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## SUBMARINE TELEGRAPH CABLES IN TIME OF WAR

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Though the recent hostilities with Spain were so short in duration and so restricted as to the opportunities for the settlement of important questions of war and international law, there was, nevertheless, one matter which assumed an importance throughout the entire period, and that was the question of international telegraphic communication by means of submarine cables in time of war.

From the time of the cutting of the Manila cable, by Admiral Dewey, until the removal of the censorship of the communication by cable between Havana and Europe, it was a matter always under consideration by the belligerents, and far from being ignored by the neutrals concerned.

It was, of course, not a novel question in the works and discussions upon international law, but it was a question, though meagre as to usage, constantly extending in its area in the world and increasing in importance, both for peaceful and warlike purposes.

The general question of the international protection of submarine telegraph cables on the high seas and elsewhere, led to various general conferences upon the subject in Europe; the last one being held in Paris, at which it was concluded a convention in March 14, 1884, the ratifications of the signatory powers being exchanged in April 1, 1885, and the date agreed upon for the agreement or convention to go into effect was May 1, 1888. To this convention, the United States was a party, the Hon. L. P. Morton being our representative. The convention treated of the laying and protection of telegraphic cables in time of peace: Article XV, of the

convention reading as follows:--

"It is understood that the stipulations of this convention shall in no wise affect the liberty of action of belligerents."

Concerning this Article, Dr. Macdonell, an English lawyer of recognized standing, in a recent lecture, says:--

"The 15th. Article of the Submarine Cable Convention expressly reserves the rights of belligerents, which, I take it, include cutting or injuring any cable likely to be useful to an adversary, however injurious such interruption may be to neutrals. This is confirmed by referring to the proces-verbal of the pro-

ceedings. I find that the Belgian delagate, M. Orban, stated that

" as he read the article the text recognised the liberty of action of the belligerent, and by implication his right to cut <sup>submarine</sup> ~~submarine~~ cables, even those that land on neutral soil." Another representa-

tive at the conference gave formal intimation at an early stage in the proceedings that the convention for the protection of submarine cables should have no application except in time of peace.

At the time of the signing the English government the convention, Lord Lyons presented a declaration in the name of the English gov-

ernment to the following effect:--"Her Majesty's Government understand by Article 15 that in time of war a belligerent Power which has signed the convention will be free to act in regard to sub-

marine cables as if the convention did not exist." M. Orban, the Belgian delagate, added a declaration to the same effect:--"The

Belgian Government, by the medium of its delagates at the Conference, has maintained that the Convention had no effect on the rights of belligerents Powers; these rights would be neither more nor less extensive after the signing of the Convention than before."

"There is little doubt that it was the opinion of the signatories of the convention of 1884, that a belligerent might freely cut submarine cables--might, for example, sever the connecting between England and her colonies and foreign possessions without just cause of offence."

So far as the usage is concerned up to the time of the war with Spain, it is confined so far as I can ascertain, to the Franco-German war; the war between Chile and Peru, and the Civil war in Chile. In these cases cables were cut, both within the territorial waters of the belligerents and in ex-territorial waters or the high seas. The belligerent action of the late war in cable cutting, wholly upon our part, was not to limit the cutting or the attempts to interrupt the communication, either to the territory or to the property of the belligerent concerned.

There is little doubt as to the right of a belligerent to cut, destroy, or interfere with a submarine telegraph cable or terminal station, no matter by whom owned in the territory land or water of the enemy, whenever military necessity or convenience requires it. The belligerent concerned is the sole judge of this necessity and of the nature of the interference which he proposes to create.

It is generally recognized, certainly by the United States, that under certain circumstances and conditions, materials for the construction of telegraphs are contraband of war. Submarine cables, if found ashore, in belligerent territory, or afloat, bound for a belligerent destination as an enemy's port or fleet, would certainly be liable to seizure as material for the construction of a telegraphic communication, and hence contraband of war. If it then can be considered contraband of war on its way on the high

seas, as material, or a component part only, to a hostile destination, how much more does such a cable become contraband of war, when it is in working order, conveying aid, information and possibly money, to a belligerent or belligerent country, in time of war.

Much could and has been said about the commercial importance and general usefulness of telegraphic communication by cable to neutrals and to innocent persons of both belligerents in war time, but such usefulness must give way to the stern necessities. War, as our late hostilities prove, is not a benevolent measure, nor can it be successfully used as a means of immediate benevolence or charity. That ultimately it may become of service in that way there is, I think, but little doubt; but during the active operations, convenience and commerce must, when necessary, step aside. There is no doubt, for instance, of the convenience and utility and even humanity, of a system of buoyage and lights ashore and afloat for the purposes of navigation and safety; yet in times of war, the extinction of sea coast and harbor lights and the removal of buoys is directed by belligerents and submitted to by neutrals as matters of military necessity.

Besides, the contraband nature of the material of a telegraphic cable in use or enroute, as an essential element of belligerent communication which would render it liable to seizure upon the high seas, there is another side to this question and that is as to the nature of the service afforded by such a communication by a neutral proprietor to a belligerent.

This service is in the nature of both an evasion of a

blockade, and what has been termed of late years, as unneutral service.

~~Take~~ Take, in the first instance, a blockaded or besieged port, as Havana and Santiago were during the late hostilities. The communication of information or dispatches or of means of assistance which can be made by such means, would easily resemble the violation of a blockade by a neutral vessel carrying dispatches, the capture of which upon the high seas, would be a justifiable and indisputable act of war.

Extend this to a country or port not blockaded or besieged and you would find the cable owned by a neutral the means of performing the most unneutral kind of service which would most properly cause its seizure, control or destruction by the offended belligerent.

There are, however, other conditions existing besides that of a cable, leading by way of or from, a neutral country to that of a belligerent. Such is the case of a cable laid between two neutral ports, link of a chain reaching from a belligerent to his colony. In this case there is little doubt but that the cable should be exempt from seizure or attack--the transit of continuous, ~~or~~ hostile or belligerent messages is too slight a matter to allow such a cable to be tampered with. The Institute of International Law, in a session held in 1878, adopted the conclusion or declaration of opinion that any submarine telegraphic cable that united two neutral territories, should be held inviolable? This will doubtless be established in time to come as a sound rule, as it is both reasonable and proper.

If, however, there should be a neutral station or

landing place interposed between the termini of a cable on territory of the same belligerent, the safety and use of the cable could, perhaps, be assumed by a censorship on the part of the neutral as to messages. A belligerent to whom such a cable is of essential military importance, could provide for this contingency by laying a cable or loop outside of the territory, if the distance is not beyond the telegraphic range of the instruments. At all events, one belligerent has the right to demand that the neutral should not permit the messages from the other belligerent passing through neutral territory--if repeated--to be injurious or disadvantageous to himself.

When possible, cable communication generally, should be kept open for commercial or other innocent intercourse, and in many cases a government censorship can meet the circumstances of the war and prevent injury to a belligerent. It is gratifying to know that to this solution of the question, the practice of the United States in the late war greatly contributed.

Authorities.

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 Owens Declaration of War, pp 182, 382. Manual of International Law, Ferguson, sections 123, 124. Treaties and Conventions of the United States, 1776-1887, pp 1176, 1187.