Is Cyberwar Legal?

A Four Hundred Year Retrospective
Are Cyber Attacks Permissible according to the Laws of War?
Seven minute Survey
on the Right to War

1) 1600’s to 1928: Old World Order

2) 1928 to Present: New World Order
Grotius’ Theory of War

War is a permissible remedy for wrongdoing
The Old World Order

Rights of Conquest

Immunity from Prosecution

Privilege to use Force

Gunboat Diplomacy

No Right to Sanction
The Legal Right of Conquest
Mexican Cession 1848
No Economic Sanctions
Old World Order

WAR ➔ LEGAL

ECONOMIC SANCTIONS ➔ ILLEGAL
Kellogg-Briand Pact (1928)
Kellogg-Briand Pact, Article 1.

The High Contracting Parties . . . condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.
Rights of Conquest

No Right to Sanction

Immunity from Prosecution

Privileges to use Force

The New World Order

Nuremberg/Rome Statute

No Conquest

Duress

Defense

Right to Sanction

Gunboat Diplomacy
Japan Invades Manchuria, 1931
Right of Conquest
No Right of Conquest
Economic Sanctions are Illegal
Economic sanction are legal
How do Cyberattacks fit into the New World Order and its outlawry of war?
Critical Question

Are Cyberattacks more like Kinetic War or Economic Sanctions?
Why is Kinetic War Illegal?

1) Violent

2) Active Harming

Economic Sanction are Legal

1) Non-Violent

2) Passive Harming
2 X 2 Matrix

<table>
<thead>
<tr>
<th>Violent</th>
<th>Active</th>
<th>Non-Violent</th>
<th>Passive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kinetic War</td>
<td>Economic Sanctions</td>
<td></td>
<td></td>
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- Active:
  - Kinetic War

- Passive:
  - Economic Sanctions
Cyber Matrix

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<tr>
<td>Active</td>
<td>Kinetic effects</td>
</tr>
<tr>
<td>Passive</td>
<td>Allowing others to use your networks for attacks</td>
</tr>
</tbody>
</table>
Cyber operations in top left/bottom right regulated by the Laws of War
Norm of non-interference
Suggestion: Cyber-attacks that interfere with essential government functions violate the norm of non-interference and therefore illegal

Elections, Utilities, Financial System
Enforcement?

• Cyber Clubs: Member states agree to cyber norms.

• Those who flout the norms lose access to club network.