

Did an Alleged Ukrainian Attack against the Nord Stream Pipelines Violate the Law of Armed Conflict?

By: Alexander Lott (Marie Curie research fellow at the Norwegian Centre for the Law of the Sea).

Matter commented on: The Nord Stream Explosions in the Baltic Sea

1. Introduction

[Preliminary Western intelligence reports](#) have emerged about a purportedly pro-Ukrainian group of six divers conducting the sabotage against the Nord Stream pipelines in September last year. The Ukrainian Government [denies](#) any involvement in such an alleged operation. Nonetheless, recently, the Washington Post and Der Spiegel published [a joint report](#) which reached the unequivocal conclusion that:

“A senior Ukrainian military officer with deep ties to the country’s intelligence services played a central role in the bombing of the Nord Stream natural gas pipelines last year, according to officials in Ukraine and elsewhere in Europe, as well as other people knowledgeable about the details of the covert operation. /.../ Chervinsky did not act alone, and he did not plan the operation, according to the people familiar with his role, which has not been previously reported. The officer took orders from more senior Ukrainian officials, who ultimately reported to Gen. Valery Zaluzhny, Ukraine’s highest-ranking military officer, said people familiar with how the operation was carried out.”

In this context, this blog post begins by briefly discussing the standards for the potential attribution of the alleged activities of the afore-referred group of divers to Ukraine. This post demonstrates that the legality of the Nord Stream explosions can be assessed from the perspective of the law of armed conflict. This post debates the question of whether an alleged Ukrainian attack against the Nord Stream pipelines violated the law of armed conflict in the wider framework of the ongoing international armed conflict between the Russian Federation and Ukraine. It examines the legal qualification of the Nord Stream pipelines as a legitimate military objective and the environmental considerations pertaining to the sabotage against these pipelines.

2. Attribution Standards

International law recognizes different standards for attribution depending on whether an act is governed by the law of armed conflict or not. According to Article 8 of the [ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts](#), the conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct. Hence, even if Ukraine (e.g., its armed forces) exercised overall control over the alleged divers’ mission by way of financing and provision of training, logistics, and weapons to the divers, then such sabotage appears not to amount to a potential armed attack attributable to Ukraine against the coastal States (Denmark and Sweden) in whose maritime zones the explosions occurred in terms of Article 51 of the UN Charter (on the *jus ad bellum* perspective to sabotage against submarine pipelines and the relevant main criteria, see [here and here](#)). This would require Ukraine’s effective control over the operation ([Nicaragua v. the United States](#), paras 115, 195, 230).

Yet, in the context of an armed conflict, the attribution standards are more flexible. The International Court of Justice (ICJ) noted in the Genocide Case that “the ICTY [the International Criminal Tribunal for the former Yugoslavia] presented the “overall control” test as equally applicable under the law of State responsibility for the purpose of determining /.../ when a State is responsible for acts committed by paramilitary units, armed forces which are not among its official organs.” (para 404) Thus, it appears

that, according to the rules of the law of armed conflict, it would suffice to invoke Ukraine's responsibility for the alleged activities of a group of divers that hypothetically conducted the sabotage against the predominantly Russian-owned and Russian-controlled Nord Stream pipelines if Ukraine exercised overall control over their actions.

3. Were the Nord Stream Pipelines a Legitimate Military Objective?

Under customary international law, as reflected in Rule 15 of the [San Remo Manual](#) on International Law Applicable to Armed Conflicts at Sea, it is not permissible to carry out an attack against critical offshore infrastructure within the limits of a neutral State's territorial sea. By contrast, if pipelines belonging to a belligerent State were injured in an exclusive economic zone (EEZ) or on a continental shelf of a third State by another belligerent State, then such use of force might be in conformity with the law of armed conflict even if the pipelines land in a neutral State.

According to Rule 68 of the [Oslo Manual on Select Topics of the Law of Armed Conflict \(Oslo Manual\)](#), the use of force against submarine pipelines must conform to the law of armed conflict, including the rules on distinction and proportionality (pp. 62-63). Rule 68 provides that: "During an armed conflict, submarine pipelines and high voltage cables exclusively serving one or more Belligerent States may – if it is militarily necessary – be seized or destroyed subject to the applicable principles and rules of LOAC [the Law of Armed Conflict], in particular distinction, proportionality and the obligation to take feasible precautions." Yet this concerns submarine cables and pipelines that serve *exclusively* belligerent(s). The Nord Stream pipelines transported gas from the belligerent State Russia to the neutral State Germany. Thus, the pipelines did not serve exclusively a belligerent State but also a neutral State.

Furthermore, at the time of the attacks, the Nord Stream pipelines likely served as civilian objects. Civilian objects, categorized as all objects that are not military objectives, cannot be the object of attack or reprisals (Art. 52(1) of the [Additional Protocol I to the 1949 Geneva Conventions](#)). Article 52(2) of Protocol I stipulates that attacks need to be limited strictly to military objectives and, in so far as objects are concerned, military objectives are limited to those objects which, by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. It is questionable whether the Nord Stream pipelines could have served as military objectives in the context of the ongoing international armed conflict between the Russian Federation and Ukraine.

The pipelines indirectly contributed to the belligerent State's war efforts because of Russia's revenues from the sale of natural gas to the European market. Thus, it could be argued that the Nord Stream pipelines could be seen as contributing to a belligerent State's war-sustaining effort, thereby potentially making it a legitimate military objective. [The Newport Manual](#) states that: "In this view, enemy export of certain goods, like crude oil, renders a vessel a military objective because the enemy earns revenue that contributes to its war-fighting effort." (p. 138) If commercial ships exporting a belligerent State's crude oil may fall under this category, then there appears to be no reason why natural gas pipelines that are controlled and owned by a belligerent State-run company (e.g., Russia's Gazprom) could not be treated equally as a military objective due to their contribution to a belligerent State's war-sustaining effort. However, [the Newport Manual](#) clarifies that most States do not subscribe to the view that military objectives include civilian objects contributing to a belligerent State's war-sustaining effort. (p. 138) Thus, the United States' interpretation, as reflected in the Newport Manual, is not widely supported under Protocol I.

In addition, the flow of natural gas from the Russian Federation to Germany had stopped by the time the Nord Stream pipelines were injured (see [here](#) and [here](#)). Thus, at the time of the attack, the pipelines were not exporting commodities and did not contribute to the war-sustaining efforts of the Russian Federation. Hence, it is highly doubtful if the Nord Stream pipelines could have served as a lawful military target in the context of the ongoing international armed conflict between the Russian Federation

and Ukraine – even if, hypothetically, the attack had been carried out by one belligerent State against another belligerent State.

4. Environmental Considerations

An attack on a submarine pipeline has a detrimental effect on the marine environment. States have a duty to prevent such effects in peacetime, but does this obligation also apply in an armed conflict? If critical offshore infrastructure is damaged in a neutral State's EEZ or on its continental shelf, then precautions need to be taken to ensure due regard for the protection and preservation of the marine environment (Rule 35 of the [San Remo Manual](#)). In the [Nuclear Weapons Case](#), the ICJ found that “[t]he existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.” (para 29) Compliance with this obligation is particularly relevant in relation to acts of sabotage against submarine oil or gas pipelines.

Rule 44 of the [San Remo Manual](#), widely considered reflective of customary international law, prohibits any damage arising to the marine environment if such use of force is not justified by [military necessity](#). In this context, it is doubtful if the use of force against the Nord Stream pipelines was conducted with due regard for the natural environment. This act of sabotage posed a significant danger to the marine environment in many respects:

- Underwater explosions often cause fatal noise pollution for marine mammals even many kilometers away from the epicenter of the explosion and the area of the Nord Stream explosions [is known as the habitat area](#) of the critically endangered Baltic Sea population of harbour porpoise,
- The explosions resulted in heavy gas leakage and supposedly the [world's heaviest methane emission event to date](#),
- In the context of the precautionary principle (which, as found by a [summary of practice on Rule 44 of the San Remo Manual](#), is also relevant in an armed conflict), the explosions at least had the potential to disturb the seabed to the extent that toxic seabed sediments were suddenly released to the water column. In addition, the explosions could break heavily corroded Second World War-era containers full of chemical warfare agents.

Notably, one of the main dumping sites of containers laden with chemical warfare agents is located on the bottom of the seafloor east of Bornholm Island, close to the Nord Stream explosion sites (see [Lott; Vanninen](#) et al. at p. 2). It is estimated that approximately 30,000 to 50,000 tons of chemical weapons (gross weight) were dumped northeast of Bornholm Island after the Second World War. Some unmapped containers were thrown overboard randomly *en route* to the main dumping site (see [Granbom](#) at p. 109). This is problematic given that the strong explosions could have damaged some containers of chemical warfare agents that might have been initially deemed to be at a safe distance when the submarine pipelines were laid on the seabed.

5. Conclusion

In the context of an armed conflict, the attribution standards are more flexible than in peace time. It would suffice that a belligerent State exercises overall control over a group of persons by way of financing and provision of training, logistics, and weapons for invoking that State's responsibility for the relevant acts. In case Ukraine as a belligerent State exercised overall control over the group of divers that allegedly conducted the Nord Stream explosions, it would *prima facie* imply Ukraine's responsibility for the sabotage against the Nord Stream pipelines.

During an international armed conflict, the protection standards of offshore critical infrastructure differ depending on whether the object is located within or outside the limits of a neutral State's territorial sea.

Conducting military operations within a neutral State's territorial sea is prohibited. By contrast, even such pipelines (as well as cables) that do not exclusively serve belligerent States might, in situations of military necessity, serve as lawful military targets in areas where the high seas freedoms apply even if the pipelines (or cables) land in a neutral State. However, belligerent States must meet the requirement of due regard for the rights and duties of the coastal State, *inter alia*, for the exploration and exploitation of the economic resources of the EEZ and the continental shelf and the protection and preservation of the marine environment.

It is doubtful that the Nord Stream pipelines could have served as a military objective even in the context of the armed conflict between the Russian Federation and Ukraine. The Nord Stream pipelines likely did not serve as a civilian object that contributed to a belligerent State's war-sustaining effort from the perspective of the ongoing international armed conflict in Europe, given that the flow of natural gas from the Russian Federation to Germany had stopped by the time the attacks were launched against the Nord Stream pipelines in September 2022. Nor did the perpetrators of the attack give due regard for the protection and preservation of the Baltic Sea marine environment. Based on these reasons, it appears that an attack allegedly attributable to Ukraine against the Nord Stream pipelines was not in conformity with the law of armed conflict.

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