

# MANUAL OF INTERNATIONAL LAW APPLICABLE TO CYBER WARFARE “THE TALLINN MANUAL”



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# The Tallinn Manual

- Pedigree
- Experts
- Process
- Format
- The Toughest Questions



# Pedigree

## **Three Boxes**

Technology: the Possible

Law: the Permissible

Policy: the Preferable

## **Five Domains**

Land

Sea

Air

Space

Cyber

# Experts

- CAPT. G. Bernatchez, Canadian Navy
- Air Commodore W. Boothby, RAF, UK
- Lt Col P. Cumming, Australian Defence Force
- Mr. B. Demeyere, Leuven University, Belgium
- Dr. Robin Geiss, ICRC
- Professor T. Gill, Amsterdam University, Netherlands
- Mr. U. Hausler, German MoD, National Defense University, USA
- Professor W. V. Heinnegg, Viadrina Europa University, Germany
- Professor E. Jensen, Fordham University, USA
- Professor D. Jinks, University of Texas, USA
- Professor J. Kleffner, Swedish Defence College
- Professor M. Schmitt, Durham University, UK
- Dr. James Sweeney, Durham University, UK
- Ms. Eneken Tikk, CCD COE, Estonia
- Brigadier K. Watkin, Canadian Forces (ret.), US Naval War College
- Professor S. Watts, Creighton University, USA
- Professor T. Wingfield, Marshall Center, Germany

# Process

- Sponsor
- Frame Issues (Table of Contents)
- Individual Work
- Small Group Review
- Plenary Presentation/Discussion
- Editorial Committee Review
- Circulation
- Publication

# Format

## RULE 2

**Without prejudice to applicable international obligations, a State may exercise its jurisdiction over persons engaged in cyber activities and cyber infrastructure located on its territory, or extraterritorially in accordance with international law.**

1. The term jurisdiction encompasses three dimensions: (a) jurisdiction to legislate / prescribe; (b) jurisdiction to enforce; and (c) jurisdiction to adjudicate.
2. The principal basis for a State to exercise its jurisdiction is physical or legal presence of a person (*in personam*) or object (*in rem*) on its territory (a form of territorial jurisdiction). Therefore, a State may adopt laws and regulations governing cyber activities initiated from its territory and enforce those norms against individuals violating them within its territory. This is so even if the offending cyber activities have no effect within the State exercising jurisdiction. Similarly, a State is entitled to regulate the activities of Internet Service Providers registered in its jurisdiction but physically operating abroad.

# Format

4. It would seem that this doctrine has particular relevance to cyber operations. For example, in April – May 2007, Estonia was targeted in cyber operations initiated from abroad. It is unquestionable that Estonia would at a minimum have been entitled to invoke territorial jurisdiction (the effects doctrine) over those individuals who conducted the operations. In particular, such exercise of jurisdiction would be justified on the basis of the fact that these operations resulted in substantial effects on Estonian territory, such as significant interference with the banking system and governmental functions. Similarly, civilians (who do not enjoy combatant immunity) involved in cyber operations against Georgia during that State's international armed conflict with the Russian Federation in 2008 would be subject to Georgian jurisdiction on the basis of significant interference with websites and disruption of cyber communications.

# The Toughest Questions

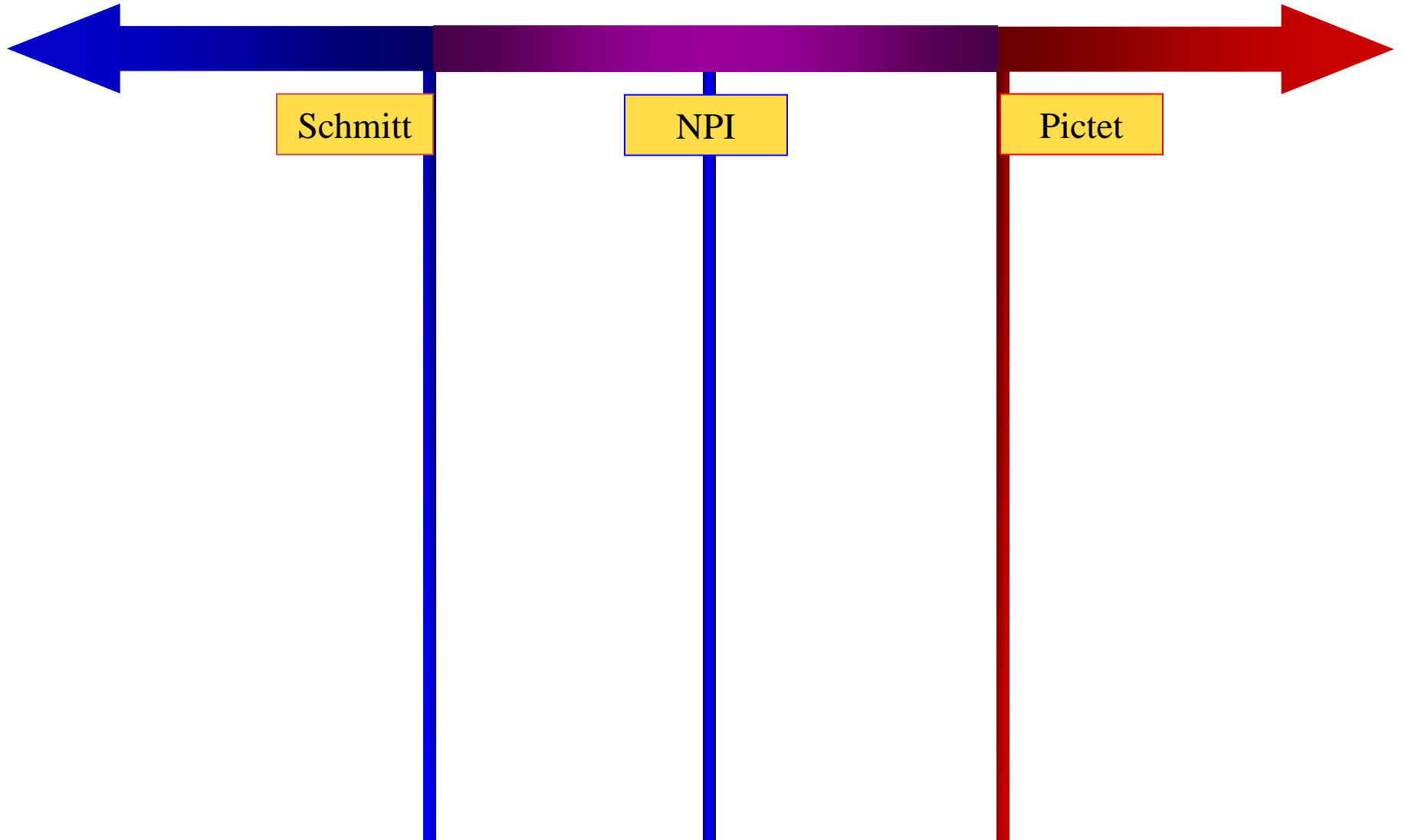
- Focus on Military Operations
- Use of Force Spectrum
- Targetability
- Proportionality



# Focus on Military Operations

- Coherent Body of Law
- *Jus ad Bellum vs. Jus in Bello*
- Borders of Law Enforcement and Intelligence Collection

# Use of Force Spectrum

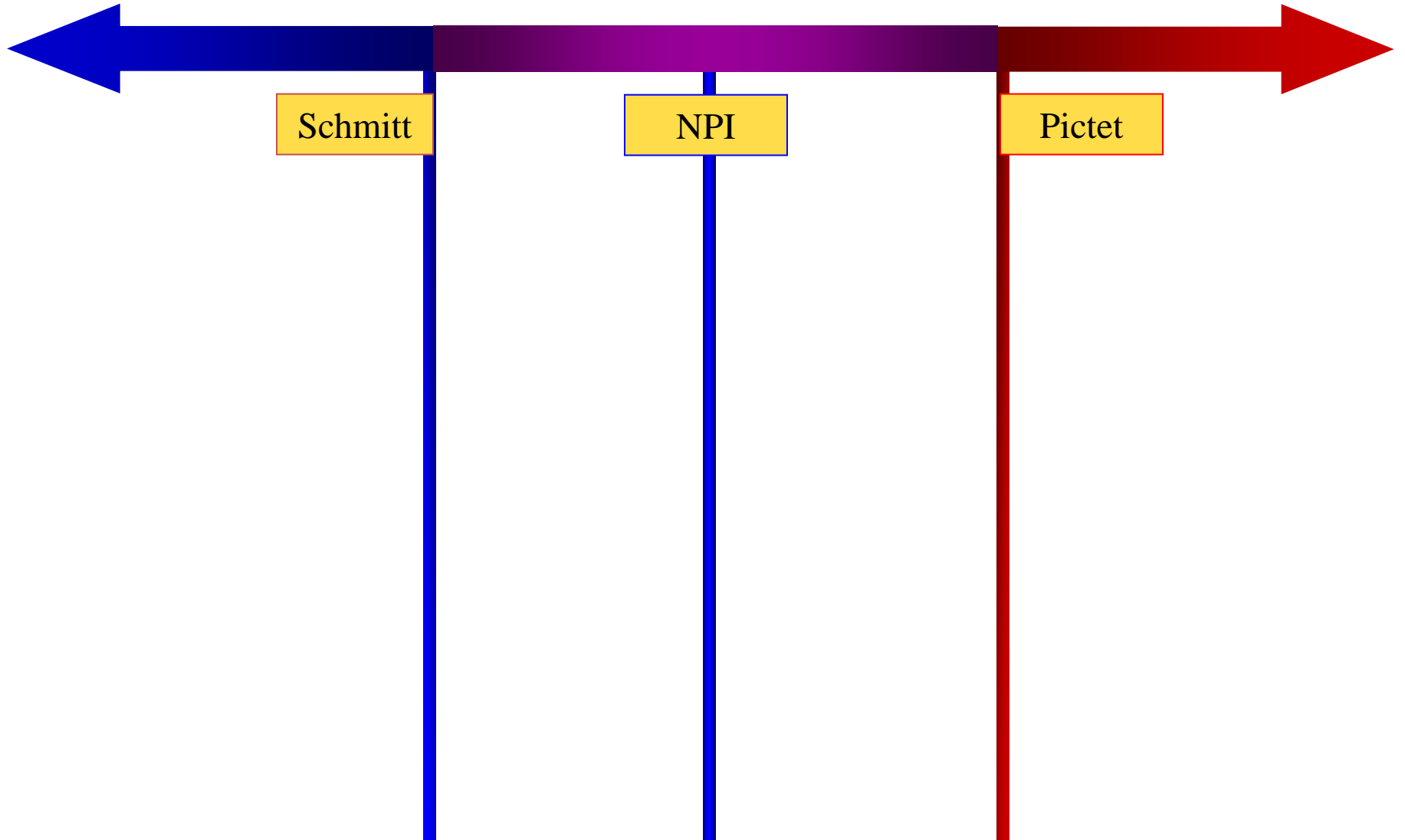


# Schmitt Analysis: Case-by-Case Evaluation

- Severity
- Immediacy
- Directness
- Invasiveness
- Measurability
- Presumptive Legitimacy
- Responsibility



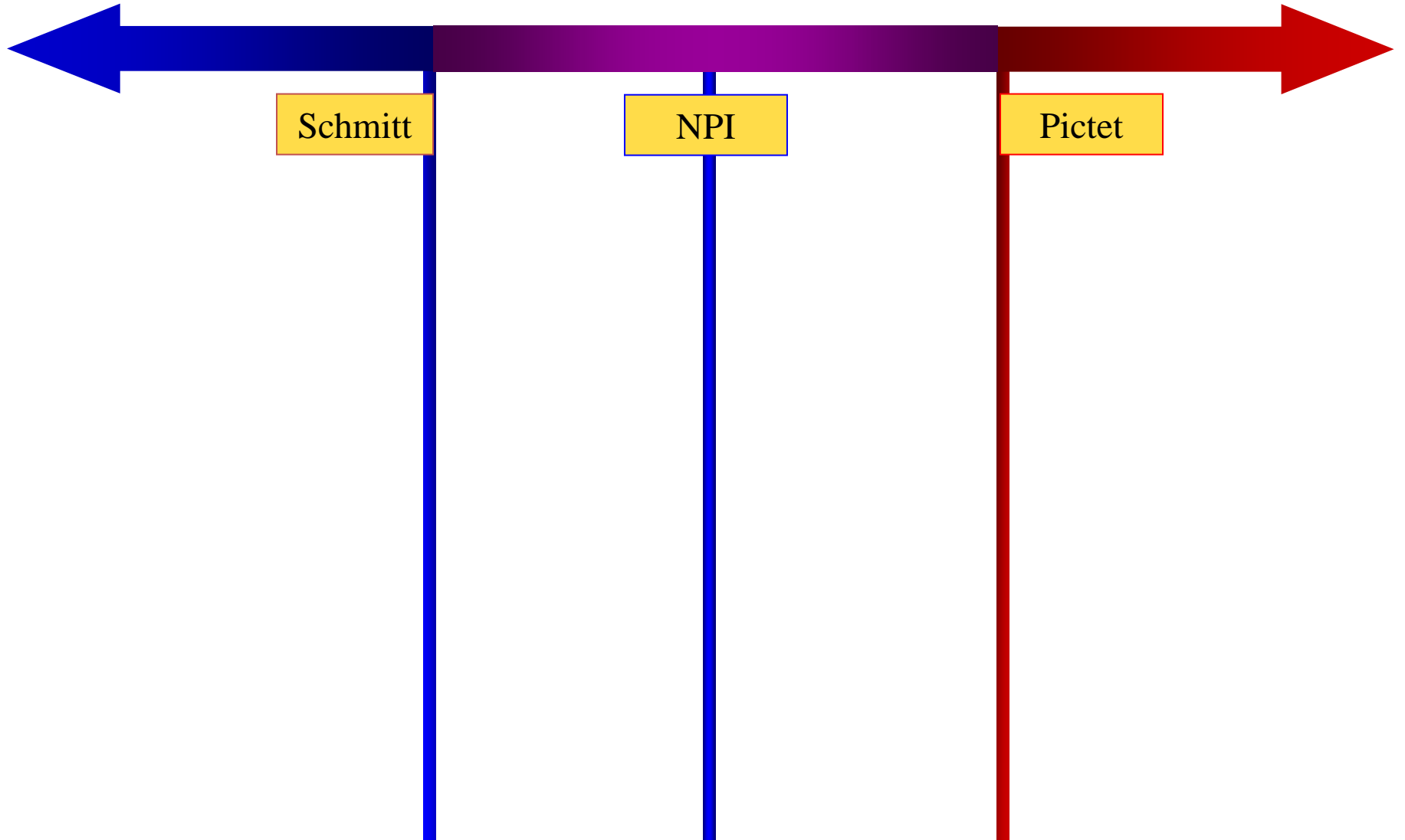
# Use of Force Spectrum



# NPI

- Necessity
- Proportionality
- Imminency

# Use of Force Spectrum



# Pictet Analysis: Threshold for Warfare

- Scope
- Duration
- Intensity



# Targetability

- Military Objectives: NLPU
- Combatants vs. Non-combatants
- Combatant
  - Military Forces
  - Organized Armed Group
  - Civilians



# Proportionality

- Showstopper
- Classical definition
- Three problems
  - Intel on target
  - “CEP” of weapon
  - “Blast radius” of weapon

# Conclusion

- Work continues
- Discussion welcome
- Contact:

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