Respecting the rule of law on the Internet and in the wider digital environment

Concerns

» Mass surveillance of our online activities and e-communications

» Extra-territorial acts to extract data from servers in other states outside a legal framework

» Lawful expression filtered and blocked on the Internet

» Cybercrime & Cybersecurity

» Big data mining & user profiling

» Risk of fragmentation of the Internet

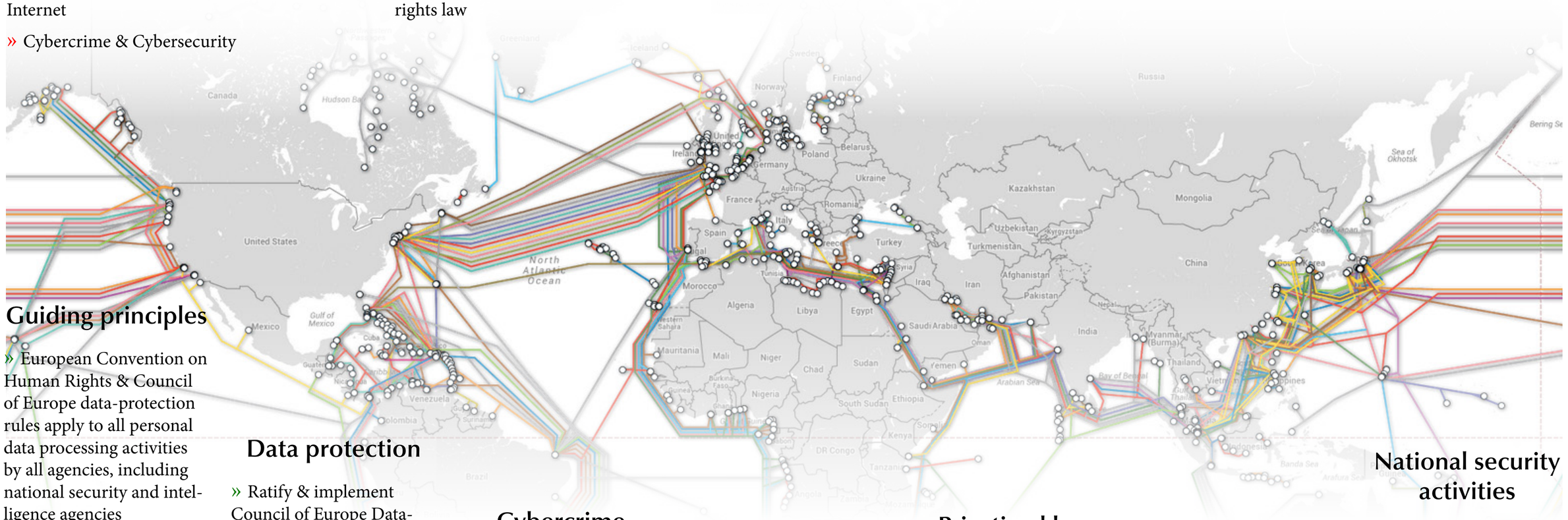
» Much of the digital environment under control of private-sector companies, which are not directly bound by international human rights law

» States' reliance on private-sector companies to circumvent their own human rights obligations

» States with global influence on the Internet not complying with international Human Rights standards in their digital activities

» Competing and conflicting laws on freedom of expression applying simultaneously

» Blurred lines between law enforcement & national security activities & agencies in the digital environment



Recommendations

Guiding principles

» European Convention on Human Rights & Council of Europe data-protection rules apply to all personal data processing activities by all agencies, including national security and intelligence agencies

» Human rights obligations shall not be circumvented through ad hoc arrangements with private actors

» No states & none of their agencies should access data stored in another country without express consent of the other country or countries involved, unless there is a clear legal basis & access complies with Human Rights standards

Data protection

» Ratify & implement Council of Europe Data-protection Convention No. 108

» Strengthen Convention No. 108 to clarify & better enforce rules, especially in relation to digital world, & surveillance for national security, & intelligence purposes

» States must not resort to or impose mandatory retention of data by third parties

Cybercrime

» All states parties to the Convention on Cybercrime must comply with their human rights obligations in anything they do or do not do under the Convention

» States must ensure that their law enforcement agencies do not obtain data from servers & infrastructure in another country under informal arrangements

Jurisdiction

» Need to limit the exercise of extra-territorial jurisdiction in relation to transnational cybercrimes

» States should only exercise jurisdiction over foreign materials that are not illegal under international law if there is a nexus between the materials or the disseminator & the state taking action

Privatized law enforcement

» Establish guidance on the responsibilities of business enterprises in relation to their activities affecting the Internet & prevent undue State pressure

» Clarify states' responsibility for failing to ensure the respect of human rights standards by private entities

Blocking & filtering

» Restrictions on access to Internet content must be based on a strict & predictable legal framework with judicial oversight

» Do not rely on or encourage private actors to carry out blocking outside this framework

National security activities

» Interfere with human rights only in cases that threaten the very fabric & basic institutions of a country

» Interferences can occur only prior proof that the threat cannot be met by means of ordinary criminal law

» Strengthen democratic oversight of national security & intelligence agencies

Image: Submarine cable map - courtesy of www.submarinecablemap.com