

BOX 7.2 Avoiding Harm to Innocent Parties

The principle of distinction requires military forces to minimize harm to innocent parties—that is, non-combatants that are not actively engaged in helping to prosecute the war. But three categories of “innocent parties” must be distinguished, especially in the cyber context.

- **Category A**—An innocent party that is compromised by an adversary and then used to shield the adversary’s actions. For example, an adversary (Zendia) that uses human civilians as shields to protect its antiaircraft sites is using this kind of innocent party. Zendia would also be doing so if it launched a cyberattack against Ruritania through the use of a compromised and innocent third-party computer (e.g., one belonging to civilians).

- **Category B**—An innocent party that is caught up in some effect that was unpredicted or could not have been expected. For example, a Zendian civilian truck in the desert is struck inadvertently by the empty drop tanks of a Ruritanian fighter-bomber en route to its target, and all those inside the truck are killed. Or, a Ruritanian cyberattack strikes a Zendian generator powering the Zendian ministry of defense, leading to a cascading power failure that disables hospitals in which Zendian patients then die.

- **Category C**—An innocent party that is granted special protection under the Geneva Convention, such as a hospital, and is then used as a facility from which to launch attacks. For example, the Zendian adversary that places mortars on the roof of a hospital is using Category C innocent parties. Or, Zendia launches a cyberattack on Ruritania using the servers and Internet connections of a Zendian hospital.

Distinguishing between these kinds of innocent parties is important because the categories of parties harmed have different implications for responsibility. If

from being so used. Accordingly, there exists a right for a threatened state “to use force to neutralize a continuing threat located in the territory of a neutral state, but not acting on its behalf, when the neutral state is unable or unwilling to fulfill its responsibility to prevent the use of its territory as a base or sanctuary for attacks on another nation.”⁶ Note also that under item 3 of UN Security Council Resolution 1368 (adopted on September 12, 2001),⁷ which calls on all member states “to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks” and stresses that “those responsible for aiding, supporting, or harboring the perpetrators, organizers and sponsors of these acts will be

⁶ Department of Defense, Office of General Counsel, *An Assessment of International Legal Issues in Information Operations*, Second Edition, November 1999.

⁷ United Nations Security Council Resolution 1368 (2001), accessed at <http://dacesssdds.un.org/doc/UNDOC/GEN/N01/533/82/PDF/N0153382.pdf?OpenElement>.