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Neutrality in Cyber War



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Outline

- Review: legal classification of conflicts
- Overview of the law of neutrality
- International armed conflict
 - ▶ The concept of neutrality in cyber space
- Non-international armed conflict
 - ▶ The rights and obligations of belligerents



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Hague Convention V of 1907



"Tweeting", circa 1907



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Legal classification of conflicts

- Rationale for separation of *jus ad bellum* from *jus in bello*
- Types of conflict
 - ▶ state vs. state – IAC
 - ▶ state vs. non-state armed group (NSA) – NIAC
 - ▶ NSA vs. NSA – NIAC
 - ▶ delimitation of the battlefield



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The law of neutrality

- Applies *de jure* in IAC
- Regulates coexistence of states at war and states at peace
- "The attitude of impartiality adopted by third states towards belligerents and recognized by belligerents ... creating **rights** and **duties** between the impartial states and the belligerents"



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The law of neutrality

- No declaration of neutrality is required
- Rules of neutrality in Hague Convention V (land) and VIII (sea) a codification of customary law
- These laws have a "slightly musty quality"
- Look to object and purpose of the law



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The law of neutrality

- **Duties** of neutral states:
 - ▶ refrain from participating in the conflict
 - ▶ impartial treatment of belligerents
 - ▶ prevent belligerents from committing violations of their neutrality on their territory
 - including use of force if necessary
 - ▶ intern combatants found on territory until end of hostilities
- **Rights** of neutral states:
 - ▶ continue normal diplomatic and trade relations
 - ▶ territory is inviolable (cf. UN Charter)



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The law of neutrality

- **Duties** of belligerent states:
 - ▶ may not move troops, weapons or other materials of war across neutral territory, air space
 - ▶ may not recruit "corps of combatants" from neutral state
 - ▶ telecommunications – later
- **Rights** of belligerent states:
 - ▶ a guarantee that neutral territory will not be used to launch attacks, recruit/shelter troops, etc.



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The law of neutrality

- **Consequences** of a neutral state violating its own neutrality: (ultimately) treatment as a co-belligerent
 - ▶ slight vs. severe violations – Oppenheim
 - ▶ correlation with *jus ad bellum*
- **Consequences** of a belligerent state violating the neutrality of a state: right of latter to use self-defense to expel belligerent
 - ▶ slight vs. severe violations
 - ▶ correlation with *jus ad bellum*



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International armed conflict

- ~60% of internet traffic worldwide traverses through U.S. servers owned by private enterprise
- How can wired neutral countries maintain neutrality during cyber conflict?
- **Central issue:** does routing of attacks by a belligerent state through the internet nodes of a neutral country violate its neutrality? If so, consequences?



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International armed conflict

- 4 potential avenues in Hague V:
 - ▶ using cyber infrastructure in a neutral country's territory as violation of that territory – art. 1
 - ▶ cyber means of warfare as "munitions of war" moved across neutral territory – arts. 2, 5
 - ▶ (cyber means as "erecting" or "using" own communications equipment on neutral territory for military purposes – arts. 3, 5)
 - ▶ cyber transmissions as **permissible** use of neutral state's telecommunications systems – arts. 8, 9



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International armed conflict

- Examples:
 - ▶ a belligerent soldier sitting in neutral territory launching a cyber attack
 - ▶ a belligerent soldier sitting in his own territory and launching a cyber attack via servers on neutral territory
- Violation of neutral country's territory per art. 1?
- Or: moving "munitions of war" through a neutral country per art. 2?
- Or: permissible use of neutral state's communication infrastructure?



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International armed conflict

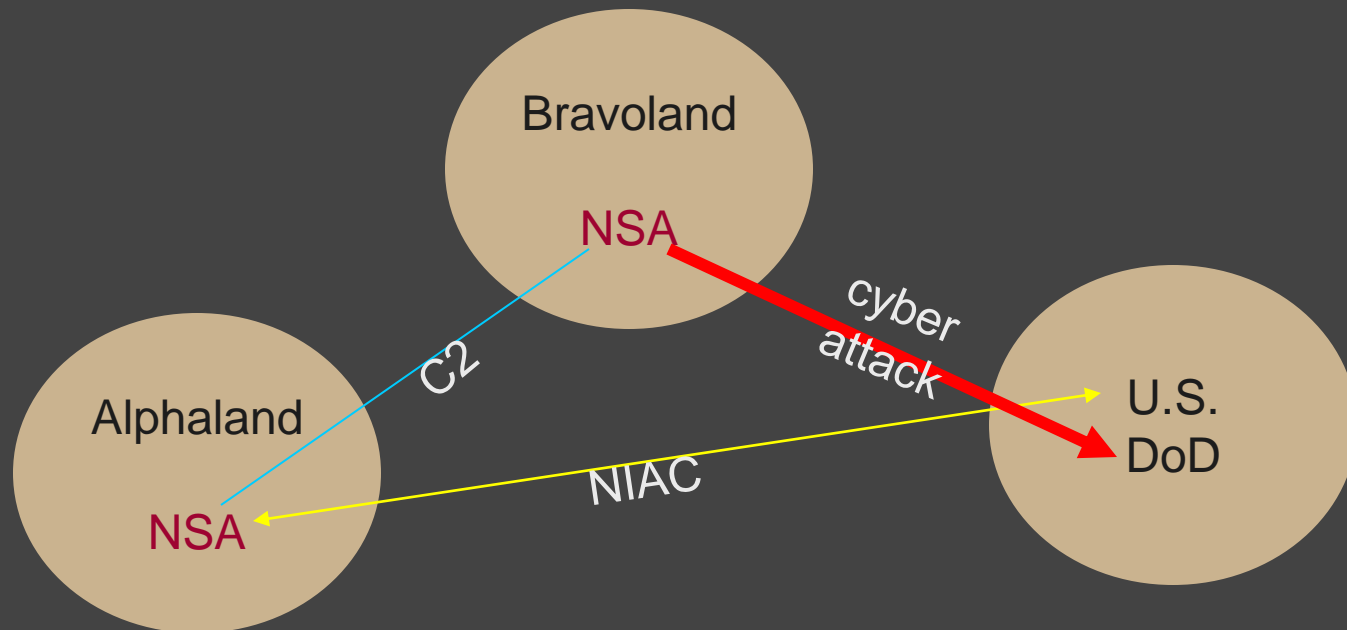
- Is **awareness** of the belligerent cyber means required before a neutral party can be held responsible for a violation of its duties of neutrality?
- Acts vs. omissions
- Possible keys:
 - ▶ look to object and purpose of law of neutrality
 - Is the neutral state's act / omission in question tantamount to participation in the conflict?
 - Oppenheim: severe vs. slight violations / consequences
 - ▶ is cyber *space* different from cyber *infrastructure*?
 - ▶ State practice, *opinio juris*



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Non-international armed conflict

- Parallel between law of neutrality (IAC) and non-participation in a NIAC?
- Hypothetical 1:





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Non-international armed conflict

- Hypothetical 2:

