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Master Thesis

An Investigation into the Functionality and Validity of the Laws of Neutrality in a Changing World

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(† 25.11.2025)

Summary

This thesis sets out to investigate the retainment of validity and functionality of the laws of neutrality in contemporary international law. With the current armed conflict between Russia and Ukraine raging, the relevance of the neutrality laws are peaking, whilst the applicability is questioned. As such a brief overview of neutrality finds its evolution and development from societal practice and norms to legal codification at the Hague Conventions (1899 and 1907). Theoretical frameworks with emphasis on constructivism are used in cohesion with methodology to assert how the laws of neutrality function and still retain validity in the continued discourse and international reverence underlined by societal norms. Nonetheless legal scholars and international use of the neutrality highlight the confounding factors relating to the functionality and notions of the laws of neutrality, which pose a significant problem. This is investigated by looking into several different notions and terms relating to neutrality (e.g. non-belligerency and impartiality) as the research serves to address the current issues of application and clash with the UN Charter. Important legal regimes and doctrines are in context discussed to strengthen the understanding of the laws of neutrality, and it is found that the laws of neutrality currently are in a stage of adaptation to contemporary international law. The laws of neutrality are, however, found to still be valid as customary international law. Although somewhat dysfunctional when regarded as traditional neutrality in the new setting of the UN charter, the laws of neutrality are found to still be valid and highly respected in international legal and political contexts, as they continue to serve the purpose of decreasing the risk of escalation and emergence of armed conflicts. To fully serve its purpose, the laws of neutrality need to leave its traditional rigidity and finalize a new doctrine, qualified neutrality in a hybrid Jus in Bello/Jus ad Bellum regime, to be able to fully function and adapt to contemporary international law. This will serve to create a better legal framework where the UN Charter and laws of neutrality synergize and complement each other.

1 Introduction

"'Russia will react toughly to unfriendly steps', [Putin] said, adding (...) 'we have every right to do so'."[1]

Three years have passed since the Russian president, Vladimir Putin, made the above statement in a meeting with German Chancellor Olaf Schulz, just two months prior to the invasion of Ukraine.[2] The statement sparked a lot of controversy at the time, but also later, because of its apparent foresight and relevance — particularly regarding third-party military support to Ukraine.

During the meeting with the German Chancellor Olaf Schulz, Vladimir Putin emphasized Russia's intention to take "appropriate retaliatory military-technical measures" in response to any unfriendly actions related to the ongoing tensions between Russia and Ukraine, emphasizing he has every right to do so.[3] Continuously throughout the ongoing conflict, Moscow has issued warnings and threats in response to the U.S. decision to provide military assistance to Ukraine, stating that this action increases the risk of a military clash between Russia and the West.[4] At the early stages of Russia's invasion of Ukraine, Russia's ambassador to the U.S., Anatoly Antonov, argued that the US decision to supply Ukraine with heavy weaponry confirmed its status as a participant in the conflict.[5] However, a lot has changed since then — especially with Russia's deployment of North Korean soldiers in the Kursk region.[6]

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[1] Baba Umar, 'Russia Warns West of Armed Response over Ukraine Threats' *TRT World* (17 December 2021) <https://www.trtworld.com/europe/russia-warns-west-of-armed-response-over-ukraine-threats-52865> accessed 2 July 2025.

[2] *Ibid*.

[3] *Ibid*.

[4] Yaroslav Lukow, 'Ukraine War: Russia Warns US of Direct Military Clash Risk' *BBC News* (10 May 2022) <https://www.bbc.com/news/world-europe-63140098.amp?> accessed 2 July 2025.

[5] *Ibid*.

[6] Justin McCurry, 'North Korea Preparing to Send More Troops to Ukraine War, Says South Korea' *The Guardian* (24 January 2025) <https://www.theguardian.com/world/2025/jan/24/north-korea-preparing-to-send-more-troops-to-ukraine-war-says-south-korea> accessed 2 August 2025.

The conflict and the ongoing war have continued for almost three and a half years since Russia invaded Ukraine on February 24th, 2022, and the level of support, involvement and impact has only increased significantly over time - although it has taken an unstable turn after the election of President Donald Trump. The increased support was seen before Biden's official departure as president, when the Biden Administration made substantial efforts to increase its support to Ukraine by allowing the use of U.S.-supplied long-range ATACMS missiles.[7] This means Ukraine could potentially use the missiles to strike into Russian soil, enabling Ukraine to change the strategic scene of the war significantly, which may cause serious military consequences.[8] Therefore, this decision is a substantial change from the prior, more restrictive policy, which only allowed limited attacks confined to Ukrainian soil.

Biden's previous reluctance to authorize such strikes stemmed from concerns about drawing NATO into direct conflict with Russia.[9] This policy shift by the Biden Administration portrays a delicate balance between supporting Ukraine's defensive capabilities and managing the risk of escalation. However, this decision did not occur out of the blue. It took place shortly after Russia deployed 50,000 North Korean soldiers to the battle-torn area in Kursk.[10]

Observing Russia's original discourse of opposing third-party support in the conflict of the war *contra* their current actions, by deploying third-party troops, highlights a clear

[7] 'Biden to Let Ukraine Use US Long-Range Missiles inside Russia: Reports - The Move Comes as Joe Biden Heads into His Final Months in US Office, with Successor Donald Trump Believed to Be More Favourable towards Russia.' *Al Jazeera* (17 November 2024) <https://www.aljazeera.com/news/2024/11/17/biden-to-allow-ukraine-to-use-us-weapons-inside-russia-reports> accessed 2 July 2025.

[8] Mike Stone and Humeyra Pamuk, 'Biden Allows Ukraine to Use US Arms to Strike inside Russia' *Reuters* (18 November 2024) <https://www.reuters.com/world/biden-lifts-ban-ukraine-using-us-arms-strike-inside-russia-2024-11-17/> accessed 2 July 2025.

[9] 'Biden to Let Ukraine Use US Long-Range Missiles inside Russia: Reports - The Move Comes as Joe Biden Heads into His Final Months in US Office, with Successor Donald Trump Believed to Be More Favourable towards Russia.' (n 7).

[10] Kevin Liptak, Natasha Betrand and Oren Lierberman, 'Biden Authorizes Ukraine to Use Long-Range US Weapons in Russia' *CNN* (18 November 2014) <https://edition.cnn.com/2024/11/17/politics/biden-authorizes-ukraine-missiles-russian-targets/index.html> accessed 14 March 2025.

shift in the threshold of allowed actions that would otherwise be considered in conflict with the laws of neutrality - similarly seen considering the substantial military Western support to Ukraine.

However, in recent history, the concept of neutrality has often been considered a relic of the past, with little legal application in contemporary conflicts.[11] Thus, literature on case law within ICJ jurisdiction and contemporary international law concerning the legal meaning of neutrality is scarce. Nevertheless, recent events have led to a renewed interest in the laws of neutrality. As the conflict between Ukraine and Russia continues to escalate, scholars and researchers are increasingly examining the principles of neutrality and the potential implications of providing military support to a belligerent involved in an international armed conflict.[12] Although Ukraine is not a member of the NATO alliance, it has nevertheless requested military assistance from NATO member states, who in turn have obliged in their third-party capacity, leading to an agitated situation jeopardising NATO's status and direct involvement in the conflict.[13] At issue is the question of whether such actions would constitute a breach of neutrality, as well as the potential consequences of President Putin's threats to take military countermeasures in response to a third party intervening in the conflict.

The uncertainty surrounding the laws of neutrality lies in the fact that the laws of neutrality have not been reformed to reflect contemporary practices or modern warfare since their establishment in the Hague Conventions of 1907.[14] This results in ill-defined statuses in conflicts and problems in the application of the laws of neutrality in

[11] StephenP Mulligan, 'International Neutrality Law and U.S. Military Assistance to Ukraine' 26/4/2022 1.

[12] Andrew Cheatham, 'A Look at Neutrality Now — and After the Ukraine War' (*United States Institute of Peace*, 26 April 2022) <https://www.usip.org/publications/2022/04/look-neutrality-now-and-after-ukraine-war> accessed 10 March 2025.

[13] Michael N Schmitt, 'Providing Arms and Materiel to Ukraine: Neutrality, Co-Belligerency, and the Use of Force' (*Lieber Institute West Point*, 7 March 2022) <https://lieber.westpoint.edu/ukraine-neutrality-co-belligerency-use-of-force/> accessed 14 November 2022.

[14] Hitoshi Nasu, 'The Future Law of Neutrality' (*Lieber Institute*, 19 July 2022) <https://lieber.westpoint.edu/future-law-of-neutrality/?> accessed 2 August 2025.

contemporary practice. Theoretically, it could be postulated that if the laws of neutrality were applied in its outdated traditional form to contemporary conflicts, third-party assistance could escalate to a third world war. However, in reality, summing up the ongoing war between Russia and Ukraine, it is notable to see the changing nature of warfare and increasingly and recurringly allowing third-party support.[15] One might ask: how far can third parties go before they get directly involved in the conflict?

Therefore, it is vital to determine whether, and in what ways, the laws of neutrality are applicable in contemporary international law and within armed conflicts, or whether they are, in fact, confounding and potentially misused.

To answer this question, it is, therefore, necessary to delve deeper into the laws of neutrality and consider the relevant legal and theoretical frameworks and state practices throughout history. Analyzing these issues can provide insight into the possible justifications and feasibility of applying the laws of neutrality in a modern context, for example, in regards to third party's support in contemporary armed conflicts. This question leads to problems and issues arising from the lack of research on the laws of neutrality in modern times and the rapid change of warfare. Furthermore, and fundamentally, considering that the laws of neutrality stem from a century-old convention that has not considered the change of the world order and the development of technology, it is vital to address the modern-day use of the laws of neutrality in international security and law.

[15] Liptak, Betrand and Lierberman (n 10).

1.1 Research problems

The laws of neutrality were codified in the Hague Conventions of 1899 and 1907 and have historically been of utmost importance to international law and international relations. Albeit, since the First World War, the concept of neutrality has faced numerous challenges. The viability of neutrality has therefore been questioned as far back as the 1920s, following the First World War and the formation of the League of Nations. In the current international system, some experts argue that certain aspects of the laws of neutrality are outdated and obsolete and may even conflict with the UN Charter. Therefore, the way the laws of neutrality are applied in today's world order can be questioned, when the nature of war has changed significantly since the establishment of the Hague Convention, particularly with the advent of the UN Charter and the prohibition on aggression as a *Jus Cogens* norm. This has led to questions about the continued usefulness of neutrality in contemporary times. Despite the passage of time, the relevance of this issue remains—and considering the current state of the world, it might even have increased its importance—as it continues to be debated by scholars today. The ongoing conflict between Ukraine and Russia has heightened curiosity regarding the application of neutrality principles in contemporary times. In particular, there is a lack of clarity surrounding the understanding of neutrality's notions and the circumstances under which a breach of neutrality occurs.

The central aim of this thesis is to investigate whether the laws of neutrality in a modern context still fulfill their intended purpose of minimizing international conflicts, to deter war and harbor rights and obligations which limit escalations. Thus, the research also intends to reach clarification of the validity and credibility of the laws of neutrality in contemporary international law.

1.2 Importance and Relevance of the Research Problem

The investigation into the laws of neutrality is without a doubt essential for the field of international security and law considering the current state of geopolitical tension around the world. With emphasis on the conflict igniting with the Russian invasion of Ukraine, anno February 2022, it is evident the world is holding its breath. The international conflict with impact rolling around the globe, seeing sanctions and summits arise, also resonate deeply within society, seen in the rhetorical change of the Nordic leaders, urging preparation for tough times. The relevance of the research is further highlighted from a national perspective as Denmark throughout the conflict has supported Ukraine economically and with weaponry - and steadfastly stand by their cause. Denmark ratified the Hague convention of 1907 on neutrality in 1909 and thus it is highly relevant to illuminate the validity and multifacetedness of neutrality. Seen from a legal perspective, as the support for Ukraine could potentially lead to an illegal stance and breach of neutrality. However, this is a complex and delicate question, inciting this thesis' work and research to further understand the laws of neutrality, their application, contemporary functionality and validity. These issues warrant continued investigation and research, which has caught my interest, and motivated me to write my thesis on this topic.

1.3 Aim & Purpose

The aim and purpose of this thesis paper is to arrive at a better understanding of whether the laws of neutrality are still rational and applicable in contemporary times. The main aim is to reach a reasonable conclusion, with the hope of finding clarification on the many uncertain questions and ambiguities surrounding the laws of neutrality and their practice. The project's research question is therefore to investigate whether the existing international law on neutrality still makes sense in contemporary times, if they are valid and functional. For that purpose, selected legal methods and philosophical theories, doctrines and regimes will be accounted for. A brief account and understanding of the laws of neutrality and their intended purpose, will be given. Emphasis will be put on the different notions and confounding factors surrounding neutrality to grasp the full width of the term and its legal intention, as well as the evolution and context of neutrality to highlight current contradictions and difficulties in application. A more detailed analysis of current legal issues in relation to neutrality laws will follow and concepts of neutrality will be discussed. The evolution in legal and political contemporary relevance will be related to the Russia-Ukraine war. Ultimately, the full scale of the research will be connected to reach an understanding of the dynamic entity which neutrality is, the validity, applicability, functionality and importantly the need for distinct clarification.

1.4 Delimitation

For the topic of this thesis, the laws of neutrality, there are multiple different areas one can concentrate on, and the approach can vary, be it a legal historical approach, pure international law, or including international relations aspects. For the sake of limitations and scope of the thesis, the following delimitations have been applied.

The historical evolution and background of neutrality shaping the current laws will be briefly touched upon. This could be a much larger study delving into scholarly, judicial and political influence and research on the topic, but is not the main focus of this thesis.

Focus will be put on a select few neutrals to emphasize points and context. Importantly, this does not disregard the other neutral states, but they are beyond the scope. For example, when specifics and relevance are needed, the focus will be on Finnish neutrality. The reasoning for this is due to Finland's geographical location as a neighboring country to Russia and Finland's recent NATO membership.

Several topics and notions of neutrality will also be delimited as to adhere to overall limitations. These topics are relevant and, on their own, provide a basis for understanding the laws of neutrality. However, since not all notions and regimes can be analysed in depth, the goal has been to briefly create insight into a select, while not being too limited in perspective.

The thesis work was decided not to dive into the conceptual "optional neutrality" as processed by Evelyne Schmid, as it contains similarities with the more defined non-belligerency,[16] however, the thesis does take a stand on whether neutrality may become optional.

Select contemporary examples of the current war between Russia and Ukraine are used to further the understanding of the current situation and state of the laws of neutrality.

[16] Evelyne Schmid, 'Optional but Not Qualified: Neutrality, the UN Charter and Humanitarian Objectives' (2024) 106 *International Review of the Red Cross* 927

However, this is also delimited since it is a whole work in itself to analyze the complex and evolving situation.

There is an increasing amount of literature, such as James Upcher, which explains "the termination" of neutrality.[17] If more research was possible, this would have been relevant to consider in a respective section of this thesis. Similarly, "differential neutrality", explained by Robert Kolb and Benjamin Meret, and in some instances utilized by Switzerland to explain their evolving neutrality, has not been chosen to be included.[18] Mainly as few details and little work has been done on the topic.

International relations theory and aspects have been included to broaden the perspective of the theiss. However, to fully include all relevant topics in the field is beyond the scope of this project.

Responsibility and consequences of neutrality have been excluded in this thesis, which is why the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) is not touched upon. The short explanation for this is that since the main focus of the thesis is to prioritize whether the laws of neutrality are valid and relevant, the topic of responsibility is rather a secondary priority in this matter.

[17] James Upcher, *Neutrality in Contemporary International Law* (OUP 2020) 4.

[18] Robert Kolb and Benjamin Meret, 'Clarifying Neutrality: The Rise of Different Statuses?' (Lieber Institute, 19 March 2025) https://lieber.westpoint.edu/clarifying-neutrality-rise-different-statuses/ accessed 2 June 2025.

2 Methodology, Legal -, & Theoretical Framework

2.1 Theoretical Framework

There are several key theories encompassed in legal theory in international law. In order to create a more manageable overview of all the relevant theories, it is essential to divide them into different sections. For instance, natural law and legal positivism are rather general theories on how international law is and should be shaped.

To briefly understand the concept of legal positivism one would have to refer to the works of Herbert L. A. Hart and Hans Kelsen. In the essence of legal positivism is the written word of law. The law is supposed to be upheld close to the exactness of the legal documents that have been worked out by the appropriate legal authorities, although thinkers like Hart do emphasize that interpretation can be necessary.[19] The validity in legal positivism is based on the correct legal procedures followed, regardless of fairness. Importantly, legal positivism extrapolates itself from any societal morality and politics, and is supposed to be pure and just based solely on the law itself. The outcome of a legal procedure can be deemed unfair and immoral in the eyes of the public, but it will nonetheless be correct and lawful in the eyes of legal positivism, as it has followed the word of law.[20] Kelsen's theory of "pure law" was based around logic and empiricism and the idea of the principle that legal norms were based off of the "basic norm" that everything derived from - societal approval or values and morality had no sway on the law which was final.[21] On the opposite side of the spectrum to Kelsen in the legal philosophical positivist world, Herbert L. A. Hart thought the positivist approach to law gained societal credibility and proved efficient through its functionality and the reception to the law in the morally excluding system.[22] Strict and/or traditional neutrality is based on legal positivism, and when referring to these notions of the laws of neutrality throughout the paper, it is always in accordance with legal positivism.

[19] Christina D Tvarnø and Ruth Nielsen, *Retskilder og Retsteorier* (4th rev edn, DJØF Forlag 2014) 389–390, 405–409.

[20] *Ibid.*

[21] *Ibid.* 398-404

[22] *Ibid.* 405-409

Somewhat contrary to this, stands legal realism, offshoot from - and opposing - legal positivism, and entirely different from natural law. In this legal dogma of Axel Hägertröm and Alf Ross, in the Scandinavian sub-theory, legal realism puts law equivalent to practice in the natural sciences. Hägertröm firstly defined it by fully dislodging morality from law. His realist view defined the legal world and its success by societal responsibility, obedience and loyalty to the law. The effect of law and the legal system was based on the normative qualities.[23] Sharing in the idealistic and philosophical legal realism was Alf Ross, who took the theory further and upheld the law to proof of concept in a socio-normative setting. Legal theories, philosophies and science are assertions tested by reality of the law in courts of the world, and proven when judgments turned the assertions into reality - much like the scientific method based on testing hypotheses. Alf Ross' prognosis-based theory approach, that highlights empirical analysis and accreditation, strives for law to be devoid of morality and ethics, it simply is, reality.[24] The American, more behavioral, legal realism of Karl Llewllyn and Oliver Wendell Holmes, is more of a practical mind, where the key is to not simply regard legality as the written law, but also the practical application of the juridical process of courts. So, where the judicial procedure would strictly follow the written word of the law in legal positivism, in the behavioral legal realism the juridical process can get influenced by the practical and realistic world. This branch of theory studies the means of influence presupposed on the law by societal impact, norms, contexts and biases in the legal procedure. It is thus believed that in legal proceedings more power is left to the individual judge to interpret the law and the potential societal outcomes and consequences.[25]

A third important legal philosophy to briefly touch upon is natural law. Natural law is based on an entirely different way of thinking than legal positivism and legal realism. In natural law, morality is placed central, the world revolves around a set of natural laws applied to everyone, from the natural intrinsic laws derived a central morality from which

[23] Tvarnø and Nielsen (n 19) 423-425

[24] *Ibid.* 427-431

[25] *Ibid.446-448*

all human laws get their credibility.[26] The natural law gained renewed traction in a revamped version after the Second World War, when Gustav Radbruch wrote about occasional obvious legal injustices when adhering to legal positivism (gesetzliches Recht). Due to the historical context of wars and the like, examples of apparent injustice of specific laws arose, and in such instances, one should follow supra-legal law (übergesetzliches Recht).[27] This would argue against the laws itself, as they were thus in conflict with ethics and morality of natural law, thus leaving them invalid. Like many legal philosophies, natural law is an older concept first envisioned by Aristotle and Cicero, believing in a universal natural purpose conveying order and justice. Later important figures are Hugo Grotius secularizing natural law, and John Locke continuing the line of Cicero's universal natural law and stating that natural law and human rights predominated governmental rulemaking.[28] This is what Gustav Radbruch also uses in his argumentation, as the governmental laws should not discriminate and limit natural justice and morality, but protect it. Later, Lon Fuller defined obligational morality and held it against aspirational morality to better define the morality-based legal philosophy but also commented on the significance of eight ruling principles required for a system of norms to evolve into a legal system.[29] As a final note, it is significant to mention that the idea of injustice is the main purpose of all the legal philosophies, but the perception of what is unjust and unfair, and how to combat it in a legal system, is fundamentally different in the numerous philosophies.

Briefly touching upon this in the context of neutrality and the ongoing war between Ukraine and Russia, before revisiting later, one could make arguments from all theoretical standpoints. From a legal positivist standpoint, neutrality must be upheld to the specifications of the Hague Conventions which are the latest written accords on international laws of neutrality. Although the laws of neutrality are argued upon heavily, there are laws in writing and precedence of which to strictly adhere to, and so from the

[26] Ole Hammerslev and Henrik Palmer Olsen, *Retsfilosofi: Centrale tekster og temaer* (2nd edn, DJØF Forlag 2019) 527–528.

[27] *Ibid.* 529-532

[28] Tvarnø and Nielsen (n 19) 353-355, 362-363

[29] Hammerslev and Olsen (n 26) 532-538

traditional neutrality perspective, support of any belligerent would thus be illegal as a neutral (disregarding the conflict of *Lex Posterior* with the UN). Opposingly, legal realism would argue that, although one should adhere to the laws of neutrality of the Hague Convention, one should still consider laws of neutrality in a modern context of the UN charter, and especially, that modern political and military interests of powerful states might sometimes stretch the standing laws. Natural law could argue that some modern concepts, such as vetoing in the Security Council, can be troublesome for universal morality and fairness in the ongoing conflict and that aiding the victim is the just cause.

In the perspective of historical traditional neutrality, as a positivist would argue, there are clear breaches of neutrality by states supporting Ukraine with arms and training of Ukrainian soldiers e.g. flying F-16 fighter jets. Furthermore, one could argue that breaches of the Hague Convention and UN charter appear in the sense of North Korean soldiers fighting in the war. However any major repercussions have been missing to supposed breaches, with the primary answer from opposing belligerents being a similar upscaling of war effort and support from third parties. From a legal realist perspective this highlights the current world order and self-interest of states. So, this begs the questions, can the laws of neutrality be applied in a modern setting considering legal and political theory, what do the theories tell us about neutrality in the current global landscape in the context of the war between Ukraine and Russia, and how does this in turn revert to the validity of the laws of neutrality.

Ultimately, the purpose of this thesis is to investigate and potentially identify whether the principles of neutrality are still valid and functional in contemporary international law. As such, in the following section, this paper will choose a select and specific theory that is deemed suitable in order to answer the research question. There are other theories that could be of interest to mention; however, due to the thesis limitations, the thesis will mainly choose to focus on constructivism and briefly involve the previously mentioned theories for context.

Function and intent of the Laws of Neutrality: A Constructivist Perspective

Having accounted for several relevant theories, focus will now shift to constructivism, as it is a useful approach to analyze the laws of neutrality and their purpose and function in light of the traditional positivist understanding of international law.

The constructivist theory in international relations suggests that the international order is based on the existence of various systems between the subjects of international law, *i.e.* States, organizations and individuals. The concept of neutrality is thus believed to be a societal construction involving mainly states in a system of norms, interactions, politics, interests and identities. In a constructivist view, the laws of neutrality would not be understood as natural or fixed, but rather as a platform for consideration of various norms, ideas, national and/or security interests, and of the choices to be made thereupon. [30]

In a constructivist view, neutrality is a normative product and a social tool derived from centuries of international conflicts, errors and practices. State practice and international discourse have shaped norms of neutrality which are designed to reduce the risk of emergence and escalation of conflicts between states, and particularly between belligerent and third (neutral) States. This is elaborated in more detail in the section covering the history of neutrality.

The modern concept of neutrality is contrasted to the 16th century Natural Law concept of "Just War", according to which a Christian prince would be entitled to wage wars against the infidels or opponents of his faith – and notably to expect diplomatic, military and economic support from other Princes of that same denomination. Modern or "qualified" neutrality, while designed to keep armed conflict to a minimum of States, does allow for such international support to a State that has been the victim of attack by an aggressor State. Assistance to a victim State, thus, is nowadays justified by international law and no longer by matters of faith or culture.

[30] Brunnée and Stephen J Toope, 'Constructivism and International Law' (1999) 93 *American Journal of International Law* 119, 123–127.

"Neutrality" had already become normative in the 18th century and ideas were formed about victim rights and neutral obligations in terms of, *e.g.*, the support of a neutral State to a victim State that had been attacked by an aggressor. From there to the Declaration of Paris, the Alabama Claims and ultimately the Hague Conventions, states accepted this new practice which ultimately was codified in, *e.g.*, the Geneva Arbitrations. Socially and politically, neutrality has proven a great tool to increase economic growth by creating neutral territories and protecting trade. International interpretation of rules and norms had led to coherence in the intent of neutrality as a respected State status and a security measure through repeated practice and historical evolution of diplomatic discourse.

Neutrality then faced a major challenge by the First World War and equally faces challenges today. Whether the laws of neutrality have reached their useful limits in a modern world governed by collective security and the UN charter is yet to be discovered. Have the laws in reality become in *desuetude* as they have been outgrown by society, or are they a legal impossibility in the contemporary world in *obsolescence*?

Legal realists would argue that, however normative society still values neutrality, the legal world practice is challenged and inconsistent in the applications of the laws. Few international courts rule on neutrality and with the ongoing war between Russia and Ukraine, the aggressor has been supported by UN member States while military support has steadily increased for the victim, arguably backed by the UN charter framework - the threshold is increasingly being pushed. No claims of breached neutrality have formally been declared by Russia, and similarly no countries have invoked collective self defense Art. 51 of the UN Charter in front of the UN Security Council.

In terms of *obsolescence* and the legal impossibilities of the laws of neutrality, one might argue this would occur in a situation where countries support Ukraine with military material, and this is classified as an indirect use of force which could be claimed as an act of aggression (*Jus ad Bellum*). In turn this would clash with the UN Charter Art. 51, an exception not in breach of Article 2 (4) according to the rights of States in self-defence and their allowed request for support. The clash of international law, Hague Conventions laws of neutrality and UN Charter Art. 51, however, could and should be seen from a

constructivist view as a reflection of evolving norms, contemporary politics, societal practice and contested meanings in international law.[31]

Constructivism accurately accounts for the societal and behavioral evolution in the normative basis and international practice regarding the laws of neutrality. This indicates that contemporary international law has moved from rigid traditional neutrality and that modern neutrality resembles the notion of qualified neutrality. Furthermore, constructivism suggests a clear separation of domestic and international law.

As Elizabeth Cladwick puts it, neutrality law has survived until now because "The seeming clarity in the operable rules of neutrality achieved by the early Twentieth Century was, generally speaking, the result of a centuries-long process of constant political accommodation; policies of neutrality had to remain inherently flexible, in order to 'fit' the needs of their time."[32] The normative weight of neutrality is better explained from a constructivist approach, which emphasises how the principles of neutrality have been shaped and adapted through shared international norms, discourse, practice and state identities. This is also seen as international organisations such as ICRC (International Committee of the Red Cross) and UN peacekeeping operations are struggling with accepting traditional neutrality and impartiality in situations with a clear victim. This as well is explained by constructivism as international institutions also set societal international norms and thus these institutions and their discourse have an important impact on international law and, in this instance, further the distancing from confounding traditional neutrality. Constructivism sees institualization both as a sympathetic derivative of societal practice and normative behaviour, but also in its function of impacting international society, discourse and law through interaction and interpretation.

Compared to realism, constructivism is better designed to understand how neutrality is socially shaped by the interests and identities of states and other actors in the international system. Constructivist theory does not offer predictions about how international affairs

[31] Marja Lehto, 'The Right of Self-defence and Third State Provision of Arms: Reflections on the Current Debate' (2025) 94(1) *Nordic Journal of International Law*.

[32] Elizabeth Chadwick, *Traditional Neutrality Revisited: Law, Theory and Case Studies* (Kluwer Law International 2002). 6

will unfold generally in the future but rather explains why events turn out the way they do, based on the interests and identities of the actors in the international system. With a complex international security situation and multifaceted threat landscape of hybrid wars in a context of collective security of the UN and NATO, neutrality is still upheld by international norms gaining legitimacy from the wish of nations to position themselves in line with international expectations.

As pointed out by Ian Hurd, norms and perceptions have greatly impacted state practice in the international society, and this is used as one of the main points to analyse the continued relevance and validity of the laws of neutrality, and whether they still achieve the intended outcome.[33] This does not disregard other relevant legal or political theories, like those already mentioned, as they can all be used to better understand the principles and workings of international law, but for determination purposes the analysis rests on the assumption that the constructivist stance better serves to understand the current state of the laws of neutrality.

With the historical emergence of the UN and collective security, less effort and mind was heeded to the doctrine of neutrality. This should however not discredit the doctrine and laws of neutrality as obsolete, as their foundation and normative ideas was the groundwork for the current international measures taken to prevent wars and conflict. As such the laws of neutrality historically have been credited for minimizing the spread of conflicts, vastly secured peacetime in major parts of the world and sparking discussions and inventions of new peace engagements and treaties internationally.[34] Nonetheless, there was a shift in the international legal world from neutrality towards collective security, with the League of Nations, the Kellogg-Briand Pact, and the UN. The League of Nations introduced a collective sanctioning system towards a member State carrying out an act of aggression against another member, similar to the Just War doctrine of the 18th century. Concurrently the Kellogg-Briand Pact stated that war was not to be used as a policy in international affairs, again signifying development on the basis which had

[33] Brunnée and Stephen J Toope (n 30) 128

[34] (EM Borchard, "Neutrality" (1938) 48(1) Yale LJ 37, 53)

arrived during the formation of early neutrality.[35] The UN Charter then went on to formulate a global consciousness in which every signatory state had obligations, violated when wars broke out - taking the general concept from norms establishing neutrality and alleviating it to a globalized world. The illegalization of war with these historical events helped to internationally reshape *Jus ad Bellum*.[36] Collective security measures are then seen as a product of international shared norms and ideas.

Norms and practices thus turned towards security measures in international law and politics to deter conflict and change times toward peace and prosperity. However, we still see conflicts all over the world, and we have also, since the 20th century, seen the greatest achievements in technology and science and prospered significantly from a somewhat stable international society.

From a constructivist standpoint, the laws of neutrality still continue to serve their intended purpose and function of minimizing escalations and serving to hinder emergence of wars. Although contemporary conflicts do not show strict adherence, states continue to reference the laws of neutrality in order to justify actions, which shows retention of normative value. The continued legitimacy is seen in countries' reverence and carefulness in conflict situations trying to avoid escalation or breaches of international law while seeking recognition in the international community. The laws of neutrality also constrain third-party assistance in conflicts and require for political justifications when stretched, thus introducing a temporal factor into the escalation of conflicts. The flexibility and evolution of social constructs and norms and the continued rhetoric and discourse on neutrality in the international community, certainly supports the validity and relevance of both constructivism, but also neutrality itself.

The laws of neutrality are continuously adapting to state behavior, practice and rule, and interpretation based on normative society is at the forefront. It is, however, also important to consider that the neutral status in a polarized international power dynamic can be taken advantage of, as seen with Ukraine being subjugated into neutrality controlled by Russia.

[35] Covenant of the League of Nations (28 April 1919) Art. 16

[36] Q Wright, 'The Present Status of Neutrality' (1940) 34(3) *American Journal of International Law* 391

Therefore the previously mentioned continuous adaptation and evolution, and the current misuse, does hint towards neutrality being challenged. However the constructivist theoretical approach has shown this to be the case before, and neutrality will continuously align with these societal factors to fully function and address the misuse. Furthermore, this would also serve to minimize confounding factors and use of *e.g.* non-belligerency as a political or strategic tool to circumvent certain obligations of the international community. To sum up, the constructivist view depicts the laws of neutrality as a product of societal norms and practices.

2.2 Legal Methodology in International Law

Throughout the thesis, and principally in the previous section investigating the hypothesis of the accomplished function of neutrality, the methodology of legal hermeneutics and dogmatics are crucial to complement the research and achieve knowledge to process and reach a new understanding of the current state of neutrality. Using the hermeneutic method means rigorous gathering of knowledge through reading legal texts, statutes, treaties and the like, then following with interpretation of the texts which can be in regards to context and intention, societal norms and legal principles. This follows the idea that texts do not carry all meaning in the words themselves, and that interpretation is needed by scholars and judges alike. Through interpretation new meaning and knowledge is achieved, which can then be reapplied to new texts, opening for new interpretations.[37] The dogmatic method is all about studying the law in its legal framework, this can be by applying legal norms to cases and gaining clarity of the legal systems. In contrast to hermeneutics the dogmatic method is more closed and does not interpret in regards to e.g. political context. As such the method revolves around a dogmatic approach to applying laws and legal normative knowledge to legal contexts - a closed system meant to analyse the law itself.[38]

These methods have been chosen as the most relevant in cohesion with the research and

[37] Tvarnø and Nielsen (n 19) 375, 378-380

[38] *Ibid.*

gathering of literature carried out in this thesis work. The hermeneutic method helps in interpreting and regathering knowledge and perspectives on texts to better understand the complexity of contemporary international law and whether the laws of neutrality still achieve their intended function. Meanwhile the dogmatic legal approach helps in identifying the legal framework and validity of the laws of neutrality. Both methods work in unison to deliver either contextual interpretative meaning or closed legal normative understanding. Thus they are deemed appropriate to answer the research questions.

The methodology that is often used in the field of law typically consists of treaty interpretation to locate and analyze sources of law relevant to determining the applicable legal rules.[39] International law has its own distinct legal system, which restricts the choice of methods, interpretative tools, and theories, as every rule must be interpreted according to established principles and laws within international law.[40] The Vienna Convention on the Law of Treaties outlines how legal sources in international law should be interpreted, whereas the ICJ statute article 38 lays out the legal framework and sources applicable in international law. This thesis will, therefore, adhere to the standards established in the Vienna Convention's interpretative framework laid out in articles 31 and 32 and the sources of international law outlined in article 38 of the ICJ Statute. The Statute utilizes primary sources in international law, such as international treaties[41], customary international law[42], and basic principles of international law[43]. Secondary sources encompass rulings issued by the most recognized scholars and national court decisions from recognized nations.[44] This thesis will draw upon these sources, given its focus on the international laws on neutrality. Among these sources, customary international law is

[39] Peter Blume, *Retssystemet Og Juridisk Metode* (3rd edn, Juristog Økonomforbundet Forlag 2011) 171.

[40] Carina Risvig Hamer and Sten Schaumburg-Müller (red.), *Juraens Verden: Metoder, Retskilder Og Discipliner* (Djøf Forlag 2020) 231.

[41] 'Statute of the Court Of Justice | INTERNATIONAL COURT OF JUSTICE' art 38., para 1(a) <https://www.icj-cij.org/statute> accessed 26 May 2025.

[42] *Ibid* 38, para 1(b).

[43] *Ibid* 38, para 1 (c).

[44] *Ibid* 38, para 1(d).

arguably the most significant, being the oldest and often considered the primary source of international law.[45]

Moving forward, it is necessary to explore the concept of customary international law, including the practices and legal criteria required for a law to attain this status. To determine whether a rule constitutes customary international law, both an objective and subjective assessment are required.[46] The objective element involves the general practice of states, while the subjective element is *Opinio Juris*.[47] Evaluating the objective element entails examination of the practice's prevalence, consistency, and duration.

[45] Robert Jennings and Arthur Watts, *Oppenheim's International Law*, vol 1 (9th edn, Pearson Higher Education 1992) 25.

[46] Frederik Harhoff (red.) and others, *Folkeret*, vol 1 (1st edn, Hans Reitzels Forlag 2017) 165.

[47] *Ibid*.

3 Brief Historical Background of the Laws of Neutrality

To better grasp the concept of neutrality, with emphasis on its birth into international law, we have to understand its origin, history and development. The following section takes a brief look at the historical background of neutrality, elective to a period spanning from the sixteenth century to modern times, however obvious it might be that this only scratches the surface of the legal history pertaining to neutrality.

Sixteenth and Seventeenth Century

From the sixteenth century emerged the early legal and treaty based definition of neutrality in international law. Countries were extensively engaged in conflicts - in a time of legal wars - to secure borders and trade routes. To limit scope of wars, or, for third-party states, to remain uninvolved, neutrality treaties became of utmost importance. The need for the neutral legal status to be established arose especially as belligerents would disrupt geographical areas and hinder economic growth, maritime trade and state security, spawned from the fear of third party states collaborating with the enemy. [48]

A neutrality treaty was established either during a conflict or just prior to its commencement, between a warring party and a third State, wherein both parties reciprocate certain commitments to avoid getting involved in war. For a warring belligerent this could create some safety in containing possible threats and uncertainties - like use of a third-party´s territory by the enemy, while for the third party it could hinder the belligerents' interruption in trade. The historical material basis and evolution of neutrality starting in above mentioned treaty practice was extensively and thoroughly investigated by Kentaro Wani (*"Neutrality in International Law: From the Sixteenth Century to 1945*")[49]. Wani highlights the breakthrough of concretization of neutrality in legal documents in the illustrative example of the Thirty Years' War (1618-1648) *"Despite their demands for neutrality to be respected, the neutrality of several third States that had not concluded neutrality treaties was not recognised by belligerents, and they*

[48] Kentaro Wani, *Neutrality in International Law: From the Sixteenth Century to 1945* (Routledge, February 2017)

[49] *Ibid.*

were invaded or attacked by the belligerents[50]" In contrast, today the act of aggression towards another state is a part of the *Jus Cogens* principle, and aggression can therefore never be justified, as this would not only be against article 2(4) of the UN-charter, but also against the whole interest of the international community.

Eighteenth Century

During the eighteenth century, states slowly started to move away from the neutrality treaties as it was, in practice, becoming a norm and seen to be sufficient to be considered neutral without interfering or helping one of the warring parties.

One of the reasons for this development comes from the re-emergence of the Just War doctrine, although the doctrines ideas are much older, the philosophy from the eighteenth century was rooted in the attempt to limit escalations, in natural law theory and the beginnings of international law. According to the scholar, Wolff, he states that: "against those who are neutrals in war the belligerents have no right of war (*Jus Belli*), since they are doing them no injury (*Injuriam*), which alone gives a right of war (*Jus ad Bellum*)."[51] From this it is clear that the ideology and approach to war changed, a collective international idea of neutrality started forming against the impromptu wars, based on the Just War doctrine.

The Just War doctrine is based on 3 basic principles:

(1) It is permissible to assist a State that is carrying out a Just War;
(2) to assist a State waging an unjust war is an "injury (*Injuria; Injure*)" against the State carrying out a just war; and
(3) in order for a State to wage war, a just cause is needed, and the only just cause of war is an "injury" inflicted. [52]

[50] Wani (48) 69.

[51] *Ibid.* 89-90.

[52] Wani (48) 91-92.

While there was mutual agreement, that a state could only have the right for war, if they got injured by another state, there was also a mutual agreement that a state who contributed or assisted one of the belligerents, could be seen as an enemy to the opposing belligerent state, and thus it was just to attack the assister - touching upon the question of consequence.[53] If one assisted a belligerent, it was incompatible with neutral status and the victim had a right to react. Evidently these lines of thought have brought forth modern neutrality law.

However, what is also particularly special about this period's conception of war is that war has two nuances, either it is just or unjust. Curiously Wollf writes that: "(…) to a nation carrying on a just war it is allowable to send auxiliaries and subsidies and to aid it in war in any manner, nay more(...)".[54] In this statement by Wolff, we can understand that it is not actually illegal to send "auxiliaries and subsidies" to the just party of the war. This idea has repercussions up to modern day conflicts seen in the augmentation such as in the ongoing war between Ukraine and Russia.

The intrusion of the Just War doctrine into international security and law was a major change to the treaty based and more rigid traditional practices in the previous century, however the possible obscuring of practiced neutrality was addressed and incompatibilities set aside.

Wani explains this well and states that this is due to the fact that states "(...) are obliged to assist a just belligerent only insofar as it does not present a risk to themselves (...)". [55] And he continues explaining that: "it is allowable for States to give priority to their own interests, the interest of remaining out of war and securing their own peace. It is therefore permissible to take an attitude of neutrality by abstaining from assisting either belligerent."[56] As such, it was naught but an option to support the victim, considering the

[53] *Ibid.* 91-93.

[54] *Ibid*. 93-94.

[55] Wani (48) 93-94.

[56] *Ibid.* 94-95

possibilities of geopolitical situations and possible compromise to national security. In many ways this line of thought aligned with legal realism. [57]

To sum up this subsection, we can therefore conclude that the practice of the 18th century changed compared to the practice in the previous centuries. In the 18th century states began to move away from neutrality treaties and accepted innate neutrality, but also moved to adopt different values inspired by the theory of the Just War doctrine, resulting in the change of state's behavior and practice in war.

19th century

Although the nineteenth century was conflict prone and tumultuous, it was also through these years globalisation slowly began with the power of industrialisation, causing international law to become increasingly applied, seeing the importance in the rise of bi- and multi-lateral agreements. Neutrality in this century was prevalently applied as both a short- and long-term tool by greater and smaller powers alike, as an option which could further economical and political growth. In direct opposition to today's declared neutral states, like Switzerland, where predominantly smaller states use neutrality as a long term political strategy for security in isolation. Interestingly, through the nineteenth century, countries had to declare neutrality to not be involved in a conflict. Whereas neutrality often sparks association with that of lesser powerful states and their vulnerability in historical conflicts, it is important to highlight that Europe's great powers also applied neutrality in this period. In some ways neutrality, although far from collective security of contemporary times, became a popular stance to further growth and minimize escalation.[58]

To sum up, neutrality in the nineteenth century could be described as a multidimensional structure. It served not only to de-escalate and minimize the impact and reach of wars, but also to govern peace and prosperity in creation of permanent and guaranteed neutral

[57] *Ibid.*

[58] Maartje Maria Abbenhuis, 'A Most Useful Tool for Diplomacy and Statecraft: Neutrality and Europe's International Order, 1815–1914' (2017) 44(1) *The International History Review* 1–2.

territories at the Congress of Vienna (1815). This led to economic growth and stability in international trade and affairs.[59] The neutrality of territory was progressively, after the landmark Congress of Vienna (1815) concluding the Napoleonic Wars (1803-1815), expanded to not only critical maritime areas, but also to include areas of landmass. The practice of neutral territories proved effective to decrease tension-prone areas.[60] Another way neutrality had a great impact in the nineteenth century was by the Declaration of Paris (1856). After the Crimean War (1853-1856) rules and regulations were codified to protect economic growth of nations and the crucial maritime trade by fission of war and commerce. As such the cargo and trade could be neutral in situations where countries were at war.[61] The Declaration of Paris was however not ratified by the United States, as their maritime practice often involved outsourcing privateering and piracy of enemy vessels. Soon thereafter the tensions between Britain and the US reached new heights during the US Civil War (1861-1865), where neutrality was tried and tested. Although Britain remained officially neutral, they were indirectly supporting the Confederacy against the Union, and both parties found themselves on an edge in regards to breaches of neutrality, however trying their fullest to remain vigilant of the tense situation. The Union boarded British ships to arrest confederate soldiers, and entered the neutral territory of Canada to apprehend deserters, opposingly Britain sold warships to the Confederacy. But the latter ended up in a peaceful resolution with the Alabama Claims brought forth by the Union of the sale, leading to the economic settlement of compensation paid by Britain at the Geneva Arbitration of 1872. Although stretching the bounds of neutrality, the fact that the parties in many instances acted in reverence to the neutrality principle can presumably have minimized the severity of the situation. This trial of the neutrality principles later led to the Washington Declaration, further emphasising the neutrals rights and obligations.[62] What is interesting to evaluate from this historical context is the indirect support in a conflict, similar to that of Western Europe supporting Ukraine, but also the workings of neutrality serving to diminish escalation.

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[59] *Ibid.* 2-3

[60] *Ibid.* 4-5

[61] *Ibid.* 8-9

[62] Abbenhuis (n 58) 10-11

Established, neutrality was an important tool for stability in Europe during the century, and following the further testing of the status under the Franco-Prussian War (1870-1871), the Hague Conventions of 1899 and 1907 finally codified the laws of neutrality. The powerful nations of Europe were among the biggest actors lobbying for neutrality to reach the state of the Hague Conventions, as neutrality was a primary tool for keeping peace apart from its usage when conflicts broke out. And so with the 1907 Hague Convention the laws of neutrality were formally codified and accepted as international law by ratifying states.[63] The Hague Convention addressed the rules of war (*Jus in Bello*) as to e.g. the civilian status, occupied territory and that of prisoners of war, while promoting peaceful resolutions to avoid escalation of conflict. But crucially as a culmination and result of centuries of neutrality in different shapes and sizes, the rules and obligations of neutral states and belligerents were codified.

First World War

The world witnessed its first global war in history shortly after the Hague Conventions were established in 1907. Neutrality had been the predominant practice up until that point, as examined in the previous sections of the thesis. The scope of World War I was incomparable with any previous European war, despite the wartorn history of the continent.

The theory of neutrality was put to a genuine test in practice which made states question whether the neutrality rules they had put in place really protected them. Germany's attack on Belgium in 1914 was an outright violation of the country's neutral status, which caused shock and apprehension across Europe. This breach did not only affect Belgium but also affected the entire Vienna Congress system and the international security order. The main issue that developed thereafter, was how nations could defend themselves against war and invasion when neutrality laws provided no protection. Belgium had been a neutral state since 1870 with a neutrality treaty with the five major European powers, including Prussia (Germany). The violation of this agreement was a threat to the Vienna Congress system

[63] *Ibid.* 13-14

and the international rule of law which had been upheld by Britain, France, the United States, Russia and several minor powers between 1870 and 1914. From this perspective, the breach of Belgian neutrality was a sufficient cause of war—*Casus Belli*. [64]

It is important to note that there has never been a single instance where a belligerent war on a neutral was considered lawful; rather, belligerents always sought to find reasons to justify their actions. For instance, Germany had to justify its aggression against Belgium for violating its neutrality, and it did so by arguing that the French army was going to attack the western side of Germany and Belgium had no capacity to prevent this. Therefore Germany had to invade Belgian territory in order to defend itself as well as in pursuit of its 'legitimate defence' and 'self-preservation'. Thus, the events of World War I revealed the vulnerability of neutrality in a total war. The theoretical safeguards that neutrality laws provided were rather suspect, and this raised more general doubts about the ability of international agreements to protect small states against the strategic interests of the great powers. [65]

The long-term neutral nations responded to the outbreak of war in the same manner as they had always done: by issuing declarations of their neutrality. In accordance with the neutrality statute of the Hague Conventions, the Dutch were able to remain out of the war in principle. Numerous deserters and wounded soldiers penetrated Dutch territory. In accordance with the obligations of a neutral state, they were interned and cared for by the Dutch Red Cross. In these instances there were positives derived from the laws of neutrality. [66]

The violation of Belgian neutrality was not an isolated case, both Luxembourg and Albania had their sovereignty violated during the war. However, some neutrals ensured that they did not get violated through a combination of diplomacy and their geographical

[64] Wani (n 48) 204-205

[65] Wani (n 48) 39-50.

[66] *Ibid.* 39-50

position. The failure of neutrality in the First World War to prevent aggression and to ensure national security led to the shift to collective security in the years after. The League of Nations which was established in the year 1920 as a bid to replace the traditional neutrality with an institution of cooperative international relations aimed at preventing future wars. This shift was further enforced by the Kellogg-Briand Treaty of 1928, and later the formation of the United Nations in 1945 which both aimed at ensuring that there are means of settling conflicts and defending countries.[67] [68]

The First World War showed that neutrality was not only a question of legal relationships but also of value, dependencies and geopolitical facts. The war fundamentally altered the perception of neutrality, paving the way for new international security frameworks in the post-war era.

[67] Müller, Leos, *Neutrality in World History* (Routledge) 146

[68] Wani (n 48) 39-50

4 An Introduction to the Laws of Neutrality in International Law

A comprehensive examination and overview of the content of the laws of neutrality are unfortunately beyond the scope of this thesis due to the limitation on the maximum page count. It is, however, evident that there are certain essential principles underlying the laws of neutrality, which need to be addressed.

This is also supported by several scholars who agree that these fundamental principles are: abstention/non-participation, impartiality/equal treatment, and prevention/protection of neutral territory.[69]

Please also note that this section deliberately refers to the *traditional/strict* laws of neutrality, as the laws of neutrality recently are being reevaluated and considered to be under development. Especially now, with the conflict in Ukraine, there is a new tendency towards a more modern understanding of the laws of neutrality. As this new tendency is dynamic, the thesis cannot, de facto, account for these developments, as it would require more extensive research, which has not yet become static. As of such, this section of the thesis will therefore account for the traditional laws of neutrality (i.e. strict neutrality). It is thus important to highlight early in the thesis, and before the examination of the core principles of the laws of neutrality, as it may appear contradictory in the following sections where the "newer" approach to neutrality diverges from the traditional one.

4.1 Basic Principles of the Traditional Rights and Duties of the Laws of Neutrality

4.1.1 Purpose of the treaty

The whole idea of the Hague Convention is to create a clear distinction regarding who is involved and who stands outside the conflict when an armed conflict breaks out.[70] This is achieved by establishing who in the conflict is involved (i.e., "belligerents") and who is

[69] Michael Bothe, 'The Law of Neutrality', *The Handbook of International Humanitarian Law* (3rd edition, Oxford University Press 2020); Upcher (n 17) 178

[70] Bothe (n 69).

outside the conflict (i.e., “neutrals"). With the neutral status follow certain rights and obligations, allowing them to benefit from and maintain this "non-involved" status in the conflict. The concept aims to prevent more states from becoming involved in a conflict, thereby avoiding potential escalation, which is in no one’s interest under international law and in the international community. [71] This distinction is therefore central for neutral states to enjoy the right not to be affected during “wartime,” and the relationship between belligerents and neutrals is thus protected under “the law of peace.”[72] Those principles were established as a compromise between the warring parties’ desire to defeat their enemy and the neutral countries’ wish to maintain peaceful relations both with those at war and those not participating in the conflict.[73] In this way, there is a mutual understanding between the neutral and the belligerent, as the neutral party has obligations that correspond to the rights of the belligerents - and vice versa.[74] In sum, the function of the Hague neutrality laws is thus to regulate neutral-belligerent relations so that neutrals can indeed remain neutral.[75] Violations, such as a neutral taking sides or a belligerent attacking through a neutral, have clearly defined consequences (e.g. loss of neutrality for the offending state or internment of forces).[76] Lastly, it is important to note that these rights and obligations are rather the conduct of the political decision to avoid any escalation by refraining from the conflict, rather than supporting the belligerents passively.[77]

[71] Bothe (n 69).

[72] *Ibid*.

[73] Constantine Antonopoulos, ‘Rights and Duties under the Law of Neutrality’, *Non-Participation in Armed Conflict Continuity and Modern Challenges to the Law of Neutrality* (Cambridge University Press 2022).

[74] L Oppenheim, *International Law: A Treatise Vol II: Disputes, War and Neutrality*, vol 2 (7th edn, H Lauterpacht ed, Longmans, Green & Co 1952).

[75] Nasu (n 14)

[76] Bothe (n 69).

[77] Nasu (n 14) 125.

4.1.2 Key Principles of the Laws of Neutrality under the 1907 Hague Conventions

The laws of neutrality come into effect when an armed conflict begins and remains valid until that conflict ends. This legal status applies only during wartime, except for states that have adopted permanent neutrality. Neutral status carries specific obligations, which were codified in the second Hague Convention of 1907: Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, and Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War.

Below, each core principle is examined: (1) abstention from participation in the conflict, (2) impartiality in treatment of the belligerents, and (3) prevention of violations of neutral territory.

4.1.2.1 Abstention (i.e Non-Participation) - (HC XIII Article 6) HC V art 7)

Neutral states must abstain from any participation in the hostilities. This duty of non-participation means that a neutral cannot provide military support or any kind of benefits to any belligerent. In broad terms, this includes not supplying war material or troops and not making neutral territory available to warring parties. In practice, this principle requires a neutral government to refrain from joining the conflict or aiding either side's war effort in any way.[78] The principle of non-participation is further codified in the Hague Conventions XII and V of 1907. For example, the Hague Convention XIII (Naval War) Article 6 explicitly forbids a neutral State from supplying warships, ammunition, or any war material to a belligerent.[79]

Hague Convention V, however, does not exclude the trade of private commerce of arms, but some scholars, such as Bothe, argue that this exception is not really applicable in today's international law, as most arms sales go through the state in one way or another.

[78] Emily Crawford and Alison Pert, *International Humanitarian Law* (2nd edn, Cambridge University Press 2024) 145–46; Paul Seger, 'The Law of Neutrality' in Andrew Clapham and Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (OUP 2014) 3.

[79] Hague Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War (adopted 18 October 1907, entered into force 26 January 1910) art 6; Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (adopted 18 October 1907, entered into force 26 January 1910) art 2.

Heintschel von Heinegg also points out the "gap" in Hague V's text on private arms exports and argues that this provision "does not imply a right of a neutral State to supply" weapons to belligerents that such a state-to-state military aid would breach neutrality.[80]

4.1.2.2 Equal Treatment (i.e. Impartiality) - Article 9 of HC XIII

Closely tied to abstention is the duty of equal treatment/impartiality. The neutral state must treat all belligerents equally and refrain from favoring one side over another. This obligation is expressly codified in the 1907 conventions. Hague V, Article 9 provides that any restrictive or prohibitive measures a neutral applies to one belligerent (such as limits on trade or transit) must be applied equally to the other. Similarly, Hague XIII, Article 9 mandates that conditions or prohibitions imposed by a neutral on belligerent warships in its ports or waters be impartially applied to both sides.[81] The overarching principle is that a neutral cannot lawfully grant an advantage or impose a disadvantage to only one party in the conflict. It is however important to note, that as long as the neutral remain unbiased, no responsibility can be put to the State. This means that it is understood that one belligerent might end up benefiting from neutral trade.[82] As such the importance lies in impartial and equal actions toward belligerents, not guaranteeing outcome as this would be a near impossibility. Curiously, Wengler has an interesting and different view on this matter. He voices concern on the legal problems that occur when trade in wartime is either continued or stopped due to the concept of equal treatment. In his analysis both the continuation and the stoppage of trade can be seen as favourable for one belligerent over another, which raises hypothetical concerns about what neutrality requires to be impartial.[83]

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[80] Wolff Heintschel Von Heinegg (*Neutrality in the War against Ukraine'*, 1 March 2022) <https://lieber.westpoint.edu/neutrality-in-the-war-against-ukraine/> accessed 18 May 2025.

[81] Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (adopted 18 October 1907, entered into force 26 January 1910) art 9; Hague Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War (adopted 18 October 1907, entered into force 26 January 1910) art 9.

[82] Seger (n 78) 2–3.

[83] Wilhelm Wengler, 'The Meaning of Neutrality in Peacetime' (1964) 10 *McGill LJ* 367, 370–372

4.1.2.3 Prevention and Protection of Neutral Territory - Article 1 of HC V and HC XIII).

The third core principle is the inviolability of neutral territory (or as laid out in the title I.e. Prevention and protection of neutral territory) and the neutral's obligation to prevent its territory from being used for warfare. Under international law, a neutral State's territory – including its land, waters, and airspace – is sacrosanct from the conflict. Hague Convention V, Article 1 establishes that "The territory of neutral Powers is inviolable."[84] Belligerents are forbidden from violating this territorial integrity. For example, belligerent armies may not move troops or convoys of war munitions across neutral soil (Hague V, Art. 2) and belligerent warships may not commit any acts of hostility in neutral waters (Hague XIII, Art. 2).[85] Neutral territory is essentially off-limits to the conduct of war. Any unauthorized use of a neutral's territory by a warring party – such as crossing a neutral border, fighting a battle in neutral waters, or launching an attack from neutral soil – constitutes a violation of neutrality. and an affront to that State's sovereignty.[86]

Correspondingly, the neutral Power has a duty to protect its neutrality by preventing and prohibiting any use of its territory for belligerent purposes - this includes, but limited to, territory used as base for attacks and transport of troops. Hague Convention V requires the neutral to police its own territory to ensure it cannot serve as a base of operations or extension of the war. Article 5 of Hague V stipulates that a neutral Power "must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory", those acts being the movement of troops or war supplies, the installation of wartime communications (e.g. wireless stations), or the raising of volunteer corps for belligerents.[87]

In other words, the neutral State is obliged to exercise "due diligence" to prevent violations of its neutrality.[88] Similarly, in the naval context, Hague XIII, Article 8

[84] Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (adopted 18 October 1907, entered into force 26 January 1910) art 1.

[85] Hague Convention (V) (n 1) art 2; Hague Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War (adopted 18 October 1907, entered into force 26 January 1910) art 2.

[86] Crawford and Pert (n 78) 146–47; Nasu (n 14) 7

[87] Hague Convention (V) (n 1) art 5.

[88] Dieter Fleck (ed), *The Handbook of International Humanitarian Law* (3rd edn, OUP 2013) 617–18; Nasu (n 3) 8–9.

mandates that neutrals use the means at their disposal to prevent the fitting out or arming of vessels in their jurisdiction if they are intended for belligerent use.

In sum, neutral territory is protected from warfare by both negative and positive obligations. Belligerents must abstain from trespass or hostile acts on neutral soil, and neutrals must actively ensure no such acts occur.[89]

4.1.2.4 Right to Remain Outside the War

Corresponding to the duties above, a neutral state enjoys the right to remain outside the conflict – meaning its sovereignty and territory must be respected by the warring parties.[90] Belligerents are absolutely prohibited from attacking, invading, bombing, or otherwise violating the territory or airspace of a neutral state in any way.[91] Neutral territory is inviolable under international law (Hague V 1907, Article 1) – a cornerstone right of neutrality. If belligerent troops or agents do enter neutral territory (whether fleeing, shipwrecked, or by mistake), the neutral must not allow them to participate further in the war: it has an obligation to intern those troops or otherwise ensure they cannot return to combat.[92]

In other words, the neutral's soil cannot become a foothold for either side's military operations.[93] The flip side of this right is a duty of self-defense of neutrality: the neutral state is expected to prevent and repel any violations of its neutrality.[94] It "must ensure that its territory is not used by parties to the conflict as a base for military operations[95]" and may not permit passage of belligerent forces through its land.[96] If a belligerent attempts to occupy or use neutral territory, the neutral is entitled – indeed obliged – to use proportionate force to resist that incursion. Importantly, repelling such a violation does

[89] Seger (n 78) 3; Ben Saul and Dapo Akande (eds), *The Oxford Guide to International Humanitarian Law* (OUP 2020) 269–70.

[90] Crawford and Pert (n 78)

[91] *Ibid*.

[92] Crawford and Pert (n 78) 147–48.

[93] Nasu (n 14) 8

[94] Saul and Akande (n 89)

[95] *Ibid.*

[96] Seger (n 78) 3.

not compromise the state's neutral status so long as the neutral's actions are strictly limited to defending its neutrality and restoring the status quo.[97] For example, if a neutral shoots at an intruding belligerent aircraft to enforce its airspace, or fights off troops that crossed its border, these defensive measures are considered actions governed by the law of neutrality (aimed at upholding neutrality, not joining the war).[98] The neutral must be careful, however, not to go beyond defense – any "additional steps which would render their defensive action an act of belligerency" (for instance, pursuing the fight into the enemy's territory) would end their neutrality. In sum, a neutral has the right to be left alone, and an obligation to keep itself out of the fray and keep the fray off its doorstep. If it fulfills its neutral duties, its sovereignty is to be fully respected by both sides.[99] Conversely, if it substantially deviates from abstention or impartiality, it risks losing neutral protection and may be treated as a co-belligerent.

The laws of neutrality, established primarily through the Hague Convention V (1907), remain significant within IHL, despite modern challenges and evolving practices. Their principles of non-participation, impartiality, and territorial inviolability continue to govern state behavior in armed conflict. Nonetheless, ongoing debates, particularly regarding the application of neutrality laws in contemporary conflicts and under collective security arrangements, ensure that neutrality will remain a dynamic and contested domain in international humanitarian law. The next section of the thesis will thus examine the applicability of the laws of neutrality in contemporary international law.

[97] Bothe (n 69).

[98] Saul and Akande (n 89) 271

[99] Crawford and Pert (n 78) 146–49

4.2 Applicability

In the previous sections, the thesis aimed at examining the different notions of the term neutrality and followingly examined the core principles of the laws of neutrality, in order to fully comprehend both the concept and the meaning of the term, before delving into the application of the laws of neutrality. In this section, the thesis will therefore now, after having made a clearer definition and examination of the term, examine the application of the laws of neutrality to understand when the laws of neutrality are applicable and when they are not, and to further comprehend its status in contemporary international law, and what this means in practice.

4.2.1 Are the Laws of Neutrality Customary International Law?

The principles of neutrality emerged in the sixteenth century and gained widespread acceptance by states in the following centuries. However, regarding the customary international law status of the laws of neutrality, particularly the provisions of the 1907 Hague Conventions, it has been viewed as contentious by contemporary scholars due to inconsistent state practice.[100] It is thus highly essential to revisit and examine recent practices and especially ICJ rulings to see how the court rulings address this issue. Accordingly, this section will examine contemporary ICJ case law alongside national court decisions and other relevant sources to determine whether these cases reflect *Opinio Juris*, and whether there is a legal basis to consider that the laws of neutrality remain part of customary international law.

There are three known ICJ cases that briefly touch upon the matter: the Nicaragua Case, the Nuclear Weapons Case, and a separate opinion made by Vice President Ammoun in the case concerning Namibia.

The Nicaragua Case (1986) does not explicitly address or refer to the laws of neutrality, however, it does examine the principle of non-intervention, which is a key principle of neutrality law, as addressed earlier. The ICJ specifically clarified that customary international law prohibits intervention in another state's internal or external affairs,

[100] Heinegg (n 80).

emphasizing that no state can use force or coercion to interfere with another state's sovereign choices.[101] For instance, in paragraphs 202–205, of the ruling, the Court explicitly acknowledged non-intervention as a customary norm, reinforcing and reaffirming the status of the principle.[102] Given that non-intervention is a central and key principle of neutrality, the Nicaragua Case provides indirect support for recognizing aspects of neutrality law as customary international law.

In the Nuclear Weapons Case (1996), the Court reaffirmed and explicitly acknowledged the existence and relevance of the laws of neutrality as part of international humanitarian law.[103] Although the ICJ did not explicitly address neutrality laws as customary international law as it did with principles like distinction and unnecessary suffering, the Court's affirmation that neutrality laws constitute integral parts of international humanitarian law strongly implies their customary status, or at least emphasizes the recognition of the relevance and continuation of the use and compliance with the laws of neutrality.

However, the clearest judicial recognition of neutrality law as customary international law emerges from Vice President Ammoun's separate opinion in the ICJ's Namibia Advisory Opinion (1971). While separate opinions are not binding judgments, they hold persuasive authority, reflecting considered judicial reasoning, which can be indicative of prevailing international norms. Vice President Ammoun explicitly stated: *"Those states are bound by the status of neutrality as it derives from the 1871 Washington Rules and Conventions V and XII adopted by the 1907 Hague Peace Conference – which have become binding rules of customary international law – and from the relevant provisions of the laws and customs of war."*[104]

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[101] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (1986) (Merits) Rep 14 (ICJ).

[102] *Ibid*.

[103] *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* (1996) Rep 226 (ICJ).

[104] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (Advisory Opinion) - separate opinion of Vice President Ammoun* (1971) Rep 16 (ICJ) 81.

In summary, the ICJ cases provide substantial/considerable jurisprudential evidence showing that fundamental aspects of the laws of neutrality exist as customary international law. The ICJ references in Nicaragua Case (1986), Nuclear Weapons Case (1996) and Namibia Advisory Opinion (1971) provide clear evidence that neutrality law maintains its customary status because the international community (through the ICJ ruling) and states (through national court rulings and military manuals) continue to recognize and affirm its relevance despite inconsistencies in practice. Further examination of contemporary state practice, however, remains necessary to fully determine neutrality's customary law status.

National court rulings also confirm the customary status of 'neutrality' consistently. For example, Germany's Bundesverwaltungsgericht (2005) recognized neutrality obligations in customary international law during the Iraq war (2003). The case concerned a German officer, who had refused to follow orders, arguing that his duties might indirectly support an unlawful war. The court affirmed Germany's obligations under international law, and stressed that neutrality obligations continue to apply regardless of NATO membership.[105]

Similarly, the Irish High Court in *Edward Horgan v. An Taoiseach* acknowledged the existence of neutrality obligations under customary international law. The applicant challenged the Irish Government's decision to allow the United States military to use Shannon Airport during the Iraq War, arguing that this contravened Ireland's neutrality obligations. While the Court ultimately held that Irish neutrality is a matter of government policy and not a constitutional matter, it did affirm that "there is an identifiable rule of customary law in relation to the status of neutrality whereunder a neutral state may not permit the movement of large numbers of troops or munitions of one belligerent State through its territory en route to a theatre of war with another"[106].

Apart from national court's judicial acknowledgments, international actors have played an equally important role in recognizing 'neutrality' as customary international law. In

[105] *Bundesverwaltungsgericht (Federal Administrative Court), Judgment in the SASPF case (2 WD 1204)* (Federal Administrative Court)) 81, 84–85. (holding that NATO membership does not relieve Germany of its obligations under international law, including neutrality) (author's own translation)

[106] *Edward Horgan v An Taoiseach and Others* [2023] High Court Case No 3739P, IEHC 64 52–54.

particular, the United Nations High Commissioner for Refugees has recognized operational neutrality policies, thus reinforcing the assumption that neutrality has not been eroded and is practiced in humanitarian law on an international level.[107]

Even more convincing is the document military manuals and states' official declarations as norms of custom draft treaties. The manuals from Canada, Germany, France, the United Kingdom and the United States explicitly state that neutrality, as international custom law, is observed under the 1907 Hague Conventions. Both Canada's Military Manual and the UK's Ministry of Defence Manual stress the 'inviolability of territory' and neutral disaffection as norms of international law. Switzerland, a state with permanent neutrality, continues to uphold the norms of military nonengagement as customary international law.[108]

In summary, despite challenges in recent decades (in terms of inconsistent state practice and limited literature) the core obligations of neutrality continue to be widely recognized as customary international law and are essential elements of the broader legal framework of humanitarian law. Indeed, recent developments in state behavior, especially in the context of collective security, reflect a shifting political climate. However, these changes do not necessarily negate the legal foundation or customary nature of neutrality. They rather highlight an evolving practice, but whether this evolution will affect the legal application or solely stay as a topic within contemporary international relations, due to the changing global issues, is difficult to predict at the present time. Furthermore, arguably, the point in legal history reached at the Hague Conventions of 1907 also

[107] UN High Commissioner for Refugees, Stéphane Jaquemet, Under What Circumstances Can a Person Who Has Taken an Active Part in the Hostilities of an International or a Non-International Armed Con ict Become an Asylum Seeker? PPLA/2004/01 (June 2004)

[108] US, Department of Defense, Law of War Manual , Of ce of General Counsel (June 2015, Updated 2016);Canada, Joint Doctrine Manual, The Law of Armed Con ict at the Operational and Tactical Levels, Of ce of the Judge Advocate

General (13 August 2001); Germany, Federal Ministry of Defence, Law of Armed Con ict– Manual– Joint Service Regulation (ZDv) 15/2 (May 2013)

emphasizes and represents the normative and customary legal values of neutrality achieved over the preceding centuries, leading to the codification.

4.2.2 Only between States or also Non-state Actors?

Historically, the laws of neutrality have been understood as governing relations between states. Neutrality describes the status of a state that is not participating in an armed conflict between other states, entailing duties of abstention and impartiality by the neutral and corresponding obligations on belligerents to respect the territory of the neutral. Non-state actors (*e.g.* rebel groups or individuals) were not traditional "subjects" of neutrality law in their own right. As one scholar defines it, neutrality law is "the body of laws regulating the coexistence of states at war and those at peace". Neutrality law evolved in an era of state-centric warfare and assumes that belligerents are states (or at least entities with belligerent status) and neutrals are sovereign states.

Hague Convention V of 1907 (Neutral Powers in land war) and Hague XIII of 1907 (Neutral Powers in naval war) codify that neutral states must not support belligerents' military operations, and belligerents must refrain from hostile acts in neutral territory. For example, neutral territory is inviolable, (*e.g.* no using a neutral's land or airspace for transit of troops or attacks) neutrals must prevent the formation of belligerent military units on their soil, and if belligerent troops enter neutral territory, the neutral should prevent their return to the war. These treaty rules explicitly address states' duties, and do not name obligations for non-state armed groups.

While neutrality law typically applies to states, there was historically a doctrine of "recognition of belligerency" that bridged the gap to non-state actors in civil wars. When third-party states recognized such actors as belligerents, they were granted limited international rights and duties, treating the conflict as an international war. In The Prize Cases, the U.S. Supreme Court confirmed that recognition of independence was not required for belligerent status under international law, noting that a declaration of neutrality presupposes two belligerent parties. For example, during the U.S. Civil War, Britain issued a proclamation of neutrality acknowledging hostilities between the United

States and the Confederate States, followed by similar actions from other powers.[109] This meant neutrality law could govern relations between non-states, as Britain, as a neutral, had to refrain from assisting either the Union or Confederacy militarily and respect impartiality between them.

However, such formal recognition of belligerency has been rare in modern times, meaning most conflicts involving non-state actors have been debated on whether or not the full regime of neutrality law in the traditional sense is applicable. For instance, in Al-Bihani v. Obama, the U.S. Court of Appeals rejected the application of the laws of neutrality to non-international armed conflict, by stating that "the laws of co-belligerency affording notice of war and the choice to remain neutral have only applied to nation states."[110] This is emphasizing the conventional viewpoint that neutrality is based on the existence of armed conflict between States. Nonetheless, what makes this topic contentious is that there is a form of disagreement in practice. For example, in the Nicaragua case, the ICJ seemed to agree that the duties of abstention and non-intervention, which are tied to the concept of neutrality, existed even if one of the conflict's parties was a non-state actor. The Court held that U.S. aid to the Contras was a breach of non-intervention and impartiality, indicating that neutrality principles do apply, perhaps even in Non-International Armed Conflicts (NIACs) involving non-state actors.[111]

In sum, while the laws of neutrality remain primarily rooted in state-to-state relations, certain cases and institutional interpretations suggest that aspects of neutrality may, in practice, extend to conflicts involving non-state actors, which is why it might still be a contentious topic.

[109] 67 U.S. Prize Cases (US Supreme Court) 669–70.

[110] *Ghaleb Nassar Al-Bihani v Barack Obama* 881.

[111] International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits)* [1986] ICJ Rep 14, 118–119

4.2.3 Obsolete in the Light of the Laws of Neutrality

In this section, the thesis will consider whether the laws of neutrality have become obsolete in contemporary international law. In order to do so, it will briefly comment on the concept of obsolete and afterwards look into scholarly opinions on the matter.

Obsolescence is used to describe the discontinuation or modification of a treaty or obligation due to presently changed circumstances, leaving adherence to the treaty impractical or meaningless with emphasis on the treaty or obligations prolongment being inequitable.[112] With other words, obsolescence puts an emphasis on the legal impossibility or irrelevance, which may be used as the grounds of a treaty termination, due to the laws incompatibility in its functionality with present norms and values of society. However, while VCLT Article 61 supports termination in cases of material impossibility, the concept of obsolescence was deliberately excluded from the Vienna Convention as an independent ground for termination.[113] The International Law Commission rejected its inclusion, considering that such situations could already be addressed under Article 54(b), which permits termination by mutual consent, including tacit agreement.[114] Obsolescence is therefore not recognized as a formal legal ground under VCLT as a direct cause for abolishing a treaty, but can nonetheless be used in the argumentation on the usefulness and relevance, which can lead to a revision of its termination.

From a scholarly perspective, there has been a long-standing debate on whether classical neutrality laws are still relevant in the modern era of the UN Charter and collective security. As far back as 1935, jurist Nicolas Politis argued that the laws of neutrality were *"obsolete, a product of the international anarchy of the times, doomed to be replaced by a new centralized international community.[115]"* Politis believed that the League of

[112] Wouters Jan and Sten Verhoeven, 'Desuetudo' [2008] Max Planck Encyclopedia of Public International Law (Oxford University Press).

[113] Marcelo G Kohen, 'Desuetude and Obsolescence of Treaties', , *The Law of Treaties Beyond the Vienna Convention: Liber Amicorum Giorgio Gaja* (Oxford University Press) 357–359.

[114] *Ibid.* Chapter 21.

[115] Maria Gavouneli, 'Neutrality – A Survivor?' 23 The European Journal of International Law 267, 267.

Nations system of collective security would supersede neutrality.[116] After the Second World War, with the establishment of the United Nations, many assumed that states would no longer remain neutral in the face of aggression, but rather collectively enforce peace. The UN Charter's emphasis on preventing war and the requirement in Article 2(5) seemed to leave little room for the traditional neutrality norm.

Some scholars in the late 20th century indeed suggested that traditional neutrality has lost much of its former importance due to the UN charter. Under the UN system, wars of aggression are unlawful, and one might expect that States should not stay "neutral" between an aggressor and a victim. For example, when North Korea invaded South Korea in 1950, the UN called members to assist South Korea. Likewise, after Iraq's 1990 invasion of Kuwait, virtually all states either joined the UN-authorized coalition or at least complied with UN sanctions, rather than remaining indifferent. These examples emphasize the view that strict neutrality might be a relic.

However, despite these developments, the laws of neutrality did not vanish. Contemporary analysis suggests that neutrality law is *not* obsolete. One recent study concludes: *"The law of neutrality is not obsolete. Its validity subsists despite the prohibition of the use of force [and] the advent of collective security...[117]"* The argument here is that neutrality adapted to the UN era. Whenever the UN is not directly engaging in collective security (which is most conflicts), the laws still operate. Even where the UN is involved, neutrality concepts morph rather than disappear (for example, UN peacekeeping forces are neutral/impartial by design, borrowing from neutrality principles).

Continuing, the resurgence of inter-state conflict in recent years, for instance the Russia-Ukraine war in 2022, has *"rekindled the debate about the validity of neutrality[118]".*While some voices in policy circles claim neutrality is now defunct in such conflicts, the legal

[116]Gavouneli (n 115) 267–68.

[117] Constantine Antonopoulos, *Non-Participation in Armed Conflict: Continuity and Modern Challenges to the Law of Neutrality* (Cambridge University Press 2022) 221.

[118] Raul (Pete) Pedrozo, 'Ukraine Symposium – Is the Law of Neutrality Dead?' (*Lieber Institute*, 31 May 2022) <https://lieber.westpoint.edu/ukraine-symposium-is-law-neutrality-dead/>.

consensus is that neutrality law remains in force. At most, scholars also agree that it has been modified by the UN Charter in specific ways (*e.g.*, obligations to implement UN sanctions override neutrality, as discussed below).

Interestingly, Maria Gavouneli's 2012 article *"Neutrality – A Survivor?"* concludes that Politis was essentially correct that the old institution had to change, and indeed it has changed.[119] Traditional neutrality laws *"do not find [a] scope of application*[120]*"* in a pure form under the UN Charter, because collective security and the illegality of aggression transformed the landscape. So, rather than being obsolete, neutrality has evolved and found a more limited, but still important role, as Gavouneli notes: *"the institution had to change and it has changed.*[121]*"*

In summary, while the golden age of neutrality (referring to the practice of neutrality in the 1800s) may be over, the laws of neutrality are not abrogated. These laws are narrower in application due to the UN framework, but the current consensus of legal scholars is that neutrality laws remain valid, though under stress, in modern armed conflicts.[122]

[119] Gavouneli (n 115) 267–73.

[120] Gavouneli (n 115).

[121] *Ibid* 267.

[122] Kolb and Meret (n 18); Antonopoulos (n 117) 221.

5 *Different Notions of Neutrality*

The application and use of the term “neutrality” has become very broad, yet confounding, as it interacts and intertwines in both international law and international relations.[123] It is therefore crucial to touch upon the political aspects of the term and how it is perceived in international relations, before delving deeper into the legal dimensions of neutrality. This section will therefore briefly examine the international relations aspects of the term, to get a better understanding on how to distinguish its use in the geopolitical landscape and its use in international law.

In order to grasp the concept of neutrality in a more nuanced and accessible way, I seek to break it down into its constituent elements. As established, neutrality is a broad and multifaceted principle that spans both international law and international relations, and is further complicated as both contain further subfields. In international relations, for instance, neutrality may be approached through the lens of security policy, non-alignment, or neutralism. In addition to this different forms of neutrality also exist, such as permanent neutrality or temporary neutrality, making a precise definition even more challenging. The various notions and behaviors associated with the term "neutrality" have continuously evolved over time, often without a clear differentiation or aligned practice.[124] Instead, these distinct concepts have frequently been subsumed under the single label "neutrality," making it challenging to grasp.

The acknowledgment of these different notions has often been overlooked in academia. However, a praiseworthy piece of research by Pascal Lottaz, his book "Notions of Neutrality", emphasizes these overlooked areas.

In his work, Pascal Lottaz emphasizes and underlines - similar to the inference of this thesis - that the different notions often have been neglected.[125] Here, Lottaz shines a light on the term by using several scholars' examination of the different notions of neutrality,

[123] Ryszard M Czarny, ‘Neutrality in International Relations: Theoretical Foundations’ in Ryszard M Czarny, *Sweden: From Neutrality to International Solidarity* (Springer International Publishing 2018) 3–5 <http://link.springer.com/10.1007/978-3-319-77513-5_1> accessed 26 May 2025.

[124] Pascal Lottaz and Herbert R Reginbogin (eds), *Notions of Neutralities* (Lexington Books 2019) x–xi.

[125] *Ibid* ix–xiv.

looking into the use and development throughout history.[126] Their research shows evidence that neutrality has been discussed and used in different ways over the past decades. They demonstrate that the topic of neutrality has been heavily discussed, with the meaning of the term being fluid and evolving with time. Notably, scholars distinguish between how the term neutrality was understood before and after the Second World War. However, the context of neutrality has often been overlooked in its common usage, as Lottaz highlights in his book. He therefore argues that in reality, we should always ask what kind of neutrality one is referring to, as "neutrality" in itself is too abstract an entity.[127]

Historians, for instance, separate the two periods, which emphasizes that there has been a shift in the behavior of neutrality itself, but this is not accounted for in the common, and especially the international relations, usage of the term. It is therefore quite clear that the term neutrality, looking at its development, has changed its notions. When discussing the laws of neutrality, we should recognize these different notions to apply and examine the term correctly, and keep in mind that what we perceive as neutrality may change depending on time and context.[128]

Therefore, to understand the true nature of neutrality, it is necessary to first understand where the concept originates from in order to spot its changing nature. The purpose of this is to understand the context, the rationale, and the need for the development of the laws of neutrality in order to later be able to compare it with its contemporary use and to what extent the need for the laws of neutrality still applies in modern conflicts, or whether it is time to accept that the laws of neutrality are a relic of the past.[129]

In the following section of the thesis, the development of the practice and laws of neutrality will therefore be examined.

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[126] *Ibid*.

[127] *Ibid*.

[128] Lottaz and Reginbogin (n 124).

[129] *Ibid*.

5.1 Neutrality in International Relations

Neutrality is a long-standing concept in international relations but lacks a uniform definition. It functions both as a security approach and a foreign policy framework by maintaining non-belligerent positions. Neutrality in its broader term exists in two parts: legal and political. This section of the thesis will aim at explaining and defining the use of neutrality within the field of international relations, meaning neutrality as a policy. Going forward, in international relations, neutrality has developed multiple related concepts which include non-alignment, neutralism, and neutrality as a security policy. In order to understand how neutrality functions as a policy under international relations, it is necessary to examine these related concepts, as each highlights different dimensions of how states engage with neutrality as part of their foreign policy strategies. By doing this, the thesis aims to gain a more comprehensive understanding of the term as a whole and to understand its different dimensions within the two fields (law and policy), as this has often been overlooked in literature.

5.1.1 Permanent Neutrality

This subsection briefly addresses the concept of permanent neutrality (also known as perpetual neutrality), as it differs from other policy stands in international relations, due to its dual nature of both legal and political dimension.[130] The most prominent example of a permanent neutral is Switzerland. Switzerland's permanent neutrality originated as a long-standing foreign policy tradition and was later formalized through legal codification in the Act of the Congress of Vienna (1815).

What makes permanent neutrality have this status of dual-natured—both legal and political by using Switzerland as an example of a permanent neutral —is the fact that the concept was initially a traditional practice and policy embedded in the country's identity for decades, and later achieved legal status through its codification in the Act of the Congress of Vienna in 1815.[131] This dual character arises from the fact that the state's

[130] Czarny (n 123) 8.

[131] John Dreyer and Neal G Jesse, 'Swiss Neutrality Examined: Model, Exception or Both?' (2014) 15 60–83.; See also Edgar Bonjour, Swiss Neutrality: Its History and Meaning (Mary Hottinger tr, George Allen

political decision to remain neutral has been recognized and upheld as binding law. Permanent neutrality therefore carries both political and legal dimensions. Legally, it may be underpinned by international guarantees or recognition. Politically, it becomes the foundation of the State's identity and foreign policy.

Aside from Switzerland, Austria is the only other modern state to hold a similar legally recognized status of permanent neutrality.[132] Historically, the legal neutralization of specific states, such as Switzerland, was used by European powers as a strategic tool to maintain the balance of power.[133]

A permanently neutral state is, therefore, a country that, in addition to the Hague Convention, has chosen to codify its political stance on neutrality into its national legislation, which has subsequently received acceptance in the international community.[134] What gives this status a "duality" is the country's own decision to codify its political position into legal text.[135] Permanent neutrality, therefore, just like other neutral states, carries an obligation to remain neutral in armed conflicts between other states, but it also prevents it joining military alliances, even during peacetime (Austria and Switzerland are for instance not a part of NATO, however recent development has seen the entry of Sweden and Finland in to the military alliance).[136] This type of neutrality also differs from foreign policy neutrality in international relations, where a state's alignment may vary depending on the geopolitical situation.[137] In contrast, permanent

& Unwin 1946), for a detailed account of Switzerland's longstanding practice of neutrality prior to its formal recognition in 1815 and its role in shaping Swiss national identity.

[132] Bothe (n 69) 577.

[133] *Ibid*.

[134] Pearce Clancy, 'Permanent Neutrality and the UN Security Council' (2021) 32 Irish Studies in International Affairs 241, 244–245.

[135] Czarny (n 123) 8–9.

[136] Seger (n 78)

[137] Czarny (n 123) 10.

neutrality is a fixed and codified position that reflects both a legal commitment and a long-term political identity.[138]

5.1.2 Neutrality as a Foreign Policy: Long term and temporary

5.1.2.1 Longterm

While Switzerland and Austria have legally established permanent neutrality, other states such as Sweden and Ireland have pursued neutrality as a foreign policy orientation without legal backing. In this sense, neutrality is a policy of non-alignment and non-involvement in external conflicts, adopted due to, for instance, political, historical or national identity reasons rather than legal obligation. For example, Sweden's traditional policy for two decades was military neutrality: Sweden refrained from alliances, hoping to stay out of any war ("non-belligerency" in case of conflict). Similarly, Ireland has long maintained a policy of military neutrality (dating back to the Second World War), even though it has no formal treaty requiring it.[139]

5.1.2.2 Temporary

Neutrality as foreign policy is often a pragmatic choice driven by national interest and circumstances. States may adopt neutrality to avoid the costs of war, to maintain trade with all sides, or to serve as mediators. For instance, Turkey's role in the Ukraine–Russia war reflects such pragmatism, while Ankara condemned Russia's aggression as illegal, it refrained from imposing sanctions, maintaining strategic dialogue with both parties and facilitating grain export deals through the Black Sea initiative.[140] Such neutrality can be

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[138] Clancy (n 134) 243–244. *For example, Austria's decision to adopt permanent neutrality in 1955—through international treaties and constitutional law—had, as Clancy notes, "profound impacts on Austrian political and national identity" (p. 243), demonstrating how codified neutrality can shape a state's long-term political character.*

[139] Seger (n 78).

[140] Yasir Atalan, 'What Role Can Turkey Play in Ukraine Negotiations?' (*CSIS - Center for Strategic & International Studies*) <https://www.csis.org/analysis/what-role-can-turkey-play-ukraine-negotiations?>; 'Russia-Ukraine Black Sea Grain Deal: All You Need to Know' *Al Jazeera* (17 July 2023) <https://www.aljazeera.com/news/2023/7/17/russia-ukraine-black-sea-grain-deal-all-you-need-to-know?>.

flexible or temporary. A country might therefore be neutral in one conflict but not in another, depending on the political interests.

Therefore, neutrality as foreign policy exists on a spectrum: some states adhere to it as a long-term principle of statecraft, while others invoke neutrality only in specific contexts. This is, for instance, the reason why some scholars might discuss the concept of "temporary vs. long-term neutrality"[141]

5.1.3 Neutrality, a Security Policy or Russian Coercion?

In this subsection, neutrality as a security policy within international relations will be examined. The aim is to highlight the political pressure that Ukraine has foregone since the Euromaidan revolution in 2014 that forced the Russian-supported president, Yanukovych, to flee the country, which Russia afterwards used as an excuse to annex Crimea.[142] Discussing this topic can prove beneficial for the overall argument and conclusion, by creating an understanding of how neutrality has been used and challenged in the geopolitical context of Russia's invasion of Ukraine, particularly in relation to NATO expansion. In some circumstances, neutrals are pressured to remain neutral because it serves the strategic interests of a neighboring great power. There is compelling evidence supporting this point, and scholars, such as Roy Allison, have provided valuable analysis on how Russia has used neutrality as a strategic tool to limit Ukraine's alignment with the West.[143] This issue is particularly relevant to the thesis conclusion, as it demonstrates how great powers may exploit neutrality to justify coercion or intervention, rather than respect it as a sovereign choice. Firstly, a brief theoretical clarification on what "neutrality as a security policy" entails will be made. This will be followed by several

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[141] *Ibid*.

[142] Taras Kuzio, 'Russian Policy toward Ukraine during Elections' 13 Demokratizatsiya: The Journal of Post-Soviet Democratization 491, 491–99;the article presents comprehensive documentations of Russia's political and financial support for Yanukovych, including election manipulation and disinformation campaigns during is years as prime minister in 2004; Jonathan Masters, 'Ukraine: Conflict at the Crossroads of Europe and Russia' (*Council on Foreign Relations*, 14 February 2023) <https://www.cfr.org/backgrounder/ukraine-conflict-crossroads-europe-and-russia>.

[143] See generally Roy Allison, 'Russia, Ukraine and State Survival through Neutrality' (2022) 98 International Affairs 1849., which offers an excellent and insightful discussion of how Russia has strategically misused the concept of neutrality to serve its geopolitical aims.

comparisons of previous USSR practices to further highlight the evidence of this particular Russian strategy, starting with some brief examples of the Cold War era practices in Finland and Austria, and secondly turning to the case of Ukraine.

Neutrality can be understood not only as a foreign policy stance but also as a security strategy/policy. In this sense, neutrality forms part of a state's defence doctrine as an alternative to military alliance commitments (instead of relying on collective security arrangements such as NATO or CSTO). While this form of neutrality overlaps with foreign policy, its primary function is to preserve national security and territorial integrity. As Robert Jervis notes, for great powers, neutrality often reflects a rational cost-benefit calculation, which can often be seen when states use neutrality as a temporary foreign policy when it fits their political interests (for instance, the previous example of Turkey), whereas for smaller states, it is typically a matter of security and survival.[144] In such cases of smaller states, long-term neutrality, and the credibility of the neutral position, depend on consistent, demonstrable impartiality that earns the trust of all major actors.

A key example of this dynamic is Finland during the Cold War under the so-called Paasikivi-Kekkonen line. Finland, which in international relations is considered a smaller state and, for obvious reasons, a fragile state due to its geographical location bordering Russia, puts itself in a precarious situation. Historically, after facing two wars with Russia, for instance, the famous Winter War, the main motivation for Finland adopting a neutral foreign policy was for security concerns towards the USSR during the Cold War tensions between the two blocs. The case of Finland truly highlights the motivation of the state's survival, which has pushed it into being forced to choose a neutral policy.

But as the title of this subsection also reveals, this section takes a relatively critical stance towards the Cold War period of neutrality. There are several examples where, due to political pressure, especially from the Soviet Union, countries were forced to adopt a security policy of neutrality, resulting in a form of isolation and deviation from the potential opportunity to join NATO. This neutrality strategy has therefore significantly

[144] See Oleh Tsebenko and Oleksandr Shymczuk, 'Neutrality as a Strategy of National Security' (2017) 3 Humanitarian vision 51, 172, citing Robert Jervis, 'Cooperation Under the Security Dilemma' (1978) 30(2) *World Politics,* 167.

benefited the USSR, as documented in various examples, including Finland and Austria, where these countries were compelled to adopt a neutral security policy solely due to pressure from the USSR.

Regarding Austria, the pressure from the Soviet Union was more public. It is no secret that Austria's 1955 State Treaty was only signed after it agreed to declare permanent neutrality. Austria promised not to join NATO or permit foreign military bases, which satisfied Soviet concerns. This was a Soviet condition for withdrawing troops from its occupied zone, which is why it can be argued that Austria's neutrality was shaped in part by Soviet leverage.

For example, with Finland during the Cold War, the former president Ryti (whom Stalin was not particularly fond of) was mysteriously imprisoned, and a "USSR"-friendly person was brought to power, namely Paasikivi.[145] Stalin had shown general dissatisfaction with Ryti and implied that he could not be trusted since he was part of the former "non-friendly" government towards the Soviet Union.[146] What proves to be critical in understanding Finnish politics during this period — and complicates the argument that Finland's neutrality was entirely sovereign — is the well-documented evidence suggesting that Paasikivi's rise to power may have been facilitated by Soviet preference. A memorandum was sent to Mannerheim, who succeeded Ryti, requesting that he appoint Paasikivi as prime minister.[147] Shortly after, due to pressure from both Paasikivi himself and Stalin, Mannerheim was forced to resign from his position as an official.[148] Besides these examples, it is also documented that Paasikivi received the Soviet Union's highest honor for his significant efforts in building friendly relations between Finland and the

[145] Immi Tallgren, 'The Finnish War-Responsibility Trial in 1945–6: The Limits of Ad Hoc Criminal Justice?', *The Hidden Histories of War Crimes Trials* (Oxford Academic 2014) 99 <https://doi.org/10.1093/acprof:oso/9780199671144.003.0021>.

[146] Jukka Seppinen, 'Vaaran Vuodet? Suomen Selviytymisstrategia 1944-1950' [2008] Helsinki: Minerva Kustannus Oy 27.

[147] See footnote 22 in Allan A Kuusisto, 'The Paasikivi Line in Finland's Foreign Policy' (1959) 12 The Western Political Quarterly 37, 46.

[148] Seppinen (n 146) 26.

Soviet Union.[149] Paasiki was also one of the first delegates to meet Stalin in person, when he was serving as an ambassador in Moscow.[150] Furthermore, there are documents from contemporary Soviet politicians who publicly expressed that Paasikivi was one of the few officials in the Finnish government striving for good relations with the USSR.[151]

All this certainly raises questions about whether, in this state, Finland was truly neutral. When it is evident that the country's top ministers favored one power bloc and attained political status with the help of one major power, one must contemplate. This case of the Soviet Union's manipulation of Finland's "neutrality" is, therefore, a prime example of how the Soviet Union, through neutrality, steered countries away from the Western NATO bloc. What is interesting here, is that this example is not far from what we witnessed with Ukraine in the period leading up to 2014 with Russia's annexation of Crimea. In fact, it can be argued that it re-emerged in "post-Soviet" Russia's approach to Ukraine.

Just as the USSR benefitted from neutrality as a mechanism to deny Western military presence near its borders and to limit countries from western alliances, modern Russia sought to limit Ukraines sovereignty by pressuring them not to join NATO. As Roy Allison also notes, Russia viewed Ukraine's neutrality "as a means to deny Ukrainian entry into a western, certainly a NATO, security zone,[152]" replicating Soviet-era strategic logic. This emphasizes that neutrality, in the Russian view, is not an autonomous Ukrainian choice but a concession imposed under conditions of threat and occupation. By the early 2010s, Ukraine had declared a non-bloc status and avoided military alliances. Yet this did not satisfy Russia. Ukraine's pursuit of closer ties with the EU, while remaining militarily neutral, was treated by Russia as a strategic threat. Russia's 2014 annexation of Crimea, (despite Ukraine's formal neutrality), revealed how vulnerable neutral positions become when confronted by a determined power unwilling to respect

[149] See footnote 32 in Kuusisto (n 147) 46.

[150] Rene Nyberg, 'Paasikivi in Moscow' <https://anselm.fi/paasikivi-in-moscow/>.

[151] See footnote 22 in Kuusisto (n 147) 42.

[152] Allison (n 143) 1852.

international agreements. Just as Finland's neutrality was shaped by Soviet coercion, Ukraine's neutrality was tolerated only as long as it aligned with Russia's strategic interests. Once Ukraine's domestic politics and foreign partnerships began tilting westward, even without NATO membership, Russia still acted. In both cases, neutrality became a tool used by a dominant neighbor to delay or block integration with Western institutions.

In sum, these examples illustrate that neutrality, while theoretically a sovereign security strategy, can also be externally shaped or imposed. Especially, when neutrality is conditioned by coercion or threats, it ceases to be a free policy choice and instead becomes an instrument of strategic control by more powerful actors.

5.2 Similar Terms and Concepts

As concluded in the previous section neutrality has different notions which can serve to confound the use and hinder the intended functionality. One partial aim of this thesis, in the goal of clarifying validity and applicability of neutrality, is to, in the process, thoroughly investigate why the current obscurity of neutrality has occurred. By outlining notions and clarifying related terms, a better understanding of the laws of neutrality can be reached. As such, adding to this complexity, there are other similar terms related to neutrality which will now be investigated. Terms like "impartiality," "non-alignment," and "non-belligerent" may raise questions about their distinctions for those not familiar with the topics.

5.2.1 Impartiality

Briefly before jumping into the section, it should be highlighted that this section focuses on impartiality primarily in the context of UN peace operations and humanitarian organizations and should not be confused with the key principle of "impartiality" within the laws of neutrality as laid out in the previous section. These two terms differ depending on the context whether it is applied under the laws of neutrality or within peace operations, which is why it is key to examine the difference in this section of the thesis. With the intention of hopefully creating clearer distinctions of all the related and overlapping terms.

While some argue the two words *impartiality* and *neutrality* are synonymous,[153] important international institutions, such as the United Nations (UN) and the International Committee of the Red Cross (ICRC), make a clear distinction between them.[154] As concepts, they serve different functions, particularly in the contexts of peacekeeping, humanitarian assistance and international law. For example, UN General Assembly Resolution 43/131 (1988) formally acknowledges impartiality and neutrality as distinct

[153] Pål Wrange, 'Neutrality, Impartiality and Our Responsibility to Uphold International Law' (31 January 2008) 277 <https://papers.ssrn.com/abstract=2558583> accessed 14 November 2022.

[154] 'Report of the Panel on United Nations Peace Operations' para 50.

operational principles in humanitarian action.[155] Likewise, the *Brahimi Report* on UN peace operations stresses that impartiality must not be confused with neutrality. If one side in a conflict is clearly violating peace or doing something wrong, the UN must recognize that and respond accordingly and not pretend both sides are equal.[156]

On the other hand, neutrality, for instance, often refers to the abstention from taking sides in an armed conflict. It is grounded in international legal obligations under the Hague Conventions, where neutrals must refrain from supporting any belligerent party, despite the violator of the peace. However, in modern peacekeeping operations, neutrality is less applicable. For example, The UN stresses impartiality in its peacekeeping missions, meaning that peacekeepers must not favor any side but must instead work to uphold international law and ensure justice, even if it means intervening against parties that violate peace agreements or human rights. This distinction became particularly evident in the aftermath of the 1990s, when UN operations faced criticism for failing to act decisively in situations where *strict neutrality* was applied with *equal* treatment of all sides, even when one party was clearly violating the terms of a peace agreement.[157] The *Brahimi Report* underlines this by stating that "[w]here one party to a peace agreement clearly and incontrovertibly is violating its terms, continued equal treatment… can in the best case result in ineffectiveness and in the worst may amount to complicity with evil."[158] This shift reflects the lessons learned from the failures of the 1990s, particularly in Rwanda and Srebrenica, where peacekeepers were mandated to remain neutral even when confronted with gross violations of human rights, and other atrocities with the characters of *Jus Cogens*.[159]

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[155] 'UNGA Res 43/131'.

[156] 'Report of the Panel on United Nations Peace Operations' (n 154) para 50.

[157] *Ibid*.

[158] 'Report of the Panel on United Nations Peace Operations (Brahimi Report)'.

[159] United Nations, Report of the Panel on United Nations Peace Operations (21 August 2000) UN Doc A/55/305–S/2000/809 (Brahimi Report), paras 48–52; see also United Nations, Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda (15 December 1999) UN Doc S/1999/1257; and United Nations, Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The Fall of Srebrenica (15 November 1999) UN Doc A/54/549.

On the other hand, the ICRC continues to base its humanitarian operations on the principle of neutrality, primarily to maintain access to conflict zones and the trust of all parties.[160] The ICRC defines neutrality as abstention from taking sides in hostilities or engaging in controversies of a political, racial, religious or ideological nature.[161] Yet this is balanced by its equally foundational commitment to impartiality, which requires the provision of aid strictly according to need, without discrimination based on nationality, race, religion or political affiliation. Neutrality in this context is a strategy to gain access, whereas impartiality governs the distribution of assistance.

Legal scholars, such as Pål Wrange, observes impartiality has become a more durable and ethically defensible concept in an age where *strict* neutrality may no longer be viable or even morally justifiable. He suggests that "there is not much room for integral neutrality under the 1907 Hague Conventions and neutrality as abstention in the sense of staying aloof is no longer possible. However (…) there will always be a need for impartiality, call it neutrality or not.[162] Similarly, Pierre Krähenbühl of the ICRC clarifies that "not taking sides in a conflict does not mean being indifferent" and that the ICRC is not neutral in the face of grave violations of international humanitarian law, even if it chooses to respond confidentially at first.[163]

Importantly, the legal weight of impartiality also differs depending on the context in which it is invoked. For instance, impartiality under the laws of neutrality is binding under international law. In contrast, impartiality within UN peacekeeping operations and humanitarian assistance is more considered as a principled guideline rather than a legal obligation, within states who voluntarily wish to send humanitarian aid to conflict zones. As Kubo Mačák argues, there is no general rule in international law requiring states to act impartially in the provision of humanitarian assistance. While neutrality and

[160] 'The Fundamental Principles of the Red Cross and Red Crescent Movement' 4.

[161] *Ibid*.

[162] Wrange (n 153) 274.

[163] Pierre Krähenbühl, cited in Wrange (82)*Ibid* 277.

impartiality is essential for humanitarian organizations such as the ICRC—as a condition of access and operational legitimacy— impartiality, in this context, does not have a legal binding effect on states, opposed to impartiality under the laws of neutrality. Therefore, impartiality in UN peacekeeping is best understood as a normative and ethical principle, rather than a universally binding legal status under international law.[164]

In sum, while impartiality under the laws of neutrality is often understood as "passive and strict non-involvement", impartiality within humanitarian aid and peacekeeping operations is considered an active engagement to ensure fairness, particularly when justice or human rights are at stake. The two principles are thus not interchangeable, though they overlap in their commitment to non-discrimination. This distinction is especially important in modern peacekeeping and humanitarian operations, where the protection of civilians and upholding international law often require decisive action rather than strict abstention. So, importantly, discernment and understanding of context and term usage between impartiality - as a peacekeeping and humanitarian tool - and impartiality - under laws of neutrality - is key to understanding the practice between states, and the behavior of international organizations.

[164] Kubo Mačák, 'A Matter of Principle(s): The Legal Effect of Impartiality and Neutrality on States as Humanitarian Actors' (2015) 97 International Review of the Red Cross 157.

5.2.2 Non-Belligerency

The term *non-belligerency* refers to a self-declared status where a state avoids active participation in an armed conflict, but does not commit itself to the full obligations of a neutral status in a conflict. For instance, in contrast to neutrality, which comes with enforced legal duties of impartiality and non-engagement as set out under the Hague conventions, non-belligerency does not exist as a legal concept in international law. In fact, according to some scholars, non-belligerency lacks legal acknowledgement and is rather a politically designed position that is intended to justify partial involvement in a conflict, such as supplying arms or aid to one party of the conflict, while wishing to avoid the formal consequences of belligerency.[165]

For instance, the use of non-belligerency during the Second World War differed greatly between countries, revealing more about its political "maneuvering" than any legal obligations. The United States, for example, maintained, for a time, a non-belligerent position but considerably supported the military efforts of United Kingdom through the Lend-Lease Act.[166] Italy adopted non-belligerency in 1939 out of military unpreparedness and did not enter the war until 1940. This allowed Mussolini to preserve a strategic flexibility while signaling alignment with the Axis powers.[167] Spain similarly shifted from neutrality to non-belligerency following the fall of France in 1940, supplying the Axis powers with raw materials like wolfram and permitting volunteer fighters for the Eastern Front, without engaging in direct hostilities.[168] Turkey also displayed non-belligerent attitude, which was documented during İsmet İnönü's speech to the Turkish National Assembly in 1940, carefully navigating between the allied powers and the Axis powers, but refrained from military aid.[169] These practices reflect that non-belligerency is

[165] Bothe (n 69).

[166] Robert R Wilson, '"Non-Belligerency" in Relation to the Terminology of Neutrality' (1941) 35 American Journal of International Law 121.

[167] *Ibid*.

[168] *Ibid* 121–23.

[169] *Ibid*.

politically useful, but offers limited clarity, and therefore sets it somewhere in the gray zone between neutrality and belligerency.

This legal ambiguity remains present in contemporary conflicts. An example from recent practice, is for instance Italy's self-declared status of non-belligerency during the 2003 U.S.-led invasion of Iraq.[170] While refraining from direct military engagement in the early phase of the conflict, Italy allowed the use of its military bases and airspace for logistical support to the "Coalition of the Willing" forces. Troops were only deployed later for reconstruction purposes under a UN mandate.[171] As Natalino Ronzitti explains, this case showcases how non-belligerency continues to serve as a politically flexible, though legally undefined, concept that "blurs the line between neutrality and participation in the conflict," allowing states to support one side without officially joining the conflict.

The most outspoken criticism of this, to legal scholars concerning logic, came from Edwin Borchard, who fiercely rejected Attorney General Jackson's attempt to redefine neutrality during the Second World War. A.G. Jackson had argued that neutrality could be reinterpreted in moral terms—allowing states to discriminate against aggressors without violating neutrality.[172] Borchard warned that this was a dangerous path, arguing that it "knocks the bottom out of international law[173]" and would lead to "extreme relativism devoid of boundaries.[174]" If states are allowed to unilaterally define neutrality—or to bypass it altogether through constructs like non-belligerency—the result is the erosion of any binding normative framework in armed conflict. Ultimately, non-belligerency appears less as a legally defensible category and more as a politically expedient tool to facilitate selective involvement in conflicts. It permits states to rhetorically uphold non-participation while materially supporting one belligerent, thus blurring the lines of legal

[170] Tess Bridgeman, 'THE LAW OF NEUTRALITY AND THE CONFLICT WITH AL QAEDA'.

[171] *Ibid*.

[172] Edwin Borchard, 'War, Neutrality and Non-Belligerency' (1941) 35(4) *American Journal of International Law* 643.

[173] *Ibid*., 618

[174] *Ibid*.

accountability. As these cases show, the term functions not as a legal shield, but as a rhetorical diversion. In this sense Borchard was correct in his statements on treading carefully considering the context and historical present.

This interpretation is further supported by the fact that non-belligerency has never achieved recognition in treaty law, nor has it developed into a norm of customary international law. Scholars, such as Michael Bothe, assert that non-belligerency lacks any basis in established legal instruments like the Hague Conventions. He argues that non-belligerency goes against the purpose of neutrality, which is to limit or reduce the conflict. This is because it lets countries avoid the legal responsibilities that come with being neutral—like staying completely out of the war—while still secretly or partially helping one side. In other words, simply relabeling partial support as "non-belligerency" does not relieve a state from the legal consequences of abandoning strict impartiality. To some degree one could philosophize that the emergence of *non-belligerency* should have been thwarted harder and immediately by the international legal community to send a signal that a practice, where a political tool could destabilize the law, is a dangerous precedent. The term *non-belligerency* provokes in its bluffing nature, as it would require the international legal community to call out when non-belligerent aid becomes belligerent.

Frederic R. Coudert makes a related point; he acknowledges the fluid nature of international law but flags that non-belligerency is not a legally recognized status. He argues that it should be seen as a hybrid "doctrine" emerging from new political realities, while stressing that the law must not become so flexible as to lose its coherence. By his own words "The strictly orthodox will say that there is no halfway house between peace and war—and they may be correct[175]", insisting on legal clarity and predictability.[176] The flexibility of non-belligerency, while politically advantageous, undermines the

[175] Frederic R Coudert, 'Non-Belligerency in International Law' (1942) 29 Virginia Law Review 143, 143.

[176] Michael Bothe and Dieter Fleck, cited in: Frederic R. Coudert, "Non-Belligerency in International Law" (1942) 29 Virginia Law Review 143, at 144–145.

fundamental legal distinctions between neutrality and belligerency upon which numerous international obligations are structured.

This ambiguity is further evident in the conduct of the United States in the last year of the Iran–Iraq War. George Politakis makes the point that the U.S. undertook naval strikes against Iranian oil installations, while claiming a non-belligerent stance, described these attacks as "defensive reprisals."[177] This enabled the U.S. to sidestep the legal consequences that would come with being either a belligerent or neutral power, once again illustrating the beneficial practicality of non-belligerency in legally problematic situations. A similar situation took place in practice with the United States' international anti-terrorist campaign against al Qaeda, especially during the Afghanistan and post-Afghanistan operations. Although the term non-belligerency was not officially invoked at the time, the United States' disregard for neutrality laws, while conducting military operations in several third-party states, reflected a similar conceptual loophole.

In summary, the non-belligerent stance does not seem to be dependent on whether one sides with the aggressor or the victim in a dispute. The examples of Italy and Spain during the Second World War demonstrate this well. Both countries maintained a non-belligerent stance, albeit centrally aligning with Nazi Germany. The more recent case of the 2003 invasion of Iraq has come under scrutiny from numerous international legal scholars, some of whom consider it an unlawful act.[178] It is within this context that Italy's non-belligerent position in the war, providing logistical support to the so-called "Coalition of the Willing", seemed to indicate that the decision was not really based on whether the war was right or legal, but more on what was politically convenient at the time.

In short, this may suggest that non-belligerency, as a status, may function independently of any clear normative judgment regarding the justness or legality of the conflict in

[177] George P. Politakis, "From Action Stations to Action: U.S. Naval Deployment, 'Non-Belligerency,' and 'Defensive Reprisals' in the Final Year of the Iran–Iraq War" (1994) 25

[178] Kohen (n 113) Chapter 21.

question, and rather a convenient "getaway" of supporting one side, without being directly involved in the conflict. Some may argue that this could be considered as a strategic way of purposely creating an ambiguous gray zone, making it more difficult to be convicted for any possible breach of the laws of neutrality.

5.2.3 Qualified Neutrality

The term "qualified neutrality" refers to a potentially problematic principle where a state claims to be neutral in a conflict while undertaking measures, such as support of the victim state, which allegedly have greater justifying motives, such as responding to unlawful aggression or enforcing international law. In other words, the term can be described as neutrality with exceptions. In his work Oppenheim explains qualified neutrality, stating that in the past, a key distinction was made between perfect (i.e. strict or absolute) and qualified neutrality.[179]

A state was historically considered qualified if it remained neutral overall but still assisted one side due to treaty obligations or other reasons.[180] In contrast, perfect neutrality meant the state provided no support at all. An example of qualified neutrality from practice, which Oppenheim also mentions in his work, was Denmark's position in 1788 during the Russo-Swedish War. Denmark, bound by a prior treaty to aid Russia with warships and troops, sent a contingent to assist Russia while simultaneously declaring itself neutral in the conflict.[181] Sweden protested Denmark's attempt at neutrality while aiding its enemy, yet tellingly did not treat Denmark as a hostile belligerent and refrained from declaring war against it.[182]

Post-1945 the concept of qualified neutrality gained prominence due to scenarios where one belligerent is clearly an aggressor, as demonstrated presently in the light of Russia's

[179] Oppenheim (n 74) 305.

[180] *Ibid* 305.

[181] *Ibid* 306.

[182] *Ibid*.

invasion of Ukraine in 2022. The question arose: Can a state remain "neutral" while supporting the victim? In the current context it seems possible, as Russia, although with heavy rhetoric, has "accepted" the Western effort, to supply Ukraines effort of self-defence, as not making them a direct official party to the conflict.

For example, throughout the Gulf War (1990-1991), Sweden and Switzerland followed the United Nations sanctions of trade and commerce with Iraq, while still claiming that their position was neutral regarding military activities. With the Ukraine conflict in 2022, Switzerland did apply sanctions against Russia as part of the European Union framework but maintained a neutral stance from a military point of view. Such an attitude can be interpreted as a modified form of neutrality, and perhaps viewed as a form of qualified neutrality, one that involves no direct combat while still engaging in active political conflict.

According to the UN Charter, particularly Articles 2(4), 2(5), and 51, members are prohibited from aiding aggressors and may, under the right of collective self-defense, assist the victims of aggression being inflicted upon them. This set of norms has led to some researchers claiming that the traditional dualistic approach to neutrality—observed or abandoned—no longer sustains credibility. Rather, they contend that qualified neutrality stands a better chance of actually being applied by states systematically embroiled in a web of conflicting obligations of international law.[183] Critics, however, argue that this degree of flexibility poses a threat to the coherence and stability that neutrality has provided from its inception.[184]

It should be highlighted that qualified neutrality does not appear in any multilateral treaty and remains a doctrinal construct. Thus, it does not possess the legal certainty of the laws

[183] Wolff Heintschel von Heinegg, '"Benevolent" Third States in International Armed Conflicts: The Myth of the Irrelevance of the Law of Neutrality' in Michael Schmitt and Jelena Pejic (eds), *International Law and Armed Conflict: Exploring the Faultlines: Essays in Honour of Yoram Dinstein* (Martinus Nijhoff Publishers 2007) 552

[184] Marco Sassóli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (2nd edn, Edward Elgar) 211–13.

of neutrality such as the Hague Conventions of 1907. Moreover, it must be distinguished from non-belligerency, a looser concept under which states offer support to one side without claiming neutrality but also claims to be "outside" the conflict and therefore not a participant.

Whether qualified neutrality is an evolutionary adaptation responding to asymmetric conflicts and emerging power dynamics, or an erosion of the foundational principles of neutrality - maybe even a "symbiont" to the UN era of international law - remains contentious. Its use in modern practice demonstrates the attempts of states to reconcile legal obligations with moral and political imperatives. Lacking authoritative judicial interpretation, or a treaty to define it, qualified neutrality remains an ambiguous politically sensitive doctrine. For instance, legal scholars still seem divided over the issue and legitimacy of qualified neutrality.

Michael Schmitt sets out three commonly held opinions: one which maintains that the laws of neutrality still exist and that arms transfers constitute illegal activity; another which regards the laws of neutrality as largely irrelevant in the era after the UN Charter; and a third middle-ground position which proposes that the laws of neutrality need reinterpretation due to change in norms of collective security.[185] He makes the case that aiding a state claiming the right of self-defence, Ukraine in this case, is not counter to the legal breach of neutrality.[186]

In the same way, Wolff Heintschel von Heinegg argues that when an aggressor such as Russia hinders the UN enforcement under Chapter VII and willingly breaks international law, neutral states cannot be assumed to remain neutrally absent. He puts forth the following view: "Neutral states can no longer be bound by an obligation of strict impartiality and a prohibition to supply the victim of aggression with the means necessary

[185] Michael N Schmitt, 'Providing Arms and Materiel to Ukraine: Neutrality, Co-Belligerency, and the Use of Force' <https://lieber.westpoint.edu/ukraine-neutrality-co-belligerency-use-of-force/>.

[186] *Ibid*.

to defend himself from an aggressor state.[187]" To some extent this philosophy follows the just-war doctrine mentioned earlier in the thesis work.

On the contrary, Raul Pedrozo is more critical of the concept of qualified neutrality. He argues that such actions should instead be justified under the law of state responsibility as lawful countermeasures against internationally wrongful acts, such as Russia's aggression. This framing, he suggests, avoids weakening the traditional laws of neutrality while still enabling states to act in support of the victim.[188]

In short, qualified neutrality is thus still a debated and unclear doctrine. It shows the struggle between old rules of neutrality—where a country stays out of a war completely—and today's moral and legal beliefs that countries should stand up to aggression. Some countries have tried to use this doctrine by imposing sanctions on one side, but most legal experts do not think that is "real" neutrality.It is clearer to say these countries are taking sides without joining the fight, rather than calling them neutral. We can see this clearly in the war in Ukraine. Countries that sent weapons or imposed sanctions on Russia usually do not call themselves neutral. But countries that strived to stay neutral—like some in the Global South—have followed neutral rules more carefully. This shows that qualified neutrality may just be a short-term doctrine used for convenience and not a solid or accepted legal rule. However, a more comprehensive comparison of the doctrine will be made in the discussion section.

[187] Heinegg (n 80).

[188] Pedrozo (n 118).

6 Neutrality and the UN

The UN Charter serves as the fundamental principles and framework for the UN itself, and thus also for the international community. The UN Charter functions as a constitution, outlining the objectives, functions, structure, principles and responsibilities of its member states. As outlined in Article 1.1 of the Charter, the primary objectives of the United Nations are as follows: "*To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, (...)*".[189]

Critically, the emphasis here regarding neutrality, is on the whole idea and approach as to how the world order sustains and brings peace when states constitute a serious security breach, such as the act of aggression towards another sovereign state. The United Nations Charter (1945) fundamentally changed the legal landscape in which neutrality used to operate, as neutrality had a different contradicting approach to maintaining peace and reducing the risk of escalation between states, by adopting a mentality of isolation rather than acting collectively in the light of an IAC, but also as neutrality in the context of legal ongoing wars). The Charter's core purpose is to maintain international peace and security, and it imposes obligations on states to act collectively against aggression, which may conflict with the stance of traditional neutrality. The new paradigm that was created as a result of the UN system prohibits the threat or use of force against the territorial integrity or political independence of any state, effectively outlawing aggressive war, as stated in Article 2(4) of the Charter. This new regime is sometimes referred to as *Jus contra Bellum* – which means that wars are no longer neutral events in the eyes of law, but rather involve a legal wrong (i.e. aggression) versus a lawful response (i.e. self-defence or enforcement). Consequently, the traditional equal treatment of belligerents by neutrals has been conceptually undermined. An aggressor state is not morally or legally equivalent to a

[189] UN charter article 1.1

victim state under the UN system, and this challenges the notion of remaining completely impartial between them. It is therefore essential to examine this relationship and friction between the UN and the laws of neutrality to understand how the laws of neutrality adapt under this "collective" UN regime, and to grasp the complex legal parallels between these two legal frameworks.

The following section of the thesis will thus firstly examine the paradigm shift of the laws of neutrality. Although the UN charter limits the possibility of adhering strictly to the laws of neutrality in a traditional sense, one could still argue that the Hague Conventions and neutrality stands until collective security takes precedence. That there are still advantages to an incremented international law system.

6.1 The UN Security Council

In the context of the UN Charter, neutrality is considered under the *Jus ad Bellum* principle when evaluating whether belligerents have the right to take action against third states that violate the laws of neutrality.[190] In a system of collective security, where the UN is directly involved in a conflict and can deploy its military contingents under Articles 43 and 45 against the aggressor, neutrality is not an option.[191] States are obligated under Article 2(5) to assist the UN and refrain from any conduct that contradicts UN action.[192] UN practice and case law confirm this principle. For example, during the Korean War (1950), the Security Council found North Korea's attack to breach the peace and recommended that UN members assist South Korea in repelling the aggression. In Resolution 83, the Council "calls upon all Members to render every assistance to the United Nations in the execution of this resolution and to refrain from giving assistance to the North Korean authorities."[193] State practice in the 1990–91 Gulf War reaffirmed these

[190] Natalino Ronzitti, 'Neutrality, Non-Belligerency, and Permanent Neutrality According to Recent Practice and Doctrinal Views' (2024) 29 Journal of Conflict and Security Law 55, 58.

[191] *Ibid*.

[192] *Ibid*.

[193] See also Howard S Levie, How It All Started – And How It Ended: A Legal Study of the Korean War (2015) 48 Akron L Rev 205, 214–216 https://core.ac.uk/download/232681022.pdf accessed 21 April 2025,

principles. The Security Council swiftly condemned Iraq's invasion of Kuwait as a breach of the peace and adopted enforcement measures.[194] Resolution 661 (1990) mandated comprehensive sanctions,[195] and later Resolution 678 authorized force to expel Iraqi forces from Kuwait.[196] Even traditionally neutral states found they could not remain aloof. For the first time, Switzerland – a permanent neutral not even then a UN member – "decided to apply [UN] sanctions [against Iraq] autonomously," fully joining the embargo.[197] These historical examples showcase that the UN Security Council holds the legal authority under international law to override traditional neutrality. In particular, when a conflict constitutes a direct violation of the UN Charter, the Council may compel third-party states to act collectively, especially in light of *Erga Omnes* obligations concerning the maintenance of international peace and security.

The UN Security Council has primary responsibility for international peace and security (Article 24 of the Charter) and unique powers under Chapter VII to respond to breaches of the peace, breaches of international security, or acts of aggression (Article 39). When the Security Council determines that a situation warrants action, it can employ a range of measures *binding on all* UN members. For neutral states, the critical point is that Security Council resolutions override any incompatible obligations the neutral might have, by virtue of Article 103 of the Charter, which gives Charter obligations precedence over other treaties.[198]

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for detailed legal context on the Korean War and the Security Council's response to North Korean aggression.

[194] United Nations Security Council Resolution 660 (1990) UN Doc S/RES/660 (2 August 1990) https://digitallibrary.un.org/record/94221 accessed 21 April 2025.

[195] United Nations Security Council Resolution 661 (1990) UN Doc S/RES/661 (6 August 1990) https://digitallibrary.un.org/record/94221 accessed 21 April 2025.

[196] United Nations Security Council Resolution 678 (1990) UN Doc S/RES/678 (29 November 1990) https://digitallibrary.un.org/record/102245 accessed 21 April 2025.

[197] Swiss Federal Department of Foreign Affairs, 'Swiss Neutrality' (2010) https://www.files.ethz.ch/isn/14841/broch_neutrality_e22.pdf accessed 21 April 2025., 7

[198] Alexander Orakhelashvili, 'The Acts of the Security Council: Meaning and Standards of Review' (2007) 11 Max Planck UNYB 143, 149–150, explaining that under Article 103 of the UN Charter, Security Council decisions prevail over incompatible treaty obligations,

6.2 UN General Assembly

The UN General Assembly, while lacking binding obligations compared to the Security Council resolutions, can also influence neutrality through political and legal pressure. Notably, under the 1950 Uniting for Peace resolution (GA Res. 377(V)),[199] the Assembly asserted that if the Security Council is deadlocked in the face of aggression or a threat to peace, the Assembly can recommend collective measures, including the use of force.[200] This procedure was invoked in the Korean War (1950)[201] and Suez Crisis (1956)[202], among other cases. For example, after North Korea invaded South Korea in 1950, the actions of the Security Council (Res. 83 recommending assistance to South Korea)[203] was swiftly supplemented by a General Assembly recommendation for members to aid South Korea (since the USSR was boycotting the UN at that moment, the Council could act, but later Assembly endorsement via Uniting for Peace reinforced it).[204] In such scenarios, even though Assembly resolutions are not legally binding, they carry weight in provoking a collective response. States that chose to remain neutral might face political condemnation for ignoring a "near-universal" call to action. Indeed, during the Korean War, countries like India and Yugoslavia attempted to mediate or stay neutral, but the majority joined the UN coalition or provided support, viewing the aggression as a test of the new world order.[205]

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[199] United Nations General Assembly Resolution 377(V) 'Uniting for Peace' (3 November 1950) UN Doc A/RES/377(V).

[200] United Nations General Assembly Resolution 377(V) 'Uniting for Peace' (3 November 1950) UN Doc A/RES/377(V); see also UN Audiovisual Library, Uniting for Peace (UN, 2008) https://legal.un.org/avl/ha/ufp/ufp.html.

[201] G.A. Res. 498(V), U.N. Doc. A/RES/498(V) (Feb. 1, 1951).

[202] G.A. Res. 997 (ES-I), U.N. Doc. A/RES/997 (Nov. 2, 1956)

[203] UN Security Council Resolution 83 (1950), S/RES/83 (1950), available at: https://digitallibrary.un.org/record/112026?ln=en

[204] United Nations Command, "History of the Korean War (1950–1953)," available at: https://www.unc.mil/History/1950-1953-Korean-War-Active-Conflict/

[205] Svetozar Rajak, 'No Bargaining Chips, No Spheres of Interest: The Yugoslav Origins of Cold War Non-Alignment' (2014) 16(1) Journal of Cold War Studies 146, doi:10.1162/JCWS_a_00434., 155; See George V Allen's diplomatic correspondence in Foreign Relations of the United States, 1950, Volume VII, Korea, Document 230, where Allen criticized Yugoslavia's "passivity" in the United Nations and warned that a neutral stance in the Korean War could diminish American support in the event of future aggression;

6.3 UN Mandatory Measures (Sanctions)

When the Security Council decides on mandatory measures under Chapter VII, such as economic sanctions or arms embargoes, all UN members are legally required by Article 25 of the Charter to carry out those measures.[206] This obligation can clash with the traditional duties of neutrals, which impose a neutral to continue normal trade with warring parties and refrain only from direct military support. However, in practice, UN mandatory sanctions override any inconsistent neutrality obligations by virtue of the Charter's supremacy (Article 103).[207]

Mandatory military measures, as participation in military coalitions is essentially voluntary and the Charter does not force any state to contribute troops (except in the theoretical scenario of Article 43 agreements, which were never implemented, where states would have pre-committed troops to the UN).

One of the most common UN enforcement tools is economic sanctions under Article 41.[208] These can range from arms embargoes to complete trade and financial bans on a target state.[209] For a neutral country, participation in sanctions can be a profound shift, since classical neutrality laws would not require (or even permit) a neutral to cut off commerce unless it did so impartially to all belligerents.[210] Yet, UN sanctions are by nature one-sided (against the aggressor state), and thus inconsistent with the traditional principle of impartiality, but neutral states have responded by reinterpreting neutrality to

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available at: https://history.state.gov/historicaldocuments/frus1950v07/d230; Robert Barnes, 'Between the Blocs: India, the United Nations, and Ending the Korean War' (2013) 18(2) Journal of Korean Studies 263, https://doi.org/10.1353/jks.2013.0022., 265

[206] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion) [1971] ICJ Rep 16, 41 (para 115) (reaffirming that Article 25 of the UN Charter renders Security Council decisions binding on all UN member states).

[207] UN Charter art 103 stating: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail"; see also Kolb and Meret (n 18)

[208] UN Charter art 41; see also David Cortright and George A Lopez, The Sanctions Decade: Assessing UN Strategies in the 1990s (Lynne Rienner Publishers 2000) 3–5 (noting that economic sanctions have become one of the most frequently used enforcement mechanisms by the UN Security Council under Chapter VII)

[209] UN Charter art 41; see also United Nations Security Council, 'Sanctions' (UN) https://www.un.org/securitycouncil/sanctions/information accessed [5 May 2025]

[210] Bothe, 571

allow for compliance with binding UN decisions. For instance, Switzerland often argued during the Cold War that neutrality meant it should not join sanctions unless they were imposed by the UN as a whole.[211] In practice, because Switzerland was not a UN member until 2002, the country was not legally bound by UN sanctions, but began to *voluntarily implement* them to uphold international expectations. A significant moment was the UN sanctions on Iraq in 1990: this was *"the first time since the First World War that Switzerland openly and fully participated"*[212] in international sanctions, breaking with the earlier concept that neutrality required abstaining from collective punitive measures.[213]

This action was rationalized by the Swiss Federal Council on the basis of international solidarity and fundamental norms. Neutrality laws, they stated, largely confine restrictions to military involvement, while participation in coercive economic measures to uphold legal standards is considered compatible with neutrality.[214] To have stood aside during the Kuwait crisis would have amounted to *"partisanship in favor of the law-breaker,"*[215] they concluded. Following this logic, Switzerland and other neutrals have consistently implemented UN sanctions in subsequent conflicts (Yugoslavia in the 1990s, Libya 1992, Liberia, etc.). European neutrals also often mirror UN sanctions through the EU. For example, Austria and Ireland (both EU members) participated in EU sanctions that complemented or even went beyond UN measures, such as EU's additional sanctions on Russia since 2014 and 2022.[216]

Also, historically no state protested that practice, indicating widespread recognition that UN mandates must be respected even by neutrals and despite the restrictions of the

[211] Federal Department of Foreign Affairs, White Paper on Neutrality: Annex to the Report on Swiss Foreign Policy for the Nineties of 29 November 1993, 93.098 (1993) 7 https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/voelkerrecht/bericht-neutralitaet-1993_EN.pdf accessed 27 May 2025.

[212] Interdepartmental Working Group, Swiss Neutrality in Practice – Current Aspects: Report of 30 August 2000 (Federal Department of Foreign Affairs 2000) 4.

[213] *Ibid*.

[214] *Ibid*.

[215] *Ibid*.

[216] European Union, EU Sanctions Against Russia (2025) https://www.consilium.europa.eu/en/policies/sanctions-against-russia/ accessed 27 May 2025.

traditional laws of neutrality. State practice provides clear examples. In the case of Southern Rhodesia, the Security Council initially called for voluntary sanctions against the rebel regime. Because those measures (e.g. an oil embargo) were recommendatory, some states effectively remained "neutral" and did not fully comply. Indeed, South Africa and Portugal (Mozambique), both neighbors of Rhodesia, continued to trade with the illegal regime, undermining the sanctions.[217] This response changed once the Security Council was faced with Rhodesia's refusal to compromise in the conflict resulting in imposed mandatory sanctions. Acting under Chapter VII for the first time, the Council adopted Resolution 232 (1966)[218] and then 253 (1968)[219] requiring all states to cut off economic relations with Rhodesia.[220] Thereafter, UN members were obligated to enforce a trade ban, and most did, besides South Africa and Portugal, which consequently put them in breach of international law rather than validly "neutral".[221]The example of Rhodesia shows the contrast, when and during the voluntary phase, that states treated it as a political choice (many Commonwealth countries embargoed Rhodesia while others remained neutral traders), but once sanctions became compulsory, neutrality could no longer excuse non-compliance. A similar pattern occurred with apartheid South Africa. Years of voluntary arms embargoes (urged by the UN General Assembly and Security Council in the 1960s) saw mixed adherence, but after Security Council Resolution 418 (1977)[222] made the arms embargo mandatory, even neutral states, such as Switzerland, Sweden and Austria, adapted their policies to ensure no arms reached South Africa, despite their general neutrality traditions.[223]

[217] Antonio Cassese, International Law (2nd edn, OUP 2005) 279–281.

[218] UN Security Council Resolution 232 (16 December 1966) UN Doc S/RES/232

[219] UN Security Council Resolution 253 (29 May 1968) UN Doc S/RES/253.

[220] Johnson Library, White House Central Files, Confidential File, CO 250, Rhodesia-Nyasaland, Federation of, Secret, Paper Prepared in the Department of State, Washington, January 23, 1967, available at: https://history.state.gov/historicaldocuments/frus1964-68v24/d553

[221] James Crawford, Brownlie's Principles of Public International Law (9th edn, OUP 2019) 613–615; Christine Chinkin, 'The United Nations Decade for Women: An International Legal Analysis' (1986) 82 American Journal of International Law 116, 132–133

[222] UN Security Council Resolution 418 (4 November 1977) UN Doc S/RES/418.

[223] Andreas R Ziegler, Switzerland's Neutrality: Its History, Legal Basis and Future (Helbing Lichtenhahn 2019) 126–130.

Consequently, in theory, the mandatory UN sanctions regime undermines economic neutrality (considering traditional neutrality), given practical compliance by both permanent neutral states and other neutrals. However, in reality, the UN sanctions are not fully adhered to, and far from all countries follow them completely. But if regarded from a qualified neutrality perspective, the member states can safeguard their neutral status while allowed to fully adhere to UN sanctions. Furthermore, this allows for responding to call-for-aid by the victim state by e.g. supplying weapons. As such, the UN sanctions can coexist with neutral states fully, in unison and synergy, as long as no troops are deployed by neutrals in the conflict. Furthermore, it is difficult to argue that impartiality in trade can continue to be a realistic and enforcing measure under the strict and traditional interpretation of the laws of neutrality, as a neutral cannot continue normal trade or financial relations with a state under UN sanctions without breaching its UN obligations.

6.4 Jus Cogens and Erga Omnes Principles

Modern international law recognizes certain peremptory norms *(Jus Cogens)* – such as the prohibitions on aggression,[224] genocide, war crimes, and crimes against humanity – that are hierarchically superior.[225] Under Article 53 of the Vienna Convention on the Law of Treaties, any treaty that conflicts with a peremptory norm of international law is void ab initio. Likewise, Article 64 affirms that existing treaties terminate if a new *Jus Cogens* norm emerges.[226] Obligations *Erga Omnes* were first mentioned by the ICJ in the Barcelona Traction case, where the Court explained that certain obligations "are the concern of all States" due to the fundamental rights involved.[227]

[224] CL Lim and Ryan Martínez Mitchell, 'Neutral Rights and Collective Countermeasures for Erga Omnes Violations' (2023) 72(2) ICLQ 361, 361-391

[225] For the status of jus cogens norms in treaty law, see Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT), arts 53 and 64. These provisions state that a treaty is void if it conflicts with a peremptory norm of general international law (jus cogens), and that any existing treaty becomes void and terminates if a new jus cogens norm emerges.

[226] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 53, 64.

[227] Barcelona Traction, Light and Power Company, Limited (Belgium v Spain) (Judgment) [1970] ICJ Rep 3, 32 [33].

Traditionally, the laws of neutrality impose duties of non-assistance and impartiality on third states. However, recent scholarship argues that these duties must be reconciled with the structure of the international law of peace and security. As Wentker argues, a deductive "armed attack exception" to neutrality exists within international law, which does not prohibit third states from assisting the victim of aggression.[228]

This carve-out is not merely a political justification but flows logically and legally from the victim state's right to self-defence under Article 51 of the UN Charter. The purpose of that right (to terminate the armed attack) must not be undermined by neutrality duties. Therefore, systemic treaty interpretation and custom reveal that neutrality duties must yield to the *Jus ad Bellum* in such cases.

Despite the normative force of *Erga Omnes* obligations, legal uncertainty remains over the extent to which states are *required* to take action beyond non-recognition and non-assistance. For instance, some argue that states are obligated to impose sanctions or participate in collective countermeasures in response to *Erga Omnes* breaches. Yet, proposals to codify such duties in the Articles on State Responsibility were rejected during their drafting.[229]

As Lim and Mitchell explain, while coalitions of states may impose countermeasures or sanctions without UN Security Council approval, neutral states retain legal autonomy.[230] There is no binding duty to participate in such collective sanctions, particularly where they are not authorized by a UN organ.[231] This reflects the enduring "right to maintain a neutral status", even amid serious breaches of peremptory norms.

The 2022 invasion of Ukraine by Russia serves as a contemporary case study. While many Western states imposed EU sanctions, others (including neutral or non-aligned states like Turkmenistan), did not. This reflects the gap between normative expectations and legal

[228] Alexander Wentker, 'The Armed Attack Exception to Neutrality in International Peace and Security Law' (2024) 73 ICLQ 963, 966–970.

[229] James Crawford, 'The ILC's Articles on Responsibility of States for Internationally Wrongful Acts: A Retrospect' (2002) 96 AJIL 874, 879.

[230] Lim and Mitchell (n 224) 364–370.

[231] *Ibid*.

obligation: while *Erga Omnes* norms invite collective solidarity, they do not currently create a universal duty to impose sanctions absent Security Council authorization.

In summary, *Jus Cogens* and *Erga Omnes* obligations have reshaped the moral and legal landscape in which neutrality operates. While states must not recognize unlawful acts or assist in the continuation of serious breaches, neutrality as a formal status remains legally permissible. However, the emergence of these core principles of *Jus Cogens* and *Erga Omnes* obligations further suggests that the notion of strict neutrality may no longer be viable. Yet, in the absence of UN authorization or clear custom, neutrality remains valid, which causes deeper tensions in between universal norms.

7 *Just War Theory: A Conceptual Foundation for Jus ad Bellum, Jus in Bello and Neutrality*

The Just War theory is a doctrine of ethics in law that historically has been setting the conditions under which war can be morally justified (*Jus ad Bellum*) and standards for conducting war (*Jus in Bello*).[232] In relation to the laws of neutrality, it is essential to touch upon the Just War theory, as it is commonly agreed upon that the laws of neutrality have been inspired by the principles hereof.[233]

The Just War doctrine evolved from its ancient and religious origins into secular legal thought, emphasizing the contributions of Hugo Grotius (1583–1645), Emer de Vattel (1714–1767), and Cornelius van Bynkershoek (1673–1743). It explores how each of these legal philosophers and jurists, writing in the natural law tradition, transformed Just War ethics into doctrines of international law and how their ideas influenced the development of the laws of neutrality. From moral theology to natural law norms, by the early modern period, Just War theory had moved beyond the exclusive domain of theologians and into secular natural law and international law.[234] Natural law theory held that certain rights and moral truths are inherent in human nature and discoverable through reason. Just War principles were framed in natural law terms by the 16th- and 17th-century by Spanish scholars and their successors. They argued that war, in order to be lawful, must serve as an instrument of justice – for example, to repel aggression, to recover wrongfully taken property, or to punish grave offenses – and must be waged with proper authority and righteous intent. These ideas set the stage for Grotius and others to systematize the laws of war.[235] Under natural law, early jurists began distinguishing the right to go to war (*Jus*

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[232] M J Taylor, 'Is Just War Theory Still Relevant in the 21st Century?' (2012) Manchester Review of Law, Crime and Ethics 11, 175.

[233] See Robert Kolb, 'Origin of the Twin Terms Jus ad Bellum/Jus in Bello' (1997) 320 International Review of the Red Cross 553, 559; William V O'Brien and Anthony Arend, 'Just War Doctrine and the International Law of War' in Paul Ramsey and Stanley Hauerwas (eds), The Ethics of War and Peace (University Press of America 1991) 68; MJ Taylor, 'Is Just War Theory Still Relevant in the 21st Century?' (2012) 11(2) Journal of Military Ethics 123.

[234] GIA D Draper, 'Review: The Just War Doctrine' (1976) 86(2) *Yale LJ* 370 https://www.jstor.org/stable/795621 371

[235] William V O'Brien and Anthony Arend, 'Just War Doctrine and the International Law of War' in Paul Ramsey and Stanley Hauerwas (eds), The Ethics of War and Peace (University Press of America 1991) 66–69

ad Bellum) from the rules of engagement in war (*Jus in Bello*). Grotius argued that, since there was no higher earthly authority to judge between sovereigns, all formally declared wars conferred belligerent rights—even to those with unjust causes—which has led to the separation of *Jus ad Bellum* from *Jus in Bello.*[236] This separation foreshadowed a foundational principle of modern international humanitarian law that all belligerents are bound by the same laws of war, regardless of the justice of their cause.[237] As Draper observes in his review of James Turner Johnson's work, Grotius's claim that *Jus in Bello* applies regardless of *Jus ad Bellum* marked a significant departure from the medieval view that God's will made war just on only one side.[238]

Claude further argues that international institutions, such as the UN, have absorbed and institutionalized elements of the Just War framework, particularly in collective security responses to aggression.[239] However, he notes the practical difficulty of international enforcement, especially when both parties claim justice even amid moral disagreement—a problem Grotius and Vattel had already anticipated by advocating legal impartiality.

Understanding the Just War doctrine is essential for grasping the moral and legal origins of *Jus ad bellum*, *Jus in Bello*, and the laws of neutrality. The works of Grotius, Vattel, and Bynkershoek show how theological concepts were reshaped through natural law into the secular legal doctrines that now govern war and peace. Yet, the ethical foundations persist even in today's positive law, debates over legitimacy, restraint and humanitarian protections echo the timeless concerns of justice in warfare. As Taylor argues, Just War theory remains a vital moral framework for assessing conflicts that international law may fail to fully regulate, especially in debates over intervention, terrorism or peacebuilding.[240] This reminds us of the inherent moral complexity of war and that the

[236] Robert D Sloane, 'The Cost of Conflation: Preserving the Dualism of Jus ad Bellum and Jus in Bello in the Contemporary Law of War' (2007) 34 Yale Journal of International Law 47, 50–53

[237] *Ibid.*

[238] G.I.A.D. Draper, 'Review of James Turner Johnson, Ideology, Reason, and the Limitation of War' (1976) 86 Yale Law Journal 370, 374.

[239] Inis L Claude, 'Just Wars: Doctrines and Institutions' in Power and International Relations (Random House 1980) 117–19.

[240] MJ Taylor, 'Is Just War Theory Still Relevant in the 21st Century?' (2012) The Journal of Military Ethics 11(2), 120–22.

doctrine of Just War theory exists to critically engage with these ethical challenges rather than obscure or legitimize them.

7.1 The Legal Classification of Neutrality: Jus ad Bellum, Jus in Bello, or a Hybrid Regime?

In order to assess whether the laws of neutrality remain applicable and rational in the contemporary legal order, it is crucial to examine the legal regime to which they belong. This section therefore aims to determine whether neutrality constitutes an element of *Jus in Bello*, *Jus ad Bellum,* or whether it forges its own unique combination of a distinct *hybrid regime.*

Whether the laws of neutrality is classified in the legal regime under *Jus in Bello*, *Jus ad Bellum* or as its own hybrid regime fundamentally impacts its obligations, scope, and enforcement. The classification of neutrality is thus not only a theoretical concern, but has direct implications for how neutrality is interpreted, applied, and perceived in practice. In simplified terms, under the Jus in Bello regime, the laws of neutrality governs the actions of neutral states in the context of armed conflict, by impartially not supporting any belligerent. In contrast the laws of neutrality in the *Jus ad Bellum* regime are shaped by when nations lawfully can resort to war (self-defence), and how neutral states respond and act in the emergence of an armed conflict. Therefore, the legal regime determines whether neutrality remains a legally protected right or becomes a conditional, "context-dependent" option. For instance, it influences whether supplying arms to a victim of aggression is seen as a breach of neutrality or an act of lawful support. Moreover, it shapes how neutrality interacts with UN Charter obligations, including the duty to cooperate in collective self-defense and to refrain from assisting the aggressor. In this sense, the legal regime classification affects not only the content of neutrality laws but also their relevance and credibility in the current international order.

By clarifying the legal regime of neutrality, this section therefore aims to highlight the influence that this determination may have on the legal interpretation in an age where war is generally prohibited and international law is expected to respond collectively to

aggression. Ultimately, understanding which legal regime neutrality belongs to is essential for assessing whether it still works as a meaningful legal concept today—or whether it is being weakened or changed because of how international law and global politics have evolved.

7.1.1 Neutrality as Part of Jus in Bello

Traditionally, the laws of neutrality have been viewed as an integral part of the *laws of war*, i.e. the same legal framework as international humanitarian law, under the *Jus in Bello* regime. For example, Lassa Oppenheim's classic 1906 treatise placed neutrality in the context of the "law of war," distinct from the law in peacetime.[241] In this conception, neutrality rules become relevant *only once* an armed conflict (historically, a state of war) exists. Neutrality was thus an appendix to war: it governed the relations between belligerents and third states during the conflict, while *Jus ad Bellum* governs the relations between states before a potential conflict (i.e. the justification for going to war).

Before 1945, war itself was a lawful institution, and neutrality filled the need to regulate third-party conduct once war began. Modern advocates of this view, such as Constantine Antonopoulos, maintain that despite changes in the legal order, neutrality remains "squarely within the modern *Jus in Bello*".[242] Under this approach, a neutral's obligations are fundamentally independent of which side is the aggressor or victim.[243] As Antonopoulos argues, *Jus ad Bellum* considerations are "beyond" the laws of neutrality .[244] In practical terms, so long as a state chooses to remain neutral in a conflict and observes its neutral duties, it should treat all belligerents impartially regardless of any UN

[241] See Lassa Oppenheim, International Law: A Treatise, Volume II: War and Neutrality (3rd edn, Longmans, Green & Co 1920), §32, §49, Oppenheim refers to the right and duties of neutral powers, during war time.

[242] Constantinos Antonopoulos, Neutrality and the Use of Force in International Law (Cambridge University Press 2022) 146.

[243] E.g. neutrality within Jus in Bello regime, means it governs the laws of war, whereas, if it was seen within the Jus ad Bellum regime, one may argue, that it states must differentiate between the aggressor and the victim of aggression, as the victim would lawfully have the right to self-defense, where it-is deemed that states may side by the victim.

[244] Antonopoulos (n 242) 146–147.

determinations of aggression.[245] For example, if belligerent State A violates the neutral territory of State N, State N's right to respond arises under the law governing self-defense (Article 51 of the UN Charter) and its status as a victim of an armed attack, rather than under neutrality laws alone. In this example State X, another neutral state, should not intervene and treat both N and A equal, unrelated to who is considered the aggressor. Conversely, if State N fails to prevent its territory from being used by belligerent B as a base, classical neutrality law would consider belligerent A justified in infringing N's neutrality to stop B – but today this would be analyzed through the lens of *Jus ad Bellum* self-defense, not a freestanding "right of self-preservation" under neutrality.

In short, the strict *Jus in Bello* approach tries to keep neutrality isolated from questions of the war's legality, which is soundly argued for by considering the establishment of the laws of neutrality at a time where war was legal, and concurrently declarations of, and waging wars, were common practice (Hague Convention 1907). This view aligns with the general post-Second World War principle of separation between *Jus ad Bellum* and *Jus in Bello*, which posits that the rules of armed conflict apply equally to all sides irrespective of who started the war.[246] Similarly, to the approach under traditional neutrality – the neutral must not take sides.

Classifying neutrality under *Jus in Bello* means neutrality is similar to other laws of war (like the Geneva Conventions) – it applies equally in all international armed conflicts *regardless* of cause.[247] This has the advantage of clarity and arguably *protects neutrals* from pressures to join a "just" war, thereby limiting conflict escalation, some would argue.[248] It also aligns with the idea that even an aggressor state should be afforded certain rights (e.g. not having neutrals actively aiding the enemy) in order to contain the

[245] Constantinos Antonopoulos, The United Nations' Collective Security System and Neutrality (Cambridge University Press 2022) 72.

[246] Antonopoulos (n 242) 146–147.

[247] *Ibid*.

[248] International Committee of the Red Cross, 'Optional but Not Qualified: Neutrality, the UN Charter and Humanitarian Objectives' (2024) 106 International Review of the Red Cross 927.

conflict.[249] However, this strict impartiality can clash with modern sensibilities and other legal obligations. For instance, after 1945, the UN Charter introduced duties (for UN members) to not assist aggressors and to cooperate in collective security (Articles 2(5) and 25, UN Charter).[250] If neutrality is purely *Jus in Bello*, a neutral state might find itself in a bind when the UN Security Council calls for sanctions or military measures against an aggressor: complying with those measures could violate traditional neutrality (by taking hostile action against one belligerent). Advocates of the *Jus in Bello* approach typically respond that when such binding UN measures are in place, they simply supersede neutrality for that situation – otherwise, neutrality laws remain intact.[251]In other words, the *default* is impartial neutrality, except to the extent a specific obligation under collective security formally overrides it.[252] Indeed, even scholars who see neutrality as part of *Jus in Bello* acknowledge that the UN Charter regime has "inherited" or "absorbed" some functions of neutrality, such as protecting states from aggression (now accomplished by collective security rather than neutrals' "self-help").[253] But they stop short of repositioning neutrality as a whole into *Jus ad Bellum*. Notably, under this classical view, the principle of belligerent equality is fundamental: neutral obligations must be applied equally to all belligerents, irrespective of who breached the peace.[254] However, even many who adhere to neutrality as *Jus in Bello* now accept some erosion of the belligerent equality principle in extreme cases, such as clear aggression.[255] Relating

[249] Michael N. Schmitt, 'Are Methods of Naval Warfare at Risk Under "Qualified" Neutrality?' (Just Security, 2022) https://www.justsecurity.org/85419/are-methods-of-naval-warfare-at-risk-under-qualified-neutrality-expert-qa-from-stockton-centers-russia-ukraine-conference/ accessed 23 April 2025.

[250] Antonopoulos (n 245) 61.

[251] *Ibid.* 61, 68.

[252] Schmid (n 16) 927.

[253] Lieber Institute, 'Clarifying Neutrality: The Rise of Different Statuses?' (2024) https://lieber.westpoint.edu/clarifying-neutrality-rise-different-statuses/ accessed 23 April 2025.

[254] Matthew Parish, 'The Principle of Separation and the Law of Neutrality' (2025) International and Comparative Law Quarterly 1, 2–3 https://doi.org/10.1017/S0020589325000089 accessed 23 April 2025; See also International Committee of the Red Cross, 'What are jus ad bellum and jus in bello?' (ICRC, 2011) https://www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0 accessed 23 April 2025.

[255] Pearce Clancy, 'The Law of Neutrality: Jus ad Bellum or Jus in Bello?' (2022) 13 Journal of International Humanitarian Legal Studies 353, 359–360 https://doi.org/10.1163/18781527-bja10055 accessed 23 April

to theory, the classical *Jus in Bello* approach to neutrality reflects a legal positivist character, insofar as it requires neutrals to apply the law impartially and without regard to considerations of aggression or just cause. In this sense, neutrality laws avoid moral evaluation, treating all belligerents equally, regardless of who violated the peace—mirroring the positivist ideal of legal objectivity and formalism. This positivist neutrality has been criticized by moral theorists, notably Michael Walzer, who argues that treating aggressors and victims equally can lead to moral decay in wartime conduct, which arguably is against human societal norms.[256]

7.1.2 Neutrality as Part of Jus ad Bellum

In the modern age, with the UN charter as a protective measure to prevent state aggression and collective security being the popular approach of nations, the *Jus ad Bellum* approach is making headwinds. In the *Jus ad Bellum* regime, focus is on preventing escalation and conflicts, mediating relations between states by defining the right to war (in modern day use primarily as self-defense). Here, consideration is upon the legal and moral aspects of engaging in war, with some main points being intent, cause and legitimacy. This aligns with the UN charter that superseded the *Jus in Bello* ideas of traditional unbiased neutrality but rather goes into *Erga Omnes* obligatory actions to be taken by neutrals, against an aggressor - ideally to prevent the will to escalate a conflict by stacking repercussions and odds against a potential aggressor state. To summarize, the *Jus ad Bellum* regime wants neutrality to exist before war, rather than the *Jus in Bello*-ideas of neutrality being a means to obtain order in the chaos of war. Before the UN, this is historically seen as if there was no international institution and agreement making war illegal, and thus, at the time, neutrality was used in a context of legal wars - *Jus in Bello*. With the UN creation, collective security is key, and the laws of neutrality should thus

2025; see also Marco Longobardo, 'The Provision of Belligerent Materials in the Russia-Ukraine Conflict: Beyond the Law of Neutrality' (2023) Questions of International Law https://www.qil-qdi.org/the-provision-of-belligerent-materials-in-the-russia-ukraine-conflict-beyond-the-law-of-neutrality/ accessed 23 April 2025.

[256] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (Basic Books 1977) 235 https://archive.org/details/justunjustwarsmo00walz/page/n403/mode/2up?q=absurdities.

exist in a context where wars are, per definition, illegal. As such the laws of neutrality governs states to hinder and deter armed conflicts, with terms like self-defense (only justifiable act), aggressor and victim becoming commonplace in the *Jus ad Bellum* regime.[257]

Markedly the switch from *Jus in Bello* to *Jus ad Bellum*, signified by the notion of illegalizing war, might have created a "void" where, because wars should not exist, new regulation and legislation on wars has become scarce. Logically, this makes sense. Updates to any system would usually be frequent when preceded by heavy use of the system in question, leading to a requirement of fine-tuning and updating. Why spend time on making, proving, or changing laws on war, when the simplicity of the fact exists that war is condemned as illegal? Perhaps this is one of the reasons the international community has a difficult time when it comes to humanitarian law in general, as the laws of neutrality are not the only legal framework under IHL facing issues of ambiguities and obsolescence. This is not to say that there should not be a law governing war once an IAC is occurring. But simply that some of the rigidity and questions of applicability regarding the laws of neutrality might arise from this exact point; that in the modern world, with every measure made by the UN to prevent the start of a war, in a *Jus ad Bellum* regime, we find ourselves in a time of illegal wars. Laws on war might simply not have been updated accordingly, considering - idealistically - that wars in general should not exist as reflected by the whole purpose of the UN charter.

An opposing view situates neutrality within the *Jus ad Bellum* or even suggests that neutrality is largely obsolete in the era of the UN Charter.[258] The argument here is that because war is illegal and the UN framework calls for collective action against aggressors, the old traditional laws of neutrality (which demanded indifference to aggression) cannot fully survive. This view gained traction after the Second World War, when jurists like

[257] Clancy (n 255)

[258] Rebecca Ingber, 'The Abuse of Neutrality' (2025) 65 Virginia Journal of International Law 1 https://larc.cardozo.yu.edu/faculty-articles/945/ accessed 23 April 2025.

Hans Kelsen and others questioned whether a UN member could remain neutral in a conflict involving a clear violator of the Charter.[259] In fact, during the 1945 San Francisco conference, there was discussion about whether permanent neutrality was compatible with UN membership – a proposal to declare neutrality incompatible with the UN was floated (though not adopted).[260] While no such explicit provision made it into the Charter, the Charter's drafters certainly envisioned that collective security would replace the old "free option" of staying neutral in the face of aggression.[261]

Under the *Jus ad Bellum*-centric view, neutrality laws *only* apply in the margins where collective security is not engaged, and even then, it is colored by the Charter.[262] Some advocates effectively fold neutrality into the modern *Jus contra Bellum* (law against war). A striking formulation comes from a 2023 article: "Neutrality is no longer an institution of *Jus in Bello* but belongs to *Jus ad Bellum*".[263] In practical terms, this might mean that a neutral's decision whether to allow or deny support to a belligerent is judged against the standards of the UN Charter (e.g. duties not to assist aggression) rather than the 1907 Hague rules alone.

For example, if State A invades State B in violation of Article 2(4) of the Charter, the *Jus ad Bellum* view would argue that other states have at least a duty not to remain neutral in a way that benefits the aggressor. This could entail a duty to impose sanctions or cut off aid to State A, even if classical neutrality would have required cutting off aid equally to

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[259] Hans Kelsen, The Law of the United Nations: A Critical Analysis of Its Fundamental Problems (Stevens 1950)

[260] Clancy (n 134) 243

[261] Hans Kelsen, The Law of the United Nations: A Critical Analysis of Its Fundamental Problems (Stevens 1950) 796; see also United Nations Bulletin, vol 1, no 1 (15 March 1946) 1, citing the San Francisco Conference discussions on the obligations of Member States under the Charter and the incompatibility of neutrality with the system of collective security.

[262] Niccolò Zugliani, 'The Supply of Weapons to a Victim of Aggression: The Law of Neutrality in Light of the Conflict in Ukraine' (2024) 35(2) European Journal of International Law 389, 395–398

https://doi.org/10.1093/ejil/chae019 accessed 23 April 2025.

[263] The Principle of Separation and the Law of Neutrality (2025) 74(2) International and Comparative Law Quarterly 301, 312 https://doi.org/10.1017/S0020589324000123 accessed 23 April 2025

both A and B.[264] Some scholars go further and suggest an affirmative *"obligation of partiality"* toward the victim of aggression as a corollary of the aggressor's breach of peremptory norms.[265] This would effectively override the traditional impartiality rule.

The interplay with the UN Charter is central here. Article 2(5) of the Charter obliges UN members to "give the United Nations every assistance" in actions it takes and to refrain from assisting a state against which the UN is taking enforcement action.[266] Article 25 binds members to carry out Security Council decisions, and Article 103 gives Charter obligations priority over other treaties.[267] Thus, if the Security Council designates a state as an aggressor and decides on collective measures, UN members are required to comply, even if that means abandoning neutrality.[268] Historically, the Council has rarely *explicitly* labeled a state an "aggressor," but it did so in the Korean War (1950) and in Iraq's invasion of Kuwait (1990), subsequently authorizing force against the aggressors.[269] In those instances, UN members were expected to join sanctions or even military enforcement; neutrality was not an acceptable stance toward North Korea or Iraq. Indeed, during the Korean War, a few states (e.g. Sweden, India) sent medical units to the victim state Korea, reflecting how Sweden and India tried to contribute in a more principled and selective manner than strict impartiality, reflecting the pressure to support UN action. [270]

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[264] Wentker (n 228) 970

[265] See Adil Haque, 'Optional but Not Qualified: Neutrality, the UN Charter and Humanitarian Objectives' (2024) International Review of the Red Cross 927; Adil Haque, 'An Unlawful War' (2023) 117 American Journal of International Law 1, 6; Wentker (n 228) 970.

[266] E. Chadwick, The United Nations' Collective Security System and Neutrality (Cambridge University Press 2021) 61 https://doi.org/10.1017/9781009085700.006 accessed 23 April 2025

[267] *Ibid.*

[268] Wentker (n 228) 971

[269] United Nations Security Council Resolution 82 (25 June 1950) UN Doc S/RES/82; United NationsSecurity Council Resolution 660 (2 August 1990) UN Doc S/RES/660.These resolutions demonstrate that, although the Security Council has rarely used the term "aggressor," it has identified acts of aggression and authorized collective measures in response, requiring UN member states to comply.

[270] United Nations Command, 'Sweden' (UN Command) https://www.unc.mil/Organization/Contributors/Sweden/ accessed 23 April 2025; United Nations Command, 'India' (UN Command) https://www.unc.mil/Organization/Contributors/India/ accessed 23 April 2025; United Nations Security Council Resolution 82 (25 June 1950) UN Doc S/RES/82; United

Outside of Security Council chapter VII measures, the *Jus ad Bellum* view still finds Charter-based constraints on neutrality. For example, it is argued that even without a Council resolution, all states have a duty not to assist an aggressor in violation of Article 2(4) (a concept sometimes derived from the notion of state responsibility for aiding in the commission of an unlawful act).[271] This would mean that when Russia in 2022 launched an unlawful war of aggression against Ukraine, states were (at minimum) not permitted to aid Russia's war effort – a duty that coincides with traditional neutrality (which also forbids aiding either side with war materials).[272] But crucially, the *Jus ad Bellum* perspective would allow (or even expect) states to assist the *victim* Ukraine, on the theory that doing so does not violate any international obligation – on the contrary, it supports the Charter's goal of repelling aggression. This is exactly how many states have behaved: by supplying arms and intelligence to Ukraine while maintaining they are upholding international law by resisting aggression, not breaching it. In classical neutrality terms, those states have violated neutrality (since arms supply to one belligerent is clearly non-neutral), but many governments and scholars contend that because the war itself is illegal, the laws of neutrality must bend. [273]

If neutrality is "absorbed" into *Jus ad Bellum*, one consequence is that *neutrality as a legal status becomes optional or conditional.*[274] States can no longer assume they have an absolute right to stay out of other states' conflicts regardless of circumstances; their neutrality may be *circumscribed by higher obligations* to maintain international peace and security.[275] A neutral who insists on strict impartiality toward an aggressor might

Nations Security Council Resolution 660 (2 August 1990) UN Doc S/RES/660.

[271] Schmid (n 16) 1053.

[272] Michael N. Schmitt, 'Strict versus Qualified Neutrality' (Lieber Institute, 2022) https://lieber.westpoint.edu/strict-versus-qualified-neutrality/ accessed 23 April 2025; See also Zugliani (n 262) 405-407

[273] Clancy (n 255) 361; Michael N. Schmitt, 'Is the Law of Neutrality Dead?' (Lieber Institute, 2022) https://lieber.westpoint.edu/is-law-of-neutrality-dead/accessed 23 April 2025

[274] Schmid (n 16) 1053.

[275] Wentker (n 228) 964.

even be seen as *violating* an international duty (for instance, failing to impose mandatory sanctions under a Security Council resolution).[276] However, it is important to note the nuance pointed out by recent analyses: the UN Charter does *not*, in fact, impose a general duty on states to actively use force against aggressors – it authorizes collective action but does not mandate each state to send troops. [277] As Professor James Upcher observes, the duties of UN members are to assist the UN and not to assist the aggressor,[278] but *"none of these duties imposes an obligation to provide military assistance to the victim State."*[279] Even when the Security Council calls for enforcement under Chapter VII, it usually *authorizes* willing states to take action but does not compel any particular state to fight .[280] Thus, neutrality in the Charter era is constrained but not entirely abolished: a state may still lawfully choose not to participate in hostilities so long as it does not obstruct UN-mandated measures or materially support the aggressor.[281] The International Court of Justice confirmed in the *Nuclear Weapons* Advisory Opinion (1996) that *"the principle of neutrality, whatever its content, remains applicable (subject to the relevant provisions of the United Nations Charter) to all international armed conflicts"*[282]. The phrase "subject to the Charter" embodies the *Jus ad Bellum* view: neutrality applies except to the extent that the Charter regime (e.g. a binding Security Council action) modifies it in a given situation. In other words, the UN Charter can override neutrality laws in case of

[276] Wentker (n 228) 969–970.

[277] Schmid (n 16) 1053.

[278] Upcher (n 17) 129 ff.

[279] Schmid (n 16) 1053.

[280] Schmid (n 16) 1053.

[281] Schmid (n 16) 1053.

[282] International Court of Justice, Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep 226, 262, para 89.

conflict – by virtue of Article 103 – but absent a genuine conflict of obligations, neutrality laws and the UN Charter co-exist.[283]

In practice, even adherents of this view accept that outside UN collective security actions, the classical rules of neutrality still operate. A notable example is the position of permanently neutral states like Switzerland and Austria. They joined the United Nations in 2002 and 1955, respectively, understanding that if the Security Council explicitly demands collective military measures, they may have to set aside neutrality. But short of that, they maintain their neutral status. As Robert Kolb summarizes, neutrality is compatible with the UN Charter because *"the UN Charter does not impose on member States a duty to participate in armed enforcement action; it authorizes these actions and leaves the choice to the States."*[284] Thus, even under a *Jus ad Bellum* lens, neutrality remains a lawful *option* in many conflicts, though not an obligation.[285]

7.1.3 Neutrality as a Separate or Hybrid Regime

A growing number of scholars see the laws of neutrality as neither wholly part of *Jus ad Bellum* nor *Jus in Bello*, but rather as a "hybrid regime" that intersects with both. This view acknowledges the historical roots of neutrality in the law of war while recognizing that the UN Charter and modern norms against aggression have injected *Jus ad Bellum* elements into neutrality's operation. In other words, neutrality law today *"straddles the two [branches], and perhaps even extends beyond the parameters of either."*[286]

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[283] Constantine Antonopoulos, The United Nations' Collective Security System and Neutrality (Cambridge University Press 2024) 59; see also T Bridgeman, 'The Law of Neutrality and the Conflict with Al-Qaeda' (2010) 85 New York University Law Review 1186, 1209.

[284] Robert Kolb and Richard Hyde, An Introduction to the International Law of Armed Conflicts (Hart 2008) 278, cited in Schmid (n 16) 1053.

[285] Ingber (n 258) 26

[286] Clancy (n 255) 358

Marco Sassòli articulates this approach by noting that the laws of neutrality *"contain some Jus ad Bellum rules as well as some Jus in Bello rules."*[287] For example, consider the inviolability of neutral territory: On one hand, respecting neutral territory in wartime is a longstanding *Jus in Bello* rule (Hague V) aimed at limiting the spread of hostilities. On the other hand, a breach of neutral territory is essentially an act of force against a non-belligerent, engaging the neutral's right of self-defense – *a Jus ad Bellum* concept.[288] Thus, the rule is at the confluence of both regimes. Likewise, neutrals' duty to refrain from allowing their territory to be used for military operations can be seen as an *extended guarantee of their peace-time territorial sovereignty* (a *Jus ad Bellum* notion) enforced through a war-time rule.[289] Another area is the duty of impartiality: as a classical neutrality rule, it derives from the law of war's idea of not favoring one belligerent. Yet the very debate over "qualified neutrality" – whether a neutral can favor the victim of aggression – brings in *Jus ad Bellum* value judgments (who is the aggressor) into what used to be an entirely *Jus in Bello* obligation.[290]

Advocates of the hybrid view often point out the *tension with the principle of separation* (the doctrine that *Jus in Bello* applies irrespective of *Jus ad Bellum*). They argue that insisting neutrality must *always* be indifferent to *Jus ad Bellum* leads to conceptual and practical absurdities.[291] For instance, Pearce Clancy critiques the strictly *in Bello* stance for being unable to account for scenarios like the Altmark incident (1940) in modern law, except by implicitly invoking self-defense.[292] He submits that it is better to admit that *"the modern Jus ad Bellum and Jus in Bello have both 'inherited' components of the law*

[287] Marco Sassòli, International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare (Edward Elgar 2019) 479, cited in Matthew Parish, 'The Principle of Separation and the Law of Neutrality' (2025) International and Comparative Law Quarterly 1, 12.

[288] Clancy (n 255) 358

[289] Wentker (n 228) 994.

[290] Matthew Parish, 'The Principle of Separation and the Law of Neutrality' (2025) International and Comparative Law Quarterly 1, 3.

[291] Clancy (n 255) 1, 3, 24, for a complementary view.

[292] *Ibid.* 353, 357–358.

of neutrality."[293] Under this approach, neutrality laws are effectively a *third regime* that co-applies with *Jus in Bello* and *Jus ad Bellum*, and different rules within neutrality may tilt more toward one or the other. Crucially, even those who keep neutrality mostly within *Jus in Bello* often concede one major departure: the principle of equal treatment (belligerent equality) may not fully apply when one belligerent is a clear aggressor. As Clancy notes, several writers (and even military manuals) accept that neutrality laws *"are exempt from the principle of belligerent equality"*[294] in such cases. In other words, a neutral might lawfully apply different measures to an aggressor (e.g. impose sanctions, cut off trade) than to a victim, without ceasing to be "neutral" – something anathema to traditional neutrality. This implicitly mixes *Jus ad Bellum* (identification of an unlawful aggressor) into the neutral's legal framework, underscoring the hybrid nature of modern neutrality.

French and German scholars also reflect this duality. For example, French jurist David Cumin writes that the law of war consists of two branches, *Jus ad Bellum* and *Jus in Bello*, *"le droit de la neutralité relevant des deux"* ("the laws of neutrality pertaining to both").[295] German scholars, such as Wolff Heintschel von Heinegg, emphasize that neutrality remains *legally in force* despite the UN Charter, but in situations of collective security enforcement it can be temporarily suspended.[296] This implies that neutrality law stands on its own (not erased by the Charter), yet operates in tandem with the Charter when necessary. The International Law Association noted as early as 1934 that certain aspects of neutrality (e.g. allowing states to distinguish between aggressor and victim) could be compatible with an emerging collective security system.[297]

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[293] *Ibid.* 359.

[294] *Ibid.* 359–360.

[295] Clancy (n 255) 359, citing David Cumin.

[296] Heinegg (n 183) 556-557

[297] International Law Association, Budapest Articles of Interpretation: Final Text (1934) in 'Rights and Duties of States in Case of Aggression' (1939) 33 American Journal of International Law Supplement 825, 825–826; see also George K Walker, 'Anticipatory Collective Self-Defense in the Charter Era: What the Treaties Have Said' (1998) 31 Cornell International Law Journal 321.

Thus, viewing neutrality as a separate regime bridging law on war and law on peace suggests a flexible application. Neutrality can accommodate both the humanitarian aim of limiting war's spread and the international community's interest in not rewarding aggression. In practice, this means a neutral state might interpret its duties in light of the overarching *Jus contra Bellum*. For instance, a neutral might consider itself free (or even obligated) to enforce UN-mandated economic sanctions against an aggressor – traditionally a violation of neutral "impartiality," but reconcilable as upholding the Charter.[298] At the same time, if no collective measures are involved, the state would revert to classical neutrality and abstain from assisting either side with war efforts. The hybrid concept also opens the door to recognizing intermediate statuses like "non-belligerency." Non-belligerency, as invoked in the Second World War and again in the Ukraine conflict, refers to a state that is not a formal belligerent but also not neutral in the traditional sense (typically because it's supporting one side politically or materially). Such a status was not clearly lawful under old neutrality laws, which demanded impartiality or else the state risked being treated as a co-belligerent. But if neutrality laws are evolving beyond a strict binary, one might argue that *non-belligerency* is an accepted practice: the state does not claim the protections of neutrality and openly aids the victim of aggression, yet it is not an official party to the conflict so long as its assistance stays below a certain threshold (e.g. no direct combat by its forces).[299] The fact that Russia, while condemning Western military aid to Ukraine, has generally not treated those states as belligerents, suggests a *de facto* acknowledgment of this grey zone status. This trend illustrates how the laws of neutrality in practice now operate "*in the shadow" of Jus ad Bellum* given that a state can "choose neutrality" or "choose non-belligerent support" based on the justice of the cause, and international law is trying to navigate the permissible limits of each choice.[300]

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[298] Schmid (n 16); Raul (Pete) Pedrozo,'Ukraine Symposium – Is the Law of Neutrality Dead?' (31 May 2022) Articles of War, Lieber Institute, United States Military Academy https://lieber.westpoint.edu/is-law-of-neutrality-dead/ accessed 23 April 2025.

[299] Zugliani (n 262) 398–399

[300] *Ibid,* 389, 399; Schmid (n 16) 1056–1057.

8 The Case of Neutrality: Findings and Perspectives

Throughout the research, it has become evident that scholars of international law and current scholarly opinions are increasingly in disagreement about the contents of neutrality. As such, there is no doubt that the concept of neutrality, its validity, credibility and function is of key importance to the international legal community.

As framed originally in the research topics, one of the main investigative points was to analyze and explain the validity of the laws of neutrality in contemporary international law. My examination of this confirms that neutrality does in fact carry the status of customary international law. Its validity has been reinforced by two recent national court rulings of Germany's Bundesverwaltungsgericht (2005)[301] and the case of Edward Horgan v. An Taoiseach (2003).[302]

Furthermore, multiple military manuals of states have reaffirmed the validity of the laws of neutrality; although these are not of binding legal nature, they still have an impact in creating *Opinio Juris* in favor of neutrality.

In contrast, arguments have been made to suggest that the laws of neutrality are obsolete – due to the UN Charter's provisions allowing the Security Council to impose duties on all states to adopt sanctions against states, who act in violation of international law. The findings of the thesis and supporting scholarly views, however, conclude that this is not the case. Although the UN Charter does limit the strict application of the laws of neutrality, it does not fully abolish them or counteract their legal validity, but rather complements the concept of neutrality.

The laws of neutrality thus are currently in the process of adapting to contemporary international legal society and evolving from traditional realist neutrality. That does not disregard the fact that the laws of neutrality have several confounding elements due to

[301] *Bundesverwaltungsgericht (Federal Administrative Court), Judgment in the SASPF case (2 WD 12.04)* (n 105).

[302] *Ireland, Edward Horgan v An Taoiseach* [2023] the Minister for Foreign Affairs, the Minister for Transportation, the Government of Ireland, Ireland and the Attorney General No. 3739P.

misuse and different interpretations that obscure the concept's legal and political contents. Still, however, the laws of neutrality do serve to reduce escalation and emergence of international armed conflicts.

So far, in the current case of Ukraine and Russia (February 2022 and ongoing), the laws of neutrality have not been formally invoked by either party to the conflict, although the concept of neutrality has been raised in political and academic contexts. However, states have all acted with the utmost carefulness in respect of the laws of neutrality. As such, there is a clear difference in the scale of military and economic support from the Western countries to Ukraine when comparing the beginning of the conflict to the current point. The political threats from Russia and other super-powers and the discourse regarding the lawfulness of the support for Ukraine is high, leading Western donor States to some caution in order to avoid manifest violations of the laws of neutrality. In conclusion, however, the laws of neutrality are still a legally valid part of international law.

The second component and aim of my research was to discover whether the laws of neutrality still uphold their original intended function and substance. Originally, the functions of the laws of neutrality were to deter war and minimize escalation of international armed conflicts; this function has by and large been upheld through history as a security measure, to defend sovereignty, to de-escalate tension, to keep peace and to bolster economic and societal prosperity.

But aggressor states appear to have themselves misused the concept of neutrality by threatening and forcing neighboring sovereign states into isolation and non-alliance with other states for security purposes. Especially throughout the Cold War, the international legal status of neutral states bordering the USSR was misused in the context of the bipolar global power-scheme. The USSR pressured sovereign and independent nations into adapting a dependent foreign policy so as to prevent these states from joining collective security alliances of the West. By securing isolation of neighboring states through enforced neutrality, the USSR could take advantage of their "neutral" status and thus undermine their sovereign independence.

This problem still exists in modern day – considering the origin of the ongoing conflict in Ukraine. Russia in this instance reacted forcefully to the possibility of Ukraine associating with Western alliances, such as the EU and NATO. Paradoxically, one of the functions of neutrality was indeed the right to enjoy security through the country's *own* sovereign decision to choose its foreign policy; in this instance, however, it was abolished by Russian coercion motivated by Russia's national and security interests. The current Russian rhetoric could be described as an ultimatum, wherein Ukraine must either submit to neutrality or find its sovereignty breached by an armed conflict. As such, neutrality no longer carries the inherent meaning of the word or sovereign choice, as it is orchestrated by Russian pressure and interests. This points to neutrality having lost its original function by ill-intended use and manipulation. The Russian invasion of Ukraine in 2022 is not without previous examples, as Russia firstly invaded parts of northern Georgia in 2008 (for the same reasons; to deter Western ties and infer continued neutrality), then annexed Crimea in 2014 eventually leading to the ongoing conflict - hence the reaction of the West. If support to Ukraine had been totally absent, however, Russia might then have continued its aggression against Moldova or Georgia.

As a further consequence of this discrepancy, Russia's abuse of the laws of neutrality has also led a number of other neutral countries to ignore their normal commitment to condemn an aggressor State for having engaged in an international armed conflict. An example of this was seen when 35 countries abstained - and 5 denied - from voting in favor of UNGA resolution ES 11/1 (2022) meant to denounce and condemn the Russian invasion of Ukraine and demand immediate withdrawal. After all, the Resolution was adopted by 141 States, but it was not supported by 40 UN member States, 38 of which were members or observers of NAM (Non-Alignment Movement) a direct product of the Cold War, further highlighting the disregard and misuse of neutrality.

Nonetheless, considering my earlier remark that the laws of neutrality are still valid and considered customary international law and that they have contributed to minimizing escalations of conflicts, I must concede that the concept neutrality has lost some of its functionality in the current international legal and political context. The purpose and intention to maintain peace, respect sovereignty and de-escalate conflicts are still valid

and respected in the international legal community, but the application and definition have to be reassessed in a modern and continuously developing world order.

From a constructivist perspective, it would appear that neutrality has developed throughout history as a construction of national interests and international practices, rules and norms. The entire legal theory behind neutrality and its intended function is a product of societal values and ideas with the aim of ensuring peace in the international society in a changing international order. Additionally, the ICRC and UN peacekeeping operations also contribute to shaping common values and evolving norms in international society.

With this perspective in mind, this thesis also suggests that the considerations of the Ibrahimi reports can be used as a normative basis to argue that the way we approach impartiality is evolving, and the laws of neutrality may benefit from these changes adapted in a peace operation context.

These international organisations adhere to the principle of self defence as the only justifiable use of force and impartiality, but not absolute impartiality, as they also recognize the authority of the UN Charter. As such, impartiality does not always equate equal treatment, considering the possibility of equating an aggressor with a victim. Extrapolated from this is the conclusion, that in situations with an undeniable victim-aggressor dynamic, "(...) continued equal treatment of all parties by the United Nations can in the best case result in ineffectiveness and in the worst may amount to complicity with evil."[303] The laws of neutrality must once again adapt to the current needs of international law.

Taking previous points together, the laws of neutrality are currently to some extent misunderstood as they are interpreted in widely different contexts and meanings, sometimes in the old-fashioned sense of traditional neutrality.

[303] 'Report of the Panel on United Nations Peace Operations (Brahimi Report)' (n 158) para 50.

In a world of collective security and the UN Charter, the new notion of *qualified neutrality* might better complement international law and politics while increasing the relevance of the laws of neutrality. For instance, the Security Council is generally paralyzed in its attempts to control the ongoing conflict between Russia and Ukraine (due to Russian veto power). This is where qualified neutrality could serve its purpose to complement the UN Charter and offer a solution when the UN becomes paralyzed.

What *qualified neutrality* means is basically that it is *not* a violation of the international legal obligation on neutral states to refrain from interfering in an armed conflict between two or more states, if those neutral states provide non-personal military or economic assistance to a State that has been unlawfully attacked by an aggressor State. Thus, qualified neutrality is relevant under two conditions: *first,* that the aggressor State is in *clear violation* of the *Jus ad Bellum*; and *second,* that the neutral States do *not* deploy their own military forces on the territory of the victim State or any other State in order to engage directly in armed action against the forces of the aggressor State. Thus, States may lawfully provide weapons and other military or economic assistance to the victim State – and still retain their neutrality – if these two conditions are met.

It is, however, important to note that qualified neutrality is still a new theory with limited supporting literature and thus far from finalized. A reframed and reinvented notion of the principle still has to be elaborated, but qualified neutrality is essential because rigid traditional neutrality is unable to reduce the risk of aggression.

This thesis concludes that the laws of neutrality must be understood and applied in a hybrid international legal regime in order to allow for neutral States, under certain circumstances, to assist the victim State against the aggressor State without abandoning their neutrality. The fact that Russia has not (yet) treated the States supporting Ukraine as belligerents involved directly in the conflict, would suggest that qualified neutrality has somehow been accepted. This would allow for the laws of neutrality to evolve into a new conceptualized neutrality, qualified or otherwise.

To sum up, the laws of neutrality are still highly respected in the international legal and political community. However, the prevailing traditional concept of neutrality is slightly dysfunctional because it does not sufficiently contribute to the attempts to outlaw aggression. Qualified neutrality, therefore, is to be developed as a new concept along with *Jus ad Bellum* and *Jus in Bello* in a hybrid legal regime in order to complement the UN Charter and the societal normative idea of collective security.

9 Bibliography

Cases

Barcelona Traction, Light and Power Company, Limited (Belgium v Spain) (Judgment) [1970] ICJ Rep 3

Bundesverwaltungsgericht (Federal Administrative Court), Judgment in the SASPF case (2 WD 12.04)

Horgan v An Taoiseach & Ors [2003] IEHC 64, [2003] 2 IR 468

International Court of Justice, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16

International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226

International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14

The Prize Cases 67 US (2 Black) 635 (1863)

United States Court of Appeals (DC Cir), *Ghaleb Nassar Al Bihani v Barack Obama et al*, Case No 09-5051, 590 F.3d 866 (DC Cir 2010)

Legislation

Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI

Covenant of the League of Nations (28 April 1919)

Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (adopted 18 October 1907, entered into force 26 January 1910)

Hague Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War (adopted 18 October 1907, entered into force 26 January 1910)

International Law Association, *'Budapest Articles of Interpretation: Final Text'* (1934), in 'Rights and Duties of States in Case of Aggression' (1939) 33 *American Journal of International Law* Supplement 827–834

Statute of the International Court of Justice https://www.icj-cij.org/statute accessed 26 May 2025

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331

UN Documents

United Nations, *Report of the Panel on United Nations Peace Operations* (Brahimi Report) UN Doc A/55/305–S/2000/809 (21 August 2000)

United Nations, *Report of the Secretary-General pursuant to General Assembly resolution 53/35: The Fall of Srebrenica* UN Doc A/54/549 (15 November 1999)

United Nations Command, 'History of the Korean War (1950–1953)' https://www.unc.mil/History/1950-1953-Korean-War-Active-Conflict/ accessed 2 July 2025

United Nations Command, 'India' (UN Command) https://www.unc.mil/Organization/Contributors/India/ accessed 2 April 2025

United Nations Command, 'Sweden' (UN Command) https://www.unc.mil/Organization/Contributors/Sweden/ accessed 23 April 2025

United Nations General Assembly, *Resolution 377(V) 'Uniting for Peace'* (3 November 1950) UN Doc A/RES/377(V)

UN Audiovisual Library, *Uniting for Peace* (United Nations, 2008) https://legal.un.org/avl/ha/ufp/ufp.html accessed 2 July 2025

United Nations, *Report of the Secretary-General pursuant to General Assembly Resolution 53/35: The Fall of Srebrenica* (15 November 1999) UN Doc A/54/549

United Nations, Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda (15 December 1999) UN Doc S/1999/1257

United Nations, Report of the Panel on United Nations Peace Operations (21 August 2000) UN Doc A/55/305–S/2000/809 (Brahimi Report)

Jaquemet S, 'Under What Circumstances Can a Person Who Has Taken an Active Part in the Hostilities of an International or a Non-International Armed Conflict Become an Asylum Seeker?' (UNHCR Legal and Protection Policy Research Series, PPLA/2004/01, June 2004) https://www.refworld.org/reference/lpprs/unhcr/2004/en/35300 accessed 2 July 2025

United Nations Security Council Resolution 82 (25 June 1950) UN Doc S/RES/82

United Nations Security Council, *Resolution 83* (27 June 1950) UN Doc S/RES/83

United Nations Security Council**,** *Resolution 232* (16 December 1966) UN Doc S/RES/232

United Nations Security Council, *Resolution 253* (29 May 1968) UN Doc S/RES/253

United Nations Security Council, *Resolution 418* (4 November 1977) UN Doc S/RES/418

United Nations General Assembly, *Res 43/131* (8 December 1988) UN Doc A/RES/43/131

United Nations Security Council Resolution 660 (2 August 1990) UN Doc S/RES/660

United Nations Security Council, *Resolution 660* (2 August 1990) UN Doc S/RES/660 https://digitallibrary.un.org/record/94221 accessed 21 April 2025

United Nations Security Council, *Resolution 661* (6 August 1990) UN Doc S/RES/661 https://digitallibrary.un.org/record/94221 accessed 21 April 2025

United Nations Security Council**,** *Resolution 678* (29 November 1990) UN Doc S/RES/678 https://digitallibrary.un.org/record/102245 accessed 21 April 2025

Government Documents

Allen GV, 'Telegram from the Ambassador in Yugoslavia (Allen) to the Secretary of State' (6 July 1950) in *Foreign Relations of the United States, 1950, Volume VII, Korea, Document 230* https://history.state.gov/historicaldocuments/frus1950v07/d230 accessed 27 May 2025

Canada, Department of National Defence**,** *Joint Doctrine Manual: The Law of Armed Conflict at the Operational and Tactical Levels* (Office of the Judge Advocate General)

European Union, 'EU Sanctions Against Russia' (2025) https://www.consilium.europa.eu/en/policies/sanctions-against-russia/ accessed 27 May 2025

Federal Department of Foreign Affairs, *White Paper on Neutrality: Annex to the Report on Swiss Foreign Policy for the Nineties of 29 November 1993*, 93.098 (1993)

Interdepartmental Working Group, *Swiss Neutrality in Practice – Current Aspects: Report of 30 August 2000* (Federal Department of Foreign Affairs 2000) https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/voelkerrecht/bericht-neutralitaetspraxis-kosovo-2000_EN.pdf accessed 27 May 2025

Johnson Library, White House Central Files, Confidential File, CO 250, *Rhodesia-Nyasaland, Federation of, Secret, Paper Prepared in the Department of State*, *Washington,* January 23, 1967

Mulligan SP, *International Neutrality Law and U.S. Military Assistance to Ukraine* (26 April 2022) Legal Sidebar LSB10735, Congressional Research Service

Swiss Federal Department of Foreign Affairs, *Swiss Neutrality* (2010) https://www.files.ethz.ch/isn/14841/broch_neutrality_e22.pdf accessed 21 April 2025

United States, Department of Defense, *Law of War Manual* (Office of General Counsel, June 2015, updated Dec 2016)

Books

Abbenhuis MM, 'A Most Useful Tool for Diplomacy and Statecraft: Neutrality and Europe's International Order, 1815–1914' (2017) 44(1) *The International History Review* 1

Allison R, 'Russia, Ukraine and State Survival through Neutrality' (2022) 98 *International Affairs* 1849–1872

Antonopoulos C, *Neutrality and the Use of Force in International Law* (Cambridge University Press 2022)

Barnes R, ‘Between the Blocs: India, the United Nations, and Ending the Korean War’ (2013) 18(2) *Journal of Korean Studies* 263 https://doi.org/10.1353/jks.2013.0022

Blume P, *Retssystemet og juridisk metode* (3. udg., Jurist- og Økonomforbundets Forlag 2011) 171

Bonjour E, *Swiss Neutrality: Its History and Meaning* (Mary Hottinger tr, George Allen & Unwin 1946)

Borchard EM, ‘Neutrality’ (1938) 48(1) *Yale Law Journal* 96

Bridgeman T, 'The Law of Neutrality and the Conflict with Al Qaeda' (2010) 85(4) *New York University Law Review* 1866–1918 https://nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-85-4-Bridgeman.pdf accessed 21 April 2025

Brunnée J and Toope SJ, ‘Constructivism and International Law’ (1999) 93 *American Journal of International Law* 379 Cassese A, *International Law* (2nd edn, OUP 2005)

Chadwick E, *Traditional Neutrality Revisited: Law, Theory and Case Studies* (Kluwer Law International 2002)

Chinkin C, ‘The United Nations Decade for Women: An International Legal Analysis’ (1986) 82 *American Journal of International Law* 616

Clancy P, ‘Permanent Neutrality and the UN Security Council’ (2021) 32(1) *Irish Studies in International Affairs* 241, 243 https://doi.org/10.1353/isia.2021.0053 accessed 23 April 2025.

Clancy P, ‘The Law of Neutrality: Jus ad Bellum or Jus in Bello?’ (2022) 13(2) *Journal of International Humanitarian Legal Studies* 353 https://doi.org/10.1163/18781527-bja10055 accessed 23 April 2025.

Cortright D and Lopez GA, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Lynne Rienner Publishers 2000)

Coudert FR, 'Non-Belligerency in International Law' (1942) 29 *Virginia Law Review* 143

Crawford J, 'The ILC's Articles on Responsibility of States for Internationally Wrongful Acts: A Retrospect' (2002) 96 *American Journal of International Law* 874

Crawford J, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019)

Dreyer J and Jesse NG, 'Swiss Neutrality Examined: Model, Exception or Both?' (2014) 15(3) *Journal of Military and Strategic Studies* 60–83

Emily Crawford and Alison Pert, *International Humanitarian Law* (2nd edn, Cambridge University Press 2024) 145–46

Gavouneli M, 'Neutrality – A Survivor?' (2012) 23 *The European Journal of International Law* 335

George P. Politakis, 'From Action Stations to Action: U.S. Naval Deployment, "Non-Belligerency," and "Defensive Reprisals" in the Final Year of the Iran–Iraq War' (1994) 25(1) *Ocean Development and International Law* 31

Hamer CR and Schaumburg-Müller S (eds), *Juraens Verden: Metoder, Retskilder og Discipliner* (Djøf Forlag 2020)

Hammerslev O og Olsen HP (red.), *Retsfilosofi: Centrale tekster og temaer* (2. udg., Hans Reitzels Forlag 2019)

Haque A, 'An Unlawful War' (2023) 117 *American Journal of International Law* 1

Haque AA, ‘An Unlawful War’ (2022) 116 *AJIL Unbound* 155–159 https://doi.org/10.1017/aju.2022.23 accessed 21 April 2025

Harhoff F and Daniel BT (eds), *Folkeret*, vol 1 (1st edn, Hans Reitzels Forlag 2017)

Ingber R, ‘The Abuse of Neutrality’ (2025) 65 *Virginia Journal of International Law* 1 https://larc.cardozo.yu.edu/faculty-articles/945/ accessed 23 April 2025

Jennings R and Watts A, *Oppenheim’s International Law*, vol 1 (9th edn, Pearson Higher Education 1992)

Jervis R, 'Cooperation Under the Security Dilemma' (1978) 30(2) *World Politics* 167–214

Book Chapters

Antonopoulos C, ‘Rights and Duties under the Law of Neutrality’ in *Non-Participation in Armed Conflict: Continuity and Modern Challenges to the Law of Neutrality* (Cambridge University Press 2022)

Antonopoulos C, ‘Rights and Duties under the Law of Neutrality’ in *Non-Participation in Armed Conflict: Continuity and Modern Challenges to the Law of Neutrality* (Cambridge University Press 2022)

Antonopoulos C, ‘The United Nations’ Collective Security System and Neutrality’ in *Non-Participation in Armed Conflict: Continuity and Modern Challenges to the Law of Neutrality*(Cambridge University Press 2024) 59

Bothe M, ‘The Law of Neutrality’ in *The Handbook of International Humanitarian Law* (3rd edn, Oxford University Press 2020)

Chadwick E, *The United Nations' Collective Security System and Neutrality* (Cambridge University Press 2021) 61 https://doi.org/10.1017/9781009085700.006 accessed 23 April 2025

Claude IL, 'Just Wars: Doctrines and Institutions' in *Power and International Relations* (Random House 1980)

Czarny RM, 'Neutrality in International Relations: Theoretical Foundations' in *Sweden: From Neutrality to International Solidarity* (Springer International Publishing 2018) 3–5 http://link.springer.com/10.1007/978-3-319-77513-5_1 accessed 26 May 2025

Heintschel von Heinegg W, '"Benevolent" Third States in International Armed Conflicts: The Myth of the Irrelevance of the Law of Neutrality' in Michael Schmitt and Jelena Pejic (eds), *International Law and Armed Conflict: Exploring the Faultlines: Essays in Honour of Yoram Dinstein* (Martinus Nijhoff Publishers 2007)

Kohen MG, 'Desuetude and Obsolescence of Treaties' in Cannizzaro E (ed), *The Law of Treaties Beyond the Vienna Convention: Liber Amicorum Giorgio Gaja* (OUP 2011)

Nasu H, 'The Laws of Neutrality in the Interconnected World' in *The Future Law of Armed Conflict* (Oxford University Press 2022) 125 https://doi.org/10.1093/oso/9780197626054.003.0008

Seger P, 'The Law of Neutrality' in A Clapham and P Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (Oxford University Press 2014) 260

Tallgren I, 'The Finnish War-Responsibility Trial in 1945–6: The Limits of Ad Hoc Criminal Justice?' in *The Hidden Histories of War Crimes Trials* (Oxford Academic 2014) 99 https://doi.org/10.1093/acprof:oso/9780199671144.003.0021

Journal Articles

Kelsen H, *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems* (Stevens 1950)

Kolb R and Hyde R, *An Introduction to the International Law of Armed Conflicts* (Hart Publishing 2008)

Kolb R, 'Origin of the Twin Terms Jus ad Bellum/Jus in Bello' (1997) 320 *International Review of the Red Cross* 553–562

Kuusisto AA, 'The Paasikivi Line in Finland's Foreign Policy' (1959) 12 *The Western Political Quarterly*

Kuzio T, 'Russian Policy toward Ukraine during Elections' (2005) 13(4) *Demokratizatsiya: The Journal of Post-Soviet Democratization* 491–517

Lehto M, 'The Right of Self-defence and Third State Provision of Arms: Reflections on the Current Debate' (2025) 94(1) *Nordic Journal of International Law*

Levie HS, 'How It All Started – And How It Ended: A Legal Study of the Korean War' (2015) 48 Akron Law Review 205, 214–216

Lim CL and Mitchell RM, 'Neutral Rights and Collective Countermeasures for *Erga Omnes* Violations' (2023) 72(2) *International and Comparative Law Quarterly* 361

Lottaz P and Reginbogin HR (eds), *Notions of Neutralities* (Lexington Books 2019)

Mačák K, 'A Matter of Principle(s): The Legal Effect of Impartiality and Neutrality on States as Humanitarian Actors' (2015) 97 *International Review of the Red Cross* 103

Müller L, *Neutrality in World History* (1st edn, Routledge 2019)

Oppenheim L, *International Law: A Treatise*, Vol II: Disputes, War and Neutrality (7th edn, Lauterpacht H (ed), Longmans, Green & Co 1952)

Oppenheim L, *International Law: A Treatise*, Vol II: War and Neutrality (3rd edn, Longmans, Green & Co 1920)

Orakhelashvili A, 'The Acts of the Security Council: Meaning and Standards of Review' (2007) 11 *Max Planck Yearbook of United Nations Law* 143

Parish M, 'The Principle of Separation and the Law of Neutrality' (2025) *International and Comparative Law Quarterly* 1, 2–3 https://doi.org/10.1017/S0020589325000089 accessed 23 April 2025

Ronzitti N, 'Neutrality, Non-Belligerency, and Permanent Neutrality According to Recent Practice and Doctrinal Views' (2024) 29(1) *Journal of Conflict and Security Law* 55

Sassóli M, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (2nd edn, Edward Elgar Publishing)

Saul B and Akande D (eds), *The Oxford Guide to International Humanitarian Law* (OUP 2020)

Schmid E, 'Optional but not qualified: Neutrality, the UN Charter and Humanitarian Objectives' (2024) 106 *International Review of the Red Cross* 1044

Seppinen J, *Vaaran Vuodet? Suomen Selviytymisstrategia 1944-1950* (Minerva Kustannus Oy 2008) 27

Sloane RD, 'The Cost of Conflation: Preserving the Dualism of Jus ad Bellum and Jus in Bello in the Contemporary Law of War' (2007) 34 Yale Journal of International Law

Taylor MJ, 'Is Just War Theory Still Relevant in the 21st Century?' (2012) 11(2) *The Journal of Military Ethics*

Tvarnø CD and Nielsen R, *Retskilder og Retsteorier* (4th rev edn, DJØF Forlag 2014)

Upcher J, *Neutrality in Contemporary International Law* (Oxford University Press 2020)

Walker GK, 'Anticipatory Collective Self-Defense in the Charter Era: What the Treaties Have Said' (1998) 31 *Cornell International Law Journal* 321

Walzer M, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (Basic Books 1977) 235

Wani K, *Neutrality in International Law: From the Sixteenth Century to 1945* (Routledge 2017)

Wentker A, 'The Armed Attack Exception to Neutrality in International Peace and Security Law' (2024) 73 *International and Comparative Law Quarterly*

Wrange P, 'Neutrality, Impartiality and Our Responsibility to Uphold International Law' (31. januar 2008) 277 https://papers.ssrn.com/abstract=2558583 accessed May 2025.

Wright Q, 'The Present Status of Neutrality' (1940) 34(3) *American Journal of International Law* 391–423

Ziegler AR, *Switzerland's Neutrality: Its History, Legal Basis and Future* (Helbing Lichtenhahn 2019)

Zugliani N, 'The Supply of Weapons to a Victim of Aggression: The Law of Neutrality in Light of the Conflict in Ukraine' (2024) 35(2) *European Journal of International Law* 389–416 https://doi.org/10.1093/ejil/chae019 accessed 23 April 2025

Websites and Blogs

Atalan Y, ‘What Role Can Turkey Play in Ukraine Negotiations?’ (Center for Strategic & International Studies, 26 April 2022) https://www.csis.org/analysis/what-role-can-turkey-play-ukraine-negotiations accessed 2 July 2025

Cheatham A, ‘A Look at Neutrality Now — and After the Ukraine War’ (United States Institute of Peace, 26 April 2022)

Heintschel von Heinegg W, ‘Neutrality in the War against Ukraine’ (Lieber Institute, 1 March 2022) https://lieber.westpoint.edu/neutrality-in-the-war-against-ukraine/ accessed 18 May 2025.

Kolb R and Meret B, ‘Clarifying Neutrality: The Rise of Different Statuses?’ (Lieber Institute, 19 March 2025) https://lieber.westpoint.edu/clarifying-neutrality-rise-different-statuses/ accessed 23 April 2025

Longobardo M, ‘The Provision of Belligerent Materials in the Russia-Ukraine Conflict: Beyond the Law of Neutrality’ (2023) *Questions of International Law* https://www.qil-qdi.org/the-provision-of-belligerent-materials-in-the-russia-ukraine-conflict-beyond-the-law-of-neutrality/ accessed 23 April 2025.

Masters J, ‘Ukraine: Conflict at the Crossroads of Europe and Russia’ (Council on Foreign Relations, 14 February 2023) https://www.cfr.org/backgrounder/ukraine-conflict-crossroads-europe-and-russia

Nasu H, ‘The Future Law of Neutrality’ (Lieber Institute, 19 July 2022) https://lieber.westpoint.edu/future-law-of-neutrality/ accessed 2 August 2025.

Nyberg R, ‘Paasikivi in Moscow’ https://anselm.fi/paasikivi-in-moscow/ accessed 23 April 2025

Pedrozo R (Pete), ‘Ukraine Symposium – Is the Law of Neutrality Dead?’ (31 May 2022)

Articles of War, Lieber Institute, United States Military Academy https://lieber.westpoint.edu/is-law-of-neutrality-dead/ accessed 23 April 2025.

Schmitt MN, ‘Providing Arms and Materiel to Ukraine: Neutrality, Co-Belligerency, and the Use of Force’ https://lieber.westpoint.edu/ukraine-neutrality-co-belligerency-use-of-force/ accessed 23 April 2025

Wouters J and Verhoeven S, 'Desuetudo' (2008) Max Planck Encyclopedia of Public International Law https://www.mpepil.com accessed 21 April 2025

Newspaper Articles (Online)

Al Jazeera, 'Russia-Ukraine Black Sea Grain Deal: All You Need to Know' (17 July 2023) https://www.aljazeera.com/news/2023/7/17/russia-ukraine-black-sea-grain-deal-all-you-need-to-know accessed May 2025

‘Biden to Let Ukraine Use US Long-Range Missiles inside Russia: Reports – The Move Comes as Joe Biden Heads into His Final Months in US Office, with Successor Donald Trump Believed to Be More Favourable towards Russia’ *Al Jazeera* (17 November 2024) https://www.aljazeera.com/news/2024/11/17/biden-to-allow-ukraine-to-use-us-weapons-inside-russia-reports accessed May 2025

Liptak K, Bertrand N and Liebermann O, ‘Biden Authorizes Ukraine to Use Long-Range US Weapons in Russia’ *CNN* (18 November 2024) https://edition.cnn.com/2024/11/17/politics/biden-authorizes-ukraine-missiles-russian-targets/index.html accessed 14 March 2025.

Lukow Y, 'Ukraine War: Russia Warns US of Direct Military Clash Risk' BBC News (10 May 2022) https://www.bbc.com/news/world-europe-63140098.amp accessed May 2025

McCurry J, ‘North Korea Preparing to Send More Troops to Ukraine War, Says South Korea’ *The Guardian* (24 January 2025)

https://www.theguardian.com/world/2025/jan/24/north-korea-preparing-to-send-more-troops-to-ukraine-war-says-south-korea accessed May 2025

Stone M and Pamuk H, 'Biden Allows Ukraine to Use US Arms to Strike Inside Russia' *Reuters* (18 November 2024) https://www.reuters.com/world/biden-lifts-ban-ukraine-using-us-arms-strike-inside-russia-2024-11-17/ accessed May 2025.

Umar B, 'Russia Warns West of Armed Response over Ukraine Threats' *TRT World* (17 December 2021) https://www.trtworld.com/europe/russia-warns-west-of-armed-response-over-ukraine-threats-52865 accessed May 2025