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Introduction

On April 15, 2022, the Washington Post reported that the Kremlin had warned the United States (U.S.) that there would be ‘unpredictable consequences’ if the U.S. kept arming Ukraine (Reuters, 2022). Indeed, since the 24th of February 2022, a large number of states have provided Ukraine with a significant amount of military assistance in its ongoing armed conflict with Russia. On top of that, with Finland and Sweden having recently joined NATO, these two countries have shifted away from their traditional stance of neutrality and non-alignment in European security affairs. Thus, Switzerland remains the only permanent neutral state in Europe with no commitment towards the European Union (EU) and its Common Foreign and Security Policy (CFSP). That said, the renewal of the discussion on the relevance of neutrality in European security has been highlighted following the Russian full-scale invasion of Ukraine.

Consequently, although the outgunned Ukrainian armed forces are in dire need of assistance, this support has raised a number of legal questions, particularly regarding the principle of neutrality in this conflict. The provision of military aid to Ukraine has prompted debate about its legal significance and whether it conflicts with established neutrality laws.

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This article will first briefly approach the large scope of the concept of neutrality in a broad sense. Then, the article will attempt to deepen the understanding of the concept of neutrality through the examination of its legal framework as holding a narrower scope. Finally, this article will examine the political considerations surrounding this legal approach to the neutrality concept according to the Russian-Ukrainian conflict.

I. The Concept of Neutrality: A Large Scope

In today’s world, the term ‘neutrality’ is used and understood as a concept of foreign policy rather than a legal norm. Even if it is mainly known and used in political contexts, the concept of neutrality remains an important and relevant principle in International Law (IL). While neutrality, as generally understood, may cover a wide range of behaviour, the legal principle of neutrality is not only narrower but also more precise in its scope. Overall, the principle of neutrality serves important goals since it is first designed to prevent escalation of conflict.

In the collective mind, it means not taking sides, being impartial or even indifferent to one party’s side or cause. Often, it is also associated with political isolationism which gives it a negative connotation. Therefore, while, for some, the term ‘neutrality’ usually means indifference, callousness or a studied calculation of costs and benefits where it is easy to refer to the behaviour of not becoming involved in an episode of genocide. In a legal sense,

the word 'neutrality' applies only if there is a war taking place (Vagts, 1998). Alternatively, legally speaking, the legal status of the principle of neutrality arises from the abstention of a state from all participation in a war between other states, the maintenance of an attitude of impartiality towards the belligerents and the recognition by the belligerents of this abstention and impartiality (Britannica, 2023).

The difference in understanding between the legal view and the political view can be explained by the narrowness of the legal scope. First, the duties and rights of neutrality only apply to sovereign states and not to any other subjects of IL. Therefore, they only apply in a situation of an international armed conflict (IAC) between two or more states. Finally, neutrality laws impose specific obligations on neutral states, particularly prohibiting them from supporting warring parties through military means. This includes providing arms, military equipment or other war-related materials, as such actions could be seen as a violation of the neutral state's duty to abstain from participating in the conflict. The neutral state must maintain impartiality and avoid any actions that could favour one party over the other, ensuring that its neutrality is preserved throughout the conflict (Seger, 2014).

II. Principle of Neutrality: The Legal Framework

As previously mentioned, the law of neutrality defines the legal relationship between nations engaged in an armed conflict, the belligerents and nations not taking part in such hostilities, the neutrals (Thomas & Duncan, n.d.). The legal approach to the concept of neutrality is still registered under the framework of the Hague Convention, which contains the rights and duties connected to the concept of neutrality. The Hague Convention (V) Respecting the Rights and Duties of Neutral Powers in Case of War on Land, and Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War set the basis for rights and duties established for neutral powers (Hague Convention [V], 1907; Hague Convention [XIII], 1907). The Hague Convention was intended merely to refer to military neutrality (Guttman, 1998). As this Convention was adopted and ratified in 1907, the International Court of Justice (ICJ) maintained this principle of neutrality as an established part of customary law as ruled in the judgement of the ICJ "Legality of the Threat or Use of Nuclear Weapons" in 1996 (ICJ, 1996).

As a result, to better understand the principle of neutrality and how it is shaped, it should be remembered that it implies specific obligations and rights in the relationship between states party to an IAC, and a neutral state. Indeed, the neutral state must abstain from supporting one party in an IAC, particularly through the provision of war material and financial assistance. Additionally, it has the obligation not to tolerate its territory's use against one of the belligerent parties for war purposes and to act impartially. The example of Ukraine and

the European territory illustrates this idea since Estonia, for instance, cannot store Ukrainian weapons to attack Russia from another flank. At the same time, 'a neutral state enjoys the right not to be adversely affected by the conduct of hostilities with, for example, the prohibition on belligerent parties from entering and using territories belonging to the neutral state, for carrying out military operations and the possibility to continue trade relationships with the belligerent parties' (Bartolini, 2024, 2).

Moreover, one of the first recommendations of the Hague Convention (XIII) provides that when war breaks out, each nation wishing to remain impartial should normally issue either a special or general declaration of neutrality. However, such a declaration is not required by International Law. During the hostilities, a neutral state may change, repeal or modify its position of neutrality, provided that such alterations are applied without bias to all belligerents (Britannica, 2023). Therefore, the status of neutrality becomes relevant during an IAC, and hence, there is no need for a neutral state to adopt a formal declaration or other formal measures to express its stance.

Furthermore, the legal framework of neutrality is usually divided between qualified neutrality and strict neutrality where different visions of these concepts are debated. Generally, states that are not part of an IAC are considered neutral states.

To be in accordance with the principles of neutrality, historically speaking, neutral states should adopt strict impartiality between the parties to the conflict and should abstain from providing any war-related goods or military assistance. The term 'strict neutrality' advocates for an equal application of neutrality rules to the belligerents except when the United Nations (UN) has acted. For example, the view of U.S. President Woodrow Wilson at the onset of WWI in Europe in 1914 for the U.S. to stay out of the conflict was a strict and impartial neutrality policy. Another example is the International Committee of the Red Cross that endeavours strict neutrality in its operations, as mentioned in its charter.

However, after the attempt to outlaw war as an instrument of national policy through the Kellogg-Briand Pact of 1928, some states took the position that neutrality can discriminate in favour of a victim of war aggression and they are not bound by their obligations of strict impartiality and abstention. Thus, this position shifts to the term 'qualified neutrality' considering that providing war material to states that are victims of aggression is not contrary to the principle of neutrality. The concept of 'qualified neutrality' expresses that neutrality rules need not be applied impartially when there is clear-cut aggression, as is the case of Russia's unjustified full-scale invasion of Ukraine.

Alternatively, other states consider that a state may only violate the principle of neutrality if the United Nations Security Council (UNSC) has authoritatively identified a specific state as

an aggressor and has decided to take preventative or enforcement action against this aggressor under Chapter VII of the UN Charter. Indeed, while Article 25 of the Charter requires member states to comply with UNSC decisions, including to support UN action at the expense of their neutrality, in the absence of a decision from the UNSC, the law of neutrality remains in full force and neutral states must observe strict impartiality between the parties to the conflict.

Consequently, in the last decades, the legal concept of neutrality appears less relevant and less strict considering the emergence of the centralised system of collective security. The UNSC can establish binding resolutions under Chapter VII of the UN Charter to require member states to adopt measures interfering with the laws of neutrality (UN Charter, 1945). Nevertheless, uncertainty remains as to the admissibility of further derogations from the laws of neutrality (Bartolini, 2024).

Lastly, the diminishing relevance of the law of neutrality may eventually lead to a legal order where third-party involvement in conflicts becomes more common (Bartolini, 2024). Even if the law remains clear on that point, claiming that neutral states that fail to comply with their obligations may lose their neutral status and become a party to an armed conflict; a state that violates its neutrality is not automatically brought into the conflict as a co-belligerent, therefore nuance must be established. Conducting an armed attack against one of the belligerents would bring the neutral state as a party into the IAC, and providing actionable intelligence to a belligerent that would allow said belligerent to successfully attack their opponent would also make the neutral state party to the conflict. On the contrary, only providing weapons and war-related material does not make a state party to the conflict.

III. Political Considerations: The Concept of Neutrality Jeopardised in the Russian - Ukrainian Conflict

In February 2022, when Russia began its full-scale war against Ukraine, numerous Western states supplied Ukraine with arms, munitions and war material, in apparent breach of their obligations as neutral, non-participating States. This 2022 conflict has rekindled the debate about the validity of qualified neutrality, also called benevolent neutrality, during an IAC. As a response to the Russian invasion, nearly 40 nations have provided billions of dollars of military aid to Ukraine. In addition to this military support, the EU and U.S. have imposed economic sanctions on Russia. While this level of involvement might seem inconsistent with traditional neutrality laws, some scholars argue that it may fall under the framework of qualified neutrality (Pedrozo, 2022).

Furthermore, a debate arises on whether assistance in the form of military aid, war-related material, intelligence by the EU, NATO and their allies will give President Putin a pretext to

broaden the fight. At first glance, violations of the principle of neutrality by Germany, the U.S., Romania or even Poland could provide President Putin justification for further military action beyond Ukraine's borders, leading to a disaster spillover into Europe. Nevertheless, scholars have dismissed such a legal argument, explaining that *jus ad bellum*, not neutrality law, dictates the legitimate use of force. In that case, countries contributing to Ukraine's self-defence are not only justified but are also arguably obligated to act (Cheatham, 2022).

On the other hand, this war has highlighted how many states have openly engaged in actions that deviate from the traditional principle of neutrality. This divergence reflects a break from long-standing views of neutrality law, while others have maintained a rigid adherence to established legal principles or have avoided taking a clear and definitive stance. Therefore, the Ukrainian-Russian conflict is a great example to assess the trends in the law of neutrality and their legal implications. Even though most states clearly oppose the Russian invasion, that does not justify turning a blind eye to the rule of law in general, in particular the law of neutrality. Indeed, the validity of this qualified neutrality, as mentioned previously, could be questionable and may be seen as political expediency to allow states to justify their violations of the principle of neutrality, on the basis of moral and ethical grounds. This criticism could be highlighted if it is argued that neutral states can arrive at the same result by applying the law of state responsibility and imposing lawful countermeasures on Russia for its internationally wrongful act of violating Article 2(3) and Article 2(4) of the UN Charter.

Consequently, when it comes to assessing the provision of material and other assistance to Ukraine, from military to financial, it is imperative to carefully distinguish between breaches of neutrality, becoming a party to the conflict, and assistance as a use of force. This blurry distinction between these three issues creates confusion in the context of assistance to Ukraine, especially because the three concepts are governed by a different body of law. Therefore, the pertinent question remains: when does a state that provides arms or other assistance itself become a party to an ongoing IAC (Schmitt, 2022)?

A large majority of states oppose the Russian invasion of Ukraine, considering it as a breach of IL. Consequently, the basic rule of law of strict neutrality could be circumvented and violated by imposing sanctions and providing weapons and other war-related materials to Ukraine as lawful countermeasures through the law of state responsibility. As a result, the traditional laws of neutrality are not disregarded, limiting the risk of increasing the conflict (Pedrozo, 2022). Finally, in the meantime of this Ukrainian-Russian conflict, the ongoing crisis of the UN collective security system and violations of its basic principles might risk making traditional interpretations of the law of neutrality a legal component of the lawfare portfolio available to states violating the prohibition on using force, thus mandating a reassessment in

its interpretation (Bartolini, 2024).

Moreover, autocrats like President Putin often weaponise international legal concepts like neutrality for their own ends. Thus, it is essential to reconsider and update global commitments to stabilising and strengthening legal frameworks to prevent would-be aggressors from exploiting IL (Cheatham, 2022). A system of IL which can impose no penalty on a lawbreaker and also forbids other states to aid the victim would be self-defeating and would be counterproductive in realising mankind's hope for enduring peace (Schmitt, 2023). As a result, the current Ukrainian-Russian conflict might be a game changer for the principle of neutrality. It could confirm the tendency that favours the protection of the common interest of the international community and the role which third states may play in that regard. However, this phenomenon could imply how the principle of neutrality may vanish entirely through obsolescence (Bartolini, 2023).

Conclusion

Overall, the analysis of this article has examined the legal framework surrounding the concept of legal neutrality, as this idea of 'neutrality' is mainly known in a broader sense, especially politically speaking. Therefore, after having briefly overviewed the general concept of neutrality followed by a deeper analysis of the legal approach, the current invasion of Ukraine by Russia introduced some political concerns of this legal concept, pointing to the change in tendency of the legal neutrality approach. Indeed, this article explores the trend of neutral states to shift from strict neutrality to qualified neutrality in decades to come.

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