



# The Shifting Concepts of Neutrality and Non-Belligerency in the 21st Century

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# The Shifting Concepts of Neutrality and Non-Belligerency in the 21st Century

A Legal Analysis with Focus on the German and Austrian State Practice

**Mara Ebbers**

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## ABSTRACT

The applicability of neutrality law is a contested area of modern international law. Because it determines the options third states are facing in an international armed conflict, the Russo-Ukraine war lends it new urgency. This ePaper analyzes these options from a conceptual and practical perspective. It will, first, theoretically discuss the applicability of neutrality law, rejecting the theories of compulsorily applicable, qualified, and obsolete neutrality based on their conceptual flaws and inadequate incorporation of the emergence of a third option for third states. It embraces optional neutrality based on the finding that it has always been optional.

The second part examines the changing customary neutrality law and the related legal uncertainty for states. It finds that this uncertainty reproduces itself and is reflected in the German and Austrian debates and their *opinio juris*. To encounter this legal uncertainty, the third part details the options available for third states – neutrality, non-belligerency, co-belligerency, and their illegal counterparts.

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## MARA EBBERS

Mara Ebbers holds a Master's in International Law from the Geneva Graduate Institute and a Bachelor's in International Relations from Dresden University of Technology. In September 2025 she was awarded the Mariano Garcia Rubio Prize for the best Master's dissertation in international law in her cohort. Her research interests include International Humanitarian Law, Human Rights, and *jus ad bellum*. She has gained experience as research assistant at the International Law Commission as well as in several German governmental and research institutions. Following her research on statelessness law, she joined UNHCR as a statelessness fellow with the Carlo Schmid Program.

## TABLE OF CONTENTS

*Acknowledgements*

*Introduction*

---

### **Part 1. Can Neutrality Be Optional? – Non-Belligerency and Concurring Ideas of Traditional, Qualified, and Optional Neutrality**

#### *I. Traditional Neutrality: Taking Part in the "Duel" or Standing by?*

1. Sources and Content of Traditional Neutrality Law
2. Historic Context and Idea of Traditional Neutrality
3. Interim Result

#### *II. The Prohibition of the Use of Force and the Decreasing Importance of Neutrality*

1. Changes in the International Legal System
2. Neutrality Law in a Changed International System
3. Interim Result

#### *III. Compulsorily Applicable Neutrality*

1. Unlimited Application
2. Limited Application and Its Extent
3. Interim Result

#### *IV. Qualified Neutrality*

1. What Qualified Neutrality Means
2. The Linguistic Problem
3. The "Conceptual" Problem
4. The Problem of Determining the Aggressor
5. The Problem of Politicalization
6. Interim Result

#### *V. Optionality Neutrality*

1. Why Neutrality was always Optional
2. Why supporting an aggressor is illegal when neutrality is optional
3. Interim Result

#### *VI. Obsolete Neutrality*

1. Why neutrality could be obsolete
2. What neutrality means in the 21<sup>st</sup> century
3. Interim Result

## VII. Interim Conclusion

---

### Part 2. How to React to a "Flagrant" Aggression in Practice? – The Problem of Missing *Opinio Juris*

#### *Introduction to part 2, How to React to a "Flagrant" Aggression in Practice?*

##### *I. Between Doctrinal Debate and Missing Opinio Juris: Too little State Practice and Opinio Juris as Basis for a CIL Modification*

1. No Application or "Irrelevance"
2. Full Compulsory Application or "Continuity"
3. "Discontinuity" and Legal Uncertainty
4. Interim Result

##### *II. Non-Belligerency in Practice: The Example of Germany*

1. State Practice
2. *Opinio Juris*
3. Interim Result

##### *III. Permanent Neutrality in Practice? The Example of Austria*

1. State practice
2. *Opinio Juris*
3. Interim Result

#### *IV. Interim Conclusion*

---

### Part 3. What lies between Neutrality and Co-Belligerency? – Content, Limits, and Legal Implications of Non-Belligerency in the 21st Century

#### *I. General Overview*

#### *II. Traditional Neutrality and Self-Defined Neutrality*

#### *III. Non-Belligerency*

#### *IV. Co-Belligerency*

#### *V. Shades of Legality*

#### *VI. Interim Conclusion*

#### *Conclusion*

#### *Bibliography*

# Acknowledgements

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- <sup>1</sup> This ePaper is based on a Master's dissertation supervised by Professor Andrew Clapham and Professor Dr. Evelyne Schmid. The author would like to thank both for their insightful comments and their meaningful supervision. Moreover, the author would like to thank Erik Buthmann and Denise Köcke for their reliable support and their helpful insights.

## Use of AI and other tools

- <sup>2</sup> For this ePaper, the following AI-supported tools were used for translation (including those marked as "own translation") and language correction: DeepL and Grammarly. For the creation of the illustrations draw.io was used.

# Introduction

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- 1 The relevance of the neutrality law has been questioned at least since the Kellogg-Briand Pact and the United Nations Charter (UNC) outlawed the right of states to wage war more comprehensively. Generations of scholars argued for and against the potential desuetude or obsolescence of neutrality, its potential optionality<sup>1</sup> and its potential qualification towards a victim of aggression.<sup>2</sup> In the absence of instructive court decisions or state practice and *opinio juris*,<sup>3</sup> the debate seemed, to use Wentker's word, "deadlocked"<sup>4</sup> – and, considering the limited amount of International Armed Conflicts (IAC), of little relevance.
- 2 When Western states started arming Ukraine, the victim of the 2022 Russian aggression, the question of neutrality and its qualification or optionality reappeared with a new urgency.
- 3 While some scholars analyzed the implications of a changed state practice on the customary international law (CIL) of neutrality, in the absence of comprehensive official explanations on its legality<sup>5</sup> others took this missing *opinio juris* as a starting point to offer a variety of plausible justifications for the delivery of heavy and lethal arms to a belligerent state by, supposedly, neutrals.<sup>6</sup> Other scholars warn of the threatening obsolescence of neutrality law, diagnose legal uncertainty, and suggest a new codification.<sup>7</sup>
- 4 While scholarly contributions are as rich as *opinio juris* is limited, this legal uncertainty<sup>8</sup> has not been solved yet. There are several reasons for this, which will be partially addressed in this paper. First, most theories on the continued application of neutrality law after 1945 (Application Theories) seem convincing when not systematically reviewed to determine how adequately they reflect essential changes in the international order. This ePaper will therefore start with the historical foundation of neutrality law and the main changes of the post-1945 legal system before testing the different theories against this background and evaluating their general persuasiveness (Part 1).
- 5 Second, too little attention is dedicated to the central implication of the shifted international system on neutrality law – the emergence of at least an (illegal) third option for third states. This ePaper will discuss this third status from the angle of all Application Theories (Part 1) and illustrate its content for the most convincing theory of optional neutrality (Part 2). For a better systematic understanding, focusing on legal and *illegal* options in this context is crucial. This is innovative since, notwithstanding

the high scholarly interest in the legality of (military) assistance to Ukraine, the concrete options of states remain implicit in many papers, Even Matsuyama, who analyzes "Third State Options", dedicates her analysis only to the content, the limits and the implications of neutrality duties and options concerning United Nations General Assembly (UNGA) and the United Nations Security Council (UNSC) resolutions.<sup>9</sup> This goes along with an intensive critique of the often-defended qualified neutrality, which is necessary to renew the openness for other approaches.

- 6 Third, many contributions focus either on the conceptual evolution of the law of neutrality or on questions of state practice and *opinio juris*. Wentker, himself basing his reasoning on a deductive analysis of the sources of international law "inductively confirm[ed]"<sup>10</sup> by state practice, helpfully differentiates between the first conceptual-deductive approach and the second state practice-inductive approach.<sup>11</sup> Following inter alia Ronzitti, Schindler, Ferro and Verlinden<sup>12</sup> this ePaper combines both by dedicating Part 1 to conceptual<sup>13</sup> considerations and discussing the two borderline cases of Germany and Austria as practical examples in Part 2.
- 7 Fourth, the missing *opinio juris* and legal uncertainty is often just accepted, as Ingber criticizes,<sup>14</sup> instead of being analyzed as a central problem that can be solved. Bartolini and Pertile offer such an analysis;<sup>15</sup> Zugliani and Bothe call for a new codification<sup>16</sup> and Ingber advocates for the complete obsolescence of neutrality law as a solution.<sup>17</sup> This ePaper tries to analyze and illustrate this problem, building upon their work (Part 2) while offering a concrete idea of how neutrality law should be re-codified (Part D). The broader goal of this ePaper is to facilitate it states to overcome the current legal uncertainty. This should be reached by answering the following question: ***Which Options are available for Third States under the Law of Neutrality after the 2022 Russian Aggression against Ukraine, and what does this mean in practice?***
- 8 The applied methodology combines theoretical and practical argumentation. It is based on legal and political-legal reasoning and an analysis of primary and secondary sources. The ePaper is structured, as mentioned, in three parts. Part 1 offers a systematic theoretical analysis that leads to the rejection of qualified neutrality and, based upon Eveline Schmid's arguments, embraces optional neutrality.<sup>18</sup> Afterwards, Part 2 will discuss the changing CIL on neutrality and the related legal uncertainty for states, using the examples of Germany and Austria. Based on these theoretical and CIL-based analyzes, a categorization of third states' options in an armed conflict will be proposed in Part 3. Part E concludes the findings of this work. The renewed interest in neutrality law and its practical relevance after the Russian aggression against Ukraine connects Part 1 and 2 and explains the focus on the 21<sup>st</sup> century as a time in which extensive third state support for a victim of aggression tests in practice how the comprehensive outlawing of the use of force has changed traditional neutrality law.

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## FOOTNOTES

1. E.g., Andrew Clapham, *War* (1st edn, Oxford University Press 2021) <<https://academic.oup.com/book/57867/chapter/471836291>> accessed 4 February 2025; e.g.,

Evelyne Schmid, 'Optional but Not Qualified: Neutrality, the UN Charter and Humanitarian Objectives' [2024] *International Review of the Red Cross* 1 <[https://www.cambridge.org/core/product/identifier/S1816383124000183/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S1816383124000183/type/journal_article)> accessed 28 January 2025.

2. E.g., Natalino Ronzitti, 'Neutrality, Non-Belligerency, and Permanent Neutrality According to Recent Practice and Doctrinal Views' (2024) 29 *Journal of Conflict and Security Law* 55 <<https://academic.oup.com/jcsl/article/29/1/55/7603866>> accessed 4 February 2025; e.g., 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 19 January 2025; e.g., Stefan AG Talmon, 'The Provision of Arms to the Victim of Armed Aggression: The Case of Ukraine' (2022) Paper No. 20/2022 Bonn Research Papers on Public International Law 1 <<https://papers.ssrn.com/abstract=4077084>> accessed 19 January 2025.

3. Ronzitti (n 2); Schmid (n 1).

4. Alexander Wentker, 'The Armed Attack Exception To Neutrality in International Peace and Security Law' (2024) 73 *International and Comparative Law Quarterly* 963, 965, who starts his contribution with a similar description of the setting as this paper does.

5. E.g., Giulio Bartolini, 'The Ukrainian–Russian Armed Conflict and the Law of Neutrality: Continuity, Discontinuity, or Irrelevance?' (2024) 71 *Netherlands International Law Review* 281 <<https://link.springer.com/10.1007/s40802-024-00262-8>> accessed 28 January 2025; e.g., Giulio Bartolini and Marco Pertile, 'Relic of the Past or Immortal Phoenix? The Legal Relevance of Neutrality in the Russo-Ukrainian War' (2023) 32 *The Italian Yearbook of International Law Online* 201 <[https://brill.com/view/journals/iyio/32/1/article-p201\\_10.xml](https://brill.com/view/journals/iyio/32/1/article-p201_10.xml)> accessed 12 February 2025; e.g., Niccolò Zugliani, 'The Supply of Weapons to a Victim of Aggression: The Law of Neutrality in Light of the Conflict in Ukraine' (2024) 35 *European Journal of International Law* 389 <<https://academic.oup.com/ejil/article/35/2/389/7664323>> accessed 12 February 2025.

6. E.g., Pearce Clancy, 'Neutral Arms Transfers and the Russian Invasion of Ukraine' (2023) 72 *International and Comparative Law Quarterly* 527 <[https://www.cambridge.org/core/product/identifier/S0020589323000064/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S0020589323000064/type/journal_article)> accessed 18 January 2025; e.g., Wentker (n 4).

7. E.g., Bartolini (n 5); e.g., Zugliani (n 5).

8. See e.g., Rebecca Ingber, 'The Abuse of Neutrality' (2025) 65 *Virginia Journal of International Law* 1 <<https://papers.ssrn.com/abstract=5028229>> accessed 1 June 2025, who speaks of 'legal confusion' (p. 5) and an 'uncertain status of neutrality law' (p. 54); see e.g., Zugliani (n 5) speaking of 'uncertainty regarding the law of neutrality' (p. 410); see e.g., Schmid (n 1) speaking of 'uncertainties' (p. 16); see e.g., Dietrich Schindler, 'Transformations in the Law of Neutrality since 1945' in Astrid J Delissen and Gerard J Tanja, *Humanitarian law of armed conflict challenges ahead: essays in honour of Frits Kalshoven* (Martinus Nijhoff 1991) <<https://brill.com/edcollbook/title/9198>> accessed 20 March 2025 speaking of 'a state of uncertainty' (p. 368); cf. Andrea Gioia, 'Neutrality and Non-Belligerency' in Harry HG Post (ed), *International Economic Law and Armed*

*Conflict* (Martinus Nijhoff, 1994) 51 <<https://brill.com/edcollbook/title/9420>> accessed 20 March 2025.

9. Saori Matsuyama, 'The Impact of the United Nations General Assembly's Qualification of Aggression on the Law of Neutrality' in Shuichi Furuya, Hitomi Takemura and Kuniko Ozaki (eds), *Global Impact of the Ukraine Conflict* (Springer Nature Singapore 2023) <[https://link.springer.com/10.1007/978-981-99-4374-6\\_14](https://link.springer.com/10.1007/978-981-99-4374-6_14)> accessed 13 February 2025.

10. Wentker (n 4) 985.

11. *ibid* e.g., 965.

12. Schindler (n 8); Ronzitti (n 2); Luca Ferro and Nele Verlinden, 'Neutrality During Armed Conflicts: A Coherent Approach to Third-State Support for Warring Parties' (2018) 17 *Chinese Journal of International Law* 15 <<https://academic.oup.com/chinesejil/article/17/1/15/4990421>> accessed 28 January 2025.

13. Cf. Wentker (n 4) e.g., 967 for this wording; cf. Ferro and Verlinden (n 12) e.g., 30 for this wording.

14. Ingber (n 8) 6.

15. Bartolini and Pertile (n 5) 227–230.

16. Zugliani (n 5) 410; Michael Bothe, 'Neutrality, Concept and General Rules', *Oxford Public International Law* (Max Planck Institute for Comparative Public Law and International Law 2015) para 8 <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e349?prd=MPIL>> accessed 9 February 2025.

17. Ingber (n 8) 6.

18. See for a comparable structure and result Robert Kolb and Benjamin Meret, 'Clarifying Neutrality: The Rise of Different Statuses?' (*Lieber Institute West Point*, 19 March 2025) <<https://lieber.westpoint.edu/clarifying-neutrality-rise-different-statuses/>> accessed 14 May 2025.

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## **Part 1. Can Neutrality Be Optional? – Non-Belligerency and Concurring Ideas of Traditional, Qualified, and Optional Neutrality**

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# I. Traditional Neutrality: Taking Part in the "Duel" or Standing by?

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- 1 This part<sup>19</sup> analyzes the content and sources of traditional neutrality (1) and discusses its historical context and the idea behind it (2).

## 1. Sources and Content of Traditional Neutrality Law

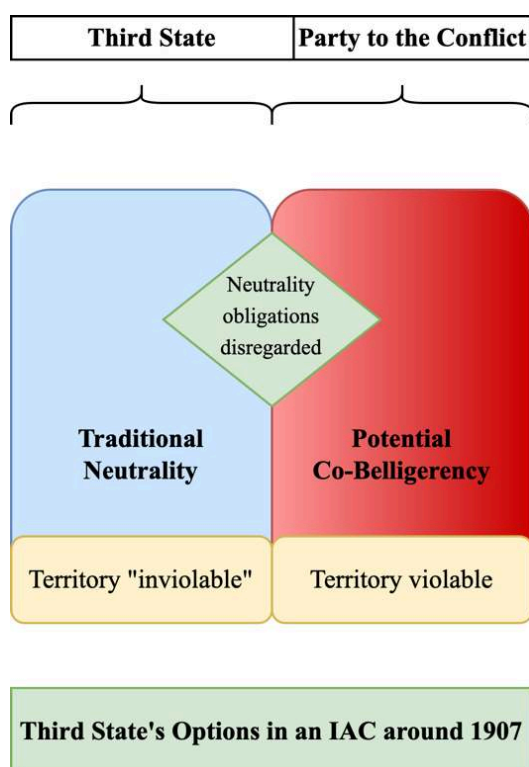
- 2 The law of neutrality traces back to the European Middle Ages, and the first notable codification between a limited number of then-existing "states" was reached in the late 18<sup>th</sup> century.<sup>20</sup> In 1907, 43 states and 40 states respectively signed the influential Hague Conventions V and XIII.<sup>21</sup> Described as the "culmination" of the "historic development"<sup>22</sup> of neutrality law, the two treaties regulate the "Rights and Duties of Neutral Powers" in case of an international armed conflict on land (Hague V) and on the sea (Hague XIII). It remains in force today, binding 34 (Hague V) and 30 (Hague XIII) member states, which include not only Russia and Ukraine (since 2015), but also Germany and Austria.<sup>23</sup>
- 3 The relationship between these two Hague Conventions and customary international law is nuanced. Some authors describe the Hague Conventions as CIL,<sup>24</sup> but this disregards Upcher's observation that these Conventions do not fully reflect the customary international law even of that time.<sup>25</sup> He argues that they codify, for instance, impartiality not as a duty but as something that "designates the way in which other neutral duties are discharged."<sup>26</sup> The extent of the applicability of the two Hague Conventions to around 160 non-member states today depends, to a significant degree, on the exact content and development of customary law<sup>27</sup> – especially regarding the applicability to states which came into existence after the initial development of customary neutrality law.<sup>28</sup> While the further development and change of this law will be discussed in Part 2, traditional neutrality law<sup>29</sup> – eventually changed by newer developments – will be understood here as the combination of the two Hague Conventions and the customary neutrality law at that time, which share at least their key characteristics. Talmon notes that "[t]he core of today's customary international law of neutrality was laid down in two of the 1907 Hague Conventions on the laws of war."<sup>30</sup>

- 4 Ronzitti describes the basic traditional duties of neutrals, under customary international law and codified in the Hague Conventions, as the duties of abstention, prevention, and impartiality.<sup>31</sup> Under the first, neutral states need to abstain from weapon deliveries, the second requires them to prevent the use of their territory by belligerents, and the third demands an impartial treatment of the belligerents.<sup>32</sup> Based on Bothe, Talmon summarizes these three duties epigrammatically: "the duties of abstention, impartiality, and prevention [mean that] the neutral State must abstain from participating in the armed conflict, it must not discriminate between the belligerents, and it must prevent violations of its neutrality and its national territory by the belligerents. In particular, the law of neutrality prohibits neutrals from providing weapons, ammunition and other war material to the belligerents or supporting them in any other way, for example by providing militarily intelligence."<sup>33</sup>
- 5 In detail, this means that Articles 1 – 5 of Hague V – which is of greater relevance for our purpose – protect the neutral's "inviolable" territory.<sup>34</sup> Hence, no "troops or convoys of either munitions of war or supplies" may be transported through neutral territory;<sup>35</sup> no telecommunication stations may be established or used "for purely military purposes"<sup>36</sup> and no "recruiting agencies" may work from neutral territory.<sup>37</sup> Furthermore, Article 9 reflects, as Upcher puts it, the principle of impartiality.<sup>38</sup> Hague V does not require neutral States to "prevent the export or transport, [of inter alia] arms [and] munitions of war"<sup>39</sup> or "to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus"<sup>40</sup> as long as it is "impartially applied [...] to both belligerents".<sup>41</sup> Moreover, Hague V foresees the internment of belligerent troops crossing neutral territory.<sup>42</sup> At the same time, it allows transporting and caring for wounded and sick in neutral territory, given that they are prevented from returning to the hostilities.<sup>43</sup> Nationals of a neutral state can lose their neutral status<sup>44</sup> by "hostile acts against a belligerent" and, inter alia, "voluntarily [enlisting] in the ranks of the armed force of one of the parties."<sup>45</sup> However, a neutral state is not responsible for individuals leaving its territory to support a belligerent.<sup>46</sup> Importantly, Hague V only applies "between Contracting Powers and only if all the belligerents are Parties to the Convention".<sup>47</sup>
- 6 Upcher, similarly to Clapham, acknowledges that the inviolability of neutral territory does not arise from the law of neutrality but from the state's sovereignty.<sup>48</sup> As a report during the drafting process on Hague Convention XIII puts it, "the right [to inviolability of its territory is] inherent in the very existence of States".<sup>49</sup> Upcher stresses, however, that "the neutral's inviolability was initially quite limited, as States could simply exchange a State's neutrality for belligerency through a declaration of war."<sup>50</sup> According to Upcher, a breach of the duty to prevent gave the aggrieved belligerent under customary international law the right to end the violation of neutrality, even by entering the territory of the neutral state.<sup>51</sup> Talmon agrees by arguing that "[v]iolations of these duties can be punished by a belligerent with countermeasures or armed reprisals and, ultimately, with treatment of the assisting State as a warring party."<sup>52</sup> In practice, a third states' territory was hence not sufficiently protected by its sovereignty; the effective and "absolute"<sup>53</sup> protection of its territory was the "reward" for adhering to its neutrality obligations.<sup>54</sup>

## 2. Historic Context and Idea of Traditional Neutrality

- 7 This clear set of neutrality regulations and the severe consequence of breached neutrality stands in opposition to the regime governing the use of force. Many scholars argue that states had an unlimited right to wage a war,<sup>55</sup> which is, according to Verdebut, a historic construction, a "narrative of indifference".<sup>56</sup> She argues that states felt already obliged to offer "articulated legal reasoning [...] justifying [their] use of force"<sup>57</sup> before the First World War and that most 19<sup>th</sup> and early 20<sup>th</sup> century scholars considered that "the right to use force was limited by international law".<sup>58</sup> Her analysis, not aiming "to determine the precise content of the rules",<sup>59</sup> mentions the high "formalisation and codification of the rules on the use of force"<sup>60</sup> in the 20<sup>th</sup> century. Hence, her findings suggest that the prohibition of the use of force existed but was less formalised and less codified before the First World War. Heintschel von Heinegg describes, for example, the conditions of legal recourse to war after the Hague Conferences (1899 – 1907), which would not profoundly limit a state's right to resort to war.<sup>61</sup> This implies a relatively high risk for all third states to be considered a party to the conflict, at least when not being neutral. This is because the recourse to war was supposedly either not formally and clearly regulated or legal as soon as a very low threshold was passed (e.g., breach of a neutrality obligation).

Illustration 1 – Third State's Options under Traditional Neutrality



Source: Author, 2025.

- 8 In the assumed absence of a legal limit between a conflict party and an unneutral third state, there was no space for an unneutral state that is not at risk of being considered a party to the conflict. Consequently, not being neutral meant *ipso facto* risking being considered a party to the conflict; it meant *ipso facto* becoming a potential<sup>62</sup> co-belligerent.<sup>63</sup> There were only two options. The idea underlying this pre-World War

customary neutrality law and the Hague Conventions is, therefore, as Schmid puts it, a "binary" differentiation between two statuses: co-belligerency and neutrality.<sup>64</sup> Schindler describes this as "dualism neutrality – belligerency", meaning that "any non-participating State should have the free choice to enter the war as a belligerent or to remain neutral and to apply the law of neutrality."<sup>65</sup> El-Zein, agreeing with this "dichotomy", argues that "neutrality was the only option for states apart from entering the conflict."<sup>66</sup> This dichotomy is visualized in Illustration 1.

- 9 Apart from a state's security, neutrality was considered to have other advantages. The idea of traditional neutrality law was protecting the third state's territory and the "[limitation]" of warfare and maintaining economic relations between the third state and the belligerent.<sup>67</sup> Furthermore, following conventional wisdom, neutrality effectively prevented conflicts from escalating by limiting them to two parties.<sup>68</sup> This is especially important for those conflicts Clapham describes as "a duel to resolve a dispute or reclaim a debt."<sup>69</sup>
- 10 This positive effect of neutrality on conflict limitation is, however, questionable. Clapham gives the example of German violations of the US neutrality rights as a reason for the latter's entry into the First World War.<sup>70</sup> According to him, this illustrates how "insisting on neutral duties could be another way to expand rather than reduce the use of force abroad."<sup>71</sup> This can lead to an escalation of the conflict and to "more tension rather than less violence"<sup>72</sup> – exactly what neutrality was said to prevent.

### 3. Interim Result

- 11 Hence, traditional neutrality must be remembered as being only effective to a certain extent in reaching its goal of conflict limitation. As an optional and protective status, neutrality was the only alternative to risking becoming party to a conflict. Under customary international law and the Hague Conventions V and XIII, traditional neutrality is connected with a range of rights and obligations, including the duties of abstention, prevention, and impartiality.

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#### FOOTNOTES

19. For the formulations in the title, see Clapham (n 1) 71; and Wentker (n 4) 968; and Wolff Heintschel von Heinegg, 'Neutrality in the War against Ukraine' (*Lieber Institute West Point*, 1 March 2022) <<https://lieber.westpoint.edu/neutrality-in-the-war-against-ukraine/>> accessed 19 January 2025; Talmon (n 2) 21; for the description of the binarity between Traditional Neutrality and Belligerency see e.g., Schmid (n 1) 3.

20. Wolff Heintschel von Heinegg, '§ 66. Neutralitätsrecht' in Knut Ipsen, *Völkerrecht* (ed. V. Epping/W. Heintschel von Heinegg) (7 ed, CH Beck 2018) 1353; Paul Seger, 'The Law of Neutrality' in Andrew Clapham and Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (1st edn, Oxford University Press 2014) 250 <<https://doi.org/10.1093/law/9780199559695.003.0010>> accessed 9 February 2025.

21. 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) 205 CTS 299 ("Hague V"); Hague Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War, (adopted 18 October 1907, entered into force 26 January 1910) 205 CTS 395 ("Hague XIII"); ICRC, 'Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. The Hague, 18 October 1907.' (*IHL Databases*, 2025) <<https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-v-1907/state-parties>> accessed 14 June 2025; ICRC, 'Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War. The Hague, 18 October 1907.' (*IHL Databases*, 2025) <<https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-xiii-1907/state-parties>> accessed 14 June 2025.
22. Own translation of Heintschel von Heinegg, '§ 66. Neutralitätsrecht' (n 20) 1353.
23. ICRC, 'Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. The Hague, 18 October 1907.' (*IHL Databases*, 2025) <<https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-v-1907/state-parties>> accessed 14 June 2025; ICRC, 'Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War. The Hague, 18 October 1907.' (*IHL Databases*, 2025) <<https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-xiii-1907/state-parties>> accessed 14 June 2025.
24. Kolb and Meret (n 18).
25. James Upcher, *Neutrality in Contemporary International Law* (James Upcher ed, 1st edn, Oxford University Press 2020) <<https://doi.org/10.1093/law/9780198739760.003.0001>> accessed 9 February 2025 Chapter 3; cf. also Pearce Clancy, 'Permanent Neutrality in International Law' (May 2024) 18–19.
26. Upcher (n 25) 73.
27. Cf. Bothe, 'Neutrality, Concept and General Rules' (n 16) para 7.
28. Cf. Schmid (n 1) 11, who mentions as a problem that the 'law of neutrality emerged prior to decolonialization'; see for a broader debate on the relation between decolonized states and CIL, George Rodrigo Bandeira Galindo and César Yip, 'Customary International Law and the Third World: Do Not Step on the Grass' (2017) 16 *Chinese Journal of International Law* 251 <<https://doi.org/10.1093/chinesejil/jmx012>> accessed 12 June 2025.
29. The descriptive term "traditional" is taken from Clapham (n 1); Schmid (n 1); Talmon (n 2).
30. Talmon (n 2) 2–3.
31. Ronzitti (n 2) 3; Lassa Oppenheim, *International Law: A Treatise, Vol 2* (Hersch Lauterpacht ed, 7th edn, Longmans 1952) 653–661; DP O'Connell, *The International Law of the Sea: Volume II* (IA Shearer ed, 1st edn, Oxford University Press 1984) 1141–1158 <<https://doi.org/10.1093/law/9780198254690.003.0015>> accessed 4 June 2025.
32. Ronzitti (n 2) 3.
33. Talmon (n 2) 3; Michael Bothe, 'Neutrality, Concept and General Rules' in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law, vol. VII* (2nd ed., fully revised and updated, Oxford University Press 2012) para 36.

34. Article 1 Hague V.
35. Article 2 Hague V.
36. Article 3 Hague V.
37. Article 4 Hague V.
38. Upcher (n 25) 73–77, as mentioned above, Upcher does not perceive impartiality in the Hague Conventions as duty.
39. Article 7 Hague V.
40. Article 8 Hague V.
41. Article 9 Hague V.
42. Article 11 Hague V.
43. Article 14 Hague V.
44. Article 16 Hague V.
45. Article 17 Hague V.
46. Article 6 Hague V.
47. Article 20 Hague V.
48. Upcher (n 25) 113; Clapham (n 1) 61.
49. Quoted after Upcher (n 25) 113.
50. *ibid.*
51. *ibid* 92–93; based on Erik Castrén, *The Present Law of War and Neutrality*, vol 85 (Suomalainen Tiedeakatemia 1954) 442; based on Anonymous, ‘International Law and Military Operations against Insurgents in Neutral Territory’ (1968) 68 *Columbia Law Review* 1127 <<https://www.jstor.org/stable/1120859>> accessed 4 June 2025; based on Robert W Tucker, *The Law of War and Neutrality at Sea* (US Government Printing Office 1957) 262.
52. Talmon (n 2) 3.
53. Own translation of Jamal El-Zein, *Das Ende des Neutralitätsrechts*, vol 26 (1st edn, Nomos Verlagsgesellschaft mbH & Co KG 2024) 209 <<https://www.nomos-elibrary.de/index.php?doi=10.5771/9783748916024>> accessed 9 February 2025.
54. Ingber (n 8) 17.
55. E.g., Talmon (n 2) 8.
56. Agatha Verdebout (ed), *Rewriting Histories of the Use of Force: The Narrative of ‘Indifference’* (Cambridge University Press 2021) 13 <<https://www.cambridge.org/core/books/rewriting-histories-of-the-use-of-force/introduction/A84A0EDEBFB19970FDD5BC9382783363>> accessed 15 May 2025.
57. *ibid* 12.
58. *ibid.*
59. *ibid.*

60. *ibid* 326.

61. Wolff Heintschel von Heinegg, '§ 55. Vom ius ad bellum zum ius contra bellum (Kriegsverbot, Gewaltverbot und Interventionsverbot)' in Knut Ipsen, *Völkerrecht* (ed. V. Epping/ W. Heintschel von Heinegg) (7 ed, CH Beck 2018) 1134–1135.

62. Ultimately, co-belligerency depends on the reaction of the aggrieved belligerent, see for this point in modern times Terry D Gill and Kinga Tibori-Szabó, *The Use of Force and the International Legal System* (Cambridge University Press 2023) 342 <<https://www.cambridge.org/core/books/use-of-force-and-the-international-legal-system/579A8A9C4D46096E0998EEC435E7A76B>> accessed 20 March 2025; it is also possible to breach neutrality obligations without facing legal consequences, as illustrated by Heintschel von Heinegg, 'Neutrality in the War against Ukraine' (n 19) 554; cf. Ingber (n 8) 23.

63. Please note that Ingber (n 8) 22–23, 42–47 heavily criticizes the concept of co-belligerency as misused and without legal relevance. For the purpose of this ePaper it will be used to describe parties to a conflict (under IHL) according to the definition provided by Schmitt (n 2): 'allies or other States engaged in an international armed conflict (IAC) with a common enemy'.

64. Schmid (n 1) 3–4, 13, 14; see also Bothe, 'Neutrality, Concept and General Rules' (n 16) para 12; see also Ingber (n 8) 6–8.

65. Schindler (n 8) 371.

66. Own translation, El-Zein (n 53) 207, 208.

67. Constantine Antonopoulos, *Non-Participation in Armed Conflict: Continuity and Modern Challenges to the Law of Neutrality* (1st edn, Cambridge University Press 2022) 220 <<https://www.cambridge.org/core/books/nonparticipation-in-armed-conflict/CB9B143E277756AD5118D37FACD615CB>> accessed 13 February 2025; Seger (n 20) 250.

68. Schmid (n 1) 4 and her respective literature review in footnote 2.

69. Clapham (n 1) 71.

70. *ibid* 70; Stephen C Neff, *The Rights and Duties of Neutrals: A General History* (Manchester University Press 2000) 162 <<https://www.manchesterhive.com/display/9781526170576/9781526170576.xml>> accessed 4 June 2025.

71. Clapham (n 1) 70.

72. *ibid*.

## II. The Prohibition of the Use of Force and the Decreasing Importance of Neutrality

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- 1 This part analyzes the changes of the international legal system (1) and its effects on neutrality law (2).

### 1. Changes in the International Legal System

- 2 In the years following the Hague codification of neutrality law, the world faced severe changes, including the almost comprehensive proscription of war, with significant effects on the law of neutrality.<sup>73</sup> The Covenant of the League of Nations, which was in force from 1920 to 1946 between up to 60 states,<sup>74</sup> foresees peaceful means for the settlement of disputes between members (Articles 12, 13, 15) and joint action against the "aggression" of non-members (Articles 10, 11) and of members in breach of their obligations (Article 16).<sup>75</sup> Moreover, it "[recognised] that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety",<sup>76</sup> contributing to the slow condemnation of war, although with limited success.<sup>77</sup> In 1928, ten mainly Western states went further by agreeing on the legally binding Kellogg-Briand Pact with which they "[condemned] recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another."<sup>78</sup> Apart from this Pact, which remains in force,<sup>79</sup> the Charter of the United Nations prohibits, in Article 2(4), "the threat or use of force against the territorial integrity or political independence of any state".<sup>80</sup> Applying also as CIL, this outlaws war for the entire international community.<sup>81</sup>
- 3 Based on Verdebout's already mentioned finding that even before the Covenant, war was not an entirely lawful option for states, Schmid questions the importance of the Covenant, the Pact of Paris, and the UNC regarding the outlawing of war and its implications for neutrality law.<sup>82</sup> While historic accuracy is essential, the degree to which war is condemned is decisive here.<sup>83</sup> Schmid admits that the regulation of the use of force was less "explicit"<sup>84</sup> before the First World War. Hence, the Covenant, the Pact of Paris, and the UNC can nonetheless be regarded as meaningful shifts in the

international legal order, even though they do not represent an absolute change from the perfect legality of war before the First World War to its complete condemnation afterwards.

- 4 Establishing the UNC system with the prohibition of the use of force has several consequences for the international legal architecture and its logic, impacting the law of neutrality. <sup>85</sup>Ingber, for example, describes "the world's ostensible outlawing of war" as a "turning point" and as a "critical juncture in international law history that compelled the shift in neutrality's legal consequences".<sup>86</sup> The following five changes<sup>87</sup> attempt to capture the major shifts relevant to the neutrality law.

1. *Jus ad Bellum* (Illegality of Force Change)

The use of force and recourse to war are, in principle, prohibited. However, the *jus ad bellum* provides a special regime regulating under which circumstances, namely (collective) self-defense under Article 51 UNC and an UNSC authorization of force under Chapter VII, the use of force is legal. This has three central implications.

2. State Sovereignty (Territorial Protection Change)

First, this prohibition of "the threat or use of force against the territorial integrity or political independence of any state"<sup>88</sup> guarantees, according to Upcher, Ingber, Schindler, and El-Zein, the inviolability of third states' territory independently from neutrality law.<sup>89</sup> Hence, mere breaches of neutrality obligations, below the entry into an armed conflict, are no longer a sufficient legal basis for an aggrieved belligerent to use force against a third state.<sup>90</sup> Therefore, neutrality is no longer a precondition for territorial integrity, which gives effect to Clapham's observation of the inviolability of a third state's territory "as flowing from states' sovereignty over their own territory."<sup>91</sup> Ingber, sharing this view, summarizes: "Under international law today, that inviolability [of a third state's territory] comes standard."<sup>92</sup>

3. New Threshold for Belligerency (Threshold Change)

Second, the prohibition of the use of force implies not only that the protection from a third state's territory is independent from the adherence to neutrality obligations but also the co-belligerency in a conflict. While the *jus ad bellum* determines the legality of this co-belligerency, its existence is defined, following Schmitt, Ingber, Herdegen, Gill and Tibori-Szabó, by passing a certain threshold under International Humanitarian Law (IHL).<sup>93</sup> Krajewski underlines accordingly: "The question of when a state is a party to a conflict within the meaning of international humanitarian law should also not be answered by recourse to the law of neutrality."<sup>94</sup>

4. Equality of Belligerents (Belligerent Inequality Change)

Third, as Schmid points out, almost "any inter-State conflict is the result of a violation of the Charter."<sup>95</sup> This implies that, despite varying clarity, IACs have, in general, an aggressor and a victim. For many scholars, this challenges the principle of equality of belligerents underlying the law of neutrality.<sup>96</sup> If one belligerent uses unjustified force under the *jus ad bellum*, they argue, third states might be or feel required to treat it differently from the belligerent in self-defense.

5. Mandatory UNSC Measures (UNSC Measures Change)

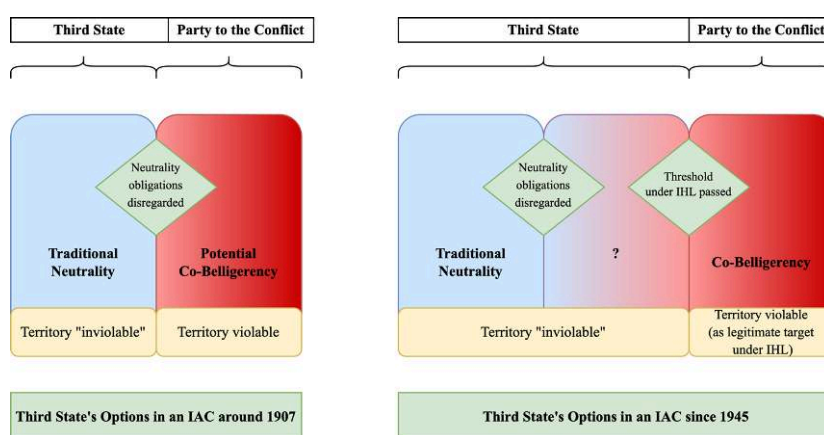
Under Chapter VII, the UNSC can take forceful measures against a state it has determined to be an aggressor. Considering the duty to assist in Article 2(5) UNC and the prevalence of the UNC over other legal obligations according to Article 103 UNC, this is sometimes considered a limitation of neutrality obligations (see B.III).

- 5 Having decoupled breaches of neutrality law from the inviolability of a third state's territory (*Territorial Protection Change*) and from potential co-belligerency (*Threshold Change*), the post-UNC order creates a third status between breached neutrality obligations and the IHL threshold of conflict participation. Even if sometimes rejected,<sup>97</sup> this status exists at least as an illegal option for third states,<sup>98</sup> just because the breach of neutrality obligations does not *ipso facto* lead to co-belligerency<sup>99</sup>. Kolb and Meret reverse the argument and reduce it to absurdity: "[I]f there existed only two statuses,

to abandon its neutrality a State would have to use force or be seen by other States as having resorted to the use of force."<sup>100</sup>

- 6 Based on the *Belligerent Inequality Change*, Schindler agrees that "[t]he dualism neutrality-belligerency has thereby been abolished."<sup>101</sup> According to him and El-Zein, and unlike around 1907, the post-UNC order knows at least three states<sup>102</sup> (see Illustration 2) whose legality and role are disputed, as the following part will show. Komarnicki describes this status as "'half-way house' between belligerency and neutrality."<sup>103</sup> By thinking not only in legal options available for states, but also considering illegal alternatives,<sup>104</sup> we ask more freely how this "half-way house" *could* look like. This enables us to conclude how it, most convincingly, *does* look. Based on Schmuki's understanding and illustration of the "neutrality-belligerency continuum", on which the "impartiality threshold" and the "non-participation threshold" divide the three options of third state's options, this can be depicted as in Illustration 2.<sup>105</sup>

Illustration 2 – Third State's Options after 1945



Source: Author, 2025 (the basic idea of this and the other illustrations stems from Schmuki (n 105) 31).

- 7 The Third Geneva Convention and the Additional Protocol I, "which were drafted after the UN Charter" as Heller and Trabucco stress, can, following Talmon, be read as confirming the existence of such a third status by differentiating between "neutral and other States not Parties to the conflict"<sup>106</sup> and "neutral or non-belligerent Powers".<sup>107</sup>
- 8 Showing the relevance of neutrality law,<sup>108</sup> the International Court of Justice (ICJ) offers little guidance on incorporating these changes and the new status into the traditional law of neutrality.<sup>109</sup> In *Nuclear Weapons*, it held vaguely "that the principle of neutrality, whatever its content, [...] is applicable (subject to the relevant provisions of the United Nations Charter)".<sup>110</sup> In *Oil Platforms*, the ICJ mentions attacks against neutral vessels.<sup>111</sup> Vice-President Ammoun's separate opinion on the *Namibia* Advisory Opinion reflects an understanding of neutrality as compulsory and applicable<sup>112</sup> – which is, however, not shared by the majority, which does not even mention neutrality in their reasoning.<sup>113</sup>

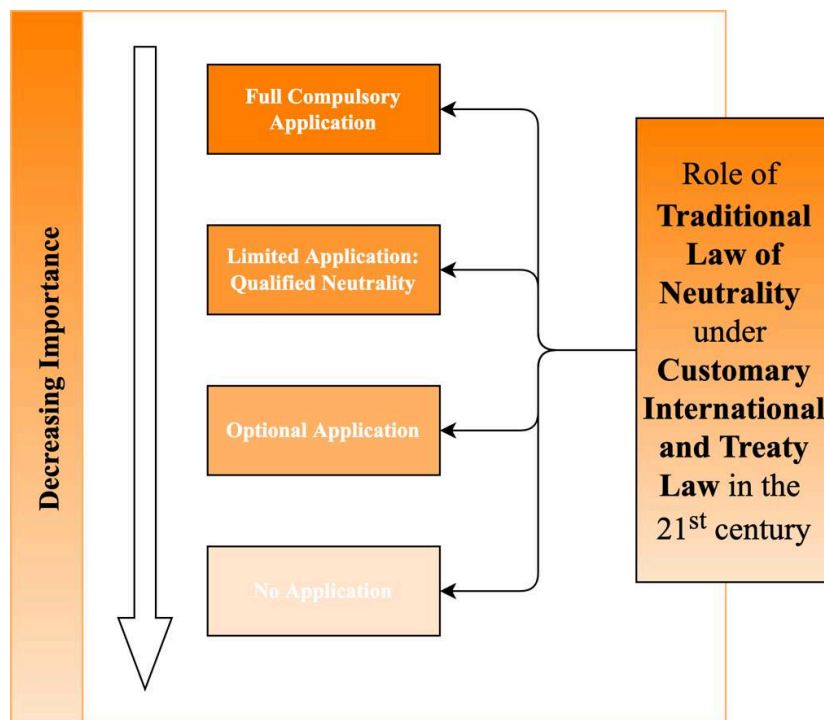
## 2. Neutrality Law in a Changed International System

- 9 Without an authoritative finding, we can consider different ways the third status and the shifts in the legal architecture regulating war and peace could have affected the law of neutrality. First, the establishment of the UNC legal order could have, in general terms, "changed"<sup>114</sup> or, more specifically, (partially) "superseded"<sup>115</sup> the Hague

Conventions and respective custom. Following Wentker, systemic integration under CIL codified in Article 31(3)(c) VCLT<sup>116</sup> allows methodologically to "take into account" the UNC as "relevant [rule] of international law applicable in the relations between the parties" when interpreting the Hague Conventions and respective custom.<sup>117</sup>

- 10 Second, a change in practice and *opinio juris* could have led to subsequent practice in the sense of Article 31(3)(b) or to modified CIL, which can also affect the Hague Conventions.<sup>118</sup> As we will see in Part 2, current state practice and *opinio juris* are not a solid basis for such a claim,<sup>119</sup> which is why we focus, as Wentker does, first on "how [...] structural considerations inform neutrality duties under treaty law as well as under customary international law."<sup>120</sup>
- 11 Turning to the potential results of this modification or systemic integration, different schools defend various theories on how neutrality law applies today, which we will call Application Theories. This categorization is based on Zugliani's and Bartolini's systematization of possible approaches (regarding customary neutrality law).<sup>121</sup> First, the law of neutrality could apply just as codified in the Hague Conventions and respective custom from the early 20<sup>th</sup> century, or with minor modifications. Second, coming to the extreme view on the opposite side, the neutrality law could be overridden entirely. Third, as a middle position, the law of neutrality could apply as in 1907, except for cases of a "flagrant"<sup>122</sup> aggression.<sup>123</sup> Fourth, neutrality could be among several legal options for third states, rendering it a non-compulsory status with specific legal implications. If depicted graphically, the different potential states of neutrality law look, sorted by the importance of neutrality, as shown in Illustration 3.
- 12 The extent to which neutrality applies is an essential question of current relevance because it decides inter alia about the legality of weapon deliveries. Clancy argues that states can see the primary rule of neutrality as inapplicable or say its breach is justified.<sup>124</sup> Consequently, support for a belligerent is legal when neutrality as a primary rule is not applicable (qualified, optional, and obsolete neutrality) or if its breach can be justified (arguably compulsorily applicable neutrality).

Illustration 3 – The Importance of Neutrality under CIL and Treaty Law



Source: Author, 2025.

### 3. Interim Result

- <sup>13</sup> The comprehensive prohibition of the use of force implies several changes for the law of neutrality, which can result in different degrees of applicability of neutrality law. The following parts will assess how adequately the four Application Theories incorporate these five changes of our legal system and the emerged third status in their conception of neutrality in the 21<sup>st</sup> century.

#### FOOTNOTES

73. Wentker (n 4) 964.

74. UN Geneva, 'The League of Nations' (*The United Nations Office at Geneva*, 2025) <<https://www.ungeneva.org/en/about/league-of-nations/overview>> accessed 12 June 2025.

75. Covenant of the League of Nations (adopted 28 June 1919, entered into force 10 January 1920) 108 LNTS 188 ("Covenant").

76. Article 8 Covenant

77. Heintschel von Heinegg, '§ 55. Vom ius ad bellum zum ius contra bellum (Kriegsverbot, Gewaltverbot und Interventionsverbot)' (n 61) 1135–1136.
78. Article 1 Kellogg-Briand Pact.
79. General Treaty for the Renunciation of War as an Instrument of National Policy (adopted 27 August 1928, entered into force 24 July 1929) 94 LNTS 59 ("Kellogg-Briand Pact", "Pact of Paris"); Talmon (n 2) 13.
80. Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UNC).
81. Heintschel von Heinegg, '§ 55. Vom ius ad bellum zum ius contra bellum (Kriegsverbot, Gewaltverbot und Interventionsverbot)' (n 61) 1138; Wentker (n 4) 968.
82. Schmid (n 1) 19–20.
83. Cf. for a similar view Wentker (n 4) 964.
84. Schmid (n 1) 20.
85. Wentker (n 4) 964.
86. Ingber (n 8) 13.
87. For alternative classifications of changes see e.g., *ibid* 13–19, who connects change 4 and 5 and emphasizes change 2; see also Schindler (n 8) 371–374, who mentions change 2 and 5, while especially emphasizing the impact of Article 51 UNC.
88. Article 2(4) UNC.
89. Upcher (n 25) 113; Ingber (n 8) 13–14, 17–19; Schindler (n 8) 378, 380; El-Zein (n 53) 209, saying literally 'Schutz unabhängig davon, ob sich ein Dritter an das Neutralitätsrecht hält'.
90. E.g., El-Zein (n 53) 209.
91. Clapham (n 1) 61.
92. Ingber (n 8) 17.
93. Schmitt (n 2); Gill and Tibori-Szabó (n 62) 342–344; Ingber (n 8) 18, 22–28; cf. El-Zein (n 53) 209; Matthias Herdegen, 'Der Überfall Auf Die Ukraine Völkerrechtliche Optionen Des Westens' [2022] GSZ-Sonderausgabe 2022 1, 1.
94. Markus Krajewski, 'Neither Neutral nor Party to the Conflict?: On the Legal Assessment of Arms Supplies to Ukraine' (*Völkerrechtsblog*, 9 March 2022) <<https://voelkerrechtsblog.org/neither-neutral-nor-party-to-the-conflict/>> accessed 19 January 2025.
95. Schmid (n 1) 16.
96. E.g., Ronzitti (n 2) 16; e.g., Talmon (n 2) 8, 21; e.g., Gioia (n 8) 64, 107; for critique see Schmid (n 1) 16.
97. E.g., Talmon (n 2) 14; e.g., Wentker (n 4) 990–991; e.g., Ferro and Verlinden (n 12) 33; see also Luca Ferro and Nele Verlinden, 'The Qualified Prohibition on Third-State Assistance to Parties in Armed Conflicts: Illuminating the Myth, Interpreting the Reality', *European Society of International Law - Conference Paper Series* (European Society of International Law 2017) 7–10 <<https://www.ssrn.com/abstract=3045276>> accessed 28

January 2025, who tie the existence of the third status to the existence of either a UNSC resolution or optional neutrality (which they reject).

**98.** See Bothe, 'Neutrality, Concept and General Rules' (n 16) para 5.

**99.** Ingber (n 8) 22–28, who also argues that it never did.

**100.** Kolb and Meret (n 18).

**101.** Schindler (n 8) 373, who sees this already as proof for neutrality's optionality; similarly El-Zein (n 53) 207, 208, who sees, based on different changes, neutrality at least as qualifiable.

**102.** Dietrich Schindler, 'Transformations in the Law of Neutrality since 1945' in Astrid J Delissen and Gerard J Tanja, *Humanitarian law of armed conflict challenges ahead: essays in honour of Frits Kalshoven* (Martinus Nijhoff 1991) 373 <<https://brill.com/edcollbook/title/9198>> accessed 20 March 2025; Jamal El-Zein, *Das Ende des Neutralitätsrechts*, vol 26 (1st edn, Nomos Verlagsgesellschaft mbH & Co KG 2024) 208 <<https://www.nomos-elibrary.de/index.php?doi=10.5771/9783748916024>> accessed 9 February 2025; see also Markus Krajewski, 'Neither Neutral nor Party to the Conflict?: On the Legal Assessment of Arms Supplies to Ukraine' (*Völkerrechtsblog*, 9 March 2022) <<https://voelkerrechtsblog.org/neither-neutral-nor-party-to-the-conflict/>> accessed 19 January 2025; see also Evelyne Schmid, 'Optional but Not Qualified: Neutrality, the UN Charter and Humanitarian Objectives' [2024] *International Review of the Red Cross* 1, 3, 11–14 <[https://www.cambridge.org/core/product/identifier/S1816383124000183/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S1816383124000183/type/journal_article)> accessed 28 January 2025 for a discussion of the existence of a legal third status, its approval, and the finding that qualified neutrality and the availability of justifications for a breach of neutrality obligations somewhat accept the existence of a third status; see also James Upcher, *Neutrality in Contemporary International Law* (James Upcher ed, 1st edn, Oxford University Press 2020) 23 <<https://doi.org/10.1093/law/9780198739760.003.0001>> accessed 9 February 2025 listing neutrality, non-belligerency, and co-belligerency as options for third states before rejecting optional neutrality.

**103.** Titus Komarnicki, 'The Problem of Neutrality under the United Nations Charter' (1952) 38 *Transactions of the Grotius Society* 77, 86 <<https://www.jstor.org/stable/743159>> accessed 20 March 2025, who himself, for example, sees neutrality as 'voluntary institution' when the UNSC is inactive giving third states the right to discriminate against an aggressor.

**104.** Otherwise, the existence of a third status and the optionality of neutrality are often tied together, see e.g., Luca Ferro and Nele Verlinden, 'The Qualified Prohibition on Third-State Assistance to Parties in Armed Conflicts: Illuminating the Myth, Interpreting the Reality', *European Society of International Law - Conference Paper Series* (European Society of International Law 2017) 7–10 <<https://www.ssrn.com/abstract=3045276>> accessed 28 January 2025; or cf. Andrea Gioia, 'Neutrality and Non-Belligerency' in Harry HG Post (ed), *International Economic Law and Armed Conflict* (Martinus Nijhoff, 1994) 61 <<https://brill.com/edcollbook/title/9420>> accessed 20 March 2025.

**105.** Yann L Schmuki, 'The Law of Neutrality and the Sharing of Cyber-Enabled Data During International Armed Conflict', *2023 15th International Conference on Cyber Conflict: Meeting Reality (CyCon)* (NATO CCDCOE Publications 2023) 31 <<https://>

ieeexplore.ieee.org/document/10181885/?arnumber=10181885> accessed 31 January 2025.

**106.** Article 9(2)(a), 19 and 31 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 07 December 1978) 1125 UNTS 4.

**107.** Article 4B.(2), 122 Geneva Convention (III) Relative to the Treatment of Prisoners of War, (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135.; Talmon (n 2) 15–16.

**108.** Wentker (n 4) 968.

**109.** Cf. Ronzitti (n 2) 10.

**110.** *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226 [89].

**111.** *Oil Platforms (Islamic Republic of Iran v. United States of America)* (Judgment) [2003] ICJ Rep 161.

**112.** *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Separate Opinion of Vice-President Ammoun) [1971] ICJ Rep 16 [e.g., 13].

**113.** *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.

**114.** Ronzitti (n 2) 15.

**115.** Schmid (n 1) 9.

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

**117.** Article 31 (3)(c) VCLT; Wentker (n 4) 979–985, who uses synonymously the expression ‘systemic interpretation’.

**118.** Cf. for general considerations on modified custom and its effect on treaties Irina Buga, ‘Subsequent Customary Law as a Means of Treaty Modification’ in Irina Buga (ed), *Modification of Treaties by Subsequent Practice* (Oxford University Press 2028) <<https://doi.org/10.1093/oso/9780198787822.003.0004>> accessed 12 June 2025; and Katie A Johnston, ‘ESIL Reflection – Rules of Change and the Nature of Customary International Law’ (*European Society of International Law*, 2024) <<https://esil-sedi.eu/esil-reflection-rules-of-change-and-the-nature-of-customary-international-law/>> accessed 12 June 2025.

**119.** See also Ronzitti (n 2) 11–12, Footnote 40.

**120.** Wentker (n 4) 967.

**121.** Zugliani (n 5), discussing different theories on the co-existence of jus ad bellum and neutrality law; Bartolini (n 5), which will be discussed in more detail in Part C; see also Ronzitti (n 2) 11–12, offering a comprehensive overview on the different schools with focus on whether non-belligerency exists see; or also Kolb and Meret (n 18), who focus similarly to this ePaper mainly on differential (compulsorily applicable), qualified, and optional neutrality, coming to a comparable result; or Schmid (n 1); for

an approach suggesting different options (traditional, qualified, optional neutrality)  
how neutrality law could apply in the changed international system see also Gioia (n 8)  
54.

**122.** See for the wording e.g., Schmitt (n 2).

**123.** For a comparable suggestion of these three options see e.g., *ibid.*

**124.** Clancy (n 6) 534.

## III. Compulsorily Applicable Neutrality

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- 1 This part<sup>125</sup> discusses the theory of compulsorily applicable neutrality, which can mean an unlimited (1) or limited (2) application of neutrality.

### 1. Unlimited Application

- 2 Considering the abovementioned changes – especially the *UNSC Measures Change* – this view is hardly defensible in its absoluteness. Most scholars argue, like Ronzitti, that a UNSC resolution under Chapter VII, which determines the aggressor, takes recommendatory or mandatory measures, or authorizes force, needs to – at least – allow member states to deviate from their neutrality duties.<sup>126</sup>
- 3 The extent and the likelihood of such measures are evaluated differently in scholarship. Wentker argues that such measures do not imply a duty to deviate from neutrality obligations as the UNSC "rarely" acts under Articles 39, 41 and 42 UNC and even "if it chooses to act it will usually merely authorise action or at most impose less specific duties that do not require deviations from neutrality law."<sup>127</sup> Ronzitti agrees with him for the case of recommendatory measures, but also points to Article 2(5) UNC, which requires the member states to "give the United Nations every assistance in any action it takes in accordance with the present Charter".<sup>128</sup>
- 4 Concerning the content of mandatory UNSC measures, for Schmid, military measures cannot be included as the UNSC, under Article 42 UNC, usually only "authorizes military force, but it does not *oblige* States to use force".<sup>129</sup> What might be true as a matter of practice<sup>130</sup> and what is, admittedly, somewhat unlikely, could nevertheless be subject to future UNSC resolutions, which can, according to Ingber, "call upon" states to carry out appropriate measures, including force.<sup>131</sup> Moreover, below the threshold of military measures, UNSC resolutions can nevertheless require states to deviate from their traditional neutrality duties, for example, in the case of partial sanctions.<sup>132</sup> For such potential cases of conflict between the Charter and neutrality law, Article 103 UNC ensures, as Wentker and Ronzitti argue, the prevalence of the Charter.<sup>133</sup>
- 5 For these reasons, it can be concluded that UNSC resolutions can allow states to deviate from their neutrality obligations and, under certain circumstances, even require them

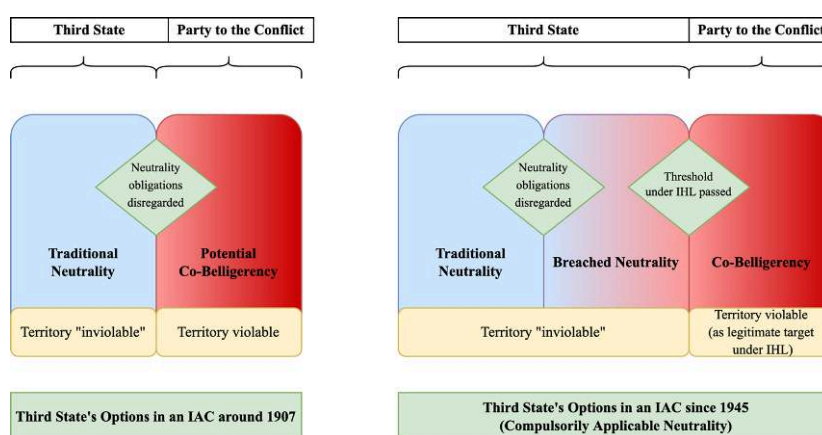
to do so, as Schindler,<sup>134</sup> Ingber,<sup>135</sup> and Gioia<sup>136</sup> made clear. Therefore, the law of neutrality has been modified for those cases.

## 2. Limited Application and Its Extent

- 6 In the absence of mandatory UNSC measures, the existence and extent of the law of neutrality are discussed more diversely. One of the most conservative positions was defended by the early Heintschel von Heinegg. He argues that "the law of neutrality remains substantively unmodified, [but] only the rules strictly necessary to achieve its object and purpose become automatically applicable during international armed conflict."<sup>137</sup> Such rules include inter alia the neutral's obligations not to deliver weapons or allow belligerents the use of their territory.<sup>138</sup> This approach rejects the existence of a third status and the possibility of qualifying neutrality as "[a] neutral State has no choice but to comply with these *essentialia neutralitatis* if it does not wish to become involved in an ongoing international armed conflict."<sup>139</sup> Accordingly, there remains a binary differentiation between those states participating in the conflict and neutral third states.
- 7 The non-compliance of states with these "*essentialia neutralitatis*" of their neutrality duties is, meanwhile, according to him, explainable by the lack of enforcing power of the aggrieved belligerent.<sup>140</sup> States breaching their neutral obligations "were simply lucky that their violations of the law went unpunished".<sup>141</sup>
- 8 Also, Heller and Trabucco consider the traditional neutrality duties under the Hague Conventions in wide parts as compulsory and applicable as CIL.<sup>142</sup> In case of a Chapter VII UNSC resolution determining the aggressor, Heller and Trabucco consider neutrality as being qualified due to Article 2(5) UNC (see B.IV);<sup>143</sup> in the absence of such a resolution, neutrality is fully applicable. Although they agree that this could change due to the Ukraine war,<sup>144</sup> currently, the lack of *opinio juris* would not allow for an extension of qualified neutrality.<sup>145</sup>
- 9 When perceiving the law of neutrality as fully applicable, third states' support of a belligerent can nevertheless be legal. For example,<sup>146</sup> Clancy considers the invocation of self-defense or collective countermeasures as circumstances precluding the wrongfulness of breached neutrality obligations.<sup>147</sup> Given a belligerent's breach of obligations *erga omnes* and *jus cogens* norms, he argues that third states are entitled to collective countermeasures.<sup>148</sup> He concedes, however, that obligations *erga omnes* are "notoriously unclear"<sup>149</sup> and that the concept of collective countermeasures "remains in a state of development",<sup>150</sup> which forms, arguably, not a sufficient basis to claim its legality.<sup>151</sup> Regarding (collective) self-defense, he argues that weapon deliveries would not qualify as use of force and were therefore not covered under this circumstance.<sup>152</sup> As we will discuss in Part 3.III, this is not convincing as, following Buchan, forceless measures can also be covered by self-defense. Considering neutrality obligations as compulsorily applicable, (collective) self-defense could therefore qualify as an adequate justification for their breach. For the following two systematic reasons, neutrality obligations are, however, not compulsorily applicable.
- 10 First, applicable neutrality offers an unsatisfactory answer to the changes of the international order. Article 2(4) prohibits the use of force against a non-neutral third state's territory while co-belligerency to a conflict requires the passing of a certain threshold under IHL (*Illegality of Force, Territorial Protection and Threshold Changes*), leading to a new option for third states. According to defenders of compulsorily

applicable neutrality, this third option is just an illegal status for states that breach their neutrality obligations (see Illustration 4). The shift of the international order means that third states can breach their neutrality obligations without risking becoming a party to the conflict, disregarding that this takes away the rationale of neutrality as an alternative to potential co-belligerency. When another regime decides on potential co-belligerency and protects a state's territory, why is a differentiation between neutral states and those violating their obligations needed? What is, to say it with El-Zein's words, the "added legal value"?<sup>153</sup> When not leading to better protection of the third state and its territory, adherence to strict neutrality obligations seems disproportional – or, as Ingber puts it, the absence "of the legal benefits of neutrality [...] render adherence to its rules unappealing."<sup>154</sup> Schindler summarizes "that the truly neutral States have to fulfil specific duties without having corresponding rights. [...] This may seem to be a one-sided burden laid upon neutral States."<sup>155</sup>

Illustration 4 – Third State's Options after Compulsorily Applicable Neutrality



Source: Author, 2025.

- 11 According to Heller and Trabucco, the only legal consequences of breached neutrality obligations are countermeasures of an aggrieved belligerent (e.g., violation of trade agreements), which may not include force since the adoption of the UNC.<sup>156</sup> Ingber rejects this point because of missing state practice and the argument that countermeasures against support for a victim of aggression "would be in tension with the Charter framework", while those supporting an aggressor are regulated under state responsibility law.<sup>157</sup> Third state's sanctions against Russia illustrate that those states supporting a belligerent might be less interested in (economic) relations with the counterpart, making them less vulnerable to (economic) countermeasures.
- 12 Second, compulsorily applicable neutrality (unless circumstances precluding wrongfulness are accepted) sticks to a non-discriminating treatment of both belligerents, disregarding the *Illegality of Force and Belligerent Inequality Changes*: The UNC explicitly asks for the condemnation of aggression and, with the *jus ad bellum*, establishes a clear differentiation between the aggressor and the belligerent in self-defense.<sup>158</sup>
- 13 Unlike the early Heintschel von Heinegg suggests, supporting the victim cannot be illegal in a system condemning aggression. This would not reflect, as Wentker puts it, "the central place of the victim's right to individual self-defence within the structure of international peace and security law."<sup>159</sup> As a reaction to the 2022 Russian aggression, Heintschel von Heinegg himself agrees, as he changed his position based on rather

practical and moral arguments and defended the view of qualified neutrality (see B.IV).

160

### 3. Interim Result

- <sup>14</sup> Consequently, compulsorily applicable neutrality, even when accepting a modification for cases of mandatory UNSC measures, does not do justice to the *Belligerent Inequality Change* and the changed legal consequences of breached neutrality (*Illegality of Force, Territorial Protection, and Threshold Changes*).

#### FOOTNOTES

- 125.** At least in Western scholarship a minority position, but see e.g., Kritika Ramya, ‘The Interplay between Neutrality, Qualified Neutrality and Co-Belligerency in the Context of U.S. Intervention in the Russia-Ukraine War’ (2023) 23 *International and Comparative Law Review* 72 <<https://www.sciendo.com/article/10.2478/iclr-2023-0004>> accessed 28 January 2025.
- 126.** Ronzitti (n 2) 4; see also e.g., Clapham (n 1) 67; and Upcher (n 25) 129ff.
- 127.** Wentker (n 4) 970.
- 128.** Ronzitti (n 2) 4.
- 129.** Schmid (n 1) 10; Upcher (n 25) 129–161; Robert Kolb and Richard Hyde, *An Introduction to the International Law of Armed Conflicts* (Hart Publishing 2008) 278.
- 130.** See Upcher (n 25) 129–161.
- 131.** Ingber (n 8) 15, footnote 50; see also Clapham (n 1) 67–68.
- 132.** Upcher (n 25) 129–161; Clapham (n 1) 67–68; Kolb and Hyde (n 129) 278; cf. Schmid (n 1) 10.
- 133.** Ronzitti (n 2) 16; Wentker (n 4) 971.
- 134.** Schindler (n 8) 371–373.
- 135.** Ingber (n 8) 15.
- 136.** Gioia (n 8) 108.
- 137.** Wolff Heintschel von Heinegg, ‘Chapter 20. 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* (Brill | Nijhoff 2007) 567 <[https://brill.com/view/book/edcoll/9789047421252/Bej.9789004154285.i-590\\_021.xml](https://brill.com/view/book/edcoll/9789047421252/Bej.9789004154285.i-590_021.xml)> accessed 28 January 2025.
- 138.** *ibid* 565.

139. *ibid* 567.
140. *ibid* 567. *North Sea Continental Shelf* (Judgment) [1969] ICJ Rep 3.
141. *ibid* 554.
142. Kevin Jon Heller and Lena Trabucco, 'The Legality of Weapons Transfers to Ukraine Under International Law' (2022) 13 *Journal of International Humanitarian Legal Studies* 251, 255–256 <[https://brill.com/view/journals/ihts/13/2/article-p251\\_004.xml](https://brill.com/view/journals/ihts/13/2/article-p251_004.xml)> accessed 18 January 2025; quoting for non-optional character Michael Bothe, 'The Law of Neutrality' in Dieter Fleck (ed), *The Handbook of International Humanitarian Law* (2nd edn, Oxford University Press 2008) 573; and quoting *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226 [88].
143. Heller and Trabucco (n 142) 261.
144. *ibid* 262.
145. *ibid* 263.
146. See for other authors Ronzitti (n 2) 11 footnote 39.
147. Clancy (n 6) 534–540.
148. *ibid* 535–540, 543.
149. *ibid* 537.
150. *ibid* 540.
151. Cf. Schmid (n 1) 14.
152. Clancy (n 6) 534–535.
153. Own translation of "kein Mehrwert", El-Zein (n 53) 211.
154. Ingber (n 8) 18, formulating it as 'obsolescence' which we will discuss below.
155. Schindler (n 8) 380.
156. Heller and Trabucco (n 142) 260; quoting Bothe, 'The Law of Neutrality' (n 142) 581.
157. Ingber (n 8) 11–12.
158. See also Schmid (n 1) 16–17, who argues "that the UN Charter has introduced at least some changes to the law of neutrality and erodes the traditional duty of neutrality for third States"; based on Schindler (n 8) 373.
159. Wentker (n 4) 967.
160. Heintschel von Heinegg, 'Neutrality in the War against Ukraine' (n 19).

## IV. Qualified Neutrality

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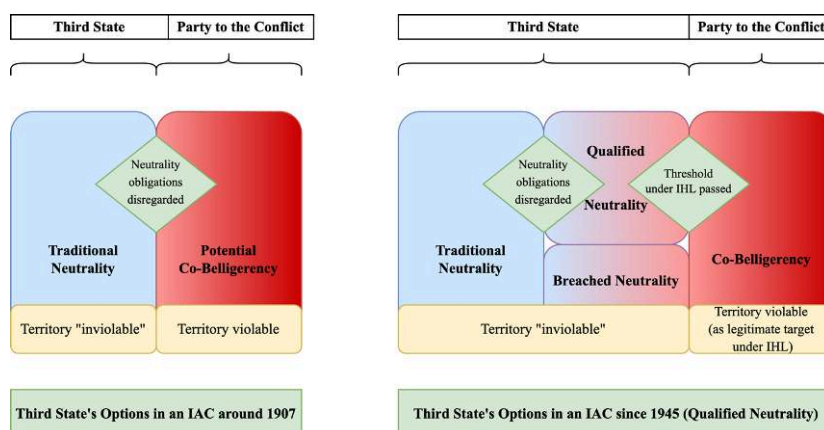
- <sup>1</sup> This part discusses the second Application Theory, qualified neutrality, by rejecting its moral basis (1) and examining its four central legal problems (2-5).

### 1. What Qualified Neutrality Means

- <sup>2</sup> Based on the *Illegality of Force and Belligerent Inequality Changes*, defenders of qualified neutrality take over the debate, arguing for a much more profound shift in the law of neutrality.
- <sup>3</sup> Scholars like Wentker point out that, from the logic of the UNC, an exception, a "carve out", from neutrality obligations renders support for belligerent states, which are the victims of aggression, legal.<sup>161</sup> For him, this exception flows from the aggressed state's right to self-defense and does not require "an authoritative or collective identification of the aggressor", although UN resolutions can "lend crucial political legitimacy".<sup>162</sup>
- <sup>4</sup> What Wentker sees as a "carve out" is for other scholars like Ronzitti "non-belligerency" and Schmitt, the 2022 Heintschel von Heinegg and, implicitly, Talmon so-called "qualified neutrality": When one state is the aggressor and the other the victim, third states cannot be required to treat them equally, they need to be allowed to "qualify" their response.<sup>163</sup> What forms an abandonment of one of the fundamental principles of traditional neutrality law – the "principle of equal treatment" which flows from the principle of impartiality<sup>164</sup> – follows a deeper understanding of morally "right" and "wrong".
- <sup>5</sup> The idea of qualified neutrality, traditionally pushed forward by the US, is sometimes tied to the old idea of "just" and "unjust" wars dating back to the 17th and 18<sup>th</sup> centuries.<sup>165</sup> It is often associated with the famous Havana speech of General Robert H. Jackson, US Attorney General during the Second World War. Talmon, arguing that outlawing of the use of force implies that the cause of a war can no longer be ignored,<sup>166</sup> quotes Jackson's Havana argument that – after the adoption of the Kellogg-Briand Pact and the Covenant (and today the UNC) – a differentiation between just (self-defense) and unjust (aggression) wars is required.<sup>167</sup> Dating back to the time before the entry of the US into the Second World War, this speech seems to be used to add moral legitimacy to the idea of qualified neutrality. Who would question that the US should have been allowed to support enemies of Adolf Hitler, the initiator of the Second World War and the Holocaust?

- 6 Also apart from this reference, the moral foundation of qualified neutrality is an essential argument for its defenders: For Talmon, "a value-based international legal order [...] virtually demands assistance to the victim of aggression" <sup>168</sup>while treating aggressor and aggressed state equally "would be tantamount to a declaration of legal and moral bankruptcy."<sup>169</sup> He summarizes that, in case of "obvious" aggressions, there is no duty to "stand idly by and watch the aggression from the sidelines."<sup>170</sup> The 2022 Heintschel von Heinegg adds that "[i]f the notion of a 'rule-based international order' is to be of any significance, States continuing to rely on and believe in international law can no longer stand by and allow an aggressor government to pursue its apparently illegal aims".<sup>171</sup>
- 7 While one is tempted to follow these *prima facie* legitimate moral considerations, in 2018, Heintschel von Heinegg himself rejected "extralegal justification attempts" such as legitimate or just causes of a conflict, "not because of their inherent danger of misuse but to safeguard the modern *jus ad bellum*."<sup>172</sup> With the Kosovo and Iraq interventions in mind, he argues that the use of force should be justified under "positive international law" and not by "metaphysical argumentation patterns."<sup>173</sup> As shown below (see Part 1.V), the support for Ukraine can easily be justified in legal terms without requiring reference to its moral legitimacy or the ethical-religious ideas of "just war."<sup>174</sup>

Illustration 5 – Third State's Options after Qualified Neutrality



Source: Author, 2025.

- 8 Turning to the legal foundation of qualified neutrality, its incorporation of the third status is an interesting phenomenon: Kolb and Meret argue that qualified neutrality completely rejects the existence of a third status, which is its main problem.<sup>175</sup> While much speaks for this view, this ePaper submits that it depends on the circumstances and the form of qualified neutrality,<sup>176</sup> whether traditional neutrality is either fully applicable or fully or partly replaced by qualified neutrality (see Illustration 5).<sup>177</sup> Qualified neutrality incorporates, hence, the *Belligerent Inequality Change*; but, just like compulsorily applicable neutrality, it does not react to the central changes regarding the inviolability of a third state's territory and the emergence of a new threshold for co-belligerency (*Territorial Protection and Threshold Changes*).
- 9 Apart from these incorporation difficulties, four central problems of qualified neutrality shall be discussed in the following – namely, the tension between qualified neutrality and the wording (1) and idea of traditional neutrality law (2), the problem of the unambiguous determination of the aggressor (3), and the danger of its

politicization (4). The following part will detail these four problems because of the high representation of qualified neutrality in scholarship. While qualified neutrality is disproportionately often defended, these aspects gain too little attention,<sup>178</sup> which makes it necessary to dedicate more space to it here. The structure and content are inspired by Schmid's threefold critique against qualified neutrality,<sup>179</sup> but they add to her arguments and combine different points from her in a new way.

## 2. The Linguistic Problem

- 10 First, linguistic clarity is lost when neutrality becomes qualified. This is because qualified neutrality assumes an inadequate interpretation of the traditional law of neutrality, contradicting its ordinary meaning. Article 31(1) VCLT demands interpreting a treaty "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."
- 11 Dictionaries define "neutral" as "not engaged on either side"<sup>180</sup> or as "not supporting either side of an argument, fight, war, etc."<sup>181</sup> Arguing for qualified neutrality in the sense of actively and partially supporting one belligerent conflicts therefore not only with the very idea of neutral, impartial behavior (see B.I) but also with the clear ordinary meaning of the term "neutral".
- 12 Following the customary rules of treaty interpretation as codified in the Article 31 (1) VCLT,<sup>182</sup> Wentker admits that "[n]either the 'ordinary meaning to be given to the terms' of these treaties nor their 'object and purpose' [...] provides a useful basis for the carve-out [which allows neutral states to support a victim of aggression]."<sup>183</sup> He explains that this can be derived from the UNC's right to self-defense via systemic integration under Article 31(3)(c) VCLT.<sup>184</sup> This disregards the ILC's description of interpretation under Article 31 VCLT as "a single combined operation"<sup>185</sup> – systemic integration cannot completely ignore a term's clear ordinary meaning mentioned prominently in paragraph 1 of the Article. Interpreting the Hague Conventions by systemic integration as allowing for qualified neutrality or a "carve-out" is hence methodologically inelegant as it accepts a fundamental shift in the ordinary meaning of the term "neutral".
- 13 "Qualified neutrality" is an oxymoron or, as Seidl-Hohenveldern puts it, a "self-contradiction",<sup>186</sup> which cannot result from carefully interpreting the Hague Conventions. To say it with Komarnicki's words: "I reject the term of 'qualified neutrality,' considering it to be misleading and inappropriate. [...] Neutrality consists in abstention and impartiality, and it is impossible to find a definition of 'qualified neutrality,' which is just the opposite of traditional neutrality."<sup>187</sup> This loss of the linguistic differentiation between neutrality and qualified neutrality adds to a broader, conceptual problem.

## 3. The "Conceptual" Problem

- 14 Second, "conceptual clarity"<sup>188</sup> is lost when neutrality becomes qualified. Schmid observes that qualified neutrality renders neutrality to "a fiction, or an empty shell" since almost "any inter-State conflict is the result of a violation of the Charter", which makes "qualified neutrality or qualifications or circumstances precluding wrongfulness [...] available whenever neutrality applies."<sup>189</sup> Hence, qualified neutrality leads to a *de*

*facto* repression of strict neutrality while allowing states to classify – or "disguise" – support of a belligerent as a neutral service.<sup>190</sup> According to her, this takes away "conceptual clarity",<sup>191</sup> blurring the divide between neutral and non-neutral acts. Kolb and Meret agree with her when arguing that "[a] State cannot eat the cake and have it, claiming to be neutral while not honoring the obligations inherent in the status as this "would empty the *status* of neutrality of its substance."<sup>192</sup> Schindler also calls for a more precise differentiation between rules for neutrals and third states because understanding "the two sets of rules [...] as parts of a single and indivisible law of neutrality has given rise to much confusion."<sup>193</sup>

- 15 Similarly to the "ordinary meaning" of "neutrality", also the object and purpose of the Hague Convention and customary neutrality law do not allow, under Article 31(1) VCLT, a reading favoring qualified neutrality. Schmid sees the concept of neutrality, "aim[ing] to limit the geographic spread of armed conflicts and serv[ing] de-escalation," as jeopardized by allowing support for belligerent under the "disguise" of qualified neutrality.<sup>194</sup> For her, qualified neutrality "leads to an erosion of the neutrality of those States that commit to it" as it "subordinates the core idea of neutrality – military abstention – to considerations about the 'flagrancy' or 'clarity' of a breach of the Charter".<sup>195</sup>
- 16 Moreover, according to Schmid, the qualification of neutrality is not "honest" and forms "a potentially hazardous doctrine for humanitarian purposes" as it endangers the status of traditionally neutral and even more permanently neutral states.<sup>196</sup> This is because "qualified neutrality allows States to 'disguise' their military support under a myth of neutrality and thereby leads to an erosion of the neutrality of those States that commit to it."<sup>197</sup> When "arms-delivering States [are] simultaneously claiming neutrality", the role of traditionally neutral states becomes conceptually unclear.<sup>198</sup> Schmid argues that qualified neutrality takes away third states' option to use a status of strict (permanent) neutrality to "maximize the potential benefits of neutrality" and to, *inter alia*, mediate between the parties and facilitate humanitarian assistance.<sup>199</sup> Instead of offering states different options in reacting to a certain conflict, qualified neutrality partly replaces and partly mixes with traditional neutrality, creating a confusing picture of neutrality. Ultimately, this endangers legal security in the sensitive area of war and peace and removes the option of strict neutrality.

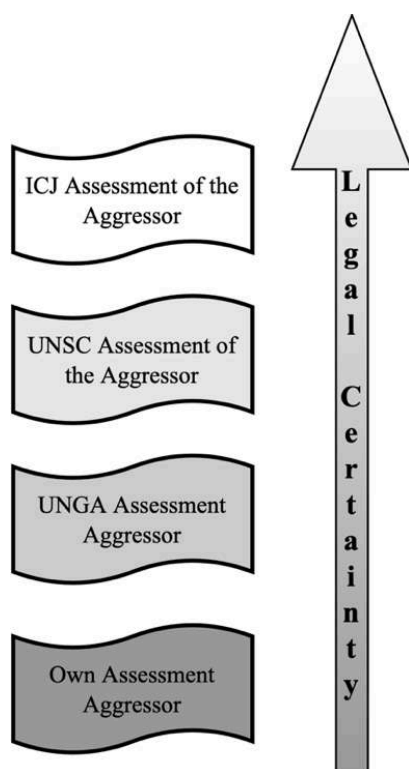
#### 4. The Problem of Determining the Aggressor

- 17 Third, legal clarity is lost when neutrality becomes qualified. Talmon observed that an aggressor is often not "clear-cut", as, for instance, both sides of a conflict claim to act in self-defense.<sup>200</sup> Moreover, he found that "clear determinations of the aggressor [...] remained the exception in the practice of the Security Council"<sup>201</sup>. This is problematic as qualified neutrality presupposes knowledge of who the aggressor is. According to Talmon, Jackson had already classified this as the "Achilles' heel"<sup>202</sup> of a qualified understanding of neutrality: "The difficulty with this proposition lies in the lack of means for determination of the fact of aggression."<sup>203</sup> Talmon and Herdegen see the possibility of the UNSC veto powers to prevent the passing of resolutions determining themselves as aggressor accordingly as a systematic flaw of the UN legal order.<sup>204</sup> This aligns with Jessup, who identified this as "the gap in the Charter".<sup>205</sup>
- 18 In our current international system, the determination of an aggressor is less a question of objective knowledge than of authority. Ideally, a competent court such as

the ICJ determines the aggressor in a legally binding, authoritative decision. Unfortunately, this might be prevented by a lack of jurisdiction or take longer than third states are willing to postpone their decisions on supporting a belligerent. This illustrates that international courts are not the forum foreseen for immediate reactions to arising armed conflicts. Talmon points, therefore, to the "primary responsibility" of the UNSC for such questions – but recognizes at the same time states' freedom to determine an aggressor by themselves and act accordingly if the UNSC is blocked.<sup>206</sup> While he sees these states "act[ing] at their own risk", potentially committing internationally wrongful acts, he seems to consider a non-binding UNGA resolution as an adequate alternative to an UNSC resolution, especially regarding "flagrant" or clear aggressions as in the Russia-Ukraine case.<sup>207</sup> This aligns with Jackson who argued that "In flagrant cases of aggression where the facts speak so unambiguously that world opinion takes what may be the equivalent of judicial notice, we may not stymie international law and allow these great treaties to become dead letters."<sup>208</sup> Schmid considers determinations by the UNSC or the UNGA as "less adventurous" than an independent determination by states.<sup>209</sup> This is not because a resolution *renders* support for a belligerent legal, but, following Wentker, Gill, and Tibori-Szabó, because such a resolution supports states in their assessment of what is legal.<sup>210</sup>

- <sup>19</sup> Before providing a helpful overview on the different possible UN actions, Ronzitti suggested, leaving out by whom, that "*a posteriori*" identification of the aggressor would suffice.<sup>211</sup> This is problematic because legality is likely a decisive factor *in* a state's decision to support a belligerent, not just in the "*a posteriori*" evaluation of this decision. Consequently, rational and responsible decisions based on knowledge regarding the legal consequences are often impossible for third states. As explained, the level of this legal uncertainty can meanwhile differ, depending on the authority having determined the aggressor (see Illustration 6).

Illustration 6 – Legal Uncertainty in Dependence of the Organ Assessing the Aggressor



Source: Author, 2025.

- <sup>20</sup> This legal uncertainty is problematic, especially in the context of sensitive questions on (military) support for belligerents.<sup>212</sup> When assuming countermeasures as a reaction to illegal unneutral service (such as defenders of compulsorily applicable neutrality do), it is dangerous to violate neutrality law while being uncertain whether it applies. It makes a non-neutral status dangerous and, as Talmon surmises, a third state's support even for victims of aggression less likely.<sup>213</sup> Qualified neutrality's approach of coupling the applicability of neutrality law to the – oftentimes uncertain or "*a posteriori*" – determination of the aggressor is therefore problematic.

## 5. The Problem of Politicalization

- <sup>21</sup> Fourth, apart from missing legal certainty and clarity, determining legal questions in mainly political forums creates a fourth significant problem: politicized decisions on legal questions.
- <sup>22</sup> Talmon sees in the determination of an aggressor by states "concomitant dangers and potential for abuse"<sup>214</sup> and Komarnicki illustrated the ideological divide between UNGA members regarding the determination of the aggressor already for the Korean War.<sup>215</sup> Schmid observed that the determination of an aggressor can be biased and politically influenced: She warns that "whether the violation is considered 'flagrant' or not often lies in the eye of the beholder – being influenced by the political preferences of powerful actors – and not necessarily (or at least not exclusively) in convincing legal distinctions."<sup>216</sup> She also criticizes that "not all uses of force face equal condemnation, and not all resolutions are interpreted in the same way by different States."<sup>217</sup> For her this means, that qualified neutrality is often a morally justified "disguise" for political

interests and power politics.<sup>218</sup> Schmid sees a risk for "double standards" and invocation of neutrality "*à discretion*"<sup>219</sup> as there is no objective and reliable mechanism to determine the aggressor and the direction of the qualification.

- 23 A closer look at the UNSC and UNGA illustrates this criticism and the negative consequences of letting political organs decide about legal questions. The UNSC is a political organ comprising 15 powerful/temporarily elected government representatives with legal competencies. This is reflected in Russia's veto against a UNSC resolution condemning its aggression,<sup>220</sup> - to use Heintschel von Heinegg's words, "[t]he aggressor State itself prevented the enforcement mechanism under Chapter VII UN Charter to function".<sup>221</sup> The UNSC achieved merely a procedural resolution calling for a UNGA emergency session, which culminated in the passing of a resolution against the aggressor Russia with a clear majority of 141 of 193 states.<sup>222</sup> Talmon argues that, despite not having "legally binding force", this resolution forms an "expression of world opinion."<sup>223</sup> Putting this the other way around, while the resolution is, using Wentker's words, an important political symbol "lend[ing] crucial political legitimacy"<sup>224</sup> to third state's support of the so-defined victim, it is a soft law document which has not and should not have legal effect. Whether a state conducted an act of aggression should not be a political decision; whether third states can legally support a belligerent should not be a democratic decision. For the same reason, courts are organs composed of independent legal experts, not democratic institutions.
- 24 The danger underlying this politicization of legal questions is best reflected in the resolutions passed by the UNGA three years later regarding the same issue. Instead of 141 states as in 2022, only 93 criticize Russia's "full-scale invasion of Ukraine" in 2025.<sup>225</sup> This raises the interesting question whether Russia's invasion of Ukraine, three years later, is to a lesser degree an aggression, or if the political wish to position oneself against Russia has just diminished.
- 25 The shifting voting behavior of the USA deserves special attention in this context.<sup>226</sup> Having voted for the pro-Ukrainian UNGA resolution in 2022, it abstained in 2025 in adopting the Ukrainian and its own in a pro-Ukrainian way amended UNGA resolution.<sup>227</sup> Moreover, it voted for the failed UNSC resolution determining Russia as an aggressor in 2022<sup>228</sup> while it brought in a resolution avoiding the determination of an aggressor and asking both sides for "a swift end to the conflict" and "a lasting peace" in 2025.<sup>229</sup> This resolution, which passed with the support of Russia and China and the abstention of the five European countries within the UNSC, is described as a pro-Russian resolution.<sup>230</sup> Thus, the policy (and president) shift in a single powerful country significantly impacts the outcome of UNSC meetings and the determination or non-determination of an aggressor. The UNSC moved from a blocked, but in its majority, Russian-critical stance to a neutral<sup>231</sup> view, asking both parties to stop the war, while the UNGA's majority ratio started to shift.
- 26 Looking into the future, there is no guarantee that, in a worst-case scenario, the UNSC (or UNGA) will not be blocked or tied, but it will determine the victim of aggression as the aggressor. Notwithstanding that it is likely that France and the United Kingdom, having abstained this time, would veto such a resolution in the near future, Russia, China, and even the USA might embrace it. US President Trump already implied an aggression by Ukraine in another context: He reacted to Zelenskyy's complaint about not being allowed to participate in the Russian-US "peace negotiation" by stating, "Well, you've been there for three years ... You should have never started it. You could have made a deal".<sup>232</sup>

- 27 For this reason, it is not advisable to tie the legality of third states' support to belligerents, which, in extreme cases, determines the survival of militarily inferior (victim) states, to resolutions of highly political organs. Notwithstanding that the determination of an aggressor and the legality of third states' support will also often depend on UNSC (or UNGA) resolutions, it would therefore be advantageous to simplify the surrounding debates by decoupling these questions at least from the law of neutrality and create what Schmid calls "conceptual clarity".

## 6. Interim Result

- 28 Hence, different from the thesis of compulsorily applicable neutrality, qualified neutrality incorporates the effects of the *jus ad bellum* and the non-equality of belligerents (*Illegality of Force and Belligerent Inequality Changes*) while facing similar problems regarding the *Territorial Protection, and Threshold Changes*. Unfortunately, it faces several conceptual problems as it overloads neutrality law by rendering it a political question and making it linguistically contradictory, conceptually complex, and legally uncertain.
- 29 Moreover, it rests on the problematic assumption that, as Schmid describes it, "neutrality is compulsory for all States – i.e., that States are at least, *prima facie*, required to remain neutral".<sup>233</sup> What if this is not true and qualified and compulsorily applicable neutrality loses its argumentative preconditions?

## FOOTNOTES

161. Wentker (n 4).

162. *ibid* 991.

163. Ronzitti (n 2); Schmitt (n 2); Talmon (n 2); Heintschel von Heinegg, 'Neutrality in the War against Ukraine' (n 19).

164. Seger (n 20) 250, 257, 261.

165. E.g., Talmon (n 2) 17; for a similar observation Schmid (n 1) 19; cf. Seger (n 20) 250.

166. Talmon (n 2) 8.

167. *ibid* 17; 'Address of Mr. Robert H. Jackson, Attorney General of the United States, Inter-American Bar Association, Havana, Cuba, March 27, 1941' (1941) 35 *American Journal of International Law* 348, 358–359.

168. Talmon (n 2) 21.

169. *ibid*.

170. *ibid*.

171. Heintschel von Heinegg, 'Neutrality in the War against Ukraine' (n 19).

172. Own translation, literally inter alia ‘Friedenssicherungsrechts’, of Heintschel von Heinegg, ‘§ 55. Vom ius ad bellum zum ius contra bellum (Kriegsverbot, Gewaltverbot und Interventionsverbot)’ (n 61) 1134.
173. Own translation of *ibid.*
174. *ibid* 1132–1134.
175. Kolb and Meret (n 18).
176. See *ibid.*, who helpfully differentiate different argumentative foundations for qualified neutrality.
177. See e.g., Krajewski (n 94), who seems to defend a view of qualified neutrality as a third status; see e.g., Clancy (n 6) 540–543, who argues that qualified neutrality does not impose a duty to qualify its neutrality. He argues that neutral states are not required to deliver weapon but can only condemn an aggressor in line with their neutrality obligations. However, for cases of UNSC resolutions this might not always be possible (see Part B.III) ; see also Ferro and Verlinden (n 97) 9–10, who reject optional and qualified neutrality as well as the existence of a third status - except for cases of an UNSC resolution. Thereby they imply that the applicability and qualification of neutrality depends on the circumstances, neutrality can be replaced in some cases (UNSC resolution), but not in others.
178. Cf. Ingber (n 8) 14.
179. See also how Kolb and Meret (n 18) build upon her analysis.
180. Merriam Webster, ‘Definition of NEUTRAL’ (10 June 2025) <<https://www.merriam-webster.com/dictionary/neutral>> accessed 12 June 2025.
181. Britannica Dictionary, ‘Neutral Definition & Meaning’ (12 June 2025) <<https://www.britannica.com/dictionary/neutral>> accessed 12 June 2025.
182. For argument that the norm applies as CIL and for further reference see Wentker (n 4) 979, footnote 85, 86. If not accepting the CIL character, qualified neutrality cannot be based on systemic integration at all, which leads, for our argument, to the same result.
183. *ibid* 979.
184. *ibid.*
185. ILC ‘Yearbook of the International Law Commission, Volume II’ (1966) 219 A/CN.4/SER. A/1966/Add. 1; Wolff Heintschel von Heinegg, ‘§ 14. Auslegung völkerrechtlicher Verträge’ in Knut Ipsen, *Völkerrecht* (ed. V. Epping/ W. Heintschel von Heinegg) (7 ed, CH Beck 2018) 476.
186. Own translation of ‘Der Begriff der differentiellen Neutralität ist ein Widerspruch in sich.’ Ignaz Seidl-Hohenveldern, ‘Der Begriff der Neutralität in den bewaffneten Konflikten der Gegenwart’ in Heinrich Kipp, Franz Mayer and Armin Steinkamm (eds), *Um Recht und Freiheit. Festschrift für Friedrich August Freiherr von der Heydte*, vol 1 (Duncker & Humblot 1977) 596 <<https://swbplus.bsz-bw.de/bsz00559376xinh.htm>> accessed 6 June 2025 Please note that he implies later that ‘differentielle’ and ‘wohlwollende’ neutrality are synonyms. see similarly Kolb and Meret (n 18).
187. Komarnicki (n 103) 79–80.

188. Schmid (n 1) 19.
189. *ibid* 16, 17.
190. *ibid* 18f.
191. *ibid* 19.
192. Kolb and Meret (n 18); in the words of Schmid (n 1) 6: 'States [...] cannot have it both ways'.
193. Schindler (n 8) 385.
194. Schmid (n 1) 17f; based on Upcher (n 25) 33 and his sources.
195. Schmid (n 1) 18f.
196. *ibid* 17, 19.
197. *ibid* 18–19.
198. *ibid* 19.
199. *ibid*.
200. Talmon (n 2) 19.
201. *ibid* 4.
202. *ibid* 18.
203. 'Address of Mr. Robert H. Jackson, Attorney General of the United States, Inter-American Bar Association, Havana, Cuba, March 27, 1941' (n 167) 355.
204. Herdegen (n 93) 3; Stefan AG Talmon, 'Waffenlieferungen an die Ukraine als Ausdruck eines wertebasierten Völkerrechts' (*Verfassungsblog*, 9 March 2022) <<https://verfassungsblog.de/waffenlieferungen-an-die-ukraine-als-ausdruck-eines-wertebasierten-volkerrechts/>> accessed 8 June 2025.
205. He observed: "The abstention from voting by parties to a dispute, be it noted, does not apply to decisions regarding measures of enforcement under Chapter VII of the Charter.", Philip C Jessup, *A Modern Law of Nations* (The Macmillan Company 1948) 203 <<http://archive.org/details/in.ernet.dli.2015.215573>> accessed 12 June 2025.
206. Article 24(1) UNC; Talmon (n 2) 3–5, 18–19.
207. *ibid* 18, 19–20; Derek W Bowett, *Self-Defence in International Law* (University Press 1958) 181.
208. 'Address of Mr. Robert H. Jackson, Attorney General of the United States, Inter-American Bar Association, Havana, Cuba, March 27, 1941' (n 167) 356.
209. Schmid (n 1) 17; Alexander Wentker and Claus Kreß, 'L'assistance d'États Tiers Dans La Guerre d'Ukraine Au Regard Du Droit International' (2022) 68 *Annuaire français de droit international* 173, 185.
210. Wentker (n 4) 991; Gill and Tibori-Szabó (n 62) 340.
211. Ronzitti (n 2) 3–5.
212. Cf. Ingber (n 8) 5.
213. Talmon (n 2) 19; similarly Ingber (n 8) 5–6.

214. Talmon (n 2) 18; similarly Gioia (n 8) 108.
215. Komarnicki (n 103) 86–89.
216. Schmid (n 1) 17; pointing to Anastasiya Kotova and Ntina Tzouvala, ‘In Defense of Comparisons: Russia and the Transmutations of Imperialism in International Law’ (2022) 116 *American Journal of International Law* 710, 710 <<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/in-defense-of-comparisons-russia-and-the-transmutations-of-imperialism-in-international-law/3857B5D4624A1A4EE165B54A53FEF803>> accessed 4 June 2025.
217. Schmid (n 1) 17.
218. *ibid* 18f.
219. *ibid* 17, 18; cf. Kolb and Meret (n 18).
220. UNSC Meeting 8979 (25 February 2022) 6 UN Doc S/PV.8979; UNSC Draft Res (25 February 2022) UN Doc S/2022/155.
221. Heintschel von Heinegg, ‘Neutrality in the War against Ukraine’ (n 19).
222. Article 27(2) UNC; UNSC Res 2623 (27 February 2022), UN Doc S/RES/2623; UNGA Res ES-11/1 (18 March 2022) UN Doc A/RES/ES-11/1; UNGA Plenary Meeting ES-11/PV.5 (2 March 2022) 14–15 UN Doc A/ES-11/PV.5; Talmon (n 2) 20.
223. *ibid*; quoting Bowett (n 207) 181, who himself quotes on p. 180 Dehn, ‘The Effect of the U.N. Charter on the Development of International Law’ [1946] *I.L.A Report of the 41st Conference* (Cambridge) 43 [inaccessible] for this wording.
224. Wentker (n 4) 991.
225. UNGA Res ES-11/7 (25 February 2025) UN Doc A/RES/ES-11/7; UNGA Res ES-11/8 (25 February 2025) UN Doc A/RES/ES-11/8; United Nations Press, ‘At Three-Year Mark of Russian Federation’s Invasion, General Assembly Upholds Ukraine’s Territorial Integrity, Adopting Two Resolutions’ (*Meetings Coverage and Press Releases*, 24 February 2025) <<https://press.un.org/en/2025/ga12675.doc.htm>> accessed 12 June 2025.
226. Cf. *ibid*; Al Jazeera, ‘Russia-Ukraine War: How the US Position Has Changed on UN Resolutions’ *Al Jazeera* (Doha, 25 February 2025) <<https://www.aljazeera.com/news/2025/2/25/russia-ukraine-war-how-the-us-position-has-changed-on-un-resolutions>> accessed 12 June 2025.
227. United Nations Press (n 225); Tagesschau, ‘UN-Sicherheitsrat für moskaufreundliche Ukraine-Resolution’ *Tagesschau* (Hamburg, 25 February 2025) <<https://www.tagesschau.de/ausland/un-resolutionen-ukraine-102.html>> accessed 12 June 2025.
228. UNSC Meeting 8979 (25 February 2022) 6 UN Doc S/PV.8979; UNSC Draft Res (25 February 2022) UN Doc S/2022/155.
229. UNSC Res 2774 (24 February 2025) UN Doc S/RES/2774; UNSC Meeting 9866 (24 February 2025) 7 UN Doc S/PV.9866; cf. Tagesschau, ‘UN-Sicherheitsrat für moskaufreundliche Ukraine-Resolution’ (n 227).
230. UNSC Meeting 9866 (24 February 2025) 7 UN Doc S/PV.9866; *ibid*.

**231.** Michelle Nichols, 'UN Security Council Adopts Neutral US Stance on War in Ukraine as Trump Pursues End to Conflict' *Reuters* (New York, 25 February 2025) <<https://www.reuters.com/world/europe/europeans-win-un-clash-with-us-over-rival-ukraine-resolutions-2025-02-24/>> accessed 12 June 2025.

**232.** David Smith, 'Trump Blames Ukraine over War with Russia, Saying It Could Have Made a Deal' *The Guardian* (London, 19 February 2025) <<https://www.theguardian.com/world/2025/feb/19/trump-ukraine-war-russia-could-have-made-a-deal>> accessed 12 June 2025.

**233.** Schmid (n 1) 5.

## V. Optionality Neutrality

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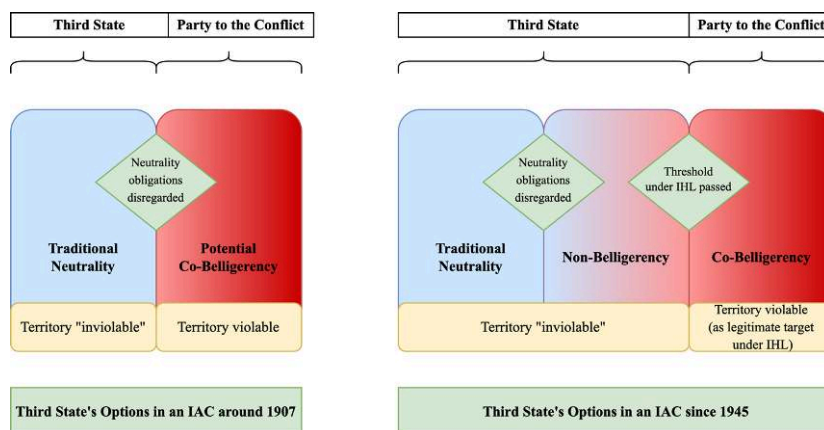
- 1 This part traces optional neutrality back to traditional neutrality (1) and discusses its implications for the illegality of supporting an aggressor (2).

### 1. Why Neutrality was always Optional

- 2 Clapham,<sup>234</sup> Gioia,<sup>235</sup> Schindler,<sup>236</sup> Schmid,<sup>237</sup> Komarnicki,<sup>238</sup> and Kolb and Meret<sup>239</sup> consider neutrality to have become optional. This ePaper, unlike Schmid, submits that optional neutrality is not only a convincing approach because it eliminates the conceptual difficulties of qualified neutrality and does justice to the five changes of the international legal system; it also submits that, historically, neutrality was never an obligation but always a choice. It has not *become* optional but always has been. Only the available options changed.
- 3 Ingber, sharing this view, argues that neutrality was always a "policy choice for states"<sup>240</sup> and a "how-to guide for states seeking to avoid being drawn into the wars of others."<sup>241</sup> Put in a nutshell, "neutrality was an important legal shield for those who chose it."<sup>242</sup> This follows from a simple logic: In a legal order not comprehensively outlawing recourse to force, states were relatively free to wage a war. Being a potential party to a war was the default option, and choosing neutrality meant opting out.<sup>243</sup> In a system with no conclusive prohibition of war and aggression, neutrality was an alternative option, a protective status.<sup>244</sup> According to El-Zein, neutrality was often the only effective way to protect one's territory and prevent becoming a party to the conflict.<sup>245</sup> To repeat Upcher, not a defender of optional neutrality himself, "the neutral's inviolability [stemming from its sovereignty] was initially quite limited, as States could simply exchange a State's neutrality for belligerency through a declaration of war."<sup>246</sup> When it is legal to join a war, it cannot be required to be neutral.<sup>247</sup> Third states cannot be hindered from taking sides in a conflict – when they accept to risk having force used against them. As Ingber puts it, "[i]n that prior world, war was a lawful tool of policy. And the decision to choose sides among the warring parties and join that war—or instead remain neutral—was also legally available."<sup>248</sup> Oppenheim argued similarly that becoming neutral in an IAC "is not a matter for International Law but for international politics [...] unless a previous treaty stipulates it expressively, no duty exists for a State, according to International Law, to remain neutral when war breaks out. Every sovereign State [...] is the master of its own resolutions".<sup>249</sup>

- 4 Historically, neutrality was therefore one of two legal options and hence not a compulsory status. This is also reflected in the Hague Conventions, which do not foresee an obligation to be neutral;<sup>250</sup> they only focus on the obligations third states must adhere to when they have *decided* to be neutral. The preamble of the Hague Convention V merely expresses the wish of "laying down more clearly the rights and duties of neutral Powers" and "defining the meaning of the term 'neutral'". Its articles regulate which conditions states need to fulfill to be considered neutral,<sup>251</sup> and what obligations belligerents have towards neutral states.<sup>252</sup> While this entails obligations for neutral states and implies legal consequences for unneutral states (e.g., violability of territory, Article 1 Hague Convention V), it does not entail a *general obligation* to be neutral. Notwithstanding that Hague Convention XIII underlines in its preamble "that it is, for neutral Powers, an admitted duty to apply these rules impartially to several belligerents", the Hague Conventions do not require states to be such a Neutral Power. Consequently, states could choose with relative freedom between being a party to the conflict or maintaining a neutral, impartial attitude towards the conflict.
- 5 Based on a comparable analysis of the Hague Convention's wording, Ingber finds that "[t]he treaty law thus follows the proposition that, as a matter of law, a state is free to opt in or out of neutrality."<sup>253</sup> Consequently, formulations such as "obligation" under or "violation" of neutrality law by scholars (as the present one) or in other treaties form "imprecise language" but do not withstand neutrality's optional character.<sup>254</sup>
- 6 The comprehensive outlawing of force decoupled neutrality obligations and potential co-belligerency by introducing another threshold for the latter, creating a third status between breached neutrality obligations and the IHL threshold of conflict participation (*Illegality of Force, Territorial Protection, and Threshold Changes*). Even if not accepting the optional character of traditional neutrality, neutrality is, according to Ingber optional today: The changed legal consequences of a neutral status due to the protection of a third state's territory under general international law is why "there is no space today for any position other than that neutrality is entirely a choice for the state."<sup>255</sup> For Schindler, it is Article 51 UNC that has ended the "dualism neutrality-belligerency" because "the right of collective self-defence [allows] third States [to] assist the victim of an armed attack by any conceivable means."<sup>256</sup> Consequently, "[b]enevolent neutrality or non-belligerency have become legally admitted attitudes" and "[n]eutrality has become purely optional."<sup>257</sup> Following them, the emergence of a third status with shifted legal consequences led *ipso facto* to the optionality of neutrality. Also for Kolb and Meret, non-belligerency is the direct consequence of the changed legal system: It "is an intermediate status, predicated upon the split-up of the exclusive dichotomy between neutrality and belligerency."<sup>258</sup> Consequently, states can opt, as around 1907, to adhere to traditional neutrality, be a party to the conflict, or a so-called non-belligerent (see illustration 7).<sup>259</sup>

Illustration 7 – Third State's Options after the Optional Neutrality



Source: Author, 2025.

- 7 According to Schmid, non-belligerency describes states which are "neither neutral nor parties to the armed conflict."<sup>260</sup> Unlike Ronzitti, who agrees on this definition but equates non-belligerency with qualified neutrality,<sup>261</sup> this paper follows Schmid's understanding of non-belligerency as an "option" for third states directly resulting from "neutrality having become optional," which does not build upon the determination of an aggressor.<sup>262</sup>
- 8 Having a third legal option always available for third states is an elegant answer to the emerged third status. It convincingly simplifies the legal order regulating third states' behavior, while, as Schmid puts it, "preserves the concept of neutrality."<sup>263</sup>

## 2. Why supporting an aggressor is illegal when neutrality is optional

- 9 Two central concerns raised against optional neutrality, which Schmid felt obliged to engage with,<sup>264</sup> are whether this approach prevents peace and whether the optionality of neutrality implies the legality of supporting an aggressor.
- 10 Regarding the first question, it is essential to remember that the idea of neutrality was not only the preservation of peace but also of economic relations, and that Clapham found that neutrality is sometimes rather a conflict-escalator instead of a de-escalator<sup>265</sup> (see Part 1.I). Additionally, the UNC follows the idea of positive peace – not supporting the victim of aggression might lead to a timely end of hostilities but not to a just and sustainable peace, emphasizing that aggression – leading to more conflicts in the long term – is unacceptable.<sup>266</sup>
- 11 Second, following Schmid, optional neutrality does not contribute to an escalation of a conflict to a greater extent than qualified neutrality, also because supporting the aggressor remains illegal.<sup>267</sup> If a state supports another state's illegal actions, this forms an international wrongful act, triggering the non-belligerent's legal responsibility (see Part 3.III). Following Schmid, "We do not need qualified neutrality to allow for an unfavourable treatment of the aggressor State."<sup>268</sup>
- 12 Also Schmitt, a defender of qualified neutrality, does not dispute the latter: He sees Belarus, a state which allows Russia to use its territory for its operations against Ukraine, not only in violation of its neutrality obligations but also as committing internationally wrongful acts (which is for him relevant as legal basis for

countermeasures).<sup>269</sup> Ingber elucidates that the law of state responsibility criminalizes internationally wrongful acts, such as support for an aggressor, sufficiently.<sup>270</sup>

According to Schmid, Schmitt, and Ingber, such support is hence already illegal under a different legal regime.<sup>271</sup> Gill and Tibori-Szabó also make clear that supporting a victim of aggression is legal, while supporting its aggressor gives rise to a third state's international responsibility.<sup>272</sup> Classifying it as a violation of neutrality law, as Schmitt does, cannot add anything.<sup>273</sup>

13 So far, we disregarded, for simplification purposes, that, according to the *Illegality of Force and UNSC Measures Changes*, traditional neutrality (when a UNSC resolution withstands this status)<sup>274</sup> and co-belligerency (when not justified under the *jus ad bellum*) can violate international law. This leads us to six options available for third states:

- Legal and illegal traditional neutrality,
- legal and illegal non-belligerency and
- legal and illegal co-belligerency.

14 Although Part 3 will further elaborate on these options, it should be underlined here again that an illegal non-belligerent acts in violation of general international law, but not in breach of the law of neutrality. As the latter is not compulsorily binding, a non-obedience with it is not a violation of binding international law but a legal act leading to the loss of the protective status of neutrality.

15 According to Clapham, the protective status of neutrality applies most clearly when neutrality is officially declared.<sup>275</sup> As Kolb and Hyde explain, it can end with the breach of neutrality obligations, rendering the neutral state a non-belligerent.<sup>276</sup> In principle, permanent neutrality is also optional because it, as Ingber puts it, "is often a longer-standing version of other policy choices of neutrality".<sup>277</sup> Its start and end are, however, often subject to the conditions of the *lex specialis* of multilateral agreements, binding unilateral self-commitments and national law.<sup>278</sup>

### 3. Interim Result

16 Optional neutrality convincingly transfers the optional character of traditional neutrality to a time in which the use of force is comprehensively outlawed. Following optional neutrality, third states can now choose between six instead of two options, which gives justice to the *Illegality of Force, Territorial Protection, the Threshold, and the UNSC Measures Changes*.

17 Unlike qualified neutrality, optional neutrality is not conceptually and linguistically confusing and overly complex (see Part 1.IV.2 to Part 1.IV.5.) since it incorporates the *Belligerent Inequality Change* more naturally: By letting general international law decide upon the legality of non-belligerency, it outsources the differentiation between aggressor and victim state. This enables the simultaneous applicability of the UN system, which requires this differentiation, and neutrality law, which prohibits it. Although not solving the problematic determination of the aggressor and the arising legal uncertainty, optional neutrality can diminish it by detangling this question from the applicability of neutrality. This reduces the legal and practical complexity for all involved parties and renders optional neutrality into a convincing Application Theory.

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## FOOTNOTES

234. Clapham (n 1) 53, 54, 72.

235. Gioia (n 8) 108.

236. Schindler (n 8) 373 argues that neutrality has 'become' optional while he implied on p. 371 that traditional neutrality had already been optional, at least according to the understanding of traditional optional neutrality applied in this paper.

237. Schmid (n 1) 11, 17.

238. Komarnicki (n 103) 86.

239. Kolb and Meret (n 18).

240. Ingber (n 8) 8.

241. *ibid* 6.

242. *ibid* 8.

243. Cf. *ibid* 18; cf. Titus Komarnicki, *The Place Of Neutrality in the Modern System Of International Law Five Lectures (Volume 80)* (The Hague Academy Collected Courses Online / Recueil des cours de l'Académie de La Haye en ligne 1952) 23–24 <<https://referenceworks.brill.com/display/entries/HACO/A9789028611726-04.xml>> accessed 3 June 2025.

244. See Seger (n 20) 261; cf. Oppenheim (n 31) 660–661.

245. El-Zein (n 53) 54, 121–130, 209; cf. Komarnicki (n 243) 23–24; cf. Ingber (n 8) 10, 17, 18.

246. Upcher (n 25) 113.

247. Adil Ahmad Haque, 'An Unlawful War' (2022) 116 *AJIL Unbound* 155, 158 <<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/an-unlawful-war/D425FCF59C8F04B8291796853DAE5C3B>> accessed 19 January 2025; cf. El-Zein (n 53) 53.

248. Ingber (n 8) 13–14.

249. Oppenheim (n 31) 653.

250. *ibid* 662 differentiates between conventional and voluntary neutrality (dependent on the existence of treaty obligations to be neutral; it is submitted that such obligations are not existent here).

251. E.g., Article 17, but also e.g., 4, 5, 9 Hague Convention V, similarly e.g. Article 3, 6, 8, 9 Hague Convention XIII

252. E.g., Article 1, 2, 3 Hague Convention V, similarly e.g., Article 1, 2, 5 Hague Convention XIII

253. Ingber (n 8) 9.

254. *ibid* 9–10. For the purpose of this paper, the formulation "neutrality obligation" is used to emphasize that, once neutrality is chosen, a state is *required* to adhere to respective obligations which can also be violated.

255. *ibid* 13.

256. Schindler (n 8) 371, 373.

257. *ibid* 373.

258. Kolb and Meret (n 18).

259. Schmuki (n 105) 31; Zugliani (n 5) 398.

260. Schmid (n 1) 11.

261. Ronzitti (n 2) esp. 5.

262. Schmid (n 1) 5–6, 11. Different from Schmid, this ePaper, however, suggests that neutrality has not "become" but always been optional.

263. *ibid* 18.

264. *ibid* 16, 17–18.

265. Clapham (n 1) 70.

266. See the morally loaded statements of Heintschel von Heinegg, 'Neutrality in the War against Ukraine' (n 19); and Talmon (n 2) 21, who also argues that according to the principle *ex injuria jus non oritur* wrong doing should lead to no new right (p. 8); see also Clapham (n 1) 72 for the more general question: "Stepping back, we could ask, from a moral perspective, should we be encouraging aloofness or rather solidarity with the victims of aggression?"; cf. Schmid (n 1) e.g., 2, 17–18 asking how peace can be reached.

267. Schmid (n 1) 16, 17–18.

268. *ibid* 16.

269. Schmitt (n 2).

270. Ingber (n 8) 55–56.

271. See similarly El-Zein (n 53) ch VI, VIII; see similarly e.g., Schindler (n 8) 374; see similarly Ingber (n 8) 18–19.

272. Gill and Tibori-Szabó (n 62) 340.

273. See for a more nuanced comparison of the legal regimes Ingber (n 8) 56; cf. El-Zein (n 53) 210.

274. See e.g., Adam Roberts and Richard Guelff (eds), *Documents on the Laws of War* (3rd edn, Clarendon Press 2000) 86, arguing that third states can choose between non-belligerency and neutrality in absence of a withstanding Chapter VII UNC resolution.

275. For a detailed examination of the start and end of a neutral status, see Clapham (n 1) 59–61, 67–72.

276. Kolb and Hyde (n 129) 278.

277. Ingber (n 8) 19.

278. Schmid (n 1) 4, footnote 15; Kolb and Hyde (n 129) 278; Kolb and Meret (n 18).

## VI. Obsolete Neutrality

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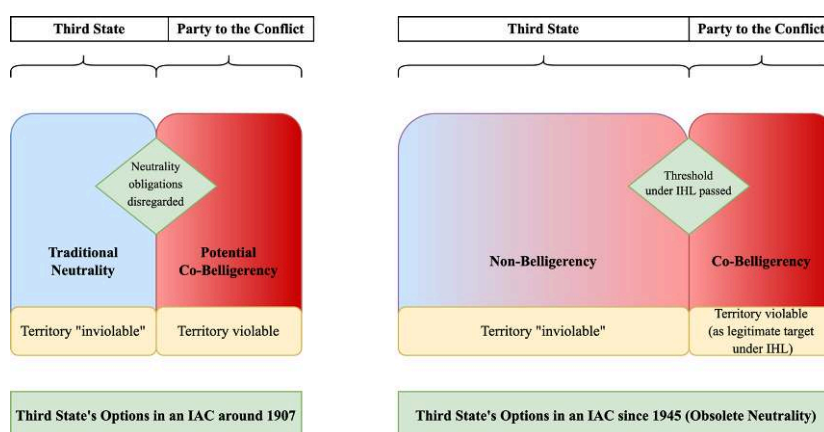
- 1 The last theory claims that neutrality is not applicable anymore. This part discusses this claim (1) and provides counterarguments (2).

### 1. Why neutrality could be obsolete

- 2 Having accepted the optional character of neutrality and the emergence of non-belligerency, the question arises whether the Hague Conventions and the respective CIL are left with any relevance. Being in a similar position after having defended his version of qualified neutrality, Wentker argues that "[g]iven the different scope and requirements of [general international and neutrality] rules [...] neutrality can [...] be envisioned as a deeper layer of soil that has, for the most part, been covered by other layers over time, but which does occasionally come to the surface."<sup>279</sup>
- 3 Since, according to the argumentation under B.V, modern international law does not cover the old soil of neutrality law but adds the option of non-belligerency for third states, Wentker's conclusion is not convincing. Applying, as Schmid does, Kohen's definition of obsolescence as "a situation where major changes in the international legal system or in the law governing the parties to the treaty concerned take place"<sup>280</sup> and render the treaty's application "legally impossible",<sup>281</sup> neutrality law is also not obsolete. Apart from cases of UNSC resolutions demanding force (see Part 1.III), she is moreover correct when arguing that neutrality law has neither been overridden by the UNC nor has entered a status of desuetude—the UNC allows neutrality in principle, and no international rule prevents neutrality from applying or has explicitly ended it.<sup>282</sup> However, this does not answer the central question of its *practical* relevance: Which advantages do neutral states have compared to non-belligerents? Is there any *legal* difference between these statuses?
- 4 Applying a broader definition of obsolescence than Schmid, Ingber diagnosed "the complete legal obsolescence of neutrality in a world where states are already inviolable."<sup>283</sup> According to what we called *Territorial Protection Change*, the "reward" of traditional neutrality was the protection of a third state's territory, which "comes standard" now.<sup>284</sup> According to Ingber, this leads to the obsolescence of neutrality law "not because it has ceased to exist, but because neutrality is an option that has ceased to have any legal significance."<sup>285</sup> For her, "there is no legal reason today for a state to choose neutrality or follow its strictures."<sup>286</sup>

- 5 For El-Zein, neutrality law can no longer contribute to the legal regulation of the relation between third states and belligerents and is therefore obsolete.<sup>287</sup> As Ingber, he points to sufficient regulations under general international law prohibiting assistance to an aggressor, allowing for trade, and protecting the territory of all third states.<sup>288</sup> Due to the *Territorial Protection and Threshold Changes*, neutrality law has no "added legal value"<sup>289</sup> anymore: Instead of depending on a third state's adherence to neutrality obligations, its participation in the conflict determines now whether a state's territory may be attacked.<sup>290</sup> Ingber adds that since war is no longer a "lawful tool of policy", not adhering to neutrality does not *ipso facto* imply that force may be used against a third state.<sup>291</sup> Regarding a third state's treatment by the conflict parties, Ingber and El-Zein are therefore correct when perceiving neutrality law as obsolete and proposing only two options for third states (see Illustration 8).<sup>292</sup>
- 6 However, the obsolescence of neutrality depends on the former's definition, which means that the positions of Ingber and El-Zein (obsolete neutrality) and of Schmid and this paper (optional neutrality) are close together. Taking Schmid's understanding, neutrality is not obsolete, and third states are, except in the case of mandatory UNSC resolutions, still free to adopt a neutral stance by adhering to traditional neutrality law (which then imposes certain behaviour on them). Deciding against such a stance, entails, however, no legal sanctions.

Illustration 8 – Third State's Options after Obsolete Neutrality



Source: Author, 2025.

## 2. What neutrality means in the 21<sup>st</sup> century

- 7 Gill and Tibori-Szabó stress that, in the absence of a withstanding UNSC resolution, third states can be neutral, which lends neutrality continued relevance.<sup>293</sup> El-Zein sees the UNC as permitting neutrality and states as referring to it.<sup>294</sup> Ingber admits that "taking sides in a conflict [...] may have policy repercussions"<sup>295</sup> and observes that neutrality "remains on the books in treaties, judicial opinions, and military manuals".<sup>296</sup> Based on a similar observation, Wentker concludes that "States themselves have not been willing to let go of neutrality entirely".<sup>297</sup> Different from Ingber, it is submitted that this is not "dangerous" but due to three legitimate reasons: political importance, legal certainty, and humanitarian advantages.<sup>298</sup>
- 8 First, Bartolini and Pertile conclude that states understand neutrality "more as a political choice rather than a legal obligation."<sup>299</sup> What is an unsatisfactory observation

for lawyers encloses enormous potential. For example, Greminger and Rickli see neutrality as an attractive "strategic option"<sup>300</sup> for small states trying "to prioritise autonomy in foreign and security policy".<sup>301</sup> According to them, "[s]mall states can also use their reputation and perceived neutrality within international organisations to be norms entrepreneurs [sic]".<sup>302</sup> In ensuring these geopolitical advantages, Greminger and Rickli see especially permanently neutral states as widely "free to determine the content of [their] neutrality policy",<sup>303</sup> which aims, as in the case of Switzerland, at "the effectiveness and credibility of neutrality."<sup>304</sup> Clapham confirms this by quoting Switzerland's view that its "policy of neutrality is not governed by law" but aims at guaranteeing "the clarity and credibility of its permanent neutrality."<sup>305</sup> The debate in Austria (see Part 2.III) also illustrates the political importance of neutrality.

- 9 Second, according to Schmid, neutrality comes with "potential advantages for humanitarian objectives".<sup>306</sup> She argues that neutral states can act "as predictable and credible interlocutors who can facilitate negotiations for humanitarian access [or] initiatives to strengthen compliance with IHL".<sup>307</sup> Seger adds that neutrality can serve "as an instrument for peace", inter alia by "promot[ing] initiatives which reduce international tensions and prevent conflicts."<sup>308</sup>
- 10 Third, neutrality can be an attractive option for third states to circumvent legal uncertainty, as Grotius already requested: "But in a dubious Cause to behave themselves alike to both Parties".<sup>309</sup> Neutrality can hence be an adequate reaction to the legal uncertainty arising from the lack of an authoritative determination of the aggressor as discussed in Part 1.IV; moreover, it can be a helpful choice in the case of a second form of legal uncertainty. As will be discussed in Part 2 and 3, the exact delimitation between neutrality, non-belligerency and co-belligerency is not always clearly defined; Zugliani, Bartolini, and Pertile even speak of a general "uncertainty regarding the law of neutrality"<sup>310</sup> and "the uncertain legal character of the most promising arguments to legitimize assistance".<sup>311</sup> Given this background, choosing a neutral stance is the safest option, neither risking legal implications nor the anger of a (legally) aggrieved belligerent.<sup>312</sup>
- 11 This is not uncontroversial. For Ingber, who acknowledges the advantages of neutrality as a policy choice,<sup>313</sup> this "legal confusion"<sup>314</sup> and "continued ambiguity over [the neutral] status"<sup>315</sup> should not be a reason to adopt a neutral stance but to "kill off neutrality law for good",<sup>316</sup> at least as a legal concept. She argues that its continued existence "has not been merely messy—it has been dangerous"<sup>317</sup> because states would misunderstand and misuse neutrality law as a basis for obligations whose breach would justify the use of force.<sup>318</sup> This would "legitimize force that exceeds what modern *jus ad bellum* [...] permits"<sup>319</sup> and cause "misplaced panic about violating neutrality"<sup>320</sup> leading to "underaiding [of] victims of aggression"<sup>321</sup> Moreover, it would contribute to "the muddying of the legal landscape regulating war"<sup>322</sup> and take away the power of international law as "shared language".<sup>323</sup>
- 12 While she is correct about these dangers, the problem is not neutrality but the confusion about it. Her idea<sup>324</sup> of changing and eliminating the widespread references to neutrality law to "give it a proper burial at sea"<sup>325</sup> is an overly optimistic goal. Even if states are willing to follow this approach, it will take so much time that it is, at best, a long-term solution. In addition, safeguarding neutrality as a political concept while fully "killing it" as a legal idea will be difficult in practice.<sup>326</sup> The pragmatic and equally effective alternative is, therefore, to make clear what neutrality (as an optional stance without legal consequences), non-belligerency, and co-belligerency mean today.

Clarifying the delimitations, characteristics, and legal consequences of these categories can be achieved by, as Zugliani<sup>327</sup> and Bothe<sup>328</sup> suggest, re-codifying neutrality law and the options for third states in case of an IAC. Thereby, legal uncertainty and "legal confusion" can be overcome in a way that "preserves the concept of neutrality",<sup>329</sup> as Schmid puts it, while preventing, as Ingber titles, the "Abuse of Neutrality".<sup>330</sup> As a first step on that way, the following parts will explain this legal uncertainty for states from the perspective of CIL (Part 2) and suggest a categorization of third states' options under the premise of neutrality as an optional concept (Part 3).

### 3. Interim Result

- <sup>13</sup> To reduce the current legal uncertainty, the options of third states should be re-codified, clarifying that neutrality is not obsolete because of its political importance and its humanitarian benefits. Despite its limited legal relevance, neutrality is still an important concept and an attractive option for third states. While the law of neutrality is toothless, neutrality is still practiced—states can and do voluntarily choose it, but when they do not, nothing happens.

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#### FOOTNOTES

**279.** Wentker (n 4) 995–996.

**280.** Marcelo G Kohen, 'Desuetude and Obsolescence of Treaties' in Enzo Cannizzaro (ed), *The Law of Treaties Beyond the Vienna Convention* (1st edn, Oxford University Press 2011) 353 <<https://doi.org/10.1093/acprof:oso/9780199588916.003.0021>> accessed 4 June 2025.

**281.** Schmid (n 1) 8; based on Kohen (n 280) 358.

**282.** Schmid (n 1) 7–11.

**283.** Ingber (n 8) 17.

**284.** *ibid.*

**285.** *ibid.*

**286.** *ibid* 13.

**287.** El-Zein (n 53) 207–211.

**288.** *ibid* 207, 209–210.

**289.** Literal translation of his finding that there is "kein rechtlicher Mehrwert", *ibid* 211.

**290.** *ibid* 207, 209–210.

**291.** Ingber (n 8) 18.

**292.** El-Zein (n 53) 211; Ingber (n 8) 17, 18–19.

293. Gill and Tibori-Szabó (n 62) 343.
294. El-Zein (n 53) 207, 208–209.
295. Ingber (n 8) 18.
296. *ibid* 3.
297. Wentker (n 4) 968–969.
298. Cf. Schindler (n 8) 380–381.
299. Bartolini and Pertile (n 5) 201; cf. also Clapham (n 1) 72.
300. Thomas Greminger and Jean-Marc Rickli, ‘Neutrality After the Russian Invasion of Ukraine: The Example of Switzerland and Some Lessons for Ukraine’ (2023) 10 *Prism* 29 <[https://www.researchgate.net/profile/Jean-Marc-Rickli/publication/375027735\\_Neutrality\\_After\\_the\\_Russian\\_Invasion\\_of\\_Ukraine\\_The\\_Example\\_of\\_Switzerland\\_and\\_Some\\_Lessons\\_for\\_Ukraine/links/653c1d713cc79d48c5b154c1/Neutrality-After-the-Russian-Invasion-of-Ukraine-The-Example-of-Switzerland-and-Some-Lessons-for-Ukraine.pdf](https://www.researchgate.net/profile/Jean-Marc-Rickli/publication/375027735_Neutrality_After_the_Russian_Invasion_of_Ukraine_The_Example_of_Switzerland_and_Some_Lessons_for_Ukraine/links/653c1d713cc79d48c5b154c1/Neutrality-After-the-Russian-Invasion-of-Ukraine-The-Example-of-Switzerland-and-Some-Lessons-for-Ukraine.pdf)>; based on Dan Reiter, *Crucible of Beliefs: Learning, Alliances, and World Wars*. (Cornell University Press 1996) <<https://www.jstor.org/stable/10.7591/j.ctvr7f55h>>; based on Jean-Marc Rickli, ‘The Evolution of the European Neutral and Non-Allied States’ Military Policies after the Cold War 1989-2004.’ (PhD Dissertation, University of Oxford 2010); based on Jean-Marc Rickli, ‘The Western Influence on Swedish and Swiss Policies of Armed Neutrality during the Early Cold War’ in René Schwok (ed), *Interactions Globales—Global Interactions* (Institut Européen de l’Université de Genève 2004) <[https://www.files.ethz.ch/isn/30044/26\\_schwok.pdf](https://www.files.ethz.ch/isn/30044/26_schwok.pdf)>.
301. Greminger and Rickli (n 300) 29.
302. *ibid*; based on Margaret E Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (3rd edn, Cornell University Press 2014).
303. Greminger and Rickli (n 300) 29–30.
304. Swiss Federal Department of Foreign Affairs, ‘Neutrality Under Scrutiny in the Iraq Conflict - Summary of Switzerland’s Neutrality Policy during the Iraq Conflict in Response to the Reimann Postulate (03.3066) and to the Motion by the SVP Parliamentary Group (03.3050)’ 8–9; quoted by Greminger and Rickli (n 300) 30.
305. Clapham (n 1) 74; Swiss Federal Department of Foreign Affairs, ‘Neutrality’ (*Swiss Federal Department of Foreign Affairs*, 21 January 2025) <<https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/neutrality.html>> accessed 12 June 2025.
306. Schmid (n 1) 19.
307. *ibid*.
308. Seger (n 20) 270–271.
309. Hugo Grotius, *Of the Rights of War and Peace in Three Volumes, 1625, Book III* (Liberty Fund 2005) ch XVII, Section III.1.
310. Zugliani (n 5) 410.
311. Bartolini and Pertile (n 5) 228.
312. Cf. Schindler (n 8) 380.

313. Ingber (n 8) 20.
314. *ibid* 5.
315. *ibid*.
316. *ibid* 3.
317. *ibid* 5.
318. *ibid* e.g., 23-24, 27.
319. *ibid* 5.
320. *ibid* 6.
321. *ibid*.
322. *ibid* 5.
323. *ibid* 48–49.
324. *ibid* 49–54.
325. *ibid* 57.
326. Cf. for their entanglement *ibid* 19–20.
327. Zugliani (n 5) 410.
328. Bothe, ‘Neutrality, Concept and General Rules’ (n 16) para 8.
329. Schmid (n 1) 18.
330. Ingber (n 8) 1.

## VII. Interim Conclusion

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- <sup>1</sup> Neutrality law was significantly influenced by five changes of the international legal order, leading, *inter alia*, to a third option for third states. Optional neutrality incorporates these changes and best translates the optional character of traditional neutrality to the 21st century. From a theoretical point of view, optional neutrality is, therefore, the most convincing Application Theory, making several options available for third states.

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## **Part 2. How to React to a "Flagrant" Aggression in Practice? – The Problem of Missing *Opinio Juris***

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## Introduction to part 2, *How to React to a "Flagrant" Aggression in Practice?*

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- 1 This part discusses the implications of third states' reactions to Russia's 2022 aggression against Ukraine for the customary law of neutrality. It thereby reopens the debate on the form in which neutrality applies in the 21<sup>st</sup> century from the perspective of CIL. By asking the same question from a different perspective, it ties in the arguments from the theoretical examination above while adding new insights. Instead of using CIL arguments to confirm theoretical considerations or *vice versa*, this analysis tries to depict the in parts complementary and in parts opposing development of CIL and treaty law.
- 2 For this purpose, it will first examine scholars' analyses of states' reactions to the Russo-Ukraine war, finding that states face a form of legal uncertainty that is reproducing itself (I). This will be exemplified by an analysis of state practice and *opinio juris* of Germany (II) and Austria (III). These German-speaking countries were chosen because of their historical, cultural, and geopolitical similarity and their divergent support for Ukraine, which is much discussed in both countries. As will be shown, these domestic debates illustrate well the transitions between non-belligerency/co-belligerency and neutrality/non-belligerency, rendering Germany and Austria borderline cases.

# I. Between Doctrinal Debate and Missing *Opinio Juris*: Too little State Practice and *Opinio Juris* as Basis for a CIL Modification

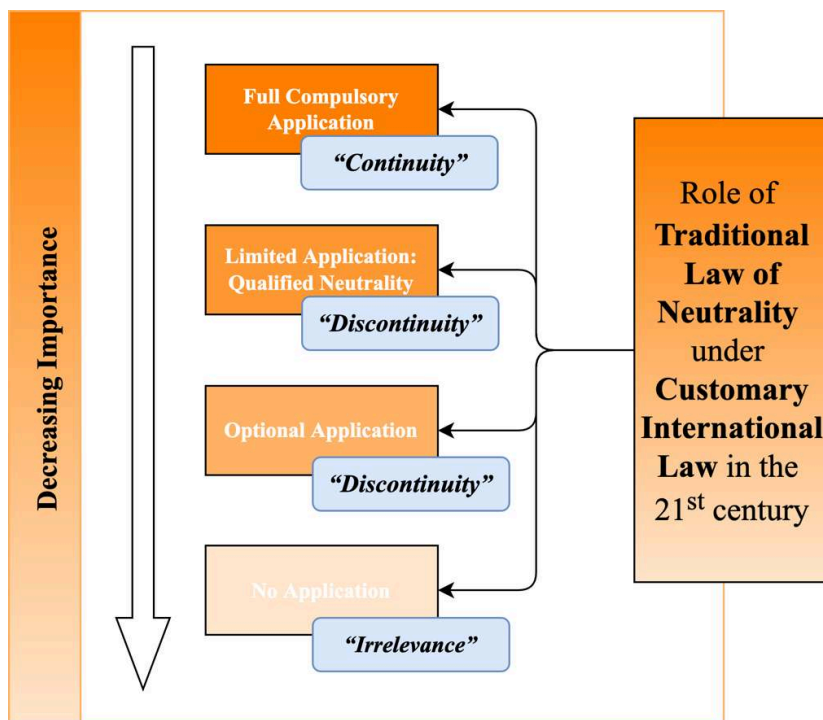
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- 1 As explained in Part 1, a modification of traditional customary law of neutrality as codified in the Hague Conventions could not only be a consequence of the adoption of the UNC but also a result of a changed state practice which "should have been both extensive and virtually uniform [...] and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved."<sup>331</sup> In part II, we followed, similar to Wentker, a theoretical approach. For him, such an approach focuses on what "deductively flows from the structure of international law of peace and security" and thereby avoids "deadlocked [...] debates as to whether State practice accepted as law suffices to establish such a rule inductively".<sup>332</sup>
- 2 This part will take a closer look at state practice and *opinio juris*. This is not only rewarding because it plays a vital role in most academic contributions to the law of neutrality in the 21<sup>st</sup> century, but also because even the most convincing legal interpretations of scholars need to be shared by states or authoritatively confirmed by a competent court to be influential in practice. Wentker admits that "it is worth illustrating that recent practice seems to resonate with" his conceptual findings.<sup>333</sup> The closer look at state practice should, however, not only be confirmatory since this disregards some of the significant problems of state practice and *opinio juris*. These are, namely, the limited availability of *opinio juris* and the uncertainty regarding states' interpretation of neutrality law in the 21<sup>st</sup> century, which prevent the reaching of legal clarity on the rights and obligations of states in practice and are probably the cause for what Wentker describes as "deadlocked debate".<sup>334</sup> Consequently, it is, as the following examples show, difficult for scholars to solidly base their arguments on the actual conduct of states.
- 3 Bartolini and Pertile provide a comprehensive analysis of third states' reactions to the Russian invasion of Ukraine and the legal justifications offered by those states delivering weapons and economically assisting Ukraine. They conclude that "[l]egal

arguments based on neutrality were scarcely used" by all relevant groups of states - neutral ones, those "essentially ignoring the law of neutrality" to support Ukraine, and also by the belligerents themselves.<sup>335</sup> The states "openly provid[ing] military and economic assistance to the attacked party" limited themselves mainly to "superficial legal reasonings centered on the violation of the *jus ad bellum*." <sup>336</sup>

- 4 The 2022 Heintschel von Heinegg observes that "since the 1990s State practice has been far from uniform."<sup>337</sup> Upcher finds meanwhile that concerning the exact scope and content of legal weapon delivery and economic assistance, "there is a lack of practice [...], and the matter must be regarded as uncertain."<sup>338</sup> Van Steenberghe classifies the "discourse used by Western states to justify their military assistance to Ukraine" as "mere law-like" and not "falling under any specific legal justification".<sup>339</sup> Clancy agrees by finding that "[i]n the absence of explicit explanations from States engaged in the supply of arms and war material to Ukraine, it has fallen to legal scholars and commentators to explain how such measures may conform with the law of neutrality."<sup>340</sup>
- 5 Also, Bartolini's analysis of third states' reactions to the Russian invasion of Ukraine reveals uncertainty. He argues that "positions are far from conclusive" and that the "open military support" to Ukraine forms a "factual shift [which] has not been accompanied by clear and extensive legal reasoning."<sup>341</sup> For him, this "self-restraint [...]" in properly engaging with the law of neutrality and legal arguments could have different reasoning", <sup>342</sup>which leaves it to future developments whether the open support to Ukraine will translate into a new legal rule.<sup>343</sup> For Schmid, "[s]tate practice is inconsistent"<sup>344</sup> and "inconclusive and *opinio juris* scarce and ambiguous."<sup>345</sup> Similarly, even after the Russian aggression, Zugliani observed third states' "reluctance [...] to characterize their [supporting] actions in legal terms." <sup>346</sup>For him, "[s]tate practice [...] is susceptible to different readings" in wide parts.<sup>347</sup> While there seems to exist a consensus in doctrine on the lack of *opinio juris* and the missing clarity in state practice, it gets differently interpreted or "read".
- 6 In the title of one of his contributions, Bartolini asks, therefore, the central question "Continuity, Discontinuity, or Irrelevance?"<sup>348</sup> regarding (how he later titles a concluding section) "The (Uncertain) Current State of the Art on the Law of Neutrality".<sup>349</sup> This gives rise to a situation similar to the one discussed in Part 1. Different states of the customary neutrality law are possible (see Illustration 9) and will be evaluated in the following (Parts 2.I.1 to 2.I.3).

Illustration 9 – The Importance of Neutrality under CIL



Source: Author, 2025.

## 1. No Application or "Irrelevance"

- 7 The thesis of the complete irrelevance of neutrality law is easily defeated. Bartolini and Pertile point to the "continuous references to this body of law in international and domestic practice".<sup>350</sup> For Ronzitti, the practice of permanently neutral states – taking part in restrictive measures but avoiding transporting war material – shows that "classical neutrality survives".<sup>351</sup> In analogy to the reasoning in Part 1.V and 1.VI, this is at least convincing to the extent that neutrality as a political option must have survived.<sup>352</sup>

## 2. Full Compulsory Application or "Continuity"

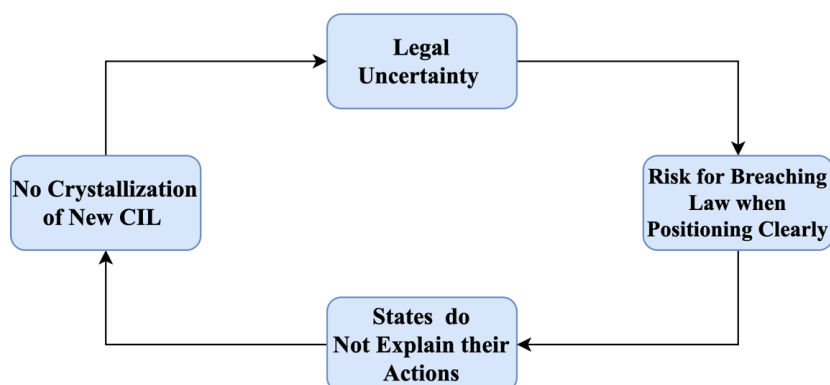
- 8 The thesis of a continued application of the traditional customary law of neutrality has more supporters. In light of the finding that traditional neutrality was optional (see 1.V), this has to be understood as compulsorily applicable neutrality, implying the existence of only an illegal status of non-belligerency (see 1.III). The 2007 Heintschel von Heinegg, Upcher, Clancy, Heller, and Trabucco have concluded from their analysis of state practice and *opinio juris* that the traditional law of neutrality is still applicable: Following Heller and Trabucco, delivering weapons is hence a violation of binding international law.<sup>353</sup> They explain that in "the absence of Security Council action [...] it is difficult to view qualified neutrality as *lex lata* [...], given the absence of supportive state practice."<sup>354</sup> Moreover, they point to missing *opinio juris* when arguing "that, to date, no state has explicitly argued that qualified neutrality applies to Ukraine or to a Ukraine-like situation."<sup>355</sup>

- 9 Inter alia, based on the same observation, Clancy comes to "[t]he inescapable conclusion [...] that qualified neutrality is not a part of contemporary international law."<sup>356</sup> This conflicts, however, with statements by Norway and several members of the UNSC implying that Ukraine's right to self-defense gives third states a right to support it with weapon deliveries.<sup>357</sup> Upcher argues that "[w]hile it may be the case that States depart in a number of instances from full compliance with the duties of neutrality, this is not sufficient evidence that the status of neutrality is inapplicable *prima facie* to a particular armed conflict" because "a [s]tate may simply choose to act contrary to a duty that flows from that status."<sup>358</sup>
- 10 For the 2007 Heintschel von Heinegg some examples of states supporting a belligerent are meanwhile not only an insufficient basis for a modification of CIL but even a proof for the continued relevance of the traditional rules: He found that states did not rely on collective self-defense but tried "in many cases to conceal their assistance [which] indicates, if not proves, that they did not base their conduct on relevant *opinio juris*."<sup>359</sup> Together with the continued references to neutrality in military manuals, this means for him that the traditional law of neutrality applies at least in its "*essentialia*".<sup>360</sup> He concludes therefore that "[s]tate practice indirectly proves the continuing validity of the law of neutrality"<sup>361</sup> and that "allegations of derogation of the law of neutrality are, to say the least, premature".<sup>362</sup>
- 11 This reasoning is unconvincing as there are several political and strategic reasons for not openly supporting a belligerent and not publicly declaring the inapplicability of neutrality law or justifying its breach (see below). Moreover, Bartolini and Pertile found, as mentioned, that third states supported Ukraine "openly",<sup>363</sup> making Heintschel von Heinegg's argumentation outworn. In 2022, he changed, furthermore, his opinion and defended qualified neutrality even without a UNSC resolution if the aggressor himself prevents the latter.<sup>364</sup> Regarding the state practice in the Russo-Ukraine war, Kolb and Meret argue in addition that compulsorily applicable neutrality "would lead to an impressive number of violations of neutrality not accompanied by any significant protest by States", which "is highly improbable".<sup>365</sup>
- 12 Apart from this shift, the position of compulsorily applicable neutrality raises major conceptual problems (see Part 1) which cannot be rebutted with references to vague *opinio juris*. First, it is questionable what the practical legal consequences of a breach of existing and applying neutrality law are under CIL if the territory is "inviolable" under Article 2(1) UNC (*Territorial Protection Change*). Second, for many observers, it is also under CIL an unsatisfactory or even morally unacceptable result to be legally prohibited from supporting a victim of aggression without becoming a full party to the conflict, especially as this contradicts the practice of a significant number of (Western) states (*Belligerent Inequality Change*).
- 13 Moreover, the extent of CIL is difficult to assess without sufficient state practice and *opinio juris*. Assuming the content of the Hague Conventions as being applicable *in toto* to all states as CIL seems unfounded in the absence of such evidence, especially when considering the changed circumstances of the international system and the fact that the majority of states have not existed at the time of the pre-UNC CIL's crystallization and the Hague Convention's codification. Schmid notes, for example, that "[i]t is challenging to evaluate the legal situation [inter alia] because [...] the law of neutrality emerged prior to decolonialization".<sup>366</sup> Compulsorily applicable neutrality under CIL ("continuity") is thus an unconvincing position in theory and practice.

### 3. "Discontinuity" and Legal Uncertainty

- 14 Given this dilemma of too little state practice and *opinio juris* for a change and too much to draw an unambiguous conclusion against it, scholars also turn in different directions with the "discontinuity" approach. As explained above, some try to avoid reliance on state practice, such as Wentker with his "deductive approach" or Clancy, who presents justifications for states "in prima facie breach of their neutral obligation."<sup>367</sup>
- 15 Others accept that there is not yet enough state practice for a new customary rule on neutrality but focus on first indications for it as well as on the current uncertainty, the reasons behind it, and the potential for the future. Bartolini speaks, for example, of "the emergence of discontinuity"<sup>368</sup> and of "diminishing relevance of the law of neutrality".<sup>369</sup> Clancy also acknowledges that the current non-existence of qualified neutrality "does not [...] preclude the emergence of such a rule in the future".<sup>370</sup> Zugliani stresses with more vigour in his conclusion that "[u]ntil this rule is settled [...] the uncertainty regarding the law of neutrality in the Charter era will persist."<sup>371</sup> Bartolini agrees by diagnosing "the uncertain legal character of the most promising arguments to legitimize assistance, namely the 'qualified' exception and the invocation of individual countermeasures".<sup>372</sup> He also assesses that "[s]tates providing military support to Ukraine have failed to properly advocate for discontinuity in this legal regime in order to crystallize the 'qualified' exception."<sup>373</sup> However, in another article, he sees together with Pertile "[support] by some important elements of the current practice" for neutrality as "an option for third states" in cases of a clear aggression.<sup>374</sup> Notwithstanding their finding that "the [s]tates that have openly supported one side in the conflict are a relatively limited group",<sup>375</sup> a slow modification of neutrality law is supported by Bartolini's and Pertile's observation of other third states' and even the belligerents' little protest.<sup>376</sup>
- 16 Furthermore, missing *opinio juris* or "silence"<sup>377</sup> does not necessarily support the continued relevance of the traditional law of neutrality as Heintschel von Heinegg suggested, but could speak for emerging "discontinuity" as well. Wentker assumes that the missing justifications of weapon-delivering states, including the lack of notification to the UNSC to trigger collective self-defense under Article 51 UNC as potential justification, could be due to the symbolic meaning and connected escalation potential of the latter; alternatively, it could mean that these states just "did not believe that their conduct infringed neutrality in any way so as to require a defence."<sup>378</sup> For Bartolini and Pertile more convincing explanations lay in the "uncertain legal character"<sup>379</sup> of such justifications which "may have prevented [s]tates from convincingly adopting them"<sup>380</sup> and in their "political-legal interest to avoid arguments which could be used in the future by other States to provide military support to belligerents even in front of less manifest violations of the *jus ad bellum*."<sup>381</sup> They warn however, that this "did not favor any clear analysis and reduced the contribution of the present practice in shaping international law."<sup>382</sup> This implies that there is legal uncertainty which reproduces itself: Because of the legal uncertainty regarding the applicability of the law of neutrality, states do not explain their practice, which reinforces the state of uncertainty again (see Illustration 10). As scholarly work could not sufficiently support states overcoming this legal uncertainty so far, Zugliani is right when wishing for a new codification effort.<sup>383</sup>

Illustration 10 – Reproduction of Legal Uncertainty



Source: Author, 2025.

- 17 Consequently, there are convincing reasons to assume that *opinio juris* and state practice can be read as supporting the view of an emerging "discontinuity". An additional question is, however, whether this change goes, as implied by most of the cited authors, towards a qualification of neutrality. Since qualified neutrality and optional neutrality allow for discrimination against the aggressor below the threshold of entering the conflict, it remains unclear why the observed state practice and *opinio juris* would support qualified neutrality and not optional neutrality. Neither the practice of states nor the respective *opinio juris* indicates that a formerly existing obligation for third states to be neutral is discontinued; state practice and *opinio juris* can also be read as supporting the view that the binary choice between neutrality and conflict participation is discontinued. As Schmid rightly points out, "all positions suffer from uncertainties"<sup>384</sup> and state practice does neither support optional nor qualified neutrality clearly: "In any event, the inconclusiveness of current State practice means that it does not confirm either optional or qualified neutrality."<sup>385</sup> For the conceptual reasons discussed in Part 1.V and by Schmid, optional neutrality "seems more convincing than alternative views."<sup>386</sup> As mentioned, this also aligns with Bartolini and Pertile's conclusion that states understand neutrality "more as a political choice rather than a legal obligation."<sup>387</sup>

## 4. Interim Result

- 18 As explained above and seen here, Part 1's conceptual approach is needed to understand what we see. However, the reliance on conceptual arguments alone is not sufficient, as it disregards an important part of the reality, the existing dilemma of too little and too much state conduct to come to a clear conclusion regarding the applicability of neutrality law in the 21<sup>st</sup> century. The "discontinuity" approach is the most convincing description of changing CIL, which acknowledges and explains the divergent state practice best, even though there is not yet a sufficient basis for a complete change of customary neutrality law. As we have seen, this creates legal uncertainty that reproduces itself. The next part will illustrate what this means in practice by presenting the examples of first German and then Austrian state practice and *opinio juris* in reaction to the Russian invasion of Ukraine.

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## FOOTNOTES

331. *North Sea Continental Shelf* (Judgment) [1969] ICJ Rep 3 [74].
332. Wentker (n 4) 965, cf. 988.
333. *ibid* 985.
334. *ibid* 988.
335. Bartolini and Pertile (n 5) 227.
336. *ibid*.
337. Heintschel von Heinegg, 'Neutrality in the War against Ukraine' (n 19).
338. Upcher (n 25) 88.
339. Raphael Van Steenberghe, 'Military Assistance to Ukraine: Enquiring the Need for Any Legal Justification under International Law' (2023) 28 *Journal of Conflict and Security Law* 231, 250–251 <<https://dial.uclouvain.be/pr/boreal/object/boreal:281879>> accessed 19 January 2025.
340. Clancy (n 6) 528.
341. Giulio Bartolini, 'The Law of Neutrality and the Russian/Ukrainian Conflict: Looking at State Practice' (*EJIL: Talk!*, 11 April 2023) <<https://www.ejiltalk.org/the-law-of-neutrality-and-the-russian-ukrainian-conflict-looking-at-state-practice/>> accessed 13 February 2025.
342. *ibid*.
343. *ibid*.
344. Schmid (n 1) 13.
345. *ibid* 16, see also 15.
346. Zugliani (n 5) 409.
347. *ibid* 410.
348. Bartolini (n 5).
349. *ibid* 294.
350. Bartolini and Pertile (n 5) 228; See also El-Zein (n 53) 208–209.
351. Ronzitti (n 2) 16.
352. Cf. Bartolini and Pertile (n 5) 201.
353. Heller and Trabucco (n 142) 263.
354. *ibid* 274.
355. *ibid* 263.
356. Clancy (n 6) 534.

357. Utenriksdepartementet, 'Norsk våpenstøtte til Ukraina og folkeretten' (*Regjeringen.no*, 10 March 2022) <[https://www.regjeringen.no/no/aktuelt/vaapen\\_folkerett/id2903706/](https://www.regjeringen.no/no/aktuelt/vaapen_folkerett/id2903706/)> accessed 12 June 2025; United Nations Press, "Western Weapons Not Cause of Senseless War" in Ukraine, Delegate Tells Security Council, Stressing Kyiv's Right to Self-Defence under United Nations Charter' (*Meetings Coverage and Press Releases*, 25 July 2024) <<https://press.un.org/en/2024/sc15778.doc.htm>> accessed 12 June 2025.
358. Upcher (n 25) 31.
359. Heintschel von Heinegg, 'Chapter 20. Benevolent Third States in International Armed Conflicts' (n 137) 553; based on Alan T. Leonhard, 'Introduction', *Neutrality - Changing Concepts and Practices* (University Press of America 1988) 4 [inaccessible]; Stefan Oeter, *Neutralität Und Waffenhandel*, vol 103 (Springer 1992) 136 <<https://swbplus.bsz-bw.de/bsz028254430cov.jpg>> accessed 6 June 2025.
360. Heintschel von Heinegg, '§ 66. Neutralitätsrecht' (n 20) 1353–1354; various parts in Heintschel von Heinegg, 'Chapter 20. Benevolent Third States in International Armed Conflicts' (n 137).
361. Heintschel von Heinegg, 'Chapter 20. Benevolent Third States in International Armed Conflicts' (n 137) 558.
362. *ibid* 544.
363. Bartolini and Pertile (n 5) 227.
364. Heintschel von Heinegg, 'Neutrality in the War against Ukraine' (n 19).
365. Kolb and Meret (n 18).
366. Schmid (n 1) 11.
367. Clancy (n 6) 534.
368. Bartolini (n 5) 287.
369. *ibid* 281.
370. Clancy (n 6) 534.
371. Zugliani (n 5) 410.
372. Bartolini (n 5) 295.
373. *ibid*.
374. Bartolini and Pertile (n 5) 230; based on Gioia (n 8) 61–68.
375. Bartolini and Pertile (n 5) 230.
376. *ibid* 228.
377. Bartolini (n 5) 295.
378. Wentker (n 4) 974–975, quoted from 975; similarly Zugliani (n 5) 410.
379. Bartolini and Pertile (n 5) 228.
380. *ibid*.
381. *ibid*.

**382.** *ibid.*

**383.** Zugliani (n 5) 410.

**384.** Schmid (n 1) 16.

**385.** *ibid* 15.

**386.** *ibid.*

**387.** Bartolini and Pertile (n 5) 201.

## II. Non-Belligerency in Practice: The Example of Germany

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- 1 This part will cover state practice (1) and *opinio juris* (2) provided by the 24<sup>th</sup> Federal government of the Federal Republic of Germany under Chancellor Olaf Scholz and of the 20<sup>th</sup> German Federal Parliament.

### 1. State Practice

- 2 In the weeks before the 2022 Russian invasion of Ukraine, Germany reacted reluctantly to the Ukrainian petition for military defense equipment. The delivery of 5000 helmets by the German government to Ukraine was highly criticized, inter alia by the Ukrainian ambassador who described it as "symbolic policy".<sup>388</sup>
- 3 After the full Russian invasion of Ukraine on 24 February 2022, Germany decided to support Ukraine with the delivery of weapons, notwithstanding that this meant the abandonment of the "longstanding practice of blocking lethal weapons from being sent to conflict zones."<sup>389</sup> Three days after the invasion, Chancellor Olaf Scholz gave his famous speech characterizing the Russian aggression as a "watershed in the history of our continent."<sup>390</sup> He argued that "[w]ith his attack on Ukraine on Thursday, President Putin has created a new reality. This new reality requires an unequivocal response. We have given one. As you know, we decided yesterday that Germany will supply Ukraine with weapons for the country's defence. No other response to Putin's aggression was possible."<sup>391</sup>
- 4 According to its own statements, Germany delivered or committed to deliver weapons and military equipment worth around 28 billion euros until mid-April 2025.<sup>392</sup> This includes armored fighting vehicles such as 18 LEOPARD 2 A six main battle tanks, air defence such as four PATRIOT launchers, Artillery such as 25 self-propelled howitzers Panzerhaubitze 2000, and different Drones and anti-drone systems.<sup>393</sup> This military support stems directly from the Federal Armed Forces stocks or the industry, financed by the Federal Government funds for security capacity building.<sup>394</sup> Additionally, over 10,000 Ukrainian soldiers were militarily trained in Germany.<sup>395</sup> However, until the end of Scholz's chancellorship in early May 2025, no Taurus cruise missiles were delivered to Ukraine.<sup>396</sup>

## 2. *Opinio Juris*

- 5 This part engages with Germany's *opinio juris* by providing a general overview (a), focusing on Germany's reaction to an exemplary earlier conflict (b), its references to non-belligerency after the Russian aggression (c), "heavy weapons" (d), and the role of Scholz's "watershed" speech (e).

### a) General Overview

- 6 In general, it can be concluded that Germany perceives itself as a supporter of Ukraine's individual self-defense under Article 51 UNC but does not consider itself a party to the conflict or a state in collective self-defense.<sup>397</sup> As Schmid argues, the question of conflict participation seems to be more important to Germany than whether neutrality obligations are breached or applicable in the first place.<sup>398</sup> The latter is almost absent from all official statements and publications and seems not to be a relevant question for the German government.
- 7 Even though it cannot speak for the government,<sup>399</sup> the scientific research service of the parliament, allows some important conclusions about how central legal questions are phrased and answered by relevant parties in Germany. Therefore, it will be occasionally quoted. It must be noted that this service is an independent service to support members of parliament in their fact-based decision-making; it is not required to follow official legal views of the government and does not represent them.<sup>400</sup> When Bartolini implies a strategic thinking behind official positions,<sup>401</sup> this cannot include the output of the scientific research service, which often only replicates the opinion of German scholars.<sup>402</sup>

### b) Germany's stance in the past

- 8 One of the most explicit official German statements on the law of neutrality was made by the German Federal Administrative Court in 2005. While assessing the legality of Major Florian Pfaff's insubordinate conduct, it found "serious concerns" regarding the compatibility of the German obligations under Hague Convention V and general international law and its assistance to the UK and the USA in their arguably illegal IAC against Iraq.<sup>403</sup> Based on inter alia the 1992 German Military Manual, the bench argued that, while states are in principle free to participate in an armed conflict, they may not support an aggressor.<sup>404</sup> Classifying Germany as a neutral country confirms for Wentker the idea of "neutrality as an automatic, rather than an optional, status"<sup>405</sup> and even for Schmid, the judgment indicates the Court's support for a "traditional view" on neutrality.<sup>406</sup>
- 9 While these views are compelling, they disregard two details. First, the direct reference of the judgment to the 1992 German Military Manual implies that the court might rule differently after the Manual changed. The current version shares the finding that conflict participation is limited to collective self-defense in support of a victim of aggression, but stresses the binarity between neutrality and co-belligerency less.<sup>407</sup> Both Manuals imply that they understand collective self-defense necessarily as co-belligerency; simultaneously, they stress that single violations of neutrality obligations do not lead to partyhood<sup>408</sup> and have very limited consequences. The current Manual can, therefore, be read as implying some room for (illegal) non-belligerency.

- 10 The German government refrained from a clear statement, stating only that the legality of the Iraq war, the German support of the USA and UK, and the potential violation of neutrality obligations are disputed.<sup>409</sup>

### c) Non-Belligerency as a Reaction to Russia's Aggression against Ukraine

- 11 Seventeen years later, after the Russian aggression against Ukraine, Germany seems to deviate from a conservative interpretation of the current Military Manual and the Federal Administrative Court's findings. The Bundestag's often cited scientific research service offers the most explicit German statement on the non-applicability of neutrality law on Germany during the Russo-Ukraine war.
- 12 In its often cited *Sachstand - WD 2 - 3000 - 019/22* from March 16<sup>th</sup> 2022, the research service clarifies that "the law of neutrality is in a way superseded by the general prohibition of the use of force and the system of collective security created by the UNC in Chapter VII. Neutrality has been replaced by a new legal status of non-belligerency."<sup>410</sup> It clarifies, based on Talmon, that this non-belligerency is understood as qualified neutrality, making it only legal to support the victim of an aggression which the UNSC or the UNGA has authoritatively determined.<sup>411</sup> Furthermore, the research service stresses the difference between non-belligerency – a "not neutral, but not conflict participating role" – and collective self-defense under Article 51 UNC, with the latter implying partyhood.<sup>412</sup> Based on recently published legal blogposts,<sup>413</sup> the research service overthrows here the official German position formulated in the 2013 Military Manual: "The Charter of the United Nations does not generally supersede the law of neutrality."<sup>414</sup> Different from the research service's findings, the Manual, depending on the interpretation (see above), seems to accept only the two options of neutrality and co-belligerency since it merely acknowledges that "every State may make a sovereign decision on whether or not it will participate in a conflict on the side of the victim (what is known as collective self-defence)".<sup>415</sup>
- 13 *Sachstand - WD 2 - 3000 - 019/22* also raises, as Schmid reflected,<sup>416</sup> the question of a third state's entry into a conflict. The research service sees partyhood or co-belligerency as given when a third state's soldiers participate in the sense of Article 51(3) Protocol I.<sup>417</sup> Based on Thielbörger and Wentker, it sees a "grey zone" regarding the delivery of fighter jets using military bases in Germany or the sharing of intelligence, and regards every use of force by Russia against a Ukrainian co-belligerent as illegal under the *jus ad bellum*.<sup>418</sup> Moreover, it argues that the NATO states did not notify the UNSC of their collective self-defense under Article 51 UNC as they do not regard themselves as having crossed the threshold of co-belligerency.<sup>419</sup>
- 14 Based on several blog posts and a newspaper interview of the German International Law Professor Pierre Thielbörger, the research service finds, moreover, that the delivery of all forms of weapons does not render Germany a conflict party, while the training of Ukrainian soldiers with the new weapons "leaves the secure area of non-belligerency".<sup>420</sup> The latter is heavily disputed and was often cited by opposition parties criticizing Germany's support for Ukraine as a risk for Germany's security.<sup>421</sup> An *AfD* politician even asked for a neutral stance following the example of Austria and Switzerland.<sup>422</sup>
- 15 After Germany had decided to deliver "heavy weapons" to Ukraine and train Ukrainian soldiers,<sup>423</sup> the government made clear that it differed from the cautious evaluation of

the research service: The then-defense minister Lambrecht was quoted with her evaluation: "I assume that neither this training nor the delivery of weapons will lead to [Germany's participation in the conflict], but if we were to send soldiers to Ukraine, that would be a very clear signal. But we won't do that either. That will not happen."<sup>424</sup> Also, the government's spokesperson ensured: "We are convinced that the training of Ukrainian soldiers in Germany on weapon systems still does not mean a direct entry into war."<sup>425</sup> This underlines the importance of the service's findings for the public and official opinion of Germany and the impact of its misleading formulation.

- 16 In June 2022, the research service, given the opportunity to analyze the threshold for co-belligerency again in more detail, found that the debate on its prior statement was "verzerrt" ("distorted").<sup>426</sup> It argued inter alia, that the relevant criteria for co-belligerency lie in IHL, while the *jus ad bellum* decides whether support already classifies as use of force.<sup>427</sup> Moreover, it confirmed their findings on the "supersedeance" of neutrality<sup>428</sup> and described the "narrative of non-belligerency" (in opposition to co-belligerency) as a pressured, but valuable rhetoric strategy rather targeted at civil society than at Russia.<sup>429</sup>

#### d) "Heavy" Weapons and Self-defense

- 17 Turning to other actors, the parliament, playing an essential role in determining the extent of military support for Ukraine, was not concerned with neutrality considerations. Around two months after the Russian aggression, a clear majority of the German Parliament agreed with the delivery of "heavy" weapons which would be delivered "in accordance with the UNC for the self-defence of Ukraine".<sup>430</sup> Having welcomed "the German government's support for the attacked Ukraine while at the same time ensuring that neither Germany nor NATO become a party to the war",<sup>431</sup> the Parliament requested the government to support the training of Ukrainian soldiers, including the "operation of the supplied weapon systems in Germany or on NATO territory".<sup>432</sup> The opposing *AfD* feared this could render Germany a party to the conflict.<sup>433</sup> One *AfD* politician who advocated in his speech for a neutral stance of Germany<sup>434</sup> formed the only reference to neutrality or non-belligerency in this important debate and decision.
- 18 The inquiries of such opposition politicians are also why we know on which explanation the government bases the legality of its support for Ukraine. In May 2022, an *AfD* politician asked why Germany neither relied on the collective right to self-defense nor notified the UNSC.<sup>435</sup> A Secretary of State of the Federal Foreign Office replied that Germany and its partners would support Ukraine, a victim of aggression, within its individual right to self-defense. She argues that, while this is in line with international law, it does not surpass the threshold of collective self-defense.<sup>436</sup> Therefore, politicians' frequent statements that Ukraine is also defending Western security, freedom, and values more generally<sup>437</sup> must be understood more rhetorically than legally.
- 19 An *AfD* politician also asked the government on what basis it argues that the training of Ukrainian soldiers in Germany does not form an entry into the conflict.<sup>438</sup> The Secretary of State answered vaguely: "According to generally and globally recognized legal opinion, the threshold of being a party to a conflict under international law is not exceeded by a training measure."<sup>439</sup>

- 20 Moreover, the opposition party *Linke* asked in the same month whether the Federal Government agreed with the earlier finding of the scientific research service that training Ukrainian soldiers could mean abandoning a non-belligerent status. A Minister of State of the Federal Foreign Office underlined that it never comments on the work of the scientific research service.<sup>440</sup> She stressed, however, that Germany is not a party to the conflict and will not become one by training Ukrainian soldiers.<sup>441</sup> Furthermore, Germany's actions would be determined by not becoming a conflict party, assessed before each act.<sup>442</sup>
- 21 In addition, after Foreign Minister Baerbock's incidental statement "We are fighting a war against Russia, not against each other",<sup>443</sup> the opposition parties CDU/ CSU asked the government for a clarification.<sup>444</sup> In April 2023, the government made clear again that it does not consider Germany a party to the conflict between Russia and Ukraine, although it supports Ukraine in its right to exercise self-defense.<sup>445</sup>

### e) Scholz's "Watershed" Moment

- 22 For Chancellor Scholz, the compatibility of the German foreign policy shift – "the watershed" – with the law of neutrality does not seem relevant. In his famous speech from 27 February 2022, he stresses the moral imperative to support Ukraine without mentioning neutrality obligations: "In Kyiv, Kharkiv, Odesa and Mariupol, people are not just defending their homeland. They are fighting for freedom and their democracy. For values that we share with them. As democrats, as Europeans, we stand by their side – on the right side of history!"<sup>446</sup>
- 23 Moreover, he classifies Russia's attack "a flagrant breach of international law" which has not been condemned by the UNSC because of the Russian veto.<sup>447</sup> Scholz seems to perceive Germany not only on the "right side of history"<sup>448</sup> but also of the law – by openly criticizing Putin for advocating that "power is allowed to prevail over the law",<sup>449</sup> he must believe that he respects Germany's international obligations. His arguments and formulations resemble the morally loaded scholarly contributions of defenders of qualified neutrality, especially of Heintschel von Heinegg, who also stresses Russia's role in preventing a UNSC condemnation.<sup>450</sup>
- 24 Also in the course of his chancellorship, neutrality did not seem to play a role for him – he only consistently underlined that Germany would not become a party to the conflict.<sup>451</sup> He pursued a strategy criticized as "hesitant" in supporting Ukraine, especially regarding the cruise missile TAURUS.<sup>452</sup> According to him, German soldiers are needed to operate the missile capable of reaching Russian territory.<sup>453</sup> Consequently, he refused to deliver it to Ukraine, fearing that it could render Germany otherwise a party to the conflict.<sup>454</sup> The opposing CDU/CSU and partly Scholz's coalition partners did not share these concerns, arguing that the missile neither requires German soldiers nor renders Germany a party to the conflict.<sup>455</sup> Also, the scientific research service found that Germany only becomes a conflict party when its soldiers are responsible for the TAURUS' targeting.<sup>456</sup> In reaction to the critique against his policy style, Scholz points to the widespread criticism in civil society towards weapon deliveries.<sup>457</sup> According to a 2023 poll, 44.5 % reject military support for Ukraine,<sup>458</sup> and 68 % are concerned that Russia could attack Germany.<sup>459</sup> This forms not only a potential explanation for Scholz's policy style, but also for the limited explicit *opinio juris*.
- 25 Maybe for this reason, Scholz's concern is also reflected in the 2025 election programme of his party: "For us, Germany and NATO must not become a party to the

war themselves. That is why we stand by Chancellor Olaf Scholz's decision not to supply the Taurus cruise missile from the Bundeswehr's stocks." <sup>460</sup>

- 26 In contrast, the successor of Scholz, Friedrich Merz, reinforced in April 2025 his openness to deliver TAURUS missiles to Ukraine.<sup>461</sup> In October 2024, he clarified that this openness is not necessarily a consequence of a different legal understanding but rather a reflection of a different willingness to assume risk. He was cited as saying that Putin would "have it in his hands how far he wants to escalate this war even further".<sup>462</sup> In reaction to Merz's 2025 statement, Russia criticized the delivery of TAURUS as "escalation" and warned "Think twice, Nazi!".<sup>463</sup> While the presumptive new coalition between CDU/CSU and SPD will decide on the post-Scholz state practice and *opinio juris* of Germany,<sup>464</sup> this debate shows that the law of neutrality will play – again – a subordinated role.

### 3. Interim Result

- 27 Scholz's government never referred to neutrality, and the opposition and the scientific research service of the parliament, which briefly engaged with this regime, did not see Germany violating any neutrality obligations. Therefore, it can be concluded that Germany does not consider its support of Ukraine an illegal act. Due to the few explicit statements, it remains unclear whether the law of neutrality has been superseded by qualified neutrality (as implied by the research service) or has just become optional.
- 28 The government's reference to Ukraine's right to self-defense suggests that it is only legal to support a victim of aggression. Whether the illegality of supporting the aggressor, Russia, follows for Germany from the law of neutrality is unclear, as Germany does not engage with it at all. While Wentker sees the German *opinio juris* as an indication that Germany considers neutrality as qualifiable,<sup>465</sup> Schmid correctly observes that this is not clear.<sup>466</sup> According to her, Germany is rather concerned with the question of co-belligerency and "optional neutrality might be equally attractive" as qualified neutrality.<sup>467</sup> That neutrality (as a political choice) has not become irrelevant is meanwhile illustrated by the example of Austria.

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#### FOOTNOTES

**388.** Own translation from "Symbolpolitik", Der Spiegel, 'Ukrainischer Botschafter kritisiert deutsche Helm-Lieferung als »reine Symbolpolitik«' *Der Spiegel* (Hamburg, 26 January 2022) <<https://www.spiegel.de/politik/deutschland/ukraine-botschafter-kritisiert-deutsche-helm-lieferung-als-reine-symbolpolitik-a-2709273c-788d-43eb-8375-07bddd8b9b3c>> accessed 3 June 2025.

**389.** David M. Herszenhorn, Lili Bayer, and Hans von der Burchard, 'Germany to Send Ukraine Weapons in Historic Shift on Military Aid' *POLITICO* (Brussels, 26 February 2022) <<https://www.politico.eu/article/ukraine-war-russia-germany-still-blocking-arms-supplies/>> accessed 3 June 2025.

**390.** German Federal Government, 'Policy Statement by Olaf Scholz, Chancellor of the Federal Republic of Germany and Member of the German Bundestag, 27 February 2022 in Berlin' (*Die Bundesregierung*, 27 February 2022) <<https://www.bundesregierung.de/breg-en/service/archive/policy-statement-by-olaf-scholz-chancellor-of-the-federal-republic-of-germany-and-member-of-the-german-bundestag-27-february-2022-in-berlin-2008378>> accessed 3 June 2025. "Watershed" is the English translated to "Zeitenwende".

**391.** *ibid.*

**392.** German Federal Government, 'Military support for Ukraine' (*Die Bundesregierung*, 17 April 2025) <<https://www.bundesregierung.de/breg-de/service/archiv-bundesregierung/military-support-ukraine-2054992>> accessed 3 June 2025.

**393.** *ibid.*

**394.** *ibid.*

**395.** *ibid.*

**396.** Tagesschau, 'Warum wieder über "Taurus" diskutiert wird' *Tagesschau* (Hamburg, 16 April 2025) <<https://www.tagesschau.de/inland/innenpolitik/taurus-marschflugkoerper-debatte-100.html>> accessed 3 June 2025; German Federal Government, 'Military support for Ukraine' (n 392).

**397.** Cf. Christian Schaller, 'Waffenlieferungen an die Ukraine: "Fahren auf Sicht" - auch was das Völkerrecht angeht' (Stiftung Wissenschaft und Politik 2023) Research Report 9/2023 2 <<https://doi.org/10.18449/2023A09%0A>> accessed 13 February 2025.

**398.** Schmid (n 1) 15–16.

**399.** E.g., Wissenschaftliche Dienste, 'Ausarbeitung: Militärische Unterstützung der Ukraine: Wann wird ein Staat zur Konfliktpartei?' 2 <<https://www.bundestag.de/resource/blob/957632/44633615ad0618f5cd38c35ad0a30fe4/WD-2-023-23-pdf.pdf>>.

**400.** E.g., *ibid.*

**401.** Bartolini (n 5) 295.

**402.** E.g., Wissenschaftliche Dienste, 'Sachstand: Rechtsfragen der militärischen Unterstützung der Ukraine durch NATO-Staaten zwischen Neutralität und Konflikteilnahme' <<https://www.bundestag.de/resource/blob/892384/d9b4c174ae0e0af275b8f42b143b2308/WD-2-019-22-pdf-data.pdf>>.

**403.** *German Federal Administrative Court, Judgment of the 2nd Military Service Senate* [2005] BVerwG 2 WD 12.04 [esp. 181, 210–211, 240] quoted after the latter, own translation.

**404.** *ibid* 211; German Federal Ministry of Defence, 'Humanitäres Völkerrecht in bewaffneten Konflikten - Handbuch - 1992' para 1104 <[https://www.bits.de/public/documents/ZDv15.2\(1992\).pdf](https://www.bits.de/public/documents/ZDv15.2(1992).pdf)>.

**405.** Wentker (n 4) 990.

**406.** Schmid (n 1) 12.

**407.** German Federal Ministry of Defence, 'Humanitäres Völkerrecht in bewaffneten Konflikten - Handbuch - 1992' (n 404) para 1104; German Federal Ministry of Defence, 'Humanitäres Völkerrecht in bewaffneten Konflikten - 2018' para 1204 <<https://>

[www.bmvg.de/resource/blob/93612/7d6909421eacad4ddc7dcd5f58d42ca/b-02-02-10-download-handbuch-humanitaeres-voelkerrecht-in-bewaffneten-konflikten-data.pdf](http://www.bmvg.de/resource/blob/93612/7d6909421eacad4ddc7dcd5f58d42ca/b-02-02-10-download-handbuch-humanitaeres-voelkerrecht-in-bewaffneten-konflikten-data.pdf); and similarly in the current English version German Federal Ministry of Defence, 'Law of Armed Conflict – Manual – 2013' para 1204 <<https://www.bmvg.de/resource/blob/93610/ae27428ce99dfa6bbd8897c269e7d214/b-02-02-10-download-manual-law-of-armed-conflict-data.pdf>>.

**408.** German Federal Ministry of Defence, 'Humanitäres Völkerrecht in bewaffneten Konflikten - Handbuch – 1992' (n 404) para 1107; German Federal Ministry of Defence, 'Humanitäres Völkerrecht in bewaffneten Konflikten - 2018' (n 407) para 1202; and similarly in the current English version German Federal Ministry of Defence, 'Law of Armed Conflict – Manual – 2013' (n 407) para 1202.

**409.** German Federal Government, 'Antwort Der Bundesregierung - Leitfaden Der Bundeswehr Zum Umgang Mit Gewissensentscheidungen' Question 6 <<https://dserver.bundestag.de/btd/16/019/1601921.pdf>>; German Federal Government, 'Antwort Der Bundesregierung - Umgang Der Bundeswehr Mit Angriffskriegsverweigerern' Question 5 <<https://dserver.bundestag.de/btd/16/047/1604769.pdf>>.

**410.** Own translation of Wissenschaftliche Dienste, 'WD 2 - 3000 - 019/22' (n 402) 5.

**411.** *ibid* 5–6; quoting Talmon (n 204).

**412.** Own translation of Wissenschaftliche Dienste, 'WD 2 - 3000 - 019/22' (n 402) 6; quoting Krajewski (n 94).

**413.** Heintschel von Heinegg, 'Neutrality in the War against Ukraine' (n 19); Schmitt (n 2); Oona A Hathaway and Scott Shapiro, 'Supplying Arms to Ukraine Is Not an Act of War' (*Just Security*, 12 March 2022) <<https://www.justsecurity.org/80661/supplying-arms-to-ukraine-is-not-an-act-of-war/>> accessed 19 January 2025; Talmon (n 204); Krajewski (n 94).

**414.** Quoted after German Federal Ministry of Defence, 'Law of Armed Conflict – Manual – 2013' (n 407) para 1204; similarly German Federal Ministry of Defence, 'Humanitäres Völkerrecht in bewaffneten Konflikten - 2018' (n 407) para 1204. Please note the similarity in the used wordings. The formulation "überlagert" in the German version is translated to "supersede" in the English version of the Manual. The scientific research service uses also the wording "überlagert" (translated to "supersede" in my translation above).

**415.** Quoted after German Federal Ministry of Defence, 'Law of Armed Conflict – Manual – 2013' (n 407) para 1204; similarly German Federal Ministry of Defence, 'Humanitäres Völkerrecht in bewaffneten Konflikten - 2018' (n 407) para 1204.

**416.** Schmid (n 1) 15–16.

**417.** Wissenschaftliche Dienste, 'WD 2 - 3000 - 019/22' (n 402) 7.

**418.** *ibid* 7–11; Alexander Wentker, 'At War: When Do States Supporting Ukraine or Russia Become Parties to the Conflict and What Would That Mean?' (*EJIL: Talk!*, 14 March 2022) <<https://www.ejiltalk.org/at-war-when-do-states-supporting-ukraine-or-russia-become-parties-to-the-conflict-and-what-would-that-mean/>> accessed 8 June 2025; Oliver Maksan, 'Krieg in der Ukraine: «Deutschland hätte das Recht, direkt einzugreifen» (Interview Pierre Thielbörger)' *Neue Zürcher Zeitung* (Zürich, 13 March

2022) <<https://www.nzz.ch/international/krieg-in-der-ukraine-ab-wann-waere-deutschland-konfliktpartei-ld.1674082>> accessed 8 June 2025.

419. Wissenschaftliche Dienste, 'WD 2 - 3000 - 019/22' (n 402) 10, in footnote 22.

420. Own translation of *ibid* 4, 6; quoting Heintschel von Heinegg, 'Neutrality in the War against Ukraine' (n 19); quoting Maksan (n 418); quoting Kai Ambos, 'Wird Deutschland durch Waffenlieferungen an die Ukraine zur Konfliktpartei?' (*Verfassungsblog*, 28 February 2022) <<https://verfassungsblog.de/wird-deutschland-durch-waffenlieferungen-an-die-ukraine-zur-konfliktpartei/>> accessed 8 June 2025; quoting Wentker (n 418).

421. Jona Spreter, 'Gutachten sieht Ausbildung ukrainischer Soldaten als Kriegsbeteiligung' *Die Zeit* (Hamburg, 2 May 2022) <<https://www.zeit.de/politik/deutschland/2022-05/ausbildung-soldaten-ukraine-kriegsbeteiligung-deutschland-voelkerrecht>> accessed 8 June 2025; Steffen Kotré, 'Steffen Kotré: Bundesregierung spielt mit dem Feuer' (*AfD-Fraktion im Deutschen Bundestag*, 21 February 2023) <<https://afdbundestag.de/steffen-kotre-bundesregierung-spielt-mit-dem-feuer/>> accessed 8 June 2025; see also German Federal Parliament, 'Stenografischer Bericht 33. Sitzung' 3041, Question 51 <<https://dserver.bundestag.de/btp/20/20033.pdf#P.3041>>.

422. Kotré (n 421); please note that the scepticism of the AfD towards supporting the Ukraine is likely to be rooted in sympathy for Putin and a NATO-critical view seeing the alliance as having provoked Russia's aggression: Hans Pfeifer, 'AfD und BSW: Zwei Freunde für Russland' *Deutsche Welle* (Bonn, 24 August 2024) <<https://www.dw.com/de/afd-und-bsw-zwei-freunde-f%C3%BCr-russland/a-70028502>> accessed 8 June 2025.

423. SPD, CDU/CSU, BÜNDNIS 90/DIE GRÜNEN und FDP, 'Antrag - Frieden Und Freiheit in Europa Verteidigen – Umfassende Unterstützung Für Die Ukraine' 5, III.2, 4 <<https://dserver.bundestag.de/btd/20/015/2001550.pdf>> accessed 8 June 2025; Spreter (n 421).

424. Own translation of *Die Zeit*, 'Bundesregierung: Ausbildung von Soldaten kein Kriegseintritt' *Die Zeit* (Hamburg, 2 May 2022) <<https://www.zeit.de/news/2022-05/02/bundesregierung-ausbildung-von-soldaten-kein-kriegseintritt>> accessed 8 June 2025.

425. Own translation of *ibid*; Spreter (n 421) which discusses the work of the scientific research service more.

426. Wissenschaftliche Dienste, 'WD 2 - 3000 - 023/23' (n 399) 14 in footnote 39.

427. *ibid* inter alia 14, 32.

428. Own translation of "Überlagerung", *ibid* 13–14.

429. Own translation of "Narrativ der Nichtkriegsführung", *ibid* 34.

430. Own Translation of SPD, CDU/CSU, BÜNDNIS 90/DIE GRÜNEN und FDP (n 423) 2, also 5, III.2; German Federal Parliament, 'Bundestag stimmt für Lieferung schwerer Waffen an die Ukraine' (*Deutscher Bundestag*, 28 April 2022) <<https://www.bundestag.de/dokumente/textarchiv/2022/kw17-de-selbstverteidigung-ukraine-891272>> accessed 8 June 2025.

431. Own translation of SPD, CDU/CSU, BÜNDNIS 90/DIE GRÜNEN und FDP (n 423) 4, II. 1.

432. Own translation of *ibid* 5, III.4.

433. German Federal Parliament, 'Bundestag stimmt für Lieferung schwerer Waffen an die Ukraine' (n 430).
434. Speech by Tino Chrupalla (AfD), German Federal Parliament, 'Stenografischer Bericht 31. Sitzung' 2725 <<https://dserver.bundestag.de/btp/20/20031.pdf#P.2719>>.
435. German Federal Government, 'Schriftliche Fragen mit den in der Woche vom 16. Mai 2022 eingegangenen Antworten der Bundesregierung' 39, Question 56 <<https://dserver.bundestag.de/btd/20/019/2001918.pdf>>.
436. *ibid.*
437. E.g., German Federal Government, 'Policy Statement by Olaf Scholz, Chancellor of the Federal Republic of Germany and Member of the German Bundestag, 27 February 2022 in Berlin' (n 390); CDU and CSU, 'Politikwechsel Für Deutschland - Wahlprogramm von CDU and CSU' 45 <[https://www.cdu.de/app/uploads/2025/01/km\\_btw\\_2025\\_wahlprogramm\\_langfassung\\_ansicht.pdf](https://www.cdu.de/app/uploads/2025/01/km_btw_2025_wahlprogramm_langfassung_ansicht.pdf)> accessed 8 June 2025.
438. German Federal Government, 'Drucksache 20/1918' (n 435) 38, Question 54.
439. Own translation of *ibid.*
440. German Federal Parliament, 'Plenarprotokoll 20/33' (n 421) 3041, Question 51.
441. *ibid.*
442. *ibid.*
443. Deutsche Welle, 'Germany Says It Is Not a Warring Party in Ukraine' *Deutsche Welle* (Bonn, 27 January 2023) <<https://www.dw.com/en/germany-says-it-is-not-a-warring-party-in-ukraine/a-64541484>> accessed 8 June 2025.
444. German Federal Government, 'Antwort Der Bundesregierung - Zur Rede Der Bundesministerin Des Auswärtigen, Annalena Baerbock, in Der Parlamentarischen Versammlung Des Europarates' 4, Questions 8, 9 <<https://dserver.bundestag.de/btd/20/063/2006365.pdf>>.
445. *ibid* 4–5, Questions 8, 9.
446. German Federal Government, 'Policy Statement by Olaf Scholz, Chancellor of the Federal Republic of Germany and Member of the German Bundestag, 27 February 2022 in Berlin' (n 390).
447. *ibid.*
448. *ibid.*
449. *ibid.*
450. Heintschel von Heinegg, 'Neutrality in the War against Ukraine' (n 19).
451. German Federal Government, 'Kanzler Kompakt: Die Nato ist - und wird - keine Kriegspartei' (*Die Bundesregierung*, 28 February 2024) <<https://www.bundesregierung.de/breg-de/service/archiv-bundesregierung/archiv-mediathek/kanzler-kompakt-nato-2262628>> accessed 8 June 2025; Deutscher Bundeswehrverband, 'Scholz gibt Garantie: Deutschland wird nicht Kriegspartei' (*Deutscher Bundeswehrverband*, 3 July 2024) <<https://www.dbwv.de/ticker-zurueck-zur-startseite/scholz-gibt-garantie-deutschland-wird-nicht-kriegspartei>> accessed 8 June 2025.

452. Tagesschau, 'Scholz begründet Nein zu "Taurus"-Lieferung' *Tagesschau* (Hamburg, 26 February 2024) <<https://www.tagesschau.de/inland/scholz-taurus-ukraine-102.html>> accessed 8 June 2025; own translation of critique against Scholz as being "zögerlich", Fabian Hartmann, 'Scholz bleibt beim Nein: Warum hat der Bundeskanzler so große Angst vor Taurus?' *Frankfurter Rundschau* (Frankfurt a M, 15 March 2024) <<https://www.fr.de/politik/zoegerlich-olaf-scholz-keine-taurus-lieferung-ukraine-warum-92890473.html>> accessed 8 June 2025.
453. Tagesschau, 'Scholz begründet Nein zu "Taurus"-Lieferung' (n 452); Hartmann (n 452).
454. Tagesschau, 'Scholz begründet Nein zu "Taurus"-Lieferung' *Tagesschau* (Hamburg, 26 February 2024) <<https://www.tagesschau.de/inland/scholz-taurus-ukraine-102.html>> accessed 8 June 2025; Fabian Hartmann, 'Scholz bleibt beim Nein: Warum hat der Bundeskanzler so große Angst vor Taurus?' *Frankfurter Rundschau* (Frankfurt a M, 15 March 2024) <<https://www.fr.de/politik/zoegerlich-olaf-scholz-keine-taurus-lieferung-ukraine-warum-92890473.html>> accessed 8 June 2025.
455. Tagesschau, 'Scholz begründet Nein zu "Taurus"-Lieferung' (n 452); CDU/CSU, 'Antrag - Unterstützung für die Ukraine konsequent fortsetzen – Lieferung des Taurus-Marschflugkörpers beschließen' <<https://dserver.bundestag.de/btd/20/091/2009143.pdf>>.
456. Wissenschaftliche Dienste, 'Kurzinformation: Rechtsfragen zum Ukrainekrieg: TAURUS-Einsatz, Konfliktbeteiligung, Angriff und Verteidigung' 2 <<https://www.bundestag.de/resource/blob/1002070/3cb55a031d3aacadc7b6d1c3f605c9a8/WD-2-025-24-pdf.pdf>>.
457. Tagesschau, 'Scholz begründet Nein zu "Taurus"-Lieferung' (n 452).
458. Peter Wetzels and others, 'Einstellungen zu Waffenlieferungen an die Ukraine und die Verbreitung von Kriegsängsten in Deutschland' [2023] MOTRA-Spotlight 1, 3, Table 1 <<https://www.ssoar.info/ssoar/handle/document/86436>> accessed 8 June 2025.
459. *ibid* 5, Table 2.
460. Own translation of SPD, 'Mehr für Dich. Besser für Deutschland.' 58 <[https://www.spd.de/fileadmin/Dokumente/Beschluesse/Programm/SPD\\_Programm\\_bf.pdf](https://www.spd.de/fileadmin/Dokumente/Beschluesse/Programm/SPD_Programm_bf.pdf)>; cf. Frank Specht, 'Merz will Ukraine Taurus liefern – Moskau reagiert scharf' *Handelsblatt* (Düsseldorf, 14 April 2025) <<https://www.handelsblatt.com/politik/deutschland/marschflugkoerper-merz-will-ukraine-taurus-liefern-moskau-reagiert-scharf/100121484.html>> accessed 8 June 2025.
461. Tagesschau, 'Kreml kritisiert Merz-Äußerungen zu "Taurus"' *Tagesschau* (Hamburg, 14 April 2025) <<https://www.tagesschau.de/ausland/europa/ukraine-merz-taurus-russland-kreml-medwedew-100.html>> accessed 8 June 2025.
462. Own translation of Merz' statement that Putin has "es in der Hand, wie weit er diesen Krieg noch weiter eskalieren will", Specht (n 460).
463. Own Translation of "Überleg zweimal, Nazi!", Tagesschau, 'Kreml kritisiert Merz-Äußerungen zu "Taurus"' (n 461).
464. See for details, Tagesschau, 'Marschflugkörper für die Ukraine?' (n 396).
465. Wentker (n 4) 978.

**466.** Evelyne Schmid, 'Optional but Not Qualified: Neutrality, the UN Charter and Humanitarian Objectives' [2024] *International Review of the Red Cross* 1, 15–16, footnotes 76, 80 <[https://www.cambridge.org/core/product/identifier/S1816383124000183/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S1816383124000183/type/journal_article)> accessed 28 January 2025.

**467.** Schmid (n 1) 15–16, footnote 80.

## III. Permanent Neutrality in Practice? The Example of Austria

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### 1. State practice

- 1 Between 24 February 2022 and 1 February 2023, Austria spent bilaterally € 124,648,000 to support Ukraine and neighboring countries.<sup>468</sup> This support includes payments to the UNHCR, UNICEF, UNIDO, different development banks, and Austrian non-governmental organisations for humanitarian purposes (covering basic needs, critical services, reconstruction planning, fuel, electricity generators, medical equipment, mine clearance, etc.).<sup>469</sup> Moreover, Austria welcomes refugees and takes part in EU support measures for the Ukrainian civil society as well as in the financing of the EU Military Assistance Mission, which trains Ukrainian soldiers on EU territory.<sup>470</sup> According to its statement, Austria does not participate in the "concrete training activities" of these soldiers and abstains from EU decisions on financing weapon deliveries.<sup>471</sup>
- 2 In 2024, Austria founded a "Point of Contact für den Ukraine-Wiederaufbau" ("Point of Contact for the Reconstruction of Ukraine) to connect Austrian actors and initiatives interested in contributing to Ukraine's reconstruction.<sup>472</sup> In March 2025, the bilateral financial support for Ukraine reached around € 293,000,000.<sup>473</sup> Furthermore, Austria assured Ukraine of € 2,000,000 for their "Grain from Ukraine" food program.<sup>474</sup> Moreover, Austria takes part in comprehensive EU sanctions.<sup>475</sup> In addition, it allows, in many cases, the transport of war material through Austrian territory and airspace.<sup>476</sup> Sometimes newspapers also report on other incidents which could be interpreted as infringing Austria's neutrality. A Russian opposition magazine reported on the post-2022 supply of Austrian-made weapons from Steyr Arms GmbH and Glock GmbH to Russian soldiers.<sup>477</sup>
- 3 In addition, an FPÖ politician pointed to "Medienberichte" (newspaper reports) claiming that Slovenia secretly delivered twenty armored vehicles of Austrian origin, Pandurs, to Ukraine.<sup>478</sup> Such reports, however, cannot be found in serious newspapers. Unfortunately, when asked whether Austria had allowed this, the Defense Minister stated that he was not competent.<sup>479</sup>

- 4 Hence, taking these individual cases aside, Austria supports Ukraine by financial and humanitarian aid, by condemning and sanctioning Russia, and by allowing other supporters of Ukraine to use its territory for transporting war material to other third states.

## 2. *Opinio Juris*

- 5 Austria understands itself as a permanent neutral country and provides a relatively straightforward *opinio juris* on the compatibility of this policy and its support for Ukraine. This part provides an overview of Austria's understanding of its neutrality (a) before engaging with official statements regarding the Austrian support for Ukraine (b), the differentiation between military and civil (c) and lethal and non-lethal support (d), and Austria's relation to the EU (e).

### a) General Overview

- 6 The "Rechts-, Legislativ- und Wissenschaftliche Dienst" (RLW; "Legal, Legislative and Scientific Service") of the Austrian parliament regularly provides analyses from a legal, economic, and political science perspective.<sup>480</sup> Like the scientific research service of the German parliament, it is impartial.<sup>481</sup> An analysis of Austrian neutrality was published shortly after the Russian aggression against Ukraine.<sup>482</sup> Although not representing the government's official view, it helps understanding neutrality from an Austrian perspective.
- 7 Tracing back to a compromise between the four Allied occupation powers of the separated Austria after the Second World War, the restitution of Austria as an independent state came along with the 1955 Federal Constitutional Law on the Neutrality of Austria.<sup>483</sup>
- 8 Its main Article I reads:
- (1) For the purpose of the permanent maintenance of her external independence and for the purpose of the inviolability of her territory, Austria of her own free will declares herewith her permanent neutrality which she is resolved to maintain and defend with all the means at her disposal.
  - (2) In order to secure these purposes Austria will never in the future accede to any military alliances nor permit the establishment of military bases of foreign States on her territory.<sup>484</sup>
- 9 This law, establishing Austria's "immerwährende" ("permanent", literal translation: "everlasting") and voluntary neutrality, is, according to the RLW, a domestic and most likely unilateral act ("rein innerstaatlicher Akt" and "einseitige[r] Rechtsakt") which can be changed or ended by the parliament, potentially requiring a notification to other states.<sup>485</sup> The RLW considers the content of the Austrian neutrality as being defined by international law, encompassing military rights and obligations (inviolability of territory, impartiality), but not infringing diplomatic and economic relations.<sup>486</sup> According to the RLW, the accession to the EU and its Common Foreign and Security Policy sets limits to Austria's neutrality; in contrast, the accession to the UN does not, because following mandatory measures of the UNSC could not reasonably be expected of Austria as a state having declared its permanent neutrality before its accession.<sup>487</sup> Having Article 103 UNC in mind, this is, however, not necessarily the case (see Part 1.III).

- 10 Moreover, the RLW acknowledges that neutrality is regulated and practiced differently in all permanently neutral European countries.<sup>488</sup> It also argues that states that are not party to a military alliance are not required to be neutral.<sup>489</sup> While this implies that permanent neutrality is not compulsory, it can also be understood as implying that neutrality is optional, either as an alternative to co-belligerency or even as an alternative to co-belligerency and non-belligerency. This question does not seem relevant for Austria and its RLW in any case, as they are rather concerned with the content and limits of their permanent neutrality.
- 11 The RLW observes that only a few political documents in Austria engage with neutrality.<sup>490</sup> For example, in its "Partial Strategy Defense Policy 2014" ("Teilstrategie Verteidigungspolitik 2014"), Austria mentions its neutrality as a limitation of its activities.<sup>491</sup> It describes its defense policy as "basing upon an engaged neutrality and solidarity Europe policy".<sup>492</sup> Moreover, it sees itself as a "Brückenbauer" ("bridge builder") and "Vermittler" ("mediator").<sup>493</sup> In the "Austrian Security Strategy 2024," after the Russian aggression, Austria reaffirms these points but adds under the heading "Active neutrality policy and European solidarity":
- Being militarily neutral does not, however, mean being indifferent when international law is violated and the sovereignty, territorial integrity, or independence of a state is attacked. In such a situation, Austria, as a member of the EU, is called upon to support joint measures of the EU in solidarity and accordance with the principles of the UN Charter, to which the Treaty on European Union (TEU) is also committed.
- Austria created the necessary constitutional basis for its participation in the EU's Common Foreign and Security Policy (CFSP) in 1995; neutrality is not an obstacle in this regard.<sup>494</sup>
- 12 This clarifies Austria's understanding of its neutrality as being modified by its EU entry and limited to the military ambit. Interestingly, Austria does not seem to perceive (permanent) neutrality as its obligation under international law – in its view, other states are allowed to be not neutral or even part of a military alliance. Moreover, even permanent neutrality may be changed and derogated, at least in parts, by EU policies.

## **b) Austrian *Opinio Juris* after the Russian aggression against Ukraine**

- 13 Also, regarding the Russian invasion of Ukraine, Austria made clear that it plans to uphold its neutrality. Chancellor Nehammer announced on 28 February 2022: "As a neutral state, our priority is to provide humanitarian aid on the ground. Austria will therefore provide helmets and protective equipment for civilian emergency services as well as fuel supplies as part of a further aid package."<sup>495</sup> It stressed the humanitarian character of its support and the abstention on EU weapon deliveries.<sup>496</sup> In April 2022, Foreign Minister Schallenberg explained the Austrian understanding of neutrality: "For us, military neutrality does not mean political neutrality. We will not remain silent if the sovereignty, territorial integrity and independence of a state is attacked".<sup>497</sup> The Foreign Ministry also underlines its solidarity with Ukraine and its condemnation of Russia.<sup>498</sup>
- 14 In May 2022, Foreign Minister Schallenberg even condemned political neutrality when explaining: "I have emphasized to [Pakistan and India] and other third countries that there can be no political neutrality in the case of the Russian war of aggression on Ukraine and that the effects will be felt globally. With its military aggression, Russia has broken all the principles of international law and the principles of the UN Charter,

thereby placing itself on the international sidelines."<sup>499</sup> In August 2024, Chancellor Nehammer explained the Austrian position in clear words:

First of all, I would like to state that in view of Russia's ongoing war of aggression against Ukraine, the Federal Government is committed to providing support within the framework of the European Union and through bilateral channels. At the same time, Austria, as a militarily neutral country, is taking every opportunity to call on Russia to end its war of aggression against Ukraine and to engage in serious negotiations for a comprehensive, just, and sustainable peace.

[...]

In the negotiations of the EU security commitments for Ukraine, Austria successfully advocated that its specific security policy interests be taken into account. This is reflected in the inclusion of two references to the special nature of the security and defense policy of certain Member States in those parts of the text that deal with further military support for Ukraine. This means that the EU's security commitments for Ukraine are compatible with neutrality and can be supported by Austria. Austria will continue not to participate in the financing and supply of weapons and ammunition within the framework of the EFF for Ukraine.<sup>500</sup>

- 15 Hence, after the Russian aggression, Austria does not deliver weapons and understands itself as a militarily neutral country, which is nonetheless (morally) required to condemn the aggressor, as Austria does not regard political neutrality as a legitimate option (anymore). Coming to a more detailed analysis, multiple conflict lines and contrasting understandings of neutrality can be observed. Lacking a uniform and detailed definition of neutrality, the political actors often disagree on what exactly qualifies as a violation of neutrality. Therefore, the line between neutral and unneutral support becomes subject to discussion in multiple cases. For Nehammer and his ministers, the differentiation between military, civil, and lethal and non-lethal support seems central. Moreover, allowing foreign war material to be transported through Austria reveals an interesting understanding of neutrality.

### c) Military vs Civil

- 16 FPÖ politicians asked in March 2022 in a parliamentary question titled "Delivery of non-lethal military equipment to Ukraine"<sup>501</sup> whether this aligns with Austria's permanent neutrality.<sup>502</sup> With this title, they imply a military nature of the delivered equipment, which is, according to their description of the facts, not the case. They explicitly point to the delivery of protective equipment for civil purposes,<sup>503</sup> which is easily overread when considering the military support implied in the title. In her answer, Defense Minister Klaudia Tanner clarified that the Austrian support, including helmets and protective vests, was humanitarian and not military<sup>504</sup> as already suggested in the original report.<sup>505</sup> Tanner's rejection shows the sensitivity of interpretation and that Austria is balancing on a fine line between, allegedly, neutral and non-neutral support. For her, the difference between military and humanitarian support seems crucial.

### d) Lethal vs non-lethal

- 17 When confronted with an FPÖ politician's accusation that Ukraine's financial support violates Austria's neutrality,<sup>506</sup> Finance Minister Brunner argued that political, economic, and humanitarian support for Ukraine does not infringe Austria's neutrality and that Austria is not financing lethal equipment.<sup>507</sup>

- 18 Foreign Minister Schallenberg clarified, when asked by NEOS politicians, that a future Austrian participation in the EU training mission EUMAM is possible while he "can exclude participation in lethal military support for reasons of neutrality policy."<sup>508</sup> Regarding the European Peace Facility, he stressed that Austria abstained in decisions on financing lethal support while voluntarily increasing its support in non-lethal areas.<sup>509</sup> The differentiation between lethal and non-lethal support seems to be the decisive difference between neutral and non-neutral support for him. Also, Chancellor Nehammer underlines that no Austrian soldiers will fight in Ukraine and that no lethal support to Ukraine "was made or will be made" because of Austria's neutrality.<sup>510</sup>
- 19 In May 2023, Chancellor Nehammer (ÖVP) clarified that financial support for demining operations is being assessed, but that no Austrian soldiers will support such operations in Ukraine during the armed conflict because this could infringe Austria's neutrality.<sup>511</sup> While this aligns with Defense Minister Tanner's (ÖVP) rejection of participation in demining operations for neutrality reasons, it contrasts with President Van der Bellen's (Grüne) view that demining in civil areas is compatible with Austria's neutrality.<sup>512</sup> Eight days later, Nehammer added that Austria will invest € 2 million to finance a demining device, stressing the humanitarian need for such a device.<sup>513</sup> His Vice Chancellor Kogler (Grüne) emphasizes, "Being neutral does not mean that we sit back and look away."<sup>514</sup> Foreign Minister Schallenberg explained later that "the deployment of members of the Austrian Armed Forces in Ukraine, which would have raised questions of neutrality law, was never part of the Federal Government's considerations".<sup>515</sup>
- 20 This conflict along party lines illustrates the importance of Austrian politicians maintaining their country's neutrality and the uncertainty in what is still classified as neutral service and what crosses the self-constructed red line. Although a different red line is in question, the Austrian debates are comparable to those in Germany;<sup>516</sup> also, the Austrian Chancellor's "Zögern" (hesitation) is criticized.<sup>517</sup>

### e) CFSP and the Transport of War Material

- 21 The RLW observes a consensus in Austrian constitutional doctrine that the EU's Common Foreign and Security Policy (CFSP) limits the Austrian neutrality as per Article 23j B-VG.<sup>518</sup> The "Irish clause" guarantees, meanwhile, respect for "the specific character of the security and defence policy of certain Member States", implying that Austria can determine the extent of its neutrality limitations itself.<sup>519</sup> On 28 February 2022, Austria nevertheless agreed with the Council Decision (CFSP) 2022/339 stating *inter alia* that "[t]he Member States shall permit the transit of military equipment, including accompanying personnel, through their territories, including their airspace."<sup>520</sup>
- 22 In practice, Austria stresses that intra-EU war material transport is, in principle, legal due to Article 5 (2a) *Kriegsmaterialgesetz* ("War Material Act"), which is itself an implementation of an EU directive.<sup>521</sup> Interior Minister Karner reports 75 permissions for war material leaving or entering the EU, passing Austria, and the absence of illegal transports between February 2022 and April 2023.<sup>522</sup> There is some dispute regarding transporting 20 howitzers from Italy through Austria in April 2023. Karner seems to trust the Italian authorities that the transport did not require a permission as it was destined to Poland;<sup>523</sup> a newspaper argues, based on the communication between Interior Ministry and Italian Embassy, that a permission would have been necessary, most likely because the Interior Ministry knew that the transport was destined to

Ukraine.<sup>524</sup> The International Law professor Walter Obwexer argues that, due to the CFSP decision, Austria would have been obliged to allow Italy the transport anyway.<sup>525</sup>

### 3. Interim Result

- 23 The Austrian government under Nehammer stresses regularly that it considers itself militarily neutral, meaning it cannot deliver military and lethal equipment.<sup>526</sup> Meanwhile, Austria does not consider the partial political condemnation of the aggressor, Russia, or the partial financial support of the aggression's victim, Ukraine, as infringing its neutrality. At least when not destined directly to a party of the conflict, the use of Austrian territory for weapon transportation is also perceived as unproblematic. For Janik, these are "inconsistencies in [the Austrian] search for striking a balance" between neutrality and European solidarity, which rely partly on legal and partly on political justifications.<sup>527</sup>
- 24 However, since these transport regulations and this non-military support favour Ukraine, they are hardly compatible with Austria's traditional obligations as a neutral state under the Hague Convention V – a view shared by the International Law lecturer Ralph Janik.<sup>528</sup> For him, Austria's CFSP-decision-based support for Ukraine does not necessarily need to align with traditional neutrality obligations since such a decision can derogate the Austrian neutrality according to Article 23j B-VG.<sup>529</sup> Constitutionally, he argues, Austria enjoys considerable discretion regarding the CFSP-decision-based European solidarity and its neutrality – the Austrian "red lines" to neither deliver and finance lethal weapons nor to let war material be directly transported to Ukraine become, therefore, rather a political decision.<sup>530</sup> Under international law, the question is, according to him, less clear.<sup>531</sup> Janik concludes that the extent of Austria's neutrality and the legality of Austrian weapon deliveries is a political question with unclear legal limits: "Those who want to, will find ways. Those who don't want to, have neutrality."<sup>532</sup> Gill and Tibori-Szabó agree by seeing the Austrian neutrality rather "as a matter of policy or domestic law".<sup>533</sup>
- 25 In contrast, Seger considers traditional neutrality under international law and a membership of the EU in its current form as being incompatible.<sup>534</sup> Accordingly, he sees Austria no longer as a permanently neutral country.<sup>535</sup> Nevertheless, he agrees with the Austrian government that a differentiation between civil and military engagement is crucial for determining the violation of traditional neutrality in a concrete case.<sup>536</sup>
- 26 Following Janik, even Austria, as a permanent neutral state, seems willing to interpret and define its neutrality in a policy-based way.<sup>537</sup> According to him, Austria spends much political energy on discussing its neutrality, confusing and misusing political and legal arguments.<sup>538</sup> This resembles not only an optional understanding of neutrality based on political instead of legal reasons; it also resembles a new "intermediate" category of self-defined neutrality, a political status between traditional neutrality and non-belligerency which is not governed by international law.<sup>539</sup>
- 27 The Austrian example points, hence, as does the German one, to a problem which consumes much political energy: The exact content and the limits of the different options available for states. Janik observed the unclear state of Austrian neutrality under international law, leaving it to Nehammer, Tanner, Schallenberg, and the opposition parties to discuss and politically define the "red lines" of their neutrality. Similarly, Scholz, Pistorius, Baerbock, and their ministries must decide what exactly non-belligerency is and what can already be qualified as participation in the conflict.

The "red lines" between neutrality and non-belligerency and between non-belligerency and co-belligerency seem unclear to states like Germany and Austria, as reflected in the analyzed debates above; the permissibility of these statuses seems not questionable. Neither state discusses *whether* they can cross these lines, but only *where* exactly they lie. Therefore, a precise and binding formulation of the different options of third states, their legality, and their limits would help the decision-makers and save political energy.

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## FOOTNOTES

**468.** Austrian Federal Ministry for European and International Affairs, 'Ukrainekrise Seit 2022' <[https://www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Entwicklungszusammenarbeit/Ukrainekrise\\_seit\\_2022.jpg](https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Entwicklungszusammenarbeit/Ukrainekrise_seit_2022.jpg)> accessed 10 June 2025.

**469.** Austrian Federal Ministry for European and International Affairs, 'Ein Jahr russischer Aggressionskrieg: Österreichs Solidarität mit der Ukraine' 2-3 <[https://www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Europa/EUGR/OEsterreichische\\_Unterstuetzung\\_fuer\\_die\\_Ukraine.pdf](https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Europa/EUGR/OEsterreichische_Unterstuetzung_fuer_die_Ukraine.pdf)>.

**470.** *ibid* 3-4.

**471.** Own translation of "konkreten Trainingsaktivitäten", *ibid* 4.

**472.** Austrian Federal Ministry for European and International Affairs, 'Zwei Jahre russischer Angriffskrieg: Österreichs Solidarität mit der Ukraine' 3 <[https://www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Europa/EUGR/Factsheet\\_\\_AT\\_Ukraine\\_Unterstuetzung\\_Maerz\\_2024.pdf](https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Europa/EUGR/Factsheet__AT_Ukraine_Unterstuetzung_Maerz_2024.pdf)>.

**473.** Austrian Federal Ministry for European and International Affairs, 'Mit klarer Botschaft der Unterstützung: Meisl-Reisinger in der Ukraine' (*Bundesministerium für europäische und internationale Angelegenheiten*, 14 March 2025) <<https://www.bmeia.gv.at/ministerium/presse/aktuelles/alle/2025/03/mit-klarer-botschaft-der-unterstuetzung-meisl-reisinger-in-der-ukraine>> accessed 10 June 2025.

**474.** *ibid*.

**475.** AußenwirtschaftsCenter Moskau, 'Außenwirtschaft - Russland-Sanktionen im Rahmen des Ukraine-Krieges - Gesamtübersicht' <<https://www.wko.at/oe/aussenwirtschaft/gesamtuebersicht-russland-sanktionen.pdf>>; Federal Chancellery of Austria, 'Lageupdate nach der heutigen Sitzung des Krisenkabinetts' 1-2 <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.bundeskanzleramt.gv.at/dam/jcr:25394f66-5e0d-41a4-a844-ff4e12c38768/20220228\\_medieninfo.pdf&ved=2ahUKewj\\_vLzmu4SNaxUIQ\\_EDHZ\\_mIjIQFnoECCIQAQ&usq=AOvVaw1WP1oCgNWa5KMDL3cFy](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.bundeskanzleramt.gv.at/dam/jcr:25394f66-5e0d-41a4-a844-ff4e12c38768/20220228_medieninfo.pdf&ved=2ahUKewj_vLzmu4SNaxUIQ_EDHZ_mIjIQFnoECCIQAQ&usq=AOvVaw1WP1oCgNWa5KMDL3cFy)>; Austrian Federal Ministry for Economy, Energy and Tourism, 'Russland, Ukraine, Belarus' (*Bundesministerium für Wirtschaft, Energie und Tourismus*, 22 May 2025) <<https://www.bmwet.gv.at/Themen/Exportkontrolle/Export/Embargos-und-Sanktionen/Russland-Belarus-Ukraine.html>> accessed 10 June 2025.

476. See e.g., Austrian Federal Ministry of the Interior, '14379/AB Vom 23.06.2023 Zu 14868/J (XXVII. GP)' <[https://www.parlament.gv.at/dokument/XXVII/AB/14379/imfname\\_1571482.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/14379/imfname_1571482.pdf)> and below.
477. Sergey Panov, 'Shooting Ukraine in the Back: Sniper Rifles and Ammunition from the EU and U.S. Are Being Supplied to Russia despite Sanctions' *The Insider* (Riga, 13 December 2024) <<https://theins.ru/en/politics/277169>> accessed 10 June 2025; Fabian Somnavilla and Peter Zellinger, 'Bis 2022 kamen österreichische Waffen legal nach Russland, seither wohl über zwielichtige Umwege' *DER STANDARD* (Wien, 17 May 2024) <<https://www.derstandard.de/story/3000000220237/bis-2022-kamen-oesterreichische-waffen-legal-nach-russland-seither-wohl-ueber-zwielichtige-umwege>> accessed 10 June 2025; Tobias Kurakin, 'Wie kommen österreichische Waffen in die Hände russischer Soldaten?' *Kleine Zeitung* (Graz, 8 February 2025) <<https://www.kleinezeitung.at/oesterreich/19323064/was-machen-oesterreichische-waffen-in-den-haenden-der-russischen-armee>> accessed 10 June 2025.
478. Gerhard Kaniak, '14994/J XXVII. GP' <[https://www.parlament.gv.at/dokument/XXVII/J/14994/fname\\_1559101.pdf](https://www.parlament.gv.at/dokument/XXVII/J/14994/fname_1559101.pdf)>.
479. Austrian Federal Ministry of Defence, '14502/AB Vom 07.07.2023 Zu 14994/J (XXVII. GP)' <[https://www.parlament.gv.at/dokument/XXVII/AB/14502/imfname\\_1574916.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/14502/imfname_1574916.pdf)>.
480. Rechts-, Legislativ- und Wissenschaftliche Dienst, 'Über den RLW' (*Parlament Österreich*, 10 June 2025) <<https://www.parlament.gv.at/fachinfos/rlw/ueber-uns/>> accessed 10 June 2025.
481. *ibid.*
482. Rechts-, Legislativ- und Wissenschaftliche Dienst, 'Was macht die österreichische Neutralität aus? | Parlament Österreich' (*Parlament Österreich*, 20 March 2024) <<https://www.parlament.gv.at/fachinfos/rlw/Was-macht-die-oesterreichische-Neutralitaet-aus>> accessed 10 June 2025.
483. *ibid.*
484. Quoted from Federal Constitutional Law on the Neutrality of Austria, Federal Law Gazette No. 211/1955 (version of 1 February 2010); original version Bundesverfassungsgesetz vom 26. Oktober 1955 über die Neutralität Österreichs, BGBl 211/1955.
485. Rechts-, Legislativ- und Wissenschaftliche Dienst (n 482).
486. *ibid.*
487. *ibid.*
488. *ibid.*
489. *ibid.*
490. *ibid.*
491. Austrian Federal Ministry of Defence and Sports, 'Teilstrategie Verteidigungspolitik 2014' 17, 23 <[https://www.bmlv.gv.at/download\\_archiv/pdfs/teilstrategie\\_verteidigungspolitik.pdf](https://www.bmlv.gv.at/download_archiv/pdfs/teilstrategie_verteidigungspolitik.pdf)>.
492. Own translation of *ibid.* 5.

493. *ibid* 8.

494. Republic of Austria, 'Austrian Security Strategy' 8 <[http://www.bundeskanzleramt.gv.at/dam/jcr:2e2a11f4-28a0-4c92-8ed4-a3887a6863fd/austrian\\_security\\_strategy\\_2024.pdf](http://www.bundeskanzleramt.gv.at/dam/jcr:2e2a11f4-28a0-4c92-8ed4-a3887a6863fd/austrian_security_strategy_2024.pdf)>.

495. Own translation of Federal Chancellery of Austria, 'Lageupdate nach der heutigen Sitzung des Krisenkabinetts' (n 475) 2.

496. Austrian Federal Ministry for European and International Affairs, 'Ein Jahr russischer Aggressionskrieg: Österreichs Solidarität mit der Ukraine' (n 469) 4; Federal Chancellery of Austria, 'Lageupdate nach der heutigen Sitzung des Krisenkabinetts' (n 475); Austrian Federal Ministry for European and International Affairs, 'Mit klarer Botschaft der Unterstützung' (n 473).

497. Own translation of Austrian Federal Ministry for European and International Affairs, 'Außenminister Schallenberg empfängt Irlands Präsident Higgins in Wien' (*Bundesministerium für europäische und internationale Angelegenheiten*, 6 April 2022) <<https://www.bmeia.gv.at/ministerium/presse/aktuelles/2022/04/aussenminister-schallenberg-empfaengt-irlands-praesident-higgins-in-wien>> accessed 10 June 2025.

498. See e.g., Austrian Federal Ministry for European and International Affairs, 'Zwei Jahre russischer Angriffskrieg: Österreichs Solidarität mit der Ukraine' (n 472) 1.

499. Own translation of Austrian Federal Ministry for European and International Affairs, '9992/AB Vom 23.05.2022 Zu 10273/J (XXVII. GP)' 5, Question 9 <[https://www.parlament.gv.at/dokument/XXVII/AB/9992/imfname\\_1447489.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/9992/imfname_1447489.pdf)>.

500. Own translation Federal Chancellery of Austria, '18309/AB Vom 13.08.2024 Zu 18895/J (XXVII. GP)' 2-3, Questions 1-9 <[https://www.parlament.gv.at/dokument/XXVII/AB/18309/imfname\\_1649408.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/18309/imfname_1649408.pdf)>.

501. Own translation of original title "Lieferung von nicht-tödlicher militärischer Ausrüstung an die Ukraine", Volker Reifenberger, '10088/J XXVII. GP' <[https://www.parlament.gv.at/dokument/XXVII/J/10088/fname\\_1427574.pdf](https://www.parlament.gv.at/dokument/XXVII/J/10088/fname_1427574.pdf)>.

502. *ibid* 2, Question 20.

503. Restatement of Press Release of Chancellor and Defense Minister (not accessible anymore), closest to Federal Chancellery of Austria, 'Lageupdate nach der heutigen Sitzung des Krisenkabinetts' (n 475); Reifenberger (n 501) 1.

504. Austrian Federal Ministry of Defence, '9824/AB Vom 03.05.2022 Zu 10088/J (XXVII. GP)' 2, Questions 10, 14, 20 <[https://www.parlament.gv.at/dokument/XXVII/AB/9824/imfname\\_1443347.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/9824/imfname_1443347.pdf)>.

505. Restatement of Press Release of Chancellor and Defense Minister (not accessible anymore), closest to Federal Chancellery of Austria, 'Lageupdate nach der heutigen Sitzung des Krisenkabinetts' (n 475); Reifenberger (n 501) 1.

506. Petra Steger, '13758/J XXVII. GP' 1, 3, Question 33 <[https://www.parlament.gv.at/dokument/XXVII/J/13758/fname\\_1513882.pdf](https://www.parlament.gv.at/dokument/XXVII/J/13758/fname_1513882.pdf)>.

507. Austrian Federal Ministry of Finance, '13288/AB Vom 24.03.2023 Zu 13758/J (XXVII. GP)' 7-8, Questions 32-35 <[https://www.parlament.gv.at/dokument/XXVII/AB/13288/imfname\\_1546919.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/13288/imfname_1546919.pdf)>.

- 508.** Own translation of Austrian Federal Ministry for European and International Affairs, '12711/AB Vom 16.01.2023 Zu 13063/J (XXVII. GP)' 5, Question 10 <[https://www.parlament.gv.at/dokument/XXVII/AB/12711/imfname\\_1503984.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/12711/imfname_1503984.pdf)>.
- 509.** *ibid* 4, Question 6.
- 510.** Own translation of Federal Chancellery of Austria, '17634/AB Vom 21.05.2024 Zu 18200/J (XXVII. GP)' 2, Questions 1, 3, 5 <[https://www.parlament.gv.at/dokument/XXVII/AB/17634/imfname\\_1629883.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/17634/imfname_1629883.pdf)>.
- 511.** Federal Chancellery of Austria, 'Bundeskanzler Nehammer lehnt Entsendung Österreichischer Soldaten in die Ukraine ab' (*Bundeskanzleramt*, 19 May 2023) <<https://services.bundeskanzleramt.gv.at/newsletter/bka-medien-newsletter/bka-medieninformation-entsendungsoldaten.html>> accessed 10 June 2025.
- 512.** Kim Son Hoang, 'Nehammer stellt sich bei Entminungshilfe für die Ukraine gegen Van der Bellen' *DER STANDARD* (Wien, 19 May 2023) <<https://www.derstandard.at/story/2000146569808/nehammer-stellt-sich-bei-entminungshilfe-fuer-die-ukraine-gegen-van>> accessed 10 June 2025; for the perspective of the NEOS and participation of Austria in OSZE demining operations see also Douglas Hoyos-Trauttmansdorff, '16176/J XXVII. GP' <[https://www.parlament.gv.at/dokument/XXVII/J/16176/fname\\_1585668.pdf](https://www.parlament.gv.at/dokument/XXVII/J/16176/fname_1585668.pdf)>.
- 513.** Federal Chancellery of Austria, 'Österreich finanziert Entminungsgerät für die Ukraine im Wert von 2 Mio. Euro' (*Bundeskanzleramt*, 27 May 2023) <<https://services.bundeskanzleramt.gv.at/newsletter/bka-medien-newsletter/aussenpolitik/bka-medieninformation-aussenpolitik-oesterreich-finanziert-entminungsgeraet-fuer-ukraine.html>> accessed 10 June 2025.
- 514.** Own translation of "Neutral sein heißt nämlich nicht, dass wir uns zurücklehnen und wegsehen", *ibid*.
- 515.** Own translation of Austrian Federal Ministry for European and International Affairs, '14674/AB Vom 24.07.2023 Zu 15081/J (XXVII. GP)' 2, Questions 1-3, 6 <[https://www.parlament.gv.at/dokument/XXVII/AB/14674/imfname\\_1577735.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/14674/imfname_1577735.pdf)>.
- 516.** See for self-constructed red lines Herdegen (n 93) 3.
- 517.** Hoang (n 512).
- 518.** Article 23j Bundes-Verfassungsgesetz (B-VG), BGBl 1/1930 idF I 89/2024; Rechts-, Legislativ- und Wissenschaftliche Dienst (n 482).
- 519.** Article 42(2) Consolidated Version of the Treaty on European Union (Maastricht Treaty as amended by Lisbon Treaty); *ibid*.
- 520.** Article 5(2) Council Decision (CFSP) 2022/339 of 28 February 2022 on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces [2022] OJ L 61/1.
- 521.** Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community [2009] OJ L 146/1; § 5 Bundesgesetz vom 18. Oktober 1977 über die Ein-, Aus- und Durchfuhr von Kriegsmaterial (Kriegsmaterialgesetz – KMG), BGBl 540/1977 idF I 104/2019; Austrian Federal Ministry of the Interior (n 476) 1–2, Questions 1–7, 11–13.

522. *ibid* 2–4, Questions 8, 10.
523. For the time in question, Karner did not mention any transportation needing but not having a valid permission, *ibid* 4, Question 10.
524. Michael Jungwirth, ‘Zug mit 20 Panzern für die Ukraine rollte durch Österreich’ *Kleine Zeitung* (Graz, 21 April 2023) <[https://www.kleinezeitung.at/politik/6277423/Ohne-Genehmigung\\_Zug-mit-20-Panzern-fuer-die-Ukraine-rollte-durch](https://www.kleinezeitung.at/politik/6277423/Ohne-Genehmigung_Zug-mit-20-Panzern-fuer-die-Ukraine-rollte-durch)> accessed 10 June 2025.
525. NEUE, ‘In einem Jahr rollten 75 Waffentransporte durch Österreich’ *NEUE Vorarlberger Tageszeitung* (Schwarzach, 11 July 2023) <<https://www.neue.at/kaernten/2023/07/11/in-einem-jahr-rollten-75-waffentransporte-durch-oesterreich.neue>> accessed 10 June 2025.
526. See for a distinction between humanitarian and military/ lethal support by traditionally neutral states Ferro and Verlinden (n 12).
527. Ralph RA Janik, ‘Current Developments: Austrian Neutrality amid Russia’s War on Ukraine’ (Social Science Research Network, 26 August 2022) <<https://papers.ssrn.com/abstract=4201552>> accessed 13 June 2025.
528. Ralph RA Janik, ‘Neutralität und der österreichische Beitrag zur EU-Sicherheitspolitik’ (*Österreichische Gesellschaft für Europapolitik*, 5 October 2022) <<https://www.oegfe.at/policy-briefs/neutralitaet-und-der-oesterreichische-beitrag-zur-eu-sicherheitspolitik/>> accessed 7 May 2025.
529. *ibid*.
530. *ibid*.
531. *ibid*.
532. Own translation *ibid*.
533. Gill and Tibori-Szabó (n 62) 334.
534. Seger (n 20) 266.
535. *ibid*; Judith Niederberger, ‘Österreichische Sicherheitspolitik zwischen Solidarität und Neutralität’ [2001] *Bulletin 2001 zur schweizerischen Sicherheitspolitik* 69 <[https://css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/Bulletin\\_2001-Oesterreichische\\_Sicherheitspolitik.pdf](https://css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/Bulletin_2001-Oesterreichische_Sicherheitspolitik.pdf)>.
536. Seger (n 20) 263–4.
537. Janik (n 528).
538. Janik (n 527) 9; similarly Peter Hilpold, ‘Das Neutralitätsrecht Österreichs und der Schweiz im »weiten Feld« des internationalen Rechts. Aktuelle Entwicklungen im Vergleich’ (2022) 60 *Archiv des Völkerrechts* 268 <<https://www.mohrsiebeck.com/10.1628/avr-2022-0016>> accessed 13 February 2025.
539. Cf. Hilpold (n 538) 274.

## IV. Interim Conclusion

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- 1 Unlike the theoretical considerations on treaty law (Part 1), CIL gives no final answer to the question of which options are available for third states under neutrality law in the 21<sup>st</sup> century. The borderline cases of Germany and Austria show that self-defined neutrality and non-belligerency seem to be accepted statuses whose limits are unclear and subject to debate. This confirms the paradigm of "discontinuity" and evolving CIL as well as the thesis of legal uncertainty, which reproduces itself.

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## **Part 3. What lies between Neutrality and Co-Belligerency? – Content, Limits, and Legal Implications of Non-Belligerency in the 21st Century**

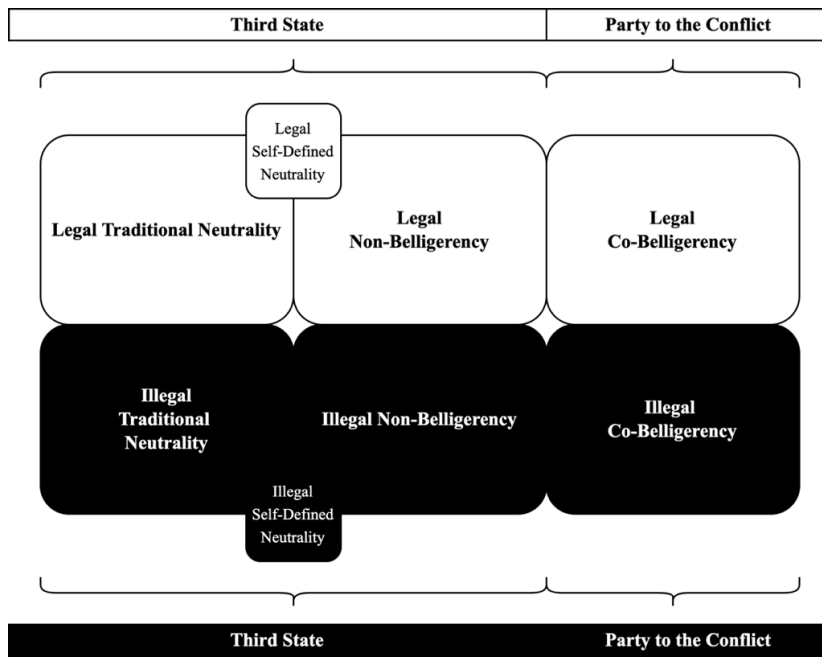
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# I. General Overview

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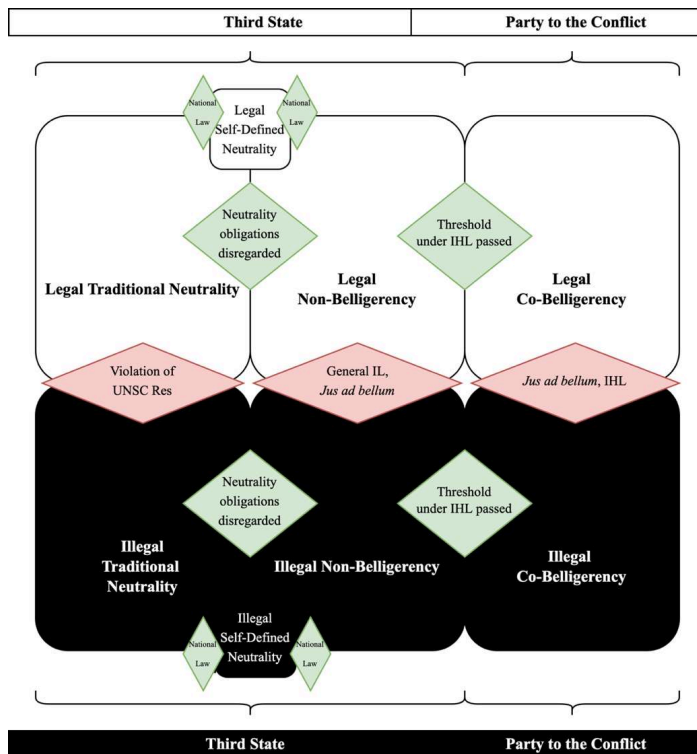
- 1 Having accepted optional neutrality (see Part 1.V), three main categories of options for third states are identifiable: traditional neutrality, non-belligerency, and co-belligerency. As these three categories have limitations under international law (namely, a UNSC resolution withstanding neutrality, illegal support for an aggressor, and unjustified recourse to war), we can differentiate between their legal and illegal forms, suggesting six different options for third states. While states opting for traditional neutrality or non-belligerency (e.g., Germany) remain third states, co-belligerents become parties to the conflict and are no longer third states.
- 2 The Austrian example indicated the existence of another sub-category of self-defined neutrality, which lies between traditional neutrality and non-belligerency. As a domestically determined status, it forms a political concept without legal content and limitations under international law. It is to that extent legal or illegal as the same conduct falling in the category of traditional neutrality or non-belligerency would be. This sub-category serves mainly the political-rhetoric need for such a category in national debates<sup>540</sup> (see Part 2.III). Thereby, it fulfills a similar – political – purpose to traditional neutrality. Taking self-defined neutrality into account, we can differentiate between four categories, with a total of eight options for third states under international law, as visualized in Illustration 11.
- 3 As will be explained in more detail below, the law of neutrality regulates not only the content of the rights and obligations of traditionally neutral states but also marks with its breach the transition between (il)legal neutrality and (il)legal non-belligerency.<sup>541</sup> The transition from (il)legal non-belligerency to (il)legal co-belligerency is defined under IHL, which also regulates the content of (il)legal co-belligerency.<sup>542</sup> (il)Legal non-belligerency is regulated under general international law and *jus ad bellum*.<sup>543</sup> The legality of co-belligerency is, meanwhile, determined under *jus ad bellum* and IHL, while general international law and *jus ad bellum* assess the legality of non-belligerency.<sup>544</sup> Meanwhile, following optional neutrality, the legality of traditional neutrality depends only on whether a UNSC resolution withstands this status. This is visualized in Illustration 12.

Illustration 11 – The Six Options Available for Third States in the Case of an IAC



Source: Author, 2025.

Illustration 12 – Legal Regulation of the Six Options Available for Third States in the Case of an IAC

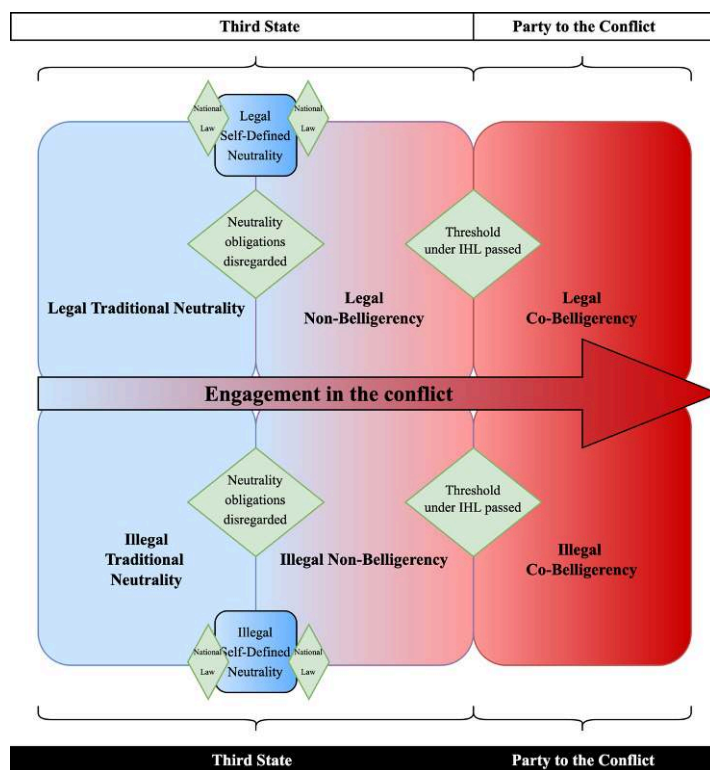


Source: Author, 2025.

- 4 Part 2 has shown that the limitations between traditional neutrality, non-belligerency, and co-belligerency are ambiguous, still undefined, or - to a certain degree - even fluid. This is also because, as Gill and Tibori-Szabó point out, the aggrieved belligerent's

perception and treatment of a third state as a conflict party ultimately determine whether the threshold between non-belligerency and co-belligerency is passed.<sup>545</sup>

**Illustration 13 – The Six Options Available for Third States in the Case of an IAC as a Spectrum of Engagement**



Source: Author, 2025 (the basic idea of this and the other illustrations stems from Schmuki (n 105) 31).

- 5 Traditional neutrality, non-belligerency, and co-belligerency might not be rigidly separated (yet), but they are mutually exclusive. While a state can conduct, for example, legal and illegal non-belligerent acts simultaneously, it cannot be simultaneously a non-belligerent and traditionally neutral. It is either a co-belligerent or a third state, but never both. However, within these distinct categories, different degrees of engagement are possible.<sup>546</sup> While neutrality is neutrality, self-defined neutrality, non-belligerency, and co-belligerency can differ in intensity. This means that a non-belligerent, for instance, can allow the transport of weapons through its territory or deliver itself lethal weapons. To use Upcher's interpretation of Schindler, non-belligerency is a "spectrum";<sup>547</sup> or, as Schmuki puts it, part of the "neutrality-belligerency continuum", on which the "impartiality threshold" (governed by neutrality law) separates "neutrality" and "non-belligerency" while the "non-participation threshold" divides "non-belligerency" (governed by general international law) and "belligerency".<sup>548</sup> Inspired by Schmuki's illustration, our spectrum also contains also two thresholds separating non-belligerency from the neighboring categories, co-belligerency, which resumes this continuum, and traditional neutrality (see Illustration 13). Building upon this overview of the six main options for third states, the following parts will examine the three categories in more detail.

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## FOOTNOTES

**540.** Cf. Janik (n 527); cf. Hilpold (n 538).

**541.** Cf. Schmuki (n 105) 31.

**542.** Schmitt (n 2).

**543.** See *ibid*; see Heller and Trabucco (n 142); cf. Schmuki (n 105) 31.

**544.** See Schmitt (n 2); see Heller and Trabucco (n 142).

**545.** Gill and Tibori-Szabó (n 62) 342, 343.

**546.** Cf. *ibid* 342.

**547.** Upcher (n 25) 22; Schindler (n 8) 373; Talmon (n 2) 15 speaks similiarly of ‘various shades of partiality’.

**548.** Schmuki (n 105) 31, please note that Schmuki’s illustration of this ‘continuum’ with three options separated by two thresholds inspired most of the illustrations in this ePaper, including the following one.

## II. Traditional Neutrality and Self-Defined Neutrality

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- 1 The first category, traditional neutrality, allows third states to remain neutral during an IAC by adhering to the rights and obligations of neutral states under CIL and, if they are parties, under the Hague Conventions. For traditionally neutral states, neutrality is fully applicable—unless there is a UNSC resolution under Chapter VII requiring states to take mandatory measures against a determined aggressor (see Part 1.III). By disregarding such mandatory measures required by the UNSC, a neutral state violates its obligations under Article 2(5) UNC and adheres thereby to an illegal form of traditional neutrality.
- 2 Within this legal limit, neutrality comes in different shapes, allowing states to follow a self-defined form of neutrality. Neutral states can freely decide to be permanently neutral or only regarding a specific conflict.<sup>549</sup> In addition, traditional neutrality law leaves some discretion for neutral states regarding their neutrality's exact form and content (Part 1.VI).<sup>550</sup> Neutrality can mean, as Clancy suggests, to choose "political condemnation" as an adequate means to position against an aggressor, without violating neutrality obligations.<sup>551</sup> Neutrality can also mean to adhere not only to international law but also, as Greminger and Rickli observed for Switzerland, to "self-imposed rules of neutrality".<sup>552</sup>
- 3 In the Austrian case,<sup>553</sup> the self-defined limits of their military neutrality are looser than those of traditional neutrality, rendering Austria legally a state between traditional neutrality and non-belligerency. As discussed in Part 2.III, Austria sees its "immerwährende Neutralität" as being limited by its accession to the European Union. Thus, it allows indirect weapon transport through its territory, takes part in sanctions, and delivers non-lethal material to Ukraine. While it is hence already in violation of traditional neutrality law, it upholds self-constructed differentiations between lethal/non-lethal and direct/indirect weapon transports to Ukraine. This illustrates that, for Austria, the interpretation of national neutrality law, public opinion, and political considerations are the decisive factors, not the Hague Conventions.<sup>554</sup>
- 4 As discussed in Part 1, the difference between traditional neutrality, self-defined neutrality, and non-belligerency is legally irrelevant. Even if Austria were to qualify as a non-belligerent under international law, the aggrieved belligerent, Russia, would not be allowed to attack its territory. The advantages of a neutral state, such as Austria, are

political— a neutral state can serve humanitarian and diplomatic purposes and contribute, for example, to a peaceful solution of a conflict.<sup>555</sup> Moreover, neutrality can avoid the need to navigate unclear legal situations (see Part 3.V). And additionally, for a belligerent disregarding international law – e.g., an aggressor – a neutral state in the traditional or self-defined sense might seem more "innocent" and protection-worthy than a non-belligerent state which supports a belligerent actively and militarily.<sup>556</sup> Consequently, it is less likely for such a neutral state to be subject to an illegal act of revenge.

- 5 These advantages for neutral states show that the decisive factor is not the adherence to traditional neutrality obligations (a yes or no question) but the perception by other states,<sup>557</sup> especially the belligerents. The attempted bilateral peace talks between Russia and Ukraine in 2022 and 2025 illustrate this point well—as intermediators, not neutral Austria or Switzerland but NATO-state Turkey were chosen; other factors than official military neutrality were more decisive. Having accepted that neutrality depends more on perception than on law, it does not necessarily matter whether the Hague Conventions or domestic neutrality law are adhered to. This means that neutrality cannot be an end in itself—to prevent the political obsolescence of neutrality in the 21<sup>st</sup> century, one must follow a political strategy and aim, not just a tradition.<sup>558</sup>

## FOOTNOTES

549. See Clancy (n 25) for details.

550. Greninger and Rickli (n 300) 29–30.

551. Clancy (n 6) 542–543.

552. Greninger and Rickli (n 300) 36.

553. See similarly Ireland and before their NATO accession Sweden and Finland, Seger (n 20) 265–266.

554. Bartolini and Pertile (n 5) 221, 228; Hilpold (n 538); Janik (n 528); Janik (n 527).

555. Schmid (n 1) 19.

556. Cf. for the subjective element of such a decision Gill and Tibori-Szabó (n 62) 342.

557. Cf. Swiss Federal Department of Foreign Affairs (n 305).

558. Cf. Seger (n 20) 267–271; cf. Greninger and Rickli (n 300).

### III. Non-Belligerency

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- 1 The second category, non-belligerency, is what happens in between, an intermediate status.<sup>559</sup> When neutrality obligations are breached and the threshold for co-belligerency is not yet reached, a third state is a non-belligerent.<sup>560</sup> Its concrete actions can range, arguably, from sending non-lethal material as Austria does to delivering lethal weapons as Germany does. Non-belligerency is a spectrum, reaching from small, almost neutral support of a belligerent to almost co-belligerent assistance.
- 2 Accepting the optional character of neutrality means that opting for non-belligerency is not a violation of the law of neutrality. But even if non-belligerency as a status is legal, certain forms are illegal under general international law. As Schmitt indicates at several points, the law of neutrality, IHL, and the legality of the use of force are quite different regimes answering separate sets of questions.<sup>561</sup> A non-belligerent can violate the prohibition of using force while respecting the other two regimes.<sup>562</sup>
- 3 This implies that the legality of non-belligerency depends on whether the victim of aggression or the aggressor is supported. That way, no references to the law of neutrality, which is conceptually not apt for such a differentiation anyway (see Part 1.IV and Part 1.V), are necessary. As Schmid puts it: "[T]he prohibition on supporting an aggressor is, in any event, clearly established. There is no room for any support to a State waging war in contravention of the UN Charter".<sup>563</sup>
- 4 Following Wentker and Kreß, there are two reasons for this. First, supporting an aggressor can form illegal aid or assistance in the commission of the internationally wrongful act of aggression; second, when amounting to the use of force, it can constitute an unjustified breach of Article 2(4) UNC.<sup>564</sup> According to Wentker and Kreß, supporters of a victim of aggression act legally under international law: If their support does not involve the use of force (scenario 1), they support the victim state in its individual right to self-defense.<sup>565</sup> If their support involves force (scenario 2), it forms, according to Schmitt, an international wrongful act which can, as Wentker, Kreß, and Schmitt point out, be justified as collective self-defense – provided that it is reported to the UNSC under Article 51 UNC.<sup>566</sup>
- 5 This raises the two questions: what constitutes the use of force, and whether non-forcible measures are covered by self-defense. The first question is especially relevant, as Schmitt and Biggerstaff argue, when the aggressor is less clear than in the Russo-Ukraine war, and it is consequently uncertain whether a third state can use "collective self-defense to fall back upon" to justify its use of force.<sup>567</sup> In analogy to the ICJ

*Nicaragua* case (dealing with support for non-state actors), Schmitt, Heller, and Trabucco argue that "arming and training"<sup>568</sup> by a third state can also form in an IAC a use of force in violation of Article 2(4) UNC.<sup>569</sup> According to Schmitt and Biggerstaff, this indirect use of force has limits, for instance, "the mere supply of funds",<sup>570</sup> which the Court excludes.<sup>571</sup> Consequently, they propose a list of potential factors to determine when assistance qualifies as indirect use of force.<sup>572</sup> But instead of coming to a conclusion, they call upon states and the international community "to clarify the scope and threshold of indirect force" to "guide future State behavior."<sup>573</sup> Wentker and Kreß also differentiate between direct and indirect use of force, arguing that the decisive factor is "the proximity of the assistance to the direct use of force by the State that receives support."<sup>574</sup> They conclude, aligning with explicit German *opinio juris*, that Western support for Ukraine does not qualify as own indirect use of force so far.<sup>575</sup> Other authors consider this threshold as already scratched.<sup>576</sup>

- 6 Having Schmitt and Biggerstaff's view on the unsettled criteria in mind, it is beyond the scope of this paper to come to a final evaluation. It is important to note that non-belligerent support for a victim of aggression, such as Ukraine, is legal<sup>577</sup> – either as support for Ukraine's individual self-defense or, when involving force, as a measure of collective self-defense. According to Wentker and Kreß, the non-notification of the latter to the UNSC by all non-belligerent states would meanwhile violate an "obligation procédurale" which can be read as an indication that states might not consider themselves in a state of collective self-defense.<sup>578</sup>
- 7 Regarding the second question, Buchan shows in a comprehensive analysis that Article 51 UNC raises a "general right under international law" to self-defense, which is not limited to forcible measures.<sup>579</sup> When not using force (scenario 1), third states can legally support a victim of aggression in their individual right to self-defense.<sup>580</sup> This also follows from the sometimes rejected<sup>581</sup> logic that if Article 51 allows the use of force in (collective) self-defense, lesser means must also be allowed *de majore ad minus*.<sup>582</sup> Having accepted the optionality of neutrality obligations, this is, however, in any event an irrelevant question – according to Gill and Tibori-Szabó, "no rule of international law [...] prohibits States from providing the [...] victim State with support not amounting to direct intervention."<sup>583</sup>
- 8 Coming back to countermeasures<sup>584</sup> discussed in Part 1.III, they do not offer a convincing alternative to (collective) self-defense here, even if ignoring the controversial character of their collective exercise.<sup>585</sup> They cannot preclude the wrongfulness of non-belligerent use of force in support of a victim of aggression since Article 50(1)(a) ARSIWA excludes force.<sup>586</sup>
- 9 Hence, non-belligerency is legal under two conditions: It does not support a belligerent's aggression or its IHL violations,<sup>587</sup> and when using force, it can preclude the wrongfulness of this use of force. Non-belligerent support for a victim of aggression is, therefore, generally lawful, while support for an aggressor is not. As explained above, the inviolability of the territory of non-belligerents follows from their sovereignty and not from their adherence to neutral obligations (*Territorial Protection Change*). Heller and Trabucco argue that, under *the jus ad bellum*, weapon deliveries on their way to Ukraine may not be targeted by Russia before entering Ukraine.<sup>588</sup> Consequently, legal non-belligerency has no legal consequences, while illegal non-belligerency does, as Schmitt puts it, "open the door to countermeasures and reparations."<sup>589</sup>

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## FOOTNOTES

559. Kolb and Meret (n 18).

560. Schmuki (n 105) 31.

561. Schmitt (n 2); for a another differentiation between the different legal regimes see also Heller and Trabucco (n 142).

562. Schmitt (n 2). Please note that Schmitt, different from this ePaper, accepts this only for cases in which qualified neutrality applies.

563. Schmid (n 1) 18.

564. Wentker and Kreß (n 209) 176; cf. Article 16 Articles on Responsibility of States for Internationally Wrongful Acts, in ILC, 'Report of the International Law Commission on the Work of its 52nd Session' (3 April - 1 June and 2 July - 10 August 2001) UN Doc. A/56/10 ("ARSIWA").

565. *ibid.*

566. *ibid.*; Schmitt (n 2).

567. Michael N Schmitt and William Biggerstaff, 'Aid and Assistance as a "Use of Force" Under the Jus Ad Bellum' (2023) 100 International Law Studies 186, 228 <<https://www.ssrn.com/abstract=4372086>> accessed 20 May 2025.

568. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v USA)* (Merits) [1986] ICJ Rep 14 [228].

569. Schmitt (n 2); Heller and Trabucco (n 142) 254.

570. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v USA)* (Merits) [1986] ICJ Rep 14 [228].

571. Schmitt and Biggerstaff (n 567) 204–205; cf. Clancy (n 6) 535.

572. Schmitt and Biggerstaff (n 567) 204–227.

573. *ibid.* 228.

574. Wentker and Kreß (n 209) 173.

575. *ibid.* 177, 179; German Federal Government, 'Drucksache 20/1918' (n 435) 39, Question 56.

576. See Christian Schaller, 'When Aid or Assistance in the Use of Force Turns into an Indirect Use of Force' (2023) 10 Journal on the Use of Force and International Law 173 <<https://doi.org/10.1080/20531702.2023.2249347>> accessed 20 May 2025.

577. Schmitt and Biggerstaff (n 567) 228.

578. Wentker and Kreß (n 209) 176, 177; see Schmitt (n 2) for the point that the co-belligerency and the use of force are different question which means that the latter does not necessarily imply the start of an armed conflict.

**579.** Russell Buchan, 'Non-Forcible Measures and the Law of Self-Defence' (2023) 72 *International and Comparative Law Quarterly* 1 <[https://www.cambridge.org/core/product/identifier/S0020589322000471/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S0020589322000471/type/journal_article)> accessed 20 May 2025.

**580.** Wentker and Kreß (n 209) 176.

**581.** Heintschel von Heinegg, 'Chapter 20. Benevolent Third States in International Armed Conflicts' (n 137) 552–553; Van Steenberghe (n 339) 237–238. Van Steenberghe argues that self-defense only covers forcible measures (see Buchan for counterarguments) and that, when accepting the *de majore ad minus* reasoning, Article 51 UNC and neutrality law would get "confused"; Heintschel von Heinegg warns that, when accepting the argument, no law would govern the relation between non-belligerent and aggrieved belligerent. This is not the case as general international law applies (see above) and neutrality is, as shown, optional in any case.

**582.** See Krajewski (n 94); See Gill and Tibori-Szabó (n 62) 340; See for example for a comparable idea Schmitt (n 2); for a broader discussion Wentker (n 4) 972–975; for the idea Buchan (n 579) 3.

**583.** Gill and Tibori-Szabó (n 62) 345–346.

**584.** Article 22 ARSIWA

**585.** Cf. Clancy (n 6) 535–540.

**586.** See also Heller and Trabucco (n 142) 266.

**587.** *ibid* 269–271; Van Steenberghe (n 339) 251.

**588.** Heller and Trabucco (n 142) 266.

**589.** Schmitt (n 2).

## IV. Co-Belligerency

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- 1 The third category is co-belligerency. According to Schmitt, co-belligerency or partyhood in an IAC in support of another belligerent is a status determined by IHL.<sup>590</sup> According to him, Gill and Tibori-Szabó, third states become co-belligerents when their support for one of the belligerents passes a certain threshold.<sup>591</sup> Schmitt notes that "[t]he nature and extent of support that renders the supporting State a party to a conflict is an unsettled issue of IHL."<sup>592</sup> In analogy to the findings in *Tadić*,<sup>593</sup> Schmitt classifies military equipment supplies and financial support as below this threshold, while he argues that, for example, the enforcement of a no-fly zone over a belligerent's territory with force would pass this threshold.<sup>594</sup> Other authors, such as Ramya, argue meanwhile that the sharing of intelligence by the Biden administration rendered the USA already a party to the conflict.<sup>595</sup>
- 2 The legality of becoming a co-belligerent is, meanwhile, as Schmitt implies, not determined under the law of neutrality or IHL but under the *jus ad bellum*.<sup>596</sup> When a state in self-defense asks for military support in the exercise of its legitimate right to collective self-defense (Article 51 UNC), becoming a co-belligerent state is, according to Schmitt, consequently a legal option for a third state, precluding the wrongfulness of the use of force by the co-belligerent.<sup>597</sup> El-Zein emphasizes, moreover, that the use of force against this co-belligerent by the aggressor is illegal under *jus ad bellum* since "there is no self-defense against lawful conduct."<sup>598</sup>
- 3 If a co-belligerent supports a state that is not in self-defense or a state that exceeds its legitimate self-defense, the co-belligerency is illegal under the *jus ad bellum*. Moreover, a co-belligerent can act illegally (under IHL) when conducting war crimes or other violations of IHL. The legality of co-belligerency and of co-belligerent acts is, therefore, determined under the *jus ad bellum* and IHL. It is never a violation of the law of neutrality, which only outlines what a state needs to do to obtain the status of a neutral state (*Threshold Change*).
- 4 The legal implication of co-belligerency is becoming a party to the conflict and the application of IHL regarding the aggrieved belligerent.<sup>599</sup> Illegal co-belligerency and the violation of IHL give additionally rise to a co-belligerent's international responsibility.

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## FOOTNOTES

590. *ibid.*

591. *ibid.*; Gill and Tibori-Szabó (n 62) 342–343.

592. Schmitt (n 2).

593. *Prosecutor v. Dusko Tadic* (Appeal Judgement) IT-94-1-A (15 July 1999).

594. Schmitt (n 2).

595. Ramya (n 125); cf. Heller and Trabucco (n 142) 257–258.

596. Schmitt (n 2); similarly Gill and Tibori-Szabó (n 62) 343–344.

597. Schmitt (n 2). And Article 21 ARSIWA and Article 2(4) UNC.

598. El-Zein (n 53) 119.

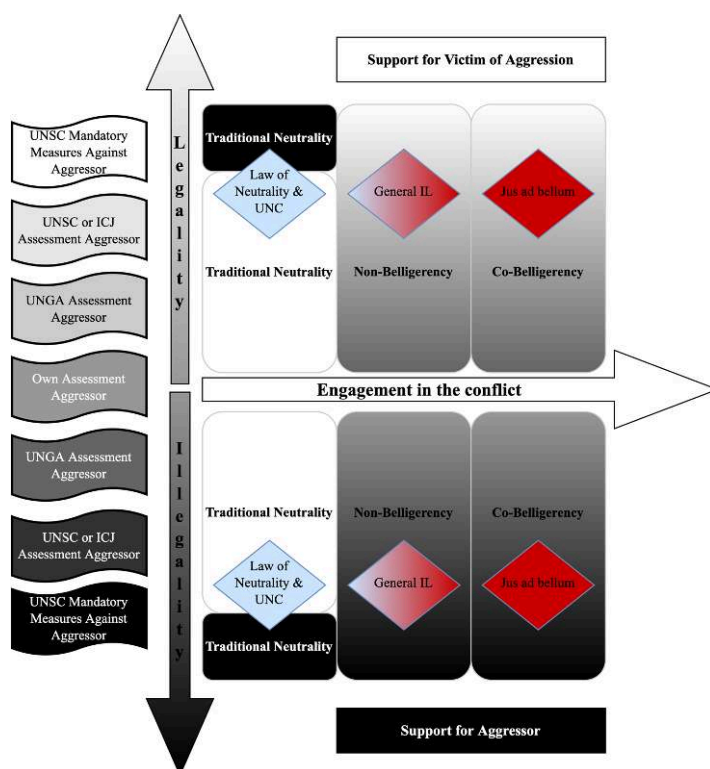
599. Cf. Schmitt (n 2).

## V. Shades of Legality

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- 1 Having contributed to a clarification of content, limitation, and legal consequences of the options available for third states in an IAC, one practical problem remains, a second form of legal uncertainty: The legality of co-belligerency and non-belligerency mainly depends on whether the aggressor or the victim is supported. A remaining problem is that the aggressor is frequently not authoritatively determined.<sup>600</sup> We have already seen in Part 1.IV., that different degrees of certainty regarding the identification of the aggressor are discussed.<sup>601</sup> These "shades of legality" (see Illustration 15) are not only a relevant factor in determining the legality of qualified neutrality but can also influence a state's choices when neutrality is one option among many. The less authoritatively the aggressor is determined, the safer neutrality is as an option for third states.<sup>602</sup>
- 2 In an international legal system, a competent court, such as the ICJ, that determines an aggressor enjoys the highest possible authority. An authoritative and binding resolution by the UNSC, even if politically colored, is comparable in its effect. If both could not be issued (yet), a non-binding resolution by the UNGA is a good substitute.<sup>603</sup> Herdegen classifies its effect as "signaling a justification" because it "gives a basis for the assumption that adhering to it is in line with the UNC."<sup>604</sup>
- 3 Weaker and thus legally riskier is the own determination of the aggressor by one state or a group of states.<sup>605</sup> Gioia warns that "discrimination against one belligerent is undertaken at a State's own risk and may give rise to international responsibility if an authoritative determination is made that assistance was in fact given to the aggressor."<sup>606</sup> It is noteworthy that this risk arises from practical, not legal uncertainty. As El-Zein puts it, "[e]ven if the aggressor is subjectively unknown, he does exist objectively."<sup>607</sup> Consequently, according to Gill and Tibori-Szabó, a UNSC or UNGA resolution is no necessary legal basis for the support of a victim of aggression, but it "would help in providing clarity and remove any doubt over which side is acting lawfully".<sup>608</sup> This will be especially important when, as Schmitt and Biggerstaff warn, "identifying the aggressor in a future conflict may be less straightforward" than "in the Russia-Ukraine conflict due to Russia's blatant violation of peremptory norms of international law".<sup>609</sup>

**Illustration 14 – The Six Options Available for Third States in Case of an IAC and Their Legality**



Source: Author, 2025.

## FOOTNOTES

**600.** Cf. e.g., Herdegen (n 93) 3; cf. e.g., Talmon (n 204).

**601.** See also Ronzitti (n 2) 4–5 for a very helpful and inspiring overview of the different possible circumstances.

**602.** For a general discussion on the authority determining the aggressor, the legal consequences, the safety, and on insightful primary sources in this regard see Bowett (n 207) 180–181; from special interest is Bowett's quotation of Dehn (n 223) 43 [inaccessible]: "Apparently the only safe course would thus be to adopt a status of strict non-intervention [...] until the aggressor had been identified, by a decision of the Security Council or by world opinion."

**603.** See Talmon (n 2) 20 in the context of qualified neutrality; and Bowett (n 207) 180; theoretically, a UNGA resolution could exceed this effect when acting under the 'Uniting for Peace' Resolution (UNGA Res 377 [3 November 1950] UN Doc A/RES/377), see Herdegen (n 93) 3, 10.

**604.** Own translation of Herdegen (n 93) 11.

**605.** See Schmid (n 1) 17 in the context of qualified neutrality.

**606.** Gioia (n 8) 109.

**607.** El-Zein (n 53) 204.

**608.** Gill and Tibori-Szabó (n 62) 340.

**609.** Schmitt and Biggerstaff (n 567) 228.

## VI. Interim Conclusion

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- <sup>1</sup> Under optional neutrality, there are therefore six main options available for third states. While three of them are in principle legal, the authority determining the aggressor plays an important role. This leads to different *shades of legality*, which will influence third states' decisions even if a new codification of neutrality law can be achieved. This is unproblematic as nuances exist in many areas of international law, and, different from qualified neutrality, these nuances are not decisive for the applicability of neutrality law.

# Conclusion

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- 1 The Russian aggression against Ukraine lends new urgency to the question of the extent to which neutrality obligations are applicable after the adoption of the UNC. Part 1 rejected compulsorily applicable, qualified, and obsolete neutrality based on their conceptual flaws, inadequate incorporation of the change in the international legal system, and the emergence of at least a third option for third states. It embraced optional neutrality based on the finding that it has always been optional. Part 2 examined the legal uncertainty third states are facing regarding their options. It found that uncertainty reproduces itself and is reflected in the German and Austrian debates and their *opinio juris*. Following optional neutrality, Part 3 tried to answer this legal uncertainty by explaining in more detail which options are available for third states – neutrality, non-belligerency, co-belligerency, and their illegal counterparts. Having answered the first part of the research question, we must examine what this means in practice.
- 2 Part 3 wants to be understood as a proposal on how states could (and should) recodify neutrality and non-belligerency in the 21<sup>st</sup> century. States should explain and delimit which options are available for third states under which circumstances and what legal implications they have. By following optional neutrality, Part 3 made a conceptually convincing proposal which is more concrete than Zugliani's vague conclusion that "the conflict in Ukraine justifies calls for a codification of the law of neutrality".<sup>610</sup> In practice, as we have seen in Part 2, this is what matters—finding a path to a clearer legal regulation that allows states to base their decisions on solid legal considerations and explain their state practice confidently with respective *opinio juris*.
- 3 Especially in a time of declining multilateralism and more international (armed) conflicts, a multilateral agreement on neutrality and non-belligerency is essential for third states and belligerents. The answer to declining multilateralism can only be increased attempts to act multilaterally.

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## FOOTNOTES

**610.** Zugliani (n 5) 410.

# Bibliography

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## International and Regional Treaties

- 1 Articles on Responsibility of States for Internationally Wrongful Acts, in ILC, 'Report of the International Law Commission on the Work of its 52nd Session' (3 April - 1 June and 2 July - 10 August 2001) UN Doc. A/56/10 ("ARSIWA")
- 2 Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UNC)
- 3 Consolidated Version of the Treaty on European Union (Maastricht Treaty as amended by Lisbon Treaty)
- 4 Covenant of the League of Nations (adopted 28 June 1919, entered into force 10 January 1920) 108 LNTS 188 ("Covenant")
- 5 General Treaty for the Renunciation of War as an Instrument of National Policy (adopted 27 August 1928, entered into force 24 July 1929) 94 LNTS 59 ("Kellogg-Briand Pact", "Pact of Paris")
- 6 Geneva Convention (III) Relative to the Treatment of Prisoners of War, (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135
- 7 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) 205 CTS 299 ("Hague V")
- 8 Hague Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War, (adopted 18 October 1907, entered into force 26 January 1910) 205 CTS 395 ("Hague XIII")
- 9 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 07 December 1978) 1125 UNTS 4
- 10 Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT)

## Regional Legislation (European Union)

- 11 Council Decision (CFSP) 2022/339 of 28 February 2022 on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces [2022] OJ L 61/1
- 12 Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community [2009] OJ L 146/1

## Domestic Legislation (Austria)

- 13 Bundesgesetz vom 18. Oktober 1977 über die Ein-, Aus- und Durchfuhr von Kriegsmaterial (Kriegsmaterialgesetz – KMG), BGBl 540/1977 idF I 104/2019
- 14 Bundes-Verfassungsgesetz (B-VG), BGBl 1/1930 idF I 89/2024
- 15 Bundesverfassungsgesetz vom 26. Oktober 1955 über die Neutralität Österreichs, BGBl 211/1955
- 16 Federal Constitutional Law on the Neutrality of Austria, Federal Law Gazette No. 211/1955 (version of 1 February 2010)

## International Cases

- 17 *Prosecutor v. Dusko Tadic* (Appeal Judgement) IT-94-1-A (15 July 1999)
- 18 *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
- 19 *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Separate Opinion of Vice-President Ammoun) [1971] ICJ Rep 16
- 20 *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226
- 21 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v USA)* (Merits) [1986] ICJ Rep 14
- 22 *North Sea Continental Shelf* (Judgment) [1969] ICJ Rep 3
- 23 *Oil Platforms (Islamic Republic of Iran v. United States of America)* (Judgment) [2003] ICJ Rep 161

## Domestic Cases (Germany)

- 24 *German Federal Administrative Court, Judgment of the 2nd Military Service Senate* [2005] BVerwG 2 WD 12.04

## UN Documents

- 25 ILC 'Yearbook of the International Law Commission, Volume II' (1966) A/CN.4/SER. A/1966/Add. 1
- 26 UNGA Res ES-11/7 (25 February 2025) UN Doc A/RES/ES-11/7
- 27 UNGA Res ES-11/8 (25 February 2025) UN Doc A/RES/ES-11/8
- 28 UNGA Res ES-11/1 (18 March 2022) UN Doc A/RES/ES-11/1
- 29 UNGA Plenary Meeting ES-11/PV.5 (2 March 2022) UN Doc A/ES-11/PV.5
- 30 UNGA Res 377 (3 November 1950) UN Doc A/RES/377

- 31 UNSC Draft Res (25 February 2022) UN Doc S/2022/155  
 32 UNSC Meeting 8979 (25 February 2022) UN Doc S/PV.8979  
 33 UNSC Meeting 9866 (24 February 2025) UN Doc S/PV.9866  
 34 UNSC Res 2623 (27 February 2022), UN Doc S/RES/2623  
 35 UNSC Res 2774 (24 February 2025) UN Doc S/RES/2774

## Documents from Domestic Governments and Parliaments (Austria)

- 36 Austrian Federal Ministry for Economy, Energy and Tourism, 'Russland, Ukraine, Belarus' (*Bundesministerium für Wirtschaft, Energie und Tourismus*, 22 May 2025) <<https://www.bmwet.gv.at/Themen/Exportkontrolle/Export/Embargos-und-Sanktionen/Russland-Belarus-Ukraine.html>> accessed 10 June 2025
- 37 Austrian Federal Ministry for European and International Affairs, 'Außenminister Schallenberg empfängt Irlands Präsident Higgins in Wien' (*Bundesministerium für europäische und internationale Angelegenheiten*, 6 April 2022) <<https://www.bmeia.gv.at/ministerium/presse/aktuelles/2022/04/aussenminister-schallenberg-empfaengt-irlands-praesident-higgins-in-wien>> accessed 10 June 2025
- 38 Austrian Federal Ministry for European and International Affairs, '9992/AB Vom 23.05.2022 Zu 10273/J (XXVII. GP)' <[https://www.parlament.gv.at/dokument/XXVII/AB/9992/imfname\\_1447489.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/9992/imfname_1447489.pdf)>
- 39 Austrian Federal Ministry for European and International Affairs, 'Ein Jahr russischer Aggressionskrieg: Österreichs Solidarität mit der Ukraine' <[https://www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Europa/EUGR/OEsterreichische\\_Unterstuetzung\\_fuer\\_die\\_Ukraine.pdf](https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Europa/EUGR/OEsterreichische_Unterstuetzung_fuer_die_Ukraine.pdf)>
- 40 Austrian Federal Ministry for European and International Affairs, '12711/AB Vom 16.01.2023 Zu 13063/J (XXVII. GP)' <[https://www.parlament.gv.at/dokument/XXVII/AB/12711/imfname\\_1503984.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/12711/imfname_1503984.pdf)>
- 41 Austrian Federal Ministry for European and International Affairs, 'Ukrainekrise Seit 2022' <[https://www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Entwicklungszusammenarbeit/Ukrainekrise\\_seit\\_2022.jpg](https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Entwicklungszusammenarbeit/Ukrainekrise_seit_2022.jpg)> accessed 10 June 2025
- 42 Austrian Federal Ministry for European and International Affairs, '14674/AB Vom 24.07.2023 Zu 15081/J (XXVII. GP)' <[https://www.parlament.gv.at/dokument/XXVII/AB/14674/imfname\\_1577735.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/14674/imfname_1577735.pdf)>
- 43 Austrian Federal Ministry for European and International Affairs, 'Zwei Jahre russischer Angriffskrieg: Österreichs Solidarität mit der Ukraine' <[https://www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Europa/EUGR/Factsheet\\_\\_AT\\_Ukraine\\_Unterstuetzung\\_Maerz\\_2024.pdf](https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Europa/EUGR/Factsheet__AT_Ukraine_Unterstuetzung_Maerz_2024.pdf)>
- 44 Austrian Federal Ministry for European and International Affairs, 'Mit klarer Botschaft der Unterstützung: Meisl-Reisinger in der Ukraine' (*Bundesministerium für europäische und internationale Angelegenheiten*, 14 March 2025) <<https://www.bmeia.gv.at/ministerium/presse/aktuelles/alle/2025/03/mit-klarer-botschaft-der-unterstuetzung-meisl-reisinger-in-der-ukrain>> accessed 10 June 2025
- 45 Austrian Federal Ministry of Defence, '9824/AB Vom 03.05.2022 Zu 10088/J (XXVII. GP)' <[https://www.parlament.gv.at/dokument/XXVII/AB/9824/imfname\\_1443347.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/9824/imfname_1443347.pdf)>
- 46 Austrian Federal Ministry of Defence, '14502/AB Vom 07.07.2023 Zu 14994/J (XXVII. GP)' <[https://www.parlament.gv.at/dokument/XXVII/AB/14502/imfname\\_1574916.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/14502/imfname_1574916.pdf)>

- 47 Austrian Federal Ministry of Defence and Sports, 'Teilstrategie Verteidigungspolitik 2014' <[https://www.bmlv.gv.at/download\\_archiv/pdfs/teilstrategie\\_verteidigungspolitik.pdf](https://www.bmlv.gv.at/download_archiv/pdfs/teilstrategie_verteidigungspolitik.pdf)>
- 48 Austrian Federal Ministry of Finance, '13288/AB Vom 24.03.2023 Zu 13758/J (XXVII. GP)' <[https://www.parlament.gv.at/dokument/XXVII/AB/13288/imfname\\_1546919.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/13288/imfname_1546919.pdf)>
- 49 Austrian Federal Ministry of the Interior, '14379/AB Vom 23.06.2023 Zu 14868/J (XXVII. GP)' <[https://www.parlament.gv.at/dokument/XXVII/AB/14379/imfname\\_1571482.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/14379/imfname_1571482.pdf)>
- 50 Federal Chancellery of Austria, 'Lageupdate nach der heutigen Sitzung des Krisenkabinetts' <[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.bundeskanzleramt.gv.at/dam/jcr:25394f66-5e0d-41a4-a844-ff4e12c38768/20220228\\_medieninfo.pdf&ved=2ahUKEwj\\_vLzmu4SNAXUIQ\\_EDHZ\\_mJjIQFnoECCIQAQ&usg=AOvVaw1WP1oCgNWa5KMDL3cFy](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.bundeskanzleramt.gv.at/dam/jcr:25394f66-5e0d-41a4-a844-ff4e12c38768/20220228_medieninfo.pdf&ved=2ahUKEwj_vLzmu4SNAXUIQ_EDHZ_mJjIQFnoECCIQAQ&usg=AOvVaw1WP1oCgNWa5KMDL3cFy)>
- 51 Federal Chancellery of Austria, 'Bundeskanzler Nehammer lehnt Entsendung Österreichischer Soldaten in die Ukraine ab' (*Bundeskanzleramt*, 19 May 2023) <<https://services.bundeskanzleramt.gv.at/newsletter/bka-medien-newsletter/bka-medieninformation-entsendungsoldaten.html>> accessed 10 June 2025
- 52 Federal Chancellery of Austria, 'Österreich finanziert Entminungsgerät für die Ukraine im Wert von 2 Mio. Euro' (*Bundeskanzleramt*, 27 May 2023) <<https://services.bundeskanzleramt.gv.at/newsletter/bka-medien-newsletter/aussenpolitik/bka-medieninformation-aussenpolitik-oesterreich-finanziert-entminungsgeraet-fuer-ukraine.html>> accessed 10 June 2025
- 53 Federal Chancellery of Austria, '17634/AB Vom 21.05.2024 Zu 18200/J (XXVII. GP)' <[https://www.parlament.gv.at/dokument/XXVII/AB/17634/imfname\\_1629883.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/17634/imfname_1629883.pdf)>
- 54 Federal Chancellery of Austria, '18309/AB Vom 13.08.2024 Zu 18895/J (XXVII. GP)' <[https://www.parlament.gv.at/dokument/XXVII/AB/18309/imfname\\_1649408.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/18309/imfname_1649408.pdf)>
- 55 Hoyos-Trauttmansdorff D, '16176/J XXVII. GP' <[https://www.parlament.gv.at/dokument/XXVII/J/16176/fname\\_1585668.pdf](https://www.parlament.gv.at/dokument/XXVII/J/16176/fname_1585668.pdf)>
- 56 Kaniak G, '14994/J XXVII. GP' <[https://www.parlament.gv.at/dokument/XXVII/J/14994/fname\\_1559101.pdf](https://www.parlament.gv.at/dokument/XXVII/J/14994/fname_1559101.pdf)>
- 57 Rechts-, Legislativ- und Wissenschaftliche Dienst, 'Was macht die österreichische Neutralität aus? | Parlament Österreich' (*Parlament Österreich*, 20 March 2024) <<https://www.parlament.gv.at/fachinfos/rlw/Was-macht-die-oesterreichische-Neutralitaet-aus>> accessed 10 June 2025
- 58 Rechts-, Legislativ- und Wissenschaftliche Dienst, 'Über den RLW' (*Parlament Österreich*, 10 June 2025) <<https://www.parlament.gv.at/fachinfos/rlw/ueber-uns/>> accessed 10 June 2025
- 59 Reifenberger V, '10088/J XXVII. GP' <[https://www.parlament.gv.at/dokument/XXVII/J/10088/fname\\_1427574.pdf](https://www.parlament.gv.at/dokument/XXVII/J/10088/fname_1427574.pdf)>
- 60 Republic of Austria, 'Austrian Security Strategy' <[http://www.bundeskanzleramt.gv.at/dam/jcr:2e2a11f4-28a0-4c92-8ed4-a3887a6863fd/austrian\\_security\\_strategy\\_2024.pdf](http://www.bundeskanzleramt.gv.at/dam/jcr:2e2a11f4-28a0-4c92-8ed4-a3887a6863fd/austrian_security_strategy_2024.pdf)>
- 61 Steger P, '13758/J XXVII. GP' <[https://www.parlament.gv.at/dokument/XXVII/J/13758/fname\\_1513882.pdf](https://www.parlament.gv.at/dokument/XXVII/J/13758/fname_1513882.pdf)>

## Documents from Domestic Governments and Parliaments (Germany)

- 62 CDU and CSU, 'Politikwechsel Für Deutschland - Wahlprogramm von CDU and CSU' <[https://www.cdu.de/app/uploads/2025/01/km\\_btw\\_2025\\_wahlprogramm\\_langfassung\\_ansicht.pdf](https://www.cdu.de/app/uploads/2025/01/km_btw_2025_wahlprogramm_langfassung_ansicht.pdf)> accessed 8 June 2025
- 63 CDU/CSU, 'Antrag - Unterstützung für die Ukraine konsequent fortsetzen – Lieferung des Taurus-Marschflugkörpers beschließen' <<https://dserver.bundestag.de/btd/20/091/2009143.pdf>>
- 64 German Federal Government, 'Antwort Der Bundesregierung - Leitfaden Der Bundeswehr Zum Umgang Mit Gewissensentscheidungen' <<https://dserver.bundestag.de/btd/16/019/1601921.pdf>>
- 65 German Federal Government, 'Antwort Der Bundesregierung - Umgang Der Bundeswehr Mit Angriffskriegsverweigerern' <<https://dserver.bundestag.de/btd/16/047/1604769.pdf>>
- 66 German Federal Government, 'Policy Statement by Olaf Scholz, Chancellor of the Federal Republic of Germany and Member of the German Bundestag, 27 February 2022 in Berlin' (*Die Bundesregierung*, 27 February 2022) <<https://www.bundesregierung.de/breg-en/service/archive/policy-statement-by-olaf-scholz-chancellor-of-the-federal-republic-of-germany-and-member-of-the-german-bundestag-27-february-2022-in-berlin-2008378>> accessed 3 June 2025
- 67 German Federal Government, 'Schriftliche Fragen mit den in der Woche vom 16. Mai 2022 eingegangenen Antworten der Bundesregierung' <<https://dserver.bundestag.de/btd/20/019/2001918.pdf>>
- 68 German Federal Government, 'Antwort Der Bundesregierung - Zur Rede Der Bundesministerin Des Auswärtigen, Annalena Baerbock, in Der Parlamentarischen Versammlung Des Europarates' <<https://dserver.bundestag.de/btd/20/063/2006365.pdf>>
- 69 German Federal Government, 'Kanzler Kompakt: Die Nato ist - und wird - keine Kriegspartei' (*Die Bundesregierung*, 28 February 2024) <<https://www.bundesregierung.de/breg-de/service/archiv-bundesregierung/archiv-mediathek/kanzler-kompakt-nato-2262628>> accessed 8 June 2025
- 70 German Federal Government, 'Military support for Ukraine' (*Die Bundesregierung*, 17 April 2025) <<https://www.bundesregierung.de/breg-de/service/archiv-bundesregierung/military-support-ukraine-2054992>> accessed 3 June 2025
- 71 German Federal Ministry of Defence, 'Humanitäres Völkerrecht in bewaffneten Konflikten - Handbuch – 1992' <[https://www.bits.de/public/documents/ZDv15.2\(1992\).pdf](https://www.bits.de/public/documents/ZDv15.2(1992).pdf)>
- 72 German Federal Ministry of Defence, 'Law of Armed Conflict – Manual – 2013' <<https://www.bmvg.de/resource/blob/93610/ae27428ce99dfa6bbd8897c269e7d214/b-02-02-10-download-manual-law-of-armed-conflict-data.pdf>>
- 73 German Federal Ministry of Defence, 'Humanitäres Völkerrecht in bewaffneten Konflikten - 2018' <<https://www.bmvg.de/resource/blob/93612/7d6909421eacad4ddc7dcd58d42ca/b-02-02-10-download-handbuch-humanitaeres-voelkerrecht-in-bewaffneten-konflikten-data.pdf>>
- 74 German Federal Parliament, 'Stenografischer Bericht 31. Sitzung' <<https://dserver.bundestag.de/btp/20/20031.pdf#P.2719>>

- 75 German Federal Parliament, 'Bundestag stimmt für Lieferung schwerer Waffen an die Ukraine' (*Deutscher Bundestag*, 28 April 2022) <<https://www.bundestag.de/dokumente/textarchiv/2022/kw17-de-selbstverteidigung-ukraine-891272>> accessed 8 June 2025
- 76 German Federal Parliament, 'Stenografischer Bericht 33. Sitzung' <<https://dserver.bundestag.de/btp/20/20033.pdf#P.3041>>
- 77 Kotré S, 'Steffen Kotré: Bundesregierung spielt mit dem Feuer' (*AfD-Fraktion im Deutschen Bundestag*, 21 February 2023) <<https://afdbundestag.de/steffen-kotre-bundesregierung-spielt-mit-dem-feuer/>> accessed 8 June 2025
- 78 SPD, 'Mehr für Dich. Besser für Deutschland.' <[https://www.spd.de/fileadmin/Dokumente/Beschluesse/Programm/SPD\\_Programm\\_bf.pdf](https://www.spd.de/fileadmin/Dokumente/Beschluesse/Programm/SPD_Programm_bf.pdf)>
- 79 SPD, CDU/CSU, BÜNDNIS 90/DIE GRÜNEN und FDP, 'Antrag - Frieden Und Freiheit in Europa Verteidigen – Umfassende Unterstützung Für Die Ukraine' <<https://dserver.bundestag.de/btd/20/015/2001550.pdf>> accessed 8 June 2025
- 80 Wissenschaftliche Dienste, 'Sachstand: Rechtsfragen der militärischen Unterstützung der Ukraine durch NATO-Staaten zwischen Neutralität und Konfliktteilnahme' <<https://www.bundestag.de/resource/blob/892384/d9b4c174ae0e0af275b8f42b143b2308/WD-2-019-22-pdf-data.pdf>>
- 81 Wissenschaftliche Dienste, 'Ausarbeitung: Militärische Unterstützung der Ukraine: Wann wird ein Staat zur Konfliktpartei?' <<https://www.bundestag.de/resource/blob/957632/44633615ad0618f5cd38c35ad0a30fe4/WD-2-023-23-pdf.pdf>>
- 82 Wissenschaftliche Dienste, 'Kurzinformation: Rechtsfragen zum Ukrainekrieg: TAURUS-Einsatz, Konfliktbeteiligung, Angriff und Verteidigung' <<https://www.bundestag.de/resource/blob/1002070/3cb55a031d3aacadc7b6d1c3f605c9a8/WD-2-025-24-pdf.pdf>>

## Documents from Domestic Governments and Parliaments (Other)

- 83 Swiss Federal Department of Foreign Affairs, 'Neutrality Under Scrutiny in the Iraq Conflict - Summary of Switzerland's Neutrality Policy during the Iraq Conflict in Response to the Reimann Postulate (03.3066) and to the Motion by the SVP Parliamentary Group (03.3050)'
- 84 Swiss Federal Department of Foreign Affairs, 'Neutrality' (*Swiss Federal Department of Foreign Affairs*, 21 January 2025) <<https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/neutrality.html>> accessed 12 June 2025
- 85 Utenriksdepartementet, 'Norsk våpenstøtte til Ukraina og folkeretten' (*Regjeringen.no*, 10 March 2022) <[https://www.regjeringen.no/no/aktuelt/vaapen\\_folkerett/id2903706/](https://www.regjeringen.no/no/aktuelt/vaapen_folkerett/id2903706/)> accessed 12 June 2025

## Doctrinal Literature

- 86 Alan T. Leonhard, 'Introduction', *Neutrality – Changing Concepts and Practices* (University Press of America 1988)
- 87 Ambos K, 'Wird Deutschland durch Waffenlieferungen an die Ukraine zur Konfliktpartei?' (*Verfassungsblog*, 28 February 2022) <<https://verfassungsblog.de/wird-deutschland-durch-waffenlieferungen-an-die-ukraine-zur-konfliktpartei/>> accessed 8 June 2025

- 88 Anonymous, 'International Law and Military Operations against Insurgents in Neutral Territory' (1968) 68 *Columbia Law Review* 1127 <<https://www.jstor.org/stable/1120859>> accessed 4 June 2025
- 89 Antonopoulos C, *Non-Participation in Armed Conflict: Continuity and Modern Challenges to the Law of Neutrality* (1st edn, Cambridge University Press 2022) <<https://www.cambridge.org/core/books/nonparticipation-in-armed-conflict/CB9B143E277756AD5118D37FACD615CB>> accessed 13 February 2025
- 90 Bandeira Galindo GR and Yip C, 'Customary International Law and the Third World: Do Not Step on the Grass' (2017) 16 *Chinese Journal of International Law* 251 <<https://doi.org/10.1093/chinesejil/jmx012>> accessed 12 June 2025
- 91 Bartolini G, 'The Law of Neutrality and the Russian/Ukrainian Conflict: Looking at State Practice' (*EJIL: Talk!*, 11 April 2023) <<https://www.ejiltalk.org/the-law-of-neutrality-and-the-russian-ukrainian-conflict-looking-at-state-practice/>> accessed 13 February 2025
- 92 Bartolini G, 'The Ukrainian–Russian Armed Conflict and the Law of Neutrality: Continuity, Discontinuity, or Irrelevance?' (2024) 71 *Netherlands International Law Review* 281 <<https://link.springer.com/10.1007/s40802-024-00262-8>> accessed 28 January 2025
- 93 Bartolini G and Pertile M, 'Relic of the Past or Immortal Phoenix? The Legal Relevance of Neutrality in the Russo-Ukrainian War' (2023) 32 *The Italian Yearbook of International Law Online* 201 <[https://brill.com/view/journals/iyio/32/1/article-p201\\_10.xml](https://brill.com/view/journals/iyio/32/1/article-p201_10.xml)> accessed 12 February 2025
- 94 Bothe M, 'The Law of Neutrality' in Dieter Fleck (ed), *The Handbook of International Humanitarian Law* (2nd edn, Oxford University Press 2008)
- 95 Bothe M, 'Neutrality, Concept and General Rules' in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law*, vol. VII (2nd ed., fully revised and updated, Oxford University Press 2012)
- 96 Bothe M, 'Neutrality, Concept and General Rules', *Oxford Public International Law* (Max Planck Institute for Comparative Public Law and International Law 2015) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e349?prd=MPIL>> accessed 9 February 2025
- 97 Bowett DW, *Self-Defence in International Law* (University Press 1958)
- 98 Buchan R, 'Non-Forcible Measures and the Law of Self-Defence' (2023) 72 *International and Comparative Law Quarterly* 1 <[https://www.cambridge.org/core/product/identifier/S0020589322000471/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S0020589322000471/type/journal_article)> accessed 20 May 2025
- 99 Buga I, 'Subsequent Customary Law as a Means of Treaty Modification' in Irina Buga (ed), *Modification of Treaties by Subsequent Practice* (Oxford University Press 2028) <<https://doi.org/10.1093/oso/9780198787822.003.0004>> accessed 12 June 2025
- 100 Castrén E, *The Present Law of War and Neutrality*, vol 85 (Suomalainen Tiedeakatemia 1954)
- 101 Clancy P, 'Neutral Arms Transfers and the Russian Invasion of Ukraine' (2023) 72 *International and Comparative Law Quarterly* 527 <[https://www.cambridge.org/core/product/identifier/S0020589323000064/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S0020589323000064/type/journal_article)> accessed 18 January 2025
- 102 Clancy P, 'Permanent Neutrality in International Law' (May 2024)
- 103 Clapham A, *War* (1st edn, Oxford University Press 2021) <<https://academic.oup.com/book/57867/chapter/471836291>> accessed 4 February 2025
- 104 Dehn, 'The Effect of the U.N. Charter on the Development of International Law' [1946] I.L.A Report of the 41st Conference (Cambridge)

- 105 El-Zein J, *Das Ende des Neutralitätsrechts*, vol 26 (1st edn, Nomos Verlagsgesellschaft mbH & Co KG 2024) <<https://www.nomos-elibrary.de/index.php?doi=10.5771/9783748916024>> accessed 9 February 2025
- 106 Ferro L and Verlinden N, 'The Qualified Prohibition on Third-State Assistance to Parties in Armed Conflicts: Illuminating the Myth, Interpreting the Reality', *European Society of International Law - Conference Paper Series* (European Society of International Law 2017) <<https://www.ssrn.com/abstract=3045276>> accessed 28 January 2025
- 107 Ferro L and Verlinden N, 'Neutrality During Armed Conflicts: A Coherent Approach to Third-State Support for Warring Parties' (2018) 17 *Chinese Journal of International Law* 15 <<https://academic.oup.com/chinesejil/article/17/1/15/4990421>> accessed 28 January 2025
- 108 Gill TD and Tibori-Szabó K, *The Use of Force and the International Legal System* (Cambridge University Press 2023) <<https://www.cambridge.org/core/books/use-of-force-and-the-international-legal-system/579A8A9C4D46096E0998EEC435E7A76B>> accessed 20 March 2025
- 109 Gioia A, 'Neutrality and Non-Belligerency' in Harry HG Post (ed), *International Economic Law and Armed Conflict* (Martinus Nijhoff, 1994) <<https://brill.com/edcollbook/title/9420>> accessed 20 March 2025
- 110 Greminger T and Rickli J-M, 'Neutrality After the Russian Invasion of Ukraine: The Example of Switzerland and Some Lessons for Ukraine' (2023) 10 *Prism* <[https://www.researchgate.net/profile/Jean-Marc-Rickli/publication/375027735\\_Neutrality\\_After\\_the\\_Russian\\_Invasion\\_of\\_Ukraine\\_The\\_Example\\_of\\_Switzerland\\_and\\_Some\\_Lessons\\_for\\_Ukraine/links/653c1d713cc79d48c5b154c1/Neutrality-After-the-Russian-Invasion-of-Ukraine-The-Example-of-Switzerland-and-Some-Lessons-for-Ukraine.pdf](https://www.researchgate.net/profile/Jean-Marc-Rickli/publication/375027735_Neutrality_After_the_Russian_Invasion_of_Ukraine_The_Example_of_Switzerland_and_Some_Lessons_for_Ukraine/links/653c1d713cc79d48c5b154c1/Neutrality-After-the-Russian-Invasion-of-Ukraine-The-Example-of-Switzerland-and-Some-Lessons-for-Ukraine.pdf)>
- 111 Grotius H, *Of the Rights of War and Peace in Three Volumes, 1625, Book III* (Liberty Fund 2005)
- 112 Haque AA, 'An Unlawful War' (2022) 116 *AJIL Unbound* 155 <<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/an-unlawful-war/D425FCF59C8F04B8291796853DAE5C3B>> accessed 19 January 2025
- 113 Hathaway OA and Shapiro S, 'Supplying Arms to Ukraine Is Not an Act of War' (*Just Security*, 12 March 2022) <<https://www.justsecurity.org/80661/supplying-arms-to-ukraine-is-not-an-act-of-war/>> accessed 19 January 2025
- 114 Heintschel von Heinegg W, 'Chapter 20. 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* (Brill | Nijhoff 2007) <[https://brill.com/view/book/edcoll/9789047421252/Bej.9789004154285.i-590\\_021.xml](https://brill.com/view/book/edcoll/9789047421252/Bej.9789004154285.i-590_021.xml)> accessed 28 January 2025
- 115 Heintschel von Heinegg W, '§ 14. Auslegung völkerrechtlicher Verträge' in Knut Ipsen, *Völkerrecht* (ed. V. Epping/ W. Heintschel von Heinegg) (7 ed, CH Beck 2018)
- 116 Heintschel von Heinegg W, '§ 55. Vom ius ad bellum zum ius contra bellum (Kriegsverbot, Gewaltverbot und Interventionsverbot)' in Knut Ipsen, *Völkerrecht* (ed. V. Epping/ W. Heintschel von Heinegg) (7 ed, CH Beck 2018)
- 117 Heintschel von Heinegg W, '§ 66. Neutralitätsrecht' in Knut Ipsen, *Völkerrecht* (ed. V. Epping/ W. Heintschel von Heinegg) (7 ed, CH Beck 2018)
- 118 Heintschel von Heinegg W, 'Neutrality in the War against Ukraine' (*Lieber Institute West Point*, 1 March 2022) <<https://lieber.westpoint.edu/neutrality-in-the-war-against-ukraine/>> accessed 19 January 2025

- 119 Heller KJ and Trabucco L, 'The Legality of Weapons Transfers to Ukraine Under International Law' (2022) 13 *Journal of International Humanitarian Legal Studies* 251 <[https://brill.com/view/journals/ihrs/13/2/article-p251\\_004.xml](https://brill.com/view/journals/ihrs/13/2/article-p251_004.xml)> accessed 18 January 2025
- 120 Herdegen M, 'Der Überfall Auf Die Ukraine Völkerrechtliche Optionen Des Westens' [2022] *GSZ-Sonderausgabe* 2022 1
- 121 Hilpold P, 'Das Neutralitätsrecht Österreichs und der Schweiz im »weiten Feld« des internationalen Rechts. Aktuelle Entwicklungen im Vergleich' (2022) 60 *Archiv des Völkerrechts* 268 <<https://www.mohrsiebeck.com/10.1628/avr-2022-0016>> accessed 13 February 2025
- 122 Ingber R, 'The Abuse of Neutrality' (2025) 65 *Virginia Journal of International Law* 1 <<https://papers.ssrn.com/abstract=5028229>> accessed 1 June 2025
- 123 Janik RRA, 'Neutralität und der österreichische Beitrag zur EU-Sicherheitspolitik' (*Österreichische Gesellschaft für Europapolitik*, 5 October 2022) <<https://www.oegfe.at/policy-briefs/neutralitaet-und-der-oesterreichische-beitrag-zur-eu-sicherheitspolitik/>> accessed 7 May 2025
- 124 Janik RRA, 'Current Developments: Austrian Neutrality amid Russia's War on Ukraine' (Social Science Research Network, 26 August 2022) <<https://papers.ssrn.com/abstract=4201552>> accessed 13 June 2025
- 125 Jessup PC, *A Modern Law of Nations* (The Macmillan Company 1948) <<http://archive.org/details/in.ernet.dli.2015.215573>> accessed 12 June 2025
- 126 Johnston KA, 'ESIL Reflection – Rules of Change and the Nature of Customary International Law' (*European Society of International Law*, 2024) <<https://esil-sedi.eu/esil-reflection-rules-of-change-and-the-nature-of-customary-international-law/>> accessed 12 June 2025
- 127 Keck ME and Sikkink K, *Activists beyond Borders: Advocacy Networks in International Politics* (3rd edn, Cornell University Press 2014)
- 128 Kohen MG, 'Desuetude and Obsolescence of Treaties' in Enzo Cannizzaro (ed), *The Law of Treaties Beyond the Vienna Convention* (1st edn, Oxford University Press 2011) <<https://doi.org/10.1093/acprof:oso/9780199588916.003.0021>> accessed 4 June 2025
- 129 Kolb R and Hyde R, *An Introduction to the International Law of Armed Conflicts* (Hart Publishing 2008)
- 130 Kolb R and Meret B, 'Clarifying Neutrality: The Rise of Different Statuses?' (*Lieber Institute West Point*, 19 March 2025) <<https://lieber.westpoint.edu/clarifying-neutrality-rise-different-statuses/>> accessed 14 May 2025
- 131 Komarnicki T, *The Place Of Neutrality in the Modern System Of International Law Five Lectures (Volume 80)* (The Hague Academy Collected Courses Online / Recueil des cours de l'Académie de La Haye en ligne 1952) <<https://referenceworks.brill.com/display/entries/HACO/A9789028611726-04.xml>> accessed 3 June 2025
- 132 Komarnicki T, 'The Problem of Neutrality under the United Nations Charter' (1952) 38 *Transactions of the Grotius Society* 77 <<https://www.jstor.org/stable/743159>> accessed 20 March 2025
- 133 Kotova A and Tzouvala N, 'In Defense of Comparisons: Russia and the Transmutations of Imperialism in International Law' (2022) 116 *American Journal of International Law* 710 <<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/in-defense-of-comparisons-russia-and-the-transmutations-of-imperialism-in-international-law/3857B5D4624A1A4EE165B54A53FEF803>> accessed 4 June 2025

- 134 Krajewski M, 'Neither Neutral nor Party to the Conflict?: On the Legal Assessment of Arms Supplies to Ukraine' (*Völkerrechtsblog*, 9 March 2022) <<https://voelkerrechtsblog.org/neutral-neutral-nor-party-to-the-conflict/>> accessed 19 January 2025
- 135 Matsuyama S, 'The Impact of the United Nations General Assembly's Qualification of Aggression on the Law of Neutrality' in Shuichi Furuya, Hitomi Takemura and Kuniko Ozaki (eds), *Global Impact of the Ukraine Conflict* (Springer Nature Singapore 2023) <[https://link.springer.com/10.1007/978-981-99-4374-6\\_14](https://link.springer.com/10.1007/978-981-99-4374-6_14)> accessed 13 February 2025
- 136 Neff SC, *The Rights and Duties of Neutrals: A General History* (Manchester University Press 2000) <<https://www.manchesterhive.com/display/9781526170576/9781526170576.xml>> accessed 4 June 2025
- 137 Niederberger J, 'Österreichische Sicherheitspolitik zwischen Solidarität und Neutralität' [2001] *Bulletin 2001 zur schweizerischen Sicherheitspolitik* 69 <[https://css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/Bulletin\\_2001-Oesterreichische\\_Sicherheitspolitik.pdf](https://css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/Bulletin_2001-Oesterreichische_Sicherheitspolitik.pdf)>
- 138 O'Connell DP, *The International Law of the Sea: Volume II* (IA Shearer ed, 1st edn, Oxford University Press 1984) <<https://doi.org/10.1093/law/9780198254690.003.0015>> accessed 4 June 2025
- 139 Oeter S, *Neutralität Und Waffenhandel*, vol 103 (Springer 1992) <<https://swbplus.bsz-bw.de/bsz028254430cov.jpg>> accessed 6 June 2025
- 140 Oppenheim L, *International Law: A Treatise, Vol 2* (Hersch Lauterpacht ed, 7th edn, Longmans 1952)
- 141 Ramya K, 'The Interplay between Neutrality, Qualified Neutrality and Co-Belligerency in the Context of U.S. Intervention in the Russia-Ukraine War' (2023) 23 *International and Comparative Law Review* 72 <<https://www.sciendo.com/article/10.2478/iclr-2023-0004>> accessed 28 January 2025
- 142 Reiter D, *Crucible of Beliefs: Learning, Alliances, and World Wars*. (Cornell University Press 1996) <<https://www.jstor.org/stable/10.7591/j.ctvr7f55h>>
- 143 Rickli J-M, 'The Western Influence on Swedish and Swiss Policies of Armed Neutrality during the Early Cold War' in René Schwok (ed), *Interactions Globales—Global Interactions* (Institut Européen de l'Université de Genève 2004) <[https://www.files.ethz.ch/isn/30044/26\\_schwok.pdf](https://www.files.ethz.ch/isn/30044/26_schwok.pdf)>
- 144 Rickli J-M, 'The Evolution of the European Neutral and Non-Allied States' Military Policies after the Cold War 1989-2004.' (PhD Dissertation, University of Oxford 2010)
- 145 Roberts A and Guelff R (eds), *Documents on the Laws of War* (3rd edn, Clarendon Press 2000)
- 146 Ronzitti N, 'Neutrality, Non-Belligerency, and Permanent Neutrality According to Recent Practice and Doctrinal Views' (2024) 29 *Journal of Conflict and Security Law* 55 <<https://academic.oup.com/jcsl/article/29/1/55/7603866>> accessed 4 February 2025
- 147 Schaller C, 'Waffenlieferungen an die Ukraine: "Fahren auf Sicht" - auch was das Völkerrecht angeht' (Stiftung Wissenschaft und Politik 2023) *Research Report* 9/2023 <<https://doi.org/10.18449/2023A09%0A>> accessed 13 February 2025
- 148 Schaller C, 'When Aid or Assistance in the Use of Force Turns into an Indirect Use of Force' (2023) 10 *Journal on the Use of Force and International Law* 173 <<https://doi.org/10.1080/20531702.2023.2249347>> accessed 20 May 2025
- 149 Schindler D, 'Transformations in the Law of Neutrality since 1945' in Astrid J Delissen and Gerard J Tanja, *Humanitarian law of armed conflict challenges ahead: essays in honour of*

- Frits Kalshoven* (Martinus Nijhoff 1991) <<https://brill.com/edcollbook/title/9198>> accessed 20 March 2025
- 150 Schmid E, 'Optional but Not Qualified: Neutrality, the UN Charter and Humanitarian Objectives' [2024] *International Review of the Red Cross* 1 <[https://www.cambridge.org/core/product/identifier/S1816383124000183/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S1816383124000183/type/journal_article)> accessed 28 January 2025
- 151 Schmitt MN, '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 19 January 2025
- 152 Schmitt MN and Biggerstaff W, 'Aid and Assistance as a "Use of Force" Under the Jus Ad Bellum' (2023) 100 *International Law Studies* 186 <<https://www.ssrn.com/abstract=4372086>> accessed 20 May 2025
- 153 Schmuki YL, 'The Law of Neutrality and the Sharing of Cyber-Enabled Data During International Armed Conflict', 2023 *15th International Conference on Cyber Conflict: Meeting Reality (CyCon)* (NATO CCDCOE Publications 2023) <<https://ieeexplore.ieee.org/document/10181885/?arnumber=10181885>> accessed 31 January 2025
- 154 Seger P, 'The Law of Neutrality' in Andrew Clapham and Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (1st edn, Oxford University Press 2014) <<https://doi.org/10.1093/law/9780199559695.003.0010>> accessed 9 February 2025
- 155 Seidl-Hohenveldern I, 'Der Begriff der Neutralität in den bewaffneten Konflikten der Gegenwart' in Heinrich Kipp, Franz Mayer and Armin Steinkamm (eds), *Um Recht und Freiheit. Festschrift für Friedrich August Freiherr von der Heydte*, vol 1 (Duncker & Humblot 1977) <<https://swbplus.bsz-bw.de/bsz00559376xinh.htm>> accessed 6 June 2025
- 156 Talmon SAG, 'Waffenlieferungen an die Ukraine als Ausdruck eines wertebasierten Völkerrechts' (*Verfassungsblog*, 9 March 2022) <<https://verfassungsblog.de/waffenlieferungen-an-die-ukraine-als-ausdruck-eines-wertebasierten-volkerrechts/>> accessed 8 June 2025
- 157 Talmon SAG, 'The Provision of Arms to the Victim of Armed Aggression: The Case of Ukraine' (2022) Paper No. 20/2022 Bonn Research Papers on Public International Law 1 <<https://papers.ssrn.com/abstract=4077084>> accessed 19 January 2025
- 158 Tucker RW, *The Law of War and Neutrality at Sea* (US Government Printing Office 1957)
- 159 Upcher J, *Neutrality in Contemporary International Law* (James Upcher ed, 1st edn, Oxford University Press 2020) <<https://doi.org/10.1093/law/9780198739760.003.0001>> accessed 9 February 2025
- 160 Van Steenberghe R, 'Military Assistance to Ukraine: Enquiring the Need for Any Legal Justification under International Law' (2023) 28 *Journal of Conflict and Security Law* 231 <<https://dial.uclouvain.be/pr/boreal/object/boreal:281879>> accessed 19 January 2025
- 161 Verdebout A (ed), *Rewriting Histories of the Use of Force: The Narrative of 'Indifference'* (Cambridge University Press 2021) <<https://www.cambridge.org/core/books/rewriting-histories-of-the-use-of-force/introduction/A84A0EDEBFB19970FDD5BC9382783363>> accessed 15 May 2025
- 162 Wentker A, 'At War: When Do States Supporting Ukraine or Russia Become Parties to the Conflict and What Would That Mean?' (*EJIL: Talk!*, 14 March 2022) <<https://www.ejiltalk.org/at-war-when-do-states-supporting-ukraine-or-russia-become-parties-to-the-conflict-and-what-would-that-mean/>> accessed 8 June 2025
- 163 Wentker A, 'The Armed Attack Exception To Neutrality in International Peace and Security Law' (2024) 73 *International and Comparative Law Quarterly* 963

- 164 Wentker A and Kreß C, 'L'assistance d'États Tiers Dans La Guerre d'Ukraine Au Regard Du Droit International' (2022) 68 *Annuaire français de droit international* 173
- 165 Wetzels P and others, 'Einstellungen zu Waffenlieferungen an die Ukraine und die Verbreitung von Kriegsängsten in Deutschland' [2023] MOTRA-Spotlight 1 <<https://www.ssoar.info/ssoar/handle/document/86436>> accessed 8 June 2025
- 166 Zugliani N, 'The Supply of Weapons to a Victim of Aggression: The Law of Neutrality in Light of the Conflict in Ukraine' (2024) 35 *European Journal of International Law* 389 <<https://academic.oup.com/ejil/article/35/2/389/7664323>> accessed 12 February 2025

## Media Documents

- 167 Al Jazeera, 'Russia-Ukraine War: How the US Position Has Changed on UN Resolutions' *Al Jazeera* (Doha, 25 February 2025) <<https://www.aljazeera.com/news/2025/2/25/russia-ukraine-war-how-the-us-position-has-changed-on-un-resolutions>> accessed 12 June 2025
- 168 David M. Herszenhorn, Lili Bayer, and Hans von der Burchard, 'Germany to Send Ukraine Weapons in Historic Shift on Military Aid' *POLITICO* (Brussels, 26 February 2022) <<https://www.politico.eu/article/ukraine-war-russia-germany-still-blocking-arms-supplies/>> accessed 3 June 2025
- 169 Der Spiegel, 'Ukrainischer Botschafter kritisiert deutsche Helm-Lieferung als »reine Symbolpolitik«' *Der Spiegel* (Hamburg, 26 January 2022) <<https://www.spiegel.de/politik/deutschland/ukraine-botschafter-kritisiert-deutsche-helm-lieferung-als-reine-symbolpolitik-a-2709273c-788d-43eb-8375-07bdd8b9b3c>> accessed 3 June 2025
- 170 Deutsche Welle, 'Germany Says It Is Not a Warring Party in Ukraine' *Deutsche Welle* (Bonn, 27 January 2023) <<https://www.dw.com/en/germany-says-it-is-not-a-warring-party-in-ukraine/a-64541484>> accessed 8 June 2025
- 171 Deutscher BundeswehrVerband, 'Scholz gibt Garantie: Deutschland wird nicht Kriegspartei' (*Deutscher BundeswehrVerband*, 3 July 2024) <<https://www.dbwv.de/ticker-zurueck-zur-startseite/scholz-gibt-garantie-deutschland-wird-nicht-kriegspartei>> accessed 8 June 2025
- 172 Die Zeit, 'Bundesregierung: Ausbildung von Soldaten kein Kriegseintritt' *Die Zeit* (Hamburg, 2 May 2022) <<https://www.zeit.de/news/2022-05/02/bundesregierung-ausbildung-von-soldaten-kein-kriegseintritt>> accessed 8 June 2025
- 173 Hartmann F, 'Scholz bleibt beim Nein: Warum hat der Bundeskanzler so große Angst vor Taurus?' *Frankfurter Rundschau* (Frankfurt a M, 15 March 2024) <<https://www.fr.de/politik/zoegerlich-olaf-scholz-keine-aurus-lieferung-ukraine-warum-92890473.html>> accessed 8 June 2025
- 174 Hoang KS, 'Nehammer stellt sich bei Entminungshilfe für die Ukraine gegen Van der Bellen' *DER STANDARD* (Wien, 19 May 2023) <<https://www.derstandard.at/story/2000146569808/nehammer-stellt-sich-bei-entminungshilfe-fuer-die-ukraine-gegen-van>> accessed 10 June 2025
- 175 Jungwirth M, 'Zug mit 20 Panzern für die Ukraine rollte durch Österreich' *Kleine Zeitung* (Graz, 21 April 2023) <[https://www.kleinezeitung.at/politik/6277423/Ohne-Genehmigung\\_Zug-mit-20-Panzern-fuer-die-Ukraine-rollte-durch](https://www.kleinezeitung.at/politik/6277423/Ohne-Genehmigung_Zug-mit-20-Panzern-fuer-die-Ukraine-rollte-durch)> accessed 10 June 2025
- 176 Kurakin T, 'Wie kommen österreichische Waffen in die Hände russischer Soldaten?' *Kleine Zeitung* (Graz, 8 February 2025) <<https://www.kleinezeitung.at/oesterreich/>>

- 19323064/was-machen-oesterreichische-waffen-in-den-haenden-der-russischen-armee> accessed 10 June 2025
- 177 Maksan O, 'Krieg in der Ukraine: «Deutschland hätte das Recht, direkt einzugreifen» (Interview Pierre Thielbörger)' *Neue Zürcher Zeitung* (Zürich, 13 March 2022) <<https://www.nzz.ch/international/krieg-in-der-ukraine-ab-wann-waere-deutschland-konfliktpartei-ld.1674082>> accessed 8 June 2025
- 178 NEUE, 'In einem Jahr rollten 75 Waffentransporte durch Österreich' *NEUE Vorarlberger Tageszeitung* (Schwarzach, 11 July 2023) <<https://www.neue.at/kaernten/2023/07/11/in-einem-jahr-rollten-75-waffentransporte-durch-oesterreich.neue>> accessed 10 June 2025
- 179 Nichols M, 'UN Security Council Adopts Neutral US Stance on War in Ukraine as Trump Pursues End to Conflict' *Reuters* (New York, 25 February 2025) <<https://www.reuters.com/world/europe/europeans-win-un-clash-with-us-over-rival-ukraine-resolutions-2025-02-24/>> accessed 12 June 2025
- 180 Panov S, 'Shooting Ukraine in the Back: Sniper Rifles and Ammunition from the EU and U.S. Are Being Supplied to Russia despite Sanctions' *The Insider* (Riga, 13 December 2024) <<https://theins.ru/en/politics/277169>> accessed 10 June 2025
- 181 Pfeifer H, 'AfD und BSW: Zwei Freunde für Russland' *Deutsche Welle* (Bonn, 24 August 2024) <<https://www.dw.com/de/afd-und-bsw-zwei-freunde-f%C3%BCr-russland/a-70028502>> accessed 8 June 2025
- 182 Smith D, 'Trump Blames Ukraine over War with Russia, Saying It Could Have Made a Deal' *The Guardian* (London, 19 February 2025) <<https://www.theguardian.com/world/2025/feb/19/trump-ukraine-war-russia-could-have-made-a-deal>> accessed 12 June 2025
- 183 Somnavilla F and Zellinger P, 'Bis 2022 kamen österreichische Waffen legal nach Russland, seither wohl über zwielichtige Umwege' *DER STANDARD* (Wien, 17 May 2024) <<https://www.derstandard.de/story/3000000220237/bis-2022-kamen-oesterreichische-waffen-legal-nach-russland-seither-wohl-ueber-zwielichtige-umwege>> accessed 10 June 2025
- 184 Specht F, 'Merz will Ukraine Taurus liefern – Moskau reagiert scharf' *Handelsblatt* (Düsseldorf, 14 April 2025) <<https://www.handelsblatt.com/politik/deutschland/marschflugkoerper-merz-will-ukraine-aurus-liefern-moskau-reagiert-scharf/100121484.html>> accessed 8 June 2025
- 185 Spreter J, 'Gutachten sieht Ausbildung ukrainischer Soldaten als Kriegsbeteiligung' *Die Zeit* (Hamburg, 2 May 2022) <<https://www.zeit.de/politik/deutschland/2022-05/ausbildung-soldaten-ukraine-kriegsbeteiligung-deutschland-voelkerrecht>> accessed 8 June 2025
- 186 Tagesschau, 'Scholz begründet Nein zu "Taurus"-Lieferung' *Tagesschau* (Hamburg, 26 February 2024) <<https://www.tagesschau.de/inland/scholz-aurus-ukraine-102.html>> accessed 8 June 2025
- 187 Tagesschau, 'UN-Sicherheitsrat für moskaufreundliche Ukraine-Resolution' *Tagesschau* (Hamburg, 25 February 2025) <<https://www.tagesschau.de/ausland/un-resolutionen-ukraine-102.html>> accessed 12 June 2025
- 188 Tagesschau, 'Kreml kritisiert Merz-Äußerungen zu "Taurus"' *Tagesschau* (Hamburg, 14 April 2025) <<https://www.tagesschau.de/ausland/europa/ukraine-merz-aurus-russland-kreml-medwedew-100.html>> accessed 8 June 2025

- 189 Tagesschau, 'Warum wieder über "Taurus" diskutiert wird' *Tagesschau* (Hamburg, 16 April 2025) <<https://www.tagesschau.de/inland/innenpolitik/taurus-marschflugkoerper-debatte-100.html>> accessed 3 June 2025
- 190 United Nations Press, '"Western Weapons Not Cause of Senseless War" in Ukraine, Delegate Tells Security Council, Stressing Kyiv's Right to Self-Defence under United Nations Charter' (*Meetings Coverage and Press Releases*, 25 July 2024) <<https://press.un.org/en/2024/sc15778.doc.htm>> accessed 12 June 2025
- 191 United Nations Press, 'At Three-Year Mark of Russian Federation's Invasion, General Assembly Upholds Ukraine's Territorial Integrity, Adopting Two Resolutions' (*Meetings Coverage and Press Releases*, 24 February 2025) <<https://press.un.org/en/2025/ga12675.doc.htm>> accessed 12 June 2025

## Miscellaneous

- 192 'Address of Mr. Robert H. Jackson, Attorney General of the United States, Inter-American Bar Association, Havana, Cuba, March 27, 1941' (1941) 35 *American Journal of International Law* 348
- 193 AußenwirtschaftCenter Moskau, 'Außenwirtschaft - Russland-Sanktionen im Rahmen des Ukraine-Krieges - Gesamtübersicht' <<https://www.wko.at/oe/aussenwirtschaft/gesamtuebersicht-russland-sanktionen.pdf>>
- 194 Britannica Dictionary, 'Neutral Definition & Meaning' (12 June 2025) <<https://www.britannica.com/dictionary/neutral>> accessed 12 June 2025
- 195 ICRC, 'Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. The Hague, 18 October 1907.' (*IHL Databases*, 2025) <<https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-v-1907/state-parties>> accessed 14 June 2025
- 196 ICRC, 'Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War. The Hague, 18 October 1907.' (*IHL Databases*, 2025) <<https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-xiii-1907/state-parties>> accessed 14 June 2025
- 197 Merriam Webster, 'Definition of NEUTRAL' (10 June 2025) <<https://www.merriam-webster.com/dictionary/neutral>> accessed 12 June 2025
- 198 UN Geneva, 'The League of Nations' (The United Nations Office at Geneva, 2025) <<https://www.ungeneva.org/en/about/league-of-nations/overview>> accessed 12 June 2025