Neutrality: Between Law and Politics

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Broadly defined, neutrality is the position of a state that is not at war and does not participate at hostilities. Yet, neutrality is more than just a position. It implies a legal status defined as a set of rights, obligations, and privileges that have to be acknowledged by both belligerents and neutrals, and that are components of the law of neutrality. This law regulates the coexistence of war and peace for states – that is some states are at war with other states while maintaining peaceful relations with others.[1]

Defining the way in which the belligerents and neutral states should act or abstain represented a complex issue in the international public law, because the inter-state relationships are determined not only in terms of war and peace but also in terms of social, economic, and cultural flows. Traditionally, the neutrality is defined as 'the legal status of a state that adopts a position of impartiality towards two other states that are at war with each other.'[2] Under this definition, the law of neutrality is based not only on the principle of non-participation or abstention from participating at military conflicts but also on the principle of impartiality. The latter principle derives from legal obligations, which leads to the conclusion that the neutral state must deal with all contending parties similarly or non-discriminatory; that is, the neutral should not favour, directly or indirectly, the emergence of political and military situations more beneficial for one side.[3] For this reason, the legal literature employs the notion of impartial neutrality. There should be added here the notion of prevention, without which the legal or impartial neutrality is not complete. Prevention originates from the norms prescribing how the neutral states should act if a belligerent infringes their neutral status.[4] The obligations constituting the principle of impartiality, abstention, and prevention are 'correlative',[5] which means, generally, that the belligerents must respect the will of a state to be neutral.

Although the law of neutrality seems clear, it becomes complex when applied to the present context. How is the law of neutrality employed in contemporary armed conflicts? Is the neutrality the uniquely acknowledged status of a state that does not want to participate in armed conflicts? A negative answer requires the analysis of other accepted options and of the legal obligations beyond the acknowledged law of neutrality.

Moreover, the political option of a state to secure its non-participation in future conflicts – known in international relations as permanent neutrality and non-alignment – is another important issue for grasping the concept of neutrality. Although the legal status of these notions differs – the permanent neutrality has a legally defined status that implies legal obligations derived from treaties and domestic state law, whereas the non-alignment has no legally defined status – they are similar in respect to the state's option of non-participation to collective defence pacts. Must the so-called neutrals apply the law of neutrality in case of an international military conflict among other states? A delicate issue emerges in this situation when the neutrals participate in international systems that are economic, politically, and culturally integrated. Such an example is the European Union. How can the EU neutrals still define their neutrality based on legal obligations if an

EU member participates in an international military conflict? In other words: what is expected from an EU neutral state when the EU security is threatened, or when an EU state is in military conflict with another state, presumably a non EU member?

To clarify the issues presented here, I will explain the concept of classical neutrality, the relations between neutrality and the UN collective security system, the concept of quasi-neutrality, and the 'European Security and Defence Policy.'

The 1907 Hague Conventions that regulate the neutrality in war on land and sea are out-of-date. They are not obsolete in the legal sense because they continue to be part of the international public law.[6] But they are multilateral treatises that codified rules based on treaties and customs, which formed the law of war and neutrality in past centuries, predominantly in the nineteenth century. In that time the states were able to wage war against each other and the status of neutrality began and ended according to a state of war. Moreover, the limits of the war technique confined the war to land and sea (the 1923 Hague Draft Rules of Aerial Warfare is not legally effective but it is considered declaratory of the existing principle). On the contrary, in the contemporary international law, the war is outlawed; but there are non-war situations[7] – called international armed conflicts – that occur between states. In the contemporary setting there is the United Nations security system, but no general norms prescribing precisely how the third-party states should act when the UN Security Council fails to declare the aggressor state and the victim state, or when a UN permanent member blocks the procedure. For this reasons, the impartial neutrality – part of the traditional international law of the system of states existent before World War I – is also called the classical neutrality.

The law of neutrality emerged from the European state system after the Peace of Westphalia, and it evolved: first, as contractual neutrality based on the seventeenth- and eighteenth-century bilateral treaties; second, through the nineteenth- and beginning of the twentieth-century institutionalization and codification. I highlight this evolution by comparing legal doctrines in different historical times. Hugo Grotius distinguished two types of neutrality: (1) the neutrality that hinders the power of the belligerent with an unjust cause and favours the belligerent with a just cause – this may be named imperfect or quasi neutrality; (2) the neutrality that treats the belligerents equally assuming that it cannot identify the belligerent on the just side – this may be named impartial neutrality. Thus, the essence of the neutrality policy changes according to the specific nature of the war: just or unjust. Eighteenth-century law scholars, such as Cornelius Van Bynkershoek and Emmerich de Vattel whose thought was rooted in the positive international law, considered that *non-hostes* or *neutral nations* must act unbiased in relation to belligerents.[8] According to the nineteenth-century law scholar Klenn, only the impartial neutrality was accepted.[9] What happened with Grotius' twofold way of non-participation: quasi neutrality and impartial neutrality? Why only the impartial neutrality succeeded to be generally accepted? The answer lies, partially, in the nature of the political configuration of the international society.[10] The legal international norms result from coordinated consensus among states. The key for understanding the public international law is therefore the link between the international politics and the generally accepted and recognized international rules.

The legal rules of neutrality originated from the balance of power system that allowed for flexible alliances and military capabilities distributed among the Great Powers in a pattern of approximate parity. The bilateral treaties of friendship, trade, and navigation in a standard pattern[11] confirm that the central states were interested in preserving the trade between countries in case of war. The balance of power system saved the law of neutrality when Great Britain banned the maritime trade between its enemies and the neutrals. The neutrals built alliances to deter the British aggressive actions against their interests and trade – the so-called 'Neutrality Leagues' or 'Leagues of the Armed Neutrality.'[12]

After the Napoleonic wars, the law of neutrality evolved based on treatises and customs developed during the wars. Two processes affected significantly this evolution: the shift from contractual neutrality to institutional neutrality and the emergence of neutrality as a strategic and security policy for the small states in time of peace. The institutionalization of neutrality implies that the norms are generally accepted in the international society by means of multilateral treaties, not only bilateral contracts, negotiated and adopted at international conferences.[13] The series of conferences started with the Congress of Vienna (1815), where the international law began to be codified. International law evolved continuously within the political reality of the multipolar balance of power system and was complemented by the Great Powers' consensus (the 'European Concert') that legalized the international law institutions in the form of multilateral treaties. The states' decision-makers, concerned with the laws of war, related them to neutrality, because some states could be at war while other states might want peaceful relations with them.[14] For example, Great Britain, Prussia, and Russia were neutrals in the war among France, Italy, and Austria (1859); Great Britain and Russia were neutral in the war between France and Prussia (1870-71); in the Ottoman – Russian war (1877-78), the other Great Powers remained neutral. At the Conference of Paris (1856), a part of the law of maritime war was codified under the treaty known as 'The Declaration of Paris', which contains the legal principles of free trade between belligerents and neutrals, as well as the principles of blockade and contraband that are also important in the belligerent-neutral relations. At the second Hague Conference (1907) the law of war and neutrality was codified under the fifth 'Convention Respecting the Rights and Duties of Neutral Powers, The Persons in Case of War on Land' and the thirteenth 'Convention Concerning the Rights and Duties of Neutral Powers in Naval War.'

The permanent neutrality emerged in the nineteenth century as a result of the European Great Powers' policy. Several small states needed to secure their neutrality in potential wars. At the same time, the political-military strategists of the Great Powers considered some of them geo-strategic locations, vital during war times. The sources of the legal permanent neutrality are the domestic law of the small states and the multilateral treaties that warranted or recognized their neutral status. The first, and most traditional example, is Switzerland.[15] Located at the bottleneck of the Alps, Switzerland was a buffer state between France and the Habsburg Empire and later between Germany, France, and Italy. The Swiss neutrality is based on the Swiss Constitution and on the guaranty treaty adopted by the Great Powers at the Congress of Vienna, in 1815. Similar cases are Belgium – neutral from 1839 and considered a 'strategic glacis' for Great Britain – and Luxembourg – neutral from 1867 and considered a buffer state between France and Germany. A different case is Sweden. Strategically located at the periphery of the system, lacking constitutional obligations able to stop its participation in political-military treaties, and unbound by multilateral treaties to the permanent neutrality, Sweden chose a non-alignment policy in the nineteenth century. This position is rooted in the tradition of its foreign policy backed by the majority of the political elite and citizens.[16]

I explained above the emergence and development of the classical neutrality not for the sake of history, but for a better understanding of the political setting of the contemporary international society, which helps unveil the positions of third-party states in military conflicts. The obligations of the traditional neutrality were designed to protect the interests of both belligerents and neutrals. The belligerents did not want that third-party states favour the opposite side; the neutrals wanted to protect their status and to avoid entanglement in undesired wars. However, the law of neutrality was not designed for cases of collapse of international order, more specifically of generalized war. Seven years after the two Hague Conventions – that reached a climax in the evolution of the law of neutrality[17] – the neutrality was challenged by major events in international relations: the two

world wars followed each by attempts of organizing the international society that aimed to eliminate the 'international anarchy.'

For the purpose of this article – that does not aim to describe and analyze the unfavourable situation of neutral states and the way they moved off from the traditional legal obligations of the neutrality during the world wars[18] – it is enough to mention that after the World War I and II, waging war was prohibited as an instrument used by states (see the Briand-Kellog Treaty 1928 and the UN Charter 1945). Under the collective security theory, this implied the removal of the impartial neutrality, so that states acted, at different extent, against the aggressor states and favoured the victim states. In reality, the impartial neutrality survived twice; in legal terms, this was a return to the twofold stance of non-belligerency: impartial or quasi neutral.

The Covenant of the League of the Nations did not make the war obsolete but it limited it. On the basis of art.16, states that do not fight military against the state that breaks art. 12, 13, and 15 are bound by some obligations that offer them the status of quasi neutrality.[19] But the League of the Nations did not succeed to limit the wars and the Briand-Kellog Treaty did not provide for specific sanctions against the states that broke the obligations of the treaty. The UN Charter is better equipped in this matter: war, aggression, and the use of force are proscribed in inter-state relations. Moreover, it provides for a mechanism that works against the state that breaks or endangers the international peace. In the following, I analyze the neutrality in the context of the UN collective security system and the contemporary state practice of neutrality and non-belligerency.

The UN Charter has not suspended directly the lawfulness of the impartial neutrality. The central aspect of the UN law's impact – particularly the Chapter VII of the UN Charter on the right of a state to exercise the traditional law of neutrality – deals with how states, third-party in an international armed conflict, can be required legally to deviate from the law of neutrality. It is less important how the UN system should operate in relation to neutrals than how the UN system actually works based on a precedent.

The most relevant case – and almost unique if considering the Korean case less significant for this discussion – is Iraq's aggression against Kuwait. The Security Council (SC) Resolution 660 – adopted on August 2, 1990 – stated that Iraq was an aggressor state based on art. 39 of the UN Charter.[20] This Resolution does not constrain the states to deviate from the traditional obligations of neutrality; it only creates the right of a neutral state that adopts the neutrality status to help the victim state in non-military ways. Based on art. 40, the SC can ask the states participating in military conflicts to conform to some provisory measures such as the call to suspend the hostilities.[21] This type of resolution has no impact on neutral states. Only a binding resolution under art. 41 such as Resolution 661,[22] corroborated also with art. 2 (5) and art. 103 can force the neutral states to deviate from the law of neutrality, specifically to suspend, partially or entirely, commercial relations and communications of any type such as communication by air, radio, mail, and train, among others. An example in this sense is the total embargo in the Iraq case.

The resolution that constrains the states to stop the diplomatic relations with the aggressor state is not considered a deviation from the obligations of neutrality. No neutral state was ever forced by the SC to act military against a state that was considered aggressor. The SC authorizes the states or state coalitions to use the force against the aggressor states, but the neutrals are not forced to participate actively, only to deviate from the law of neutrality based on art. 41. Thus, the SC resolution under art. 41 renders compulsory another type of neutrality that bounds the states, which do not want to participate in a military conflict, to discriminate one side of the conflict. This is an important support for the opposite part of the conflict that has the SC authorization to use the force. Art. 41 suspends the law of neutrality, which is also related to the UN Charter art. 2 (5) and art. 103. The deferral of the law of neutrality is limited to the special obligations enshrined in the SC

resolution that does not allow the neutral states to deviate from the neutrality law in favour of the aggressor state. For example, USA asked Iran to respect the neutrality law and held the Iraqi military air units present on Iranian territory.[23] This type of neutrality has no official name; it can be named quasi neutrality, along with other names: qualified, imperfect, and differential neutrality.

The resolutions under art. 39 create rights (possibilities), but no obligations for the neutral states to sanction the aggressor state by means of sanctions such as the ones mentioned above under art. 41, or to sustain passively the military actions by allowing for free transit of the military units that move to fight against the aggressor state. Examples in this sense are Austria, Ireland, and India that permitted the free transit.[24] It should be emphasized that the Iraq-Kuwait case is a rare example in which states, third-party to a military international conflict, know clearly how they should act under international public law. These issues become blurred in situations in which the force is used under a SC resolution that implies[25] the authorization of the use of force (this is the case of the Kosovo War and the recent US-Iraq war), or in situations of military conflict between states without any SC resolution identifying the aggressor state. The confusion is caused by two major factors: one refers to the radical change of the political reality after the World War II; the other refers to the modern *ius ad bellum*.

The international society of states after the World War II was characterized by bipolarity (during the Cold War) and unipolarity (after the Cold War). Therefore, the situation in which several central actors are at war while others are neutral is no longer possible, as it was in the nineteenth century. During the Cold War, USA and the former USSR, as two superpowers, could not afford the war against each other because of the nuclear balance; after the Cold War, USA is the only central actor. In this type of power system, the law of neutrality is not anymore the uniquely accepted status for states that are third-party in military conflicts between other states. In both the unipolar and the bipolar systems, third-party states are not so keen to apply the legal obligations under the traditional law of neutrality. For example, it was no secret that the Soviet Russia was sustaining the North Vietnam against the US. Under the traditional international law of neutrality, the US would have been entitled to declare war or to retaliate against the Soviet Russia. But it is well-known why this never happened. On the other hand, the US retaliated against Cambodia under the right of self-defence.[26] This practice does not lead to a customary law because in similar cases states acted differently. It is obvious that also Iran could not afford to declare war against the US when the latter deviated from the law of neutrality favouring Iraq, in the Iran-Iraq war.[27] In the unipolar world, there are many states interested in supporting, to a different extent (supposedly not military), the central actor in a military conflict situation, and other states interested in applying the strict neutrality, in different circumstances.

All these stances in cases of armed conflicts across international boundaries, outside the UN framework, apparently chaotic – in the sense that some third-party states are neutral in the classical sense and other states choose to assist, more or less, one side – are based on the contemporary international law. The realities of international politics are mirrored in the states' rules and practices during international armed conflicts. Because of the modern *ius ad bellum*, third-party states to a conflict have the option either to apply the law of neutrality or to take an intermediate position between neutrality and belligerency.[28] This option operates when SC does not take enforcement measures and does not identify the aggressor state. The modern *ius ad bellum* is based on the distinction between aggression and self-defence; this results from the UN rules regarding the illegality of resorting to force in inter-states relations except for the cases of self-defence. These rules are *ius cogens* – that is, they do not allow for conventional or customary derogations. Thus, the necessity to distinguish between the aggressor and the victim of the aggression has inevitable consequences for the position of the third-party states. When the SC does not function under Chapter VII, the third-party states have the right, not the obligation (maybe

a moral one) to discriminate the aggressor state and to assist the victim state in different ways such as providing for economic help and subsidies for the victim, while suspending financial and other economic relations with the aggressor.

But there is no violation of international law if a third-party state applies the law of neutrality based on its own safety or other considerations of political nature. Between the non-belligerents and the belligerent discriminated by them, the general law of peace would operate. Using the force, under the law of neutrality, against a third-party state for the reason that the latter assisted the enemy would be a violation of the international law because, as I stated above, the rules enshrined in the UN Charter are *ius cogens*.

However, it is questionable whether states are entitled under art. 51 to use the force against a non-participant/third-party state on the basis that the latter permits the hostile military units to transit its national land or air or, furthermore, that the national land, air, and/or sea is used as a base of attack. It can also be imagined a case in which a non-participant state allows for conscription on its territory for the military purpose of a state part to an armed conflict. Would the other state, part to the armed conflict, be entitled to threat or to use the force under art. 51 against the non-participant state? In all these questionable stances, the states part to an armed conflict would use force only based on the self-defence principle; the closeness to the neutrality law is only a matter of coincidence, not a legal base to justify the act of using the force or of threatening with force.[29]

The optional feature of neutrality in the contemporary international law raises some problems: first, whether the international community have already developed or is in the course of developing new types of legal obligations that operate during armed conflicts, not only for neutrals but also for non-belligerents (quasi neutrals); second, the international lawyers have still to explore the issue of applying the rules of neutrality in international armed conflicts that are not formalized and recognized states of war (non-war situations).

The non-belligerents are the states that do not want to apply the neutrality obligations of impartiality, but that want to be free to decide the degree to which they assist or help one of the parties in the armed conflict, providing that they do not participate military in the conflict. We have already seen how S.C. can force the creation of lawful obligations for non-belligerents as well as for neutrals. This is not the case when the SC does not act towards authorizing enforcement actions against the illegal use of force or, at least, towards indicating the state that breaks the international peace. In the latter situation, the non-participants to the conflict would be neutrals in the lawful sense or non-belligerents as an intermediate position between neutrality and belligerency. But assisting a state, part to an armed conflict, only on the bases of art. 51, makes way for abuses, especially when both sides claim the right to use the force under art. 51. Moreover, the possibility of being biased towards one side does not help a peaceful resolution, but hamper humanitarian disasters caused by war. The rules governing relations between belligerents have a fundamental humanitarian function that is linked with the modern trend toward the protection of human rights. Neutrals and non-belligerents have important roles as 'protecting powers' under the Geneva Conventions and the First Additional Protocol[30] that states in art. 2 (c) that ' "Protecting Power" means a neutral or other State not a Party to the conflict which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and this Protocol.' New legal obligations modify the neutrality law and bring the non-belligerency close to a lawful status based on the SC Resolution 612[31] about the Iraq-Iran War and on the 1993 Paris Chemical Weapons Convention[32]. Both legal sources make compulsory for third-party neutrals or other states not part to an armed conflict to prohibit and to stop the transfer of chemical weapons to the belligerents. Banning the transfers of some types of weapons in any direction is a new kind of obligations in the international law of

neutrality. Moreover, it should be noted that art. 7 of both Hague Conventions are clearly out-of-date because the reality has changed. At the beginning of the twentieth century, the governments engaged less in the trade of war materials and in manufacture; at present, they exercise more or less strict control over the export of arms and ammunition even if their manufacture was left in the hands of the private enterprise. In the present international community, there is a growing interest to hinder the spread of weapons of mass destruction and their afferent technologies. In time of armed conflicts among states, prohibiting the export of war material for both sides and binding all non-participants would be a solution to stop human disasters and to create conditions for beginning peace negotiations between the belligerents.

The contemporary international law allows for the distinction between impartial neutrality and quasi neutrality. If the application of the neutrality law is an option, then the issue of when these rules operate becomes prominent. When neutrality was the uniquely accepted status of non-participation under the law of Hague, it operated in relation to the existence of a formal state of war after a declaration of war, an ultimatum, or an implicit *animus belli* from the part of at least one state. The modern law of armed conflicts came into existence in all cases of armed conflicts under the law of Geneva. This is not the case of neutrality that, as I put above, depends on the existence of a formal state of war. But the practice of states shows, on the one hand, that states do not recognize the formal status of war when there is an armed conflict among them and, on the other hand, that third-party states maintain the optional status of the impartial neutrality whenever the state of war is existent or not. Nevertheless, there should not be drawn the conclusion that neutrality can be applied discretionary. The legal scholars show, based on the recent states' practices of armed conflicts, that neutrality is applied in time of 'actual military fighting of a certain intensity and magnitude between forces of at least two states – that is defined as the *state of generalized hostilities*."[33] The Iraq-Iran War and the Falkland War confirmed that the existence of a formal state of war is irrelevant both for the operability of the neutrality law and as a condition of materializing the belligerent rights, that is, imposing a contraband list under the law of prize against trade between third-party states and enemies, for example the Israel-Egypt War in 1948 (see the prize court at Alexandria) and the Kashmir War in 1965. It should be stressed that the example of states that call for the belligerent rights based on a state of war are rare after World War II and the 1965 case is the last one. In conclusion, when an armed conflict emerges among states, third-party states should determine when the conflict reaches the level of actual generalized hostilities or at least if there is an imminent intention of this kind of conflict, for example the Falkland Islands War.

Not only the neutrality in time of an armed conflict altered from the traditional framework but also the permanent neutrality. During the Cold War it was a generally accepted requirement for some states to choose a strategic policy outside the two rival blocks. Yet the legal scholars disputed on the compatibility of the permanent neutrality and the UN system.[34]

The general trend after World War II increased the number of non-alignment cases instead of that of legal permanent neutrality cases. Excepting Austria, the other neutrals that appeared did not define their status in international legal terms. The experiment of the neutral Indochina states was a failure because there were no important state-actors that could or wanted to warrant effectively this status, and also because of the instability of the region and of the internal weakness of the new states. In Europe, the neutrals continued to be Switzerland, Sweden, Ireland, Austria, and Finland. No matter how these states have defined their status, in legal or not legal terms, they have in common the policy of non-participation in collective defence agreements.[35] But securing the non-participation in international armed conflicts does not automatically mean that these states could perform the impartial neutrality in all the

armed conflicts that occur in the international society. The real change of the international environment that affected the permanent neutrality is the emergence of the link between international trade and security issues of political and even military nature. This change is emphasized especially in Europe, where the process of socio-political and economic integration into the European Community and, later, the European Union produced a domestic tension for the neutral states between the policy of traditional neutrality and the perspective of economic marginality. Even during the Cold War, neutrals, excepting Finland, became increasingly dependent on the US export of high technologies. This ran in parallel with the increasing economic interdependence with the EC states.[36]

At the end of the 1980s, decision-makers in the European neutral states began considering a compromise that would make neutrality compatible with the EC member status. Encouraging was the lack of compulsory collective defence agreement for the members of the EC/UE and the precedent of neutral Ireland, part of the EC from 1973. The end of the Cold War meant another positive condition for the neutrals' integration within the European system. In 1995, Austria, Finland, and Sweden entered the EU. [37] The Swiss citizens chose to be outside of the EU and accepted the UN membership only in 2002. Essential in the Swiss case is the national identity that has been strongly shaped by three fundamental political institutions; neutrality is one of them, along federalism and direct democracy.[38] Neutrality plays also an important role in defining the national identity in Sweden. In Austria and Finland, citizens are attached to this policy although this policy is relatively recent, after War World II, and it is connected at roots with the conditions emerged from the Cold War context in Europe. In the post-Cold War international environment, the European neutral states have the effective right (not only the theoretical one) and the will to play an active collective security role in both global and European arenas. At present, the 'European Security and Defence Policy' drafted by the EU Common Foreign and Security Policy does not imply a collective defence alliance but it implies participation in crises management, peacekeeping, peace-enforcement, and humanitarian operations, known as the Petersberg Tasks. The EU neutrals participate in the CESDP and in the European Rapid Reaction Force that is the military tool intended to resolve the military operations enshrined above.[39]

It can be considered that neutrality for the EU countries begins to be a political fiction or, at least, a policy that deviates substantially from the hypothetical possibility of maintaining an independent and impartial status of neutrality in many cases of armed conflicts across international boundaries.[40] This consideration stems from the following arguments.

First, participating with military units in management crises or peacekeeping operations means a high possibility of being entangled in an international armed conflict. The troops sent in a country for a peace-support mission can be attacked by one side of the civil war, so that the neutrals would be involved in an international armed conflict along other EU states that are part of WEU and NATO. This exposure to war situations is a clear deviation from the essence of a strategic option of a state to avoid participation in an armed conflict.

Second, the practical meaning of the permanent neutrality in Europe is absent. There are no wars and it is hardly possible to conceive of a war between EU member states or even member states and non-member states. There are no hypothetical military threats in the geographical proximity of the EU neutrals, especially in Ireland or Sweden cases; the lack of real threats is broadly linked with the absence of a potential aggressor from a military alliance, as it was the case in the Cold War period. Then, neutrality represented the way to secure independence and territorial integrity; now these two elements are not threatened anymore in the European context. Yet some scholars warn that we cannot predict the future; thus, it is wiser to prevent the entanglement in armed conflicts and to apply the neutrality in relation to geographical

remote armed conflicts. The counter-arguments affirm that neutrals will have to deal with an increasing process of strengthening the political solidarity among the EU states in foreign affairs; this results naturally from the increase of socio-economic and security interdependence in Europe.

Besides these two issues, there can be added a third one: concerning the defence, the EU neutrals are not involved (WEU is a different body from the EU), but the possibility of applying impartial neutrality in case of aggression against an EU member is almost inexistent. It is hard to believe that neutral governments would not support politically and economic a fellow EU state which is attacked. For this situation, there is a precedent in the Falkland War case. Evidently, this example is not absolute; history is not like physics experiments, reproducible in similar conditions. However, this is the only example in which the EC/EU territory was attacked and invaded by another state. In that time only Ireland was neutral in the EC and it sustained and applied the EC sanctions against Argentina.[41] This deviation from the neutrality law was based only on the EC solidarity in contexts where the SC did not function properly and did not formulate sanctions under art.41 (see SC Resolution 512). This leads to the conclusion that the membership of the neutral states in the EU renders almost impossible the application of impartial neutrality; it can be imagined a status of quasi neutrality or, in other words, an intermediary position between neutrality and belligerence favouring the other EU member states in cases of defence. The quasi neutrality of the European neutrals is expected even in cases of dysfunctions of the SC or before the SC takes sanction measures against the aggressor state.

Conclusions

As long as international armed conflicts exist, the interests of states to be outside of this kind of conflicts will also exist. The state practice of post-War World II setting shows a variety of attitudes of the third-party states towards an international armed conflict that can be categorized under the concepts of impartial neutrality and quasi neutrality.

The concept of impartial neutrality stems from the legal norms enshrined in the 1907 Hague Conventions. The concept of quasi neutrality is not based on multilateral treaties, but results from the contemporary international law principles, in particular from the modern *ius ad bellum* that distinguishes between the aggressor state and the victim of the aggression. Thus, when the SC takes sanction measures against a state that breaks the international peace and attacks a state, the quasi neutrality becomes compulsory for or legally enforceable against the neutral states that do not accept the sanctions related to the aggressor state. But quasi neutrality becomes optional as impartial neutrality when the SC does not take sanction measures. In the later case, most of the legal literature does not consider quasi neutrality as part of the international law but only as a policy of non-belligerence. This is part of a broader problem related to the question of how, in what specific conditions, and when a state practice becomes part of the international customary law. In other words, how the dynamic of international relations is connected with the public international law.

This intricate issue arises from the conflict of interests between third-party states and those states part of the armed conflict. The conflicts arise from the belligerent self-defence and belligerents-neutrals trade relations. The most important and recent guide in this issues is the *San Remo Manual on Armed Conflict at Sea*, published in 1994, a non-official, legal codification made under the auspices of the Institute of Humanitarian Law by a group of non-governmental experts including naval scholars, as well as lawyers.[42] This codification is primarily designed to restate and update the law on the conduct of armed conflict at sea and contains many provisions bearing on the rights and duties of neutrals and belligerents. It updates also the

concept of neutrality in case of armed conflicts in which the SC takes action (art. 7-9). It is enshrined the right of self-defence that the belligerent has under two conditions: (1) the neutral state fails to cease the violation of its neutral waters; (2) the violation of the state neutrality by the belligerent constitutes a serious and immediate threat to the security of the opposing belligerent (art. 22). Concerning the economic dimension, the *San Remo Manual* regulates the norms applied to neutral vessel and civil aircraft (art. 67-71; about visit and search art. 118-136), the norms regarding the blockade (art. 93-104), and the capture of neutral vessels, civil aircraft, and goods (art. 146-158). This codification confirms that even if the optional feature of the neutrality law is generally accepted, at least when the SC does not function properly, third-party states and the parts to the conflict need a set of norms that regulate the rights and duties in self-defence and the economic components of their relations.

The future monitoring of third-party states practices in international armed conflicts will focus on the will and possibilities of the state-actors to play certain roles related to the conditions of the international environment. The future trends may take a different direction from what the scholars have codified in 1994. Yet, non-participation, in the contemporary international law, will still imply the choice between impartial neutrality and quasi neutrality.

NOTES:

[1] G. Schwarzenberger, *A Manual of International Law*, Clarendon Press, London, 1967, p. 84; S. C. Neff, *The Rights and Duties of Neutrals. A general History,* Juris Publishing, Manchester University Press, Manchester, 2000, p. 1.

[2] M. Elizabeth, *Dictionary of Law,* Oxford University Press, Oxford, 2002, p. 653; see also G. Evans and J. Newnham, *The Penguin Dictionary of International Relations*, Penguin Group, 1998, p. 336.

[3] See art. 9 from the *Hague Convention Respecting the Rights and Duties of the Neutral Powers in Naval War* (the Vth Convention): 'Every measure of restriction or prohibition taken by a neutral Power in regard to the matters referred to in **Articles 7** and **8** must be impartially applied by it to both belligerents. A neutral Power must see to the same obligation being observed by companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus.' See also art. 7 and 8, and art. 9 from the *Hague Convention Concerning the Rights and Duties of Neutral Powers in Naval War* (the XIIIth Convention): 'A neutral Power must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.'

[4] See art. 5 from the Hague Vth Convention: 'A neutral Power must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory. It is not called upon to punish acts in violation of its neutrality unless the said acts have been committed on its own territory'; and art. 8 from the XIIIth Convention: 'A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, which had been adapted entirely or partly within the said jurisdiction for use in war.'

[5] This means that a right of a neutral state corresponds to a duty of a belligerent, and a right of a belligerent corresponds to a duty of a neutral. See I. A. Shearer (ed.), *Starkes' International Law,* Butterworth, London, Boston, 1994, p. 526-527. The rights and duties of neutrals and belligerents are differently related to land, sea, and air warfare. For further details about rules of neutrality see H. McCoubrey and N.D. White, *International Law and Armed Conflict,* Aldershot, Brookfield, Ashgate, 1992: about neutrality in land warfare (p. 301-302), about neutrality in armed conflicts at sea (p. 302-307), about neutrality in air warfare (p. 308-311). See also M. S. McDougal and F. P. Feliciano (eds), *The International Law of War*, New Haven Press, New Haven/ Martinus Nijhoff Publishers, Doordrech, 1994, p. 435-519.

[6] The Hague Conventions are still in force today for most powers: United States, Russia, United Kingdom, France, and Japan. Further details in F. Deak, 'Neutrality Revisited', in *Transnational Law in a Changing Society*, ed. by W. Friedman, L Henkin, and O. Lissitzyn, Columbia University Press, New York, London, 1972.

[7] I. A. Shearer, *op.cit.* p.,477-480.

[8] Lauterpacht (ed.), *International Law a Treatise. Disputes War and Neutrality by L. Oppenheim*, Longmans Green & Co., London, New York, Toronto, 1955, p. 625; A. P. Rubin, 'The Concept of Neutrality in International Law'. in *Neutrality-Changing Concepts and Practice* ed. by A. T. Leonhard, University Press of America, Lanham, New York, London, 1988.

[9] 'Lois et usages de la neutralité d'apres le droit international conventionnel et coutumier des États civilisés', vol I, 1898 quoted in W. G. Grewe, *The Epochs of International Law*, de Gruyter, Berlin, New York, 2000, p.535

[10] See a general account on this topic in A. C. Arend, *Legal Rules and International Society,* Oxford University Press, Oxford, 1999.

[11] See, for example, the Pyrenees Treaty (1656), the Utrecht Treaty (1713); further details in Neff, *op.cit.*, p. 27-38.

[12] The armed neutrality at sea, an idea advanced by Russia during the War of American Independence, was a method of protecting commerce. The idea of a League of Armed Neutrality was supported by Denmark and Sweden (1780), and later by Prussia, Austria (1782), and Portugal (1783); France and Spain recognized the principle, but Britain prevented Holland from joining the league by declaring war on the Dutch. The league demanded (1) free passage of neutral ships from port to port and along the coasts of combatants; (2) freedom of enemy goods in neutral ships *(le pavillon couvre la marchandise),* except for contraband; (3) definition of blockade (nominal "paper" blockade not sufficient; a blockade, to be legal, must be effective). The Second League of Armed Neutrality in December, 1800, between Sweden, Denmark, Russia, and Prussia was based on the same principles as the Armed Neutrality of 1780, but with further guaranties against capture under blockade, in the form of a provision for previous warning on the part of the war-ships on guard, and also of a prohibition against the searching of trading vessels under convoy. see Neff, *op.cit.*

[13] Further details on codification conferences and law-making treaties in Grewe, *op.cit.* p.512-517, and Arend, *op.cit.* p.46-47

[14] See the Declaration of Paris (1856) preamble: 'The Plenipotentiaries who signed the Treaty of Paris of March assembled in conference, considering: That maritime law in time of war has long been the subject of deplorable disputes; That the uncertainty of the law and of the duties in such a matter gives rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts; that it is consequently advantageous to establish a uniform doctrine on so important a point; That the Plenipotentiaries assembled in Congress at Paris cannot better respond to the intentions by which their Governments are animated than by seeking to introduce into International relations fixed principles in this respect.'

[15] E. Bonjour, *La neutralité Suisse: synthèse de son histoire,* Edition de Baconnere, Neuchatel, 1979.

[16] O. Elgstrom, 'Do Images Matter? The Making of Swedish neutrality 1834 and 1853', in *Cooperation and Conflict*, vol 35 (3), 2000.

[17] The 'Declaration Concerning the Laws of Naval War' (London, 1909) was never enforced; see further details in Neff, *op.cit.*, p. 136-143.

[18] E. Karsh, *Neutrality and Small States,* Routledge, London, New York, 1988, p. 44-60.

[19] '...severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not and The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.'

[20] See paragraphs 1 and 2 from SC Res. 660.

[21] See paragraph 3 from SC Res. 660.

[22] See paragraphs 3, 4, 5, 6, 7, 8, and 9 from SC Res. 661.

[23] Shearer, *op.cit.*, p. 526.

[24] This relates to the refueling of the American warplanes on their territory; when the president of Austria (a permanent neutral state) stated that '[w]hen the members of the United Nations act against an aggressor, there can be no question of neutrality, only of solidarity'; see Neff, *op.cit.*, p. 193.

[25] Further details on the implied authorization of force by the SC in C. Gray, 'From Unity to Polarization: International Law and the Use of Force against Iraq', in EJIL, vol. 13 (1), 2002.

[26] The American intervention in Cambodia occurred during the Vietnam War and began in 1969 with the systematic bombing of North Vietnamese bases in Cambodian territory; in 1970 a large-scale intervention of the American and South Vietnamese ground forces was launched. Some of justifications were based on the neutral state's wrongful act of being insufficiently diligent in preventing the violation of its neutrality by the other side. However, the principal justification of the US was the right of self-help in self-defence; see also Neff, *op.cit.*, p. 211-212.

[27] See F. A. Boyle, *International Crisis and Neutrality: U.S. Foreign Policy Toward the Iraq-Iran War,* in Leonhard, *op. cit.*

[28] A. Gioia 'Neutrality and Non-Belligerency', in *International Economic Law and Armed Conflict* ed. by H. G. Post, Martinus Nijhoff Publishers, Boston, Doordrecht, 1994.

[29] See McCoubrey and White's opinion *op.cit.*, p.312: '...at worst a breach of neutrality weather taking the form of violation by a belligerent or of intervention by neutral, might itself became a cause of conflict through the exercise of rights preserved by article 51 of the United Nation Charter.'

[30] Articles concerning neutrals and non-belligerents in the 1949 Geneva Conventions and the 1977 First Additional Protocol: I Convention art. 4, 8, 10, 11 27, 3b, 37, 43, II Convention art. 5, 8, 10, 11, 15, 16, 17, 21, 25, 31, 32, 38, 40, 43, III Convention art. 4, 8, 10, 11, 109, 110, 111, 114, 115, 116, IV Convention art. 4, 9, 11, 12, 12, 24, 25, 36, 132, 140, and the I Additional Protocol art. 2, 9, 19, 22, 30, 31, 37, 39, 64.

[31] See Resolution 612 paragraph 4.

[32] Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction.

[33] G. C. Petrochilos, 'The Relevance of the Concept of War and Armed Conflict to the Law of Neutrality', in *Vanderbilt Journal of Transnational Law*, vol. 31, 1998.

[34] Deak, *op.cit.*

[35] H. Neuhold, *The Neutral States of Europe Similarities and Differences,* in Leonhard, *op. cit.*

[36] B. McSweeny, 'The European Neutrals and the European Community', in *Journal of Peace Research*, vol. 25, (3), 1988.

[37] Ch. Agius 'Reinventing Neutrality-The Case of Austria, Finland, Sweden and the European Union', in *Europe Rethinking the Boundaires* ed by Ph. Murray, L. Halmes, Ashgate, Brookfield USA, Singapore, Sidney, 2000.

[38] Th. Christi, Al. H. Trechsel, 'Joining the EU? Explaining Public Opinion in Switzerland', in *European Union Politics*, vol.3 (4), 2000.

[39] For the details concerning the ESDP see R. A. Wessel 'The State of Affairs in EU Security and Defence Policy. The Breakthrough in the Treaty of Nice', in *Journal of Conflict&Security Law*, vol. 83 (2), 2003.

[40] D. Keohane considers Ireland as an active security actor, more as a non-alignment country than a neutral one, see 'Realigning Neutrality? Irish Defence Policy and the EU', Occasional Papers, Institute for Security Studies of WEU, 2001, www.iss-eu.org/occasion/occ24.html.

[41] Further details on the European quasi neutral states, see S. Stavridis and Ch. Hill (eds), *Domestic Sources of Foreign Policy. West European Reactions to the Falklands Conflict,* Berg Publishers Limited, Oxford, Washington D.C., 1996 and on Ireland see B. Tora 'The Internal Dissenter (II): Ireland', in Stavridis and Hill, *op.cit.*

[42] L. Doswald-Beck (ed.), *San Remo Manual on International Law Applicable to Armed Conflicts at Sea,* Cambridge University Press, Cambridge, 1995.