

International Humanitarian Law

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INTRODUCTION

The law of neutrality states legal relationship between nations which are engaged in an armed conflict (belligerents) and nations which are not taking part in such hostilities (neutrals). The law of neutrality serves a localize war, to limit the impact of war on both land and sea, and even lessen the conduct of war on International level.

Developed at a time when nations commonly issued declarations of the war before engaging in actual hostilities, the law of neutrality aim that the transition between the war and peace would be clear and unambiguous. With the onset of international efforts to abolish "war" coupled with the procreation of collective security preparations and the extension of the spectrum of warfare to involve dissent and counter surgeries armed conflicts between nations are now seldom followed by formal declarations of wars. Consequently it became very difficult to determine with complete precision the point in time when the hostilities have become a "war" and to distinguish between belligerent nations from neutrals. Notwithstanding the ambiguity, the law of neutrality continues to serve a vital role in containing the spread of the hostilities and in the regulation the conduct of belligerent nations with respect to nations which are not participating in the ongoing conflict, in regulating the conduct of the neutrals with respect to belligerents, and in reducing the harmful effects of such hostilities on the international commerce.

A belligerent nation can be defined as a nation engaged in an international armed conflict, whether or not it is a formal declaration of war that has been

issued. On the other hand, a neutral nation can be defined as a nation that has announced its neutrality or has otherwise assumed neutral status with respect to ongoing conflict between the nations.

NEUTRAL STATUS

Customary international law states that all the nations have the option to refrain itself from participating in the armed conflict by declaring or otherwise. The law of armed conflict reciprocally imposes duties and confers rights upon neutral nations and upon belligerents. The principal right of the neutral nation is that of inviolability, its principal duties are those of abstention and impartiality. Conversely, it is the duty of a belligerent to respect assuming neutral status. the former and its right to insist upon the latter.

This customary law has, to some extent, been modified by the United Nations Charter. Neutral status, once established, remains in effect unless and until the neutral 13 nation abandons its neutral stance and enters into the conflict.

NEUTRAL TERRITORY

As a general principle of international law, all the acts of hostility in neutral zone territory, including neutral waterd, neutral airspace, and neutral land, are prohibited¹. A neutral nation has the duty to prevent itself from the use of its territory as a place of sactum or a base of operations by belligerent forces of any of the side². If the neutral nation is unable or unwilling to enforce effectively its right of

¹ Peace Resource Center, Hague convention V (Ar 1) , HR LIBRARY (Jan.26,1910), <http://hrlibrary.umn.edu/peace/docs/con5.html>

² Peace Resource Center, Hague convention V (Ar 5) , HR LIBRARY (Jan.26,1910), <http://hrlibrary.umn.edu/peace/docs/con5.html>

inviolability, the aggrieved belligerent can take such actions which are necessary in neutral territory to counter all or specific activities of enemy forces in that land, including warships and military aircraft, making unlawful use of that particular territory. Belligerents are also authorized to act in self-defense if attacked or threatened to attack while in the neutral territory or when attacked or threatened from neutral territory.

Neutral Lands

Belligerents are not allowed to move troops or war materials supplies across neutral zone territory.³ Neutral nations may be required to maintain sufficient armed forces to ensure fulfillment of the responsibility which is to prevent belligerent forces from crossing the neutral borders. Belligerent troops which enter the neutral territory must be disarmed till the end of the armed conflict.⁴

A neutral may authorize for passage through the territory for wounded and sick who may be belonging to the armed forces of either side, on a condition that the vehicles transporting them carry neither combatants nor materials of war. If the passage of sick and wounded is been permitted, the neutral nation assumes that responsibility for providing for their safety and control. Prisoners of war who have escaped their captors and made their way to the neutral territory may on either repatriated or left at liberty in the neutral nation, but must not be allowed to take part in any belligerent activities while there.⁵

³ Peace Resource Center, Hague convention V (Ar 2) , HR LIBRARY (Jan.26,1910), <http://hrlibrary.umn.edu/peace/docs/con5.html>

⁴ Peace Resource Center, Hague convention V (Ar 11) , HR LIBRARY (Jan.26,1910), <http://hrlibrary.umn.edu/peace/docs/con5.html>

Neutral Internal Waters

Neutral internal waters encompass those waters of a neutral nation that are landward of the baseline from which the territorial sea is measured, or, in the case of archipelagic states, within the closing line drawn for the delimitation of such waters. The rules neutral ports and roadsteads apply as well to neutral internal waters.

Neutral Territorial Seas. Neutral territorial seas, like neutral territory generally, must not be used by forces either as a sanctuary from their enemies or as a base of operations. Belligerents are obliged to refrain from all acts of hostility in neutral territorial seas except those necessitated by self-defense or undertaken as self-help enforcement actions against enemy forces that are in violation of the neutral status of those waters when the neutral nation cannot or will not enforce their inviolability.

A neutral nation may, on a non discriminatory basis, suspend passage of belligerent warships and prizes through its territorial seas, except in international straits. When properly notified of its closure, belligerents are obliged to refrain from entering a neutral territorial sea except to transit through international straits or as necessitated by distress.⁶ A neutral nation may however allow the "mere passage" of belligerent warships and prizes through its territorial seas. While in neutral territorial seas, a belligerent warship must also refrain from adding to or repairing its armaments or replenishing its war materials. Although the general practice has been to close neutral territorial seas to belligerent

⁵ Peace Resource Center, Hague convention V (13-14) , HR LIBRARY (Jan.26,1910), <http://hrlibrary.umn.edu/peace/docs/con5.html>

⁶ United Nations, Territorial Sea Convention, art. 16(3) ,UN,(Dec10,1982) https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

submarines, a neutral nation may elect to allow passage of submarines.⁷

Neutral Archipelagic Waters

The United States recognizes the right of qualifying island nations to establish archipelagic baselines enclosing archipelagic waters, provided the baselines are drawn in conformity with the 1982 LOS Convention. The balance of neutral and belligerent rights and duties with respect to neutral waters, is, however, at its most difficult in the context of archipelagic waters.

Neutral forces must refrain from acts of hostility in neutral archipelagic waters and from using them as a sanctuary or a base of operations.⁴ Belligerent ships or aircraft, including submarines, surface warships, and military aircraft, retain the right of unimpeded sea lanes passage through, over, and under neutral archipelagic sea lanes.⁵ Belligerent forces exercising the right of archipelagic sea lanes passage may engage in those activities that are incident to their normal mode of continuous and expeditious passage and are consistent with their security, including formation steaming and the launching and recovery, of aircraft.⁶ Visit and search is not authorized in neutral archipelagic waters. A neutral nation may close its archipelagic waters (other than archipelagic sea lanes whether designated or those routes normally used for international navigation or overflight) to the passage of belligerent ships but it is not obliged to do so. The neutral archipelagic nation has an affirmative duty to police its archipelagic waters to ensure that the inviolability of its neutral waters is respected. If a neutral nation is unable or unwilling effectively to detect and expel belligerent forces unlawfully present in its archipelagic waters, the opposing belligerent may undertake such self-help enforcement actions as may be necessary to terminate the violation of neutrality. Such self-help enforcement may include surface, subsurface, and air penetration of archipelagic waters and airspace and the use of proportional force as necessary.

⁷ D.Schindler and J.Toman, Hague convention VIII (Ar 14(2)),INTERNATION COMMITTEE OF RED CROSS,(Oct 18, 1917) [https://ihl-](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTR O/215)

The 12-Nautical Mile Territorial Sea

When the law of neutrality was codified in the Hague Conventions of 1907, the 3-nautical mile territorial sea was the accepted norm, aviation was in its infancy, and the submarine had not yet proven itself as a significant weapons platform. The rules of neutrality applicable to the territorial sea were designed primarily to regulate the conduct of surface warships in a narrow band of water off neutral coasts. The 1982 Law of the Sea Convention provides that coastal nations may lawfully extend the breadth of claimed territorial seas to 12 nautical miles.

Although extension of the breadth of the territorial sea from 3 to 12 nautical miles removes over 3,000,000 square miles of ocean from the arena in which belligerent forces may conduct offensive combat operations and significantly complicates neutral nation enforcement of the inviolability of its neutral waters, the 12-nautical mile territorial sea is not, in and of itself, incompatible with the law of neutrality. Belligerents continue to be obliged to refrain from acts of hostility in neutral waters and remain forbidden to use the territorial sea of a neutral nation as a place of sanctuary from their enemies or as a base of operations.

Neutral Airspace

Neutral territory which extends to the airspace i.e over a neutral nations lands, waters and sea. Belligerent military aircraft are not allowed to enter such neutral space with some exceptions to the same which are:

1. The airspace above neutral international straits and archipelagic sea lanes remains open at all times to belligerent aircraft, including armed military aircraft, engaged in transit or archipelagic sea lanes passage. Such passage must be continuous and expeditious and must be undertaken in the normal mode of flight of the aircraft involved. Belligerent aircraft must refrain

[databases.icrc.org/applic/ihl/ihl.nsf/INTR O/215](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTR O/215)

from acts of hostility while in transit but may engage in activities that are consistent with their security and the security of accompanying surface and subsurface forces.

2. Medical aircraft may, with prior notice, overfly neutral territory, may land therein in case of necessity, and may use neutral airfield facilities as ports of call, subject to such restrictions and regulations as the neutral nation may see fit to apply equally to all belligerents.
3. Belligerent aircraft in evident distress may be permitted to enter neutral airspace and to land in neutral territory under such safeguards as the neutral nation may wish to impose. The neutral nation must require such aircraft to land and must intern both aircraft and crew.⁸

APPLICABILITY OF THE LAW OF NEUTRALITY TO CYBERSPACE

The continuing validity of the core principles and rules of the law of neutrality cannot be doubted in the course of an international armed conflict that is characterized by the use of traditional (kinetic) weapons. But when it comes to hostilities and hostile acts conducted in or through cyberspace one might be inclined to reject their applicability. Indeed, if cyberspace is considered to be a new ‘5th dimension’, a ‘global common’, that “defies measurement in any physical dimension or time space continuum” it could be rather difficult to maintain that the law of neutrality applies. If we acknowledge, however, that cyberspace “requires a physical architecture to exist” many of the difficulties can be overcome.

The law of neutrality serves a double protective purpose. On the one hand, it is to protect the (territorial) sovereignty of neutral States and their nationals against the harmful effects of the ongoing hostilities. On the other hand, it aims at the protection of belligerent interests against any interference by neutral States and their nationals to the benefit of one belligerent and to the detriment of

the other. Thus, the rules and principles of the law of neutrality aim at preventing an escalation of an ongoing international armed conflict “in regulating the conduct of belligerents with respect to nations not participating in the conflict, in regulating the conduct of neutrals with respect to belligerents, and in reducing the harmful effects of such hostilities on international commerce.

Applied to the cyber context it is safe to conclude that the law of neutrality protects the cyber infrastructure that is located within the territory of a neutral State or that profits from the sovereign immunity of platforms and other objects used by the neutral State for non-commercial government purposes. Hence, belligerents are under an obligation to respect the sovereignty and inviolability of States not parties to the international armed conflict by refraining from any harmful interference with the cyber infrastructure located within neutral territory. Neutral States must remain impartial and they may not engage in cyber activities that support the military action of one belligerent and that are to the detriment of the other belligerent. Moreover, they are obliged to take all feasible measures to terminate an abuse of the cyber infrastructure located within their territory (or on their sovereign immune platforms) by any of the belligerents.

The correctness of these findings might be doubted because they are based upon a teleological interpretation of the law of neutrality alone. However, they are supported not only by the majority of authors dealing with the issue of neutrality in the cyber context is also by State practice. For instance, the U.S. Department of Defense has taken the position that “long-standing international norms guiding state behavior – in times of peace and conflict – also apply in cyberspace

”The DoD Cyberspace Policy Report, *inter alia*, emphasizes that “applying the tenets of the law of armed conflict are critical. The Report also addresses activities “taking place on or through computers or other infrastructure located in a neutral third country. It may be added in this context that the

⁸ Peace Resource Center, Hague convention V (Ar 11), HR LIBRARY (Jan.26,1910),

<http://hrlibrary.umn.edu/peace/docs/con5.html>

applicability of the law of neutrality to cyberspace has also been acknowledged in the recent HPCR Manual. Since that Manual has been endorsed by a considerable number of governments it may be considered as a restatement of the existing law and as reflecting the consensus of States on the issues dealt with in the Manual. Of course, the rules of the traditional law of neutrality, while in principle applicable to cyberspace, may require clarifications or even modifications because of the unique characteristics of cyberspace. Still, the “law of armed conflict and customary international law provide a strong basis to apply such norms to cyberspace governing responsible state behavior.”

CONCLUSION

As a general principle of international law, all the acts of hostility in neutral zone territory, including neutral water, neutral airspace, and neutral land, are prohibited⁹. A neutral nation has the duty to prevent itself from the use of its territory as a place of *sacrum* or a base of operations by belligerent forces of any of the side¹⁰. If the neutral nation is unable or unwilling to enforce effectively its right of inviolability, the aggrieved belligerent can take such actions which are necessary in neutral territory to counter all or specific activities of enemy forces in that land, including warships and military aircraft, making unlawful use of that particular territory. Belligerents are also authorized to act in self-defense if attacked or threatened to attack while in the neutral territory or when attacked or threatened from neutral territory.

⁹ Peace Resource Center, Hague convention V (Ar 1) , HR LIBRARY (Jan.26,1910), <http://hrlibrary.umn.edu/peace/docs/con5.html>

¹⁰ Peace Resource Center, Hague convention V (Ar 5) , HR LIBRARY (Jan.26,1910), <http://hrlibrary.umn.edu/peace/docs/con5.html>