

The Application of Strict Neutrality to Permanent  
Neutral States in Times of International Armed  
Conflict: In the Case of Russia-Ukraine Conflict  
Involving the General Assembly

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# The Application of Strict Neutrality to Permanent Neutral States in Times of International Armed Conflict: In the Case of Russia-Ukraine Conflict Involving the General Assembly

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## Introduction

Russia's invasion of Ukraine significantly affected the European neutral States, promoting diverse responses. In particular, Finland and Sweden abandoned their neutrality and applied for NATO membership together; Finland joined NATO in 2023, followed by Sweden one year later in 2024. On the other hand, Switzerland, a permanent neutral State, has taken a more nuanced approach. While it fully participates in EU economic sanctions against Russia, it rejected requests from Denmark, Germany and Spain to allow the re-export of Swiss-made weapons to Ukraine based on the Federal Act on War Material (the War Material Act, the WMA).<sup>1</sup> This dual stance—supporting sanctions while prohibiting

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<sup>1</sup> Whereas Art. 18(1) of the WMA stipulates that “an export licence may be granted only if it relates to a delivery to a foreign government or to an undertaking acting on behalf of a foreign government, and if a declaration is provided by that government stating that the material will not be re-exported,” Art.22a2(a) states

weapons exports—has sparked criticism both domestically and internationally. In response, the Federal Assembly has begun to discuss the possibility of allowing arms exports to Ukraine via States that share Swiss values, or approving the re-exports of Swiss-made weapons to Ukraine if these are linked to the Russia-Ukraine conflict (Politico [2023]).

However, it is forbidden for neutral States to provide directly or indirectly their arms to one of the belligerents under traditional neutrality laws that prohibit discriminatory action against belligerents. Neutral States bear the fundamental obligation of impartiality treating both belligerents equally without favoring one at the expense of the other (Antonopoulos [2022], p.9). This is the reason why the Swiss government prohibits the re-export of Swiss-made weapons to warring states based on the WMA (Conseil federal, Communiqués [2022a]).<sup>2</sup>

While this war was initiated by Russia's act of aggression, it remains an international armed conflict under international law. As a result, Switzerland is obligated to apply the laws of neutrality, as it would in other international armed conflicts, despite one of the belligerents being a permanent member of the Security Council. As will be discussed later, since the end of the Cold War, measures decided by the Security Council have come to be regarded as acts of law enforcement, and the prevailing view is that the laws of neutrality do not apply to armed conflicts in which the Security Council is involved. However, in the case of

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that "export trade...shall not be authorized if the country of destination is involved in an internal or international armed conflict." at [https://www.fedlex.admin.ch/eli/cc1998/794\\_794\\_794/en](https://www.fedlex.admin.ch/eli/cc1998/794_794_794/en) (Accessed December 7, 2024)

2 If the export of weapons is controlled by the State, allowing such export is considered an unneutral service (Antonopoulos [2022], p.93).

Ukraine, the Security Council has failed to function effectively, partly because Russia, a party to the conflict is directly involved in its decisions. This situation has prompted the aforementioned arguments in the Swiss parliament, including a motion passed by the Security Policy Committee of the National Council. The motion states that the re-export of war materials may be permitted in cases of armed conflict condemned as violations of international law by the Security Council or by two-thirds of the UN General Assembly (NZZ [2023a]).

In a situation where the Security Council is unable to fulfill its function, is it possible for permanent neutral States to directly or indirectly provide war materials and other assistance to Ukraine, one of the belligerents, based on a General Assembly resolution condemning aggression? This paper examines whether permanent neutral States, which are required to maintain “strict neutrality” in international armed conflicts—a concept that means a neutral State neither actively nor passively, directly nor indirectly, favors either belligerent [Oppenheim [1952], p.663]—are obligated to uphold the same standard of strict neutrality in the Russia-Ukraine conflict.

To begin with, the status of third States in international armed conflicts will be examined in relation to the outlawing of war and the principles of collective security established by the United Nations. Then, it considers the shifts in perspectives on the status of permanent neutral States and their responses to international armed conflicts involving the Security Council, which emerged with the restoration of the Council’s functions following the end of the Cold War, as well as the positions of the permanent neutral States themselves. Finally, it considers whether

traditional neutrality laws apply to permanent neutral States in the context of the Russia-Ukraine conflict, given the Security Council's inability to act, by focusing on the emergency special session of the UN General Assembly held based on the Uniting for Peace resolution and the principles of State Responsibility.

### 1. The Status of Third States in International Armed Conflicts

Neutral States must abstain from supplying war materials to belligerents, either directly or indirectly (Art. 6 of the XIII Hague Convention). In the Russia-Ukraine conflict, however, Western third parties, including Finland and Sweden, supplied Ukraine with war materials at an early stage. The supply of war materials by third States to belligerents has been a constant trend during World War II and subsequent international armed conflicts (Norton [1976]). It is well known that the United States, which declared neutrality at the outbreak of World War II, supplied war materials to the Allies through the Lend-Lease Act. What underpinned the legality of the United States' actions from an international law perspective was the Kellogg-Briand Pact (Hathaway and Shapiro [2022]). The prohibition of aggressive war under the Pact was an obligation that applies to all States, and the violation of this obligation had the effect that all other States could potentially be victims. This effect legally justified U.S. assistance (Wright [1930], pp.79-80).

The United Nations Charter further strengthened the prohibition of war of the Pact and also prohibited the use of force. According to General Assembly's Definition of Aggression (Resolution 3314 (XXIX), 1974), "the first use of armed force by a State in contravention of the

Charter shall constitute *prima facie* evidence of an act of aggression” (Art. 2). Therefore, the State that first resorts to war may be considered the aggressor, while the State that suffers aggression may be considered the victim. The outlawing of war has naturally affected traditional neutrality, which is based on the principle of equal treatment of belligerents. This has led to the emergence of third States that practice qualified neutrality, in which they support the victim while abstaining from direct participation in hostilities. Consequently, discriminatory measures have been taken against belligerents.

The outlawing of war is usually incorporated into the system of collective security, whereby an aggressor is subject to collective action. The Security Council is empowered under Chapter VII of the Charter to take coercive and discriminatory measures in order to maintain international peace and security. Thus, there is no neutrality between the aggressor and the victim in the UN system of collective security. When the Security Council imposes enforcement measures, Member States are obligated to participate in these measures in accordance with Article 2(5) of the Charter, which requires them to “give the United Nations every assistance in any action it takes.” However, since the UN’s enforcement measures are contingent upon the discretion of the permanent members of the Security Council who hold veto power, Member States are only obligated to act if it orders them to do so. In light of the above, it is inevitable to conclude that there is still room for neutrality in wars where the Security Council does not intervene. Moreover, even when the Security Council recommends enforcement measures that are not binding on Member States, it is possible for them

to maintain strict neutrality with respect to those measures (Schindler [1991], p.372).

Therefore, third States cannot adopt a position of strict neutrality when the Security Council has decided on enforcement measures against an aggressor in the context of UN collective security. With regard to military measures, however, Member States are not obligated to participate unless they have entered into a special agreement or agreements with the Security Council (Art. 43 of the Charter). This means that Member States are restricted to a neutral position only in cases where the Security Council has decided on economic enforcement measures (Bothe [2021], p.606).

## **2. The Status of Permanent Neutral States and Their Responses to International Armed Conflicts**

In October 2022, the Swiss government published a report titled “Clarté et orientation de la politique de neutralité,” which addresses swiss neutrality practice over the past 30 years and future directions (Le Conseil federal [2022b]).

The report outlines Swiss neutrality as follows:

Swiss neutrality consists of the law of neutrality and the policy of neutrality. The law of neutrality developed in the 19th century as customary international law, and was codified in the Hague Conventions. Since then, the law of neutrality has continued to develop as customary international law.

The report suggests that a permanent neutral State is bound by the

traditional obligations of neutrality under the Hague Conventions and customary international law in the event of an international armed conflict. This is consistent with the general understanding of permanent neutrality under international law. Here, permanent neutrality is “the international law status of a state which obligated prospectively to maintain classical neutrality in the wars of other states and not to take part in the wars of other states” (Havel [2000], p.183), with “classical neutrality” specifically meaning strict neutrality. Additionally, a permanent neutral State is obligated not to participate in military alliances in peacetime, as this obligation is necessary to enable the fulfillment of neutrality obligations during wartime (Havel [2000], pp.186-87). Accordingly, it can be said that permanent neutrality in international law is based on strict neutrality, precluding any qualified neutrality in international armed conflicts (Spring [2014], p.182).

What about in the case of coercive or discriminatory measures imposed by the Security Council?

Based on the understanding that the Security Council’s coercive measures under collective security are fundamentally different in legal nature from traditional armed conflicts between States, it is argued that the laws of neutrality should not be applicable between the United Nations and an aggressor. However, since coercive measures had not been perceived as law enforcement actions during the Cold War, participation in such measures, particularly military ones, could risk being regarded as hostile acts by belligerent (i.e. aggressor). It was not feasible to expect the permanent members of the Security Council to always act in unison against an aggressor State, and therefore coercive



measures could not be considered law enforcement measures (Schindler [1967], p.254). Participation in military measures was seen as equivalent to becoming a belligerent State (Cummings [1978], p.51). Henceforth, permanent neutral States had to maintain strict neutrality by refusing to conclude special agreements with the Security Council obligating them to participate in military measures under Art.43 of the Charter. Participation in non-military measures not involving the use of force was also considered a violation of the principle of impartiality under the laws of neutrality if directed against one of the belligerents in an international armed conflict (Schindler [1967], pp.257-58). Given that Switzerland considered its participation in the economic sanctions imposed by the League of Nations on Italy, for its invasion of Ethiopia, to be a threat to its neutrality and subsequently reverted to strict neutrality, it can be said that Switzerland also shared this view.

However, when the Security Council decides on non-military measures, even permanent neutral States must prioritize their obligations as UN Member States and maintaining strict neutrality is no longer permitted. Thus, the view has developed that limited neutrality is permissible to the extent that non-military measures are decided by the Security Council (Chaumont [1956], p.16). Alternatively, the current position of the Swiss government is that economic sanctions, such as the severance of economic relations, are not prohibited by the laws of neutrality, but are rather a matter of choice within the policy of neutrality.<sup>3</sup>

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<sup>3</sup> Following the 1990-91 Gulf War, the Swiss government revised its position, which had previously held that participation in economic sanctions was incompatible with strict neutrality. It argued that “in principle the law of neutrality is silent on duties in the economic sphere and, furthermore, for Switzerland to stand aside would be equivalent to partisanship in favour of the law-breaker” (Report of the interdepartmental working group [2000], p.4).

Furthermore, focusing on the restoration of the Security Council after the Cold War, the argument has resurfaced that all coercive measures, including military ones, are considered law enforcement actions (Schindler [1992]). The Swiss government also made the statement in the Neutrality White Paper, which underpins Switzerland's current neutrality (White Paper on Neutrality [1993], p.20).

[T]he law of neutrality in its traditional interpretation principally does not apply to sanctions decreed by the Security Council pursuant to Chapter VII of the Charter and supported by the majority of the international community. Thus, participation by a neutral state in UN sanctions under Chapter VII of the Charter is not at variance with the law of neutrality. This applies both to economic sanctions and military measures. According to this view, UN military measures do not constitute a form of war to which the law of neutrality is applicable, as they are legal means by which the decisions of the Security Council acting in behalf of the international community are enforced. Both the Security Council and all the states authorized to use force on its behalf are not acting as belligerents but as an enforcement agencies of international law. Therefore, permanent neutrals are free to participate in UN sanctions.

Austria also adopted a similar position when it amended the Criminal Code on endangering neutrality, which prohibits aiding one of the belligerents. The use of force by a coalition of States authorized under Chapter VII of the UN Charter did not constitute "war" in the traditional sense, since it was an international police action to restore peace. Therefore, a provision was added to exempt Security Council measures from actions that would endanger neutrality (Loibl and Brandstetter

[1992]). In response to the fundamental changes in the international security environment, Austria issued “The Security and Defence Doctrine” in 2001, which replaced the 1975 Defence Doctrine, while adhering to the view expressed in the amendment of the Criminal Code (Security and Defence Doctrine [2001], p.7).

### 3. Permanent Neutrality and the Russia-Ukraine Conflict

After Russia’s military invasion of Ukraine, a draft resolution calling for an immediate withdrawal was submitted to the Security Council. However, it was vetoed by Russia, the party to this conflict. As a result, the armed conflict between Russia and Ukraine is regarded as an international armed conflict in which the Security Council is unable to intervene. Therefore, it is supposed that permanent neutral States would be obligated to adhere to traditional neutrality laws. In this regard, it is necessary to consider whether this conflict still qualifies as an international armed conflict to which classical neutrality law be applicable. This question arises given that the General Assembly has addressed the situation in Ukraine under the Uniting for Peace resolution, due to the Security Council’s deadlock caused by Russia’s veto. According to the Uniting for Peace resolution, “[i]f the Security Council … fails to exercise its primary responsibility for the maintenance of international peace and security…, the General Assembly shall consider the immediately with a view to making appropriate recommendations to Members for collective measures.”

The Ukraine-focused emergency session was convened under its Uniting for Peace mechanism, and adopted Resolution ES-11/1 by a

large majority (141 for, 5 against, and 35 abstentions), which deplored “in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2(4) of the Charter.”

Although General Assembly’s resolutions are generally not binding, the use of the Uniting for Peace mechanism can be seen as the collective will of the many (i.e. the 193 members of the Assembly), achieving what the few (i.e. the 15 members of the Council) have failed to do through Chapter VII decisions (Ramsden [2022]). In other words, it means the condemnation of Russia’s action as an act of aggression by the collective will of the international community as a whole. Thus, it serves as a reminder that the act of aggression constitutes a violation of obligations *erga omnes*, i.e. obligations owed to the international community as a whole.

Again, this raises the question of whether permanent neutral States must maintain traditional strict neutrality in the context of the Russia-Ukraine conflict. A permanent neutral State, as indicated above, is obligated to apply the traditional laws of neutrality in international armed conflicts, except when the Security Council is involved under Chapter VII of the Charter. In emphasizing that the Russia-Ukraine conflict is an international armed conflict without the involvement of the Security Council, it should be noted that a permanent neutral State is obligated to apply the laws of neutrality and is not permitted to take discriminatory measures, such as the direct or indirect supply of war materials.

It is crucial to emphasize why permanent neutral States could not be required to maintain strict neutrality in international armed conflicts involving the Security Council. The outlawing of war does not lead both

belligerents to openly declare themselves as aggressors and wage war against the other. Instead, both parties typically claim to be the victim and justify their use of force as an exercise of the right of self-defense. Therefore, it is difficult for third States to determine which State is the aggressor and which is the victim, making it necessary for an authoritative body to assess and recognize the situation (Spring [2014], p.144). The United Nations, established on the basis of the lessons learned from the failure of the League of Nations to provide centralized authority, assigned the Security Council the responsibility for determining situations under Art. 39 of the Charter. In this way, the Council's recognition of acts of aggression as an authoritative body has become a crucial prerequisite for assessing the applicability of neutrality laws.

However, challenges arise when the Security Council is unable to fulfill this role due to political deadlock or other factors. Such cases have occurred in practice, and there is an argument identifying three scenarios that fall under authoritative judgments: (1) when the Security Council makes determinations, (2) when the General Assembly exercises the Uniting for Peace mandate, and (3) when the international community clearly identifies the aggressor State (Spring [2014], p.149). This view, which argues that the laws of neutrality do not apply to scenario (1) as well as to scenarios (2) and (3), rests on the premise that scenarios (2) and (3) possess a level of authority or objectivity comparable to scenario (1).

In the case of Ukraine, the General Assembly, through the Uniting for Peace mandate, complemented the functions of the Security Council by effectively acting as an authoritative body. Consequently, it condemned Russia's military aggression as an act of aggression. It could also be

said that the General Assembly, representing the international community, identified Russia as an aggressor State. The Russia-Ukraine conflict seems to be a pertinent example of an international armed conflict that falls under scenarios (2) and (3). It appears to meet the conditions under which neutrality laws would not be activated. The General Assembly successfully recognized Russia as the aggressor in the Ukraine situation; however, it has not proceeded to recommend any specific enforcement or discriminatory measures. The next issue to consider is whether the mere recognition of an act of aggression by the General Assembly allows a permanent neutral State to take concrete discriminatory measures against one of the belligerents.

The Uniting for Peace resolution states that “in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security.” In the past, at the emergency special session in 1981, the General Assembly called for “all support and assistance, including military assistance, to the front-line States (Zambia, Botswana, Mozambique, Tanzania, Angola, Zimbabwe [author’s addition]) in order to enable them to defend their sovereignty and territorial integrity against the renewed acts of aggression by South Africa” (ES-8/2).

However, as of December 2024, the resolutions adopted by the General Assembly on the situation in Ukraine include six key measures: (1)

condemning Russia's aggression against Ukraine (ES-11/1), (2) addressing the humanitarian consequences of the aggression (ES-11/2), (3) suspending Russia's membership rights in the Human Rights Council (ES-11/3), (4) invalidating Russia's unilateral annexation of four Ukrainian regions (ES-11/4), (5) promoting remedy and reparation for the aggression (ES-11/5), and (6) reiterating the demand for Russia's withdrawal one year after its full-scale invasion of Ukraine (ES-11/6). No discriminatory measures against Russia or requests for support to Ukraine have been recommended.

In this regard, it should be noted that there is an argument that the prohibition of aggression constitutes a violation of a peremptory norm or an obligation *erga omnes*. According to this view, other States have an obligation to discriminate against the aggressor State (Schaub [1995], pp.105-109), and thus it would not be permissible to maintain strict neutrality. On the other hand, it is necessary to point out that the relevant articles of State Responsibility contain provisions that challenge this argument. Specifically, in the case of a violation of an obligation *erga omnes*, such as the prohibition of aggression, “[a]ny State other than an injured State is entitled to invoke the responsibility of another State” (Article 48(1)). The provision does not impose an obligation on third States to respond. Additionally, the measures that may be taken by States other than the injured State are described as “lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached” (Article 54), and do not contemplate countermeasures against the wrongful act. However, according to the ILC, a definitive conclusion could not be reached due to the limited state practice regarding

countermeasures by third States, and this issue is left to the further development of international law (ILC [2001], p.139). Thus, it does not explicitly prohibit countermeasures by third States other than the injured State (Clancy [2023], p.540). It should be stated that third States may only take discriminatory measures against one of the belligerent States as a countermeasure in situations where only an act of aggression has been identified (Clancy [2023], pp.542-43).

The question arises whether permanent neutral States, as well as other third States, may adopt a position of qualified neutrality in international armed conflicts where only an act of aggression has been identified. If it is understood that the essence of collective security lies in the obligation of other Member States to act and support a state that has suffered aggression (Neff [2020], p.20), then it can be said that the General Assembly's identification of aggression fulfills the prerequisite for the activation of the UN's collective security functions. Nevertheless, it is unclear whether the positive legal obligations of permanent neutral States have been waived. Therefore, it seems appropriate to conclude that permanent neutral States are still required to maintain strict neutrality even when there is only an identification of aggression. On the other hand, if permanent neutral States could adopt a position of qualified neutrality based on the above arguments, they would likely find themselves in a situation where the General Assembly recommended concrete discriminatory measures, as it did in the Namibia case.

Yet, given that the recommendations of the General Assembly tend to be ignored by States and that there are doubts as to whether they truly embody the essence of collective security (Dinstein [1994], p.303), it cannot be denied that a State targeted by enforcement measures might



perceive such participation as involvement in hostilities. Accordingly, participation in the Assembly's collective measures may lead to outcomes that are inconsistent with the nature of the permanent neutrality system, which is intended to prevent involvement in war.

## Conclusion

In the early stages of the Russia-Ukraine conflict, the Swiss Federal Council has decided to maintain its position of strict neutrality: “Overflights by military aircraft of other states for the purpose of providing military support to the parties to the conflict, in particular through the delivery of war materiel” will not be accepted (Conseil federal, Communiqués [2022c]). Despite harsh criticism from the international community for not allowing the re-export of weapons to Ukraine, Switzerland issued a statement maintaining its ban on (re) exports, asserting that the Russia-Ukraine conflict qualifies as a war to which the law of neutrality applies (Press Releases [2023]). As noted previously, the National Council has approved a motion that would allow the re-export of war materiel if the General Assembly recognizes a violation of international law by a two-thirds majority. The motion is currently under consideration by the Security Policy Committee of the Council of States. The committee has reportedly temporarily suspended its deliberations to seek expert opinions on whether permitting re-exports based on the General Assembly's recognition is consistent with the law of neutrality (NZZ [2023b]). On the other hand, along the lines of the National Council's decision, the Ministry of Defense's working group, established in August 2024 in response to heightened security

concerns triggered by Russia's invasion of Ukraine, recommended re-evaluating Switzerland's restrictive re-export provisions (Bericht der Studienkommission Sicherheitspolitik [2024]). However, as this paper has pointed out so far, the argument appears inconsistent with the current law on permanent neutrality, which requires permanent neutral States to maintain strict neutrality.

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