



The Problem Of Neutral States In International Armed Conflicts

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Abstract

This research was conducted because there was a legal conflict regarding the status of a neutral state whose actions did not conform to neutral values in the form of freezing the assets of citizens in banks located in neutral state. The formulation proposed in this study is: First, the concept of neutrality in contemporary international law armed conflicts. Second, legal consequences of the status of a neutral State in relation to international armed conflict. The purpose of this research is to outline the concept of neutrality and analyse the problem of a neutral country in the Russian-Ukrainian armed conflict. The research approach used is the Statute Approach, including the 1907 Hague Convention especially Convention V and Convention XIII and the Conceptual Approach, including Neutrality in Humanitarian Law and the Courant Normal.

Keywords: Conflict Party; Neutral State; Impartiality

A. Introduction

Conflicts between countries have an impact on countries outside the parties to the conflict. The decision to choose or not to choose one side is related to international political interests. The freedom to determine one's stance on international issues is the right of a sovereign state. World peace can be disrupted by conflicts involving many countries. As subjects of law with international personality, countries have the ability to exercise their rights and obligations. The division of jurisdiction and the inability to fully meet all needs within a country create a situation where countries seek to fulfil their own interests. However, the pursuit of these interests creates opportunities for friction, which can disrupt the stability of world peace and security. The stance taken is a result of good relations between countries. In addition, there is a movement to not choose either side or to remain impartial, also known as neutrality. This neutral stance is recognised and regulated in international law, namely in the laws of neutrality¹.

The neutrality of a country in an international dispute has largely been ignored in international law. The subject of neutrality has not been widely discussed, resulting in minimal interaction in international law. Not many countries have declared themselves as neutral countries. The demand to maintain a consistent neutral stance amid pressure from neighbouring countries is considered quite challenging. In addition, conflicts between countries due to conflicting interests are also taken into consideration when choosing a country's stance.

¹ Menno T. Kamminga, 'International Law', in *Introduction to Law*, vol. 9783319069, preprint, 2014, https://doi.org/10.1007/978-3-319-06910-4_11.



Maintaining neutrality as a country poses significant challenges. Interdependence sometimes encourages countries to continue economic activities with countries in conflict. In meeting national needs, especially economic needs, neutral countries face certain limitations due to their status. The requirement to remain non-participatory and impartial towards countries in conflict has an impact on the fulfilment of the national needs of countries with neutral status.

Conflicts between countries have an impact on countries outside the parties to the conflict. The decision to side with or not side with one of the parties is related to the foreign policy interests of each country, both the disputing countries and third countries. The freedom to determine one's stance on international issues is the right of a sovereign state. The stance taken is a result of good relations between countries.

Some disputes sometimes trigger strong responses from the international community, particularly those related to humanitarian issues. Condemnation, offered as a form of appeal to end the dispute, has in some cases had no effect, particularly on perpetrators who are superpowers. The ability to continue meeting the needs of the country will gradually diminish as the dispute continues over a long period of time. Economic sanctions become an alternative means for third countries to attempt to end the dispute.

B. Research Method

This research is a legal study conducted to find solutions to existing legal issues. This legal research was conducted using several approaches. The approaches used are the statute approach, namely the 1907 Hague Convention V on the Rights and Duties of Neutral States and Persons in Land Warfare, the 1907 Hague Convention XIII on the Rights and Duties of Neutral States and Persons in Naval Warfare, the 1949 Geneva Convention IV on the Protection of Civilians in Time of War, and the conceptual approach, namely Neutrality in Humanitarian Law and Courant Normal. This research focuses on the discussion of Neutrality in Contemporary International Law and the Legal Consequences of the Status of Neutral States in Relation to International Armed Conflicts.

C. Results and Discussion

1. Neutrality in Contemporary International Law

1.1 The Development of Neutrality

Discussing the issue of neutrality cannot be separated from International Humanitarian Law (hereinafter referred to as IHL). The law governing matters of war is a branch of public international law that relates to the existence of international law to regulate global society in



the event of war and armed conflict². According to J. G. Starke, "the laws of war consist of the limits set by international law within which the force required to overpower the enemy may be used, and the principles thereunder governing the treatment of individuals in the course of war and armed conflict". Based on the definition outlined by J. G. Starke and Jean Pictet, it can be understood that humanitarian law is a part of public international law that can be applied in times of war or armed conflict.

According to Kalshoven, neutrality has two meanings, namely not participating in a conflict and not taking sides. Non-participation in a conflict means that there is an obligation to refrain from actions related to the conflict. In the position of a neutral country, there is an obligation to treat the conflicting parties equally. The law of neutrality governs the legal relationship between countries involved in an armed conflict and countries that do not participate in the hostilities, known as neutral countries. The purpose of this law is to localise war, limit the conduct of war, both on land and at sea, and reduce the impact of war on international trade.

The term neutrality has many connotations, and its meaning has evolved over time, so the law of neutrality must be understood historically. It began with Grotius's thinking in the 16th century, which explained that neutrality is understood in two different ways based on certain conditions. First, if the warring parties can be identified as to the cause, then it is obligatory for non-involved countries not to do anything that could prevent the war from happening or not to help the parties. second, if there is doubt about which party caused the war, impartiality is the middle ground for non-involved countries. Entering the 17th century, neutrality developed alongside the concept of autonomous norms capable of imposing structure on the international order, supported by state sovereignty. In the 18th century, the rules governing intervention in wars with neutral trade developed with far greater precision than previously known. It was these developments that led to the 1856 Paris Declaration.

Neutrality can be used to determine foreign policy and the legal status of an international conflict. Unlike countries that obtain neutral status based on certain conditions, the requirement to maintain a neutral stance does not have to be fulfilled. The most famous neutral country during the Second World War was Switzerland, a historically neutral country. Swiss neutrality was maintained with strong military support for its mountainous territory. Apart from Switzerland, not many countries were able to remain neutral during World War

² Ibid.



II, due to the numerous attacks between the blocs. Switzerland successfully handled the legal rules of neutrality.

It should be noted that the political concept of neutrality differs from its legal definition. According to James Upcher, neutral status can be obtained in two ways, namely permanent neutrality and neutrality due to conflict. Permanent neutrality is a product of the 19th century, whereby the neutral status of the country concerned will always remain neutral forever. Meanwhile, neutrality due to conflict is a neutral stance based on certain conditions, taking into account the impact in the future. A country that does not take part in a war between other countries is referred to as neutral.

The term neutrality comes from the Latin word *nauter*. Neutrality can be defined as an attitude of impartiality adopted by a third country towards warring parties and recognised by those parties³. Such an attitude creates rights and obligations between the non-partisan state and the warring parties. The adoption by a third country of a non-partisan stance during a war is not a matter for international law, but for international politics. Therefore, except for prior agreements that have explicitly defined the neutral status of a country under international law, there is no obligation in this regard. The neutral or non-neutral stance of a sovereign state that is also a member of the UN can be taken based on an agreement that has established it. However, not all countries explicitly declare their neutrality or otherwise, either in statements or actions. This relates to the rights and obligations arising from such neutrality.

The first distinction that must be made among the various types of neutrality is permanent neutrality. Permanent neutrality is neutrality whereby the status is held by countries that are neutralised under special agreements, such as Switzerland, Belgium and Luxembourg. Regardless of the duties arising from their neutralisation in times of peace or war, the duties and rights of neutrality are the same as those of other types of neutrality. It should be noted that as a neutral country, it is not only obliged not to assist in war but also to prevent the use of neutral territory for military purposes. The following are the types of neutrality:

a. General and Partial Neutrality

General neutrality is the neutrality of a country that has no part of its territory neutralised by treaty. Partial neutrality, on the other hand, is the neutrality of a part of a country that has

³ Kamminga, 'International Law'.



an obligation to remain neutral. Examples of this are the Ionian Islands of Corfu and Paxos, which belong to the Kingdom of Greece (now the Ionian Islands of the Hellenic Republic).

b. Voluntary and Conventional Neutrality

Neutrality is neutrality that is not bound by general or specific agreements to remain neutral in a particular war. Countries that choose to be neutral can relinquish their impartiality and take part in a war at any time. In contrast to conventional neutrality, this neutrality is a country's stance to remain neutral in a war.

c. Armed Neutrality

Armed neutrality is a state's stance to take military action with the aim of maintaining its neutrality against the possible exploitation of neutral territory. This stance aims to defend neutral rights from possible threatening violations.

d. Benevolent neutrality

Benevolent neutrality stems from an ancient concept, whereby the obligations imposed by neutrality were not strict, allowing states adhering to this principle to support one of the warring parties in many ways without violating their neutral stance. This form of neutrality is closely related to diplomatic negotiations in the modern era.

e. Perfect and Qualitative Neutrality

Perfect neutrality is when a neutral country does not actively or passively, directly or indirectly, favour one of the warring parties. Meanwhile, qualified neutrality is when a country remains neutral overall but actively or passively, directly or indirectly, provides assistance to one of the warring parties as a consequence of an agreement made before the war and not exclusively for that particular war.

The concept of neutrality policy according to Suter (1998) and Riklin (1991) provides different classifications of neutrality as follows:⁴

- a. Non-Military Non-Alignment Neutrality: there is no obligation or contract to support the warring forces, but the country may choose to support one side.
- b. Specific Conflict Neutrality: a country declares its neutrality for a specific conflict.
- c. Permanent Neutrality: a declaration that a country will not take sides in any warring forces, even before any conflict can be anticipated.
- d. Armed Neutrality: a declaration by a country that it will be prepared to defend its neutrality by its own means.

⁴ Marcel Stolz, *On Neutrality and Cyber Defence 2 . Cyber Studies in Political Science 3 . Switzerland ' s Tradition of Neutrality Policy*, 2017.



- e. Integral Neutrality: a very strict and absolute interpretation of neutrality with isolationist aspects. No international organisations should be joined, and no economic sanctions should be followed.
- f. Differential Neutrality: international organisations may join and economic sanctions may be followed if they are widely accepted by the international community and there are no military sanctions. The aim is to defend oneself without taking sides with any power.
- g. Active Neutrality: recognition by neutral states of their responsibility for world peace.

The change in neutrality can be seen in Dana's Revision of Wheaton Classic Text. In his original work, Wheaton, in 1836, argued that the fulfilment of treaty obligations prior to the outbreak of war did not result in the loss of neutrality or make neutrals enemies of other warring nations, as this did not make them allies. In 1866, Dana stated in his revision that modern progress had become a pressure on pure and impartial neutrality⁵. It is further explained that it is difficult for a country to maintain its neutrality due to certain limitations that conflict with the principle of neutrality. Related to the changes described in Dana's Revision of Wheaton Classic Text, Hugo Grotius in the 16th century discussed the doctrine of just war. In the framework of , Grotius's thoughts on neutrality are explained in terms of two different actions based on certain conditions. First, if the warring parties can be identified as to the cause, then it is obligatory for non-involved countries not to do anything that could prevent the war from happening or not to help the parties. The second condition is that if there is doubt as to which party caused the war, non-partisanship is the middle ground for non-involved countries. According to Grotius, it would be more beneficial if a country had made an agreement with one of the warring parties to stay out of the war and continue to engage in activities with the rest of humanity. Grotius further emphasised that the mandatory aspect of neutrality is to not help in any way or to abstain.

Based on this, the concept of *courant normal* was developed, which is the embodiment of maintaining post-war trade relations⁶. The concept of *courant normal* developed throughout the Cold War. This principle emphasises that neutral countries should not be exposed to any accusations of bad faith against one of the warring parties. In other words, changes in post-war trade relations do not affect the neutrality of neutral countries. The

⁵ James Upcher, 'Neutrality in Contemporary International Law', preprint, 2020, 340.

⁶ Ibid.



concept of normal courant itself did not develop as a rule in international law, but was limited to policy for neutral countries only.

1.2 Neutrality in Inter-State Relations

1.2.1 Decision-Making Theory in Determining Foreign Policy

Foreign policy is based on national interests and is directed towards achieving and protecting what is categorised or defined as "National Interests"⁷. Foreign policy emerges as a social phenomenon because no country can meet all its social, political and economic needs by relying solely on the resources available within its own territory⁸. External actions taken by a country in an effort to fulfil its needs include the following methods⁹:

- a. Diplomacy, the government's efforts to communicate with other countries in pursuit of national interests, rationalisation of those interests, threats, promises, and the possibility of acceptable agreements on an issue. In essence, diplomacy is an effort to negotiate between countries by making certain offers in order to achieve optimal national interests through official channels.
- b. Propaganda is the government's effort to influence the behaviour and opinions of foreign publics or other countries so that they are in line with what is expected. The influence of foreign public opinion or other countries is expected to influence the behaviour and policies of their governments.
- c. Economics refers to the government's efforts to manipulate international economic transactions in order to achieve national objectives. Manipulation takes the form of rewards or coercion. Coercive economic transactions are used to influence foreign governments in their domestic and foreign policy-making. Rewards are used to support foreign governments in making decisions in line with the wishes of the supplying country.
- d. Military, the government's efforts to use military threats and/or support to influence foreign countries in their foreign policy decisions.

The international system functions as a constellation of states interacting with one another. The international system can be viewed as macro-level social interaction involving actors at various levels. According to Taku Maki, one useful conceptual tool for explaining

⁷ Yanyan Mochamad Yani, 'Politik Luar Negeri', *Politik Luar Negeri*, 2007, 1–13.

⁸ Upcher, 'Neutrality in Contemporary International Law'.

⁹ Arif Wicaksana, 'Tinjauan Umum Hubungan Internasional', <https://Medium.Com/>, 2016, 22.



the complex international system is the ranking analysis approach¹⁰. According to Joyce Kaufman, ranking analysis will be the overarching framework needed to understand international relations¹¹. In Stuart Robinson's view, ranking analysis is a relatively complete point of view or aggregation for organising research, usually to identify the main causes behind several aspects of international behaviour¹².

The ranking analysis approach as a method for studying international relations was first introduced by Kenneth Waltz through the concept of Three Images¹³. There are three levels of analysis that can be used to study the reasons why war can occur. The first level is human behaviour, where human selfishness is a factor in the occurrence of war. The second level is the internal structure of states, focusing on internal factors within a country such as ideological foundations. The third level is the anarchic nature of the international system, focusing on the structure of the prevailing international system or how the international system works. The level of analysis influences the decisions and actors behind the policies implemented by a country.

Establishing an analytical ranking aims to understand the factors that drive a country's actions in its international relations, such as¹⁴:

- a. Whether actions merely reflect the individual preferences of the leaders of the countries concerned;
- b. Are actions the result of the political and bureaucratic forces within the country?
- c. Whether a country's actions can be seen as a resonance of national interests that have been formulated in national objectives and policies;
- d. Are the actions of a country only seen as a response to signals and situations that occur in the regional or global system?

According to Mohtar Masoed, ranking analysis is considered important because¹⁵:

- a. It can explain an international event that may have more than one contributing factor;
- b. It can assist in selecting the factors that should be emphasised;
- c. It enables the selection of the impact of a set of specific factors on a phenomenon;

¹⁰ Taku Tamaki, *The Level of Analysis of International System*, in *Ashgate* (United Kingdom, 2012).

¹¹ Joyce P. Kaufman, 'Introduction to International Relations: Theory and Practice', *Rowman and Littlefield Publishers Inc.*, 2013, 10.

¹² Stuart Robinson, 'Level of Analysis', *Routledge Handbook of Defence Studies*, 2005, 88.

¹³ Kenneth Waltz, *Man, the State and War* (Columbia University Press, 1959).

¹⁴ Daniel S. Papp, *Contemporary International Relations: Framework for Understanding* (Longman Publishing Co., 2002).

¹⁵ Mohtar Mas'oed, 'Ilmu Hubungan Internasional: Disiplin Dan Metodologi', *LP3ES*, 1990.



- d. Can explain possible methodological errors known as the fallacy of composition (an error resulting from assuming that generalisations about the behaviour of 'parts' can be used to explain the 'whole') and the ecological fallacy (an error resulting from assuming that generalisations about the behaviour of the 'whole' can be used to explain 'parts').

The factors influencing decisions can be identified by conducting a ranking analysis. The determination of the ranking analysis has an impact on decision-making in a country's foreign policy. Foreign policy is implemented through foreign policy actions, which are a means for countries to meet their needs.

1.2.2 Foreign Policy in Neutral Countries

The subject of international politics, as an important part of international relations studies, also places great emphasis on explaining the interests, actions, and elements of power of major countries. The study of international politics includes discussions of patterns of behaviour of a country and patterns of reaction or response from other countries¹⁶. International politics also pays attention to the international system, deterrence, and the behaviour of decision makers in situations of inter-state conflict. According to Thomas Diez, foreign policy can traditionally be defined as a country's policy directed at external actors, particularly other countries¹⁷. The subject of foreign policy is generally inseparable from the study of foreign policy objectives. Foreign policy objectives are generally understood as one of the goals that a country wishes to pursue in its interactions with other countries¹⁸. Foreign policy objectives can be divided into short-term, medium-term, and long-term objectives. This division is based on the need for response, with short-term objectives being urgent, medium-term objectives being strategic, and long-term objectives being general and ideal¹⁹.

Discussions on foreign policy generally include elaborations on foreign policy orientations, determinants of foreign policy, techniques or instruments of foreign policy, the international roles that a country can play through foreign policy, a country's global strategy and world view, the foreign policy decision-making process, and so on²⁰.

¹⁶ Selly Meilianawati, 'Pengaruh Implementasi Kebijakan Extended Deterrence Amerika Serikat Terhadap Kondisi Stabilitas Keamanan Semenanjung Korea', *E Journal* 5, no. 4 (2017): 1331–38.

¹⁷ Thomas Diez et al., *Key Concepts in International Relations*, in *Key Concepts in International Relations* (2014), <https://doi.org/10.4135/9781446288344>.

¹⁸ Umar Surya Bakri, *Dasar-Dasar Hubungan Internasional* (Kencana Prenada Media, 2017).

¹⁹ Ibid.

²⁰ Ibid.



A country's neutrality in foreign policy is closely related to neutral countries, one example being Switzerland. Neutrality was not only chosen by Switzerland, but was also enforced by the major European powers during the reorganisation process after the Napoleonic Wars.²¹ Switzerland was required to demonstrate its neutrality as a neutral country. The policies issued by Switzerland today are considered not to reflect how a neutral country should be. Switzerland's history as a permanent neutral country after its recognition at the Congress of Vienna in 1815, with the statement "in the true interest of the whole of Europe", occupied the highest position in the mid-19th century as a location for the international community carrying out special functions in the field of world peace. Basically, neutral countries cannot rely on foreign powers to protect their interests and then develop exceptions that arise due to circumstances. Micheline Calmy-Rey, President of the Swiss Confederation in 2007 and 2011, decided on a foreign policy related to neutral status, namely active neutrality towards her country. This is related to Switzerland's participation in achieving world peace through the United Nations.

Unlike Indonesia, as one of the countries that actively participates in world peace activities, it advocates a free and active foreign policy. The principle of Indonesia's 'free and active' foreign policy has a double meaning: firstly, it aims to maintain national identity and secondly, it is a manifestation of national ideals as stated in the preamble of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), namely 'to promote general welfare, to educate the nation and to participate in establishing world order based on lasting peace and social justice'²². This principle refers to the protection of national interests. Indonesia's independence and activeness in determining its foreign policy stance and policies, by bringing its own people's interests without any bloc power on various issues related to stability, peace and better world order. Indonesia's commitment to maintaining world peace and security is embodied in this foreign policy principle. National identity in Indonesia's free and active principle explains diversity and tolerance, which is then implemented in the international world as a pluralistic global characteristic that tends towards universalisation and uniformity of global values. In Law of the Republic of Indonesia Number 37 of 1999 concerning Foreign Relations, Article 19 states that it is an obligation to

²¹ Stolz, *On Neutrality and Cyber Defence 2 . Cyber Studies in Political Science 3 . Switzerland ' s Tradition of Neutrality Policy*.

²² Mangadar Situmorang, 'Orientasi Kebijakan Politik Luar Negeri Indonesia Di Bawah Pemerintahan Jokowi-JK', *Jurnal Ilmiah Hubungan Internasional UNPAR*, 2015, 67–85.



implement the free and active principle in all foreign relations, both governmental and non-governmental. Based on this article, it is clear that Indonesia's foreign policy focuses not only on relations between countries, but also on the interests and protection of its citizens. Quoting a statement by the Indonesian Minister of Foreign Affairs, Retno Marsudi, in a press conference at the G20 Summit (hereinafter referred to as G20) in Denpasar on 15-16 November 2022, via the Metro TV News YouTube account, stated that the free and active policy adopted by Indonesia does not mean neutrality, but rather freedom to make decisions and take positions, and actively contribute to efforts to achieve world peace. Indonesia's free and active principle in foreign affairs is essentially a neutral policy, but rather a political principle whereby Indonesia has the freedom to express its stance and policies on a particular issue²³. Currently, Indonesia is trusted as the President of the G20 International Organization to play an active role because this conflict (Rusia-Ukraina) has an impact on the economy of not only the conflicting countries but also other international countries. It is possible that the peace path to build international stability is made by neutral countries including Indonesia which places itself as a mediating country²⁴.

The attitudes demonstrated by both Switzerland and Indonesia can be analysed through ranking analysis. Switzerland, as a neutral country, adheres to active neutrality based on statements made by the President of the Swiss Confederation in 2007 and 2011, Micheline Calmy-Rey. President Micheline's decision can be categorised in the second level of the internal structure of states belonging to Kenneth Waltz and state level analysis belonging to Charles Kegley and Shannon Blanton. In establishing its policy as an adherent of active neutrality, Switzerland pays attention to the needs arising from within the country, while still including its role as a neutral country.

1.2.3 Interstate Relations in Situations of Conflict and Peace

Peace can be defined as a condition in which communities can live side by side, despite their cultural, social and other differences²⁵. The father of peace studies, Johan Galtung,

²³ Saryono Saryono et al., 'Sikap Politik Dan Hukum Internasional Indonesia Terkait Penyerangan Rusia Ke Ukraina', *Jurnal Citizenship Virtues* 2, no. 2 (2022): 386–97, <https://doi.org/10.37640/jcv.v2i2.1529>.

²⁴ Della Paula Ajawaila, 'Indonesia's Position As Mediating State In Handling The Conflict Russia-Ukraine Conflict Based On The Concept Of Responsibility To Protect (R2P)', *Widya Pranata Hukum : Jurnal Kajian Dan Penelitian Hukum* 6, no. 1 (2024): 109–17, <https://doi.org/10.37631/widyapranata.v6i1.1548>.

²⁵ M. Prakoso Aji and Jerry Indrawan, 'Memahami Studi Perdamaian Sebagai Bagian Dari Ilmu Hubungan Internasional Understanding Peace Studies As Part of International Relations', *Pertahanan & Bela Negara* 9, no. 3 (2019): 65–83.



emphasises that a peaceful condition is one without violence and social injustice in society²⁶. Johan Galtung mentions that there are two definitions of peace, as follows²⁷:

- a. Negative Peace, characterised by the absence of conflict between two or more parties seeking to achieve their respective interests.
- b. Positive Peace is characterised by the existence of non-coercive conflict resolution mechanisms to prevent conflicts from arising.

The biggest difference between relations between countries in conflict and in times of peace is the guarantee of security. The threat of attack during a conflict situation affects the lives of the people of each country involved. Daily routines cannot be carried out freely as they are in times of peace. Trauma then arises after an attack, in this case an international armed conflict.

The United Nations (hereinafter referred to as the UN) is the primary organisation dedicated to peace and security. The UN has played many roles in the peace process, with its track record improving since the end of the Cold War. This is in line with the UN's objective in Article 1 of the UN Charter, which is to maintain peace and security.

1.3 Impact of Neutral Status on Conflicting Countries and Third Countries

The UN Charter obliges member states to resolve disputes between them peacefully. When disputes arise between countries, before submitting them to the UN, the disputing parties are required to seek resolution through negotiation, statements, mediation, referral, arbitration, peaceful means through regional institutions or any other means they deem appropriate to achieve peace. Specifically, the UN Charter stipulates that the use of threats or military force is prohibited. The determination of threats or breaches of peace or acts of aggression, as set out in Chapter VII, gives the Security Council the authority to decide on non-military or military enforcement measures designed to maintain or restore international peace and security²⁸. Decisions made by the UN Security Council must go through a deliberation mechanism with other member states and must then be implemented by members under the UN Charter. Non-military sanctions, such as economic and diplomatic sanctions, as well as military sanctions imposed by the Security Council, are joint decisions

²⁶ Loreta N. Castro and Jasmine N. Galace, 'Peace Education: Pathway to A Culture of Peace', *Centre of Peace Education*, 2010.

²⁷ Aji and Indrawan, 'Memahami Studi Perdamaian Sebagai Bagian Dari Ilmu Hubungan Internasional Understanding Peace Studies As Part of International Relations'.

²⁸ Christopher Tuck, 'Land Warfare', *Routledge Handbook of Defence Studies*, 2018, 171–85, <https://doi.org/10.4324/9781315650463-15>.



made by all member states. Decisions in the form of resolutions are based on Article 27 Chapter V Security Council of the UN Charter as follows:

1. Each member of the Security Council shall have one vote
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in the decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting

At least nine of the total members are required, including five votes from the permanent members, namely China, France, Russia, the United Kingdom and the United States.²⁹

Claims of neutral status have a significant impact on the economic stability of a country. The restrictions that should be considered as standards for a neutral country indirectly become a benchmark for the validity of that status. Countries that have chosen to remain neutral, either permanently or only in certain armed conflicts, are not prohibited from showing a positive or negative attitude towards other countries, nor are they subject to restrictions on expression within their own borders. In general, neutral countries are not allowed to participate in hostilities by providing assistance, recruiting troops, supplying military equipment, or providing military intelligence³⁰. Despite these restrictions, neutral countries have the right to trade with all warring countries by applying the principle of impartiality.

Unlike recognition of non-international armed conflict (NIAC) or civil war, which then becomes international armed conflict (IAC) due to recognition of belligerents by sovereign states. It is possible for a state to recognise an IAC conflict which then becomes NIAC. The decision to remain neutral or become involved in the warring parties is entirely up to the state. An important note to be aware of is that recognition by a third country of belligerents must also be carried out by the legitimate government.³¹. This will have an impact on the loss of neutrality, resulting in the loss of previously attached rights and obligations.

²⁹ Ibid.

³⁰ Saint Maurice et al., *Published on How Does Law Protect in War? - Online Casebook* (<https://Casebook.Icrv.Org>), XII, no. September (2001): 1–4.

³¹ Kamminga, 'International Law'.



2. Legal Consequences of Neutral State Status in Relation to International Armed Conflicts

2.1 Types of International Armed Conflict

The United Nations (hereinafter referred to as the UN), as an international organisation with the aim of maintaining international peace and security, requires all members to resolve international disputes peacefully. Using such means that international peace and security and justice are not threatened. Article 33 of the UN Charter states that several options are available for alternative dispute resolution, including negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, regional arrangements or other peaceful means mutually agreed upon. Disputes that cannot be resolved through alternative means in accordance with UN recommendations have the potential to lead to international armed conflict.

Wars always begin with a conflict of interest between two or more countries disputing a national interest related to sovereignty.³² The Commentary Geneva Conventions explains the definition of armed conflict, namely, Any difference arising between two states and leading to intervention of armed forces is an “armed conflict” within the meaning of Art. 2, even if one of the parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place. Intervention by one country in the interests of another country marks the beginning of an armed conflict. This situation prompts the neighbouring countries of the disputing parties to declare their position. This declaration of position is a form of exercising national interests. The main factor influencing this declaration of position is economics. National needs cannot be fully met by the state, thus requiring assistance from other states. High dependence leads to a tendency towards certain states. However, not all states can take a firm stance on a war between states. One reason for this is their status as neutral parties.

International armed conflicts prior to 1949 did not take into account territorial sovereignty. The provisions of the 1949 Geneva Convention state that,

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them;

³² Chad R. Fulwider, *German Propaganda and U.S. Neutrality in World War*, ed. Chad R. Fulwider (University of Missouri Press, 2016).



The convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance³³.

The conditions set out in Article 2 are armed conflicts between two or more states, either in a situation of declared war or in a state of war not recognised by the parties. Purely international armed conflicts must be conducted by state subjects.

Between 1974 and 1977, the ICRC, as the organisation that regulates and coordinates humanitarian aid activities, assessed that there was a need to update the 1949 Geneva Convention relating to the rules of international humanitarian law applicable in armed conflicts (). The development of weaponry technology and the emergence of various new types of warfare not covered by the 1949 Geneva Convention led to the adoption of Additional Protocol I (Protocol Relating to the Protection of Victims of International Armed Conflicts) and II (Protocol Relating to the Protection of Victims of Non-International Armed Conflicts) in June 1977. Additional Protocol I, which covers international armed conflicts, explains in Article 1 paragraph (4) that,

The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations³⁴.

The article refers to international armed conflicts, including colonial domination, alien occupation and racist regimes, or what are known as CAR conflicts. According to Additional Protocol I, a CAR conflict is an armed conflict that arises between states with colonial domination, alien occupation and racist regimes. The new categories mentioned in Additional Protocol I refer to several previous cases, namely Angola and Mozambique under Portuguese colonial domination, Palestine occupied by Israel (alien occupation), and the apartheid policy in South Africa (racist regime)³⁵. These movements are solely aimed at determining their own destiny through armed violence by the people. The people in this

³³ International Committee of the Red Cross, *The Geneva Conventions of 12 August 1949*, no. August (1949): 224.

³⁴ Michael Bothe, 'Protocol I: Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)', *New Rules for Victims of Armed Conflicts*, no. August 1949 (2014): 15–31, https://doi.org/10.1163/9789004254718_003.

³⁵ Mirsa Prajodi et al., 'Konflik Bersenjata Di Wilayah Ukraina Tahun 2014 Menurut Hukum Humaniter Internasional', *Belli Ac Pacis* 1, no. 1 (2015): 89–99.



case are a group of people who have been recognised by the legitimate government in the region. They can consist of various ethnicities, languages and cultures, who have political similarities and desires to live together as a nation³⁶. Referring to this, according to KPHG. Haryomataram, in addition to armed conflicts between countries, there are conflicts carried out by countries against people, referred to as pseudo-international armed conflicts. Pseudo-international armed conflicts are divided into two types, namely Wars of National Liberation and Internationalised Internal Armed Conflict. Wars of National Liberation are different from Internationalised Internal Armed Conflict. Internationalised Internal Armed Conflict can be considered a Non-International Armed Conflict due to the recognition or assistance from a third country, developing into a Non-International Armed Conflict that has been internationalised.³⁷ Pietro Verri explains that Internationalised Internal Armed Conflict must meet the following criteria:

1. The country where the rebellion took place recognises the rebels as belligerents or warring parties.
2. One or more foreign countries assist one of the armed forces involved.
3. Two foreign countries intervene with armed forces and assist each of the warring parties.

2.2 Impartiality and Non-Participation of Neutral Countries in International Armed Conflicts

As a non-participating state, neutral states are obliged to avoid involvement in a conflict.³⁸ As further explained in Frits Kalshoven's book *Reflection of the Law of War*, such actions relate to attitudes in war. The non-participation referred to by Kalshoven does not diminish the right of neutral countries to defend themselves and protect their legitimate interests under international law. Neutral countries treat the parties fairly, which in turn implies an obligation. According to Kalshoven, neutrality has two meanings: non-participation in a conflict and impartiality. Non-participation in a conflict means that there is an obligation to refrain from actions related to the conflict. Impartiality means that there is an obligation for neutral states to treat the parties to the conflict equally.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Frits Kalshoven, *Reflections on the Law of War Collected Essays*, in *Reflections on the Law of War*, ed. Frits Kalshoven (Martinus Nijhoff Publisher, 2007).



2.2.1 The Hague Convention V of 1907 on the Rights and Duties of Neutral Powers and Persons in Land Warfare

Convention V of the Hague Convention of 1907 is one of 13 conventions that were refined and subsequently agreed upon at the Second Peace Conference following the First Peace Conference in 1899. This series of conventions is known as the Hague Laws, which regulate the means and methods of warfare. In this convention, neutral countries, as one of the objects regulated in addition to neutral persons, have the right to inviolability in terms of territorial sovereignty, as stated in Article 1: "The territory of neutral powers is inviolable."³⁹

The non-involvement of neutral countries in land wars highlights the spatial limitations of warfare. Furthermore, neutral countries are required to remain impartial and not take sides. Article 9 states that, 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 the same obligation being observed by companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus⁴⁰.

The impartial stance of treating all parties equally without exception in relation to Articles 7 and 8 is the embodiment of the fundamental value of neutrality.

In relation to the concept introduced by Kalshoven, in line with the explanation contained in Article 9, namely non-participation and impartiality. Further explained in Article 9, the absence of restrictions or prohibitions in relation to Article 7, namely regarding export transport on behalf of one of the warring parties and in part; Article 8, namely the absence of restrictions on the use of telegraphs or telephone cables on behalf of the warring parties and in part, is a continuous action. The stance of non-participation, which then changed to non-partisanship, is a reduction in the value of neutrality for a neutral country's position between countries in conflict. It is stated in the International Court of Justice's statement in Legality of Threat or Use of Nuclear Weapons that the principle of neutrality applies in all international armed conflicts regardless of their nature⁴¹.

2.2.2 The Hague Convention XIII of 1907 on the Rights and Duties of Neutral Powers in War at Sea

³⁹ T H E Rights et al., 'Convention Regarding the Rights and Duties of Neutral Powers and Persons in Case of War on Land', *American Journal of International Law* 2, nos 1–2 (1908): 117–27, <https://doi.org/10.2307/2212503>.

⁴⁰ Ibid.

⁴¹ Mimbar Hukum, *The Principle of Neutrality At Sea After*, 29 (2017): 588–603.



This convention is part of the Second Peace Conference, which discussed the rights and obligations of neutral powers in maritime warfare. Article 1 states that belligerents are bound to respect the sovereign rights of neutral powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any power, constitute a violation of neutrality. Article 1 emphasises that belligerents must respect sovereign rights, and that certain actions within neutral territory, even if permitted, still constitute a violation of neutrality. The provision in Article 1 regarding permission by any Power (if knowingly permitted by any Powers) indicates that respect for neutral countries demonstrates impartiality rather than non-participation. In relation to the theory put forward by Frits Kalshoven, the phrase "if knowingly permitted" indicates that there are situations where it is known and permitted by the competent authorities, including the neutral country itself. This indirect participation by neutral countries then supports impartiality or non-participation or gives the same attitude towards the parties in conflict.

2.2.3 Geneva Convention IV of 1949 on the Protection of Civilian Persons in Time of War

Civilians outside the military and medical personnel must be protected during wartime, in the sense that they may not be targeted in attacks. Article 33 states that

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited.

The prohibition against retaliating against protected persons and their property is mentioned in the last sentence. The obligation to remain impartial and not participate as a consequence of being a neutral country also applies to individuals who are citizens of the warring parties and their property. This includes individual assets located in the territory of a neutral country. No action may be taken with regard to such assets for any reason whatsoever.

D. Conclusion

War always begins with a conflict of interest between two or more countries disputing a national interest related to sovereignty. A third country, as a country outside the disputing parties, has the right to determine its stance on the war. The biggest factor influencing this decision is the need to maintain the economic stability of the third country. However, there are also countries that choose to remain neutral. Neutrality is a stance of non-participation



on all sides, present at the time of war. In the book *Reflection of the Law of War* by Frits Kasholven, non-participation does not diminish the right of neutral countries to defend themselves and protect their legitimate interests under international law.

Neutrality as an impartial stance in its development conflicts with the fulfilment of the needs of third countries in relation to the warring parties. Obstacles that affect economic stability influence third countries in taking a firm stance in a war. Except for countries that have been designated as neutral countries based on agreements, such as Switzerland, Belgium and Luxembourg. The shift in the value of neutrality based on the losses incurred as a result of war gave rise to the concept of *courant normal*, as explained in Dana's Revision of Wheaton Classic Text in 1836. The concept of *courant normal* is, in broad terms, the embodiment of maintaining trade relations after a war has occurred. Trade relations are closely related to economic ethics, including the imposition of economic sanctions based on Chapter VII of the UN Charter.

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