

**THE INTERPLAY BETWEEN NEUTRALITY,  
QUALIFIED NEUTRALITY AND CO-BELLIGERENCY  
IN THE CONTEXT OF U.S. INTERVENTION  
IN THE RUSSIA-UKRAINE WAR**

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**Summary:** The United States of America (U.S.), and the European Union (EU) have supplied weapons to Ukraine in the ongoing Russian-Ukraine armed conflict. The Pentagon has pledged thousands of weapons to Ukraine as part of the security/military aid to worn-torn Ukraine. The supply of such weapons by a neutral/non-belligerent state stands in clear violation of the laws of Neutrality which casts a duty on the neutral states to refrain from participating in the hostilities and be impartial in their conduct towards the belligerents. However, the argument of the U.S. government in previous such instances has been that laws of neutrality have been overshadowed by the United Nations (UN) Charter and modern forms of warfare and the U.S. maintains that they fall under *qualified neutrality* after the 20<sup>th</sup> century. However, Qualified Neutrality is not recognised either under treaty conventions or customary international law. Similarly, international laws in terms of co-belligerency are also governed by International Humanitarian Laws (IHL) under the Four Geneva Convention of 1949 which lays down rules where military assistance by a neutral state can result in co-belligerency. However, no existing treaty or international law lays down a clear threshold for crossing from a neutral state to a co-belligerent state which has also led to an ambiguity in terms of checks and balances of the lethal weapons supplied to Ukraine by the U.S. currently. This article attempts to define the threshold in terms of severity, effectiveness, and inertia of the intervention. It further argues that the U.S. has crossed its threshold and therefore the existing laws governing violation of neutrality and affixing of state responsibility are now applicable to the U.S.

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## 1 Introduction

The laws of neutrality find mention under several domains of legal jurisprudence. The most literal interpretation is captured in *Max Planck Encyclopedias of International Law* (hereinafter referred to as the MPEIL),<sup>2</sup> which has defined neutrality “as a state not a party to an armed conflict”. This definition of neutrality requires the non-warring states to remain impartial and not participate at any stage of an armed conflict.<sup>3</sup> Neutrality is also an integral part of customary international law which requires all states to declare their status as neutral or non-neutral in an armed conflict.<sup>4</sup> The philosophical underpinnings of neutrality can be traced to the concept of political isolationism which advocates that a sovereign state should refrain from getting involved in the political or strategic affairs of any other country and by extension not get involved in their military operations.<sup>5</sup>

This article will proceed as follows. First, it will discuss the concept of neutrality under international law and then investigate whether the involvement of the U.S. in the ongoing Russia-Ukraine war violates the principle of neutrality. Next, this article will describe the relatively new concept of qualified neutrality and its prevalence in international law. I do so because the U.S. Congressional Research Service (hereinafter referred to as CRS) <sup>6</sup> has evoked the concept of qualified neutrality to justify the supply of weapons to Ukraine in the ongoing war. Further, this article will argue that the U.S. involvement in the Russia-Ukraine war violates both the principles of neutrality and qualified neutrality and therefore, the U.S. can be considered a co-belligerent under international law. Finally, I will describe the responsibility of a co-belligerent under international law.

## 2 Neutrality

### 2.1 History of laws of neutrality

Historically, sovereign states often resorted to war to further their interests and territories. Many of their neighbours either became allies in the war or remained neutral. However, there wasn't any universal concept of neutrality that

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2 BOTHE, Michael. *Neutrality, Concept and General Rules*. *Max Planck Encyclopaedia of International Law*, 2015.

3 SEGER, Paul. The Law of Neutrality. In CLAPHAM, Andrew, GAETA, Paola (eds). *The Oxford Handbook of International law in Armed Conflict*. Oxford University Press, 2014.

4 THOMAS, A.R., DUNCAN, James. The Law of Neutrality. Annotated Supplement to The Commander's Handbook on the Law of Naval Operations, US Naval War College. *International law Studies*, 1999, vol. 73, pp. 365–372.

5 SEGER (n 2) 1.

6 International Neutrality Law and U.S. Military Assistance to Ukraine. [online]. Available at: <<https://crsreports.congress.gov/product/pdf/LSB/LSB10735/3>> Accessed: 19 May 2022.

could comprehensively define what it means to be a non-warring party during an armed conflict.

With increasing global trade because of advancements in shipping during the 16<sup>th</sup> century, a need to define neutrality was felt by the influential nations of that time. Specifically, in the backdrop of the American War of Independence and the Anglo-French War, the United Kingdom (U.K.) started inspecting many European ships for contraband. This resulted in the choking of international shipping lanes and hindered international free trade. In March 1780, upon Russia's initiation under the leadership of Empress Catherine II, the first major treaty called '*The First League of Armed Neutrality*' was signed by major European trading partners. This treaty allowed ships to navigate and access the ports of not only the neutral states but also those of the belligerent states. Only those ships that were carrying contraband were excluded from this treaty.<sup>7</sup>

## **2.2 Explanation of neutrality under international law**

Under international law, the concept of neutrality finds mention in five major conventions. The first two conventions are the Hague Convention (V) respecting the rights and duties of neutral powers and persons in case of war on land, 1907 (hereinafter referred to as 1907 Hague V) and the Hague Convention (XIII) respecting the rights and duties of neutral powers and persons in case of neutral powers in naval war, 1907 (hereinafter referred to as 1907 Hague XIII). These conventions while establishing the obligations of a neutral state do not explicitly define the term "Neutral State". The other three conventions which mention the concept of neutrality are the Paris Declaration, of 1856, the 1949 four Geneva Conventions and Additional Protocol I of 1977. These conventions do not provide any additional insights into the concept of neutrality.

Next, this paper will briefly describe the obligations of a neutral state as described by the 1907 Hague (V) and the 1907 Hague (XIII). The preamble of the 1907 Hague (V) Convention declares that the convention is "desirous of establishing the meaning of the term "neutral". In pursuance of this objective, the convention outlines the obligations of neutral powers as follows: "neutral power cannot export or transport on behalf of one or other belligerents, of arms, munitions of war, or in general, of anything which can be of use to an army or a fleet<sup>8</sup>. Similarly, a neutral power cannot avail himself of neutrality if, he commits acts against a belligerent, commits acts in favour of a belligerent, particularly voluntarily enlisting in the ranks of the armed force of one of the parties".<sup>9</sup> Addi-

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7 *Armed Neutrality*. Encylopeadia.com: Available at: <<https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/armed-neutrality>>; *U.S. Russia Relations*, Available at: <<https://usrussiarelations.org/2/timeline/first-contact/8>> Accessed: 17 May 2022.

8 Art. 7, 1907 Hague (V)

9 Art. 17, 1907 Hague (V)

tionally the convention also imposes restrictions on the belligerent states. For example, the “belligerent states are forbidden to move troops or convoys of either munition of war or supplies across the territory of a neutral power”<sup>10</sup>.

Similarly, the preamble of the 1907 Hague (XIII) declares that “it is for neutral states an admitted duty to apply rules of impartiality to several belligerent states”. It has defined the obligations of neutral states to refrain from assisting belligerents. A neutral power cannot supply warships, weapons, or other types of war material to a belligerent country. A neutral state is also required to refrain from intervening in an armed conflict between belligerent states, giving the belligerents military support, and take the necessary precautions to protect its territorial land, naval, and air space from any incursions by the belligerent states”.<sup>11</sup> On the other hand, the belligerent states are forbidden from committing hostile acts against the neutral states. For instance, they cannot capture or search a warship owned by a neutral country.”<sup>12</sup>

In the context of the Russia-Ukraine war, it is important to note both the belligerent countries, i.e., Russia and Ukraine have ratified both the Hague Conventions of 1907 (V and XIII). Even the U.S. which is claiming to be a neutral state in this war has ratified both conventions.

### ***2.3 Relevance of neutrality under contemporary international law***

This sub-section will discuss, on the one hand, the reasons that are given to argue that the concept of neutrality described in the preceding sub-section is irrelevant in modern international law. On the other hand, it will also discuss the reasons why neutrality is required and needs to be redefined in contemporary international law.

The first reason given by some scholars against the concept of neutrality is that the two main conventions governing the concept of neutrality i.e., the 1907 Hague V and XIII conventions are no longer applicable to modern forms of armed conflict most notably air warfare. Further, even the US Department of Defense (hereinafter referred to as the DOD) stated in 2016 that “it may be inaccurate to presume” that the 1907 Hague V and XIII reflect customary international law.<sup>13</sup>

The second reason for the irrelevance of neutrality is the creation of the United Nations Security Council (hereinafter referred to as the UNSC).<sup>14</sup> Post second

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10 Art. 2, 1907 Hague (V)

11 SEGER (n 2) 2.

12 Art. 2, 1907 Hague (XIII)

13 Department of Defense Law of War manual. [online]. Available at: <<https://dod.defense.gov/Portals/1/Documents/pubs/DoD%20Law%20of%20War%20Manual%20-%20June%202015%20Updated%20Dec%202016.pdf?ver=2016-12-13-172036-190#page=990>> Accessed: 12.06.2022.

14 HATHAWAY, Oona and SHAPIRO, Scott. Supplying Arms to Ukraine is Not an Act of

world war, there was a consensus among nations that steps, including armed intervention, might be necessary to prevent spiraling of a localized conflict into a more global war. The UN Charter, therefore, created UNSC to legitimize the use of force by neutral countries to maintain international peace and security. Therefore, one can argue that the mandate given to UNSC, under the UN Charter's provisions<sup>15</sup> contradicts the principles of neutrality. Some authors conclude that the laws of neutrality are an "old body of law"<sup>16</sup> with a "somewhat musty"<sup>17</sup> quality and are no longer relevant in contemporary international law.

On the other hand, there are several arguments in favour of the continued relevance of neutrality. First, some scholars have argued that the laws of neutrality were explicitly used in several armed conflicts such as the 2003 invasion of Iraq.<sup>18</sup> Second, some scholars argue that the 1907 Hague (V and XIII) continues to be reflective of customary International Law that is binding on all nations unless there is an explicit objection raised.<sup>19</sup>

A more middle ground has been taken by some scholars who argue that although the UN charter supersedes earlier conventions regarding neutrality, it does not explicitly dismiss the concept of neutrality. This argument is best described by the International Court of Justice (hereinafter referred to as the ICJ) in their advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*<sup>20</sup>, where it was held that "principles of neutrality, whatever its content, is a fundamental character applicable to all international armed conflicts subject to the UN Charter."<sup>21</sup>

Building on the above argument, this article will not discuss various provisions of the UN Charter under which a neutral nation can intervene in an armed conflict. It is important to note that the UN Charter also mandates that the use of all these provisions requires the approval of the UNSC and cannot be used unilaterally by any single nation.

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War. *LawfareBlog*, 12 March 2022: Available at: <<https://www.lawfareblog.com/supplying-arms-ukraine-not-act-war>> Accessed: 17 October 2022.

15 Arts 2(5), 25, 33–51, 103, Charter of the United Nations (adopted 26 June 1945) (UN Charter).

16 FERRO, Luca, VERLINDEN, Nelle. Neutrality During Armed Conflicts: A Coherent Approach to Third-State Support for Warring Parties. *Chinese Journal of International Law*, 2018, vol. 17, pp. 15–43.

17 VAGTS, Detlev F. The Traditional Legal Concept of Neutrality in a Changing Environment. *American University International Law Review*, 1998, vol. 14, pp.84.

18 HELLER, Kevin Jon and TRABUCCO, Lena. The Legality of Weapons Transfers to Ukraine Under International Law. *Journal of International Humanitarian Legal Studies*, 2022.

19 BILLER, Jeffrey T., SCHMITT, Michael N. Classification of Cyber Capabilities and Operations as Weapons, Means or Methods of Warfare. *Stockholm Center for International Law, International Law Studies*, 2019, vol. 95, pp.179.

20 Legality of the Threat or Use of Nuclear Weapons, decided on 8<sup>th</sup> July, 1996.

21 Paragraph 89, Legality of the Threat or Use of Nuclear Weapons, decided on 8<sup>th</sup> July, 1996.

The first provision is Article 51 of the UN Charter, which states “that members have an inherent right to individual or collective self-defence if an armed attack occurs against a member of the UN”. This article violates the principle of neutrality and is an exception under Article 2(4) of the UN Charter which prohibits the “threat or use of use of force against the territorial integrity and political independence of any state”. However, Article 51 can be invoked only after the members of the UNSC are satisfied that all necessary steps to maintain peace and security have been exhausted and armed intervention is necessary.

The second provision is Article 2(5) of the UN Charter which authorizes the UNSC to initiate an armed intervention to maintain global peace and security. The UN Charter mandates all members to “give the UN every assistance in any action it takes in accordance with the charter.” In the context of Article 2(5), this means providing support to the military operations of the UN peacekeeping force, imposing trade restrictions, etc.

The resolutions passed under Article 2(5) are binding pursuant to Article 25 of the UN Charter. The legality of Article 25 has been established by the ruling of the ICJ in its *Advisory opinion on Namibia*.<sup>22</sup> The ICJ ruled “when the Security Council adopts a decision under Article 25 in accordance with the Charter, it is up to member States to comply with that decision, including those Security Council members who voted against it and those members of the United Nations who are not members of the Council. To hold otherwise would be to rob this major organ of its fundamental duties and authority granted by the Charter.”<sup>23</sup>

The third provision is Article 39 of the UN Charter which states that the UNSC “shall determine the existence of the threat to the peace or breach or act of aggression and shall decide measures to restore international peace and security.” This article allows UNSC to violate the principles of neutrality specifically under chapter VII of the UN charter by adopting a resolution that has the unanimous approval of the members of the UNSC states. Therefore, all the individual states are bound by the laws of neutrality unless the UNSC adopts a unanimous resolution authorizing the use of force by a neutral nation.

#### ***2.4 Is the U.S. a neutral state in the Russia-Ukraine war?***

The Russia-Ukraine war was initiated in the month of February 2022 and the world community labelled Russia as an aggressor in the war. Consequently, the U.S. along with several European nations decided to help Ukraine and therefore violated neutrality. As stated in the previous section, the only way a neutral state can help a belligerent state is via the approval of the UNSC.

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22 Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, pp.16.

23 *Ibid* paragraph 116 at pp.54.

The UNSC consists of five permanent members including Russia and the U.S. Any of these members can veto any resolution. Using its veto power, Russia rejected UNSC Resolution No. 2623 (2022)<sup>24</sup> introduced by the U.S. and Albania which would have paved the way for U.S. intervention in the conflict. Thus, given contemporary international law, the U.S. did not have the UNSC approval to violate laws of neutrality.

Given that the U.S. has geopolitical interests in Eastern Europe, it has bypassed UNSC and actively supported Ukraine in the ongoing war. The U.S. along with its allies referred the rejected UNSC resolutions to the United Nations General Assembly (hereinafter referred to as the UNGA)<sup>25</sup>. Consequently, UNGA has passed a resolution denouncing Russia's violation of Ukraine's territorial integrity.<sup>26</sup> The U.S. is now using these resolutions to justify its intervention in the conflict. Now, this article will describe the extent of aid given by the U.S. to Ukraine.

According to the U.S. DOD fact sheet on U.S. Security Assistance to Ukraine<sup>27</sup>, released on August 19, 2022, the U.S. has given Ukraine roughly \$10.6 billion in security assistance. This includes around 1400 Stinger anti-aircraft systems, around 8500 Javelin anti-armour systems, over 700 Switchblades tactical unmanned aerial systems, 20 Mi-17 helicopters, tactical secure communications systems and funding for training, maintenance, commercial satellite imagery services among others.<sup>28</sup> Additionally, on August 19, 2022, the DOD announced the eighteenth Presidential Drawdown to provide Ukraine with additional equipment as part of security assistance, valued at \$775 million<sup>29</sup>.

To justify such massive spending, the U.S. federal government introduced the Ukraine Democracy Defense Lend Lease Act 2022 (hereinafter referred to as the Lend Lease-II Act),<sup>30</sup> in the U.S. Congress in May 2022 which received biparti-

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24 S/RES/2623 (2022), United Nations Security Council. [online]. Available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/271/32/PDF/N2227132.pdf?OpenElement>> Accessed: 22 June 2022.

25 UN Security Council, 'Security Council vote sets up Emergency UN General Assembly Session on Ukraine Crisis' (27 February 2022): Available at: <<https://news.un.org/en/story/2022/02/1112842>> Accessed: 1 June 2022.

26 CHEATHAM, Andrew. *Rethinking U.S. Engagement with U.N. in the context of Ukraine: Part One, Ukraine*. [online]. Available at: <<https://www.usip.org/publications/2022/03/rethinking-us-engagement-un-context-ukraine-part-one>> Accessed: 17 May 2022.

27 *Fact Sheet on U.S. Security Assistance to Ukraine, U.S. Department of Defense*. [online]. Available at: <<https://media.defense.gov/2022/Aug/22/2003061456/-1/-1/0/Ukraine-Fact-Sheet-vFinal2.PDF>> Accessed: 17.05.2022.

28 *Id.*

29 U.S. Department of Defense, *\$775 Million in Additional Security Assistance for Ukraine*. [online]. Available at: <<https://www.defense.gov/News/Releases/Release/Article/3134457/775-million-in-additional-security-assistance-for-ukraine/>> Accessed: 20.08.2022.

30 117<sup>th</sup> Congress Public Law, Ukraine Democracy Defense Lend Lease Act 2022, [online]. Available at: <https://www.govinfo.gov/content/pkg/PLAW-117publ118/pdf/PLAW-117publ118.pdf>

san support. Section 2 of the Lend Lease-II Act has authorized the President to lend or lease defence articles to Ukraine and other eastern European countries impacted by the Russian invasion.

This Act is similar to the Lend-Lease Act enacted in 1941 by the U.S. under President Roosevelt which allowed the U.S. to supply food, oil and material to the United Kingdom (U.K.), the Soviet Union and other allied nations during World War II. The aid also included the supply of warships and warplanes along with other weaponry.

While the U.S. congressional approval lends some credibility to the U.S. intervention, it still does not satisfy the requirements to violate neutrality under international law. Therefore, the U.S. intervention violates the 1907 Hague (V and XIII), the U.S. Neutrality Acts of 1930<sup>31</sup>, as well as the spirit of the UN Charter.

On the other hand, the U.S. has justified its intervention by pointing towards human rights violations by Russia against Ukraine and evoking the principle of collective self-defence. Even if one accepts this argument, Article 51 of the UN Charter has stated in *Nicaragua vs. the United States of America*<sup>32</sup> that the interfering state must submit a report to the UNSC with respect to the support extended and its justifications. “Any failure to submit the report will contradict the interfering States’ claim to be acting in self-defence.”<sup>33</sup>

As of now, the U.S. has not filed their report to the UNSC to resort to such actions taken under collective self-defence. Therefore, the weapons and military aid supplied to Ukraine by the U.S. is in clear violation of laws of neutrality under International Law as well as the UN Charter.

In conclusion, the U.S. intervention in the Russia-Ukraine war is in violation of neutrality for two reasons. First, the U.S. has not got approval from the UNSC which is mandated under international law to violate neutrality. Second, the U.S. has not submitted any report to the UNSC to justify its intervention in the principles of collective self-defence.

### ***2.5 Does the intervention of U.S. private companies violate the principles of neutrality?***

In modern warfare, belligerent states are not only receiving weapons from other states but also from private companies. For instance, during the Armenia and Azerbaijan war in 2020, Azerbaijan bought Turkish-made Bayraktar

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117publ118.pdf Accessed: 15.06.2022.

31 U.S. Department of State, The Neutrality Act, 1930, [online]. Available at: <<https://history.state.gov/milestones/1921-1936/neutrality-acts>> Accessed: 25.05.2022.

32 *Nicaragua vs. the United States of America*, dated 27 June 1986.

33 Paragraph 235 of *Nicaragua vs. United States of America*, dated 27 June 1986 and S/PV/2187, United Nations Security Council.

drones from a private Turkish company. This raised concerns about the violation of neutrality by Turkey in the international community.<sup>34</sup>

Coming back to the context of the Russia-Ukraine war, a key question is whether the sale of weapons by private companies of a state also amounts to a violation of laws of neutrality. Further, should the states prevent their nationals from supplying such weapons to a belligerent state?

In the context of the Russia-Ukraine war, several private companies are providing logistics and weapons to Ukraine against Russia. For instance, SpaceX which is owned by Elon Musk has provided Ukraine with tactical and operational support through its network of Starlink satellites. These satellites help the Ukrainian forces in coordinating unmanned drone attacks on Russian tanks.<sup>35</sup> This support is quite expensive. In a recent statement, SpaceX claimed that it has spent \$ 100 million in enabling and maintaining satellite service to Ukraine.<sup>36</sup>

Additionally, it is important to note that arms support by private companies to Ukraine is actively encouraged by the U.S. federal government. In fact, as per the New York Times, article<sup>37</sup> in October 2022, the Biden Administration has encouraged private weapons sales to Ukraine. The U.S. State Department has authorized private weapon sales of more than \$300 million to Ukraine in the first four months of 2022.

It is to be noted that such private deals come with low public oversight and are kept out of the public eye. Therefore, there is a high risk that such weapons without strict tracing policies end up with terrorist groups or hostile military forces based on the experience in Afghanistan and Syria<sup>38</sup>. Often the supply of weapons by private companies acts as a substitute for the official supply of weapons by the U.S. government.<sup>39</sup>

Not only is the U.S. government encouraging its private companies to supply weapons to Ukraine, but it is also sanctioning any private company that is supplying weapons to Russia. For instance, in October 2022, the EU imposed sanctions on private entities in Iran which were supplying Kamikaze drones to

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34 OSTROVSKY, Simon, *How Azerbaijan Won the Karabakh War*. [online]. Available at: <<https://pulitzercenter.org/stories/how-azerbaijan-won-karabakh-war>> Accessed: 18 October 2022.

35 Pentagon considering paying for Musk's Starlink network in Ukraine. *Reuters*, 17 October 2022: Available at: <<https://www.theguardian.com/world/2022/oct/17/pentagon-starlink-ukraine-musk-funding>> Accessed: 19 October 2022.

36 *Ibid.*

37 SCHECK, Justin. *She's a Doctor. He was a Limo Driver. They pitched a \$30 Million Arms Deal*. [online]. Available at: <https://www.nytimes.com/2022/10/06/world/europe/ukraine-private-arms-deals.html> (last accessed 20 October 2022).

38 *Ibid.*

39 *Ibid.*

Russia.<sup>40</sup> The EU has also frozen the assets of three individuals and one entity which were responsible for drone deliveries to Russia.<sup>41</sup>

Next, this article will discuss the responsibility of a neutral state to regulate the activities of private companies under contemporary international law to safeguard the laws of neutrality.

On the one hand, the private sector is exempted from the prohibition on support under the traditional law of neutrality. Article 7 of the 1907 Hague (V) states that “A neutral power is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet”.

On the other hand, several arguments exist to advocate state responsibility in controlling private entities to maintain neutrality. The first argument can be found in the interpretation of Article 7 of the 1907 Hague (V) by the International Committee of the Red Cross (hereinafter referred to as the ICRC).<sup>42</sup> This interpretation states that “the distinction between public and private armaments industries is artificial nowadays and doesn’t reflect political realities. The State manages, encourages, and controls the arms trade in a variety of ways. Even customary international law maintains that when a State authorizes the provision of any kind of war materials (warships, ammunition, and other war materials), the State is undertaking a non-neutral act. Large-scale financial support for a combatant, providing coal or oil, etc., would also typically be considered non-neutral behaviour.”<sup>43</sup>

The second argument has been described by several authors such as Michael Bothe.<sup>44</sup> which emphasizes that there is no distinction between government and private corporations.<sup>45</sup> A modern state not only produces weapons but also regulates the supply of weapons carried out by any private corporation operating from within its territory. These private corporations cannot supply weapons without the approval of the executive and the state legislature. Thus, any supply of weapons without following the guidelines of the UNSC would amount to a violation of neutrality under international law.

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40 Aljazeera, *EU agrees on new sanctions over Iranian drones in Ukraine*. [online]. Available at: <<https://www.aljazeera.com/news/2022/10/20/eu-agrees-new-sanctions-over-iranian-drones-in-ukraine>> Accessed: 19 October 2022.

41 *Ibid.*

42 International Committee of the Red Cross. *The Law of the Armed Conflict: Neutrality*. June 2002: Available at: <[https://www.icrc.org/en/doc/assets/files/other/law8\\_final.pdf](https://www.icrc.org/en/doc/assets/files/other/law8_final.pdf)> Accessed 19 October 2022.

43 *Id.*

44 BOTHE, Michael. *The Law of Neutrality*. In FLECK, Dieter (ed), *The Handbook of International Humanitarian Law*, Oxford University Press, 2008, pp. 573.

45 HELLER (n 17).

### 3 Qualified Neutrality

#### 3.1 Meaning of Qualified Neutrality

In the above section, this article has argued that the U.S. intervention in the Russia-Ukraine conflict violates the principles of neutrality. It is important to note that even the U.S. Congressional Research Service recognizes this and has therefore justified the U.S. intervention using the concept of Qualified Neutrality. More specifically, the U.S. CRS report titled, “International Neutrality Law and U.S. Military Assistance to Ukraine” published in April 2022<sup>46</sup> stated that “binary systems of neutrals and belligerents are no longer available as the modern international law allows for countries to take an active role in assisting the victims of unlawful wars”. It further posits that “states can take a non-neutral role when they are supporting the victims of an unlawful war of aggression”.<sup>47</sup>

Using the concept of Qualified Neutrality, the U.S. intervention is justified by claiming that Ukraine is a victim of unlawful aggression by Russia. Therefore, military aid to Ukraine is lawful as long as Ukraine adheres to the legal framework governing the conduct of hostilities under the Geneva Convention and International Humanitarian Laws.<sup>48</sup>

While the concept of Qualified Neutrality seems pertinent, it is important to note that even the CRS has not explicitly defined the meaning of Qualified Neutrality. Therefore, this article will explore whether Qualified Neutrality is a permissible concept under international law and customary international law.

#### 3.2 Is Qualified Neutrality a permissible concept under international law?

On the one hand, the concept of Qualified Neutrality does not find mention in any of the international conventions governing laws of neutrality. Both 1907 Hague (V and XIII) conventions do not define the meaning of Qualified Neutrality. This term has not been described in any of the standard references such as the Max Planck Encyclopedias of International Law.

On the other hand, several nations in the past relied on some version of Qualified Neutrality to justify their armed intervention. For instance, in the early 20<sup>th</sup> century, Germany used the concept of *Benevolent neutrality* to negotiate with Great Britain regarding the Haldane mission and later it was used by Great Britain to justify U.S. involvement in World War I<sup>49</sup>. *Benevolent neutrality* justi-

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46 CRS (n 5) pp. 2.

47 CRS (n 5) pp. 1.

48 *Ibid.*

49 OPPENHEIM, Lassa Francis. *International Law. A Treatise. War and Neutrality*. Volume II (of 2), Longmans, Green and Co, 1912: Available at: <<https://www.gutenberg.org/files/41047/41047-h/41047-h.htm>> Accessed 2 June 2022, pp. 370.

fies the conduct of non-belligerents by stating that a state would remain neutral in the loose sense of the term and continue to favour a belligerent.<sup>50</sup>

### **3.3 Is Qualified Neutrality in violation of principles of customary international law?**

Even while assessing the concept of Qualified neutrality through the prism of customary international law, it seems clear that international courts have refused to accept this principle as part of customary international law.

For instance, in the case concerning *Military and Paramilitary Activities in and against Nicaragua*<sup>51</sup>, the ICJ held that the U.S. had violated Article 2(4) of the UN Charter. The U.S. had done so by assisting the contras<sup>52</sup> in Nicaragua by “organizing or encouraging the organization of irregular forces of armed bands, the incursion into the territory of another state participation in acts of civil strife of another state”.<sup>53</sup> The U.S. helped in recruiting, training, arming, financing, supplying and aiding military and paramilitary actions in Nicaragua. Although the U.S. justified its intervention on humanitarian and national security grounds, the court considered the U.S. intervention a breach of its obligation under the international laws of neutrality. The Court has also laid down that if the states are allowed to intervene in the internal affairs of another state, whether, at the request of the government or the opposition, it would lead to a violation of the customary law principle of non-intervention.<sup>54</sup>

Therefore, the U.S. intervention in the Russia-Ukraine war based on the principle of Qualified Neutrality cannot be justified either by international law or customary international law.

## **4 Belligerency**

In this chapter, I shall discuss the meaning of the term belligerency and co-belligerency under the laws of the armed conflict to ascertain the real status of U.S. intervention in the Russia-Ukraine war. While the concept of belligerency is well-defined in international law, the meaning of co-belligerency is somewhat vague. After discussing the definition of belligerency, this article will discuss in depth the meaning of co-belligerency. Further, this article will discuss a theoretical framework to assess the status of the co-belligerency of a nation under modern international law.

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50 *Id.*

51 *Nicaragua vs. the United States of America*, dated 27 June 1986.

52 Paragraph 228 of *Nicaragua vs. the United States of America*, dated 27 June 1986.

53 Paragraph 228 of *Nicaragua vs. the United States of America*, dated 27 June 1986.

54 Paragraph 246 of *Nicaragua vs. the United States of America*, dated 27 June 1986.

According to the MPEIL, *Belligerency is the condition of being in fact engaged in war*.<sup>55</sup> Belligerency applies to both international and non-international armed conflict. Furthermore, Geneva Convention contains important rules to limit the barbarity of war.<sup>56</sup> Common Article 3 to the Geneva Conventions (I-IV), 1949 and the additional protocols prescribe for standards to determine the state of belligerency applicable to an armed conflict not of an international character. To consider a state as a belligerent state, it must be ascertained whether the level of violence has exceeded the threshold which requires the application of laws of armed conflict.<sup>57</sup> If the threshold is crossed, then the third party assumes the obligation of neutrality and shall treat all parties participating in the conflict as equals.

#### 4.1 Co-belligerency

The current international law clearly distinguishes between a belligerent state and a neutral state. However, in most armed conflicts, some of the so-called neutral states, often help one or the belligerent parties against the others. International law is ambiguous on when the aid-providing neutral state can be considered as a co-belligerent in the conflict. More specifically, none of the conventions defines a threshold above which a neutral state becomes a co-belligerent.

To have a consistent definition of co-belligerency is not just a theoretical endeavour but is also a pressing need given its widespread usage in recent conflicts. Interestingly, the U.S. has used the concept of co-belligerency in both internal and international conflicts.

An example of usage of co-belligerency within the U.S. can be found when the Bush Administration introduced the concept of co-belligerency to target Al-Qaeda, Islamic State of Iraq and Syria (hereinafter referred to as ISIS), and all other groups that might have participated in the 9/11 attack<sup>58</sup>. Additionally, the Bush Administration extended the concept of co-belligerency by formulating the principle of *pre-emptive strike*. According to this principle, the President can “use force to deter and pre-empt any future acts of terrorism or aggression against the U.S.”<sup>59</sup> This principle was operationalized by a military order in November

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55 AZAROVA, Valentina, BLUM, Ido. Belligerency, *Max Planck Encyclopedias of International Law*, 2015, pp. 1–3.

56 *The Geneva Conventions of 1949 and their Additional Protocols*. [online]. Available at: <<https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>> Accessed 5 May 2022.

57 *Ibid*.

58 CARDEN, James. *US a ‘co-belligerent in Ukraine war, legal expert says*. [online]. Available at: <<https://asiatimes.com/2022/04/us-a-co-belligerent-in-ukraine-war-legal-expert-says/>> Accessed: 06.07.2022; DAMON, Andre. *US paramilitary forces on the ground in Ukraine*. [online]. Available at: <<https://www.wsws.org/en/articles/2022/07/05/apad-j05.html>> Accessed 6 July 2022.

59 107<sup>th</sup> Congress Public Law, Joint Resolution to authorize the use of United States Armed

2001 which gave the U.S. government extraordinary powers to “detain, militarily or try in a military commission any alien who has “engaged, aided or abetted or conspired to commit acts of international terrorism or harboured such an individual”.<sup>60</sup>

Furthermore, in 2004, the concept of co-belligerency was extended to nation-states through a memo issued by the U.S. Office of Legal Counsel (hereinafter referred to as OLC)<sup>61</sup>. This memo was released in the backdrop of the invasion of Iraq in 2003. This memo aimed to explore the nature of participating states in the armed conflict and to decide whether they are co-belligerents or not. The OLC stated that “states that did not participate in actual combat operations in Iraq but played a subsequent role in the occupation of Iraq suffices the status of co-belligerency under the Geneva Convention. Mere participation itself does not amount to co-belligerency, however, if a state sends military forces to assist in rounding up Baathist remnants and impose general security in Iraq, they can be categorized as co-belligerents. Therefore, a state can be considered a co-belligerent by its close participation in the hostilities.” They finally concluded that the U.K., Australia, Spain, Poland, Kuwait and Qatar were co-belligerents in the Iraq War of 2003.

Taking the definition of co-belligerency as defined by the U.S., we can now test whether the U.S. itself is a co-belligerent in the Russia-Ukraine war.

Although the U.S. has not sent their regular military on the war ground in the Russia-Ukraine war, there are several media reports<sup>62</sup> that state that U.S. paramilitary and intelligence operatives are operating on the ground in the conflict.<sup>63</sup> For example, Hal Brands in his article in the Washington Post in May 2022 stated that “The U.S. is waging a proxy war in Ukraine by loading Ukraine with arms, money and intelligence to inflict shattering blows on the rival, Russia.”<sup>64</sup> Given the magnitude of U.S. intervention, there are some fears that Russia might directly attack U.S. interests in the region.<sup>65</sup> Thus, one can argue beyond reasonable

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Forces those responsible for the recent attacks launched against the United States, Available at: <<https://www.govinfo.gov/content/pkg/PLAW-107publ40/html/PLAW-107publ40.htm>> Accessed 16 October 2022.

60 INGBER, Rebecca. Co-Belligerency. *Yale Journal of International Law*, 2017, vol. 42, no. 67, pp. 100–103.

61 ASHCROFT, John D., GOLDSMITH, Jack., *Memorandum Office of Legal Counsel of the United States Department of Justice*. [online]. Available at: <<https://www.justice.gov/olc/file/477031/download>> Accessed 9 July 2022.

62 CARDEN (n 57).

63 *Ibid*.

64 BRANDS, HAL. Russia Is Right: The U.S. is Waging a Proxy War in Ukraine. *Washington Post*, 10 May 2022: Available at: <[https://www.washingtonpost.com/business/russia-is-right-the-us-is-waging-a-proxy-war-in-ukraine/2022/05/10/2c8058a4-d051-11ec-886b-df76183d233f\\_story.html](https://www.washingtonpost.com/business/russia-is-right-the-us-is-waging-a-proxy-war-in-ukraine/2022/05/10/2c8058a4-d051-11ec-886b-df76183d233f_story.html)> Accessed 15 June 2022.

65 CARDEN (n 57).

doubt that the U.S. can be considered a co-belligerent in the Russia-Ukraine war as per the norms laid down by the OLC.

Next, this article will propose a theoretical framework that can be used to test whether a country that is providing any support to a belligerent country can be called a co-belligerent or not. After defining the framework, this article will apply the same to the role of the U.S. in the Russia-Ukraine war.

There are three characteristics which can be used to assess a country's role in an armed conflict. These are the Severity, Effectiveness, and Inertia (SEI) of the military/non-military aid provided by a country to the warring parties. The characteristic of *severity* measures the quantum and the quality of the aid provided. The second characteristic, i.e., *effectiveness* tests whether the aid that is being provided can substantially change the outcome of the war. Finally, the characteristic of *inertia* compares the aid provided by a state to the warring party before and after the breakout of conflict. If there is a substantial increase or decrease in the aid provided, then the neutral state might be termed as a co-belligerent.

Now, we will apply the SEI test to assess the role of the U.S. in the Russia-Ukraine war. First, the U.S. aid to Ukraine during the war has been massive and passes the test of severity. For example, the U.S. and the west have provided multiple weapons to Ukraine which include High Mobility Artillery Rocket Systems, multiple rocket launch systems, Unmanned Combat Aerial Vehicles (UCAV), etc. According to some reports, it has been conjectured that the Ukraine forces would not have been able to last a week against Russia's full-scale invasion if those weapons would not have been supplied.<sup>66</sup> According to Independent Defence Anti-Corruption Committee, a Ukrainian nongovernmental watchdog in Kyiv, 90% of Ukrainian military aid comes from the U.S.<sup>67</sup> Additionally, the U.S. is also providing key military intelligence to the Ukrainian forces.<sup>68</sup> Although it is to be noted that the Pentagon has firmly denied the allegation of providing active intelligence to Ukraine in the war.

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66 DETSCH, Jack. Where does the Ukraine War go from here. *Foreign Policy*, 25 August 2022: Available at: <<https://foreignpolicy.com/2022/08/25/zelensky-putin-russia-ukraine-war/>> Accessed 17 October 2022.

67 NAKO, Available at: <<https://nako.org.ua/en>> Accessed 25 July 2022.

68 BARNES, Julian, COOPER, Helene. Ukrainian Officials Drew on U.S. Intelligence to Plan Counteroffensive. *New York Times*, 10 September 2022: Available at: <<https://www.nytimes.com/2022/09/10/us/politics/ukraine-military-intelligence.html>> Accessed 6 October 2022.

MITCHELL, Ellen. How US weapons and intelligence helped Ukraine's rout of Russia. *The Hill*, 16 September 2022: Available at: <<https://thehill.com/policy/defense/3645393-how-us-weapons-and-intelligence-helped-ukraines-rout-of-russia/>> Accessed 17 October 2022; BARNES, Julian, COOPER, Helene, SCHMITT, Eric. U.S. Intelligence is helping Ukraine kill Russian Generals, officials say. *New York Times*, 4 May 2022: Available at: <<https://www.nytimes.com/2022/05/04/us/politics/russia-generals-killed-ukraine.html?smid=tw-nytimes&smtyp=cur>> Accessed: 19 October 2022.

Second, it needs to be determined whether the military and intelligence aid provided to Ukraine is effective in shaping the outcome of the war. The main evidence of the effectiveness of U.S. military aid is that the Ukrainians have been able to resist the Russian invasion for almost a year. The weapons supplied by the U.S. have hugely benefited the Ukrainian forces. For instance, the Ukrainian forces effectively fought Russia in Kherson using Anti-Tank Guided Missiles provided by the U.S.<sup>69</sup> Ukraine also used American drones, known as Switchblade, to attack T-2B3 which is the main battle tank of Russia.<sup>70</sup> Lastly, as per Ukrainian records,<sup>71</sup> the U.S.-provided HIMARS launch system was used to inflict substantial damage on Russian troops.

Additionally, the intelligence provided by the U.S. has been very effective for the Ukrainian forces. As per the media reports by NBC News and the New York Times<sup>72</sup>, the U.S. is providing *near-real-time intelligence-sharing* to Ukraine in the war which has enabled Ukraine to shoot down a Russian transport plane carrying hundreds of troops in the early days of the war. “Ukrainian officials said that they have killed 12 Russian generals and this targeting help is a part of a classified effort by the Biden administration to provide real-time battlefield intelligence to Ukraine”<sup>73</sup> It is evident that this information was superior to the publicly available information provided by flight tracking websites such as *ixigo* and *flightware*.

Third, we argue that the military aid provided by the U.S. violates the test of inertia. Before the breakout of the war, the U.S. was providing Ukraine with military assistance worth \$19.6 billion. However, since January 2021 the Biden Administration has provided approximately \$17.6 billion to Ukraine.<sup>74</sup> An addi-

69 TIWARI, Sakshi. Ukraine’s ‘Most Lethal’ US Supplied Anti-Tank Missile (ATGM) Turns A Russian Tank Into Rubble. *Eurasian Times*, 23 October 2022: Available at: <<https://eurasianimes.com/ukraines-most-lethal-us-supplied-atgm-reportedly-turns-russian/>> Accessed: 25 October 2022.

70 HELFRICH, Emma. *Switchblade Suicide Drone attack a Russian Tank in Ukraine*, Available at: <<https://www.thedrive.com/the-war-zone/watch-this-switchblade-suicide-drone-attack-a-russian-tank-in-ukraine>> Accessed: 21.10.2022.

71 OTT, Haley. *Ukraine says Russia plans to retaliate for deadly strike on military base with “prolonged” drone attack*. [online]. Available at: <<https://www.cbsnews.com/news/ukraine-news-russia-war-us-weapons-strike-military-base-retaliation-drones/>> Accessed: 18.01.2023.

FELIPE DANA, *Shaken by deadly airstrike, Russia is said to be considering more drone attacks*. [online]. Available at: <<https://www.latimes.com/world-nation/story/2023-01-03/russia-shaken-ukrainian-strike-mulling-more-drones>> Accessed: 18 January 2023.

72 DILANIAN, Ken et al, *U.S. intel helped Ukraine protect air defenses, shoot down Russian plane carrying hundreds of troops*. [online]. Available at: <<https://www.nbcnews.com/politics/national-security/us-intel-helped-ukraine-protect-air-defenses-shoot-russian-plane-carry-rcna26015>> Accessed: 19.10.2022; BARNES (n 67).

73 *Ibid.*

74 U.S. Government. U.S. Security Cooperation with Ukraine, Fact sheet. Available at: <<https://www.state.gov/u-s-security-cooperation-with-ukraine/>> Accessed: 20 October 2022.

tional \$2.5 billion have been given to the Ukrainian forces in 2023 through the Additional Ukraine Supplemental Appropriations Act of 2023, which the President signed into law in December 2022.<sup>75</sup> The total military aid to Ukraine is now an unprecedented \$27.5 billion.<sup>76</sup> Thus, it is evident that the U.S. has increased its aid to Ukraine by an *order of magnitude* since the breakout of the conflict. Furthermore, even the sanctions imposed by the EU on Russian oil violate the test of inertia. For example, according to several media reports<sup>77</sup>, the EU and the UK will drastically reduce their oil imports from Russia from December 5, 2022. The EU has stopped importing Russian oil by sea, and as of February 5, 2023, refined oil products will no longer be imported. In 2021, 30% of the oil used in the EU came from Russia, and more than 50% of Russia's exports were purchased by the EU.<sup>78</sup> This is by far the biggest action taken so far to eliminate the source of funding for Russia's invasion of Ukraine through the sale of fossil fuels. In March 2022, the US stated that it will stop importing Russian oil. The U.S. imported from Russia over 700,000 barrels of crude oil and refined petroleum products every day.<sup>79</sup>

Additionally, many private firms based in the western world such as Visa and Mastercard have stopped providing their services to Russia which is a clear violation of the test of inertia.<sup>80</sup>

## 5 Consequences for Violation of Neutrality and State Responsibility of a Co-Belligerent

In the previous section, this article has argued that the U.S. has violated laws of neutrality and can be considered a co-belligerent state in the Russia-Ukraine war. This section will argue that according to international law, the U.S. must bear state responsibility and subsequent implications for its conduct. We will

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75 BLINKEN, Antony. *Significant new U.S. military assistance to Ukraine*, Press Statement, U.S. Department of State. [online]. Available at: <<https://www.state.gov/significant-new-u-s-military-assistance-to-ukraine/>> Accessed: 21 January 2023.

76 *Ibid.*

77 HORTON, Jake, PALUMBO, Daniele. *Russia sanctions: What impact have they had on its oil and gas exports?* [online]. Available at: <<https://www.bbc.com/news/58888451>> Accessed: 23.01.2023.

MYLLYVIRTA, Lauri. *EU ban on Russian oil: Why it matters and what's next*. [online]. Available at: <<https://energyandcleanair.org/eu-ban-on-russian-oil-why-it-matters-and-whats-next/>> Accessed: 23.12.2022.

78 *Ibid.*

79 The White House, FACT SHEET: *United States Bans Imports of Russian Oil, Liquefied Natural Gas, and Coal*. [online]. Available at: <<https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/08/fact-sheet-united-states-bans-imports-of-russian-oil-liquefied-natural-gas-and-coal/>> Accessed: 19.10.2022.

80 BBC: *Visa and Mastercard suspend Russian operations*. [online]. Available at: <<https://www.bbc.com/news/business-60637429>> Accessed: 19.10.2022.

first describe the meaning of state responsibility in a situation of conflict and then discuss some historical examples of its implications.

If a non-belligerent state violates the laws of neutrality, then as per MPEIL, that state must bear the consequences for such a violation, for instance, reprisals.<sup>81</sup> Such consequences might also be borne by a state which gives support to victims of aggression.<sup>82</sup> Additionally, the International Law Commission has drafted the Responsibility of States for Internationally Wrongful Acts, 2001<sup>83</sup> (hereinafter referred to as the 2001 State Responsibility Act) to define state responsibility. Article 12 states that “there is a breach of an international obligation by a state when the acts of the state are not in conformity with its obligation”. Further, Article 25 states that “even necessity may not be invoked by a state as a ground for precluding the wrongfulness of an act not in conformity with the international obligation of that state.” Reading both articles together, proves that the U.S. might have to bear state responsibility for violating its obligation of neutrality in the Russia-Ukraine war.

A wrongful act must be a *conditio sine qua non* for reparation under the state responsibility. Furthermore, the wrongful act needs to be attributed to the state through the principle of causation and the ‘but for’ test. However, many times international wrongful act is committed by combined actions of several actors or factors. Therefore, the ‘but for’ test may be difficult to prove.<sup>84</sup>

Once it is proved that a wrongful act has been committed and attributed to a state, there are several articles under the 2001 State Responsibility Act that describe the characteristics of reparations. First, Article 31 states that the state which has committed the wrongful act, “is under an obligation to make full reparation for the injury caused by the internationally wrongful act which includes material as well as moral damage.” Second, Article 34 states that “full reparation for the injury caused by the internationally wrongful act shall take the form of restitution<sup>85</sup>, compensation<sup>86</sup> and satisfaction<sup>87</sup>.” Finally, under Article 36, the state is responsible “to compensate for the damage caused”.

It is important to note that Article 32 states that “a state may not rely on the provisions of its internal law as justification for failure to comply with its obliga-

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81 SEGER (n 1) pp. 13.

82 *Ibid.*

83 Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission, reprinted in Report of the International Law Commission on the work of its fifty-third session, 23 April–1 June and 2 July–10 August 2001, UN Doc. A/56/10, 2001.

84 CRAWFORD, James, *State Responsibility, The General Part*, Cambridge: Cambridge University Press 2013, pp. 499.

85 Art. 35, 2001 Responsibility of States for Internationally Wrongful Acts (State Responsibility Act).

86 Art. 36, State Responsibility Act.

87 Art. 37, State Responsibility Act.

tions”. Thus, the U.S. justification of Qualified neutrality by domestic laws like the Lend Lease-II Act<sup>88</sup> and Additional Ukraine Supplemental Appropriations Act of 2023, cannot be justified and it has violated the obligation of neutrality under international law by becoming a co-belligerent in the war.

Besides the 2001 State Responsibility Act, there are some other conventions in international law that deal with reparations. The first is Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, 2000.<sup>89</sup> Article 3 of this law<sup>90</sup> states that “humanitarian law includes, inter alia, a state’s duty to: a) afford appropriate remedies to victims; and b) provide for or facilitate reparation to victims.” The second is the Rome Statute of the International Criminal Court (ICC), 1998<sup>91</sup>. Article 75 of ICC provides that: “the Court shall establish principles relating to reparations including restitution, compensation and rehabilitation to, or in respect of victims...”

There are examples under international law where belligerents have compensated the victim state for the commission of the internationally wrongful act. For instance, a UN Compensation Commission was set up through UNSC resolution 687 (1991). This commission was set up after the 1990 Gulf war to ensure restitution for Kuwait by Iraq. Because of the commission, Iraq paid \$ 52.4 billion for any loss, and damage, including environmental damage and depletion of natural resources.<sup>92</sup>

Another example is the 1952 Agreement between West Germany and Israel after the second world war.<sup>93</sup> Under this agreement, West Germany had to pay reparations to Israel for persecuting Jews and confiscating their properties.

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88 Section 2 of the Ukraine Democracy Defense Lend Lease Act 2022.

89 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, annexed to The Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms: Final Report of the Special Rapporteur of the UN Commission on Human Rights, submitted in accordance with UN Commission on Human Rights resolution 1999/33, UN Doc. E/CN.4/2000/62, 18 January 2000.

90 *Ibid*, Art. 3.

91 Statute of the International Criminal Court, adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 17 July 1998, UN Doc. A/CONF.183/9.

92 U.N News. Iraq makes final reparation payment to Kuwait for 1990 invasion. 9 February 2022: Available at: <<https://news.un.org/en/story/2022/02/1111632>> Accessed: 19 January 2023.

93 Agreement between the State of Israel and the Federal Republic of Germany (adopted 10 September 1952): Available at: <<https://treaties.un.org/doc/Publication/UNTS/Volume%20162/volume-162-I-2137-English.pdf>> Accessed: 19 January 2023.

## 6 Conclusion

This article traces the history of laws of neutrality and explores their meaning in the modern context. After the two world wars, the international community decided to redefine the concept of neutrality to prevent a third world war. The UN which emerged after the second world war gave the UNSC authority to intervene in any conflict if there was a threat to international peace and security. However, with changing global order, the structure of the UNSC seems archaic. This is particularly true in the context of U.S. intervention in the Russia-Ukraine war where the U.S. intervened in war without the approval of the UNSC. These developments indicate that there is an urgent need to redefine neutrality in the modern context and update norms on co-belligerency.

It seems clear that in any major conflict, globally important nations will intervene with or without the approval of the UNSC. Therefore, this article has given a framework to determine the threshold beyond which an intervening state reneges on its responsibility of neutrality and becomes a co-belligerent in the war. This threshold is based on the principles of severity, effectiveness, and inertia of the intervention. By using these principles, this article proves that the U.S. is in fact co-belligerent in the Russia-Ukraine conflict.

Lastly, this article discusses various conventions that define state responsibility and its implications on a belligerent state. We argue that since the U.S. is a co-belligerent, therefore it cannot shy away from state responsibility.

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