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Conditions for the Lawful Exercise of the Right of Self-Defense by Permanently Neutral States

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Conditions for the Lawful Exercise of the Right of Self-Defense by Permanently Neutral States

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Abstract: *This article is part of a series of scientific endeavors signed by the authors on the subject of the legal content of the status of permanent neutrality. Since there is no international treaty in this area, over time, permanently neutral states have developed their own approaches to this status, strictly adhering to the essential obligations of abstention and impartiality. Being not a "popular" status in the international system, neutrality has not sparked much interest among scholars. Most works dedicated to the status, competences, and legal personality of the state in international law are limited to outlining the rights and obligations of the permanently neutral state, largely inspired by the provisions of Law of the Hague. Under these conditions, we consider it appropriate to review the content of the right to self-defense of the permanently neutral state by identifying its foundation, forms of implementation, and the challenges it faces. The investigation was carried out exclusively within the field of public international law, consciously avoiding reflections on the neutrality policy of states. Deduction, analysis (both logical and comparative), and synthesis have allowed for the formulation of conclusive ideas to demonstrate the thesis that permanent neutrality is not an obsolete concept in the contemporary international system, nor in the system of international public law. The institution of permanent neutrality deserves to be addressed today as a tool for ensuring global stability.*

Key-words: *Permanent Neutral State, Self-Defense, Collective Security.*

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Introduction

The right of self-defense (individual and collective) against an armed attack directed at the sovereignty and territorial integrity of a state is a right recognized throughout history, applicable both in the period when states held the monopoly on force and in the context of delegating this authority to entities responsible for collective security. However, it is precisely this prerogative of the permanently neutral state that has sparked the most debates among scholars, politicians, and the general public.

In the past, it was considered that a permanently neutral state cannot be sovereign, because, by virtue of its status (the obligations of non-participation in armed conflicts), it lacks an essential attribute of sovereignty, such as the ability to resort to force not only in cases of self-defense¹ and, as a result, its freedom to act is limited.² In this context, the legal scholar Kleen stated that permanent neutrality is incompatible with the right, inherent to the sovereignty of any independent state, to decide for itself on the means to defend its existence, its integrity, and its rights against violations of which it could become the object.³

Today, the Charter of the United Nations, in Article 51, proclaims that individual or collective self-defense constitutes an inviolable right enjoyed by states. By recognizing this right, the Charter establishes the conditions and limits for its exercise. This provision of the Charter, far from being outdated, maintains its great importance and relevance, effectively contributing to the achievement of the goals of maintaining international peace and security, as well as to the very prohibition of the use of force. In the opinion of the Romanian author V. Duculescu, if states, including neutral ones, were not recognized the possibility of exercising their right to individual or collective self-defense until international community intervention, they would be practically exposed, defenseless, to armed attacks from a potential aggressor and left at its discretion, waiting for a political resolution of the conflict, which may sometimes be delayed.

¹ Anzilotti D., *Cours de Droit International. Premier Volume : Introduction - Théories Générales* (1929). Librairie du Recueil Sirey, Paris, p. 242-243.

² Ignatenko, G., Tiunov, O., *Mezhdunarodnoe parvo* (2000), NORMA, Moskva, p. 55.

³ Regnaut, H., *Des effets de la neutralité perpétuelle en temps de paix, Thèse pour le doctorat soutenue le mardi 14 juin 1898* (1898), V. GIARD & E. BRIERE. Paris, p. 48-50.

In this context, the well-known Romanian jurist Vespasian Pella considered: "*Self-defense is not only a right but also a supreme duty for any state living in the international community under the regime of law.*"⁴

Contemporary neutral states, by actively promoting peaceful coexistence, contribute to the development of international cooperation and to the maintenance of international peace and security. This contribution is effective only when the rules imposed by this status are respected. Moreover, it is precisely neutrality that provides a sense of security to the state that has adopted it.

1. The Evolution of Regulations Regarding the Self-Defense of Permanently Neutral States

There being no legal text that contains a generalization of the legal content of the status of permanent neutrality, permanently neutral states have been forced to borrow principles and reasoning characteristic of the status of eventual neutrality.

Numerous scholars have expressed their views over time regarding the *jus belli ac pacis* of neutral states.

The permanently neutral State has the right—and even the duty—to resort to arms in order to defend itself when its own rights or interests are violated by a third power: the defense of its neutrality by taking up arms is, in fact, an obligation for it. What is forbidden to it, however, is engaging in war for purposes of conquest. From the perspective of the law of war, no distinction is to be made between whether the permanently neutral State is attacked by a guarantor power or a non-guarantor of its neutrality: it must defend its rights—and especially its neutrality—against any actor that seeks to infringe upon them. This was the conduct of Belgium, which in 1914, when Germany disregarded its neutrality status, which it had once guaranteed, violated its territorial inviolability: Belgium responded with armed force to defend itself. The protocols and treaties of January 20, June 26, and November 15, 1831, and April 19, 1939, which created the status of permanent neutrality for Belgium, did not specify that they deprived it of the *right to war* (*within the framework of this study, the concept shall be interpreted as referring to the right of self-defense*), being interpreted in this way during the parliamentary discussions that preceded the approval of the neutrality status by Congress.

⁴ Duculescu, V. *Instituții de drept public și relații internaționale în dezvoltare*; „Lumina Lex”. București (2002), p. 466-467.

Additionally, the Constitution of Belgium formally recognized the king's right to peace and war.⁵

It is useful at this stage to address the concept of permanent neutrality under international law directly. Permanent neutrality may be viewed as an extension of the spirit of the 1907 Hague Convention V and XIII into peacetime. On their own, these instruments apply only in instances of international armed conflicts, or situations where belligerency has been recognised. Despite this, these treaties are routinely used by permanently neutral states to orient themselves around parallel rights and obligations under bilateral or multilateral treaties, as in the case of Austria, customary international law, as in the case of Switzerland, unilateral declarations, or through forced neutralisation by third states, as in the case of Laos.⁶

The Hague Convention of October 18, 1907, regarding the rights and duties of neutral states in the event of land warfare, stipulates in Article 10: "The fact of a neutral Power resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act." while Article 2 of the Geneva Protocol of October 2, 1924, states: "The signatory States agree in no case to resort to war either with one another or against a State which, if the occasion arises, accepts all the obligations hereinafter set out, except in case of resistance to acts of aggression or when acting in agreement with the Council or the Assembly of the League of Nations in accordance with the provisions of the Covenant and of the present Protocol."

While the specific circumstances of each individual neutral state's rights and obligations will vary, in general a number of core principles may be identified. First among these is the obligation to refrain from any action or assuming any obligation during peacetime that would make adherence to the Hague Conventions impossible during a subsequent armed conflict. The most obvious example of an act that would be in breach of this obligation is membership in a mutual defence agreement, such as NATO's Washington Treaty. In line with the provisions of the Hague Conventions, further peacetime obligations include refraining from acceding to treaties that would obligate the provision of war materials or troops to would-be belligerents, and to prohibit the movement of belligerent troops through their territory. As rightly stressed by Zemanek, at the core of these obligations is the interest of

⁵ Fauchille, P. *Traité de droit international public* (1922), Tome I-er; Rousseau & C-ie. Paris, p. 697.

⁶ Pearce Clancy Permanent Neutrality and the UN Security Council, *Irish Studies in International Affairs* (2021), Volume 32, Number 1, p. 241-259. Published by Royal Irish Academy. DOI: <https://doi.org/10.1353/isia.2021.0053> p. 244.

‘inspiring confidence on the part of all other states that the permanently neutral state can and will in fact maintain and defend its neutrality’.⁷

In the approximately 80 years of existence of the universal collective security system, several viewpoints have been expressed regarding the way in which the right to self-defense is exercised by permanently neutral states.

Thus, the permanently neutral state - a member of the UN, according to Soviet authors, did not have the right, by virtue of its status, to collective self-defense, and if the aggression was not committed against it, it was obliged to remain permanently neutral. However, if aggression is committed against the permanently neutral state, then, by repelling it, the state has the right to turn to other states to request assistance⁸

Currently, the commitment to non-belligerence and the use of armed force solely for defensive purposes, as part of the neutral status, is fully in accordance with the principles recognized and applied by the international community.

2. The Legal Basis and Extent of the Permanently Neutral State's Right to Self-Defense

Only the primary subject of international law – the state – can hold the status of permanent neutrality, and the obligations that arise from this status cannot serve as a limitation of its sovereignty.⁹ States, as political structures of human communities, have developed the concept of national security to defend and promote their own interests.¹⁰ In this context, the status of neutrality perfectly fits into a state's security policy.

The state is free to choose the status of permanent neutrality, as this stems from the sovereign right of each state to independently select the instruments for conducting its foreign policy. By opting for neutrality, a state is free to abandon this status at any time. However, as long as it maintains this status, it is bound by the obligations that international law imposes on neutral

⁷ Pearce Clancy Permanent Neutrality and the UN Security Council, *Irish Studies in International Affairs* (2021), Volume 32, Number 1, p. 241-259. Published by Royal Irish Academy. DOI: <https://doi.org/10.1353/isia.2021.0053> p. 246.

⁸ Ganiushkin, B.V., *Neytralitet i neprisoedinenie, Mezhdunarodnye otnosheniya* (1965), Moskva.

⁹ Ignatenko, G., Tiunov, O., *Mezhdunarodnoe parvo* (2000), NORMA, Moskva, p. 55.

¹⁰ Balaban, C-G. *Securitatea și dreptul internațional. Provocări la început de secol XXI* (2006), Editura C.H. Beck. București p. 1.

states.¹¹ A permanently neutral state holds all the rights that stem from its sovereignty, including the right to self-defense when it becomes the victim of aggression by another state.¹²

The existence of both internal constitutional acts and international acts of recognition and guarantee of this status grants the permanently neutral state the right to individual and collective self-defense in order to maintain its status. In the absence of international recognition and guarantees – without such recognition and guarantees being considered as conditions for the status of permanent neutrality – we cannot be in the presence of permanent neutrality, whose effects would be effectively opposable in the international sphere.¹³ Romanian scholar D. Mazilu, on the other hand, argues that the international guarantee of neutrality is not an essential condition for this status.¹⁴ This thesis is, in fact, confirmed by the international practice of states, where, except for the cases of Switzerland and Austria, the existence of international guarantees has not been an obstacle for "permanently neutral" states to endure external aggressions, such as the aggression by Germany during World War II against Belgium and Luxembourg.¹⁵

By virtue of the essential rights of the state, including the right of self-preservation and the right to independence, these treaties will always be terminable by the unilateral will of each contracting party, and the principle must be applied that a state never permanently renounces this quality, which is always necessarily reserved, even when the reservation is not expressly stated. This expresses the principle of the common will of the contracting states for a higher principle, the principle that freedom is inalienable.¹⁶ Although these views provide a solid basis for determining the moment when the effects of permanent neutrality cease, in the context of discussions on the right of these states to wage war, it should be noted that they were formulated before the establishment of the universal collective security system within the

¹¹ Anzilotti D., *Cours de Droit International. Premier Volume : Introduction - Théories Générales*. Librairie du Recueil Sirey (1929) Paris, p.243.

¹² Takacs, L., Niciu, M. I., *Drept internațional public* (1976), Editura didactică și pedagogică. București, p. 72.

¹³ Bolintineanu, Al., Năstase, A., Aurescu, B., *Drept internațional contemporan* (2000), All Beck. București, p. 89-90.

¹⁴ Mazilu, D., *Drept internațional public* (2005) Volumul 1; Ediția a II-a, Lumina Lex. București, p. 136.

¹⁵ Quoc Dinh, N., *Droit international public* (1999), L.G.D.J., Paris, p. 942.

¹⁶ Regnaut, H., *Des effets de la neutralité perpetuelle en temps de paix, Thèse pour le doctorat soutenue le mardi 14 juin 1898* (1898), V. GIARD & E. BRIERE. Paris, p. 54.

UN, after which the absolute prohibition of resorting to war to resolve international disputes was introduced. Therefore, permanent neutrality entails a substantial limitation of the right to resort to war (*jus ad bellum*), except in situations of renunciation of this status or self-defense.¹⁷

Given that permanently neutral states are small and medium-sized states, in order to minimize the potential danger directed against their neutrality, they must effectively implement the status of permanent neutrality, whose aspirations would be of a nature to impress both present and potential belligerents, taking into account the following rules:

1. The neutral state renounces war as an instrument of foreign policy, except in cases of self-defense, where it is obligated to apply force to defend itself. Other states must be convinced of this through the numerous measures taken by neutral states both externally and internally: from non-participation in alliances, blocs, or any other forms of military cooperation, including renouncing territorial claims against neighbouring states, to rooting neutrality in the state's social and cultural heritage, as well as in its political and legal systems.
2. In times of war, the state will feel obligated by the content of traditional neutrality, with all of its requirements, beginning with the obligation of impartiality.
3. Neutrality is not an ideological expression, but rather a practical one. In other words, opting for permanent neutrality does not exclude the possibility of sympathizing with one of the belligerents. Therefore, neutrality involves adopting an attitude that requires the exercise of an appropriate and balanced policy towards both sides in the conflict, without prejudicing either of them in any way.¹⁸

¹⁷ Combacau, J., Sur, S., *Droit international public* (2006), 7-e edition, Montchrestien, Paris, p. 618.

¹⁸ Karsh, E. *Neutrality and small states* (1990), Routledge, London, New York, p. 38-39.

Conclusion

Permanent neutrality is the legal status of a sovereign state on the international stage, which, based on a unilateral act, freely expressed or through an international treaty, assumes the obligation not to participate in military conflicts, except in cases of self-defense, and in times of peace, to promote a policy that would not allow its involvement in any potential military conflict. The full realization of the permanent neutrality status is only feasible under the condition of a multilateral treaty recognizing and guaranteeing the status of permanent neutrality. It should be noted that the membership in international organizations under whose auspices universal and regional collective security systems are established theoretically meets the expectations of permanently neutral states in the event of an attack on their sovereignty and territorial integrity. However, in practice, the support that could be provided by the defensive security system might be compromised by the decision-making process, which in the 21st century is burdened by political considerations.

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