THE LAW OF NEUTRALITY MICHAEL BOTHE pdf

1: Oxford Public International Law: 11 The Law of Neutrality

1 'Neutrality' means the particular status, defined by international law, of a State not party to an armed conflict (Armed Conflict, International). This status entails specific rights and duties in the relationship between the neutral and the belligerent States (Belligerency).

Consumer Law Earlier this week, the Department of Justice DOJ filed a lawsuit seeking to enjoin the State of California from enforcing its new law mandating net neutrality. The complaint alleges that when the Federal Communications Commission FCC repealed the federal net neutrality requirements in January of this year, it established a nationwide policy of laissez-faire for internet service providers ISPs. In this column, I shall explain the likely path of the litigation going forward. It includes a potential surprise twist: If conservative scholars and Supreme Court justices succeed in what appears to be their goal of weakening federal regulatory agencies, that could actually be a boon to net neutrality and maybe to government regulation more broadly. At that time, most people rented their phones from the same company that ran the phone lines to their homes or offices, but some tech-savvy customers started connecting their own devices to the network. Ma Bell was unhappy, but the FCC and the courts sided with these customers, allowing anyone to connect anything to the phone network, so long as it did not damage the network. Wu worried that without a legal requirement of net neutrality, an ISP might use its control over the gateway to the internet to favor some content over other content. Why would an ISP do that? The short answer is money. An ISP might be part of a company that also distributes content. For example, Comcast owns NBCUniversal and could use its ISP services to speed up access to its own programming while slowing down or even blocking content from rivals. Even an ISP that does not own a content provider might favor, say, Netflix over Amazon content or vice versa based on contractual payments. Persuaded by Professor Wu and other net neutrality advocates, the FCC during the Obama administration promulgated three core net neutrality rules: The January rescission order claims that market forces will satisfy consumer preferences for net neutrality and that a government mandate would stifle innovation. I happen to think that the Obama-era policy of net neutrality was a good idea because of the oligopolistic nature of the ISP market which limits the impact of consumer choice and because open access to the internet for all content providers serves not just consumer welfare but also democratic values. Here, however, I shall set aside that policy preference to focus on issues of administrative law. The rescission order contains such rules, including in paragraphs â€” provisions making clear that it not only abandons the Obama-era net neutrality policy but also forbids states from adopting such a policy. While ordinarily the repeal of a prior federal regulation does not block states from adopting a similar or even identical regulation pursuant to their own powers, the FCC rescission order explains that as a practical matter, state regulation would have unavoidable spillover effects. There is little doubt that the text of the rescission order purports to pre-empt state laws. Does it validly do so? If the rescission order is invalid, then so is its pre-emption provision. Second, California could argue that agencies should not have the power to pre-empt state laws. Pre-emption, in this view, is a decision to favor federal over state rulemaking, and therefore only Congressâ€”which provides representation for state interestsâ€”should make the call whether to pre-empt. A article by law professor Ashuthosh Bhagwat provides a useful summary of this argument and of the counterarguments in favor of the orthodox view that Congress can delegate to agencies the power to pre-empt state law. Third, in recent years, various conservative scholars, judges, and justices have proposed cutting back on or even overruling a central principle of modern administrative law: Called the Chevron doctrine for the leading case , the principle of deference has come under attack on grounds that roughly parallel the attack on agency pre-emption: Here too, California could not ask that a lower federal court overrule Chevron, but it could hope that the courts would decline to give deference to the rescission of net neutrality in particular. Perhaps without granting the FCC deference, a court might say that there is an insufficient basis for finding that the FCC has authority to pre-empt state net neutrality laws. The Scrambled Ideological Landscape The two more radical arguments just describedâ€”against pre-emption by agency action and against Chevron deferenceâ€”have generally been favored by conservatives and opposed by progressives. Does that

configuration make sense? Since the New Deal and arguably even earlier, much of federal regulation has been achieved through acts of Congress that grant agencies the power to make rules, rather than by statutes that themselves contain all of the key details. Indeed, scholars of administrative law conventionally explain that development as inevitable: By attacking the doctrines that permit agency pre-emption and deference to agency rulemaking, conservatives seemingly attack regulation itself. Yet notice two key limitations of the assumption that the attack on the administrative state is necessarily deregulatory and thus serves conservative rather than progressive ends. First, new approaches that limit the power of federal agencies to regulate also can limit the power of federal agencies to deregulate. That is especially true with respect to federal pre-emption. Industry lobbyists often seek federal pre-emption of state regulation precisely because they hope to set a low ceiling on state regulation. Thus, the fact that arguments against agency pre-emption end up working in favor of state efforts to regulate is in no way peculiar to net neutrality. Across a wide range of subject areas, limitations on agency pre-emption could have the effect of empowering state regulators. Second, even an overall weakening of administrative agencies might not be deregulatory in the long run. The standard argument for the necessity of agencies contains a logical gap. It is true that the members of Congress lack the time and expertise to regulate across a wide range of areas. They need to enlist a very large staff. But there is no necessity that such staff be located in the executive branch of government or in independent agencies. As my colleague Jed Stiglitz has explained , Congress could develop such expertise within the legislative branch itself. To be sure, Professor Stiglitz argues that Congress has additional reasons for delegating power to agencies, but in a world in which Supreme Court doctrine foreclosed or greatly limited agency rulemaking, a future Democratic Congress likely would increase its own staff and start to write more detailed statutes. The result would be less agency regulation but not necessarily less regulation overallâ€”and the regulations produced by Congress would be more durable, because they could not be subject to rescission by an anti-regulatory Republican administration. Conservatives who seek to throttle the administrative state by cutting back on the power of administrative agencies should be careful what they wish for.

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2: Neutral country - Wikipedia

Neutrality (derived from the Latin neuter: neither of each) is defined in international law as the status of a state which is not participating in an armed conflict between other states. Neutral status gives rise to rights and duties in the relationship between the neutral state on one hand and the parties to the conflict on the other.

Neutrality during war has for centuries performed a crucial function within the laws of international armed conflict, as the status helps to curtail the spread of hostilities by promoting neutral abstention and an attitude of impartiality toward the belligerents. Therefore, neutral states remain at peace with other neutral states and at peace with the belligerents to the greatest extent possible. In return, the belligerents are obligated to respect neutral territory and jurisdiction land, sea, air, etc. Such seeming simplicity as regards the mutuality of neutral and belligerent rights and duties is not the entire picture, however, as rules of neutrality between states do not necessarily bind private individuals. In other words, so long as neutral governments officially abstain from assisting either party to the hostilities, and remain impartial, they may feel moreâ€"or lessâ€"inclined to prohibit their citizens from engaging in such activities as foreign enlistment. Further, neutrals may still benefit from foreign wars indirectly. On the other hand, the UN Charter of appears at first sight to have altered this centuries-old accommodation between war and neutrality. Charter Article 2 4 prohibits aggression, and is reinforced in Charter Chapter VII by Security Council enforcement powers which are legally binding on states. Accordingly, the preponderance of the available evidence indicates a high degree of ongoing support for neutrality within international society. General Overviews The slow evolution of neutral principles up until the League of Nations era can be found in the four volumes of Neutrality: Its History, Economics and Law Jessup, et al. In essence, the core principles of neutrality are few and are designed to ensure that neutral states abstain from the hostilities and adopt a nondiscriminatory attitude of impartiality toward the belligerents. The main rights and duties of neutral and belligerent states include the following: The inviolability of neutral territory may however depend on the context of the hostilities. International instruments such as the Hague Convention V , relating to the rights and duties of neutral powers in case of war on land, and the Hague Convention XIII , applicable to neutral powers in naval warfare for both see International Treaties , differ in detail as to this point. For this reason, general overviews on neutrality tend to be divided in approach. Neff provides fairly generic discussions of both land and sea neutrality, while the San Remo Manual Doswald-Beck , Heintschel von Heinegg , and the Committee on Maritime Neutrality deal with maritime neutrality alone. In turn, the prohibition of aggression in UN Charter Article 2 4 and Chapter VII enforcement powers have led most modern writers to advocate a high level of tolerance for neutral flexibilities. Nonetheless, as states continue to characterize their uses of force as lawful pursuant to Charter law, and as belligerent environments continue to evolve, the currency of the core neutral principles is maintainedâ€"a point reflected by ongoing reference to neutrality in most state military manuals, in academic commentary, and in state practice. Complete, if occasionally succinct, accounts of the modern rules of neutrality are also found in Cummings , Walker , and the Tallinn Manual Schmidt Committee on Maritime Neutrality. Helsinki Principles on Maritime Neutrality: Report of the 68th Taipei, Taiwan Conference, 24â€"30 May Edited by Dietrich Schindler and Jiri Toman, â€" Heintschel von Heinegg, Wolff. Its History, Economics and Law. Columbia University Press, â€" Jessup and Francis Deak, The Origins , is essentially historic and strategic in outlook; Volume 2: Phillips, and Arthur H. Reede, The Napoleonic Period , and Volume 3: Jessup, Today and Tomorrow , focuses on political and legal contexts of neutrality; coverage overall extends from the 16th century to the League of Nations era, as exemplified in treaties, state practice, and prize court decisions. The Rights and Duties of Neutrals: Manchester University Press, Users without a subscription are not able to see the full content on this page. Please subscribe or login. How to Subscribe Oxford Bibliographies Online is available by subscription and perpetual access to institutions. For more information or to contact an Oxford Sales Representative click here.

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3: Law of war - Wikipedia

Michael Bothe, The Law of Neutrality, in DIETER FLECK, THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS (Â¶) () ("The duty of non-participation means, above all, that the state must abstain from.

Terminology[edit] A neutral country in a particular war , is a sovereign state which officially declares itself to be neutral towards the belligerents. The rights and duties of a neutral power are defined in Sections 5 [1] and 13 [2] of the Hague Convention of A permanently neutral power is a sovereign state which is bound by international treaty to be neutral towards the belligerents of all future wars. An example of a permanently neutral power is Switzerland. The concept of neutrality in war is narrowly defined and puts specific constraints on the neutral party in return for the internationally recognised right to remain neutral. Neutralism or a "neutralist policy" is a foreign policy position wherein a state intends to remain neutral in future wars. A sovereign state that reserves the right to become a belligerent if attacked by a party to the war is in a condition of armed neutrality. A non-belligerent state does not need to be neutral; the policy of non-interventionism is distinct from neutrality, but related, in that it seeks to avoid alliances or intervening militarily in other countries. For example, Austria has its neutrality guaranteed by its four former occupying powers, Switzerland by the signatories of the Congress of Vienna and Finland by the Soviet Union during the Cold War. The form of recognition varies, often by bilateral treaty Finland , multilateral treaty Austria or a UN declaration Turkmenistan. Austria and Japan codify their neutrality in their constitutions, but they do so with different levels of detail. Some details of neutrality are left to be interpreted by the government while others are explicitly stated, for example Austria may not host any foreign bases and Japan cannot participate in foreign wars. Yet Sweden, lacking formal codification, was more flexible during the Second World War in allowing troops to pass through its territory. Military preparedness without commitment, especially as the expressed policy of a neutral nation in wartime; readiness to counter with force an invasion of rights by any belligerent power. It is the condition of a neutral power, during said war, to hold itself ready to resist by force, any aggression of either belligerent. Such states assert that they will defend themselves against resulting incursions from all parties. Sweden and Switzerland are, independent of each other, famed for their armed neutrality, which they maintained throughout both World War I and World War II. It pursues, however, an active foreign policy and is frequently involved in peace-building processes around the world. But not having a military does not result in neutrality as many countries, such as Iceland , replaced a standing military with a military guarantee from a stronger power. Leagues of Armed Neutrality[edit] The phrase "armed neutrality" sometimes refers specifically to one of the "Leagues of Armed Neutrality". This league had a lasting impact of Russian-American relations, and the relations of those two powers and Britain. It was also the basis for international maritime law , which is still in effect. Carl Kulsrud argue that the concept of armed neutrality was introduced even earlier. Within 90 years before the First League of Armed Neutrality was established, neutral powers had joined forces no less than three times. As early as , Lubeck and Holland joined powers to continue their maritime exploration without the commitment of being involved in wartime struggles on the sea. It occurred during and The idea of this second league was to protect neutral shipping from the British Royal Navy. However, Britain took this as the alliance taking up sides with France, thus attacking Denmark. The alliance was forced to withdraw from the league. For many states, such as Ireland and Sweden, neutrality does not mean the absence of any foreign interventionism. Peacekeeping missions for the United Nations are seen as intertwined with it. Despite this, 23 Swiss observers and police have been deployed around the world in UN projects. European Union[edit] There are five members of the European Union that still describe themselves as a neutral country in some form: Austria , Ireland , Finland , Malta and Sweden. I must correct him on that: Finland is a member of the EU. We were at one time a politically neutral country, during the time of the Iron Curtain. Now we are a member of the Union, part of this community of values, which has a common policy and, moreover, a common foreign policy. The policy was designed to be inclusive and allows for states to opt in or out of specific forms of military cooperation. That has allowed most of the neutral states to participate, but opinions still vary. It was passed with the government arguing that its opt-in nature allowed

Ireland to "join elements of PESCO that were beneficial such as counter-terrorism, cyber security and peace keeping The Maltese government argued that it was going to wait and see how PESCO develops to see whether it would compromise Maltese neutrality. According to Ion Marandici, Moldova has chosen neutrality in order to avoid Russian security schemes and Russian military presence on its territory.

4: Neutrality - International Law - Oxford Bibliographies

User Review - Flag as inappropriate This is without a doubt, the standard work on international humanitarian law. It helps the reader to resolve some of the recent debates about the status and protection to which combatants are entitled under the The Hague and Geneva Laws.

The signing of the First Geneva Convention by some of the major European powers in The modern law of war is made up from three principal sources: Not all the law of war derives from or has been incorporated in such treaties, which can refer to the continuing importance of customary law as articulated by the Martens Clause. Such customary international law is established by the general practice of nations together with their acceptance that such practice is required by law. For instance, the principles of distinction, proportionality, and necessity, all of which are part of customary international law, always apply to the use of armed force". The opposite of positive laws of war is customary laws of war, [1] many of which were explored at the Nuremberg War Trials. These laws define both the permissive rights of states as well as prohibitions on their conduct when dealing with irregular forces and non-signatories. In addition, the Nuremberg War Trial judgment on "The Law Relating to War Crimes and Crimes Against Humanity" [13] held, under the guidelines Nuremberg Principles , that treaties like the Hague Convention of , having been widely accepted by "all civilised nations" for about half a century, were by then part of the customary laws of war and binding on all parties whether the party was a signatory to the specific treaty or not. Interpretations of international humanitarian law change over time and this also affects the laws of war. For example, Carla Del Ponte , the chief prosecutor for the International Criminal Tribunal for the former Yugoslavia pointed out in that although there is no specific treaty ban on the use of depleted uranium projectiles, there is a developing scientific debate and concern expressed regarding the effect of the use of such projectiles and it is possible that, in future, there may be a consensus view in international legal circles that use of such projectiles violates general principles of the law applicable to use of weapons in armed conflict. But based on the adherence to what amounted to customary international law by warring parties through the ages, it was felt[by whom? Wars should be brought to an end as quickly as possible. People and property that do not contribute to the war effort should be protected against unnecessary destruction and hardship. To this end, laws of war are intended to mitigate the hardships of war by: Protecting both combatants and non-combatants from unnecessary suffering. Safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war , the wounded and sick, and civilians. Facilitating the restoration of peace. Principles of the laws of war[edit] article outlining the basic principles of the law of war, as published in the Tacoma Times. Military necessity , along with distinction , and proportionality , are three important principles of international humanitarian law governing the legal use of force in an armed conflict. Military necessity is governed by several constraints: Generally speaking, the laws require that belligerents refrain from employing violence that is not reasonably necessary for military purposes and that belligerents conduct hostilities with regard for the principles of humanity and chivalry. However, because the laws of war are based on consensus, the content and interpretation of such laws are extensive, contested, and ever-changing. Declaration of war[edit] Main article: Declaration of war Section III of the Hague Convention of required hostilities to be preceded by a reasoned declaration of war or by an ultimatum with a conditional declaration of war. Some treaties, notably the United Nations Charter Article 2, and other articles in the Charter, seek to curtail the right of member states to declare war; as does the older Kelloggâ€"Briand Pact of for those nations who ratified it. Combatants also must be commanded by a responsible officer. That is, a commander can be held liable in a court of law for the improper actions of his or her subordinates. There is an exception to this if the war came on so suddenly that there was no time to organize a resistance, e. Once they land in territory controlled by the enemy, they must be given an opportunity to surrender before being attacked unless it is apparent that they are engaging in a hostile act or attempting to escape. This prohibition does not apply to the dropping of airborne troops , special forces , commandos , spies , saboteurs , liaison officers , and intelligence agents. Thus, such personnel descending by parachutes are legitimate targets and, therefore, may be attacked, even if their aircraft is in distress. It is also

prohibited to fire at a person or vehicle bearing a white flag , since that indicates an intent to surrender or a desire to communicate. In fact, engaging in war activities under a protected symbol is itself a violation of the laws of war known as perfidy. Failure to follow these requirements can result in the loss of protected status and make the individual violating the requirements a lawful target. Parties are bound by the laws of war to the extent that such compliance does not interfere with achieving legitimate military goals. For example, they are obliged to make every effort to avoid damaging people and property not involved in combat or the war effort , but they are not guilty of a war crime if a bomb mistakenly or incidentally hits a residential area. By the same token, combatants that intentionally use protected people or property as human shields or camouflage are guilty of violations of the laws of war and are responsible for damage to those that should be protected. The use of contracted combatants in warfare has been an especially tricky situation for the laws of war. Some scholars claim that private security contractors appear so similar to state forces that it is unclear if acts of war are taking place by private or public agents. Remedies for violations[edit] During conflict, punishment for violating the laws of war may consist of a specific, deliberate and limited violation of the laws of war in reprisal. After a conflict has ended, persons who have committed or ordered any breach of the laws of war, especially atrocities, may be held individually accountable for war crimes through process of law. Also, nations which signed the Geneva Conventions are required to search for, then try and punish, anyone who has committed or ordered certain "grave breaches" of the laws of war. Third Geneva Convention , Article and Article Combatants who break specific provisions of the laws of war are termed unlawful combatants. Unlawful combatants who have been captured may lose the status and protections that would otherwise be afforded to them as prisoners of war , but only after a " competent tribunal " has determined that they are not eligible for POW status e. At that point, an unlawful combatant may be interrogated, tried, imprisoned, and even executed for their violation of the laws of war pursuant to the domestic law of their captor, but they are still entitled to certain additional protections, including that they be "treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial. In the Luanda Trial , after "a regularly constituted court" found them guilty of being unlawful mercenaries , three Britons and an American were shot by a firing squad on July 10, Nine others were imprisoned for terms of 16 to 30 years. International treaties on the laws of war[edit].

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5: The Handbook of Humanitarian Law in Armed Conflicts - Google Books

This fully updated second edition of The Handbook of Humanitarian Law in Armed Conflicts sets out an international 'manual' of humanitarian law in armed conflicts accompanied by case analysis and extensive explanatory commentary by a team of distinguished and internationally renowned experts.

Net neutrality rules are now repealed: The net neutrality rules are no longer the law of the land. The repeal of Obama-era net neutrality protections officially took effect on Monday, nearly six months after the Republican-led Federal Communications Commission voted to roll back the rules. In a press release Monday, the FCC said the repeal does away with "unnecessary, heavy-handed regulations" and replaces them with "common-sense regulations that will promote investment and broadband deployment. State officials, members of Congress, technology companies and various advocacy groups are still pushing to save the rules through legislation and litigation. What exactly is net neutrality? The net neutrality rules were approved by the FCC in amid an outpouring of online support. The intention was to keep the internet open and fair. Under the rules, internet service providers were required to treat all online content the same. Remember the uproar over repealing internet privacy protections last year? The FCC did away with rules barring internet providers from blocking or slowing down access to online content. The FCC also eliminated a rule barring providers from prioritizing their own content. In the absence of a firm ban on these actions, providers will be required to publicly disclose any instance of blocking, throttling or paid prioritization. It will then be evaluated based on whether or not the activity is anti-competitive. Trump administration sends mixed messages on big media As part of this shift, oversight of internet protections will shift from the FCC to the Federal Trade Commission. But consumer advocacy groups have been less than optimistic. The concern among net neutrality advocates is that the repeal could give internet providers too much control over how online content is delivered. Internet providers could choose to prioritize their own content and services over those of rivals. Businesses like Netflix, with large audiences and bank accounts, will likely be able to adapt -- but smaller companies may struggle to strike deals with providers and pay up to have their content delivered faster. The repeal could also change how customers are billed for services, both for good and bad. T-Mobile TMUS , for example, was criticized by net neutrality supporters for effectively making it cheaper for customers to stream videos from Netflix and HBO, putting other video services at a disadvantage. Without net neutrality, internet providers may pursue similar offers more aggressively. Initially, this might be viewed as a positive by consumers looking to save money on their streaming media. Not much is expected to change right away, however, as the possibility of legislation and litigation looms. Is there a chance the repeal is, well, repealed? The Senate passed a measure to preserve the net neutrality rules last month. On Thursday, with the official repeal date looming, dozens of senators sent a letter to House Speaker Paul Ryan urging him to schedule a vote on the issue. More than 20 states have filed a lawsuit to stop the net neutrality repeal. Several states , including New Jersey, Washington, Oregon and California, have gone so far as to push legislation to enforce the principles of net neutrality within their borders. This local legislation could lead to a legal showdown, however. The FCC order that just took effect asserts authority to prevent states from pursuing laws inconsistent with the net neutrality repeal.

6: The Handbook of International Humanitarian Law - Michael Bothe - Google Books

For a general overview of the law of neutrality in the latter sense, see, e.g., Michael Bothe, "The Law of Neutrality", in Dieter Fleck (ed.), The Handbook of International Humanitarian Law, Oxford University Press, Oxford, , p.

Particularly relevant sections of underlying case readings are yellow highlighted. The student is, however, expected to at least be familiar with the entire reading. Where the case title is highlighted, as in Yamashita, the student is expected to read carefully the entire case. A Note to German Students: To facilitate your understanding I have included German language texts of treaties where available. The hyperlink will be identified by the words "German language version. Proclamations of Neutrality were a means by which, if effective, nonbelligerent nations could avoid at least some of the financial and political burdens of warfare. Thus, in , President Wilson proclaimed that "the United States must be neutral in fact, as well as in name When they [England and France] proclaimed their neutrality and accorded us belligerent rights and the hospitality of their ports to Confederate cruisers, they just as much recognized the independence of the South as if they had officially received our ministers. The human mind cannot conceive of belligerent rights except as attached to a supreme independent power. Some commentators have argued that neutral status ceases to exist under the obligations incurred under the United Nations Charter by all members of the United Nations. Article 2 5 provides: All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action. Article 25 requires that: The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter. Moreover, in armed conflicts inside a country, third States, by their recognition of revolutionaries as belligerents, may still become obligated to apply the law of neutrality. Finally, there are States, such as Switzerland, which even now are under an international obligation to remain permanently neutral and, more recently, Austria has chosen to base her own foreign policy on the principle of neutrality. Thus, the law of neutrality appears to be far from dated. Lauterpacht lists various types of neutrality: The status of states permanently neutralized by special treaty. General neutrality covers the territory of an entire State, but circumstances may exist in which only a part of its territory is neutral, for example, by treaty. In some instances a state is bound by treaty to remain neutral; in all others the status is purely voluntary. The status of a state which takes military measures to protect its neutral status. An obsolete term for less than neutral behavior. Qualified neutrality implied the giving of some kind of aid to one belligerent. Although they had not declared war against us and were, therefore, from the point of view of international law, still in a state of neutrality, the United States had begun, very shortly after the start of the war, to give Britain an ever-increasing measure of support and assistance. American naval forces had been actively engaged in helping the British. The whole vast resources of American armament production and industry had been placed at the disposal of the opponents of the Axis Powers The American attitude, which was completely contrary to every tenet of international law, was of the utmost military, material and moral benefit to Britain In May of , when Hitler made his irrevocable decision to attack Poland, and foresaw the possibility at least of a war with England and Francein consequence, he told his military commanders: Declarations of neutrality must be ignored. On the 7th October General von Brauchitsch directed Army Group B to prepare "for the immediate invasion of Dutch and Belgian territory, if the political situation so demands. At the conference on the 23rd November, , Hitler said: The progress of the war depends on the possession of the Ruhr. If England and France push through Belgium and Holland into the Ruhr, we shall be in the greatest danger Certainly England and France will assume the offensive against Germany when they are armed. England and France have means of pressure to bring Belgium and Holland to request English and French help. In Belgium and Holland the sympathies are all for France and England If the French Army marches into Belgium in order to attack us, it will be too late for us. We must anticipate them We shall sow the English coast with mines which cannot be cleared. This mine warfare with the Luftwaffe demands a different starting point. England cannot live without its imports. We can feed ourselves. The permanent sowing of mines on the English coasts will bring England

to her knees. However, this can only occur if we have occupied Belgium and Holland. My decision is unchangeable; I shall attack France and England at the most favourable and quickest moment. Breach of the neutrality of Belgium and Holland is meaningless. No one will question that when we have won. We shall not bring about the breach of neutrality as idiotically as it was in If we do not break the neutrality, then England and France will. Without attack, the war is not to be ended victoriously. On the same day the German Ambassadors handed to the Netherlands and Belgian Governments a memorandum alleging that the British and French armies, with the consent of Belgium and Holland, were planning to march through those countries to attack the Ruhr, and justifying the invasion on these grounds. But, note the German view in When Hitler decided to occupy Denmark and Norway he did not know of the draft resolution passed by the Allied Supreme Council on March 28, This resolution dealt with the laying of minefields along the coasts of Norway, Denmark and Sweden, in spite of the fact that this would violate the neutrality of those countries. Had Hitler known of this, it would have saved him a lot of rationalizing to justify their occupation. This version of the resolution also dealt with the bombing of Russian oilfields in the Caucasus and measures to prevent us from receiving Rumanian oil. Questions About Rules Governing Neutrality 9. Was the training of anti-Castro Cuban Rebels by the U. Would it make any difference if the actual combat training and arming of the troops was conducted in a third country after they were recruited in the United States? Does that fact create a legal distinction between the Contras and the anti-Castro Cubans? Is Doenitz legally correct in his complaint that the United states had violated international law by aiding the UK? What is the contrary argument? Was this a breach of neutrality? Was this conduct consistent with neutrality? Do current revelations show violations of neutrality? By the time the program ended in August, , 2,, German soldiers had transited Swedish rail lines. Was this a violation of Hague V? If so, why did Sweden permit Germany to ship those troops across its neutral territory? Should Sweden have been required to intern them? If so, why should escaped Allied POWs who reach Swedish territory be permitted to remain at liberty under the terms of the Hague Convention? What was the legal status of those countries in relation to the competing powers? If so, what were their obligations? Were those obligations impacted by the terms of the NATO treaty? Under a highly technical reading, that may be correct, since the Charter assumes global jurisdiction. In a sense, however, neutrality has continued in force through the Cold War the "Nonaligned Nations" or "Third World" and in the use of good offices by Western powers in attempts to settle various conflicts, either regional or internal to states. As there is no diplomatic intercourse between the contending States during war, complaints of breaches of the laws of war are sent to the enemy Complaints may also be lodged with neutral States, with or without a view to soliciting their good offices, mediation or intervention, for the purpose of making the enemy observe the laws of war. Following the June 22, invasion of the U. The Swedish government capitulated to German demands and on June 26th the German rd Infantry Division was permitted to entrain across Sweden. Following Allied protests, the Swedish Foreign Ministry explained the conduct as due to a special relationship with Finland: It does not mean that we have chosen sides in the war between Germany and Great Britain. Neutrality does not demand that nations not participating in an armed conflict should be indifferent to the issues of the belligerents. The sympathies of neutrals may well lie entirely with one side, and a neutral does not violate his duties as long as he does not commit any unneutral acts that might aid the side he favors. Since , have there been situations where the good offices of third party States have been more effective than the activities of the Security Council in ending hostilities? Would there be a need for one if world opinion was all on one side? Can an NGO effectively function as a neutral or a protecting power or both? Now look at the U. In February, the United States Government informed the French Government at Vichy that information had been received "that the French Government may have entered into some arrangement with the Axis Powers providing for the use of French ships for the transportation of supplies and possibly war material to Tunis for the use of enemy forces in Libya. France now proceeds to enter into agreements for the shipment of war materials or forwards supplies to the enemies of the United Nations, France, by its own action, will have turned its back upon the uninterrupted friendly relationship with the United States and will place itself in the category of nations which are directly assisting the Axis Powers who have opened warfare with the United States. There can be no possible justification under the terms of the Armistice for shipment of war materials or other direct aid to Axis nations

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Is a neutral justified in trading with an aggressor in order to forestall an attack? Therefore I need only very shortly remind the Tribunal of two passages. First of all, on the first page it is interesting to see who was present: We know the purpose of the conference was an analysis of the situation. On 11th October, , the accused, von Leeb, wrote to his Commander-in-Chief, von Brauchitsch, inclosing a memorandum prepared by him advising against this course of action. In it he argued that the invasion would develop into a long-drawn-out trench warfare, and then continued: France and Belgium will then have one common foe:

7: Holdings : The handbook of international humanitarian law / | York University Libraries

The handbook of international humanitarian law / edited by Dieter Fleck in collaboration with Michael Bothe [and 12 others]. KZ H36 Handbook of international humanitarian law in South Asia / edited by V.S. Mani.

8: The Handbook of International Humanitarian Law - Dieter Fleck - Oxford University Press

General Overviews. The slow evolution of neutral principles up until the League of Nations era can be found in the four volumes of Neutrality: Its History, Economics and Law (Jessup, et al.).

9: Oxford Public International Law: Neutrality, Concept and General Rules

One thing that the Brett Kavanaugh Supreme Court hearings destroyed was the myth of legal neutrality. That may be a good thing because it is time to recognize both that the Supreme Court and its.

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