



THE LAW OF ARMED CONFLICT

Neutrality



ICRC



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NEUTRALITY



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The aim of this lesson is to explain the law of armed conflict as it relates to neutrality. The focus will be on land operations. Detailed sea and air aspects of neutrality will be found within those sections of the Teaching File.

The lesson will cover:

1. Principles and definitions.
2. The duties of belligerent States.
3. The duties of neutral States.
4. Practical provisions regarding the law of neutrality.
5. Neutrality aspects related to sea and air which might impact on land operations.

1. Principles & definitions
2. Duties of belligerent States
3. Duties of neutral States
4. Practical provisions regarding the law of neutrality
5. Neutrality aspects related to sea & air which might impact on land operations

INTRODUCTION

The sources of the international law of neutrality are customary international law and, for certain questions, international treaties, in particular the Paris Declaration of 1856, the 1907 Hague Convention No. V respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, the 1907 Hague Convention No. XIII concerning the Rights and Duties of Neutral Powers in Naval War, the four 1949 Geneva Conventions and Additional Protocol I of 1977.

The United Nations Charter of 1945 and Security Council decisions based on the Charter may in certain circumstances modify the law of neutrality. For example, Article 2(5) of the Charter requires UN Member States to give the UN every assistance in any action it takes, and Article 25 requires UN members to accept and comply with the decisions of the Security Council; the enforcement measures spelled out in Chapter VII can also have an impact, as they **are governed by particular rules which differ from those of the law of neutrality.**

1. PRINCIPLES AND DEFINITIONS

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THE PRINCIPLE OF INVIOABILITY

The territory of a neutral State is inviolable. It is prohibited to commit any act of hostility whatsoever on such territory.

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Neutrality describes the formal position taken by a State which is not participating in an armed conflict or which does not want to become involved. This status entails specific rights and duties. On the one hand, the neutral State has the right to stand apart from and not be adversely affected by the conflict. On the other hand, it has a duty of non-participation and impartiality.

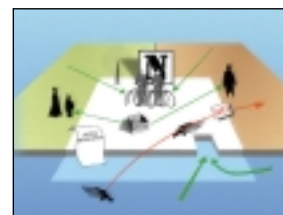
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Neutral space comprises the national territory of the neutral State, its territorial waters and its national air space.

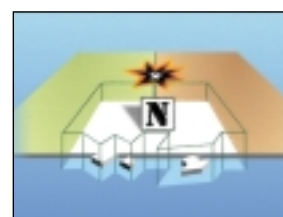
Neutral persons are nationals of neutral States. They lose their neutral status if they commit hostile acts against a belligerent. Individuals may join the armed forces of a belligerent party, but then they also lose their neutral status. They still have all the guarantees of protection that a member of those forces would enjoy, and therefore are entitled to POW status if they are subsequently captured. If, however, they can be defined as mercenaries, whom we covered in an earlier lesson, they do not have the right to be considered as combatants or POWs.

As long as their home State maintains normal diplomatic relations with the belligerent State they are living in or visiting, neutral persons are to be treated in the same way as they would be in peacetime. They remain under diplomatic protection.

If there are no such diplomatic relations, neutral persons are entitled to be treated as protected persons under the Fourth Geneva Convention. It makes no difference to their status if they are civilians or members of the armed forces of the neutral State to which they belong.



HC V, Art. 1



HC V, Arts. 16-17
GP I, Art. 47

GC IV, Art. 4

2. THE DUTIES OF BELLIGERENT STATES

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Belligerent States have a number of duties.

They must establish a neutrality policy ensuring respect for neutral space, in particular that armed forces involved in the conflict do not enter neutral space and that neutral States are not affected by the collateral effects of hostilities.

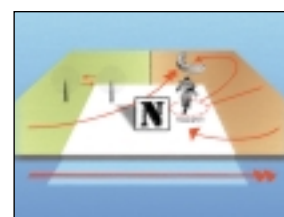
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They must issue **clear instructions and orders** to the armed forces in action in the vicinity of neutral space to avoid violations. Those orders and instructions should include the following prohibitions:

- neutral space must not be entered or passed through, meaning that troops and combat supply convoys must not be moved across neutral territory (this entails giving precise information on borders, boundaries, etc.);
- units must not be formed or combatants recruited in neutral territory;
- no telecommunication installations may be erected on neutral territory for military purposes, and any military telecommunication installations erected before the armed conflict may not be used.

Even if clear instructions are issued, mistakes can occur. A patrol can cross into neutral space because of a map-reading error. Troops should be clearly briefed on how to react in such circumstances. If they are aware of their error and have not been discovered, they should backtrack rapidly into their own territory. If they are discovered, they should admit their mistake and avoid escalating the incident into a fight. Normally, the neutral State will warn such offenders and give them the opportunity to withdraw peacefully. In some circumstances, described below, they might be interned.

You should be aware that the law does not actually differentiate between intentional and non-intentional acts. The above simply offers practical ideas on how to deal with the realities of operational life. It will be for the State and its armed forces to lay down clear rules that must be followed to avoid confusion and possibly escalate a minor or possibly purely accidental event into a major incident.



HC V, Arts. 2-4

3. THE DUTIES OF NEUTRAL STATES

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Policy and instructions – the neutral State must also take measures to ensure and enforce the protection of its neutrality in the neutral space for which it is responsible in relation to the belligerent parties and in particular their armed forces. To obtain neutral status, the State does not have to make a formal declaration, nor do other States or parties formally have to recognize such status. A formal declaration will only have the effect of making neutral status better known.

The armed forces of the neutral State also require clear instructions on how they are to operate in relation to the defence of their territory and in dealing with incursions. For isolated and accidental violations of neutral space, the instructions might include the need to issue warnings or give a demonstration of force. For increasingly numerous and serious violations, a general warning might be called for and the use of force stepped up.

Particular obligations – the neutral State must ensure respect for its neutrality, if necessary using force to repel any violation of its territory. Violations include failure to respect the prohibitions placed on belligerent parties with regard to certain activities in neutral territory, described above. The fact that a neutral State uses force to repel attempts to violate its neutrality cannot be regarded as a hostile act. If the neutral State defends its neutrality, it must however respect the limits which international law imposes on the use of force.

The neutral State must treat the opposing belligerent States impartially. This obligation does not mean that a State is bound to treat the belligerents in exactly the same way. It entails a prohibition on discrimination. That is it forbids only differential treatment of the belligerents which in view of the specific problem of armed conflict is not justified. Therefore a neutral State is not obliged to eliminate differences in commercial relations between itself and each of the parties to the conflict at the time of the outbreak of the armed conflict. It is entitled to continue existing commercial relations. A change in these commercial relationships could, however, constitute taking sides inconsistent with the status of neutrality.

A neutral State must never assist a party to the armed conflict, in particular it must not supply warships, ammunition or other war materials directly or indirectly to a belligerent power, but otherwise its trade with the belligerent States remains unaffected.



HC V, Arts. 5 & 10

HC XIII, Art. 6

There should be no need to develop this point. However, if any student refers to the law's subsequent provisions on the subject, you might need to point out, in class or after, that the law is a little confusing. Subsequent provisions in the two main Hague Conventions on neutrality hint that such supply by private companies or individuals of a neutral State might nevertheless be acceptable.

HC V, Art. 7
HC XIII, Art. 7

State practice since the adoption of those Conventions has modified this view. The separation of the State and private armaments industry is now artificial and does not correspond to political reality. Arms production and the arms trade are in many ways managed, promoted and controlled by the State. Customary international law at present holds that the State is committing a non-neutral act if it grants permission to supply any sort of war materials, i.e. not just the examples given in the law (warships, ammunition and other war materials), which are purely illustrative. Massive financial support for a party to the conflict, supplying oil or coal, etc., would also tend to constitute non-neutral behaviour.

Regarding the use of telecommunication equipment, again State practice and technology have moved on since 1907. However, the principles of the Hague Convention No. V remain valid. The outbreak of an armed conflict does not result in the obligation for a neutral State to prevent the use of its telecommunication installations by a party to the conflict which used them or had access to them before. Existing **non-military telecommunications**, in particular those owned by public companies, may be used by the parties to the conflict. They can rent fixed lines for voice and data communication of a military nature and may be granted access from such lines to satellite communications. On the other hand, it would be considered a non-neutral act for a neutral State to place at the disposal of a party to the conflict telecommunication installations not available to it under normal conditions, e.g. its own military communications system, to create new infrastructure for a party to the conflict or to allow it to create such facilities itself.

HC V, Arts. 8 & 9

4. PRACTICAL PROVISIONS REGARDING THE LAW OF NEUTRALITY

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TREATMENT OF MEMBERS OF BELLIGERENT ARMED FORCES

Neutral States receiving troops belonging to the belligerent armies on their territory must intern them. It would be a violation of the duty of non-participation if the neutral State permitted such troops to take part again in hostilities.

Here again the law is a little unclear. Let us look at it from the military point of view. The word "receive" is a little vague. In operational terms it can mean a number of things. Obviously, the rule provides a useful deterrent to trespass by the belligerents and this makes sense.

If whole units of a belligerent party deliberately operate in or through neutral territory and are captured, the neutral State is within its rights to intern them.

If individuals or units of a belligerent State cross the border into neutral territory simply because they seek refuge or want to give themselves up, i.e. to desert from their armed forces (this means to break allegiance with the party to which they belong), the neutral State might have a problem on its hands. Should it accept those people and intern them or send them back? If it accepts them, it risks antagonizing the parent belligerent State.

Deserters are in fact not covered by the Third Geneva Convention or the Hague Convention No. V, and as such are not protected by the law of armed conflict when they find themselves on neutral territory. They are only protected by refugee law if they meet the conditions for refugee status. However, nothing prevents the neutral State from applying the Third Geneva Convention and treating them like military internees.



NEUTRALITY

The above details should be sufficient to explain the problem and treatment of deserters. If more detail is required or requested, refer to the paragraphs below.

If the deserters are considered as refugees, the neutral State is not allowed to send them back to their State of origin.

If the neutral State accepts the deserters, it is not obliged to intern them. They are simply foreigners on neutral territory. An obligation to intern could arise, however, if the deserters try to reach enemy territory through neutral territory.

The neutral State has the right to grant asylum to deserters and to refuse, as a consequence, to repatriate them after the end of hostilities against their will.

At the outbreak of hostilities policy for such matters should be clearly laid down and ideally agreed with the belligerent States. Whatever action is taken should in any case be applied equally to all belligerent parties. In the case of an accidental incursion, i.e. not an act that was knowingly committed by a belligerent (a patrol leader gets lost), common sense might dictate that a low-key response is the most sensible. In that case, the neutral State can issue a warning and allow the patrol to return to its side of the border.

See previous instructors' note (page 8-3). HC V does not make a difference between international and non-international acts. The above simply offers a common-sense option to deal with such a situation.

Internees who are held in neutral territory may be kept in camps or other secure places.

Officers may, at the discretion of the neutral State, be released on parole but are not allowed to leave neutral territory without permission. During internment, internees are to be fed and clothed and allowed relief supplies. The neutral State may enter into an agreement with the belligerent State concerned about the treatment of internees and the belligerent State is responsible at the end of hostilities for making good the costs incurred. In the absence of any agreement, the internees should as a minimum be given treatment equivalent to that of POWs under the Third Geneva Convention. Delegates from the International Committee of the Red Cross are entitled to visit such internees.

HC V, Arts. 11 & 12
GC III, Art. 4 (B 2)

HOT PURSUIT INTO NEUTRAL TERRITORY

It is generally accepted that if belligerent forces enter neutral territory and the neutral authority is unable or unwilling to expel or intern them, the adverse party is entitled to undertake their **hot pursuit** and attack them there. It may even seek compensation from the neutral State for this breach of neutrality. The mere presence of belligerent forces does not justify hot pursuit, there must be some failure by the neutral State to uphold its neutrality.

MILITARY EQUIPMENT

Military equipment taken from belligerent internees also has to be kept by the neutral State until the end of hostilities.

TREATMENT OF MILITARY MEDICAL AND RELIGIOUS PERSONNEL FROM BELLIGERENT ARMED FORCES

Although the law does not explicitly deal with the subject, you would be on safe ground to apply the general rules on retaining such persons:

- if you need them to tend to the medical or spiritual needs of other interned members of the belligerent armed forces, retain them for as long as their services are required;
- if you do not need them for that purpose, repatriate them.

By analogy,
see GC I, Art. 4
& GC II, Art. 5

TREATMENT OF FORMER PRISONERS OF WAR

Escaped POWs who reach neutral territory or POWs who are held by a belligerent party seeking refuge there are to be left at liberty. If the neutral State tolerates their stay on its territory, it can assign them a place of residence.

HC V, Art. 13

Does the term *left at liberty* actually mean that these persons must be allowed to go back to their home country, or is the neutral State bound by the general requirement to prevent former belligerent combatants from taking further part in hostilities? The law is not clear on this point. Articles 110 and 111 of the Third Geneva Convention might be of relevance in specific circumstances. They state that certain categories of POW can or must be sent home during an armed conflict, i.e. the incurably wounded and sick and those whose mental or physical fitness is gravely diminished. However, the question is not addressed comprehensively. Wherever possible, it should be regulated by specific agreements between the States concerned, the rule of equal treatment for all parties being applied.

GC III,
Arts. 110 & 111

TRANSFER OF POWS INTO A NEUTRAL STATE

By arrangements between the States concerned (i.e. Parties to the conflict with the co-operation of neutral States), POWs can be admitted and interned on neutral territory until the end of hostilities. This rule caters for those States that might not be able to provide POWs with the treatment they must receive under the Third Geneva Convention, e.g. incurably wounded and sick or mental cases. Agreements between the belligerent parties and a neutral State mutually agreed by them, may also be drawn up to cover the transfer of able-bodied POWs who have undergone a long period of captivity.

GC III, Arts. 109-111

THE WOUNDED AND SICK

A neutral State may authorize the passage through its territory, or the treatment there, of the wounded and sick of the armed forces of a belligerent. While in the neutral State, they are governed by the relevant Geneva Conventions and Additional Protocol I.

Wounded and sick must not be accompanied in transit by combatant personnel, arms or other military supplies. In the event that they are, the neutral State must take such steps for safety and control that are necessary.

The sick and wounded brought into a neutral State under these conditions must be guarded to ensure that they do not take part in military operations again.

HC V, Arts. 14 & 15
GC I, Art. 4
GC II, Art. 5
GP I, Art. 19

HUMANITARIAN ASSISTANCE

The passage of humanitarian assistance through neutral territory to the victims of the conflict in the belligerent States does not constitute a hostile act in violation of neutrality. The only criterion applying to humanitarian assistance for the victims of conflict is need. The details concerning the passage of humanitarian assistance are no different from those we covered in earlier lessons.

GC IV, Arts. 23 & 59
GP I, Arts. 69 & 70

RAILWAY MATERIAL

Railway material coming into a belligerent State from a neutral State or into a neutral State from a belligerent State must not be used or requisitioned. It may only be used or requisitioned in cases of absolute necessity and then only for as long as necessary before being sent back to the country of origin.

It makes no difference if the railway material belongs to the State or to a private company or individual. If material is used, then compensation based on usage and the period of use must be paid to the other party.

HC V, Art. 19

5. ASPECTS OF NEUTRALITY RELATED TO THE SEA AND AIR WHICH MIGHT HAVE AN IMPACT ON LAND OPERATIONS

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The main issues of neutrality relating to sea and air matters are covered in separate lessons. However, some aspects may have an impact on land operations and these are outlined below.



SEA

This concerns chiefly the armed forces of a neutral State which might be involved in port operations. Although passage through neutral waters is permitted, neither the port facilities nor the waters may be used as a basis for warlike operations.

Warships of the belligerent parties may be admitted into a neutral port for repair (but not to restore their battle worthiness), to revictual to peacetime standards or to refuel to the extent necessary to enable them to reach the nearest home port. Their stay must not exceed twenty-four hours except in case of damage or stress of weather. A maximum of three vessels of one belligerent are allowed in port at any one time. If two belligerents have vessels in the same port they must depart at different times, i.e. 24 hours apart.

Medical ships of the belligerent parties are not subject to the restrictions imposed on warships in neutral ports.

HC XIII, Arts. 12-14
GC II, Art. 32
GP I, Arts. 22 & 23

AIR

This concerns chiefly those involved with air defence or airfield security duties.

Military aircraft of the belligerent parties are excluded from neutral air-space just as belligerent ground forces are excluded from neutral territory. If they break this rule, they can be ordered to land and be impounded. If they fail to respond to warnings to land, they can be forced down or destroyed by anti-aircraft missiles or air attack. In emergency situations, a belligerent aircraft may have to land in neutral territory. The pilot should signal his plight using the normal emergency radio signal procedure. In such cases, the neutral State must allow the aircraft to land. The pilots and crew must be interned until the end of hostilities, and the aircraft impounded.

Medical aircraft may fly over neutral air space and even stop over but only by previous notification and agreement. Aircraft flying without agreement should make every effort to identify themselves. They will be ordered to land and inspected. If the inspection shows that they are being used for non-medical purposes, the aircraft can be impounded and the crew detained. If they were on a legitimate medical mission, they should be allowed to continue with appropriate notifications and clearances given to your own forces. If they fail to respond to the order to land, they can be attacked, but you should allow enough time for them to comply with the order.

GP I, Art. 31

Questions from the class

APPENDIX

Questions from the instructor to the class to confirm the lesson

1. After an attack, one of your platoon commanders reports that those captured include five citizens of a neutral State who say they are members of a volunteer battalion which had been incorporated into the enemy armed forces. How would you advise the platoon commander to deal with these volunteers?

Answer: If they meet the conditions for lawful combatant (GP I Arts. 43 and 44) they are entitled to POW status and treatment. Although neutrals lose their claim to neutrality if they participate in combat activities, they cannot be punished for this.

2. A humanitarian convoy with civilian drivers passing through neutral territory is suspected of carrying arms for one of the belligerent parties. You command a checkpoint through which this convoy will pass. What action should you take when the convoy arrives?

Answer: As a rule, such convoys should be allowed free passage through neutral territory. However, they must be intended purely for humanitarian purposes. As the commander of the checkpoint and based on your intelligence warning, you are duty-bound to search the convoy thoroughly. In any case, a neutral State has a duty to inspect to safeguard its neutrality. If nothing untoward is found, the matter is reported through the chain of command and the convoy allowed to proceed. If arms are found, the matter should be treated seriously. The convoy vehicles and goods can be impounded under domestic law. Similarly, the civilian drivers can be arrested and dealt with by your own civilian courts and law.

3. You are an officer of a neutral State, Goodland. You are in charge of a border observation post overlooking Badland, which is fighting with its neighbour, Sadland. The weather is particularly bad, it is foggy and visibility is down to a few hundred metres. Suddenly you notice a six-man patrol crossing into your territory from Badland. By the time you see them they are some 1,000 metres inside Goodland territory. What are your rights in dealing with this incursion? How would you deal with it practically?

Answer: You would be within your rights to demand the patrol give itself up. If it resists, you are entitled to force it to surrender. Once captured, its members must be interned until the end of the conflict.

In this situation, however, an intelligent commander might well realize the incursion is accidental, caused by the appalling weather conditions. Not wanting a relatively minor incident to escalate, the commander might warn the patrol by voice that it is in neutral territory and that it should backtrack immediately to avoid arrest. The aim should be to diffuse the situation, not to escalate it.

As stated in the lesson the law does not actually differentiate between intentional and non-intentional acts. The above answer simply gives a common sense solution to what might be a real military problem.

LAND

