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## Neutrality Law in the Age of Digitalization: An Analysis of the Russia-Ukraine Conflict

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**Abstract** *This article aims to describe the application of the concept of neutrality law in the current era with the contamination of digitalization. The main problem refers to the intervention of third countries or neutral states in the Russian conflict v. Ukraine, then questioned the existence of neutrality law in the era of digitalization. The method used is a normative juridical method with a statute approach analyzed qualitatively and descriptively. The results show that validity is needed to determine the attitude of third countries or neutral states intervening with belligerents (Russia/Ukraine). The determination of the validity is based on the scale of the intervention provided by the third country. Validity refers to the 1907 Hague Convention and the UN Charter, which generally outlines violations of territorial sovereignty and international law. So, in conclusion, the*

*concept of open access, broad and immeasurable digitalization, cannot be avoided in the conflict between Russia and Ukraine. This does not necessarily become a justification because the essence of the principle of neutrality and intervention is very different; the two can only be combined if a violation of international law indicates one. So neutrality law can no longer be the primary regulation to control the attitude of a neutral state but requires new norms that shape the attitude of a neutral state so that it can be used as international customary law.*

**Keywords** Neutrality Law; Digitalization; Existence; Neutral States; Russian *v.* Ukraine

## 1. Introduction

War causes so much suffering to humankind that every human being longs to live in peace. We know that humans are social creatures naturally having animal desires (dissatisfaction with something). This human nature often encourages people who cannot control their passions to do everything to achieve goals. This reinterpretation of fundamental rights did not imply any specific interpretive conclusions. However, in a liberal era of secularism, individualism, and social disintegration, a concept of rights as realms of human liberty, free from socially mandated concepts of morality, gradually evolved by the early 1970s.<sup>1</sup> The obligation of each strengthens the affirmation of these fundamental rights. States parties to the convention to preserve and guarantee the fundamental rights of all persons within its territory and territory of its jurisdiction without distinction based on race, colour, sex, language, religion, politics,

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<sup>1</sup> Jud Campbell, "The Emergence of Neutrality," *The Yale Law Journal* 131, No. 3 (2022): 782–97, <https://www.yalelawjournal.org/article/the-emergence-of-neutrality>.

nationality, ancestry, property, birth or status, others (Article 2 paragraph 1 of ICCPR. One of the universal foundations and all religions To recognize that right is "the right to life" (the right to life in article 6 of ICCPR).<sup>2</sup> Individually humans can hurt each other and even kill each other, but in the context of the state, humans even fight each other for various reasons that accompany it. In some parts of the world, war is considered one of the most effective internal dispute resolutions, whether on a large scale or a small scale. Even in the era of modern technology,<sup>3</sup> These six wars have not resulted in a peace treaty for the conflicting countries. Although the world condemns the war action because it can impact world security stability, this does not affect the countries in conflict.<sup>4</sup>

The rapid development of cooperative relations between countries in various fields, economic cooperation, military cooperation, political cooperation and others, marks the modern era. About Sean Healy's assertion<sup>5</sup> What are the potential repercussions of the neutrality principle's existence for current humanitarian practice? So neutrality must be viewed as a beneficial tool in some situations but useless in others. We should be neutral to uphold our obligations to suffering people. We should not be neutral if doing so would

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<sup>2</sup> Zainal Abdul Aziz Hadju, "Anotasi Spirit Unable Dan Unwilling Terhadap Kejahatan Perang Israel Palestina," *Jambura Law Review* 1, No. 2 (2019): 167–91, <https://doi.org/10.33756/jalrev.v1i2.1990>.

<sup>3</sup> Teguh Sulistia, "Pengaturan Perang dan Konflik Bersenjata dalam Hukum Humaniter Internasional Humaniter Internasional," *Indonesian Journal of International Law* 4, No. 3 (2021): 526–55, <https://doi.org/10.17304/ijil.vol4.3.157>.

<sup>4</sup> Iswara Aditya Jaya, "5 Perang Yang Masih Terjadi Saat Ini, Termasuk Korea dan Yaman," Kompas.com, 2021, <https://internasional.kompas.com/read/2021/11/09/181522970/5-perang-yang-masih-terjadi-saat-ini-termasuk-korea-dan-yaman?page=all>. See also Aprilia Putri Adiningsih, and Ngboawaji Daniel Nte. "North Korea's Nuclear Weapons Development: The Impact for International Security and Stability". *International Law Discourse in Southeast Asia* 1, No. 2 (2022): 123-58. <https://doi.org/10.15294/ildisea.v1i2.58398>.

<sup>5</sup> Sean Healy, "Neutrality: Principle or Tool?," Humanitarian Practice Network, 2021, <https://odihpn.org/publication/neutrality-principle-or-tool/>.

require us to increase that suffering and significantly cause more harm than good. We should study the situation, argue, and document our arguments for potential answers when the subject of neutrality is uncertain before selecting what we think is the best course of action. The viewpoints, biases, and their close ties to the global liberal order and neutrality may encourage international humanitarian organizations to exhibit prudence and caution in "intervening" in communities. This relationship and cooperation is a state interaction that occurs during peace, but it will be a sensitive issue if there is a war between one country and another. A war between a country and another country in an organization will position other countries (which are not at war) on a neutral side. The sense that a neutral country in times of war will experience limitations in attitude and movement regarding cooperative relations with warring countries (conflicting). Because if you do not make restrictions, then a country that is not at war can be interpreted as giving partial action.<sup>6</sup>

In order to prevent the spread of war and to regulate the attitude of the state, rules are made to limit the attitudes and actions of third countries concerning the parties to the dispute. Countries that have declared themselves neutral should also take neutral attitudes and actions. In practice, it was easier to understand than in the Russia-Ukraine war.

Russian President Vladimir Putin declared his invading Ukraine on February 24, 2022. This declaration of war has been triggered for several reasons, including Ukraine's involvement with the West. Apart from these reasons, the focus is the attitude and response of UN member states, including Indonesia, which agreed to establish a Resolution demanding that Russia immediately cease using force against Ukraine and withdraw its military forces through

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<sup>6</sup> Eko Fariontono, "Tinjauan Hukum Netralitas Terhadap Perang Irak-Iran." *Thesis* (Surabaya: Universitas Airlangga, 1989).

the United Nations General Assembly.<sup>7</sup> This resolution calls for Russia to withdraw its military forces from Ukraine and stop all invasions aimed at Ukraine. Countries as third parties agreed on the resolution's contents with the mission of "Uniting for Peace".

Referring to the universal principle of human rights and the principle of peace, which is the vision of the UN mission, the attitude of a third country that approves the resolution is an obligation and responsibility of the state according to international law. However, in international politics, the attitude of third countries has become a boomerang for themselves regarding the cooperative relationship they have agreed with Russia. Suppose you understand the country from the political will, of course. In that case, Russia is offended by the approval of the general assembly resolution regarding the Withdrawal of Actions from Russia's invasion of Ukraine.<sup>8</sup> In this case, third-party countries, including Indonesia, indirectly support Ukraine through the contents of this resolution.

This is where the attitude of third-party countries should be studied. State actions can be seen from two aspects, namely, aspects of international law and aspects of international politics. Both may indicate a violation of international law on non-intervention and recognition of equality.

The attitude of this third country does not only come from its government, and the public's attitude even strengthens it through the role of social media, which seems to agree with the government's steps. For example, in Indonesia, most of the Indonesian public admires President Putin through social media. This public attitude in

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<sup>7</sup> Leovaldi A Tirta, "Kekuatan Resolusi Majelis Umum PBB (UNGA) dan Dewan Keamanan PBB (UNSC) Sebagai Sumber Hukum Internasional," *Jurnal Yustika: Media Hukum Dan Keadilan* 14, No. 1 (2011): 93–107.

<sup>8</sup> Frederik Agnar Widjaja, "Kedudukan Majelis Umum dalam Perserikatan Bangsa-Bangsa," *Rewang Rencang: Jurnal Hukum Lex Generalis* 4, No. 1 (2023): 1–27, <https://doi.org/https://doi.org/10.56370/jhlg.v4i1.352>.

Indonesia was formed based on the dislike of most Indonesians towards the United States and the North Atlantic Treaty Organization (NATO). According to Radio Dharmaputra, a Russian and Eastern European Studies researcher at Airlangga University, Surabaya, the public's attitude is considered pro-Russian compared to Ukraine, which is actually due to people's lack of understanding about Ukraine.<sup>9</sup> This condition causes the public to be easily influenced by the dominant narrative from the elite and academics who consider this issue a geopolitical conflict between Russia and Ukraine. Data obtained by Evello (a digital monitoring and analysis platform) shows that on Instagram, Tiktok, Twitter and Youtube in the period from February 23 to March 14, 2022, there was an increase in the attention of social media users in Indonesia on the Russia-Ukraine war.<sup>10</sup> This attitude can raise concerns about the worldview, especially Russia's view of Indonesia, which seems partial and hypocritical. Therefore, it is crucial to examine how the state should exercise a neutral attitude and apply the norms in the neutrality law that have been applied and become international customary law for countries in the world. If the state acts according to its will in war conditions, it is necessary to question the existence of the law of neutrality in this international law.

## 2. Method

The article is prepared using the normative legal method, namely, legal research conducted.<sup>11</sup> Examining the law of neutrality,

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<sup>9</sup> VOI, "Konten Disinformasi Juga Jadi Senjata Ampuh Dalam Konflik Rusia Kontra Ukraina," VOI.ID, 2022, <https://voi.id/bernas/143978/konten-disinformasi-juga-jadi-senjata-ampuh-dalam-konflik-rusia-kontra-ukraina>.

<sup>10</sup> BBC News Indonesia, "Perang Di Ukraina: Mayoritas Publik Indonesia Kagumi Putin, Pakar Khawatir 'Bangsa Kita Dicap Hipokrit,'" Bbc.Com, 2022, <https://www.bbc.com/indonesia/indonesia-60737298>.

<sup>11</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2019).

which consists of the 1907 Hague Convention, the United Nations Charter and customary international law, the approach used is the statute approach. The results of these legal materials were analyzed descriptively and qualitatively, explaining the data or statements supported by several international references in journals and e-books.

### 3. Results & Discussion

#### A. Application of the Law of Neutrality in Wartime

The law of neutrality grew with bilateral treaties, which stipulate that the parties to the treaty will not help the belligerents if one of the parties is at war. As a part of international law, neutrality grew and developed in the 16th century with the agreement to determine special conditions on third parties not to assist the belligerent in any way during war or allow its citizens to do so.<sup>12</sup>

One of the essential roles of international law is to regulate the use of physical force or war between members of the international community. Since the beginning of its development, many attempts have been made to regulate war and physical violence that has occurred.<sup>13</sup> Methods for regulating war in international law are (a) rules governing the war area itself (*jus ad Bellum*), (b) rules governing relations between belligerent states (*Jus in Bello* in the narrow sense) and (c) which regulates the relationship between belligerent countries (in this case it can be referred to as belligerents in the context of the situation) and third countries (neutrality states). Concerning this rule, then:

- a) The prohibition of war and the use of force by States have become principles of general international law since the

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<sup>12</sup> Fariontono, "Tinjauan Hukum Netralitas Terhadap Perang Irak-Iran."

<sup>13</sup> J.G Starke, *An Introduction to International Law* (UK: Butterworth & Co Publishers Ltd, 2018).



development of the League of Nations Covenant (1919) to the United Nations Charter (1945).

- b) Several agreements made by belligerent and neutral states have been widely adopted.
- c) Referring to point b), most of the neutral state's treaties were adopted as international humanitarian law, such as the 1907 Hague Convention, which respects the Law and Customs of War on Land and its annexes, and the four Geneva Conventions of 1949 and its Additional Protocol 1977.<sup>14</sup> A permanent international criminal tribunal ( International Criminal Court) has been established to impose criminal responsibility on individuals who violate this convention.<sup>15</sup>
- d) Compared to these developments, the development of international law and international legal research related to the regulation of violence and war is always guided by the convention adopted at the Second Hague Peace Conference in 1907 (Convention (V) respecting the Rights and Duties of Neutral Powers and Persons. in the Case of War on Land and Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War), which was later simplified in 1907 The Hague Convention.<sup>16</sup> There were no further agreements after the convention, not even the quantity of research on the implementation of the convention is relatively few. This means that the convention implementation is effective now and does not require further research.

However, wars and armed conflicts continue to occur, which in principle, prohibits war and the use of force by the state. Rules

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<sup>14</sup> Sandoz Yves, *The Law of the Hague and the Four Geneva Convention 1949* (US: Routledge Publisher, 2020).

<sup>15</sup> Mochtar Kusumaatmadja, *Konvensi-Konvensi Palang Merah 1949* (Bandung: Alumni Pers, 2018).

<sup>16</sup> Syahmin A.K, *Hukum Internasional Humaniter Bagian Khusus* (Bandung: Armico, 2018).



governing the relationship between belligerent States (States of war or international war or belligerent) and third countries (States not parties to war or international armed conflicts or neutral states) are still needed. There has been much debate about the status of neutrality laws in the pre-digital era that once governed the relationship between belligerents and third States, raising questions today as to whether the law of neutrality is still legally applicable in modern international law, and whether the principle of non-use of force requires some revision of the law.

The comparative example of war before digital technology affects access in applying state attitudes/habits, namely the application of neutrality law in the Iran-Iraq War (1980-1988) and the NATO bombing of Yugoslavia (1999), have become controversial. In Japan, the neutrality issue has been debated concerning the Act on Measures to Ensure Japan's Peace and Security in Dangerous Situations in the Surrounding Areas of Japan (1999) and the Japanese Act on the Restriction of Maritime Transportation of Foreign Military Supplies in Armed Attack Situations 2004.<sup>17</sup>

As discussed below, there are conflicting views on the current status of the neutrality law, and many uncertainties continue to exist. However, scholars have general agreement regarding the basic features of traditional neutrality laws. Section 3 explains why it is necessary to reconsider the assumptions about the traditional law of neutrality generally held by contemporary writers.<sup>18</sup> This modification of assumptions will provide an entirely new framework

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<sup>17</sup> Georg Schwarzenberger, *International Law as Applied by International Courts and Tribunals: The Law of Armed Conflict* (London: Stevens Publisher, 2019). See also Muhammad Ikhsan Lubis, "The Relationship of International Human Rights Law with International Humanitarian Law in Situations of International Armed Conflicts". *Journal of Indonesian Legal Studies* 1, No. 1 (2016): 13-34. <https://doi.org/10.15294/jils.v1i01.16565>.

<sup>18</sup> Oppenheim, *International Law 9th Edition* (London: Oxford University Press, 2018).

within which we discuss the current relevance of neutrality in modern international law.

Many experts affirm the legality of a non-war stance in current international law, namely the legality of third countries to help warring states.<sup>19</sup> There are two main reasons for this view. The first reason is the change in the status of the laws of war caused by violators of the laws of war. According to these authors, the "duty of impartiality", which forms a central part of traditional neutrality law, is a result of States' freedom to use war and belligerent equality in traditional international law (called the "non-discriminatory conception of war").<sup>20</sup> Since all belligerents are equal, it is not permissible for a third State to discriminate against a belligerent by aiding one. However, since the Paris Pact and the United Nations Charter denied the state's freedom to use war, traditional neutrality laws, the historical foundation of the state's freedom to use war, have lost their validity. Since belligerents are distinguished between lawful and unlawful parties in modern international law, it is legal for third States to assist lawful belligerents.<sup>21</sup>

The second basis for the view that affirms the legality of non-war behaviour is that, since the Second World War, third countries have provided military assistance to States belligerently in wars and armed conflicts, and the new rules of customary international law permitting non-compliance. War has been set. These practices included aid from the United States to Great Britain in the early part of the Second World War (1939–1941), assistance from the United States to Great Britain in the Falklands/Malvinas Conflict (1982) and

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<sup>19</sup> Kentaro Wani, *Neutrality in International Law From the Sixteenth Century to 1945* (Ohio: Routledge, 2018).

<sup>20</sup> Wani.

<sup>21</sup> Alfred. P Rubin, "The Concept of Neutrality in International Law," *Denver Journal of International Law & Policy* *Denver Journal of International Law & Policy* 16, No. 2 (1988): 353–375.

the provision of weapons by France to Iraq in the Iran–Iraq (1980–1988).<sup>22</sup>

In addition, the legality of the non-war stance also allowed third countries to choose neutrality status voluntarily. In other words, a State has the following three options in a war or international armed conflict under modern international law: (1) a belligerent State (a State party to an international armed conflict), (2) a neutral State and (3) a non-warring state. Although many authors affirm the legality of the non-war stance, there are still many uncertainties, such as the legal advantages for a State to choose a neutral status, or in other words, the difference in rights granted to a neutral State and a neutral State. Non-warring countries. More specifically, it remains uncertain whether the same protection is afforded to neutral States.

In the further context, neutrality law during the digital age war, remain to be complex problems and challenges. In today's digital era, computers are the most extensive infrastructure in the civil and military world. One example of the United States military is supported by more than two million units of computers and has more than ten thousand local area networks. The internet used for military operations has a universal network with the internet for public needs. In other words, it is difficult to detect an internet security network used for the military with an internet network used for daily purposes. This is considering that the internet facilitates telecommunications in defence and security. However, globalization has then taken advantage of the advancement of the internet for social, political and economic needs.

In the context of neutrality, Schindler, for example, observes that current international law only recognizes abstentions (non-

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<sup>22</sup> Ambarwati Ambarwati; Ramdhany Denny; Rusman Rina, *Hukum Humaniter Internasional: dalam Studi Hubungan Internasional* (Jakarta: Rajawali Pers, 2018).

hostile attitudes) but does not explain their legal consequences.<sup>23</sup> On the other hand, there is an opinion that non-hostile behaviour is wrong internationally. The basis of this view is the continued validity of customary neutrality laws in modern international law.<sup>24</sup> Under the traditional law of neutrality, a State that does not participate in a war between other States automatically becomes a neutral State and is bound by the obligation of impartiality. The situation is no different under modern international law. In this way, the researcher can refute the two primary views confirming the legality of the non-hostile attitude mentioned above.

Concerning the first reason, existing rules of customary international law can be changed or abolished only by new rules established by State practice accompanied by the jury's opinion. Traditional neutrality law, developed as a collection of principles and rules of customary international law, cannot be changed or abolished only as a logical consequence of changing the status of the law of war under international law. It can be changed or abolished only when a new rule of customary international law that amends or abolishes it is enacted. Therefore, the next issue concerns a second basis for a view that affirms the legality of a non-war stance: whether new rules of customary international law have been established that amend or abolish traditional neutrality laws. According to writers who deny the validity of the non-war stance,

In conclusion, the views of contemporary war law experts regarding the current status of neutrality law differ in two respects: (1) the effect of changing the status of the law of war on traditional neutrality laws and (2) the evaluation of state practice since the Second World War. However, there is general agreement among these authors on the basic features of the traditional law of neutrality.

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<sup>23</sup> Wani, *Neutrality in International Law From the Sixteenth Century to 1945*.

<sup>24</sup> Rubin, "The Concept of Neutrality in International Law."

The first basis for the view that affirms the legality of non-hostile behaviour is that the historical basis of traditional neutrality law is the freedom of States to fight in traditional international law, which is not denied by writers who deny the legality of non-war stance. According to them, the traditional law of neutrality has not lost its validity simply because its historical foundation has been lost: the traditional law of neutrality,

So the non-hostile attitude in traditional neutrality law, when interpreted in international law, is a form of respect for state sovereignty. However, in the context of the digital era, this kind of attitude can lead to a justification for stopping the conflict by being indirectly involved in the conflict,<sup>25</sup> Namely playing the side effects of digitization by utilizing various platforms and capabilities to hack security defences, as felt by Russia over its conflict with Ukraine. Hacking internet networks and telecommunications and recruiting digital soldiers are forms of assistance from individuals in neutral countries, which are classified as partial actions.<sup>26</sup> Some opinions state that this is part of humanitarian assistance, but of course, this is far from the element of humanitarian intervention. Interventions that are justified in the intervention law that upholds human rights according to jus cogens norms, while partial actions such as hacking, IT Army recruitment, and spreading hoax information to gain support from the wider community are violations of the law of neutrality, both neutrality, namely "every act of hostility." in a neutral country is prohibited" (Article 2 of the Hague Convention 1907).

In other words, digitization's broad and accessible scope can affect war conflict situations. Even though it is carried out through social media and it is difficult to detect the attacker's identity, this has violated the law of neutrality itself on the aspect of sovereignty and

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<sup>25</sup> Haryomatarram Haryomatarram, *Hukum Humaniter* (Jakarta: Rajawali Pers, 2017).

<sup>26</sup> Verri Pietro, *Dictionary of the International Law of Armed Conflict* (Geneva: ICRC, 2018).

the prohibition of intervention in war according to international law because partial activities are carried out in a country which is a neutral country.

## **B. The Effect of Digitalization on the Guarantee of State Neutrality Facing War**

### **1) International Legal Relations and Digitization**

A clear sign of the entry of the digitization process is the increasing use of digital-based technology to be used in almost every aspect of life so that people can easily and quickly obtain information via Internet access. The understanding of term digitization is a term or terminology used to describe a media transition process that starts from the use of print, video or audio media into digital media to be able to archive documents in the form of digital transformation.<sup>27</sup>

According to Brennan and Kries, digitization is digital communication and the impact of digital media on contemporary social life. Meanwhile, according to the Gartner.com dictionary of terms, digitization is using digital technology to transform a business model and provide new revenue and value-generating opportunities. It is a process of moving to a digital business. This process can occur with digitization. What is digitization? Digitization is a conversion process from analogue to digital.<sup>28</sup>

The apparent influence of technological developments and digitalization on aspects of state diplomacy is the ease with which the state can communicate and interact directly over long distances (virtual meetings), the ease of transferring documents in the form of

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<sup>27</sup> Exporthub.Id, "Digitalisasi Adalah Proses Yang Penting Di Zaman Ini! Mengapa?," Exporthub.ID, 2022, [https://www.exporthub.id/digitalisasi-adalah-proses-yang-penting-di-zaman-ini-mengapa/#:~:text=Adapun pengertian dari istilah digitalisasi,dokumen dalam bentuk transformasi digital.](https://www.exporthub.id/digitalisasi-adalah-proses-yang-penting-di-zaman-ini-mengapa/#:~:text=Adapun%20pengertian%20dari%20istilah%20digitalisasi,dokumen%20dalam%20bentuk%20transformasi%20digital.)

<sup>28</sup> Exporthub. Id.

agreement texts or similar notes, and being able to optimize the information dissemination process, both data and electronic media. , some Non-Government Organizations even signed a Memorandum of Understanding virtually. This is a sign that state actors are no longer the leading players in international relations due to the strengthening of non-state actors, such as individuals, NGOs, the press/media and regional organizations that can influence world public opinion and build a massive, structured world image. And systematic<sup>29</sup>.

In addition, the acceleration of globalization, free markets and free trade have pushed the world without borders. Borders between countries are gone. Everyone from various countries can interact directly, in real-time, and online.<sup>30</sup> This affects legal relations and interactions with the community, in this context, the international community. Because international law is a mirror of the international community, the progress of civilization determines the quality of the law that governs it. If you look at history, the existence of international law on the acceptance of the concept of digitization has existed and has been regulated for a long time, including:

- a. In 1865, an international organization regulating telecommunications was established, the International Telecommunications Union.
- b. The establishment of the International Civil Aviation Organization in 1944. The organization that regulates aviation technology, from aviation for fighter aircraft to the present there, is civil logging;

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<sup>29</sup> Agus Subagyo, "Media Sosial Dalam Hubungan Internasional," *Dinamika Global: Jurnal Ilmu Hubungan Internasional* 4, No. 1 (2019): 1–23, <https://doi.org/https://doi.org/10.36859/jdg.v4i01.99>.

<sup>30</sup> Subagyo.



- c. The establishment of the International Maritime Organization in 1959 regulates technology in the shipping and marine sector.
- d. The launch of satellites (Sputnik I and Apollo) as a form of the latest technological advances
- e. *Space Treaty 1967* is a convention that regulates space technology.

Based on this, it indicates the deterritorialization of international law where international law is no longer based on territoriality. Its domain is broad. In addition, the relationship between digitalization and international law makes legal changes faster, and every norm is technology-based. This gives birth to new laws (norms) to contextualize (applicable) law.

The effect of this acceptance of digitization in war situations is the increased use of digital-based technology to spread information as widely as possible. This information and technology certainly have a vulnerability in the aspect of legitimacy. Everyone can post and blow up something, even referring to hoax information. The borderless nature of digitalization and identical anonymity can easily affect the mindset of people who do not understand the conditions of war directly and become a way for the world of politics to influence the beliefs of neutral states to belligerents or warring parties. So that this condition also creates interconnectivity in cyberspace.

The law of war, which is a legal component that regulates actions permitted in a state of war (*jus in Bello*), will make it challenging to identify which information spreaders are combatants or non-combatants so that the distinction principle in a war situation will be challenging to apply. Therefore, the international legal approach does not only see international law as a set of rules and principles but also links the processes and institutions that participate in realizing the rules and principles in reality.<sup>31</sup> So, international law

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<sup>31</sup> Sefriani Sefriani, *Hukum Internasional Suatu Pengantar* (Jakarta: Rajawali Pers, 2018).

constantly adapts to developments and is codified according to the general principle of law, which is based on freedom and equality. This is stated in Article 13, paragraph (1) of the United Nations Charter:

*“The General Assembly shall initiate studies and make recommendations for:*

- 1) Promoting international cooperation in the political field and encouraging the progressive development of international law and its codification;*
- 2) promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in realizing human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”*

This article emphasizes the need to encourage the progressive development of international law and promote international cooperation to realize human rights and fundamental freedoms. At the same time, its implications in the context of International Law reveal the importance of upholding the guarantee of civil and political rights, liberal and democratic principles or independence, and individual freedom about the state. Points of conflict were identified, particularly regarding the range of equal rights between states in conflict, which aligns with the arrangements in the International Convention on Civil and Political Rights.<sup>32</sup>

The UN's mission is to uphold world peace and security, which forms the cornerstone of its qualified neutrality philosophy. Therefore, as a neutral international institution, the UN shall be the conduit for any action connected to enforcing this ideology. In the event of an armed attack against one of the UN's members, Article 51

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<sup>32</sup> Mellisa Towadi, Nur Mohamad Kasim, and Rumawi Rumawi, “An Indication of China’s Policy towards Uighurs and Its Implications by International Law Aspects,” *Jambura Law Review* 3, No. 1 (2021): 55–71, <https://doi.org/10.33756/jlr.v3i1.7730>.

of the UN Charter grants states the right to engage in self-defence, individually or collectively.<sup>33</sup>

Resolutions on the legal status of neutrality from the past until now are relatively simple. In several cases, the UN Security Council decided to take enforcement steps against countries that violated neutrality status based on Chapter VII of the United Nations Charter.<sup>34</sup> Because the decisions of the Security Council are legally binding on states member of the United States (Article 25 of the United Nations Charter)<sup>35</sup>, and the obligation to comply with those decisions takes precedence over other international legal obligations (Article 103 of the UN Charter), member states must comply with those decisions, and in doing so, they are not deemed to have violated other international obligations.

## 2) Implications of Digitalization on the Principle of Neutrality in the Russian Conflict *v.* Ukraine

War can cause various losses and have an extensive impact. In the era of digitalization, war does not only occur physically but can occur through cyberwarfare. Trade through cyberspace can make the two warring countries attack each other by showing the sophistication of their respective technologies.

In the case of the invasion of Russia *v.* In Ukraine, many elite business people and Russian oligarchs, under President Putin's support, materially provided technology-based war tools for the

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<sup>33</sup> Gregory Joshua Manogar and Diajeng Wulan Christianti, "Principle of Neutrality and the Obligation to Prevent International Humanitarian Law Violations: A Case Study of US Military Assistance in Russia-Ukraine War," *Padjajaran Jurnal Ilmu Hukum (PJIH)* 10, No. 1 (2023): 80–100, <https://doi.org/https://doi.org/10.22304/pjih.v10n1.a5>.

<sup>34</sup> Muhammad Iqbal Asnawi, "Konsistensi Penegakan Hukum Humaniter Internasional dalam Hubungan Antar Bangsa," *Jurnal Hukum Samudra Keadilan* 12, No. 1 (2017): 111–22.

<sup>35</sup> Art 25 UN Charter: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council under the present Charter."

smooth invasion of Ukraine. This makes Ukraine use a similar method, namely by utilizing renewable technology. However, unlike Russia, which has the support of elites and members of the oligarchs, Ukraine receives technological support from the international community, which specializes in this field. One of the most visible is the involvement of teenagers from Florida. For example, Jack Sweeney<sup>36</sup> Takes advantage of his ability to easily track private jets belonging to the elite and billionaire Russian oligarchs, who then detect them for pursuit efforts.

In addition, a Ukrainian-born Californian took part in the “digital army” (IT Army) initiated by the Minister of Information and Telecommunications of Ukraine, Mykhailo Fedorov.<sup>37</sup> These digital soldiers then carry out online attacks on every computer network database in Ukraine. However, the impact of this attack is not as severe as the NotPetya attack in 2017<sup>38</sup>, namely an attack allegedly affiliated with Russian intelligence by spreading corrupted malware. The malware targets the Windows system, encrypts the system and ends up asking for a ransom payment in the form of Bitcoin. This online attack even infected several countries, such as England, France, Italy, Germany, Poland, Russia and the United States. However, in the case of 2022, the online attacks carried out by digital soldiers were limited to taking down and blocking information in Russian online media that contained incitement and even hoax information aimed at gaining the international community's sympathy.

The facts above show evidence of the participation of the world community in the Russian conflict v. Ukraine based on individual

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<sup>36</sup> Nova Poerwadi, “Peran ‘Tentara Digital’ dalam Konflik Rusia-Ukraina,” *Liputan VoA*, 2022.

<sup>37</sup> Poerwadi.

<sup>38</sup> Tenri Gobel, “Malware Perusak Yang Diduga Terafiliasi Dengan Rusia,” *Cyberthreat.ID*, 2020, <https://cyberthreat.id/read/8978/NotPetya-Malware-Perusak-yang-Diduga-Terafiliasi-dengan-Rusia>.

freedom. This individual attitude can be categorized as a form of intervention representing his country, as did Jack Sweeney from Florida and an IT Army from California. In international law, human expression that is poured through anything, including digital media, is contained in Article 19 of the Universal Declaration of Human Rights (UDHR) 1948:

*“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”*

UDHR regulates freedom of expression without limiting the form of conveying information and ideas through any media, in contrast to the regulation on freedom of opinion in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which:

- (1) Everyone shall have the right to hold opinions without interference.*
- (2) Everyone shall have the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his choice.*
- (3) The exercise of rights in paragraph 2 of this article carries special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a. For the rights or reputations of other*
  - b. For the protection of national security, public order, or public health or morals.”**

The ICCPR emphasizes that freedom of expression is not limited to any scope but should pay attention to and respect the rights or reputations of other people or the state and protect state security and public order.

In this aspect, the ICCPR is in line with the objective of the 1907 Hague Convention to prevent acts of violence and war both in calm conditions or to the extent that military interests are involved, as stated in its preamble. In more detail about the conditions of war that will take place, the Hague III 1907 convention states in article 2 that:

*"The existence of a state of war must be notified to the natural powers without delay and shall only take effect concerning them after receiving a notification, which may, however, be given by telegraph. Neutral Powers, nevertheless, cannot rely on the absence of notification if it is established that they were aware of a state of war."*

The rule interprets the conflict between Russia v. Ukraine to put the attitude of third countries (non-belligerents) in a neutral position. Therefore, a few days before the ceasefire, Russian President Putin declared aggression against Ukraine through various media to ensure the attitude of non-belligerent countries to be more vigilant and maintain diplomatic attitudes during the conflict. The introspective attitude follows the mandate in Article 2 HC III 1907 above that the conflict between Russia v. Ukraine as much as possible has no political impact on neutral countries. However, some countries need to show the principle of good faith in the provisions and choose to act freely and actively towards Russia and Ukraine.<sup>39</sup>. This fact

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<sup>39</sup> Lalu Rahardian, "Intelijen AS Bantu Ukraina Sikat Kapal Perang Rusia," CNBC Indonesia, 2022, <https://www.cnbcindonesia.com/news/20220506114751-4-336964/intelijen-as-bantu-ukraina-sikat-kapal-perang-rusia>.

strengthens the attitude of the United States, which did not comply with neutrality and international law during military conflicts.

If associated with the dynamic behaviour of individuals carried out by its citizens through digital media, the United States does not limit the model of these interventions. This action is part of the unwilling spirit in optimizing the implementation of the law of war, where the law of war is a law that cannot be disputed and cannot be granted exceptions, compels (*jus cogens*) and aims to protect basic norms (peremptory norms).

The annotation of unwilling spirit by a neutral country on neutrality law in a war situation violates the good faith principle and general principles of international law. Some experts argue that this attitude is a humanitarian intervention whose application is justified according to international law. This intervention is specific to conflict situations such as the one between Israel v. Palestine. In this situation, many countries intervene but for humanitarian purposes. Even Indonesia in the Israeli conflict Palestine is one of the countries that intervened in the conflict between the two countries and imposed an embargo on Israel.

Essentially, an intervention intended as humanitarian assistance (humanitarian intervention) is an attitude that cannot be called an impartial attitude because "humanitarian" itself is a non-derogable right, where this norm is the main characteristic of *jus cogens*.<sup>40</sup> *Jus Cogens* is an essential norm and its primary behaviour in the hierarchy of international norms. Hence, an attitude based on non-derogable rights is an attitude that does not require a written agreement or, in other words, does not require the approval of a third-party state. However, the method of application and the object of humanitarian intervention need to be regulated and become part of

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<sup>40</sup> Malcolm N Shaw, *International Law 9th Edition* (London: Cambridge University Press, 2021).



the legislative objectives of a multilateral agreement. In this regard, it is necessary to prove the impartiality of the IT Army from neutral countries attacking Russia through international digital media, whether it is a form of humanitarian intervention or not.

#### 4. Conclusion

The basic principle of Neutrality law is always guided by the Hague Convention of 1907, supported by the Geneva Convention of 1949 and its additional Protocol in 1977. The principle of neutrality law has always questioned the status of neutral and non-belligerent states in war situations. Neutrality law in wartime before the digital era always refers to general agreements made by the state. Traditional Neutrality Law is the principle used to legalize the attitude of third countries that it is legal for third countries to provide legal assistance to warring parties. In other words, third countries (neutral states) are prohibited from supporting countries at war, violating international law. The validity of this attitude is referred to as part of the non-discriminatory conception of war. Meanwhile, the application of neutrality law when faced with technological developments (digital) has no difference in validity, only that its legality is always associated with the form of humanitarian intervention, which is part of the application of Jus cogens norms as a general legal principle that is respected by countries. In other words, the validity of limitations on the application of neutrality law in war can be changed and modified by new rules based on customary international law.

However, the partial action taken, such as the formation of the IT Army group in a neutral country's territory, clearly violates Article 2 of the 1907 Hague Convention that "any action (indicating) hostility in the territory of a neutral country is prohibited". Meanwhile, the application of neutrality law when faced with technological

developments (digital) has no difference in validity, only that its legality is always associated with the form of humanitarian intervention, which is part of the application of Jus cogens norms as a general legal principle that is respected by countries. In other words, the validity of limitations on the application of neutrality law in war can be changed and modified by new rules based on customary international law. However, the partial action taken, such as the formation of the IT Army group in a neutral country's territory, clearly violates Article 2 of the 1907 Hague Convention that "any action (indicating) hostility in the territory of a neutral country is prohibited". Meanwhile, the application of neutrality law when faced with technological developments (digital) has no difference in validity, only that its legality is always associated with the form of humanitarian intervention, which is part of the application of Jus cogens norms as a general legal principle that is respected by countries. In other words, the validity of limitations on the application of neutrality law in war can be changed and modified by new rules based on customary international law. However, the partial action taken, such as the formation of the IT Army group in a neutral country's territory, clearly violates Article 2 of the 1907 Hague Convention that "any action (indicating) hostility in the territory of a neutral country is prohibited".

The concept of open access, broad and immeasurable digitization, must be addressed in this situation. Russian conflict v. Ukraine is one of the relevant and accurate cases showing the extent to which the role of digital influences the current alignment and principle of neutrality. One example is the establishment of the IT Army by a group based in a neutral country that helps Ukraine against Russia through digital access based on humanitarian assistance (humanitarian assistance). This does not necessarily become a justification because the essence of neutrality and

intervention is very different. The two cannot be combined unless one is indicated as violating international law.

## 5. Declaration of Conflicting Interests

Authors stated that there is no conflict of interest in the publication of this article.

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### Legislations

Geneva Convention 1949

Hague Convention V 1907 for neutrality in the war on land

Hague Convention XIII 1907 for neutrality in war at sea

Declaration of Respecting Maritime Law in Paris 1856

Declaration concerning the Laws of Naval War (London Naval Conference) 1909

Rules of Air Warfare 1922

Additional Protocol to Geneva I 1977

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