University for Peace

Master Programme:

Master of Arts in International Law and Human Rights

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International legal basis of Permanent Neutrality.

February, 2025

Abstract

The thesis proposes a hypothesis, under which, the evolution of international law has incorporated the historical obligations of third States towards Neutrals, as part of the binding international *corpus iuris*. Under this proposal, declarations of neutrality can be understood as acts of sovereignty, imposing no new obligations on third States, so it can be unilaterally adopted as a binding self-imposed foreign policy, due to the inexistence of a general rule of international law prohibiting such act.

This thesis is submitted in partial fulfilment of the requirements for the degree of Master of Arts in International Law and Human Rights

To my mother

With all my love

Until we meet again

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ACKNOWLEDGEMENTS

Above all, to my mother, my partner in this journey, you managed to be with me without being here. I hope this work reflects my eternal gratitude for your infinite love.

To Professor Hayashi, who had the patience and the wisdom to guide me through the journey that this thesis became. It was a fantastic experience. Thank you for letting me explore the depths of my capacities in my long pursuit for peace.

To my cousin Nathalia, who endured my ups and downs during this year and 3 months. Without your support, it wouldn't have been possible.

To "the girls", Sash, Molly, Dani and Maddie. Thank you for your kindness and love, you were the best part of the whole experience. I couldn't have asked for better friends.

To Wayne and Ercan, my brothers during the programme.

To my dogs, Pelos, Pantera, Tronco and Negrito, whom without their endless joy and infinite love I wouldn't have made it.

To my many friends abroad, who have always supported and encouraged my pursuit of peace, for as insane as it might have sometimes looked or sounded. You have always believed in me more than I have believed in myself.

Thank you all.

Chapter One. Introduction

a. Research Question and Thesis Statement

Being myself Costa Rican, and having domestically litigated successfully against Costa Rica's support to the 2003 US-UK led 'Coalition of the Willing' that invaded Iraq, arguing a violation of Costa Rica's unilateral declaration of permanent neutrality, I set myself the goal of determining, under international law, the legality of unilateral declarations of neutrality, taking into account, in particular, International Law Commission's principle 9 on unilateral acts[1], which states that unilateral acts cannot create obligations on third States.

The research took into account the evolutive nature of international law[2], including the creation and recognition of customary *erga omnes* obligations of international law[3], now part of the international *corpus iuris*.

The research is developed as follows: Chapter Two contains a historical review of the institution, and practice of neutrality until 1945. This chapter uncovers the historical core obligations of third States before World War I and how widespread and common neutrality became in the inter-wars' era -neutrality was anything but a rarity. Chapter Three analyzes the evolution of international law and how this evolution has impacted the obligations of third States, fundamentally changing the nature of neutrality in the light of its adoption. Following this analysis, the Chapter will revise the legal basis of neutrality and its legality. Finally, some specific practical questions will be discussed before reaching the final conclusions, succinctly presented in Chapter Four.

As a final introductory note, this research is based extensively on documents from the International Court of Justice, the Permanent International Court of Justice, the League of Nations and the United Nations, with the support of Treaties and some academic work. Five States were approached for interviews on the topic. The Republic of Ireland was the only State to provide such an interview. Switzerland and Costa Rica initially accepted responding to a written questionnaire, but several months later, they apologized

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[1] ILC Guiding Principles. *Op. Cit.* Principle 9.: *"No obligation may result for other States from the unilateral declaration of a State. However, the other State or States concerned may incur obligations in relation to such a unilateral declaration to the extent that they clearly accepted such a declaration."*

[2] Aegean Sea Continental Shelf, Judgment, I.C.J. Reports 1978, p. 3. (hereinafter the "Aegean Sea Case"). *"80. … It follows that* ***in interpreting and applying reservation (b) with respect to the present dispute the Court has to take account of the evolution which has occurred in the rules of international law*** *concerning a coastal State's rights of exploration and exploitation over the continental shelf."*

[3] *Erga omnes* obligations are international legal obligations that, due to their nature, are binding for all States. The ICJ referred to them in case of the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Second Phase, Judgment, I.C.J. 1970. (Hereinafter the "Barcelona Traction case") pag. 33. "*By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes.".*

and didn't submit any answers. Liechtenstein expressly refused to participate in the survey, and Austria didn't reply to the request for an interview. The questionnaires sent to all 3 States that originally accepted, can be found in Annex 2.

It is fundamental to understand that neither the origins of neutrality nor its different uses throughout time can be interpreted **today** as if the state of International Law **is** as it **was** when neutrality first became a legal institution of regular use in the XIX century. International law must be interpreted taking into account its evolution. For instance, the prohibition of invading Neutral States, which constituted a core element exclusive to multilateral neutrality since the Middle Ages, became superseded by the prohibition of the use of force as a Treaty obligation under article 2.4 of the United Nations Charter[4] (considered by the International Court of Justice -hereinafter "the ICJ"- as a *"cornerstone of the United Nations Charter"*[5]). Moreover, such prohibition has been widely recognized as a customary rule of international law[6] of *erga omnes* characteristics, even as a prohibition of *ius cogens*[7] as the International Law Commission considered. Due to its *erga omnes* character, it binds all States[8].

With the evolution of international law, obligations that neutrality imposed on third states have become part of what now constitutes the international *corpus iuris* (either as treaty law, customary law or *ius cogens* norms). This insight was fundamental to understanding the legal concept of neutrality and concluding that unilateral declarations are the most legally appropriate mechanism to accede to neutrality in international law. If accession to neutrality is the exercise of a State act of Sovereignty, an act of State freedom[9], and the reaffirmation of existing *erga omnes* obligations for third States, seeking Treaty

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[4]

[5] Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. 2005. (Hereinafter the "Activities in the Congo case"). parr. 148.

[6] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. 1986 (hereinafter the "Nicaragua Case"). parrs.188 and 227. *"188. The principle of non-use of force, for example, may thus be regarded as a principle of customary international law…"*, "*227. The Court will first appraise the facts in the light of the principle of the non-use of force, examined in paragraphs 187 to 200 above. What is unlawful, in accordance with that principle, is recourse to either the threat or the use of force against the territorial integrity or political independence of any State.".* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, p. 136. parr. 87 (hereinafter the "Wall Advisory Opinion"). *"As the Court stated in its Judgment in the case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States America), the principles as to the use of force incorporated in the Charter reflect customary international law (see 1. C. J. Reports 1986, pp. 98-1 01, paras. 187-190)"*

[7] Commentary of the International Law Commission to Article 50 of its draft Articles on the Law of Treaties, ILC Yearbook, 1966-11, p. 247. parr. (1) *"the law of the Charter concerning the prohibition of the use of force in itself constitutes* ***a*** *conspicuous example of a rule in international law having the character of jus cogens".* Also Document A/77/10. United Nations. International Law Commission. Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries. Yearbook of the International Law Commission, 2022, vol. II, Part Two. (7), referring to the former citation.

[8] Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Second Phase, Judgment, I.C.J. 1970. (Hereinafter the "Barcelona Traction case") pag. 33. "*By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes.".*

[9] Nicaragua Case. *Op. cit.* par. 241. "*It appears to the Court to be clearly established first, that the United States intended, by its support of the contras to coerce the Government of Nicaragua in respect of contras, matters in which each State is permitted, by the principle of State sovereignty, to decide freely (see paragraph 205 above);* Case of the S.S. "Lotus". (French Republic v. Turkish

recognition of it would be both problematic (as developed in Chapter Three) and counter-productive to the principles the adoption of neutrality seeks to reaffirm.

The freedom of action of States is a paramount principle of international law referred to known as the "Lotus Principle"[10]. In summary, States are free to act in exercise their sovereignty as long as they don't transgress any rule or obligation of international law or impose obligations on third States.

The analysis of the State practice of neutrality under current international law, its acceptance, recognition and lack of opposition, demonstrated the existence of a customary rule of international law, as will be proved in this paper. Since customary law does not necessarily lead to specific rules[11] or refers to a strictly coherent practice[12], an opportunity opened to essay a contribution to the field by drafting a Convention on the law of permanent neutrality, which is included as part of this thesis. It summarizes the conclusions reached in an effort to put some practical sense to the theory and the findings—a humble attempt to contribute.

As I conclude, permanent neutrality is grounded on a customary rule of international law that refers to a Status to which any State can accede via unilateral declaration. Its accession is an act of sovereignty that may also represent an exercise of self-determination, in any scenario, the exercise of an *erga omnes* **freedom**. This Status reaffirms the duties of neutrals and allows third States to rely on such acts, protected by the rule of estoppel. Accession to permanent neutrality doesn't create obligations to third States beyond existing or arising obligations *erga omnes*, whether ius cogens or customary international law. Due to its nature, permanent neutrality should be addressed *ad orbi* and shouldn't accept suspension (unfortunately, this is a discussion beyond the scope of this research).

With all the above, this thesis' Research Question and Statement can be established as follows:

Research Question.

Republic) Judgment. P.I.C.J. Collection of Judgments Series A, No. 10. 1927 (Hereinafter, the "Lotus case"). pag. 18. *"International law governs relations between independent States.* ***The rules of law binding upon States therefore emanate from their own free will*** *as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims****. Restrictions upon the independence of States cannot therefore be presumed****."*

[10] Lotus Case. pag. 18. *Ibis idem.*

[11] Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984, p. 246 (Hereinafter the "Gulf of Maine case") *"111.* ***A body of detailed rules is not to be looked for in customary international law…".***

[12] Nicaragua case: *"186. It is not to be expected that in the practice of States the application of the rules in question should have been perfect, in the sense that States should have refrained, with complete consistency, from the use of force or from intervention in each other's internal affairs. The Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule. In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules, and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule."*

Generally, can States declare themselves neutral by a binding unilateral act of international law?

Thesis Statement.

No general rule of international law was found prohibiting States, acting in the exercise of sovereign freedoms, to unilaterally and universally engage in a legally binding self-imposed foreign policy of neutrality by a unilateral declaration of international law.

b. Scope of the Research

After completing the research that led to this thesis and assessing the limitations imposed by the academic requirements, two realities became evident: a) the subject matter of the research became far more extensive than initially anticipated, and b) it would be necessary to narrow the scope of the outcome with precision.

After consideration of the findings, this thesis was narrowed down to the core arguments that would provide significant factual and legal support for the proposed interpretation of the evolution of international law and its impact on the institution of permanent neutrality. Consequently, a series of highly interesting topics or debates were left aside out of necessity.

This research will deal with the following issues:

a) The historical evolution of permanent neutrality.
b) The rights and duties involved in this evolution.
c) The conceptual differentiation between 'neutrality' and 'neutralization'.
d) State practice before and during the League of Nations, and the practice while in the current United Nations System.
e) The evolution of international law under the United Nations System and its impact on the duties of third States towards neutrals.
f) The consequences of the 'elimination' of the duties for third States regarding the adoption of neutrality via unilateral act.

Out of necessity and without prejudging on its legal or academic value, the following topics were left out of the scope of the final document:

a) Except for a brief mandatory reference, the philosophical and axiological component of permanent neutrality will not be revisited. Neither will the Kantian debate on permanent standing armies and demilitarization vis-à-vis the objectives and purposes of the United Nations Charter be revisited.
b) Neutralization as a separate and independent institution of international law.
c) Neutrality *in bello*. International humanitarian law has extensively developed and studied neutrality this area of law. Nonetheless, some reference to the relevant instruments will be mentioned.
d) Non-international armed conflicts, as Neutrality, have always been understood in terms of international conflicts -with the exception of Costa Rica, as referred to in Chapter Three.
e) Although sovereignty and self-determination are fundamental components of the proposal advanced with this thesis, both legal institutions have been extensively elaborated on by

academics and international courts, for which this work will only consider well-settled and accepted components of both institutions relevant to support the intended approach.

f) Termination, suspension, renunciation, breaches or abandonment will not be covered either.

g) The debate about unilateral acts as a source of international law, this thesis departs from the acceptance of the premise that unilateral acts do constitute a source of international law.

c. Methodological Framework

Chapter Two is a descriptive analysis of State practice during the period under study. This Chapter relies on academic material and direct sources -treaties-.

Chapter Three comprises two rational processes: on the one hand, a descriptive analysis of State practice and the evolution of the institutions of international law directly related to neutrality. This process relies heavily on hard law—treaties—and jurisprudence from the Permanent International Court of Justice and its successor, the International Court of Justice.

On the other hand, and taking into account the findings of the previous process, the selected method is legal topic, resourcing logical syllogisms and group theory to provide a rationale for the concluded 'absorption' of third States' obligations by the evolution of erga *omnes rules*, obligations now part of the international *corpus iuris*. This conclusion will provide the fundamental premise for the proposed approach outlined in this thesis.

Chapter Four is a synthesis of the conclusions arrived at in Chapters Two and Three.

d. Conceptual Framework

Generally, this thesis will make use of legal concepts according to their traditional, widely recognized and accepted general use, with the exceptions that follow:

"Neutralization" will be understood as the process of rendering a State materially incapable of waging hostilities by prohibiting the transit of foreign troops with hostile intent, removing all hostile capacity -foreign or domestic-, prohibiting belligerency, renouncing to the exercise of self-defence *muto propio* (demilitarization). Chapter Three includes a brief section outlining the rationale behind the necessity of differentiating it from 'neutrality' as a separate institution of international law.

The concept of "partisanship" will be understood simply as 'taking sides' in a conflict or abandoning 'absolute' impartiality towards the parties of an international conflict -armed or not. In other words, the abandonment of impartiality in any manner *non refert pacem aut bellum.*

The concept of partisanship, as here understood, is linked to the existence of an adversary or rival. This conception will be key when referring to the transformation of the United Nations from a partisan to a non-partisan organization and how, in consequence, this impacts the conduct of neutrals whilst exercising functions as part of United Nations bodies, particularly the Security Council.

As outlined in Chapter Two, neutrality is understood as the adoption of a posture of "strict impartiality and abstention towards all belligerents"[13].

This thesis will separate from the concept of *ius cogens* as understood by the International Law Commission, in favour of the position adopted by the Supreme Court of Canada, in the sense of simply understanding rules of *ius cogens* as rules of "fundamental importance"[14]. In other words, those rules of international law without which the Concert of Nations wouldn't function in a way suitable to provide for the fulfilment of the objectives and purposes enshrined in the United Nations Charter.

Finally, in the light of the International Law Commission Principle 1 on unilateral acts[15], and the Nuclear Tests case[16],this thesis departs from the premise that **unilateral acts are a source of international law.**

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[13] Clancy, Pearce. Permanent Neutrality in International Law. Thesis for the Degree of Ph.D. in International Law. Irish Centre for Human Rights. School of Law. University of Galway. May 2024. pag. 14.

[14] Nevsun Resources Ltd. v. Araya, Judgment of 28 February 2020, Supreme Court of Canada, 2020 SCC 5, para. 99.

[15] Document A/61/10. Report of the International Law Commission at its Fifty-Eight Session. 2006. Guiding principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto. pp. 369-381, (hereinafter the 'ILC Guiding Principles'). Principle 1: *"Declarations publicly made and manifesting the will to be bound may have the effect of creating legal obligations. When the conditions for this are met, the binding character of such declarations is based on good faith; States concerned may then take them into consideration and rely on them; such States are entitled to require that such obligations be respected."*

[16] Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974, p. 253. (hereinafter the "Nuclear Tests case"). par. 45: ***"With regard to the question of form, it should be observed that this is not a domain in which international law imposes any special or strict requirements. Whether a statement is made orally or in writing makes no essential difference, for such statements made in particular circumstances may create commitments in international law, which does not require that they should be couched in written form…"***

Due to the scope and limited length of this research, this premise will be taken as valid without entering into its surrounding debate.

Chapter Two. Historical Evolution of the Institution of Neutrality

a. Pre-World War era

Authors widely differ on the origins of neutrality in history. Such debate is irrelevant to this research, as the ancient origin and practice of neutrality predates international law and is not deemed to have any legal foundation.

It was not until neutrality was discussed among Powers and incorporated into Treaties, thus becoming legally binding, that the seeds of a legal institution of neutrality emerged in the Middle Ages[17].

During this early stage, neutrality was linked to two particular ideas: impartiality and neutralization. In the sense defined in the conceptual framework, neutralization means rendering a location or State incapable of exercising belligerency and prohibiting the settling or transit of foreign troops with hostile intent in the territory of the Neutral[18].

Concerning neutrality as impartiality, Hugo Grotius is regarded as the precursor of the philosophical debate about the axiological value and nature of neutrality and its linkage to impartiality. In *De Jure Belli Ac Pacis Libri Tres,* Grotius introduced the principle of impartiality as the core element of neutrality, although subject to a natural law assessment: the justice of the war or the justice of the cause of the parties. This approach was challenged by van Bynkershoek, who removed from the equation the natural element - the justice of the cause - reducing neutrality to a less subjective basis: strict impartiality and abstention of all participation in conflicts of third States[19]. This approach finally prevailed and is adopted in this research.

In the early practice of neutrality, dissimilar as it was, the terms 'neutrality' and 'neutralization' were used indistinctively, something rather inconvenient and mistaken, for which the correct understanding of the terms under current international law is fundamental.

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[17] Wilson George Grafton; Tucker, Geroge Fox. Chapter XXII. Definition and History of Neutrality. International Law. Boston, Silver, Burdett. p. 290. For further enquiry on the history of ancient neutrality, see: Lawrence T. J. Part IV. The Law of Neutrality. Principles of International Law. Boston, D.C. Heath & Co. pp. 587-607, and Lawrence T. J.; Winfield, Percy H. Part IV. The Law of Neutrality. Principles of International Law. London, Macmillan. pp. 582-602.

[18] Sherman, Gordon E. The Permanent Neutrality Treaties. Yale Law Journal. December, 1914. p. 221. *"Neutralization as it has been interpreted with reference to Switzerland, Belgium and Luxemburg may be distinctly held then to imply a freedom, under all possible circumstances, from the presence of armed forces belonging to a foreign state provided such forces are marching with a hostile intent towards any third Power whatever, and thus, for the moment, employing the neutralized territory as a base of belligerent operations."*

[19] van Bynkershoek, Cornelius. On Questions of Public Law in Two Books (1737). Tenney Frank (trs), Lonang Institute, 2003. For a more detailed analysis of this: Clancy, Pearce. Permanent Neutrality in International Law. *Op cit.* pp. 13-15.

Both 'neutrality' and 'neutralization' must be understood within their historical context to understand **today** what each means and how the concepts are entirely separate and different. The early forms of neutrality were by no means a free, unilateral, or willing act of the Neutral State (with the exceptions of the Swiss Confederation and Liechtenstein). Neutrality was instead an imposed condition, through a multilateral agreement, to establish buffer zones[20] between frequently belligerent Powers in a time when the use of force was not outlawed, and it was more of a custom than a sporadic occurrence. Belgium would be a perfect example. As stated by Lingelbach: *"The neutrality of Belgium was the logical result of powerful historic forces"*[21].

When Belgium was finally recognized as an independent State, it was **made neutral but not neutralized.** The text of article V of the protocol of January 20th, 1831, is very clear: *"La Belgique... formera un État perpétuellement neutral"* (Belgium will form a perpetually neutral State), for which the leading European Powers at the time, ought to "guarantee" such neutrality by protecting Belgium's territorial integrity[22]. Belgium was to maintain its military, not to participate in any wars of the signatory Powers, and prevent the transit and positioning of foreign troops with hostile intent. As mentioned, this last duty was 'guaranteed' by the other Powers.

From the study made by Sherman[23], it can be concluded that by the eve of World War I, neutrality was a consensual legal situation, where the obligations of third States towards neutrals were summarized into respecting the territorial integrity of the neutral and guaranteeing such neutrality from violations from other States. On the other hand, the obligations of the neutrals are summarized into a promise to remain neutral in case of conflicts involving the parties, non-participation in conflicts, preventing any foreign force with hostile intent from stationing or transiting its territory and, in some instances, neutralization.

The 1907 Hague Conventions are particularly important for the codification of neutrality ***in bello***. Conventions V[24] and XIII[25], most notably, established what would become explicit and specific universally binding rules of neutrality *in bello*. **As of today,** the International Court of Justice has repeatedly considered the 1907 Hague Conventions *erga omnes* customary rules of international law[26], as

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[20] Lingelbach, William E. Belgian Neutrality, its Origins and Interpretation. The American Historical Review, Oct., 1933, vol 39. No.1 Oxford University Press. pp. 49

[21] *Ibis ídem. Op. Cit.* pp. 48.

[22] Protocols held at London relative to the Affairs of Belgium. Protocole No. 11 de la Conférence tenue au Foreign Office le 20 Janvier, 1831. Part III. p. 7. Article V.

[23] Sherman, Gordon E. *Op. Cit.*

[24] Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. Concluded at the Second Peace Conference in The Hague, October 18th, 1907.

[25] Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval Warfare. Concluded at the Second Peace Conference in The Hague, October 18th, 1907.

[26] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, p. 136 (hereinafter the "Wall Advisory Opinion"). parr. 89. *"89. As regards international humanitarian law, the Court would first note that Israel is not a party to the Fourth Hague Convention of 1907, to which the Hague Regulations are annexed. The Court observes that, in the words of the Convention, those Regulations were prepared "to revise the general laws and customs of war" existing at that time. Since then, however, the International Military Tribunal of Nuremberg has found that the "rules*

they encompass *"elementary considerations of humanity"*[27]. This status has been extended to the 1949 Geneva Conventions.

Having determined the legal status of the 1907 Hague Regulations as *erga omnes* obligations of customary international law, it can be assumed that sufficient and consistent practice accompanied by *opinio iuris* was found to be present by the ICJ, as practice and *opinio iuris* are the constitutive elements of customary rules of international law.

Prematurely in this research, as it is, it can be concluded that, neutrality ***in bello***, is nowadays a well-established *erga omnes* obligation of international law, supported by State practice accompanied by *opinio iuris,* widely recognized and undisputed by the international community as a whole.

b. Inter-war period

By the end of the inter-war period, particularly during the short existence of the League of Nations, it became evident by extensive State practice - as will be demonstrated- that neutrality was a well-established and widespread principle of international law of significant importance for international relations. Indeed, neutrality is so widely present in international treaties of all sorts that one could question if at least some elements of neutrality as a legal institution could constitute peremptory rules of *ius cogens,* in the sense understood by the Supreme Court of Canada: a fundamental rule in which absence the international community wouldn't function peacefully, a rule absolutely essential for the functioning of international relations[28].

The League of Nations became the first International Organization to centralize the deposit, production, and, codification of international law of all sorts, which also allowed for the cumulative acceptance and recognition of neutrality as a 'common' institution in international law.

Completely unaware of the task to face, I decided to find support of State practice and *opinio iuris* in the Treaties signed during the time of the League of Nations. The amount of evidence found was

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laid down in the Convention were recognised by al1 civilised nations, and were regarded as being declaratory of the laws and customs of war" (Judgement of the International Military Tribunal of Nuremberg, 30 September and 1 October 1946, p. 65). The Court itself reached the same conclusion when examining the rights and duties of belligerents in their conduct of military operations (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I. C. J. Reports 1996 (1), p. 256, para. 75). The Court considers that ***the provisions of the Hague Regulations have become part of customary law, as is in fact recognized by all the participants in the proceedings before the Court.****"* Also, Legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. Advisory Opinion. I.C.J. 2024. (hereinafter the "Israel Occupation Advisory Opinion"). par. 96: *"As the Court has observed, the Hague Regulations have become part of customary international law (ibid., p. 172, para. 89),"*. Also, Corfu Channel case, Judgment of April 9th, 1949: I.C. J. Reports 1949, P. 4. (hereinafter the "Corfu Channel case").

[27] Nicaragua case. p. 104. *"There is no doubt that, in the event of international armed conflicts, these rules also constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts; and they are rules which, in the Court's opinion, reflect what the Court in 1949 called* ***"elementary considerations of humanity"*** *(Corfu Channel, Merits, 1. C. J. Reports 1949, p. 22; paragraph 2 15 above). The Court may therefore find them applicable to the present dispute…".*

[28] Nevsun Resources Ltd. v. Araya, Judgment of 28 February 2020, Supreme Court of Canada, 2020 SCC 5, para. 99.

flabbergasting. In fact, the list of International Agreements deposited in the short life spawn of the League of Nations is so large, that we'll satisfy by directing the reader to the bibliography section D.1-77.

In between 1920 and 1946, the League of Nations registered 4834 international agreements of all sorts (including accessions, exchanges of letters, etc.). Seventy-seven (yes, seventy-seven!) of them explicitly referred to neutrality in all sort of manners and at all times, ***sine bello, in bello*** and ***non refert pacem aut bellum.*** It is to note that treaties referring solely to the neutrality of arbitrators or members of panels and accessions to The Hague Conventions are excluded from this count. As there are too many, only selected samples will be explicitly referred to[29] as we'll focus on the specific useful findings of such survey.

In terms of areas of application or uses, the diversity of Treaties and Agreements is mind-blowing: from Security and Friendship Treaties to; transit of persons, commerce, aerial navigation, neutralization, disposal of tonnage, a daily service of press telegrams, transit and communications in rivers, Straits regime, hydraulic power, money orders, maritime ports, boundary issues, the Parcel Post Agreement and the Universal Postal Union, the treatment of prisoners of war, commercial aviation, maritime neutrality, illicit trade of liquor, the protection of artistic and scientific institutions and immunity of State owned vessels. The importance of neutrality and its core element of impartiality for the functioning and development of international relations can be inferred from such widespread use. Neutrality is a cornerstone in the modern world, in my view, a "fundamental norm" of international law and relations. It is not by chance that theses clauses on neutrality and neutralization -or about them-, were included in all these treaties covering such a varied range of areas.

The vast number of Treaties found, and the widespread use of neutrality, demonstrate without any doubts that, for as abstract as it may be, the concept of neutrality as a legal institution is well accepted, practiced and recognized by the international community as a whole.

In terms of the reference or use of 'neutrality', variety and diversity are also present:

a) Neutrality as neutralization: several Treaties were concluded establishing neutralized zones, most of them, related to navigational issues (like the Kiel or Panama Canals) and in protection of commerce, being the case of the binational bridge (Venezuela and Colombia) an interesting example.

b) Neutrality and Neutralization together: being the case of the Aaland Islands and the Holy See the most widely known.

c) Neutrality as a promise to remain neutral in case of war. This includes neutrality, friendship, conciliation, and armistice agreements[30].

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[29] For specific on treaties of general application in this timeframe: Sherman, Gordon E. *Op Cit.* pp. 217-220.

[30] For instance, article 2 of the Treaty of Neutrality, Conciliation and Judicial Settlement between the Kingdom of Italy and the Turkish Republic. Signed at Rome, may 30th, 1928; *"Should one of the High Contracting Parties, notwithstanding its peaceful attitude, be attacked by a third Power or third Powers,* ***the other Party shall observe neutrality*** *during the whole of the conflict."*

d) Neutrality as a permanent obligation: as is the case of most navigation and commerce-related agreements, such as the case of the Kiel and Panama Canals, which are good examples[31].

e) Neutrality as a binding existing obligation: Several treaties only included explicit recognitions of the rules of neutrality; other treaties subjected their application to the compatibility with the rules of neutrality, establishing a superior hierarchy in favour of the rules of neutrality[32].

f) Neutrality as **non-escalation.** Although only one treaty presented this feature, it is nonetheless essential[33], as non-escalation will be considered part of the duties of neutrals later in this work (Ireland recognized it as part of the duties of Permanently Neutral States[34]).

In terms of moment, it can be said that the treaties analysed cover all possible moments regarding the use of neutrality:

a) Neutrality *sine bello*. Regarding neutrality *sine bello* (or in times of peace), neutrality has been introduced into treaties in two different ways:

   a. As a promise to remain neutral in the case of the armed conflict of one of the Parties and third States.

   b. As a permanent obligation to impartiality, as in the treaties regarding commerce, navigation, and posts.

b) Neutrality *in bello*. Neutrality *in bello,* as indicated before, was codified in the Hague Conventions of 1907 referred to above, however, many of the treaties listed in the references mentioned, established either the maintenance of the application of the terms of the treaty subject to neutrality rules, or, the direct attitude of non-intervention and non-belligerency in a conflict not of its own, in fulfilment of the promise given *sine bello*.

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[31] For further details on the practical implications of permanent neutrality: Case of the S.S. "Wimbledon". (British Empire, French Republic, Kingdom of Italy and Empire of Japan v. German Empire). Judgment. P.I.C.J. 1923. (hereinafter the "Wimbledon Case").

[32] For instance, article 12 of the Convention between the Kingdom of Italy and the Kingdom of the Serbs, Croats and Slovenes regulating railway communications and transit. Signed at Belgrade, July 14th, 1924, says "*Article 14. The present Convention* ***does not prescribe the rights and duties of belligerents and neutrals in time of war. The Convention shall, however, continue in force in time of war so far as such rights and duties permit****."*

[33] Convention of Friendship and Good Neighbourly Relations between France and Turkey. Signed at Angora, May 30th, 1926. *"Article I. The Turkish Republic and the countries detached from the Ottoman Empire and placed under the authority of the French Republic will henceforth maintain relations of friendship and good neighbourhood. They will not engage in or permit the violation of their common frontier as laid down in the present Convention and will accordingly take the measures specified in Protocol No. III annexed hereto. Being resolved to observe reciprocally the rules of neutrality,* ***they will not encourage or support any aggression*** *directed against each other."*

[34] See response to the questionnaires in Annex III.

An additional note must be made here due to the exceptional character of the "Anti-War Treaty" provisions signed among several Latin American States[35]. Article III seems to impose a duty to intervene to restore the peace[36], which will later be important in this research.

c) Neutrality *non refert pacem aut bellum*. For this, the Maritime Convention does provide a good example[37].

d) There is no reference to neutrality ***ad bellum*** in any of the Treaties included in the survey.

Despite the fact that neutrality doesn't have a specific definition, nor has been established in homogeneous forms, by the end of the era of League of Nations**, neutrality had been widely recognized and practiced** and indistinctively used in three ways: a) Neutrality as neutralization/demilitarization – as in the sense defined in the conceptual framework- **subject to guarantees** from Third States -meaning safeguard of the territorial integrity of the Neutralized State-, b) "Neutrality" as "military neutrality", implying non-belligerency and/or non-participation in conflicts of third States, c) "Neutrality" as a permanent political and non-belligerent impartiality *non refert pacem aut bellum*. In all cases, neutrality was **consensual** and not considered as the exercise of the freedoms provided by the attributes of sovereignty.

As pointed before, in some of the instruments deposited in the League of Nations, "remain neutral" would be understood as "remain neutralized". It is important for this research to clarify the modern use and understanding of both concepts.

As of today, neutrality and neutralization refer to two separate situations, for which care must be applied when reading treaties prior to the post-wars' era. To prove the inadequacy of its undistinctive use, *reductio ad absurdum* will provide a useful tool, as the use of neutralization and neutrality as interchangeable terms would inevitably lead to a legal antinomy. Ask the following question: If Neutral States are not to take part of military alliances **and** must remain neutralized -meaning demilitarized-, how could a Neutral State defend its neutrality by force and by itself? [38] Liechtenstein does provide a perfect example of this mistake.

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[35] Anti-war Treaty (Non-Aggression and Conciliation). Signed at Rio de Janeiro, October 10th, 1933. (hereinafter, the "Anti-war Treaty").

[36] *Ibis ídem. Op. cit.* Article III: *"In case any of the States engaged in the dispute fails to comply with the obligations set forth in the foregoing Articles, the* ***Contracting States undertake to make every effort in their power for the maintenance of peace. To that end, and in their character of neutrals, they shall adopt a common and solidary attitude; they shall exercise the political, juridical or economic means authorized by International Law; they shall bring the influence of public opinion to bear; but in no case shall they resort to intervention either diplomatic or armed****. The attitude they may have to take under other collective treaties of which said States are signatories is excluded from the foregoing provisions.".*

[37] Convention on Maritime Neutrality, adopted by the VIth International Conference of American States, signed at Habana, February 20th, 1928, says: "*Article 10.* ***Belligerent warships*** *may supply themselves with fuel and stores in neutral ports, under the conditions especially established by the local authority and in case there are no special provisions to that effect,* ***they may supply themselves in the manner prescribed for provisioning in time of peace****."*

[38] Art, 5 Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. Concluded at the Second Peace Conference in The Hague, October 18th, 1907. Arts 2, 9 and 24 Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval Warfare. Concluded at the Second Peace Conference in The Hague, October 18th, 1907.

It regards itself as neutral because it doesn't have a military, regardless of its open support for Ukraine[39]. Lichtenstein is not neutral; it is neutralized. In fact, Liechtenstein never officially declared its neutrality[40], neither in the political sense nor as an internationally binding act. Despite the many published articles on Lichtenstein's neutrality, there is no record, **at all**, of the country declaring neutrality; the only existing associated record is the disbandment of its 80-man army.

The necessary follow-up question is: "Is demilitarization incompatible with neutrality?" the answer is negative, but that will be addressed later. The way to defend neutrality by force only applies in cases of self-defence, not just because neutrality has been violated, but also because a violation of neutrality implies a breach of Sovereignty - as will also be addressed in Chapter Three -in which case the issue becomes a matter of self-defence, where neutrality has no role to play, as neutrality refers to conflicts **of others.**

Let us not forget that **self-defence is a sovereign right** of every State, **not an obligation**, as there is no such obligation under international law, even though there is neither an obligation to have armed forces -domestic or foreign-, as the ICJ hinted in the Nicaragua case[41]. Moreover, in modern international law, force is not the only way to defend against violations of territorial integrity[42], as Costa Rica demonstrated by recurring to the International Court of Justice in the face of Nicaragua's incursion in its territory in 2010.

The protection of neutrality by force by the neutral is a clause that can only be understood in the context of its era; the use of force wasn't outlawed, and it was a customary manner to resolve disputes. When the use of force became forbidden and the Security Council was created, it would do so with massive impacts on the legal institution of neutrality.

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[39] Ohrenstein, Isaac R. Interview to Dr. Daniel Risch, Prime Minister of Liechtenstein. Liechtenstein's Quiet Power: Prime Minister Dr. Daniel Risch on Security, Diplomacy, and Finance. Harvard International Review. October 16th, 2024. Accessed on Oct. 16th, 2024 at: https://hir.harvard.edu/liechtensteins-quiet-power-prime-minister-dr-daniel-risch-on-security-diplomacy-and-finance/

[40] *Ibis Idem. Op. Cit.*

[41] Nicaragua case. *Op. Cit.* par. 269. *"It is irrelevant and inappropriate, in the Court's opinion. to pass upon this allegation of the United States. since in international law there are no rules. other than such rules as may be accepted by the State concerned, by treaty or otherwise. whereby the level of armaments of a sovereign State can be limited, and this principle is valid for all States without exception."*. This seems to imply that States are free to determine the amount of armament they can have, with no lower no upper boundaries.

[42] See: Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011, p. 6

As of today, the defence of neutrality by force by the neutral is an obsolete clause that has also been overridden by the rise of self-defence as part of[43] a rule of *customary international law*[44]. One can even question if self-defence, by derivation, constitutes or not a rule of *ius cogens*[45]. Moreover, and as stated before, **when a neutral State faces a violation of its sovereignty by the use of force, neutrality ceases to operate because the conflict ceases to be foreign.** The issue would now move to self-defence, as a State can't remain neutral in an armed conflict in which it is involved.

Besides all the instruments collected, it shall not be put aside the fact that the Permanent International Court of Justice (hereinafter the "PICJ") dealt with the issue of neutrality in at least two cases.

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[43] Activities in the Congo Case: *"148. The prohibition against the use of force is a cornerstone of the United Nations Charter. Article 2, paragraph 4, of the Charter requires that: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations**." Article 51 of the Charter may justify a use of force in self-defence only within the strict confines there laid down**. It does not allow the use of force by a State to protect perceived security interests beyond these parameters."*

[44] Nicaragua Case. *Op. cit. "193. The general rule prohibiting force allows for certain exceptions. In view of the arguments advanced by the United States to justify the acts of which it is accused by Nicaragua, the Court must express a view on the content of the right of self-defence, and more particularly the right of collective self-defence. First, with regard to the existence of this right, it notes that in the language of Article 5 1 of the United Nations Charter, the inherent right (or "droit naturel") which any State possesses in the event of an armed attack, covers both collective and individual self-defence. Thus, the Charter itself testifies to the existence of the right of collective self-defence in customary international law. Moreover, just as the wording of certain General Assembly declarations adopted by States demonstrates their recognition of the principle of the prohibition of force as definitely a matter of customary international law, some of the wording in those declarations operates similarly in respect of the right of self-defence (both collective and individual). Thus, in the declaration quoted above on the Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the reference to the prohibition of force is followed by a paragraph stating that: "nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful". This resolution demonstrates that the States represented in the General Assembly regard the exception to the prohibition of force constituted by the right of individual or collective self-defence as already a matter of customary international law.", "194. … In view of the circumstances in which the dispute has arisen, reliance is placed by the Parties only on the right of self-defence in the case of an armed attack which has already occurred, and the issue of the lawfulness of a response to the imminent threat of armed attack has not been raised.",* and *"195. In the case of individual self-defence, the exercise of this right is subject to the State concerned having been the victim of an armed attack. Reliance on collective self-defence of course does not remove the need for this".*

[45] The prohibition of use of force has been widely recognized as a rule of *ius cogens,* as the International Law Commission pointed out. For reference: Document A/77/10. *Op. cit.* The author understands that self-defence is an exception to the rule of the prohibition of the use of force, which means that self-defence in itself is **part of the rule** that prohibits the use of force. Self-defence is not a standalone rule, but an exception that must be understood as part of the rule itself.

In the Wimbledon Case, the Court upheld the Treaty neutrality of a waterway[46] (the Kiel Canal). In the case of the Zones Franches[47], the international recognition of the Swiss independence and perpetual neutrality was upheld, including the inviolability of its territory as a component of its Neutral Status (in the form of an obligation on third States).

[46] Case of the S.S. "Wimbledon". (British Empire, French Republic, Kingdom of Italy and Empire of Japan v. German Empire). Judgment. P.I.C.J. 1923. (hereinafter the "Wimbledon case"). pag. 25. *"The argument has also been advanced that the general grant of a right of passage to vessels of all nationalities through the Kiel Canal cannot deprive Germany of the exercise of her rights as a neutral power in time of war, and place her under an obligation to allow the passage through the canal of contraband destined for one of the belligerents ; for, in this wide sense, this grant would imply the abandonment by Germany of a personal and imprescriptible right, which forms an essential part of her sovereignty and which she neither could nor intended to renounce by anticipation. This contention has not convinced the Court; it conflicts with general considerations of the highest order. It is also gainsaid by consistent international practice and is at the same time contrary to the wording of Article 380 which clearly contemplates time of war as well as time of peace. The Court declines to see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty. As examples of international agreements placing upon the exercise of the sovereignty of certain states restrictions which though partial are intended to be perpetual, the rules established with regard to the Suez and Panama Canals were cited before the Court.* ***These rules are not the same in both cases; but they are of equal importance in that they demonstrate that the use of the great international waterways, whether by belligerent men-of-war, or by belligerent or neutral merchant ships carrying contraband, is not regarded as incompatible with the neutrality of the riparian sovereign.*** *"* Furthermore, pag. 30: *"From the foregoing, therefore, it appears clearly established that Germany not only did not* ***, in consequence of her neutrality, incur the obligation to prohibit the passage of the " Wimbledon" through the Kiel Canal****, but, on the contrary, was entitled to permit it. Moreover, under Article 380 of the Treaty of Versailles, it was her definite duty to allow it. She could not advance her neutrality orders against the obligations which she had accepted under this Article. Germany was perfectly free to declare and regulate her neutrality in the Russo-Polish war, but subject to the condition that she respected and maintained intact the contractual obligations which she entered into at Versailles on June 28th, 1919. In these circumstances it will readily be seen that it would be useless to consider in this case whether the state of war between Russia and Poland, and with it Germany's neutrality, had or had not terminated at the date on which the "Wimbledon" incident occurred.* ***In war time as in peace time the Kiel Canal should have been open to the "Wimbledon" just as to every vessel of every nation at peace with Germany****."*

[47] Case of the Free Zones of Upper Savoy and the District of Gex. (French Republic v. Swiss Confederation). Judgment. P.I.C.J. Collection of Judgments, Orders and Advisory Opinions. Series A|B, Fascicule No. 46. 1932. pags. 23-25 *"The era of the Napoleonic wars preceding the Hundred Days was brought to an end by the treaties concluded at Paris on May 30th, 1814, between France, on the one hand, and Austria, Great Britain, Prussia and Russia respectively, on the other. Article 6 of these treaties, which all correspond, contains inter alia the following provision:* ***"Switzerland, independent, shall continue to govern herself "."*** *… "In the preamble to the above-mentioned Declaration of March 20th, 1815, special reference is made to* ***the Powers' desire to provide Switzerland, by restitutions and cessions of territory, with the means of preserving her independence and maintaining her neutrality****; it is also stated therein that the Powers have obtained all information relative to the interests of the various cantons. The Declaration itself states that: "As soon as the Helvetic Diet shall have duly and formally acceded to the stipulations contained in the present Instrument,* ***an Act shall be prepared containing the acknowledgment and the guarantee, on the part of all the Powers, of the perpetual neutrality of Switzerland in her new frontiers****; which Act shall form part of that which, in the execution of Article 32 of the Treaty of Paris of May 30th, was to complete the arrangements contained in that Treaty." … "This hope met with fulfilment when the Powers concluded the second series of treaties of Paris on November 20th, 1815, after the Hundred Days; for on the same day they made a Declaration, the relevant passage of which is as follows: … "These changes being fixed by the stipulations of the Treaty of Paris signed this day, the Powers who signed the Declaration of Vienna of the 20th March declare,* ***by this present Act, their formal and authentic Acknowledgment of the perpetual Neutrality of Switzerland; and they Guarantee to that country the Integrity and Inviolability of its Territory in its new limits****, such as they are fixed, as well by the Act of the Congress of Vienna as by the Treaty of Paris of this day, and such as they will be hereafter";*

c. Post-World War II era

With this scenario, the League of Nations came to an end, and the era of the United Nations began. For as much as I would have preferred to review the international instruments registered at the United Nations, such an endeavour would by far exceed the reach of this thesis. Between 1946 and 2013, over FIFTY THOUSAND treaties and agreements of all sorts have been registered or deposited at the United Nations (50569, to be precise). Notwithstanding, as one of the original objectives of this thesis was to demonstrate widespread state practice, the survey of treaties and agreements under the League of Nations should suffice to provide such evidence.

As a result of the above, we can conclude that there is sufficient State practice resourcing or referring to neutrality as a legal institution, abstract as it may be, capable of creating international obligations to neutrals and non-neutrals in times of peace, and in times of war, even *non refert pacem aut bellum*. This practice, as expected, is not uniform; nonetheless, it is widespread, **non-opposed** and **non-contradictory.** Moreover, it shows that neutrality **has been widely accepted as an institution of international law** in its abstract sense.

The formation of the United Nations Organization and its regimen, particularly the prohibition of the use of force, changed the rules of the game. The Charter forbade the use of force[48], while the ICJ has reaffirmed this prohibition, adding to it, *erga omnes* character while sourcing it from custom[49]. Furthermore, the role of 'guarantor States' became obsolete and unnecessary, as the Security Council would provide for such function[50], not because of the protection of neutrality *per se* but because of the breach of the peace, the violation of the prohibition of the use of force, and the violation sovereignty -territorial integrity-.

Since the creation of the United Nations, several countries have, regardless of their legal form, engaged in active "permanent neutrality" as a matter of domestic legislation, unilateral acts, acts of sovereignty, freedom or self-determination, either as international obligations or as an issue of domestic policy.

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[48] United Nations Charter. Article 2.4). *"2. The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles… 4) All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*

[49] Nicaragua Case. *Op. Cit. "188. The principle of non-use of force, for example, may thus be regarded as a principle of customary international law…", "227. The Court will first appraise the facts in the light of the principle of the non-use of force, examined in paragraphs 187 to 200 above. What is unlawful, in accordance with that principle, is recourse to either the threat or the use of force against the territorial integrity or political independence of any State.".* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, p. 136. parr. 87 (hereinafter the "Wall Advisory Opinion"). *"As the Court stated in its Judgment in the case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States America), the principles as to the use of force incorporated in the Charter reflect customary international law (see 1. C. J. Reports 1986, pp. 98-1 01, paras. 187- 190)"*

[50] United Nations Charter (hereinafter 'UN Charter'). Article 24.1: *"In order to ensure prompt and effective action by the United Nations,* ***its Members confer on the Security Council primary responsibility for the maintenance of international peace and security,*** *and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf."*

Because of this research's specific objectives, the historical context of each adoption of permanent neutrality will not be addressed. Clancy[51] has conducted extensive research on the historical background and political issues behind each adoption of neutrality, to which we refer for further details.

According to Clancy, during the current United Nations system, seven States have opted for permanent neutrality (the short-lived failed case of the Territory of Trieste will not be studied): Austria[52], Malta[53], Laos (abandoned in 1977[54], thus not included in the analysis), Cambodia[55], Turkmenistan[56], Moldova[57] and Costa Rica[58]. The Republic of Ireland represents a peculiar case, as there is no act of declaration of neutrality, and the Republic of Ireland is emphatic in affirming that its neutrality is entirely a matter of domestic policy that doesn't internationally bind the State in any manner[59].

Even when the sample was reduced, the State practice of permanent neutrality in the post-wars' era showed some commonalities in the characteristics and conditions of each form of neutrality. Moreover, both recognition and non-opposition were extensively found during the course of this research.

For instance, all the said States, except Moldova, whose provision is silent, explicitly reject the participation in military alliances, as this is deemed incompatible with permanent neutrality and independence[60]. All States except Austria and Turkmenistan, whose provisions are silent about, reject the presence of foreign military bases, as such foreign presence is deemed incompatible with permanent neutrality. All States, except Moldova and Cambodia, whose provisions are silent about, reiterate the duty to defend neutrality, where Austria is the only State explicitly referring to the defence of neutrality with the use of force.

Interestingly enough, there is no record of any of the said States receiving, from a third State, any sort of protest or opposition regarding their neutrality. Ireland denied having received any such communication from any State regarding its policy of neutrality.

It can be considered a development in the field that none of the said States have linked neutrality with neutralization, which points to the clarification of the difference between the concepts and their

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[51] Clancy, Pearce. Permanent Neutrality in International Law. *Op. cit.* chapter I.III.

[52] Federal Constitutional Law of Austria of 1920. Art. 9.

[53] Constitution of Malta of 1964. Article 1.

[54] Neuhold puts the exact date of termination at 1977, see Neuhold, 'Permanent Neutrality in Contemporary International Relations' (n 74) 15; cited in Surya P Subedi, Land and Maritime Zones of Peace in International Law (Doctoral Thesis, Oxford University, 1993) 183-184.

[55] Constitution of the Kingdom of Cambodia. Adopted by the Constitutional Assembly in Phnom Penh on September 21, 1993 at its 2nd Plenary Session. Articles 1, 53, 55 and 71.

[56] Constitution of Turkmenistan of 2008. Articles 1 and 6.

[57] Constitution of the Republic of Moldova of 1994. Article 11.

[58] Proclama presidencial sobre la neutralidad perpetua, activa y no armada de Costa Rica. (1983). (whole text)

[59] See Irish response to the questionnaire in Annex III (minutes of the interview).

[60] Costa Rica's proclamation of permanent neutrality considers the "Rio Treaty" mechanism as a system of "collective security" that doesn't require militarization to be part of. It is of my personal opinion that neutrality is incompatible with the status of State Party to the Rio Treaty unless a reservation is made and accepted by the rest of State Parties.

subsequent separation. Even in the case of Costa Rica, as it must be recalled, it demilitarized itself, *muto proprio,* **thirty-five years before** it became neutral; demilitarization was adopted in 1948, neutrality in 1983.

The survey of State practice also evidenced some differences that should be pointed out.

Only Costa Rica has openly assumed permanent neutrality as an international obligation acquired via unilateral act. The declaration was transmitted to all States with which Costa Rica had diplomatic relations and to the United Nations Secretariat. The case of Costa Rica does present a singularity of exceptional character that deserves a short reference.

On march 19th, 2003 the President of Costa Rica issued a public statement in support of the Coalition of the Willing that invaded Iraq without authorization nor consent from the United Nations Security Council, thus, lacking of any permission to engage in such use of force against Iraq. The author of this research filed suit before the Constitutional Chamber of the Supreme Court of Justice of Costa Rica, which, in the abovementioned ruling 9992-04 declared that the support given by the President of Costa Rica was in violation of its duty to respect international obligations, whilst it considered the neutrality proclamation of 1983 as a unilateral act of international law under the form of a unilateral promise:

> *"Under these considerations, this Constitutional Court understands that the "Proclamation of Perpetual, Active and Unarmed Neutrality" of nineteen eighty-three* ***is a unilateral promise*** *of Costa Rica in the international concert that came to develop the constitutional value of peace and that, Consequently,* ***it must be observed in good faith permanently by the Costa Rican Government, avoiding, at all times, transgressing the "estoppel rule" (venire contra factum proprium) of Public International Law, exception or non-observance of it for a specific and determined case.*** *It must be taken into account, for the specific case, that the aforementioned Proclamation, in the "Duties of neutrality" provided the following:*
>
> > *"Faithful to its centuries-old vocation for peace, Costa Rica sovereignly assumes before the community of nations the duties inherent to its new condition as a perpetually neutral State. We undertake not to start any war; to not use force, including any threat or military retaliation; to not participate in a war between third States; to effectively defend our neutrality and independence with all possible material, legal, political and moral resources and to* ***practice a foreign policy of neutrality in order not to get involved, really or apparently, in any conflict; war.*** *Furthermore, we undertake to extend our duties as a perpetually neutral State to armed conflicts within States."* [61]

[61] Ruling 9992-04 in the case of Luis Roberto Zamora Bolaños v. Costa Rica, case concerning the position of the government of Costa Rica regarding the 2003 invasion of Iraq. Constitutional Chamber of the Supreme Court of Justice of Costa Rica. 2004. (translation by author) Although this ruling catalogued the 1983 Neutrality Proclamation as a unilateral promise, this conclusion is, under the opinion of the author, a mistake, for there is a fundamental logical flaw in that conclusion. A promise refers to an obligation that the promising party is due to undertake **in the future event** of certain situation happening or not. This would imply that neutrality is not permanent as its only due to enter into operation given the specified situation. Moreover, in the particular case of Costa Rica, it expressly

Interestingly enough, following the abovementioned ruling, the United States State Department proceeded to remove the name of Costa Rica from the list of States member of the so-called Coalition of the Willing referred to, in a clear case of recognition.

It is worth noting that as far as this research found, this is the only domestic judicial case in which a Neutral State has been found in breach of its neutrality under international law, although by a domestic court. In the case of Horgan v. Ireland[62], although the Irish Court found the existence of a customary rule on neutrality, it didn't find Ireland in breach of such rule.

Like Costa Rica, Switzerland and Austria also transmitted the adoption of their constitutional permanent neutrality clause to all States they had diplomatic relations with at the time they adopted neutrality.

Turkmenistan's neutrality was first recognized by the United Nations General Assembly[63] before adopting it as a constitutional provision (Art. 1)

As we can conclude from the review of State practice in the timeframe under review, State practice of permanent neutrality has gained in consistency, has been widely recognized and more important, has been practiced without any opposition from any State, regardless of the subsistent lack of complete uniformity.

It is not possible to bring closure to this Chapter without referencing the 1949 Geneva Conventions, which further developed the rules of neutrality *in bello* and are part of customary international law.

This brings us to the end of Chapter Two and the historical development of permanent neutrality in international law.

states that it will be "non-transitory", in reiteration of its character of "perpetual". Moreover, the "active" character of the neutrality, provides it of an active and constant exercise of neutrality, not a passive one. All this doesn't prejudice the fact that permanent neutrality does contain a promise, that of remaining neutral *in bello.*

[62] Case concerning the use of Shannon Airport. Horgan v. Ireland. Ruling 3739P of the 28th of April. 2003. High Court of the Republic of Ireland. (Hereinafter the "Horgan Case").

[63] UN General Assembly, 'Permanent neutrality of Turkmenistan' (12 December 1995) UN Doc A/RES/50/80 A, para 1.

Chater Three. Conceptual Understanding and the Legal Basis of Permanent Neutrality

The conclusions of Chapter Two imposed a significant challenge for the structure and framing of this thesis, as it was necessary to re-frame neutrality in the light of the evolution of international law.
After long consideration, I decided to start by assessing the impact of the 'absorption' of obligations of third States by *erga omnes* obligations, conventional or customary, part of the international *corpus iuris*.
It is pertinent to clarify that this study will not focus on consensual neutrality, despite pointing at its inconveniences, as consensual neutrality by treaty is a well-accepted and established institution of international law sourced in the consent of States parties. This form of practice remains valid regardless of the findings and proposed approach that follows.

a. The Absorption of Obligations of Third States by the International Corpus Iuris

As highlighted in Chapter Two, the main obligations of third States towards neutrals, prior to the UN era, could be summarized into:

1. The obligation to respect the territorial integrity of the neutral, by:
    a. Not invading neutral territory
    b. Not stationing nor transiting troops with hostile intent.
2. The obligation to protect –'guarantee'- such neutrality, even by the use of force

Regarding the first obligation, the United Nations Charter became the first general international treaty proscribing the use of force to settle international disputes, as Article 2.4) referred to above, enshrined.
This prohibition has been subject of study by the International Court of Justice, which has reaffirmed its legal value as a binding treaty, but also expanded its legal basis to an *erga omnes* obligation under customary international law, as it did in the Nicaragua Case and the Wall advisory opinion, as pointed in footnote 52.
According to the Charter and the ICJ, this prohibition of the use of force prevents the violation of either territorial integrity or political independence of another State. This includes not only the direct attack against another State, but also the positioning of forces without authorization from the recipient State, as the ICJ studied in the Activities in the Congo case, when the Congo withdrew its authorization to the

presence of Ugandan forces[64]. If this positioning or transit of forces were to happen with the consent of the neutral, it would be so in violation of neutrality by both parties.
As can be seen, the obligations of third States towards neutrals ceased to be obligations of third States towards neutral to become obligations of all States towards all other States, regardless of its neutrality. In other words, neutrality became irrelevant to the binding character of the prohibition of the use of force as in article 2.4) of the Charter and as the ICJ has interpreted it.
It can be concluded that the adoption of neutrality ceased to require the imposition of such obligation, as the obligation is already imposed on all States due to its *erga omnes* character.

Concerning the obligation of third States to 'guarantee' such neutrality from violations of any State -party or not party to the treaty-, it can also be understood that such role and obligation has fallen into desuetude and has become obsolete, in the light of the creation of the United Nations, and in particular, of its Security Council, which has the primary duty to maintain and restore international peace and security, as established in article 39 of the Charter[65], **regardless of the condition of neutral of the affected State.** In other words, neutrality becomes irrelevant to the Security Council in the exercise of its functions.

From the above, it is possible to conclude that, effectively, the obligations of third States towards neutrals have been absorbed by fundamental norms of the international *corpus iuris. A*s such, the adoption of neutrality by a State wouldn't be imposing any new obligations on third States.
A second conclusion to be drawn is that neutrality would reduce itself to a set of self-imposed obligations by the neutral.

The first consequence of these conclusions directly relates to the ILC Commission's "Guiding Principles" on unilateral acts. In particular, principles 1, 2, and 9:

> *"1. Declarations publicly made and manifesting the will to be bound may have the effect of creating legal obligations. When the conditions for this are met, the binding character of such declarations is based on good faith; States concerned may then take them into consideration and rely on them; such States are entitled to require that such obligations be respected.*
>
> *2. Any State possesses capacity to undertake legal obligations through unilateral declarations.*

[64] Activities in the Congo case. *Op. Cit.* paras. 51, 52.
[65] UN Charter. art. 39. *"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."*

9. No obligation may result for other States from the unilateral declaration of a State. However, the other State or States concerned may incur obligations in relation to such a unilateral declaration to the extent that they clearly accepted such a declaration."

Unless a general rule of international law prohibits so -of which no evidence was found - it would seem appropriate to arrive at the ultimate conclusion that neutrality, at the current state of international law, can be adopted by a unilateral act. Before arriving to such a conclusion, the institution of neutrality is to overcome the test of legality, for which the next step is to determine the legal basis for the adoption of neutrality via unilateral act, and whether or not it transgresses any rule of the international *corpus iuris*.

b. The Legal Basis for the Adoption of Neutrality via Unilateral Act

As clarified in the conceptual framework, this thesis takes as valid the premise that unilateral acts are a source of international law, and as such, the discussion is beyond the scope of this research.
The author satisfies himself with the jurisprudence of the ICJ in the Nuclear Tests case, where it reaffirmed the validity of unilateral acts as a source of international obligations[66], and the ILC Principles 1 and 2, *supra* mentioned.

To construct the argument, it must be clarified that, according to the author's view, the adoption of permanent neutrality can be considered as a 'complex' or 'compound' institution of international law, as it combines the freedoms to engage in international obligations not contrary to general international law, and, the freedom of every State to determine its own foreign policy in conformity with general international law. **Neutrality, when unilaterally adopted, is a self-imposed binding foreign policy.** Both freedoms are considered attributes of sovereignty, as follows:

b.1) Concerning the Freedom to Engage in International Obligations

The understanding of the freedom to engage in international relations raised an observation from the thesis director, as I had deemed it under the Lotus Principle while the professor considered it under the Wimbledon case.

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[66] Nuclear Tests case: *"46. One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential.* ***Just as the very rule of pacta sunt servanda in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral declaration. Thus interested States may take cognizance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected.****"*

A fundamental principle of international law, the Lotus Principle establishes, in a nutshell, that States are free to act as long as their actions do not cause injury to other States nor violate international law -general or particular-[67].

According to the Lotus case ruling, part of this freedom included the consented acquisition of international obligations[68].

For its part, in the Wimbledon case, the PICJ determined that the freedom to acquire international obligations was an attribute of State sovereignty[69].

The author of this thesis did not find any conflict between the rulings or the principles. On the contrary, I arrived at the conclusion that the principle highlighted in the Wimbledon case is complementary to the freedoms broadly covered by the Lotus principle. Thus, the sovereign self-limitation of sovereignty through international engagements within general international law falls within both freedoms as an attribute of State sovereignty.

The legality of the freedom to engage in international obligations is the necessary corollary of these considerations. Moreover, such freedom is undoubtedly considered one of the attributes of sovereignty.

b.2) Concerning the Freedom of Every State to Determine Its Own Foreign Policy

The capacity of every State to determine its own foreign policy is part of its **sovereign freedoms,** and has developed into a customary rule of international law, protected by the principles of non-interference, and non-intervention, as confirmed by the ICJ.

The principles of non-intervention and non-interference have been regarded as developed by United Nations General Assembly resolutions. In particular, the 1965 'Declaration on the

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[67] Lotus Case. p. 18. *"Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts 'outside their territory, and if, as an exception to this general prohibition, it allowed States to do so in certain specific cases.* ***But this is certainly not the case under international law as it stands at present. Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable****."*

[68] Lotus case. p. 18. *"International law governs relations between independent States.* ***The rules of law binding upon States therefore emanate from their own free will*** *as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed."*

[69] Lotus case. p. 25. *"But* ***the right of entering into international engagements is an attribute of State sovereignty****."*. It seems appropriate to mention that this thesis disagrees with the approach of the Court in the sense that the entering into international engagements should have been understood as a freedom and not as a right.

Inadmissibility of Intervention in Domestic Affairs'[70], the 1970 'Declaration on Friendly Relations and Co-operation among States'[71], and the 1981 'Declaration against Interference and Intervention'[72].

According to the 1965, and the 1970 Declarations mentioned, and as reaffirmed by the International Court of Justice, intervention occurs when coercion is used to influence or deter the exercise of sovereign freedoms of other State[73]. The core element of the prohibition of intervention, as developed by the 1965 Declaration, relies on the use of 'coercion', in order to prevent another State, from freely exercising its sovereign rights, without reducing 'coercion' to the use or threat of the use of force[74].

The ICJ, in the 'Nicaragua' and 'Activities in the Congo' cases, had the opportunity to reaffirm the said contents of the principle, taking a step forward and considering the principle of non-intervention as a customary rule of international law[75] while reaffirming the possibility of other forms of intervention different from the use of force[76].

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[70] Resolution 2131 (XX). United Nations General Assembly. Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty. December, 1965. (hereinafter, the 'Inadmissibility of Intervention' Declaration).

[71] Resolution 2625 (XXV). United Nations General Assembly. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. October, 1970. (hereinafter, the 'Friendly Relations' Declaration).

[72] Resolution 36/103. United Nations General Assembly. Declaration on the Inadmissibility of Intervention and Interference in the Domestic Affairs of States. December, 1981. (hereinafter, the 'Non-Intervention/Non-Interference Declaration').

[73] Kriener, Florian. Intervention, Prohibition of. Max Planck Encyclopaedia of Public International Law. Oxford University Press. 2023. para. 1. *"The prohibition of intervention is a rule of customary international law that proscribes a State from coercively influencing the domaine réservé of another State. It thereby protects the principle of sovereign equality and delineates the sovereign spheres of States from each other."*

[74] Non-Intervention Declaration. "*1. No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned. 2. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no State shall organize, assist, foment, Finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State."*

[75] Nicaragua Case. *Op. cit.* para. 202. *"**The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference**; though examples of trespass against this principle are not infrequent, **the Court considers that it is part and parcel of customary international law.** As the Court has observed: "Between independent States, respect for territorial sovereignty is an essential foundation of international relations" (I.C.J. Reports 1949, p. 35), and international law requires political integrity also to be respected. **Expressions of an opinio juris regarding the existence of the principle of non-intervention in customary international law are numerous and not difficult to find**."*, parr. 205, *"As regards the first problem - that of the content of the principle of non-intervention - the Court will define only those aspects of the principle which appear to be relevant to the resolution of the dispute. In this respect it notes that, in view of the generally accepted formulations, the principle forbids all States or groups of States to intervene directly or indirectly in internal or external affairs of other States. **A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty. to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones"**.*

[76] Activities in the Congo case. parr. 164. "*164. In the case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), the Court made it clear that **the principle of non-intervention prohibits***

For its part, the principle of non-interference refers to *"a measure of influence upon the domaine réservé of a State taken without the targeted State's consent."*[77]

It can be concluded that there is sufficient legal basis to consider the adoption of foreign policy as a sovereign freedom of any State protected by customary rules of international law, in particular the principles of non-interference and non-intervention -without disregarding the link to the inviolability of territorial integrity-.

b.3) The Legality of Neutrality Itself

The conclusions reached in the previous sections, by no means imply that Neutrality is a conduct in conformity with international law, as it remains to be checked if the adoption of neutrality violates any rule of international law.

Under the assumed premise that neutrality can be adopted via unilateral act of international law, its legality still remains subject to its conformity with international law, as the ICJ[78] and the ILC[79] have pointed out.

As a generic legal institution, **no evidence was found** about any general rule of international law prohibiting the adoption of neutrality as a binding foreign policy.

En passant, it can be noted that a rule of law forcing States to take sides in a conflict of others would be quite problematic for the purposes of achieving the objectives of the UN Charter, but this reflection lies far beyond the scope of this research.

ILC's Principle 8 only requires unilateral acts to be in conformity with peremptory norms of international law, to which this author disagrees, more in favour of the position of the ICJ, in

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a State "to intervene, directly or indirectly, with or without armed force*, in support of an internal opposition in another State" (I.C.J. Reports 1986, p. 108, para. 206). The Court notes that in the present case it has been presented with probative evidence as to military intervention. The Court further affirms that acts which breach the principle of non-intervention "will also, if they directly or indirectly involve the use of force, constitute a breach of the principle of non-use of force in international relations" (ibid., pp. 109-110, para. 209).".* It is interesting that in the Nicaragua case the ICJ stated in paragraph 245 that *"At this point. the Court has merely to say that it is unable to regard such action on the economic plane* ***as is here complained*** *of as a breach of the customary-law principle of non-intervention.",* at this doesn't seem to rule out the possibility of economic measures as possible breaches of non-intervention (including the protection of neutrality), the ruling out was only due to the way it was "complained".

[77] Kriener, Florian. *Op. Cit.* para. 46.

[78] Fisheries case, Judgment of December 18th, 1951. I.C. J. Reports 1951, p. 116. (hereinafter the "UK-NOR Fisheries case"). p. 20. *"Although it is true that the act of delimitation necessarily* ***a unilateral act****, because is only the coastal State is competent to undertake it****, the validity of*** *the delimitation with regard to other States* ***depends upon international law****."*

[79] ILC Guiding Principles. *Op. Cit.* Principle 8. *"A unilateral declaration which is in conflict with a peremptory norm of general international law is void."*

terms that the conformity of each unilateral act has to be in accordance with international law, in general. A State is bound and remain bound by its engagements as long as this remains valid.

This issue is being highlighted for a specific issue. The only unilateral act of international law of adoption of neutrality is the neutrality declaration issued by Costa Rica in 1983, which raises an incompatibility with its participation in the Rio Treaty (Inter-American Treaty of Reciprocal Assistance), for the participation in military alliances seems to represent a core element of neutrality, as will be developed below. Moreover, in another unilateral decision, Costa Rica abolished its armed forces in 1948, making it impossible for the country to fulfil its obligation to military engage in the protection of other American State under invasion, according to article 3.1 of the Treaty[80] and in contravention of article 60 of the Vienna Convention on the Law of the Treaties of 1969[81].

Despite this legal contradiction, no State party to the Rio Treaty has raised any objection or protest against Costa Rica's unilateral acts of demilitarization and adoption of neutrality. On the contrary, Costa Rica's actions have been praised by the international community.

One final observation raised by the thesis director dealt with the issue of "specially affected States"; however, **no evidence** was found of any State claiming any affectation by the adoption of permanent neutrality by another State. Moreover, the research found, as indicated in Chapter Two, that communications of neutrality have found non-opposition, acquiescence [82] or recognition.

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[80] Rio Treaty. *Op. Cit.* art. 3.1. *"The High Contracting Parties agree that an armed attack by any State against an American State shall be considered as an attack against all the American States and, consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations."*

[81] 1969 Vienna Convention on the Law of Treaties: "*Article 60 Termination or suspension of the operation of a treaty as a consequence of its breach. 1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part. 2. A material breach of a multilateral treaty by one of the parties entitles: (a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either: (i) in the relations between themselves and the defaulting State; or (ii) as between all the parties; (b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;(c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty. 3. A material breach of a treaty, for the purposes of this article, consists in: (a) a repudiation of the treaty not sanctioned by the present Convention; or (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty…"*

[82] The ICJ has been consistent in maintaining that the lack of opposition or action from States, in response of unilateral acts of another States, might lead to acceptance. Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment of 1.5 June 1962: I.C. J. Reports 1962, p. 6. (hereinafter the "Temple of Preah Vihear case"). p. 21. *"It has been contended on behalf of Thailand that this communication of the maps by the French authorities was, so to speak, ex-parte, and that no formal acknowledgment of it was either requested of, or given by, Thailand. In fact, as will be seen presently, an acknowledgment by conduct was undoubtedly made in a very definite way; but even if it were otherwise, it is clear that the circumstances were such as called for some reaction, within a reasonable period, on the part of the Siamese authorities, if they wished to disagree with the map or had any serious question to raise in regard to it. They did not do so, either then or for many years, and thereby must be held to have acquiesced.* ***Qui tacet consentire videtur si loqui debuisset ac potuisset****."*, also in the UK-NOR Fisheries case. p. 27. *"The Court notes that in respect of a situation which could only be strengthened with the passage of time, the United*

Although it falls beyond the scope of this research, it is important to signal at the nature of neutrality and whether or not it is the kind of act that doesn't require any reaction by third States nor cause harm to them.

b.4. Neutrality and Self-determination

Another well-established principle of international law is the right to self-determination.

Kingdom Government refrained from formulating reservations… The Court is thus led to conclude that the method of straight lines, established in the Norwegian system, was imposed by the peculiar geography of the Norwegian coast; that even before the dispute arose, this method had been consolidated by a constant and sufficiently long practice, in the face of which the attitude of governments bears witness to the fact that they did not consider it to be contrary to international law.". Also, Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment, I.C.J. Reports 2008, p. 12 (hereinafter the "Pedra Branca case"). par. 121. *"Such manifestations of the display of sovereignty may call for a response if they are not to be opposable to the State in question.* ***The absence of reaction may well amount to acquiescence. The concept of acquiescence "is equivalent to tacit recognition manifested by unilateral conduct which the other party may interpret as consent . . ."*** *(Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984, p. 305, para. 130).",* also in the Gulf of Maine case: *"130. The Chamber observes that in any case the concepts of acquiescence and estoppel, irrespective of the status accorded to them by international law, both follow from the fundamental principles of good faith and equity. They are, however, based on different legal reasoning,* ***since acquiescence is equivalent to tacit recognition manifested by unilateral conduct which the other party may interpret as consent,*** *while estoppel is linked to the idea of preclusion."*

Enshrined in article 1 of the International Covenant on Civil and Political Rights[83], the right to self-determination includes the capacity of any people to self-determine its independence[84], political status[85], and self-government[86].

[83] UN General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966. *"Article 1. 1. All peoples have the right of self-determination**. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development**. 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."*

[84] Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 12. (hereinafter the "Western Sahara Advisory Opinion"). *"58. General Assembly resolution 2625 (XXV), "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations -to which reference was also made in - the proceedings-mentions other possibilities besides independence, association or integration. But in doing so it reiterates the basic need to take account of the wishes of the people concerned: "**The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people**." (Emphasis added.)"*

[85] Palestine Occupation Advisory Opinion: *"233. **The centrality of the right to self-determination in international law is also reflected in its inclusion as common Article 1 of the ICESCR and the ICCPR, the first paragraph of which provides: "All peoples have the right of self-determination. By virtue of that right, they freely determine their political status** and freely pursue their economic, social and cultural development." The Human Rights Committee has explained that the importance of the right to self-determination stems from the fact that "its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights" (General Comment No. 12 (13 March 1984), Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (UN doc. A/39/40 (SUPP)), Annex VI, para. 1).", also: "241. Fourth**, a key element of the right to self-determination is the right of a people freely to determine its political status** and to pursue its economic, social and cultural development. This right is reflected in resolutions 1514 (XV) and 2625 (XXV), and it is enshrined in common Article 1 of the ICCPR and the ICESCR (see paragraph 233 above)."*

[86] Chagos case: *"146. The Court will begin by recalling that "respect for the principle of equal rights and self-determination of peoples" is one of the purposes of the United Nations (Article 1, paragraph 2, of the Charter). Such a purpose concerns, in particular, the "Declaration regarding non-self-governing territories" (Chapter XI of the Charter), since the "Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government" are obliged to "develop [the] self-government" of those peoples (Article 73 of the Charter)."*

The ICJ has referred to it in several of its proceedings, reaffirming its status as an *erga omnes*[87] obligation of customary international law[88]. For its part, the ILC has considered it as a peremptory norm of *ius cogens*[89].

The right to self-determination imposes on all third States the obligation to respect (or not to impede)[90] the exercise of such right. Not of lesser importance, the Court has highlighted the link between territorial integrity and self-determination[91].

It seems that State sovereignty and self-determination are different sides of the same coin, as the right to self-determination basically entitles the peoples to give content to several attributes of sovereignty, except those reserved to 'the State' as a legal entity, i.e., entering into international engagements.

The principle becomes relevant since, according to the survey, Austria, Costa Rica, Ireland, Moldova, and Switzerland consider their respective neutralities, as expressions of self-determination (regardless of its international legal value, which will be analysed below).

From the above, it can be concluded that the adoption of permanent neutrality can be realized as the exercise of self-determination expressed through the designated authorities to engage the State in such self-binding foreign policy, in which case, all other States are in the obligation of

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[87] The Wall Advisory Opinion: *"88. … The Court indeed made it clear that* ***the right of peoples to self-determination is today a right erga omnes*** *(see East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995, p. 102, para. 29).",* also *"156. As regards the first of these,* ***the Court has already observed (paragraph 88 above) that in the East Timor case, it described as "irreproachable" the assertion that "the right of peoples to self-determination****, as it evolved from the Charter and from United Nations practice, has an erga omnes character"*. In the Chagos case: *"180****. Since respect for the right to self-determination is an obligation erga omnes,*** *all States have a legal interest in protecting that right (see East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995, p. 102, para. 29; see also Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain), Second Phase, Judgment, I.C.J. Reports 1970, p. 32, para. 33)"*

[88] Chagos case: *"155. The nature and scope of the right to self- determination of peoples, including respect for "the national unity and territorial integrity of a State or country", were reiterated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. This Declaration was annexed to General Assembly resolution 2625 (XXV) which was adopted by consensus in 1970.* ***By recognizing the right to self-determination as one of the "basic principles of international law", the Declaration confirmed its normative character under customary international law."***

[89] As considered by the International Law Commission in the 'ILC Guiding Principles'.

[90] The Wall Advisory Opinion: *"88. The Court also notes that the principle of self-determination of peoples has been enshrined in the United Nations Charter and reaffirmed by the General Assembly in resolution 2625 (XXV) cited above, pursuant to which* ***"Every State has the duty to refrain from any forcible action which deprives peoples referred to [in that resolution] . . . of their right to self-determination."*** *Article 1 common to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights reaffirms the right of al1 peoples to self-determination, and lays upon the States parties the obligation to promote the realization of that right and to respect it, in conformity with the provisions of the United Nations Charter."* Palestine Occupation Advisory Opinion *"237… The Court considers that Israel, as the occupying Power, has the* ***obligation not to impede the Palestinian people from exercising its right to self-determination,*** *including its right to an independent and sovereign State, over the entirety of the Occupied Palestinian Territory."*

[91] Chagos Case: *"160. The Court recalls that the right to self-determination of the people concerned is defined by reference to the entirety of a non-self -governing territory, as stated in the aforementioned paragraph 6 of resolution 1514 (XV) (see paragraph 153 above). Both State practice and opinio juris at the relevant time confirm the customary law character of* ***the right to territorial integrity of a non-self- governing territory as a corollary of the right to self- determination****."*

not to prevent or impede the exercise of the right, in this case, the full realization of permanent neutrality and the absolute detachment of conflicts of other States.

As a final remark, it has to be understood that the acceptance of neutrality as a unilateral act of international law implies, *in abstracto,* the acceptance of self-imposed obligations[92] according to the context and content of the declaration[93]. Violations of such obligations could be subject to the rule of estoppel[94] in the case that another State has relied on such unilateral act and suffers prejudice from its breach or reversal.

Although no evidence could be found of such a situation, at the international level, it is possible to think about some scenarios where the rule of estoppel could be applied, for instance, a third if a State demilitarizes its border with the neutral only for the neutral to allow the stationing of foreign troops of hostile intent in such border.

Anecdotic as it may be, there is one case where the rule of estoppel was applied domestically to uphold neutrality, even when no State took measures based on such declaration or was affected by the specific breach to the neutrality obligations.

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[92] Nuclear Tests case: *"46. One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential.* ***Just as the very rule of pacta sunt servanda in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral declaration. Thus interested States may take cognizance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected.****"*

[93] Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile), Judgment, I.C.J. Reports 2018, p. 507. (hereinafter the "Obligation to Negotiate case"): *"146…* ***The Court also asserted that, in order to determine the legal effect of a statement by a person representing the State, one must "examine its actual content as well as the circumstances in which it was made****" (Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 28, para. 49).",* also, Nuclear Tests case: *"49… There can be no doubt, in view of his functions, that his public communications or statements, oral or written, as Head of State, are in international relations acts of the French State. His statements, and those of members of the French Government acting under his authority, up to the last statement made by the Minister of Defence (of 11 October 1974), constitute a whole.* ***Thus, in whatever form these statements were expressed, they must be held to constitute an engagement of the State, having regard to their intention and to the circumstances in which they were made.*** Also, ILC Guiding Principle 7: *"A unilateral declaration entails obligations for the formulating State only if it is stated in clear and specific terms. In the case of doubt as to the scope of the obligations resulting from such a declaration, such obligations must be interpreted in a restrictive manner. In interpreting the content of such obligations, weight shall be given first and foremost to the text of the declaration, together with the context and the circumstances in which it was formulated."*

[94] North Sea Continental Shelf case: *"30. Having regard to these considerations of principle, it appears to the Court that only the existence of a situation of estoppel could suffice to lend substance to this contention, -that is to say if the Federal Republic were now precluded from denying the applicability of the conventional regime, by reason of past conduct, declarations, etc., which not only clearly and consistently evinced acceptance of that regime but also had caused Denmark or the Netherlands, in reliance of such conduct, detrimentally to change position or suffer some prejudice.".* Also, in the Pedra Branca case. *"228. Regarding the second submission, the Court points out that a party relying on an estoppel must show, among other things, that it has taken distinct acts in reliance on the other party's statement (North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 26, para. 30)."* Furthermore, in the case of the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 303, par. 57. *"An estoppel would only arise if by its acts or declarations Cameroon had consistently made it fully clear that it had agreed to settle the boundary dispute submitted to the Court by bilateral avenues alone. It would further be necessary that, by relying on such an attitude, Nigeria had changed position to its own detriment or had suffered some prejudice."*

The case concerns the support given by the Costa Rican Government to the 2003 'Coalition of the Willing' that illegally invaded Iraq.

The author of this thesis filed unconstitutionality action against such support for multiple violations of international and domestic law. Costa Rica has a fully monist system-, including the 1983 neutrality declaration[95]. In ruling 9992-04, the Constitutional Chamber of Costa Rica's Supreme Court of Justice, considered that such support *"was against the Constitution, Costa Rica's neutrality declaration, international law, and the United Nations system",* and declared:

> *"Under these considerations, this Constitutional Tribunal understands that the "Perpetual, Active and non-Armed Proclamation of Perpetual Neutrality" of 1983 is a unilateral promise from Costa Rica that, within the international concert, came to develop the constitutional value of peace, and that, consequently, must be permanently observed in good faith by the Costa Rican Government, avoiding the transgression of the "estoppel rule" (venire contra factum proprium) of International Public Law…"* (Translation from Spanish by the author).

Interestingly enough, the US authorities recognized this neutrality when they proceeded to remove Costa Rica from the list published on the White House's website[96].

b.5) The Content of Neutrality and the Existence of a Customary Rule of International Law

So far, this research has focused on the impact of the evolution of international law on third States' obligations towards neutrals and the legal basis of neutrality *in abstracto,* as it has considered the adoption of neutrality as the exercise of attributes of sovereignty (freedom to engage into international obligations and the freedom to self-determine its foreign policy) or the exercise of self-determination.

When it comes to the determination of the content of 'permanent neutrality' (as indicated before, this research doesn't cover neutrality *in bello),* it is necessary to look at the 'classic' elements - those prior to the UN System-, and State practice within the UN era. As concluded above, the evolution of international law has fundamentally changed the nature and content of permanent neutrality (without defeating its consensual achievement by treaty).

As it comes to the 'classic elements', as recollected in Chapter Two, are; maintain a position of impartiality regarding conflicts of others, non-belligerency in conflicts of others, and the maintenance of territorial neutrality, preventing the transit or positioning of foreign troops with

[95] Ruling 9992-04. *Op. Cit.*

[96] https://www.washingtontimes.com/news/2004/sep/9/20040909-095934-1120r/ accessed on October 10th, 2024.

hostile intent, in some cases, by the use of force[97] -either by the neutral or by the 'guarantor States-.

As it comes to State practice during the UN era, it has shown to be inconsistent in both its form and content. It is important to recall that inconsistency in practice is not an impediment to the construction or recognition of a customary rule of international law, as the ICJ pointed out in the Nicaragua case[98].

Despite these inconsistencies, it is the opinion of the researcher, that certain elements seem to be common among the scarce quantity of States **considered** neutrals. This research will demonstrate, that, in strict terms of international law, there is only one neutral State.

Notwithstanding the latter, **regarding the content** of the self-imposed obligations, the most common elements in State practice are, in addition to the 'classical'; non-participation in military alliances, universality, and continuity -attached to the continued validity of the sourcing act-. *En passant,* it is noted that, although neutral States have not customarily applied unilateral sanctions (its illegality not the subject matter of this research), by the end of 2024, when this thesis was written, Switzerland had started imposing unilateral sanctions generating considerable domestic debate about Swiss' neutrality.

There is, however, one particular situation where two States present a contradictory position. While Switzerland considers a requirement for neutrality, the capacity to defend itself by force, which requires the mandatory existence of an army of its own, Costa Rica demilitarized itself in 1948, 35 years after becoming neutral. It was not possible to determine, with the official documents available, whether Switzerland considers this requirement a legal one or a material one.

The Swiss' position, based on their understanding of the principle of independence, doesn't find any support in international law, while Costa Rica's demilitarization finds support in the lack of obligation to possess armed forces, as the ICJ hinted in the Nicaragua case[99].

Moreover, self-defence in current international law is no longer exclusively exercised by force, as this objective can be achieved through the use of international law, as Costa Rica proved when faced invasion by Nicaragua in 2010[100].

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[97] As noted before, and due to the evolution of international law, this obligation has fallen into obsolescence, as the non-consented entering of troops (with or without hostile intent) in the territory of another State represents a violation of territorial integrity, and sovereignty, to which the Security Council shall act upon. Moreover, a modern obligation to defend neutrality by force would imply the obligation to possess armed forces, which finds no grounds in international law.

[98] See footnote 18.

[99] See footnote 43.

[100] See Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011, p. 6

Although beyond the scope of this research, I consider demilitarization of a similar nature as the adoption of neutrality, a sovereign freedom.

On the other hand, **regarding the forms** of State practice, the research found devastating results for the establishment of a customary rule of international law. There are three different forms to adopting neutrality as a foreign policy.

i.) **Treaty Neutrality.** A few States have concluded neutrality by Treaty (Malta and Laos). This mechanism, although not prohibited, raises a few issues to consider: a) universality would depend from the will of other States, b) unless specific obligations imposed on the non-neutrals, beyond the obligations covered in section 2.a., States not party would have the same obligations as the States parties, and, c) if neutrality is understood as a reaffirmation of sovereignty by the exercise of its attached freedoms, neutrality by treaty makes the universal adoption of neutrality subject to the will of other States, deterring the principle that the adoption of neutrality is meant to reaffirm.

ii.) **'Domestic' Neutrality.** 'Domestic' neutrality is the most common form of practice of adoption of neutrality. All neutrals listed in Chapter Two, with the exception of Laos, Malta and Costa Rica, have adopted neutrality as a purely domestic legal regulation -Ireland doesn't have any **legal** regulation establishing its neutrality policy-.

The international legal value of these provisions is, at least, questionable.

Switzerland, Austria and Ireland reject the idea of being internationally bound by their adoption of neutrality, which raises issue of the lack of *opinio iuris*[101] from these States.

The research found no data of the other 'domestically neutral' States regarding the international value of their neutrality.

Regarding the position of the 3 States listed above, two particular objections can be raised -although not part of the scope of this research-.

First, what makes a unilateral act in the form of a declaration binding, is its communication[102]. This communication must be understood within its purpose, considering the possibility of the existence of *opinio iuris*. Nonetheless, and, as second

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[101] North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p.3 (hereinafter the "North Sea Continental Shelf case"). p.45: *"77. The essential point in this connection -and it seems necessary to stress it- is that even in these instances of action by non-parties to the Convention were much more numerous than they in fact are, they would not, even in the aggregate, suffice in themselves to constitute the opinio iuris; -for, in order to achieve this result, two conditions must be fulfilled. Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule requiring it. The need for such a belief, i.e., the existence of the subjective element, is implicit in the very notion of opinio iuris sive necessitates.* ***The States concerned must therefore feel that they are conforming to what amounts to a legal obligation.****"*

[102] Bothe, Michael. Neutrality, Concept and General Rules. Max Planck Encyclopaedia of Public International Law. Oxford University Press. 2023. para. 16. *"The international legal basis of the permanent neutrality of Austria is also a unilateral act, namely the Austrian notification of the Federal Constitution Act of 26 October 1955."*

objection, lies the nature of neutrality itself, as neutrality is a foreign policy. While **recognizing that there is no general international rule regulating unilateral acts, and treaty principles are not necessarily applicable to unilateral acts,** it could be interesting to question the **analogical application** of certain institutions of Treaty law, like object and purpose and *effet utile*. What would be the object and purpose[103] and *effet utile*[104], of communicating the adoption of neutrality, if not having an international effect?

The author finds it difficult to accept the posture that States declare neutrality towards themselves, as the nature of neutrality carries a legal standing before the international community.

iii.) Neutrality as a unilateral declaration

Costa Rica is the only State to have issued a neutrality declaration with the express intention of being an international obligation. Moreover, and as pointed before, it has been upheld by the Supreme Court, recognized and praised by the international community -regardless of its incompatibility with the Rio Treaty, as pointed *supra*-.

Notwithstanding the lack of coherent practice, opposition, acceptance and recognition of neutrality, it is due to the scarcity of State practice, and, -in some cases-, *opinio iuris*, it cannot be concluded, that a customary rule of international law on neutrality has been created.

b.6) Neutrality and the United Nations

A final issue to be addressed deals with the operation of neutrality within the United Nations System.

Several elements must be considered to find the coexistence of both provisions, given that there is no rule in international law prohibiting the adoption of neutrality.

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[103] The Wall Advisory Opinion: *"94. The Court would recall that, according to customary international law as expressed in Article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969, a treaty* ***must be interpreted in good faith*** *in accordance with the ordinary meaning to be given to its terms in their context and in* ***the light of its object and purpose.*** *"* (this should apply *mutatis mutandis* to unilateral acts as international obligations)

[104] Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, 1. C. J. Reports 1994, p. 6. (hereinafter the "Libya-Chad Territorial Dispute case"). *"51… Any other construction would be contrary to* ***one of the fundamental principles of interpretation of treaties, consistently upheld by international jurisprudence, namely that of effectiveness*** *(see, for example, the Lighthouses Case between France and Greece, Judgment, 1934, P. C. I. J., Series A/B. No. 62, p. 27; Legal Consequences for Stutes of the Continued Presence of' South Africa in Namibia (,South West Africa) notwithstanding Security Council Resolution 276 (1970), I.C.J. Reports 1971, p. 35, para. 66; and Aegean Seu Continental Shelf; I.C. J. Reports 1978, p. 22, para. 52)."*

The first element to take into account is the supremacy clause contained in article 103 of the Charter: "*In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.*"

The second element to take into account is the purposes of the United Nations, and the mechanisms used to achieve such purposes. Article 1.1 of the Charter establishes as one of its purposes: *to maintain international peace and security"*[105]. In order to achieve such purpose, the United Nations have been designed to act as a collective security mechanism, as has been widely understood[106]. Kelsen indicated that: *"**We speak of collective security when the protection** of the rights of the states, the reaction against the violation of the law, **assumes the character of a collective enforcement action**."*[107]. This enforcement action is reflected in Chapter VII of the Charter **in order to achieve the purposes** mentioned.

The third element to take into consideration is that of consent. With a few exceptions, all States are parties to the United Nations Charter. Thus, they have consented to subject themselves to the rules and proceedings of the Charter, including the use of force. In that regard, measures under Chapter VII of the Charter can be imposed 'against' any State, but not in the sense of considering the targeted State as an adversary.

The latter refers us to the concept of neutrality and partisanship -as defined in the conceptual framework-.

Although the United Nations was born as a partisan organization, as its article 107[108] reveals, **it ceased** to be partisan when all recognized States became party to the treaty, in particular those referred to in article 107, the back-then 'adversaries'. With the incorporation of the old 'adversaries', the other 'party' ceased to existed, rendering partisanship impossible and turning the United Nations into an impartial organization.

From all the above, it can be concluded that membership in the United Nations is not incompatible with neutrality; on the contrary, and in virtue of Article 103 *supra,* **neutrality must be exercised in conformity** with the Charter.

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[105] UN Charter. Article 1.1: *"The Purposes of the United Nations are: 1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace…"*

[106] Frowein, Jochen A. United Nations. Max Planck Encyclopaedia of Public International Law. Oxford University Press. 2013. para. 3, and Wood, Michael. United Nations, Security Council. Max Planck Encyclopaedia of Public International Law. Oxford University Press. 2007, para. 40

[107] Kelsen, Hans. Collective Security and Collective Self-Defense Under the Charter of the United Nations. The American Journal of International Law, Vol. 42, No. 4. October, 1948. p. 783.

[108] UN Charter. Article 107: *"Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action."*

Having validated the coexistence of neutrality with membership to the United Nations, the question remains regarding the exercise of functions within the Charter, in particular, those exercised while occupying a seat in the Security Council.

An interesting analysis of this issue was made by Clancy[109] regarding the Austrian dilemma, and the positions for and against the compatibility of neutrality and voting in the UN Security Council. This research finds that the debate regarding voting in the Security Council is fruitless, as there is no legal obligation to vote, as States can abstain. Beyond this basic consideration, the question still remains, in the sense of: are neutrals **prohibited to vote** while in the Security Council in decisions dealing with declarations of a breach to the peace or the use of force?

This research finds the answer to such question in the negative, due to a logical exercise. If neutrals are prohibited from voting in the Security Council, and if all States become neutral, the application of syllogisms leads to the conclusion that the Security Council wouldn't be able to reach any decision, as all States would be legally bound to abstain, rendering the Council useless, by depriving it of any *effet utile*.

Another form of participation in Security Council approves activities is in the field. According to the Charter, States are under the obligation to *"make available"*[110] armed forces to the Security Council. Given that neutrality must be compatible with the Charter, and not the other way around, it should be understood that fulfilling article 43 of the Charter is not incompatible with neutrality, because, *ab initio,* neutrality cannot be incompatible with the Charter.

Beyond of the scope of this research, it still seems important to point at the tension that could arise between the non-prohibited demilitarization and Article 43 of the Charter.

[109] Clancy, Pearce. Permanent Neutrality and the UN Security Council. Irish Studies in International Affairs, Volume 32, Number 1, 2021, p. 241-259

[110] UN Charter: *"**Article 43. 1. All Members of the United Nations**, in order to contribute to the maintenance of international peace and security, **undertake to make available to the Security Council**, on its call and in accordance with a special agreement or agreements, **armed forces**, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security."*

Chapter Four. Conclusions

After all the research, considerations and reflections made, we can conclude:

1. The subject matter deserves further analysis and deeper research, particularly on State practice, the links between International Public Law and Human Rights, self-determination and demilitarization.
2. The evolution of *erga omnes* obligations of international law has 'absorbed' the obligations of third States towards neutrals -respect of the attributes of sovereignty-, for which neutrality **can be understood** as the exercise of State freedoms in the form of a **self-imposed binding foreign policy.**
3. The role of 'guarantor States' have been substituted, generically, by the United Nations through the Security Council.
4. Neutrality finds legal basis in well-grounded rules and principles of international law: in particular, sovereignty and self-determination -given the case-. Moreover, it finds no prohibitive rule in international law.
5. The constitutive elements of a customary rule of international law regarding neutrality, were not verified, in particular, a considerable amount of State practice accompanied by *opinio iuris*.
6. A well-defined set of duties of the neutrals cannot be established by the current State practice, except for the duties of impartiality, non-belligerency, and non-participation in military alliances.
7. The legal obligation to defend neutrality by force must be understood as overridden by the **right** to self-defence, which States can opt not to exercise, and the freedom to demilitarize.
8. Neutrality is a self-imposed binding foreign policy resulting from the exercise of sovereign freedoms of the State or its peoples.

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ANNEX I. Draft CONVENTION ON THE LAW OF PERMANENT NEUTRALITY

(NOTE: for the purposes of this thesis, termination, and other operational clauses are not included, only substantive clauses)

Article 1. **Object and purpose.** By becoming Party of the present Convention, States do not become permanently neutral. The object and purpose of the present Convention restricts to codify the customary rule of international law on permanent neutrality, in terms of rights and duties of neutrals and third States.

Article 2. **Definition.** Permanent Neutrality is a self-imposed binding foreign policy that each State can adopt unilaterally in exercise of its sovereign freedoms. Such unilateral declaration shall include the core elements hereinafter established. Third States can take measures and act relying on such declaration protected by the rule of estoppel. Accession to Permanent Neutrality doesn't create obligations to third States beyond existing or arising obligations *orga omnes*, whether *ius cogens* or customary international law. Adoption of neutrality under this Convention shall be considered *ad orbi.*

Article 3. **Self-defence and demilitarization.** Declarations of Permanent Neutrality do not restrain or prevent the exercise of the inherent right of every State to self-defence nor the freedom to demilitarize.

Article 4. **Core rights and duties of Permanently Neutral States.** The core rights and duties of Neutral States are to apply *ad bellum* and *non refert pacem aut bellum***.** They are:

1. Rights:
    a. Inviolability of territorial integrity
    b. Inviolability of sovereignty and self-determination, particularly political independence.
    c. Receive immediate protection from the United Nations Security Council in case of violation of the abovementioned rights.
    d. To defend its neutrality by force. This resource to force to defend neutrality shall not be considered a hostile act, an act of belligerency, an abandonment of neutrality or a partnership with any of the opposing Parties.
2. Duties:
    a. Remain impartial before other State's conflicts, whether armed or not, including belligerency or expressions of support.
    b. Non-intervention in conflicts of thirds States, with the exception of impartial intervention aiming at a peaceful settlement of the dispute.

c. Abstention from joining or participating in military alliances or performing joint military exercises.
d. Prohibition of the use of its territory, in any manner, by any Party in any conflict with another State or for the purposes of establishing foreign military facilities.
e. Non-escalation
f. Abstention to manifest or vote regarding *ius ad bellum* (legality or illegality of the use of force), except at the United Nations Security Council.
g. To remain neutral *non refert pacem aut bellum* and *ad bellum,* without interruptions or suspensions.
h. Not to enter into any obligations that would result in a violation of its neutrality in the event of war.

Participation in activities agreed under UN Chapter VII is not incompatible with Permanent Neutrality.
Neutrals can acquire further obligation in their respective declarations of neutrality, as long as these doesn't impose obligations on third States beyond the international *corpus iuris*, which would render void only the particular clause.
Besides the obligations applying *sine bello*, permanent neutrality contains a unilateral promise to remain neutral *ad bellum* and *in bello.*
These rights and duties are without prejudice of the existing obligations *in bello* under customary or treaty International Humanitarian Law.

Article 5. **Rights and duties of third States.** The core rights and duties of third States are:

1. Rights:
    a. To rely on the Neutrality declaration of the neutral State for the purpose of domestic or international decision making. (ie. Demilitarizing the border if adjacent to a neutral State).
    b. To claim before the International Court of Justice violations of neutrality under the rule of estoppel, even when the claiming State has not taken any measures on the basis of the declaration of permanent neutrality.
    c. To receive impartial treatment *non refert pacem aut bellum.*
2. Duties:
    a. To respect the rights of neutrals, including, in any manner, to refrain from inviting or exercising pressure to, Permanently Neutral States to separate from its obligations.
    b. To refrain, under the principle of good faith, to use aid or trade as a leverage or countermeasure against a neutral State for acquiring or maintaining such Status.

Article 6. **Intervention in disputes of third States ('active neutrality').** In any of its forms, neutrality is incompatible with the intervention of Neutrals in conflicts of third States. If a Neutral States opts for such intervention, it shall act impartially and restrained to pursue the peaceful solution to said dispute.

Article 7. **Neutrality out of the present Treaty.** States not party to the present Treaty are not prevented from declaring neutrality in its own terms, including the terms included in this Convention.

ANNEX II. QUESTIONNAIRES TO STATES

Questionnaire for the Republic of Ireland.

The following questionnaire is part of the research process conducted by Luis Roberto Zamora Bolaños, in the process of writing his thesis opting for a Master's Degree on International Law and Human Rights at the UN Mandated University for Peace.

1. What is the domestic legal basis for Ireland's neutrality?
2. The Republic of Ireland is not party to the V Hague Convention of 1907. What is the international legal basis for Irish neutrality?
3. Does the Republic of Ireland consider neutrality as a manifestation of the principle of self-determination?
4. Given the obligation to first resort to the pacific settlement of disputes, is there a duty "not to escalate"? Would neutrality find any basis in such a duty?
5. Does the Republic of Ireland consider neutrality as a non-escalating measure?
6. What is the legal basis for neutrality during times of peace?
7. Can neutrality exist when there are no contending Parties?
8. If Ireland maintains that its neutrality is a matter of policy, does this mean that States are not subject to the obligation not to invade?
9. Besides the inviolability of the Territory, does neutrality impose other obligations on non-neutral States (third States)?
10. Does the Republic of Ireland consider a "with me or against me policy" to be a violation of neutrality or sovereignty?
11. Does neutrality impose **positive obligations** for Neutrals towards "the conflict"?
12. What is the legal term corresponding to the "abandonment of neutrality"?
13. Does the Republic of Ireland consider a breach of neutrality as representative of an abandonment of neutrality?
14. Does the abandonment of neutrality require belligerency?
15. Does taking sides without belligerency constitute an abandonment of neutrality? (political support)
16. How may an "abandonment of neutrality" occur?
17. What would be the correct legal term to refer to "the abandonment of neutrality by the mere expression of support, support through military or financial resources, or belligerent support"?

18. Does the Republic of Ireland consider the UN to be a neutral organisation? Why?
19. Does the Republic of Ireland consider NATO to be a neutral organisation? Why?
20. Should a neutral State abstain from voting on resolutions before the Security Council regarding ius ad bellum (the authorisation of the use of force)? What would happen if a Permanent Member becomes neutral?
21. Since IHL refers to neutrality in bello, what is the legal basis for neutrality ad bellum and neutrality sine bello, and permanent neutrality (*in omnibus pacis vels belli*)?
22. Would neutrality be a legal impediment for Ireland if it wanted to join NATO?
23. Does the Republic of Ireland believe there to be any difference between collective security measures taken by the Security Council and measures taken by other organisations?
24. Has at any moment the Republic of Ireland received from another State, correspondence, manifestation or any other communication, objecting, opposing or in any manner rejecting Irish Neutrality? Particularly in the case of the 2003 Iraqi invasion?
25. Has any Irish authority been judicially found in violation of Irish neutrality?

Questionnaire for the Republic of Costa Rica.

The following questionnaire is part of the research process conducted by Luis Roberto Zamora Bolaños, in the process of writing his thesis opting for a Master's Degree on International Law and Human Rights at the UN Mandated University for Peace.

1. The Republic of Costa Rica is a Permanently neutral State. Does this mean neutrality **ad bellum, in bello and sine bello?** Would Costa Rica consider its neutrality **omnibus pacis vels belli** (regardless of peace or war)**?**
2. The Republic of Costa Rica isn't party to the V Hague Convention of 1907. What's the legal basis of Costa Rican neutrality?
3. Since International Humanitarian Law refers to neutrality in bello, what is the legal basis for neutrality ad bellum and neutrality sine bello or permanent neutrality (in times of peace)?
4. Under Costa Rican legislation, neither the President nor the Congress have constitutional powers, by themselves, to engage the country in international obligations. The neutrality declaration was issued by President Monge but never ratified by the Congress, its legal value was given by the Constitutional Court. If the VCL of 1969 were to apply to unilateral acts, would that neutrality declaration be void until ratified by the Congress?
5. What is the legal value of President Monge's declaration of neutrality and how important is ruling 9992-04 for the Constitutional Chamber of the Supreme Court?

6. Was the Supreme Court wrong when it recognized international legal value to the 1983 Neutrality Declaration as a unilateral act susceptible to the rule of stoppel?
7. Is Neutrality **sine bello and ad bellum** a decision within the freedom of the Lotus Principle?
8. Does the Republic of Costa Rica consider its neutrality as an act of sovereignty?
9. Does the Republic of Costa Rica consider its neutrality as a manifestation of self-determination?
10. The Swiss Confederation considers that the capacity for self-defence is a requirement *sine qua non* to be able to become neutral. How does this view conflicts with demilitarized models of Permanent Neutrality, like Lichtenstein and Costa Rica have?
11. Would Costa Rica consider participating in UN actions under chapter VII of the Charter be a violation of neutrality? Why?
12. Does the Republic of Costa Rica consider the existence of any difference between collective security measures taken by the Security Council and measures taken by other organisations, when it comes to participation and neutrality maintenance?
13. What is Costa Rica's understanding of permanent neutrality, in broad terms?
14. Besides the inviolability of the Territory, does neutrality impose other obligations on non-neutral States (third States)?
15. Does the Republic of Costa Rica consider "with me or against me policy" a violation of neutrality or sovereignty?
16. Does the Republic of Costa Rica consider neutrality as a manifestation of the principle of self-determination?
17. Does Neutrality impose **positive obligations** for Neutrals towards "the conflict"?
18. Does the abandonment of neutrality require belligerency?
19. Does taking side without belligerency constitute an abandonment of neutrality? (political support)
20. What's the legal term to refer to the "abandonment of neutrality"?
21. How does the "abandonment of neutrality" may occur?
22. What would be the correct legal term to refer to: "the abandonment of neutrality by the mere expression of support, military or financial resources support or belligerent support"
23. Does the Republic of Costa Rica consider the UN as a neutral organization? Why?
24. Does the Republic of Costa Rica consider NATO as a neutral organization? Why?
25. Should a neutral State sitting before the Security Council abstain from voting resolutions regarding ius ad bellum (authorization of the use of force)? What would happen if a permanent member becomes neutral?
26. Does the Republic of Costa Rica considers neutrality as a non-escalating measure?

27. Is there a duty to "not to escalate" deriving from the duty to resource to peaceful means of settling disputes? Would neutrality find any basis in such duty of "not to escalate"?
28. Isn't article 3 of the Río Treaty incompatible with neutrality?
29. Has at any moment the Republic of Costa Rica received from another State, correspondence, manifestation or any other communication, objecting, opposing or in any manner rejecting Swiss Neutrality?

Questionnaire to the Swiss Confederation.

The following questionnaire is part of the research process conducted by Luis Roberto Zamora Bolaños, in the process of writing his thesis opting for a Master's Degree on International Law and Human Rights at the UN Mandated University for Peace.

1. Switzerland is a Permanently neutral State. Does this mean neutrality **ad bellum, in bello and sine bello?** Would Switzerland consider its neutrality **omnibus pacis vels belli** (regardless of peace or war)**?**
2. Swiss neutrality is defined by domestic law and the 1907 Hague Convention, which has not been ratified by most post-wars States. How did Switzerland become internationally bound (what international act) **ad bellum and sine bello?**
3. Since IHL refers to neutrality **in bello**, what is the legal basis for neutrality **ad bellum**, neutrality **sine bello** or neutrality **omnibus pacis vels belli**?
4. Is Neutrality **sine bello and ad bellum** a decision within the freedom of the Lotus Principle?
5. How are newly formed States bound to respect Swiss neutrality and territorial integrity **in bello**?
6. Does Switzerland consider neutrality as an act of sovereignty?
7. Does Switzerland consider neutrality as a manifestation of self-determination?
8. Does neutrality impose obligations to third states beyond the obligation not to invade?
9. Does Switzerland consider the "with me or against me policy" a violation of neutrality, sovereignty or self-determination
10. Does the abandonment of neutrality require belligerency?
11. Does taking sides without belligerency (mere expressions of support) constitute an abandonment or violation of neutrality?
12. How does the "abandonment of neutrality" may occur?
13. What would be the correct legal term to refer to: "the abandonment of neutrality by the mere expression of support, military or financial resources support or belligerency"?
14. Does Switzerland consider the United Nations as a neutral organization? Why?

15. Does Switzerland consider NATO as a neutral organization? Why?
16. Should a Permanently neutral State sitting before the Security Council abstain from voting resolutions regarding ius ad bellum (authorization of the use of force)?
17. What would happen if a permanent member becomes neutral?
18. Is there a duty to "not to escalate" deriving from the duty to resource to peaceful means of settling disputes? Would neutrality find any basis in such duty of "not to escalate"?
19. Why does Switzerland consider a requirement to be neutral that States must be able to defend themselves? Would this requirement render Costa Rican neutrality void?
20. Would Switzerland see fit a Convention to establish the legal framework of Permanent Neutrality and the rights and duties of States?
21. Would the sale of weapons to a non-neutral in times of peace violate neutrality?
22. Does Switzerland consider the existence of any difference between collective security measures taken by the Security Council and measures taken by other organisations, when it comes to participation and neutrality maintenance?
23. What is Switzerland understanding of permanent neutrality, in broad terms?
24. Has at any moment the Swiss Confederation received from another State, correspondence, manifestation or any other communication, objecting, opposing or in any manner rejecting Swiss Neutrality?
25. Has any Swiss authority been judicially found in violation of Swiss neutrality regulations?

ANNEX III. INFORMED CONSENT FORM. REPUBLIC OF IRELAND.

*. Due to anonymity request, the signed original is not attached to this final document and kept safeguarded by the author.

UNIVERSITY FOR PEACE
INFORMED CONSENT FORM

Research Project Title: What is the legal base of permanent neutrality under international law and international custom?
Name of Participant: Republic of Ireland
Name of Researcher: Luis Roberto Zamora Bolaños

Objectives of Research: This research project seeks to make an updated and consolidated comparative study among the 4 different permanent neutrality models (treaty, domestic regulation, foreign policy and unilateral promise) with the intention of drafting a framework proposal to regulate the law of permanent neutrality, thus defining rights and duties of neutrals and third States.

What is asked from the participant States: Participants States will be requested to participate in an reply in written or give an interview and engage in discussion about a questionnaire sent to them. The Study poses no foreseen risks for any of the participants and could provide an international platform for a conventional regulation of neutrality.
States are required to indicate:

a. If quotes from the interview or written response can be included in the final paper.
   YES_____ NO_____
b. In such case, how the quote should be made:
   _____
c. If the interview or writing response can be shared for academic purposes:
   YES _____ NO _____
d. In case of States participating via interview, can it be recorded?
   YES _____ NO _____

Regarding the interview or written response.

1. States can reply or refuse to reply any question at their discretion.
2. The records (writing response or recording) will be safely kept for 5 years at the University and then will be destroyed. The researcher may keep a copy of the records for academic purposes.
3. Information exchanged is not confidential.
4. A copy of the final outcome document will be sent to every participant State.
5. This informed consent form doesn't represent a waiver of any legal rights for the participant State.
6. A copy of this consent form, duly signed will be kept by the researcher.
7. No payment or compensation of any sort will be given to the participants States.

After receiving sufficient information and background on the proposed research,

1. I consent to participate in this project.
2. I understand that after I sign and return this consent form it will be retained by the researcher.
3. I understand what is demanded as form of participation (writing response or interview).
4. I confirm that:
   a. The possible effects of participating in this research, including any possible risks or discomforts have been explained to my satisfaction;
   b. I am free to withdraw from the project at any time without explanation or prejudice and to withdraw any unprocessed data I have provided;
   c. The purpose of research;

Officer responsible: _____

Officer position: _____

Officer signature: _____

Date: _____

NB: If you have concerns or problems about your participation in this study or your rights as a research subject, please contact Professor Nobuo Hayashi at UPEACE, E-mail: nhayashi@upeace.org
If you have questions about the study itself, please contact Roberto Zamora at lzamora@master.upeace.org, or by telephone at the number: +(506)87180408

ANNEX IV. RESPONSES FROM STATES

Response from the Republic of Ireland.

The Republic of Ireland agreed to respond to the questionnaire in a live interview. Such interview happened in Dublin on October the 7th, 2024 with a designated officer from the Department of Foreign Affairs whose identity shall remain confidential as the officer was not acting in a personal capacity or expressing personal opinions.
For these reasons, what is presented here as "response" from the Republic of Ireland, corresponds to the summarized minute of such meeting. This summarized minute have been read and approved by the Department of Foreign Affairs.

The Republic of Ireland was emphatic in reaffirming that Irish Neutrality is a matter of domestic policy and as such, the Republic of Ireland hasn't engaged in nor acquired international obligations derived from such policy. For these reasons, all the questions regarding the "international legal basis" were not applicable to the Republic of Ireland, and consequently, not responded.

Ireland clarified that its neutrality was military, not political for which it has maintained and maintains partial stances regarding specific conflicts, in particular when self-determination is at stake. Furthermore, Ireland agreed that the adoption of neutrality could very well represent an act or expression of self-determination, without confirming if it was the case of Ireland.

Neutrality is regarded as politically (not legally) incompatible with the participation in military alliances (it would represent an abandonment of neutrality), which justified the Irish Protocol to the Lisbon Treaty of Common European Union Security Policy recognizing Irish neutrality, and maintains Ireland out of NATO. Moreover, Ireland currently doesn't allow the use of its territory for the transit or stops of military transports of Third States *en route* to conflict. Participation in the United Nations is not incompatible with neutrality as the UN is not regarded as a military alliance.

Ireland also agreed with the propositions that; the obligation for third States of not to invade Neutrals became superseded by the Treaty and customary prohibition of the use of force, non-escalation could be regarded as part of the inherent elements of neutrality, neutrality doesn't create new obligations for third States (the obligation to respect State Sovereignty is part of the customary rule of international law that

prohibits intervention) and that a "with or against me policy" would be in violation of the sovereignty (in its element of political independence) of Neutral States.

The Republic of Ireland has never received any manifestation or rejection or opposition to its policy of neutrality from another State or International Organization.

Finally, and because Irish neutrality has no legal basis, there is reluctance in terms of setting a specific date for the adoption of neutrality as a policy.

ANNEX V.

Declaration of Academic Honesty

I hereby declare that this research report is entirely my own work and that it has not been submitted as an exercise for a degree at any other University. Moreover, I declare that AI tools have not been use at all, in any manner, or for any purpose in the elaboration of this paper. All research, analyses and conclusions are the result of my own intellectual work, skills and time allocation. I state my open rejection to the use of AI tools for academic purposes for I consider it as being inherently unethical, counterproductive and involutive.

LUIS ROBERTO ZAMORA BOLAÑOS (FIRMA)

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Luis Roberto Zamora Bolaños

Santo Domingo, Heredia, Costa Rica

ANNEX VI.

UNIVERSITY FOR PEACE LIBRARY

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Date……ZAMORA BOLAÑOS (FIRMA)……

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ANNEX VII

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