

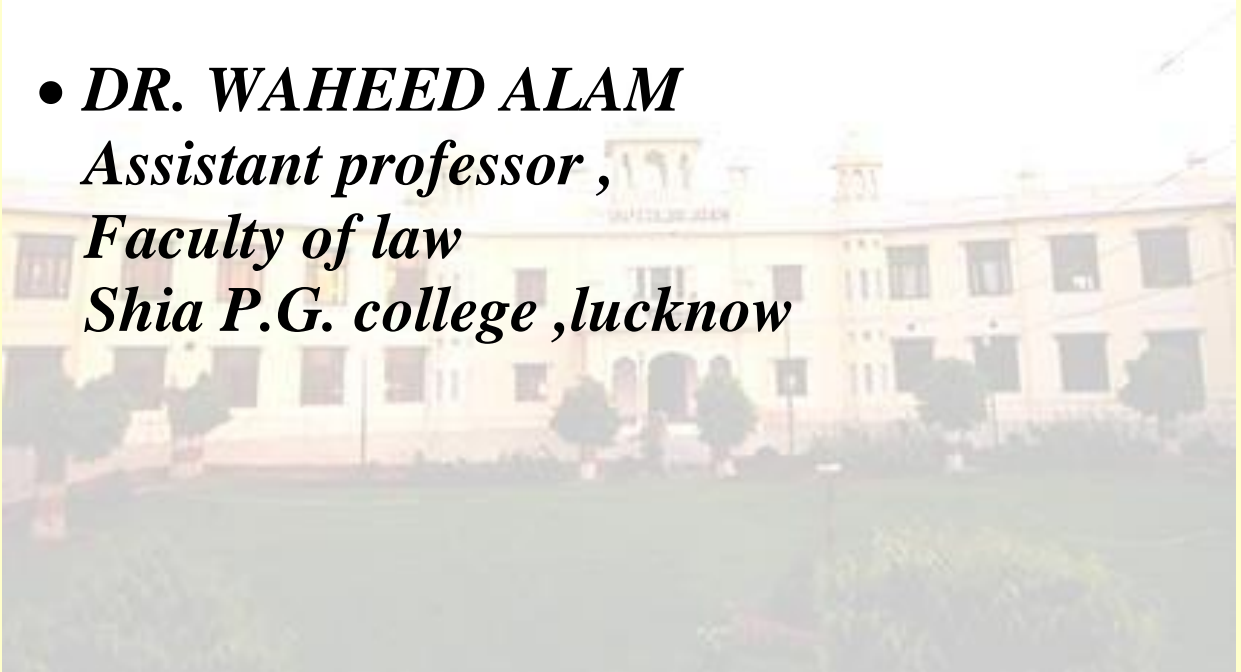


SHIA COLLEGE OF LAW

INTERNATIONAL SHORT NOTES

MODULE-2

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Law of Neutrality

Neutrality, non-war armed conflict and the UN charter

When two or more States engage in war, they are known as belligerents. As belligerents, they acquire certain rights and are bound by certain obligations towards third States who do not take the side of either of the belligerents. Such third are called neutral States.

Definition of neutrality

Neutrality is derived from the Latin word "neuter" which means neither. Neutrality thus connotes the status of a State which does not favor or disfavor either of the belligerents. Such neutral State remains indifferent to both the warring groups. Oppenheim defines neutrality as "the attitude of impartiality adopted by third States towards belligerents, such attitude creating Rights and duties between the impartial States and the belligerents¹.

Starke examines the concept of neutrality from two angles:

- 1) popular sense, and
- 2) Technical sense

In its popular sense, it denotes the attitude of a State which is not at war with belligerents, and does not participate in the hostilities. In its technical sense, neutrality is more than an attitude and denotes a legal status of a special nature, involving a complex of rights, duties, and privileges at international law, which must be respected by belligerents and neutrals alike².

Neutrality and non-war armed conflict

Neutrality generally refers to the status of belligerents and third States in a war. War ceases to be legal in view of the Charter of the UN. However, practically, war in the garb of non-war armed conflict subsists. Such war is continuing since 1950 when the Korean conflict started. Vietnam, Suez, Indo-China, Indo-Pak, Iran-Iraq, Arab-Israel, the Balkan and Anglo-American attack on Iraq is some of the leading examples. A question therefore arises whether the term neutrality will apply to such conflicts? Taking the orthodox view neutrality is relevant in a war. But the basic object of neutrality is to segregate the belligerents and the third States and keep international trade and commerce alive. The rules of warfare have been applied by the States in case of non-

war armed conflicts. Therefore neutrality is also applicable in armed conflicts. Starke prefers to designate it as quasi-neutrality or non-belligerency³.

Neutrality and the UN Charter

Neutrality in relation to the members of the UN is not a voluntary act. Under Article 2(5) of the Charter, members are bound to give every assistance to the UN in any action it takes under the Charter and to refrain from giving assistance to any State against which preventive or enforcement action is being taken by the organization. Under Article 25, members are bound to carry out the decisions of the Security Council and under Article 41, the Council may ask the members to apply economic or trade sanctions against a State. Under Article 43, the Security Council may ask the Member States to make available their armed forces and: under Article 45, the members may be asked to take combined action. But certain Member States of the UN may maintain neutrality when they are not involved by the Security Council. This is "qualified" neutrality because such States cannot assist the belligerents and must assist the Member States taking measures. A permanent member of the Security Council with veto power may remain neutral by exercising veto.

Duties of neutral States

Similarly, the duties of neutral States are as given below:

- 1) **Abstention.**—The neutral State must not give any direct or indirect assistance to either belligerent. For instance, it must not supply troops or provide shelter or allow construction or fitting of warships in its territory.
- 2) **Prevention.**—It is the duty of a neutral State to prevent within its territory such activities as the enlistment of troops for the belligerent armies or other warlike measures in its territory.
- 3) **Duty of acquiescence.** —The neutral State must acquiesce in the legitimate acts of belligerents as are permitted by the laws of war. This acquiescence is required in acts like seizure of contraband meant for the other belligerent or adjudication by the Prize Courts.

Kinds of neutrality

Neutrality has been classified as under:

- 1) **Perfect and imperfect neutrality.**— When a neutral State, neither nor passively favour either belligerent, it is perfect neutrality. Any favour to one of the belligerents is imperfect neutrality.
- 2) **Absolute and qualified neutrality.** — In absolute neutrality, the belligerent States can fight effectively without affecting the territorial integrity economic activities of the non-belligerents. Direct or indirect help neutral State to a belligerent is a case of qualified neutrality.
- 3) **Permanent neutrality.**—When a State is neutralized through an international treaty it is a case of permanent neutrality.
- 4) **Voluntary neutrality.**—Declaration by a State of its neutrality is the case of voluntary neutrality.
- 5) **Sui generis neutrality.** —Austria and Switzerland are neutralized States. They are members of the UN. Under Article 2(5) of the Charter, members.

Commencement of neutrality

Neutrality is an attitude of a State towards the belligerents in a war. Therefore, such attitude can be shown only on the commencement of war. Neutrality commences at the outbreak of war between the belligerents and when such commencement is conveyed or becomes known to the States not involved in the conflict.

End of neutrality

Neutrality comes to an end when the war is terminated. A neutral State, at any-time during war, may withdraw its neutrality. A State when attacked by the belligerents has to defend itself. Its neutrality automatically comes to an end. When a neutral State actively joins one of the belligerents, its neutrality comes to an end. With the termination of neutrality, the rights and obligations of neutrality also come to an end.

Unneutral service

Originally the doctrine of unneutral service was related to the duties timid citizens in naval warfare and was regarded similar to contraband. But unneutral service is now not confined to ships at sea but includes aircraft which are commonly used for transport of troops during war. It is the duty of the neutral vessel or aircraft not to advance the interests of one State and injure the same interests of the opponent. If this duty is not done, it amounts to unneutral service. Vessels or aircraft in unneutral service may be captured and subjected to adjudication by Prize courts.

REFERENCES

1. L. Oppenheim, International Law, Vol. II (7th Edn. 1952) 653.
2. J. G. Starke, Introduction to International Law (10th Edn. 1989) 577.
3. Ibid.

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