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Neutrality and Morality: Developments in Switzerland and in the International Community

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NEUTRALITY AND MORALITY: DEVELOPMENTS IN SWITZERLAND AND IN THE INTERNATIONAL COMMUNITY

DIETRICH SCHINDLER

I. SWISS NEUTRALITY	155
A. BASIC CONDITIONS AND CHARACTERISTICS OF SWISS NEUTRALITY	155
B. SWISS NEUTRALITY IN WORLD WAR II	157
C. SWISS NEUTRALITY SINCE WORLD WAR II	161
II. NEUTRALITY AND MORALITY IN THE INTERNATIONAL COMMUNITY SINCE 1945	163
A. THE COLD WAR PERIOD: RESURRECTION OF NEUTRALITY, LITTLE ATTENTION PAID TO MORALITY	163
B. THE PERIOD FOLLOWING THE END OF THE COLD WAR: FADING OF NEUTRALITY, MORE ATTENTION PAID TO MORALITY	166
C. DEVELOPMENT OF PRINCIPLES IN INTERNATIONAL LAW IMPOSING AN OBLIGATION ON STATES TO OBSERVE MORAL STANDARDS	167

I. SWISS NEUTRALITY

A. BASIC CONDITIONS AND CHARACTERISTICS OF SWISS NEUTRALITY

Switzerland has practiced neutrality since the sixteenth century, interrupted only during the Napoleonic wars between 1798 and 1815.¹ The growth of Swiss neutrality can be attributed mainly to

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1. The most comprehensive history of Swiss neutrality was written by EDGAR BONJOUR, *GESCHICHTE DER SCHWEIZERISCHEN NEUTRALITÄT* (1965-1976). *See*

two factors, one external and one internal. Switzerland's geographic situation, buffered between mightier states often at war with each other, was the first. Since European transit ways passed through Switzerland's borders, its territory was of strategic importance. Neighboring states would not have tolerated an antagonistic power's dominance of Switzerland, but they accepted Swiss neutrality provided that Switzerland defended each state against any attempt at foreign domination. Neutrality, for Switzerland, was thus a condition of its independence, while for the European states it was a stabilizing element in the European balance of power. In 1815, the states assembled at the Vienna Congress, at Switzerland's request, formally recognized Swiss neutrality stating that it was "in the true interest of the whole of Europe."² Swiss neutrality enjoyed its highest esteem in the second half of the nineteenth century. In this period, permanently neutral states were considered to be islands of peace, entrusted with special functions by the international community. The Swiss government took many initiatives such as holding international conferences in Switzerland, advocating the adoption of international conventions, and encouraging the creation of international organizations establishing their headquarters in its territory to meet these expectations. In the same period, humanitarian activities began to play a prominent role. The Red Cross was founded in Geneva in 1863, and the first Geneva Convention concluded in 1864.

The second factor that contributed to the formation of Swiss neutrality was the internal structure of Switzerland. Switzerland for many centuries formed a loose conglomerate of small communities, each of which was eager to maintain its autonomy. The alliance treaties concluded between them had the sole purpose of protecting their independence and democratic self-government against foreign rule. They preferred their autonomy to the creation of a larger and more powerful state. Neutrality became a shield behind which each canton and Switzerland as a whole could cultivate its internal way of life without being disturbed by international affairs. In the sixteenth century, when the Reformation split Switzerland into Protestant and

also EDGAR BONJOUR, *SWISS NEUTRALITY* (1946) (providing a short English language survey).

2. PARIS DECLARATION OF NOVEMBER 20, 1815, 2 Martens Nouveau Recueil 740.

Catholic cantons, neutrality became even more a necessity for survival. If some of the cantons had followed the call to assist their fellow believers in other countries during the European Religious Wars, Switzerland would have fallen apart. The fact that Switzerland is composed of German, French, and Italian speaking cantons added another justification for neutrality, especially in view of wars between Germany and France. All the values of Swiss political life, such as individual freedom, democratic self-government, and peaceful coexistence of different religious and linguistic groups, were realized on the basis of a policy of neutrality in foreign affairs. A strong army served to defend these achievements against foreign encroachments. Neutrality and armed defense thereby became almost synonymous terms.

This understanding of neutrality was particularly strong during the period of Nazi and Communist totalitarianism. When the Western European powers receded before Hitler's aggressive policy in the 1930s and accepted acts such as the illegal occupation of the Rhineland (1936) and the annexation of the Czech Sudetenland (1938), Switzerland considered its neutrality a kind of bulwark of freedom and democracy against totalitarianism. It vigorously reacted to attempts by Germany to suppress the freedom of the press in Switzerland and to other actions directed against Swiss independence and neutrality. Obviously, Switzerland acted to defend only its own existence and interests, not those of other states. As a small country, however, that always followed a policy of non-involvement in conflicts of other states, it could not be expected to act otherwise. Even today, the conviction that neutrality is a guarantee of internal freedom and democracy against foreign interference is still strong.

B. SWISS NEUTRALITY IN WORLD WAR II

This section will first examine whether moral considerations should have made Switzerland relinquish its neutrality during World War II and join the Allied war effort. Second, this paper will discuss the question, whether Switzerland's handling of neutrality calls for serious criticism.

As to the first question, it has been suggested that Switzerland should have abandoned neutrality when Germany's defeat loomed on the horizon and the danger of German retaliation had diminished.

There is no doubt that World War II, as stated in the introduction to this conference, differed from all previous wars due to the immensity and horror of the atrocities committed by the Third Reich. Although the full extent of what happened was not yet known during the war, much of it was common knowledge, in particular, the systematic persecution of the Jewish population and the German misdeeds in occupied territories. The Swiss people were aware of the problem of remaining neutral in a struggle between Western democracies and a totalitarian regime threatening Western civilization as a whole. A number of circumstances, however, must be considered. If Switzerland had been attacked by the Axis powers, it would have declared war on the Axis and fully cooperated with the Allies. Entering the war without being attacked, however, was politically inconceivable for Switzerland. A sudden departure from neutrality by democratic means was not feasible because neutrality was so deeply rooted in the Swiss mind and considered the best way to protect freedom and democracy. The American experience shows how difficult it is for a democracy to declare war without being attacked. The American declaration of war against the Axis powers became possible only after the Japanese attack on Pearl Harbor in December 1941.

Switzerland also refused to declare war at the end of hostilities in order to gain admittance to the San Francisco Conference that established the United Nations (the deadline set was March 1, 1945). Such action would have been considered an act of sheer opportunism, contrary to honor and morality. Moreover, Switzerland was convinced that its humanitarian and diplomatic services were more helpful to the Allies than entering the war. Even if Switzerland had joined the Allied war effort, it is doubtful that this would have diminished the extent of Nazi atrocities and the loss of human life. Germany, whose forces encircled Switzerland, probably would have reacted by occupying as much of Swiss territory as possible, confiscating all assets found in Switzerland, deporting or exterminating the Jewish population and the Jewish refugees, stopping the protection afforded by Switzerland as a protecting power of Allied prisoners of war in German detention, and bringing an end to the humanitarian assistance provided to all victims by the International Committee of the Red Cross operating from Switzerland.

The second issue is whether Switzerland handled its neutrality impeccably in every respect. The most striking aspect is that Switzer-

land, during the whole war, managed to respect the rules of the law of neutrality, as codified in the two Hague Conventions on neutrality of 1907,³ with only minor exceptions.⁴ Switzerland based its policy strictly on these Conventions, which constituted the only safe basis for defending its behavior against claims of belligerents contradicting neutrality. The emphasis put on legality gave Swiss neutrality a legalistic appearance. Legality, in certain cases, served to evade moral questions. The Swiss government made some decisions that had unfortunate consequences even if in conformity with the law. For example, arms trade with belligerents was legal under the law of neutrality provided that the arms were furnished by private enterprises, not by the neutral state itself.⁵ Although the distinction between state and private trade had become blurred since most states regulated arms trade, it still corresponded to the law in force during World War II. In April 1939, before the war broke out, the Swiss government prohibited arms exports to belligerent states hoping to maintain an incontestable moral neutrality during the War. However, it changed its decision shortly after the outbreak of the war due to pressure from France and Britain, which for years had neglected their armaments. The Swiss government realized that Switzerland, devoid of any raw materials, could not obtain goods for its survival without supplying weapons in return. After the French defeat in 1940 and the encirclement of Switzerland by the Axis powers, arms were exported mainly to Germany. For the greater part of the War, however, Switzerland did manage to export some goods of military importance to the Allies. At the beginning of the War, the Swiss government determined that arms could be exported only against cash payment or against goods essential for Switzerland's survival. This principle, however, was soon disregarded in favor of generous credits. Consequently,

3. See Hague Convention V Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, Oct. 18, 1907, 36 Stat. 2310, 1 Bevans 654 [hereinafter Hague Convention V]; Hague Convention XIII Concerning the Rights and Duties of Neutral Powers in Naval War, Oct. 18, 1907, 36 Stat. 2415, 1 Bevans 723 [hereinafter Hague Convention XIII].

4. See Detlev F. Vagts, *Switzerland, International Law and World War II*, 91 AM. J. INT'L L. 466, 475 (1997) (concluding behavior of the Swiss Government during World War II was in compliance with the rules of international law, including the rules of neutrality).

5. See Hague Convention V, *supra* note 3, art. 7, 36 Stat. at 2323, 1 Bevans at 662.

Germany could obtain arms on credit, even though this was incompatible with the law of neutrality. The certainty that arms trade was in conformity with the law of neutrality made Swiss officials careless with respect to the modalities and the quantity of arms exports. Although Switzerland during World War II imported about five times more weapons and other war materials from Germany for its own defense—against possible German attacks!—than it exported to Germany, this cannot excuse the impropriety mentioned.

Similarly, the certainty that accepting gold from the central banks of belligerents was in conformity with neutrality made the receiving Swiss authorities careless with respect to the true origin of the gold. Analogous is the most tragic consequence of Swiss legalism, the turning away of some twenty thousand Jews who were attempting to escape from Nazism in 1942. This action was in conformity with international law of that time, which provided a neutral state the right to provide asylum but established no obligation. The prohibition of *refoulement*—i.e., the prohibition to expel or return a refugee to territories where his life or freedom is threatened on account of his race, nationality, political opinion, religion, or social group—was introduced by Article 33 of the 1951 Convention relating to the status of refugees only.⁶ *Non-refoulement* is now considered a norm of customary international law and of *jus cogens*. No doubt, in cases of a mass migration of refugees there may be limits to their admission as established by the principle of self-preservation. The Swiss practice of 1942, however, primarily affected Jews and therefore amounted to a measure of racial discrimination.

Another shortcoming of Switzerland was to overestimate neutrality after the end of the war. The Swiss population was convinced that armed neutrality had saved it from being dragged into the war. Although Switzerland felt a deep gratitude toward the Allied forces, which by liberating Europe had removed the threat of Nazi tyranny, it continued to consider neutrality as the only policy guaranteeing its independence in the future. Subsequently, Switzerland did not want to join the United Nations as it assumed that the United Nations was no better situated to prevent wars than the old League of Nations. During the inter-war period, Switzerland joined the League of Na-

6. Geneva Convention of 1951, 189 U.N.T.S. 150.

tions, pinning its hopes on the system of collective security established by the League of Nations. Switzerland was bitterly disappointed when the League failed due to the absence of the United States and the appeasement policy of the Western powers toward Nazi Germany.

This experience strongly influenced Switzerland's behavior during and after World War. Switzerland's policy in World War II is now under thorough examination by two commissions that consist of both Swiss and foreign members. They are the Volcker Commission, which is examining assets in dormant bank accounts, and the Bergier Commission, which is examining the entire historical relationship of Switzerland to Nazi Germany. Both commissions will present their reports to the public.

C. SWISS NEUTRALITY SINCE WORLD WAR II

After the end of World War II, Switzerland was exposed to a type of isolation it had never experienced before. Switzerland no longer stood between two belligerents but in front of a closed block of victorious powers making claims and subjecting Switzerland to pressure. The 1946 Washington Accord on German Assets in Switzerland⁷ and on gold claims, now considered by some to be an unjust concession by the Allies to Switzerland, was conceived as a "dictate," a "capitulation," and as "deepest humiliation" in Switzerland. The fact that the neutrals were excluded from the San Francisco Conference of 1945 increased the feeling of isolation and discrimination.

Unexpectedly, however, the Cold War changed the situation. Neutrality gained new esteem. The first sign was the armistice agreement of 1953 ending the war in Korea.⁸ The parties to this war, the United Nations being one, set up two neutral commissions: a neutral nation's supervisory commission and a neutral nation's repatriation commission. Switzerland was asked to participate in both. Furthermore, in 1955, Austria's permanent neutrality was created on the model of Swiss neutrality and was universally recognized. Both blocks slowly began not only to tolerate neutrality but to consider it a useful contribution toward overcoming the East-West antagonism.

7. 13 U.T.S. 1118 (1946).

8. 47 AM. J. INT' L., Supp. 180, 186, 195 (1953).

At the Conference on Security and Cooperation in Europe ("CSCE," now "OSCE"), a group of neutrals and nonaligned countries in which Switzerland participated, played an important mediating role appreciated by both sides. In this way, neutrality was accepted even in the relations with a totalitarian power threatening Western civilization.

The end of the Cold War ended the privileged position of neutrals. Switzerland, as other neutrals, was forced to adapt its neutrality to new circumstances. The United Nations Security Council ("UNSC") was now in a position to take action on the basis of Chapter VII of the Charter.⁹ When, after Iraq's aggression toward Kuwait in 1990, the UNSC ordered economic sanctions against Iraq, Switzerland, although not a member of the United Nations, felt politically and morally compelled to take part. It was impossible to remain neutral between the international community as a whole and a single aggressor state; particularly since the aggressor was not a neighbor state. Switzerland abandoned the old doctrine that a neutral state may not break off economic relations with one of the belligerents and maintain them with the other. This change of policy was confirmed in all later cases of UNSC decisions regarding economic sanctions. Neutrality thus was reduced to its military core, i.e., to non-participation in armed hostilities and military alliances. Furthermore, it was recognized that the law of neutrality is applicable only in traditional interstate wars in which the UNSC has not yet made a decision to act. It is not applicable, however, to enforcement measures decided upon by the UNSC, even if such measures include military enforcement. Switzerland therefore also permits forces operating under UNSC authorization to fly over its territory, but, for political reasons, does not itself participate in military operations.

These changes have enabled Switzerland to act more in solidarity with the international community. There remains, however, a certain cleavage between the government and the people. The people, who have the final say in all important matters, hold on to neutrality as a method of avoiding involvement in international disputes and of protecting existing democratic institutions. For example, the voters rejected the government's proposals to join the United Nations (1986), to become part of the European Economic Area (1992), and

9. U.N. SCOR, 45th Sess., 2933d mtg., U.N. Doc. S/RES/661 (1990).

to provide armed forces in peacekeeping operations (1994). In spite of such restraining forces, neutrality is no longer a condition of Swiss independence and security. Switzerland's warring neighbors are now peaceful democratic states.

II. NEUTRALITY AND MORALITY IN THE INTERNATIONAL COMMUNITY SINCE 1945

Since 1945, three developments have determined the relationship between neutrality and morality in the international community. The following three sections will examine these developments. First, the Cold War brought about an unexpected resurrection of neutrality and at the same time reduced the possibilities for paying attention to moral standards. It revealed that neutrality becomes a highly esteemed institution as soon as a balance of power between the major power develops. Second, after the end of the Cold War, when the world attained a relatively high degree of unity, neutrality lost most of its significance while more attention was given to morality. The third development, the most important of the three, has evolved throughout the entire period since 1945: the growing recognition of principles of international law imposing an obligation on all states to observe certain moral standards in all circumstances. These principles have narrowed down the freedom that the old law of neutrality had left to the neutrals.

A. THE COLD WAR PERIOD: RESURRECTION OF NEUTRALITY, LITTLE ATTENTION PAID TO MORALITY

At the end of World War II neutrality was widely considered obsolete. Charles Fenwick wrote: "The adoption of the Charter of the United Nations on June 26, 1945, finally marked the end of neutrality as a legal system."¹⁰ When the East-West tensions mounted and the Cold War broke out, however, neutrality came to life in new forms, and generally not based on the traditional law of neutrality. Nonalignment became the attitude of new states that wanted to avoid being involved in the great power confrontation. Austria's permanent

10. See CHARLES G. FENWICK, *INTERNATIONAL LAW 727* (4th ed. 1965); see also Charles G. Fenwick, *The Old Order Changeth, Yielding Place to New*, 47 AM. J. INT'L L. 84, 86 (1953); Josef L. Kunz, *The Laws of War*, 50 AM. J. INT'L L. 313, 326 (1956).

neutrality was also a product of the Cold War but was based on the traditional law of neutrality. The permanent neutrality of Laos (1962) and of Malta (1980), on the other hand, both established by international instruments,¹¹ gave expression to the principles of non-alignment. The first generation of United Nations peacekeeping forces, such as those established between Egypt and Israel in 1956 ("UNEF I") and in the former Belgian Congo in 1960 ("ONUC"), were conceived as neutral supervisory forces to prevent regional or national conflicts from escalating into superpower confrontations. They were composed of contingents of neutral or nonaligned states but did not include forces from the five permanent members of the UNSC. The European neutrals, particularly Austria, Sweden, and Finland, developed an active mediating role between the two blocks, building bridges, and assuming functions that required impartiality. The CSCE adopted two declarations expressly recognizing the right of states to neutrality, both in the sense of the traditional law of neutrality and in the sense of non-alignment.¹²

Moral considerations hardly played a role in the creation and recognition of these various forms of neutrality. Neutrality was nevertheless morally justified and even welcomed because it helped overcome tensions, partly contributing to the protection of human rights. Neither did moral considerations play a major role in the behavior of the two rival blocks. The Western powers obviously fought for individual freedom, human rights, and democratic self-government. But in an international community that was ideologically divided and had no central bodies to enforce human rights since the UNSC was unable to act, moral considerations were not always given precedence over strategic and political interests. If it seemed to be in the strategic or economic interest of Western powers, they even supported regimes that grossly violated human rights. Some cases of genocide occurred without any notable reaction in the Western world. Nonetheless, the Western powers, by upholding the values of Western

11. See Laos: Declaration on the Neutrality of Laos and Protocol to the Declaration, 47, 1962, DEP'T ST. BULL., 259 (1962); Malta: Agreement on Neutrality of Malta, 21 I.L.M. 396 (1982).

12. See Conference on Security and Cooperation in Europe, Final Act, Aug. 1, 1975, 14 I.L.M. 1292; Concluding Document of the Madrid Session, Nov. 11, 1983, 22 I.L.M. 1389.

civilization in their own sphere and, as far as possible, outside it, succeeded in slowly overcoming the totalitarian threat.

Since 1945, the law of neutrality has no longer been applied apart from a few exceptions.¹³ This is due, first, to Article 51 of the United Nations Charter, which recognized the right of collective self-defense and allowed states to assist the victim of an armed attack by lending him military or nonmilitary assistance as long as the UNSC has not made a decision on measures to be undertaken.¹⁴ The United Nations Charter thereby abrogated the obligation of states not participating in an armed conflict to observe the law of neutrality. States therefore freely supplied belligerents with war materials, most obviously so in the wars between the Arab states and Israel, the Vietnam War, and the Iran-Iraq war. In so doing, not too much attention was paid to the question of which party was the aggressor and which one the victim of aggression. A further reason for not applying the law of neutrality is that armed conflicts fought since 1945 have generally not been "wars," the existence of a state war being considered a condition of the applicability of the law of neutrality. Moreover, the majority of armed conflicts have been internal conflicts to which the law of neutrality has never been applicable. It was, however, generally admitted that states, by their own decision, might apply the old law of neutrality if the UNSC fails to act.

Neutrality did, however, gain universal recognition beyond the period of the Cold War in the field of humanitarian activities. The rules of international humanitarian law must be applied "without any adverse distinction based on the nature or origin of the armed conflict or the causes espoused by or attributed to the Parties to the conflict."¹⁵ The nationals of an aggressor state and of the state victim of aggression must be treated without distinction. This is an established principle of international law. The first Geneva Convention of 1864

13. See Dietrich Schindler, *Transformations in the Law of Neutrality Since 1945*, in HUMANITARIAN LAW OF ARMED CONFLICT 368 (Astrid J.M. Delissen & Gerard J. Tanja eds., 1991).

14. Cf. 2 L. OPPENHEIM & H. LAUTERPACHT, INTERNATIONAL LAW 651 (7th ed. 1955).

15. Protocol Additional to the Geneva Conventions of 12 August 1949, Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Aug. 15, 1977, preamble, para. 5, 1125 U.N.T.S. 3, 3-608, 16 I.L.M. 1391, 1391-442.

stated that wounded and sick combatants "to whatever nation they may belong" (Art. 6) must be treated equally.¹⁶ A country's own nationals may not be given preferential treatment over enemy nationals. The "principles of humanity, neutrality and impartiality" are also confirmed by the resolutions of the United Nations General Assembly on humanitarian assistance.¹⁷ Similarly, neutrality is a necessary prerequisite of all functions of mediation, conciliation, arbitration, supervision and control. In all of these situations, neutrality incontestably serves moral values. In these cases neutrality is applicable not only in war and not only by states and to states, but at any time and by all actors engaged in such functions.

B. THE PERIOD FOLLOWING THE END OF THE COLD WAR: FADING OF NEUTRALITY, MORE ATTENTION PAID TO MORALITY

The situation of neutrality quickly changed after the end of the Cold War. Neutrality was fading away when the Warsaw Pact and the Soviet Union were dissolved in 1991 and the international community attained a higher degree of unity. Nonalignment became an almost meaningless term, the group of neutrals and nonaligned countries in the CSCE ceased to exist, and the European neutrals reduced their neutrality to its military core, i.e., non-participation in military alliances and non-admission of foreign military bases on their territory. They abandoned the practice of equal treatment in economic matters. This enabled them (with the exception of Swit-

16. Geneva Convention of 1864, reprinted in DIETRICH SCHINDER & JIRI TOMAN, *THE LAWS OF ARMED CONFLICTS* 279, 280 (3d. ed. 1988).

17. See *Humanitarian Assistance to Victims of Natural Disasters and Similar Emergency Situations*, U.N. GAOR, 43d Sess., U.N. Doc. A/Res/43/131 (1989); *Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations Resolution*, U.N. GAOR, 46th Sess., Annex I, Agenda Item 2, U.N. Doc. A/Res/47/68 (1991). In international humanitarian law the principle of neutrality is distinguished from the principle of impartiality. Neutrality means not taking sides in hostilities or engaging in controversies of a political, racial, religious, or ideological nature. Impartiality is understood as the principle not to make discrimination as to nationality, race, religious beliefs, class or political opinions. See Proclamation of the Fundamental Principles of the Red Cross, XXth International Conference of the Red Cross, Vienna, 1965, reaffirmed in Preamble of the Statutes of the International Red Cross and Red Crescent Movement of 1986, in INTERNATIONAL COMMITTEE OF THE RED CROSS [ICRC] AND THE LEAGUE OF RED CROSS AND RED CRESCENT SOCIETIES, *COMPENDIUM OF REFERENCE TEXTS ON THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT* (1990).

zerland) to join the European Union, a step they had so far avoided in view of their neutrality. The UNSC was no longer paralyzed by the great power confrontation and became able to pay more attention to moral values. In the many internal conflicts that have taken place in recent years, the UNSC strongly emphasized humanitarian needs. Regarding Iraq, the UNSC insisted that access be provided to all those in need of assistance.¹⁸ The UNSC determined that the magnitude of a human tragedy could constitute a threat to international peace and security, and they justify the use of all means necessary to establish a secure environment for humanitarian relief operations.¹⁹ Furthermore, the UNSC established two international tribunals for the prosecution of persons responsible for serious violations of international humanitarian law in the former Yugoslavia and in Rwanda.²⁰

C. DEVELOPMENT OF PRINCIPLES IN INTERNATIONAL LAW IMPOSING AN OBLIGATION ON STATES TO OBSERVE MORAL STANDARDS

The experiences of World War II, particularly the systematic denial of fundamental human rights by Nazi Germany, led to the conviction that all states must accept certain international standards of morality in order to prevent a repetition of atrocities, such as those committed before and during World War II. The United Nations Charter gave expression to this conviction by making the guarantee of fundamental human rights a basis of the future world order. In seven different provisions, the United Nations Charter refers to the necessity for respecting human rights and fundamental freedoms. In the Cold War period, the international community adopted conventions and declarations laying down more specific rules in this regard

18. See U.N. SCOR, 46th Sess., 2982d mtg., U.N. Doc. S/RES/688 (1991).

19. See U.N. SCOR, 47th Sess., 3145th mtg., U.N. Doc. S/RES/794 (1992) (regarding Somalia); U.N. SCOR, 48th Sess., 3191st mtg., U.N. Doc. S/RES/816 (1993) (regarding the protection of Bosnian airspace); U.N. SCOR, 48th Sess., 3228th mtg., U.N. Doc. S/RES/836 (1993) (regarding the protection of Bosnian safe areas); U.N. SCOR, 49th Sess., 3392d mtg., U.N. Doc. S/RES/929 (1994) (regarding Rwanda).

20. See U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993) (establishing the International Criminal Tribunal for the former Yugoslavia); U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/RES/955 (1994) (establishing the International Criminal Tribunal for Rwanda).

such as: the Genocide Convention of 1948,²¹ the Universal Declaration of Human Rights of 1948,²² the Convention on the Elimination of All Forms of Racial Discrimination of 1966,²³ the two International Covenants on Human Rights of 1966,²⁴ among other instruments. The Geneva Conventions of 1949 and their Additional Protocols of 1977 also form part of the instruments embodying such rights. In the course of this development, the fundamental character of basic human rights was emphasized by their recognition as norms of *jus cogens* and obligations *erga omnes*. The category of *jus cogens* (peremptory norms) was introduced by Articles 53 and 64 of the Vienna Convention on the Law of Treaties of 1969.²⁵ The category of obligations *erga omnes* was established by the International Court of Justice in its *Barcelona Traction* judgment of 1970.²⁶ All the basic principles embodied in the instruments mentioned form part of these two categories of rights and obligations. One of the most important achievements in this development is that human rights no longer belong to the internal affairs of states as they did in the World War II period, but rather have become matters of international concern. The International Criminal Tribunal for the former Yugoslavia rightly stated: "A state-sovereignty-oriented approach has been gradually supplanted by a human-being-oriented approach."²⁷

The recognition of fundamental human rights as norms of *jus cogens* and as obligations *erga omnes* has had the following effects on neutrality:

- Neutral states, as all states, have a right to take a position against violations of human rights occurring in other states. They may take measures not involving the use of armed force

21. 78 U.N.T.S. 277 (1948).

22. GAOR, 3d Sess., Res. 217 A (1948).

23. 660 U.N.T.S. 195 (1966).

24. 993 U.N.T.S. 3; 999 U.N.T.S. 171.

25. U.N. Doc. A/Conf. 39/27; 8 ILM 679 (1969).

26. *Barcelona Traction, Light and Power Co. (Belg. v. Spain)*, 1970 I.C.J. 3, 32 (Feb. 5).

27. *Prosecutor v. Tadic*, U.N. Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia Since 1991, Case No. IT-94-1- AR72 (App. Chamber 1995), *reprinted in* 35 I.L.M. 32 (1996).

against such states²⁸ and thereby deviate from possible obligations deriving from neutrality. They have, however, no obligation to take such measures unless the Security Council adopts decisions to that effect.

- States may not lend assistance to other states for the commission of violations of human rights. The International Law Commission, in its draft articles on state responsibility, stated: "Aid or assistance by a state to another state . . . rendered for the commission of an internationally wrongful act carried out by the latter, itself constitutes an internationally wrongful act, even if, taken alone, such aid or assistance would not constitute the breach of an international obligation."²⁹ This rule does not imply an obligation of states to interrupt commercial relations with a belligerent violating human rights; states are only prohibited from rendering assistance for the commission of internationally wrongful acts. If, however, certain goods delivered to other states, such as weapons, can be used for the suppression of human rights, their exportation to the respective states should be prohibited.
- States may not recognize acts or consequences of acts committed in violation of human rights or of international humanitarian law. Thus, for instance, states should prohibit the importation of objects confiscated by other states in violation of human rights or humanitarian law.
- Under the principle of *non-refoulement* states may not "expel or return a refugee . . . to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."³⁰

28. See 1989 Resolution on the Protection of Human Rights and the Principle of Non-intervention in Internal Affairs of States, in ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL, RÉSOLUTIONS 1957-1991, at 207, Art. 2 & 3 (1992) (stating that states, acting individually or collectively, are entitled to take all kinds of measures except use of force).

29. Report of the International Law Commission on the Work of its 48th Session, U.N. GAOR, 51st Sess., Supp. No. 10, at 9-13, U.N. Doc. A/51/10 (1996).

30. Convention Relating to the Status of Refugees, July 28, 1951, art. 33, 189 U.N.T.S. 150.

- All states, including neutrals, have the obligation to bring persons having committed grave breaches of international humanitarian law before their own courts regardless of their nationality and the place where the breaches were committed.³¹

Obviously, the rules listed here do not concern neutral states alone. All states have an obligation to act in conformity with the moral standards laid down in international law. All states therefore are called upon to take action if atrocities such as those committed in World War II are committed and to prevent such acts with all the means at their disposal. Problems, such as arms trade, gold transfers, and heirless assets, discussed in recent years with respect to the neutrals of World War II, are no longer problems of neutral states alone. They concern all states and can be resolved only if all states participate in regulating them and observe the respective rules. Such rules, unlike the old law of neutrality, should be applied not only in interstate wars going on between other states, but at all times; and particularly in cases of internal armed conflicts and violations of human rights occurring in other states.

31. See Geneva Convention for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field, Aug. 12, 1949, art. 49, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, art. 50, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 129, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 146, 6 U.S.T. 3516, 75 U.N.T.S. 287.