

Remarks on Neutrality

RUSSIA NATO Dialogue

**Remarks by
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Ukraine and Russia are exploring plans for neutrality in their negotiations. Reportedly, this plan would involve Kyiv renouncing its ambitions to join NATO, and commitments to not host foreign military bases and weapons in exchange for protection from allies such as the US, UK, or Turkey, but also Russia and other neighbouring countries have been mentioned as potential guarantors.

In 2015, the issue of Ukrainian neutrality had already been discussed. At the time, this initiative didn't receive any internal support. Today, this issue is being discussed at gun point. This is definitely not an enabling environment to do so.

Let me make a few thoughts on neutrality.

The strongest model of neutrality is one which is based in International Law – as it is the case in Switzerland and Austria. The weakest model is self-declared – e.g. Moldova – where the status of neutrality is relatively easily changeable.

When we talk about neutrality, we need to differentiate between the **law of neutrality** and the **policy of neutrality**. While the law of neutrality is very much codified, the policy of neutrality whose purpose is to convince other countries of the neutral stance of the **neutral state** is not codified at all. Here, every neutral state is relatively free to conduct its own policy of neutrality.

The law of neutrality is governed by the two Hague Conventions of 1899 and 1907 as well as by customary international law. These norms have remained valid despite enormous changes in warfare and the emergence of weapons of mass destruction during the 20th century.

There are five key obligations of a neutral state:

1. **Neutral states must not take part in an international armed conflict**
2. **Neutral states must ensure their own self-defense**
Self-defense does not only protect a neutral state from damage. It serves the credibility and predictability of neutrality as well. By analogy with conventional warfare, this means that a neutral state is obliged to protect its infrastructure in such a way that it cannot be used by parties to the conflict.
3. **Neutral states must treat all warring parties equally regarding the export of armaments and military technology**
Neutral states must treat all belligerents equally when exporting military equipment (devices, technologies). **Discrimination is not allowed.** This is a delicate issue because unequal treatment can have causes that have nothing to do with neutrality, such as the implementation of a UN embargo or human rights violations in the receiving state.
4. **Neutral states must not provide troops or mercenaries to warring parties and must not allow recruitment on their own territory**
This provision goes beyond the principle of equal treatment (see above). It is important because private contractors are becoming more widespread and states increasingly tend to resort to surrogates to fight wars. In this case, to what extent are states responsible for the actions of the surrogates?
5. **Neutral states must not place its own territory at the disposal of the belligerents**

As I stated before, beyond these legal obligations every neutral state enjoys broad freedoms to conduct its own policy of neutrality.

In the 70s, the importance played by neutral states in the CSCE gave birth to the concept of **active neutrality** via the hosting of international institutions, and their active role in international relations. Switzerland for example, started advocating a concept of active or engaged neutrality, by providing its good offices to conflicting parties.

Neutral states are banned from being members of military alliances. They can, however, still be part of such entities as the NATO PfP, or work under the auspices of NATO Commands such as KFOR. They are, however, not restricted from joining non-military organisations such as the EU.

Neutrality is **not about being neutral on values or international law**, i.e. on issues such as democracy vs autocracy or the violation of international law or human rights law. So, you have seen Switzerland joining the comprehensive sanction package on Russia. Switzerland's choice was based on its assessment of the severity of Russia's violation of international law. This is, however, fully in line with its principles of neutrality.

As a diplomatic solution in current negotiations, the **Austrian model** could be an interesting option for Ukraine. In its neutrality law of 1955, Austria agreed not to join military alliances, and not to host foreign military bases on its territory. It also allowed the withdrawal of foreign troops from the country. Austria then adopted Western values and initiated a process of integration into the European market economy, leading to Austria's membership of the European Union in the 1990s. This arrangement was accepted by the Soviet Union, largely because Austria did not become a NATO member.

How best to provide Ukraine with neutrality, while providing them with realistic security guarantees? One idea of providing security guarantees to Ukraine could be also taken from the Austrian experience. In addition to its neutrality law, a State Treaty also assures that Austria would not join a new union with Germany (Anschluss), as it had happened in 1938. In the case of Eastern and Central European States, such a prohibition to join Russia or parts of it, combined with neutrality, could also contribute to guarantee its unity" (Heinz Gärtner).