

Neutrality in the European context: Constitutional perspectives of Ireland and Malta

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Abstract

After the Russian attack on Ukraine, neutrality has experienced a revival, despite being partially considered obsolete. Ireland and Malta both strictly maintain their neutrality despite changing security policy conditions, with Ireland practising it as a politically and socially significant principle without explicit constitutional enshrinement, while Malta explicitly anchors its neutrality in its constitution and further secures it through international treaties. Both countries, integrated into the EU and the international security system, follow different historical and legal paths in interpreting and developing neutrality. This contribution analyses these developments from constitutional, international, and European law perspectives, highlighting the national and international dimensions of neutrality in the context of the Ukraine crisis and global security upheavals.

1. Introduction

Following Russia's attack on Ukraine, neutrality has experienced something of a revival¹. For a long time, the end of neutrality had been predicted², as it was no longer considered compatible with international law — particularly the prohibition of war within the international security system (Article 2, paragraph 4 of the UN Charter). Nevertheless, the ongoing legal debate about the possible obsolescence of neutrality has not stopped individual states from maintaining or adapting their neutral status to current security

1 See N. Ronzitti, Neutrality, non-belligerency, and permanent neutrality according to recent practice and doctrinal views, in: *Journal of Conflict and Security Law*, 2024, p. 55 ff.

2 Cfr. N. Orvik, *The decline of neutrality*, London, 1971 and M. Gehler, *Finis Neutralität? Historical and political Aspects in European Comparison: Ireland, Finland, Sweden, Switzerland and Austria*, Discussion Paper C92, Centre for European Integration Studies, 2001.

policy circumstances, nor from further developing or constantly re-explaining it within the United Nations and European Union systems.

Ireland and Malta are among the states that have maintained their neutrality without restriction even after the attack on Ukraine. In addition to their geographical similarity as island states, these permanently neutral states are now strongly integrated into the international security system and are effectively affiliated EU member states. Moreover, the neutrality of both countries is predicated on a deliberate decision in the context of their independence from Great Britain, with their respective developmental trajectories diverging along historical, legal, economic and political pathways.

The latest developments in this complex area, which combines dimensions of international law, European law and constitutional law, require a differentiated and interdisciplinary analysis. It is imperative to acknowledge the pivotal role of studies³ that underscore the integration of components of international and European law into national legal frameworks; this is central to the analysis of neutrality in the context of the tension between national constitutions and the international security architecture. In the context of the methodological framework outlined above, this article undertakes a detailed examination of the legal foundations and developments of neutrality in Ireland and Malta. A particular emphasis is placed on the constitutional implications of neutrality-oriented political practice. In particular, the study considers their positioning in the context of the Ukraine crisis and how this is perceived by society against the backdrop of global political and international legal upheavals.

2. The constitutional significance of Ireland's neutrality in transition through EU referendums

The Republic of Ireland is currently the only neutral member of the European Union that has not explicitly enshrined neutrality in its constitution.

3 See in particular P. Hilpold, *The law of neutrality at a crossroads: The specific situation of Austria and Switzerland from the perspective of international law, European law and constitutional law*, in this volume, as well as the journal *Percorsi costituzionali* No. 3/2023, *Neutralità e Costituzione*, which considers and provides an in-depth analysis of the continued existence of the institution of neutrality in the light of constitutional, European and international law.

In contradistinction, the two other neutral states, Austria⁴ and Malta⁵, have also enshrined their commitment to neutrality in their constitutions. However, this has been achieved under different legal systems, at different times and for different geopolitical reasons⁶.

Irish neutrality is a concept of significant importance, extending beyond traditional historical and political aspects, despite the absence of explicit constitutional recognition. This principle is not merely a foreign policy tenet; rather, it is also, as a constitutional and social foundation, a crucial factor in the procedure for EU referendums. This is especially apparent in the context of constitutional referendums, in which significant extensions of the EU's powers must be legitimized by popular vote⁷. This is particularly important in the case of Ireland, given the implications for its participation in European foreign policy and security architecture, into which neutrality is now integrated⁸. It is widely acknowledged within the relevant literature that any alteration or abolition of neutrality would require the approval of a constitutional referendum⁹.

This constitutional relevance is also reflected in the fact that grounds for neutrality are sometimes asserted in lawsuits before the *High Court* and are the subject of case law. It is evident that Ireland's neutrality is also explicitly supported by the EU treaties. This construct, which gives expression to perpetual neutrality even without binding international law or domestic

4 See P. Hilpold, The Law of Neutrality in Austria and Switzerland in the "Wider Field" of International Law – A Comparison of Current Developments, in: Archiv des Völkerrechts, 3/2022, p. 268 ff. and ID., Neutrality as a priority characteristic, in: P. Hilpold, M. Matzka and W. Hämmerle, 100 Years of B-VG, Vienna 2020, p. 143 ff.

5 See S. Andò, Il declino della neutralità nell'attuale fase del costituzionalismo europeo : Malta come metafora, Padua, 2002.

6 For a comprehensive overview of the relationship between historical and international context and the constitution, see the interesting study on the provisions of contemporary constitutions relevant to foreign policy by Renato Ibrido, Geopolitica costituzionale. Una introduzione, Bologna, 2025.

7 See D. Fennelly, Crotty's Long Shadow: the European Union, the United Nations and the Changing Framework of Ireland's International Relations, in: E. Carolan (ed), The Constitution of Ireland: Perspectives and Prospects, Dublin, 2012.

8 To date, nine constitutional referendums have been held in relation to the EU. See G. Hogan, Ireland: The Constitution of Ireland and EU Law: The Complex Constitutional Debates of a Small Country, in: A. Albi and S. Bardutzky, National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law National Reports, The Hague, 2019, p. 1325 ff.

9 See E. Daly, Neutrality and the Irish Constitution, VerfBlog, 13 April 2022 (www.verfassungsblog.de).

constitutional norms, has enabled Ireland to pursue a particularly flexible policy of neutrality over the last eight decades¹⁰.

a. The constitutional relevance of Irish neutrality

Ireland has pursued a policy of military neutrality since the 1930s and is not a member of NATO, yet this neutrality has not been explicitly codified in the Irish constitution. The attainment of full independence by the Republic of Ireland from the United Kingdom occurred in 1937, coinciding with the entry into force of the new constitution. Following the Second World War, Ireland opted not to accede to NATO, as from an Irish perspective, membership would have been perceived as a legitimization of the partition of Ireland, particularly within the context of the ongoing Northern Ireland conflict. This standpoint is indicative of Ireland's profoundly entrenched political and historical identity as a postcolonial nation that has strategically opted to refrain from entering into a military alliance with the United Kingdom¹¹.

Ireland thus maintained a neutral stance throughout the Second World War, a decision that was widely regarded as a manifestation of its newly acquired independence from Great Britain¹².

Despite the absence of an explicit declaration of neutrality in the constitution, two pivotal moments in Ireland's constitutional development can be identified as instances where neutrality played a formal role in the constitution's formulation. The first constitutional change relating to neutrality status was initiated in 1939. On 2 September of that year, the then Prime Minister (*Taoiseach*) Éamon de Valera formally declared Ireland's position of neutrality in the face of the impending Second World War, initially in Parliament and subsequently in an address to the nation. Parliament, including the opposition party *Fine Gael*, supported this declaration of neutrality by a majority vote, with only one dissenting vote. Concurrently

10 See M. Gehler, *Finis Neutralität? Historische und politische Aspekte im europäischen Vergleich: Irland, Finnland, Schweden, Schweiz und Österreich* (The End of Neutrality? Historical and Political Aspects in European Comparison: Ireland, Finland, Sweden, Switzerland and Austria), Centre for European Integration Studies, Discussion Paper C 92, 2001, p. 39.

11 See B. Girvin, *National Interest, Irish Neutrality and the Limits of Ideology*, in: M. Gehler and R. Steininger (eds.), *The Neutrals and European Integration 1945-1995*, p. 88 ff.

12 Ibid.

with this political declaration, a constitutional amendment was passed that endowed both houses of the Irish Parliament with the authority to declare a national emergency even in the absence of direct involvement in a war. This amendment is now enshrined in Article 28, paragraph 3, number 3 of the Irish Constitution. In light of the provisions outlined, the Parliament proceeded to pass a resolution pertaining to Ireland's stance during the Second World War. This resolution stipulated that Ireland would adopt a neutral position, a decision that was enshrined through the enactment of the *Emergency Powers Act 1939*.

The aforementioned legislation bestowed upon the government a considerable degree of legislative authority, thereby enabling the government to implement measures deemed necessary in the prevailing circumstances¹³.

Following this primary constitutional reference point, Ireland's neutrality continued to have constitutional relevance in the context of its accession to the European Communities and, subsequently, to the European Union. Since the Single European Act of 1986 (SEA), any amendment to the EU Treaties has been subject to ratification through a national constitutional referendum in accordance with Article 46 of the Irish Constitution¹⁴. A total of nine constitutional amendments have been adopted to facilitate Ireland's adaption to EU law¹⁵, with neutrality concerns being taken into account at each stage of integration. The use of constitutional referendums to approve EU treaties is not expressly provided for in the Constitution, but derives from a landmark and widely debated ruling in 1987, when the *Supreme Court*, in its judgment in *Raymond Crotty v. An Taoiseach*¹⁶, held that treaty amendments affecting Ireland's foreign and security policy orientation – including its neutrality – may only be ratified with the consent of the population by referendum. The agreement on the Single European Act, which at that time referred exclusively to the common foreign policy and not yet to the common security and defense policy, was therefore deemed unconstitutional as a transfer of sovereignty, insofar as the common foreign policy envisaged therein would curtail the government's foreign policy

13 This law was repealed after the end of the war, but it was not until 1973 that Parliament decided that the underlying state of emergency had ended. See O. Doyle, *The Constitution of Ireland. A Contextual Analysis*, Oxford, 2022, p. 182.

14 See B. Gavin, *Einsatz und Durchführung von Referenden in Irland – Eine Analyse*, in: Braun Binder et al. (eds.), *Jahrbuch für direkte Demokratie 2018, 2019*, Baden-Baden, p. 174 ff.

15 *ivi*.

16 *Crotty v. AN Taoiseach* (1987) IR 713.

powers¹⁷. The so-called Crotty doctrine emerging from this ruling has since shaped Irish legal practice and has effectively institutionalized constitutional referendums as an element of democratic control over amendments to EU treaties¹⁸. This doctrine was subsequently applied to the ratification of the Maastricht Treaty and, in particular, the Nice and Lisbon Treaties, whose adoption initially failed and was only secured in a second referendum after issues of particular importance to Ireland had been addressed through protocols and declarations annexed to the respective EU treaties¹⁹.

In *Pringle v. Government of Ireland* (2012)²⁰, the Irish Supreme Court adopted a more flexible approach to the assessment of sovereignty transfer to the European Union for the first time, while nevertheless handling constitutional concerns with characteristic caution. The Court held that the establishment of the European Stability Mechanism (ESM) did not entail a significant transfer of sovereign powers warranting a referendum. This judgment signals a nuanced evolution in the Court's jurisprudence, accommodating pragmatic transfer of authority without neglecting the political and social sensitivities surrounding Ireland's military neutrality²¹.

There have been repeated attempts over time to enshrine neutrality explicitly in the Irish Constitution. The most recent of these was in March 2022, shortly before the outbreak of war in Ukraine, when *Dáil Éireann* (the lower house of the Irish parliament) rejected a bill to amend the constitution. The *Thirty-Ninth Amendment (Neutrality) Bill* would have introduced an explicit reference to permanent neutrality in the 1937 Constitution. Introduced by the Trotskyist opposition party *People Before Profit*, the proposal was rejected by the government majority²². However, immedi-

17 See O. Doyle, op. cit. pp. 35 and 200, and G. Hogan. Ireland: The Constitution of Ireland and EU Law: The Complex Constitutional Debates of a Small Country, in: A. Albi and S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, The Hague, p. 1325.

18 See E. Daly, cit., and H. Gerard: Ireland: The Constitution of Ireland and EU Law: The Complex Constitutional Debates of a Small Country, in: Albi, Bardutzky (eds.), *National Constitutions in European and Global Governance*, p. 1325.

19 See O. Doyle, cit., p. 201.

20 *Pringle v. Government of Ireland* [2012] IEHC 470.

21 See U. Haider-Quercia, I profili costituzionali ed europei della neutralità militare della Repubblica d'Irlanda, in: *Percorsi costituzionali* no. 3/2023, p. 185 ff.

22 <https://www.oireachtas.ie/en/bills/bill/2022/34/>.

ately after the Russian attack, the Irish government reaffirmed its policy of neutrality, confirming the decades-long political tradition²³.

The question of making an explicit reference to neutrality in the constitution is therefore not new, and is a regular topic of debate in the Dáil. A similar proposal based on broad public support for neutrality was put forward in 2003. At that time, the initiative was largely driven by the *Sinn Féin* party and supported by the *Labour Party*, but was ultimately blocked by the governing parties *Fine Gael* and *Fianna Fáil*²⁴. *Sinn Féin* raised the issue again in 2016²⁵ and 2019²⁶. The most recent push in this direction was the *Thirty-Ninth Amendment (Neutrality) Bill* of January 2022, would have provided for a referendum on enshrining military neutrality in the constitution²⁷.

The overall constitutional landscape therefore remains unchanged: while neutrality is not explicitly enshrined, it is indirectly reflected in the constitutional principles that govern international relations and form part of the state's regulatory framework. The relevant provisions (particularly Articles 1, 5, 28 and 29) affirm state sovereignty, the peaceful resolution of international conflicts and adherence to the principles of international law. Foreign policy is primarily the responsibility of the government, which can exercise it formally autonomously and with few restrictions, even without parliamentary approval. Parliamentary approval is required only in exceptional cases, such as a declaration of war (Art. 28(4)). Accordingly, these principles do not result in any direct restrictions on foreign policy, as might be derived from a constitutional declaration of neutrality. Therefore, they do not constitute an independent legal basis for evaluating the government's foreign policy measures²⁸.

The aforementioned autonomy of the government in international relations is a key argument against the draft constitutional amendment to

23 See E. Daly, Neutrality and the Irish Constitution, VerfBlog, 13 April 2022 (www.verfassungsblog.de).

24 See <https://www.oireachtas.ie/en/debates/debate/dail/2022-03-30/10/>.

25 See <https://labour.ie/news/2016/11/24/labour-supports-bill-on-neutrality-proposes-improvements/> dated 24 November 2016.

26 See K. Mullan, Martina Anderson calls for Irish neutrality referendum amid fears over European militarisation, in: Derry Journal, 9 April 2019, www.derryjournal.com and M. O'Halloran, Government rejects Bill enshrining Ireland's neutrality, in: The Irish Times, 10 April 2019, www.irishtimes.co.

27 See C. Finn, Government Parties vote against a Bill calling for a Referendum on Ireland's Neutrality, in: The Journal (www.thejournal.ie) of 30 March 2022.

28 See E. Daly, cit.

enshrine neutrality, which was rejected in 2022²⁹. The government has repeatedly emphasized that, in the Irish tradition, neutrality is a political decision and not a constitutional one³⁰. Explicitly enshrining neutrality in the constitution could restrict the executive's freedom of action when exercising its foreign policy powers under Article 29 of the constitution to peacefully resolve conflicts³¹. Constitutionally enshrined neutrality would significantly limit Ireland's ability to play an active role in international relations and security policy. In particular, concerns have been raised that a constitutional reference to neutrality could hinder Ireland's participation in UN peacekeeping missions³² – an issue that has long been debated in legal literature³³.

Despite legal system's reluctance to enshrine an explicit constitutional norm on neutrality, the concept has gained significant constitutional status over time. It has grown so relevant that abandoning the policy of neutrality in favor of joining a military alliance would almost certainly require a constitutional referendum. This is because any future decision to abandon neutrality in order to join a military alliance would constitute an amendment to the 1937 Constitution³⁴. In the event of such a drastic change in Ireland's international position, confirmation by a constitutional referendum would effectively protect political decision-makers from possible legal challenges³⁵ in the context of such a momentous decision³⁶.

29 See M. Killeen, Irish Government rejects Proposal to change Constitution on Military Neutrality, in: Euractiv, 1 April 2022 (www.euractiv.com).

30 <https://www.oireachtas.ie/en/debates/debate/dail/2022-03-30/10/>.

31 See Dáil Ériann, Parliamentary Debates, Official Report, No. 3, 30 March 2023, p. 233 f.

32 See *ibid.*, p. 234.

33 See M. Gehler, *cit.*, p. 22.

34 This contrasts with the case of the two EU states Sweden and Finland, which decided to abandon their neutrality status (defined as non-alignment in the absence of an international document or domestic law) and join NATO following Russia's attack on Ukraine. In both cases, the abandonment of neutrality and the parliamentary decision to join NATO did not pose any particular constitutional hurdles for these two countries.

35 See E. Daly, *cit.*

36 See M. Cahill, Crotty after Pringle, The Revival of the Doctrine of Implied Amendment, in: Irish Journal of European Law, 2014, p. 17 ff.

b. Anchoring in the European treaties

Ireland's participation in the European Communities further consolidated neutrality in formal legal terms³⁷. In 1973, Ireland became the first neutral country to join the European Communities. While neutrality did not pose any particular obstacle to accession initially, it subsequently led to specific adjustments in primary law, now known as the "Irish clause". Even after the Single European Act of 1986, which generally addresses European political cooperation, Ireland has continually expressed concerns about the expansion of the political dimension and security and defense policy areas within the Union.

This stance mainly reflected concerns about military and political alliances with the United Kingdom, which is also why Ireland was able to negotiate an exemption clause in primary law. Initially enshrined in Article J (4) of the Maastricht Treaty, this has since been incorporated into every subsequent treaty amendment. The "Irish clause" clarifies that the Common Security and Defense Policy (CSDP) does not affect "the specific character of the security and defense policy of certain Member States".

Based on this exemption, there are now five references to neutral states in EU law. In addition to the Irish clause, which is mentioned twice in Article 42 of the Treaty on European Union (TUE), references can be found in Protocol No. 10 on Permanent Structured Cooperation (PESCO) and in Declarations 13 and 14 on the Common Foreign and Security Policy (CFSP).

In 1995, the Irish clause was applied to the accession of the other neutral states - Austria, Sweden and Finland - which were unable to negotiate any further exemptions and therefore relied on the Irish clause in their accession treaties³⁸. The same applied to Malta in 2004. Thus, the European

37 It is widely known that the emergence of Irish neutrality is inextricably linked to the territorial issue with Great Britain. Its constitution is often dated to 6 December 1921, when the Irish Free State (Éire) was established by a treaty with Great Britain. However, this bilateral treaty makes no reference to neutrality, nor does the treaty of 1949, when Ireland legally and definitively withdrew from the Commonwealth. The external sovereignty of the Free State of Éire took effect with the ratification of the treaty by the Dáil Éireann on 7 January 1922 and was subsequently enshrined in the Constitution of 29 December 1937. See M. Gehler, *op. cit.*, p. 18. See K. Devine, A Comparative Critique of the Practice of Irish Neutrality in the "Unneutral" Discourse, in: Irish Studies in International Affairs, Volume 19, 2008, p. 74 f.

38 See H. Isak, *GSVP und Irische Klausel: Neutrale Mitgliedstaaten: Lösung oder Problem*, in: Sicherheit und Frieden, 2008, p. 186 ff.

context provided the framework for establishing the legal basis for Irish neutrality, which had been practiced at the political level for decades.

As European integration progressed, a strong relationship developed between neutrality and Irish national identity. Preserving neutrality has always been one of the central concerns in treaty reforms. For instance, referendums on the ratification of the Nice and Lisbon treaties had to be repeated after the Irish population initially rejected them³⁹. To finally enable the adoption of the Treaty of Nice, an amendment was added explicitly referencing the EU's defense policy. Since then, Article 29 (4) (9)⁴⁰ has contained an opt-out clause regarding a future EU defense union⁴¹ and expressly states that the decision on participation in a common defense under Article 42 TEU is solely Ireland's to make.

The open wording of this subsection highlights the flexible nature of Irish neutrality: there is no absolute refusal to participate in European security and defense policies; rather, the decision is removed from the remit of the European institutions and returned to the national level. Consequently, this provision did not prevent Ireland from participating in enhanced cooperation in foreign and security policy⁽⁴²⁾ and in the European Peace Facility, which it joined in 2001 and 2017 respectively.

Unlike the Treaty of Nice, the Treaty of Lisbon did not lead to as far-reaching a change to the Irish Constitution. However, it was accompanied by the European Council's decision on the "concerns of the Irish people re-

39 Cfr. M. Gastinger, J. Lieb, A. Maurer, M. McGinley, Ireland's No to the Lisbon Treaty. Campaigns, voting motives and perspectives on the Reform Treaty, Discussion Paper EU-consent, German Institute for International and Security Affairs, Berlin, October 2008, p. 7.

40 "The State shall not adopt a decision taken by the European Council to establish a common defense pursuant to Article 42 of the Treaty on European Union where that common defense would include the State."

41 See G. Barrett, *op. cit.*, p. 165.

42 See G. Barrett, *op. cit.*, p. 165.

garding the Treaty of Lisbon⁴³, which explicitly recognized Ireland's traditional military neutrality for the first time in an international document⁴⁴.

The flexible mechanism of Article 29 (4) (9) of the Irish Constitution also underpinned the government's October 2024 decision to take participation in the Europe-wide ESSI (*European Sky Shield Initiative*) air defense system into account when planning to procure modern radar and air defense systems for the Irish armed forces. In February 2024, the Irish government signed an Individual Tailored Partnership Program (ITPP) with NATO, enabling greater information exchange, including intelligence findings⁴⁵.

c. Contours of an Interpretation of Neutrality in Case Law: The Use of Shannon Airport by the USA

The consolidation of the Irish people's identity of neutrality is also evident in the controversial handling of Shannon Airport, which has become a symbol of the Irish concept of neutrality⁴⁶. Since the early 2000s, Shannon has developed into an important European transit point for US military aircraft and military cargo, particularly in the context of the missions to Afghanistan and Iraq in 2001 and 2003⁴⁷. The Irish government only approved the use of the airport on the condition that the aircraft were unarmed and did not carry ammunition or explosives, nor were they directly involved in military operations. However, these restrictions were rarely enforced and were often questioned, as numerous transits were linked to

43 In addition to referring to neutrality and security policy, this document also addresses other issues of importance to the Irish people, such as the right to life, education and family, and the scope of the Union's and Member States' powers in the field of taxation. With regard to neutrality, the declaration confirms in particular that the European Union's common security and defense policy does not in any way affect the national defense and security policy of Ireland or any other Member State. See Official Journal of the European Union L60/131 of 2 March 2013.

44 "The Treaty of Lisbon does not affect or prejudice Ireland's traditional policy of military neutrality."

45 See Attack on Neutrality, in German Foreign Policy, 17 June 2025, p. 4.

46 See C. Gallagher, Is Ireland neutral?, The many myths of Irish Neutrality, Dublin, 2023, p. 166.

47 See M. Havemann, Neutrality in Ireland: The War on Terror, the Use of Shannon Airport and the Irish Anti-War Movement, Independent Study Project (ISP) Collection. 359, https://digitalcollection.sit.edu/isp_collection/359.

active military operations. Shannon remains a regularly used military base in current conflicts, such as those in Ukraine and the Middle East. Since October 2023, at least eleven US military transports to Israel have been documented⁴⁸.

The use of foreign military aircraft at Shannon Airport has sparked intense social and political debate, symbolizing Ireland's tension between its claimed neutrality and its practical role as a logistical hub for US and NATO military operations. Against this backdrop, permission for US military aircraft to fly over Irish territory and land at Shannon has been the subject of several Supreme Court rulings, prompted by pressure from civil society. Although military neutrality is predominantly considered a political category under Irish law and is not directly enforceable, the Irish civilian population was able to bring the matter before the *High Court*, which delivered two rulings on it ⁴⁹.

In the first case, *Horgan v Ireland* (2003)⁵⁰, the *High Court* dismissed a lawsuit that challenged the use of Shannon Airport as a stopover point for US military aircraft travelling to the Persian Gulf. The plaintiff, a retired soldier, had challenged the legality of the government's authorization to allow the US armed forces to use Shannon as an air base during the Iraq War. This authorization has been approved by the Irish parliament, which supported the government's decision not to participate in the military action authorized by the UN Security Council. The plaintiff based his claim in particular on two articles of the Constitution: Article 28 (3), which states that Ireland may not participate in acts of war without the consent of the *Dáil Éireann*; and Article 29 (3), which refers to generally recognized principles and customs of international law, thus guaranteeing Irish neutrality under international law⁵¹. In his judgment, Judge Kearns acknowledged that the rules of customary international law governing the conduct of neutral states, particularly the Hague Conventions of 1907, could potentially form

48 www.shannonwatch.org/about-shannonwatch.

49 See G. Barrett, cit., p. 167.

50 *Horgan v Ireland and others, Application for declaratory relief*, 2003 No 3739P, [2003] IEHC 64, (2003) 2 IR 468, ILDC 486 (IE 2003), 28 April 2003, Ireland, High Court.

51 Specifically, allowing US military aircraft transporting troops and military equipment to transit through the country is contrary to the obligations of neutral states under the Fifth and Thirteenth Hague Conventions of 1907, which relate to neutrality in land warfare and naval warfare respectively. These conventions prohibit the transit of foreign troops into a belligerent country, as this contradicts the principle of impartiality and the desire to remain outside the conflict.

part of Irish law under Article 29 (3). However, he emphasized that the government has broad discretion in the area of foreign policy, which cannot be restricted by principles of international law⁵². Following case law from other jurisdictions⁵³, the High Court emphasized that no national authority is empowered to provide a legally binding interpretation of instruments of international law, nor to subject the government's foreign policy to judicial review. Furthermore, the High Court confirmed that Article 29 (2) of the Irish Constitution, which obliges Ireland to settle international disputes peacefully, does not establish subjective rights for individuals; rather, it merely standardizes the state's rights and obligations towards other states⁵⁴. Finally, Judge Kearns stated that, although neutrality is historically significant, it is not enshrined in the Constitution or in domestic law in such a way that legal obligations can be derived from it. Consequently, it must be regarded as a matter of government policy⁵⁵.

Similar issues concerning the relationship between domestic and international law, in particular the right to neutrality were addressed in another ruling from 2007⁵⁶. The plaintiff argued that the *Dáil Éireann* had not given its explicit approval for the ongoing use of Shannon Airport by US forces for transporting troops to Afghanistan. The court first noted that the plaintiff had not sufficiently demonstrated that neutrality had constitutional status. On all other points, however, the *High Court* upheld the earlier decision and emphasized the judiciary's non-interference of the government decisions. It also reiterated that no subjective rights for individuals could be derived from Article 29(3). New to the 2003 ruling was the expanded interpretation of Article 15(6) of the Constitution, which states that "no military or armed forces shall be maintained except those established by the *Oireachtas*". The court clarified that the Irish Army is the only official armed force; however, this does not preclude authorizing foreign troops and military installations to pass through the country.

52 See O. Doyle, cit., p. 36.

53 In particular, the judgment in *Kavanagh v Governor of Mountjoy Prison* (2002) 3 I.R. 97 case.

54 See L. Thornton, "Horgan v An Taoiseach", OUP International Law in Domestic Courts, ILDC 486 (IE 2003).

55 For more on this topic, see P. Daly, "Political questions" and judicial review in Ireland, in: Judicial Studies Institute Journal, 2008, p. 116 ff., in particular p. 129.

56 *Dubsky v Government of Ireland and Ors*, Judicial review, 2002 NO 571 JR, [2005] IEHC 442, ILDC 485 (IE 2005), 13 December 2005, Ireland; High Court.

This ruling affirms the stance adopted in the 2003 judgment, classifying Irish neutrality as primarily a political decision of the executive rather than a directly enforceable constitutional norm. Referring to the separation of powers, the ruling leaves the assessment of foreign policy measures to the government apparatus, which can interpret them flexibly.

d. The Role of Flexible Neutrality in the EU's Military Support for Ukraine

The Russian-Ukrainian crisis is, in a sense, the first serious test for neutral states within European defense policy. This policy is based on the principle of mutual political solidarity between member states (Art. 24(2) TEU), as well as the obligation to provide assistance in the event of an armed attack on the territory of a member state (Art. 42(7) TEU)⁵⁷. Russia's attack on Ukraine has prompted further developments in EU law concerning neutral states. The European Council's decision of 28 February 2022 to amend the purpose of the European Peace Facility (EPF) is of central importance. The EPF was established the previous year to coordinate Member State initiatives on conflict prevention, peacekeeping and strengthening international security. Since then, the EPF has financed joint European aid for Ukraine⁵⁸, which is exercising its right to legitimate self-defense as enshrined in Article 51 of the UN Charter. Ireland abstained from voting on this EPF support measure for the Ukrainian armed forces at the European Council on 28 February 2022 (2022/339).

In response to questions from the Irish parliament, the government clarified that certain restrictions apply to neutral countries with regard to this European aid. In particular, that the direct supply of weapons to a country at war is incompatible with neutrality⁵⁹. Consequently, Ireland –

57 Within the framework of the European Union's measures, no differentiation can be discerned with regard to the economic sanctions imposed on Russia by European states.

58 Cfr. M. Vellano, *L'evoluzione dell'aspirazione pacifista e della neutralità nell'azione dell'Unione europea e il suo futuro*, in: *Percorsi costituzionali*, No. 3/2023, p. 85 ff.

59 Cf. *Ukraine War, Dál Éireann Debate*, Thursday – 27 April 2023 (<https://www.oireachtas.ie>) *Austria sent military equipment to Ukraine. For reasons of neutrality, the equipment is limited to "non-lethal" protective helmets and vests*, in: *Wiener Zeitung*, 5 May 2022 (www.wienerzeitung.at).

like Austria⁶⁰ – distinguishes between lethal and non-lethal military equipment within the scope of European measures. The Irish government is therefore exercising its right to *opt out* of European security policy in order to provide non-military goods, such as medical supplies, food⁶¹, protective equipment and fuel, to countries affected by conflict.

Another issue that has resurfaced in the war in Ukraine, and which was also discussed during the military interventions in Iraq and Afghanistan, is the transit of military equipment through Irish territory and airspace. Although the Fifth Hague Convention of 1907 prohibits neutral states from allowing the transit of enemy troops or convoys carrying ammunition and supplies⁶², Ireland has authorized the transit of weapons and other military equipment from EU and NATO countries on route to Ukraine, despite the absence of a corresponding UN Security Council resolution⁶³. The Irish government has referred to Article 5 of the European Council Decision of February 2022⁶⁴. Based on this obligation under European law, the limits of neutrality were interpreted broadly to prevent a neutral country from actively blocking the transport of weapons to a country under attack through its territory⁶⁵.

A more restrictive interpretation of neutrality also appears to have been applied by the neutral states with regard to the European Council's decision

60 See A. Purger, *Old helmets, old vests and new millions from Austria for Ukraine*, in: *Salzburger Nachrichten*, 5 May 2022, (www.salzburgernachrichten.at).

61 For example, relatively soon after the outbreak of the war, Ireland sent packaged, long-life and ready-to-eat soldier food ("Meal, Ready-to-Eat") and protective clothing from its armed forces' stocks to Ukraine. <<https://www.breakingnews.ie/ireland/body-armour-and-10-tonnes-of-food-sent-by-ireland-to-ukrainian-army-1273802.html#:~:text=Ireland%20has%20sent%205,000%20ready,forces%20battling%20the%20Russian%20invasion>

62 Articles 2 and 5.

63 If the direct shipment of weapons were to be considered a violation of neutrality, the authorization of the transit of third-party arms deliveries would nevertheless be compatible with neutrality status, as this does not fall within the scope of the Hague Convention, which provides for an explicit prohibition exclusively against belligerent states. In this context, the Hague Convention is used as an argumentative instrument to expand the scope of action of neutral states within the law of neutrality. See R. Janik, *Current Developments: Austrian Neutrality amid Russia's War on Ukraine* (26 August 2022), in: *Austrian Review of International and European Law*, vol. 26, 2023.

64 See M. Zimmermann, *Weapons for Ukraine through the neutral country. How Austria is navigating the situation*, in: *Salzburger Nachrichten*, 8 May 2023 (www.sn.at) and M. Smentana, *Weapons transports through Austria – despite neutrality?*, in: *Salzburger Nachrichten*, 17 August 2022 (www.sn.at).

65 Cfr. R. Janik, *cit.*

of 17 October 2022 decision to establish a training mission for Ukrainian soldiers on European soil⁶⁶. In this area too, Ireland adopted a flexible approach to its military neutrality, not only agreeing to the Council decision but also declaring its willingness to participate in the training of Ukrainian soldiers. However, Ireland limited its participation to the training of Ukrainian soldiers in mine and unexploded ordnance clearance as part of the *EU Military Assistance Mission in support of Ukraine* (EUMAM Ukraine), thereby participating in measures that primarily benefit the civilian population.⁶⁷

Foreign and Defense Minister Simon Coveney described this contribution as an opportunity for Ireland to participate in an EU structure to support and train Ukrainian soldiers in protection against Russian attacks, as mine clearance is a vital protective measure for both civilians and the military⁶⁸.

e. Reform of the Triple Lock and the current Controversies surrounding Irish Neutrality

Since June 2023, Irish neutrality, as a guiding principle of foreign and defense policy, has been the subject of intense public debate. The government has initiated a broad dialogue with citizens, experts and activists, and citizens' assemblies are also being considered as potential forums for discussing the enshrining of neutrality in the constitution.

Currently, the Defense (Amendment) Bill 2025 is under consideration, providing for a fundamental reform of the so-called Triple-Lock mechanism. Since 1960, this mechanism has governed the conditions for the deployment of Irish armed forces abroad. Deployments of more than twelve soldiers require a UN Security Council mandate and the approval of Parliament (*Dáil Éireann*) and the government, which is considered a

66 Unlike the decision on arms deliveries in February 2022, Ireland and Austria agreed to this training mandate. However, Austria exercised an opt-out and ruled out the participation of Austrian soldiers on grounds of neutrality. Cf. *EU military training mission approved*, in: *Tiroler Tageszeitung*, 10 October 2022.

67 <<https://www.military.ie/en/news-and-events/news/rish-defence-forces-training-assistance-to-eu-military-assistance-mission-in-support-of-ukraine-eumam-ua-cyprus.html>> last accessed on 9 July 2025.

68 See N. O'Leary and C. Gallagher, *Ireland set to provide training for Ukraine to clear Russian landmines*, in: *Irish Times*, 17 October 2022, (www.irishtimes.ir).

central constitutional barrier to preserving Irish neutrality. Although not a legal term, the term "triple lock" describes the practical legal framework introduced by the Defense Act 1960 and modified in 1993 and 2006⁶⁹. Although originally intended to enable Ireland's participation in UN missions, the mechanism is now often seen in political debate as the essential legal safeguard of neutrality⁷⁰.

The government's current reform proposal aims to increase the number of soldiers that can be deployed without parliamentary approval from twelve to fifty, and to remove the requirement for a UN mandate from the Security Council. Instead, missions in accordance with the principles of the UN Charter would also be permitted within the framework of other organizations (OSCE, EU and NATO)⁷¹. This reform has been met with considerable criticism from opposition parties and sections of the population, who view it as a departure from historical neutrality⁷². In June 2025, around a thousand people protested against the plan in Dublin. The government, on the other hand, emphasizes that military neutrality will be maintained, while Ireland's ability to act in foreign policy will improve in a changing security environment. Notably, the influence of the veto powers of individual permanent members of the UN Security Council, particularly Russia and China, on Irish troop deployments is set to be eliminated to ensure sovereign decision-making for international peace missions⁷³.

3. Sui Generis: Malta's Neutrality in the European Context

Unlike Ireland, Malta's neutrality is enshrined in its constitution. It has been a central pillar of Maltese foreign policy since the country gained independence in 1964, especially after the 1987 constitutional amendment. Article 1, paragraph 1, no. 3 of the Maltese Constitution defines Malta as

69 See K. McDonagh, What is Ireland's "Triple Lock" and why is it in the news again?, in: www.rte.ie, 23 May 2025.

70 See C. Murphy, Ireland, the Triple Lock and Military Neutrality, in: Institute of International and European Affairs, June 2025.

71 Press release, Tánaiste secures government approval to reform the Triple Lock, <https://www.gov.ie/en/department-of-defence/press-releases/t%C3%A1naiste-secures-government-approval-to-reform-the-triple-lock/>.

72 See Neutrality: Where Ireland's political parties stand, June 2025, www.eolas.ie and N. Ní Bhriain, Saving the Triple Lock, *The Neutrality Hawks v. The Government of Ireland*, Transnational Institute, August 2024, www.tni.org.

73 See B. Andrews, Irish Neutrality in a Changing Europe, April 2022, p. 7.

a neutral state that "actively pursues peace, security and social progress among all nations by adhering to a policy of non-alignment and refusing to participate in any military alliance"⁷⁴.

Another distinctive feature is that Malta secures its commitment to neutrality through international agreements with third countries. In 1980, Malta signed bilateral treaties with Italy and the former Soviet Union which enshrined the recognition and respect of Maltese neutrality. Italy also committed itself in a treaty, binding under international law, to defend Malta militarily in the event of an attack⁷⁵. This dual anchoring in international and constitutional law distinguishes Malta's model of neutrality from that of other European neutral states. In recent decades, this has enabled Malta to safeguard its political independence and interests at the international level flexibly and, above all, actively⁷⁶.

a. The Emergence of Maltese Neutrality: Geopolitical and Economic Foundations

Even though both states gained their independence from Great Britain, Maltese neutrality differs fundamentally from that of Ireland. While Irish neutrality is often seen as an extension of the struggle for independence, Maltese neutrality is primarily the result of efforts to achieve economic independence and a departure from Malta's previous role as a military base in the Mediterranean region⁷⁷. It was established over several decades through Malta's diplomatic efforts and negotiations with various states, including

74 Constitution of Malta, Art. 1(3), 1987. Official English version (last amended in 2019). See also: International Constitutional Law Project, *Malta Constitution*, https://www.servat.unibe.ch/icl/mt00000_.html.

75 See S. Andò, op. cit., p. 87 ff.

76 See A. Khakee and V. Cassar, Maltese neutrality in a brave new world, in: Times Malta, 16 March 2025, https://www.um.edu.mt/library/oar/bitstream/123456789/134732/1/Maltese_neutrality_in_a_brave_new_world.pdf.

77 Unlike Ireland, the question of Malta's neutrality was not an issue at the London Independence Conference in 1963, and the United Kingdom was neither opposed to nor demanding of a neutralist orientation for the island state. Since Malta gained sovereignty in 1964, the United Kingdom has refrained from interfering in Malta's internal and external affairs in the spirit of non-interference. See, among other sources, the Malta Independence Act, an Act of the Parliament of Westminster, 1964, for information on the United Kingdom's position on the question of Maltese neutrality.

Italy, France, Libya and Algeria, to secure international recognition of this status⁷⁸.

Malta's neutrality is also closely linked to Italy's post-war foreign policy. Italy regarded its support for Malta⁷⁹, including financial aid and the guarantee of neutrality, as a strategic opportunity to strengthen its own position in the Mediterranean region. The Treaty of Neutrality between Malta and Italy, which recognized Malta's neutrality and included financial support, was signed on 15 September 1980. This was intended to ease the economic burden on the island state following the challenging period after independence, particularly given that a significant proportion of the population had previously been employed by the British military⁸⁰. From this perspective, Maltese neutrality is not primarily viewed in the literature as a foreign policy restriction, but rather as an investment in political stability and economic development in Malta and the Mediterranean region⁸¹.

Malta officially joined the Non-Aligned Movement in 1973. Malta's example illustrates that neutrality does not have to be based on a long historical tradition; it can also serve as a strategic instrument for preserving national independence and positioning oneself in the international system. With the constitutional amendment of 1987, Malta's neutrality was enshrined in constitutional law. This development must be understood against the backdrop of decolonization and Malta's historical affiliation with the Non-Aligned Movement during the Cold War.

78 See S. Andò, *op. cit.*, p. 77.

79 From 1979 onwards, Prime Minister Aldo Moro in particular played a key role in lobbying the United Kingdom and NATO for the closure of British military bases in Malta. See G. Hauser, *Staats- und wehrpolitische Bildung im Bundesheer, Neutralität, Vienna, 2019.*

80 See S. Andò, *op. cit.*, p. 77.

81 For Italy and the Western states, Maltese neutrality did not merely represent a "negative strategic value" in the form of a renunciation of military presence, but rather a significant geopolitical gain for the stabilization and security of the Mediterranean region. Neutrality served as an instrument for de-escalating military tensions and as a guarantor of peaceful cooperation. Through this buffer function between East and West, Malta contributed to regional stability and limited the influence of external great powers, creating added value in the region's balance of power.

b. Architecture of International and Constitutional Law: From Bilateral Treaties to Detailed Constitutional Principles

Maltese neutrality is enshrined in a complex network of constitutional and international legal instruments developed over several years, covering various political, economic and legal aspects. Its central legal basis consists of two primary bilateral agreements. The first is the Treaty between Malta and Italy of 2 August 1980, supplemented by a financial protocol formalized through an exchange of notes on 15 September 1980, which was adopted alongside the Maltese government's declaration of neutrality on 15 May 1981. This treaty guarantees Malta's neutrality under international law and designates Italy (and therefore a NATO member) as Malta's protecting power⁸².

Secondly, there is a treaty with Libya dating from 1984 which initially provided for military cooperation as well as recognizing neutrality. However, it was amended in 1989 to align with Malta's neutrality status⁸³.

Additionally, the former Soviet Union recognized Malta's neutrality in a memorandum dated October 1981. This unilateral recognition was also confirmed by other Mediterranean states, including France (1981), Tunisia (1982) and Bulgaria (1982), and was also recognized jointly in the final document of the CSCE Conference in Madrid in 1982.

The final step towards formalizing neutrality was taken in 1987 with the inclusion of a relevant clause in Article 1, paragraph 1, No. 3 of the Maltese Constitution. This constitutional anchoring represents a domestic political agreement reached as part of a political compromise between Prime Minister Dom Mintoff's Labour Party, which promoted neutrality as a means of achieving economic independence and state autonomy, and the Nationalist Party. The constitutional amendment (Amendment Act IV of January 1987) formed part of a broader reform package that, among other things, reformed and stabilized the electoral system in exchange for the enshrinement of neutrality in the constitution⁸⁴. Since then, the neutrality

82 Treaty between Malta and Italy of 2 August 1980 and exchange of notes of 15 September 1980. Malta's declaration of neutrality of 15 May 1981.

83 Treaty between Malta and Libya 1984, amended 1989; cf. Andò, S., *op.cit.*, p. 77.

84 Maltese Constitution Amendment Act IV, January 1987. See Andò, S. *op.cit.*, pp. 75-80.

clause has remained formally unchanged, even after Malta's accession to the EU⁸⁵.

Malta's neutrality is constitutionally enshrined, representing a conscious, voluntary commitment that arose from an independent foreign policy initiative, not imposed by third countries. Malta does not rely on military defense⁸⁶, but instead relies on external guarantees under international law. This distinguishes Malta from other neutral states, as its security depends on Italy's protective role as a NATO member, making its neutrality a *sui generis* model.

Through the 1987 constitutional amendment, the Republic of Malta officially declared and enshrined its neutrality and enshrined its neutrality as a central principle of its foreign policy. These norms are based on formulations from the 1980 government declaration and from previously concluded bilateral treaties, particularly with Italy. The constitution obliges Malta not to enter into military alliances and not to allow foreign military bases on its territory (Art. 1 (1) and (3)). Malta thus combines military non-alignment with an active policy of promoting peace, which has since played a key role in shaping its foreign policy, including, as will be explained in more detail below, in relation to the European Union.

No other constitution contains such a detailed and comprehensive definition of neutrality as the Maltese one. Nevertheless, legal discussions highlight ambiguities in its content and questions of interpretation, given that it is the only declaration of neutrality in the world established in peacetime that is essentially based on the concept of non-alignment, which is not clearly defined in international law⁸⁷. In one respect, the Maltese constitution is similar to the constitutional neutrality obligations of other countries such as Switzerland and Austria, in that it expressly prohibits membership of military alliances⁸⁸. Unlike other neutral constitutions, however, the

85 On constitutional amendments following EU accession, see P. G. Xuereb, *The Constitution of Malta: Reflections on New Mechanisms for Synchrony of Values in Different Levels of Governance*, in: A. Albi and S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, The Hague, 2019, p. 141 ff.

86 Nevertheless, concerns are regularly expressed about Malta's low defense budget, which leads to Malta being viewed from outside as a "free rider" in terms of security. See D. Fiott, *Being small, acting tall? Malta and European Defence*, in: D. Fiott (ed.), *The Common Security and Defence Policy: National Perspectives* Egmont Paper 79, Ghent, 2015.

87 See S. Andò, *op. cit.*, p. 79.

88 See Art. 1, para. 1 no. 3 Constitution of Malta.

Maltese constitution does not stipulate a military obligation to defend neutrality. Although this is not explicitly stated as such, it follows from the interaction of the obligations that this is a perpetual neutrality.

The constitutionally standardized neutrality obligations can be divided into three main pillars. The first pillar consists of the prohibition of foreign military bases on Maltese territory (para. 3 lit. a and b). A further prohibition relates to the presence of foreign armed forces⁸⁹. The only exceptions are in the case of an express invitation from the Maltese government or in clearly defined situations, such as self-defense or on the basis of a UN Security Council resolution. The constitution generally prohibits the permanent presence of foreign military forces and their use of military facilities, except for a small number of civilian or technical personnel for the defense of Malta⁹⁰. Another element of constitutional neutrality concerns the purely civilian use of shipyards. Maltese shipyards are intended exclusively for civilian and commercial purposes and repairs to non-combatant military vessels are permitted only to a limited extent. Military vessels belonging to the former superpowers, the USA and the Soviet Union, are excluded from this, as explicitly stated in Malta's non-alignment policy⁹¹. Through these constitutional principles, Malta explicitly focuses on non-alignment, distancing itself from major powers, while striving to play an active role in promoting peace and in the economic and political development of the Mediterranean region⁹².

Legal literature points out that these explicitly stated obligations are not exhaustive, and that the constitutional wording leaves room for interpretation. This means that Malta could be subject to further foreign policy restrictions⁹³. Notably, Malta does not explicitly prohibit the use of force in international conflicts or the transit of military personnel, deviating from other neutral states such as Switzerland or Austria. However, some international law scholars argue that such obligations can be derived from customary international law. This is a legal peculiarity of Maltese neutrality⁹⁴. Ultimately, Maltese neutrality is understood as an active peace policy that has been practiced consistently as non-alignment since the parliamentary constitutional debate in 1987.

89 See Art. I, para. 1 no. 3, lit. b. Constitution of Malta.

90 Lit. c. of Art. I, para. 3 Constitution of Malta.

91 Constitution of Malta, Art. I(1)(3), lit. e.

92 See S. Andò, *op. cit.*, p. 84.

93 See S. Andò, *op. cit.*, p. 90.

94 See S. Andò, *op. cit.*, p. 91.

This hybrid constitutional architecture has enabled Malta to adopt an active position of neutrality over the past four decades, taking into account its international obligations and affiliations and guaranteeing the preservation of its constitutional neutrality.

c. Adapting Malta's Commitment to Neutrality within the EU Framework

Maltese neutrality is central to its constitutional and foreign policy identity. This commitment has not been abandoned or fundamentally questioned during Malta's EU membership. However, the changed international situation requires the commitment to neutrality to be adjusted and specified, particularly with regard to shaping the European Union's common foreign and security policy. Although Malta joined the EU as a neutral member state in 2004 following a referendum⁹⁵, joining countries such as Ireland, Austria, Sweden and Finland, this accession sparked complex debate about the compatibility of neutrality with EU membership obligations⁹⁶. In particular, the end of Malta's membership of the Non-Alignment Movement was discussed as part of the accession process. In return, Malta issued a declaration of neutrality, stating that its involvement in the CFSP would not affect its constitutional neutrality. Nevertheless, the Maltese government

95 Accession took place following a referendum in 2003, in which 54% of the population voted in favor of EU membership. In addition to this relatively weak consensus for EU accession (in the other nine accession countries in 2004, approval was much higher), it is interesting to note that there was a very high turnout (91% of eligible voters). See M. Cini, *Malta Votes Twice for Europe: The Accession Referendum and General Election, March/April 2003*, in: *South European Society and Politics*, No. 8/2003 and *id.* *Culture, Institutions and Campaign Effects: Explaining the Outcome of Malta's EU Accession Referendum*, in: *West European Politics*, vol. 27, 2007.

96 Malta's neutrality was already an important issue during the accession negotiations. Between 1993 and 1999, the European Commission expressed concerns about the compatibility of the Maltese constitution with the EU's security policy requirements, particularly with regard to joint CFSP actions and defense cooperation. The Commission considered constitutional changes to be necessary, even though the neutrality of other EU states (Austria, Ireland, Sweden, Finland) was already established practice. Despite these challenges, EU membership led to a broader national consensus on Malta's foreign policy. Commission Opinion Malta's Application for Membership (June 1993), point 17 "Common Foreign and Security Policy", and Report Updating the Commission opinion on Malta's application for membership (1999). See M. Cini, "Malta Votes Twice for Europe", *op. cit.*

made it clear that decisions on common defense measures must be made unanimously by the European Council, in accordance with the constitutional rules of each member state⁹⁷.

As early as 2006, the Maltese government, under the leadership of Prime Minister Lawrence Gonzi, initiated a formal attempt to align Malta's foreign policy guidelines with EU membership through the publication of the document "Strategic Objectives of Malta's Foreign Policy". Building on the traditional core values of Maltese foreign policy, which include peace, stability, and the promotion of dialogue in the Mediterranean region, this document reaffirms an active policy of neutrality without explicitly addressing the concept of neutrality⁹⁸.

This strategy was also reflected in Malta's response to the Ukraine crisis. Malta is not providing military support, but is focusing on diplomatic and humanitarian contributions, in line with its constitutional neutrality. Additionally, Malta has recently positioned itself as a brake on EU sanctions against Russia, as economic interests, particularly within the shipping industry, must be considered⁹⁹. Unlike Sweden and Finland, Malta has maintained its constitutional commitment to neutrality since the start of Russia's war of aggression in Ukraine. To date, Malta is the only EU member state that has not participated in Permanent Structured Cooperation (PESCO) in the defense sector, instead pursuing a wait-and-see approach¹⁰⁰.

The debate surrounding Malta's status as a non-aligned EU member state is viewed differently in domestic politics, particularly between the Nationalist and Labour parties, but it is generally considered to be advantageous for the country. Furthermore, Malta's 2024 chairmanship of the Organization

97 See V. Cassar, *Neutral Yet Aligned? Malta's Security and Defence*, Paper Series, L'Università ta Malta, 2004, p. 8 f.

98 See M. Cini, *Malta Votes Twice for Europe: The Accession Referendum and General Election*, op. cit.

99 See Russia sanctions: Malta now also opposes planned EU energy price cap, in: <https://weltwoche.de/daily/russland-sanktionen-nun-stellt-sich-auch-malta-gegen-geplanten-energiepreisdeckel-der-eu/>.

100 See M. Costa, "Malta to 'wait and see' before deciding on PESCO defense pact," *MaltaToday*, 2017 and Malta among three countries opting out of EU's new defence agreement", *Times of Malta*, 11 December 2017, www.timesofmalta.com. This stance can be traced back to the then Prime Minister Joseph Muscat, who stated that he wanted to observe how PESCO developed and functioned in practice and what – albeit unexpected – effects it might have on Malta's neutrality. See Costa, M., Malta to 'wait and see' before deciding on PESCO defence pact, Muscat says, in: *MaltaToday*, 15 December 2017, www.maltatoday.com.

for Security and Cooperation in Europe (OSCE) is based on this unique neutral position¹⁰¹.

d. Malta's active Neutrality in the Context of the Ukraine Crisis

The idea of abandoning Maltese neutrality has not gained relevance in the context of the Ukraine crisis. Instead, the active interpretation of neutrality that has been in place since Article 1(3) of the Maltese Constitution came into force in 1987 and that enables the small state to participate internationally in a manner that exceeds its size. This differs significantly from the more restrictive perspectives on neutrality held by Switzerland and Austria, which entail political isolation or restraint. Malta, on the other hand, views neutrality as an active instrument for fostering a peaceful Mediterranean region free of military presence. This would not oblige Malta to abstain from certain conflicts, but rather would legitimize its passive participation in them¹⁰².

Notably, Malta's positive domestic law provides for an exception to the prohibition on foreign armed forces using military facilities in Article 1(3) (b)(i) of the Constitution, specifically when this is done "in execution of measures decided by the Security Council of the United Nations". As a United Nations member since 1966, Malta thus expressly fulfils its obligations under the collective security system, particularly in accordance with Chapter VII of the UN Charter regarding the use of military force. Therefore, Malta's neutrality does not justify any differentiation in its membership of collective systems; rather, it expressly includes the implementation of measures decided by the UN.

101 See F. Caffio, *Il caso della neutralità maltese*, in: *Percorsi costituzionali*, No. 3/2023, p. 203 ff. The OSCE decided to hand over the chairmanship of the 57-member international organization to Malta after Russia vetoed the chairmanship of NATO member Estonia. Malta has also developed an active role in other organizations, above all the UN (particularly with regard to the UN Security Council).

102 See S. Andò, who quotes Prime Minister Dom Mintoff on this interpretation of neutrality.

Following its active policy of neutrality¹⁰³ during the 2011 Libya crisis¹⁰⁴, Malta condemned Russia's aggression against Ukraine from the outset, calling for an end to it and supporting European unity in this conflict¹⁰⁵. Although Malta's constitution commits the country to military neutrality, it does not exclude active value orientation or participation in peace policy principles. Consistent with this active neutrality, Malta has consistently refrained from providing military support to Ukraine, but has provided humanitarian aid and non-lethal military equipment¹⁰⁶ – similar to the other two neutral EU states¹⁰⁷.

Like Ireland, Austria and Switzerland, Malta participated in the EU sanctions packages against Russia and supports Ukraine with non-lethal means through the European Peace Facility¹⁰⁸. In March 2023, Malta also signed a European Defense Agency initiative for the joint procurement of ammunition. This enables the replenishment of national stocks as well as providing military support, thus facilitating the participation of neutral states in cooperative security measures¹⁰⁹. Despite the Russian invasion, Malta remains the only EU state to refuse to join the PESCO military

103 See A. Galea, How neutral is Malta? In: *The Independent*, 24 April, 2024, www.independent.com.

104 The Libya crisis was a particularly significant test for Malta's practice of neutrality. Due to its geographical proximity and close relations with Libya, Malta took an active role at the time. Then Prime Minister Lawrence Gonzi declared that the Gaddafi regime had lost its legitimacy, while Malta acted as a neutral state but took a leading role in humanitarian aid. While Malta's contribution to UN Resolution 1973 was debated internationally, Malta played a key role in the evacuations and as a transit hub for humanitarian aid. Particularly controversial was the admission of two defected Libyan fighter pilots at Malta Airport – an event that provoked political and public reactions without undermining Malta's policy of neutrality. See V. Cassar, cit., p. 9.

105 Ministry for Foreign and European Affairs and Trade, "Malta expresses grave concern with regard to the situation in Ukraine" Press Release Reference Number PR220251, 22 February, 2022, <https://foreign.gov.mt/en/government/press>.

106 See V. Cassar, cit., p. 12.

107 See U. Haider-Quercia, Permanent neutrality in times of war: Ireland and Austria and European military support for Ukraine, in: *DPCE online*, No. 63, 2024.

108 See M. Killeen, Irish PM: Non-lethal aid to Ukraine not against military neutrality, *Euractiv*, 1 March 2022, www.euractiv.com.

109 See J.P. Cordina, J.P., Malta joins EU ammunition procurement initiative that will help replenish Ukrainian stocks, *Newsbook*, 21 March 2023. <https://newsbook.com>.

initiative, continuing to adopt a wait-and-see approach. This is despite numerous observers arguing in favor of participation¹¹⁰.

In another significant area, Malta has taken a clear stance alongside other neutral EU members, such as Austria and Ireland, by signing the Treaty on the Prohibition of Nuclear Weapons (TPNW). While NATO countries either reject the agreement or offer limited support, Malta was among the first 50 countries to ratify the TPNW, thereby reaffirming its commitment to non-proliferation and the promotion of humanitarian security initiatives¹¹¹.

Malta is also actively involved in international organizations. For example, during its two-year term on the UN Security Council from January 2023, Malta also assumed the presidency. In February 2023, Foreign Minister Ian Borg unequivocally condemned Russia's actions in Ukraine, signaling a change in Malta's foreign policy tone¹¹². Despite this evolutionary development, the Maltese government assures that it will maintain neutrality as a proven foreign policy principle while adapting to changing security conditions¹¹³.

Furthermore, Malta advocates a proactive role for the European Union in security and defense matters, particularly with regard to the implementation of the Strategic Compass initiative adopted by the European Council in 2022. Malta emphasizes the importance of regional specificities, highlighting the Mediterranean region as a strategic priority. The country also acknowledges the United Nations' pivotal role in establishing a rules-based international order¹¹⁴.

110 See K. Sansone, Safeguarding neutrality and indifference: the decision to opt out of EU military cooperation, *Malta Today*, 3 March 2023, www.maltatoday.com.

111 See O. Meier and M. Vieluf, "From Division to Constructive Engagement: Europe and the TPNW" *Arms Control Today* Vol. 51, No.10. 2021, pp. 6-11 and C. Cutajar, "Neutrality as a key to promote peace, security and dialogue" *The Malta Independent*, 21 November 2021, <https://www.independent.com>.

112 The minister himself admitted: "Our foreign policy has changed significantly over the last year [...] Perhaps it has changed without us even noticing." Borg, B., Malta is speaking up about the Ukraine war. Is its foreign policy changing? in: *Times of Malta*, 28 February 2023, www.timesofmalta.com.

113 See B. Borg, Malta draws praise from Ukraine, condemnation from Russia at UN Security Council" *Times of Malta*, 28 February 2023. www.timesofmalta.com.

114 See V. Cassar, *op. cit.* p. 15.

e. Current Discussions on the Reorientation of Maltese Neutrality

Abandoning Maltese neutrality remains out of the question. Despite the occasional discussion on the issue, neutrality remains a fundamental and binding principle of Maltese identity and foreign policy, and the Ukraine crisis does not appear to have changed this. In fact, it has reinforced awareness that the formulation of neutrality in the 1987 Constitution, influenced by the situation of the two blocs during the Cold War, requires positive legal adjustment to the new global political situation and EU membership.

Similar to Ireland, where the government is seeking dialogue with civil society on the issue of neutrality, Malta is also experiencing an intense domestic political debate on the significance and future shape of neutrality against the backdrop of the war in Ukraine. There is a clear tension between public opinion and academic discourse¹¹⁵. While the majority of the Maltese population remains committed to neutrality¹¹⁶, a significant proportion supports the governments and EU's reactions to the Russian invasion of Ukraine¹¹⁷.

Malta's challenges in balancing strategic cooperation with international partners and upholding its constitutionally guaranteed policy of neutrality were particularly evident in 2020, during the controversial debate surrounding a planned Status of Forces Agreement (SOFA) with the United States. The agreement was intended to regulate the legal basis for the presence and actions of US military personnel on Maltese territory. The key issue was jurisdiction over criminal offences involving US military personnel: the SOFA stipulated that such cases should primarily be dealt with

115 See E. Zammit Lewis, Should we rewrite our constitutional neutrality?, in: Times of Malta, 6 April 2025, <https://timesofmalta.com>, I. Martin, "Time to consider rewriting Malta's neutrality – Evarist Bartolo" Times of Malta, 8 June 2022, www.timesofmalta.com; H. Briffa, Neutrality and Small States, in: P. Lottaz, H. Gartner, H.R. Reginbogin (eds.), *Neutral Beyond the Cold. Neutral States and Post-Cold War International System*, 2022, London, p. 46 ff. and Id. Maltese Neutrality: A Live Debate, 3 August 2023, in: <https://neutralitystudies.com/2023/08/maltese-neutrality-a-live-debate/>.

116 62.2% of the population states that neutrality is a very important part of Malta's politics, reputation and work in world politics. Cf. I. Martin, I. (2022) "Two in three Maltese strongly support neutrality – survey" Times of Malta, 9 February 2022, www.timesofmalta.com.

117 See Standard Eurobarometer 98, Malta National Report, March 2023. https://malta.representation.ec.europa.eu/news/standard-eurobarometer-98-national-report-2023-03-20_en.

by US courts. The proposal was met with widespread skepticism nationally as people feared that the agreement could undermine Malta's neutrality and sovereignty. The Maltese government proposed a watered-down version, but this was rejected by the US. The former president of Malta also publicly opposed the SOFA, arguing that it would pave the way for further military agreements. Due to this opposition, the agreement was ultimately suspended at the end of 2020. The Maltese government repeatedly emphasized the importance of Malta's constitutional neutrality and sovereignty as guiding principles for foreign and security policy decisions¹¹⁸.

At the same time, there is a growing recognition in academic and political circles that neutrality needs updating in light of the changed security situation. However, there is no questioning of its fundamental preservation, nor is NATO membership being considered¹¹⁹. In February 2022, as part of these debates, the Maltese Ministry of Foreign and European Affairs published a new foreign policy strategy. This strategy sets out guiding principles and strategic objectives for Malta's foreign policy, including protecting the values, well-being and prosperity of the Maltese people, and promoting peace, security and international influence. The strategy emphasizes neutrality as a central element, clarifying that it underlines Malta's active role in promoting peace in the region and beyond¹²⁰.

Another focus of domestic political debate is Malta's participation in NATO's Partnership for Peace program (PfP). Malta's PfP involvement began in the 1990s, was suspended in 1996 and resumed in 2008. This reflects differing views on neutrality within Maltese politics. While the Nationalist Party government viewed PfP participation as integration into the international security architecture and an opportunity for military modernization, the opposition Labour Party criticized close ties to military alliances as unconstitutional¹²¹. The government justified the resumption of PfP membership on the grounds that it would not undermine Malta's neutrality, but

118 See H. Briffa, *Maltese Neutrality: A Live Debate*, op. cit.

119 See H. Briffa, H., *Neutrality and Shelter Seeking: The Case of Malta*, in: Brady, A.M., Thorhallsson, B. (eds.), *Small States and the New Security Environment*, 2021, Switzerland, p. 135.

120 Malta's neutrality does not mean indifference to events in its surroundings. It ensures Malta's effectiveness and credibility and enables it to play a significant role in actively promoting peace and security. Ministry for Foreign and European Affairs and Trade, "Malta's Foreign Policy Strategy" February 2022.

121 See V. Cassar, cit., p. 18.

rather promote dialogue on foreign and defense policy within the EU¹²². However, there was no parliamentary debate at the time, which led to criticism¹²³. Since 2008, Malta has officially participated in NATO's PfP again, using this forum to promote capacity building and cooperation with NATO partners based on its constitutional neutrality and the protection guarantees of the EU Treaty¹²⁴. In May 2023, the government began negotiations on extending the partnership programme. Foreign Minister Ian Borg emphasized the prioritization of non-military areas of cooperation, such as cybersecurity and civil protection. The parliamentary debate on this issue was unanimous, reflecting a broad political consensus on the interpretation of Malta's neutrality and the use of the PfP¹²⁵.

4. Outlook: The Future of Europeanized Neutrality in Ireland and Malta

Ireland and Malta's neutrality is recognized within the EU as an integral part of the member states' diverse security policy traditions. It has undergone its first effective test within the EU treaty framework as a result of the war in Ukraine. The war in Ukraine has demonstrated that there can be different levels of European solidarity within the European legal framework. Neutral states can make use opt-out provisions under Articles 42 and 47 TEU in the context of the Common Foreign and Security Policy, while engaging at European level in a manner consistent with their foreign and security policy traditions.

The outbreak of the war in Ukraine has significantly influenced the debate on neutrality in small, neutral EU member states such as Ireland and Malta. At the same time, it has raised awareness of the importance of

122 See M. Xuereb, Membership 'will not impinge on neutrality', Times of Malta, 22 March 2008, www.timesofmalta.com.

123 See Times of Malta (2008b) "Partnership for peace: A bolt from the blue" Times of Malta 27 March 2008, www.timesofmalta.com.

124 See H. Briffa, Neutrality and Shelter Seeking: The Case of Malta, op. cit., p. 135 ff.

125 It can be observed that, after 30 years of EU membership as a neutral state, the decades-long debate between Malta's two dominant parties now seems to have been overcome. The Nationalist Party has promoted this as part of its program and election campaigns since the 1990s, whereas the Labour Party has considered it absolutely out of the question, partly because of the constitutional obligation of neutrality, which would be violated by EU accession. Neutrality was an important argument for opponents of the EU as well as for EU institutions, which believed that Malta still had improvements to make before it could become a member of the EU. See Andò, cit., p. 59.

neutrality and highlighted the need to redefine the principle in line with contemporary circumstances. Both countries are integrated into the European security structure. However, unlike other former neutral states, they show no willingness to participate more intensively in the EU's or NATO's defense integration or to abandon their neutral positions enshrined in EU law. A change in their neutral position would only be possible through a constitutional referendum in both states. However, it should be noted that a broad social debate on the significance of neutrality is taking place in both countries. In Ireland, in particular, social attitudes diverge from the government's foreign policy. Overall, neutrality is widely accepted by society, but this acceptance is conditional upon a constitutional redefinition in the context of EU membership and changing international law.

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