

CHAPTER I

HISTORICAL EXPERIENCE WITH NEUTRALISATION

Neutralisation, as distinguished from neutralism and neutrality, is a conferring of a permanent status of neutrality by agreement with other states. It is normally normally done so by a treaty under ^{the} terms of which the independence and territory of a neutralised state are permanently guaranteed by one or more states, in return for an undertaking on the part of the neutralised state to abstain from participating in wars, or in alliances or other commitments that might lead to war.

The Kuala Lumpur Declaration is only the preliminary step in the neutralising of South East Asia. Since the initiative to neutralise the region has not come from the Big Powers but from the South East Asian states themselves, it may appear to depart from the normal concept of neutralisation. This bid in "self-neutralisation" has no historical precedent except possibly the unilateral declaration of neutralisation by Austria, which will be discussed later. But the international community does not regard a unilateral act as law unless it is accompanied by some form of international recognition. In this respect, it will be seen that the difference between "imposed" neutralisation" and

"self-neutralisation" in international law is only in the initiating stages. The substance of a neutralisation understanding that makes it law in the international community should be similar in both cases.

The principal examples of permanent neutrality are Switzerland, Belgium, Luxembourg, Austria and Laos.

(a) Switzerland

Switzerland has the longest record of neutrality which began as early as 1536. Being a loose confederation of cantons she has been subjected to entanglement in the recurring wars that were characteristic of the European balance of power system at that time.

It was not until the Act of Paris of November 20, 1815 that the status of permanent neutrality in the contemporary sense was conferred to her. In it Austria, France, Great Britain, Prussia and Russia declared "their formal" and authentic acknowledgement of the perpetual neutrality of Switzerland, and they guarantee that to that country the integrity and inviolability of its territory. It should be noted that neutrality had already been prevailing in Switzerland's dealing with other states at that time. Therefore the Act of Paris was simply a formalisation or recognition of the Swiss policy, by the great powers.

A clearer understanding of Swiss neutrality can be achieved by examining the official interpretation of neutrality as adopted

by the Political Department of the Swiss Government 1954.¹

A summary of the above shows that the Swiss consider three principal obligations on their part as the main characteristics of their neutrality.

- (i) to abstain from starting a war
- (ii) to defend its neutrality
- (iii) and to avoid policies and actions that might on some future occasion involve it in hostilities.

This means that Switzerland does not enter into any military alliances with other states even defensive alliances, treaties of guarantee and collective security arrangements. But they retain the right to have other treaties which are for humanitarian and non-political purposes.

It is difficult to reconcile the above obligations with the fact that Switzerland is also a member of various international organisations which are predominantly political in nature. Membership of such organisations must surely include representatives of rival political groupings which might be parties to possible conflicts. In an era of international interaction, when an abstention can be construed as something else, it is a marvel that Switzerland has managed to continue her participation in these

¹ Conceptions officielle, suisse de la neutralite, Schweizerisches Jahrbuch fur Internationales Recht, XIV (1957), 195-199.

organisations without incurring the wrath of the conflicting states. She has however, refrained from being a member of the United Nations for fear that its Charter may require her to take up arms against another state. It is submitted that even this problem of the United Nations membership for neutralised states can be overcome, and will be discussed later.

The report also stressed that the obligations of a neutralised state should be narrowly interpreted in order to strengthen the confidence of belligerents in the institution of neutrality.

(b) Belgium

A treaty guaranteeing the perpetual neutrality of Belgium was drafted in 1831 by a conference of the same five powers that guaranteed Swiss neutrality. But it was not until 1839 that the treaty was concluded. This was due to the intransigence of the Dutch. Belgian neutrality went through a rough period during the time of Napoleon III of France and Bismark of Germany, when the two powers negotiated among themselves to have Belgium annexed by France in compensation for the unification of Germany. This forced the Belgians to conclude a separate agreement with Britain and France in anticipation of a German attack due to the breakdown of Germany-France talks for the earlier scheme. In 1914 when the Germans finally invaded Belgium, Britain and France came to Belgium's defense.

Belgium's neutrality was one of necessity in view of the struggle for territorial expansion by the great European powers. Here, neutralisation was employed as a means to terminate competitive intervention. The powers saw it necessary to neutralise the state and imposed upon it restraints and limitations as a condition to its independence.

The Belgians however, had always regarded this imposed neutralised state as an unjustified limitation of its sovereignty and when the chance came to free itself from these state of affairs, it did not hesitate to do so. Under the Treaty of Versailles which ended World War I, the Germans abrogated the treaty of 1839 and the neutralisation of Belgium was terminated.²

(c) Luxembourg

The 1867 treaty neutralizing Luxembourg signed by the same guarantors of Belgium neutrality differs from the Belgium Treaty in that apart from being neutralised, Luxembourg was also demilitarized. There was also disagreement over the obligations of the guarantor states. The British regarded their obligation as collective and therefore they were not individually responsible for the defense of Luxembourg's neutrality. The others thought otherwise. However, the issue was never resolved.

2 Alexander Fuehr, The Neutrality of Belgium (New York 1915)

It is also of interest to note that during the German occupation of Luxembourg in World War II, the Germans respected this neutrality and thereupon did not interfere in the affairs of the civilian government. Because of this, the Luxembourg government did not consider its neutralisation had been violated by the occupation. Thus when the Treaty of Versailles provide that the 1867 Treaty be abrogated, Luxembourg did not recognise it and continued its neutral posture in European politics.

But after the second German invasion of World War II, Luxembourg finally abandoned its policy of neutrality and appropriately amended its constitution to that effect.

(d) Austria

At the end of World War II, Austria was occupied by the United States, France, Britain and the Union Soviet Socialist Republic. Anxious to end this four-power occupation without upsetting the existing balance of power in central Europe, Russia raised the possibility a neutralised Austria as a basis for giving the country its independence. The other three powers, however, were against any kind of a formal neutralisation agreement on the model of Belgium or Luxembourg.

U.S.S.R. and Austria undertook to negotiate the issue on a bilateral basis. The result was the Moscow Memorandum of April 15, 1955. In this agreement Austria obliged -

- (1) to practise permanent neutrality of the type maintained by Switzerland.

- (ii) to obtain from the Austrian Parliament a commitment to this end.
- (iii) to take appropriate measures to obtain international recognition of this neutral status and
- (iv) to request and accept a guarantee by the four powers of the inviolability and integrity of the territory of the Austrian state.³

The Soviet Union, on its part agreed to recognise the declaration of neutrality and to participate in a four power guarantee of Austrian territory.

Consequently, the Austrian Parliament enacted a Constitutional Federal Statute in which "Austria, of its own free will, declares herewith its permanent neutrality and will never in the future accede to any military alliances nor permit the establishment of military bases of foreign states on its territory".

Austrian neutrality differs from that of Switzerland in that there was no formal treaty of guarantee by the major powers and other states, except U.S.S.R. But there was recognition by the international community of this self-declared status of Austria, with the formal recognition by the states concerned of the

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Josef L. Kunz, "Austria's Permanent Neutrality", American Journal of International Law, 1956, 418-425.

Constitutional Federal Statute of Austria which contains the declaration.

(e) Laos

The Declaration of the Neutrality of Laos was signed in 1962 by Burma, Cambodia, Canada, the People's Republic of China, the Democratic Republic of Vietnam, France, India, Poland, the Republic of Vietnam, Thailand, U.S.S.R., Great Britain and the United States. This declaration of neutralisation was proposed as a compromise solution to a complex international dispute. The guarantor states were all more or less involved in the internal affairs of Laos.

A prominent characteristic of the neutralisation of Laos was the role the International Commission for Supervision and Control of Laos, established under the Geneva Agreement of 1954. This commission was assigned to enforce this neutralisation agreement. It was obvious that the Commission was an instrument of the guarantor states; it serves as an extension of their collective authority within the territory of the neutralised state. Although the Commission has not been effective in controlling repeated interventions by several of the guarantor states, it does represent an important precedent in establishing the principle that guarantor states may set up a sizable and durable instrument to ensure the maintenance of a treaty of neutralisation.⁴

4 George Modelski, International Conference on the Settlement of the Laotian Question, 1961-62 (Canberra 1962).

There are of course other cases of neutralisation of states but these are of such a special and limited character that they do not constitute substantial precedents in the historical record.