

INTRODUCTION

NEUTRALISATION AS A LEGAL CONCEPT IN THE INTERNATIONAL SYSTEM

Definition of Neutralisation

A neutralised state has often been defined as one whose political independence and territorial integrity are guaranteed permanently by a collective agreement of great powers, subject to the conditions that the neutralised state will not take up arms against another state, except to defend itself, and will not assume treaty obligations which may compromise its neutralized status.¹

However, historical experience has shown that neutralisation is an extremely flexible concept and has therefore assumed in the past and may take in the future, many diverse forms which the above definition does not fit. A more general definition to cover all cases must necessarily be abstract: Neutralisation is a special international status designed to restrict the intrusion of specified state actions in a specified area.

¹ Black, Falk, Knorr, Young, Neutralisation and World Politics
- Princeton University Press, 1968, pp. xi.

Characteristics of Neutralisation

Permanent neutrality, which is essentially the effect of neutralisation, is a special international status which normally is brought about by international agreement between the state-to-be-neutralised and either a group of great powers or a group of small as well as great powers. There is no legal reason, of course, why a small state should not be neutralised by agreement with neighbouring small powers.

A state may also neutralise itself by means of a unilateral declaration, an act which acquires international status as soon as it is recognised by other states. It is primarily this aspect of neutralisation that this paper is concerned about. The only slight variation would be that in the context of South-East Asian neutrality it is not just one small state wanting to be neutralised alone but rather a group of small states in the same region consenting to be neutralised under one agreement, the effect of which the whole region is simultaneously neutralised. This multiple-neutralisation has not historical precedent and its viability as a legal concept cannot possibly be assessed without touching on policy considerations and acknowledging the realities of current South East Asian politics and world order.

An international neutralisation agreement specifies a set of reciprocal obligations of the kind mentioned above and usually makes varying provisions for its enforcement. The normal enforcement provision is a guarantee by the other signatory powers to assist the neutralised state in the maintenance of its status and

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particularly to come to its aid and when this status has been violated by deliberate aggressions. In principle such a guarantee can impose three kinds of responsibility on the guarantor states: first, collective; second, individual; and third, both collective and individual. The last kind is called the joint-and-several guarantee. A neutralisation agreement may also create instruments for assisting in its enforcement for example, machinery for verifying the observation of treaty provisions.

Neutralism

Neutralism and neutralisation are quite different phenomena. Countries such as Yugoslavia, the United Arab Republic, India and Burma, which have from time to time defined themselves a neutralist posture, meant to do no more than dissociate themselves for various reasons, from the worldwide struggle for influence between the Communist powers on the one hand, and the United States and its allies on the other.² Indeed, most neutralist states condemned this struggle. But they wanted to be nonaligned only with reference to this East-West antagonism. They did not want to become neutralised, even in the sense of self-neutralisation and accept the obligations that neutralisation imposes.

2 of Peter Lyon, Neutralism (Leicester, 1965), Chapters I and II.

Neutrality

Neutralisation also differs from enutrality. Neutrality is similar to neutralism in that it describes the posture of a state vis-a-vis a conflict - usually a military conflict - between other states. It is a policy of non-participation in ongoing wars. It is not like neutralisation, concerned with preventing, moderating, or terminating interstate coercion. Unlike neutralism, however neutrality is a legal status as well as a diplomatic or political posture. It may be said, of course, that neutralisation means permanent neutrality, rather than neutrality only in time of formal hostilities.

Functions of Neutralisation

It is useful at the outset to summarise the primary functions of neutralisation as they relate to different kinds of states according to their roles in neutralisation.

From the viewpoint of all states involved, neutralisation may serve to stabilise an unstable international situation or prevent the status quo in an area from becoming seriously disturbed, if not upset, by means of coercion. The function of neutralisation is, then, one of bolstering international order, of regulating interstate coercion, of leaving the settlement of international disputes concerned with the neutralised state to the play of accepted international norms and institutions and to diplomacy.

From the viewpoint of the guarantor states with a strong and competitive interest in the status of the neutralised area.

neutralisation may restrain or stop them from engaging in military actions which are costly in various ways, above all, those which threaten to escalate into a major and dangerous war between themselves.

Also from the viewpoint of the great powers, or from that of neighbouring states, neutralisation may help prevent the international balance of power from becoming upset to their disadvantage.

General Problems of Neutralisation

It is obvious that neutralisation is only one of many techniques of statecraft for regulating interstate coercion and supporting or restoring international order. The pre-requisites for its utility - that is, for its establishment and maintenance - are largely peculiar to its characteristics. As a means of preserving international peace and tranquility, or of terminating or moderating international conflicts, it is, therefore, more practicable in some situation than in others. Part II of this paper will be devoted to a detailed analysis of these problems in relation to South East Asian neutrality.

However, it is necessary to summarise these problems at this juncture in order to visualise the effectiveness of neutralisation as a contemporary technique of statecraft.

Neutralisation raises problems of maintenance and enforcement, if the neutralised state has an efficient government and

a politically cohesive populations, it may be vulnerable to arm attack by stronger states, but is invulnerable to indirect forms of coercive intervention. Violations of its neutral status by direct military attack is highly visible. The likelihood of such violations hinges on the reprisals which the violating states expect to incur. When a neutralised state is vulnerable to other forms of interventionist coercion, and perhaps already subject to such intervention, redoubtable problems of control and enforcement are apt to arise. Their nature and severity depend upon the character of the neutralised area, upon the access and resources available to actual or potential intervening powers, and upon the political states which led, or might lead, to unilateral or competitive intervention in its internal affairs. In order to cope with the difficulties of preventing, terminating, or at least moderating such intervention, neutralisation agreements may specify appropriate organs to undertake supervision and control.

Then there is the problem of negotiations. One peculiarity of neutralisation is simply that it must be negotiated by governments at least some of which are competing for influence in the area under consideration. This always so when neutralisation is a meliorative rather than preventive measure, when it is a question of terminating and dampening interstate coercion rather than avoiding such entanglement. Neutralisation can come about only if the interests of the states concerned are sufficiently convergent and only if the interests engaged are not just those

directly at stake in connection with the area to be neutralised. For the great powers, these interests derive also from the overall global relationship between them and from their governments' expectations of how the acceptance of neutralisation may be interpreted by other governments as an index of their states' position and power.

Neutralisation and the United Nations and Regional Organisations.

Neutralisation must also be considered in relation to the peace keeping functions of the United Nations and regional organisations. If the United Nations were fully effective in enforcing its Charter and if it defined peace keeping more clearly with reference to what has been called in the United Nations circles 'indirect aggression' as well as in regard to direct aggression, the need for neutralisation would disappear. Since these shortcomings have not yet been overcome, neutralisation can be regarded as an instrument complementary to the activities of the United Nations, supporting its mission it is certainly conceivable that the United Nations, in turn, might support measures of neutralisation in connection, for example, with negotiation, supervision, control, and enforcement. On the other hand, there is the question of whether or not the rules of conduct imposed upon the neutralised state are compatible with the responsibilities of United Nations membership implied in the collective security provisions of the Charter. Membership in regional security organisations may pose similar questions.