

## THE MEANING OF NEUTRALITY IN PEACETIME

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In recent years, governments of various countries have aimed at the establishment of a legal status of their "neutrality" in the case of a war, but, chiefly in a time of peace. In the case of two States, viz., Austria<sup>1</sup> and Laos<sup>2</sup>, such a neutrality has already been laid down in international instruments. The question may therefore be asked, what can be the significance in international law of such a duty to neutrality in peacetime, and whether in general it is now legally possible to establish such a neutrality in peacetime, as an institution of international law.

The fact that in traditional international law neutrality is linked with war, and that rights and duties of neutral states in time of war are governed in detail by numerous legal rules of international law, may be the reason why lawyers seldom take the trouble to examine the intrinsic meaning of the word "neutrality". Equally unsatisfactorily has political science dealt with the meaning of "non-alignment". On closer examination, one discovers that the word "neutrality" is not absolutely unequivocal.<sup>3</sup> Firstly, we associate with it the idea that when individuals or groups with colliding interests oppose each other and seek to realize their interests by armed conflict those individuals, groups, or States which do not *support* one of the opponents in the conflict are called "neutrals".

But already the question, when does non-neutral (unilateral) support arise is not quite definite. One can hold the view that the

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<sup>1</sup> By a constitutional enactment dated 26.10.1955, Austria declared her permanent neutrality and communicated the text of this Act to most of the other states. The other states, through diplomatic notes, have either expressly recognized the Austrian neutrality or taken note of the Austrian communication.

<sup>2</sup> By the Geneva Conference Laotian neutrality has been made the subject of an international treaty in the form of a declaration dated 23.7.62.

<sup>3</sup> Modelski is correct, *vide. International Conference on the Settlement of the Laotian question 1961-62, Canberra 1962, p. 25*. The "decision" of the 7th Congress of the International Association of Democratic Lawyers (*Aspects juridiques de la neutralité, Brussels, 1961*) cannot be regarded as the valid expression of a generally accepted view of international law on the content of peacetime neutrality.

neutral has to abstain from any action by which one or other of the conflicting parties would be favoured; by way of example, it must deliver supplies to neither of the conflicting parties, if the delivery would influence the outcome of the struggle. But if the neutral has already delivered specific supplies before the outbreak of hostilities to only one of the adversaries (perhaps because the other had bought the supplies in question from another place), it may be argued equally well that it favours one party when the neutral after the outbreak of hostilities ceases to make customary delivery. According to this interpretation, the actual status *quo ante bellum* must be maintained by the neutral.<sup>4</sup>

According to another view, it is fundamentally compatible with neutrality for the neutral to maintain or enter into trade and other relations with the disputing parties; it need only manifest its neutrality so that when these relations affect the strength of both adversaries the support be *equal*.<sup>5</sup> This requirement of equal treatment of the parties in dispute by the neutral causes new difficulties: does "equal" mean for example, that the supplies to each of the states at war must be absolutely identical in quantity? Or, that the supplies to allies are always to be reckoned together? A further question is whether a state, which wishes to be neutral, accords equal treatment to belligerent states when it gives its citizens an opportunity to deliver supplies to one or other, or to both of the belligerent parties; or whether equality of treatment of belligerents by the neutral state requires that the state must exercise care that its citizens supply all belligerent states equally.

Some authors contend that the neutral must either not support the combattants or else do so equally, although it is not forbidden to hold or to express an opinion with regard to the legal or moral justification of one or the other cause. According to this conception the neutral state does not violate its neutrality if it makes up its mind, in an impartial manner, for example whether the war was rightly or wrongly begun by one of the belligerents. Others believe that neutrality also includes the obligation not to express oneself on the divergent claims of the belligerents; for them neutrality comprises

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<sup>4</sup> That any later change in the regulations which a state has drawn up for the defence of its neutrality is *prima facie* suspect as aiding and abetting one of the belligerents is obviously the intent of art. 13 of the Hague Convention of 1907; vide penultimate paragraph of the preamble.

<sup>5</sup> Art. 9 of the Hague Convention (No. V), 1907 decided that the restriction on economic relations of a neutral state with belligerent states "*devraient être uniformément appliquées*". The preamble of the Convention (No. XIII) speaks of "impartial" application of regulations published by a neutral state.

the attitude of refraining from taking sides.<sup>6</sup> Occasionally, one even encounters the view that it is part of neutrality for the neutral to say nothing concerning alleged violations of the rules of warfare by a belligerent.<sup>7</sup>

As for the rights and obligations of neutral states in time of war, positive international law has sometimes decided in favour of one or the other of the possible interpretations of neutrality outlined above. Any direct supply of arms on the part of a neutral government to a belligerent state is forbidden, and this holds good even if the neutral state before the beginning of the war was regularly supplying arms to one or other of the belligerent states. On the other hand, there is no fundamental objection to the supply, for example, of foodstuffs by a neutral government, but this may certainly not be done with the intention of supporting one belligerent unilaterally. Positive law does not consider it to be a violation of neutrality in time of war, if a state refuses to break off close economic ties of its citizens, which existed before the outbreak of hostilities, with citizens of one of the belligerents because its economy is dependent on trade with that belligerent.<sup>8</sup>

But what does neutrality mean in international law when there is absolutely no state of war? In connexion with the so-called *permanent* neutrality of several European states, the question has already been raised whether the obligation contained in permanent neutrality, not to begin a war and on the outbreak of a war between other states, to remain neutral, does not produce certain anticipatory legal effects in time of peace. It has been held as inconsistent with the permanent neutrality of a state that during peacetime it concludes treaties of alliance with another state, or that it supports another

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<sup>6</sup> If a neutral state is obliged not to make, through members of its government, such statements on the justification in international law or in ethics of a point of view of the belligerents, which represent moral support for one of the parties to the conflict, this does not include the obligation to prevent expressions by its citizens especially in its press, which side morally with one or other of the belligerent states. During the 2nd World War Switzerland in particular rejected such an obligation of "ideological neutrality".

<sup>7</sup> There is also the related question of whether a neutral state which is a party to the Geneva Conventions of 1949 has the right to punish for breach of the Convention a subject of a belligerent state, when the alleged violator of the Convention is arrested on the territory of the neutral state. The right of a "non-affected" state to punish for violations of the Convention is a controversial question.

<sup>8</sup> However, not all the controversial questions on the obligations of neutrality are answered by the Hague Conventions (Nos. V and XIII) of 1907; these Conventions are themselves in part not clear.

state in its war preparations, even if war has not yet been declared and it is still not certain who the aggressor will be. There has also been a tendency to deduce from the obligation of permanent neutrality that the state, permanently neutralized, ought not to be allowed to enter, in peacetime, into close relationships with other states, which could not be dissolved in case of war without jeopardizing the existence of the neutral state; this is still the explanation to-day of Swiss and Austrian hesitation to join the European Supernational Communities.<sup>9</sup> On the one hand, governments of permanently neutral states have frequently been appointed as arbitrators or mediators for settling disputes between other states in order to prevent a war, provided always that both disputing parties agreed thereto. On the other hand, when this was not the case, governments of permanent neutral states have been very reluctant to express their opinion as to the merits of the dispute.

A peacetime declaration by a state against its participation in war under similar reserves to a permanent neutral state only has real meaning in international law if the latter sanctions war under circumstances other than those reserves. But, in modern international law, no state is permitted to initiate war under any conditions. Such an undertaking by a permanent neutral state, or any other, has become superfluous since this obligation already exists under the law of nations. The position of the permanent neutral state in modern international law is further confused by its membership obligations to the United Nations and similar organizations to co-operate in the imposition of sanctions upon a delinquent state pursuing a policy contrary to the Charter of the organization.<sup>10</sup> One may even ask whether membership itself is compatible with its neutral status, since it is thereby called upon to take sides on a controversial issue, either by voting or by abstaining from casting its ballot.

The obligation to participate in sanctions within the scope of a world organization may not only hamper the permanent neutrality of a state but may produce as well similar anticipatory effects as permanent neutrality did in classical international law. When belligerent activity is permitted in the exercise of the right of collective security it seems at first sight permissible for several member states of the UN, before it comes to a war, to join in a defence alliance for the eventuality of an attack by a third state. But within the organization

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<sup>9</sup> Vide Haug, *Neutralität und Volkergemeinschaft*, Zurich 1962, p. 145 et seq.; Baltl, *Probleme der Neutralität*, Graz 1962, p. 39 et seq.

<sup>10</sup> The participation of Switzerland in the sanctions of the League of Nations was the subject of resolutions of the Council dated 13.12.1920 and 14.5.1938.

of the UN, it can be said of no state that it would in future be an aggressor, or be the victim of an aggression. The obvious question is whether it is compatible with the obligations under the Charter for a state — merely for the purpose of defence against third states — to bind itself so closely to another state that it is no longer practicable for it to participate in sanctions if that very ally would itself in future attack a third state.

It is undeniable that military defence alliances (which today repeatedly lead to a more or less close “integration” between the allied states) certainly impair the capability of the individual state to participate in collective sanctions of the UN against one of its allies. At the same time these alliances not only reduce the possibility of wars between the allies themselves, but also promote world peace in that they exercise a deterrent effect against a potential outside aggressor. Inversely, there may be circumstances where the certainty that a particular state would remain neutral in war diminishes the danger of war between certain other states. In practice, the UN has on the one hand, considered separate defence alliances against a possible aggressor, in particular those in the form of regional organizations, as not generally incompatible with the Charter;<sup>11</sup> moreover, it has also regarded the permanent neutrality of a state, for example of Austria or Laos, as not, ab initio, incompatible with membership in the UN.<sup>12</sup> However time and again alliances, declared by the allied states themselves as genuine defence alliances, are criticized by others as being contrary to the Charter. Neither do the wishes of individual states to declare themselves permanently neutral always meet with the approval of other states; on the contrary some powers try to entice other states into economic and other ties which are so close that in the event of war the other states could hardly be neutral even if they wished to be.

In view of this one might suppose that the United Nations has to decide whether a specific defence alliance or the permanent neutrality of a specific state is advantageous or harmful to world peace, and consequently compatible or incompatible with the Charter. But apart from the fact that the Charter provides for no competent organ for such decisions, it is an illusion to believe that at this moment the members of the UN would be prepared to give objectively and without political motive a decision on such a question.

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<sup>11</sup> *Vide* Art. 52 of the UN Charter.

<sup>12</sup> On this point see Verdross in: *Symbolae Verzijl*, The Hague (1958), p. 410 et seq; Haug, *op. cit.* p 59 et seq. The compatibility of the permanent neutrality of Austria etc. with the Charter is usually justified by saying that the Security Council is not bound to impose participation in military measures against a state which is declared to have committed a breach of the peace on *all* states.

Consequently, in order for a declaration of neutrality to have any practical effect, whether made during time of war or peace, it must coincide with the interests of the great powers. Notwithstanding this happy coincidence, the neutral state must be wary of attracting accusations of compromise with its neutral status. It must be emphasized that mere words in the form of a declaration of neutrality convey no clear scope of the obligations thereby undertaken. For purposes of clarification, it would be advisable to draw up a list of those acts deemed by international law to be inconsistent with the status of a neutral state in peacetime, which list would be evidenced by an instrument recognized as expressing international law.<sup>13</sup>

Among such acts, it is submitted that one would most certainly find the following: the conclusion of treaties of alliance, the admission of foreign troops on the territory of a state,<sup>14</sup> and the acquisition of war materials, which either place the buyer in a position of dependence upon the seller or which, on the contrary, represent an incitement to aggression by a third state.<sup>15</sup> The ultimate act constituting a violation of neutrality of course would be the loss of independence in peacetime by merger with another state.

It thus follows that one of the principal duties of a neutral state is to maintain the integrity of its entire territory without indulging in cessions of its territory to other states, particularly when the ceded portion is of strategic importance. This duty may conflict with the acknowledged right of the majority of the inhabitants of a state to determine its own destiny. Here one faces the basic problem which remains unresolved even in the UN Charter — whether in certain cases, it is in the interest of peace that self-determination be denied to a people.

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<sup>13</sup> The declaration of the Government of Laos dated 9.7.1962 terms entry into military alliances absolutely inadmissible; similarly, any other treaty with a third state, "which is inconsistent with the neutrality of the Kingdom of Laos" ought to be inadmissible. This latter regulation is, in the writer's view, too vague.

<sup>14</sup> *Vide* Nos. 4 and 6 of the Laos declaration of 9.7.1962.

<sup>15</sup> *Vide* art. 6 of the supplementary protocol on the declaration of neutrality of Laos: "The introduction into Laos of armaments, munitions and war material generally, except such quantities of conventional armaments as the Royal government of Laos may consider necessary for the national defence of Laos, is prohibited."

<sup>16</sup> *Vide* No. 2 of the Laos declaration: "It is the will of the Laotian people to protect and ensure respect for the sovereignty, independence, neutrality, unity and territorial integrity of Laos". The maintenance of the independence of Austria is the subject of an obligation of that state by art. 4 of the peace treaty of 15.5.1955, but it is independent of the maintenance of its neutrality.

The biggest difficulties arise when one asks whether a state, which is neutral in time of peace, should also undertake to exercise care that neither its government nor its political parties allow themselves to be *influenced unilaterally* by another state. If this means that the state concerned ought to isolate itself from the rest of the world, it is simply impracticable in modern conditions. If other states are governed according to capitalist or socialist ideologies, the neutral state cannot be obliged to exercise care that no political forces with corresponding ideologies influence its country. On the other hand, it would not be unrealistic to think of the establishment of an international contractual obligation, in which the neutral state is not allowed to tolerate direct intervention in its international affairs by any state.<sup>17</sup>

All states positively interested in the neutrality of a state in time of peace may have a common interest that the neutral state has certain constitutional guarantees that it will not embark on a policy equally undesirable to them. Such constitutional engagements can only be of a very general nature.<sup>18</sup> They might invite the danger that the domestic conditions of the neutral state frequently become the object of criticism by other states; whereas an attempt to guarantee the contractual tie in the constitution of the neutral state by a right of intervention by other states<sup>19</sup> would obviously be inconsistent with the inviolability which, as has been shown above, itself forms part of the status of permanent neutrality.

That the neutral state in peacetime itself must not intervene in the internal affairs of other states is obvious from the general principles of international law and needs no special contractual verification.<sup>20</sup> But it becomes important to determine whether, apart from this obligation, the neutral state ought to bind itself to refrain from giving *moral* support to one party in an internal conflict within another state, and particularly to one state in case of an external

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<sup>17</sup> *Vide* No. 5 of the Laos declaration: "It will not allow any foreign interference in the international affairs of the Kingdom of Laos in any form whatsoever".

<sup>18</sup> Austria is bound, by the peace treaty of 15.5.1955, "to have a democratic government, based on elections by secret ballot and shall guarantee to all citizens free, equal and universal suffrage." At the Geneva Conference on Laos, in order to secure the neutrality of Laos, the United States of America attempted to make arrangements against the contingency that armed parties, supported from outside, might menace the constitutional order of Laos.

<sup>19</sup> *Vide* the "guarantee" of the Constitution of Cyprus by the United Kingdom, Turkey and Greece.

<sup>20</sup> However No. 3 of the declaration of Laos states: "It will not resort to the use or threat of force in any way which might impair the peace of other countries, and will not interfere in the internal affairs of other countries".

conflict between other states.<sup>21</sup> An especially delicate question is whether peacetime neutrality of a state ought to extend so far, and can in fact, go so far, that it is bound even in its roll as a member of an international organ not to take sides when the organ is concerned with disputes the continuance of which might endanger international peace. A state undertaking such an obligation could hardly be elected a member of the Security Council.

When the peacetime neutrality of a state is established by means of an international instrument, precise answers to these questions should be specified. Also the neutral state ought to insist on an arrangement, whereby an independent agency will be able to give binding rulings, if it is accused of having violated its neutrality.<sup>22</sup> But it is no less important that certain peacetime obligations towards the neutral state should be established for other states. Here also it is insufficient that third states merely bind themselves "to respect" the neutrality of the neutral state; the obligations thereby undertaken must be accurately established. The fact that other states are not allowed to attack a neutral state in peacetime or to put it under pressure by threats of an attack, or to intervene in its internal affairs, is evident from the general principles of international law. Instead of emphasizing this it is more important that other states be denied the right to exert pressure on the neutral state by any other means which might endanger its neutrality.<sup>23</sup> Such an obligation will be the keystone in a contractual system for the maintenance of peacetime neutrality; it ensures that the neutral state will be a "sphere of no-interest" for other states. Nevertheless

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<sup>21</sup> True, in recent years, various works advocate an "active neutrality" of a permanent neutral state; it ought to show that the state stands "for law and justice", *vide* Toncic and Sorinj, *Außenpolitik* Vol. 9 (1958) 146 et seq. But opinions as to what is law and what (most of all) is justice differ between states in dispute; such active neutrality is a dangerous thing for the neutral state while no recognized agency exists for neutral and non-neutrals which could give a binding ruling on who is right.

<sup>22</sup> The Commission set up "for supervision and control" has not so much to supervise the Laotian Government's observance of its obligations, as observance of the obligations by other treaty-states. Where there exists an international agency as the Security Council under chapter VII of the UN Charter, whose decisions are binding on all states, it could also decide whether a state, in spite of its declared neutrality, ought to take part in economic and similar sanctions.

<sup>23</sup> In the declaration on Laos the States other than Laos promised in No. 1 "that they will recognize and will respect and observe in every way the sovereignty, independence, neutrality, unity and territorial integrity of the Kingdom of Laos". In No. 2a they undertake that "they will not commit or participate in any way in any act which might directly or indirectly impair the sovereignty, independence, neutrality, unity or territorial integrity of the Kingdom of Laos".

the scope of such an obligation cannot be precise since it might itself become the cause of recurring disputes. At the same time scrupulous observance of this obligation brings with it the threat of economic and cultural isolation, such an isolation being especially dangerous for economically underdeveloped states.

Another unresolved issue is whether some states may make arrangements for the protection of the peacetime neutrality of a certain state, when not all the other states participate in these arrangements. This leads to the further question of whether the neutral state should refuse to "recognize" this protection when it is extended by only a restricted number of other states.<sup>24</sup>

One last question remains, namely whether peacetime neutrality — the scope of which needs precise definition — may be established by means of a *unilateral* declaration by the state concerned or whether such a neutrality must be founded on a *treaty* with other states. In present-day international law it is not impossible for a state to establish duties for itself by unilateral acts;<sup>25</sup> then it can certainly revoke such a unilateral act unilaterally.<sup>26</sup> But in no case can a state which itself wishes to become a permanent neutral state invoke by a unilateral act obligations for *others* to respect that neutrality, which obligations exceed those the UN charter has

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<sup>24</sup> No. 4 of the declaration on Laos directs that the government of Laos "will not recognize the protection of any alliance or military coalition, including SEATO". A collective guarantee of Austria's inviolability (which is also a part of its permanent neutrality) was contemplated in the Moscow memorandum dated 15.4.1955; however it did not result in the conclusion of such a treaty by the great powers.

<sup>25</sup> *Vide* the "unilateral" declaration of Egypt about the Suez Canal dated 24th April, 1957, which has been registered with the Secretary General of the United Nations in accordance with art. 102 of the UN Charter as a valid obligation of Egypt under international law.

<sup>26</sup> *Vide* Wengler, *Volkerrecht*, Berlin 1964, p. 308. - Verdross, *Die immerwährende Neutralität der Republik Österreich*, Wien 1958, o.12, contends that the declaration of Austria regarding its neutrality could not be revoked unilaterally by that State. Verdross is probably correct on condition that the Austrian communication to other States has been "accepted" by them (which means more than merely taking note). This writer is of the opinion that communication of the declaration of neutrality and its acceptance constitutes the conclusion of a treaty in international law. Such a treaty can be revoked by later treaties; it is known that after the first World War the permanent neutrality of Belgium, created by treaty in 1839, was abolished by the peace treaties of 1919. Baltl, *op. cit.*, maintains that the Austrian declaration of neutrality could not be set aside either by a unilateral act of Austria or with the consent of those states which have recognized the Austrian neutrality; this view is untenable.

prescribed for all states.<sup>27</sup> Obligations exceeding those contained in general international law and in the Charter must be embodied in a treaty, or perhaps in unilateral (revocable) binding instruments issued by each of the other states.

The recent attempts to establish a neutral status for a country in peace time, recognized and guaranteed by international law, are serving to construct this neutrality on the principles applicable during a hypothetical armed international conflict. Although in practice it is chiefly the status in peacetime that one has in mind, neutrality in war is not only a *sine qua non* of peacetime neutrality, but also fixes its content. Nevertheless, effective operation of neutrality of smaller countries in an armed conflict between World Powers is doubtful. For this reason the linking of peacetime neutrality to neutrality in the event of war appears unfortunate.

Does the possibility exist today to attribute a meaning to neutrality in peacetime without linking with neutrality in war? Recent treaties contain little help in this respect. Even the agreement over Laos as indicated in most of its regulations is concerned with questions of a military nature, whereas dispositions relating to territorial integrity of Laos and to non-intervention are chiefly rules which are valid for all states as general principles of international law. However one substantially new element which may be typical of a genuinely new conception of neutrality in peacetime can be seen in the regulations of the Laotian treaty, whereby other states giving economic or financial assistance to Laos are not allowed to attach any conditions of a political nature; obviously Laos is also prevented from introducing such a condition. This provision is more than an undertaking by other states not to apply pressure on Laos in order to cause it to conclude treaties which for Laos are incompatible with its above mentioned military obligations. Developing the idea underlying the regulations concerning unconditional assistance, one can understand neutrality in peacetime as a condition in which a neutral state is *precluded from all ties* with states which are unfriendly among themselves, which could be regarded as a commitment to one of those states, or as an effective support of its

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<sup>27</sup> Baltl, *op. cit.*, p. 26, assumes that a State could unilaterally, by its declaration of neutrality, impose obligations on other States; but this view is unfounded. He reasons as follows: A State which declares its neutrality must be regarded as creating a "factor of international security"; this, he believes, ought to be respected by all other countries. It should be pointed out that the Romanian author Bolintineanu, *Studii si Ceretari Juridice* VII (1962) 316, also supports the view that a State could create international legal obligations for other States by its unilateral declaration of permanent neutrality.

policy, even when the attitude in question does not entail an anticipated strengthening of the position of other states in future war.

This injects something new in the idea of neutrality in peacetime. But it ought not to be overlooked that with such a legal commitment the political dealings of neutral states will be dependent on one or other of the unfriendly states; one should hesitate to advise a neutral state to bind itself to a policy of non-alignment, when no independent agency exists which can decide on alleged violations of this obligation.

An obligation in international law by a state not to take sides in relation to a group of strong unfriendly states certainly can not make a weak state more resistant to pressure by those states than it already is. An obligation of international law among states unfriendly among themselves not to induce the neutral state to abandon its policy of non-alignment operates under a decided disadvantage: if this obligation is broken by one of the unfriendly states, according to general principles of international law, the other is no longer bound; each breach of contract can, so to speak, destroy the whole neutrality system, while the neutral state can do nothing.

One ought, therefore, to consider whether the *collective resistance* of the largest possible number of states which desire to be neutral in peacetime, in relation to certain states unfriendly among themselves, could prevent one of the outside states from, for example, attempting to grant an individual member of the neutral states economic help and thereby imposing on it conditions of political nature. Collective resistance by all neutral states against such an attempt would parallel the collective armed neutrality of the 18th century.<sup>28</sup> Whether the prerequisites of a true "collective defence of non-alignment" exist for those states which desire to be neutral, in other words, whether those states striving for peacetime neutrality already represent a "third force", is not a question for the jurist to answer.

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<sup>28</sup> Vide Scott, *The armed neutralities of 1780 and 1800* (1918).