Neutralised States

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NEUTRALISATION "either of states, of parts of states, of particular bodies or streams of water is a limitation on national sovereignty which may be created by agreement". The essence of neutralisation is that it is a collective act i.e. all the Great Powers must expressly or impliedly assent to the status of neutrality permanently conferred. Another important element of neutralisation is that it is contractual.

Neutralisation may take place in the case of:

1. States that have been permanently neutralised by treaty;
2. Where persons, things or places though in fact belonging to a belligerent state are invested with immunities to which as so belonging they would not be entitled, they are said to be neutralised;
3. The term neutralisation was used in a very extended sense with reference to the Black Sea in the Treaty of Paris, 1856.

This threefold classification is made by Moore "International Law Digest" Vol. 2 para. 19.

Neutralisation is not to be confused with neutrality. "A state is neutral which chooses to take no part in a war, and persons and property are called neutral which belong to a state occupying this position. The term (neutrality) has in recent times received a larger application. A condition of neutrality or one resembling it, has been created, as it were artificially, and the process has been called neutralisation". (Moore op. cit. p. 19). A state may conclude a treaty with another state undertaking the obligation to remain neutral if such other state becomes a belligerent without thereby becoming a neutralised state. Neutralisation, therefore, differs fundamentally from neutrality which is "a voluntary policy assumed temporarily in regard to a state of war affecting other powers, and terminable at any time by the state declaring its neutrality. Neutralisation, on the other hand, is a permanent status conferred by agreement with the interested powers without whose concurrence it cannot be abandoned". (Starke, Introduction to International Law, p. 90). The act through which a state becomes permanently neutralised is always an international treaty between the powers,

the neutralising states on the one hand, and the neutralised state on the other. If not all the Great Powers take part in the treaty of neutralisation, those which do not take part must give at least their implied consent, by showing that they agree or are not averse to the neutralisation. Although any state may declare itself to be permanently neutral, such unilateral declaration does not have the effect of making the state which declares itself permanently neutral "a permanently neutralised state". Such 'autonomius neutralisation' has been claimed by Ireland and the Holy See, the latter state declaring itself to be invariably and in any event neutral and its territory inviolable.

The reasons which prompt the neutralisation of a state vary, of course, with each particular case, but it may be said that with regard to the neutralised state itself, it is invariably a weak state, which does not desire a prominent or active position in international politics, "being exclusively devoted to peaceable developments of welfare." (Oppenheim). As regards the neutralising states, it is generally the desirability of having a buffer state between the territories of the Great Powers which impels them to consent to the neutralisation.

Oppenheim's definition of neutralised states is fairly comprehensive. "A neutralised state", he says, "is a state whose independence and integrity are for all the future guaranteed by an international convention of the Powers, under the condition that such state binds itself never to take up arms against another state except for defence against attack, and never to enter into such international obligations as could indirectly drag it into war". In guaranteeing the permanent neutrality of a state, the contracting powers enter into an obligation not to violate or their part the independence of the neutralised state and to resist any violation by other states. "Not only it is preordained that such states are to abstain from taking part in a war into which their neighbours may enter, but it is also prearranged that such states are not to become principals in a war. By way of compensation for this restriction on their freedom of action, their immunity from attack is guaranteed by their neighbours for whose collective interests such an arrangement is perceived to be on the whole expedient". (Moore op. cit. p. 19). A neutralised state may not, therefore, enter into treaties of alliance which may prejudice its impartiality and complete neutrality, which might drag it even incidentally into hostilities with any other state

Thus in 1867, Belgium could not sign the Treaty of Guarantee in connection with the neutralisation of Luxembourg. In fact, Article 2 of the Treaty of London of May 11, 1867, said: "Sous la sanction de la garantie collective de puissances signataires à l'exception de la Belgique, qui est elle même un état neutre". For the same reason, it was only after considerable discussion and a referendum by the Swiss electorate that Switzerland joined the League of Nations, with the qualification that she was not to be forced to take part in any military measures whatsoever as any ordinary member of the League might be called upon to do. In 1936 when economic sanctions against Italy were ordered by the League, Switzerland considered that her participation might prejudice her impartiality.

The neutralised state, however, must be ready to defend itself against attack and to uphold its neutrality and integrity. At the same time, a neutralised state when attacked must call upon the guarantors for assistance. In 1938, when the Council of the League of Nations recognised Switzerland's full neutrality, it noted the fact that Switzerland could and would defend itself. Though usually neutralised states are not forbidden to own Armed Forces for their defence and are in fact required to defend themselves while calling for the assistance of the guarantors, there have been cases where the treaty of neutralisation forbids the possession of Armed Forces except for Police. Luxembourg and the Free City of Cracow were forbidden to own Armed Forces except for Police.

At the moment the only neutralised state in existence is Switzerland which has succeeded in preserving its neutrality intact since 1815. Examples of neutralised states in the past have been few and were certainly not lasting. Neutralised states were a product of the 19th century when a spirit of conciliation prevailed at the various conferences of the Powers which followed the end of the Napoleonic Wars. Belgium, Luxembourg, Cracow and the Congo Free State were at one time neutralised states.

1. SWITZERLAND. — Switzerland has pursued a traditional policy of neutrality since the Peace of Westphalia in 1648. Her neutrality, however, was violated during the Napoleonic Wars and French intervention in 1798 enacted a new constitution whereby the several cantons were deprived of their independence. The Confederation gave place to the "Helvetic Re-

public'' which was in effect a puppet state of France. In 181 the Confederation was restored and in 1815 its neutralisatic was guaranteed by Great Britain, Austria, France, Portuga Prussia, Russia. Spain and Sweden at the Congress of Vienn On May 27th, 1815 Switzerland gave her consent to the decla ation of the Powers. Art. 84 of the Vienna Congress confirme the declaration and Switzerland's neutralisation was again e pressly recognised by the Powers assembled at Paris on the 20 November 1815, after the final defeat of Napoleon. Since th time, for almost a century and a half, Switzerland has alwa succeeded in maintaining her neutrality despite the bloody wa that have raged over the whole of Europe.

Switzerland has no restrictions on her keeping Armed Forc and building fortresses provided these are for defence purpos only. As a matter of historical interest, it may be recalled th a French Army of about 80,000 men which entered Switzerla in 1871 during the Franco-Prussian War was disarmed a detained in Switzerland until the end of that war.

As has already been observed, Switzerland has been ve reluctant to join International Organisations, fearing that h neutrality might thereby be prejudiced. She joined the Leag of Nations as a qualified member on the understanding that s was not to take part in military operations, but she has not se fit to join the United Nations. On the other hand, Switzerla is very much in the picture where peaceable organisations a concerned and Geneva has long been a favoured seat of Inte national Organisations. Switzerland has often taken t initiative in organising International conferences of a peaceat character.

The neutralisation does not have any effect on the rank Switzerland as a state. She is a state with Royal honours, ful independent and sovereign, enjoying the same internatior position within the family of nations as the guarantors of h neutralisation.

2. BELGIUM. — The Treaty of London of he 15 November 1831 between Great Britain, Austria. Belgium, Fran and Russia stipulated in Article 7 the independence and p manent neutrality of Belgium. Art. 25 of the same Treaty co rained the guarantee of the Great Powers which was given aga in Art. 2 of the Treaty of London of April 19th, 1839 whi followed the final separation of Belgium from the Netherland

But Belgium, unlike Switzerland, has not been able to preserve her neutrality. Germany invaded Belgium in 1914 in order to get at France, and after the First Great War Belgium asked that her neutralisation should come to an end. The Powers acceded to her request and Germany and Austria both consented to the abrogation of the treaties neutralising Belgium and promised to observe the new arrangements which were to be made by the Allied Powers respecting Belgium. But apparently nothing was done after this and it might be argued that Belgium could still be considered legally, though not de facto a neutralised state. In 1936, Belgium followed a policy of non-involvement in world affairs and requested to be released from the provisions of the Treaty of Locarno which had redefined the frontiers laid down in the Peace Treaties of 1919. Moreover, Belgium obtained a restriction of her obligations under the Covenant of the League of Nations. But Germany again invaded Belgium in 1940 and after the Second World War, Belgium can no longer be considered as a neutralised state in view of her participation in various international military organisations, such as the Atlantic Pact. Belgium is also an unqualified member of the United Nations and has in fact taken part in the military operations undertaken by the United Nations in Korea.

3. LUXEMBOURG. — From 1815 to 1866 the Grand Duchy of Luxembourg was in personal union with the Netherlands, the King of the Netherlands being at the same time Grand Duke of Luxembourg. At the same time Luxembourg was a member of the Germanic Confederation and Prussia in 1856 actually acquired the right to keep troops in the fortress of Luxembourg. When the Germanic Confederation came to an end in 1866, Napoleon III tried to obtain Luxembourg by purchase from the King of Holland. Prussia was alarmed at this and in order to ease the tension that arose in consequence it was decided to neutralise Luxembourg. A Conference attended by Austria, Great Britain, Belgium, France, Holland and Luxembourg, Italy, Prussia and Russia took place in London and Luxembourg was neutralised by means of the Treaty of May 11th, 1867. Belgium, as has already been stated above, did not sign the guarantee. Luxembourg was prevented by the terms of the treaty from possessing any Armed Forces except for Police. The neutrality of Luxembourg was violated by Germany in 1914. After this Luxembourg like Belgium asked that her

neutrality should cease. Germany again invaded Luxembourg in 1940 and after the Post War period, Luxembourg certainly cannot be considered as a neutralised state having taken part in various military organisations for common defence.

4. THE CITY OF CRACOW. — The International status of the City of Cracow and its territory from 1815 to 1846 has caused much confusion of thought. The Convention of St. Petersburg of the 13th October 1795 assigned the City of Cracow and its territory to Austria, from which it was severed by Napoleon and attached to the Duchy of Warsaw in 1809. The Treaty of May 3rd, 1815 between Austria, Russia and Prussia stipulated that the City of Cracow and its territory "sera envisagée" for ever, as a free, independent and strictly neutral city, under the protection of the three High Contracting Powers, and the Three Courts by Art. 6 pledged themselves "to respect and cause to be respected on all occasions, the neutrality of the Free City of Cracow and its territory". An armed force was not to be introduced into it upon any pretext whatsoever at any time. But it was expressly provided that no protection or asylum to fugitives and deserters from the three countries (Austria, Russia and Prussia) should be granted and that such persons should be immediately surrendered upon a demand of extradition made by the competent authorities. Moreover, the city of Cracow had no right to levy custom duties but only pontage and road tolls upon the transit of goods and cattle, according to a tariff regulated by the Commissioners of the Three Powers. The other articles of the Treaty provided for the political constitution of the Free City, but no provision was made regarding consuls or commercial agents. The Peace of the City and the Police were to be in the hands of a Civic Militia. The European Powers who took part in the Congress of Vienna admitted this treaty between Austria, Russia and Prussia to be inserted in the principal act of the Congress. When Austria, Russia and Prussia declared their intention of suppressing the independence of Cracow in 1846, various Powers amongst them Great Britain and France protested on the ground that it was not competent for three of the countries who had been at the Vienna Congress to undo what was established by the common engagements of the whole. But the Republic of Cracow was extinguished and incorporated into Austria.

5. THE CONGO FREE STATE.—The Congo Free State was recognised as an independent Free State by the Berlin Congo Conference of 1884-5. It was a permanently neutralised state from 1885-1908, though its neutralisation lacked a guarantee of the Powers and was consequently imperfect. Art. 10 of the general act of the Berlin Congo Conference provided that the signatory powers should respect any territory within the Congo district provided the power who was in possession proclaimed its neutrality. The King of the Belgians as the sovereign of the Congo Free State declared it permanently neutral, which declaration was communicated to and recognised by the Powers. In 1908 the Congo Free State merged into Belgium.

6. MALTA. — It is of historical interest to recall that art. 10 of the Treaty of Amiens provided that the islands of Malta, Gozo and Comino should be restored to the Order of St. John of Jerusalem and their independence and perpetual neutrality recognised under the guarantee of Austria, France, Great Britain, Prussia, Russia and Spain. As is well known, the Maltese objected to the provision of this treaty which was never put into effect as war broke out again in 1803.

Since neutralised states in return for the guarantee of independence are subject to certain restrictions according to the terms of the treaty of neutralisation, the question arises whether these states enjoy the same international position within the family of nations as other states. A neutralised state cannot make war against another state except in face of an attack. In this case, the neutralised state is under the obligation to defend itself if it has the means to do so. It follows from the Treaty of neutralisation that a neutralised state cannot cede any part of its territory without the concurrence of the powers which signed the treaty of neutralisation. In this matter a neutralised state cannot go beyond mere frontier regulation. It must also abstain from entering into any obligations in time of peace which might involve it in hostilities with other states. This does not usually mean that the neutralised state cannot have Armed Forces provided these are used for defensive purposes only (v. case of Belgium and Switzerland). But here we must refer to the conditions of the neutralisation of Cracow and Luxembourg, both of which were forbidden by the treaty of neutralisation to have any armed forces (except for Police) and to possess any fortresses. These latter states, if they were invaded, had to depend

on the guarantors of their neutralisation for their defence and in this case their depedence would seem to be absolute.

Such limitations, infinitesimal though they might be must have some effect on the sovereignty of a state. For this reason some writers have classed these states among those which are part sovereign. Others, and among these Oppenheim, hold that the limitations imposed by the neutralisation do not have any effect on the sovereignty of a state. Lawrence comes to the conclusion that though the restrictions of the neutralisation admittedly are limitations on sovereignty yet they are so small and have so little effect in regard to rank, honour and influence of states, "that it might be accounted pedantry to insist on classing them along with part sovereign states" for the mere reason that they are deprived of exercising certain prerogatives which belong to sovereign states. Indeed, if they were to be so classed, they would form a class by themselves. But this in no way excludes the fact that the limitations imposed by the neutralisation are restrictions on sovereignty. As a rule these restrictions regard external sovereignty but we have come across instances of restrictions on internal sovereignty as well (v. Cracow and Luxembourg).

Those who deny that neutralisation affects the sovereignty of states argue that sovereign states often voluntarily impose limitations on their future action by treaties and that these limitations are no restriction on their sovereignty. However, we must not forget that the limitations resulting from neutralisation are a permanent and essential condition of the existence of a neutralised state. Other states can withdraw from their agreements without a change of status, but once a neutralised state goes back on any of the conditions of the neutralisation, it loses its status of neutralised state and moreover, such action gives a right of intervention to the guarantors of the neutralisation. So the contention that the restrictions placed on a neutralised state by the treaty of neutralisation are no different from the limitations into which ordinary states enter by agreement cannot be upheld. We must equally reject the contention that neutralised states come under the protection of their guarantors. The stray pieces of sovereignty of which neutralised states are deprived are not transferred to anybody else and remain, so to say, in abeyance.

Oppenheim, it must be admitted, takes rather an ex-

treme view of the matter when he says that a neutralised state is as fully sovereign as any not neutralised state. Such statement may perhaps be true in the case of Switzerland and Belgium, but the same cannot be said with regard to Luxembourg and Cracow. As regards Luxembourg, Oppenheim describes as "abnormal" the condition that she was not allowed to keep Armed Forces by the Treaty of 1867. The case of Cracow is even more complicated. The conditions of the neutralisation of the city were exceedingly severe and in spite of the solemn declaration of the powers that "the city of Cracow with its territory should be regarded for ever, as a free, independent and strictly neutral city", one is inclined to agree with Sir Travers Twiss, who says, comparing the Free City with the State of the United Ionian Islands (then under the protection of Great Britain) "if a careful comparison is made between the condition of these protected independent states, and the condition of the Free City of Cracow, it will be seen that the Ionian Islands enjoy far more of the rights which pertain to an independent state, than the Free City of Cracow". In fact the Free City was by the treaty of 1815 debarred from levying any custom duties; it had neither a commercial flag nor commercial agents in foreign countries, and as far as external sovereignty was concerned foreign powers could not have any relations with the Free City except through the medium of Austria, Russia or Prussia. The Free city was politically represented at the General Treaty of Vienna by these three powers, and it could only address itself to foreign governments through one of these three powers. From this we may conclude that the Free City was in fact a protectorate of Russia, Austria and Prussia and not an independent state in spite of the declaration. It is a fact that these three powers resented any interference from any other power with regard to Cracow and it was finally annexed by Austria in 1846 with the concurrence of Russia and Prussia without consultation with the other powers, which action aroused strong protest from Great Britain and France.

A lot depends on the provisions of the particular treaty creating the neutralised state and "from a political and legal point of view it is of great importance that the states imposing and those accepting restrictions upon independence should be clear upon their intentions. For the question may arise whether these restrictions make the state concerned a dependent one".

(Oppenheim). In other words, the question whether a neutr ised state has through the neutralisation forfeited its indepe dence or not can only be answered by reference to the particu treaty creating the neutralised state and the intentions of t parties to the treaty. Thus, while we may all agree about t complete independence of Switzerland, today the only existi example of a neutralised state, past examples of neutralisati may not provide such a clear cut answer. Cracow and to a les extent Luxembourg provide complexities which are not eas solved.

It may perhaps be wondered why the subject of the neutr isation of states, today a comparatively unimportant branch International law should come in for such minute attentic The institution seems to have been born and to have died w the 19th century and it cannot be said that the experiment w much of a success (with the exception of Switzerland); but had a beneficial effect, perhaps only temporary in the major of cases, in that peaceful settlements were arrived at on d puted pieces of territory which have been described as lying the "international borderline which represents the struggle power between the great states". It was instrumental in easi the tension that arose between the Great Powers over particu tracts of territory and notably so in the case of Luxembou which both France and Prussia coveted on account of its fo ress. By effecting its neutralisation neither state got the fo ress, but the fact that the other state did not get it either doubt proved a source of consolation to the two countries and situation which might easily have degenerated into a war w peacefully settled.

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