

PERMANENT NEUTRALITY OF EUROPEAN UNION STATES. EVOLUTIONARY ASPECTS

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Abstract

Les termes „intégration” et sécurité” ont été revendiqués par plusieurs universitaires et praticiens. Pour que l'éternel débat sur la sécurité européenne, où intégration signifiait seulement coopération internationale, laisse la place à celui sur l'intégration politique de l'Europe, il faut donc que convergent des courants de pensée différents depuis toujours. Les problèmes posés par les pays neutres ne résident pas tant dans l'adhésion de ces derniers à l'idée de coopération structurée, mais plutôt dans la possibilité d'appliquer la clause d'assistance mutuelle, qui implique que tous les pays européens fournissent une participation militaire, dès lors que l'un d'entre eux est agressé.

Keywords: *neutrality, European Union, integration, security*

1. The Concept of Neutrality within a European Context

Today, in the case of joining the European Union, an integral incorporation of the European Union acquis is necessary. Nevertheless, an active participation to achieving the final objective of the Union, which has an evident political dimension, will be necessary. Therefore, the Single European Act, signed in Luxembourg in 1986, expressly underlines the importance of a better cooperation on European security issues between member states, cooperation which might bring a common external policy. In the opinion of many authors, the respective obligations contradict the status of neutrality. The purpose of the present study presupposes an inter alia demonstration of the thesis according to which the obligations of a European Union member state do not contravene to the status of permanent neutrality of the respective state, but totally abide by the requirements of a regional system of collective security of the member states.

From its formation, the European Union has made much progress with a view to creating a single market and currency, the field which did not

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witness such development so as to establish ??? the foreign policy and common security. Until 2009, the European security and defence policy, which was part of the external and common security policy, had three dimensions: humanitarian aid, managing the civilian and military crisis, the so-called "Petersburg missions", and preventing conflicts. After the modifications introduced by the Treaty of Lisbon, the Union has had an operational capacity based on civil and military means, which presupposes: common actions related to disarmament, evacuation and humanitarian missions, counselling and assistance missions concerning military issues, missions for preventing conflicts and maintaining peace, missions of the fighting forces for managing crisis, including missions for re-establishing peace and operations for creating stability after the end of conflicts.

The crises that appeared after the Cold War in the Balkans, Afghanistan and Iraq highlighted the necessity for Europe to have political authority, capable of representing it in the process of managing emerging conflicts. At the level of the European Union, it is clear that the adherence of states like Austria and maybe Switzerland has/will have consequences on their neutrality. In this context the following questions may arise: How could neutral states, in situations like the conflict in the Falkland Islands, assume the obligations stemming from their neutrality, i.e. impartially treat belligerents, and apply for economic sanctions against Argentine?

At the level of the European Community, intense discussions fuelled the aspirations of Sweden, Switzerland and Austria to gain access to the common market. Therefore, meeting a harsh response from neutrality and independence supporters in their countries, the adepts of joining the European Economic Community (EEC) resorted to a manoeuvre, declaring that the adherence of the neutral states to the common market will not be full, simply involving the participation to the EEC in the form of so called "associations", which does not endanger the status of neutrality and is fully compatible with it. This solution was proposed at the end of October 1961, at the conference of Ministers for Foreign Affairs in Austria, Switzerland and Sweden. At the same time, at the end of 1962, the publication entitled "La Suisse" wrote: "Switzerland's participation to the EEC is an equivalent to trying to merge water with fire, and EEC with Switzerland". On the other hand, the incompatibility of joining the EEC was acknowledged by the leaders of the neutral states. Thus, delivering a speech at a press conference in March 1963, the Prime Minister of Switzerland, Tagher Erlander, declared that Sweden considers that it is unacceptable to enter the common market with full membership rights, because this will be

incompatible with its neutrality¹.

In its turn, the Soviet Union was categorically against neutral states joining the EEC, especially against Austria, motivating that such adherence would be inherent to the co-participation in the actions of the “aggressive” North-Atlantic Block, and therefore the neutral state could not maintain its status of neutrality, because it will no longer be independent in achieving its internal and external policy².

In the specialised literature of the previous century, the idea that a neutral state could conclude treaties which might regulate economic, moral or material interests was largely spread, but on condition that it did not bond its fate to another state, to avoid unifying their institutions³. Moreover, the Hague Conventions of 1907 on the rights and obligations of neutral states, in case of war, stipulate that neutral states are obliged to treat all belligerent states equally, without discrimination, resulting thus that neutrality creates a legal situation, mandatory for all states.⁴ Certainly, developing or not economic relations with a certain state or groups of states is decided by the neutral state itself, commerce with belligerents being a right, not an obligation of neutral states.

The fact that regional organisations or agreements must pursue the noble purpose of ensuring peace and security of small, medium and large states must not be overlooked and the idea of states permanent neutrality cannot be rejected. For this reason, permanent neutral states cannot be denied entry into such organisations based on the fact that their help in fighting aggression will be limited.

2. Historical Evolution of the European Integration Idea in Terms of Security

1945-1954. During this period, the discussions concerning national security were limited to the idea of going past the independence of sovereign states. At the same time, Jean Monnet’s ideas, which allowed the development of European institutions in the economic field among the Six, were also

¹ Ганюшкин Б.В. Нейтралитет и неприсоединение. «Международные отношения», Москва 1965, pp. 163-164 .

² *Ibidem*, p. 165.

³ Marcel Sibert, *Traité de droit international public*, Tome premier, Paris 1951, p. 394.

⁴ Marcel Stănculescu, Mihai Floroiu, *Drept International Public*, Ed. Paralela 45, Pitești, 2006, p. 142.

adopted in relation to security by signing the Treaty on the European Defence Community (EDC), in 1952. If this treaty had been put into practice, it would have inevitably led to the creation of a European army, integrated at the level of divisions, with a common uniform, a unified commandment structure, a unified system of production and procurement of armament, and with a combination of inter-governmental and supra-national authorities – which would have reflected the European Coal and Steel Community¹.

1962-1968. The Americans carried out a strong campaign for transforming the Atlantic Alliance in its/ their? interest, in a more equitable partnership, inventing the metaphor “European Pillar”.

1968-1978. After the Harmel Report gave the Alliance a new orientation, agreed on by all, European cooperation and autonomy in matters of security emphasized that Europe was given possibilities to firmly manifest its position in NATO businesses.

1978-1987. Even more events took place in this period, namely: the declarations made by the USA on the neutron bomb, the invasion in Afghanistan by the USSR, the “Cold War”. They brought a new dimension of the political weight of the Western European Union in its quality as instance of reflection on European security interests. If, until then, the European Union did not have attributions in matters of security, by the Treaty of Amsterdam of 1997, the competence of the European Council to define the principles of a common security policy was established. The progressive definition of a common defence policy of the European Union member states was introduced by article 17 of the Treaty concerning the European Union, signed in Maastricht in 1992. At the same time, the respective provision was only achieved in 1999, as a consequence of the French-British summit in Saint-Malo. During this meeting, the government of the United Kingdom mentioned that the European security and defence initiative must be designed as a component of the North-Atlantic Alliance. It presupposes the fact that European Union member states will be able to influence the decision of the Alliance. At the same time, the discordances between the neutral states and the member states of the Atlantic Alliance within the EU framework persisted, not to mention the fact that two of the four EU neutral states, Finland and Sweden, in reality cooperated with the

¹ Ian Gambles, *L'intégration européenne de sécurité dans les années 90*, Institut d'Etudes de Sécurité de l'Union de l'Europe Occidentale, 1996, p. 2.

Alliance and reacted positively to the propositions of Saint-Malo¹.

Following the consecration of the common foreign defence policy in the Treaty of Maastricht, the conflict in Yugoslavia started. That was when the European Union tried, without being successful, to advance its good offices in view of the diplomatic regulation of the conflict. Lacking the capacity of European intervention, the Union member states could only intervene in the UNO Peace Keeping forces and, under the commandment of the USA, in the framework of a NATO force (this being the case of Bosnia-Herzegovina in Kosovo and the ex-Yugoslavia Republic of Macedonia)². Therefore, the lesson of the conflict in the Balkans was learned. From that moment on, the Union acted both in the diplomatic area, as well as in matters of security.

Later on, the European Council of Helsinki (10th - 11th December 1999) set as global objective the annual detachment of 60,000 troops. This presupposed the fact that the national armed forces would be replaced by a new European army force (Euro Force). During the Feira Summit (June 2000), the four civil directions of the European Common Policies in matters of Security and Defence were defined: police, civil protection, civil administration, and lawful state. In what follows, the European Council of Nice (7th -9th December 2000) decided on the establishment of permanent bodies:

- the Political and Security Committee: composed of national representatives, which follows the evolution of the international situation, contributes to defining policies, supervises their application;
- the Military Committee of the European Union: composed of chiefs of the Military, who offer military counselling to the Political and Security Committee;
- the Military of the European Union, which carries out fast reaction functions, strategic planning and evaluation.

On the 29th of October 2004, the Treaty on establishing a European Constitution was signed in Rome. After long negotiations, it did not enter into force, suffering a failure in its process of ratification in many EU member states. At the same time, all the innovations introduced by that project of European constitutional treaty are worth mentioning, because

¹ Alain Richard, french defence minister on the perspectives of the EU's external policy and common security <http://www.assemblee-nationale.fr/europe/c-rendus/c0076.asp>.

² http://www.europa.eu.int/pol/cfsp/overview_fr.htm.

they were at the basis of the future Treaty of Lisbon, which included the mutual defence clause. Articles 40 and 201 of the 2004 Treaty stipulated the principle of unanimous decisions in matters of security and defence. Like the Security Council of the United Nations, the EU does not have the necessary means to force one of its members to send its forces beyond its frontiers. Furthermore, the same objectives and the same intentions support the external and security policies of the European Union. Both are looking to establish world peace. In this context, the EU counts on the international law and on multilateralism. It is necessary to mention that the provision of Article 40 stated the following: “the policies of the Union, in the context of the present article, do not affect the specific criterion of security and defence policy of certain member states”. Without expressly using the word “neutrality”, this mention constituted a clear reference to the concept of neutrality, because it was inserted at the request of the European neutral states¹.

Finally, concerned with maintaining collective regional security, EU member states managed to advance a compromise, including the matter of neutrality in the content of the Treaty on the European Union (TEU), modified by the Treaty of Lisbon, signed on the 13th December 2007, and entered in force on the 1st December 2009. According to Art. 42 of TEO:

“(1) The common defence and security policy is an integral part of the external policy and common security. It grants the European Union an operational capacity based on military and civil means. The Union may resort to these means in missions carried out outside the Union to maintain peace, to prevent conflicts and to strengthen international security, according to the principles of the Charter of the United Nations Organisation. Fulfilling these tasks is based on the capacities supplied by member states. (2) The common defence and security policy includes the gradual definition of a common defence policy of the Union. It will lead to a common defence after the European Council takes this decision in unanimity. In this case, the Council recommends the member states to adopt a decision according to the constitutional norms. The policy of the Union, in the context of this section, does not bring the achievement of the specific character of the defence and security politics of certain member states, it respects the obligations which result from the North Atlantic Treaty for certain member states which consider that their common defence is achieved in the framework of the North Atlantic Treaty Organisation (NATO) and is compatible with the common defence and security politics established in this framework.” [...] (7) In case a member state is the object of armed aggression on its territory, the other member states are bound to help and assist it by all means available, according to Article 51 of the Charter of the United

¹ *Tratatul instituind o Constituție pentru Europa*. Text comentat și adnotat. Ministerul Afacerilor Externe a României. 2004.

Nations Organisation. This does not affect the specific character of the defence and security policy.”¹.

Therefore, the Treaty of Lisbon provisioned, similarly with the NATO Treaty (Art. 5), “the clause of mutual defence”. At the same time, the particular status of neutral states was taken into account (it does not affect the specific character of the defence and security policy). In practice, it would mean that Austria becomes “a victim of armed aggression”, Hungary has “the obligation to award aid and assistance by all means available” to Austria, while Austria does not have the same obligation towards Hungary².

3. International Practices in the Field

In view of elucidating the proposed subject, it is logical to examine the situation of Switzerland, which represents the classic model of permanent neutrality. The permanent neutrality of this state has profound roots in national conscience. It is, without any doubt, at the basis of the refusal of the majority of the Swiss population to join the EU and, in the past, to UNO. Moreover, Switzerland today corresponds to all European Union standards, but its status of permanent neutrality is the main impediment for becoming a EU member.

Regarding the European Union, Switzerland has concluded bilateral agreements which are not related to its status of neutrality, because they do not include military cooperation. Things would have been different if joining the EU had been the case. The Federal Council has expressed itself many times on the subject of neutrality and adherence to the EU, for example in the Report of 1992 concerning Switzerland joining the European Community, in the Report on integration of 1999, as well as in the Europe Report of 2006. In this last report, the Council mentioned the following: “The European Union is not a military alliance; it does not compel member

¹ Tratatul privind Uniunea Europeană (TUE) așa cum a fost modificat prin Tratatul de la Lisabona, semnat la 13 decembrie 2007, intrat în vigoare la 1 decembrie 2009.

<http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A12012E%2FTXT>

² Luif P., Austria and the European Union Political Institutions, World Politics, nov. 2016 <http://politics.oxfordre.com/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-185>

states to participate in military operations".¹

If the permanent military neutrality of Switzerland allows maintaining its independence and credibility, it continues, together with other European neutral states to contribute to political stability and European equilibrium. As long as the current situation exists, in the opinion of the Federal Council, there is no immediate reason for a new external political orientation of Switzerland, to join, for example, the European Union. Moreover, starting with 2002, Switzerland is a member state of the United Nations Organisation, and the Charter of the United Nations Organisation is less complex than the Treaty on the European Union, and nothing forces a neutral state to participate in military sanctions. In what concerns the military sanctions decided by the Security Council, it seems possible to find, in most cases, a solution respecting the status of neutrality.

The logical solution which we propose in view of reconciling the status of permanent neutrality with the process of European integration in matters of security consists in excluding the military actions of security, which will allow neutral states to play a decisive role in the European construction without abandoning neutrality.

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¹ Rapport Europe 28 iunie 2006. <https://www.admin.ch/opc/fr/federal-gazette/2006/6461.pdf>