

MALTESE NEUTRALITY

An Historical and Comparative Analysis

by

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Introduction

The decision by the Irish Government in 2017 to join the EU's permanent structured military co-operation (PESCO) was a body blow to advocates of Irish neutrality and opponents of imperialist wars of aggression. There were only three EU countries who opted out: the United Kingdom, Denmark and Malta. The United Kingdom is in the process of leaving the EU, so their opt-out was inevitable; Denmark has a Protocol that excludes it from EU militarisation, but they are members of NATO, so are not a threat to the overall EU-NATO axis. This leaves Malta, with a population of just 0.08% of the EU total, as the sole genuine opponent of the EU-NATO axis. It was this that prompted the author to study the history, legal context and current prospects of Malta's neutrality, and what Ireland can learn from it.

Historical Development of Neutrality

Independence and Bilateral Treaties

Malta achieved independence in 1964 and joined the United Nations the same year. One of the turning points in the years following independence was the 1971 election of a centre-left Labour Party government, resulting in the young state

adopting a more independent foreign policy¹. From 1977-79, the Labour Prime Minister Mintoff stepped up this independent foreign policy in working to secure written support for neutrality plus substantial funding from Italy, France, Libya and Algeria².

He was not ultimately successful in this ambitious quest, but did manage to reach an arrangement with Italy; it came in force on 15th September 1981 in the form of an Exchange of Notes with Italy, under whose terms Italy agreed to be the guarantor of Malta's neutrality, and pledged to take (with Malta's assent) any necessary steps to guarantee this neutrality³. Days earlier in September 1981, Malta had also entered an agreement with Soviet Union under which Moscow agreed to respect Maltese neutrality⁴.

Two further bilateral treaties were to follow, with the DPRK and Libya. Independent Malta enjoyed surprisingly cordial relations with the DPRK, a country viewed with suspicion even in the Eastern Bloc, and in the 1970s, the DPRK's future leader Kim Jong-il lived and studied at the University of Malta⁵. In 1983, the two countries signed an agreement that saw the DPRK supply the island with \$2 million in military and other equipment⁶. In 1984, Malta signed a treaty of co-operation with Libya, Article 3 of which saw Libya agree to support Maltese neutrality⁷.

¹ *Malta: a Nation in Transition*, declassified CIA Intelligence Assessment, 1979

² Ibid.

³ *International Law and Its Sources*; by Wybo P. Heere and Maarten Bos (ed.), p. 72

⁴ "Malta's Course, to the West or "unaligned", tied to vote", by James Markham, *New York Times*, 14th December 1981

⁵ "1982 Labour Government "secret" agreement with North Korea - "Times change"; *Malta Independent*, 7th February 2010

⁶ *Malta: Closer Ties with the East?*; declassified CIA Memo, 3rd August 1984

⁷ *Malta-Libya Treaty of Friendship and Co-operation (Ratification) Act 1984*, justiceservices.gov.mt

Referendum in 1987

Having established Maltese neutrality in international law by way of bilateral treaties, the Labour Government, still in power in 1987, called a referendum which resulted in an amendment (Article 1 (3)) that enshrined, and, thirty years later, continues to enshrine, neutrality in the Constitution. The amendment reads as follows:

“(3) Malta is a neutral state actively pursuing peace, security and social progress among all nations by adhering to a policy of non-alignment and refusing to participate in any military alliance. Such a status will, in particular, imply that:

(a) no foreign military base will be permitted on Maltese territory;

(b) no military facilities in Malta will be allowed to be used by any foreign forces except at the request of the Government of Malta, and only in the following cases:

(i) in the exercise of the inherent right of self-defence in the event of any armed violation of the area over which the Republic of Malta has sovereignty, or in pursuance of measures or actions decided by the Security Council of the United Nations; or

(ii) whenever there exists a threat to the sovereignty, independence, neutrality, unity or territorial integrity of the Republic of Malta;

(c) except as aforesaid, no other facilities in Malta will be allowed to be used in such manner or extent as will amount to the presence in Malta of a concentration of foreign forces;

(d) except as aforesaid, no foreign military personnel will be allowed on Maltese territory, other than military personnel performing, or assisting in the performance of, civil works or activities, and other than a reasonable number of military technical personnel assisting in the defence of the Republic of Malta;

(e) the shipyards of the Republic of Malta will be used for civil commercial purposes, but may also be used, within reasonable limits of time and quantity, for the repair

of military vessels which have been put in a state of non-combat or for the construction of vessels; and in accordance with the principles of non-alignment the said shipyards will be denied to the military vessels of the two superpowers⁸."

Challenges to Neutrality 1995 to 2017

US and NATO Pressures

Despite popular support for neutrality, it faces powerful political opponents. As has been seen, the Labour Party was the driving force behind the establishment of Maltese neutrality, but the centre-right Nationalist Party has long been sympathetic to NATO, in 1995 bringing Malta into NATO's "Partnership for Peace". This decision was reversed when the Labour Party returned to government in 1996⁹, with the country's involvement being "suspended", but in 2008 Malta's involvement in the "Partnership for Peace" was reactivated¹⁰ under a Nationalist Party government.

The attachment to neutrality felt by Maltese workers was manifested in 2001 when dockyard workers refused to carry out repairs on a US warship on the basis that it compromised the constitutional provision on neutrality¹¹; although supported by the General Workers' Union, they ultimately backed down under pressure.

The so-called "War on Terror" after the attack on the Twin Towers in the same year posed a further challenge to the nation's neutral stance. There were suggestions of possible involvement of Maltese facilities in "extraordinary rendition" flights (transport of terrorist suspects to secret prisons for torture).

⁸ Constitution of Malta; justiceservices.gov.mt

⁹ "Membership 'will not impinge on neutrality'"; *Times of Malta*, 22nd March 2008

¹⁰ "Relations with Malta", nato.int

¹¹ "Neutrality for our Time", by Ranier Fsnadi, *Times of Malta*, 2nd October 2014

However, Malta was not among the 54 countries (including Ireland) named in a 2013 report as being complicit in CIA rendition flights¹².

The Obama Administration saw the “War on Terror” morph into a war on the Islamist terror group ISIS, despite the US and its allies having paved the way for militant Islam through the overthrow of secular regimes in Iraq and Libya. In this context, Malta was in 2014 included by the US Government in a list of the members of the US “coalition” against ISIS. The Labour Government in Malta, however, protested that while they condemned terrorism on the part of ISIS, they did not form part of any US coalition; the US State Department removed Malta from the list¹³.

The European Union

By far the most significant setback to Malta’s constitutional neutrality has been the country’s accession to the EU in 2004. Consistent with its long-standing support for neutrality, the Labour Party opposed EU membership and argued that accession would pose a risk to Malta’s neutrality¹⁴. Although the vote went against them and Malta joined the Union, a declaration on neutrality to be attached to the accession treaty was agreed; this was based on the Irish declaration in the context of the Nice Treaty¹⁵; the text is as follows:

“Malta confirms that its participation in the European Union's common foreign and security policy does not prejudice its neutrality. The Treaty on European Union specifies that any decision by the Union to move to a common defence would have

¹² *Globalising Torture*, Open Society Justice Initiative, 2013

¹³ “Malta not part of anti-ISIS coalition, US amends country list”, by Miriam Dalli, *Malta Today*, 30th September 2014

¹⁴ *Malta’s EU Story*, the Today Public Policy Institute, June 2014

¹⁵ “Neutrality”, by Simon Busuttil, *Times of Malta*, 14th January 2003

to be taken by unanimous decision of the European Council adopted by the Member States in accordance with their respective constitutional requirements.”¹⁶

However, the Declaration does not have the same standing as a Protocol and is not of equal standing to other parts of the Treaty (Protocols declared to be an integral part thereof have equal status to other parts of a treaty). Moreover, the declaration of neutrality was unilateral on the part of the Maltese Government and was not agreed by the member states¹⁷. As such, the Declaration has little importance from a legal perspective.

In 2008, the Maltese Parliament unanimously ratified the Lisbon Treaty¹⁸, whose terms further undermined neutrality and paved the way for PESCO in 2017. However, Malta, under Labour rule once more, declined to participate in PESCO.

Maltese and Irish Neutrality: How Do They Compare?

Maltese neutrality contrasts dramatically with Irish pseudo-neutrality, particularly in legal terms. The Fifth Hague Convention of 1907 on the Rights and Duties of Neutral Powers and Persons in Case of War on Land sets out the generally accepted definition of neutrality in international law. Under Article 2 of the Convention, neutral states should not aid belligerents during war. The Maltese Constitution stringently outlines the obligations of Malta as a neutral state and is accordingly in line with the conception of neutrality in the Hague Convention.

By contrast, the Constitution of Ireland contains no explicit reference to neutrality and the policy is not based in any international treaty or legal

¹⁶ *Foreign Policy Objectives in European Constitutional Law*, by Joris Larik, p. 193

¹⁷ “Repealing the EU-Malta Accession Treaty”, by Alex Sceberas Trigona, *Times of Malta*, 24th October 2004

¹⁸ “Malta’s Parliament Ratifies Lisbon Treaty”, rte.ie; 30th January 2008

document¹⁹; this has allowed considerable flexibility to be employed in how the term has been defined by successive governments. Moreover, in allowing and assisting the transit of US troops via Shannon airport, Ireland's supposed "neutrality" is sharply at odds with the definition of neutrality in international law.

It has instead become defined as narrowly as possible, as meaning non-participation in formal military alliances. However, Ireland's participation in PESCO makes even this weak definition difficult to sustain. Indeed, referring to Ireland's application to join what was then the EEC in 1961, Seán Lemass made a prophetic statement:

"We recognise that a military commitment will be an inevitable consequence of joining the Common Market and ultimately we would be prepared to yield even the technical label of neutrality, we are prepared to go into this integrated Europe without any reservations as to how far this will take us in the field of foreign policy and defence²⁰."

Conclusion

The analysis of Malta shows that it is entirely possible for a small country to maintain a neutral and non-aligned stance and the role of bilateral defence treaties in the history of Malta's neutrality is particularly important in demonstrating how a neutral state can have its defence and international security needs met outside a collective military alliance.

While the nation's neutrality has been compromised on a number of fronts in recent years, Maltese neutrality nonetheless has a far stronger basis in domestic

¹⁹ *Irish Neutrality: What are the costs and benefits of Ireland's policy of neutrality?* by Comt Conor Burke, 2004

²⁰ *Ibid.*

and international law than fictitious Irish “neutrality”. Malta is at this stage the only EU country that has any claim on describing itself as neutral, as the only EU member state that is neither a member of NATO nor PESCO. As such, the Peace and Neutrality Alliance should seek to establish contacts with pro-neutrality forces in Malta as a matter of priority.

As inspiring as the firmness of Malta’s current government is in the face of EU militarisation, the reality is that Malta as the EU’s smallest member state, will only be able to hold out for so long and the question of the country’s EU membership will have to be addressed if Malta is to stand by its Constitution.