

How is malta's neutrality status being safeguarded politics essay



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Neutrality is one of the oldest and best strategies for security policy, which often has been chosen specifically by small states (such as Switzerland) as evidenced by the history of the last two centuries.

As Peter Calvocoressi stated in his book 'Neutrality now', neutrality is a status chosen by a state confronted by an imminent or existing war and accepted by the belligerents in that war'[1]

Thus, a state which declares itself permanently or generally neutral is doing no more than declare an intention to claim status if and when war occurs.

Since in the last 40/50 years the World is threatened less by inter-state wars, the role of neutrality has lessened. During the cold war, neutral states emphasized their political choice not to join any military blocs. In today's conditions neutrality often rests more on the particular state's historical traditions. Peter Calvocoressi continued by saying that often its only a political stance with judicial definition which more resembles a symbol than politics.

Malta's neutrality has to be considered in its historical background. Malta's foreign policy is dictated by its particular geographic position and by the political situation prevailing in the region as well as internationally[2].

The adoption by Malta of its neutrality in the late seventies was a response to fundamental geo-political realities in the Mediterranean area. Malta's location at the strategic centre of this highly volatile region makes it particularly sensitive and the actual and potential causes of instability and discord residing in its long standing cultural and economic disparities, in its

residue of historical antagonism and in its more recent threats coming from environmental degradation, drugs and arms trafficking, terrorism and illegal immigration[3].

Although the Malta Labour Party had proposed neutrality for Malta back in the mid-1950s they only had the chance of putting their policy into practice soon after their election to government in 1971. Moreover, neutrality could only begin to function fully according to the Labour conception following the closure of the British Military bases in March 1979. Insecurity in Europe and the Mediterranean region were correctly perceived as emanating from the East-West conflict and a policy of neutrality based on Non-alignment was calculated to be the best option for Malta. Furthermore, being incapable of basing its neutrality on self-help, Malta sought guarantees from third countries with diverse political systems and interests. It is not certain how these guarantees would have worked in practice in the case of a serious threat to Malta's security.

However, in 1976, the Maltese Government proposed a declaration of neutrality in return for a quadrilateral security guarantee and adequate financial assistance from the Government of Italy, France, Algeria and Libya. Ultimately only Italy made a declaration recognising and granting Maltese neutrality.[4]

The Maltese declaration of neutrality based on a policy of non-alignment was made on the 15th of May 1981 and was followed on the same day by the Italian declaration recognizing and guaranteeing Maltese neutrality as embedded in the former declaration. During the same month, the Maltese

declaration of neutrality was deposited with the United Nations. The text of 1981 declaration was reproduced almost when the neutrality clause was introduced in the Maltese Constitution.

Malta's neutrality status was shortly afterwards recognized by the Union of Soviet Socialist Republics (USSR) wherein the latter declared its recognition, respect and support of the status of the Republic of Malta as a neutral state pursuing a policy of non-alignment.

In 1982, another international agreement was entered between the Mintoff's Government and North Korea. In this agreement North Korea came to an understanding to supply free military weapons to Malta, ammunitions instructors and assistance to Malta. This agreement was the subject of a debate in Maltese Parliament with the opposition claiming that this agreement is practically the same as to a military alliance. Rebutting to these claims the Government claimed that the policy of neutrality as understood by the Maltese Government does not exclude a country from requesting military assistance from another country.[5]

Malta's neutrality was also included in the treaty of Friendship and cooperation between Malta and Libya signed on the 19th November 1984. The main points of interests and contention in this agreement were found in the ' Protocol on Cooperation in Security'. The agreement called the two parties to exchange information relating to security and defence. Libya agreed to provide military training and considered supplying military equipment.

When neutrality was being introduced in the Maltese Constitution in 1987, the Labour Government emphasised that the objectives and reasons of the Constitutional amendments were to include the status of neutrality based on non-alignment. The same party also proposed that if elected, it would seek security guarantees from the European Union.[6]

The issue of neutrality arose again when Malta applied to join the European Union. The Nationalist Government's position as expressed by the former Deputy Prime Minister and Foreign Minister Guido de Marco was that, the move to join the European Union does not require any constitutional amendments. He pointed out that Austria is a member state and is a neutral state. It made neutrality a particular issue when it applied to join the EU. This was a clear indication that the Government was ready to join the EU on the same lines as the other neutral member states.[7]

Examining Malta's Constitution

To analyse Malta's neutrality status one has to start from our constitution and it is important that a few general salient points are highlighted.

The supremacy of the constitution of Malta is embodied in Article 6 thereof, which establishes it as the supreme law of the land. The same article lays down the principle that any legislation which is inconsistent with the constitution is null and void.

Malta's neutrality provisions are enshrined in article 1(3) of the constitution which 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:

in the exercise of the inherent right of self-defense 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;

The first thing that should be noted in this statement is that Malta's policy status of neutrality is qualified by the principles of non-alignment. The second point would be 'refusing to participate in any military alliance'. This gives a particular meaning to the term 'neutral state', that is, a state which is refusing to participate not only in time of war but also during a peace time scenario.

Another important characteristic describing Malta's neutrality is that this 'neutrality' is an active one, since the constitution says; 'pursuing peace, security and social progress among all nations'.

The rest of the article goes on to give us a list of circumstances that may arise and are prohibited;

Prohibition of foreign military bases in Maltese territory.

Prohibition on the use of military facilities in Malta by any foreign forces.

Prohibition to use non military facilities in a military manner.

Prohibition of foreign military personnel on Maltese territory.

Prohibition of the use of Maltese shipyards other than for commercial purposes.

Does this mean that Malta's neutrality is safeguarded?

Definitely Not! This article cannot stop the Government of the day to violate Malta's constitution neutrality provision. The Government can exercise its executive power and not follow the letter and spirit of the constitution. The Constitution gives the right to an individual to contest the legality of laws according to the Constitution. However, the basis of a contestation must be a legal enactment and not a ministerial decision. This means that there is no judicial remedy against such action.

Indeed, the Malta neutrality clause has been subject of local political debates in the past. First clear example is when the Nationalist party applied for membership in NATO's partnership for Peace program and the second case was the issue of the US Naval vessel ' La Salle' entering the Maltese docks.

Consequently, this clause depends heavily on the good faith of the Government of the day since judicial remedy is not provided for the Constitution.

Malta's neutrality and Europe's security policies.

With regards to the Common Foreign and Security Policy (CFSP) and European Security Policy (ESDP), both emanating from the Nice Treaty, the position of Malta's neutrality status is safeguarded here. This was confirmed in 2002 by former European Commissioner President Romano Prodi where he assured Mr. Mintoff, the Nice treaty holds no threat to neutrality.[8]

The Nice Treaty only mentions the possibility of a common defence, which would necessitate an unanimous decision of the European Council, in accordance with Member states' constitutional rules. The principle of

unanimity prevails for decision-making in the FSP and where joint actions or common positions can be decided with qualified majority in policy fields, the Nice Treaty retains the possibility of 'constructive abstention'[9].

Moreover, Joe Borg, in the Times of Malta, also confirmed that the Nice Treaty is fully compatible with neutrality obligations and he does not see the possibility of all foreign and particularly defence decisions being taken by majority vote, with individual countries being obliged to follow them when they do not agree.[10]

But then again, in the event that a ratification of a future treaty arises, what can Malta do? Will our neutrality status be guaranteed? Will our country be bound to follow Europe's decisions?

Answer to this would be to try and secure a neutrality agreement similar to the Danish Protocol. This protocol explicitly states that Denmark does not participate in their adoption nor contribute to their financing.[11] Security through the addition of a similar Protocol applicable specifically to Malta. Would also be a safeguard against the executive powers of the Maltese Government.

Conclusion

Malta's neutrality in the future

Small states like Malta can contribute a great deal to achieve results on difficult issues because they pose no threat and have no hidden agendas. At the same time they have to ensure that their voice is heard and to do this they have to be around the table where decisions are taken. Malta's 'active'

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neutrality should not only be written on paper. Active neutrality should be advocated in terms of it being implemented and put into practice. It is important that neutrality be actively promoted and defended insofar as it is a viable and feasible foreign policy. But such an argument must be based on the tenants of neutrality, its history and a discussion of the plausibility and practicality of neutrality in addressing the needs of the Maltese islands, past, present and future.

Neutrality's political core can no longer be interpreted as a device for standing apart from all political and military questions on international cooperation. Today, neutrality's main task is not securing individual state sovereignty per se, but using neutrality's beliefs' for all Europe. Malta has to adopt its neutrality to the new environment.

Malta, as a nation demonstrating its active commitment to peace,

Malta's position at the core of the Mediterranean, halfway between the shores, will enhance the EU's profile which would attract dialogue between Europe and North Africa. It should establish strong cooperation with its Mediterranean neighbours.

It is important to point out that it is practically impossible to contest any action by the Government of the day, which is not in strict observance of the principles enshrined in the constitution of Malta's neutrality clause. There are procedural difficulties in the first place.

Notwithstanding the above, qualified majority decisions shall not apply to decisions having military or defence policy implications. As far as there are neutral countries in the EU,