

## THE NEUTRALIZATION OF THE PHILIPPINES

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The Act of Congress of January 17, 1933, popularly called the Hawes-Cutting-Hare Act, is now before the Filipino people for acceptance or rejection. The act of acceptance or rejection of said law is entrusted to the Philippine Legislature or to a convention to be called by the Legislature for the purpose. This Law is an attempt at a definite solution of the relationship between the United States and the Philippine Islands. But it is far more significant from the viewpoint of the Filipinos than from that of the Americans. Thru this enactment the Congress of the United States not only defines the political status of the Philippines for the next twelve years under the American flag but also seeks to determine in a way the kind of independence which the Philippines shall assume after the period of transition. The apparent date set for the withdrawal of actual and direct American sovereignty over the Philippines is July 4, 1935.

In many respects this piece of legislation is unique. Some persons see in its provisions an enlargement of the autonomous powers of the Commonwealth Government provided for during the period of ten years. They point to the provision authorizing the calling of a constitutional convention to draft the constitution which is to provide for the government of the Islands during the ten-year transition period. They point to the authority of the Filipino people to elect their own Chief Executive. On the other hand, others are persuaded that local autonomy is not only not enlarged but actually diminished by certain provisions of this law contained in sections 2 and 7 thereof which enumerate a series of limitations on the powers of the government during the period of transition, many of such limitations not being found in the present Organic Law of these Islands. They are of the opinion that the Chief Executive of the government during the transition period will be a mere figure-head, exercising no powers of any significance, for the President of the United States, thru the high commissioner who is an American, has broad power of direct intervention in the government of the Islands and has the very extraordinary authority to suspend the operation of any law, contract, or executive order of the govern-

ment on matters affecting the financial affairs of that government and the international obligations of the United States.

But for the present this discussion will be limited to the hints expressed in the law as to the character of Philippine independence. The terms of this congressional enactment with respect to this matter are by no means certain and definite. In its section 11 the President of the United States "is requested, at the earliest practicable date, to enter into negotiations with foreign powers with a view to the conclusion of a treaty for the perpetual neutralization of the Philippine Islands, if and when Philippine Independence shall have been achieved." Under section 10, in relation to section 5, the President of the United States is empowered to reserve and retain for the United States land or property for military and other reservations of the government of the United States not later than two years after the proclamation of Philippine Independence.

The above cited provisions of the Law indicate that Congress contemplates a permanently neutralized Philippine State. The President of the United States is not obliged to work for Philippine neutralization. He is simply requested to enter into a negotiation for neutralization. It is discretionary on his part to do it or not. Should he decide to take any action for Philippine neutralization, the question will arise as to whether the conditions of the grant and establishment of independence are compatible with neutralization. To answer this question, a proper understanding of the nature and circumstances of neutralization is necessary.

The permanent neutralization of an independent state has existed since the first years of the 19th century when the Island of Malta was neutralized by the Peace of Amiens of 1802. By this arrangement security of the neutralized state is guaranteed primarily on account of a community of interests existing against the dangers of annexation by adjoining states. In this sense the neutralized state may be considered as a *buffer state*, as expressed by the French statesman Thiers.

Neutralization is based upon an agreement between the neutralized state and other states. It establishes a permanent juridical relation among the interested states. In order to create this status the declaration by one state alone is not sufficient.

Neutralization may be of two kinds. The first type, such as that of Switzerland at present, requires that the neutralized state should adopt a policy of complete neutrality not only during

war times but also during periods of peace. Such a state, therefore, may not negotiate treaties of alliance or of mutual protection with another state which may oblige it to take part in wars. The other type of neutralization binds the neutralized state to an additional obligation, which is the disarmament within its territory and a renunciation of the right to construct therein military works and fortifications. This was the case of Luxemburg before the World War. The neutralized state retains intact in all other respects her international juridical capacity.

Permanent neutralization binds not only the states which give their consent to it but also those that tacitly approve or acquiesce to the arrangement. The violation of neutrality, therefore, by belligerent constitutes a breach of international law.

Neutralization imposes upon the states concerned the duty to protect with their armed forces, in case of need, the territorial integrity of the neutralized state. It may not be modified or lost by a declaration to that effect on the part of one state only. Nor may some of the states which have given their consent withdraw arbitrarily from the treaty of neutralization. The enlargement of the territory of the neutralized state requires the previous consent of the other states, whose obligations may not be increased by the unilateral act of the neutralized state. This does not seem to include, however, the acquisition of colonies, to which the guarantee of neutralization does not extend.

Permanent neutralization involves three essential conditions: (1) The inviolability of territory, (2) the inhibition from participating in wars, except wars to repeal an invasion, and (3) the duty to prohibit the passage of troops thru the neutralized territory.

If the Philippines will be permanently neutralized, the proper states which shall take part in the treaty of perpetual neutralization are the United States, Japan, Great Britain, France, Holland, Australia, and China. Will these nations, outside of the United States, agree to neutralization? It has been rightly anticipated that the presence of military, naval, and other reservations of the United States in the Philippines will be a serious obstacle to the consummation of this plan. The very idea of neutralization presupposes equality of rights among the neutralizing states in their relations to the neutralized state. The existence of fortified points belonging to one of the neutralizing powers in

the territory neutralized destroys an essential and well-established motive of neutralization. That motive is preservation of a balance of powers.

To secure the assent of other states to the permanent neutralization of these Islands, they must have an interest in such a status. So far the main causes of existing and past treaties of neutralization have been the desire to establish a *buffer state* and the need for the maintenance of a balance of powers. It is not clear whether the Philippines may serve as a *buffer state*. Australia may be interested in her permanent neutrality in order that a barrier may be formed against a possible expansion of Japanese interests to her domain. And Australia is anti-Japanese, or anti-Oriental. Holland may take the same attitude. These, however seem to be mere possibilities, for the Philippines is separated by seas sufficient to place her in a position of relative isolation.

The idea of a balance of powers in this part of the globe is a recent creation by some Americans opposed to Philippine independence. Whether the need for it is real, it remains yet to be seen. It does not seem clear that the preservation of such equilibrium of powers is as urgent and vital to the interests of the states in the East as has been the case of the balance of powers in Europe. To say that the peace of the Orient may only be preserved through the perpetual neutrality of the Philippine Islands is to mistake windmills for giants.

Very recently the Japanese consul-general in Manila gave out a statement that Japan has no particular interest which would make her take part in a treaty for the perpetual neutralization of the Philippines. Perhaps this statement, although not made in his official capacity, indicates the trend of thought among some leaders of Japan. On the other hand, Japan may desire to see the withdrawal of European and American political influence from the Orient; and this consideration may induce her to act as one of the guarantors of Philippine neutralization.

But assuming that the perpetual neutralization of the Philippines may be carried out, will it be for the best interests of the Philippines that she should be perpetually neutralized? Responsible Filipino leaders invariably speak of membership in the League of Nations in the event of independence. May the Philippines, if perpetually neutralized, be accepted as a member of the League of nations? The admission of Switzerland into the League was attained with some difficulties on account of her

neutralized status. For neutralization is clearly incompatible with membership of the League, because such membership calls for the performance of certain obligations which conflict with the character and spirit of a treaty of perpetual neutralization. Articles 10 and 16 of the Covenant of the League require its members to maintain the territorial integrity or existing political independence of every member against external aggression, and enjoin all members to adopt war measures and an economic boycott against any state violating the Covenant of the League.

The League Council was confronted by a serious question: Should Switzerland be admitted as a member and at the same time be permitted to retain her permanent neutrality? It would be singularly absurd to deny membership to her when her national history and policy have been one of devotion to world peace. It was only after a favorable report presented by Mr. Balfour that the Council decided to admit Switzerland without compelling her to surrender her neutrality. The Council took into account the "unique situation" of Switzerland, the fact that her neutrality had been in existence for over a century and had been reaffirmed in the Treaty of Versailles, and that such neutrality had become an accepted condition of the public law of Europe. The resolution of the Council dated February 13, 1920, on the admission of Switzerland reads as follows:

"The Council of the League of Nations, while affirming that the conception of neutrality of the members of the League is incompatible with the principle that all members will be obliged to co-operate in enforcing respect for their engagements, recognizes that Switzerland is in a unique situation, based on a tradition of several centuries which has been explicitly incorporated in the Law of Nations, and that the members of the League of Nations, signatories of the Treaty of Versailles, have rightly recognized by Article 435 that the guaranties stipulated in favor of Switzerland by the Treaties of 1815, and especially by the Act of November 20, 1815, constitute international engagements for the maintenance of peace.

"The members of the League of Nations are entitled to expect that the Swiss people will not stand aside when the high principles of the League have to be defended. It is in this sense that the Council of the League has taken note of the declaration made by the Swiss Government in its message to the Federal Assembly of August 4, 1919, and in its Memorandum of January 13, 1920, which declarations have been confirmed by the Swiss delegates at the meeting of the Council, and in accordance with which Switzerland recognizes and proclaims the duties of solidarity which membership of the League of Nations imposes upon her, including therein the duty of co-operating in such economic and financial measures as may be demanded by the League of Nations against a covenant-breaking State and is prepared to make every sacrifice to defend her own territory

under every circumstance, even during operations undertaken by the League of Nations, but will not be obliged to take part in any military action or to allow the passage of foreign troops or the preparation of military operations within her territory.

"In accepting these declarations the Council recognizes that the perpetual neutrality of Switzerland and the guaranty of the inviolability of her territory as incorporated in the Law of Nations, particularly in the Treaties and in the Act of 1815, are justified by the interests of general peace, and as such are compatible with the Covenant." League of Nations, Vol. III, (1920), pp. 59-60.

It is said that the statement of the Council to the effect that Switzerland is in a "unique situation" was intended "to guard against the special status, which is to be conceded to her in the League, being claimed as a precedent in favor of other members who desired not to participate in the League's military enterprises." That this was really the intention is demonstrated in the case of Luxemburg. The original application presented by Luxemburg for membership in the League contained an expression of her desire to retain her neutralization. The Council refused this petition; and it was only after the representatives of Luxemburg withdrew their desire to preserve the neutralized status of their country that League membership was accorded to her.

"The original request made by Luxemburg contained a reservation concerning her neutrality. This neutrality is of a twofold nature. It exists by international law and by internal legislation. Internationally it was recognized by the treaty of 1867. The Treaty of Versailles altered the dispositions of that condition, but Luxemburg still retained its neutrality in virtue of its internal legislation. The case is different from that of Swiss neutrality, because Swiss neutrality is an armed neutrality, and one, therefore, which Switzerland is enabled to defend. In the case of Luxemburg the condition is entirely different. There is no army, and therefore Luxemburg would not be in a position to defend its neutrality. However, article 16 of the Covenant provides for the passage of troops through territories if ordered by the League of Nations. This passage of troops through a neutral country is incompatible with the idea of neutrality. Luxemburg, however, has agreed to this condition, and it has accepted the obligations which fall on every Member of the League under Article 16 of the Covenant. The original reservation has been withdrawn in a letter which was addressed to the Committee, and, further, the Luxemburg Delegation undertake to see that the internal legislation will be altered to bring it into line with the requirements of the Covenant, and in particular with the requirements of Article 20 of the Covenant." League of Nations, Vol. IV, (1921), pp. 150-151.

An independent Philippines will have before her, therefore, the choice of three situations for her international status. She

may become a perpetually neutralized state, conditioned of course upon the willingness of the powers most concerned with Oriental problems to sign a neutralization treaty. She may wish to become a member of the League of Nations, in which case she must forego any desire of being a neutralized state. And lastly, she may decide to remain unattached to the League of Nations and at the same time to be free from the duties and responsibilities of a perpetually neutralized state. This last situation, however, will not be in any way beneficial to small countries as the Philippine Islands. Membership in the League of Nations, although not giving the complete and ideal protection small nations desire, has nevertheless tempered to a considerable extent the greed and the insolence of powerful states. She may well profit by the experience of a neighbor, Siam. It was only after Siam became a member of the League of Nations that the harassing encroachments of England and France upon her territories ceased, and her internal peace and development secured a chance to gain a firmer footing. The Philippines will have in the League of Nations an adequate agency through which she may appeal to world opinion instead of to the opinion of only three or four countries, parties of a neutralization treaty.