

3-1-1988

Costa Rica's Permanent Neutrality and the Inter-American System

Héctor Gros Espiell

Inter-American Court of Human Rights

Follow this and additional works at: <https://digitalcommons.schulichlaw.dal.ca/dlj>



Part of the [International Law Commons](#)

Recommended Citation

Héctor Gros Espiell, "Costa Rica's Permanent Neutrality and the Inter-American System" (1988) 11:2 Dal LJ 663.

This Commentary is brought to you for free and open access by the Journals at Schulich Law Scholars. It has been accepted for inclusion in Dalhousie Law Journal by an authorized editor of Schulich Law Scholars. For more information, please contact hannah.steeves@dal.ca.

Comments

Héctor Gros Espiell*

Costa Rica's Permanent
Neutrality and the
Inter-American System

I. Introduction

Costa Rica's permanent neutrality was proclaimed on November 17, 1983¹. Costa Rica is the only Latin American State with a legal regime of permanent neutrality, as well as the single Member State of the Organization of American States which is also a Party to the Inter-American Treaty for Reciprocal Assistance (Rio de Janeiro, 1947), which has adopted permanent neutrality as a guiding principle of its foreign policy.

In the past there have been several frustrated efforts in Latin America to apply a legal regime of permanent neutrality to a country² or to preserve a state of neutrality in the face of eventual armed conflicts of its neighboring nations³. It can also be said that an attitude of neutrality has been a prevailing constant feature, with certain exceptions, in the history of several Latin American countries, among these Costa Rica itself⁴.

* Judge at the Inter-American Court of Human Rights, San José, Costa Rica.

1. Proclama Presidencial sobre la Neutralidad Perpetua, Activa y No Armada de Costa Rica, November 17, 1983, San José, 1983; Luis Alberto Monge, *The Neutrality of Costa Rica*, Imprenta Nacional, San José, Costa Rica, 1984.

2. Treaty subscribed among Uruguay, Argentina and Brazil on the Neutrality of Uruguay, dated January 2, 1859, which never entered into force due to the lack of ratification on the part of Uruguay. See: Héctor Gros Espiell, "Un Antecedente Curioso de Neutralidad," *La Nación*, Costa Rica, January 18, 1986.

3. Honduras, Article 3 of the General Treaty of Peace and Amity of December 20, 1907, states: "Taking into account the central geographical position of Honduras and the facilities which owing to this circumstance have made its territory most often the theater of Central American conflicts, Honduras declares from now on its absolute neutrality in event of any conflict between the other Republics; and the latter, in their turn, provided such neutrality be observed, bind themselves to respect it and in no case to violate the Honduran territory." Salvador Rodríguez González, "The Neutrality of Honduras and the Question of the Gulf of Fonseca," 10 A.J.I.L. 509.

4. Several "chapters" of the preamble to the Presidential Proclamation refer to this issue (Origen de Nuestra Neutralidad, La Vocación de Neutralidad, El Carácter de Nuestro Pueblo). See: Armando Vargas, "La Neutralidad Restaurada", Ministry of Information and Communications, San José. See also: Studies by José Néstor Mourelo, Hugo Alfonso Muñoz, Enrique Van Browne, Raúl Arévalo and Bernardo Baruch, in "La Neutralidad Perpetua de Costa Rica," Minutes of the First World Congress on Human Rights, Vol. 1, San José, 1984; Luis Guillermo Solís, "Neutralidad y No Intervención en la Historia de Costa Rica," *Relaciones Internacionales*, Heredia, Costa Rica, Year IV, No. 6, 1983; Armando Vargas, "La Nación contra La Nación," Foro de La Nación, *La Nación*, San José, December 7, 1985.

Nevertheless, these extremes do not contradict the aforementioned on the exceptional and unique nature of Costa Rica's permanent neutrality in today's Latin America.

This fact grants it a significant interest — not merely political, but juridical as well⁵ — regarding the compatibility of Costa Rican neutrality with the American regional system, grounded on the United Nations Charter (Art. 52), structured by the Charter of the Organization of American States currently in force, as amended by the Protocol of Buenos Aires, and on the Inter-American Treaty on Reciprocal Assistance (Rio de Janeiro Treaty, 1947).

Costa Rica's neutrality derives from the "Presidential Proclamation" of November 17, 1983. In the first place, it is important to bear in mind that the juridical basis of Costa Rica's neutrality is not in a multilateral or bilateral treaty. This solution is adopted in cases which are generally thought of today as examples of permanent neutrality⁶. Indeed, the case closest in time to that of Costa Rica — that of Malta's permanent neutrality — has its basis in a bilateral treaty with Italy⁷. Costa Rica's permanent neutrality, on the other hand, derives from a unilateral act of domestic law, from a Presidential Proclamation. The analysis of the presidential competence in this regard and the constitutional and legal problems it implies are irrelevant from the point of view of international law⁸. It is a unilateral and valid juridical act which has full effect at the

5. Dietrich Schindler, "Neue Fälle Dauernder Neutralität: Malta and Costa Rica," in *Mélanges Georges Perrin*, Lausanne, 1984, pp. 277-291.

6. Héctor Gros Espiell, "Neutralidad y No Intervención," I.I.D.H., San José, 1985, pp. 17-18.

7. Natalino Ronzitti, "Malta's Permanent Neutrality," V. *Italian Yearbook of International Law*, 1980-81; Dietrich Schindler, *supra*, note 5.

8. "A State cannot invoke its own Constitution, as regards another State, in order to withdraw from the obligations imposed by International Law or by the treaties in force." *Treatment of Polish Nationals and other Persons of Polish Origin or Speech in the Dantzing Territory Advisory Opinion*, 1932, P.C.I.J. A/B, No. 44, p. 24. In accordance with Art. 27 of the Vienna Convention on the Law on Treaties of May 23, 1969: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46." On the problem of Costa Rica: Hugo Alfonso Muñoz, "Reform to Articles 1 and 12 of the Political Constitution of Costa Rica," *Relaciones Internacionales*, Heredia, No. 8-9, Costa Rica, 1984; Magda Inés Rajos, "Constitución Política y Neutralidad," *ibid.*, Vol. IV, No. 6, 1983. When the bill to include permanent neutrality in the Constitution through a constitutional amendment was rejected, it was announced on February, 1986 that the Executive sent a draft "Law of Neutrality" to the Legislative Assembly. The text of the draft of the Executive Branch has already been made public. Its Articles 1 and 2, which are essential for the issue under study, stipulate:

ARTICLE 1. Costa Rica is neutral in the face of any international armed conflict and in the face of any armed conflicts within other states, in accordance with the provisions of this law and with International Law. Costa Rica's neutrality is perpetual, active, and non-armed.

international level⁹. In this connection, I have stated in a recent study that:

But, in addition, nothing, from the point of view of international law prevents a State's permanent neutrality from being the result of a unilateral declaration of a State. International law today recognizes that unilateral declarations may well be sources of international law. This is accepted by the doctrine and there is ample international jurisprudence in this area. This thesis was fully developed by the International Court of Justice in the cases of the French nuclear tests in the Pacific¹⁰.

As an internationally valid unilateral act, it creates rights and obligations with respect to other States. Costa Rica may demand that these be complied with and they may, in turn, be similarly required under a regime based on "good will," as it was put by the International Court of Justice. Nevertheless, it should be pointed out that the essentially revocable nature of a Presidential Proclamation at all times, and especially in the event that a new government takes a different position on this matter, creates problems that cannot be ignored.

The Presidential Proclamation of November 17, 1983 refers to the matter of the rights attributed to it, and the duties that Costa Rica assumed¹¹. In this respect, it is important to bear in mind paragraphs B and C of the resolutive portion of the Proclamation:

ARTICLE 2. The national territory, including its air space and its jurisdictional waters, is inviolable. In the event of an act of aggression, Costa Rica shall exercise the right of legitimate self-defense, in accordance with Article 12 of its Political Constitution, the Charter of the Organization of American States, and the Inter-American Treaty of Reciprocal Assistance. The defense of its neutrality and the integrity of its territory, is not to be considered as a hostile act, even though the use of force is needed. The Executive shall endeavor to negotiate bilateral or multilateral agreements or treaties in order to guarantee Costa Rica's neutrality.

9. See: the issue of Nuclear Tests, *Australia v. France* judgment, I.C.J., Reports 1974, paragraphs 43-46. In the latter part of this paragraph, the Court stated: "Just as the very rule of *pacta sunt servanda* in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral declaration. Thus interested States may take cognizance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected." On unilateral declarations and neutrality, see Alfred P. Rubin, "The International Legal Effects of Unilateral Declarations" (1971), A.J.I.L. 1 in reference to the case of neutrality of Laos.

10. Héctor Gros Espiell, *supra*, note 6 at 19.

11. In the presidential explanation of the Neutrality Proclamation on the duties and commitments which Costa Rica assumes internationally, it is stated: "In line with our vocation to peace, Costa Rica freely assumes full responsibility before the community of world nations, of all duties inherent to its new condition as a permanently neutral state. We commit ourselves to start no war; to use no force, including threats or military retaliation; to participate in no war between third states; to effectively defend our neutrality and independence with all the material, legal, and moral resources available; and to conduct a general policy of neutrality in order not to be drawn in reality or in appearance into an armed conflict. Moreover, we commit ourselves to extend our duties as a perpetually neutral state to armed conflicts within states."

(B) I DECLARE that the Government of Costa Rica is willing to comply with, and see that others comply with, the duties implicit in this Proclamation of Permanent, Active, and Unarmed Neutrality, according to the principles of International Law; and

(C) Based on Article 139, Clause (2) of the Political Constitution of Costa Rica, I RESOLVE that this Proclamation be communicated to all other nations with which Costa Rica maintains diplomatic relations.

II. *Characteristics Attributed to Costa Rica's Neutrality*

In the first place, the Proclamation states that the neutrality shall be "Perpetual and Non-Transitory"¹². In other words, Costa Rica waives its sovereign right to proclaim in the future to be neutral or not in the face of a foreign armed conflict and, on the contrary, is committed to being a State with a permanent neutrality. Its international juridical status will, therefore, be analogous to that of Austria, Switzerland, Laos, Finland, the Vatican or San Marino¹³. In a certain way, inasmuch as its legal regime of permanent neutrality compels it to "have a foreign policy of neutrality", it would resemble the cases of countries which exercise such a policy, such as Sweden¹⁴ (which is, however, not *strictu sensu* a State with a legal regime of permanent neutrality).

Secondly, the Proclamation describes Costa Rica's neutrality as "active". The Proclamation explains the meaning of this classification as follows:

It does not imply ideological or political impartiality. Consequently, Costa Rica reaffirms its faith in the political and social conception that it shares with the western democracies.

In reality, this symbolizing feature of Costa Rica's neutrality is logical, and perhaps inevitable, by virtue of this nation's international location. Today, permanent neutrality tolerates and is compatible with international ideological and political definition. In the past this may have seemed impossible. The change is the result of the modification of the general characteristics of the prevailing international situation in comparison to that of yesteryear, since neutrality is not a crystallized institution having totally and absolutely unchanging traits. Quite the contrary, surrounding the nucleus which constitutes its essence, and

12. Rudolf L. Bindschedler, "Permanent Neutrality of States," in Bernhard (ed.), *Encyclopedia of Public International Law*, Installment 4, 1982; René Dollos, "Essai sur la Neutralité Permanente," R.C.A.D.I., Vol.67, 1939.

13. We have studied the characteristics of each of these cases, quoting the current bibliography on each, in "Neutralidad y No Intervención," *supra*, note 6 at 17, and in "Neutralidad y Seguridad," *Revista de Ciencias Jurídicas*, No. 52, San José, pp. 99-105.

14. Astrom Sverber, "La Política de Neutralidad de Suecia," 1984.

which is unchangeable because it determines its own existence, there are elements which may evolve in accordance with the changes taking place in the international arena¹⁵. Such is the case of the ideological commitment, of belonging to a specific international policy, to which a neutral State is entitled notwithstanding its neutral nature and its abstaining from participation in any external armed conflict.

This feature of Costa Rica's neutrality leads us to distinguish between the concepts of neutrality and non-alignment. I have stated on another occasion that:

For the sake of avoiding confusion and before further delving in the topic, it is necessary to distinguish between the concept of a State with a legal regime of permanent neutrality and the case of a State belonging to the Movement of Non-Aligned Nations. Non-alignment is a political concept and is not the same as neutrality. Neither Switzerland, nor Austria, nor the Vatican, for example, take part in the Movement of Non-Aligned Nations. On the other hand, as an example, neither Yugoslavia, nor India, nor Argentina are states that have a legal regime of permanent neutrality, in the strict and traditional meaning of the expression. It is impossible to grasp the meaning of the problems posed by neutrality, if one does not understand this distinction or comprehend that it is necessary to differentiate between the neutrality of a state in the face of one or more armed conflicts, whether simultaneous or consecutive, as a consequence of declarations of neutrality in the face of concrete and specific cases, and the condition of a legal regime of permanent neutrality¹⁶.

Costa Rica is not a member of the Movement of the Non-Aligned Nations, while other Latin American countries that do not have a legal regime of permanent neutrality, such as Argentina and Bolivia, for example, are members. Non-alignment is a political concept that is indispensable for understanding current reality and international law¹⁷, but it does not necessarily coincide with permanent neutrality, despite the fact that it may have some analogous elements, especially those derived

15. Georges Perrin, "La Neutralité Permanente de la Suisse et les Organisations Internationales," Heule, Belgique, 1964, p. 6; Dietrich Schindler, "Aspects Contemporains de la Neutralité," *Recueil des Cours, Academie de Droit International*, Vol. 121, 1967. This leads us to also understand that nowadays the statute of permanent neutrality of a State is not incompatible with the ideological commitment of that State. The special case of the Vatican City should be considered a case by itself. Ideologically speaking, Switzerland stands in a special sphere. It is evident that, although in different circumstances, Austria follows suit. And it is doubtlessly true that Finland is in a different and complex situation, although not an opposing one.

16. Héctor Gros Espiell, "Neutralidad y No Intervención," *supra*, note 6 at 16-17.

17. Mohammed Bedjaoui, "Non Aligement et Droit International," *Recueil des Cours, Academie de Droit International*, Vol. 151, 1976; Héctor Gros Espiell, "Los Conceptos de Soberanía e Interdependencia y los Principios del Movimiento de los Países No Alineados," in *The Principles of Non-Alignment*, edited by Höchler, Third World Center, London, 1982.

from the will to withdraw from any eventual armed confrontation between superpowers. But politically and ideologically speaking, essential differences exist which, in the case of Costa Rica, signify that this neutral State is not a part — nor is it contemplating the possibility of becoming a part — of the Non-Aligned Nations Movement, despite the fact that it is a member of the Group of the 77 and it is clearly an underdeveloped country.

Thirdly, Costa Rica's neutrality is "unarmed." The Presidential Proclamation states that:

Its external security will continue to be grounded on the sovereign will of the people, on the rules of International Law, and on the systems of collective security to which it belongs. None of these requires the maintenance of armed forces as a permanent institution or the use of force in the solution of conflicts which affect other states.

This characteristic of the Costa Rican neutrality necessarily derives from the fact that we are speaking of a State which has "voluntarily and unilaterally" renounced its right to have armed forces and has had no army since 1949. Article 12 of the 1949 Constitution, currently in force, reads:

The army as a permanent institution is proscribed. For vigilance and the preservation of the public order, there will be the necessary police forces.

Only through continental agreement or for the national defense may military forces be organized; in either case they shall always be subordinate to the civil power; they may not deliberate, nor make manifestations or declarations in individual or collective form.

Generally, neutral States have armed forces in order to guarantee their neutrality (relatively speaking, as far as today's international situation, military strategy and technology are concerned). Conceptually, however, nothing prevents non-armed neutrality from existing. Such is the case of Vatican City and the Holy See. The 1929 Treaty of Letran between the Holy See and the Kingdom of Italy declares in its Article 24 that the Holy See wishes to remain and shall remain apart from all temporary disputes amongst nations. The final paragraph of this article reads as follows:

In consequence of this Declaration, the State of the Vatican shall always and in every case be considered neutral and inviolable territory.

And the Declaration of the Holy See of June 7, 1944, on the occasion of the entry of Allied troops in Rome, stated that:

It is the avowed policy of the Holy See to maintain unchanged this attitude of neutrality whoever may be the military authorities actually having control of the City of Rome and it has every confidence that it will be able to continue its spiritual activity in the world through regular and free

contacts with its representatives in the various nations and with the Episcopacy of the Catholic Church in every country¹⁸.

This non-armed feature of the Costa Rican neutrality could eventually pose problems by virtue of international commitments accepted by the Costa Rican State (for examples, Arts. 43 and 45 of the United Nations Charter and Arts. 27 and 28 of the Amended Charter of the Organization of American States). Nonetheless, we believe that such problems do not exist in reality and that non-armed neutrality is perfectly compatible with Costa Rica's international commitments, for the reasons set forth below.

III. *Compatibility of a State with a Legal Regime of Permanent Neutrality with Membership in the United Nations and the Organization of American States*

This issue has evolved, since San Francisco, from a position that neutrality was irreconcilable with the United Nations Charter to the current position in which, *de facto et de jure*, it is accepted that a neutral state may be a member of the United Nations.

Upon analyzing the United Nations Charter, particularly the interpretation of Articles 43 and 45, Verdross concludes:

Even though they tried to suppress the institution of Neutrality at San Francisco, that objective was not attained in the contents of the Charter. Furthermore, in view of the fact that, as a consequence of the division of the superpowers, the Security Council is not always in a position of taking action, the concept of neutrality becomes very topical at the present time¹⁹.

I do not plan to develop this point further, especially delucidated as a result of Austria's entrance in the United Nations²⁰ and of the studies prompted by Switzerland's situation²¹. It is merely pertinent to recall that this conclusion regarding the present compatibility of permanent neutrality with the status of a Member State of the United Nations becomes a necessary assumption for raising the issue of Costa Rica's permanent neutrality under the inter-American system.

The Organization of American States constitutes a "regional agency" within the United Nations System (Arts. 52-54 of the United Nations

18. "Vatican City, Declaration of Continued Neutrality of the Holy See, June 7, 1944" (1944), 538 A.J.I.L. 20.

19. Héctor Gros Espiell, *supra*, note 6 at 11.

20. A. Verdross, "Die Immerwährende Neutralität Österreich," Wien, 1977; Felix Ermacora, "20 Jahre Österreichische Neutralität," Frankfurt, 1975; A. Verdross, "Austria's Permanent Neutrality" (1956), 50 A.J.I.L. 61; Ch. Chaumont, "La Neutralité de l'Autriche et les N.U.," A.F.D.I., 1955; Ch. Chaumont, "Nations Unies et Neutralité," R.C.A.D.I. 89, 1956-I.

21. G. Perrin, "La Neutralité Permanente de la Suisse et les Organisations Internationales," Centre International d'Etudes et des Recherches Européennes, Luxembourg, 1965; Emanuel Diez, "UNO-Beitritt und Neutralitätserklärung," *Mélanges Georges Perrin*, Lausanne, 1984.

Charter). Article 1 of the 1948 O.A.S. Charter, amended by the Buenos Aires Protocol in 1967, resolved:

The American States establish by this Charter the international organization that they have developed to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence. Within the United Nations, the Organization of American States is a regional agency.

Article 2, which enumerates the essential “purposes” of the organization, specifies clearly and precisely the relationship that these purposes have with the compliance of regional commitments derived from the United Nations Charter:

The Organization of American States, in order to put into practice the principles on which it is founded and to fulfill its regional obligations under the Charter of the United Nations, proclaims the following essential purposes:

- a) To strengthen the peace and security of the continent;
- b) To prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the Member States;
- c) To provide for common action on the part of those States in the event of aggression;
- d) To seek the solution of political, juridical, and economic problems that may arise among them; and
- e) To promote, by cooperative action, their economic, social, and cultural development.

If the permanent neutrality is considered today to be reconcilable with the status of a Member State of the United Nations, it would appear, in principle, that such neutrality would not create a problem of incompatibility by belonging to a regional agency, such as the O.A.S., whose activities must be in accordance “with the Purposes and Principles of the United Nations” (Art. 52 of the United Nations Charter).

I have stated on another occasion that:

As regards the O.A.S. Charter, I find no incompatibility between the situation of a Member State of the Organization of American States and the possibility that this State adopt a legal regimen of permanent neutrality. If neutrality is recognized as compatible with the United Nations system — containing that which the O.A.S. Charter System does not, namely, the possibility of action, including the use of force whenever the Security Council may deem it necessary (Arts. 42-49 of the United Nations Charter) — there is even more cause to recognize the compatibility between being a member of the Organization of American States and the permanent neutrality of an American State²².

22. Neutralidad y No Intervención, *supra*, note 6 at 22.

It is a fact that the O.A.S. Charter contains two resolutions (Arts. 27 and 28) related to "Collective Security" (Chapter VI). Nevertheless, these do not lead to the conclusion that a Member State may not have a legal regime of permanent neutrality.

Article 27 states:

Every act of aggression by a State against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States.

It seems evident that this principle — a current version of the traditional "American Solidarity"²³, taken from paragraph (f), Article 3, of the O.A.S. Charter — does not affect the possibility that a State may be neutral.

There was a norm (Art. X) in the Covenant of the League of Nations that in a certain way was analogous, but it was not considered an obstacle *a priori* for a neutral State to become a member of the League²⁴. Moreover, in present-day America the fact that, in the event that an act of aggression against an American State occurred, all others would consider this act as an aggression against the other American States, only implies that the legitimate collective defense is effectively implemented (Art. 51 of the United Nations Charter). Permanent neutrality is therefore not incompatible with the inherent right to legitimate defense.

Costa Rica's "active" neutrality does not prevent an aggression against another American State being also considered an act of aggression against Costa Rica; nor, in the opposite case, an aggression against Costa Rica being considered an act of aggression against the other American States.

Save the case of aggression and in exercise of the right to legitimate defense, taking into account the active and non-armed nature of its neutrality, Costa Rica shall not participate in any foreign armed conflict. This was clearly set forth in the Neutrality Proclamation:

Active neutrality is entirely compatible with the rights of Costa Rica as a member of the United Nations, the Organization of American States, and the Inter-American Treaty of Reciprocal Assistance in all aspects pertaining to the preservation of peace and international security, as well as all activities oriented toward the peaceful solution of controversies and a more equitable economic and social order with greater respect for human rights and fundamental liberties.

23. Alberto Guani, "La Solidarité Internationale dans l'Amérique Latine," R.C.A.D.I., 1925, II. Vol. 8; Antonio Gómez Robledo, "La Seguridad Colectiva en el Continente Americano," México, 1961.

24. John B. Whitton, "La Neutralité et la Société des Nations," R.C.A.D.I., Vol. 17, 1927.

The above conclusion, derived from Article 27 of the O.A.S. Charter, is confirmed by Article 28 of Chapter VII (Collective Security):

... the American States, in furtherance of the principles of continental solidarity or collective self-defense, shall apply the measures and procedures established in the special treaties on the subject.

Article 28 limits itself to a reference to special treaties, which, more precisely, is the Inter-American Treaty of Reciprocal Assistance (Rio de Janeiro, September 2, 1947).

The Inter-American Treaty of Reciprocal Assistance (Rio Treaty) is an international instrument of the inter-American system and its basic principles have been incorporated into the O.A.S. Charter (Art. 26 of the Rio Treaty and Arts. 27 and 28 of the Charter), but the status of member of the Organization does not automatically signify that it becomes a party to the treaty or vice versa (Art. 23 of the Rio Treaty and Art. 144 of the Charter). Although the Rio Treaty operates within the inter-American system, a nation may be a member of the system, such as member of the O.A.S., but not necessarily be a party to the Rio Treaty. Even though a few years ago this was only a theoretical possibility and in a certain way restricted by Article 6 of the Charter, there are several States today, especially in the Caribbean Basin, that are members of the O.A.S., but are not parties to the Rio Treaty²⁵.

As far as the legitimate collective defence and collective regional security are concerned, the 1947 Inter-American Treaty of Reciprocal Assistance is the instrument in force, since the revised Protocol adopted in 1975 in San José is not in effect because it has not yet attained the number of ratifications required by its Article IX.

Upon confronting the issue of the compatibility of permanent neutrality with the Rio Treaty System, in my study on "Neutrality and Security", I have pointed out that:

One must recall that according to the doctrine, and I here quote a definition of the great jurist Alfred Verdross, a neutral state "is obliged to take no part in the wars of other States and to create no ties in times of peace which might lead it to war or, in the event of war, make compliance of the norms governing the right to neutrality impossible. It must abstain, for example, from any treaty of alliance." In applying this concept to the Rio Treaty, it should be understood that this Treaty is not an alliance treaty in the traditional sense of the term, but merely a juridical regulation of legitimate collective defense and regional security, through a coordinate system which is accessory to that of the United Nations (Arts. 51-54 of the

25. "Neutralidad y No Intervención," *supra*, note 6 at 22. On the applicability to some of these situations of Article 6 of the O.A.S. Charter, and on its effects on the inter-American system, see Francisco V. Gardía Amador, "El TIAR: Génesis, Desarrollo y Crisis del Sistema Regional de Seguridad Colectiva," *Anuario Jurídico Interamericano*, 1983, p. 23.

United Nations Charter and Art. 5 of the Rio Treaty). Despite its flaws and dangers, and its obvious and interesting political significance, it does not establish an automatic military alliance which may inevitably lead the States to war, in the assumption set forth in Articles 3, 6 and 7, since in order to adopt the measures mentioned in Article 8, which may go as far as the use of armed force, a decision of the Organ of Consultation is required to be adopted through the vote of two-thirds of the signatory States which have ratified the Treaty (Article 17). These decisions are mandatory; however, "no state shall be required to use armed force without its consent" (Article 20)²⁶.

It is evident that the conclusion to be reached on the compatibility of permanent neutrality of an American State with the Rio Treaty should not be the result of an abstract or theoretical proposal, but should take into consideration the true nature of the Rio Treaty and the specific meaning it has today. It should also be based on the concrete analysis of its resolutions, on the resulting commitments to be undertaken by the States and on the undeniable crisis it is currently undergoing.

The Inter-American Treaty of Reciprocal Assistance cannot be considered at present a traditional form of military alliance with automatic effects²⁷. It is a conventional set of regulations within the inter-American system for a regime of collective security, resulting from legitimate collective defence, which functions through a procedure governed by the Treaty itself, and is also directly related to the United Nations Charter.²⁸

The Rio Treaty is complex and diffuse. In its beginnings, it dangerously mixed legitimate collective defense with regional collective security. It later acquired the features of a regional military alliance, though non-automatic and restricted in nature through the inclusion of Article 20. Likewise, it intended to operate as an instrument against the "subversive aggression of international communism".²⁹ When the time came, this supposed and atypical alliance was unable to consider itself unlinked from other more or less analogous treaties concluded in other regions of

26. *Revista de Ciencias Jurídicas*, No. 52, San José, 1985, pp. 103-104.

27. Alberto Quiroga, "El Caso de las Malvinas visto desde la perspectiva del Organ de Consulta del TIAR," *Anuario Jurídico Interamericano*, 1983, p. 247; César Sepúlveda, "Meditaciones sobre el Tratado de Río," *Anuario del Instituto Hispano Luso Americano de Derecho Internacional*, Madrid, No. IV, 1973; Antonio Gómez Robledo, "El Tratado de Río," *Foro Internacional*, Vol. I, No. 1, México, 1960.

28. The necessary compatibility of the inter-American system for maintaining international peace and security with the purposes and principles of the United Nations is reaffirmed in paragraph 2 of the Preamble of the Rio Treaty. Articles 1, 2, 3.1.4, 5, 7, and 10 of this Treaty refer to or invoke provisions of the United Nations Charter. Article 10 is especially eloquent: "None of the provisions of this Treaty shall be construed as impairing the rights and obligations of the High Contracting Parties under the Charter of the United Nations."

29. On this evolution of TIAR, see César Sepúlveda's brilliant analysis, *supra*, note 27.

the world in the years immediately following³⁰. But after the Rio Treaty crisis broke out, a crisis which has continued and even worsened, the military alliance characteristics have gradually faded. The sad experience of its frustrated application in the case of the Falkland Islands³¹ shows that it cannot operate as an alliance for the protection of a Latin American State from armed aggression originating outside the continent, if the United States is, in turn, the aggressor's ally³². It has therefore only operated as an atypical method for the solution of controversies and for the settlement of conflicts between small Latin American countries.

These historical and political elements prove that the Rio Treaty today is not in reality a military alliance that can be considered incompatible with permanent neutrality. The specific study of its resolutions demonstrate likewise. Article 20 stipulates that "no State shall be required to use armed force without its consent," which means that it is not a military alliance capable of automatically involving its parties in a foreign armed conflict. The application of the Rio Treaty cannot produce the automatic consequence of involving any Member State military in the event of an external conflict. As such, Costa Rica, which does not have armed forces anyway, will not be committed to militarily intervening in any armed conflict and, regardless of its eventual solidarity as a result of its "active" but "unarmed neutrality," it can legally stay on the sidelines of any armed conflict covered by the Rio Treaty.

The Presidential Proclamation of Neutrality of November 17, 1983 asserts the full compatibility of Costa Rican neutrality with the Inter-American Treaty of Reciprocal Assistance. Furthermore, the proposed law submitted by the Executive to the Legislative Assembly on February 11, 1986 stipulates that "in the event of an act of aggression, Costa Rica shall exercise the right of legitimate self-defense, in accordance with Article No. 12 of its Political Constitution, with the Charter of the Organization of American States, and with the Inter-American Treaty of Reciprocal Assistance."

In a paper on Costa Rican neutrality by Dr. Manuel Freer Jiménez, former Procurator General of the Republic, who played an active role in drawing up the Presidential Proclamation of November, 1983, it is understandably maintained that Costa Rica's permanent neutrality

30. Héctor Gros Espiell, "El TIAR y el Tratado de Washington," *Revista Internacional y Diplomática*, México, 1982.

31. Alberto Quiroga, "El Caso de las Malvinas," *supra*, note 27; Antonio Augusto Cancado Trindade, "O Conflicto Anglo-argentino no Atlántico Sul e a Vigesima Reuniao de Consulta (1982) do Tratado Interamericano de Asistencia Reciproca," *Mundo Nuevo*, Año, VI, No. 19/22, Caracas, 1983; Juan Carlos Puig, *Malvinas y Régimen Internacional*, Depalma, Buenos Aires, 1983.

32. Héctor Gros Espiell, "El TIAR y el Conflicto de las Malvinas," *Revista Internacional y Diplomática*, México, 1982.

prevents it from "joining any military alliance", but is properly integrated within the Rio Treaty system and that "nothing stops it from exercising its inherent right of legitimate individual or collective self-defense".³³ A similar view has been expressed by Enrique Von Browne in his work on "Neutrality and Collective Security"³⁴, and by Gonzalo Ortiz Martín in his recent work on "The Statute of Perpetual Neutrality of Costa Rica".³⁵ I also arrive at the conclusion that this "qualified" neutrality exercised by Costa Rica is fully compatible with the Rio de Janeiro Treaty, and have so expressed in a recent paper:

. . . in my opinion, although it is an exceptional situation never before seen, Costa Rica may proclaim its neutrality while continuing to be a party to this Treaty. This is in fact an atypical and new situation, but not an impossibility. I acknowledge the fact, however, that this issue is debatable and that certain doubts may arise in this respect. Costa Rica would be the sole case, the only example, of an American State with permanent neutrality, being at the same time, a party to a reciprocal assistance treaty. But the exceptional nature and the unique character of one case does not suffice to uphold a juridical impossibility.³⁶

It is true that in today's international arena there are no examples of states with a legal regime of permanent neutrality which simultaneously belong to analogous collective security systems such as the Rio Treaty — as could have been the case of the 1949 Washington Treaty³⁷ — but it is also true that the time elapsed since 1983 has affirmed the relevance of the Costa Rican government thesis. No American State has, in fact, impugned Costa Rica's thesis, nor has it been questioned by any body of the inter-American system. It seems then that one can speak of a general acquiescence or acceptance that Costa Rica's permanent neutrality does not in any way affect the Charter of the Organization of American States nor the Inter-American Treaty of Reciprocal Assistance.

It is a fact that a debate in which the issue has been concretely and specifically addressed has not taken place, nor have there been express

33. Manuel Freer Jiménez, "La Neutralidad Permanente de Costa Rica," *Relaciones Internacionales*, Heredia, Costa Rica, Volumen IV, No. 6, 1983, p. 39.

34. Enrique Van Browne, "La Neutralidad y la Seguridad Colectiva," *id.*

35. Gonzalo Ortiz Martín, "Estatuto de la Neutralidad Permanente de Costa Rica," in Comité Jurídico Interamericano, *Curso de Derecho Internacional*, Vol. XI, O.A.S., Washington, 1985, p. 289.

36. "Neutralidad y No Intervención," *supra*, note 6 at 24.

37. Belgium was a neutral State due to the 1839 Treaty, as was Luxembourg by the 1867 Treaty. The brutal violation of these neutralities as a result of the German invasion in 1914 and the regime following the First World War, as well as the new invasion of these two nations in 1940, the international readjustment in the post-war period, and the participation of Belgium and Luxembourg in the North Atlantic Treaty Organization have created a situation in which it is impossible to rank these two States as endowed today with a Permanent Neutrality. *See*: "The Neutrality of Belgium" (1915), 9 A.J.I.L. 707; Harold J. Tobin, "Is Belgium Still Neutralized? (A Study on the Termination of Treaties)" (1932), 26 A.J.I.L. 514.

statements on the matter. But there has been what can be called a tacit acceptance, as a result of the lack of criticism or affirmation of an opposing thesis. Despite the fact that it is a current issue particularly linked to the present Central American crisis, this is a subject under the O.A.S.' continuous analysis and discussion, as well as in the Contadora Group, and in bilateral contracts. It has a truly international significance, both from the juridical and the political point of view.

IV. *Conclusion*

Apart from any ethical or political considerations, apart from any appraisal on the importance that Costa Rica's perpetual neutrality may have as a contribution to regional peace and security³⁸, it is evident that it is a case with a profound new and revolutionary juridical interest, within the inter-American system, which will certainly continue to draw the attention of scholars in Politics and International Law.

38. "Neutralidad y No Intervención," *supra*, note 6 at 30; David Ayala, "Un Estatuto de Neutralidad Permanente para Costa Rica y Propuestas de Paz para Centro América," *Relaciones Internacionales*, Vol. 4, No. 6, 1983; David Ayala, "La Neutralidad de Costa Rica y la Guerra en Centro América," *ibid.*; Carlos José Gutiérrez, "La Neutralidad de Costa Rica y la Paz Centroamericana," *ibid.*