BOOK REVIEWS

"Il declino della neutralità nell' attuale fase del costituzionalismo europeo. Malta come metafora"

By Salvo Andò in *Ricerche di diritto pubblico comparato*, n. 24, collana diretta da M. Patrono e A. Reposo, CEDAM, 2002, pp. 1-424.

Various neutral states have existed in Europe for a long time, but European integration seems to put the significance of neutrality to a hard test. The changes which have occurred in the heart of the European Union have not only put into question the general concept of neutrality, but they have also, perhaps, led to its decline. All these issues are subjected to close examination in the book under review, which adopts an original perspective on them: namely that with the advent of the European Union, political relationships are become more complex and states are undergoing deeper integration. Consequently, neutrality has lost its original meaning becoming, practically and scientifically, a "betrayed and ineffective" status (p. 287). The problems that will derive from the broadening of the Union, i.e. from the admission of neutral states, might appear to be of marginal importance, but in reality they open the road to wider reflections. They allow us, in fact, to understand that however great the work achieved so far, the European Union has not been completed yet.

Moreover, looking at the future of Europe helps us to understand the dark side of our own national histories. In the progress, as the Treaty of Maastricht says, towards an ever closer union, the nations of Europe are better able to understand every other people's past, also when they remember their own past of mutual invasions, aggressions, occupations or of neutrality. To know the history of states, however, is not enough. In fact, from May 1950, when the proposal to put coal and steel under common control witnessed the beginning of the European adventure, and up to the process of formulation of the European Constitution, the objective of the European Union has remained above all an economic one. However the nature, meaning and motivation of the Union have been and are political; they intend to transform power relations, security, insti-

tutions and states. And it is necessary, therefore, to also reflect on the political choices on the part of states that have created the bases for the integration of the states that today knock at the door of Europe. This requires an analysis which is not only historical and institutional, but one which is above all historical, political and institutional. Thus the text under review is not only a historical but also a politico-legal analysis, since it not only reconstructs the historical trajectory of various kinds of neutrality, but it also explores the different interpretations and meanings of this concept from the post-war period to the present day.

The book is divided into six parts. It is not possible to expose here, in its entirety, the thought and the ample reflections of the author. Nevertheless, I will try to focus on the central points of the book. The well constructed reasoning begins with an introduction which is as original as it is essential, in which the author establishes the theme of the work.

It continues with an analysis of the decline in the importance of neutrality in Europe, and with a review of the characteristics of Maltese neutrality, of the debate on the membership of this country in the European Union and of the "supremacy" of the Maltese constitution (chapters 1, 2, 3 & 4). It concludes by questioning the destiny of neutrality in a globalised world, a question on which, in this delicate historical period, it is necessary to pronounce oneself and on which the author furnishes his original and important opinion.

Very opportunely, before embarking on an analysis of the characteristics of the neutrality, properly speaking, of the European states, this book reconsiders the difference, identified by contemporary international lawyers, between neutrality and neutralization. Neutrality is a status that also continues to exist in times of peace and it involves, for the neutral state, a series of obligations that are characterized by the fact that they oblige the neutralised state to behave in such a way as to avoid being dragged into an armed conflict. Although a typical content of permanent neutrality in time of peace does not really exist, it is characterized by some instrumental duties which facilitate the purpose that neutrality pursues. A neutral state is bound, particularly, not to participate in military alliances of a bilateral kind and not to grant military bases on its own territory. Unlike permanent neutrality and neutrality in time of war that pertain to the state,

neutralisation has for its object a part of the government territory. Within this territory subject to neutralization, there ought not to be pursued in case of war any military operations, neither from the part of the territorial sovereign nor from that of other states. Keeping these points in mind also explains the different forms of the treaties through which the statuses of neutrality and neutralization are established. Neutralization is founded on multilateral treaties that aim to define the international order; neutrality is constituted by bilateral pacts, real pacts of non-aggression (pp.2,3).

In inter-state relationships, therefore, neutrality means not to participate in an armed conflict among states. It is necessary, therefore, to distinguish between the law of neutrality on the one hand and the politics of neutrality on the other. The law of neutrality includes the arrangements of public international law that must be observed between a neutral state and one which is at war in the case of an international armed conflict. These essentially aim to assure the right of the neutral country to stay out of the conflict and establish its duty of impartiality between the warring parties and non-participation in the conflict. As a rule, such arrangements only limit to some extent the freedom of action of the neutral country. Customary international law and the Aja Convention of 1907 constitute the sources of international law on neutrality. The law of neutrality is applicable only to inter-state conflicts and not to internal conflicts (for example civil wars). This law doesn't even find any application in the cases in which, in the interest of international peace and security, the United Nations adopts coercive measures towards a state transgressor of international law. In such cases the neutral country has, in principle, the faculty to freely decide if and as it wants to uphold the resolutions decided by the international community. The politics of neutrality includes all the provisions that a neutral country adopts at its discretion over and above its juridical obligations, to guarantee the credibility and the effectiveness of its neutrality. Such politics is planned, on the part of every neutral state with proper flexibility, keeping into account its specific political-institutional history and the actual context of its current foreign and security policies.

Apart from making reflections of a comparative nature the author allows to shine through with extreme neatness the peculiari-

ties of the Maltese arrangement, without, however, omitting to introduce and comment upon the models of the other neutral countries: Austria, Switzerland, Ireland, Sweden and Finland. "Austria is a neutral country member of the EU, whose Constitution that enacts the principle of neutrality is rigid, as well as protected by the control of the constitutionality of the laws" (p.19). "With reference to the international organizations, [...] Austria has tried to adjust its own neutrality to the statutes of the international organizations in which it participates. In this however it is obliged to render account of its own status of neutrality to the United Nations; with reference to the EU, it has proceeded, instead, with a procedure of global revision, to adjust the Constitution to the Treaty of the European Union (from now on indicated by the initials TEU), enacting the precedence of the obligations assumed towards the EU in comparison to the federal order, and to the prerogatives of the Landers, but holding that it is not obliged to repudiate its own status of neutrality" (p.19). As opposed to Austria, Switzerland has not held that its own neutrality is compatible with membership of the United Nations. Despite this, in the nineties, it has noticeably intensified its international cooperation in the field of foreign and security policies, without its neutrality having to be somehow placed in question. It is necessary to notice, particularly, the contribution of Switzerland to the Partnership for Peace program, initiated in 1996 and the dispatch of units of the Swiss army in Bosnia or in Kosovo within the international peace-keeping missions. Switzerland has stuck therefore to the dominant conception in the international community, according to which in case of coercive measures decided by the U.N., the right of neutrality is not applicable, since there can be no neutrality in regard to the international community united on the basis of unanimous consent and if confronted by a state that threatens security and violates collective peace. In this framework, Switzerland authorizes peace-keeping missions conducted under the aegis of the U.N. or the OSCE.

The other European countries – apart from Austria and Switzerland – recognized at the international level as neutral are Sweden, Finland and Ireland. These countries have never held that they were somehow obliged to link the choice of neutrality to a formal decision to submit this status for recognition from other states, that is to a declaration or

treaty from which precise rights and obligations sprang or to have to insert in the Constitution a norm that enacted in a direct way the principle of neutrality or that in some way made reference to a choice of neutrality that somehow bound the public powers. Thus, the neutrality of Sweden, Finland and Ireland is de facto neutrality. History, the increase in international inter-dependence and the needs of the present, have all shown that the presuppositions that have, in fact, justified the neutrality of states, are anachronistic today and make neutrality unproductive in terms of both internal and external security.

The largest part of the book deals with the Maltese arrangement which, as we will see, constitutes a case to itself, given that Malta is the smallest of the new acceding countries, with 371.000 inhabitants and 361 km2 of surface area. Since independence was obtained in 1964, the politics of the archipelago that has Valletta as its capital city has always been polarised between two big parties: the Nationalist party, of Christian Democrat ideology and the Labour party, that together command the support of practically all the electorate and which constantly alternate in power. Since the beginning of 1987, the electoral law has been modified with constitutional amendments and at the same time the Republic of Malta has adopted a politics of neutrality and it has stuck to the movement of non-aligned countries. In June 1990 the Nationalist government introduced an application for membership of the EU. The Commission expressed its own opinion in June 1993. Nevertheless, the general elections held in 1996, one year before the natural expiration of the term of the Government, gave the victory to the Labour party, after almost one decade of government of the nationalistic party. Because of the divergences of opinion among the two parties on the subject of foreign policy, these results have modified the nature of the relationships between Malta and the EU. In fact, the Labour government in the same year froze the application for membership of the EU. However, the victory of the Nationalist party in the 1998 elections and the reactivation of the application re-launched Malta on the road of membership of the European Union, also bringing the spotlight on the problem of the compatibility of Maltese neutrality with membership of the Union. The Declaration of Maltese neutrality, in fact, "has been almost fully regulated by the Constitution" (p. 78), in article 1, par. 3 which

reads: "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: [...]" There follows therefore a list of the duties connected to the status of neutrality, which is not exhaustive. The characteristics of Maltese neutrality, and therefore of its originality, are thus summarised by the author by a short but effective scheme: "The specific characteristics of this neutrality", he writes, "are constituted however: 1) by the fact that it is meant to be a voluntary neutrality [...]; 2) by the fact that it is to be an active neutrality [...]; 3) by the fact that only Malta is the primary guarantor of its own safety: Italy [...]; 4) by the fact that Maltese neutrality adheres to a policy of non-alignment" (pp 85 – 86).

The overall picture that emerges is that the safety of the state is guaranteed only by Italy. This element is important insofar as we are here dealing with the only case where neutrality has been guaranteed by only one country and also because Italy besides guaranteeing the normal rights proper to a neutral country, assures a military assistance that could also involve the use of force in some cases. Such a guarantee could create, nevertheless, a problem of compatibility with article 11 of the Italian constitution due to the fact that "Italy repudiates war as an offensive tool against the liberty of other peoples and as a means of resolution of international controversies [...]"; if, in fact, this article had to be interpreted as altogether precluding any military action that was not directly finalized to the needs of legitimate self-defence, there is not doubt that a part of the obligations assumed towards Malta should be considered as constitutionally illegitimate. If instead, one believes that the repudiation of war should not rest exclusively on article 11, but must instead be placed within the context of a foreign policy that does not exclude certain forms of intervention for the protection of values that lie at the base of the Constitution, then the guarantee of neutrality and the use of military strength to protect it even when there do not exist the extreme situations that legitimate defence justifies, constitutes an objective which is permissible in the context of the objectives of foreign policy contained in the afore-mentioned constitutional norm" (p. 112, cfr. S. Cassese, "Foreign Policy and International Relationships", in Choices of the

Constituent Institution and Juridical Culture, II, Protagonists and moments of the constitutional debate, Bologna, 1980, 540 sses.).

The author underlines that, although almost twenty years have passed from the Treaty of Neutrality and more than thirteen from the Amendment Act IV that introduces the principle of neutrality in the Constitution, there is still a strong polemic among the Maltese political parties on the contained reality of neutrality. This goes to show that the choice of neutrality was simply meant for internal Maltese politics and that with the passing of time this decision has shown its weakness and above all its loss of actuality. Justly, in fact, it is powerfully underlined by the author that, with the reiteration of the question of admission, to the European Union, the country has shown that: "it treated of a simple choice of non – alignment of a contingent character, above all dictated by the demand not to accept some type of hegemony neither of the Western, nor of the Soviet kind" (p. 149).

The adhesion of four neutral countries to the EU and the greater tolerance shown by the EU Commission has smoothened the road to Maltese accession. This however does not mean that Malta won't have to face very serious problems when it will have to reconcile the Treaty and the Community laws with its unchanged Constitution. Since the exponents of the Labour Party are not prepared to modify this Constitution, a situation could be created that the author defines as "paradoxical", in which it would be necessary to create a distinction between the obligations Malta has assumed towards Italy and those regarding other EU states that have not also recognized Malta's neutrality. The Italo-Maltese treaty is founded, in fact, on a mutual tie between Malta and Italy, because to the neutrality of Malta corresponds the Italian guarantee of the safety of the island. If one or both of the parties decided to repudiate the Treaty, Malta in virtue of the tie unilaterally assumed in its Constitution (modifiable in terms of art. 66 of the same Constitution only through the procedure of constitutional revision for which a qualified majority of the members of parliament is needed), would remain equally tied to the declaration of neutrality, also without being able to enjoy the benefits of Italian protection. The rigidity of the Maltese Constitution sets greater problems if it is noticed, as opportunely underlined, that the possibility is

not anticipated that the norms dictated by the treaties will automatically have internal effect without the need for enacting legislation and this will create "serious problems to the adhesion of Malta to the EU" (p. 221). Once Malta will be admitted in the EU, the lack of an adjustment of the Maltese Constitution would not allow, in fact, Community law to penetrate in the arrangement, as the supremacy of the Constitution would hinder this. It could be that this characteristic together with the constitutionalisation of Matese neutrality would put brakes to Malta's entry into the Union, and for this motive the author recalls that all the member states have proceeded, since the signature of the Treaty of Maastricht, to the change of their own legal systems so as to make the community law directly applicable, abdicating considerable parts of their own sovereignty. The problems of the Maltese system derive from the lack of political consensus. To modify the constitution, to abdicate neutrality, would help the country but would be understood as signs of political weakness and this the Labour Party would not accept. It doesn't make sense, in fact, not to modify article 1 of the Constitution, especially in a moment in which collective safety potentially depends on the parity of power of most larger states, and in which alliances are undergoing a process of internal expansion through which they are becoming more and more equal, and in which the incompatibility between collective safety and neutralizations emerges clearly. Collective safety implies that some actions be taken against a state that violates peace and such actions also constitute a duty for neutral states. The history of the Maltese arrangement, supports the conviction often expressed by the author that a reconsideration of the theoretical and juridical categories of neutrality is needed.

The book has more than one merit. First of all, it clarifies the significance of neutrality nowadays, and this is a praiseworthy task in itself. Besides, it examines this status in the light of present realities and also in the context of the future. This allows the author to historicise the concept of neutrality, which seems not to have a significant role any more. This work also makes possible some reflections of a general character on the European Union. Indeed, while it is true that Europe has consolidated itself internationally through a politics of gradual small steps forward, it is also true that the widening of the Union is very near by now. In

2002, the European Union concluded membership negotiations with the new acceding countries, so that these can participate as members in the 2004 European Parliament elections. While enlargement is due to proceed in a very short time, the process itself has confirmed that without a substantial reform of the institutions of the same Union and its decision-making processes, the European Union risks coming to resemble a monster without head. Moreover, enlargement not only requires the establishment of a certain vision of division of competencies, but also of the principles and values at the basis of the European civitas, of European citizens.

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Shake Hands with the Devil: The Failure of Humanity in Rwanda

By Roméo Dallaire (with Brent Beardsley). Toronto: Random House of Canada, 2003. Pp. xvii, 562. $39.95 (Hardcover)

"De profondus clamo ad te domine" (Out of the depths, I cry to you O Lord) were the riveting words that overshadowed Lieutenant General Roméo Dallaire's prayers throughout his 100 days as Canadian Force Commander of UNAMIR (United Nations Assistance Mission for Rwanda) during the Rwandan genocide.

Born in the Netherlands during the years that followed World War II, Roméo Dallaire writes in his book *Shake Hands with the Devil* that he was born to a Canadian non-commissioned officer and a student nurse from Holland. Although this work takes the form of a bildungsroman, one might be prompted, through the sixteen chapters that constitute this book, to identify its major theme, which outlines the General's awful and demoralizing experience through the 1994 Rwandan horrific genocide. Of relevance is the fact that this book is not academic; rather, it is a first-hand-account and an eyewitness' records of the Rwandan genocide. It interests legal scholars, human rights and humanitarian activists. Moreover, the book includes a rich glossary and an insightful index.

While reading the book, it is important to know of the history of Rwanda in order to have a clear idea of the deep roots of hatred that led to genocide in the Rwandan community. In 1916, Belgium chases the Germans out