

Irish Neutrality and the Lisbon Treaty

Karen Devine

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One of the main themes of the conference focused on the definition of neutrality. The convenors of the conference frequently raised the question, “what do we mean when we talk of ‘neutrality’?” This paper explains the differences between the public concept of neutrality and government concepts of ‘military neutrality’ and evaluates whether the Lisbon Treaty, including the June 2009 ‘clarification’ declarations, contravene or protect neutrality.

Irish public concepts of neutrality

Opinion polls have shown that Irish neutrality is the first or second substantive policy reason given by Irish people for voting against the Single European Act (Jones 1987), the Maastricht Treaty (Coghlan 1992), the Amsterdam Treaty (Sinnott 1998) and the Nice Treaty (Sinnott 2001; Jupp 2002) referenda. In the Lisbon Treaty referendum, neutrality emerged as the most divisive issue in referendum debates (IMS/DFA, 2008: 25) and was the second most important reason why people voted ‘no’ (IMS/DFA, 2008: 14). Evidently, many Irish people have consistently demonstrated a belief through their voting behaviour that further integration in the area of EU foreign, security and defence policy is incompatible with the concept of neutrality they support.

The ISPAS data shows that 4 in 10 voters in Ireland very strongly support Irish neutrality. Voters professing above average support for neutrality regard it as having the following characteristics and foreign policy goals: peace promotion, non-aggression, the primacy of the UN and the confinement of state military activity to UN peacekeeping, not being involved in wars, impartiality and maintaining Ireland’s independence, identity and independent foreign policy decision-making (especially in the context of “big power” pressure) (Devine, 2008a: 471). These characteristics reflect the concept of ‘active’ neutrality, also known as ‘positive’ or ‘fundamental’

neutrality. Many of the eight percent of the electorate that very strongly reject neutrality opted to state their disagreement with it when asked to define it, whilst a smaller proportion reported that neutrality means ‘nothing’ to them, or that it means ‘sitting on the fence’ (Devine, 2006a: 115).

‘Active’ neutrality embodies a commitment to the legal definition of neutrality as described by Convention No. V signed at The Hague on 18 October 1907, as well as the above set of values and foreign policy goals – attributes that are distinctly different to the concept of ‘military’ neutrality which successive Irish governments have sought to embrace.

Irish governments’ concepts of military neutrality

Governing parties’ positions on neutrality have shifted over the past 35 years of Ireland’s membership of the EC/EU. An examination of government discourse shows a move away from active neutrality (see Devine, 2009) and the meaning of neutrality has become highly politicised at the elite level (see Devine, 2006b, 2008b). The meaning of ‘military neutrality’ articulated by Fine Gael from the 1980s (FitzGerald *Dáil Éireann* 327 (11 March 1981)1424; Taylor-Quinn *Dáil Éireann* 420 (9 June 1992) 2047) and the Labour Party from the 1990s (Quinn *Dáil Éireann* 506 (15 June 1999) 190) was non- membership of military alliances, including the Western European Union (WEU), and non-assumption of the relevant mutual defence clause (MDC) i.e. in the case of the WEU, Article V of the Modified Brussels Treaty (MBT). Fianna Fáil shared the same definition of military neutrality, reflected in their desire to avoid signalling “that Ireland is moving away from its neutrality and towards gradual incorporation into NATO and WEU in due course” (Ahern, 29 March 1996; *Dáil Éireann* 473 (19 December 1996) 608; 506 (15 June 1999) 180) and in discourses on joining Partnership for Peace (PfP) (Andrews *Dáil Éireann* 509 (13 October 1999) 370-1; Ireland, 1999: 7).

The meaning and policy prescriptions of ‘military neutrality’ can be changed by government decree because ‘military neutrality’ is not defined in Irish legislation. I argue, with respect to the Irish government’s most recent revisions to ‘military neutrality’ in context of ensuring ratification of the Lisbon Treaty, that ‘military

neutrality' has been redefined to mean joining a military alliance under certain circumstances i.e. joining the WEU through the 'back door' in a WEU-EU merger (Laursen, 1997: 16) and assuming its mutual defence clause (MDC), even though this definition contravenes previous government definitions and the legal concept of 'neutrality' outlined in Hague Convention (No. V) signed on 18 October 1907. This term, 'military neutrality', is used by the government in a strategic 'two-level game' to agree to developments in ESDP at the European Union supranational level that might violate the 'active neutrality' supported by the public at the domestic level.

The meaning of 'military neutrality' changed in parallel with discussions over ways to incorporate the WEU's mutual defence clause—Article V MBT—into the EU Constitution/Lisbon Treaty. On 19 December 2002, Minister Dick Roche noted "aspects of the [draft ESDP provisions in the Defence Working Group 'Barnier'] Report which raise issues for Ireland. These include reference to a mutual assistance or mutual defence clause". The report of the Convention on the Future of Europe suggested a counter-proposal to put Article V MBT into an 'opt-in' protocol to the Constitution/Lisbon Treaty (20 December 2002: 12). Thereafter, Minister Michael Smith was reported as saying, "There is no such thing as, if you like, complete military neutrality" (Irish Times, 18 January 2003) and the Government re-formulated their military neutrality concept to mean "non-membership of military alliance, and *specifically, non-membership of an alliance with a mutual defence commitment*" ((emphasis added) Cowen, *Dáil Éireann* 563 (20 March 2003) 722).

The four neutral-state governments in the Intergovernmental Conference (IGC) on the EU Constitution attempted to render the mutual defence clause non-binding by amending the first part of the Article to read "If a Member State is victim of armed aggression, *it may request that the other Member States give it aid and assistance by all the means in their power, military or other, in accordance with article 51 of the UN Charter*" (Cowen, 5 December 2003). Thereafter, the Irish government redefined neutrality as non-membership of "pre-existing military alliances with mutual automatic obligations", stating that Ireland's foreign policy tradition is only "partly described as neutrality". (Mansergh, 24 January 2004) The neutrals' proposal was rejected and instead a modified (with the words "military and other" deleted and the "Irish clause" added) WEU MDC was included by the governments at the IGC in the

European Constitution signed on 29 October 2004. Although neutral state governments argue that ‘military neutrality’ is protected under this formulation, academic experts concluded that “The term ‘military non-alliance’ has been defined in such a way that it has close to no meaning at all.” (Ojanen, 2005: 410)

Joining the WEU and assuming its mutual defence clause through the Lisbon Treaty

The long-standing plans for the EU to subsume the WEU’s institutions, functions and responsibilities, including its mutual defence clause, were rarely acknowledged in Irish government discourses, although neutrality advocates raised the issue as far back as 1963 (Corish *Dáil Éireann* 199 (5 February 1963) 1044) and continued to raise it in the 1980s and the 1990s in the context of European Political Cooperation (McCartan/MacGiolla/Higgins *Dáil Éireann* 382 (21 June 1988) 1007-8) and in relation to the Maastricht Treaty (de Rossa *Dáil Éireann* 418 (8 April 1992) 1089 - 1090). Successive Irish governments claimed there was no intention to join the WEU or to assume its mutual defence clause e.g. “the Government will not be proposing that Ireland should seek membership of NATO or the Western European Union, or the assumption of their mutual defence guarantees” (Ireland, 1996: 147) and rejected plans for the WEU-EU merger (Ahern (in opposition) *Dáil Éireann* 473 (19 December 1996) 608; Andrews *Dáil Éireann* 506 (15 June 1999) 197-198). Nonetheless, the WEU-EU merger process started in the aftermath of decisions taken by the European Council at the Cologne (June 1999) and Helsinki (December 1999) summits and will be completed once the Lisbon Treaty is ratified in the aftermath of a required ‘yes’ vote in the second Irish referendum on 2 October 2009: Ireland will effectively become a full member of the WEU and will assume its MDC, putting an end to ‘military neutrality’ as defined in the 1996 White Paper on Foreign Policy and the possibility of adhering to ‘neutrality’ based on the Hague Conventions.

The Amsterdam Treaty’s WEU-EU merger clause (Article 17.1 mandated the EU to “foster closer institutional relations with the WEU with a view to the possibility of the integration of WEU into the Union should the European Council so decide”) was repealed in the Nice Treaty. This ‘deletion’ reflected the ongoing process of the

transfer of WEU capabilities and institutions to the EU and was considered the most significant treaty change in relation to ESDP (Trybus 2005: 101).

The Marseille Declaration (13 November 2000) of the WEU Ministerial Council detailed the active transition process, noting, for example, the WEU Military Staff preparations to cease its activities (point 3); several WEU military staff had informally transferred to the EU by the June 2001 cessation date (House of Commons, 9 January 2002). The WEU Institute for Security Studies in Paris was transferred to the EU through a Council Joint Action (20 July 2001) establishing a European Union Institute for Security Studies mandated to “contribute to the development of the CFSP, in particular the ESDP, in coherence with the European Security Strategy”. The Institute replaced the WEU as the employer of staff serving on 31 December 2001. By 1 January 2002, all functions and institutions of the WEU other than the Western European Armaments Group (WEAG), the Article V mutual defence clause, and the WEU assembly had been transferred to the EU. Subsequently, the functions of the WEAG were transferred to the European Defence Agency (EDA) established by a Council Joint Action (12 July 2004) (WEU, 2004). In June 2000, the WEU Assembly agreed to be re-named “Assembly of the Western European Union-the Interim European Security and Defence Assembly” (European Parliament, 23/02/2001) and noted that in the aftermath of the transfer of WEU’s operational activities to the EU, the Assembly’s main focus is the scrutiny of the EU’s European Security and Defence Policy (ESDP). However, the so-called “double democratic deficit” (European Parliament, 21/02/2006; Hänggi, 2004: 16) still remains whereby national parliaments and the European Parliament have no roles in ESDP scrutiny.

A 2007 WEU report outlined other aspects of the merger transfers in operational terms:

Following the transfer of WEU’s operational activities to the EU...the Ambassadors representing member states on the ESDP’s main political steering body, the EU Political and Security Committee (PSC), also make up the WEU Permanent Council...Foreign Affairs and Defence Ministers sit on both the EU and WEU Councils....The EU High Representative Javier Solana, who is responsible for the Common Foreign and Security Policy (CFSP), is at one and

the same time the WEU Secretary-General, thus creating a link between both organisations at the highest executive level.

Whether the WEU can be confirmed as redundant depends on whether the military alliance's mutual defence clause in Article V of the Modified Brussels Treaty (MBT) is transferred to the EU.

WEU's article V mutual defence clause

It was made clear during the drafting, negotiation and agreement of the Constitution/Lisbon Treaty that Article 42(7) of the Lisbon Treaty is designed to take over the WEU's mutual defence clause, leading to the termination of the WEU once the Lisbon Treaty is ratified. For example, the Working Group on Defence final report stated that "it was suggested that Member States which so wished [a collective defence clause in the then Constitution] could share between themselves the obligations laid down in the Brussels Treaty relating to mutual assistance, thus bringing to an end the Western European Union." (2002: 21)

Academic legal opinion specifies that Article 42(7) "transfers the WEU collective defence element in Article 5 Modified Brussels Treaty to the EU" (Trybus, 2005: 337). Reichard (2006: 220) notes that the drafters of Article 42(7) wanted to "completely replace Article V MBT by the new provision" and "did intend to finally relegate the WEU to history". He continued:

should the [Lisbon Treaty] enter into force, its [Article 42(7)] would derogate Art. V MBT. As Art. V MBT is the only provision of the MBT still operable, this would arguably also have the effect of terminating the WEU as a whole. The WEU would have 'completed its purpose'... for the one residual purpose left to it...that is, mutual defence.

Finally, the WEU Assembly noted the debate on the equivalence of Article 42(7) with Article V MBT and the associated scenario of the redundancy of the WEU's MDC after the Lisbon Treaty enters force, with an expected renouncement of the MBT by WEU member states:

The governments would then be able to tell the general public that ratification of the Lisbon Treaty had made possible a reduction in the number of European institutions, and Western European Union (WEU), its collective defence clause and the WEU Assembly would cease to exist (WEU, 2008).

Although the Irish government has consistently argued that Irish neutrality was protected because the WEU and EU “remain two separate organisations, established under separate treaties... and with separate responsibilities” (Andrews *Dáil Éireann* 418 (1992) 1090), this will no longer be the case once the Lisbon Treaty is ratified. The WEU-EU merger effectively constitutes Ireland’s full membership of the WEU, with the corollary for Ireland and the other neutrals that “there would be no doubt...this certainly means the end of the policy of military neutrality” (Keatinge, 1996: 173). The Irish government White Paper on Foreign Policy acknowledges this loss of neutrality through the assumption of NATO or WEU mutual defence guarantees (1996: 147) incorporating

provisions committing the parties to collective action in the event of armed attack against one or more of them, and membership of either [NATO or WEU] would not be compatible with an intention to remain neutral (Government of Ireland, 1996: 120).

The “Irish Clause”

Legal scholars view the Irish clause (stating that provisions “shall not prejudice the specific character of the security and defence policy of certain member states”) as having no clear effect on the Article 42(7) mutual defence clause with respect to safeguarding neutrality (Hummer, 2006: 69). They argue, “there remains no doubt that the neutral and non-aligned Member states are under the obligation to mutual (military) assistance in the case of armed attack” (Hummer, 2006: 67) and this is clearly against the law of neutrality. Naert (2005: 193) points out that:

the stipulation that this obligation of aid and assistance ‘shall not prejudice the specific character of the security and defence policy of certain Member States’ raises questions for the precise scope of this obligation. This is so because the said mutual assistance obligation is clearly incompatible with the neutrality of

the four neutral Member States, [noting that] if the true scope of the safeguard clause is to exempt the neutral Member States from the obligation to provide assistance, it would have been preferable to have made the exemption more explicit” (2005: 194).

The June 2009 Declarations

In June 2009, the Irish Government issued declarations to clarify the meaning of the Lisbon Treaty, stating that: “The Lisbon Treaty does not affect or prejudice Ireland’s traditional policy of military neutrality” (European Council, 2009). However, reference to the undefined and non-legal concept of ‘military neutrality’ does not satisfy the concerns of those who voted ‘no’ in the Lisbon Treaty referendum in June 2008 in order to safeguard ‘active’ neutrality. The declaration also claims that: “It will be for Ireland, acting in a spirit of solidarity and without prejudice to its traditional policy of military neutrality, to determine the nature of aid or assistance to be provided to a Member State which is the object of a terrorist attack or the victim of armed aggression on its territory.” However, legal opinion notes that “in view of the textual obligation to provide aid and assistance ‘by all the means in their power’ such a general freedom of response does not seem correct” (Naert 2005: 194). Clearly, the declaration does not exempt Member States from the obligation to provide assistance that violates the international law of neutrality. Given these conceptual and legal problems, the declarations do not satisfy the concerns of the Irish people who voted against the Lisbon Treaty due to their fears over the loss of neutrality.

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