Presentation by Paddy Smyth to Joint Committee on Public Oversight and Petitions, Wednesday 15th July, 2015

I thank the committee for the invitation to address it on the issue of Dr Horgan *et al’s* petition (POOO72/12), and specifically on the question of Irish neutrality. I am currently the Foreign Policy Editor of the Irish Times and what limited expertise I have on the subject comes from years of reporting and commenting on issues around neutrality and most specifically this State’s engagement with the idea and the institutions of the emerging European defence union. I am not a lawyer – my reflections will be mainly on the doctrine and political assumptions underlying the State’s foreign and security policy.

Your chairman has on a number of occasions sought legal and political definitions of neutrality from your witnesses. Both the Secretary General of DFAT Niall Burgess and his Minister, Mr Flanagan, have argued that definitions of neutrality in international law relate specifically to “time of war”, and that Ireland’s own operational - not legal - peacetime definition consists straightforwardly in “non-participation in military alliances”. It arises from political aspirations and only from the most general of constitutional commitments to peace.

In the context of Ireland’s EU membership, the State’s neutrality, its “non-participation in military alliances”, is taken to mean more precisely a refusal to become involved in any Nato Article 5-like “one for all, all for one” promises. That is promises automatically to come to the defence of any member state that is attacked or threatened.

That the EU in many respects is becoming what most people would see as a military alliance is beyond doubt – it does peace-enforcing, humanitarian missions, pursues international criminals, confronts pirates, shares arms purchasing and research ... and, increasingly in ways that, like the proverbial walking duck, walks and talks like an alliance. But, unlike Nato, it does not do territorial collective defence. It is not, yet anyway, a “defence union”. Ireland’s “neutrality” remains inviolate.

The [Seville Declarations on the Treaty of Nice](https://en.wikipedia.org/wiki/Seville_Declarations_on_the_Treaty_of_Nice) and subsequent declarations acknowledge and accomodate Ireland's "traditional policy of military neutrality”, whatever that may mean. The principle of not signing up to “common defence” is constitutionally enshrined, following both Nice and Lisbon treaties (Article 29, section 4, subsection 9°).

It has to be said, however, that given Ireland’s political commitment to the EU and its integrity, it seems to me inconceivable that Ireland would not voluntarily join in the defence of any member under attack, just as it has seen the extension of loans to a bankrupt Greece as an essential imperative arising from the solidarity on which the Union is based. And from which this country too has benefited.

The idea of military neutrality so-defined, both Mr Burgess and Mr Flanagan argued – and I agree ‑ is not in any way incompatible with a political and legal commitment to the primacy of multilateral collective security co-operation under the auspices of the UN which is seen, as Mr Burgess put it as “primarily responsible for international peace.... We support actions of the UN Security Council in accordance with the UN Charter.”

That may and has involved Ireland in recent years in peace-enforcing missions that are far more robust than traditional peacekeeping. It has also involved Irish troops in small numbers in the UN operation in Afghanistan. It has involved Ireland in what might be described as UN-mandated operations regionally subcontracted, under the aegis of Nato.

Clearly Irish neutrality does not mean in principle eschewing the use of force, or assistance in its use, at the behest of the UN or in UN-sanctioned operations. Chapter Seven of the Charter (Article 43.1) requires that “All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, [my emphasis] necessary for the purpose of maintaining international peace and security.”

Dr Horgan’s insistance that “it is clearly in breach of international law to allow a planeload of troops on the way to a military operation or on its way to war to pass through Shannon Airport or a neutral country” would appear in this light to make Ireland’s membership of the UN incompatible with its neutrality. Not, I would suggest, his intention. What matters , however, is the nature of the military operation and its political and legal standing.

And arguably Ireland’s UN commitment, this State’s central strategic security doctrine, makes its facilitation of Shannon’s use in UN-mandated operations not only compatible with its security doctrine but prima facie appears to require it. Politically as well as legally. (Although the Charter does provide a case by case opt-out opportunity).

The specific mandates with which we are concerned are for the US roles in Afghanistan and Iraq. The former is pretty straightforward – a unanimous resolution of the UNSC, 1368, (Ireland was a member at the time) was agreed in the immediate aftermath of 9/11 and which concluded with the council expressing its readiness to take “all necessary steps” to respond to the attacks and combat all forms of terrorism in accordance with the Charter. In December 2001 the Security Council unanimously adopted a resolution authorising a peacekeeping force in Afghanistan under Chapter 7 of the Charter. **In late 2001, the Security Council authorised the US to overthrow the Taliban government ....**

**Iraq is considerably more problematic.** Ireland in November 2002 voted yes to Resolution 1441 which threatened "serious consequences" if Iraq did not comply with weapons inspectors. But when the US insisted Iraq was in material breach of the resolution and the invasion went ahead in 2003, unsanctioned by the UN, Ireland refused to support it, although the Dail agreed to a Government proposal that Shannon could be used by coalition planes.

The ambiguous UN “mandate” was later repudiated by Sec Gen Kofi Annan who in 2004 said about the invasion that "I have indicated it was not in conformity with the UN Charter. From our point of view, from the charter point of view, it was illegal.”

Permission to use Shannon for the Iraq operation would then appear not to have been a UN-based imperative, although the Dail vote certainly gave it a degree of democratic legitimacy.

While facilitating both the Afghan- and Iraq- related troop-transporting flights would seem to me to be consistent politically and legally with the spirit of both our neutrality and our commitment to multilateral security through the UN, whatever we may think about the wisdom of both operations, I do not believe the same can be said of facilitating rendition flights. If that has been done.

Rendition flights are clearly illegal in international law, and clear evidence of their existence must put an extra onus on Ireland routinely to inspect flights however diplomatically embarrassing that may prove.

Paddy Smyth

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