

## EDITORIAL COMMENT

### PHILIPPINE NEUTRALIZATION

The problem of neutralization is brought forward under somewhat new conditions in the Act of Congress of the United States approved March 24, 1934, and providing for the independence of the Philippine Islands. This Act was accepted by a concurrent resolution of the Philippine Legislature of May 1, 1934. Section 11 of the Act is as follows:

The President 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.

Considerable discretion is left to the President in this section of the Act, which is identical in its terms with the same section of the Act of January, 1933.

It is evident from Section 12 of the Act that this neutralization, if agreed upon, is not regarded as impairing in any degree the independence of the Philippine Islands, nor is independence conditioned on neutralization. While just what States are to be approached in the negotiations for neutralization is not stated, it may be implied from Section 12 that it would be the Powers "with which the United States is in diplomatic correspondence," as they are to be invited "to recognize the independence of the Philippine Islands." Many of the Powers "with which the United States is in diplomatic correspondence" would obviously have only remote interest in Philippine independence, or even in the neutralization of the Philippines.

Neutralization has often been a measure to which resort was had when a State or States might be uncertain as to an immediate settlement or unable to make a satisfactory settlement of a problem. Section 11 by providing for a "treaty for the perpetual neutralization of the Philippine Islands," introduces an idea which has been common in neutralization treaties. In some treaties the words "forever," "always," or "lasting," or several of these words, have been used.

In the Treaty of Vienna, 1815, "the town of Cracow, with its territory, is declared to be forever a free, independent, and strictly neutral city" and "the Courts of Russia, Austria, and Prussia engage to respect, and to cause to be always respected, the neutrality of the free town of Cracow and its territory." The Congress of Vienna also "acknowledged that the general interest demands that the Helvetic States should enjoy the benefit of a perpetual neutrality." In spite of this action, Switzerland made known in subsequent periods of war that she would maintain her neutrality "by all the means in her power."

By the Treaty of 1831 it was provided that Belgium "shall form an inde-

pendent and perpetually neutral state." Subsequent treaties reaffirmed this principle.

The City of Cracow, which was under the Treaty of 1815 to be forever a "strictly neutral city," was annexed to Austria in 1846, thus giving the words "forever" and "always" an unduly restricted meaning of 31 years.

Switzerland has stated that her "neutrality and inviolability" rested to a considerable degree upon her ability to "maintain and defend" the "integrity of her territory."

The Treaty of 1867, providing for the perpetual neutrality of the Grand Duchy of Luxemburg, was held by some of its negotiators to be one of "limited liability" which could call merely for "collective action" but in which no one of the Powers may "be called upon to act singly or separately."

In the Franco-Prussian War, Great Britain negotiated treaties with Prussia and with France which declared "that if France (Prussia) should violate Belgian neutrality she will coöperate with Prussia (France) for its defense," and this treaty was to remain in effect for a year from the treaty of peace.

It is evident that a treaty of neutralization with no sanction is not an ample guarantee of the security of the neutralized area. Even Mr. Gladstone, speaking in 1870 in reference to the British action in regard to Belgium, said that he was unable to subscribe to the doctrine that "the simple fact of the existence of a guarantee is binding on every party to it, irrespectively altogether of the particular position in which it may find itself at the time when the occasion for acting on the guarantee arises," and he further said that the great authorities to whom he had been accustomed to listen never "took that rigid and, if I may venture to say so, that impracticable view of a guarantee." Subsequent events seem to have supported Gladstone's opinion.

The "perpetual neutralization of the Philippine Islands" for which provision is made in the Act of March 24, 1934, may or may not involve any of the problems of previous attempts at neutralization, but it is evident that mere words may not be sufficient for the realization of the ends sought.

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#### PHILIPPINE INDEPENDENCE

There are several aspects of the Tydings-McDuffie Act of March 24, 1934,<sup>1</sup> providing "for the complete independence of the Philippine Islands" which attract the attention of international lawyers. Some of them are provocative of considerable discussion, to which this comment may serve as a signpost but not as a solution. Others are perhaps of equal or greater general importance but will not be considered here.<sup>2</sup>

In the first place it should be noted that this act in general follows the

<sup>1</sup> Public No. 127, 73d Congress.

<sup>2</sup> The economic effects are considered in the Bulletins of the American Council, Institute of Pacific Relations, Vol. III, Nos. 19 and 20, Oct. 5 and 19, 1934.