

AUSTRIAN NEUTRALITY—EC—IS AUSTRIAN MEMBERSHIP IN THE EC COMPATIBLE WITH ITS PERMANENTLY NEUTRAL STATUS: A LEGAL ANALYSIS OF SOME PROBLEMS POSED BY FULL MEMBERSHIP

I. FACTS

On July 17, 1989, Austria applied for membership in the European Community (EC).¹ The controversy over Austria's application stems from Austria's 1955 declaration of permanent neutrality and subsequent codification of this neutral status into the Austrian Constitution by the Federal Constitution Act of 1955.² However, while Austria has

¹ Buchan, *Belgium Bridles as Austria Applies to Join the EC*, Financial Times, July 18, 1989, at 2 [hereinafter Buchan]. See Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 (entered in force Jan. 1, 1958) [hereinafter EEC Treaty]. Article 237 of the EEC Treaty describes the process of entering the EEC. That article provides that:

[A]ny European State may apply to become a member of the Community. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament which shall act by an absolute majority of its component members.

Austria's accession could be defeated not only by EEC nations objecting but also because of objections coming from the Soviet Union or the United States. After Austria submitted its application, Belgium emerged as the strongest opponent to Austrian accession. Belgium dropped its objections only after receiving assurances that a thorough study would be made on the neutrality issue. Austria is in a precarious position, often acting as a "bridge" between East and West and seen by the Soviets as a "buffer" against a possible Western invasion. However, recent developments in Europe may have rendered this point moot as the superpowers rethink their policies and strategies. See *infra* note 2.

² BUNDESGESETZ BLAT [B. G. Bl.] 201 (1955). The Austrian State Treaty, signed just prior to this Act, technically has nothing to do with Austria's neutrality. In reality, there was intense debate between the United States and the Soviet Union prior to the signing, centering around these two countries' future involvement in Austria and Austria's future status. The two superpowers finally accepted Austria's status as a neutral state, which Austrian officials had long been advocating. To ensure independence, the Austrians sought to keep the neutrality obligation out of the State Treaty. If the neutrality obligation had become part of the Treaty, the United States and the Soviets may have participated in determining the scope of the neutral policy since they would have been signatories. An agreement was reached at the final negotiations in Moscow where the Austrians obligated themselves to be a neutral nation only after the last foreign troops left Austrian soil. The Austrians thus succeeded in achieving complete sovereignty through which they alone would

legally bound itself to remain neutral,³ it has in reality practiced "active neutrality" by engaging in dealings with both the East and West.⁴ As a member of the European Free Trade Association (EFTA)⁵ and the United Nations, Austria has often taken sides on international issues.⁶

decide how they would conduct their international policy. The results of the State Treaty and the Federal Constitutional Act were stated in 1983 by the former Austrian Minister of Foreign Affairs, Willibald Pahr as follows:

Austrian neutrality was not imposed, but was freely chosen; it is an "active neutrality"; Austria has the exclusive right to interpret its neutrality; it is not of an ideological nature; it is purely armed neutrality; it demands impartiality; and permanent neutrality has become part of Austrian national consciousness, ideology and pride.

EUROPE'S NEUTRAL AND NONALIGNED STATES 162 (S. Papacosma, M. Rubin eds. 1989); TREATIES AND ALLIANCES OF THE WORLD 8 (Keesing Publications 1974) [hereinafter TREATIES AND ALLIANCES]; Address by the Austrian Association of Democratic Lawyers, 2 *Int'l Rev. Contemp. L.* 21 (1988).

³ Austrian Constitution, BUNDESGESETZ BLAT [B. G. Bl.] 201 (1955).

⁴ Luif, *Neutrality and External Relations: The Case of Austria*, 21 COOPERATION AND CONFLICT 25 (1986). Austria's closest ties are with West Germany, but it has close relations to Western Europe in general. In 1960, it joined the European Free Trade Association, see *infra* note 5, and in 1973 the EC and Vienna reached an agreement on industrial and agricultural goods. Economic ties are, however, close to the East as well. Vienna in particular is linked to the East by a transportation network that has survived from the days of the Hapsburg Empire (e.g., a rail system that connects Vienna, Prague, and Cracow). In 1979, Austria and Hungary entered a bilateral agreement abolishing visa requirements, thus creating a special relationship between these two countries. And in 1982, American and Austrian relations were severely strained when the United States felt the Austrians were transferring militarily sensitive products and technology to the Soviet bloc. Although Austria later agreed to scrutinize carefully the transfer of sensitive technology, it retained the right to establish and maintain a large and highly variegated trade network. Indeed, in light of recent developments in the East, Austria will play a vital role in this region's economic development.

⁵ The European Free Trade Association, established in 1960 as an economic association for non-EC countries, includes other neutral states such as Sweden and Switzerland. The objectives of EFTA are similar to those of the EC. Article 2 provides for the promotion of trade between member states and Article 3 provides for the reduction of tariffs between member states. In 1972, EFTA signed treaties with the EC to facilitate trade between these two blocks of trading partners. TREATIES AND ALLIANCES, *supra* note 2, at 79; Treaty Establishing the European Free Trade Association, Jan. 1, 1972, 370 U.N.T.S. 3.

⁶ TREATIES AND ALLIANCES, *supra* note 2, at 77. Indeed, the United States often felt that former Austrian chancellor Bruno Kreisky exploited Austria's neutral position to justify controversial stances on international issues. For example, in 1982, the government met with Libyan leader Muammar al-Qaddafi, and formally recognized the Palestine Liberation Organization. In that same year, Vienna also concluded several trade agreements with the East. Austria has also played a key role in the balance between East and West. Vienna has become the third seat of the United Nations, behind New York and Geneva, with the development of the "UN City."

The EC is primarily an economic association, but there have always been inclinations to transform this group into a political force.⁷ In fact, the founding principle of the EC is integration in various areas including the social, economic, political, and legal spheres.⁸ Legal

See Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 (entered in force Jan. 1, 1958) [hereinafter EEC Treaty]. There also have been a variety of international meetings in Vienna. The SALT I Treaty negotiations were carried out there, and in Helsinki from 1970 to 1972. In 1979, the SALT II Treaty was signed by American President Carter and Soviet President Brezhnev. Austria also has been involved in various international disputes due to its membership in the United Nations, including the supply of troops for UN peace keeping missions in the Congo, Cyprus, and the Middle East.

⁷ Toepke, *The European Economic Community - A Profile*, 3 NW. J. INT'L L. & BUS. 640 (1981). The Community finally did formally adopt the Single European Act (SEA) in 1987. This Act, in Title III, provides the Community with a legal basis to achieve political cooperation. This formal adoption of a means to achieve European Political Cooperation (EPC) was a culmination of years of effort in this direction. For example, the Solemn Declaration on European Unity and the Draft Treaty Establishing the European Union were efforts to facilitate European union through the existing EC treaties based on a federalist type of system. Though these efforts were extreme, they did give rise to the Ad Hoc Committee for International Affairs (Dooge Committee), its report essentially being the basis for Title III of the SEA.

The SEA, in Titles I, II, and IV, is a group of amendments to the EEC, and provides a legal means to achieve a closer European union in Title III. The SEA provides, for example, for one internal market (art. 13) and increased economic and social cohesiveness (art. 23). Parliament's influence over the Council and Commission has been increased in certain areas. However, all of these provisions from Titles I, II, and IV were created as amendments to the existing EEC Treaty and are distinct from Title III. Title III also has been made literally distinct by language in the other provisions that distinguish Title III from the others. Simultaneously, EPC is kept a part of the Community by references throughout Title III to obligations of the member states in respect to this provision.

Under Article 30 of Title III, the SEA places only vague obligations on member states to implement measures designed to achieve European unity. This raises doubts as to the true effectiveness of the provisions in the political realm. Some scholars have also argued that Title III will be a hindrance to European unification. Under Article 30, the member states are to undertake to consult with each other on foreign policy matters; take full account of other member's position in such matters; and refrain from impeding the formation of a common position.

The effectiveness of the SEA and its implication on a politically united Europe remain to be seen. Ireland, however, did not see the SEA as a substantial interference with its neutral status. See *infra* note 40. Murphy, *European Political Cooperation after the Single European Act: The Future of Foreign Affairs in the European Community*, 12 B.C. INT'L & COMP. L. REV. 335 (1989).

⁸ Jacque, *The Draft Treaty Establishing the European Union*, 22 COMMON MKT. L. REV. 19 (1985). This principle is derived from the opening statements of the EEC Treaty. Language such as "[d]etermined to lay the foundations of an ever closer union among the peoples of Europe," "resolved to ensure the economic and social

integration is an obvious focus because it naturally accompanies any type of international economic organization involving a group of nations. A uniform legal system that integrates and unites member states is the first step toward a larger, politically united organization. Because member states "give up" specific aspects of their sovereignty by submitting themselves to EC jurisdiction over legal matters pertaining to the EC, and since Austria is constitutionally bound to remain neutral, Austria's application presents a problem.

The question is whether Austria will be able to submit to EC authority and follow EC directives and policies while simultaneously remaining neutral.⁹ This paper briefly examines the legal obligations of EC membership that would most likely infringe on a country's neutrality and then looks at Ireland, an EC member that has managed to submit to these legal obligations and maintain its neutral status. In conclusion, the paper examines Austria's prospects for future membership in the EC.

LEGAL ASPECTS OF EC ACCESSION

The controversy over whether Austria can be an active member of the EC and remain loyal to the 1955 Constitutional Act creating its neutral status centers in part on the legal character of the Community and the political implications this character has for Member States.

The treaty-making powers of the EC cover all actions necessary for the EC to attain its objectives.¹⁰ Article 113 of the EEC Treaty gives

progress of their countries," and "intending to confirm the solidarity which binds Europe and the overseas countries" gives credence to this general statement about EEC goals.

⁹ Buchan, *supra* note 1, at 2.

¹⁰ EEC Treaty, *supra* note 1. Article 235 provides, "If any action taken by the Community appears necessary to achieve, in the functioning of the Common Market, one of the aims of the Community in cases where this Treaty has not provided for the requisite powers of action, the Council . . . shall enact the appropriate provisions." The goals of the EEC are set out in Article 3 and provide for the following:

- (a) the elimination, as between Member States, of customs duties and of quantitative restrictions in regard to the importation and exportation of goods, as well as of all other measures with equivalent effect;
- (b) the establishment of a common customs tariff and a common commercial policy towards third countries;
- (c) the abolition, as between Member States, of the obstacles to the free movement of persons, services and capital;
- (d) the inauguration of a common agricultural policy;
- (e) the inauguration of a common transport policy;
- (f) the establishment of a system ensuring that competition shall not be

the Community the express authority to enter treaties by imposing the obligation of developing a common commercial policy.¹¹ Article 228 expressly gives the Commission the power to negotiate the treaties and the Council the power to conclude them.¹² The EEC also has the power to enter association agreements involving reciprocal rights and obligations.¹³

distorted in the Common Market;

(g) the application of procedures which shall make it possible to co-ordinate the economic policies of Member States and to remedy disequilibria in their balances of payments;

(h) the approximation of their respective municipal law to the extent necessary for the functioning of the Common Market;

(i) the creation of a European Social Fund in order to improve the possibilities of employment for workers and to contribute to the raising of their standard of living;

(j) the establishment of a European Investment Bank intended to facilitate the economic expansion of the Community through the creation of new resources; and

(k) the association of overseas countries and territories with the Community with a view to increasing trade and to pursuing jointly their effort towards economic and social development.

¹¹ EEC Treaty, *supra* note 1. The corresponding provisions in the other two treaties that comprise the EC are Article 203 of the Euratom Treaty, 298 U.N.T.S. 167, at 230 (1957), and Article 95 of the Treaty Establishing ECSC, 261 U.N.T.S. 14, at 225 (1951). Article 203 provides:

[I]f any action by the Community appears necessary to achieve one of the aims of the Community in cases where this Treaty has not provided for the requisite powers of action, the Council, acting by means of unanimous vote on a proposal of the Commission and after the Assembly has been consulted, shall enact the appropriate provisions.

Article 95 provides: [I]n all cases not provided for in this Treaty where it becomes apparent that a decision or recommendation of the High Authority is necessary to attain, within the common market in coal and steel and in accordance with Article 5, one of the objectives of the Community set out in Article 2,3 and 4, the decision may be taken or the recommendation made with the unanimous assent of the Council and after the Consultative Committee has been consulted. *See* Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 (entered in force Jan. 1, 1958) [hereinafter EEC Treaty].

¹² EEC Treaty, *supra* note 1. Article 228 states:

[W]here this Treaty provides for the conclusion of agreements between the Community and one or more States or an international organisation, such agreements shall be negotiated by the Commission. Subject to the powers conferred upon the Commission in this field, such agreements shall be concluded by the Council after the Assembly has been consulted in the cases provided for by this Treaty.

¹³ EEC Treaty, *supra* note 1. This power is stipulated in Article 238, which provides that "[t]he Community may conclude with a third country, a union of States or an international organisation agreement creating an association embodying reciprocal rights and obligations, joint actions and special procedures."

The authority to enter a treaty is implied in every internal Community power.¹⁴ The EC has on many occasions entered bilateral and multi-lateral treaties with non-member countries and other international organizations.¹⁵ These agreements are legally binding on member states of the EC, and they also create a "foreign policy" for the EC.¹⁶ Since Member States are bound by the agreements, they too become proponents of this policy.¹⁷ Any truly neutral member would have difficulty maintaining its neutral status while at the same time engaging in external economic policy designed to benefit it and other members of the EC.¹⁸

Since 1964, the European Court of Justice has decided a number of cases establishing the predominance of EC law over Member States' laws, whether the laws were enacted prior to or after a member's admission to the Community. In *Costa v. ENEL*,¹⁹ and *Wilhelm v. Bundeskartellamt*,²⁰ the Court expressly and unequivocally affirmed this principle. In *ENEL*, a Mr. Costa requested an interpretation from the

¹⁴ Opinion of the Court, [1977] E.C.R. 741 (1977).

[W]henver Community law has created for the institutions of the Community powers within its internal system for the purpose of attaining a specific objective, the Community has the authority to enter into the international commitments necessary for the attainment of that objective even in the absence of an express provision in that connexion.

"[a]lthough the internal Community measures are only adopted when the international agreement is concluded and made enforceable, the power to bind the Community vis-a-vis third countries nevertheless flows by implication from the provisions of the Treaty. . . ." *Id.* at 742.

¹⁵ For example, the EEC and Iran signed a three-year agreement in 1963 that called for temporary reductions in the EEC's external tariff for products of special importance to Iran. A similar agreement was signed with Israel in 1964. A technical cooperation agreement was signed with Lebanon in 1965. A trade agreement with Yugoslavia was signed in 1970 that gave that nation most-favored-nation treatment. In 1975, an Association Agreement was signed with developing African countries and with the Association of South-East Asian Nations (ASEAN). *TREATIES AND ALLIANCES*, *supra* note 2, at 71-72.

¹⁶ *See supra* note 15. Since the EC operates on behalf of all members when concluding agreements with other nations, in a sense it establishes an EC position in external relations. *PUISSOCHET, THE ENLARGEMENT OF THE EUROPEAN ECONOMIC COMMUNITIES; COMMENTARY ON THE TREATY AND ACCESSION OF DENMARK, IRELAND AND THE UNITED KINGDOM* (1975).

¹⁷ EEC Treaty, *supra* note 1. Under Article 228, agreements concluded according to the conditions laid out in the first two paragraphs of this article are binding on the institutions of the Community and on Member States.

¹⁸ *LEGAL PROBLEMS OF AN ENLARGED EUROPEAN COMMUNITY* 135 (1972) [hereinafter *LEGAL PROBLEMS*].

¹⁹ *Costa v. ENEL*, [1964] E.C.R. 585, 3 Comm. Mkt. L. R. 425 (1964) [hereinafter *ENEL*].

²⁰ *Wilhelm v. Bundeskartellamt*, [1969] E.C.R. 1, 8 Comm. Mkt. L. R. 100 (1969) [hereinafter *Bundeskartellamt*].

Court of various EEC articles he claimed had been violated by the Italian government.²¹ The Court rejected the Italian government's submission that it had to apply national (Italian) law,²² holding that "the Member States have limited their sovereign rights, albeit within limited fields and have thus created a body of law which binds both their nationals and themselves and the precedence of Community law is confirmed by Article 189."²³

In *Bundeskartelamt*, the Court held that national courts may take legal action following national law even if similar action is taking place at the Community level, so long as the application of national law does not prejudice the "full and uniform application of Community law or the effects of measures taken or to be taken to implement it."²⁴ If a national decision would be incompatible with a decision by the Commission, the national court must "take proper account of the effects of the latter decision."²⁵ Finally, in 1970, the Court laid to rest any lingering doubts about EC predominance over member nations' laws by stating that "[t]he validity of a Community measure or its effect within a Member State cannot be affected by allegations that it runs counter to either fundamental rights as formulated by the constitution of that State or the principles of its constitutional structures."²⁶ The Court's decisions in these cases contributed to a uniform

²¹ *ENEL*, [1964] E.C.R. at 585, 3 Comm. Mkt. L. R. at 425 (1964). On December 6, 1962, the government nationalized the production and distribution of electric energy and created the Ente Nazionale Energia Electrica (ENEL), to which assets of electricity undertakings were transferred. Mr. Costa was a shareholder in one of the affected companies and protested these actions.

²² *ENEL*, [1964] E.C.R. at 593, 3 Comm. Mkt. L. R. at 455 (1964). The Court stipulated that "[b]y contrast with ordinary international treaties, the EEC Treaty has created its own legal system which . . . became an integral part of the legal system of Member States and which their courts are bound to apply."

²³ *ENEL*, [1964] E.C.R. at 593, 3 COMM. MKT. L. R. at 455.

²⁴ *Bundeskartelamt*, [1969] E.C.R. at 14, 8 Comm. Mkt. L. R. at 105 (1969). The Federal Cartel Bureau of Germany (*Bundeskartelamt*) had fined the petitioners for illegal restraint of trade, according to German law. At the same time, the Commission had initiated proceedings against these same companies for violating EEC provisions. The question was whether the *Bundeskartelamt* could simultaneously pursue legal action against these companies.

²⁵ *Id.* at 14, 8 Comm. Mkt. L. R. at 118 (1969).

²⁶ *Internationale Handelsgesellschaft mbH v. Einfuhr-und Vorratsstelle fur Getreide und Futtermittel*, [1970] E.C.R. 1125, 9 Comm. Mkt. L. R. 294 (1970). In 1967, *Internationale Handelsgesellschaft* received an export license for grain, the condition being that it had to make a monetary deposit, in accordance with Article 12 (1) of Regulation No. 120/67/EEC of the Council. This deposit was a guarantee of exportation of the grain while the company had the license. When the company

interpretation of EC law that members were bound to follow.²⁷ These interpretations are resulting in a judicial cooperation which has a direct internal effect on Member States.²⁸

Since joining the EC in 1972,²⁹ Ireland has continuously maintained its neutral status. Because Ireland has practiced a "watered down" version of Austria's "active neutrality," participation in the EC has not yet proved a problem.³⁰ However, since the Irish Constitution of 1937 did not permit Irish entry into an international organization such as the EC, a referendum was held to provide for a constitutional amendment allowing Irish entry.³¹ By the language of the amendment and that of Ireland's treaty with the EC, Ireland restricted its participation to those institutions then constituting the EC: the EEC, Euratom, and ECSC.³² Thus, Ireland was legally bound to follow actions taken only by these three institutions.³³ Any political or military institution created as a part of the EC would have had no authority over Ireland.³⁴

did not export the full amount of grain required, some of the deposit was retained. The German based company argued that the deposit requirement was contrary to the German constitution provisions on free trade and that the retained money actually acted as a punitive measure. The Court rejected this argument. *Id.* at 1134, 9 COMM. MKT. L. R. at 296 (1970).

²⁷ PUISOCHET, *supra* note 16, at 75.

²⁸ *Id.* The idea behind "judicial cooperation" is that the Community and the Member States have a common interest in the correct implementation of Community law. The typical court functions have been split between the Court of Justice and the Member States' national courts, the former being responsible for uniform implementation of Community rules and the latter being responsible for deciding cases in accordance with the applicable Community laws. See also LEGAL PROBLEMS, *supra* note 18, at 34-37.

²⁹ Act concerning the Conditions of Accession and the Adjustments to the Treaties-Accession to the European Communities of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, 15 J.O. COMM. EUR. (No. L 73) 1 (1972).

³⁰ Ireland, like Austria, is a member of the United Nations and both nations have sent troops on U.N. peace keeping missions. EUROPE'S NEUTRAL AND NON-ALIGNED STATES, *supra* note 2, at 115.

³¹ IRISH CONSTITUTION art. 29.4.3 (1972).

³² See *supra* note 11.

³³ Lang, *Legal and Constitutional Implications for Ireland of Adhesion to the EEC Treaty*, 9 COMMON MKT. L. REV. 167 (1972).

³⁴ Ireland was faced with this problem prior to the adoption of the SEA. In the "Crotty Case," the Irish Supreme Court held that the 1972 constitutional amendment authorized Irish entry into the EC as it stood then. Thus, before Ireland could adopt the SEA, yet another referendum had to be held since it would have been unconstitutional for Ireland to accept the SEA. Through the referendum, the Irish accepted another constitutional amendment permitting adoption of the SEA. Lang, *The Irish Court Case That Delayed the Single Act*, 24 COMMON MKT. L. REV. 709 (1987); see also *supra* note 7.

Any economic agreements concluded under Article 235³⁵ that would be seen by some as politically motivated or as creating a political stance on an issue will not affect Ireland's neutral status. The same is true for Ireland's submission to EC law in the form of decisions, regulations, and directives. The interpretation given by the Court of both the binding effect of EC treaties and the doctrine of EC judicial predominance have also supported Ireland's neutral status.

Under classic international law,³⁶ treaty obligations are brought only on the parties, and the EC acts as a separate and distinct party. Ireland is but one of eleven other members of this body and cannot be bound as an individual party. The effect of EC treaty making power on Irish neutrality is further diminished by the fact that the types of treaties the EC can enter are limited to economic treaties. Thus, the Community has the exclusive right to conclude trade agreements, but leaves other foreign matters to Ireland.³⁷

Ireland has through the language of its Constitutional amendment and the Treaty of Accession assured a degree of autonomy in relation to Community matters. This autonomy is strengthened by the structure of the EC and the language of the EC treaties. Community membership has not weakened Irish neutrality.

III. ANALYSIS

Analysis of the Austrian situation, in relation to the EC legal characteristics discussed above, indicates that Austria will likely be allowed to join the EC without violating its constitutional obligation of neutrality. Ireland's entry into the EC provides a guideline for Austrian admission and demonstrates solutions to some problems that face this neutral country in its bid to become a member state.

Austria has set the example for the "active neutrality" that Ireland has practiced. Since 1955, Austria has remained neutral in only the political and military realms, not the economic realm.³⁸ In addition, although the EC does infringe on national sovereignty in the legal sphere and to an extent has a uniform international policy, these political aspects of membership should not affect Austrian neutrality

³⁵ EEC Treaty, *supra* note 1. See also LEGAL PROBLEMS, *supra* note 18, at 20.

³⁶ LEGAL PROBLEMS, *supra* note 18, at 27. The phrase "classic international law" refers to the traditional devices that countries used to obligate themselves for a common purpose, such as bilateral treaties.

³⁷ *Id.* at 124-27.

³⁸ EUROPE'S NEUTRAL AND NONALIGNED STATES, *supra* note 2, at 164.

any more than they affect Irish neutrality.³⁹ To assure the status quo in this respect, Austria may follow the Irish lead by restricting the scope of its participation to the present EC institutions, or Austria may write its neutral status into the Treaty of Accession as a condition of entry.⁴⁰ Conflicts may arise, however, if the EC develops purely political policies that extend beyond the economic realm of "active neutrality."⁴¹

Since signing the State Treaty in 1955, Austria has anticipated participation in and submission to the authority of international organizations.⁴² For example, the Austrian Constitution provides:

A law of treaty to be approved pursuant to Article 50, may transfer individual sovereign rights of the Federation to international institutions and to their organs and may regulate within the limits imposed by international law the activities of organs of foreign states in Austria and the activities of Austrians abroad.⁴³

This was inserted into the Constitution to facilitate Austria's acceptance of the secondary law of such organizations.⁴⁴

In 1960, Austria joined the European Free Trade Association (EFTA), an organization similar to the EC that includes non-EC states.⁴⁵ In 1972, EFTA and the EC reached an agreement providing for the gradual achievement of free trade in industrial goods and preserved the existing free trade among all countries which were members of EFTA.⁴⁶ This pattern of association seems to alleviate doubts about what effect EC treaty-making authority will have on Austria's neutrality. Although the EC can conclude economic treaties that would bind Austria, this would not seem to create any greater obligations than do agreements made by EFTA.

³⁹ *Id.* at 112, 164.

⁴⁰ Hummer, *Das Problem der Neutralitaet-Oesterreich und die EG-Beitrittsfrage*, 17 *EUROPA-ARCHIV* 506 (1988).

⁴¹ Esterbauer, *Oesterreich's Teilnahme an der europaeischen Integration aus rechtlicher Sicht*, 96 *JURISTISCHE BLAETTER* 136 (1974) [hereinafter Esterbauer]; *EUROPE'S NEUTRAL AND NONALIGNED STATES*, *supra* note 2, at 114.

⁴² *EUROPE'S NEUTRAL AND NONALIGNED STATES*, *supra* note 2, at 163.

⁴³ Austrian Constitution, *BUNDESGESETZ BLAT* [B. G. Bl.] 201 (1955) at art. 9, para. 2. Article 50 simply provides for the approval of such agreements. *Id.* at art. 50, para. 1.

⁴⁴ Hanreich, *Die Beschluesse internationaler Wirtschafts-organisationen im oesterreichischen Rechtsquellensystem dargestellt am Beispiel der Vertaege Oesterreichs mit den EG*, 26 *OSTERREICHISCHE ZEITSCHRIFT FUR OFFENTLICHES RECHT* 173-196 (1975) [hereinafer Hanreich].

⁴⁵ *See supra* note 5.

⁴⁶ *TREATIES AND ALLIANCES*, *supra* note 2, at 79.

The conclusion is that articles such as Article 235 of the EEC Treaty probably will not substantially change Austria's neutral status. As demonstrated by Ireland, this requirement of EC membership poses no threat to Austria's obligation of neutrality or to the EC's ability to maneuver in world trade.⁴⁷

A second problem for Austria, posed under Article 189, is resolved by looking to the Austrian courts' previous decisions regarding international trade disputes. This, as well as those characteristics of the EC judiciary that have "supported" Irish neutrality, demonstrate the compatibility of full EC membership with Austria's neutral status.⁴⁸ The Austrian courts have often decided cases with European integration in mind by adopting legal doctrines espoused by European organizations, some of which do not claim Austria as a member.⁴⁹

For example, in 1974, the Austrian Constitutional Court drew direct conclusions from practices pursuant to the EEC Treaty rules.⁵⁰ The Court had to decide whether the Austrian-German Commercial Treaty of 1930 had become obsolete.⁵¹ The court held that this treaty had been abrogated due to lack of use, relying on the fact that the Federal Republic had not asked the EEC Council to extend the validity of the Treaty. Thus, the Austrian Court looked directly to the EEC to decide an internal legal matter.⁵²

In 1979, the Austrian Supreme Court, in *Austro v. Mechana*,⁵³ held that the Trade Treaty with the EEC did not oblige Austria to admit a parallel importation of gramophone records from the Federal Republic of Germany under Articles 13 and 20 of Austria's Treaty with the EEC.⁵⁴

These two articles are essentially identical to Articles 30 and 36 of the EEC Treaty⁵⁵ which prohibit such parallel imports between Member

⁴⁷ Esterbauer, *supra* note 41, at 138.

⁴⁸ See *supra* notes 29-37 and accompanying text.

⁴⁹ Seidl-Hohenveldern, *Austrian cases on European Intergration*, 1983 LEGAL ISSUES OF EUROPEAN INTEGRATION 13. See also Hanreich, *supra* note 44, at 173. (Discussing cases where the Austrian courts have submitted to the predominance of EFTA regulations).

⁵⁰ Seidl-Hohenveldern, *supra* note 49, at 24.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Austro-Mechana Gesellschaft Zur Verwaltung und Auswertung Mechanisch-Musikalischer-Urheberrechte GmbH v. Gramola Winter & Co.*, 2 Comm. Mkt. L. R. 626 (1984).

⁵⁴ Seidl-Hohenveldern, *supra* note 49, at 24. These articles prohibit the use of industrial and commercial property as a disguised restriction of trade between contracting parties.

⁵⁵ As interpreted by the European Court of Justice.

States. Instead of making a wholly independent judicial interpretation, the Austrian courts relied on the EEC interpretation of these articles and prohibited the parallel imports. These two decisions clearly show that Austria has anticipated the gradual integration of Europe and has incorporated this integration into its judicial system. Thus, the formal obligation of EEC Article 189 regarding the power of the Council and Commission to make decisions, directives, and regulations would not appear to impose any duty on Austria that it has not already practiced in the past.⁵⁶

IV. CONCLUSION

Although there has been some outcry and debate over whether neutral Austria can legally become a member of an association that professes political unity as its underlying goal, there are no insurmountable obstacles which would prevent full membership. Austria has long been a member of the international community and is presently bound by a multitude of international treaties. Any future economic treaties concluded by the EC, with Austria a member, would not interfere with its "neutrality." Austria has long followed the lead of the EC in court decisions and has conducted itself within the legal realms of EFTA as well. The formal subordination of Austrian courts will not significantly alter the present judicial situation. Unless the EC begins to take on clear characteristics of a political body, with distinct obligations resembling Articles 235 and 189 instead of the vague language and subtle underlinings now present in the SEA, Austria will have no problem remaining faithful to the 1955 Constitutional Act. To alleviate any concern about the effect that a future political entity within the EC will have on Austrian membership, Austria's treaty of accession should stipulate the scope and character of its participation as did Ireland's treaty.

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⁵⁶ EEC Treaty, *supra* note 1, art. 189.