COUNTERPOINT:
AUSTRIA—NEUTRALITY—EUROPEAN ECONOMIC COMMUNITY—AUSTRIAN NEUTRALITY AND EC MEMBERSHIP: ARE THEY COMPATIBLE?

On July 17, 1989, Austria formally submitted its application for membership to the European Community (EC). Unlike any prior EC applicant, Austria made continuance of its neutral status an express condition of entry to the Community.

The Soviet Union has expressed its fear that Austria would be unable to remain truly neutral once admitted to the EC. Austria, in defending its application to the Soviets, has declared that it intends to maintain rigidly its neutral status, and, in defending its neutrality condition to the EC countries, has denied that such status is incompatible with EC-membership.

The other countries of the European Community have been mixed in their reaction to Austria's application for membership. West Germany and Italy, while recognizing the potential conflict with the future economic and political aspirations of the EC, are publicly well-disposed to admitting their neighbor. France and Great Britain, on the other hand, are concerned that Austrian membership under

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1 The EC is comprised of three Communities, namely, the European Economic Community (EEC), the European Coal and Steel Community (ECSC), and the European Atomic Energy Committee (EURATOM). These Communities share a common decision-making apparatus composed of the Council of Ministers and the European Commission. Membership consists of the six original Member States, Belgium, France, Italy, West Germany, Luxembourg, and The Netherlands, plus The United Kingdom, Ireland, Denmark, Greece, Spain, and Portugal.

2 Buchan, Belgium Bridles as Austria Applies to Join the EC, Fin. Times, July 18, 1989, at 2, col. 3.


4 Id.

5 Id.

6 Alterman, EC Faces Soul-Searching Over Austrian Membership Application, The Reuter Library Rep., July 16, 1989. The West Germans are particularly eager to be joined by another German-speaking country in a Community in which business is increasingly done in English and French. Id.
the neutrality condition might preclude the development of a security dimension to the EC.\(^7\)

Two issues raised by the Austrian application to the EC are whether Austria’s neutral status prohibits it from joining the EC, and, conversely, whether the EC can admit Austria given the latter’s permanent neutrality. This paper will address the first issue by examining the law of neutrality as it applies to Austria, and the second issue by exploring the legal character of the European Community.

Austria’s neutrality stems from, and is regulated by, three instruments. The Moscow Memorandum of April 15, 1955, imposed upon Austria the obligation of permanent neutrality as a precondition to Soviet signature of the Austrian State Treaty.\(^8\) The Austrian State Treaty, which was signed exactly one month later and which provided for the creation of a sovereign, independent, and democratic Austria, forbade political or economic union with Germany and stipulated that the terms of the Moscow Memorandum were to be fulfilled.\(^9\) Then, on October 26, 1955, in a Constitutional Amendment, Austria declared “of her own free will her perpetual neutrality.”\(^10\)

In the Moscow Memorandum Austria agreed to maintain a permanent neutrality “of the same type as that maintained by Switzerland.”\(^11\) The official Swiss conception of neutrality, however, states clearly that “a permanently neutral state cannot conclude any customs [or] economic alliances.”\(^12\) This principle is supported in customary

\(^7\) Buchan, supra note 2, at col. 5. France and West Germany have recently proposed that EC political union, including development of common foreign and security policies, begin by 1993. Waxman, France, West Germany Calling for European Security Alliance by '93, The Atlanta J. and Const., Apr. 20, 1990, at A-3, col. 1. The growing uncertainty over the role of NATO in the wake of the Cold War provides added impetus to the prospects for establishing an EC security structure. Id. at col. 2.


\(^9\) Id.

\(^10\) Id. at 184. The Amendment came into force on November 5, 1955, and was given international publicity. The key passage reads as follows: For the purpose of the lasting maintenance of her independence externally, and for the purposes of the inviolability of her territory, Austria declares of her own free will her perpetual neutrality. Austria will maintain and defend this with all means at her disposal. For the securing of this purpose in all future times Austria will not join any military alliances and will not permit the establishment of any foreign military bases on her territory. Id. at 184.

\(^11\) Lyon, supra note 8, at 187.

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law by at least one historical precedent, namely, the protests of the great powers at the then neutral Belgium's negotiations with France on the formation of a customs union in 1841-42. Of additional legal significance is the Advisory Opinion of the Permanent Court of International Justice in 1931, which denounced Austria's customs union with Germany as a compromise of the former's independence.

Despite the obvious political pressures which led to Austria's neutral status, Austria has always maintained that it is neutral by choice and accordingly retains the "exclusive right and duty to interpret its neutrality." As officially defined by the State Secretary for Foreign Affairs at the time of declaration, the Austrian conception of neutrality entailed three obligations, namely that Austria abstain from joining a military alliance, bar foreign military bases from its territory, and refrain from accepting "any obligations—political, economic, or other—which would tend to impair its neutrality in wartime."

Indeed it was the fear of breaching this last requirement, along with strong Soviet protest, which accounted for Austria's joining the Europe Free Trade Association (EFTA) rather than the EC in the first place, and which prevented it from applying for full EC membership, after much deliberation, in 1973. Apparently, however, Austria has presently reinterpreted its neutrality. When current Foreign Minister Alois Mock recently argued that EC membership would not violate Austria's neutrality, he delineated only two requirements of that neutrality: that Austria not join a military alliance or have foreign military bases on its soil.

14 Permanent Court of International Justice Advisory Opinions, Reports, Series A/B, no. 41 (1931).  
15 Johnson-Freese, Austria, in Europe's Neutral and Non-Aligned States 162 (1989). This claim was made by former Austrian Minister of Foreign Affairs Willibald Pahr in a lecture at the Royal Institute of International Relations, Brussels, Feb. 17, 1983. He further characterized Austria's neutrality as active, armed, non-ideological, impartial, and freely chosen. Id.  
16 Lyon, supra note 8, at 184. The definition was given by Austrian State Secretary for Foreign Affairs, Bruno Kreisky, Austria Draws the Balance, FOREIGN AFFAIRS, 269 (1959).  
17 The EFTA is a loosely arranged association which harbors no aspirations for economic or political union and which is run basically by majority rule.  
18 Lyon, supra note 8, at 187.  
19 Buchan, Belgium Bridles as Austria Applies to Join the EC, supra note 2, at col. 4.
Pertinent to the issue of neutrality are Articles 223 and 224 of the Treaty of Rome. According to Article 223, the Community will not interfere with the right of a Member State to take measures it considers necessary for the protection of its essential security interests and which concern the production or trade of arms, ammunition, and war material. Under Article 224 Members may take common steps to prevent the Common Market from being affected adversely by the measures a Member State takes in the case of war or "in order to carry out undertakings into which it has entered for the purpose of maintaining peace and international security." These Articles might seem to afford a neutral Member sufficient freedom to protect its neutral status. However, Article 225(2) authorizes the Court of Justice of the EC to decide if an improper use of the power provided for in Articles 223 and 224 is made. This means, in effect, that the Court will be the judge of what the law of neutrality requires.

The Treaty of Rome does not provide for the suspension of obligations of a Member State in the event of war or for any other reason. In fact, the very wording of Article 224 demonstrates that the Treaty is applicable during time of war. Additionally, most writers agree that a Member State is not free to leave the EC. This

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21 Eek, Neutrality and the European Communities, in Legal Problems of an Enlarged European Community 143 (1972).
22 Id. Article 223(b) provides:
Any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.
Treaty of Rome, supra note 20, art. 223(b).
23 Eek, supra note 21. Article 225(2) provides:
By way of derogation from the procedure laid down in Articles 169 and 170, the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in Articles 223 and 224. The Court of Justice shall give its ruling in camera.
Treaty of Rome, supra note 20, art. 225(2).
24 Eek, supra note 21, at 143.
25 These articles are apparently not intended to resolve the problems peculiar to neutral states. Id. at 144.
26 Id. at 143.
27 Id. at 144; cf. Detter, Law Making by International Organizations 216 (1965).
reasoning is based on Article 240, which states that the Treaty "shall be concluded for an unlimited period." 28

The Treaty does allow for some leeway in adapting to the unique characteristics of potential Member States. Article 237, which declares that membership is open to any European state, 29 foresees that admission of new members may necessitate "adjustments to this Treaty." 30

Austria points to Ireland as an example of how a neutral state can exist compatibly in the EC. 31 However, Ireland's purported neutrality is of a significantly different legal, political, and historical character than is Austria's. Unlike Austria's, Ireland's neutrality does not arise from international treaty obligations and is not grounded in constitutional law. Nor has Ireland's neutrality ever developed the characteristics of a stable or rigid doctrine. 32

Ireland's neutrality is, in fact, currently of dubious status. Many scholars feel that Ireland disregarded a major prohibition restricting a permanently neutral nation's foreign policy when it joined the EC and is no longer to be counted among Europe's permanently neutral states. 33 Indicative of Ireland's ambiguous status is its alignment in the Conference on Security and Co-operation in Europe (CSCE). 34 Ireland does not belong to the neutral and non-aligned caucus but rather coordinates its policy with the EEC group, whose other members all are NATO countries. 35

Ireland will undoubtedly perpetuate the current ambiguities of its nominally neutral status until external pressures force its hand. However, should Ireland eventually be faced with the prospect of European

28 Eek, supra note 21, at 144.
29 Toepke, The European Economic Community—A Profile, 3 NW. J. INT'L L. & Bus. 643 (1981). However, as the Commission stated to the Council in connection with Greece's accession, the principles of pluralist democracy and respect for human rights form part of the common heritage of all Member States and adherence to them is therefore an essential requirement of membership. Id. See 12 Bull. Eur. Comm. (No. 5) 75 (1979). Austria, of course, meets this requirement.
30 Eek, supra note 21, at 144.
31 Austria to be Neutral as EEC Member, The Daily Telegraph, July 5, 1989, at 10.
32 Stephan Kux, Europe's Neutral States: Partners or Profiteers in Western Security? 32 (1986). Ireland does not have a comprehensive doctrine of neutrality, nor even a formal declaration of security policy. Id.
33 Boczek, supra note 13, at 16.
34 Id. See also Kux, supra note 32, at 33.
35 Boczek, supra note 13, at 17. See also Kux, supra note 32, at 33. Although the CSCE'S 35 participating states officially maintain their sovereignty and independence, unofficial policy coordination occurs in the several major operational caucuses. Id.
political union, it probably will have few qualms about renouncing its neutrality in the interest of retaining the enormous economic benefits it enjoys as an EC member. Such renunciation of its neutral status, furthermore, would be unlikely to create much turmoil on the international scene given that neither superpower makes much of an issue of Ireland's neutrality.

Austria, on the other hand, necessarily must maintain its permanently neutral status due to its unique historical and geopolitical character. The Soviet Union could not be expected to accept easily an Austrian alliance with the West. Any type of political union or foreign policy coordination with any other country, especially Germany, would undeniably be a blatant breach of Austria's treaty obligations and would have a destabilizing effect on East-West relations. EC membership should certainly be considered in the context of the Community's political and foreign policy overtones.

Entry into a Community whose legal authority is derived from partial surrender of sovereignty by its Member States, whose law-making powers supersede those of its Members, whose charter does not provide for the suspension of obligations, and whose stated goals

36 Among the many advantages attendant to participation in the Common Market, Ireland benefits particularly from the resultant market for its agricultural exports. Kux, supra note 32, at 33.
37 Id. at 35.
38 Id. at 26. Austria lies in a region of considerable strategic importance. Situated in the geographic center of Europe, Austria borders both Eastern and Western bloc countries, separates NATO's forces in West Germany from Italy and Yugoslavia, and offers the most convenient direct access to the Balkans and south-eastern Europe. Id.
39 Lyon, supra note 8, at 183.
40 See supra note 7.
42 See Toepke, supra note 29, at 658-59. Article 100 enables the Community to create law that changes national law if required in the interest of better affording to all Member States the benefit of the Common Market. The Council, upon proposal by the Commission, shall "issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affects the establishment or functioning of the common market." Treaty of Rome, supra note 20, art. 100.
43 See supra notes 25-28 and accompanying text.
include economic and political union,\textsuperscript{44} would potentially imperil the neutral status of Austria. Even if considered in a purely economic context, accession to the EC would violate the principle of economic impartiality implicit in the general international law of neutrality, something which Austria itself has, until recently, recognized.\textsuperscript{45} Additionally, economic integration into the EC would of necessity mean economic union with Germany, which is expressly forbidden by the Austrian State Treaty.\textsuperscript{46}

Beyond the literal requirements of its State Treaty and Constitution, Austria has a duty to maintain a credible policy of permanent neutrality. As a nation whose history and geopolitical position are in the very heart of the post-World War II European order, and whose neutrality has never been tested in a major conflict, Austria can ill-afford to raise doubts in the international community as to its intention, or, more to the point, its ability to remain forever neutral. Accession to the EC could be a major step toward irreversible entanglement with the economic, political, and defense policies of the Western Bloc, or, almost as importantly, could be perceived as such.

The EC must deny admission to Austria for two primary reasons. First, as a responsible and increasingly powerful player in international politics, the EC must not be party to the violation of Austria's neutrality, especially since two of its members, Great Britain and France, are signatories to the Austrian State Treaty. Second, the Community must not act to seriously impede its own ultimate goal of European political union.

In any event, the Community should recognize the import of its decision; allowing Austria to accede could lead to the encumbrance of its decision-making process with the unwieldy prospect of entertaining applications from the other European neutrals who are likely to follow suit. This possibly would undermine the international law of permanent neutrality, and fundamentally change the course and character of its own destiny.

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\textsuperscript{44} See Treaty of Rome, \textit{supra} note 20, Preamble and art. 2.
\textsuperscript{45} Norbert Steger, former Vice-Chancellor responsible for foreign trade, officially interpreted the economic dimension of Austria's neutrality in 1984 as requiring the "treating [of] all countries correctly and without favoritism." Johnson-Freese, \textit{supra} note 15, at 166.
\textsuperscript{46} See Lyon, \textit{supra} note 8, at 183.