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Austria's Neutrality an Impediment?

By Dr Walter Stermann, Vienna

The recent and very outspoken statements of the British Prime Minister Mr Wilson—emphasising again Britain's firm intention to arrive as soon as possible at an arrangement with the EEC—are proving once more that Austria was quite justified when turning to Brussels on its own. The frequently quoted "bridge-building" between EFTA and EEC has proved to be unrealisable and dropped almost completely out of international discussions. In any case the Austrian Government has made it clear from the first that it regarded the association of the "Seven" with EFTA as a preparation only of a European large-scale market, not as a definite solution, and that the country's economic conditions would necessarily cause Austria to come to an agreement with the Common Market.

Since in March, 1965, EEC Council of Ministers gave the Commission the first mandate for negotiations with Austria, all pertaining problems—reaching from an elimination of customs and trade barriers up to the institutions—have been discussed in six rounds of negotiations and both parties' points of view have been defined. In its session of October 26 the Council of Ministers has again dealt with the problem of Austria and on December 12 the new round of negotiations has begun.

However, the impetus of negotiations so far carried through and the prevailing atmosphere of understanding should not make us ignore the fact that regarding the most important problems no agreement and sometimes not even an approximation of standpoints has been reached. No wonder if we consider how complicated and new the problems are that were raised in this connection. The negotiations on association carried through with Greece so far, faced much simpler commercial problems and above all dealt with an association with the EEC that is only meant to be a first step to full membership, while Austria's association is to be an agreement "sui generis". It is well-known that Austria's membership is out of the question since it is obliged to remain neutral.

Variants of Co-operation

As regards Austria the following three possibilities of an integration into the Common Market have been under discussion:

1. Full membership in accordance with Article 237 of the EEC Treaty. No doubt, from an economic point of view this formula would be the best solution as this way the problems so important to Austria's economy could be solved. As will be explained later this is

out of the question for legal and thus also for political reasons in connection with the country's neutrality. However, there are Austrian experts in international law who believe this formula to be in agreement with Austria's neutrality under the condition that the country registers its right to withdraw and that this reservation is accepted. Among others, the Document No. 1430 (Struye-Report) addressed to the General Assembly of the European Council and the conception of neutrality as defined in this report are appealed to.

2. A trade agreement according to Article 113 of the EEC Treaty, respectively an (extended) trade agreement in accordance with Article 238. Under international law no objections would be raised in this case, but from an economic point of view this solution would be unsatisfactory and not to Austria's advantage.

3. An association in accordance with Article 238 of the EEC Treaty in the form of a modified customs and economic union (an agreement *sui generis*). The Austrian Government decided in favour of such an association as a basis for negotiations since it is acceptable both from the economic point of view and under international law. An unambiguous definition of such an association is not existing and, in order to quote Professor Hallstein, it reaches from a "trade agreement plus 1% to membership minus 1%".

Before we inquire into the modifications to be demanded from Austria for reasons of its neutrality, the origin and the conception of the country's neutrality as are resulting from the State Treaty and the Neutrality Law, are to be dealt with.

Economic or Military Neutrality

Article 4 of the Austrian State Treaty as concluded with the four victorious powers in 1965, prohibits any economic or political unification between Austria and Germany. Therefore Austria must not do anything or take any measure suitable to promote indirectly or directly a political or economic unification with Germany or to prejudice the country's political or economic independence.

According to the Western nations' conception of international law this prohibition of another "Anschluß" is no obstruction to Austria's association with the EEC, for it is not a question of joining another State but a supra-national group of States into which Germany is integrated. (Or else Austria would be obliged to leave the United Nations whenever Germany would become its member).

The Neutrality Law decided on unanimously by the Austrian National Assembly in 1955, is fixing Austria's permanent independence more firmly than the State Treaty. Its Article No. 1 reads as follows:

1. Austria voluntarily declares its everlasting neutrality for the purpose of permanently maintaining its external independence and inviolability of its area. This neutrality Austria will maintain and defend with every possible means at its disposal.

2. In order to secure these purposes Austria will never join military alliances and will not permit the establishment of military bases of foreign States in its area.

It is thus a question of unceasing military neutrality from which an economic one cannot be deduced. The latter could only be done on the assumption that economic neutrality is an integrate part of the neutrality concept as such. However, this does not apply since in that case political and even ideological neutrality would be a consequence of military neutrality.

As this neutrality serves the purpose of Austria's lasting independence full membership to the EEC could not be aimed at—or only if the "right to withdraw" is reserved. It was mainly political considerations pertaining to its neutrality that caused the Austrian Government to choose the form of an association, also keeping in mind that the interdependence between economic and foreign policy cannot always be anticipated.

Frequently it is also maintained that Austria be obliged to keep a neutrality according to the pattern of Switzerland. This may be traced back to 1965 when in Moscow in connection with the Austrian State Treaty an Austrian and a Soviet delegation signed a memorandum according to which Austria would always keep "a neutrality after the model of Switzerland". This clause of the "Moscow Memorandum" was

never taken on in the State Treaty or the Neutrality Law and it is the general Austrian opinion that this memorandum is to be considered a political not a legal reference. However, even if a legal obligation to neutrality could be deduced therefrom, it would never be Austria's obligation to always carry through the same neutrality policy as Switzerland.

Obligations towards the Eastern Bloc

It is well-known that the Communist countries and above all the Soviet Union are regarding any form of Austrian integration into the Common Market (perhaps with the exception of a loose trade agreement) a violation of the State Treaty as well as of the Austrian Neutrality Law. Hereto it is to be pointed out that the Eastern neutrality concept is differing considerably from the Western one, although in theory the Soviet scientists are expounding the classical doctrine of neutrality. In practice the Eastern neutrality concept is a dynamical one as compared with the statical conception, in so far as it considers the "legitimate" neutrality of States not belonging to the Communist sphere of influence to be a detachment from the camp of the "enemies of socialism". In the Soviet view these States are joining instead an interim zone of peace which finally will be followed by an integration into the socialist camp. Although the Minister of Commerce who is responsible for integration—and who in the present Government is holding the office of Vice-Chancellor—has recently stated very firmly that the Austrian policy of neutrality is the task of the country's Government and Parliament alone and that Austria as a sovereign State would have to decline any interpretation of its intentions also from a third party (outside EEC) that does not agree with the facts, it is very obvious that Austria has to take the Russian attitude into consideration with regard to its decisions or, respectively, must endeavour to bring about a change in this attitude.

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Already in 1961 when Britain had decided to apply for its EEC membership, the three neutral EFTA countries Sweden, Switzerland and Austria had formulated a "neutrality doctrine" which was to be the basis of their negotiations with the EEC. These are the most important points of this doctrine:

1. The neutral State must reserve to itself the right of concluding trade agreements with third countries ("treaty making power").
2. The neutral State must have the right of suspension or of giving notice in case a conflict is threatening or has already broken out.
3. In case of war the neutral State must have the possibility of providing for its vital supplies.

Point one is mainly a matter of Austria's trade with the East which with 11 % of total imports and 15 % of total exports in relative terms has almost four times the volume of that of the other OECD countries. The EEC Commission acknowledges this commercial necessity for Austria but above all would like to avoid that via Austria Eastern products are directed at dumping prices into the other Common Market countries. Therefore a harmonisation of Austria's and its partners' trade policies is to be provided for, although it is to be pointed out in this context that the EEC itself has not yet worked out such a common trade policy.

The problem of East-West trade as well as that of Austria's supplies in case of war should not create too serious difficulties. The same applies to the fixing of periods and applicable rates of mutual tariff reductions (Austria demands that the EEC countries should reduce their tariffs more quickly than Austria) and to the adjustment of Austrian tariffs to the common external tariffs of the EEC, including the re-introduction of Austrian tariffs vis-à-vis its EFTA partners. However, as regards a common agricultural policy no progress at all has been made so far. The major difficulties in future negotiations—caused by Austria's obligation to remain neutral—are to be expected for the harmonisation of economic policies and in connection with this problem for the so-called institutions, i.e. in which way current economic and social policy decisions and regulations of the EEC will become effective in Austria.

Renunciation of Prestige Thinking Necessary

Austria believes it to be incompatible with its dignity as a sovereign State if it would simply and automatically acknowledge decisions and stipulations in the making of which the country did not participate due to the fact that in case of an association Austria would not have a seat and a vote in the authoritative bodies of the EEC. Therefore Austria demands the right to "autonomous subsequent decision" by the Austrian political bodies (National Assembly, etc.). The EEC is objecting rightly to this demand that it would oppose the Common Market's supra-national character if its authorities—to whom the member countries have surrendered part of their sovereign rights—were making an exception in the case of Austria and establish a dangerous precedent. Austria has recommended an Association Council—a representation in equal numbers—which is to take three different forms of decisions:

- ☐ Decisions on detailed regulations to be applied directly by Austria.
- ☐ Basic decisions that in line with the EEC regulations are binding also for Austria as regards their aims but in respect of their prosecution are to be voluntary,
- ☐ Recommendations whose effects Austria cannot yet estimate sufficiently and therefore cannot yet accept due to its neutrality obligation but which would be binding for Austria, too, if accepted by this country.

Thus the finding of solutions to these open questions, which will be acceptable to both parties, will be difficult in the coming negotiations. Nevertheless the optimism demonstrated by Austria seems to be quite justified, because integration into the Common Market is not only a vital economic requirement for Austria, but the conclusion of an agreement is also a prestige problem for the EEC and an important incentive to European unification.