

Conference on

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Austria´s “Permanent Neutrality” after 1955 – a Model for Serbia?

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Introduction:

Austria´s Permanent Neutrality (PN) is a very specific case of Neutrality, quite different to the other examples of Neutrality introduced at this conference. Its origin, substance and political weight are linked mainly to the international developments after 1945 at European and global level and the Austrian reaction to them.

Accordingly it has undergone some changes since its adoption in 1955. Formally Austria never abandoned PN, today more for domestic reasons, as Austrian citizens grew extremely emotionally attached to it.

Could Austria´s PN serve as a model for Serbia? From the “original” Austrian PN – as a product of the Cold War – more or less nothing is of relevance for a European state of today. Austria itself faces some difficulties with its PN and tries to bypass by “new interpretations”. But, how Austria dealt with its neutral status when approaching EU, the role it played for the EU in the accession process and today for Austria as an EU member state in a Union with a Common Security and Defense Policy (CSDP), these experiences provide some interesting aspects, may well be relevant for Serbia´s EU accession process.

This contribution will therefore cover:

1. The historical background and development of Austria´s PN from its origins 1955 to the end of Cold War in 1989, during Austria´s EU accession process 1989 - 95 and beyond.
2. Austria´s PN in the context of the EU CFSP/CSDP.
3. Some relevant points from Austria´s experience with PN for Serbia on its way to EU.

1. Historical background and development of Austria's PN:

1.1 Permanent Neutrality in the Cold War Period 1955 – 1989 (FN 1)

In order to get rid of the military occupation by the four WWII Allies USA, USSR, UK and F, to regain its full sovereignty by the State treaty 1955, Austria promised in negotiations with the USSR, to follow in the future a PN "like Switzerland", based on International Law (FN2).. This met the interests of both sides of the Cold War: Of the West, as it allowed for the withdrawal of the USSR from a part of central Europe; of the USSR, because it led to creation of a "neutral barrier" between NATO North and South (Switzerland plus Austria). This mutual interest of East and West was not only the political precondition for the State Treaty 1955, but also the political basis for Austria's PN to be respected in the Cold War period.

Austria fulfilled its promise to PN firstly by adopting a constitutional law on PN (FN3) with a very restricted content: Austria shall not be part of a military alliance, admit foreign forces or military bases on its territory and be ready to defend its PN by all available means ("Armed Neutrality"). Secondly, this Constitutional provision was notified by Austria to all states it had diplomatic relations with in 1955, thus entering into a *unilateral* international obligation as regards its PN. The Austrian PN is not based on a multilateral state treaty. Austria has stressed again and again that its PN was its sovereign decision in order to exclude an interpretation of its status as a kind of "neutralization", which could have been used by the former Allies as a legal basis to justify an intervention following possible allegations, that Austria violates its obligations to PN.

The content of Austria's PN

The term "permanent" Neutrality is often misinterpreted: It lies in mere opposition to the term "ad hoc" Neutrality which is declared by a state in case of a specific war between third states, as it is an obligation to keep out of any future war. It is no obligation to maintain this status for ever, can be abolished at any time by a simple notification to the IC.

Austria's obligations deriving from International Law and the Austrian Constitution are clear: it shall not wage war and keep out of any war between others, notwithstanding

the participants, the reasons or the geographical location of such a war. They leave no room for political or moral interpretation.

Austria is obliged to

- equal treatment of both sides of a war and not to grant advantages to one side e.g. by supplying or transferring (flights over its territory) troops or material
- to be able to defend its territory by military means (“Armed Neutrality”), in order to prohibit any party to a war to take advantage of its neutral territory by occupation, establish transport lines, misuse its air space etc., in a way, that the International Community (IC) can fully trust that Austria can actually maintain its PN status in case of war.

This entails also obligations in peace times: to pursue a “Neutrality Policy”, an impartial, non-biased foreign and security policy, that the IC, in particular potential partners to a conflict like NATO or the Warsaw Pact, can trust, that the permanent neutral state will defend its Neutrality in case of a conflict. This “pre impact” of PN was of great practical importance during the Cold War.

Austria’s neutral status between two opposing blocks was seen as a way to be kept out of military conflicts in Europe and allowed Austria to play a specific role in certain areas of international affairs. This explains why Austrian citizens grew emotionally attached to it and started to regard PN as part of the Austrian national identity.

At the same time PN also created some political problems:

When Austria applied for UN membership PN stood principally in contradiction to the UN system of Collective Security, which obligates all UN member states to take side and to participate in UN military measures against an aggressor. Theoretically there is no room left for neutrality. Austria overcame this obstacle by a first reinterpretation of the “Swiss model” of neutrality by simply declaring, in the framework of UN there is no Neutrality. The UN accepted Austria, in particular the Permanent Members of the Security Council, understandably, all of them except China were politically involved in the creation Austria’s PN.

Austria faced after 1955 two serious challenges of its “Armed Neutrality”: 1956, when the SU suppressed the Hungarian revolution, and 1968, when the SU occupied the

CSSR, destroying the “Prague Spring”. But even in these situations Austria’s PN was respected, except some violations of its airspace.

Sandwiched between East and West, Austria in general had to handle a sensitive foreign policy situation. On the one side Austria emphasized permanently its contingency “to the West”, as there is no “Ideological Neutrality”. On the other side Austria pursued at the beginning after 1955 a very cautious, more “passive” foreign policy between the two blocks. Not prior than in the 1970s, when Bruno Kreisky became Federal Chancellor, Austria changed to the so called “Active Neutrality”, an attempt to combine the neutral status with a more flexible and ambitious foreign and security policy under the conditions of the Cold War, providing “good services”, increasing the commitment to UN peace keeping missions, “pioneering” in delicate recognitions (GDR, China, Palestine/Arafat). Of greatest importance in this context became the successful Austrian effort in making Vienna to one of the three main sites of the UN. Another highlight in this period of “Active Neutrality” came up with the very exposed cooperation of the three Social democratic leaders Olof Palme, Willy Brandt and Bruno Kreisky. Austria’s PN in this period showed even a sort of ideological, moral touch by underlining its particular peaceful approach, compared to the more in military bound NATO - or Warsaw Pact countries. However, all these experiences and activities are today more less history. With the end of the Cold War 1989, the focus concerning PN moved to its role in the context of Austria’s access to the EU.

2. Austria’s Permanent Neutrality after 1989 and the EU accession

Until the late 1980s the opinion that Austrian (full) membership of the European Union was incompatible with PN prevailed, in particular in the main political parties (Social Democrats and People’s Party). Consequently Austria joined EFTA in 1960, together with Sweden, Switzerland, the UK and others and refrained from applying for EU membership until June 1989, a few months before the unexpected end of Cold War in November 1989.

Applying in 1989 was easier from a PN point of view, as the EU only set up its CFSP with the Maastricht Treaty in 1992 and agreed on the “Copenhagen-criteria”, which, i.a., oblige candidate countries not to block the development of CFSP in 1993. These fundamental changes in the political substance of the EU were adopted at a time, where the two leading political parties had fully endorsed the Austrian EU perspective

and were thus ready to, accept the conditions set by the EU in the accession negotiations on CFSP, while of course stating, that the PN is compatible with EU membership and CFSP. The Austrian citizens endorse the accession treaty in a referendum in June 1994 with a two thirds majority. The participation of Austria to the EU and the CFSP necessitated a series of constitutional amendments, e.g. to enable Austria to participate in CFSP sanctions, which are contradictory to classical PN.

The Amsterdam Treaty of 1997 incorporated the “Petersberg-Tasks” including autonomous EU peace making operations, which contradict the core obligation of PN, not to participate in wars. Taking into account the deep rooted support in the Austrian public opinion for PN the Austrian government chose not to initiate a public debate on this issue, but instead to further amend the Constitution to cover the “Petersberg Tasks”, simply arguing, that this development of the CSDP does not touch upon the Austrian status of PN.

The other neutral countries joining EU in 1995 did not face a political problem with their neutrality: Sweden was never bound by international obligations to its neutrality and was therefore free to accept the CFSP based on a non-aligned status. Finland seized immediately after 1989 the opportunity to get rid of its Post WW2 Neutrality as a part of a legal obligation vis-a-vis the USSR and declared itself as a non-aligned country. Only Austria maintains and stresses its PN until today.

Following a restrictive interpretation Austria´s traditional PN is not in contradiction to CSDP: The EU recognizes by the so called “Irish Clause” **(FN4)** the special status of neutral member states in the context of CSDP, which have the right to opt out from military missions. However, an EU member state can´t pursue in peace time a foreign and security policy, which in case of war will comply with the obligations of neutrality. This is politically no longer possible: The IC and in particular all other member states will expect from their EU partner, that he exercises, if not military, at least political solidarity as demanded from Lisbon Treaty.

Austria´s pragmatic way out of this problem was again a reinterpretation of PN, adapting it to the new situation of the EU- requirements: PN was reduced to the “core elements” of the law on Neutrality - no alliance, no bases. As long as the EU does not become a military alliance and no military bases on Austria´s territory are requested, neither the law on PN nor the international obligations to PN are formally

violated. However, as Austria amended the constitutional law to enable its participation in EU peace *making* operations on a voluntary basis (“Irish Clause”), the status of PN was de facto changed into a non-aligned status. This actually already has been written down in Austria’s National Security and Defense Doctrine in 2001, which even mentioned NATO accession as a future “option”. This option however, is now being questioned again in the framework of ongoing discussions on a new Security and defense Doctrine. In any case: Austria has so far adapted to all developments of CFSP from the Maastricht to the Lisbon Treaty and participated in all EU military operations, based on the assumption, that PN does not apply within the EU, but only to the rest of the globe.

This situation is, however from a legal and political point of view, neither clear nor satisfactory. The discrepancy between the - formally never abolished – status of PN based on international law and the status of an EU member state with an obligation to solidarity (**FN 5**) persist. The perspectives for an even stronger CSDP will entail new problems:

Of course, in case of a military aggression against an EU member state Austria could in theory opt out of a military participation. But politically it is unthinkable to treat an third state and an EU partner equally, or to deny member states, which want to render assistance access to Austrian territory or airspace.

In case of an EU peace making operation without UN mandate, the “constructive abstention” (not to vote in favor, but not to impede such an operation) introduced by the Lisbon Treaty is a wise compromise between requirements of Nonalignment or Neutrality and CSDP .

For Austria however this legal and political ambiguity on peacemaking operations might pose some serious domestic problems in case of dramatic security situation the EU is confronted with. As long as Austria formally sticks to PN, while at the same time the constitution allows Austria to participate in peace *making* operations, a decision to actually take part an autonomous EU peace making operation, could trigger a serious domestic conflict, over the primacy of EU solidarity over PN. This situation affects Austria’s reliability in CFSP and CSDP and weakens in general its position within the EU.

Therefore, from a general European perspective it is worthwhile to consider, whether PN and Non alignment make at all sense for current and future EU member states. The real issue is a very practical one: How are security interests of (non NATO) - EU Member states best served: By sticking to a *national* security policy, based on Neutrality or Nonalignment or by a CSDP?

In my opinion, there is no reasonable alternative to CSDP: The political perspectives of CSDP as designed by the Treaties are indispensable for the peace and security interests of Europe and its member states. An effective value based CSDP has the potential to be an important contributor to global peace and security. An integrated CSDP provides more security for all EU Member states, compared with 27 separated national policies, strategies and military forces. By pooling and sharing of military an resources national defense budgets could gradually decrease.

The EU today is still far away from this vision, as the interventions on the Balkans, in Iraq, Libya, Middle East etc. show, it is not a full-fledged collective defense system. But politically CSDP is based on and is directed towards an integrated EU security policy, providing more security for all EU member states, including non aligned and neutral countries. An effective CSDP represents an enormous added value for all Europeans. Therefore all EU member states have an obligation to contribute to it. PN, nonalignment doesn't contradict the idea of a strong EU-CSDP, but weakens it politically and diminishes its effectiveness.

Security and defense are among of the strongest prerogatives of national sovereignty. For countries with a strong tradition to PN or nonalignment, CSDP is not easy to accept as it demands more or less a total swift from a national to a collective approach to security. However, there is no reasonable alternative to CSDP, even from a national interest point of view, and Austria is a good example for this: Today, with the exception of CH and Liechtenstein, there is no foreseeable threat to Austria that does not affect other EU – or NATO-Member states - first. Austria no longer needs to defend its borders. Without any doubt: Austria enjoys security, as long as the EU as such is secure. That's why, at least for Austria, there is no reasonable alternative to CFSP, and Austria should fully contribute to it instead of trying to keep out preserving the historical PN.

Therefore Austria should clarify formally, where it stands as regards CSDP and PN. “No Neutrality within EU – but outside EU” is not a position that can be maintained for ever. PN outside the EU and its neighborhood is irrelevant. Austria emptied the content of its PN to an extent, that it is today more or less politically obsolete. The country’s position today is rather that of a non-aligned country. Austria should thus formally revoke the status of a permanent neutral country. This can be communicated to the international community without difficulties. The domestic situation is however quite different, as any such decision would require a deep national debate, viewing that Austrians are still strongly emotionally attached to PN.

3. Serbia and other candidate countries: Lessons from Austria’s Neutrality?

From the “original” Austrian PN – as a product of the Cold War – more or less nothing is of relevance for a European state of today. Austria’s experience with its PN in the context of EU accession, in particular its participation in CSDP, could prove interesting for Serbia and other EU candidate countries on their way into the EU.

Serbia is – understandably – not eager to join NATO. EU-integration however is of vital importance for its future. In this context the question arises how to assess the status of N or non-alignment of Serbia within the EU.

The EU-accession of neutral/non-allied countries poses no legal or political problems, in particular since the “Irish clause” in the EU treaties. The security policy of traditional neutral, non-aligned countries is accepted within EU as the examples of Austria, Cyprus, Finland, Ireland, Malta and Sweden have proven. On the other side, since the Maastricht-Treaty 1992, neutral and non-aligned candidate countries and EU member states are obliged not to hinder the further development of CFSP. The Lisbon Treaty introduced new elements in CFSP, in particular the obligation to military solidarity in case an EU member state is attacked. Another new aspect to be taken into consideration by neutral/non-aligned states is the new opportunity to an enhanced cooperation of some EU member states in the area of defense policy (**FN 6**), which could lead to a “Two class”-situation within the EU CSDP and beyond.

PN and non-alignment are elements from the Cold War with limited relevance today. However, principally Serbia could easily insist on a non-aligned position, also based

on its history, like Sweden or Finland. To remain outside of NATO is no hindrance at all, against the trend of many other new EU member states, which joined NATO.

A PN status like Austria would however make no sense at all for Serbia. On the contrary, it would create the political and legal problems Austria is facing now, without any tangible advantage. Non-alignment is at least the much more flexible status, avoiding all the legal and political distortions needed to adapt PN to CSDP.

However, also Serbia has to answer the principal question any other new EU candidate country has to: how far is it willing to participate, integrate in the developing CSDP, politically and militarily, whether it prefers a more individual, national security and defense policy, based on non-alignment, with some reluctance to EU CSDP, or sees its future security grounded within the CSDP. The latter offers, from my point of view, a more positive perspective for all EU member states as it strengthens Europe's security as a whole and its contribution to the global security.

One last remark: Serbia is crucial for the security in South East Europe, but is today still involved in potentially violent conflicts. This is first of all a Serbian problem in relation with its EU ambition. Undisputed borders and stable political relations with its neighbors are important preconditions for EU accession. The unresolved issue of the status of Kosovo, which also affects the EU internally, as only 22 of the 27 EU member states recognize Kosovo and five do not, is a clear obstacle to Serbia's EU accession.

The resolution of all conflict on the Balkans, besides the Kosovo issue, also the dispute between FYROM and Greece differences, the internal problems in BiH and not to forget the frozen conflict in Transnistria, are a precondition for the EU accession of the countries involved in them.

To conclude: Non-alignment and Neutrality are no doubt compatible with EU-membership and CFSP. The question remains however, whether they also make sense. Today, the focus of any European country should lie on an effective, integrated CFSP of all current and future EU member states, including Serbia.

Footnotes:

FN 1 To the history and political development of Austria's PN with an English summary and a comprehensive list of literature see: Markus Krottmayer, Die

Neutralitätsfalle - Österreichs Sicherheitspolitik in der Sackgasse?, LIT-Verlag, Wien 2009;

FN 2: Convention (V) respecting the Rights and Duties of Neutral powers and Persons in Case of War on Land, The Hague, 1907

<http://www.icrc.org/ihl.nsf/FULL/200?OpenDocument>.

FN 3 Constitutional Law on Permanent Neutrality 1955:

http://www.ena.lu/state_treaty_re_establishment_independent_democratic_austria_vienna_15_1955-2-803

(1) For the purpose of the permanent maintenance of her external independence and for the purpose of the inviolability of her territory, Austria, of her own free will, declares herewith her permanent neutrality which she is resolved to maintain and defend with all the means at her disposal.

(2) In order to secure these purposes, Austria will never in the future accede to any military alliances nor permit the establishment of military bases of foreign States on her territory.

FN 4: The “Irish Clause”, Art. 42 par 2 Lisbon Treaty

FN 5 Solidarity clause Art 42/7Lisbon Treaty

FN 6 Enhanced cooperation Art 42 par 6 Lisbon Treaty