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## Neutrality – myth or opportunity?

Almost two centuries after its recognition under international law, Switzerland's permanent armed neutrality remains a topical and controversial issue. By adopting an active policy of neutrality, Switzerland aims to contribute to world peace.

By Rolf Ribi

Switzerland's Foreign Minister herself provided the anecdote: When organisers at the University of Zurich were preparing for her presentation on "Neutrality as an opportunity", they asked whether the title should end with a question mark. Federal Councillor Calmy-Rey's reply: "No, an exclamation mark!"

Almost two hundred years after Swiss neutrality was recognised under international law, this pillar of our state system remains a topical – and controversial – issue. What exactly is the current view of the country's permanent armed neutrality: a nostalgic myth, an exaggerated dogma, an objective in the federal constitution, or simply a pragmatic instrument of foreign policy?

The controversy raging around neutrality is even echoed in government circles. "The only genuine neutrality is an active neutrality. An active neutrality policy calls for a dedicated peace policy" (Federal Councillor Calmy-Rey). "You've heard all the talk about an active neutrality policy. Neutrality should not mean active interference everywhere and taking a stand on everything" (Federal Councillor Christoph Blocher).

### What is neutrality?

Economics and politics agree on the fundamental definition of neutrality: "The neutrality of a state means non-participation in armed conflict and a renunciation of military support to countries waging war," says Dietrich Schindler, Professor of International Law. "Correctly interpreted, neutrality prohibits us from waging war against others or supporting other states either actively or passively in a war," explains Federal Councillor Calmy-Rey.

The law of neutrality concerns those provisions of international law that are applicable between a neutral state and a state at war. The law of neutrality is applicable only in conflicts between states, and not to civil war. The general laws of the 1907 Hague Convention on Neutrality still apply. But the main legal source for the law of neutrality is customary international law as it has been formulated over the course of time.

How must a neutral state conduct itself in the event of international conflicts? Firstly it is obliged to refrain from military intervention. According to the 2000 report of the Federal Administration's interdepartmental working group, "The prohibition of direct participation with one's own forces in a conflict situation is undoubtedly the most fundamental element of the concept of neutrality." Secondly, the neutral state must not lend military support to the parties in conflict. This prohibition of indirect support concerns the transit and overflight of foreign troops or the unilateral supply of arms to one party in the conflict. In short, the obligations of the neutral state are limited to military non-participation.

### Aspects of neutrality policy

The actual application of the law of neutrality i.e. neutrality policy, often raises awkward questions: Must Switzerland comply with the coercive military or economic measures of the international community, or can it invoke its neutrality and stand aloof?

According to current international law, the following applies: The law of neutrality does not apply in the case of military and non-military sanctions decided on by the United Nations. Switzerland can support military UN sanctions by allowing foreign troops the use of Swiss sovereign territory or participating in peace-keeping operations. Our country cannot be forced to make its troops available. Neutral Switzerland has often supported economic UN sanctions for reasons of solidarity. The law of neutrality applies in the case of military intervention by NATO which has not been backed by the UN Security Council.

### Federal neutrality

A look at history illustrates the often rocky road taken towards neutrality. The defeat of the Swiss confederates at the Battle of Marignano in 1515 marks the historic beginnings of our neutrality. Half a century of federal power politics came to a bloody end on the battlefield at the gates of Milan. The monument in Marignano (nowadays called Melegnano), unveiled by the federal authorities in 1965, bears the in-

scription "Ex clade salus" – "From defeat, salvation". The words refer to the saving grace of permanent neutrality.

The concept of neutrality appears early on in the history of the Confederation. In the 17th century it gained "credible currency", according to historian Thomas Maissen. "Archaic alliances" in the old Confederation were dissolved and united under the pledge to "stand aloof and remain neutral". Some historians point to 1674 as the defining moment: In view of the Franco-Dutch war, the federal assembly declared that "we shall maintain a neutral stance". Historian Maissen regards our present-day neutrality as "not so much a consistent state maxim as a pragmatically applied argument".

Every Swiss schoolbook cites 1815 as the beginning of our neutrality. At the Congress of Vienna the major powers attempted to draw up a new, European order for lasting peace. The resultant balance of military powers in Europe marked the beginnings of a long period of peace on the continent until the first World War. The Congress of Vienna on 20 March 1815 and the Treaty of Paris of 20 November accorded Switzerland "formal and legal recognition of its permanent neutrality ... in the interest of all European states."

When the Swiss federal state was founded in 1848 and the first federal constitution was formulated, the country's founding fathers deliberately refrained from including neutrality as a legal obligation in the new law. The federal assembly held that neutrality is "not a constitutional principle, but a means to an end which serves to safeguard Switzerland's independence". Hence the Confederacy must reserve the right "under certain circumstances to renounce neutrality in the interest of our own independence" (see also page 10).

The recognition of Switzerland's neutrality under international law by the Treaty of Paris in 1815 helped Switzerland to survive subsequent European wars unscathed. In the Franco-German War of 1870-71, the First World War of 1914-1918 and the Second World War of 1939-1945, Swiss troops guarded the country's borders. Soldiers as well as the entire population helped to keep the country viable and fulfil the obligation of neutrality. On all three occasions the concept of armed neutrality proved its worth.

In 1920, the vision of international peace prompted the Federal Council to join the League of Nations. The people and cantons voted in favour of membership, but the vote was only just carried by a 56 percent majority, thanks to the French-speaking cantons; had a cantonal majority counted, a hundred residents of Appenzell-Ausserrhoden could have

prevented Switzerland's yes vote. Fifty years later, Willy Bretscher, editor-in-chief of the "Neue Zürcher Zeitung", proclaimed: "Switzerland's membership of the League of Nations has strengthened its international standing."

#### Neutrality and world war

The acid test of our neutrality came during the Second World War. "Switzerland had no choice but to remain neutral," wrote Dietrich Schindler. The reason: For a long time the major powers had watched Hitler pursue his policy of aggression and done nothing. The League of Nations was ineffective because the major powers failed to exercise their responsibility. America entered the war only in 1941. "Unless it were directly attacked, participation was out of the question for Switzerland for the entire period of the war." At the end of the war in 1945 the allied governments declared their "complete understanding of Switzerland's special neutrality, which they have consistently respected".

Nevertheless, not all the measures taken by the federal authorities were in compliance with the obligations of a neutral state. For instance, the export of arms to Germany for generous credits was in violation of the law of neutral-

ity; and the acceptance of gold from the German Reichsbank, often without looking too deeply into its origins. In particular, there was the closing of national borders: While the law of neutrality at the time permitted this measure, it violated "the substance and spirit of international law" (according to Professor Daniel Thürer).

So how did Swiss neutrality fare during wartime? "If you look at the policy of neutrality as a whole during the Second World War, the fact is that it was implemented within the boundaries prescribed at the time by international law" (Professor Edgar Bonjour).

#### Neutrality during the Cold War

World War II was followed by the Cold War period, which lasted until the fall of Communism at the end of the 1980s. In the opinion of Professor of Law René Rhinow, Swiss neutrality policy "adopted a highly restrictive approach with self-imposed constraints on foreign policy". From 1951 our neutral country had to bow to American pressure and impose a ban on trading with Eastern bloc states.

During the Cold War, neutral Switzerland was regarded by the Americans as a bulwark against Communism. Its neutrality was even

#### NEUTRALITY IS MUCH IN FAVOUR

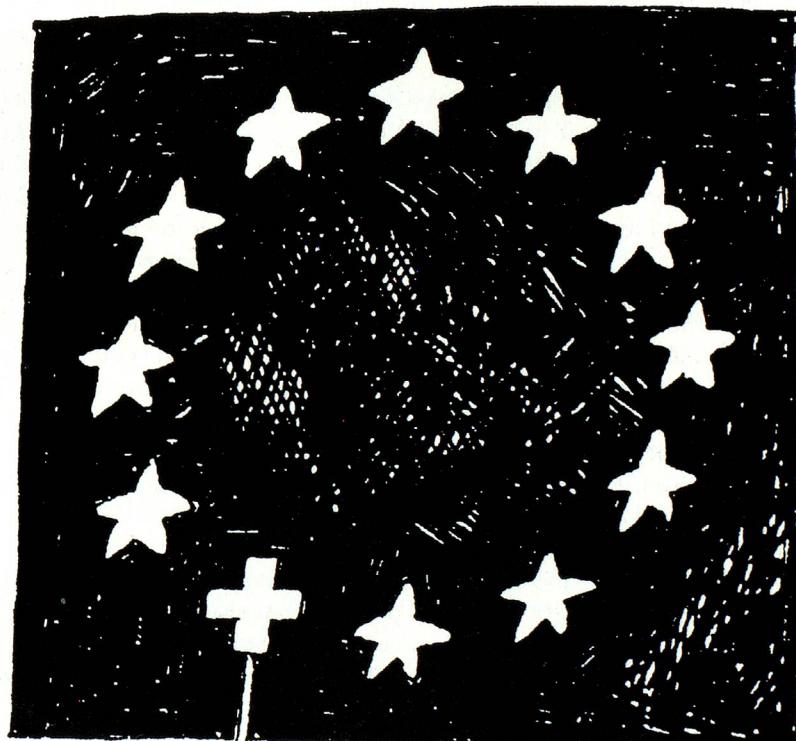
■ Eighty-nine percent of the Swiss population wants Switzerland to remain neutral. Even among the 18–30 year old generation group, who have experienced neither the Second World War nor the Cold War, 83 percent are in favour of neutrality. These are the findings of the Federal Institute of Technology in Zurich (ETHZ) in its 2004 survey on the importance of neutrality and security.

■ The relevance of neutrality in security policy was less highly rated: fifty-seven percent of the population is convinced that Switzerland's neutral stance safeguards it from involvement in international conflicts. But 52 percent believe there is no longer any credible justification for armed neutrality. Fifty-six percent believe that national security is increasingly being dictated by other states. Only 58 percent believe there is a need for a national army and hence a national defence system, and among 18–29 year olds the figure is only 41 percent.

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upgraded: Switzerland was an active participant at the Korean Armistice Agreement in 1953 (and to this day deploys an observation troop). And in 1955 Austria pledged to adopt "permanent neutrality along the same model as Switzerland". Neutral states like Switzerland were in much demand as mediators and for performing good offices. Despite this, international law expert Dietrich Schindler remains critical: "Switzerland allowed the opportunities to demonstrate the positive aspects of neutrality to slip through its hands, and withdrew into a moral-political isolation."

Only after the radical changes in international politics at the end of the 1980s and the Gulf War against Iraq did the country return to a more active policy of neutrality. When Iraq occupied Kuwait in 1990 in violation of international law, Switzerland did not want to stand by and do nothing. The Federal Council unhesitatingly agreed to economic sanctions. "That decision marked a turning point in our foreign policy and the concrete implementation of neutrality," according to Foreign Minister Calmy-Rey. From then on, Switzerland participated in various UN measures to restore peace and security: in Haiti, Libya and Liberia, and in UN peace-keeping operations in Bosnia-Herzegovina and Kosovo.



NATO's military operations against Yugoslavia in 1999 put Switzerland in an awkward position. Since NATO's air attacks were launched without the UN's express authorisation, the Federal Council was of the opinion that the law of neutrality was applicable. By invoking neutrality, Switzerland could not grant NATO the right to fly over Swiss territory for military purposes. Overflights for humanitarian purposes, however, continued to be permitted. Switzerland participated in the UN arms embargo and in most EU sanctions against Yugoslavia. By participating in the EU's

## NEUTRALITY AND THE FEDERAL CONSTITUTION

Is the principle of permanent, armed neutrality enshrined in the federal constitution of 2000? Federal Councillor Christoph Blocher, for one, talks of the "principle of neutrality laid down in the constitution".

■ According to Article 2 of the constitution, which defines the purpose of state: "The Swiss Federation protects the liberty and rights of the people and safeguards the independence and security of the country." Nor is neutrality mentioned in Article 54 on the aims of foreign relations: "The Federation strives to preserve the independence of Switzerland and its welfare; it shall, in particular, contribute to alleviate need and poverty in the world, and to promote respect for human rights, democracy, the peaceful coexistence of nations, and the preservation of natural resources." Only in Article 173 and Article 185 on the tasks and powers of the Federal Council and Federal Parliament is neutrality mentioned: The Federal Parliament and Federal Council "shall take measures to safeguard the external security, the independence, and the neutrality of Switzerland." Nowhere does the constitution refer to armed neutrality. Article 58 merely states that the army "contributes to prevent war and to maintain peace."

■ When the federal state was founded in 1848 and the constitution was drawn up, the founding fathers deliberately refrained from enshrining neutrality as a state aim. In 1847 the federal assembly held that neutrality is "not a constitutional principle, but a means to an end which serves to safeguard Switzerland's independence". It even justified its opinion thus: One can "never know when neutrality may have to be relinquished in the interests of the country's independence." Professor Edgar Bonjour, author of the seminal 1943 work "Swiss Neutrality", made an interesting statement: According to Bonjour, General Guisan vehemently opposed any "absolutisation of neutrality".

coercive measures, Switzerland imposed economic sanctions for the first time without an accompanying resolution by the UN Security Council.

The most intensive debate on neutrality in recent years took place ahead of the referenda on UN membership in 1986 (rejected by 75 percent) and 2002 (accepted by 54.6 percent). In its application for membership of the United Nations and the country's first appearance at the UN General Assembly on 10 September, 2002, the Federal Council emphasised that "Switzerland will remain a neutral country within the boundaries of the UN." By joining the United Nations, Switzerland recognised the UN's responsibility for peace and security. "UN resolutions are binding for Switzerland whenever the Security Council performs its task of maintaining peace and security" (Federal Councillor Calmy-Rey).

## Neutrality now

What importance is attached to our neutrality nowadays? "Neutrality is a small country's survival strategy", commented Federal Councillor Christoph Blocher recently. Moreover, "Neutrality protects us against warmongering, and against premature capitulation under pressure. It allows us to provide unbiased assistance and it sets a high threshold for deployment of the Swiss army." Federal Councillor Max Petitpierre, Foreign Minister between 1945 and 1961, declared even then that, "Neutrality has thus become a way of life for the Confederation: a pillar of its freedom and independence." Later, however, he qualified this by saying that neutrality was not an end in itself but the most effective means of defending our independence.

"In the course of the 20th century, the law of neutrality as such has lost much of its original significance," wrote the Federal Administration's working group; because it regulates only the military aspect of the legal relationship between neutral states and parties to the conflict. Hence the rules of the law of neutrality are in actual fact only invoked expressly by the permanent neutral states of Austria and Switzerland.

Experts in international law also view neutrality and the law of neutrality in a new light. For Dietrich Schindler, neutrality suffered a loss of esteem during the two World Wars: Members of the League of Nations and the United Nations pledged to join forces against violators of the peace. "Neutrality was excluded and is often regarded as an immoral stand."

René Rhinow emphasises that nowadays, most conflicts are internal i.e. within states, rather than between two states. International

structures such as the UN, NATO and the Organisation for Security and Cooperation in Europe (OSCE) are committed to global security, hence the law on neutrality is outdated. In Europe we are surrounded on all sides by friends who are no longer interested in our neutrality, but expect us to show solidarity in the cause of security. Hence, says Rhinow, "Swiss neutrality has lost its relevance for security policy."

Daniel Thürer also believes that "security has become a common good". The law on neutrality governs classical war between states, but armed conflicts nowadays usually arise within a country's borders. "The importance of neutrality has plummeted." He identifies a "global, fundamental lack of understanding for neutrality." In his view, "The special statute governing permanent neutrality is now largely obsolete. Neutrality as a concept of Swiss foreign policy is outmoded."

Official Switzerland is somewhat less forthcoming in its opinion. According to the Federal Council's Foreign Policy Report of 1993, Switzerland intends to "adhere to its permanent and armed neutrality". But even this document talks of an "active foreign policy of solidarity, global cooperation and participation" and a "neutrality that helps to shape peace".

In the 2000 Foreign Policy Report, the Federal Council professes to a "significant reorientation of Swiss neutrality": As before, neutrality must be viewed "not as an end in itself or indeed as an objective of foreign and security policy". Instead, neutrality is "a means, among various others, of guaranteeing the external security of our country". The legal principle underpinning neutrality has been recalled i.e. the military core of neutrality, and Switzerland now endorses the view which states that the law of neutrality does not apply in the event of coercive measures by the UN.

Neither politicians nor neutrality experts consider the abolition of neutrality as an issue. The government knows how deeply-rooted neutrality is in the collective subconscious: it is an integral part of our identity. According to a regular survey conducted by the Military Academy of the Federal Institute of Technology in Zurich, almost 90 percent of Swiss citizens want to keep neutrality. Consequently, the abolition of neutrality could only be decided on by the people and the cantons in a federal referendum.

"The neutrality of a state only makes sense when it is able to make a contribution to its own security," according to the 2000 Neutrality Report. "Neutrality cannot be an end in itself, but only an instrument of security policy," commented an earlier report by the Federal Working Group on Army Reform. For profes-

sor of law and former State Councillor René Rhinow, the aim of an autonomous national defence is "increasingly illusory". Neutrality under international law, he believes, "is no longer an appropriate instrument of security policy".

The Federal Council, in its 2000 Foreign Policy Report, took the bold move of asking "whether it is necessary, for the purposes of our security, to enter a collective European security system that is compatible with neutrality, or even joining a defence alliance that is no longer compatible with neutrality".

### Active neutrality policy

Since Federal Councillor Calmy-Rey was appointed, neutrality has enjoyed a new lease of life. "I fervently support an active neutrality. A neutrality that uses the instruments of international law in a bid to promote civil peace and human rights, and prevent or mediate conflicts." In Calmy-Rey's opinion, an active neutrality policy calls for a committed policy on peace. The end of the Cold War changed Switzerland's international environment. "The passive concept of neutrality became obsolete".

For Switzerland's Foreign Minister, peace policy is a guiding principle of Swiss foreign policy, and its core lies in Switzerland's humanitarian tradition. "I firmly believe that a peace

policy is neither useless nor a violation of neutrality – quite the contrary." The Federal Councillor wants "to exploit our country's existing potential for peace policy more effectively." In this respect she emphasises the importance of multilateral peace missions with her "Peace Support Operations".

The Federal Councillor includes the army in her peace plans. She believes that Switzerland could make an important contribution to global security and peace through military peace-keeping operations. And this would also serve the country's own interests. Even seemingly remote conflicts can have indirect implications for Switzerland: for example, waves of refugees from ethnic conflicts such as those waged in Sri Lanka or the Balkans. Nevertheless, participation in armed conflicts in order to enforce peace is difficult to reconcile with our concept of neutrality.

Neutrality is not a synonym for indifference, emphasises magistrate and Foreign Minister Calmy-Rey. She proudly cites the UN General Assembly's mandate to Switzerland to carry out consultations and submit a report on ways of enforcing humanitarian rights in view of Israel's illegal construction of a separation barrier in occupied Palestine. "This is a mark of the confidence and recognition which the

community of nations accords to our role as a neutral state committed to humanitarian values."

"You've heard all the talk about active neutrality," said Christoph Blocher, addressing army officers. "Neutrality should not mean active interference everywhere and taking a stand on everything." Neutrality, in Blocher's view, guarantees the trump card in the country's foreign relations: stability. Swiss neutrality is the "survival maxim of little Switzerland", and as such must be unconditionally upheld. Blocher even believes that, in the event of an attack, neutrality and the militia system would "set a high threshold for deployment of the Swiss army." And he believes that "neutrality in the event of terrorist attacks offers better protection than hastily taking sides."

The relatively conservative "Neue Zürcher Zeitung" is sceptical about Federal Councillor Calmy-Rey's foreign policy predicated on active neutrality. It talks of "neutrality rhetoric, idealism, and bleeding-heart diplomacy". But the paper recognises the commitment of the Foreign Office to projects devoted to civil peace-keeping or human rights policy. In the opinion of this leading Zurich broadsheet, neutrality is no longer an essential criterion for the pursuit of an active foreign policy based on solidarity.

"Neutrality is a purpose-built tool of Swiss foreign policy – at its core, an instrument reserved for times of adversity, for classical wars between states."

Meantime Foreign Minister Calmy-Rey maintains that "Peace policy is a lasting, effective instrument of neutral Switzerland which actively administers its responsibility with engagement and solidarity. The only genuine neutrality is active neutrality."



### Documentation

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