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**White Paper on Neutrality**

Annex to the Report on Swiss Foreign Policy for the Nineties of 29 November 1993

## List of Abbreviations

NBC	Nuclear, biological and chemical (weapons)
CFSP	Common Foreign and Security Policy
CSCE	Conference on Security and Co-operation in Europe
EC/EU	European Community/European Union
EEC	European Economic Community
EPC	European Political Co-operation
FF	Feuille Fédérale
ICRC	International Committee of the Red Cross
NACC	Noah Atlantic Co-operation Council
NATO	Noah Atlantic Treaty Organization
RS	Recueil Systématique du Droit Fédéral
UN	United Nations
WEU	Western European Union
WEUCC	Western European Union Co-operation Council

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## **Introduction**

Since 1989 there have been a number of parliamentary questions on neutrality and the Federal Council has been asked to prepare a detailed white paper on the subject. It is the Federal Council's intention to meet these requests through the present white paper, which seeks to place permanent neutrality within the overall context of Switzerland's current foreign policy environment.

If one looks at the history of our country, it is evident that neutrality has never been a rigid institution, but that Switzerland has instead adjusted and adapted this instrument to serve its interests. The significance and content of neutrality have always depended on the foreign and security policy situation, which has evolved rapidly since 1989. The historic events that have changed the face of Eastern Europe have brought an end to the Cold War and to the confrontation between the two camps associated with it. These events have not only changed the political landscape in Europe, but have also affected the world political order. On the one hand, it is now possible to envision the building of a unified Europe, free and at peace, capable of resolving peacefully any conflicts among its members and of calling to order any countries failing to respect international law. On the other hand, the collapse of the old political structures has allowed formerly suppressed conflicts to re-emerge and is even giving rise to new disputes creating a new form of instability.

These developments are not without impact on the position of Switzerland in general and on its permanent neutrality in particular. During these European changes, the Federal Council has regularly surveyed the situation and adjusted its policies to the new international situation.

In 1991, the Federal Council appointed a task force to conduct an in-depth study of neutrality in its various aspects. The study group published the results of its work in a document entitled: "Swiss Neutrality under Scrutiny: Continuity and Change of Swiss Foreign Policy". For the Federal Council, the report forms a solid basis for an objective discussion of neutrality-related issues in Switzerland.

The Federal Council is convinced that, in these times of transition and uncertainty, neutrality remains an appropriate instrument for conducting Switzerland's foreign and security policy and that it still serves to safeguard our national interests. Our commitment to non-belligerency and to the use of armed force for purely defensive purposes implicit in the neutral status is in accordance with the principles applied by the international community.

In the future, Switzerland will therefore continue to observe the obligations that international law imposes on neutral states; these obligations, which govern their behaviour in the event of war, have been laid down in the Hague Conventions of 1907. While these conventions are now outdated in many respects and no longer reflect the military situation at the end of the 20th century, they are still valid in terms of the principles they embody. The so-called "anticipatory effects of neutrality", however, which are more recent, are dependent on the specific political environment.

Above and beyond the obligations imposed by public international law, a neutral state enjoys considerable political room for manoeuvre. The Federal Council considers it important to adapt Switzerland's neutrality policy to present-day conditions without, however, allowing it to become opportunistic. Swiss policy should continue to be characterized by the constancy and predictability that have earned Switzerland the respect of the international community in the past.

Thus, in the present white paper, the Federal Council sets out how it views Switzerland's future neutrality policy, with regard to three areas in particular:

First, the white paper elucidates the room for manoeuvre afforded by Switzerland's defence capability. It states that the freely assumed obligation of neutrality should not prevent our country from taking whatever measures it deems necessary to counter new types of threat against which it can protect itself only through international cooperation. Care, however, must obviously, be taken to ensure that a neutral country does not, in so doing, enter into commitments that might draw it into an armed conflict. A neutral country must retain full political and military independence and remain free at all times to decide on whatever measures it deems necessary. In this way, its behaviour as a neutral remains predictable.

Second, the white paper discusses the context within which our country can determine its position on multilateral sanctions, in particular those imposed by the United Nations. The paper states that participation in collective sanctions imposed by the international community against a country that has broken the peace or violated international law is compatible with neutrality.

Third, the white paper assesses the latitude available to a neutral Switzerland with regard to possible accession to the European Union (EU). It states that neutrality would be compatible with accession to the Union in its present form, but points out that this issue will need to be re-examined in light of the future evolution of the EU.

Where external circumstances have so required, the Federal Council has already begun to reorient Switzerland's neutrality policy in a number of areas. One impressive example is the solidarity Switzerland has displayed in applying United Nations sanctions. This policy shift met with wide support both among the population and within Parliament and was warmly welcomed abroad as well. The Federal Council intends to adhere to this path, as it offers the double advantage of enabling us to safeguard our national interests in the most effective manner and to co-operate internationally in every area where a collective approach is necessary to maintain peace and prosperity. Prerequisite is an understanding of neutrality that takes into account both changes in international law and the political situation in this final decade of the 20th century. In order to conduct Switzerland's affairs in a responsible manner, the Federal Council must, however, in view of the rapid pace of change on the international scene, reserve the right to re-evaluate its position at a future date.

# 1 Fundamentals of Swiss Neutrality

## 11 Permanent Armed Neutrality

Neutrality is a complex concept in international law and in politics, which emerged from the special politico-military constellation of the 18th and 19th centuries and has now become an integral part of the legal and political order. In short, it means that such a state does not participate in wars between other states.

Neutrality is closely linked to the history of the Swiss Confederation and has been a determining factor in its existence over the centuries. From the 16th century on, **noninterference in other countries' affairs** has been the practical foreign and security policy position that has enabled the Confederation to survive as an independent nation amidst the warring European superpowers. But neutrality was also a domestic policy imperative for a confederation of states with conflicting interests and confessions. The permanent neutrality to which this attitude gradually gave birth over the centuries was recognized in 1815 by the great powers of the time. They stated that "the neutrality and inviolability of Switzerland and its independence from all foreign influence are in the true political interest of all of Europe"<sup>1</sup>. Later, permanent neutrality was the main factor that allowed the Swiss ship of state to weather all the fierce storms of the 19th and 20th centuries and, in particular, to emerge unscathed from the tempests of the two world wars. This undoubtedly goes a long way in explaining why neutrality is so deeply anchored in the minds of many Swiss citizens.

To date, Swiss neutrality has had two distinguishing features. First, it has been **permanent**, which means that Switzerland is committed to remain neutral in any future conflict, regardless of the identity of the belligerents and of the place and time of its outbreak. Secondly, Swiss neutrality is **armed**, which means that Switzerland is determined to avail itself of every means at its disposal to defend itself militarily against any aggressor and to prevent any act incompatible with its neutrality that belligerents may seek to perpetrate on its territory.

## 12 Neutrality as an Adaptable Instrument for Defending our Interests

Neutrality is a central maxim in Switzerland's foreign and security policy. Historically and constitutionally, however, neutrality has never been a goal as such, but rather one **instrument** among many enabling Switzerland to attain its true objectives, chief among which is to maintain the maximum possible degree of independence. This is why the drafters of the modern Confederation deliberately refrained from mentioning neutrality in the article setting forth the purposes of the Confederation<sup>2</sup>. In the present Constitution, neutrality is only referred to in the list of powers and responsibilities of the Federal Assembly (Art. 85, Para. 6) and of the Federal Council (Art. 102, Para. 9), where both bodies are charged with maintaining "Switzerland's independence and neutrality".

Under international law, Switzerland is at liberty to give up its neutrality **unilaterally**. Historically, permanent neutrality is a status under international law freely chosen by the Confederation. Switzerland has reiterated its desire to be neutral on countless occasions, but has never given or recognized a commitment under international law to remain permanently neutral. Therefore, our country has no obligation to maintain this status for ever.

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<sup>1</sup> Acte portant reconnaissance et garantie de la neutralité perpétuelle de la Suisse et de l'inviolabilité de son territoire du 20 novembre 1815

<sup>2</sup> The Federal Diet of 1847 unequivocally refused to include maintenance of neutrality among the purposes of the Confederation listed in the Federal Constitution on the grounds that "neutrality is a means to an end; it is a political rule that appears at this time to be the most appropriate for ensuring Switzerland's independence," and that no one could know whether neutrality "might not at some time have to be abandoned for the sake of that independence." (Abschied der ordentlichen eidgenössischen Tagsatzung des Jahres 1847, anlässlich der Verhandlungen betreffend die Revision des Bundesvertrages, IV. Teil, S.51.)

Consequently, Switzerland can claim the right to adapt and redefine its neutrality in light of changes in its environment. It has great latitude in this regard.

In the history of our country, neutrality never was a rigid institution, fixed and unchanging. On the contrary, Switzerland has always adapted the instrument of neutrality to international requirements and to its own interests. Periods in which the Confederation has pursued an foreign policy of engagement, with an active presence on the international stage, have alternated with periods where Switzerland has been more reserved in its foreign policy and has concentrated on domestic issues. Swiss practice in areas pertinent to neutrality has also changed according to the needs and interests of the time. Thus, between the 16th and the 19th centuries, certain members of the Confederation signed defence pacts with other powers, raised mercenary troops for them and granted certain foreign armies the right of passage. In 1817, the Confederation yielded to pressure from the great powers and joined the Holy Alliance despite its neutrality. In 1920 Switzerland became a member of the League of Nations and agreed to participate in economic sanctions applied by the League, but refused to partake in military sanctions. In 1938, it changed its position again.

During the First and Second World Wars, Switzerland succeeded in maintaining its neutrality despite great opposition. However, it was obliged to make certain concessions in the bitter commercial war between the belligerents. After 1945, under the impression of the Cold War, Switzerland interpreted its neutrality in a very narrow and strict sense compared to other neutral states. Thus, it initially refused, on the grounds of neutrality, to participate in any way in international organizations with a political character, such as the Council of Europe. This decidedly cautious foreign policy found its expression in the 1954 directives issued by the Federal Political Department (former designation of the Department of Foreign Affairs)<sup>3</sup>. These principles, formulated in very strict terms, reflect (the atmosphere that prevailed during the Cold War Era. They have often been incorrectly described as the "official or traditional view of Swiss neutrality". In reality, however, these principles were never ratified by the Federal Assembly or by the Federal Council and are, therefore, not binding.

Like generations before us, we too must, in debating our foreign and security policy, remember that content and range of Swiss neutrality depends on the countless twists and turns of history and that our neutrality is a purely pragmatic instrument. It should not be viewed as in unassailable dogma. The changes that have taken place in our environment and in the position of other countries in the foreign policy arena have, whether we like it or not, had an impact on our foreign policy objectives and on the value of our neutrality. Depending on the foreign policy situation in which we find ourselves, Switzerland's neutrality will be of greater or lesser relevance. Neutrality must have a function not only for the neutral country itself, but serve other countries' interests as well. Historically, the success of Swiss neutrality can be explained, in part, by the fact that it has been constantly adapted and adjusted to the international situation, that it has served the interests of other countries, and that it has been **predictable**. It is therefore important that we should review our neutrality from time to time to verify that it still is an appropriate foreign and security policy instrument and to adapt it if necessary to new requirements. Neutrality should continue as a foreign and security policy instrument as long as it remains **more appropriate than other instruments** to safeguard national interests. Swiss neutrality, however, is not unchangeable, neither with regard to its content nor to its duration.

## 13 The Law of Neutrality

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<sup>3</sup> Cf. Jurisprudence des autorités administratives de la Confédération (JAAC) 24, 1954, No. 1, p. 9 ff. (Summary of the prevailing doctrine in the form of principles.)

The rights and obligations of belligerents and neutral states in times of armed conflict are governed by the law of neutrality. This law was transformed in the 19th century into a customary law and was codified in part in two conventions signed on October 18, 1907 at the Second Peace Conference in The Hague:

- Fifth Convention respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land; and
- Thirteenth Convention concerning the Rights and Duties of Neutral Powers in Naval War<sup>4</sup>.

The law of neutrality confers a certain number of rights to a neutral state. For example, it prohibits any attack on the territory of the neutral state by belligerents, or the passage of any troops, munitions or provisions through its territory. The neutral state is also entitled to free movement of its economic goods and its nationals are free to trade on land and by sea with any other state, whether belligerent or not. On the other hand, the law of neutrality also imposes certain obligations on the neutral state. It is not permitted to play any direct part in armed conflicts or to assist belligerents by furnishing them with troops or arms. It is forbidden to place its territory at the disposal of the belligerents for military purposes, whether to install operational bases, to move troops through it, or nowadays even to overfly it. The neutral state is obliged to ensure the inviolability of its territory with a suitably equipped army. The law of neutrality does not impose any further conditions limiting the neutral state's foreign policy, neither does it define the peacetime position of a permanently neutral state. In particular, traditional practice and doctrine have not prevented neutral states from collaborating with foreign military authorities to prepare joint defence measures. Similarly, a state that has proclaimed itself permanently neutral is under no obligation to extend its neutrality to the political, ideological or economic realms.

If Switzerland does more than the law of neutrality requires, it does so for political reasons, and not to meet a legal obligation. Switzerland pursues a **policy** of neutrality, which determines its position on matters which do not come under the law of neutrality but which are indirectly affected by neutrality. Unlike observance of the **law** of neutrality, the manner in which a policy of neutrality is implemented lies within the discretion of the neutral state. The law of neutrality grants Switzerland **great freedom of action**, and limits its political decision-making only to a very small extent. Neutrality is not an institution that determines the overall conduct of foreign policy; rather, it is a status under public international law whose narrow essential content leaves great latitude for formulation of a foreign policy adapted to the needs of the moment and one which, in practice, has to be constantly developed to meet changes in the international political scene. The only unchanging principle inherent in neutrality is **nonparticipation** by a state in armed conflicts between other states.

It should be noted in this context that the law of neutrality has never been updated since its codification in 1907. Thus it has lost some of its relevance and effectiveness, has gaps and is no longer adapted to the world of today. A number of **reasons** can be listed for this.

Under international law applicable until World War I, a state had only two choices in the event of war: it could participate in the conflict as a belligerent, or it could remain neutral by respecting the law of neutrality. There was no other option. Since World War I, however, neutrality has been only one alternative among many in the event of war involving other states, one that has only rarely been adopted by governments. This development is due to the fact that the view of war on which the law of neutrality was based one in which war was seen as a normal, perfectly legitimate means of conducting policy or settling disputes - has become unacceptable as a result of the evolution of international law for peacetime. The Covenant of the League of Nations and the Kellogg-Briand Pact, and later the Charter of the United Nations, prohibit the use of force among states, except for the purpose

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<sup>4</sup> For Switzerland, these two conventions came into effect on July 11, 1910. Other conventions, in particular, the four Geneva Conventions of 1949 on the Protection of Victims of War, also contain one or more provisions regarding neutral states.



of legitimate defence. At the same time, the legitimacy of states has been recognized to assist another which is the victim of aggression. In the event of war, therefore, states may now adopt any position from total involvement in the conflict all the way to neutrality. Thus, neutrality is no longer the only possible response for states not wishing to participate in a war, but only one option among many<sup>5</sup>.

The law of neutrality has also lost some of its significance to the extent that it no longer fully meets the current needs of the international community. Because of its initial focus on traditional 19th-century warfare in Europe, which involved limited, open conflicts, fought with conventional weapons and usually without an ideological or economic overlay, the law of neutrality is now outdated in several respects. It does not explicitly regulate air warfare. It takes virtually no account of the fact that modern warfare has become total and that economic warfare has become a decisive factor. During the two World Wars, the belligerents waged an implacable commercial war and paid little heed to the right of neutrals to maintain trade with whomever they chose. Switzerland found itself caught in a vice and had to make many commercial concessions.

The law of neutrality does not take account of the sanctions that a community of states based on a system of collective security like the United Nations can decree against a state violating international law. Furthermore, the law of neutrality can be applied only to effective war between states. Yet most of the armed conflicts that have occurred since 1945, and more particularly, wars of liberation and civil wars, have involved parties that were not states. In all these cases, therefore, the law of neutrality was irrelevant. Similarly, the law of neutrality offers no response to such recent forms of violence as indirect warfare, subversion, economic and political blackmail, or terrorism.

#### **14 Domestic Policy Functions of Neutrality**

Historically, domestic policy reasons contributed to the birth of Swiss neutrality and provided its original justification. In a country characterized by multiple divergent interests and confessions, linguistic and cultural differences, a policy of *laissez-faire* and restraint in foreign affairs prevented divisions and disintegration. Neutrality played a pacifying, stabilizing, unifying and integrating role.

Since then, these *raisons d'être* for Switzerland's neutrality have become less important. The danger of Switzerland being divided by confessional differences has been overcome. The divergencies in foreign policy interests of various cantons have eased in many respects with the consolidation of the Confederation over the past century. Linguistic and cultural differences within our country have lost much of their force with the establishment of the Swiss national concept and the amicable relations Switzerland has enjoyed with its neighbours since the end of World War II. Neutrality, nonetheless, remains deeply rooted in the minds of many Swiss citizens.

These are not the only close links that have existed between neutrality and domestic policy. For centuries, neutrality served as a shield for the Confederation, enabling it to take a reserved stance in foreign policy matters, to concentrate almost exclusively on domestic policy and to build a uniquely structured state with many unusual features. Indirectly, neutrality thus contributed to the establishment and development of direct democracy, federalism, prosperity and defensive armed forces based on the militia principle. The development of these achievements has been enhanced by the fact that, by choosing "non-involvement in the affairs of others", Switzerland has been able to focus almost exclusively on its own affairs and has never had to invest all its

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<sup>5</sup> To cover these various intermediate stages, public international law now refers to "neutral states and other states not participating in the conflict." Cf. Additional Protocol I of June 8, 1977 to the Geneva Conventions of August 12, 1949 on the Protection of Victims of Armed Conflicts.

resources in foreign policy disputes. Neutrality has enabled Switzerland to stand apart from the world and "cultivate its own little garden". As a result, neutrality and the slow, peaceful development that has stemmed from it - hardly ever challenged from the outside - have also given birth to what is sometimes called the "exceptional case of Switzerland".

Unlike the past, Switzerland today is surrounded by peaceful neighbours which, like it, have embraced respect for human rights, democracy, the rule of law and, to varying degrees, federalism, and which no longer represent a threat to the special makeup of our country. More and more countries of Central and Eastern Europe are also coming to recognize these same fundamental principles. They no longer differentiate Switzerland from its neighbours as such, but rather through their special form. In such an environment, neutrality is less important for maintaining special domestic institutions. We should not lose sight of the fact that, despite all its special features, Switzerland has a great deal in common with its neighbours. By geography, history, culture and economy, Switzerland is an eminently European state. Switzerland has always been and will remain closely associated with Europe.

## 15 Neutrality in the Service of Peace

Permanent neutrality is first and foremost an instrument of national security policy. It should guarantee the security of our country and its inhabitants. While neutrality serves our own interests, it is not without value for our neighbours' security policy either. A neutral state that can be trusted generates stability and predictability. It is not a threat to anyone. From the outset, Switzerland's permanent armed neutrality has **contributed to peace** in Europe. The fact that the strategically important territory occupied by Switzerland is defended by strong militia-type armed forces, structurally equipped only to defend the country, and that the country is prepared to unilaterally renounce war and any form of aggression as a means of achieving its objectives (except for defensive purposes) and that its foreign policy is predictable - all of these factors enhance peace and stability in themselves. In addition to this more passive function of Switzerland's neutrality with regard to peace policy, Switzerland has long contributed actively to peace efforts by providing its **Good Offices**, conferring an almost universal function on its neutrality. Ever since the Middle Ages, the Swiss have been providing their good offices in one form or another, first to settle disputes among members of the Confederation, and later in conflicts involving other states. Switzerland's good offices have become a feature of our country's foreign policy that is greatly appreciated abroad. They are an expression of Switzerland's interest in and commitment to peace among the other members of the international community, and its commitment to solidarity, common responsibility and co-operation.

Switzerland's neutrality makes it easier for it to provide Good Offices. The recipients of services of this type have a certain preference for states that can guarantee their impartiality in the conflict in question and have no direct national stake in its outcome. This is why Switzerland is in a better position than other countries when it comes to helping foreign countries settle their disputes or putting an end to a conflict. In the peace-making arena, however, neutrality can sometimes be a drawback, because - precisely on account of its neutrality - Switzerland traditionally refuses to accept politically delicate mediation missions. Other countries which are not neutral or which have not opted for permanent neutrality, even superpowers, may present their good offices. In fact, there is now an increasing number of other states presenting their good offices. Some have been highly effective in this role. Neutral Switzerland has no exclusive franchise on good offices.

Since the end of World War II, Switzerland has, on the whole, been less frequently asked to provide its good offices. There are several reasons for this. One, less importance is attached nowadays to neutrality than in the past for missions involving good offices. Other factors, primarily political, are becoming increasingly important. In addition, most of the conflicts have occurred outside Europe, among states that do not want European assistance. The main reason, however, for this reduced number of requests to Switzerland lies in the fact that

more and more of the requests for good offices, mediation and other forms of conflict resolution are being addressed to the international organizations. The United Nations and its Secretary General have received the lion's share of these requests, particularly in the peace-keeping area, such as the provision of observers to monitor elections or cease-fires, the deployment of "Blue Helmets" and commissions of enquiry. Regional organizations such as the CSCE, the European Union (EU) and the Arab League are also increasingly being called upon to provide services.

In view of the fact that Switzerland's neutral status is losing its importance for providing good offices, the Federal Council believes it is necessary to extend and develop Switzerland's services, by strengthening what the country has to offer in the way of material and human resources. Provision of Swiss "Blue Helmet" forces would be an important step in this direction. The Federal Council will also continue to contribute toward alleviating the consequences of conflict by providing humanitarian assistance to the victims. As stated in the Foreign Policy White Paper, the Federal Council is firmly resolved to pursue a foreign policy even better focused on peace and humanitarian assistance than in the past. On the basis of its long tradition of good offices and humanitarian assistance, Switzerland must increase its efforts to support international security and peace. Switzerland is to prove itself a useful member of the international community and a factor contributing to peace. Neutrality needs to be interpreted in light of the requirements of international solidarity and should be used to serve of the international community and world peace.

## **2 Strategy for Neutrality and Participation**

### **21 Changes in the Security-Policy Situation**

Neutrality describes the position of a state in a war involving other states. Neutrality is thus defined in relation to tensions and military conflicts, i.e. in relation to basic forms of insecurity. It is essentially in this context that it has a function as a foreign and security policy maxim. Such a status is appropriate when antagonistic states or blocs oppose each other and the country in question fears the outbreak of military conflicts in which it may become involved and have to defend itself on its own.

Swiss neutrality developed out of the special historical situation on the European continent and derived its importance from the European community of nations. For the great powers, Swiss neutrality helped maintain the balance of forces in Europe. Ever since the 16th century, the Confederation has been the focus of hegemonial aspirations, primarily on account of its important geopolitical role as guardian of the Alpine passes and hence of a strategically vital north-south axis. Switzerland had reason to fear becoming embroiled in military conflicts of the great powers. At that time, armed neutrality was for the small Swiss state an efficient means of safeguarding its independence against the hegemonial politics of the great powers. Switzerland's neutrality was based on a state of equilibrium in the face of real or potential military conflict. The situation was such that Switzerland was constantly **anticipating war**.

After World War II, the centuries-old struggle between the great powers in Switzerland's immediate vicinity came to an end. While the balancing and stabilizing function that had been the role of Swiss neutrality in the old constellation of powers, namely, the age-old rivalry between France and Germany, did not entirely disappear at the end of World War II, it did retain a limited significance in the East-West division of Europe. Together with Austria, Switzerland formed a wedge some 800 kilometres long separating the northern and southern members of NATO. Switzerland's neutrality and security policy in general were focused on the East-West conflict. With other neutral states, Switzerland played a mediating and communicating role, primarily within the CSCE. For forty years, the fear of a major conflict with disastrous consequences for all of mankind hung over post-war Europe, divided as it was along ideological, economic, military and social lines.

The changes and developments that have taken place in Central and Eastern Europe and in the former USSR have altered the strategic situation and, with it, the role of neutrals. The probability of a major military conflict erupting in Europe has been reduced, even though - as recent events have clearly shown - the danger of war has not been entirely eliminated. In the present circumstances, however, it is unrealistic to envisage a military confrontation in which Switzerland would be a primary objective. In the present constellation of powers, Swiss territory has lost some of its geo-strategic value. If the trend towards increased co-operation in Europe continues, the traditional stabilizing and mediating functions of a neutral state will become less significant.

Europe is going through a period of profound reorganization. The rapid changes taking place in Switzerland's foreign policy environment entail both opportunity and risk. We are currently in a **transitional phase** which will last for years. During this period, extreme swings in the security policy pendulum are possible, involving both greater security and greater threat. Old, familiar risks are changing and new ones are emerging. Armed forces have not been disbanded in Europe. They are still regarded as necessary for safeguarding peace, protecting a country's national existence and maintaining its territorial integrity. A considerable potential for military threat still remains in Europe. While there are many hopeful signs of efforts in the direction of peace and integration, there are also trends toward instability, war and break-up.

## 22 Maintenance of Neutrality

Europe does not have a solid, common and comprehensive security structure yet. Today, existing institutions are being transformed and new institutions are being sought. Although the need for a European security order is widely recognized, it will probably be quite a while before a European security system can be established and its effectiveness tested.

As the Federal Council has already indicated in its October 1, 1990 Report on Switzerland's Security Policy<sup>6</sup> and in its white paper of January 27, 1992 on the role of the armed forces in the nineties (1995 Armed Forces White Paper<sup>7</sup>), it is clear to the Council that, in view of the security policy situation in Europe, Switzerland must **maintain its foreign and security policy strategy of permanent neutrality**. With regard to the lessons of history and the imperatives of political prudence, it would seem inappropriate to discard the instrument of armed neutrality at this time of transition and uncertainty, since we have no guarantees as capable of ensuring our security as our armed forces and our neutrality. Neutrality should help us achieve national objectives, particularly by preserving the existence of our country under international law, ensuring our security, and sparing us any involvement in armed conflicts. Neutrality is the expression of our categorical rejection of any form of hegemonial politics based on the use of military force. Switzerland's foreign and security policy must remain **predictable**. Thus permanent armed neutrality continues to be a stabilizing factor for neighbouring states. Finally, Switzerland can still serve other European countries with its Good Offices in the event of conflict.

## 23 Emphasis on Participation beyond Neutrality

In view of the number of interdependent challenges of the final decade of the 20th century, neutrality cannot be understood as a position of passivity and isolation. **Solidarity** has always been a determining maxim in Swiss foreign policy. Viewed initially as a primarily humanitarian commitment to people in other countries requiring assistance, this maxim has taken on a wider meaning since World War II, with Switzerland thus expressing its

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<sup>6</sup> Feuille Fédérale (FF) 1990 III 794, 825 ff., 844

<sup>7</sup> FF 1992 I 843, 862 ff.

availability and willingness to share responsibility for the major problems of our time and to participate actively in resolving these problems internationally. This attitude stems from the conviction that Switzerland's fate is indivisably linked to that of Europe and the entire world.

For some time now, the Federal Council has been increasingly focusing our foreign and security policy on the maxims of solidarity and co-operation as international sharing of responsibilities, participation in resolving international problems and involvement in international decision-making are, in effect, the only way Switzerland can safeguard its interests. Beyond the commitments inherent in the law of neutrality, the Federal Council intends to make full use of its considerable room for manoeuvre in Swiss foreign and security politics. As the Foreign Policy White Paper indicates, the defence of Switzerland's interests calls for active, comprehensive **solidarity**, and both global and regional **co-operation** and **participation**. Neutrality as an instrument has thus lost some of its efficiency and import.

During the coming years, Switzerland will have to weigh both future options and the risks that remain and strike a balance between a position of openness and one of continuity. **Openness** in the sense of in measures against new forms of threat and in the establishment of effective security structures. **Continuity** in the sense of refusing to discard proven security mechanisms with undue haste. Such a **strategy** of solidarity and participation, combined with the continuation of our own defence efforts according to the requirements of permanent neutrality, will meet the legitimate security needs of a small country. This strategy would reflect both our commitment to continued selfdetermination and our recognition of the fact that our fate is insolubly linked to that of the whole of Europe<sup>8</sup>.

The following is devoted to a more detailed discussion of Switzerland's foreign and security policy, past and future, in three areas that are relevant to neutrality, namely, future national security guarantees; our country's position on sanctions, more particularly those decreed by the United Nations; and relations with the European Union.

### 3 Neutrality and Security

#### 31 Limits to National Independence

Neutrality and independence are interrelated: Independence is both what neutrality seeks to protect and, since the state must be able to take decisions freely, a *sine qua non* of neutrality. To be credibly neutral, a permanently neutral state must evidence a sufficient degree of real independence vis-à-vis other countries. Only then will it be in a position to resist the pressures to which it may be exposed in times of crisis and fulfil its obligations as a neutral.

In the 20th century, countries have become increasingly interdependent. Events in one country inevitably affect the situation of its neighbours. This narrows a small country's freedom in decision-making. Switzerland is particularly involved in interdependent relationships of this kind. While Switzerland's political independence remains a reality, its **de facto** independence, particularly in economic terms, could one day be challenged, primarily as a result of its **low level of economic autarky**. For example, more than 70% of Switzerland's imports currently come from the European Union (EU) and more than 58% of its exports go to the EU. Switzerland has attained a level of economic integration with the EU which exceeds that of many of its members among themselves. Such economic involvement has consequences in other policy areas and is as important for neutrality

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<sup>8</sup> Cf. the Federal Council's White Paper of January 27, 1992 on the Role of the Armed Forces in the Nineties (Army Master Plan 95) (FF 1992 I 863).

as are legal conventions. The more Switzerland comes to depend on the EU, the more relative the independence and autonomy its status of neutrality require become. This is true, whether Switzerland becomes a member of the EU or not. Participation at the international level would be one way of offsetting this de facto decline in independence.

## 32 Limits to Autonomous Defence Capability

The limits to Switzerland's independence, which have been apparent for many years in the economic area, are evident in other sectors as well such as the defence sector. Traditionally, Switzerland has maintained its own defence capability. In this context, defence capability should not be understood in absolute terms, but in relation to the general security policy environment. Switzerland has no nuclear deterrent. During the Cold War era, therefore, Switzerland took advantage of the nuclear balance between the two superpowers and focused on improving its conventional defence capability. If we discount the fact that our country was not in a position to defend itself on its own against weapons of mass destruction, neutrality remained vitally important as an expression of independence. The strategy of preventing involvement in any armed conflict through dissuasive conventional means was central to our armed neutrality. Switzerland would have been in a position to defend itself on its own both against military actions aimed at specific targets and against a conventional military attack on the country as a whole.

The security policy environment and weapon technology, however, continue to evolve. In the medium term, we must expect exposure of our country to new forms of military threat from new directions, particularly in the field of air defence. The number of countries possessing long-range missiles is growing all the time. The only way a country can defend itself against such weapons is through co-operation with other states, e.g. through a European missile defence system. The satellite reconnaissance, operational control and defence systems required will exceed the technical and financial resources of a small country like Switzerland or even those of a medium-sized country.

In the long run, it will be virtually impossible for Switzerland to escape the implications of such developments. In the years ahead, the limits to its independent defence capability will become ever more apparent, and the result will probably be a **greater need for international co-operation**, both bilateral and multilateral. Even if we limit our considerations to conventional warfare, it will become more and more difficult (and, above all, increasingly expensive) to organize an independent defence system. The current imbalance between the cost of maximum independence and the benefits it provides will continue to grow.

It is conceivable that Switzerland's defence policy, traditionally based on an independent defence capability, could increasingly come under question as a result of these security political and technological changes. If indeed Switzerland were to be no longer capable of defending itself on its own against new types of weapons or threats, the country would have to adjust its current security and defence policy to the new circumstances.

This would also apply to our understanding of neutrality. Too restrictive an interpretation, greatly limiting its defence possibilities, would be a handicap for our country and its inhabitants. The purpose of neutrality is to enhance the country's security, not to restrict its defence capability. It should not prevent a neutral country from taking the necessary steps to defend itself against new threats and from plugging any gaps in its defence arrangements through countermeasures which extend beyond its national borders.

The law of neutrality developed at the start of this century relates to the behaviour of neutral states in the event of war and makes no mention of precautionary defence measures in peacetime. Inasmuch as weapons have, at the end of the century, now developed in such a way that we can no longer provide for our own defence except by

co-operating with other countries in certain fields, this co-operation (provided it does not exceed certain limits) must be deemed compatible with the spirit of neutrality. This applies all the more since a neutral state is not only entitled but also obliged to take such military precautions as one can reasonably demand of it to enable it to effectively defend itself against possible attack.

We shall have to be alert to this problem in the future. The primary objective of our security policy must be to retain as much **freedom of action** as possible. Achieving this goal will not only depend on techno-military developments, but on the political will to make adequate efforts to maintain an independent defence capability as well.

### **33 Protection against New Threats**

Neutrality is a concept derived from classical military conflicts. In the past, it has proved satisfactory in this context as a security instrument designed to preserve the territorial integrity of such a country. With the end of the Cold War, different types of dangers have come to the fore, some unexpected, some long forgotten: regional conflicts among and within East European countries sparked by nationalism, minority problems, secessionist aspirations or border disputes, wars raging outside Europe with implications for our continent, coercion with weapons of mass destruction or equally effective conventional weapons, terrorism, mass migration and waves of refugees, destruction of the environment, and disasters.

Non-involvement and passivity under the pretext of neutrality offer inadequate protection against these dangers. If neutrality were to imply a ban on co-operation with other countries in the security policy area, it would present a dangerous obstacle to international measures aimed at countering these threats.

Since combined efforts are needed to combat these dangers, they cannot be tackled through national measures, but only through international co-operation, more particularly through joint European action. Such a defence requires a multinational approach. The same applies to the creation of effective instruments to prevent and contain regional conflicts that threaten European stability and security. Not only do our European neighbours see their existence threatened by the same dangers as Switzerland, but they are committed to the same values. Any country not participating in international security policy co-operation risks isolation and being accused of seeking a free ride. Such a country would no longer be a respected and equal partner in Europe. In the event of a threat, it would probably be unable to rely on solidarity and support from its partners and would make itself particularly vulnerable to certain dangers.

For all these reasons, the Federal Council has on many occasions expressed its willingness to participate actively in efforts of the international community to counter new risks, to ensure peace, to deal with crises and eliminate the causes of conflicts. To counter new forms of threat, the Federal Council is determined, *inter alia*, to **co-operate internationally**. Neutrality is not an obstacle here. Switzerland's future security will depend even more than in the past on the international constellations and the environment abroad. In the final analysis, the security of the nations of Europe depends on the security of the continent as a whole. Thus, every contribution to stability in Europe enhances Swiss security as well. The traditional concept of "security through neutrality and independence" will increasingly have to be supplemented with "**security through co-operation**". In the future, security will increasingly require a "joint" effort. Therefore, the Federal Council has revised its previous rather restrictive position toward greater co-operation, and it intends to pursue this course. On the one hand, this co-operation will serve to significantly improve Switzerland's security in the face of threats and, on the other, it will enable Switzerland to meet its solidarity obligations towards a free and democratic Europe which is committed to humanitarian values.

## **34 Establishment of New Security Structures**

Lasting and universal peace with freedom in Europe is of fundamental importance for Switzerland. As the Federal Council has repeatedly emphasized<sup>9</sup>, Switzerland intends to co-operate without prejudice in establishing reliable security structures for our continent. Our neutrality is not incompatible with this goal.

At this time, as the Foreign Policy White Paper indicates, the most likely eventuality would seem to be a multi-pillared European security system, with a number of institutions pursuing different tasks and with different memberships existing side by side, complementing one-another in certain aspects but also competing in others. At the outset, none of these institutions should be denied the capacity to play a determining role in the future European security order. Initially, security in Europe would probably be best achieved through a very dense network of separate institutions, interconnected and even inter-linked, each reinforcing the other. Currently, it is impossible to say whether this security order will take concrete form in a collective system of coercive measures, collective defence organizations or some other form of security. Participation in a collective security system which, like the United Nations security system, would impose collective sanctions against aggressors and offenders of international law would not be at variance with our neutral status. Accession, however, to a military alliance requiring binding mutual assistance, or even a common defence system, would not allow us to retain our neutrality. Switzerland should not decide on whether or not to join such a new system until the contours and the reliability of the new security order can be evaluated. The decision will then be based essentially on the answer to the question whether participation in the regional defence system will protect our country and its population more effectively than non-participation. A small peace-loving country has every interest that such a security system functions effectively. That is why Switzerland should participate in its establishment.

As the final architecture of the European security system and the roles of its various players are still unknown, Switzerland must objectively examine the relationships it intends to maintain with all these institutions in the future. This will be the common strategic task of our future foreign and security policy. At present, questions relating to Europe's security policy are being discussed within institutions of which Switzerland is not a member, such as NATO's Co-operation Council (NACC) or the WEU's Co-operation Council (WEUCC). Encouraged by Switzerland's successful involvement in the CSCE process, the Federal Council is currently studying whether Switzerland should participate in the new European co-operation fora should such an opportunity arise<sup>10</sup>. Given that the members of NACC and WEUCC come from very different backgrounds, and their security policy commitments are very limited, an institutional rapprochement should not pose any neutrality problem. Other European neutrals are also planning to take such steps. Finland already has observer status in the NACC. Switzerland's neutrality should not prevent it from drawing closer to NATO and WEU either. Both are protagonists in European security policy. Both are available to the CSCE as peace-keeping instruments. Both are important for shaping our security policy environment. For Switzerland it would therefore be worth examining, whether it would be opportune to establish contacts with those organizations, inasmuch as they are willing to correspond with neutral states like Switzerland. The purpose of such contacts would be to enable our country to participate in deliberations on what the future may hold and to defend our own interests.

## **4 Neutrality and Coercive Measures**

### **41 United Nations Sanctions**

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<sup>9</sup> Cf. for instance the Federal Council's White Paper of October 1, 1990 on Switzerland's Security Policy (FF 1990 III 825, 844).

<sup>10</sup> For more details, see the Foreign Policy White Paper, section 411.



## 411 The United Nations Security System and Swiss Practice to Date

Neutrality and the United Nations collective security system are two institutions under public international law reflecting different stages in the development of international order and appear, at first sight, to be somewhat at odds with each other. Neutrality stems from a view of warfare that held sway until the beginning of the 20th century. It was marked by a measure of indifference to armed conflicts: war was still viewed as a normal, legitimate means of settling international disputes. It was entirely permissible, even morally acceptable, for a state to opt for neutrality in the event of armed conflict.

The United Nations collective security system, for its part, stems from a very different set of considerations: it is based on the principle that war and any recourse to violence between nations in general is prohibited. Under the UN Charter, the only exceptions to this absolute ban on the use of force are the right of self-defence in the event of armed aggression and the application of collective coercive measures. International security and peace are to be maintained or restored by peaceful means of conflict resolution or, in the final resort, by means of collective coercive measures decreed by the international community against the state that has broken the peace. Under this system of collective security, any state threatening the peace or security of any other state is disturbing the peace and security of the entire international community. The UN Charter outlaws war as a means of settling international disputes and legitimizes collective sanctions by all states against the peace-breaker. The concept of neutrality cannot be found anywhere in the UN Charter, as a permanent system of collective security leaves no room in principle for the traditional idea of neutrality. The system thus **permanently enjoins all states** to act against disturbers of the peace.

The Security Council is the key element in the UN collective security system. Under Chapter VII of the UN Charter, it can require four types of measures to be taken when it has determined the existence (Art. 39) of a threat to the peace, breach of the peace or act of aggression: it can call upon the parties to comply with provisional measures (Art. 40), make recommendations (Art. 39), and order **non-military** (Art. 41) or **military measures** (Art. 42). Under the heading of non-military measures, the Security Council can order complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and the severance of diplomatic relations. If the Security Council considers the measures under Art. 41 to be inadequate or if they have already proved to be inadequate, it can order military measures. These are to be executed by the armed forces made available to the United Nations by member states under a special agreement (Art. 43) or authorized by the Security Council.

For the institutions and members of the United Nations, sanctions decreed by the Security Council under Chapter VII (Articles 39-51) of the Charter are legally binding. This is why all member states are obligated to apply the UN's economic sanctions. On the other hand, no one is required to participate actively in military sanctions. Article 43 expressly states that member states cannot be obliged to participate in military sanctions except on the basis of special agreements to be ratified by the signatory states in accordance with their respective constitutional processes. States cannot be obliged to conclude such agreements. Likewise, the Security Council's authorization permitting the use of force merely legitimizes, but does not mandate, action by the states in question. The decision on whether or not to participate in military sanctions or interventions is left entirely to their own political discretion.

The Security Council can order sanctions only with the affirmative vote of nine of its fifteen members and with none of the five permanent members<sup>11</sup> voting against (casting its veto). As the Security Council was usually paralyzed by vetoes from one or more of its permanent members, the UN collective security system has until

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<sup>11</sup> The five permanent members of the Security Council are China, France, Russia (previously USSR), the United Kingdom, and the United States.

recently only rarely been applied. Despite this security system, the world has been ravaged by a multiplicity of armed conflicts since 1945.

**Non-military** sanctions have been imposed on rare occasions only: in 1966, an economic embargo was ordered against Rhodesia; in 1977 all arms sales to South Africa were banned; in 1990, Iraq was the subject of extensive economic sanctions, combined with an air and sea blockade; in 1991, all arms sales to Yugoslavia were banned, and in 1992 the same measure was imposed on Somalia and Liberia; in 1992, air links with Libya were suspended and economic measures were taken against Serbia and Montenegro, which were reinforced in 1993. Switzerland's response to the Rhodesia sanctions was to apply the principle of *courant normal* (normal flow of trade), i.e. it stabilized its volume of trade at the average for a representative base period prior to the imposition of sanctions. Switzerland was already respecting the embargo against arms shipments to South Africa, Yugoslavia, Somalia and Liberia pursuant to the Federal Law of June 30, 1972 on War Matériel (RS 514.51), which forbids any delivery of weapons to politically unstable regions. Switzerland did participate in the nonmilitary measures against Iraq, the first UN sanctions against a state involved in international conflict. Switzerland also independently applied the sanctions decreed against Libya and Serbia/Montenegro. The Federal Council's policy met with widespread approval both at home and abroad.

To date, the Security Council has only very rarely decreed the use of **military force**. In 1950, the Security Council recommended that member states assist the Republic of Korea militarily against North Korea. In 1966, the United Kingdom was authorized to use force, if necessary, to implement the oil embargo against Rhodesia. During the 1990-91 Gulf conflict, member states were authorized to take all necessary means against Iraq to secure compliance with earlier resolutions and re-establish international security in the region. None of these military measures were taken on the basis of special agreements as defined in Article 43 of the UN Charter, primarily because no country was ever willing to place its armed forces at the disposal of the Security Council nor could any country be obliged to do so. Instead, in every instance, individual countries conducted their own military operations with the Security Council's authorization.

Forceful **humanitarian intervention** is a special type of military enforcement, designed to protect the population of a country against inhuman persecution within the territory of the country in question, or to enable humanitarian aid. On the basis of Chapters VI and VII of the UN Charter, the Security Council authorized the international community in 1991, following the Gulf War, to protect the Iraqi Kurds and later, in 1992, to provide armed humanitarian aid to Somalia and, in 1992 and 1993, to Bosnia-Herzegovina.

As a matter of principle, Switzerland has never participated in military measures. When allied military Gulf War operations in the began on January 17, 1991, the Federal Council decided not to allow countries involved in the military measures decreed by the UN to fly over Swiss territory with combat aircraft or airlifters carrying troops and ammunition. Already then, however, the Federal Council announced that it would re-examine Swiss practice in this area<sup>12</sup>. The Federal Council also suspended export licenses for war matériel destined for countries in the crisis region, including Turkey. Export licenses to countries with troops stationed in the Arabian peninsula were made conditional upon the matériel in question not being used in the military operations against Iraq. As against this, the Federal Council has always been generous in authorizing and supporting humanitarian measures and overflights. After the end of the war proper, Switzerland played an active role in implementing the sanctions imposed on Iraq, notably by providing experts for the UN to detect and destroy biological and chemical weapons and their production facilities in Iraq. In the crisis areas of Somalia and Bosnia-Herzegovina, the Federal Council has provided humanitarian aid, for example, by offering the services of the Swiss Disaster Relief Unit and by giving generous support to the ICRC.

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<sup>12</sup> Cf. the Federal Council's reply to Mr. Oehler's question of January 21, 1991.

The following chapter is devoted to the considerations that have prompted the Federal Council to support non-military coercive measures of the UN since 1990 and the position it intends to adopt towards such measures in the future.

## 412 Compatibility of Neutrality and the UN System of Sanctions

Switzerland's neutrality and the United Nations collective security system both pursue similar goals: to preserve the integrity of states, to prevent conflicts and wars, and to promote peaceful coexistence among all countries. Unlike neutrality, which is more a defensive institution, the UN collective security system seeks to achieve its objectives by means of collective sanctions exercised by all states against the nation disrupting the peace. To be effective, the collective security system presupposes widespread agreement among the international community. Neutrality, on the other hand, is an appropriate instrument where unanimity is lacking. Because both serve similar ends, and differ only in their behaviour towards a state that has disrupted the peace, they are perfectly compatible.

As a small country, Switzerland has an eminent interest in ensuring that the UN collective security system operates effectively. Obviously, Switzerland is concerned that international law and the ban on the use of force are applied to all states and that a peaceful order is established in which the small countries are not exposed to the hegemonial aspirations of superior powers. This is why Switzerland, whether a member of the UN or not, needs to respond to the **imperatives of international solidarity** and support the UN when it is unanimous and takes the measures envisaged in the charter against a perpetrator of international law. As a matter of principle, no neutral attitude is acceptable between a state that has broken the peace or seriously disregards the international order, and all the other members of the international community. In such a case, Switzerland can only opt for the side of law and order, i.e. that of the United Nations. It should also be borne in mind that the sanctions are directed against members of the UN who, in joining the organization, expressly accepted the objectives and instruments of the organization and have thus implicitly recognized its system of sanctions.

For Switzerland to oppose on its own the permanent members of the Security Council and the remainder of the international community presenting a united front on a Security Council resolution could have extremely serious consequences for politics, economics and even security politics. By refusing to join in economic sanctions, Switzerland would end up providing moral and *de facto* support to the country that has broken the law, thwarting measures seeking to impose an economic blockade on that country, and deriving economic benefits from its position while every other country is burdened by participating in the boycott. Such non-participation would obviously be viewed by the international community as favouring the country against which the sanctions have been ordered, and would be very detrimental to Switzerland's image throughout the world. Furthermore, the Security Council might compel Switzerland to apply the sanctions decreed by exerting economic or even military pressure. Switzerland would then find itself in a difficult position. In the event of UN military measures, it is very doubtful that Switzerland could really maintain a position of *de facto* non-involvement.

Basing its argument on the dominant doctrine of the time, the Federal Council defended in 1981 the point of view that a neutral state's participation in economic sanctions decreed by the UN did not pose a particular problem with respect to the law of neutrality. As against this, it argued that a neutral state could not consider participating in military sanctions as this would be contrary to the law of neutrality<sup>13</sup>.

Having regard, in particular, to the universality of the United Nations and its growing inclination in recent years to enforce international law, more recent doctrine has almost unanimously adopted the opposite view, as in

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<sup>13</sup> Message of December 21, 1981 regarding Switzerland's accession to the United Nations (UN) (FF 1982 I 505 ff).

Austria since the Gulf War. According to this view, the law of neutrality in its traditional interpretation principally does not apply to sanctions decreed by the Security Council pursuant to Chapter VII of the Charter and supported by the majority of the international community. Thus, participation by a neutral state in UN sanctions under Chapter VII of the Charter is not at variance with the law of neutrality<sup>14</sup>. This applies both to economic sanctions and military measures. According to this view, UN military measures do not constitute a form of war to which the law of neutrality is applicable, as they are legal means by which the decisions of the Security Council acting in behalf of the international community are enforced. Both the Security Council and all the states authorized to use force on its behalf are not acting as belligerents but as enforcement agencies of international law. Therefore, permanent neutrals are free to participate in UN sanctions. The law of neutrality does not limit their freedom of action here.

### 413 Switzerland's Room for Manoeuvre within UN Sanctions

Wherever its national interest and solidarity obligations so demand, Switzerland should in future voluntarily support **non-military** UN sanctions, and particularly **economic** sanctions, provided these have been decided by the Security Council pursuant to the Charter and are supported by the overwhelming majority of member states. However, Switzerland reserves the right to refrain from participating in sanctions if major states indicate from the outset that they will be abstaining or if international agreement on applying the sanctions does not hold.

Whether Switzerland will or will not support **military** measures or humanitarian interventions ordered or authorized by the Security Council will depend primarily on **Swiss interests** and its **solidarity obligations**. The Federal Council will be obliged to carefully weigh the interests at stake to determine whether Swiss participation or non-objection is both beneficial to Switzerland and in the interest of solidarity, humanity and international peace. In particular the Federal Council must determine what Swiss attitude will serve peace and humanity best. The fact that all military conflicts are unpredictable and that our country does not participate in armed conflicts, there is, however, need for caution. We must remember that participation in coercive measures may bring some security policy risks.

Out of solidarity with the international community and because it has every interest in seeing effective action taken against perpetrators of international law, Switzerland will as a rule **not oppose** military actions by the Security Council or by states authorized by the UN to use force.

Non-participation in UN sanctions would not improve Switzerland's position to provide **good offices** in the conflict at hand. Under the Charter of the United Nations, the UN is never a party to a conflict, but the guardian of the world order mandated by the international community as a whole and is charged with restoring international peace. When all the members of the UN unanimously oppose a state, there can, under the Charter, be no neutral position between them and the perpetrator of international law, nor is a third party required for mediation. In addition, the Gulf War and the conflicts in ex-Yugoslavia show that diplomatic contacts between a state guilty of violating international law and the UN or other states continue through the UN in New York even during and after the application of military measures, and more intensively than would have been possible through a neutral state.

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<sup>14</sup> Cf. Dietrich Schindler, Kollektive Sicherheit der Vereinten Nationen und dauernde Neutralität der Schweiz. *Revue suisse de droit international et de droit européen*, Vol. 4/1992, p. 435 ff.; Daniel Thürer, UN Enforcement Measures and Neutrality: The Case of Switzerland. *Archives du droit international* 30, 1992, p.63 ff.; Christian Dominicé, La neutralité de la Suisse au carrefour de l'Europe. Offprint from *Semaine judiciaire* 1991, p. 398 ff.; Jacques-Michel Grossen, Quelques aspects juridiques du conflit du Golfe. Offprint from *Recueil de Jurisprudence neuchâteloise*, 1992, p. 9 ff.

In all cases of armed conflict not involving the UN collective security system, Switzerland will opt for a position consistent with its obligations as a neutral. It will attempt to work toward a peaceful solution by providing its Good Offices.

## 42 Non-UN Economic Sanctions

Economic sanctions can be an important and legitimate tool, not only within the United Nations system but also at the regional level, in combating breaches of the peace and international law, safeguarding fundamental values, and enforcing the binding rules of international law (*ius cogens*). Restrictions by a state or group of states on import or export of merchandise, raw materials, technology, capital or services can be used to persuade the state subject to these economic sanctions to adopt the desired attitude. These measures may replace the use of force: they can be taken either instead of or prior to military sanctions. Thus, they can serve as a modern security policy instrument. Economic sanctions can have considerable political impact, particularly if they are taken by a relevant group of states.

In the future, we can expect economic sanctions or other measures approved by international law to be taken against perpetrators and states disturbing the peace both by the United Nations and by regional organizations or groups of states. Consider, for example, the measures adopted in November 1991 by a large number of European countries against the former Yugoslavia. The European Union (EU), for its part, has the ability to decree such sanctions under its Common Foreign and Security Policy<sup>15</sup>. Furthermore, it is conceivable that, in the future, the CSCE will also create a coercive instrument involving economic sanctions. The industrial nations are currently considering co-ordinated measures to ban the export of NBC weapons and dual-use goods and technology to prevent the proliferation of weapons of mass destruction and their delivery systems.

In principle, under the law of neutrality, neutral status and participation in economic sanctions are not incompatible. Ever since the 17th century, neutral states have been granted the right to benefit from trade even during wartime by supplying everyday items to a belligerent or even to all the parties in a conflict. This **right of a neutral state to trade freely** by land or sea was codified in the Hague Conventions of 1907. Article 7 of the Fifth Convention even stipulates that a neutral power "is not required to prevent the export or transit, for the account of either of the belligerents, of arms, munitions and, in general, any goods that may be useful to an army or navy". The neutral state must treat the belligerents equally only if it limits or bans trade in such goods (Art. 9 of the Fifth Hague Convention), as Switzerland, for example, does under its 1972 Law on War Matériel. This obligation to extend equal treatment to all belligerents, however, applies only to goods which are by their nature intended exclusively or essentially for military purposes. Otherwise the Hague Convention does not require equal treatment and leaves the neutral state free to conduct its international economic relations as it sees fit. There is no express requirement to observe economic neutrality.

When sanctions are imposed against a state breaking the peace or violating international law or other common commitments such as the CSCE principles, these measures can have the function of **restoring order and thus serve the peace**. Such measures are in accordance with the spirit of neutrality. A neutral state which generally opposes sanctions of this type decreed in the interest of peace or which goes so far as to impede them will be acting at variance with the goals and fundamental values of its own neutrality. Depending on the circumstances, it may even risk involuntarily supporting a violation of international law and thus breaking that law itself. The international community will not respect a state's neutrality if one of the features of that neutrality is to maintain economic relations with a state sanctioned for breaking international law. Since the destiny of mankind has become indivisible, and elementary goals can only be achieved through co-operation, and because it is impossible

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<sup>15</sup> See section 532 below for further details.

to establish security on a national basis alone, a neutral state must principally also be willing to partake in measures adopted by a group of states of regional importance against a state that has broken the law or disturbed the peace.

For these reasons, the Federal Council is principally willing to join in non-UN economic sanctions as well. After carefully assessing the situation, it will decide on a case-by-case basis whether abstention or participation is in Switzerland's interest and which course will most effectively serve to re-establish a situation which conforms with international law. The Federal Council will also take into account the security policy risks participation would bring, such as Switzerland being drawn into a military conflict.

## 5 Neutrality and the European Union (EU)

Today, the European Union is the key organization in Europe and its point of reference. It will play a significant role in creating a new European order, in establishing a European security system, in combating new types of threat, in setting economic and monetary policy and many other questions affecting the whole of Europe. Switzerland's foreign and security policy, its neutrality, and many other aspects of its domestic policy as well, are being profoundly influenced by the EU, **regardless of whether Switzerland becomes a member of the European Union or not.**

As early as 1991 the Federal Council announced that Switzerland's integration policy was aimed at accession to the EC, and in May 1992 -it lodged an application to open negotiations on accession. Even after the Swiss people's rejection of the EEC Treaty on 6 December 1992, the Federal Council adheres in principle to the objective of accession to the EU. In the following chapter we shall set forth the reasons why neutrality would remain a useful instrument for our foreign and security policy even if Switzerland were to join the EU, and we shall explain why EU membership would be fully compatible with a neutral status<sup>16</sup>.

### 51 The Range of the EU's Foreign and Security Policy

Ever since its establishment, the EC has also had a foreign and security policy dimension which has steadily grown over the years<sup>17</sup>. The economic union has always been merely a means toward an end, namely the **establishment of an order of peace** in Europe and the political integration and unification of Europe. In terms of security policy, however, the EU integration process is less advanced than it is in the economic field. Three phases can be distinguished:

- Since the end of the sixties, the EG's political objective found its expression in the **European Political Co-operation (EPC)**, which enabled EG member states to formulate common foreign policy positions in order to enhance their influence through a coherent approach. To date, many joint positions on foreign policy issues and economic sanctions against other countries have been adopted within that forum. The EPC provided the framework for inter-governmental co-operation with no supranational element. In the absence of a general consensus, no common action could be taken. Political decisions could not be imposed upon any member state. Any country could cast its veto against an EPC decision or abstain.

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<sup>16</sup> Cf. the White Paper of May 18, 1992 on the Issue of Switzerland's Accession to the European Community (FF 1992 III 1125, 1244 ff).

<sup>17</sup> Cf. the White Paper of May 18, 1992 on the Issue of Switzerland's Accession to the European Community (FF 1992 III 1232 ff).

- With the entry into force of the Treaty on European Union, the EPC was replaced by the **European Union's Common Foreign and Security Policy (CFSP)**. The CFSP goes further than the former EPC. While co-operation retains its inter-governmental character and is still not a Community function, the CFSP now implies acting as a unit, rather than the simple co-ordination of national positions. In the security policy area, common actions (the modalities of which can if necessary be determined by simple majority) have initially been limited to four areas: the CSCE process, disarmament and arms control in Europe, non-proliferation of nuclear weapons, and control of military technology transfer and arms exports to non-EU "countries. The inclusion of defence, I.e. the traditional element of any security policy, in the co-operation process is envisaged, but still has to be approved by all the member states. It is expressly stipulated that the 'policy of the Union shall not prejudice the specific character of the security and defence policy of certain member States'<sup>18</sup>.
- A developmental clause allows for future integration of defence under the authority of the Union. According to this provision, 'the CFSP shall include all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence'<sup>19</sup>. This topic is scheduled for debate at a future conference of governments in 1996. This important step, too, will have to be approved and ratified by all the states that are then members of the EU.

## 52 Maintenance of Neutrality in the Event of EU Accession

It is obvious from the outline above that the European Union will not, within the foreseeable future, offer an **effective security and defence system** guaranteeing Switzerland and its citizens at least the security afforded by permanent armed neutrality. Thus, even if it joined the EU, Switzerland would maintain its armed neutrality. Through adequate armament, it would ensure that it were capable of repelling an attack as well as preventing the emergence of a security policy gap on its territory.

On political and economic issues as well as in combating new threats, Switzerland would follow the dictates of its national interests and of solidarity with other EU member states if it were a member of the Union. It would work particularly hard to establish an effective EU security system and a comprehensive system for the peaceful settlement of disputes in Europe. Switzerland would support all EU efforts to resolve military conflicts both inside and outside Europe. It would continue to provide its Good Offices and make every effort to increase its diminishing options through the influence of the EU. Our country could offer the EU and its member states Switzerland's long tradition in the humanitarian field and its capacity as the seat of several international organizations. Finally, the Confederation would serve the EU as a loyal member by helping to make our world more stable, more secure and more democratic.

Switzerland could endorse without reservation the Union's common security policy objectives as laid down in the Maastricht Treaty. It would also participate loyally in extending these objectives. If the EU were one day to establish an effective and lasting common defence structure, our country would need to fundamentally reconsider its neutrality.

## 53 Compatibility of Neutrality and EU Membership

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<sup>18</sup> Article J.4.4 of the Maastricht Treaty on European Union.

<sup>19</sup> Article J.4.1 of the Maastricht Treaty on European Union.

As the Federal Council wrote in its May 18, 1992 White Paper on the Issue of Switzerland's Accession to the European Community, the member States and the European Commission agree that it is primarily up to a neutral country itself to decide whether EU membership is compatible with its neutrality. A neutral country seeking admission should, in their view, be prepared to meet all existing treaty obligations and endorse the security and defence policy finality of the European Union without any reservation or restriction<sup>20</sup>. At the same time, account must be taken of the European Council's practice, where consensus exists, of ordering economic sanctions against certain countries under the EPC (or currently under the CFSP)<sup>21</sup>. Problems could arise in this context if a neutral member felt obliged to systematically oppose such measures because it considered them to be at variance with its policy of neutrality. Alternatively, CFSP could be difficult if a country, arguing neutrality, were to block the CFSP decision process and thus prevent any concrete action being taken. It is therefore important that the Union should obtain from neutral states seeking accession clear assurance that they will be legally capable of honouring the commitments the CFSP entails. Nonetheless, the European Commission reached the overall conclusion that these problems can be resolved from the legal point of view during the accession negotiations.

The Federal Council deems it **legally possible** to maintain a neutral status as a member of the EU. Accession to the EU would violate none of Switzerland's legal neutrality obligations. EU membership would not exclude a position of neutrality in future conflicts nor would it entail any military commitments. To date, the practice of the EU shows that states observing permanent neutrality have always been able to meet their neutrality obligations with regard to international warfare. Neutrality would also be compatible with obligations under the CFSP. EU law and procedures are sufficiently flexible to exempt a member state from participating in an action that might compromise its neutral status. Therefore, the Federal Council would not negotiate on Switzerland's neutral status if talks were to begin on its accession to the EU.

Questions concerning neutrality with regard to EU membership may be answered in detail as follows:

### **531 "Common Foreign and Security Policy" and Neutrality**

As far as the law of neutrality is concerned, there is no reason why Switzerland should not participate in the CFSP, as the latter operates on the consensus principle and cannot decide on military obligations. In foreign policy terms, the sovereignty of the EU member states remains intact in their relations with other countries and groupings of states. However, Swiss participation in the CFSP would entail other basic changes. Switzerland has, until now, always defined the broad lines of its foreign policy independently. If Switzerland were to become a member of the EU, it would generally have to co-ordinate its foreign policy with its EU partners, particularly on sensitive European or global policy issues. Nevertheless, EPC practice has shown that divergencies in the foreign policy of one or more members are acceptable. Even as a member of the Union, Switzerland would still have considerable latitude in shaping its relations with other countries. In particular, it could remain faithful to its traditional foreign policy maxims.

If we compare the EPC foreign policy positions adopted so far with those of Switzerland, we find a very wide degree of convergence. This is hardly surprising, as Switzerland and the EU countries share similar interests in the foreign policy area and defend the same basic values. Moreover, for many years Switzerland has, felt compelled to some extent by EU member countries appealing to its sense of solidarity to act in accordance with Union views on major foreign policy issues.

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<sup>20</sup> The European Commission's position on neutrality is clearly apparent from its opinions on the accession applications submitted by Austria, Sweden and Finland; cf. the European Commission's opinions of July 31, 1991 on Austria's application, of July 31, 1992 on Sweden's application, and of October 30, 1992 on Finland's application.

<sup>21</sup> This power stems from Article 113 of the Treaty of March 25, 1957 establishing the European Economic Community and was expressly codified in Article 228a of the Treaty on European Union.



Defence is excluded from the CFSP. It is mentioned only in a developmental clause. Swiss neutrality would thus **not be at variance** with the legal foundations of the CFSP. The objectives of the EU's security policy are similar to those of Switzerland's security policy: both seek to counter new forms of threat through international co-operation and solidarity. As the Federal Council has already stressed on a number of occasions<sup>22</sup>, Switzerland simply must seek to co-operate with its European neighbours in many security policy areas, even if it does not join the EU.

### 532 EU Economic Sanctions

The only divergencies to date between the EPC and Switzerland's foreign policy relate to economic sanctions against non-EC countries under the EPC. As we have already noted<sup>23</sup>, the law of neutrality does not impose any general requirement for economic neutrality. Whether or not Switzerland decides to take part in economic sanctions depends primarily on the broad lines of its foreign policy and foreign economic policy, which Switzerland may determine at its own discretion. To the extent that economic sanctions are used to maintain or re-establish peace, to prevent or contain warfare or even to punish states that have violated international law, Switzerland would in principle be prepared to participate in such sanctions within the EU. It demonstrated this willingness in November 1991, when Switzerland imposed its own sanctions, similar to those of the EU, against certain republics of the former Yugoslavia.

We should not forget, however, that certain factual constraints do exist: after Austria has joined the European Union and Switzerland is surrounded on all sides by EU member states, the EU could prevent Switzerland from trading via the territory of EU member states with a third country subject to Community sanctions. Then, at the latest, even if it were to remain outside the Union, our country would be unable to ignore economic sanctions imposed by the Union.

### 533 Defence Policy Objectives and Neutrality

If Switzerland were to join the European Union, the Federal Council would be prepared to accept the common security policy objectives that the Maastricht Treaty lays down for the EU. Switzerland would not delay or oppose the Union's development. In time, it would commit itself to working loyally, along with the other member states, to establish a common defence that would increase the security of the EU member states. It would also be prepared to discuss its place within the security system. Until the EU has established a security system that guarantees the military defence of its members, Switzerland's credible armed neutrality would continue to be justified.

One of the EU's major accomplishments is to have made war between the states of Western Europe very unlikely. The European unification process is imbued with a **peace-making function**. In accordance with the intentions of the founding fathers of European unification, the economies of the EC member states are to be functionally linked and their relations codified to the extent that the preamble to the Treaty of Rome applies, which states that the foundation has been laid for an "ever closer union among the European peoples", and that war between the various EU member states has become unthinkable. Continuation of this policy opens up the prospect of

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<sup>22</sup> Cf. the Federal Council's White Paper of October 1, 1990 on Switzerland's Security Policy in a Changing World, and the White Paper of February 13, 1992 on the Role of the Armed Forces in the 90s (1995 Armed Forces White Paper).

<sup>23</sup> Cf. section 42 above.

eliminating the possibility of war from the entire European continent by widening the integration process. It is entirely in Switzerland's interest to support this process, as it is fully compatible with the spirit of our neutrality.

### **534 Credibility of Swiss Neutrality after EU Accession**

The following objection is sometimes raised against the affirmation that neutrality and EU membership are compatible: if Switzerland were to become a member of the EU, it would subsequently be identified with the EU as a political bloc, which would undermine the credibility of our neutrality abroad; especially countries not belonging to the EU might begin to question whether Switzerland could remain neutral in a military conflict between them and the EU.

The principal criterion for gauging the credibility of our neutrality abroad is whether Switzerland demonstrates its determination, under all circumstances, to remain true to the fundamental principles of its neutrality, which are: not to take part militarily in any armed conflict involving other states, to defend its national territory by maintaining an appropriate military capability, and to pursue a predictable foreign policy in the service of peace. The credibility threshold for Swiss neutrality cannot be defined once and for ever, but will particularly depend on factors such as political and economic changes in the European and global environment.

Ever since the end of World War II, the credibility of Swiss neutrality has been assessed primarily in the light of the East-West division of Europe. A current assessment of that credibility must take account of the historic changes which have been altering the face of Central and Eastern Europe and the former Soviet Union since 1989. The division of Europe into two antagonistic blocs is both politically and militarily a thing of the past. The likelihood of Switzerland becoming involved in a major conflict on the European continent has now become remote. The countries of Central and Eastern Europe, together with some of the USSR's successor states, are themselves seeking integration with the EU in one form or another. Switzerland's accession to the EU would do nothing to change, even less upset, the military balance and the security policy situation in Europe.

As a member of the EU, Switzerland could still maintain a neutral image abroad by maintaining an independent defence capability, by participating in the construction of a new Europe, and by making its Good Offices available. Thus, the Federal Council believes that Swiss neutrality would remain both intact and credible if Switzerland were to join the EU.

As the process of European change has not come to an end yet, the importance of our neutrality will be subject to change as well. Switzerland's accession or non-accession to the European Union will not be the determining factor. In particular, it is quite possible that Swiss neutrality will become even less important in the future as reliable European security structures are established. Whether our country becomes a member of the European Union or not, Switzerland foreign and neutrality policy will be different tomorrow from what it was during the Cold War.

## **6 Conclusions**

Switzerland's foreign policy environment has changed radically in recent years. The constants have disappeared on which we used to build our foreign and domestic policy for decades. In order to continue to defend Switzerland's interests effectively in this changing world, the Federal Council has adapted its foreign policy in many fields to these new circumstances. In this context, it has also begun to **re-orient** the neutrality aspects of Swiss foreign policy. The Federal Council intends to persevere in this course, as it offers the dual advantage of safeguarding our national interests in the best possible manner and also of allowing for international co-operation

in all areas where common tasks need to be accomplished and peace and prosperity are to be preserved. In neutrality matters, the Federal Council shapes its foreign policy according to the following **guidelines**:

## **61 Maintenance of Permanent Armed Neutrality**

Europe is going through a period of profound restructuring. The changes taking place in Switzerland's foreign policy environment present both opportunities and risks. We are currently in a **period of transition** that will last for years. It will take a long time to realize the vision of an all-European security system which provides sufficient security for both Europe and Switzerland. Because of this, Switzerland will maintain its permanent and armed neutrality as a proven instrument of our foreign and security policy, which is flexible and helps us preserve our interests even after the change in international relationships.

This means that, as in the past, Switzerland will never start a war and will never move militarily against another state. Furthermore, Switzerland will stay neutral in the event of war, regardless of the identity of the parties and the place or time of the conflict, and will provide no military assistance to any of the belligerents. By equipping its armed forces with appropriate arms, Switzerland will provide for its own defence against a possible aggressor and prevent the emergence of a military vacuum on its territory. Switzerland will also shape its neutrality so that the necessary military precautions can be taken to counter new forms of threat. Depending on the type of threat involved, this could also imply cross-border co-operation in preparing defence measures. At the same time, Switzerland will continue to pursue a predictable foreign and security policy.

As in the past, Switzerland will insist on its right of free political expression and will continue to actively defend its fundamental values such as democracy, the rule of law, and human rights. Switzerland will not compel its citizens to demonstrate neutrality of opinion, and it will frame its economic relations as it sees fit.

## **62 Neutrality in the Service of Peace**

Based on its long tradition of providing Good Offices and humanitarian assistance, Switzerland will continue to direct its neutrality toward humanitarian and peaceful goals. It will increase its efforts to promote peace and international security. In shaping its neutrality, it will also take the needs of international solidarity into account in order to serve the community of nations. Swiss neutrality must remain a peace-promoting factor both in Europe and throughout the world.

## **63 An Active Foreign Policy Which Transcends Neutrality and Focuses on Participation and Solidarity**

In light of the challenges facing the end of the 20th century, neutrality cannot be understood as a status justifying inaction and non-involvement. The key maxim in Switzerland's foreign policy has always been solidarity with others. For some time now, the Federal Council has been increasingly focusing its foreign and security policy on this principle, as in many fields Swiss interests can only be realized through an attitude that is willing to share international responsibilities and participate in resolving international problems and in international decision-making. Our interests can indeed best be served by comprehensive **solidarity**, by global and regional **co-operation** and **participation**.

Switzerland is willing to co-operate and share international responsibilities beyond its borders especially in countering "new forms of threat" and in establishing reliable security structures in Europe. To ensure its own

security, Switzerland has a vital interest in assuming an active role in the efforts being made by other states to defend themselves against new types of risks, to ensure world peace, to defuse crises and eliminate the causes of conflicts. Therefore, it would now seem appropriate for Switzerland to abandon its past restrictive stance and increase its co-operation with other states. Such co-operation will serve to significantly enhance Switzerland's security against existing threats and to fulfil its solidarity obligations towards a democratic Europe. As the future architecture of the European security system is still unknown, as is the role that each actor will play, it behoves Switzerland to examine without prejudice what relations it wishes to maintain with these institutions.

## 64 Participation in Coercive Measures

Swiss participation in UN-imposed sanctions is not at variance with neutrality. As a small peace-loving country, it is very much in Switzerland's interest to ensure that the UN security system functions effectively and that a peaceful order is established which is based on international law and the prohibition of the use of force. This is why Switzerland will continue to support the United Nations when all of its members approve Charter-authorized sanctions against a country violating international law. It will participate autonomously in **non-military** sanctions and particularly support UN **economic** sanctions, provided these are sustained by an overwhelming majority of the community of nations.

The question as to whether Switzerland is willing to facilitate military sanctions or armed humanitarian interventions ordered or authorized by the Security Council, e.g. by granting overflight rights, is one that should be determined in light of our national interests and solidarity obligations. The Federal Council will decide, after weighing all of the issues involved, whether support of such measures is in Switzerland's interest and necessary for reasons of solidarity, humanity and international peace. The Swiss legislative has excluded any participation in UN military measures by Swiss "Blue Helmets".

When economic sanctions are imposed outside the UN against a state that has broken the peace or violated public international law or other common commitments, such measures may serve to **re-establish order and thereby serve the peace**. Such measures would thus be in accordance with the spirit of neutrality. Therefore, the Federal Council is in principle also willing to participate in economic sanctions decreed outside the UN system. After weighing all the issues involved, the Federal Council will decide on a case-by-case basis whether participation or non-participation will better serve to re-establish a situation which conforms with international law and to safeguard our country's interest.

## 65 Neutrality is No Obstacle to Switzerland's Accession to the European Union

Legally, accession to the European Union would allow Switzerland to maintain its neutrality, as current EU Law does not impose any military obligations on EU member states.

Under the political obligations stemming from the common foreign and security policy laid down in the Maastricht Treaty, Switzerland as a member of the EU would out of solidarity have to take the political and economic position of the other EU member states into account. Beyond that, the common foreign and security policy includes "the eventual framing of a common defence policy, which might in time lead to a common defence"<sup>24</sup>.

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<sup>24</sup> Article J.4.1 of the Maastricht Treaty on European Union.

Even if this statement of political intent does not establish a legal obligation for future military co-operation with the EU, an applicant for membership must endorse this security and defence policy goal inherent in the European Union. This means that a neutral state must also be prepared to rethink its neutrality as such, should the future evolution of the Union make this necessary.

## **66 Strategy of Participation and Neutrality**

In this era of manifold change, Switzerland's foreign and security policy must weigh the opportunities that present themselves and the risks that continue to exist and seek to strike a balance between openness and constancy, between continuity and change, **Openness** in the sense of participation in measures against new forms of threat and in establishing effective security structures. **Continuity** in the sense of a refusal to abandon proven security concepts with undue haste. Such a **strategy** of solidarity and participation, combined with further defence efforts to meet the requirements of permanent neutrality, corresponds to the legitimate security needs of a small country. This strategy would reflect both our desire for continued self-determination and our recognition of the fact that our fate is insolubly linked to that of the European continent.