

The right to neutrality at a crossroads: The situation in Austria and Switzerland from the perspective of international law, European law and constitutional law

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Abstract

The present conflict in Ukraine has forced a critical re-evaluation of the role of neutral states within the global landscape, prompting the international community to question the enduring relevance of the right to neutrality amidst a profound assault on the international legal order. Yet the issue is not novel. It became acute already with the entry into force of the Charter of the United Nations, which fundamentally reshaped the normative framework of collective security. Since then, the conviction that neutrality has little meaningful place in the contemporary peace order has grown so pervasive that it has influenced governmental practice to the point where a thorough legal examination of neutrality has often seemed superfluous. This assessment has not been significantly challenged by the fact that some states have sought to preserve their neutral status or to assert neutrality anew. The international community has largely tolerated such positions, albeit with uncertain legal implications. The war in Ukraine and its consequences, however, have renewed the need for clearer legal and political delineation, a need that is particularly evident in the cases of Switzerland and Austria. This contribution examines and compares the respective debates from a comparative-law perspective and situates them within the broader context of the Ukraine conflict.

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- 1 This article builds on ideas from the author's earlier work, in particular the following article published in 2022 in the journal *Archiv des Völkerrechts*: "Das Neutralitätsrecht Österreichs und der Schweiz im 'weiten Feld' des internationalen Rechts", in: 60 AVR pp. 268-287. Numerous other developments have been taken into account, such as the "Sky Shield" defense project and the discussion on the adaptation of Swiss neutrality law. In addition, reference has been made to more recent publications that are also worthy of consideration and may be useful for future studies on Austrian and Swiss neutrality law. All links were last accessed on 20 March 2026.

I. Introduction

The present conflict in Ukraine has forced a critical re-evaluation of the role of neutral states within the global landscape, prompting the international community to question the enduring relevance of the right to neutrality amidst a profound assault on the international legal order. In essence, however, this question is not really new, but became immediately relevant with the entry into force of the Charter of the United Nations. The conviction that neutrality has no real *raison d'être* in the peace order has become so overwhelming that it has shaped the attitude of governments to such an extent that a detailed examination of questions of neutrality seemed superfluous. This was not undermined by the fact that individual states wanted to maintain their status as (permanently) neutral or claimed such status anew. The international community tolerated this position – with unclear legal consequences.² However, the Ukraine conflict and its consequences require a clearer position, both in terms of the domestic relevance of the law of neutrality but also with regard to the significance of the law of neutrality in the modern international legal system as a whole and with regard to the concrete possibility of providing Ukraine, as the victim of an aggression unprecedented in the present day, with help and support – including from neutral states.

Austria and Switzerland offer a paradigmatic lens through which to assess the current state of the law of neutrality. Both states, according to their own understanding, claim a status of “permanent neutrality” and therefore a particularly robust form of neutrality, defined both by its enduring character and by the obligations it entails. For this reason, they have been especially engaged in sustaining the conviction that the law of neutrality remains valid and operative. Internationally, however, their efforts attracted only limited attention, and within academic discourse they were scarcely registered. That the law of neutrality has vanished altogether from many international law textbooks is telling in this regard.

Even within these two countries, interest in the law of neutrality has been characterized by significant fluctuations. Viewed against the current backdrop, a cursory look at Switzerland and Austria might suggest that the debate on reforming neutrality has reached a state of stagnation. In Switzerland, Federal President Ignazio Cassis’s initiative to modernise neu-

2 This article refers primarily to permanent neutrality, i.e. the assumption of neutrality obligations regardless of any specific military conflict.

trality policy by introducing the qualifier “cooperative” was rejected by the Federal Council on 7 September 2022. The proposal was driven in part by Switzerland’s initially hesitant, and internationally criticised, approach to joining economic sanctions against Russia following the attack on Ukraine on 24 February 2022. At the same time, the closer military cooperation with the EU and NATO advocated by the Federal President is already regarded as compatible with Switzerland’s neutrality framework under the 1993 Neutrality Report.³ Subsequent efforts to at least ease the strict re-export restrictions on Swiss war materiel, introduced shortly before the outbreak of the Ukraine conflict, have long remained unsuccessful.⁴ Only recently, at the end of 2025, a partial relaxation of these restrictions was adopted. However, the law has not yet entered into force and, as of March 2026, remains subject to a possible referendum. Even under this revision, the direct export of war materiel to Ukraine would remain prohibited. In 2022, Austrian Chancellor Karl Nehammer declared the debate on neutrality closed after the question of NATO membership had once again been raised at the political level.⁵ In reality, however, the issue remains unresolved, not least because political decision-makers have yet to offer technically and doctrinally satisfactory answers to the questions it raises.

Over the past decades, the Austrian debate has periodically intensified, only to fade again into the background.⁶ There are several reasons why questions of neutrality repeatedly return to the fore: they may be triggered by shifts in the global political landscape, or they may arise from domestic political controversies. Notably, the Austrian discussion has often coincided with comparable debates in Switzerland, and this is particularly true today. Yet, viewed more broadly, one is left with the impression that systematic cross-border engagement, rather than being the rule, is currently the exception.

Little seems to be known about the respective situation and considerations in the neighbouring country. This is regrettable, because even a cursory look at the core arguments reveals striking parallels. Recent contributions on neutrality law in the Swiss quality press or on online portals⁷ show

³ See NZZ, 8 September 2022, p. 7.

⁴ See Chapter VII of this contribution.

⁵ See orf.at, 7 March 2022.

⁶ See Der Standard online, 7 March 2022, <https://www.derstandard.at/story/2000133894868/neutralitaet-ist-fuer-rendi-wagner-nicht-verhandelbar>.

⁷ See, in particular, René Rhinow, “Wie weiter mit der Neutralität?”, *Die Schweiz in Europa*, 28 June 2022, <https://suisse-en-europe.ch/rene-rhinow-wie-weiter-mit-de>

notable similarities with debates in the Austrian media and professional circles. A more sustained exchange could therefore be of great benefit to both realities.

As will be shown below, this exchange was more vibrant in the past. It was likely shaped, in part, by differing integration policy orientations, which in turn influenced how each country's neutrality law was interpreted as a core element of its foreign policy. In recent years, however, the scope for action under international law has become increasingly uniform, and the room for manoeuvre in foreign policy has grown ever more similar. This appears to be fostering a convergence in the substance of the neutrality debate. As the conclusion will show, however, this should not obscure the fact that the historical contexts from which the respective neutrality regimes emerged were fundamentally different.

As mentioned, in Switzerland, in recent years, the re-export of war material has been a highly contested issue. Under the current, very restrictive version of the Swiss War Material Act (*Kriegsmaterialgesetz* - KMG), re-exports are subject to authorisation. Re-exports to crisis areas are deemed incompatible with international law and are therefore not approved, with the principle of equal treatment under Article 9 the Fifth Hague Convention of 1907 cited as the key reference point. The relaxation of this prohibition, adopted at the end of 2025, has not yet entered into force and may still be subject to a referendum.

In general it can be said that any requirement to treat the aggressor and the victim of aggression equally is incompatible with United Nations law. Moreover, Article 9 of the Hague Convention, whose practical effectiveness is in any event open to doubt (as will be shown below), does not apply to

r-neutralitaet/; and Mark E. Villiger, "Die dauernde Neutralität der Schweiz – eine Ergänzung", *Unser Recht*, 4 August 2022, <https://unser-recht.ch/mark-e-villiger-die-dauernde-neutralitaet-der-schweiz/>. See also Oliver Diggelmann, *Die Schweiz darf bei allen Sanktionen mitmachen*, *Tages-Anzeiger*, 22 February 2022, <https://www.tagesanzeiger.ch/dann-machen-wir-uns-politisch-und-moralisch-enorm-angreifbar-793560648925>.

Thomas Cottier takes a highly critical view of the legal continuity and factual relevance of Swiss neutrality in "Abschied von der Neutralität", 25 May 2022, <https://suisse-en-europe.ch/thomas-cottier-abschied-neutralitaet/>. For a current comparison between Swiss and Austrian neutrality, see Werner Bartl, *Why Switzerland struggles with its neutrality and Austria does not*, SWI swissinfo.ch, 21 June 2022, https://www.swissinfo.ch/ger/business/schweiz-oesterreich-neutralitaet-ukraine-militaer-waffenlieferung_warum-die-schweiz-mit-ihrer-neutralitaet-hadert-und-oesterreich-nicht/47687576. Formularende

the re-export of war material.⁸ As a result of Russia's war against Ukraine, and the pressure exerted by various states, that have bought Swiss war material in the past, to permit re-export in order to strengthen Ukraine's defensive capabilities, the question has arisen as to how far the Swiss regime can be amended. This, in turn, raised fundamental questions about the scope of neutrality under both treaty law and customary international law.

While this debate is specific to Switzerland, the discussion surrounding the European Sky Shield missile defence system concerns both Austria and Switzerland, since both participate despite their neutrality. The positions advanced on whether such participation is compatible with each country's obligations under neutrality law once again raise fundamental questions about the content and interpretation of international neutrality law.

II. Fundamentals of general international law – with particular reference to Hague law

Immediately after the United Nations Charter came into force, the question arose as to what significance the institution of neutrality could still have in the UN system, which was characterised by an absolute prohibition of force and a monopoly on the use of force by the United Nations in the collective security system. Compared to the situation in 1907, when the two Hague Conventions (V and XIII) central to the regulation of neutrality under international law were concluded, the situation had changed fundamentally.⁹

8 For a detailed argument in favour of a more flexible Swiss practice on the re-export of war material, see *Thomas Cottier*, *Kriegsmaterial-Wiederausfuhr: Zeit für eine Praxisänderung*, *Vereinigung die Schweiz in Europa*, 8 August 2025, <https://suisse-en-europe.ch/kriegsmaterial-wiederausfuhr-zeit-fuer-eine-praxisaenderung-von-thomas-cottier/> (with the accompanying paper in PDF). *Cottier* also argues that, where the goods are already located abroad and are owned by a foreign state, their onward transfer does not fall under the statutory export regime and therefore does not require Swiss authorisation.

See also *René Rhinow*, *Plädoyer für eine offene Schweiz*, 2025, at 74 and 79. *Rhinow* contends that, in cases of aggression in breach of Article 2(4) of the UN Charter, a rigid wartime neutrality may undermine the UN's collective-security rationale and, from a legal perspective, conflict with mandatory international law. He further criticises export bans affecting items intended to protect the civilian population as "diametrically opposed to Switzerland's humanitarian role as guardian of the Geneva Conventions".

9 Hague Convention (V) of 18 October 1907 (Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land) and Hague Convention

Neutrality was widely regarded as incompatible with United Nations law.¹⁰ Added to this was strong political opposition to the neutral countries, given that the fight against the dictatorships that had threatened the central achievements of modern civilisation had not been won by standing aside and “quite”, but through courageous, self-sacrificing commitment. From today’s perspective, what is particularly striking is the massive Soviet opposition to the concept of neutrality, which they regarded as obsolete wherever it was still permissible and as impermissible within the United Nations.¹¹

(XIII) of 18 October 1907 (Convention Respecting the Rights and Duties of Neutral Powers in Naval War).

Thomas Cottier (note 7) is critical of the continuing relevance of the Hague Conventions under contemporary international law:

“The right to neutrality under the Hague Conventions of 1907 arose in an era of equal states and colonial power which were largely ideologically like-minded. Neutrality was superseded by the system of collective self-defense. This incompatibility is one of the reasons why neutral Switzerland joined the United Nations so late.” (Translation by this author).

The Hague Conventions were, in turn, strongly influenced by US neutrality law, which has its roots in the early years of US independence (Neutrality Act of 1794), when the United States was not yet militarily stabilized and therefore sought security in neutrality. That historical context, however, differs markedly from present conditions. See Paul Luif, *The European Union, a ‘Neutral’ Power?*, in Peter Hilpold et al. (eds.), *Österreich und die EU im Umbruch*, Vienna 2022, pp. 81–101, at 84.

- 10 See Peter Hilpold, *Solidarität und Neutralität im Vertrag von Lissabon*, 2010, p. 22 ff. See also Paul Guggenheim, *Völkerbund, Dumbarton Oaks und die schweizerische Neutralität* Europa Verlag Zurich: Zurich 1945, p. 84 ff., who as early as 1945 raised the question of the extent to which it should be possible for neutral countries to remain on the sidelines in a solidarity-based security system such as the one that had just been created with the collective security system. As will be shown, this remains a highly topical question, particularly with regard to Austria’s position in the context of the obligation to provide assistance under Article 42(7) TEU.

- 11 On Soviet criticism of neutrality, see Eugene A. Korovin, *The Second World War and International Law*, in: 40 AJIL 1946, pp. 742–755:

The concept of neutrality also requires serious modifications in our times. The previous World War confirmed the indisputable truth that both war and peace are indivisible, and that under contemporary international communications not only a weak country but a great power as well cannot remain outside the World War. Another step in the liquidation of neutrality was made by the Second World War. The neutrality of some states (Norway, Denmark, Holland, Belgium, Luxembourg) was trampled upon by the fascist aggressor; for others, like Spain, neutrality served as camouflage for the closest kind of collaboration with the aggressor; the third group of neutrals, like the republics of Central and South America, regarding themselves vitally interested in the defeat of the aggressor, broke off diplomatic relations with him and declared war.”

Ibid., p. 753 f.

The neutral states were not invited to the founding conference of the United Nations in San Francisco. They faced harsh criticism from the highest levels: UN Secretary-General *Trygve Lie* declared that international organisations and neutrality were conceptually incompatible, and the French delegation even proposed that this incompatibility be explicitly stated in the Charter.¹² Ultimately, however, the prevailing view was that it was not necessary to explicitly exclude neutral states from the United Nations, since the system itself was thought to leave no room for neutrality within the new peace order: Article 2(5), requiring all members to support United Nations measures, and Article 25, requiring implementation of Security Council decisions, were intended to remove any doubt on that point.

A highly nuanced analysis of this topic comes from *Hersch Lauterpacht*, widely regarded as one of the most influential international lawyers of the 20th century. In 1953, in a perceptive study,¹³ and against the background of an international legal order that, despite all efforts to create a "perfect" post-war system, still displayed considerable shortcomings, he argued that a distinction must be made between "those acting legally" (the victims) and "those acting unlawfully" (the aggressors) among the belligerents.¹⁴ There could be no neutrality towards "those acting unlawfully". At the same time, however, Lauterpacht acknowledges the many deficiencies of the international legal order and the unequal power relations between formally equal

Korovin believed that neutrality was only possible in relation to states that did not belong to the United Nations, which, with the continuous expansion of UN membership, would have led to the complete abolition of this institution over time:

"In the future, a member of the United Nations will be able to remain neutral only in the exceptional event that a war breaks out between two non-members and if the United Nations itself does not deem it necessary to take measures to stop this war. In all other cases the members of the United Nations are to render it every assistance in all its preventative or coercive actions against the eventual aggressor (paragraph 5, Article II). With aggression an international crime, neutrality becomes a form of connivance at this crime."

- 12 The following wording was proposed: "Participation in the organisation implies commitments that are incompatible with the status of neutrality." See *Helmut Türk*, *Neutralität und Mitgliedschaft bei den Vereinten Nationen*, in: Konrad Ginther et al. (eds.), *FS Karl Zemanek*, 1994, pp. 439–463.
- 13 See *Hersch Lauterpacht*, *Rules of Warfare in an Unlawful War*, in: *George A. Lipsky* (ed.), *Law and Politics in the World Community*, University of California Press: Berkeley/Los Angeles 1953, pp. 89–113.
- 14 *Ibid.*, p. 110. In this sense, see also *Thomas Cottier*, *Die Würde des Menschen steht im Mittelpunkt*, *NZZ*, 23 June 2023, p. 19, with reference to the primacy of UN law and human dignity.

parties, and therefore sees considerable scope for political compromise in this regard.¹⁵ More than 70 years later, this insight remains relevant in many respects. In the Ukraine conflict, with Russia as the clear aggressor, there is no longer any room for neutrality.

Although one cannot expect small states threatened by an aggressive great power to endanger themselves, such a situation is surely not given in the case of Austria and Switzerland.

This emerging framework of solidarity is also reflected, at least indirectly, in the International Law Commission's draft articles. Article 41, which is widely regarded as possessing considerable authority and is often said as reflecting customary international law¹⁶, requires states to cooperate in response to serious breaches of international law. An armed attack undoubtedly constitutes such a breach. Under Article 41(1), states must cooperate to bring the breach to an end; under Article 41(2), they must neither recognise as lawful the situation created by the breach nor render aid or assistance in maintaining it. Obligations of this kind sit in clear tension with a posture of neutrality.

When seeking for a justification for national neutrality obligations under international law, reference is regularly made to the Hague Convention of 1907.

However, their continuing validity as set of rules of customary international law has rightly been disputed.¹⁷ Nor does the fact that these conventions were never formally repealed, answer the more fundamental question of their compatibility with UN law, which, as has been shown, is doubtful.¹⁸ Ratification has always been limited: with 32 and 28 ratifications

15 See *Hersch Lauterpacht*, 1953, p. III.

16 See *Carlo Focarelli*, *Diritto Internazionale*, 8th ed. 2025, p. 593.

17 See *Karl Zemanek*, *Austria's Neutrality and the CFSP*, Europainstitut, Saarbrücken 1995, 13; and *Mark E. Villiger*, *Handbuch der schweizerischen Neutralität*, 2023, 40 ff. See also *Dietrich Schindler*, who notes that the Hague law of neutrality has largely fallen into oblivion:

"The two 1907 Hague Conventions on neutrality (Conventions V and XIII) have largely fallen into oblivion. There has hardly been any discussion on the problems of the law of neutrality outside the permanently neutral States."

Dietrich Schindler, *Transformations in the Law of Neutrality since 1945*, in *A.J. Delissen and G.J. Tanja* (eds.), *Humanitarian Law of Armed Conflict – Challenges Ahead* (Festschrift for Frits Kalshoven), Martinus Nijhoff, Leiden/Boston 1991, pp. 367–386, at 368.

18 As this author already pointed out in *Solidarität und Neutralität*, Vienna 2010, p. 18 f., it is not the (relatively small) number of contracting parties to the Hague Con-

respectively, the ratification process stalled after 1945, a stagnation that may itself be read as an additional indication of Charter-era concerns. Although one ratification was added in 2015, this does little to restore the conventions' present legal relevance. It was Ukraine that acceded, and, just over a year after Russia's annexation of Crimea and under an increasingly acute military threat, Ukraine could reasonably be expected to pursue every available avenue to reinforce its independence, even by resorting to an instrument that had largely fallen into disuse. The limited practical value of such ratifications became evident when Russia launched its aggression against Ukraine on 24 February 2022.¹⁹

References to neutrality²⁰ in various national and international instruments of international humanitarian law (IHL) do little to support the

ventions that raises doubts about their continued validity (possibly also as customary international law), but it is rather their structural incompatibility with UN law, which then also led to the termination of the ratification process (up to the ratification by Ukraine in 2015, an event, which, as shown, must be assessed separately).

- 19 If, conversely, one argues that Ukraine's ratification of the Hague Conventions (V) and (XIII) confirms the customary status of both instruments, that conclusion is likewise unpersuasive. The general and abrupt standstill in ratifications since 1945, particularly with respect to conventions that have attracted only a comparatively limited number of parties, tends rather to corroborate the fundamental paradigm shift brought about in 1945 by the entry into force of the Charter of the United Nations. It therefore remains doubtful to what extent subsequent ratifications can meaningfully contribute to the crystallisation or confirmation of these Conventions as customary international law, or to the transformation of their provisions into custom.

The relationship between treaty law and customary international law is complex. In particular, the ICJ held in *North Sea Continental Shelf* (1969) that the ratification of treaties does not, by itself, establish that their provisions reflect customary international law (para. 76). An isolated ratification occurring more than half a century after the most recent prior ratification may, if anything, point in the opposite direction: if the relevant rules were already customary law, ratification would be largely superfluous. See also Richard Baxter, "Treaties and Custom," 129 *RdC* (1970), 76 ff.

As Dietrich Schindler (note 17) has shown, post-1945 invocations of neutrality largely became a phenomenon associated with permanently neutral states, even though occasional references by other states did occur: "Nevertheless, states have not completely ceased to refer to the law of neutrality. Occasionally they declare themselves neutral or invoke specific rights or duties of neutrals." Ibid., 368. Ukraine's 2015 declaration of neutrality fits well within this uneven and inconsistent practice.

- 20 See, in particular, the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (1994); the *HPCR Manual on International Law Applicable to Air and Missile Warfare* (2013); and Michael N. Schmitt (ed.), *Tallinn Manual on the International Law Applicable to Cyber Warfare* (2013).

Although the ICJ refers to the principle of neutrality at several points in its 1996 Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* (paras.

claim that the law of neutrality remains valid as a matter of international law. IHL simply draws on neutrality to the extent that the parties to a conflict recognize it as such; it cannot, in itself, constitute or establish the law of neutrality.

Moreover, a bare declaration of neutrality in a particular conflict may give rise to situations that can be taken advantage of for purposes of IHL, without supporting any broader legal inference as to the confirmation, “revival,” or re-establishment of permanent neutrality as a legal concept.

Finally, certain diplomatic conventions of deference toward Austrian and Swiss neutrality were wrongly taken as legal recognition. Swiss constitutional law scholar René Rhinow captured the point aptly: “When governments around the world respect our neutrality in a diplomatic and courteous manner, it does not mean much.”²¹

Even proponents of the continued validity of the international law of neutrality acknowledge that the Hague Conventions sit uneasily with contemporary legal realities: they are outdated, incomplete, and in many respects widely regarded as obsolete.²² If this observation directly calls into question the existence of an international law of neutrality, the dilemma is often addressed by turning to customary international law, which is then treated as the true legal basis for a continuing and valid law of neutrality.²³ On the other hand, this inevitably reopens the question whether there is any “general practice accepted as law” at all. Such practice would have to be extensive, consistent over time, and sufficiently uniform, and it would have

51, 74, 88–90, 93), these references must be read in their specific humanitarian-law context. In that setting, invoking neutrality as a traditional device for constraining the conduct of hostilities is not, in itself, surprising. At the same time, the Court’s formulation is of limited value for assessing the contemporary legal relevance of a “law of neutrality” more generally. In particular, the phrasing in para. 89 (“whatever its content” and “subject to the relevant provisions of the United Nations Charter”) tends to raise interpretive questions rather than provide clarification:

“The Court finds that, as in the case of the principles of humanitarian law applicable in armed conflict, international law leaves no doubt that the principle of neutrality, whatever its content, which is of a fundamental character similar to that of the humanitarian principles and rules, is applicable (*subject to the relevant provisions of the United Nations Charter*) to all international armed conflicts, whatever type of weapons might be used.” (Emphasis added by the author.).

21 See René Rhinow, Glaubwürdige Schweiz, nicht unglaubwürdige Neutralität, in: NZZ, 29 March 2022 (translation by this author).

22 See Manuel Rodríguez, Das Neutralitätsrecht und das umfassende Gewaltverbot gemäss Art. 2 Abs. 4 UNO-Charta, Helbing Lichtenhahn: Basel 2024, p. 10.

23 *Ibid.*

to be carried out in particular by those States whose interests are especially affected,²⁴ which would plainly include more than the permanently neutral States alone. It is therefore for those who maintain that customary rules of neutrality exist to produce concrete and detailed evidence. Repeated assertions in the literature, even when amplified through chains of cross-references, will hardly suffice.²⁵

This becomes particularly clear in the context of private individuals' exports of war material, which Article 7 of the Fifth Hague Convention (1907) does not prohibit. A "pragmatic" argument that extends the Convention's prohibition, directed at neutral states, to private individuals, for instance by invoking changes in international trade and the expansion of state export control powers, is unpersuasive where no specific legal basis can be demonstrated and the extension is merely asserted in general terms.

The conflict in Ukraine has prompted a range of scholarly efforts to analyse the dispute through the lens of the law of neutrality.²⁶ Yet, in the absence of significant state practice accompanied by consistent official statements, the claim that the law of neutrality remains operative, even beyond the group of "permanently neutral countries",²⁷ appears to offer limited analytical purchase. As shown above, the states supplying weapons to Ukraine have consistently refrained from invoking neutrality as a legal basis for their conduct.²⁸

24 See Bruno Simma/Stephan Wittich, *Das Völkergewohnheitsrecht*, in: A. Reinisch (ed.), *Österreichisches Handbuch des Völkerrechts*, Manz: Vienna 2021, para. 170.

25 As to this discussion see with further references Stephan Wittich, *Die Neutralität im Völkerrecht*, in: Martin Senn/Jodok Troy (Hrsg.), *Österreichs Neutralität: Recht, Politik und Gesellschaft – Eine Debatte*, Bielefeld: Transcript Verlag, 2025, pp. 77-96 (81 s.).

26 A few authors have subsequently taken the view that arms shipments to Ukraine violate neutrality law. For example, Kevin Jon Heller and Lena Trabucco argue in their article "The Legality of Weapons Transfers to Ukraine under International Law" (13 *Journal of International Humanitarian Legal Studies* 2022, pp. 251–274). However, they do not see these arms shipments as a breach of the prohibition of force and also assume that the states supplying weapons do not become parties to the conflict.

27 Further to this distinction, René Rhinow, *Permanence as a unique feature – Switzerland and its policy of neutrality*, in this volume, pp. 67-85.

28 For a detailed discussion, see Giulio Bartolini, *The Ukrainian–Russian Armed Conflict and the Law of Neutrality: Continuity, Discontinuity, or Irrelevance?*, 71 *NILR*, 2024, 281–298 (at 283 ff.), who points in particular to Switzerland as a notable outlier, given its strict position on arms exports and, especially, its re-export ban, and contrasts this with Russia's comparatively late and arguably instrumental invocation of neutrality. See also the response by State Secretary Susanne Baumann to a parliamentary question, BT-Drs. 20/1918, p. 39 (18 May 2022): "The Federal Republic of

For states supporting Ukraine in the exercise of its right of self-defence, the central concern was to avoid being classified as belligerent parties themselves. Accordingly, almost all of them also refrained from invoking the right of collective self-defence under Article 51 of the United Nations Charter, presumably so as not to venture into this grey area.²⁹

The practice of states supporting Ukraine, including their official statements, was therefore not a “revival” of a pre-Charter right of neutrality. Rather, it reflected an effort to avoid violating the prohibition on the use of force themselves and to prevent being characterised as a party to the conflict. The considerable legal uncertainties and practical indeterminacies in this area are illustrated by the Federal Republic of Germany’s approach to determining which arms deliveries could be made without crossing that threshold. After initially adopting a highly restrictive position, Germany gradually expanded the range of weapons it was prepared to supply³⁰ and ultimately, in the name of “strategic ambiguity”, opted to withhold details of further deliveries from public disclosure.³¹

In theory, reliance could also have been placed on the concept of “countermeasures” as reflected in the ILC’s 2001 Articles on State Responsibility. However, it remains uncertain whether countermeasures are available in response to breaches of obligations *erga omnes* in the sense contemplated by Article 48 of the ILC Articles.³² It was therefore prudent to refrain from advancing such a justification. In any event, framing the issue in terms of

Germany and its partners are supporting Ukraine by supplying weapons to enable it to exercise its individual right of self-defense against Russia’s war of aggression, which violates international law. These support measures, which are in conformity with international law, do not cross the threshold into a collective exercise of the right of self-defense.” See further *Alexander Wentker*, *The Armed Attack Exception to Neutrality in International Peace and Security Law*, 73 ICLQ, 2024, pp. 963–996 (at 985).

29 See *Giulio Bartolini* (note 28) as well as *Marco Pertile*, *Armed Conflict, Neutrality, and Disarmament*, in *IYIL* 2023, pp. 522–532 (532).

30 <https://www.bundesregierung.de/breg-de/service/archiv-bundesregierung/waffenlieferungen-ukraine-2054514>.

31 <https://de.euronews.com/2025/05/12/waffenlieferungen-ukraine-aurus>.

32 See the comments in the ILC commentary on the 2001 draft article, Part III, Chapter II, p. 129, para. 8:

"Occasions have arisen in practice of countermeasures being taken by other States, in particular those identified in article 48, where no State is injured or else on behalf of and at the request of an injured State. Such cases are controversial and the practice is embryonic. This chapter does not purport to regulate the taking of countermeasures by States other than the injured State."

countermeasures would risk misdirecting the analysis: the point is not law enforcement as such, but the provision of assistance to a state whose very existence is under threat and which is also seeking to avert the most serious violations of international humanitarian law.

Overall, the conflict in Ukraine has merely confirmed the obsolescence of the classical law of neutrality, while at the same time underscoring the centrality of the right of self-defence. On that basis, arms transfers to a state under armed attack are permissible under international law.³³ To resort to the justification of collective self-defence (requiring also the notifications foreseen in Article 51 of the UN Charter) appears necessary only where states go beyond material support and deploy their own troops, which has not occurred to date.

III. Austrian neutrality – justification and legal nature

1. Introduction

Seen from the highly specific circumstances of 1955, a commitment to neutrality, whatever its precise form, was a sensible means of advancing the negotiations for the restoration of Austrian sovereignty. That political calculus, however, must be kept distinct from the separate question whether a right to neutrality exists, and if so with what content, under international law, including customary international law. It was precisely this conflation of politics and law that remained a defining feature of Austrian neutrality law in the period that followed. It shaped both political and legal debate, often leaving it unclear which lens was being applied, or producing theses that shifted depending on the perspective adopted.

2. Moscow Memorandum and Vienna State Treaty – both from 1955

Historical research indicates that, immediately after the First World War, Austrian constitutional scholars and policymakers were already contem-

On the enforcement of Community interests by third countries, see *Paolo Palchetti*, *Consequences for Third States as a Result of an Unlawful Use of Force*, in: C. Weller (ed.), *The Oxford Handbook on the Use of Force*, OUP: Oxford 1124-1238.

33 This is also the view of *Alexander Wentker* (note 28), who, however, bases his argument on the assumption that a general right of neutrality continues to apply.

plating whether the constitution should be oriented toward a neutrality model.³⁴ The decisive commitment to neutrality, however, came only some time after the Second World War, as a strategically astute and highly effective means of breaking the deadlock in efforts to restore Austrian sovereignty, at a moment when Cold War tensions were escalating.

The thaw following Stalin's death in 1953 was used to secure the withdrawal of Soviet troops by offering a neutrality arrangement based on the Swiss model.³⁵ On 15 April 1955, an Austrian government delegation in Moscow issued a declaration of intent, undertaking to ensure that Austria would commit itself to perpetual neutrality of the kind practised by Switzerland.³⁶

These efforts culminated in the BVG Neutrality Act (*BVG Neutrality*), albeit with one notable difference: there was no longer any mention of the Swiss model.

Comprising a mere two articles, this statute is characterized by its concision and functional austerity. The relevant Article 1 reads as follows:

- (1) *For the purpose of the permanent maintenance of her external independence and for the purpose of the inviolability of her territory, Austria of her own free will declares herewith her permanent neutrality which she is resolved to maintain and defend with all the means at her disposal.*
- (2) *In order to secure these purposes Austria will never in the future accede to any military alliances nor permit the establishment of military bases of foreign States on her territory.*³⁷

Neutrality is thus not an end in itself, but a means of safeguarding territorial integrity and sovereignty. It is pursued through non-alignment and

34 Heinrich Lammasch in particular distinguished himself in this regard – efforts that were ultimately in vain, however. See Gerhard Oberkofler, 'Wird Österreich ein „willkürlicher Fetzen Landes“ im imperialistischen Europa?' *Zeitung der Arbeit*, 26 July 2023, <https://zeitungderarbeit.at/feuilleton/wird-oesterreich-ein-willkuerlicher-fetzen-landes-im-imperialistischen-europa/>.

35 On this process, see Christian Jenny, 'Konsensformel oder Vorbild? – Die Entstehung der österreichischen Neutralität und ihr Schweizer Muster', Haupt: Bern et al. 1995. On the advantages that the USSR expected to gain from Austria's neutrality, see Wolfgang Mueller, 'The USSR and Permanent Neutrality in the Cold War', in: *Journal of Cold War Studies* 2016, pp. 148–179 and idem, 'Wozu dient Österreich heute die Neutralität?', in: *Die Presse* of 29.10.2015.

36 At least, this is the prevailing interpretation of the Moscow Memorandum in Austria. See the literature in the footnote 38.

37 RIS, Federal Constitutional Law on the Neutrality of Austria.

by prohibiting the establishment of foreign military bases on Austrian territory. This, in turn, suggests that if the overarching objective of protecting independence can be more effectively achieved by other means, neutrality itself, and with it the self-imposed restrictions just described, may legitimately be reconsidered. This is all the more so because Austria was not “neutralised”, in the sense of having neutrality imposed upon it, but adopted neutrality “of its own free will”.

From a legal perspective, these statements give rise to a host of questions. The underlying tensions can scarcely be reduced to a common denominator, let alone reconciled. The undertakings given by the Austrian government delegation were undoubtedly a precondition for the conclusion of the State Treaty of 15 May 1955 and for the subsequent withdrawal of Soviet troops. To dismiss the Moscow Memorandum as a mere “gentlemen’s agreement” devoid of legal force, as has been common in Austrian international-law doctrine since Verdross,³⁸ seems overly reductive. At the same time, Moscow accommodated Austria’s insistence that the neutrality obligation not be incorporated into the State Treaty, an inclusion from which one might otherwise have inferred an international treaty obligation to maintain neutrality.

Austria’s commitment to neutrality rests on the Constitutional Law on Neutrality of 26 October 1955 (BVG Neutrality), which Austria notified to all states with which it maintained diplomatic relations at the time. The central question, however, is this: what is the international legal status of a neutrality commitment assumed “of one’s own free will”?

Austrian doctrine has developed a complex theory under which Austria’s notification of the BVG Neutrality, coupled with subsequent acknowledgements of receipt, gave rise to a network of interrelated unilateral legal acts producing corresponding binding effects, from which Austria could withdraw by way of a *contrarius actus*.³⁹ Leaving aside the fact that this view appears neither to have been endorsed outside Austria nor, so far as can be seen, to be widely known, the approach, even if it were accepted internationally, would not necessarily strengthen Austria’s freedom of action. What, for example, would happen if another state objected to the withdraw-

38 See on this discussion *Peter Hilpold*, *Solidarität und Neutralität im Vertrag von Lissabon*, 2010, p. 28ss. According to the renowned Austrian-American international lawyer *Josef L. Kunz* there can be no doubt that the Moscow Memorandum created binding international obligations. See *Josef L. Kunz*, *Austria’s Permanent Neutrality*, in: 50 AJIL 1956, pp. 418-425 (421).

39 According to *Stefan Verosta*, *Die dauernde Neutralität – ein Grundriss*, 1967, p. 65.

al of the notification, that is, to the *contrarius actus*? Would Austria then remain permanently bound by its neutrality declaration? From Austria's perspective, there is therefore little to be gained by relying on this elaborate construct.

Taken as a whole, this discussion alone already lays bare the structural weakness of Austrian neutrality from a legal and doctrinal standpoint: it is difficult to determine how much "hard law", and in particular how much "international law", this concept actually contains, since many of the formally elaborate interpretations advanced in this field are plainly interest-driven and rest on tenuous legal foundations.

3. The constitutional dimension

It should also be emphasised that the BVG Neutrality is a constitutional statute and that the obligations it contains, though formulated with deliberate brevity, established binding commitments under domestic law of a particularly stringent kind. As will be shown below, the BVG Neutrality in its original form is no longer applicable.

IV. The five phases of the development of Austrian neutrality law

The development of Austrian neutrality law can be divided into five phases. This trajectory was shaped, to a significant extent, by the Swiss neutrality debate⁴⁰ and, at times, was virtually determined by it.

The following phases may therefore be distinguished:⁴¹

1. Justification of neutrality (1955/1956)
2. Indifference (1956–1967)
3. Exaggeration (1967–1989)
4. End of the East–West conflict and rapprochement with the EEC/EU (1989–1993)
5. Uncertainty and the search for new substance and orientation following the broad erosion of traditional foundations

40 See Alois Riklin, *Neutralität am Ende – 500 Jahre Neutralität der Schweiz*, Zeitschrift für Schweizerisches Recht 5 (2006) I, p. 563, for a similar development in Switzerland.

41 See also Peter Hilpold, *Österreichs Neutralität nach Lissabon*, in: 13 ÖJZ 2010, pp. 590–598 (591).

The early period from 1955 onward was thus marked by the development in the literature of doctrinally refined lines of argument, alongside a widespread indifference to these debates among the broader population.

This situation changed abruptly in 1967, at a moment when accession to the EEC still seemed a remote prospect, creating another parallel with Switzerland.

In this period, Alois Riklin, then rector and professor of political science at the University of St. Gallen, argued that neutrality in Switzerland was “elevated to an all-encompassing state doctrine,” with “almost every foreign policy issue being measured against an exaggerated concept of neutrality.”⁴²

Comparable, though less pronounced, views began to gain ground in Austria as well. Austria embraced the so-called “Bindschedler” doctrine concerning the anticipatory effects of permanent neutrality.⁴³ The Swiss international-law scholar Rudolf Bindschedler (1915–1991) maintained that permanently neutral states should refrain from joining customs or economic unions if such arrangements could generate dependence on a stronger partner.⁴⁴

This line of argument aligned closely with Austria’s revised foreign trade policy. As noted above, Vienna was no longer pursuing EEC membership, in part because of Italian resistance, and instead sought alternatives such as EFTA and bilateral arrangements with the EEC. This convergence was not merely coincidental. Political economy research suggests that background forces were at work, rendering the underlying determinants more prosaic than the official neutrality discourse implied:⁴⁵

- The isolationist measures demanded by the politically influential agricultural sector could be presented as necessary to safeguard neutrality.

42 See Alois Riklin, 2006, p. 592.

43 As Dietrich Schindler (in FS Bindschedler 1980, p. 563) points out, this idea was originally conceived by Karl Strupp (Neutralisation, Befriedung, Entmilitarisierung, Stuttgart 1933, p. 207 ff.). Rudolf Bindschedler (fn. 43) further elaborated on this concept under the term “secondary obligations of permanent neutrality” and made it more widely known.

44 See Rudolf Bindschedler, Die Neutralität im modernen Völkerrecht, ZaöRV 1956/1957, pp. 1–37 (3 ss.).

45 See Paul Luif, Der Wandel der österreichischen Neutralität. Ist Österreich ein sicherheitspolitischer Trittbrettfahrer?, 2nd ext. version 1998, p. 23s as well as *idem*, in this book (p. 315–333). See also René Rhinow, Permanence as a unique feature – Switzerland and its policy of neutrality (in this book, pp. 67–85) who sees “anticipatory effects” of the policy of neutrality as largely constituting an “actually autonomous foreign policy”.

- Austria’s relatively large nationalized industrial sector could likewise be protected, justified by the purported requirements of neutrality policy.
- At the same time, an assertive neutrality policy enabled the federal government to strengthen its foreign-policy profile.

The Austrian constitutional lawyer *Theo Öhlinger* captured this dynamic succinctly:

*“The danger was obvious and was not always avoided, namely to support this policy with legal arguments, i.e. to postulate that what proved to be a sensible and successful policy of neutrality was also legally required.”*⁴⁶

Switzerland experienced a similar exaggeration of neutrality, as the boundary between legal reasoning and political justification became increasingly blurred. Even the country’s leading neutrality scholar, *Professor Dietrich Schindler*, denied that permanent neutrality possessed the legal character of customary international law. At the same time, however, the Swiss and Austrian debates on neutrality law and neutrality policy began to interact in revealing ways.

In its search for support for the legal character of permanent neutrality, Swiss scholarship has repeatedly invoked the Austrian Neutrality Act (*BVG Neutrality*). That law is widely understood to rest on the Moscow Memorandum, which itself refers to Switzerland’s neutrality status.⁴⁷

Austria’s accession to the EU fundamentally reshaped the debate. Since 1995, much of the discussion has revolved around clarifying what EU membership means for Austria’s status of neutrality. The reluctance and, at times, inconsistency of political actors to assess these implications soberly can likely be attributed, at least in part, to tangible interests in preserving at least the appearance of neutrality. As a result, the legal arguments advanced, insofar as that label remains warranted, have often been adjusted to fit those interests. The terminological and conceptual confusion that followed is substantial.

46 See *Theo Öhlinger*, Kommentar zum Bundesverfassungsgesetz vom 26. Oktober 1955 über die Neutralität Österreichs, in: *Korinek/Holoubek* (Hrsg.), Österreichisches Bundesverfassungsrecht, I. instalment (*1. Lieferung*) 1999, para. 7 (translation by this author).

47 See *Peter Hilpold*, *Solidarität und Neutralität*, 2010, p. 45, with reference to *Dieter Schindler*, 1980, p. 579.

V. The effects of EU accession on Austrian neutrality law

Austria acceded to the EU on 1 January 1995 without any neutrality reservation, contrary to what had originally been planned and communicated domestically. The constitutional framework for reconciling EU membership with Austria's neutrality obligations was subsequently established through the insertion of Article 23f B-VG. Under the Treaty of Lisbon, the relevant provision is now set out in Article 23j B-VG, which provides:

"Austria participates in the Common Foreign and Security Policy of the European Union [...] as set out in the Treaty of Lisbon with [...]."

The Common Foreign and Security Policy (CFSP) also encompasses the gradual development of a Common Security and Defence Policy (CSDP).⁴⁸ In this context, the so-called "Petersberg tasks," defined in 1992 within the framework of the Western European Union and later incorporated into Article 43 TEU, are politically particularly sensitive from the perspective of neutrality.

The "Petersberg tasks" included the following:

- humanitarian tasks and rescue operations
- peacekeeping tasks
- combat missions in crisis management, including peacekeeping operations

The expanded version of Article 43 TEU now also mentions the following tasks:

- Military advice and support
- Conflict prevention and peacekeeping
- Operations to stabilise the situation after conflicts.

48 See Article 42 TEU:

"The common security and defense policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civilian and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States."

On neutrality as a communicative tool for justifying a policy conditioned by the Cold War, see *Matthieu Gillibert/Pauline Milani, Communicating neutrality. Public diplomacy by neutral states at the beginning of the Cold War*, 27 *European Review of History* 2020, pp. 628–650.

Articles 23f B-VG and, subsequently, Article 23j B-VG, as *lex posterior* and *lex specialis*, have in substantive terms derogated from the Neutrality Act (BVG Neutrality) in key respects. As a result, as far as EU law applies, very little of constitutional neutrality remains.⁴⁹

In addition, Article 42(7) TEU must be considered. Its mutual assistance clause effectively commits the Union, in the event of an armed attack, to a form of collective military assistance, a commitment that sits uneasily with a central constitutional pillar, namely neutrality.

It was another neutral EU Member State, Ireland, which secured an explicit exemption to this clause, which reads as follows:

"This [the mutual assistance clause] shall not affect the specific character of the security and defence policy of certain Member States."

Interestingly, this "Irish clause" did not originate from an Austrian initiative. It was negotiated by Ireland, yet it subsequently became available for all neutral states, including Austria, to invoke.

To what extent the "Irish clause" establishes a right to opt out of any obligation to contribute to the European Defence Fund under Article 42(7) TEU is, however, contested. The claim that the provision imposes an obligation to provide assistance in a purely asymmetrical and non-reciprocal manner is hardly convincing. It is difficult to square with the EU law principles of solidarity and reciprocity to suggest that neutral Member States would enjoy only rights (namely, to receive assistance in the event of an armed attack), while all other Member States would bear only obligations towards them.

Looking at past practice, Austria has demonstrated solidarity in security matters and has also cooperated closely with NATO, as will be shown in detail below.

During the EU accession process, discussions took place about formally ending Austria's neutral status. However, the invasion of Iraq, dubbed "Iraqi Freedom", triggered a "rediscovery" of neutrality,⁵⁰ and the 2004 presidential election campaign, in which Heinz Fischer, a proponent of neutrality,

49 See also *Andreas Th. Müller*, Der rechtliche Rahmen der österreichischen Neutralität im Wandel, in: *M. Senn/J. Troy (eds.)*, Österreichs Neutralität, Bielefeld: Transcript Verlag 2025, pp. 97-112 (101).

50 See *Paul Luif*, Die Neutralität: Taugliche sicherheitspolitische Maxime?, in: *Waldemar Hummer (ed.)*, Staatsvertrag und immerwährende Neutralität Österreichs, 2007, pp. 363-389.

ultimately prevailed, was widely regarded as reflecting popular support for neutrality.⁵¹

VI. Current Austrian practice in the context of the EU and in relation to NATO

The mutual defence clause under Article 42(7) TEU was invoked for the first time by France in November 2015, albeit in a highly specific context that did not amount to a classic armed attack, namely in response to the Paris attacks of 13 November 2015.⁵² The Austrian government did not regard a declaration of solidarity as incompatible with neutrality, even though it remained unclear how far such solidarity would extend in practice.

Austria has increasingly committed itself to shaping the CSDP and does not view neutrality as an obstacle to doing so. This is clearly reflected in Austria's 2024 Security Strategy.⁵³ Moreover, through its participation in the development and implementation of the 2016 Global Strategy⁵⁴, which gave the CSDP considerable substantive concreteness, Austria has underscored its commitment to this approach. The "targeted engagement" as provided for in this strategy requires participation in peace operations, international crisis management and cooperative security.⁵⁵

51 Ibid., p. 383.

52 See *Peter Hilpold*, *Terrorismus, Bündnisfall und die Frage der Neutralität*, *Wirtschaftsblatt* v. 25.11.2013, p. 13 and idem, *Die österreichische Neutralität und der Kampf gegen den Terrorismus*, in: 24 JRP 2016, pp. 282-286. The classification of these attacks as acts of aggression was confirmed by SR Res. 2249 of 20 November 2015, although this resolution was, as a whole, rather ambivalent.

53 <https://www.bundestkanzleramt.gv.at/themen/sicherheitspolitik/sicherheitsstrategie.html>.

The same was true for the 2013 Security Strategy.

54 *Shared Vision, Common Action: A Stronger Europe A Global Strategy for European Union's Foreign and Security Policy*, June 2016. See *Gerhard Jandl*, *Some Observations on the Neutrality of Austria, and its Participation in the European and Euro-Atlantic Security Structures*, in: *Andreas J. Kumin et al. (eds.), Außen- und sicherheitspolitische Integration im Europäischen Rechtsraum, Liber Amicorum Hubert Isak*, 2020, pp. 343-352 (349).

55 See *Heinz Gärtner*, *Die "Global Strategy" der EU – eine Analyse*, Policy Paper, Österreichisches Institut für Internationale Politik, Vienna: Österreichisches Institut für Internationale Politik (oiip) 2016, https://www.ssoar.info/ssoar/bitstream/handle/document/59074/ssoar-2016-gartner-Die_Global_Strategy_der_EU.pdf?sequence=3&isAllowed=y.

Austria participates in CARD and in Permanent Structured Cooperation (PESCO), established in 2017, particularly in the field of capability planning and development. When the European Defence Fund (EDF) is also taken into account, supporting both consortia of companies from different Member States engaged in the cooperative research and development of defence products and technologies and the development of supply chains, a “triangle” emerges that can, in turn, be specifically linked to corresponding NATO activities.⁵⁶

Austria also takes part in a large range of NATO working groups, with particular emphasis on the interoperability of the Austrian Armed Forces with the armed forces of other European countries.⁵⁷

Special mention should also be made of the European Peace Facility, which was established in 2021, largely unnoticed by the public due to the COVID crisis. It is an international organisation with its own budget of €5.692 billion. The ceiling for this was set by a Council decision on 13 March 2023 to €7.979 billion by 2027. This “peace facility” is intended to finance operational military measures in the field of CFSP, thereby improving the Union's capacity for conflict prevention, peace-building and strengthening international security.⁵⁸ A separate budget was therefore necessary, since, pursuant to Article 41(2) TEU, expenditure arising from operations with military or defence implications may not be charged to the EU budget.

From the perspective of neutrality law, it is particularly significant that contributions to the budget are calculated on the basis of gross national income (GNI). As a result, neutral Member States also contribute, without any general exemption, to financing activities carried out under the Peace Facility. Formally, this issue has been addressed by providing that “Member States with a specific security and defence policy” (that is, typically the neutral states) are not required to co-finance measures involving the use of

⁵⁶ Ibid.

⁵⁷ This is also reflected in a written statement by *Bernhard Christandl* from the Austrian Ministry of Defense to the present author (on file with author).

⁵⁸ See European Council, European Peace Facility, Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility and repealing Decision (CFSP) 2015/528, <https://www.consilium.europa.eu/de/policies/european-peace-facility/>. Its predecessors were the Athena mechanism and the African Peace Facility. Ibid.

“lethal force”.⁵⁹ At the same time, however, the Member States concerned are not relieved of their solidarity obligations: they must contribute to “other support measures”⁶⁰ that are not geared towards the use of lethal force. In overall terms, the financial contribution remains unchanged; any reduction in one category is offset by a correspondingly higher contribution in another. The Council Decision establishing the European Peace Facility is explicit on this point and addresses the linkage in notably clear terms:

*The additional amount to be contributed by a Member State abstaining from the adoption of an assistance measure which provides for the supply of military equipment, or platforms, designed to deliver lethal force will ensure that the overall contribution of that Member State to assistance measures will be in accordance with its share of GNI in the total GNI aggregate of the Member States. The amount of the contributions due from the other Member States to the measures to which such additional contributions are made will not be affected by those additional contributions. The proportion of costs for assistance measures concerning the supply of military equipment, or platforms, designed to deliver lethal force will therefore decrease as a result of such abstentions, compared with that of the other assistance measures funded under the Facility. As a result of the abstention, the appropriations potentially available for assistance measures concerning the supply of such equipment or platforms will decrease.*⁶¹

The functioning of this mechanism became particularly clear on 28 February 2022, when two separate CFSP decisions were adopted to impose sanctions on Russia in response to its invasion of Ukraine. One decision allocated €450 million for military equipment and platforms intended for the use of lethal force⁶², while the other provided €50 million for additional support measures for the Ukrainian armed forces.⁶³ Austria was bound only

59 See recitals 4 and 21 as well as Article 56(2)(c) of Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility and repealing Decision (CFSP) 2015/528. To this end, Member States may submit a formal declaration pursuant to Article 31(1), second subparagraph, stating that, for “essential reasons of national policy [which must be specified],” they oppose a decision.

60 Ibid., recital 21.

61 Ibid., recital 22.

62 Council Decision (CFSP) 2022/338 of 28 February 2022 on an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force.

63 Council Decision (CFSP) 2022/339 of 28 February 2022 on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces.

by the second decision, yet this did not alter its proportional share of the overall support package.

In a lucid critique of Switzerland's traditional concept of neutrality, the Basel constitutional law scholar René Rhinow⁶⁴ captured this core point from a broader perspective:

*“How can it be justified that bulletproof vests are considered relevant to war, but overflights by military aircraft serving a humanitarian purpose are not? Can it seriously be argued that bandages are not war-related? Why is the export of war material not confined to weapons in the strict sense? Items intended to protect life and limb are not covered by the Hague Convention. The term ‘war-related’ should be abandoned altogether, because what, in modern warfare, is not relevant?”*⁶⁵

There is a risk that political correctness and a feel-good mentality will replace rigorous legal reasoning, with everything ultimately folded into a vague notion of “neutrality.” At the same time, Austria has authorized the transit of weapons to Ukraine, invoking EU law as its legal basis.⁶⁶

However, it is not only military cooperation within the CFSP and CSDP that is incompatible with the obligations of a neutral country – according to the traditional concept – but also, in particular, close cooperation with NATO, which occurs in two ways: at the EU level through the CFSP and bilaterally in Austria's direct relationship with this military alliance.

Accordingly, Permanent Structured Cooperation (PESCO) under Articles 42(6) and 46 TEU and Protocol No. 10, in which 25 of the 27 EU

64 See René Rhinow, *Wie weiter mit der Neutralität?*, Die Schweiz in Europa, 28 June 2022, <https://suisse-en-europe.ch/rene-rhinow-wie-weiter-mit-der-neutralitaet/> (translation by this author).

65 Even under traditional neutrality law, the continued applicability of which is, as argued above, doubtful, the sustained provision of financial support to a belligerent would, in itself, be incompatible with neutrality. See Michael Bothe, *Neutrality, Concept and General Rules*, in: *Max Planck Encyclopedia of Public International Law* (online ed.), para. 36. See also Michael Schilchegger, *Die österreichische Neutralität nach Lissabon*, 66 ZÖR (2011), pp. 5–24, at 20, who characterizes “any financial assistance” to one of the parties to an armed conflict as contrary to neutrality. On this basis alone, Austria would have breached its neutrality by participating in the European Peace Facility, assuming that neutrality in the traditional sense remains applicable.

The practical impossibility of drawing a clear line between military and civilian goods is also noted by Stephan Wittich (note 25), at 82.

66 See Ralph Janik, *Austrian Neutrality amid Russia's War on Ukraine*, in: 26 ARIEL 2021 (2023), pp. 147–160 (154).

Member States participate (Malta and Denmark do not, whereas Austria and Ireland do), is not only designed to align and jointly develop the participating states' defence capabilities within the EU. It also entails parallel coordination with NATO, for example on standards.⁶⁷

Austria has been cooperating directly with NATO since 1995 through the Partnership for Peace platform, which was established in 1994 and currently involves a total of 18 European and Asian countries working with this defence alliance to varying degrees.⁶⁸ This affects peace preservation operations, humanitarian and disaster relief, and search and rescue services. In addition, there is political dialogue and military and civilian cooperation within the Euro-Atlantic Partnership Council (EAPC)⁶⁹, which has been in existence since 1997. While this does not constitute a traditional defence alliance, it nevertheless represents a contractually anchored form of military cooperation. In addition, Austrian officers are assigned to various NATO staffs in so-called "partner staff posts," and Austrian personnel also participate in numerous NATO working groups, particularly those focused on interoperability.⁷⁰

Austria's cooperation with NATO entered a new phase with its participation in the Individually Tailored Partnership Programme (ITPP) since its launch in 2022. The programme defines "security" in very broad terms, encompassing, for example, climate protection, while also covering traditional core areas of military cooperation such as electronic warfare, mine detection, and airspace surveillance.⁷¹

67 See, for example, *Lorenzo Giuglietti*, The EU's Permanent Structured Cooperation, NATO, and the US: beyond a zero-sum game, CEPOB 5/2021, May 2021, https://intra.net.eulacfoundation.org/en/system/files/giuglietti_cepob_5.pdf.

68 See *Gerhard Jandl*, 20 Years of Austrian Partnership with NATO, in: 61 *Politörbis* 1/2016, pp. 75-80. Switzerland has also been participating in this partnership since 1996. The membership of Russia and Belarus was suspended after Russia's invasion of Ukraine on 24 February 2022. With Finland (2023) and Sweden (2024) joining NATO, the number of members fell from 20 to 18.

69 See Österreichisches Bundeskanzleramt, Zusammenarbeit mit der NATO, <https://www.bundeskanzleramt.gv.at/themen/sicherheitspolitik/zusammenarbeit-mit-der-nato.html?lang=en>.

70 This is reflected in the written reply of the Directorate-General for Defense Policy in the Austrian Federal Ministry of Defense, provided in response to an inquiry by the author.

71 See *D. Bischof/J. Streithammer*, Wie Österreichs Neutralität fast unbemerkt geschrumpft ist, in: *Die Presse*, 7 July 2023, <https://www.diepresse.com/13441550/wie-oesterreichs-neutralitaet-fast-unbemerkt-geschrumpft-ist>.

As will be explained in more detail below, accession to the Sky Shield missile defence system presents a new challenge, as it implicates fundamental questions of neutrality law, including those relevant to Switzerland.

VII. Swiss neutrality

Compared with Austria, Switzerland arguably faces even greater uncertainty regarding the legal nature of neutrality obligations. While Swiss neutrality is, of course, not governed by EU law, similar doubts as in Austria arise as to whether binding neutrality obligations continue to exist under international law. The central issue is the extent to which the traditional right to neutrality retains legal significance after the entry into force of the UN Charter, and in any event after Switzerland's accession to the United Nations in 2002. The establishment of a general prohibition on the use of force, together with the introduction of a limited right of self-defence, including, however, collective self-defence, marked a radical paradigm shift from the previous legal order, which presupposed strict compliance with the law of neutrality. Switzerland's neutrality reservation upon accession to the United Nations does little to alter this conclusion, while the official narrative of Swiss neutrality – like that of Austria – regularly paints an exaggerated, idealised picture of neutrality,⁷² highly qualified sources⁷³ have recently published very nuanced and fundamentally critical analyses of the

72 However, there have long been notable exceptions to this view. See, for example, Hans-Ulrich Jost's sustained critical engagement with Swiss neutrality, including: "Origines, interprétations et usages de la 'neutralité helvétique'," *Matériaux pour l'histoire de notre temps* 93 (2009), 1–12; "No money, no Switzerland: a realistic history of Swiss neutrality," in *Nor good nor bad nor neutral*, Colloquium, 9 September 2009, Berkeley Center for New Media; "Le double jeu de la neutralité," *L'Hebdo*, 2 June 2010; and "Neutralité helvétique: Saisir les opportunités," in *L'Europe. Encyclopédie historique*, ed. Christophe Charle and Daniel Roche (2018), 1632–1640.

For the legend portraying the Battle of Marignano (13–14 September 1515) as the "birth" of Swiss neutrality, see Marco Jorio, *Die Schweiz und ihre Neutralität: eine 400jährige Geschichte, Hier und Jetzt*: Zurich 2023, 35ss. For the development of the law of neutrality more generally, see Mark E. Villiger, *Handbuch der Schweizer Neutralität*, 2023, 21ss.

73 See Thomas Cottier, note 7, as well as *idem*, *Das Ende der Neutralität*, in: *NZZ*, 15 June 2022, p. 19.

subject. Two monographs published in 2023 have also greatly enriched the Swiss debate on neutrality law.⁷⁴

Swiss neutrality thus emerged historically from a position of weakness and was accepted by the major European powers primarily for their own interests, as it created a buffer between France and Austria (Austria-Hungary from 1867).⁷⁵ It was not neutrality as such, but rather favourable circumstances, that spared Switzerland from the world wars. Switzerland leveraged its neutral status with considerable commercial acumen, yet today that same status is increasingly proving a disadvantage in economic, political, and security terms.⁷⁶

A hallmark of Swiss neutrality has long been its capacity to adapt to changing circumstances.⁷⁷ Thus, reliance on “differential” neutrality enabled Switzerland to join the League of Nations in 1920.⁷⁸ More recently, the notion of “cooperative neutrality” has been advanced not only to avoid Switzerland being entirely sidelined in the context of the war in Ukraine, a stance widely viewed unfavourably internationally, but also to modernise

74 See Marco Jorio, *Die Schweiz und ihre Neutralität – Eine 400jährige Geschichte, Hier und Jetzt*: Zurich 2023 and Mark E. Villiger, *Handbuch der schweizerischen Neutralität*, 2023. See also Astrid Epiney/David Kläui/Sophie Dukarm, *Die Neutralität der Schweiz – status quo und Perspektiven*, in: 144 *Zeitschrift für Schweizerisches Recht* 2025, II, pp. 5–94.

75 See Thomas Cottier (note 7). As has been emphasised many times in the literature – see most recently Marco Jorio (note 72) in particular – neutrality was also a valuable instrument for holding together a country divided by political and religious conflicts.

76 See Thomas Cottier (note 7).

77 See Anna Petrig, *Flexible Neutralität: Eine neutralitätsrechtliche und –politische Verortung der Sanktionen der Schweiz gegen Russland*, in: *VerfBlog* 2022/3/04, under *Neutrality Law*, <https://verfassungsblog.de/flexible-neutralitat/>: “The policy of neutrality is an instrument that Switzerland has always handled flexibly (and at times quite opportunistically)” (translated from German). See also Marco Sassòli, in: Peter Hilpold, Matthieu Gillibert, Johanna Rainio-Niemi and Marco Sassòli, *Neutrality Law In A Comparative Perspective: Austria, Switzerland, Finland, The Defense Horizon Journal*, 2023, <https://www.thedefensehorizon.org/post/neutrality-law-comparis-on-austria-switzerland-finland> (10 August 2023).

78 In 1938, Switzerland reverted to “integral” neutrality, in part because of the League of Nations’ evident failure as a system of collective security, and in the hope that this stance would better serve Switzerland’s own security interests.

Switzerland's official understanding of neutrality more generally.⁷⁹ To date, however, these initiatives have not succeeded.⁸⁰

Whether Switzerland's commitment to perpetual neutrality, undertaken at the Congress of Vienna, can still be maintained in today's fundamentally altered landscape of international law and politics in Europe is highly questionable. There is likewise little convincing justification for the frequently asserted claim that Swiss neutrality has the status of customary international law, or any adequate explanation of it. Mere factual acknowledgment of Switzerland's neutral status can hardly be taken to establish state practice and *opinio juris*; and even if one were to attempt to do so, it would remain unclear who would be entitled or bound under such "customary law."

As noted above, modern international humanitarian law, in particular the four Geneva Conventions of 1949 and Additional Protocol I of 1977, does presuppose the existence of neutral States.⁸¹ Nevertheless, this does not amount to a right to neutrality under international law. Rather, it simply presupposes neutrality, where it exists, without examining its precise legal basis, in order to serve humanitarian objectives.

Even the enshrinement of neutrality in the Swiss Constitution is comparatively weak, and the obligations that flow from it are correspondingly limited. Swiss legal scholarship regularly stresses the primarily internal character of the Constitution's neutrality-related provisions.⁸² The Federal Constitution of 1999 mainly allocates competence over neutrality matters, entrusting constitutional responsibility to the Federal Assembly (Art. 173) and the Federal Council (Art. 185). It does not, however, express any normative preference for neutrality or accord it elevated constitutional rank: neutrality is absent from the purpose clause (Art. 2), the foreign policy objectives (Art. 54), and the security policy framework (Art. 57).⁸³

79 See "Die Presse", 25 August 2022, p. 1. The efforts of Swiss Federal President *Ignazio Cassis* in this regard must be regarded as having failed, given the rejection of the preparatory report on 7 September 2022.

80 For a very clear statement in this regard, see *Marco Jorio*, 2023, p. 468: "Under international law, there should no longer be any neutrality in the case of aggression." (Translation by this author).

81 See *Manfred Rotter*, *Begründung und Ausgestaltung der immerwährenden Neutralität*, 2007, p. 182. See also *Peter Hilpold*, *Solidarität und Neutralität*, 2010, p. 19.

82 See *Urs Saxer*, Art. 185, para. 35, in: *Ehrenzeller/Schindler/Schweizer/Vallender*, *Die schweizerische Bundesverfassung – St. Galler Kommentar*, 3rd ed. 2014.

83 See *Alois Riklin*, *Checkliste zur Neutralität der Schweiz*, September 2022, <https://unrecht.ch/2022/08/04/aloes-riklin-checkliste-zur-neutralitaet-der-schweiz/>.

It has been argued that Swiss neutrality, in its form as “permanent neutrality”, has crystallised into customary constitutional law, with the consequence that any renunciation would require a referendum.⁸⁴ This is an acceptable position on an issue that is, in the end, largely political. However, as set out above, the evidence for the existence of such a rule of customary international law is thin, if it exists at all. Of decisive importance in this regard is, what is meant by “neutrality”. As the historical literature on Swiss neutrality shows, the content of the concept has been continuously reinterpreted and has evolved over time.⁸⁵

Moreover, in some instances theory and practice diverged to a very substantial degree.⁸⁶ This raises a further question: which understanding of neutrality could plausibly have crystallised into customary international law? The strict provisions of the Swiss War Material Act, which, until recently, also prohibit the re-export of Swiss weapons by the purchasing state, are difficult to derive from international law,⁸⁷ as will be discussed in detail below. A related difficulty is that classical neutrality law was developed with inter-state wars in mind, whereas most contemporary conflicts are internal.⁸⁸ Dietrich Schindler therefore also cautioned against characterising “permanent neutrality” as customary international law.⁸⁹

84 Ibid.

85 See in particular the contributions by *Hans-Ulrich Jost*, note 72.

86 Ibid.

87 See Art. 18 Swiss War Material Act of 13 December 1996 (*Kriegsmaterialgesetz – KMG*), in force since 1 April 1998, AS 1998 794. Section 3 of the Austrian KMG of 18 October 1977 prohibits exports to conflict zones and to countries where there is a risk that the weapons will be used to suppress human rights, and provides for the possibility of imposing conditions and requirements to prevent these prohibitions from being circumvented (e.g. the submission of an “end-user certificate” with regard to the aforementioned export bans; Section 3(2) KMG). In this sense, the Swiss KMG is much more restrictive and less flexible in its application than the Austrian one. See also, however, the recent reform attempts relating to the Swiss KMG of December 2025.

88 See *Urs Saxer* (note 82), para. 33 as well as *Peter Hilpold*, *Die österreichische Neutralität und der Kampf gegen den Terrorismus*, 24 JRP 2016, pp. 282–286.

89 See *Dietrich Schindler*, *Die Lehre von den Vorwirkungen der Neutralität*, in: E. Diez et al., FS Rudolf Bindschedler, Stämpfli: Bern 1980, pp. 563–582 (574). *Dietrich Schindler's* studies on neutrality law reflect very well the changing views on this subject in academia over the decades. While Schindler still held the view in 1969 that Swiss neutrality was customary international law (see: “Aspects contemporains de la neutralité”, in: *Recueil des cours* 1967 II, pp. 226–319, 302), by 1996 he had adopted the following position, which remains highly convincing today: “*This [...] means that traditional neutrality law has evolved from law with generally binding force into little*

In Austria, by contrast, the question whether neutrality forms part of the constitution's "fundamental provisions" (Baugesetze), such that any amendment would require a referendum, has been answered in the negative.⁹⁰ In Switzerland, however, accession to NATO would in any event require a referendum pursuant to Article 140 of the Federal Constitution.⁹¹

Traditionally, Switzerland and Austria were seen as markedly different in terms of defence capability. Switzerland was long regarded as highly capable of self-defence ("Switzerland does not have an army; Switzerland is an army")⁹², but this assessment has recently been questioned. Switzerland's autonomous defence capacity is now often rated almost as poorly as Austria's has long been: with defence spending of around 0.7% of GDP, Switzerland is said to be no longer able to defend itself independently and instead to free-ride, in particular on the defence efforts of NATO countries.⁹³ Austria's defence budget, at roughly 0.8% of GDP, is only marginally higher.⁹⁴

Thomas Cottier has recently offered a particularly pointed assessment of the current status of Swiss neutrality:

"Switzerland will also have to rethink its right to neutrality and its policy of neutrality. Slogans such as active neutrality, peace promotion, good offices, mediation and upholding international law are not enough in this context. Switzerland's right to neutrality is proving to be an obstacle

more than a set of guidelines for states that place value on being regarded as neutral or that have committed themselves to permanent neutrality." (Translation by this author). See Dietrich Schindler, Die politischen Änderungen in Europa und die dauernde Neutralität, in: H. Neuhold/B. Simma (eds.), Neues europäisches Völkerrecht nach dem Ende des Ost-West-Konfliktes?, 1996, pp. 141–145 (143).

90 See Walter Berka, Verfassungsrecht, 8th ed. 2021, para. 215.

91 See Alois Riklin, Checkliste zur Neutralität der Schweiz, September 2022, <https://unserrecht.ch/2022/08/04/aloes-riklin-checkliste-zur-neutralitaet-der-schweiz/>.

92 In this sense Wolfgang Mueller (University of Vienna), echoing the well-known dictum. Cited according to Werner Bartl (note 7).

93 See statista 2022 with reference to SIPRI April 2022.

94 See Thomas Cottier, Der Krieg in der Ukraine: Ein Wendepunkt in den Beziehungen der Schweiz zur Europäischen Union und zur NATO?, in: 32 SRIEL 2022, pp. 547–555 (554, translation by this author). See also Marco Jorio, 2023, p. 467:

"The classic law of neutrality laid down in the Hague Convention of 1907, which Switzerland is currently the only country to stick to obsessively, is outdated and has now been superseded by other rules of international law." And further: "Switzerland could [...] abandon its neutrality without harm due to its geopolitical, historical and international legal situation." Ibid., p. 468.

to effectively supporting a people's struggle for democracy and freedom beyond humanitarian aid.”⁹⁵

The tightening of the War Material Act (KMG) in 1996⁹⁶ has triggered renewed and intense debate in 2021, culminating in a reform that entered into force on 1 May 2022.⁹⁷ Under Art. 18 KMG, the re-export of war material supplied to foreign governments, or to companies acting on their behalf, is generally prohibited. To secure compliance, the recipient states must provide “non-re-export declarations”. While the Federal Council may still authorise such “foreign transactions” under Art. 22a KMG, the 2021 reform (effective 1 May 2022) added a further limitation in Art. 22a(1): re-export to war zones is categorically excluded, irrespective of whether the end user is the aggressor or the victim of an attack.⁹⁸

Because the ban applies without any temporal limitation, Switzerland is, in a key respect, placed outside the international solidarity coalition supporting Ukraine. It also imposes a lasting constraint on Swiss arms exports. This stringent re-export prohibition, which lacks any basis in international law, has drawn substantial criticism both internationally and domestically. In December 2025, it was decided to soften the ban. It is still unclear, however, whether this amendment will enter into force and what its practical implications will be.

Already Parliamentary initiative 23.403 of 21 February 2023 was intended to provide at least a partial remedy by permitting re-export after five years, even where the destination state is involved in an internal or international

95 See *Thomas Cottier* (footnote 7). Basically, this judgement is very similar to the one made regarding Austria's policy of neutrality. See *Peter Hilpold*, *Die Made im Speck – Die österreichische Neutralität im Kontext der Ukraine-Krise*, *VerfBlog*, 14 March 2022, <https://verfassungsblog.de/die-made-im-nato-speck/>.

96 *Kriegsmaterialgesetz* of 13 December 1996, in force since 1 April 1998, AS 998 794.

97 Amendment of 1 October 2021, AS 2022 226. For more details, see *Thomas Cottier*, *Neutralität, Kriegsmaterial und das Gewaltverbot*, in this volume pp. 241–283.

98 “Foreign transactions pursuant to Article 22 and the conclusion of contracts pursuant to Article 20 shall not be authorised if:

“the country of destination is involved in an internal or international armed conflict; [...].”

See *Marco Jorio*, 2023, p. 456. According to *Thomas Cottier*, this practice of the Swiss authorities is not directly based on the KMG, as Articles 22 and 22a KMG expressly refer to goods “for recipients abroad”, but not to goods that are already abroad and are owned by a foreign state for its benefit and use. See *Thomas Cottier*, *Die Wiederausfuhr von Kriegsmaterial: Die Zeit ist reif für eine Praxisänderung*, in: *Die Schweiz in Europa, Kriegsmaterial-Wiederausfuhr: Zeit für eine Praxisänderung von Thomas Cottier - Vereinigung die Schweiz in Europa*.

armed conflict, provided that it is exercising its right of self-defence under international law. If the UN Security Council were unable to reach agreement, a two-thirds majority vote of the UN General Assembly finding a breach of the prohibition on the use of force under Article 2(4) of the UN Charter would suffice.

This would have been an innovative and original approach, drawing on the 1950 *Uniting for Peace* resolution.⁹⁹ Although that resolution has been invoked only intermittently over the decades and the resulting practice is not especially extensive, it nonetheless exhibits a degree of consistency.¹⁰⁰ The proposal, however, did not succeed.

Even if one were to assume that a right of neutrality under international law continues to exist, a proposition that, as shown, is far from compelling, priority must, as Hersch Lauterpacht made clear in 1953¹⁰¹, be accorded to UN peacekeeping law. It must therefore be possible to provide assistance to the victim of an act of aggression without such assistance necessarily constituting an act of aggression, or having to be characterised as “collective self-defence”. This was a central concern for states supporting Ukraine, which sought to avoid being regarded as parties to the conflict.¹⁰² Where, as in the case of Ukraine, the UN General Assembly has determined that aggression, in this instance by Russia, has occurred,¹⁰³ the conditions for UN-legitimised self-defence pursuant to the “Uniting for Peace” resolution are fulfilled.

99 UNA Res. 77 (V) of 3 November 1950.

100 For more details, see *Christian Tomuschat*, “Uniting for Peace” – A Review After 50 Years, in: 76 *Die Friedenswarte* 2-3/2001, pp. 289-303; *Andrew J. Carswell*, Unblocking the UN Security Council: The Uniting for Peace Resolution, in: 18 *JCSL* 3/2013, pp. 453–480; *Larry D. Johnson*, “Uniting for Peace”: Does it Still Serve any Useful Purpose?, in: *AJIL Unbound* 2014, pp. 106–117; *Stefan Talmon*, The Legalising and Legitimising Function of UN General Assembly Resolution, in: *AJIL Unbound* 2014, pp. 123–128; and *Michael P. Scharf*, Power Shift: The Return of the Uniting for Peace Resolution, in: 55 *Case Western Reserve Journal of International Law* 2023, pp. 1–29.

101 See *Hersch Lauterpacht*, 1953.

102 This question remained largely unaddressed. Only a few states referred explicitly (Albania) or implicitly (Poland) to the right of collective self-defence. Germany, on the other hand, explicitly ruled out the existence of a situation of collective self-defence. For more details, see *Giulio Bartolini*, The provision of belligerent materials in the Russia-Ukraine conflict: Beyond the law of neutrality?, in: *Questions of International Law, Zoom-out* 99, 2023, pp. 3–21, referring to UN Doc S/PV.9256, UN Doc S/PV.9126 and Bundestag-Drucksache 20/1918 of 18 May 2022.

103 UNGA Res. ES-11/1 of 2 March 2022 (adopted with 141 votes in favour, 5 against and 35 abstentions).

Even if one were to disregard the primacy of UN law under Article 103 of the UN Charter and, more generally, ignore the prevailing authority of UN peacekeeping law, the concern that curtailing the re-export ban would violate the law of neutrality was entirely unfounded. Even the remaining proponents of a right of neutrality under international law concede that there is no evidence of any corresponding requirement under customary international law.¹⁰⁴

Although this proposed amendment did not receive majority support, the political mood in Switzerland has shifted in the meantime: The willingness to rearm, which has been evident throughout Europe since at least the beginning of 2025, has led to a strong upswing in the European arms industry, from which the Swiss arms industry would hardly benefit with the restrictive version of the KMG from 2021. On this basis, there are now strong tendencies towards liberalisation of arms exports, with the creation of legal regulations that pay lip service to neutrality but make the underlying concept of neutrality appear even more incoherent.¹⁰⁵

The “Manifesto Neutrality 21” (29 May 2024)¹⁰⁶ offers an approach that, in conformity with international law, seeks to preserve neutrality as a foreign-policy instrument while remaining firmly anchored in UN law. Framed in ten points, it calls for strict adherence to UN law and, at the same time, highlights the scope that this legal order affords for a credible policy of neutrality. It argues that Switzerland should define the content

104 See *James Upcher*, *Neutrality in Contemporary International Law*, OUP: Oxford 2020, p. 85. In this sense, see also *Thomas Cottier*, *Die Würde des Menschen steht im Mittelpunkt*, NZZ 23 June 2023, p. 19.

105 See www.srf.ch/news/schweiz/kriegsmaterial-export-diese-lockerungen-hat-der-staenderat-beschlossen-die-uebersicht.

In addition, efforts have recently been made to further expand the right to neutrality, in particular through the “Neutrality Initiative” (<https://neutralitaet-ja.ch/>). According to this initiative, an Article 54a should be added to the Swiss Federal Constitution, which should contain the following provision in paragraph 3:

“Switzerland does not take part in military conflicts between third countries and does not adopt non-military coercive measures against belligerent states.” (Translation by this author). Under this concept, Switzerland would continue to implement UN sanctions, but would generally refrain from adopting EU sanctions. In practice, this would preclude Swiss participation in EU restrictive measures against Russia in response to its attack on Ukraine. In the longer term, accession to a military or defense alliance would be ruled out; cooperation with such alliances would be envisaged only in the event of a direct military attack on Switzerland. How such a far-reaching retrenchment of solidarity could be translated into workable policy, however, remains uncertain.

106 <https://suisse-en-europe.ch/neutralitaet-21/>.

and modalities of its neutrality autonomously and should refrain from codifying its neutrality policy in binding legal form (point 3). The manifesto is clearly oriented towards contemporary challenges, including the war in Ukraine. This focus is articulated with particular clarity in points 9 and 10:

9. The exercise of neutrality is subordinate to the requirements of collective security and to humanitarian interventions, including under the Responsibility to Protect (R2P). It therefore permits Switzerland to provide appropriate support, for example by granting overflight rights or authorising the transit of troops and matériel in support of a victim of aggression and the affected civilian population.

*10. Switzerland should amend the War Material Act. The export of war material should be regulated anew in light of Switzerland's security and foreign policy interests. The structure and modalities of arms exports should be determined autonomously, and not be dictated by considerations of neutrality.*¹⁰⁷

On this basis, it remains uncertain whether Switzerland could provide support in the form of collective self-defence. The exercise of the Responsibility to Protect typically presupposes Security Council authorisation, and Article 7 of the “Manifesto” appears to formulate only a negative obligation with respect to self-defence, namely that Switzerland must refrain from any conduct that would favour the aggressor.¹⁰⁸ However, as shown, there are several arguments that collective self-defence is, in any event, compatible with UN law; and under the manifesto, neutrality is framed merely as an instrument of foreign policy rather than as a legal entitlement. A complete decoupling of arms export law from neutrality considerations would, accordingly, give Switzerland a broad margin of manoeuvre, comparable to that enjoyed by other states with similarly developed defence industries.

VIII. The Sky Shield Initiative (European Sky Shield Initiative – ESSI)

The war in Ukraine has once again underscored that the principal military threat is increasingly airborne, posed by aircraft and, in particular, by

107 Translation by this author.

108 See P. Hilpold (ed.), *Responsibility to Protect (R2P) – A New Paradigm of International Law?*, Brill/Martinus Nijhoff: Leiden/Boston 2015 and *idem*, *Intervening in the Name of Humanity: R2P and the Power of Ideas*, in: 17 *Journal of Conflict and Security Law* 1/2012, pp. 49-79.

missiles and remotely piloted drones. Even “neutral” states must respond to this challenge. Yet this war also illustrates, in especially stark and practical terms, how difficult it has become to maintain neutrality as a workable and meaningful concept. For European states with comparatively small territories, effective protection against aerial threats is, in practical terms, achievable only through cooperation. This, however, raises questions about the compatibility of such arrangements with the traditional prohibition on alliances.

On 7 July 2023, Austria and Switzerland announced their intention to participate in “Sky Shield” and signed a corresponding declaration, accompanied by an additional declaration stating that the neutrality of both states would be preserved.¹⁰⁹ At the same time, it remains unclear, or at least not publicly known in sufficient detail, what concrete forms cooperation within the “Sky Shield” framework will take. In various quarters it has been suggested that the initiative primarily functions as a joint procurement platform. Participation in such a mechanism would not be problematic, at least according to a neutrality that is not too demanding. However, a number of statements indicate that “Sky Shield” may extend beyond procurement to include coordinated defence measures, potentially involving joint operational responses. Such a development would constitute a military alliance—an arrangement prohibited by Austrian constitutional law and incompatible with the traditional Swiss conception of neutrality.¹¹⁰ How assurances derived from neutrality law could be squared with an integrated air-defence system of this kind therefore remains, for the time being, an open question.

109 See “Austria and Switzerland join European air defense,” *Der Spiegel*, 7 July 2023, <https://www.spiegel.de/ausland/sky-shield-oesterreich-und-schweiz-schliessen-sich-europaeischer-luftverteidigung-an-a-85e65733-5c7f-4acf-a182-33d451dc471d>. The following considerations are based on *P. Hilpold*, The compatibility of the “Sky Shield” initiative with Austrian neutrality law: “You cannot have it both ways,” *Legal opinion* 2024, <https://unzensuriert.at/280458-gutachten-bestaetigen-sky-shield-mit-neutralitaet-nicht-zu-vereinbaren/>.

110 Former Austrian Vice-Chancellor *Kogler* sought to redefine the boundaries of security cooperation by asserting that the ‘Sky Shield’ initiative does not constitute a ‘military alliance in the strict sense.’ However, it remains legally opaque how a neutrality exception can be derived from constitutional jurisprudence for joint defense efforts based on such a distinction. The practical implications and precise legal definition of an alliance that is not one ‘in the strict sense’ remain fundamentally unclear.” See „Sky Shield: Teilnahme Österreichs für Kogler ‘logisch’“, in: *Die Presse* v. 31.7.2023, https://www.diepresse.com/13494512/sky-shield-teilnahme-oesterreichs-fuer-kogler-logisch?ref=ues_a.

The European Sky Shield Initiative (ESSI) originated as a German proposal and quickly attracted the support of fifteen European states. These were all NATO members, with the exception of Finland, which had not yet joined the Alliance at the time. On 13 October 2022, participating states signed a Letter of Intent 'to strengthen the European pillar in NATO's Integrated Air and Missile Defence (IAMD) through the European Sky Shield Initiative (ESSI)'.

The circle of participants subsequently expanded: Denmark and Sweden joined in February 2023, followed one year later by Greece and Turkey. Austria and Switzerland acceded in July 2023, albeit subject to the aforementioned "neutrality reservation", the implications of which will be examined below.

In principle, the final sentence of Article 23j(1) of the Federal Constitutional Law already permits the establishment of an EU "common defence" with Austrian participation. Constitutionally, however, this requires the analogous application of Article 50(4) B-VG on the approval of international treaties, and thus a constitutional majority in both the National Council and the Federal Council.¹¹¹

However, the Sky Shield initiative does not appear to be taking this route. Despite its label as "European", it is neither an EU initiative nor an endeavour embraced by the EU Member States as a whole. On the contrary, several key economic, political, and military actors within the Union, including France, Italy, Spain, and Poland, are not among its supporters. Precisely because the initiative has exposed and reinforced divergences within the EU, it is unlikely that the Union as an institution will adopt or "communitarise" Sky Shield in the foreseeable future.

The Memorandum of Understanding dated 13 October 2022 explicitly situates this initiative within a NATO framework, specifically citing the goal of 'strengthening the European pillar in NATO's Integrated Air and Missile Defence (IAMD)'. Consequently, the ESSI serves as a foundational element of European defence that maintains, at the very least, a functional and factual integration into the NATO system.

If the prohibition against joining a military alliance is to remain meaningful, it must encompass modern security architectures like the ESSI.

111 See *Th. Öhlinger*, Austria's neutrality in the European Union, in: 73 ZÖR 2018, pp. 621-634 (630) and *S. Griller/W. Obwexer*, Völker-, unions- und verfassungsrechtliche Rahmenbedingungen für militärische Kooperationen Österreichs, in: 145 JBl. 10/2023, pp. 617-636 (629).

From this perspective, the BVG Neutrality extends beyond a mere ban on formal NATO membership; it must also preclude agreements designed to fulfill NATO objectives in a broader capacity. That such an alignment is intended, is made explicit by the title of the October 13, 2022, agreement, which defines the initiative as a “pillar in NATO’s integrated air and missile defence”.

It is noteworthy that Austria and Switzerland issued a joint “neutrality reservation” upon signing the Letter of Intent with the following wording:

‘The Signatories will abstain from any measures operational or otherwise that could be construed as an establishment of or participation in a military alliance or as an acceptance of a permanent military presence on their territory.’

This raises a number of issues, in particular:

- Verification: Who would be competent to verify compliance with these voluntary commitments, and by what mechanisms?
- Enforcement: What legal or practical consequences would follow from a breach of the commitments?
- Authoritative interpretation: Who would have the power to interpret, in a binding manner, terms such as “operational measures”, “participation in a military alliance”, or “permanent military presence”?
- Structural compatibility: Are these commitments, as formulated, structurally compatible with the European “Sky Shield” initiative at all?

Under point 4, the signatories also insist on a right of withdrawal should a participating state become involved in a military conflict. This immediately raises the question whether such a withdrawal clause is structurally compatible with the obligations inherent in ESSI and, given the nature and tempo of the military operations at issue, whether it would be practicable at all in a conflict scenario.

Moreover, the signatories expressly contemplate participation in joint training and exercises “for the purposes of ESSI” (point 3 of the reservation clause). In doing so, they are not merely aligning themselves with a technical framework; they are, in substance, affirming the initiative’s aims and its operational direction.

They further insist, under point 4, on a right of withdrawal should a participating member become involved in a military conflict. This raises the question whether such a withdrawal is structurally compatible with

ESSI-related commitments and, given the character of the operations at issue, whether it would be practically feasible once a conflict has begun.

In other words, by committing to joint training and exercises “for the purposes of ESSI” (point 3 of the reservation clause), the signatories are ultimately endorsing ESSI’s purposes themselves. This concern is compounded by a further issue that remains unresolved: the precise institutional and operational design of ESSI.

Is ESSI in fact merely a “procurement platform”, as widely reported in the media? If so, the initiative could plausibly be regarded as compatible with neutrality, and a right of withdrawal in the event of war could also be safeguarded. Yet in that case, the initiative would not only be a striking misnomer (what, precisely, does a joint procurement arrangement have to do with a “shield”?), but it would also stand in open tension with the text of the Letter of Intent of 13 October 2022, notwithstanding the document’s vague phrasing.

If, however, the objective is to establish an air-defence shield over the airspace of participating states, modelled on international examples such as Israel’s “Iron Dome” or the “Golden Dome” planned for the United States, and if this includes joint command structures, then several considerations point in a different direction. The character of aerial threats, the short response times involved, the limited territorial size of many of the areas to be protected (particularly Austria’s), and the economies of scale inherent in the relevant technology (which would make separate national command centres economically unrealistic) strongly suggest that the initiative’s true purpose is the creation of a military alliance, albeit one with a limited scope. Such an outcome would amount to a clear breach of neutrality.

Even assuming that nationally autonomous command centres could be established, thereby enabling Austria in particular to retain the final decision on the employment of defensive weapons against airborne threats (and leaving aside that no one has yet provided a convincing explanation of how this could be achieved technically, quite apart from the costs), the decisive point remains: the interconnection between the upstream structures that feed into the national command centres and, above all, the interoperability of the weapons systems involved would in itself already amount to a military alliance.

On any understanding of “military alliance” that is attentive to contemporary operational realities, the case for classifying such arrangements as an alliance is compelling. Consequently, even under the more autonomy-

friendly assumption described above, the conclusion remains that neutrality would be infringed.

A further aspect concerns the provision of radar equipment and radar data to other participants in Sky Shield. In this context, it has been suggested that Austria's Goldhaube system could be made available for use within Sky Shield.¹¹²

There can be no doubt that such a step would have nothing to do with a mere "procurement platform". Rather, a contribution of this kind would, at minimum, constitute an element of a military alliance. This alone illustrates how unrealistic it is to assume that a right of withdrawal could be meaningfully exercised in the event of an attack on a member of this system, as asserted in the Declaration of Intent of 7 July 2023.¹¹³

IX. Conclusions: Austria and Switzerland's neutrality is currently less a matter of international law than of autopoietic nature.

The legal binding force—and indeed the very relevance—of Austrian neutrality remains a recurring theme within domestic academic discourse.¹¹⁴ However, at the level of formal legal policy, these scholarly debates are often overlooked or inadequately addressed. For the political establishment, neutrality has evolved into an entrenched principle presented as a binding mandate, even if such assertions frequently fail to withstand rigorous legal scrutiny.

It is widely acknowledged that the traditional concept of neutrality, insofar as it can be captured in a single definition at all, is increasingly

112 <https://www.bundesheer.at/aktuelles/detail/skyshield-faq>.

113 If, for example, the "Goldhaube" system identifies an attack against a member, can this information still be forwarded to the member concerned? Doing so could constitute a breach of neutrality; however, failing to do so calls into question the very purpose of the system. For a "permanently neutral state" in particular, the exchange of radar data would therefore be highly problematic even in peacetime (always on the condition, of course, that "permanent neutrality" is given substantial content).

114 See, for example, the numerous articles by *Gerhard Jandl*, who over many years has followed and commented on the legal debate surrounding Austrian neutrality. See, for example, *Gerhard Jandl*, *Neutralität und österreichische Sicherheitspolitik*, in: *Gerald Schöpfer* (ed.), *Die österreichische Neutralität – Chimäre oder Wirklichkeit?* Graz 2015, p. 199 ff. See also *Peter Hilpold*, *How to Construe a Myth: Neutrality Within the United Nations System Under Special Consideration of the Austrian Case*, in: 18 ChJIntL 2019, p. 247-279.

difficult to reconcile with contemporary geopolitical realities. Recent efforts at “adjectival” reconfiguration, such as “differential neutrality,” “dynamic neutrality,” “neutrality with variable geometry,” or “neutrality reduced to its core,” may suggest adaptability, but often amount to little more than a rhetorical gloss. On closer examination, these formulations tend to falter because they are inherently vague and applied inconsistently.

The same skepticism extends to collective defence commitments, including those associated with the “Sky Shield Initiative.” In the end, the decisive issue is technical feasibility. Absent credible operational viability, such commitments risk being perceived as political appeasement or even serves as a convenient fig leaf.

The political leadership’s targeted efforts at persuasion, driven in part by less than noble motives, have borne fruit, and the broader public now expects this promise to be honoured.¹¹⁵ Most of the population no longer anticipates, let alone demands, a legal justification for it. A utopian idea has acquired a momentum of its own.

There are numerous parallels between the Swiss debate on neutrality law and the Austrian one, but also significant divergences. What is particularly striking in Switzerland is the firm stance taken by established international law scholars in favor of a fundamental rethinking of Swiss neutrality¹¹⁶, even though there have recently been various attempts to defend the concept of neutrality, albeit on grounds that this author finds less persuasive.

The debate on neutrality within Austrian academia appears less intense today than it was in the past. In both periods, however, the same question arises: to what extent do academic discussions reach the wider public and thereby shape democratic decision-making? The repeated reappearance of

115 See with regard to the debate on neutrality policy, the very apt remarks by *Heinrich Neisser*:

“Austria’s conduct during the accession phase already reveals the duplicity that would later characterize the debate on Austrian neutrality. Unlike the other neutral applicants for the 1995 enlargement—namely Sweden and Finland—Austrian neutrality was frequently addressed throughout the accession process. In the Treaty of Accession itself, however, it was omitted entirely. To this day, Austrian political figures profess their commitment to neutrality in a largely undifferentiated manner. In doing so, they reinforce a fundamental sentiment among the public, many of whom view neutrality as a core element of Austrian identity and perceive no inherent conflict between neutrality and EU membership.” (Translation by this author). See *Heinrich Neisser*, 25 Jahre Mitgliedschaft Österreichs in der Europäischen Union, ÖGIE Policy Brief 23/2020, p. 4.

116 As stated in the manifesto “Neutrality 21”.

political notions of neutrality that have long been discredited in scholarly debate, and their subsequent uptake by media discourse, suggests that this “transmission belt” between academia, public debate, and political practice is weak or malfunctioning.

Politics, by contrast, often approaches neutrality differently, at least in part. If political parties are viewed through the lens of the new political economy (*public choice theory*) as vote maximisers,¹¹⁷ they will tend to adopt the position most likely to increase electoral support. Once an inflated or absolutist concept of neutrality becomes embedded in public discourse, it can develop into a self-reinforcing dynamic. Over time, this may produce escalating competition among parties to outbid one another with increasingly far-reaching legal and political demands framed as “defence of neutrality.” In Switzerland and Austria, there are indications of such a trend, including demands that are largely insulated from empirical or scientific scrutiny.¹¹⁸

As the literature has shown,¹¹⁹ the interests of neighbouring states and not necessarily those of the relevant “world powers” were decisive in the emergence of both Swiss and Austrian neutrality. Initially, there was no sign of any “neutrality euphoria” in either country.¹²⁰ Over time, however,

117 See *Anthony Downs, An Economic Theory of Democracy*, Harper & Brothers: New York 1957. As is well-known, the basic concepts of this idea can be traced back to Joseph Schumpeter.

118 In August 2023, it was announced that representatives of the Austrian Armed Forces would play a more prominent role in schools, with the stated aim of promoting “comprehensive national defense” and addressing neutrality in education. The Austrian National Union of Students (ÖH) criticised this initiative as a “militarisation of education” (*Der Standard*, 6 August 2023, citing a statement by ÖH Chair *Nina Mathies*).

Against the backdrop of an ongoing and largely unresolved debate about the legal meaning and scope of neutrality, and given the frequent political disregard for well-established principles of international and EU law, it is reasonable to ask which “law of neutrality” is actually being taught. From a logical and pedagogical standpoint, it would seem preferable to first establish a solid, evidence-based consensus between academia and policymakers before passing “simplified summaries” on to pupils, especially where the underlying premises and authorship of those summaries remain unclear.

119 See, for example, the contributions by *H.-U. Jost*, note 72, and *M. Jorio*, *Die Schweiz und ihre Neutralität – Eine 400jährige Geschichte, Hier und Jetzt*: Zurich 2023, for Switzerland. On the history of the Austrian neutrality, see, for example, *Michael Gehler*, *From Saint-Germain to Lisbon*, Vienna 2020, p. 235 ff.

120 For further discussion of the myth that the Battle of Marignano provided the foundation for Swiss neutrality, see *Marco Jorio*, note 119, p. 35 ff.

attitudes toward neutrality shifted: key stakeholders recognised that a flexibly interpreted concept could deliver substantial political and economic benefits on the international stage. Neutrality thus developed into an “autopoietic” concept, morally and politically exalted in ways that also served to shield its interest-driven and, at times, unsolidary use from criticism.

In Switzerland, this development was accompanied by a corresponding adjustment in historiography, moving from an “invented tradition” in which the idea of neutrality was projected ahistorically far into the past, thereby rendering it effectively unassailable.¹²¹ In both Austria and Switzerland, neutrality has been mystified to such an extent that, within democratic political debate, it is now treated as a settled and immovable fixture.

Debates on the law and policy of neutrality have consistently been shaped by efforts to secure a more advantageous position within the broader structure of international relations. So long as the international system was defined by a largely unfettered right to wage war, neutrality could generate added value for all participating states. With the advent of United Nations law and the general prohibition on the use of force, that foundational premise fell away.

The incentive to invoke purported special rules of international law, often by further stretching the concept of neutrality, nevertheless persisted. Yet this tendency only underscored the opportunism underpinning such claims, which ultimately lacked any plausible legal justification.¹²²

What makes this debate even more complex is that neutrality originated as a concept of international law, yet today it must also be assessed through the lens of EU law. In many countries, unfortunately including Austria, it is often difficult to conduct discussions at the intersection of international and EU law, because many lawyers, let alone non-lawyers, are insufficiently familiar with international law and struggle to grasp its nature and effects. This creates a risk that a concept of neutrality will be incorporated into national law on the basis of assumptions about international law that do not exist in that form and may never have existed.

121 See *Hans-Ulrich Jost*, note 72.

122 See *Hans-Ulrich Jost*, note 72. According to *Alois Riklin*, the Swiss myth of neutrality did not grow “from the bottom up” but “from the top down”. The same can probably be said of the concept of neutrality in Austria. See *Alois Riklin*, *Isolierte Schweiz. Eine europa- und innenpolitische Lagebeurteilung*, in: 1 *Schweizerische Zeitschrift für Politische Wissenschaft*, 2-3/1995, pp. 25-36 (31).

At the same time, it should not be denied that a policy of neutrality can serve a wide range of interests successfully, even where international-law justifications are advanced incorrectly¹²³. A candid and technically sound approach would require acknowledging such arguments as political rather than legal, and not shifting responsibility for contested choices onto an imagined body of international law. As discussed above, the debate on neutrality law in the context of the war in Ukraine, particularly in academic circles, has not altered the conclusion that the law of neutrality is obsolete. From the standpoint of international law, invoking the concepts of neutrality law is therefore of no relevance.

A reference to concepts of neutrality law is neither useful nor necessary for the assessment of arms deliveries to Ukraine under the perspective of international law.

What remains is merely a vestigial “right of neutrality” limited to a few specific nations, notably Austria and Switzerland. Even this remnant lacks solid legal footing; to the extent it ever existed, it has since withered away.

At the political level, neutrality nevertheless remains a serious and influential factor in both countries. Greater clarity would be achieved if the issue were addressed explicitly as a political question rather than framed as a legal debate. That shift would also enable a more sober comparison between the situation in Austria and that in Switzerland. Making transparent the markedly divergent foreign-policy objectives at stake would underscore how context-dependent neutrality discourse is: Austrian neutrality was shaped primarily by the aim of accommodating the USSR, whereas Swiss neutrality, though largely imposed from outside, ultimately fostered cohesion among the country’s linguistically and culturally diverse communities. These differences illustrate that debates about “neutrality law” are driven less by international law than by the particular needs of each national setting. References to international law therefore often function as little more than a legitimising device, invoked to cloak national interests in the authority of a legal order to which, it is assumed, almost any content can be attributed with little risk.

The conflict in Ukraine has compelled both Switzerland and Austria to confront an uncomfortable question: what degree of solidarity are they prepared to demonstrate in the face of an existential threat to the Ukrainian

123 For the significance of Switzerland’s policy of neutrality, see *Didier Pfirter*, *Die Neutralitätspolitik als Kern der schweizerischen Neutralität*, in: FS Stephan Breitenmoser, Basel 2022, pp. 1293–1299.66.

nation, which has become the victim of aggression on a scale unseen in Europe since the Second World War? Against this backdrop, how credible is an appeal to neutrality whose contours are increasingly indeterminate and which can scarcely be reconciled with the UN's peace and security framework, which also entails duties of solidarity?¹²⁴ In this context, the debate over participation in the European Sky Shield Initiative has once again exposed how inconsistent and internally contradictory neutrality discourse often is.

Austria's parallel refusal to participate in mine-clearance operations in Ukraine, justified by reference to neutrality law, further reinforces this perception of incoherence and raises serious moral and humanitarian concerns.¹²⁵ The growing engagement of academia with these questions, plainly visible in Switzerland and to a lesser extent in Austria, offers some grounds for optimism that, over time, public debate will shift from short-term political positioning toward a more objective and legally rigorous examination of neutrality, informed by a spirit of European solidarity, which the international community is increasingly calling for.

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124 On the subject of "credibility" as an essential factor in a policy of neutrality (or a corresponding foreign policy), see also *René Rhinow* in this volume, pp. 69-89, as well as *Ove Bring*, The Changing Law of Neutrality, in: idem/Said Mahmoudi (eds.), FS Sztucki (ed.), Current International Law Issues, Martinus Nijhoff: Dordrecht et al. 1994, pp. 25-50 (25).

125 See „Fachleute sehen Österreichs Neutralität nicht als Hindernis für humanitäre Entminung in der Ukraine“, in: Der Standard v. 11. Mai 2023, <https://www.derstandard.at/story/2000146299719/oesterreichs-neutralitaet-verhindert-fachleuten-zufolge-keine-humanitaere-entminung-in-der> as well as *Peter Hilpold*, Unbehagen im Rechtsstaat, in: Die Presse v. 1. Juni 2023, <https://www.diepresse.com/6294329/unbehagen-im-rechtsstaat>.

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