

Permanence as a unique feature – Switzerland and its policy of neutral

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Abstract

A special feature of Swiss neutrality is its permanence. However, Switzerland can in principle renounce its neutrality. This also applies to its permanence and the transition to situational neutrality. Neutrality is based on a triangular relationship between the neutral party and the warring parties characterised by the principle of protection of good faith under international law. Permanent neutrality presupposes that all warring parties recognise neutrality in the event of a possible future war and can be trusted in. However, this cannot be assumed. The transition to situational neutrality eliminates the need for an ambiguous neutrality policy that restricts the freedom of a sovereign state to shape its foreign and security policy.

"We are neutral because we have always been neutral"

"It will be a long time before we find a new concept of neutrality."

1. Introduction¹²

When we focus below on the nature and the issue of Switzerland's "permanent" neutrality, we are not referring to the long historical duration of neutrality, nor to the time it will take to dispel the mythological notions surrounding neutrality. Rather, we will examine the salient feature of Swiss neutrality, namely its permanence. Neutrality is certainly garnished with

1 The following thoughts are largely based on my study "Peace neutrality – a concept for the future", in: *Plädoyer für eine offene Schweiz* (A plea for an open Switzerland), Zurich 2025, 37 ff. Individual passages are taken verbatim from this study. Further evidence for the theses presented here can also be found there.

2 I would like to thank Dr Paul Seger for critically reviewing a draft version and for further discussion.

other additions. In the traditional description it is "armed"³ – indicating that Switzerland does everything in its power to defend its territory. Since the First World War, it has been sometimes called integral, sometimes differential, comprehensive, active or cooperative.⁴ However, its dominant feature is its permanence, especially in international comparison. This is because Switzerland has maintained a permanent neutral status since 1815. As unchallenged as this permanent neutrality is in this country, the concepts of neutrality and permanence appear vague and complex. Generally, only few are aware within the Swiss public what legal and political neutrality means. Ultimately, Switzerland is simply neutral, as expressed in the first popular quote.

The permanence of Switzerland's neutrality is accepted as an unalterable fact of life and is not questioned. This may be because the exceptional nature of this permanence is not widely known and neutrality is therefore necessarily seen as permanent. Or it may be because it is precisely in this permanence that the true protective nature of neutrality is (still) seen. In the view of the general public, there is *one* neutrality, even if ideas may vary considerably what neutrality means today. The following thoughts are devoted to this enduring neutrality.

2. Neutrality as a triangular relationship

Before examining the precarious state of ordinary neutrality and the phenomenon of the permanence of neutrality in more detail, it is worth taking a look at the often overlooked external functions of neutrality.⁵ These are

3 This addition is both unnecessary and incorrect. It is the Federal Constitution, not primarily neutrality, that obliges Switzerland to maintain credible national defence. And it is the army that is armed, not an institution under international law.

4 When Switzerland joined the League of Nations in 1920, its neutrality was 'differential' in that it committed itself to participating in economic sanctions, but not in military sanctions imposed by the League. Before joining the League of Nations and from 1938 to 2002, Swiss neutrality was "integral" (without any obligation to participate in international economic sanctions). Upon joining the UN in 2002, Switzerland agreed to adopt the sanctions decided by the Security Council. After the Second World War, new adjectives were added, such as the "active" neutrality of former Federal Councillor Micheline Calmy-Rey, the "comprehensive" neutrality of former Federal Councillor Christoph Blocher and the "cooperative" neutrality of Federal Councillor Ignazio Cassis.

5 For internal and systemic functions, see Rhinow, *Friedensneutralität*, 52 ff.

often disregarded in international law studies on neutrality, and are hardly mentioned in political discussions on neutrality. A look at the history of Swiss neutrality shows that it arose in a Europe of warring powers. It essentially consisted of abstaining from wars between others, especially between the states surrounding Switzerland. These were mainly the European great powers, at that time the Habsburg monarchies of Austria, Spain and France, and in the 19th and 20th centuries Germany, Italy, Austria-Hungary and France. Neutrality emerged in a Europe where monarchies dominated the continent with their power politics. It served the great powers to shelter the territories of small states from enemy encroachment, and for the small states it appeared to be a kind of insurance for their continued existence. Neutrality "thrives" on a certain constellation of power. To be politically effective it requires a lasting and stable balance between rival powers, and it is determined by a definable and delimitable conflict.⁶ Neutral states depend on the structural stability of their political environment. The American international lawyer *Hans J. Morgenthau* succinctly expressed the legitimising function of this interlinked set of interests: "As long as these antagonistic interests are in balance, the rules of international law referring to the rights and obligations of neutrality may safeguard the legal status."⁷

This (passive) neutrality in wartime was not only in Switzerland's security interests, but also in those of the European powers. Switzerland was always keen not to be drawn into any war, primarily in order to protect its independence and to safeguard the country's cohesion. The European states, on the other hand, were keen to ensure that Switzerland did not support any other party to the conflict and that no other power occupied Swiss territory, used it as a military assembly area or controlled the Alpine and Jura passes. This is crucial and is often overlooked today: neutrality in war cannot be limited to an autonomous decision by the neutral party, but is a matter of mutual agreement. That is why the preamble to the Swiss Declaration at the Congress of Vienna in 1815 stated that the neutrality of centrally located Switzerland was in the interests of Europe. The signatory powers recognised that "the neutrality and inviolability of Switzerland and its independence from all foreign influence are in the true interests of the politics of Europe as a whole". These "vrais intérêts" of 1815 represented interests that were specific to that time. But what if these "vrais intérêts"

6 Batz, 241 ff.

7 Morgenthau, 483. See also El-Zein, 35.

no longer exist, as is the case today? In Switzerland, however, neutrality is discussed as if the surrounding world had to conform itself to our ideas about neutrality in war, as if neutrality was exclusively an expression of our sovereignty. Critical contemporaries such as the Bernese historian *Sacha Zala* diagnose a Helvetic "sovereignty complex": "We see ourselves as Asterix, successfully defending ourselves against Roman superiority. We believe that sheer willpower and the magic potion of neutrality are enough to ward off external pressure. But when the power exerted on the other side of the table becomes too heavy, Switzerland can really only capitulate and pay a ransom."⁸ *Zala* describes this as a fundamental pattern of Swiss foreign policy.⁹

Neutrality is actually based on a triangular relationship, which is often overlooked in purely legal studies. However, *Stephan Verosta* has highlighted this reciprocal legal obligation: "The rights and obligations of the permanently neutral state correspond to the obligations and rights of the other states [...] through the treaty-like relationship of accepting and recognising the declaration of permanent neutrality."¹⁰ The safety interests of the neutral party are counterbalanced by the interests of the warring parties in the neutral party's abstinence and impartiality.

3. Neutrality is based on trust

The neutral state which is faced with at least two warring parties trusts that it will not be attacked. The protective idea of neutrality relies on this confidence. The protection of good faith is enshrined in international law and means that a state can rely on the lawful and consistent behaviour of another state or an international organisation.¹¹ This protection may be based on an obligation under international law, on implied conduct, on declarations or on concrete actions. The prerequisite of trust is justified good faith. It is often forgotten to recall that the neutral party must check whether its faith

⁸ NZZ am Sonntag, 24 March 2024.

⁹ For example, in 2024, the Federal Council described joining the G7 multinational task force, which aims to track down the assets of Russian oligarchs and enforce the full implementation of sanctions against Moscow, as a real threat to neutrality and rejected it because it could be interpreted as Switzerland's participation in a Western "coalition of the willing".

¹⁰ Verosta, 13.

¹¹ Fundamental to the protection of legitimate expectations in international law Müller, *passim*.

that all warring parties are willing to respect its independence is justified. Can a state that massively violates international law be trusted to honor neutrality? Diplomatic declarations and promises to respect neutrality are not in themselves a guarantee that neutrality obligations will be upheld during an armed conflict. This trust inherent in neutrality can only come into play in a specific conflict situation, not abstractly in all future conflicts. And trust presupposes that the belligerents expressly recognise neutrality in the event of a conflict.

Trust also plays an important role on the part of the belligerents. They rely on the expectation that the neutral party will fulfil its obligations, namely not to favour any party to the conflict militarily and to prevent violations of neutrality. Even the slightest violation of neutrality obligations can be taken by a warring party as an opportunity to deviate from its own neutrality duties – at the expense of the neutral party. Finally, there is also a relationship of trust between the warring parties. Each warring party must be able to rely on the other warring party to respect the integrity of neutral territory and its airspace.

Without this mutual trust, neutrality cannot fulfil its protective function! The dependence on this mutual trust relationship is rarely ever mentioned in Switzerland. If one party concludes that the other party to the conflict is not respecting neutrality, it will not feel bound by it either – again to the detriment of the neutral party. For example, Russia no longer recognises Switzerland as a neutral country because it has adopted the sanctions imposed by the EU after the attack against Ukraine. Interestingly, when discussing the Fifth Hague Convention in academia and practice, the focus is primarily on the rights and obligations of neutral parties, with little or no mention of those of the warring parties to respect neutrality. This said basis of trust inherent in neutrality must remain in place for the entire duration of an armed conflict. All parties involved must be able to rely on all others to comply with their neutrality obligations until the end of the war. This is an expectation that cannot be fulfilled in the reality of modern warfare. As examples from the Second World War show, the interests of war can change in the course of a conflict. This is a highly uncomfortable situation for neutral parties. Realistically, they must anticipate this situation and prepare for such developments before the war begins – in plain language: they cannot rely on the protection of their neutrality.

In the 20th century, The Hague neutrality failed on several occasions, for example in the First World War, when Germany invaded neutral Belgium

in the first days of the war. According to the Bernese historian *Walter Hofer*, the Second World War saw the "greatest demise of neutrality in world history". The Axis powers, but also the USSR, invaded neutral states without restraint because it was in their war interests. For the same reason, the Allies did not always respect neutrality (Azores, Iceland) – albeit in the interest of liberating Europe from totalitarianism. History clearly shows that neutrality in war is only respected as long as it is in the interests of the belligerents – regardless of any signing of the Hague Convention or previous promises made to the neutral parties.¹²

In addition, governments can be replaced by other governments during a war. Even if such a process does not affect the international legal responsibility of a state, it cannot be ruled out that its foreign policy and war interests may change as a result, possibly to the detriment of the neutral party. In this respect, too, the neutral party is in a highly uncertain situation because its confidence in neutrality is built on shaky foundations. In summary, as a result of possible changes in the behaviour of the warring parties, the protective function of neutrality is reduced to the principle of hope – a poor basis for a security policy that safeguards national existence.

4. The precarious situation of ordinary neutrality

In the international arena, neutrality has always been and continues to be primarily a matter of ordinary, occasional or situational neutrality.¹³ It only comes into play after the outbreak of war. On the one hand, it presupposes that the neutral party is fundamentally capable of defending its independence militarily – which is not the case for Switzerland today, not least because of its international economic ties and dependencies. Recently, namely Thomas Cottier has put his finger on this fact. On the other hand, neutrality requires the explicit recognition of all belligerent states which presupposes a certain constellation of interests. In international law, neutrality is traditionally based on the Hague Conventions of 1907. Ordinary

12 We owe Marco Jorio an excellent, fact-based and ideology-free account of the history of Swiss neutrality; cf. Jorio, *passim*.

13 From the extensive literature on ordinary neutrality, reference should be made to the more recent works listed in the bibliography (each with further references), in particular Cottier, Maissen, Mohler, Hilpold, Riklin, Rodrigues, Schaub, Schmid, Seger, Villiger and El-Zein.

neutrality is an instrument of abstinence, characterised by an obligation not to participate in a war between other states and an obligation to remain impartial which primarily means a prohibition to cooperate with warring parties. Neutrality applies when an international armed conflict breaks out.¹⁴ Behind it there is a double distinction: between war and peace on the one hand and between neutrality and warfare on the other. If a state does not participate in the war, it is in principle neutral.

Today, however, two things are controversial: firstly, whether the status of neutrality comes into effect automatically or is merely a right of a non-belligerent state.¹⁵ In practice, non-belligerent states are unlikely to be aware that they automatically assume neutrality status under international law with all its rights and obligations. Besides, further forms of "neutrality" have been added to the classical doctrine of neutrality in international law¹⁶ : so-called qualified neutrality allows a neutral state to support a victim state that has been attacked in flagrant violation of the UN Charter with military supplies. Non-belligerent states retain their neutrality status ("non-belligerency") without, however, being bound by the law of neutrality.

Dietrich Schindler noted 36 years ago that the law of neutrality had largely fallen into oblivion and is now regarded as a special rule of the permanently neutral states of Europe.¹⁷ In any case, the law of neutrality is generally only applied by permanently neutral states.¹⁸ Powers not involved in conflicts, namely the major powers, ignored the law of neutrality and felt free to support one or the other warring party with war material or other goods. Neutrality has always been understood as mere non-participation in armed conflicts. In the war in Ukraine, many states, especially the USA, are providing the victim of the attack with massive aid, despite their neutral,

14 The question of the "beginning of war" is not addressed here, given the complex nature of modern conflicts and the fact that wars are no longer "declared".

15 Rodrigues, 8.

16 Rodrigues, 7.

17 According to Schindler, no state has acceded to the Hague Neutrality Convention since 1945, not even those that describe themselves as "neutral", such as Ireland, Laos or Malta. The fact that Ukraine acceded to the convention "in an emergency" in 2015 does not alter the chaotic state of neutrality law. According to Thürer, "neutrality has fallen silent" in international law literature. As a keyword in textbooks, it has "practically disappeared". When it joined the UN in 2002, Switzerland no longer sought a neutrality reservation, but merely deposited a declaration of neutrality.

18 Schindler, *Vorwirkungen*, 579.

"non-belligerent" stance. Both positions restrict the principle of impartiality, but their relationship to neutrality remains unclear.¹⁹

Do these controversial extensions of the law of neutrality also affect the specific permanence of neutrality? One is inclined to answer this question in the negative as they concern the period after the outbreak of war. However, since permanent neutrals have the same obligations in a war between third parties as those who are occasionally neutral it does not appear to be irrelevant to which type of neutrality the permanence refers. Moreover, since the Second World War, neutrality has primarily been measured on the basis of behaviour in peacetime.

Until the First World War, wars of aggression were not prohibited by international law. The Hague Convention changed this situation insofar as neutrality applied. Thus, the new law was of great importance to neutral countries. By recognising neutrality, the warring parties undertook to respect the independence of neutral countries and not to attack neutral territory. This gain in protection was the fundamental *raison d'être* of neutrality. However, the protective factor of neutrality, the prohibition of attacks on neutral countries, has not only been lost as a result of the fragile basis of trust. Since the Briand-Kellogg Pact of 1928 international law has prohibited any forcible attack on sovereign states and recognises the sovereignty of all states. In modern international law, the concept of war has also lost its meaning. The UN Charter uses the terms "force" and "international armed conflict".

According to Article 2(4) of the UN Charter, "any threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations" is prohibited. The prohibition of force under international law does not apply to the right of individual or collective self-defence. This right is not dependent on a decision by the UN under Chapter VII of the Charter, but may be invoked and exercised independently by any UN member state in accordance with Article 51 of the Charter, as long as there are no decisions or obligations under Chapter VII of the Charter. It allows states which haven't been attacked to support the victim state. According to Article 2(5) of the Charter, the members shall support the United Nations in all measures taken in accordance with the Charter and shall refrain from granting

19 In both legal situations, a state does not participate in an armed conflict, but it does support one of the warring parties.

support to any state against which the United Nations takes preventive or coercive measures. Both the right to neutrality and collective security are motivated by the desire to limit the extent and adverse effects of armed conflicts. However, they are based on different stages of development of the international order. The system of collective security created tension with the concept of neutrality under international law. Accordingly, the relationship between the Hague Conventions of 1907 and the UN Charter of 1945 is controversial in international law literature, and thus also the validity and content of neutrality in international law today.²⁰ According to the view expressed here, it follows from Article 103 of the UN Charter that the obligations of members under the Charter take precedence over obligations under other international agreements, including older customary law on neutrality.

Today, it can therefore be assumed that the protective function of neutrality in wartime has ceased to exist, both because of Switzerland's geopolitical situation and the precarious basis of trust in the international community as well as a consequence of the prohibition of aggression in the UN Charter. However, it cannot be completely ruled out that a situational neutrality, based on the UN Charter, may one day be a useful tool for Swiss foreign and security policy.

5. Lonely permanent neutrality

In Switzerland, the fixation on the permanence of neutrality obnubilated the fact that it was not this Swiss type of neutrality that was and is the norm, but rather temporary neutrality related to a specific war. Switzerland's permanent neutrality is unique. No other neutral country comparable to Switzerland except Austria – which has to follow Swiss neutrality and

20 For more on this, see Rhinow, *Friedensneutralität*; Rodriguez, 29ff., 43 ff. The internationally renowned Austrian international law expert Peter Hilpold concludes that the law of neutrality as defined by the Hague Convention no longer exists in this form. In any case, it is hardly compatible with the peace law of the UN Charter. In a detailed study of international law from 2024, *El-Zein* argues that the right of neutrality has become obsolete today. According to *Adrian Schaub*, the prohibition of violence under international law gives rise to a right of the neutral party to discriminate against the aggressor. The principle of equal treatment should be considered derogated, so that there is no longer any obligation to comply with the law of neutrality.

is in a different position as a member of the EU – is permanently neutral.²¹ Isn't the very idea of a permanent commitment irritating in view of the rapidly changing environment? How can Switzerland promise to remain neutral for ever after, regardless of military conflicts and its own security interests? How can it assume that its neutrality will be recognised by all sides in any future armed conflict? According to *Verosta*, Switzerland's permanent neutrality is still under the collective guarantee of the former great powers France, Great Britain, Italy, Sweden and Spain, while this does not apply to the USA and Russia.²² Are these "great powers" of 1815 still aware of their responsibility?

If we take the word "permanent" seriously, Switzerland committed itself in 1815 to remain neutral for all time, indeed for all eternity, regardless of developments in international law, the parties to conflicts and geopolitical circumstances. As far as I can see, the term "permanence" has hardly been discussed in international law doctrine. The phrase "neutralité perpétuelle"²³ used at the Congress of Vienna referred to the constellation of powers in 19th-century Europe and does not mean "forever and ever" but "for an indefinite period", i.e. without a specific expiry date. It would be more accurate to speak of neutrality "until revoked" or "until further notice" – until the autonomous renunciation of neutrality. In those days, it was in the interest of the European great powers that the Alpine country in the middle of Europe stays out of wars and does not support any warring parties, even in future wars in Europe. The term "perpetual neutrality", used in the past and currently again in the Swiss People's Party's 's neutrality initiative, is misleading. Nothing lasts forever, especially in law. In the current global environment with its enormous geopolitical, power-political and military-technical upheavals a perspective going beyond temporary permanence would represent an unfulfillable obligation. The fact that Switzerland is entitled to give up its neutrality also indicates that it is a "terminable" legal status, i.e. it cannot be "perpetual" by no means.

The term "permanence" can be better understood when it is distinguished from ordinary neutrality on the one hand, and when its future dimension is examined more closely on the other.

21 In Europe, Liechtenstein and Vatican City (both without armies) and Ireland (no permanent neutrality in the sense of international law) have permanent neutrality status; outside Europe, as far as I am aware, Costa Rica and Turkmenistan.

22 *Verosta*, 105.

23 *Denis de Rougemont* has convincingly demonstrated that Swiss neutrality is perpetual, not eternal.

6. A colourful policy of neutrality

Ordinary neutrality differs from permanent neutrality primarily in terms of its preliminary effects. An ordinarily neutral state is completely free in its foreign policy in times of peace, whereas permanent neutrality entails additional obligations, known as preliminary effects. The foreign policy of a permanently neutral state must be aimed at avoiding anything that would make it a party to an armed conflict between other states. These obligations whose legal nature is controversial²⁴ require, in Switzerland's view, a credible policy of neutrality. These include, first and foremost, the prohibition of waging a war of aggression – which today is covered by the UN Charter – the ability and willingness to defend one's own territory, and the prohibition of joining a military alliance. Since the obligations of a permanently neutral state must be fulfilled in times of peace, it is referred to as peace neutrality²⁵ and considered part of international peace law. These "obligations" can also be observed by an occasionally neutral state within the framework of its foreign policy without the need to be permanently neutral.

For centuries, Switzerland and, earlier, the cantons used to pursue a flexible policy of neutrality in response to threats. Neutrality policy was 'the' foreign policy of the time. It extended far beyond security policy to all areas of foreign policy such as trade, financial policy and participation in multilateral organisations. The Basel history professor *Edgar Bonjour* entitled his history of Switzerland from 1933 to 1945 "History of Neutrality" and subsumed the entire foreign policy and parts of domestic policy under the broad concept of neutrality.

With Switzerland's accession to the Hague Convention that does not prescribe permanence and therefore neither prescribes a policy of neutrality, neutrality became essentially a legal concept. From then on, both the protective purpose as well the various underlying interests of neutrality receded into the background. The main task for lawyers was to examine what international law prohibits or permits in terms of neutrality. In addition, the concept of neutrality policy took on an additional meaning. From an official point of view, neutrality policy now means doing everything

24 For more details, see *Schindler, Vorwirkungen*, passim.

25 In my study "Friedensneutralität", I see the primary function of Swiss neutrality today as being active peace promotion and the provision of so-called good offices; *Rhinow, Friedensneutralität*, 91 ff.

possible to maintain the credibility of neutrality in the event of war and refraining from anything that could call that into question. In this way, neutrality continued to find its way into foreign policy as a whole because one would always examine whether a particular foreign policy action could be detrimental to neutrality's credibility in the future. This created a playground for different opinions on what could be beneficial or harmful to its credibility.²⁶ To that the fatal belief was added that this type of "obedience" served Switzerland's security interests. Doesn't it seem strange that this focus on a vague credibility "into the blue" is hardly recognised as such and questioned as a self-imposed restriction of Swiss autonomy? The belief that striving for credible neutrality will secure recognition of Switzerland's neutral status also seems fatal.²⁷ Switzerland's foreign policy must be credible in general.²⁸ But others, not Switzerland, decide on the success or failure of credibility efforts! Basically, the "credibility policy" represents a considerable, autonomously decided loss of sovereignty. Isn't it surprising that political circles, which otherwise praise Switzerland's sovereignty above all else, hardly criticise this dependence?

The policy of neutrality has an ambivalent relationship with the law of neutrality. Although the two are clearly separated in theory they often blur in the federal government's foreign policy.²⁹ According to *Sacha Zala*, the distinction between the law of neutrality and the policy of neutrality is a Swiss invention that belongs to the arsenal of diplomatic tricks, as does the distinction between technical and political international organisations. It is easy to join the former (e.g. the European Broadcasting Union), but not the latter deemed to be non-compatible with neutrality. Switzerland's accession to the Council of Europe is a good example how arbitrary this distinction could be. For a long time the Council was classified as political and accession therefore rejected. Only after the EEC was founded it was approved after all.

In addition, the policy of neutrality has long been drastically exaggerated, even mythologised. Much of what is presented as a policy of neutrality,

26 For example, in 2024, the Federal Council rejected joining the multinational task force of G7 countries, which aims to track down the assets of Russian oligarchs and enforce the full implementation of sanctions against Moscow, as a real threat to neutrality because it could be interpreted as Switzerland's participation in a Western "coalition of the willing".

27 Maissen, *Neutralität*, 52.

28 Rhinow, *Glaubwürdige Schweiz*, *passim*.

29 See the article by *Mohler*, *Vermischung*, *passim*.

especially in the context of the so-called preliminary effects, is actually autonomous foreign policy. The aforementioned prohibition of aggression is now enshrined in the UN Charter, while "armament" and the requirement for credible national defence are anchored in the Federal Constitution (Art. 2, 58 FC). This obliges Switzerland to do everything in its power to preserve the independence of the country as best it can (Art. 54 para. 2 FC). The extensive use of the concept of neutrality may also suggest a kind of "remote control" in order to disguise Switzerland's freedom of action in foreign policy freedom and its corresponding responsibility. It is also questionable whether it makes sense to restrict Switzerland's autonomy in foreign policy to such a drastic extent, thereby tying the hands of Swiss security policy.

7. Renunciation of permanent neutrality

One can examine the "essence" of permanence not only in contrast to ordinary neutrality, but also in terms of its temporal dimension. Switzerland has beyond doubt the right to renounce its neutrality, but not at an "inopportune moment". This is the unanimous opinion of official Switzerland and the majority of Swiss international law scholars. What is rarely considered: The renunciation could either refer to neutrality as a whole or to the permanence of neutrality alone. The first case occurs, for example, if Switzerland actively supports one of the warring parties during a war or joins a military alliance such as NATO. This would be accompanied by a definitive departure from neutrality. In the case of a mere abandonment of permanence "in peacetime", which has hardly been discussed to date, Switzerland could in principle remain politically neutral, but reserve the right to depart from this status according to its own foreign and security policy interests. A mere renunciation of the permanence of neutrality, without abandoning it, has never been discussed in detail in doctrine or practice, as far as can be seen.

Once war breaks out the warring parties must be able to rely on Switzerland's permanently neutral stance. However, only a state rightfully relying on neutrality in good faith, and whose trust therefore appears worthy of protection, can claim protection of legitimate expectations. In respect to Switzerland this principle applies above all in relation to states that are involved in wars in Europe and want to and can count on Switzerland's impartiality. It is difficult to imagine that states from more distant regions

would have a legitimate interest in Swiss neutrality in the event of war. Furthermore, a state that massively violates international law by waging a war of aggression will not respect the right to neutrality either and does not deserve to have its good faith protected to begin with.

But what about waiving the mere permanence? Which state today and tomorrow is so interested in Swiss neutrality in war that it is prepared to respect it in an eventual war – and for the entire duration of the war? What value does such a promise have also in the perspective of future changes of government? The states that surround Switzerland and with which our country has diverse ties, both in terms of values and economically, are critical of neutrality, despite all diplomatic courtesies. As the war in Ukraine clearly shows, they would prefer to see more engagement and solidarity. Formal recognition or confirmation of neutrality by organisations, international agreements or individual states in peacetime says nothing about whether the neutral state will be effectively protected in the event of a future war.³⁰ "Abstract" diplomatic recognition is cheap to obtain. The decisive factor is how the parties to the conflict will behave in a future war, still unknown at the time of abstract recognition, and whether they will still be interested in neutrality at that time. It cannot be repeated often enough: if a warring party loses interest in neutrality it becomes useless. In addition to the examples of Belgium and the Netherlands mentioned above, we can point to Russia's current invasion of non-aligned Ukraine. After Russia had already broken the 1994 Budapest Memorandum with its annexation of Crimea in 2014 in which Ukraine's territorial integrity, sovereignty and protection were guaranteed – including by Russia – Ukraine's ratification of the Hague Conventions in 2015, backdated to 1991, was of no use – a striking example for the loss of neutrality's protective function when war interests are at stake. Permanent neutrality consists primarily of the principle of hope: namely, that one day all future warring parties in the world will have a fundamental interest in Switzerland's neutrality. However, trust can

30 There is no shortage of confirmations of Swiss neutrality. These can be found, for example, in Article 435 of the Treaty of Versailles of 1919, in the London Declaration of the League of Nations of 13 February 1920, which exempted Switzerland from all military coercive measures of the League of Nations, and in the decision of the League of Nations of 1 May 1938. Swiss neutrality has also been indirectly recognised on various occasions, for example in the Moscow Memorandum of 1955, which held it up as a model for the Austrian neutrality that was to be established. Finally, in 2002, Switzerland joined the United Nations without a neutrality reservation, but with an accompanying declaration of neutrality.

only be realised in relation to specific actors, not in the abstract. What was conceivable at times in a conflict-ridden Europe is likely to prove illusory today, especially in view of the dwindling willingness to abide by the rules of international law.

How far does the protection of trust extend in so-called times of peace? Is there also an 'inopportune time' when the permanence of neutrality cannot be waived? Generally, the principle of good faith under international law applies. The permanence of neutrality and the possibility of waiving it are in a peculiar tension with each other. Can all states rely on Switzerland being and remaining neutral in the event of a future war? Or does this only apply to states that formally commit to it? Could there be cases in which Switzerland would be obliged to maintain its neutrality against its will and continue to observe the preliminary effects of neutrality? This would amount to an excessive restriction of Switzerland's sovereignty and, under certain circumstances, a massive disregard for its own security interests. A permanently neutral state must have the right, in good faith, to depart from permanent neutrality in times of peace, at its own political discretion, and to switch to situational neutrality or to renounce neutrality altogether. Whether and when such a waiver may be appropriate is determined by the autonomous foreign and security policy of the permanently neutral state. In my opinion, given the massive changes in the geopolitical and security environment, there is nothing to prevent Switzerland from transitioning to situational neutrality today.

The policy of neutrality as a "policy of credibility" is a consequence of the permanence of neutrality. If the latter is no longer the case Switzerland will switch to situational neutrality, and a specific policy of neutrality in peacetime will also become unnecessary.³¹ This does not, of course, release Switzerland from its obligation to pursue a forward-looking, situation-oriented foreign and security policy based on the Federal Constitution and tailored to its defence capabilities.

The legal requirements for Switzerland to renounce its permanent neutrality will not be discussed in detail here. Although neutrality is anchored in the Federal Constitution, it is not defined as a foreign policy objective, but (only) in the provisions governing the powers of the Federal Assem-

31 In Switzerland, the handling of neutrality "in wartime" is also referred to as neutrality policy. If wartime neutrality is based on the UN Charter, a special category of neutrality policy should be superfluous. It is a matter of autonomous foreign policy within the limits of international law.

bly and the Federal Council (Art. 173 para. 1 lit. a and Art. 185 para. 1 FC). A complete renunciation of neutrality would undoubtedly require an amendment of the Federal Constitution. However, since a departure from neutrality in peacetime only makes sense if it is accompanied by joining a military alliance, it would in any case be subject to a vote by the people and the cantons in accordance with Art. 140 para. 1 lit. b of the Federal Constitution (accession to collective security organisations). However, this provision presupposes that Switzerland has sufficient time to go through the lengthy procedure for amending the Constitution which is only likely in peacetime. If Switzerland were to renounce its neutrality due to a disastrous change in circumstances, possibly even before the actual outbreak of war, the only recourse would be to invoke emergency powers in the sense of Art. 165 of the Federal Constitution and emergency provisions to safeguard the external security of the nation in the sense of Art. 17 para. 1 lit. a.

In my opinion, however, simply renouncing to permanent neutrality and transitioning to situational neutrality does not require a constitutional amendment. Even though the Federal Constitution does indeed contain a neutrality clause it does not prescribe a specific form.³² Besides, it does not express itself on the relationship between the UN Charter and the Hague Convention. It would therefore be permissible to switch to situational neutrality by a decision of the Federal Assembly.

8. Conclusion

Neutrality does not have to be permanent. For Switzerland, a transition to a situational war-time neutrality is recommended. Switzerland should decide on its application according to its foreign and security policy goals and interests in a conflict-related situation, based on the Federal Constitution and within the framework of the UN Charter. It is to be hoped that the debate on neutrality will focus on its real functions today and tomorrow as well as on the foreign and security policy dimensions of neutrality, rather than on the dispute over its international law foundation. For once, the principle of "law follows function" must apply.

32 Biaggini, BV.

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