Bern, 26 October 2022

# Clarity and guidance on neutrality policy

## Federal Council report
in response to Postulate 22.3385 put forward by the Council of States Foreign Affairs Committee (FAC-S), 11.04.2022

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# 1 FAC-S Postulate

On 11 April 2022, the Council of States Foreign Affairs Committee (FAC-S) submitted postulate 22.3385 calling for 'Clarity and guidance on neutrality policy':

*The Federal Council is instructed to submit an up-to-date, cross-departmental neutrality report to Parliament. This must address the limits of the law of neutrality (e.g. with regard to overflights, arms deliveries, and NATO membership or cooperation) as well as the intended use of leeway provided by neutrality policy (sanctions: imposition and enforcement).*

The Federal Council proposed the adoption of the postulate on 11 May 2022. The Council of States approved the postulate on 16 June 2022.

The Federal Council held discussions on neutrality on 31 August and 7 September 2022. On 7 September 2022, the Federal Council set out its approach to responding to the postulate. It also adopted the complementary report to the 2021 Security Policy Report, which addresses the impact of the war in Ukraine. Some of the questions raised in the postulate are answered in the complementary report. The present report in response to the postulate was drafted by a joint working group consisting of representatives from the DDPS, EAER and FDJP and led by the FDFA. It was coordinated across all departments. A group of external experts[1] was convened to ensure that viewpoints outside the Federal Administration were taken into account.

# 2 Background

Switzerland has been neutral for several hundred years. This neutrality has proved to be an effective security and foreign policy tool in various major geopolitical events and conflicts down the years. Neutrality has never been an end in itself, but always an instrument for safeguarding interests, first and foremost for the security, independence and prosperity of the country, and also for the defence of Swiss values, as enshrined in the Federal Constitution.

On 24 February 2022, Russia attacked Ukraine. This aggression is an attack on the fundamental values of freedom, democracy and the rule of law, as well as a serious violation of international law. The war in Ukraine increased the need for a discussion of neutrality in Switzerland, and was also the basis for postulate 22.3385.

The Federal Council regularly reviews its practice of neutrality. The last time it conducted a comprehensive review was in the 1993 White Paper on Neutrality, which was published as an annex to the Report on Swiss Foreign Policy for the Nineties.[2] Reports on the practice of neutrality were also prepared in subsequent years, each focusing on a specific event.[3]

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[1] Members of the group of experts in alphabetical order: Yves Daccord (former director-general of the ICRC), Martin Dumermuth (former director of the Federal Office of Justice), Renata Jungo-Brüngger (member of the Board of Management of Mercedes-Benz Group), Dominik Knill (president of the Swiss Officers' Association), Christoph Mäder (Chairman of economiesuisse), Anna-Lina Müller (Co-Director of think tank foraus), Philippe Rebord (former Chief of the Swiss Armed Forces), René Rhinow (former member of the Council of States, Professor Emeritus of Public Law at the University of Basel), Sacha Zala (Professor of Swiss and Modern and Contemporary History, Director of the Diplomatic Documents of Switzerland Research Group).

[2] Annex to the Report on Swiss Foreign Policy for the Nineties: White Paper on Neutrality, 29 November 1993; White Paper on Neutrality.

[3] For example, the 2000 report on the practice of neutrality in the Kosovo conflict: Swiss Neutrality in Practice – Report of the interdepartmental working group of 30 August 2000; or the Bericht zur Neutralitätspolitik im Irak-Konflikt 2005 (2005 report on neutrality policy during the Iraq conflict), BBl. 2005 6997; or Die Kandidatur der Schweiz für einen nichtständigen Sitz im Sicherheitsrat der Vereinten Nationen in der Periode 2023-2024 (Switzerland's candidature for a non-permanent seat on the United Nations Security Council for the period 2023–24).

Section 3 of the present report explains some of the terminology behind the word 'neutrality' and examines the special characteristics of Swiss neutrality. Section 4 provides some historical context and presents different approaches to neutrality over the years. Section 5 lists the decisions the Federal Council has taken on neutrality since the beginning of the war in Ukraine. Section 6 presents the current context in which neutrality is applied as an instrument of foreign and security policy. Section 7 concludes the report with a summary and examines the outlook for the future.

# 3  What is neutrality?

Neutrality refers to the particular status of not being a party to an armed conflict between states. An international armed conflict is deemed to exist either when a state declares war or hostilities between states have commenced.

Adopting neutral status is a means of preventing other states from being drawn into an armed conflict. Neutrality is of potential relevance to many states, and there are significant differences in its application:

- Neutrality can be applied **permanently** or on a **case-by-case** basis: a permanently neutral state will not participate in a war between states under any circumstances. It will neither begin a war nor be drawn into one. Permanent neutrality is first and foremost a commitment to peace. Case-by-case neutrality is when a state decides to adopt a neutral stance in a particular armed conflict. All states have the option of declaring themselves neutral in a particular conflict, as long as they are not subject to any obligations as part of an alliance.[4]

- Neutrality can be either **political** or **legal** in nature: while neutrality is a purely political stance for some states, others apply it with recourse to the law of neutrality. The neutrality of a small number of countries – including Switzerland – is also recognised under international law.

- Neutrality can be **armed** or **unarmed**: a neutral state must be able to defend its own territory in order to prevent it from being used as part of a war. Some unarmed nations have, however, declared themselves neutral.

## 3.1 Features of Swiss neutrality

Swiss neutrality has five distinct features:

- Firstly, Switzerland is **permanently** neutral, i.e. it remains neutral with respect to all wars between states. The status of permanent neutrality is **recognised under international law.** Austria is the only European country apart from Switzerland to have this special international legal status.

- Secondly, Swiss neutrality is **self-determined**. Although the permanently neutral status is recognised internationally and in international law, Switzerland is free to decide unilaterally to relinquish its neutrality. It is not obliged under international law to be neutral.

- Thirdly, Switzerland is an **armed** nation, which means that it is able and willing to defend its territory. Equipping its Armed Forces enables Switzerland to defend its neutral status, which lends credibility to Swiss neutrality and increases its impact.

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[4] Jordan, for example, declared itself neutral in the Gulf War in 1990, but joined the US-led coalition against Iraq in 2003. The US, meanwhile, declared itself neutral in the Iran–Iraq war of the 1980s.

- Fourthly, Switzerland has **pursued a non-expansionist** policy since the middle of the 16th century. It has never attempted to expand its territory by military means, nor did it participate in the scramble for colonies. Switzerland's peaceful attitude to other countries lends considerable credibility to its neutral stance.

- Fifthly, Swiss neutrality **does not mean neutrality of opinion**. Neutrality does not preclude the Swiss government or Swiss citizens from freely expressing their opinions and taking a stand in response to international events. Adopting a neutral stance does not mean being neutral on values.

**Neutrality and solidarity**

Neutrality is often construed as passive. However, Switzerland has never seen itself as a passive member of the international community. It has always been actively involved in global politics to a greater or lesser extent, depending on the scope available for domestic and foreign policy action and the circumstances prevailing at the time. Switzerland's humanitarian tradition and good offices are therefore often talked about in the same breath as neutrality and viewed as an extension of it. Both are expressions of Switzerland's solidarity towards others.

- Switzerland's humanitarian tradition is notably expressed through its commitment to international humanitarian law, as well as its work to provide comprehensive and effective humanitarian relief in crisis-hit areas and protect civilian populations in war zones.

- Good offices, as a component of Switzerland's foreign policy "to respect human rights and promote democracy, peaceful coexistence of peoples",[5] include all measures taken to "keep the peace between foreign powers, maintain peace among hostile parties, overcome other conflicts, or reconcile existing differences".[6] In addition to protecting power mandates, good offices also entail a generous host state policy (International Geneva and other venues in Switzerland) as well as conflict prevention, dialogue support, facilitation and mediation. But good offices are not only offered by states not laying claims to power: strong guarantor powers and international organisations can also provide them.

Although neutrality is no longer an absolute requirement for good offices and humanitarian activities, it still lends credibility to Switzerland's efforts, alongside qualities such as discretion, expertise and flexibility, and thus remains one of Switzerland's (specific) advantages. It is also important for Switzerland's credibility that it pursues a universal human rights policy without double standards. Such a policy is compatible with both the legal and political understanding of neutrality and does not interfere with the internal affairs of other countries.

**Neutrality as a part of Swiss identity**

In Switzerland, neutrality enjoys a consistently high level of acceptance. At the beginning of 2022, the annual 'Security 2022' study conducted by ETH Zurich reported that 97% of Swiss people were in favour of maintaining neutrality. According to the same study, 96% of Swiss people, on average, in the last 10 years, believed that neutrality enabled Switzerland to safeguard its interests effectively and to contribute to global security. ETH Zurich conducted a follow-up survey between May and June 2022 in response to the war in Ukraine. This revealed that although support for neutrality had fallen by 8% since the previous survey at the beginning of the year, 89% of the Swiss population still wished to retain neutrality. This shows that despite the war in Ukraine and the changing threats facing Switzerland, the population still believes the advantages of neutrality outweigh the disadvantages. In terms of domestic policy, neutrality therefore continues to perform an important identification function.

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[5] Art. 54 para. 2 FC.
[6] Probst, Raymond (1992): Die Schweiz und die 'guten Dienste' (Switzerland and 'good offices') in Riklin, Alois/Haug, Hans/Probst, Raymond (eds): Neues Handbuch der schweizerischen Aussenpolitik (New handbook of Swiss foreign policy), Bern/Stuttgart/Wien: Paul Haupt, pp. 659–676, p. 660.

## 3.2 Neutrality: law and policy

Swiss neutrality is composed of the law of neutrality and neutrality policy. The image of an atom may help to explain the interrelationship. The law of neutrality is like the nucleus of an atom. This includes rights and obligations, which are like the protons and neutrons making up the nucleus. Neutrality policy orbits flexibly around the law of neutrality, like an electron shell, although there is limited room for movement.
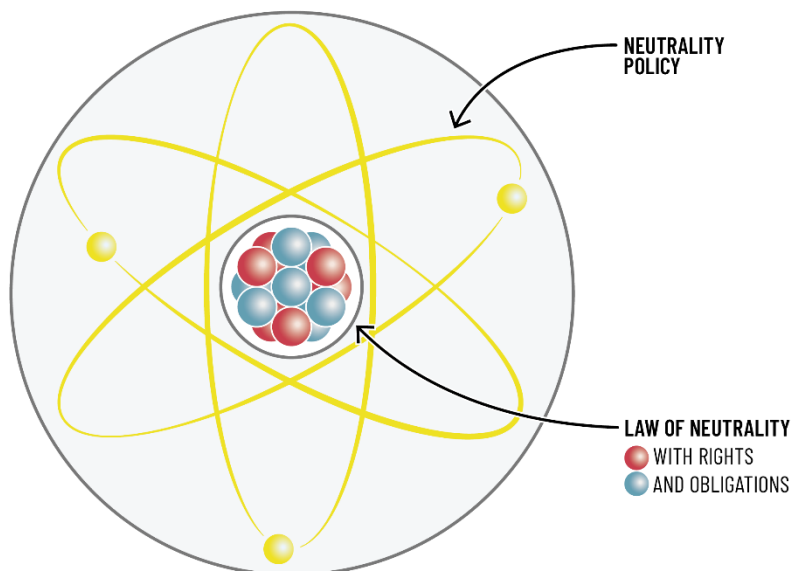


*Figure 1: Law of neutrality and neutrality policy (source: FDFA)*

N.B.

-   The law of neutrality is enshrined in international agreements and in customary international law.
-   Neutrality policy refers to a set of measures that lend credibility to Swiss neutrality and increase its impact.

**Law of neutrality**

The law of neutrality developed during the 19th century, taking the form of customary international law, and was codified in the two Hague Conventions of 1907,[7] which were ratified by Switzerland in 1910. Since then, the law of neutrality has evolved through state practice and opinio juris as customary international law. Due consideration must also be given to the decisions of national courts and legal assessments by individual states and international bodies. Switzerland has also played a leading role in developing the law of neutrality, as it is the only country to have maintained a permanently neutral status over such a long period.

The law of neutrality solely applies to international armed conflicts.[8] It does not apply to internal armed conflicts, e.g. civil wars.

The following **rights and obligations** between neutral states and belligerents are laid down under the law of neutrality:

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[7] Hague Convention (V) and Hague Convention (XIII).
[8] See also comments of the International Court of Justice on the law of neutrality in Licéité de la menace ou de l'emploi des armes nucléaires, avis consultatif (Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons), CIJ Recueil 1996, p. 260.

| RIGHTS OF NEUTRAL STATES | OBLIGATIONS OF NEUTRAL STATES |
|---|---|
| Right to territorial integrity. Belligerents are prohibited from transporting troops, ammunition or food convoys across the territory of a neutral state, whether by land, sea or air. | Verbot, sein Territorium zur Verfügung zu stellen. Dabei Sicherstellung der Unverletzlichkeit des eigenen Territoriums innerhalb der Grenzen des Zumutbaren. |
| Right to self-defence, including by military means. | Obligation not to lend military assistance in armed conflicts. |
| Right to trade freely, as long as this does not serve military purposes. | Ban on states supplying militarily relevant goods from their own inventory; obligation of non-discrimination where restrictions apply to the private export of militarily relevant goods. |
| | Anticipatory effect: neutral states must not do anything in peacetime that prevents them from complying with their obligations in the event of war. In particular, neutral states must not join military alliances that involve a mutual assistance obligation or permit the deployment of foreign armed forces. |

*Table 1: Rights and obligations of neutral states*

Despite the nucleus analogy, the law of neutrality is not fixed and leaves considerable scope for interpretation for the following reasons:

- There are only a few rules defining the rights and obligations of neutral states in relation to belligerents. In addition, general legal principles relating to 'military assistance' and 'militarily relevant goods', for example, are left very much open to interpretation.

- Customary international neutrality law has only developed on an ad hoc basis by a small number of states making specific decisions regarding neutrality in practice. The law of neutrality has not been developed consistently as a body of law.

- The rules underlying the law of neutrality, as set out in international treaties, are over 100 years old. Even as far back as 1907, it was not possible to codify all relevant aspects of neutrality in the Hague Conventions.[9] Since then, new issues have arisen which are not covered by specific rules, which presents a challenge in terms of how to apply the existing rules to contemporary situations. For example, there are various rights and obligations relating to the territory of neutral states. What would this mean for cyber operations which, by definition, transcend national borders?[10]

This legal latitude presents the familiar challenge of how individual rules should be applied in particular cases. The term 'militarily relevant goods', for example, can have very different meanings depending on the type of conflict. In order to determine what constitutes 'militarily relevant goods', it is necessary to have details of the requirements of the belligerents. However, the scope for interpretation is even greater because the few rules that exist are applied in a wide variety of situations by a small number of neutral states and warring nations. There is therefore little enforcement of the law with minimal case law available. This means there is considerable room for interpretation and discretion in the application of the law of neutrality to specific cases.

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[9] See the Federal Council Dispatch on the 1907 Hague Conventions (BBl. **1909** I 1 p. 40): "Even the Second Hague Conference did not result in full codification of the law of neutrality, but merely gave form to a set of issues, which were contentious to a greater or lesser extent, so as to give due consideration to the interests of neutral states."
[10] See also Directorate of International Law (2021): Switzerland's position paper on the application of international law in cyberspace – Annex UN GGE 2019/2021. Bern; Federal Council response dated 1 September 2021 to Interpellation 21.3614 'Is Switzerland well prepared for cyberwarfare from a neutrality perspective?' (30.09.2021, Müller Damian).

Arguably the most fundamental development in international law since the Hague Conventions is the anchoring of the prohibition of the use of force and the system of collective security in the UN Charter. When the Hague Conventions were concluded in 1907, war was considered a permissible means for states to assert their interests under international law. War was only outlawed in 1928 with the conclusion of the Kellogg-Briand Pact. The prohibition of the use of force was then enshrined in the UN Charter in 1945. A certain tension exists between neutrality and the prohibition of the use of force. Since 1945 there have been doubts as to whether neutrality can still apply if the prohibition of the use of force is breached, or whether it must be applied in a different form. In such cases:

- if the UN Security Council determines that a threat, breach of the peace or an act of aggression has occurred, the law of neutrality does not apply under either state practice or the doctrine of international law.[11] Instead, the law of neutrality would be suspended as a result of the UN Security Council decision. Neutrality does not apply with regard to military actions undertaken by UN member states to implement UN Security Council decisions. This is in line with current Swiss practice.

- if there is no UN Security Council decision, the law of neutrality remains applicable based on the rules currently in force.[12] In this case, there is no binding decision on which state has violated the prohibition of the use of force and is considered the aggressor, and which state can invoke the right of self-defence – which is also enshrined in the UN Charter – and is considered the victim. It is not uncommon for both sides to claim the right to self-defence. When there is no decision by the UN Security Council, states generally cannot agree as to who the aggressor and victim are. Neutrality remains applicable in such cases.

**Neutrality policy**
Neutral states are free to determine their own neutrality policy, and the contents and function of the policy may change over time. Such decisions depend on whether neutrality is viewed solely as an instrument of foreign and security policy or as a broad guiding principle of foreign policy based on the notion of impartiality.

At various times in the past, for example at the beginning of the Cold War, neutrality policy was equated with Switzerland's overall foreign policy. The neutrality narrative ran through the full spectrum of foreign policy issues, e.g. trade policy, financial policy and participation in multilateral organisations, and neutrality was proclaimed to be a state doctrine. This gradually changed from 1960 onwards. Neutrality policy's importance diminished, and it became just one of several instruments for promoting Switzerland's interests and values.

Nowadays, Switzerland maintains a neutrality policy that "determines its stance on matters on which the law of neutrality is silent, but where neutrality has an indirect effect".[13] The Federal Council has also explained that neutrality policy includes any measures that give neutrality greater credibility and increase

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[11] For more details on Switzerland's position on this, see also Section 4.2 on the 1993 White Paper.

[12] The continuing global relevance of the law of neutrality in the absence of a UN Security Council decision was also affirmed, inter alia, by the UN International Law Commission in 2011 in the Draft Articles on the Effects of Armed Conflicts on Treaties (see Art. 17 and the official commentary on this). The International Court of Justice (ICJ) also affirmed this in 1999 in *Legality of the Threat or Use of Nuclear Weapons* (1999, ICJ Reports 66, paras. 88f.).[12] With regard to international law, see also Bothe, Michael (2015): Neutrality, Concept and General Rules. In: Max Planck Encyclopedias of Public International Law, Oxford, paragraph 9 and Paul Seger (2014): The Law of Neutrality in Clapham, Andrew/Gaeta, Paola (eds.), The Oxford Handbook of International Law in Armed Conflict, Oxford: Oxford University Press, 248–270, p. 262. Various states involved as belligerents in international military operations have also produced law of war manuals that deal with the law of neutrality in depth, e.g. the US Law of War Manual published in 2015 (Law of War Manual, Department of Defense of the United States of America, 2015, Washington, DC, pp. 929–994 (2015)). Here too, the law of neutrality is considered applicable in the absence of a decision by the UN Security Council. For more on the practices of national courts, for example in the context of the Iraq War in 2003, see the High Court of Ireland judgment (*Horgan v. An Taoiseach & Ors* [2003] IEHC 64) and the judgment of the Federal Administrative Court (FAC, judgment of 21.06.2005 – 2 WD 12.04).

[13] BBl. **1994** I 153 p. 213 .

its impact, with the intention of convincing other countries that Switzerland will remain neutral in response to future conflicts and that its position will be respected.[14]

Neutrality policy serves as a vital counterpart to the law of neutrality for a permanently neutral state such as Switzerland. This is partly because the law of neutrality, which was last codified in 1907, does not address all the issues that can arise in current international relations in relation to neutrality. To take an example: the economic sanctions imposed by Switzerland against Russia in response to the Ukraine war were neither required nor prohibited under the law of neutrality. Internal armed conflicts, such as the civil war in Syria, which have major global implications, requiring neutral states to take a position, would be another example. A systematising neutrality policy is therefore required to help deal with neutrality-related issues that fall outside the scope of the law of neutrality. However, neutrality is only useful to Switzerland if other states recognise and respect its neutral status in the event of war. Otherwise, neutrality remains a dead letter. Neutrality needs to be backed up by policy measures to enforce and secure Switzerland's neutral status.

Against this backdrop, the purpose of neutrality policy is firstly to emphasise to other states that Switzerland will abide by the law of neutrality in response to international armed conflicts. This includes not creating interdependencies in peacetime that could make it difficult to comply with the law of neutrality during a war and involve policymaking in areas such as military assistance and transit rights. Secondly, there are certain areas relating to neutrality policy which are not governed by the law of neutrality but touch on neutrality, where other countries expect neutral states to take action, for example by imposing travel bans, freezing accounts, pursuing a policy as a host state to international organisations, expelling warring countries from multilateral forums, managing diplomatic visits and expelling diplomats.

## 3.3 An instrument for safeguarding the interests and values of the Federal Constitution

Throughout its history, neutrality has contributed substantially to safeguarding Switzerland's interests and values as set out in the Federal Constitution. Article 2 of the Federal Constitution sets out the aims of the Confederation, which include protecting the liberty and rights of the people, safeguarding the independence and security of the country, promoting the common welfare and internal cohesion of the country and preserving a just and peaceful international order.

The Swiss legislature has consciously opted not to include neutrality as one of the aims in the Constitution because neutrality is an instrument and not an end in itself. Neutrality must be flexible enough to adapt to changing times. To this end, the only provision the Federal Constitution currently makes with regard to neutrality is that the Federal Council and the Federal Assembly take measures 'to safeguard Switzerland's neutrality' (Art. 173 para. 1 let. a and Art. 185 para. 1 Cst.).

Neutrality is a security, foreign and economic policy instrument. It therefore protects those values and interests which are relevant to foreign, security and economic policy. But foreign policy is always bound up with domestic policy, especially given that neutrality is integral to Switzerland's identity. One of the key interests when deciding on the application of neutrality must therefore be the domestic policy aspect of neutrality.

The following values and interests, which neutrality helps to promote, should also be noted:

- **Independence and security (Art. 2 para. 1 Cst.)**

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[14] Neutrality report appended to the 2007 foreign policy report (BBl **2007** 5557 p. 5559); Switzerland's candidature for a non-permanent seat on the United Nations Security Council for the period 2023–24 – Federal Council report dated 5 June 2015 in response to Postulate 13.3005 put forward by the National Council Foreign Affairs Committee (FAC-N) dated 15 January 2013, p. 5558.

Article 2 of the Constitution refers to independence in conjunction with security. Switzerland has close political, economic and cultural ties to the rest of the world. This interconnectedness means that it is no longer possible for Switzerland to be entirely independent, i.e. self-sufficient. In the current climate, independence means shaping relations with other actors while retaining maximum decision-making autonomy. Safeguarding independence and security is a national defence task to be performed by the Armed Forces, as outlined in Article 58 paragraph 2 Cst.

- **Common welfare (Art. 2 para. 2 Cst.)**
  The common welfare is attained, in particular, by promoting sustainable economic growth. Economic growth is achieved by maintaining a strong and stable centre for business, trade and finance that operates within a similarly strong and stable international regulatory framework. In considering neutrality, it is important to distinguish between short-term and long-term interests. While there is a short-term interest in trading with all partners, including belligerents, on an unlimited basis for as long as possible, there is a long-term interest in enforcing a rules-based international order, possibly including sanctions, which may be incompatible with this aim. Article 54 paragraph 2 of the Constitution refers to the common welfare as a foreign policy principle, which is promoted, among other things, by safeguarding the interests of the Swiss economy abroad (Art. 101 Cst.) and taking measures to ensure national supply (Art. 102 Cst.).

- **Internal cohesion of the country (Art. 2 para. 2 Cst.)**
  Even if neutrality is no longer needed to hold the diverse federal state together, it remains an important identifying feature of Switzerland.

- **Just and peaceful international order (Art. 2 para. 4 Cst.)**
  Switzerland is committed to a just and peaceful international order with minimal scope for power politics. Switzerland can deploy various measures to maintain a just and peaceful international order, for example by supporting sanctions, providing good offices and engaging in peacebuilding efforts. Article 54 paragraph 2 Cst. refers to a commitment to peace as a principle of foreign policy. Alongside defence, peacekeeping is one of the core tasks to be performed by the Swiss Armed Forces (Art. 58 para. 2 Cst.).

There is, to some extent, a certain tension between these values and interests. In a globalised world, for example, there may be an uneasy balance between independence and national security. This makes it necessary to weigh up the interests at stake on a case-by-case basis.

## 3.4 Neutral countries compared

Switzerland is not the only country with a neutral status. Interpretations of neutrality vary significantly from one country to another. Some countries, for example Austria, Ireland and Costa Rica, are permanently neutral, while others apply neutrality on a case-by-case basis, as India is currently doing in response to the Ukraine war. Neutrality as practised by other European countries, i.e. Austria, Ireland, Sweden and Finland, is of particular interest to Switzerland. For some time now, Finland and Sweden have described themselves as 'non-aligned' rather than neutral. Following the accession process launched on 29 June 2022, both countries are set to become NATO members and relinquish their prior status as non-aligned nations.[15]

Only Switzerland and Austria are recognised as permanently neutral under international law and have decided to place themselves under an obligation to comply with the law of neutrality. There are also neutral nations that just describe themselves as politically neutral.

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[15] Liechtenstein, Malta, Moldova, San Marino, Turkmenistan and the Vatican City State are also neutral. Another option for countries is to decide on a case-by-case basis whether to take a neutral stance.
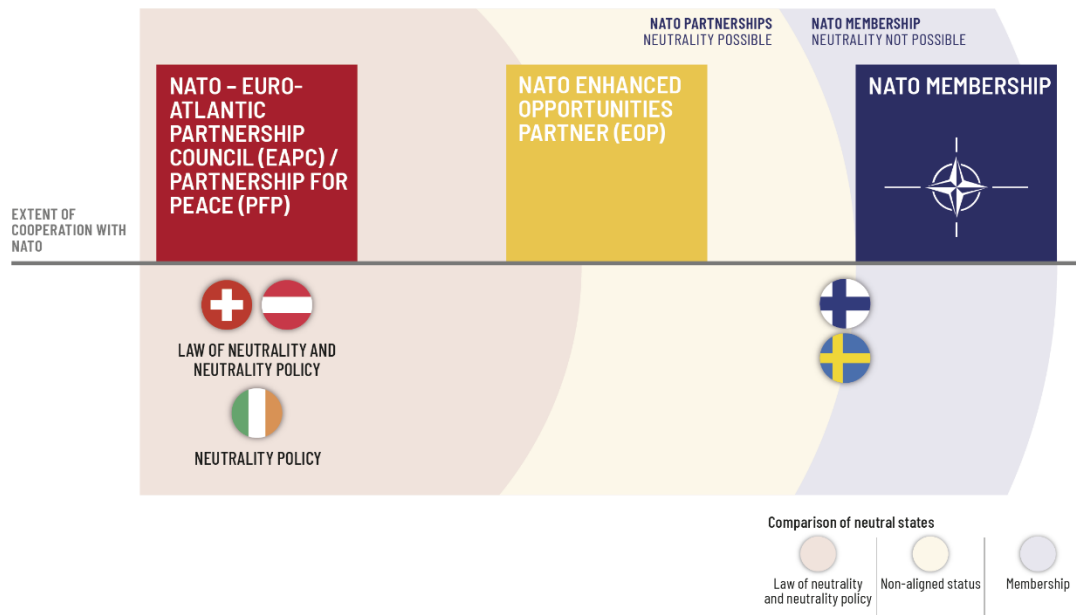
*Figure 2: Neutrality, non-alignment and cooperation with NATO (source: FDFA)*

**Neutrality and non-alignment:** Neutral states are always militarily non-aligned. Not all non-aligned countries are neutral. By adopting 'non-aligned status', a country is expressing that it does not want to belong to any military alliance. Non-aligned status originated during the Cold War among nations that sought not to align themselves with one or other of the major power blocs, i.e. the US or the Soviet Union, but eschewed neutral status. The most well-known non-aligned group is the Non-Aligned Movement (NAM), which came together during the Cold War.[16] NAM states such as India, South Africa and the United Arab Emirates currently play a key role in security policy discussions at the UN.

**Neutrality and EU membership**: It is feasible, in principle, for EU member states to maintain neutrality.[17] This raises a number of questions, however, especially with regard to participation in the Common Foreign and Security Policy (CFSP) and the progressive framing of a common defence policy. Decisions under the CFSP generally require unanimity. The 'constructive abstention' option is therefore available to all member states, which means that abstaining countries are not required to implement decisions. However, they must accept these decisions are binding on all other member states and refrain from doing anything that could prevent implementation. The mutual defence clause,[18] which was included in the EU founding treaties and is backed up by the solidarity clause,[19] is not incompatible with EU member states adopting a neutral stance per se, given that the aid and assistance afforded to member states that are victims of armed aggression may also be non-military in nature.

**Neutrality and NATO**: Under Article 5 of the NATO Treaty, an armed attack against one or more NATO member states is deemed to be an attack against them all. This means that members must come to the assistance of other members that are attacked. Neutrality is incompatible with the mutual assistance obligation of NATO member states. Neutrality and NATO membership are therefore mutually exclusive. To greater or lesser degrees, all the neutral states covered in this section have a clear security interest in cooperating with NATO. The main vehicle for such cooperation is the Partnership for Peace (PfP). Switzerland has been part of the PfP since 1996. NATO has always sought to tailor its cooperation to

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[16] Spring, Alexander (2014): The International Law Concept of Neutrality in the 21st Century, Dike Law Books. Zurich: Dike. p. 48.
[17] Regarding Switzerland, see the 1993 White Paper. However, Finland concluded that EU membership was incompatible with a policy of neutrality.
[18] Art. 42 para. 7 EU Treaty: "If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States."
[19] Article 222 of the Treaty on the Functioning of the European Union.

individual states. It has recently made even greater efforts to establish individual cooperation pro-grammes based on the interests of and opportunities available to the respective partner state, while maintaining previous forms of cooperation such as the PfP.

## Permanently neutral states
### Austria
Following the example of Switzerland, Austria declared itself permanently neutral in 1955. The declaration was made in the course of negotiations on the withdrawal of the Allied forces. Austria's neutral status is enshrined in its constitution and recognised under international law. Under the Treaty of Accession to the European Union, Austria agreed to participate fully and actively in the CFSP. In practice, this means that the law of neutrality does not apply to decisions concerning the CFSP. However, Austria 'constructively' abstained from voting on the resolution to supply arms to Ukraine, for example, so that it did not have to participate. Austria is also involved in the PfP.

### Republic of Ireland
Ireland's neutrality was motivated by its need to demonstrate independence from the UK. Ireland has a policy of 'military neutrality', which precludes joining a military alliance. The deployment of Irish troops abroad for UN peacekeeping missions, for example, requires a UN Security Council Resolution. In contrast to Austria and Switzerland, Irish neutrality is not part of customary international law or laid down in national legislation. Ireland did not relinquish its neutrality on becoming a member of the EU. The Treaty of Lisbon includes opt-outs allowing Ireland to retain its traditional policy of military neutrality.[20]

### Costa Rica
In 1983, President Luis Alberto Monge proclaimed Costa Rica's policy of permanent, active and un-armed neutrality. Active neutrality means a commitment to finding peaceful solutions and respecting human rights and fundamental freedoms. Unlike Switzerland, Costa Rica is an unarmed neutral state. The rationale behind this is that unarmed neutral nations are protected from attack by other nations precisely because they have no armed forces. For Costa Rica, this represents the ultimate commitment to peace.

## Non-aligned and occasionally neutral countries
### Finland and Sweden
At the beginning of the Cold War, Finland declared political neutrality for geopolitical reasons without acquiring the status of a neutral state under international law. In the 19th century, Sweden also adopted a policy of neutrality as a result of negative experiences in connection with great power politics. After the end of the Cold War, both countries transitioned from neutral to non-aligned status once they had joined the EU and the Treaty of Lisbon had come into force. Finland determined that neutrality was incompatible with EU membership[21] and Sweden gradually moved away from its neutral position. Finland and Sweden finally abandoned neutrality in 2009 when they decided to join the new Nordic Defence Cooperation structure which was set up to strengthen the defence capabilities of Nordic countries. The non-alignment of Sweden and Finland primarily involved NATO non-membership.

### India
India is a country with a long tradition of non-alignment dating back to independence. India's non-align-ment policy has varied significantly in response to internal needs and external power relations. Its neutral stance is a political one and unrelated to the law of neutrality. India has adopted a neutral position on the Ukraine war, for example, with the aim of distancing itself from Russia without condemning its actions

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[20] Art. 42 para. 7 EU Treaty.
[21] However, EU membership does not require countries to abandon neutrality. Austria, Ireland and Malta retained their neutral status while acknowledging their obligation to support CFSP decisions as EU member states.

explicitly or adopting sanctions. Commentators have referred to this type of approach as 'strategic neutrality'. India attempts to steer a middle course between the US, Russia and China and seeks a modus operandi with NATO by pursuing a 'multi-aligned' approach, which is counterbalanced by strong 'strategic autonomy'.

**Interim conclusion**

Austria is most comparable to Switzerland, although the countries also differ in terms of defence capability, EU membership and the status neutrality enjoys among the general public. Both Finland and Sweden have built close relationships with NATO over the years, so that their move to join NATO comes as no surprise. The accession of Sweden and Finland to NATO will change the significance of the PfP. NATO's cooperation with partner states will be even more individual and flexible in future, and will be based on the interests of and opportunities available to the respective partner. The status of permanent neutrality is the main common denominator for Switzerland, Ireland and Costa Rica.

# 4   Historical development of Swiss neutrality

Neutrality is not and has never been a fixed concept, but may be altered in substance to reflect the contemporary context. This also applies to the law of neutrality and neutrality policy. The Federal Council produces regular reports updating the concept of neutrality. The last comprehensive report was published in 1993. Even before that, Switzerland had adjusted its understanding of neutrality from time to time in line with global realities and Swiss interests.

## 4.1  Looking back in time

Switzerland did not invent neutrality, yet it has contributed substantially to its development over the last four centuries. The Swiss Diet first declared neutrality officially in 1674, when France invaded Franche-Comté. The Confederation adopted a policy of 'sitting still' following the Thirty Years' War, mainly due to its exposed geopolitical position between the great powers of France and Habsburg, the difficulty faced by the alliance in forming a common foreign policy and internal religious and political tensions. However, at that time neutrality was understood very differently from the way it is today and the law of neutrality did not yet exist, with the result that cantons supplied mercenaries to foreign powers and allowed mercenaries to be recruited on their territory.

The invasion of Switzerland by French troops in 1798 marked the end of the Old Swiss Confederacy and the version of neutrality practised at the time. Switzerland effectively lost its independence and became a French satellite, which meant that Swiss foreign policy was aligned with that of France. Although France formally recognised Switzerland's neutrality, it made the decisions on how it should operate in practice.

Permanent neutrality came into being when the Swiss Diet declared Switzerland's neutrality and its independence from French rule on 13 November 1813. Following Napoleon's abdication, Switzerland persuaded the major European powers at the 1815 Congress of Vienna to recognise Swiss neutrality for the first time as being in Europe's interests. They subsequently recognised Switzerland's permanent neutrality under international law for the first time at the Paris Peace Conference. The great powers declared that the "neutrality and integrity of Switzerland and her independence from any foreign influence are in the interest of European politics as a whole."

Neutrality was reaffirmed at national level when the Swiss federal state was established in 1848. However, when the first Federal Constitution was drafted, neutrality was deliberately not mentioned in the provision setting out the aims of the Swiss Confederation, but in the provision setting out the powers of the Federal Assembly and Federal Council.

The Hague Peace Conference held in 1907 marked a major milestone for neutrality. The law of neutrality was codified for the first time in two Conventions concerning neutrality in relation to naval war and war on land. To this day, they are the most significant written legal sources on neutrality.

Only a few years later, the First World War proved an acid test for Swiss unity and neutrality. Surrounded by warring parties, Switzerland remained neutral throughout the war, managed to avoid being drawn into the conflict and preserved its internal cohesion, which linguistic, regional and denominational tensions had previously threatened to erode.

The League of Nations was created in response to the catastrophe of the First World War. Switzerland joined the League of Nations following a referendum in 1920. Switzerland secured further international recognition of its permanently neutral status under the London Declaration of Accession of 13 February 1920, which also exempted it from joining military measures taken by the League of Nations, but not from any economic sanctions that might be imposed.[22] This led to the emergence of differential neutrality, characterised by increased involvement on the international stage and, in particular, the adoption of economic sanctions. In 1935, for the first time, Switzerland adopted some of the sanctions imposed by the League of Nations against Italy in response to its military aggression against Abyssinia (Ethiopia).

However, the League of Nations could not stop global tensions from flaring up again and gradually became ineffective. Against this backdrop, Switzerland decided, with the consent of the Council of the League of Nations, to adopt integral neutrality in 1938.[23] This meant that Switzerland would have minimal involvement in the League of Nations and not join sanctions. Integral neutrality determined Switzerland's approach during the Second World War. However, both the belligerents and Switzerland committed various breaches of neutrality in the period after 1938, with Switzerland constantly engaged in a balancing act between preserving territorial integrity and its independence.

Following the Second World War, Switzerland continued to pursue its strategy of integral neutrality, which was essentially deemed equivalent to a state doctrine. Although Switzerland was firmly aligned with Western countries both ideologically and economically, it eschewed any participation in multilateral political organisations or military alliances. It also construed the anticipatory effects under the law of neutrality for permanently neutral states broadly,[24] opting not to join the UN initially and remaining detached from the process of European integration. Switzerland nonetheless became involved in certain areas, for example by participating from 1953 as a 'Western neutral' in the Neutral Nations Supervisory Commission to monitor the armistice in Korea.[25] It has also made certain concessions: in 1951, for example, it agreed under pressure – mainly from the United States – to secretly participate in the embargo policy against the Communist bloc (CoCom sanctions regime).[26]

From 1960 onwards, the Federal Council gradually moved away from this wide-ranging understanding of neutrality. In 1963, Switzerland joined the Council of Europe. Starting in the 1970s, it was also involved in the Conference on Security and Co-operation in Europe (CSCE), which was renamed the Organization for Security and Co-operation in Europe (OSCE) in 1995. As a CSCE member, Switzerland and other neutral states successfully ensured that neutrality was included in the 1975 Helsinki Final Act as a legitimate component of European security.[27] Accordingly, the Final Act now provides that participating States "also have the right to neutrality". In the late 1970s, the Federal Council

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[22] See dodis.ch/1721.
[23] See the compilation dodis.ch/C1660.
[24] See for example the 1954 guidance issued by the Political Department (Bindschedler doctrine), which includes a broad interpretation of the anticipatory effects under the law of neutrality.
[25] Regarding Switzerland's participation in the Neutral Nations Supervisory Commission (NNSC) to monitor the ceasefire in Korea, see dodis.ch/T2067.
[26] Regarding the Hotz-Linder-Agreement of 1951 and its application, see dodis.ch/T1803.
[27] See dodis.ch/58821 as well as the compilation dodis.ch/C1588.

started to pursue the objective of joining the UN. This was rejected in an initial popular vote in 1986,[28] but was ultimately accepted in a subsequent one in 2002.[29]

## 4.2 1993 White Paper

The world changed fundamentally in 1989 when the Berlin Wall fell, marking the end of the Cold War. The following year, the UN Security Council also imposed sanctions against Iraq in response to the invasion of Kuwait. The Federal Council decided for the first time to adopt non-military UN sanctions even though Switzerland was not a UN member at the time.[30] As a result of these foreign and domestic policy milestones, it was necessary to clarify the meaning of neutrality as is being done today. The Federal Council subsequently produced the 1993 White Paper, which was appended to the Report on Switzerland's Foreign Policy published in the 1990s. The 1993 White Paper still forms the basis of Switzerland's understanding of neutrality today.

The White Paper concluded that "in these times of transition and uncertainty, neutrality remains an appropriate instrument for conducting Switzerland's foreign and security policy".[31] It also stated that neutrality policy should be adapted with a view to ensuring that it would "continue to be characterised by the constancy and predictability that have earned Switzerland the respect of the international community in the past".[32]

The 1993 White Paper defined the following parameters:

- **Neutrality does not apply to UN Security Council measures:** based on international law literature and the standard practice of states, the Federal Council concluded that neutrality does not apply to coercive measures, whether military or economic, imposed against states by the UN Security Council. In coming to this conclusion it took account of developments in customary international law whereby UN coercive measures do not constitute a form of war to which the law of neutrality is applicable, as they are legal means by which the decisions of the Security Council acting on behalf of the international community are enforced.[33] In the case of UN coercive measures, Switzerland is therefore not bound by its legal neutrality obligations and the law of neutrality does not limit its freedom of action.[34]

- **Autonomous adoption of UN non-military measures. Participation in UN military measures also permitted:** the Federal Council also acknowledged that it is very much in Switzerland's interest to ensure that the UN security system functions effectively and that a peaceful order is established which is based on international law and the prohibition of the use of force. Any coercive measures taken by all UN members to enforce these values are therefore in Switzerland's interest. The White Paper gave as the rationale for imposing UN sanctions that non-participation could be "viewed by the international community as favouring the country against which the sanctions have been ordered".[35] It therefore concluded that Switzerland would support the UN and participate autonomously in non-military measures and, in particular, economic sanctions. With respect to specific cases, Switzerland would also need to assess in the particular circumstances whether it was willing to support UN military measures, for example by granting overflight rights.

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[28] See dodis.ch/T1772.
[29] See dodis.ch/T1773.
[30] See dodis.ch/54497 as well as the thematic compilation dodis.ch/T1674.
[31] BBl. **1994** I 153 p. 208
[32] BBl. **1994** I 153 p. 208
[33] In 1981, a different assessment was made regarding the international law position on this issue (see Dispatch of 21 December 1981 regarding Switzerland's membership of the United Nations (BBl. 1982 I 497 p. 546-549)).
[34] BBl. **1994** I 153 p. 229
[35] BBl. **1994** I 153 p. 229

- **Non-UN sanctions:** the Federal Council also stated that non-UN sanctions may also serve to re-establish order and serve the peace and that Switzerland may therefore participate in economic sanctions imposed outside the UN system. It noted that decisions would be taken on a case-by-case basis, once all the issues involved had been weighed up.[36]

- **Neutrality does not pose an obstacle to Switzerland joining the EU:** in 1993, the Federal Council determined that legally, accession to the European Union would allow Switzerland to maintain its neutrality, given that EU members were not required to provide military assistance. It also pointed out that the EU's common foreign and security policy is not yet fully developed. The Federal Council noted at the time that Switzerland must be prepared to fundamentally reconsider its neutrality in the event that the EU achieved its goal of creating a firm and permanent defence structure and if Switzerland aspired to participate in that structure.

- **Good offices:** the Federal Council noted in the White Paper that alongside the more passive function of Switzerland's neutrality, Switzerland had long contributed actively to peace efforts by providing its good offices, "conferring an almost universal function on its neutrality".[37] However, it also pointed out that Switzerland was now less frequently asked to provide its good offices, mainly because international organisations were gaining greater prominence. The Federal Council therefore concluded that in order to continue supporting peacekeeping efforts it was necessary for Switzerland to extend and develop its services.

- **Cooperation and participation:** neutrality should be backed up by "comprehensive solidarity, by global and regional cooperation and participation" as the best way of serving Switzerland's interests. It would therefore seem appropriate for Switzerland to abandon its past restrictive stance and increase its cooperation with other states.

In practice, the Federal Council has subsequently been guided by the 1993 understanding of neutrality, for example when taking the decision to participate in NATO's Partnership for Peace programme and to contribute to the international peacekeeping mission in Kosovo.

**Follow-up work**
The key points of the 1993 White Paper were further developed by the following work:

- **The 2000 report on Swiss neutrality in practice in relation to the Kosovo conflict**[38] stated that although the Federal Council had referred to the 1993 White Paper in its decisions on sanctions and transit flights, these decisions were not perceived as coherent. The report therefore concluded that the Swiss understanding of neutrality had not been made sufficiently known.

- **The dispatch on the 2000 Embargo Act**[39] was based on the 1993 White Paper. The key statement in the dispatch was that sanctions were in principle consistent with neutrality.

- **The 2005 report on neutrality policy during the Iraq conflict**[40] concluded that permanent neutrality had proved its worth as an instrument for guiding Switzerland's foreign and security policy and that no adjustment was needed.

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[36] BBl. **1994** I 153 p. 241 f.
[37] BBl **1994** I 153 p. 216
[38] Swiss Neutrality in Practice – Report of the interdepartmental working group of 30 August 2000.
[39] BBl. **2001** 1433
[40] BBl. **2005** 6997

- **The 2015 report on the compatibility of non-permanent Security Council membership with Swiss neutrality**[41] concluded that membership of the UN Security Council would not create any additional obligations for Switzerland, including with respect to neutrality. Switzerland could remain entirely faithful to its neutrality as currently practised.

# 4.3 Neutrality as practised for the past 30 years

In the past 30 years, the Federal Council has applied neutrality in specific situations based on the 1993 White Paper, having assessed the circumstances of the conflict concerned. In each case, it gave due consideration to the overall context and the particular features of the conflict concerned and took decisions accordingly. As shown below, the Federal Council has had to address new types of military operation in the last 30 years, including the humanitarian intervention in Kosovo and the right of preventive self-defence in Iraq.

**Kosovo conflict, 1998–99**
*Key issue: humanitarian intervention*
When NATO commenced air strikes against the Federal Republic of Yugoslavia in March 1999, Switzerland had to consider its approach towards 'humanitarian intervention', in the absence of a UN Security Council mandate, in response to serious human rights abuses in Kosovo. The Federal Council decided that neutrality should apply in the absence of a UN Security Council resolution.

The Federal Council took the following key decisions:

- **Switzerland adopts EU sanctions for the first time in its history**: the Federal Council decided to adopt the EU sanctions against the Federal Republic of Yugoslavia in response to serious violations of international law which specifically affected Switzerland (large Kosovan community, potential for influx of refugees).

- **No oil embargo against Yugoslavia**: the Federal Council decided, however, not to adopt the EU oil embargo against Yugoslavia. The Federal Council regarded oil as militarily relevant goods because Yugoslavia did not have its own oil reserves, which meant the continuance of its war capability depended directly on oil imports. If it had joined the oil embargo, it would have had to observe the principle of non-discrimination and apply the same sanction to other NATO member states. However, it made a determination regarding compulsory notification to prevent Swiss territory from being used to circumvent the EU sanctions.

- **Ban on overflights of NATO aircraft for military purposes**: in imposing this ban, Switzerland met its obligation under the law of neutrality not to give belligerents access to its territory.

- **Refusal to supply war materiel to NATO countries**: because the arms embargo against Yugoslavia was based on a UN Security Council resolution, the principle of non-discrimination under the law of neutrality did not apply. Pursuant to its neutrality policy, however, the Federal Council decided to suspend export licences for NATO member states and introduced a licensing requirement.

**2003 Iraq War**
*Key issue: right of preventive self-defence*
In 2003, the US, UK and other coalition partners launched a military intervention in Iraq based on the claim that Iraq had weapons of mass destruction. The military intervention was justified by invoking

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[41] Switzerland's candidature for a non-permanent seat on the UN Security Council for the period 2023–24 – Federal Council report dated 5 June 2015 in response to Postulate 13.3005 put forward by the National Council Foreign Affairs Committee (FAC-N) dated 15 January 2013.

the 'right to preventive self-defence' and also by arguing that force had been authorised indirectly by past Security Council resolutions. The Federal Council rejected the argument that force had been authorised by the UN Security Council and determined that neutrality should apply in these circumstances.[42]

The Federal Council took the following key decisions:

- **Overflight bans:** in February 2003, before the outbreak of hostilities, Switzerland received a general overflight permit request from the US. Given that the US was clearly preparing for a military operation, even without Security Council authorisation, the Federal Council took an immediate decision to ban overflights of Swiss territory for military purposes. It believed the ban was necessary in order to maintain credibility in Switzerland's neutrality. Following the outbreak of hostilities on 20 March 2003, the Federal Council barred the Allies from flying aircraft connected to the Iraq War over Swiss territory.[43]

- **Requirement to obtain export licences for war materiel**: the UN Security Council had imposed an arms embargo against Iraq before the war started. The principle of non-discrimination under the law of neutrality did not therefore apply in this situation either. Pursuant to its neutrality policy, however, the Federal Council decided to suspend export licences for the US and the UK and introduced an enhanced licensing procedure. Given RUAG's close government ties and the entities under its control, the Federal Council required the company to certify in writing that exports of materiel would not be used in the Iraq war.[44]

### Iran in 2011
*Key issue: protecting power mandate*
Starting in 2006, the UN Security Council imposed sanctions against Iran because of its nuclear programme, which constituted a breach of its obligations under international law. As a UN member, Switzerland adopted the sanctions. The US, EU, Australia, Japan, Canada, New Zealand and Norway imposed additional sanctions. In October 2010, the EU adopted further measures. When the EU stepped up its regime, the Federal Council had to decide whether to support the sanctions based on various considerations including Switzerland's position of neutrality.

It took the following key decision:

- **Switzerland would only adopt some of the EU sanctions**: the imposition of further far-reaching sanctions against Iran by the US and the EU in 2011 raised the spectre of an international armed conflict, which would have required Switzerland to apply the principle of neutrality. Switzerland decided not to adopt the sanctions against the Central Bank of Iran or join the EU's oil embargo against Iran. The protecting power mandate Switzerland had undertaken to exercise between the US and Iran, which posed a particular challenge in that it lent credibility to its neutrality, was a key factor in assessing neutrality policy. By representing the relevant interests, Switzerland made a real contribution to easing tensions between the US and Iran, which it assessed as more important than adopting the measures in full.

### Ukraine crisis, 2014
*Key issue: 'OSCE chairpersonship'*
On 1 March 2014, unmarked armed units took control of public buildings in Crimea. Within days, they took control of the peninsula, changed the political leadership and called an illegal 'referendum' on whether Crimea should become part of Russia. President Vladimir Putin later confirmed that Russian military forces had been involved in this operation. On 18 March 2014, Russia decided to annex

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[42] BBl. **2005** 6997 p. 7017
[43] BBl. **2005** 6997 p. 7012
[44] BBl. **2005** 6997 p. 7013

Crimea.[45] In parallel, hostilities between unmarked armed groups and Ukrainian troops commenced in eastern Ukraine in March 2014. This was the beginning of a violent escalation of the situation in eastern Ukraine. [46] Because of Russia's military intervention, neutrality was applied. Switzerland was Chair of the OSCE at the time and therefore played a significant mediating role in efforts to find a peaceful solution. Switzerland had to consider the position it should adopt in this particular situation, given the special function it was exercising within the OSCE.

The Federal Council took the following key decisions:

- **Adoption of EU sanctions to implement the policy of non-recognition of the annexation of Crimea**: the Federal Council strongly condemned the annexation of Crimea, which constituted a violation of international law, and adopted all the EU sanctions that related directly to the annexation, including the ban on trade involving certain goods to and from Crimea.

- **Measures to prevent circumvention of EU sanctions in all other areas**: the Federal Council decided that Switzerland could deliver greater added value in its capacity as OSCE Chair if both belligerents viewed it as a credible mediator and promoter of dialogue. The Federal Council therefore opted not to adopt the additional EU sanctions against Russia. Instead, it adopted a series of measures to prevent Switzerland from being used to circumvent EU sanctions (e.g. requirement to authorise the issue of long-term financial instruments for certain Russian banks and companies and tighter export controls).

- **Extension of specific sanctions to Ukraine:** the Federal Council was obliged to apply the principle of non-discrimination in relation to the sanctions adopted, and, as a consequence, the ban on importing firearms and related goods had to be imposed not just against Russia but also Ukraine. It was not necessary to impose separate sanctions in respect of war materiel, as the relevant legislation already prohibited supplies of war materiel to both belligerents.[47]

- **Transit**: unlike the EU, Switzerland also banned both belligerents from flying over its territory.

**Practice in relation to internal armed conflicts with a global dimension**
It is not always easy to draw the line between an international armed conflict to which neutrality applies and an internal armed conflict. Today, the majority of internal armed conflicts also assume a global dimension. In recent years, the internal armed conflicts in Libya, Syria and Yemen have clearly had global repercussions, requiring Switzerland to make an assessment with regard to neutrality.

*Libya in 2011*
In 2011, the Gaddafi regime responded violently to a series of Arab Spring protests and demonstrations. On 17 March 2011, the UN Security Council adopted Resolution 1973, authorising member states to take all necessary measures to protect civilians in Libya from armed attacks by their own government. NATO launched airstrikes against Libyan forces in order to enforce the resolution, which meant that this internal armed conflict took on a global dimension. However, because of the UN Security Council resolution, Switzerland had no obligations under the law of neutrality. The Federal Council therefore decided to approve transit requests in connection with the implementation of Resolution 1973.

*Syria in 2011*
In March 2011, the Assad regime responded violently to protests and demonstrations, which rapidly escalated into an internal armed conflict. Switzerland adopted all EU sanctions in response to the serious human rights violations committed by the Assad regime. Starting in 2014, the US and other

[45] BBI. **2015** 1055 p. 1079
[46] BBI. **2015** 1055 p. 1080
[47] Prohibition of war materiel exports to countries involved in an international armed conflict under Art. 22a para. 2 let. a WMA.

countries conducted military airstrikes in Syria against the 'Islamic State' terrorist group, known at that time as ISIS. Although the UN Security Council adopted a number of resolutions in connection with ISIS, Russian and Chinese vetoes prevented it from authorising military operations on Syrian territory. In line with its neutrality policy, the Swiss authorities rejected requests from the US and partner countries for transit directly to the conflict zone in Syria.

*Yemen in 2014*

Since 2014, Yemen has been mired in an internal armed conflict between the government and Houthi rebels. A Saudi-led coalition intervened in the conflict to support the Yemeni government. It was also recognised that Iran backed the Houthi rebels, although it had no direct military involvement in the conflict. The conflict therefore took on a global dimension, even though no international armed conflict had occurred. In this situation, Switzerland had to consider exports of war materiel. The Federal Council decided that to sustain peace, international security and regional stability, war materiel should not be exported to the Yemen coalition countries where there was reason to believe that the equipment would be used in the Yemen conflict. Neutrality policy concerns did not play a role in this decision.

# 5  The war in Ukraine

Since the beginning of the war in Ukraine, the Federal Council has had to make a number of decisions regarding neutrality. For this purpose, it considered neutrality in practice over the last 30 years and followed three basic approaches with respect to Russia and Ukraine:

a. **Neutrality is applied:** immediately after Russia invaded Ukraine, the UN Security Council convened on 25 February 2022, but Russia wielded its veto as a permanent member, preventing the Council from adopting measures. On 27 February 2022, the UN Security Council called on the UN General Assembly to address the situation in Ukraine in a special session. In the UN General Assembly on 2 March 2022, over 140 states agreed to condemn Russia's aggression in a legally non-binding resolution. However, more than 50 states refrained from condemning Russia. Against this backdrop, the Federal Council came to the conclusion that **the policy of neutrality applied to Russia and Ukraine and that Switzerland was exercising its rights and discharging its obligations in relation to neutrality under international law.**

b. **Neutrality does not mean indifference to serious violations of international law:** the Federal Council strongly condemned the serious violations of international law by Russia from day one. Russia's military aggression constituted a serious violation of the prohibition of the use of force (Art. 2 para. 4 UN Charter) and the state sovereignty and territorial integrity of Ukraine (Art. 2 para. 1 UN Charter). Switzerland has taken this line both in the multilateral and bilateral spheres. Among other things, it approved the UN General Assembly resolution of 2 March 2022.

c. **Neutrality is compatible with the adoption of EU sanctions:** as stated in the 1993 White Paper on Neutrality,[48] neutrality does not in itself prevent the adoption of economic sanctions, including those outside the UN system. In practice, this concerns EU sanctions, the majority of which the Federal Council has since adopted. The EU imposes economic sanctions in response to violations of international law. They can therefore be described as helping to enforce the global order. The Federal Council assesses on a case-by-case basis whether adopting sanctions is in Switzerland's overall interests and whether they should be adopted in full, in part or in amended form.

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[48] BBl. **1994** I 153.

Adhering to these basic guidelines, the federal government made the following decisions:

## 5.1 Adoption of EU sanctions

On 25 February 2022, the EAER adjusted its sanctions list regarding Russia based on the EU's decisions, and a few days later, on 28 February, the Federal Council decided to adopt the first EU sanctions packages against Russia in their entirety. The Federal Council also adopted the subsequent sanctions packages, guided by the following considerations:

- The Federal Council took the view that the situation in 2022 was different from the annexation of Crimea in 2014 and the outbreak of armed conflict in eastern Ukraine. Russia had previously violated international law in 2014, but the scale of the war and the magnitude of the violations were different in 2022. Moreover, in 2014 Russia had shown its willingness to negotiate on eastern Ukraine at the outset and signed the Minsk agreements. Switzerland also played a special role in the negotiation process in its capacity as chair of the OSCE at the time. Given the different circumstances in 2022 compared with 2014, the Federal Council decided to adopt the EU sanctions on this occasion. In 2014, the Federal Council merely decided to take measures to prevent Swiss territory from being used to circumvent EU sanctions.

- Once sanctions are adopted, neutrality plays a role in relation to militarily relevant goods: if, in the context of sanctions, Switzerland places restrictions on the export or transportation through Switzerland of militarily relevant goods which are intended for either belligerent, the law of neutrality dictates that it must apply the same restrictions to the other belligerent. Since the Federal Council had adopted the EU sanctions against Russia, Switzerland also had to place restrictions on certain exports to Ukraine. For example, the Federal Council had to restrict exports of specific military goods in order to ensure that equipment serving a military purpose would not give Ukraine an advantage, as one of the belligerents. In doing so, it fully complied with its obligations under the law of neutrality regarding the adoption of sanctions. It was not necessary to make separate decisions regarding measures to ensure non-discrimination in exports of war materiel, given that the War Materiel Act (WMA)[5] ) prohibits exports to countries, such as Russia and Ukraine, which are involved in an international armed conflict.

In making its assessment, the Federal Council also took account of Switzerland's particular circumstances. For example, it decided not to adopt the broadcasting prohibition for certain Russian media outlets, as this was deemed to be incompatible with the Swiss understanding of freedom of expression.

## 5.2 Transit requests

On 11 March 2022, the Federal Council decided to refuse transit through Swiss territory during the war in Ukraine by imposing

- an overflight ban on Russian and Ukrainian aircraft to be used for military purposes;

- an overflight ban on aircraft sent from other states for the purpose of assisting one of the belligerents militarily, for example by delivering war materiel.

The Federal Council decided that overflights serving humanitarian or medical purposes, including the transportation of casualties, would be exempted from the bans. Other overflights in the context of the war in Ukraine that fall outside the scope of the rules adopted will be submitted to the Federal Council

for assessment. The Federal Council has not had to make any transit decisions in response to requests of this kind to date.

## 5.3   War materiel exports and transfers

In accordance with the law of neutrality, it is illegal for a country to transfer war materiel directly from its own inventory to belligerents. Switzerland is therefore not allowed to supply either Russia or Ukraine with armaments from its own inventory.

Private companies are permitted to export war materiel under the law of neutrality. However, if Switzerland places restrictions on the export of such goods in respect of one belligerent, the restriction must also apply to the other belligerent (principle of non-discrimination). The War Materiel Act also applies. This provides that export licences for war materiel will not be granted where the country of destination is involved in an international armed conflict.[49] Swiss legislation therefore precludes the export of war materiel to Russia and Ukraine. In this respect, the legislation goes further than the obligation imposed by the law of neutrality.

The Federal Council met these requirements in relation to the war in Ukraine. The transfer of Swiss-made war materiel and the export of war materiel in the form of assembly packages and components for downstream processing by third countries have generated extensive debate.

Germany and Denmark applied to Switzerland for authorisation to transfer Swiss war materiel to Ukraine. Authorisation from Switzerland was required because both countries had signed an agreement at the time of procurement – long before the Ukraine war started – that they would not re-export the materiel without Switzerland's prior consent. The agreement concerned was a non-re-export declaration, which countries are routinely required to sign under Swiss war materiel legislation prior to receiving war materiel from Switzerland. Based on the export criteria laid down in the War Materiel Act and the law of neutrality, Switzerland refused the requests submitted by Germany and Denmark. However, confirmations were made to Germany that it could re-export Swiss-made military equipment to European countries, allowing the countries concerned to use the equipment for their own purposes. The equipment in question was decommissioned materiel that the Swiss army sold back to the original manufacturer in Germany around ten years ago without any conditions. Switzerland also enabled the United Kingdom to receive a small part of the delivery of a weapon system (a shoulder-launched multi-purpose weapon) which both countries had ordered a little earlier than scheduled so that the United Kingdom could replenish its own stocks. There are no legal restrictions on such an approach in Swiss legislation or in the law of neutrality.

With regard to the export of war materiel in the form of assembly packages and components for downstream processing by third countries, the Federal Council decided to permit deliveries to European defence companies, even if the end products manufactured outside Switzerland could be sent to Ukraine. There are no requirements with regard to international supply chains under the law of neutrality. Supplies of war materiel of this kind are generally approved for partner states,[50] provided that their share of the value of the end product does not exceed 50%.

## 5.4  Supplies of protective equipment

Since the war broke out, Switzerland has received a number of requests for supplies of protective equipment. From a neutrality standpoint, any requests relating to militarily relevant goods ought to be rejected

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[49] Art. 22a para. 2 let. a WMA.
[50] Partner states in this context are countries listed under Annex 2 of the War Materiel Ordinance (SR 514.511). They are as follows: Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, UK, US.

– this was taken into account when the sanctions were adopted. Bulletproof vests and helmets are items of equipment manufactured for military purposes and therefore qualify as military goods under Swiss legislation. Requests for supplies of helmets and bulletproof vests for Ukrainian armed forces were rejected on this basis.

Requests for the supply of humanitarian aid to the Ukrainian people, including goods from the Armed Forces Pharmacy, medicines, family tents, mattresses, sleeping bags and woollen blankets, pose no problem and have been approved.

## 5.5 Stance in relation to multilateral bodies

Various international bodies, e.g. the Council of Europe, UN General Assembly, UN Human Rights Council and the OSCE Permanent Council, have adopted resolutions and other instruments in response to Russia's military aggression in Ukraine. Within these multinational forums, Switzerland has condemned Russia's military aggression as a serious violation of international law and proactively supported a number of resolutions. At the same time, Switzerland has argued that Russia's membership of multilateral organisations should, in principle, continue in order to keep the channels for dialogue and communication open.

## 5.6 Expulsion of diplomats

Various European countries expelled Russian diplomats at the end of March 2022. The decisions to expel the diplomats were taken partly as a political response to the military aggression against Ukraine and, in particular, reports of alleged war crimes in areas such as Bucha, and partly because the diplomats concerned were alleged to be members of Russian secret services engaged in espionage activities for Russia in the host states concerned. The Federal Council decided not to expel diplomats as a political response to the military aggression, adhering to the principle that such expulsions should only be carried out for internal security reasons. This also ensured that the Swiss embassy in Moscow could continue to operate, enabling it, in particular, to safeguard the interests of Swiss nationals on the ground and preserve Switzerland's protecting power mandate for Georgia.

## 5.7 Admission of wounded

In May 2022, NATO issued a call to partner states to receive wounded persons from Ukraine. The Geneva Conventions, as well as the Hague Conventions of 1907, stipulate that wounded military personnel being cared for on the territory of a neutral state may not return to war. Allowing them to return would be tantamount to military support for a belligerent. No such restrictions apply to civilians. NATO's appeal made no distinction between civilian and military personnel and explicitly stipulated that recovered persons return to Ukraine after treatment. For this reason, Switzerland was unable to respond to NATO's call. However, Switzerland was able to respond positively to a specific request from Ukraine in July to take in civilians – and children in particular – who were in need of care and assistance.

# 6 Neutrality in the current international context

The use of neutrality as an instrument of foreign and security policy depends on various factors. In today's context, there are four points to highlight.

## 6.1 Geopolitical context

The liberal world order that brought security and prosperity to Switzerland has come under pressure in recent years. The Federal Council was already talking about 'a historic turning point' three weeks prior to Russia's military aggression against Ukraine.[51] Russia's destructive war against its neighbour has accelerated the pace of change. It is a direct attack against the UN Charter and international law and has overturned certainties that we took for granted.

The Ukraine war marks a profound turning point for the **region surrounding** Switzerland. Russia has torn down the peaceful order established in Europe under the Helsinki Final Act and Charter of Paris. Even before the war started, Moscow's extensive demands for a recognised sphere of influence clearly signalled that it no longer supported the existing order and called the sovereignty of its neighbours into question.

The **global environment** is affected by growing geopolitical tensions, with rivalry between major powers shaping international relations. There is scarcely any area of the world whose dynamics are not dominated by regional powers competing for supremacy and influence. The world has become **multipolar**. The Ukraine war has to some extent changed existing regional dynamics and created new dependencies and networks, for example in relation to energy supplies and food security. The war has also made it clear that many African, Middle Eastern and Asian countries are unwilling to firmly align themselves with any of the global power centres, in the hope that this will increase their political influence and confer economic benefits. This is also why Russia is much less isolated globally than it is in Europe. Sanctions in response to the invasion of Ukraine have primarily been imposed by Western countries.[52] Nine of the G20 countries have not adopted sanctions.[53]

Against this backdrop, multilateralism is also under pressure. This has implications for the **UN's system of collective security and for international law**. If one of the permanent members of the UN Security Council brings the peaceful world order into question and violates fundamental rules of the UN Charter such as the prohibition of the use of force, the Security Council cannot take action against the lawbreaker because of the veto right. With regard to international law, Russia's veto in the Ukraine war raised further questions as to whether neutrality should be suspended in such cases despite the lack of a Security Council decision. Since the entry into force of the UN Charter and the prohibition of the use of force, the fundamental question arises as to whether the violation of the charter should influence the application of the law of neutrality.[54]

## 6.2 Security cooperation in Europe

Switzerland is just as exposed to cross border threats as other European states; it is highly interconnected with them at the economic, technological and social levels and shares their values. As outlined in the Federal Council's complementary report to the 2021 Security Policy Report, Switzerland's security environment is likely to deteriorate in the long term due to the war in Ukraine and will remain volatile. Security and defence policy cooperation in Europe should therefore be intensified.[55]

With regard to security policy, the complementary report emphasises that it is not possible for Switzerland to act alone and forego international cooperation in defence. It is in Switzerland's interests to focus more closely on international cooperation in its foreign and security policy.

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[51] BBl. **2022** 366 p. 5
[52] Alongside the G7 countries (US, Canada, Germany, France, Italy, UK, Japan), these countries include the 24 other EU member states, all NATO member states except Turkey, as well as European countries Switzerland, Liechtenstein, Andorra and Ukraine itself and non-European countries Australia, New Zealand, Singapore and South Korea.
[53] Argentina, Brazil, China, India, Indonesia, Mexico, Saudi Arabia, South Africa, Turkey.
[54] See e.g. German Bundestag, Report: Legal questions concerning military support for Ukraine by NATO countries – between neutrality and participation in the conflict, 16 March 2022. See also Section 3.2 in the present report.
[55] Complementary Report to the Security Policy Report 2021 on the Consequences of the War in Ukraine, Report of the Federal Council of 7 September 2022.

It is important to bear in mind when considering neutrality that in the event of an armed attack on its territory, Switzerland would be free to defend itself by cooperating with other states or a military alliance. The Swiss Armed Forces therefore need to be interoperable, i.e. be capable of conducting joint operations with partners. There is nothing in the law of neutrality to prevent Switzerland from cooperating more closely with NATO or the EU. As long as Switzerland retains its permanently neutral status, however, it is essential that any cooperation arrangement does not equate to supporting a belligerent in an international armed conflict. Concrete plans to participate in exercises and operations must be carefully assessed from a neutrality standpoint on a case-by-case basis.

## 6.3 Perception of neutrality in Europe and the world

Neutrality is only useful to Switzerland as a security and foreign policy instrument if it is recognised and respected internationally. It therefore needs to be perceived as transparent and beneficial. Whether other states recognise Switzerland's neutrality depends primarily on the credibility of its actions. Switzerland therefore needs to demonstrate by its actions that it is helping to uphold the international order – even if, as a neutral state, it does so through different means.

Perceptions of Swiss neutrality in the current international context reflect a **geographical divide** that has widened since the outbreak of war in Ukraine: countries in Asia, the Middle East, Africa and Latin America hold largely favourable, albeit not particularly nuanced, views on neutrality. Neutrality contributes substantially to Switzerland's good reputation and is often associated with its mediator role. However, in Europe and the English-speaking countries there is less understanding of Swiss neutrality, which is currently viewed in negative terms. The EU and NATO play a stabilising role and ensure security in Europe. Neutrality is no longer credited with having a stabilising effect on European security. In Europe, there are clear expectations that Switzerland should support European security and common values.

## 6.4 Significance of the digital space

The digital space is today of great importance with regard to foreign and security policy. As described in the 2021 Security Policy Report, cyber and information tools are now widely used for power-political ends and their use is likely to increase. Malicious cyber activity, e.g. against critical infrastructure, may be used to erode public morale or prepare for military operations, and could also be deployed in international armed conflicts.[56]

For the law of neutrality to apply in the digital space, all three of the following conditions must be met:

- there is an international armed conflict;
- the cyber operation must be equivalent to direct military action;
- and the attack is attributable to a state under international law.

If these conditions are not met, the law of neutrality does not apply. However, neutrality considerations may still come into play in responses to cyber operations.

The absence of borders in the digital space in fact delimits the territorial rights and obligations of neutral countries. While airspace can be closed to certain aircraft, the same targeted approach cannot be used for data traffic on the internet. Moreover, data is not just transmitted through terrestrial and undersea cable channels but also via satellites. Satellites orbit in outer space, where further questions arise regarding the application of the law of neutrality. As a result:

- Belligerents are not permitted to use installations on the territory of a neutral state, or installations under its exclusive control, for cyber operations.

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[56] Switzerland's Security Policy – Federal Council Report (BBI 2021 2895 p. 10).

- Belligerents are also prohibited from taking control of a neutral state's computer systems in order to carry out such operations.
- In principle, belligerents are not permitted to damage the data networks of neutral countries when undertaking combat operations via their own computer networks.

# 7  Summary and outlook

The last time the Federal Council addressed the topic of neutrality in detail was in the context of the 1993 White Paper on Neutrality. In the present report, the Federal Council has presented the practice to date in the subject areas mentioned in the postulate and reviewed the decisions taken so far during the Ukraine war.

The Federal Council has concluded that the practice of neutrality established in 1993 and pursued since then still provides Switzerland with sufficient leeway to respond to events in Europe following the outbreak of the Ukraine war and to use neutrality as an instrument of Swiss foreign and security policy in the current international context. The Federal Council will therefore continue to adhere to the current practice of neutrality, as it is outlined in this report.

Switzerland's operation of neutrality in the current international context must be understood and recognised both in Europe and around the world. This is the only way for it to remain an effective instrument. It is therefore vital for Swiss diplomacy to clearly convey the benefits of neutrality as well as its contribution to the international order.

The Federal Council will continue to analyse the impact of the war in Ukraine on international relations and will review the situation as part of its foreign policy strategy, taking Switzerland's neutrality into account.

# Annex 1

# List of abbreviations

| | |
|---|---|
| & Ors | And others |
| 1993 White Paper | Federal Council White Paper on Neutrality of 1993 (BBl. *1994* I 153) |
| Art. | Article |
| BBl. | Federal Gazette |
| cf. | Compare |
| CFSP | Common Foreign and Security Policy of the European Union |
| CoCom | Coordinating Committee for Multilateral Export Controls |
| Cst. | Federal Constitution of the Swiss Confederation of 18 April 1999 (SR 101) |
| Ed./Eds | Editor(s) |
| EmbA | Embargo Act, or the Federal Act of 22 March 2002 on the Implementation of International Sanctions (SR 946.231) |
| ETH | Swiss Federal Institute of Technology |
| EU Treaty | Consolidated version of the Treaty on European Union of 17 December 2007, OJEU C 83 of 30 March 2010 p. 13 |
| EU | European Union |
| f./ff. | And the following page(s), paragraph(s), etc. |
| FAC-N | Foreign Affairs Committee of the National Council |
| FAC-S | Foreign Affairs Committee of the Council of States |
| G7 | Group of Seven |
| G20 | Group of Twenty |
| Hague (V) | Convention of 18 October 1907 respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (SR 0.515.21) |
| Hague (XIII) | Convention of 18 October 1907 concerning the Rights and Duties of Neutral Powers in Naval War (SR 0.515.22) |
| ICJ/CIJ | International Court of Justice (French: Cour internationale de justice) |
| ICRC | International Committee of the Red Cross |
| IEHC | High Court of Ireland |
| KFOR | Kosovo Force |
| Let. | Letter |
| NAM | Non-Aligned Movement |
| NATO Treaty | North Atlantic Treaty of 4 April 1949 |
| NATO | North Atlantic Treaty Organization |
| No. | Number |
| OJEU | Official Journal of the EU |
| OSCE | Organization for Security and Co-operation in Europe |
| P5 states | Permanent members of the UN Security Council (USA, UK, France, China and Russia) |
| PfP | Partnership for Peace |
| SR | Classified Compilation of Federal Legislation |
| UK | United Kingdom of Great Britain and Northern Ireland |
| UN | United Nations |
| US(A) | United States of America |
| v. | versus |
| WMA | War Materiel Act, or the Federal Act of 13 December 1996 on War Materiel (SR 514.51) |

# Annex 2 Glossary

**1993 White Paper**: Annex to the Report on Swiss Foreign Policy for the Nineties of 29 November 1993 (BBl. *1994* I 153; see also dodis.ch/54677). This report is the basis for Switzerland's current practice of neutrality (cf. Practice of neutrality).

**Aggression**: When a state uses military force against the sovereignty (cf. Sovereignty), territorial integrity (cf. Territorial integrity) or political independence of another state. International law (cf. International law) prohibits military force in principle, but allows for two exceptions: on the one hand, military self-defence under specific conditions; on the other hand, measures to maintain or restore international peace and security based on a UN Security Council (cf. UN Security Council) resolution in line with Chapter VII of the UN Charter (cf. UN Charter). The concept of interstate aggression under international law must be distinguished from the concept of aggression under international criminal law, which focuses on individual criminal responsibility.

**Annexation**: Forcible and illegal acquisition of foreign territory of a state by another state.

**Anticipatory effects**: Permanently neutral states must not do anything that prevents them from complying with the obligations of the law of neutrality (cf. Law of neutrality) in the event of war. Activities in peacetime can have repercussions of this nature, known as 'anticipatory effects', in the event of an international armed conflict (cf. International armed conflict). To account for such effects Switzerland incorporates suspension clauses into military cooperation agreements, allowing it to unilaterally suspend contractual obligations if they conflict with an application of neutrality.

**Article 5 of the North Atlantic Treaty**: Provision according to which an attack against one or more members of NATO (cf. NATO) constitutes an attack against all members. This is the principle of collective defence or the obligation of mutual defence. So far, the provision has only been applied once – in response to the terrorist attacks of 11 September 2001 in the US.

**Assembly packages and components (cf. also War materiel)**: Assembly packages are war materiel parts that are manufactured in Switzerland and incorporated into a final product abroad.

**Belligerent (cf. Neutrality, Non-belligerent)**: State that has made a declaration of war and/or is involved in hostilities.

**Bilateralism**: The practice of discussing or negotiating foreign policy issues between two parties. If there are more than two parties involved, this is multilateralism (cf. Multilateralism).

**Bloc-building**: Bloc-building is when different states and international actors join forces to defend common values and interests, as they did during the Cold War.

**Charter of Paris**: cf. European security architecture.

**CoCom sanctions regime**: The CoCom sanctions regime was established in 1949 and dissolved in 1994. Its membership consisted of Western Bloc states. CoCom was an informal, non-contractual body. The aim of the export control measures envisaged by CoCom was to compensate for the Eastern Bloc's numerical military superiority by using a restrictive export policy to secure a technological advantage for partners in the Western alliance.

**Coercive measures**: Cf. Sanctions.

**Collective security**: A peacekeeping system. All participating states undertake, in principle, not to use military force against each other, but to cooperate in collective coercive measures against any aggressor. In contrast to a purely defensive alliance, the aggressor can also be a state that is itself part of the collective security organisation. A system of collective security therefore has an internal as well as external focus. An example of such an organisation is the UN, although here there is no obligation to participate in coercive military measures (cf. UN, Sanctions).

**Congress of Vienna**: The Congress of Vienna took place between September 1814 and June 1815. Under the leadership of the four great powers, Austria, Prussia, Russia and the United Kingdom – and later also France – it reconstituted political order in Europe. At the Congress, Swiss neutrality was acknowledged by the great powers as being in Europe's interest.

**Cooperative security**: Relies on inclusion and dialogue and thus differs from systems of collective security (including coercive measures; cf. Collective security, Sanctions) and collective defence (alliances, deterrence). The term is used especially in connection with the OSCE (cf. European Security Architecture). Further characteristics of cooperative security within the context of the OSCE are the principle of unanimity and, therefore, the sovereign equality (cf. Sovereignty) of states, as well as the political (rather than legal) nature of commitments, the promotion of security through cooperation on a

wide range of issues, and the reliance on trust and security-building measures.

**Customary international law**: Along with international treaties, customary law is one of the foundations for the rights and obligations of states (i.e. a source of international law; cf. International law). Customary international law is when states adopt certain courses of action in the belief that they are fulfilling an obligation. For customary law to develop, two elements are required: the systematic recurrence of identical patterns of behaviour by states, and the conviction of these states that they are acting in accordance with the law (and not, for example, based on morality or civility).

**Cyber incident/cyber operation**: An intentional unauthorised act by a person or group in cyberspace that aims to compromise the confidentiality, integrity or availability of information and data (cf. Data); depending on the nature of the incident, this may also lead to consequences in the physical world. Also referred to as a cyber attack.

**Cyberspace**: Cyberspace refers to a virtual information space created by humans. It is used for digital data (cf. Data) processing and networking as well as the logging and management of systems and processes. Cyberspace is part of the more broadly defined digital space (cf. Digital space).

**Data**: In information technology and data processing, data is understood to be a representation of information (usually in digital format) that can be read and processed (by a machine).

**Differential neutrality**: Understanding of neutrality according to which Switzerland adopted economic but not military sanctions (cf. Sanctions) of the League of Nations.

**Digital space**: This term refers to the entire physical and virtual space that is opened up or permeated by digitalisation (cf. Digitalisation). The digital space refers not only to systems, but also to actors and processes.

**Dual-use goods**: Goods that can be used for military and civilian purposes. Transactions with these goods are subject to the Goods Control Act.

**Embargo**: Cf. Sanctions.

**Embargo Act**: The Embargo Act provides the legal basis for the Federal Council to adopt coercive measures to enforce international sanctions adopted by the UN, the OSCE or Switzerland's main trading partners and ensure compliance with international law.

**Enhanced Opportunities Partner**: Enhanced Opportunities Partners are countries that work closely with NATO (cf. NATO) but are not members of the alliance. The extent and areas of cooperation between NATO and each Enhanced Opportunities Partner are defined individually.

**European security architecture:** Consists of a globally unique framework of regional organisations: the EU, NATO (cf. NATO), the OSCE, and the Council of Europe. It emerged from the pan-European security regime whose foundations were laid by the Helsinki Process during the Cold War. Alongside the OSCE, its key pillars were the Partnership and Cooperation Agreement between the EU and Russia, which entered into force in 1997, and the NATO-Russia Founding Act, also signed in 1997.

**Export control**: Control which requires a licence to be obtained for the export of certain goods. The categories of goods controlled are usually military equipment, goods that could be used for the development, production or proliferation of weapons of mass destruction, and goods that could be used for the production of conventional weapons.

**Federal Constitution**: The Federal Constitution is the constitution of the Swiss Confederation. It is the highest law in the Swiss Confederation. All federal, cantonal and communal laws, ordinances and decrees are subordinate to it.

**Foreign policy**: Foreign policy shapes the relations of a state with other states and international organisations, and safeguards the state's interests abroad. It encompasses various policy areas, including trade, environmental, security (cf. Security policy), development and cultural policy. In Switzerland, the entire Federal Council is responsible for foreign policy. The FDFA is responsible for coordinating foreign policy and ensuring coherence with other departments.

**G7**: The Group of Seven is an informal grouping of the seven major Western industrialised countries (Canada, France, Germany, Italy, Japan, the UK and the USA) and the EU. Within this framework, various issues of international interest are addressed.

**G20**: The Group of Twenty is an informal alliance of 19 states and the EU which represents the main industrialised and emerging economies. It addresses financial and economic cooperation and can set international standards.

**Global governance**: Refers to efforts to develop an institutional and regulatory system as well as international cooperation mechanisms to tackle global problems and cross-border issues. This process involves the UN system (cf. UN), international organisations, state and non-state actors, and regional organisations. Switzerland traditionally plays a key role here, and

International Geneva is one of the major centres of action (cf. International Geneva).

**Good offices**: An umbrella term to describe the efforts of a third party to peacefully settle a conflict between two or more states. Switzerland's good offices consist of three areas: protecting power mandates (cf. Protecting power/protecting power mandate); Switzerland as a host state (cf. Host state) for peace negotiations; and Switzerland as a mediator and facilitator and as a supporter of mediation and negotiation processes. Good offices range from technical and organisational support (e.g. providing a conference venue) to mediation services and the organisation of or participation in international peace processes.

**Host state**: This term describes a country that hosts foreign representations (embassies, missions, consulates) or international organisations. Switzerland – and Geneva in particular (cf. International Geneva) – hosts a multitude of international organisations.

**Host state policy**: The way a country acts as a host state (cf. Host state).

**Human rights**: Human rights are inherent and inalienable rights to which all people are entitled, without distinction, by virtue of their being human. They are crucial to the protection of physical and psychological integrity and human dignity, and are an important foundation for the development of every individual. They are the basis of the peaceful coexistence of nations. They are guarantors of a society based on the obligation to respect the rights of the individual. They apply both in international relations and domestic policy, but also at the place of residence of every individual. Human rights are universal, indivisible and closely interrelated. Every state is obliged to respect, protect and implement human rights.

**Humanitarian principles**: Humanity, impartiality and neutrality are key values and principles of humanitarian action. They were enshrined in the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, and adopted by the UN General Assembly (cf. UN General Assembly).

**Interests and values**: The core mission of Switzerland's foreign policy (cf. Foreign policy) is to promote Switzerland's interests and values, which are two inextricably linked sides of the same coin and are based on the Federal Constitution (cf. Federal Constitution).

**Internal armed conflict (cf. International armed conflict)**: Internal armed conflicts are protracted armed conflicts that take place within the territory of a state, either between state armed forces and one or more armed groups, or between a number of such armed groups.

The intensity of the armed conflict and level of organisation of the belligerents must reach a certain threshold before the term is applied.

**International armed conflict (cf. Internal armed conflict)**: An international armed conflict occurs when armed force is used between two or more states.

**International Geneva**: Geneva forms the heart of the multilateral system (cf. Multilateralism) and is the location of the UN's European headquarters (cf. UN). Thirty-eight international organisations, programmes and funds, as well as 179 states and 750 NGOs are represented there. International Geneva provides 45,000 jobs and contributes more than 11% to the GDP of the canton (1% of Swiss GDP). Around 3,300 international conferences are held in Geneva every year, the main themes of which are: 1) peace, security, disarmament; 2) humanitarian aid and international humanitarian law (c.f. International humanitarian law), human rights (c.f. Human rights), migration; 3) labour, economy, trade, science, telecommunication; 4) health; 5) the environment and sustainable development.

**International humanitarian law**: International humanitarian law governs the conduct of war and protects the victims of armed conflict (cf. International armed conflict, Internal armed conflict). It applies in all international and internal armed conflicts, regardless of the legitimacy or cause of the use of force.

**International law**: International law is the result of interactions between states, and governs how they coexist. It underpins peace and stability and aims to ensure the protection and well-being of persons. International law covers many different fields, such as the prohibition of the use of force (cf. Prohibition of the use of force); human rights (cf. Human rights); the protection of individuals during wars and conflicts (cf. International humanitarian law); and the prevention and prosecution of war crimes, crimes against humanity, genocide, transnational organised crime and terrorism. It also governs other areas, such as the environment, trade, development, telecommunications and transport. Due to the sovereignty of states (cf. Sovereignty), international law only applies for each state insofar as it has agreed to adopt certain international obligations. The peremptory norms of international law, for example the prohibition of genocide, are an exception to this, as they are fundamental norms that apply to all states.

**Interoperability (of armed forces)**: Ability of armed forces to work together to achieve certain goals. Interoperability is a key concept for military alliances such as NATO, as their operations require the armed forces of different allies to cooperate (cf. NATO).

**Kellogg-Briand Pact:** Treaty signed on 27 August 1928 under international law for the 'renunciation of war'. The treaty, which Switzerland joined on 2 December 1929, was initiated by the French foreign minister, Aristide Briand, and the US secretary of state, Frank B. Kellogg. It constitutes the first basis for prohibiting wars of aggression under international law. It is still in force today (SR 0.193.311). The main substance of the treaty was incorporated into the UN Charter's prohibition on the use of force in 1945.

**Law of neutrality**: The law of neutrality is part of international law (cf. International law) and defines the rights and obligations of a neutral state. The law of neutrality is enshrined in the 1907 Hague Conventions on the rights and duties of neutral powers and persons in the event of war on land or at sea, which Switzerland ratified in 1910. These are the only international agreements that regulate the law of neutrality. They have however evolved under customary law (cf. Customary international law): today the same rules apply not only to wars on land or at sea, but also to aerial warfare. Since the law of neutrality refers exclusively to the rights and duties of neutral states during international armed conflicts (cf. International armed conflict), it is sometimes also referred to as part of the international law of war.

**League of Nations**: The League of Nations was an intergovernmental organisation based in Geneva (cf. International Geneva). It came into being after the First World War as a result of the Paris Peace Conference of 1919-20 and began its work in 1920. It was unable to fulfil its goal of permanently securing peace through the settlement of international conflicts, international disarmament and a system of collective security (cf. Collective security). After the end of the Second World War and the founding of the United Nations (cf. UN), its then still 43 members, including Switzerland, unanimously decided to dissolve the League of Nations with immediate effect.

**Militarily relevant goods and services**: Goods and services which directly support the combat capability of belligerents in a militarily relevant manner.

**Multilateralism**: Multilateralism is when issues of public interest are discussed and negotiated between more than two states (cf. Bilateralism). International organisations and bodies, such as the UN (cf. UN), the OSCE and the Council of Europe (cf. European security architecture) are platforms for such discussions. Multilateralism allows Switzerland to achieve leverage through alliances and thereby increase its influence.

**Mutual defence clause of the Treaty on European Union**: Article 42 paragraph 7 of the Treaty on European Union provides that in the event of an armed attack on an EU member state, the other member states have an obligation to provide aid and assistance by all the means in their power. This support can be both military and non-military in nature.

**NATO**: NATO is a military alliance of European and North American countries. It connects the two continents and allows them to consult and cooperate on defence and security issues and to jointly conduct multinational crisis management operations.

**Neutrality case**: A situation in which neutrality applies for Switzerland. This is the case if there is an international armed conflict (cf. International armed conflict).

**Neutrality in practice**: Describes a state's operation of neutrality. The term comprises all decisions that are relevant from the perspective of neutrality. These decisions are made based on the understanding of neutrality and by applying the law of neutrality and neutrality policy (cf. Understanding of neutrality, Law of neutrality, Neutrality policy).

**Neutrality policy**: Political stance of a neutral state in matters that are not covered by the law of neutrality (cf. Law of neutrality), but on which neutrality exerts an indirect influence. This includes measures to ensure the effectiveness and credibility of neutrality and thus the respect of neutrality by other states.

**Non-Aligned Movement**: Group of non-aligned states (cf. Non-alignment).

**Non-alignment**: By adopting non-aligned status, a country is expressing that it does not want to belong to any military alliance. Neutral states are always militarily non-aligned. Non-aligned states, on the other hand, do not adopt a position on neutrality.

**Non-belligerent (cf. Belligerent, Neutrality)**: State that does not take part in hostilities but does provide military support to a belligerent.

**Non-re-export declaration**: Declaration by the country of destination of an export, provided for in Swiss war materiel legislation, which states that war materiel originally acquired by Switzerland will not be passed on without Switzerland's consent.

**P5 states**: The five permanent members of the UN Security Council (USA, UK, France, Russia, China; cf. UN Security Council).

**Partnership for Peace**: The PfP is a flexible instrument for cooperative security (cf. Cooperative security) and cooperation between NATO and its partner countries. Switzerland participates in the PfP alongside states from Western

Europe, Eastern and South-Eastern Europe, the South Caucasus, and Central Asia. Each country works with NATO to determine its stipulated areas of cooperation with other PfP members.

**Passive neutrality**: A neutrality that stands on the sidelines and exercises the greatest-possible abstention.

**Peacebuilding**: Civilian peacebuilding includes efforts to prevent, de-escalate or resolve violent conflicts, notably through trust-building, mediation and the promotion of international humanitarian law (cf. International humanitarian law) and human rights (cf. Human rights). Peacebuilding activities after violent conflicts comprise a range of activities, including dealing with the past, efforts to support democratic processes and elections, and strengthening human rights. Peacebuilding creates and reinforces the conditions needed for sustainable development. It comprises both civilian and military measures.

**Principle of non-discrimination**: According to the law of neutrality (cf. Law of neutrality) currently in force, the principle of non-discrimination must be observed in arms exports by private companies. Accordingly, a neutral state cannot ban exports by private companies to one belligerent and at the same time allow such exports to the other – not even via third states.

**Prohibition of the use of force**: Article 2 paragraph 4 of the UN Charter (cf. UN Charter) prohibits states from using force. War is thus fundamentally forbidden. However, the Charter provides for two narrow exceptions: the right to self-defence and the authorisation of military force by the UN Security Council (cf. UN Security Council).

**Protecting power/protecting power mandate**: A protecting power mandate comes into effect when a state breaks off diplomatic and/or consular relations with another state. If all the parties involved agree, the protecting power takes on the functions agreed with the sending state, grants protection to citizens of that state on the ground, and/or represents its interests in the host state (cf. Host state). Protecting power mandates allow states to maintain low-level relations (cf. Good offices). In mid-2022, Switzerland was performing seven protecting power mandates, representing Iran in Egypt, the United States in Iran, Georgia in Russia, Russia in Georgia, Iran in Saudi Arabia, Saudi Arabia in Iran and Iran in Canada.

**Protective goods/protective equipment:** Goods, such as body armour, that can only be used to preserve the life and physical integrity of persons and not for offensive purposes.

**Re-export (cf. War materiel)**: Export of war materiel by a country that has itself imported this materiel from another country.

**Resolution**: Decision by an international organisation or conference. Resolutions have a standardised format. They are composed of a preamble and a number of operative paragraphs. Most resolutions are not legally binding but have the character of recommendations, for example the resolutions of the UN General Assembly (with the exception of those concerning the internal law of the organisation; cf. UN General Assembly). The situation is different with UN Security Council resolutions (cf. UN Security Council), which are directly legally binding on all states. Resolutions sometimes bear other names ('decision', 'recommendation', 'declaration' or similar).

**Rule of law**: The rule of law refers to the supremacy of law over the rule of might. At the national level, the fundamental objective of the rule of law is to safeguard the primacy of the law at all levels of government and to protect the associated freedom of citizens. In terms of foreign policy, the rule of law is crucial to international peace and security, economic and social progress, development and the protection of rights and human freedoms (cf. Foreign policy). It is achieved primarily through the reinforcement of international law, which guarantees the political stability and reliability of international relations (cf. International law).

**Sanctions**: All diplomatic, economic or military measures taken by a state or an international organisation such as the UN (cf. UN) or the EU to stop a violation of international law (cf. International law) that an organisation has identified or that a state believes it has suffered. Sanctions against a state that is endangering international peace are decided by the UN Security Council (cf. UN Security Council) on behalf of the states. States may also take non-military sanctions as they see fit, but these must be proportionate to the harm suffered. The use of force is prohibited by the UN Charter (cf. UN Charter). This report only concerns sanctions that are issued in connection with an armed conflict and to which neutrality thus applies.

**Security policy**: The aim of security policy is to protect Switzerland and its population against threats and dangers and to contribute to stability and peace beyond its borders. It thus serves to safeguard and strengthen Switzerland's security. An effective security policy anticipates threats and dangers to the country and the population. It derives the necessary measures from this so that the Confederation, cantons and communes can respond correctly and efficiently. Various instruments are used to implement security policy, including the armed forces, the intelligence service, civil protection

and the police, as well as economic policy and foreign policy (cf. Foreign policy).

**Sovereignty**: At the international level, a state is considered sovereign if it is independent of all other subjects of international law. Consequently, it must only fulfil those obligations which it has itself entered into, as well as obligations arising from the peremptory norms of international law (cf. International law).

**Specific military goods**: Goods designed or modified for military purposes, but which are neither weapons, ammunition, explosives nor any other means of combat, together with military training aircraft equipped with suspension points. Transactions involving such goods are subject to the Goods Control Act.

**Territorial integrity**: Term used in international law (cf. International law) to denote the inviolability of the territory of a state. Territorial integrity is protected by the UN Charter (cf. UN Charter).

**Transit request**: Request by a state to cross the territory of another state with troops or materiel.

**UN**: The UN is an international organisation with a global reach. It comprises 193 member states (as at 2022) and provides a forum for discussing virtually all topics of international interest. The UN promotes security and peace and advocates human rights (cf. Human rights), the reduction of social inequalities and the protection of natural resources, as well as providing humanitarian aid. Switzerland became a full member of the UN in 2002. The Security Council is the most important organ with regard to security policy (cf. Security policy, UN Security Council).

**UN Charter**: International treaty and founding document of the UN (cf. UN). The Charter regulates the rights and duties of the member states and defines the areas of responsibility and organs of the UN as an international organisation. The Charter stipulates, among other things, the prohibition of violence (cf. Prohibition of violence). A notable feature of the Charter is that obligations of member states derived from it (e.g. the enforcement of sanctions imposed by the Security Council; cf. UN Security Council, Sanctions) take precedence over other obligations under international treaties. In this regard, the Charter is also said to have a constitutional character, although international law has no formal constitution (cf. International law).

**UN General Assembly**: Organ of the UN (cf. UN), consisting of representatives of all UN member states, which deliberates on issues of international importance.

**UN Human Rights Council**: The Human Rights Council is one of the main organs of the UN (cf. UN) for the promotion and protection of human rights (cf. Human rights). It is a subsidiary body of the UN General Assembly (see UN General Assembly) and was established in June 2006 to replace the Commission on Human Rights. The Council is composed of 47 member states and is based in Geneva (cf. International Geneva).

**UN Security Council**: The United Nations Security Council is composed of five permanent members (USA, UK, France, Russia, China) and ten non-permanent members. It is committed to maintaining international peace and security. Switzerland will be a non-permanent member of the Security Council during the period 2023-24.

**Understanding of neutrality:** Describes how a state uses its neutrality as an instrument for promoting its own security and foreign policy interests (cf. Foreign policy, Security policy). Includes both the interpretation of the law of neutrality and the shaping of neutrality policy (cf. Law of neutrality, Neutrality policy).

**Universality**: Universality means maintaining good relations with all states of the world. This does not mean, however, that foreign policy instruments are deployed in all countries in the same way, nor that Switzerland has a representation in every country (cf. Foreign policy). Instead, Switzerland represents its interests in a modular fashion and according to political priorities. It does so both bilaterally and multilaterally, and as a member of international organisations (cf. Bilateralism, Multilateralism).

**Veto power of P5 states**: Each of the five permanent members of the UN Security Council has the right to speak out against a Security Council decision. If this happens, the decision does not come into effect (cf. P5 states, UN Security Council).

**War materiel**: Weapons, weapons systems, ammunition, military explosive devices and equipment that have been specifically designed or modified for use in combat or for the conduct of combat and that cannot generally be used in the same form for civilian purposes.

**War Materiel Act**: The War Materiel Act (WMA) requires a licence to be obtained for the export and transit of war materiel as well as the transfer of production licences. This is done to fulfil Switzerland's international obligations and uphold its foreign policy principles, including respect for neutrality. Applications must be submitted to SECO, which issues export licences.

**Weapon of mass destruction**: Weapons of mass destruction are chemical (cf. Chemical weapons), biological or nuclear weapons.

# Annex 3 Postulate FAC-S 22.3385

**Council of States**

**22.3385**
**Postulate put forward by the Council of States Foreign Affairs Committee**
**calling for 'Clarity and guidance on neutrality policy'**

**Wording of the Postulate dated 11 April 2022 (English translation)**

The Federal Council is instructed to submit an up-to-date, cross-departmental neutrality report to Parliament. This must address the limits of the law of neutrality (e.g. with regard to overflights, arms deliveries, and NATO membership or cooperation) as well as the intended use of leeway provided by neutrality policy (sanctions: imposition and enforcement).

**Background**

The Federal Council's last report on neutrality ('White Paper on Neutrality') dates from 29 November 1993. The FDFA brochure of 3 March 2022 also refers to this report (despite the fact that the Federal Council submitted another report entitled 'Neutrality put to the test in the Iraq conflict' to Parliament in 2005 in response to postulates 03.3066 and 03.3050).

The 1993 White Paper is based on the assumption that the "division of Europe into two antagonistic blocs is both politically and militarily a thing of the past" (1993 White Paper, Section 534). In the light of Russia's attack on Ukraine on 24 February 2022, the situation is now fundamentally different.

When aggressors and lawbreakers seek to turn back the wheel of history, peace, security, democracy and the key principles of international law are in acute danger. This also affects Switzerland's security and independence.

The scope of the law of neutrality is clear and strictly defined. Neutrality policy, on the other hand, changes in line with developments over time – it must adapt as appropriate to reinforce the credibility of Switzerland's neutrality. The law of neutrality grants Switzerland considerable freedom in its conduct and action (1993 White Paper, Section 13).

Neutrality features in the articles of the Federal Constitution that outline the duties and powers of the Federal Council and Parliament. The Federal Council has stated on several occasions that it does not consider it expedient to further enshrine the core aspects of neutrality in the Federal Constitution or in national legislation, as this would restrict Switzerland's room for manoeuvre with regard to security and foreign policy (brochure, p. 6). This view deserves our support. To that end, Switzerland's neutrality policy must now be updated in the form of a report.

The following topics, among others, must be clarified and updated:

- Security policy cooperation

- Approach to granting overflight rights

- Dealing with new conflict scenarios (e.g. with non-state actors)

- Conflicts in the digital space

- The supply of arms, military protective material and dual-use goods

- Cooperation with or accession to collective defence organisations (NATO, EU defence)

- Sanctions

**Federal Council statement of 18 May 2022 (English translation)**

The FDFA has already begun work on an updated Federal Council report on neutrality. In particular, the report will analyse the development of neutrality over the past thirty years and review recent Federal Council decisions in relation to the war in Ukraine.

Based on the 2021 Security Policy Report, the DDPS will also conduct an assessment of the conflict and submit an additional report to the Federal Council by the end of the year at the latest. The report will focus on the impact of the war on the security situation in Europe and on opportunities for security policy cooperation.

**Proposal of the Federal Council**

The Federal Council proposes the acceptance of the Postulate.

**Timeline**

16 June 2022 Council of States: Approved