

Switzerland and neutrality towards belligerents: a system of conflict limitation

By Niccolò Salvioni, Canton of Ticino, Switzerland.

On Monday, February 28, 2022, the Swiss Federal Council made a historic decision by adopting the sanctions against Russia already decided by the European Union.

The decision was taken during an extraordinary meeting of the Government and announced at a press conference.

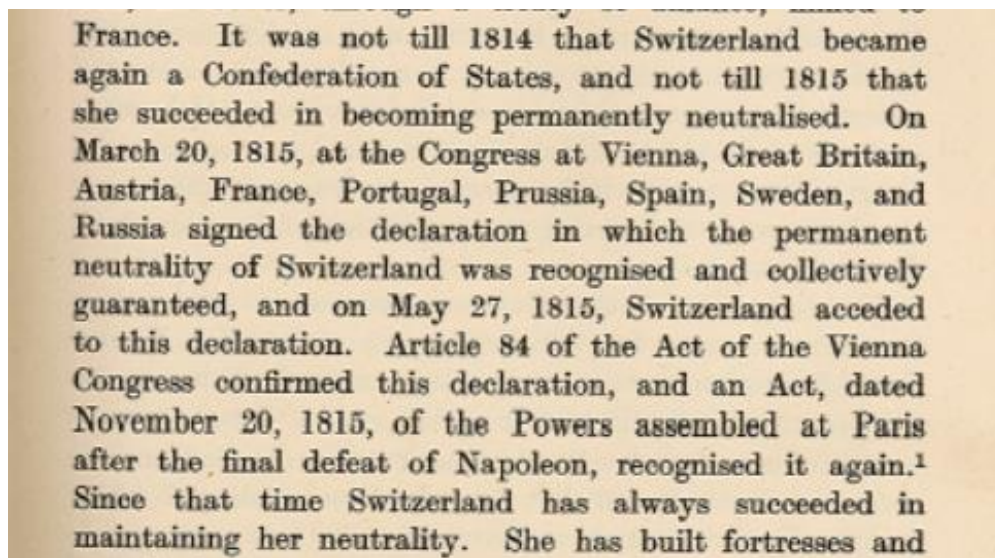
The President of the Confederation, Ignazio Cassis said that *"States that respect international law must be able to count on Switzerland. Playing the aggressor's game is not compatible with our neutrality."*

Bern therefore decided to adopt the measures already decided by the EU on February 23 and 25. The assets of several persons and companies are blocked with immediate effect and financial sanctions are taken against Russian President Vladimir Putin, Prime Minister Mikhail Mishustin and Foreign Minister Sergey Lavrov.

Among the people subject to sanctions are all members of the Russian Duma (lower house of the Russian parliament) who voted in favor of the annexation of the autonomous regions of eastern Ukraine, as well as several legal entities.

Russia's aggression against Ukraine *"is an aggression against the sovereignty, freedom, democracy and civilian population of a sovereign country"* - Cassis said, adding that - *"it is unacceptable both under international law, and politically and morally."* *"It is still open for diplomatic actions by Switzerland, if both sides want it, as well as our law of neutrality is not changed by this decision"*, Cassis pointed out.

This decision was said to be based on a legal opinion that such an approach would be compatible with the Swiss concept of neutrality.



(Oppenheimer's International law – a Treatise – Vol I - Peace – 7th Edition Longmans, London, 1940, Chapter X. "Neutralized States" – Switzerland - Abstract - page. 221)

According to the *Neutrality Report* of the Federal Council of November 29, 1993, Switzerland's neutrality is characterized by being perpetual, permanent, which means that Switzerland commits itself to remain neutral in any future conflict, regardless of the belligerent parties and the time or place when war breaks out. On the other hand, it is an armed neutrality, which implies Switzerland's determination to defend its independence militarily against any aggressor with all the means at its disposal and to prevent actions contrary to neutrality from being carried out on its territory by a belligerent state.

Switzerland's permanent and armed neutrality has always had a peace-policy function in Europe. Parallel to this peace-promoting function inherent in the concept of neutrality, Switzerland has long been actively contributing to the cause of peace through its good offices, which at the same time give neutrality a certain universal function.

I reproduce below a classic definition of neutrality from the volume *Völkerrecht* (International Public Law), by Wolfgang Graf Vitzthum und Alexander Proelss, 7th edition, 2016, De Gruyter, Berlin, in the chapter "Parties to the conflict and third states - law of neutrality" (translated from German by the writer):

Neutrality is the status defined by international law of a state that is not involved in an armed conflict.

This status results in certain rights and obligations in the relationship between neutral and belligerent states.

On one hand, there is the right of the neutral state not to be disturbed by the conflict, that is, not to be affected.

On the other hand, there is the duty of non-participation and impartiality.

The right not to be affected means that the relations between the neutral and the belligerent states are those of the law of peace, which are modified only in some respects by the law of neutrality.

In particular, the neutral must tolerate certain controls in the area of maritime trade.

The duty of non-participation and non-involvement is the necessary counterbalance to the right not to be disturbed.

Above all, the duty of non-participation means refraining from acts of support for one side of the conflict.

The duty of impartiality does not mean a duty of schematic equality.

It is a prohibition of discrimination, i.e. it prohibits differential treatment of belligerents that is not justified in view of the special problematic situation of the armed conflict.

Since neutrality does not impose an obligation of schematic equality of treatment, existing differences in trade relations between neutrals and their respective parties to the conflict must not be leveled at the outbreak of the armed conflict.

Rather, the neutral has the right to continue existing trade relations (*courant normal* principle); a change in trade relations in favor of a belligerent would, however, be partisanship incompatible with the status of neutrality.

The prohibition on acts of support also means that the neutral state cannot tolerate a party to the conflict using its resources against its will.

Therefore, the defense of neutrality is also part of the duties of non-participation.

The regime of rights and duties of neutrals as a whole is an important instrument of conflict limitation.

By distinguishing between neutral states and states involved in a conflict, international law prevents more and more states from being drawn into a conflict.

Neutrals can help conflicting parties maintain or establish relationships that lead to alleviating the suffering of conflict victims (e.g., through relief efforts or the exchange of messages) and ultimately pave the way for peace (e.g., by mediating ceasefires). (...)

In a post of last Monday, the Russian bi-weekly *Novaya Gazeta* commented, "*Switzerland has joined sanctions against Russia. The country for the first time since 1815 has violated the neutrality it held even during World War I and World War II.*"

The sanctions adopted by the European Union against Russia, were adopted by a supranational body (European Union) of which most countries are also part of NATO, as a defense organization, and support -within their legal limits as non-neutral states- Ukraine as another party to the conflict. Switzerland is not yet a member of either the EU or NATO.

The new measures were integrated into the corresponding ordinance already on Monday, based on the Swiss Embargo Act. The Ordinance on Ukraine, according to the new Article 8, freezes the assets and economic resources of natural and legal persons as indicated in the SECO list.

<https://www.fedlex.admin.ch/eli/cc/2014/486/fr>

https://www.seco.admin.ch/dam/seco/de/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/Exportkontrollen/Sanktionen/Verordnungen/Russland,%20Ukraine/situation_ukraine_2022-02-28.pdf.download.pdf/Situation%20in%20der%20Ukraine_2022-02-28.pdf

Ukraine welcomed Monday's decision by the Federal Council, as did the European Union, among others.

The Russian government, for now, has not taken an official position on Switzerland's decision. Russian Foreign Minister Lavrov, who was supposed to be in Geneva on Thursday, did not go there due to alleged air travel difficulties imposed by the overflight bans of various European nations. He was also sanctioned in Switzerland. Russia, on the same day, has also closed its airspace to Switzerland.

The coming days will show -if and how- the different types of European sanctions will be further integrated into the Swiss Embargo Act Ukraine Ordinance. For now, as mentioned, the persons and entities named in the 147-page SECO list had their assets and economic resources frozen.

The decision of the Federal Council was accompanied on the same day by a resolution of the National Council condemning the war in Ukraine. The Swiss federal policy responsible for governing the institution of neutrality has thus expressed, in a single day, a judgment on the conflict in being, siding in favor of a belligerent party, and, indirectly, against the other.

The decision of the Federal Council combined with the resolution of the National Council is unusual and represents an anomalous application of the permanent neutrality internationally recognized to Switzerland since 1815.

The executive and legislative Switzerland, have taken part in favor of a belligerent party, deciding to adopt, against the other party to the conflict, the same sanctions adopted by the EU.

In doing so, Switzerland has disengaged itself from the behavior that it should have held as a neutral state, since it has decided to adopt economic measures in favor of a party, discriminating against the other, similarly to what the EU has done as a supranational entity.

After the international solution of 1815 to provide Switzerland with permanent military neutrality recognized by the Treaty of Paris and the Congress of Vienna, neutrality is still enshrined in the Swiss Constitution. Art. 183 of the Fed. Const. states that the Federal Assembly has the duty and the power to take measures to safeguard the external security and the independence and neutrality of Switzerland, while Art. 185 of the Fed. Const. states that the Federal Council shall take measures to safeguard the external security, independence and neutrality of Switzerland.

Is the position adopted by the Federal Council and the National Council compatible with the perpetual neutrality status of Switzerland?

The first impression is that with these decisions, for the first time, both constitutional federal institutions responsible for the protection of Swiss neutrality have sided with one side in the conflict, to the detriment of another.

Only the future will be able to tell if Switzerland will still be considered perpetually neutral and thus benefiting from the prerogatives of neutrality, i.e. not to be disturbed by the parties to the conflict.

The decision taken may have reduced the existing tension in Europe and the West, which has seen, with Switzerland, a completely unexpected ally appear, with the approval of Ukraine and its supporters.

On the other hand, it did not allow for easier relations with Russia. On the contrary, Russia now finds itself having to negotiate with almost the whole of Europe lined up against it, without the semblance of a neutral peacetime support, not even from Switzerland, from the West.

Nevertheless, however, other states, even non-neutral ones, are increasingly offering their good offices to contribute to a peaceful solution of conflicts and have already demonstrated several times that they can do so successfully, so it is fair to say that good offices are no longer exclusive to neutral Switzerland. Yesterday for instance, China made a mediation offer.

The historic decisions of the Federal Council and the National Council of February 28, 2022, paradoxically, while understanding that in good faith the government and the parliament wanted to give signals of humanitarian support to Ukraine as a weak party in an occupation phase somehow, in some ways, cannot be cheered.

The Ukraine is now more alone, having Switzerland, with its own decision, precluded its role as a neutral provider of good offices aimed at achieving an end to hostilities by mediating between the two countries on its territory.

These decisions have led to an abnormal abandonment of Switzerland's function as a perpetually neutral and impartial state between belligerents and as a proven system of conflict limitation, the effects of which only the future can show us.

I could only explain this historical dysfunction of Swiss neutrality by the dismay of the government and parliament in the face of a sudden, unexpected, dramatic war at Europe's doorstep. A frightening, shocking series of war events that most of us Swiss have often trained, but never experienced, in the past.

The temptation chosen, instead of maintaining an objective equidistance, has been to take sides for the belligerent that seems to us most akin and that is supported by the forces closest to us. In doing so, unfortunately, we undermined the conditions for implementing good offices in Europe, distancing Russia even further not only from us, but also from Europe itself.

The European Union was also founded on the awareness that a single and free market would have prevented the birth of new wars on the continent.

Many, in these days, have argued that Ukraine and its people are Europe. Few have argued that also Russia and its people are part of Europe, and that, in the future, we will again come back to law of Peace contacts, also with them.

Applying embargoes in Europe, or on its borders, below current affairs, means creating the conditions for markets to break up and therefore social and armed unrest to spread.

Perhaps more attention should be paid to the functionality of Switzerland's perennial neutrality and not lose sight of its possible importance in limiting conflicts, even in Europe or in its immediate vicinity.

The momentary commotion about neutrality in Switzerland, which perhaps can still be remedied, made it possible to learn more about the particularities of a neutral state, how much these have already helped the international peace planning, also by Switzerland, and how the use of this institution could also be considered in the case of Ukraine in the future, as has already been suggested by many.

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