

From neutrality to sanctions practice

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Swiss neutrality and economic sanctions were long regarded as incompatible. The classical doctrine held that a permanently neutral state should abstain from economic measures directed against one party to a conflict, since such measures could be read as taking sides. The practice of the Cold War decades followed that doctrine with some flexibility. Switzerland did not join United Nations sanctions formally, since it was not a member of the organisation, although it tried to prevent Swiss territory from being used to circumvent them.¹

The Iraqi invasion of Kuwait changed that practice. Iraq invaded on 2 August 1990. The Security Council adopted Resolution 661 on 6 August, and on 7 August 1990 the Federal Council issued an ordinance on economic measures against the Republic of Iraq, which implemented the UN embargo autonomously.² Contemporaries saw the decision as a departure. The legal scholar André Schaller described it as the first time that Switzerland had clearly participated in sanctions adopted by the United Nations, while he stressed that it also stood in continuity with earlier practice. At the same time the Federal Council remained cautious in the military sphere: in December 1990 it allowed American overflights only for the transport of wounded soldiers and medical supplies.³

The Iraq measures, and the many that followed in the 1990s, rested directly on the Federal Constitution, which allowed the Federal Council to issue ordinances to safeguard the interests of the country. The competence was broad, although its use for a lasting sanctions practice was open to doubt. From 1998 onwards the Federal Council also adopted measures of the European Union that were not based on a UN resolution, beginning with measures against the Federal Republic of Yugoslavia.⁴ Switzerland also became an intellectual contributor to the field. Between 1998 and 2001 it hosted the so-called Interlaken process on targeted financial sanctions, which produced manuals on how asset freezes against individuals and

entities could be designed to hit decision-makers without harming populations. Roland E. Vock of SECO later described the process as a Swiss contribution to “smart sanctions” and wrote that support for broadly based international sanctions lay in the interest of a foreign policy committed to international law.⁵

Two developments of 2002 ended the improvised phase. Switzerland joined the United Nations on 10 September 2002, which made the non-military measures of the Security Council binding upon it. In the same year Parliament adopted the Embargo Act, which came into force on 1 January 2003 and has since provided the statutory basis for all Swiss sanctions ordinances.⁶ The combination of binding UN measures and discretionary adoption of EU measures still defines the Swiss system. The Federal Council does not list persons of its own motion under a genuinely autonomous Swiss regime. It decides whether to follow the United Nations, which it must, and whether to follow the European Union, which it may.

The last element of the historical frame is the Swiss understanding of neutrality law itself. The official position is that neutrality law, which governs the conduct of a neutral state in an international armed conflict, concerns military matters and does not prohibit economic sanctions. SECO states on its website that participation in non-military sanctions is consistent with neutrality law and that the defence of peace and international law are values that Switzerland shares with other democracies.⁷ The distinction between economic measures, which neutrality permits, and the supply of arms to belligerents, which neutrality law restricts, runs through the rest of this chapter. It explains why Switzerland could freeze billions of francs of Russian assets in 2022 while refusing to let Germany pass Swiss ammunition to Ukraine in the same year.

1 Notes

1. Federal Council, Bericht zur Neutralität of 29 November 1993 (93.098), https://www.files.ethz.ch/isn/14853/rp_931129_neutrality_g.pdf, which describes the “courant normal” practised in the case of Southern Rhodesia (trade held at the average level of a representative period before the sanctions) and the autonomous implementation of the arms embargo against South Africa. ↩
2. SECO, “Sanktionsmassnahmen der Schweiz gegenüber der Republik Irak”, <https://www.seco.admin.ch/de/massnahmen-gegenueber-irak>.

The page identifies the Verordnung vom 7. August 1990 über Wirtschaftsmassnahmen gegenüber der Republik Irak (SR 946.206) as the founding ordinance, which remains in force in amended form. The general trade ban was lifted on 25 June 2003. ↩

3. swissinfo.ch, “1991: Die Schweiz und der Golfkrieg”, <https://www.swissinfo.ch/ger/1991--die-schweiz-und-der-golfkrieg/3175972>. The article quotes Schaller (“Erstmals nahm die Schweiz klar an von der UNO getroffenen Sanktionen teil”) and the political scientist Aviva R. Schnur on the new constellation in the Security Council. ↩
4. SECO, “Die Schweiz und internationale Sanktionen”, <https://www.seco.admin.ch/de/schweiz-und-internationale-sanktionen>. The page states that since 1998 Switzerland has decided case by case to adopt sanctions outside the UN framework, such as EU sanctions. ↩
5. Roland E. Vock, “UNO-Sanktionen: Umsetzung in der Schweiz”, Die Volkswirtschaft, 1 November 2005, <https://dievolkswirtschaft.ch/de/2005/11/vock-2-2/>. Vock explains that non-military coercive measures of the Security Council rest on Article 41 of the UN Charter and are binding under international law. ↩
6. SECO, “Die Schweiz und internationale Sanktionen” (cited above), stating that since UN accession Switzerland implements all non-military coercive measures of the Security Council and that sanctions ordinances have been issued on the basis of the Embargo Act since 1 January 2003. ↩
7. SECO, “FAQ – Sanktionen der Schweiz”, <https://www.seco.admin.ch/de/faq-sanktionen-schweiz>. The FAQ also records that Switzerland currently maintains 28 sanctions ordinances, all based on measures adopted by the UN and/or the EU. ↩

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