

"Switzerland in the conflict between international and neutrality law and the re-export of armaments".

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The controversy surrounding the re-export of Swiss military equipment not only damages Switzerland's international reputation, but also directly jeopardises the Security-Related Technology and Industrial Base (STIB) and thus Switzerland as an industrial location. How can Switzerland extricate itself from this self-inflicted dilemma between the right of neutrality and the internationally demanded solidarity with Ukraine? And how can a realistic and long-term understanding of neutrality be found that can be applied not only to the war in Ukraine, but also to other armed threats?

These and other important questions were discussed at the 13th FSS Security Talk in Bern by renowned experts such as **Prof. Dr Christoph Frei** (political scientist and professor of international relations, University of St. Gallen), **Simon Plüss** (Minister, Deputy Head of Division Bilateral Economic Relations, Head of Department Arms Control and Arms Control Policy, SECO), **Dr Stefan Brupbacher** (Director of Swissmem), National Councillor and SPC-N President **Mauro Tuena and Roland Borer** (former National Councillor & entrepreneur).

It became apparent that Swiss neutrality needs to be reconsidered in the context of global interdependencies and the Russian war of aggression. In some places, the current understanding of neutrality is seen as a stumbling block for credible international cooperation and as an obstacle to the Swiss arms industry and cooperation. At the same time, despite agreement on the need for action, it is difficult to find political majorities in Swiss politics. The question therefore remains open as to what role Switzerland should and can play in the European security architecture.

"The Federal Council did not decide in a vacuum".

The 13th FSS Security Talk kicked off with two informative input presentations. First, **Simon Plüss** (Minister, Deputy Head of Bilateral Economic Relations, Head of Arms Control and Arms Control Policy, SECO) gave an insight into the **foundations and developments of the Confederation's arms control policy**.

Simon Plüss began his presentation with an **overview of the current provisions on arms exports and the War Material Act (WMA)**. The Federal Council had already dealt with these issues several times, he noted. The first time, on **3 June 2022**, the Federal Council assessed in detail the transfer of Swiss war material to Ukraine and the export of war material supplies in the form of assemblies and individual parts to European defence companies: It came to the conclusion that the **export of war material of Swiss origin was not possible** due to the export criteria of the War Material Act and the principle of equal treatment under neutrality law. At the same time, the Federal Council advocated that **industrial cooperation with foreign countries in the form of the subcontracting of subassemblies and individual parts to European defence companies** should remain **possible**, even if the war material produced abroad could end up in Ukraine. This is in line with the WMA, which provides for a corresponding exemption for the supply of subassemblies and individual parts. Due to international pressure and increasingly loud criticism, the Federal Council again addressed the issue on **10 March 2023** and decided to adhere to the **current practice**.

Simon Plüss then explained the considerations that led to this practice on the part of the Federal Council. As he explained, since last year the **WMA** has contained a provision in Art. 22a which clearly states that **foreign transactions cannot be authorised** if the **country of destination is involved in an internal or international conflict**. This means that the export of war material from Switzerland to Ukraine is prohibited. In addition, Art. 18 of the WMA states that the **export of war material can in principle only be authorised if**, firstly, it is a delivery to a foreign government and, secondly, this government undertakes within the framework of a **non-re-export declaration that it will not pass on the material without Switzerland's consent**. The exception is individual parts that are installed and not re-exported unchanged. In this case, a non-re-export declaration can be waived. "The Federal Council has not decided in a vacuum, but has also taken recourse to concrete transactions," Simon Plüss emphasised.



He then explained how these provisions in the WMA dated back to the federal popular initiative against arms exports to civil war countries (the so-called "**correction initiative**"). The aim of this initiative was to **completely prevent the export of war material to conflict regions** and to take away the Federal Council's room for manoeuvre. As part of the preparation of the Dispatch on the "correction initiative", the Federal Council drew up an **indirect counter-proposal**. This provided for the **export criteria to be raised from the ordinance level to the level of a federal law**. Nevertheless, the Federal Council wanted to reserve the right to deviate from these export criteria in **exceptional circumstances in order to protect the country's foreign and security policy interests**. However, this famous Art. 22b in the Federal Council's counter-proposal was **rejected by parliament**, so that in the end an indirect counter-proposal was adopted that was stricter than the initiative itself. Based on this parliamentary decision, the initiative committee finally decided to withdraw the initiative.

Finally, Simon Plüss addressed the **neutrality law and the Hague Convention**. It is important, he emphasised, that there is no obligation in neutrality law to prevent the export of war material by private companies. However, if restrictions are placed on the export of war material by private companies, then the **neutrality law principle of equal treatment** applies. Based on these remarks, Simon Plüss drew an initial conclusion. The WMA, the neutrality law and also the “correction initiative” ultimately had one goal: to **prevent Swiss war material from appearing in conflict areas**. Against this background, the Federal Council had therefore come to the conclusion that these **goals should also be applied to the re-export of war material**. According to this logic, the Federal Council has been applying the principle for 30 years that the same criteria apply to re-exports as to exports of arms from Switzerland.

Simon Plüss concluded his presentation by discussing the current **parliamentary motions on the re-export of war material**. Simon Plüss reminded the audience that the Federal Council had stressed that if one wanted a change of policy in this regard, then parliament would have to become active. As Simon Plüss explained, there are currently five parliamentary motions pending: two motions and three parliamentary initiatives. In his opinion, the interests behind these various initiatives are so far apart that it will be difficult to find a common denominator. He therefore did not think that parliament would find a quick solution to the problem of re-exports.

"Can someone be neutral who is no longer independent?"

The second speaker was **Prof. Dr Christoph Frei**, political scientist and professor of international relations at the University of St. Gallen. Right at the beginning, he emphasised the high relevance of the topic for Switzerland's security: "How do we fulfil the constitutional mandate to guarantee the security of our country? Because **we don't have to save neutrality, we have to guarantee security!**"

Prof. Dr Frei began by highlighting the connection between Switzerland's prosperity and its institutions. Switzerland's prosperity explains why we are so attached to our institutions of the last 200 years, such as direct democracy and neutrality. Switzerland has cultivated neutrality - in the sense of non-interference in foreign conflicts - since around the middle of the 17th century. In our perception, we have always been able to benefit greatly from it. This explains the great importance of neutrality for the Swiss.

It is therefore worthwhile to look back at the **history of the origins of neutrality**, Prof. Dr Frei explained. With the end of the Thirty Years' War, sovereign states with a certain independence were formed as units that occupied economically, legally and politically symmetrical spaces. Of course, even then these spaces were not 100% congruent and of course there was trade. Rivalries among major European powers were widespread at that time. At the Congress of Vienna, it was therefore decided that Swiss neutrality was in the European interest. At the same time, as Prof. Dr Frei emphasised, war was normal at that time: **Every state had a right to wage war of aggression**. Within this framework, **neutrality was a legitimate foreign policy concept**, especially for a poor small state.

At the beginning of the 20th century, the **Hague Conventions** arose from these preconditions, Prof. Dr Frei explained. These represent the **most important point of reference for the core of neutrality law** to which Switzerland still refers today. This law was created 120 years ago and has never been adapted. Prof. Dr Frei stressed that this body of law could no longer exist today because we have a completely different body of international law. Of course, the Hague Conventions are still valid, but they no longer fit today's situation because the **basis of this law** is the **right of every sovereign state to go to war**.

Afterwards, Prof. Dr Frei shifted the focus away from Switzerland's perspective to that of its environment. As neutrality must always be considered in the context of other states, a decisive question arises: **Are there still sovereign states?** His answer: On paper, yes, but practically no longer because of globalisation. Prof. Dr Frei noted that economic areas are no longer bounded by borders and that free trade presupposes treaties. Switzerland is bound in its actions by 4,280 international treaties. Accordingly, Prof. Dr Frei noted that today we have a "**law of cooperation**" instead of a "**law of coexistence**". The international view of wars has also changed fundamentally: Since the founding of the UN, **war is no longer legal and legitimate, but irrational, illegal and outlawed**. Anyone who wages a war of aggression today is punished according to the UN Charter. Today we have arrived at a time when we can no longer afford war.

At the same time, Prof. Dr Frei underlined that **technological networking** is even greater than economic networking today: "Whether we like it or not, we have reached a point where we have grown together technologically, economically, in terms of international law, socially and through economic migration. Of course, there is still the political fragmentation into sovereign states, but this fragmentation should not obscure the view of the close way in which we are connected". Prof. Dr Frei therefore posed the key question: "**Can someone be neutral who is no longer independent?**"



In conclusion, Prof. Dr Frei stated that **Swiss perceptions** must **better keep pace with developments in the environment**. He recalled that the Swiss armed forces had been cut down in the last three decades in what he considered a short-sighted, unhistorical and historically oblivious manner, and that Switzerland's defence budget had been well below 0.8% in recent years. He would therefore like to see "a little more cost truthfulness, openness and honesty in political discourse", Prof. Dr Frei said. For **Switzerland's security is certainly not guaranteed by armed neutrality, but by the United States of America**

and NATO. At the same time, Switzerland is no longer a poor small state, but one of the twenty largest economies in the world. In view of the fact that Switzerland does not want to join NATO, Prof. Dr Frei therefore called for **more solidarity from Switzerland**: "We can gladly keep neutrality, but let's please reframe it. Let's adapt it to international law. Let's look for neighbours who are still willing to support this neutrality to some extent". After the war in Ukraine, the **European security order must be reanimated and the OSCE must be rebuilt** - also with Russia. Switzerland should not stand on the sidelines, however, but should **co-finance and co-initiate this new European security order**, and not only with humanitarian means.

Switzerland in crisis?

The two keynote speeches were followed by a high-level **panel discussion** moderated by **Fredy Müller**, Managing Director of the SWISS SECURITY FORUM. In addition to **Prof. Dr Christoph Frei**, **Dr Stefan Brupbacher** (Director of Swissmem), **National Councillor and SPC-N President Mauro Tuena** (SVP, ZH) and **Roland Borer** (former National Councillor & entrepreneur) also took part in the panel discussion.

By way of introduction, Fredy Müller confronted the four panellists with the recent statement by U.S. Ambassador Scott Miller that **Switzerland was in the most serious crisis since the Second World War with regard to neutrality**. While Dr Stefan Brupbacher clearly affirmed this from the point of view of Swissmem member companies, National Councillor **Mauro Tuena expressed** his firm conviction that Switzerland was not in a crisis. He stressed that neutrality was not easy and that Switzerland's neutrality had to be explained but that Switzerland must also be able to **withstand pressure from abroad in the current situation**. At the same time, he referred to the ongoing collection of signatures for the **neutrality initiative**, which would offer the opportunity to discuss neutrality and submit the issue to the people and the cantons for a vote.

Prof. Dr Christoph Frei then drew a line from the current discussions on neutrality to the development of Swiss security policy. Ironically, he said, Switzerland had been supra-European in the way it had collected the **peace dividend** after the end of the Cold War. At the same time, however, there had always been voices warning that the OSCE had only been in decline since 2001 and that the European peace order was slowly being left behind. **Roland Borer** shared this analysis: Switzerland does indeed have a **security policy deficit** today. He attributed this, on the one hand, to the decades-long neglect of security policy issues by the right-wing parties and, on the other hand, to a kind of political thinking that no longer considers long-term periods but is only oriented towards four-year election periods.

National Councillor **Mauro Tuena** admitted that right-wing Federal Councillors were also partly responsible for the fact that the army had less money and fewer personnel available every year. At the same time, he stressed now is the time to seize the opportunity. In his opinion, the procurement of new fighter planes would not have passed so easily without the war in Ukraine. However, one must keep in mind that for further security policy reforms, such as an **amendment to the War Material Act, majorities in parliament and among the people must be created**.

The importance of the defence industry for Switzerland's security

Fredy Müller led the discussion into the second block of topics: the **current challenges for the Swiss defence industry**. **Dr Stefan Brupbacher** began by **emphasising** the importance of the defence industry for Switzerland's security: **Switzerland can only defend itself if it has its own defence industry, and this defence industry must be able to export because the Swiss army does not need enough**. The Swiss defence industry is expected to be able to export, so it must also be able to export when these

weapons are needed, which unfortunately is not during peace. All defence manufacturers complain today that they no longer have any **export possibilities** unless they can also in another country. This is because **Switzerland has lost all of its reliability and credibility** in this regard and has thus called its entire security policy into question, Dr Stefan Bruppacher warned.

Roland Borer shared Dr Stefan Bruppacher's assessment. Switzerland is no longer trustworthy as a supplier with regard to future customers. Today, Switzerland could no longer provide the necessary guarantees for armaments deals, which often last more than 30 years. **International defence companies** will therefore **withdraw production from Switzerland** and only profit from Swiss know-how. For **Prof. Dr. Christoph Frei**, this discussion was an example of a larger phenomenon: the **deindustrialisation of Europe**. Against the background of the short-sightedness of security policy in Europe, it is no wonder that dependence on the USA continues.



The moderator then asked National Councillor **Mauro Tuena** how the SVP could reconcile the fact that on the one hand it was calling for a strong arms industry and, on the other hand, it wanted to ban the re-export of these very goods on the basis of concepts of neutrality. National Councillor Tuena pointed out that the discussion on the **transfer of Swiss ammunition** was only about 12,000 rounds and that this quantity was **not decisive for the war**. Moreover, a change in the law regarding the re-export of war materials would not come into force until spring 2024 at the earliest. Roland Borer, a former National Councillor of the same party, did not accept this argument. He said that he expected the SVP to submit a parliamentary initiative at the same time to call on the Federal Council to restore the War Material Act to its pre-2021 status.

National Councillor Mauro Tuena, however, again pointed to the **lack of parliamentary majorities** for such an amendment. He said that it was necessary to tell foreign countries that the current War

Material Act had been passed by a parliamentary majority and that Switzerland could not break its own laws. **Prof. Dr Christoph Frei**, however, questioned whether this explanation of the legal framework would be understood and accepted abroad. In the course of the rescue of Credit Suisse, it was certainly perceived abroad that Switzerland can act very quickly if the pressure from abroad is only great enough. At the end of the day, it will be noted that **Switzerland goes from being a special case to an obstacle** whenever it does not act in accordance with the UN's collective security system and the **right to self-defence**, he warned.

A new understanding of security and neutrality policy for Switzerland

Fredy Müller introduced the third and final part of the panel discussion by raising the question of whether **Switzerland** needs to **adapt its concept of neutrality to today's realities**. **Prof. Dr Christoph Frei** agreed that Switzerland - since the last neutrality report in 1993 - had missed the opportunity to address the question of how far the framework of neutrality law had moved away from the Hague Conventions. At the same time, the Federal Council had also failed to prepare for the Russian attack on Ukraine, despite the warning signals from the United States. **The damage caused by Switzerland's actions since 24 February 2022 has been enormous, he said.** We therefore need to talk about where Switzerland stands in Europe because whether we like it or not, we are **part of the European security architecture**.

Dr Stefan Brupbacher, on the other hand, emphasised that **Switzerland** needs a **new kind of foreign policy culture**. **Swissmem** defined this as follows two years ago: As a small state in a world that is becoming increasingly multipolar, in which there are more and more conflicts and in which it is becoming more and more difficult for small, open economies, three elements are needed: firstly, **Swiss companies** that manufacture indispensable products that are needed abroad; secondly, **diplomatic initiatives by the FDFA**, but also by the other departments; and thirdly, an **understanding of neutrality** that does not enshrine neutrality in the constitution with an absolute renunciation of any sanctions, but is based on an understanding that not every single country has to tick in the same way as Switzerland.

Prof. Dr Christoph Frei concluded by referring to the statements of Federal Councillor Ignazio Cassis that neutrality is cooperative. He criticised that **neutrality is only defensive and not cooperative**, on the contrary, **defence and security are cooperative; otherwise they do not exist**. He argued that it would be difficult to develop a Swiss foreign policy in the field of security as long as we have to argue about such perceptions. Switzerland lacks experience in foreign policy, but it does not have to remain a special case. Instead, he demanded: **"We must learn to think of security as a whole, or Europe will always remain dependent and immature"**.

"Switzerland must move!"

At the end of the panel discussion, the moderator asked the four panellists for their **conclusions** for Switzerland. **Roland Borer addressed** the defence industry: He said that if Switzerland waited until its entire network was free of conflict, or if it tried to solve the current problem via a popular initiative, then the defence industry would soon no longer exist. Therefore, **quick and consistent decisions are needed to preserve the Swiss defence industry**. **Dr Stefan Brupbacher** agreed with this conclusion: Switzerland must return to a **pragmatic political culture that clearly defines its interests**. One of these interests must be that Switzerland - and thus also its neutrality - is respected and accepted abroad.



National Councillor **Mauro Tuena**, on the other hand, stressed that it was important for Switzerland, as a small, neutral and sovereign country, to explain to other countries what it means to make decisions independently. He recalled Switzerland's special role as the host country of various international organisations. He argued that if Switzerland gave up its neutrality, it would never be able to act as a neutral mediator and that in that case these organisations would leave the country again. In his opinion, it is therefore necessary to strike a **balance between neutrality and the defence industry**. He said he was ready to offer a hand to **strengthen Switzerland's security**. But this would require political majorities, he recalled.

Prof. Dr Christoph Frei concluded the round by saying that **Switzerland must move**: "If we don't expect ourselves to move a little in this wonderful country, then we will have a real problem relatively soon. We must therefore move, we must expect ourselves to change, and we must all put our innermost convictions to the test and try to enter into conversation again with arguments!".

After these closing words, Fredy Müller ended the discussion and invited all participants to continue the discussion at the subsequent aperitif.

