

Thesis Summary

Since its foundation in 1945, the United Nations has undergone profound transformations, adapting, from time to time, to the multiplicity of historical mutations and to the current problems in the international scene.

The late marriage between Switzerland and the UN is undoubtedly an important step in the history of the Organization and a turning point in the Swiss legal system. The reshaping of the concept of permanent neutrality, the question of the relevance of their status in foreign policy together with the willingness to adapt to the current international situation are some of the topics covered in the paper. In particular, after a first part focused on the general concept of neutrality as understood in international law and on the important question of the admission to the Organization of a neutralized State, it will be analyzed the case of Switzerland and all the vicissitudes that have involved the State in the context of the international relation until the full UN membership in September 2002.

With the exception of the States which signed the Charter at the end of the San Francisco Conference and are considered by Article 3 as original members of the Organization, a State becomes a member of the United Nations under the admission procedure of Article 4. Paragraph 1 of the Article 4 provides that a State, to become a member of the UN, must be peace loving and accept Charter provisions. Regarding the admission of neutralized States, Chapter 2 contains one of the main topics of this study or rather the admission of a neutralized State to the United Nations and the compatibility between status as a UN member and status of neutralized State. The preparatory works also indicate the possibility of admitting a neutralized State. During the San Francisco Conference, in Committee 1/2 which was examining the article concerning admission, the French representative proposed that this article should state that neutralization is not compatible with the obligations involved in UN membership. Later, Committee 1/1 dealt with neutralization during the study of Article 2, para. 5,

which imposes on the Member State the obligation to assist the UN in any actions it undertakes. The Committee chose not to include any reference to neutralization in Article 2, para. 5, but expressed the opinion that a Member State could not avail itself of this status in order to free itself from the Charter obligation.

It has been debated whether a neutralized State, that is, a State which, on the basis of an international agreement, has undertaken not to wage war or to engage in acts that might lead to war, may be admitted to the UN. The debate originated from the fact that some of the obligations to provide assistance and to participate in UN actions for the maintenance of the peace and security, seem to be incompatible with neutralization. The question of compatibility may be raised, for example, with regard to Article 2, para. 5, which provides that members have a general obligation to assist the UN in all actions, and therefore also in military actions, undertaken against a State. The same can be said with regard to Article 41 which, in connection with Article 39, authorizes the Security Council to require the Member States to adopt measures not involving the use of force (severance of diplomatic relations, economic sanctions) with a country responsible for breaching the peace. Such measures may be seen as actions capable of involving in a war the State adopting them. The problem of compatibility has two components. One is whether a neutralized State may be admitted to the Organization and the other is whether, once admitted, has the right to invoke its status in order to be exempted from the Charter obligation regarding maintenance of the peace.

To answer the first question, the requirements which, Article 4, para. 1, a State must fulfill to be admitted must be taken into account. First of all, there is the acceptance << of the obligations contained in the present Charter >>. For this reason, the acceptance by a neutralized State must be unconditional, lest the decision of the Assembly and Council be illegal. In the case of Austria's admission to the UN, it is indicative that the request explicitly provided for acceptance without any reservation. It is also indicative that in the discussion,

before the admittance of Switzerland, was rejected the view that the neutralized status could be the object of a formal reservation expressed when the application was made. Therefore, there are no other limits to the power of the Assembly and the Council to admit a neutralized State.

The problem arose for the first time with the admission of Austria to the United Nations in 1955. The neutralization of Austria is not contemplated by a true international treaty. On May 26, 1955 the Republic of Austria declared its perpetual neutrality in a constitutional provision and informed all the States with which it had diplomatic relations of such provision, inviting them to recognize its neutrality. The Austrian invitation and the recognition by the other States can be considered as elements of an international convention formalizing the neutralization of Austria. With the admission of Switzerland in 2002 another neutralized country is member of the United Nations. The status of neutrality of Switzerland has been recognized by international contractual instruments and it is also the object of an international custom. In 1920, when Switzerland became a member of the League of Nations, it was once and for all exempted from military measures but not from economic measures by a Council resolution. In order to join the League, the concept of differential neutrality was adopted. This concept of neutrality enables a neutral State to take part in economic sanctions but not in military sanctions adopted by an organization of collective security. The negative experience with the League's sanctions regime against Italy for the Ethiopian War motivated Switzerland to return as soon as 1938 to the concept of integral neutrality. From that time, it became a matter of principle for the Federal Council not to take part in international sanctions for reasons of neutrality. The decision of Switzerland not to become a member of the United Nations in 1945 is to be seen in this context. However, in 1981 the Federal Council sent a message to the National Council proposing the admission but a popular referendum rejected the proposal. After two other messages of the Federal Council the referendum was again held in 2002 and this time the admission was approved by the majority of the population.

Neutrality is closely linked to the history of the Swiss Confederation. Since the sixteenth century, the non-interference in others' affairs was the more suited attitude for the common security and foreign policy in order to survive as an independent state between the European great warring powers. Neutrality, however, has not only protected the Switzerland from wars, but it has also become necessary in domestic politics as an appropriate means to the maintenance of the union of a federation of States characterized by multiple differences of interests, linguistic and religious denominations. The decision, in 1945, of the non – participation in the United Nations had not resulted in the total isolation of Switzerland with respect to the Organization. In 1946 the Federal Council already drew up a kind of program contains the three main objectives to be pursued in the relations between Switzerland and the UN. Prior to its formal accession to the United Nations, Switzerland had maintained an *observer* role at the UN's General Assembly and its Economic and Social Council. A first proposal to join the UN was made by the Federal Council in 1981 but the majority of citizens and all the Cantons expressed their contrary opinion in the referendum of March, 16, 1986. A second referendum, on March 3, 2002, was approved by the 54.6% of the population. On September 10, 2002, the UN General Assembly, by its resolution n. 57/1, approved the admission of Switzerland as a full member of the United Nations. The 2002 vote made Switzerland the first country to join based on a popular vote.

In the case of Switzerland, as well as being the result of free choice, neutrality is perpetuated and reinforced. On the one hand, Switzerland undertakes to remain neutral in any future conflict regardless of the warring parties and the time or place in which war occurs. On the other hand, the fact that it is an armed neutrality implies the resoluteness of Switzerland to militarily defend its independence against any aggressor with all the available means and to prevent actions, contrary to neutrality, conducted on its territory by a belligerent State allowing, therefore, the country to be able to exercise the right of self – defense. The non – adherence to the UN did not prevent to Switzerland, during the period

of the Cold War, to actively participate in some of the activities conducted by the UN peacekeeping. With the end of the Cold War, the interpretation of Swiss neutrality was again revisited in the light of changed conditions in terms of foreign policy and security. The changes in the system of international relations in the late '80s, have also affected the action of the Security Council, forced to redefine its role in relation to the exercise of its powers. The resolutions, taken by the latter, also involved Switzerland which, however, remained out of the participation in the maintenance of collective security. As other non – member States, the Swiss Confederation has also changed its attitude within the actions taken by the Security Council and so, the focus was shifted towards a policy of cooperation and greater involvement. The action taken by the Council, also seemed to really reflect the will of the entire community of States, both in respect of inter – state conflicts both in internal crises characterized by continuous violations of human rights and democratic principles.

The Swiss neutrality may be considered a sort of “neutrality in motion”, or a neutrality that, over time, has assumed different forms and connotations adapting to the historical peculiarities of the moment. In the face of international conflicts, the Federal Government cannot avoid questioning about his role, the behavior to assume and the meaning to be given to the concept of active and armed neutrality. These are the main reasons that led Switzerland to renew their inclination towards the collective security system by redefining the cornerstones of its new policy of neutrality. The new hallmark of this policy prepares the ground on the concept of cooperation. The collaboration in the collective security system is no longer considered as a potential threat to their neutralized status since the two institutions can perfectly coexist with each other having a common purpose, such as the maintenance of the integrity of individual states and the guarantee of a cohabitation peaceful.

An important analysis can be done about the different attitude taken by the Swiss Confederation on the measures not involving the use of force, on the measures of peace – keeping operations and military measures.

With regard to the first, in the message of December 21, 1981 on the UN membership, Switzerland declared that economic sanctions decided by the Security Council are not in disagreement with the new concept of permanent neutrality. The real recognition of such behavior is applied in 1990, when Switzerland declared openly that the sanctions imposed by the Council, with regard to Iraq's invasion of Kuwait, not invalidated the obligations related to neutrality. This position is confirmed in the Report of 1993, in which Switzerland supports that the lack of participation in the sanctions imposed by the Security Council would have the effect of favoring the State transgressor of the law.

In the 1993 Report, it is also stated that economic sanctions against a State offender of law are, in principle, consistent with the obligations imposed on the neutralized State and therefore, the use of these penalties can disengage from participation by the State to the Swiss system of collective security. The law of neutrality does not establish a fundamental incompatibility between neutrality and participation in economic sanctions. Support for international sanctions on a large scale corresponds to the interest of the foreign policy of Switzerland, based on the respect of international law and humanitarian values. Even solidarity with the international community and the need for effective action against those who break the law are elements that the Federal Council takes into account. The participation of Peace – keeping operations appears, therefore, compatible with the obligations related to the permanent neutrality as these do not generate a war situation. The Swiss contribution to these operations has been developed in several ways. In particular, the Federal Council has always allowed the use of airspace and land in order to contribute to humanitarian activities.

Since its admission to the UN in September 2002, Switzerland had accepted all the Charter obligations renouncing all discretion in the sanctions execution decided by the Security Council in accordance to Article 41. The admission into the Organization also embodies the full cooperation by the Swiss to the realization of all enforcement actions decided by the Security Council and, therefore, the provision of its land and airspace for the passage of the armed

forces as part of the collective security system. As noted, the admission of the Switzerland entails an important change in the concept of neutralization. Already during the '90s, the Swiss Confederation has showed a kind of openness in adapting to the international needs and to the multiplicity of the political and international behavior of the other States that always have an impact on the value assigned to the neutrality. In all these cases, it is not produced a state of war because the general principle upon which the Security Council works is to maintain and restore peace when it is violated. In this sense, the participation of Switzerland, as a member of the UN, to support enforcement actions decided by the Security Council, is not affects its neutral condition.

Obligations associated with the neutrality return to prevail in the event that enforcement actions are developed outside of the collective security system.

In such cases, Switzerland, according to what is stipulated in the Report on Neutrality of 1993, is required to comply with its own rules of the neutrality law, contributing to the resolution of the conflict in a totally peaceful.

At present it is not yet possible to predict future developments on Switzerland's position in relation to its permanent neutrality. The available basics, however, seem to support the hypothesis that the Swiss Confederation will give up its status transforming a perpetual neutrality condition into an occasionally neutrality.