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Swiss human rights policy: between humanitarian tradition and political reluctance

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Publication Date:

2003

Permanent Link:

<https://doi.org/10.3929/ethz-a-004474247> →

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**Swiss Human Rights Policy:
Between Humanitarian Tradition
and Political Reluctance**

Beiträge

Nr. 39 • Januar 2003

Forschungsstelle für Internationale Beziehungen

Eidgenössische Technische Hochschule

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Publication note

A slightly abbreviated version of this article will be published under the title "Swiss Human Rights Policy: From Reluctance to Normalcy" in Jürg Martin Gabriel and Thomas Fischer (eds.), *Swiss Foreign Policy in a Changing World, 1945-2002* (Houndmills, Basingstoke: Palgrave, forthcoming).

Introduction

Switzerland – like all countries – cultivates a positive self-image containing the domestic core elements of a republican system of government, direct democracy, federalism and respect for the rule of law. Neutrality and humanitarianism complement the picture in foreign policy. While neutrality has lost some of its aura in recent years, the positive image of Switzerland's humanitarian tradition remains uncontested. The International Committee of the Red Cross (ICRC) and Switzerland's active promotion of international humanitarian law are cited as evidence of the country's humanitarian tradition.

The Federal Council has at times declared that promoting human rights is a constant and integral part of Swiss foreign policy. However, such constancy cannot be found for the period following the Second World War, because for decades, human rights played no role in Swiss foreign policy. They have become more important only in recent years. It was not until 1993 that the Federal Council explicitly defined the promotion of human rights as one of its foreign policy objectives. Rather than constancy then, there has been an uneven process in the course of which human rights have gained increasing importance.

In the early years after the Second World War, Switzerland – in contrast to comparable European countries – was sceptical of the internationalisation of human rights. This reticence was closely intertwined with the country's foreign policy isolation and its rigid understanding of sovereignty. In the 1970s Switzerland developed a more co-operative foreign policy. It signed the European Convention on Human Rights (ECHR) and began to participate in international efforts to protect human rights. An important opportunity was the Conference on Security and Co-operation in Europe (CSCE, since 1994 Organization for Security and Co-operation in Europe, OSCE).

Foreign Minister Pierre Aubert initiated a new phase of Swiss human rights policy in the late 1970s. In view of the increased international focus on human rights, he made the issue one of his foreign policy priorities. In the 1980s, and as part of the discussion on UN membership, human rights became a regular topic on the Swiss political agenda. However, given the continued isolationism prevailing in parliament and in the public at large the new departure remained within narrow confines. The step towards a comprehensive human rights policy was taken only after the end of the Cold War, in the context of a general foreign policy change. In

the 1990s, Switzerland took actions to catch up in the area of human rights. It ratified numerous human rights conventions and, for the most part, cast off its previous reservations.

This study will examine the development of Swiss human rights policy since the end of the Second World War. I will argue that with respect to human rights policy, Switzerland moved from its exceptional, unique position among nations to a normal position and ultimately developed a policy comparable to that of other western democracies. In tracing the process I will sketch out the essential features of Swiss human rights policy.

The essay has five Parts. Part one begins with some remarks on the general relation between foreign policy and human rights. Part two turns to Swiss human rights policy and presents the position held in the early post-War years. Part three discusses Switzerland's first experiences with international human rights protection in connection with the Council of Europe (CoE) and the CSCE. Part four deals with the activation of human rights policy in the 1980s. The fifth and concluding part analyses the development of Swiss human rights policy since the end of the Cold War.

1 Human Rights and Foreign Policy

Human rights were traditionally a matter of domestic but not of international politics. Foreign policy and international law dealt with the issues of war and peace; in these questions the rights of individuals had no place. This changed after the Second World War. In the treaty establishing the United Nations, member states pledged themselves to take action for the achievement of universal respect for and observance of human rights. As a consequence, they were compelled to devote more attention to human rights in foreign policy. However, it soon became apparent that the relation between human rights and foreign policy is fraught with tensions. The concept of universal human rights gives a central place to the individual, strives to overcome national borders and emphasises what all people share in the sense of a global civil society. The world of classical foreign policy, in contrast, is a world of states in which

foreign policy is meant to assure national sovereignty. It is within this controversial context that the promotion of human rights must operate.¹

The dividing line between advocates and critics of human rights policy corresponds rather precisely to the distinction between idealists and realists. The realist worldview has no room for norms like human rights, for international politics is characterised as an unbridled struggle for power in an anarchic environment dominated by sovereign states. The goal of foreign policy is to assure the existence of the state and to maximise its interests. Realists hold that human rights goals should not be pursued because foreign policy must always be about the national interest defined primarily in terms of power. To follow a set of individualistic ethics could endanger the economic and security interests of the state. According to the realist view, a state should pursue an assertive human rights policy only when it does not harm national interest.²

In contrast, the idealist view stresses the importance of rules and norms in international relations. Idealists and liberals perceive human rights as a morally and politically necessary subject of foreign policy. From this perspective international law is an authority standing above power. Idealism eliminates the realist dichotomy between domestic and foreign policy. The norms that prevail at home should also be valid in international politics. Human rights are but one concern of foreign policy, and the objective of promoting human rights abroad may

¹ On the role of human rights in international relations, compare the newer literature: David P. Forsythe, *Human Rights in International Relations*, Cambridge University Press, Cambridge 2000; Richard A. Falk, *Human Rights Horizons: The Pursuit of Justice in a Globalizing World*, Routledge, New York/London 2000; Tim Dunne and Nicholas J. Wheeler (eds.), *Human Rights in Global Politics*, Cambridge University Press, Cambridge 1999; Thomas Risse, Stephen C. Ropp and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, Cambridge University Press, Cambridge 1999; Jack Donnelly, *International Human Rights*, Second Edition, Westview Press, Boulder 1998; Jack Donnelly, *Universal Human Rights in Theory and Practice*, Cornell University Press, Ithaca/London 1989. On integrating human rights goals into foreign policy, see David P. Forsythe (ed.), *Human Rights and Comparative Foreign Policy*, United Nations University Press, Tokyo/New York/Paris 2000; Kathryn Sikkink, "The Power of Principled Ideas: Human Rights Policies in the United States and Western Europe" in Judith Goldstein, and Robert O. Keohane (eds.), *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*, Cornell University Press, Ithaca/London 1993, pp. 139-170; Jan Egeland, *Impotent Superpower – Potent Small State: Potentials and Limitations of Human Rights Objectives in the Foreign Policies of the United States and Norway*, Norwegian University Press, London/New York/Toronto 1988; R. J. Vincent, (ed.), *Foreign Policy and Human Rights*, Cambridge University Press, Cambridge 1986; Stanley Hoffmann, "Reaching for the Most Difficult: Human Rights as Foreign Policy Goal", in *Daedalus: Journal of the American Academy of Arts and Sciences*, 4, 1983, pp. 19-49.

² For this perspective, which is sceptical of or rejects the integration of human rights in foreign policy, see George F. Kennan, "Morality and Foreign Affairs", in *Foreign Affairs*, Vol. 64, No. 2, Winter 1985/86, pp. 205-218; Henry Kissinger, *Diplomacy*, Simon & Schuster, New York 1994; Stephen D. Krasner, *Sovereignty: Organized Hypocrisy*, Princeton University Press, Princeton 1999.

conflict with other policy goals. However, commitment to human rights may in some cases serve national interests in the long run.³ Whether or not a state follows an active human rights policy depends upon its foreign policy conception. As a rule, a realist foreign policy will be sceptical of human rights. In contrast, an active human rights policy is usually the expression of an idealist orientation. The actual foreign policy practised by most states is a mixture of realist and idealist elements.

2 Humanitarianism and Neutrality

Swiss foreign policy, too, is marked by the tension between realism and idealism. Since the founding of the Confederation in 1848 there has been a realist and an idealist tradition. In the Swiss context, realism is a combination of "raison d'état" and perpetual neutrality. Idealism, on the other hand, is expressed in an open, co-operative foreign policy emphasising solidarity.⁴ As elsewhere, Swiss foreign policy never knew an absolute contrast between foreign abstinence and openness. Switzerland was always both open and closed. This is not to say that the weighting of realist and idealist components did not change over time, and shifts usually had a direct effect on Switzerland's humanitarian and human rights engagement. But it is important to know that Swiss political identity, and thus its foreign policy, developed in a direction opposite to the general trend in Europe.⁵

2.1 Humanitarian Tradition

Switzerland practised a relatively idealist and outward-looking foreign policy in the second half of the nineteenth century and the first decades of the twentieth. It was a period when the rest of Europe was nationalistic and involved in wars. At that time Switzerland felt that it had a mission to fulfil for the promotion of peace, justice and democracy. The country believed that it served as a moral and political model for other countries, and it tried to be useful inter-

³ For the idealist perspective, which approves explicitly of a foreign policy oriented to norms, see Chris Brown, *International Relations Theory: New Normative Approaches*, Harvester Wheatsheaf, Hemel Hempstead 1992; Mervyn Frost, *Ethics in International Relations: A Constitutive Theory*, Cambridge University Press, Cambridge 1996; Karen E. Smith and Margot Light, (eds.), *Ethics and Foreign Policy*, Cambridge University Press, Cambridge 2001.

⁴ Daniel Frei, "Sendungsgedanken in der Schweizerischen Aussenpolitik", in *Schweizerisches Jahrbuch für Politische Wissenschaft*, Vol. 6, 1966, pp. 98-113; Daniel Frei, *Neutralität – Ideal oder Kalkül? Zweihundert Jahre außenpolitisches Denken in der Schweiz*, Huber, Frauenfeld/Stuttgart 1967.

⁵ Herbert Lüthy, *Die Schweiz als Antithese*, Arche, Zürich 1969.

nationally. The government organised numerous conferences, created a number of international agreements and organisations and engaged actively in codification and development of international law. Switzerland was very active at this time and pursued a relatively modern and co-operative foreign policy.⁶

During this period the Confederation assumed a pioneering role in supporting the concept of humanitarianism in international politics, as shown by its efforts in international law and the ICRC. Humanitarian engagement was viewed as a natural complement to and as a legitimisation of neutrality.⁷ Neutrality as practised at the time did not hinder the country from launching international initiatives or from joining the new League of Nations in 1920. However, League membership turned out to be both the high and final point of Switzerland's idealist foreign policy.⁸

2.2 Neutrality and Solidarity

The end of the Second World War marked a break in international politics and sounded the bell for the decline of classical international law and its notion of state sovereignty. Collective security as propagated by the United Nations was incompatible with a state's right to wage war. Furthermore, the promotion and protection of human rights was declared to be an international concern and a main objective of the new organisation.⁹ As early as December 10, 1948, the UN General Assembly adopted and proclaimed the Universal Declaration of Human Rights. When the Council of Europe was set up a parallel effort was undertaken ending in

⁶ Madeleine Herren, *Hintertüren zur Macht: Internationalismus und modernisierungsorientierte Aussenpolitik in Belgien, der Schweiz und den USA, 1865-1914*, Oldenburg Verlag, München 2000, pp. 215-370.

⁷ For an overview of Swiss efforts to promote humanitarian law, compare Marco Sassòli, "La Suisse et le droit international humanitaire – une relation privilégiée?", in *Schweizerisches Jahrbuch für internationales Recht*, Jubiläumsband 1989, pp. 47-71; Hans-Peter Gasser, "Humanitäres Völkerrecht: Probleme – Perspektiven", in *Schweizerisches Jahrbuch für Politische Wissenschaft*, Vol. 28, 1988, pp. 209-220; Daniel Thürer, "Humanität und Neutralität – zum politischen und völkerrechtlichen Spannungsverhältnis zweier Grundprinzipien der schweizerischen Aussenpolitik", in Yvo Hangartner and Stefan Trechsel (eds.), *Völkerrecht im Dienste des Menschen: Festschrift für Hans Haug*, Paul Haupt, Bern/Stuttgart 1986, pp. 279-308. On the history of the ICRC, compare Hans Haug, *Humanity for All: The International Red Cross and Red Crescent Movement*, Paul Haupt, Berne/Stuttgart/Vienna 1993.

⁸ For a comparison of the Swiss attitude to the League of Nations and to the United Nations respectively, see Carlo Moos, *Ja zum Völkerbund – Nein zur UNO: Die Volksabstimmungen von 1920 und 1986 in der Schweiz*, Chronos, Zürich 2001.

⁹ Compare the Preamble and Article 1 para. 3, Article 55 and 56 of the UN Charter.

what by its full name is called the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR, for short). It was signed in November 1949 in Rome and entered into force in September 1953. Just a few years after the end of the Second World War, the cornerstones for universal and European human rights protection had been laid. The new emphasis on human rights, a movement that had begun in the Second World War, represented a moral, legal, and political break with the international order that had ruled prior to 1945. Unfortunately, the two proclamations were soon to be overshadowed by the outbreak of the Cold War.

In contrast to most other countries, the end of the Second World War was not a historical turning point for Switzerland. The country had survived the war unharmed and attributed the success mainly to its neutrality and the armed forces. Despite international criticism of neutrality, the Federal Council, after 1945, held on to this proven foreign policy instrument. It even elevated neutrality to an identifying feature of Swiss uniqueness and made it the crux of its entire foreign policy.¹⁰ As a consequence, Switzerland opted for a low profile, one-dimensional and rather isolationist foreign policy. Non-membership in the UN for a half a century stands as a symbol of the exceptional route taken.

Besides neutrality, the maxim of solidarity was the second pillar of Swiss foreign policy.¹¹ The emphasis on international solidarity was meant to compensate and legitimatise the disadvantages of neutral abstinence and to counteract international isolation. In the Federal Council's reading, solidarity was non-political and contained a co-operative and humanitarian dimension. Based on its own distinction between "technical" and "political" internationalism, Switzerland emphasised the former. As part of its solidarity policy after 1945, Switzerland

¹⁰ On Swiss neutrality, see from the newer literature: Andreas Suter, "Neutralität: Prinzip, Praxis und Geschichte", in Manfred Hettling et. al., *Eine kleine Geschichte der Schweiz: Der Bundesstaat und seine Traditionen*, Suhrkamp, Frankfurt a. M. 1998, pp. 133-188; Jürg Martin Gabriel, *Sackgasse Neutralität*, vdf Hochschulverlag, Zürich 1997; Alois Riklin, "Die Neutralität der Schweiz", in, Alois Riklin, Hans Haug and Raymond Probst (eds.), *Neues Handbuch der schweizerischen Aussenpolitik*, Paul Haupt, Bern/Stuttgart/Wien 1992, pp. 191-209; Hans-Peter Brunner, *Neutralität und Unabhängigkeit der Schweiz im ausgehenden 20. Jahrhundert – Bestandesaufnahme und Ausblick: Die Fragen der europäischen Integration und die Sicherheits- und Friedenspolitik als Fallbeispiele*, Schweizer Studien zum Internationalen Recht, Bd. 58, Schulthess, Zürich 1989.

¹¹ For an overview of Swiss foreign policy maxims, see Walter Kälin and Alois Riklin, "Ziele, Mittel und Strategien der schweizerischen Aussenpolitik", in Riklin, *Neues Handbuch*, pp. 167-189. For the formulation of Swiss foreign policy guidelines in the 1940s, see Daniel Möckli, *Neutralität, Solidarität, Sonderfall: Die Konzeptionierung der schweizerischen Aussenpolitik der Nachkriegszeit, 1943-1947*, Zürcher Beiträge zur Sicherheitspolitik und Konfliktforschung, Nr. 55, Zürich 2000 (http://www.fsk.ethz.ch/documents/beitraege/zu_55/zu55_entire.pdf).

joined numerous special UN organisations dealing with economic, social and humanitarian issues.

Well before the Second World War, the concept of humanity helped to cast neutrality in an ethical and moral light. In the context of what was called "humanitarian solidarity", Switzerland after the war continued its efforts to codify and implement international humanitarian law thereby supporting the work of the ICRC. As a country left unharmed by the war, it also felt a moral obligation to contribute to the reconstruction of a ravaged continent. Swiss assistance, first limited to European countries, later gave rise to development aid in the Third World. The Federal Council stressed the non-political, technical or humanitarian character of solidarity.¹² In contrast, politically defined solidarity would have been at odds with neutrality instead of legitimising it.

2.3 Lack of Human Rights Policy

Human rights were not a component of Swiss humanitarian solidarity. For decades, Switzerland's position on the internationalisation of human rights was one of scepticism and reserve. It was not that the Swiss authorities rejected human rights as such. As a democratic state adhering to the rule of law, Switzerland declared support for human rights and in general respected the fundamental rights of its citizens, although human rights were not a part of the countries founding myths.¹³ It was internationalisation that caused difficulties, as did related tendencies such as the legalisation, multilateralisation and the "politicisation" of human rights.

With its emphasis on classical neutrality Swiss foreign policy was strongly determined by political realism after 1945. The idealist and co-operative tradition of the League of Nations era was not maintained. Switzerland's view emphasised the anarchic structure of international politics, where rival sovereign states struggled to maximise their power. The main task of its

¹² For an analysis of Swiss "solidarity policy", ranging from development assistance and good offices to the support of peace-keeping activities, compare Jon A. Fanzun and Patrick Lehmann, *Die Schweiz und die Welt: Aussen- und sicherheitspolitische Beiträge der Schweiz zu Frieden, Sicherheit und Stabilität, 1945-2000*, Zürcher Beiträge zur Sicherheitspolitik und Konfliktforschung, Nr. 57, Zürich 2000 (http://www.fsk.ethz.ch/documents/beitraege/zu_57/zu_57.pdf).

¹³ For an in-depth analysis of the place of human rights in Swiss legislation and jurisdiction, see Jörg Paul Müller, *Grundrechte in der Schweiz: im Rahmen der Bundesverfassung von 1999, der Uno-Pakte und der EMRK*, Stämpfli, Bern 1999; Peter Saladin, *Grundrechte im Wandel*, 3. Auflage, Stämpfli, Bern 1982. For a short overview see Claude Rouiller, "Human Rights in Switzerland", in *International Affairs*, Vol. 42, No. 4, 1996,

foreign policy was therefore to assure the independent survival of the state. Moral issues were difficult to integrate in this one-dimensional foreign policy conception, for international politics was seen as an arena where unpredictability reigns and a normative authority is lacking. It was also widely held that human rights would unnecessarily restrict decision-makers' freedom of action. Finally, a more active human rights policy – especially in terms of public human rights interventions – would have conflicted with neutrality.¹⁴

Switzerland's understanding of sovereign independence was still shaped by classical international law. It took a sceptical view of the development of modern international law, evolving as it did from the law of co-existence to that of co-operation and integration. Obviously, the expanded conception of international law constrained Swiss sovereignty. This fear also affected human rights policy and helps to explain why for decades, Switzerland distanced itself from global and European human rights agreements. It did not, however, prevent Switzerland from joining the International Court of Justice in 1948. Non-membership in the UN and the Council of Europe also had negative effects on human rights matters. By abstaining, Switzerland removed itself almost completely from the efforts of these two organisations to develop and codify human rights. In fact this was a paradoxical situation. On the one hand Switzerland was a traditional advocate of the ICRC and the humanitarian law, and on the other hand it abstained from the international efforts to promote human rights, although both follow the objective of protecting human dignity.¹⁵

pp. 106-115; Giorgio Malinverni, "La Suisse et les droits de l'homme", in *Schweizerisches Jahrbuch für Internationales Recht*, Jubiläumsband 1989, pp. 153-192.

¹⁴ The writings of Rudolf Bindschedler, legal adviser to the Foreign Ministry from 1961 to 1980, are typical of such a worldview, inspired by political realism. See, for example, Rudolf L. Bindschedler, "Zum Primat der Aussenpolitik", in Urs Altermatt and Judit Garamvölgyi (eds.), *Innen- und Aussenpolitik: Primat oder Interdependenz? Festschrift zum 60. Geburtstag von Walther Hofer*, Paul Haupt, Bern/Stuttgart 1980, pp. 27-36. Other authors expressed similar opinions and argued that it is not suitable and not possible to regulate foreign policy with legal norms because of the anarchical and unpredictable character of international relations. See Thomas G. Borer, *Das Legalitätsprinzip und die auswärtigen Angelegenheiten*, Helbing & Lichtenhahn, Basel/Frankfurt a. M. 1986; Luzius Wildhaber, "Legalitätsprinzip und Aussenpolitik – eine Problemskizze", in Edouard Brunner, Franz E. Muheim, Rolf Stüchel and Paul Widmer (eds.), *Einblicke in die schweizerische Aussenpolitik: Zum 65. Geburtstag von Staatssekretär Raymond Probst*, Verlag Neue Zürcher Zeitung, Zürich 1984, pp. 443-460. For the opposite view stressing the importance of the rule of law in foreign policy and the feasibility of legal regulation of international politics, see Walter Kälin, "Verfassungsgrundsätze der schweizerischen Aussenpolitik", in *Zeitschrift für Schweizerisches Recht*, 105, II, 1986, pp. 251-383; Josef Hofstetter, *Die Bedeutung rechtlicher Normen in der Aussenpolitik: Eine Darstellung anhand der schweizerischen Nord-Süd-Politik*, Helbing & Lichtenhahn, Basel/Frankfurt a. M. 1990.

¹⁵ This attitude of the Swiss government towards international protection of human rights was criticised among scholars. See Alois Riklin, *Grundlegung der schweizerischen Aussenpolitik*, St. Galler Studien zur Politikwissenschaft, Bd. 1, Paul Haupt, Bern/Stuttgart 1975, pp. 41-45; Peter Saladin and Hans Walder, "Der Bei-

3 Cautious First Steps

In response to Détente and growing European integration, the Federal Council, in the early 1960s, modified its foreign policy and revised the restrictive interpretation of neutrality. The government stressed solidarity more strongly, increased its humanitarian engagement and expanded development co-operation. This cautious foreign policy opening occurred first at the European level. Switzerland joined the CoE in 1963 and, late in the decade, participated actively in the CSCE process. UN membership, although debated, was still no realistic option, however. Joining the CoE and taking part in the CSCE process was part of an attempt to shape a more active foreign policy, yet membership was also significant with respect to human rights. The Council of Europe and the CSCE (renamed OSCE in 1994) were and still are the most important European, or Euro-Atlantic, forums for human rights issues.

3.1 Adhesion to the European Convention on Human Rights

For many years, Switzerland remained outside the CoE, founded in 1949. The Federal Council saw entry as incompatible with neutrality. Moreover, the Federal government's evaluation of the Strasbourg organisation was mostly negative. In the late 1950s, however, Bern changed its stance abruptly. It supported CoE membership and declared it compatible with neutrality. After a debate that was brief by Swiss standards, Switzerland joined the Council in May 1963.¹⁶ As a member, Switzerland was faced with the decision to ratify the European Convention on Human Rights and the European Social Charter, both of fundamental significance to the Council of Europe's work. The process turned out to be difficult.

The Federal Council was still sceptical of the internationalisation of human rights and was in no hurry to ratify the CoE human rights conventions. It did not recommend accession to the ECHR until 1968 – the CoE's "year of human rights." Ratification was delayed by a few more years, however, due to domestic resistance and some contradictions between Swiss law and

trag der Schweiz zum Kampf gegen die Folter", in Ulrich Häfelin, Walter Haller and Dietrich Schindler (eds.), *Menschenrechte, Föderalismus, Demokratie: Festschrift zum 70. Geburtstag von Werner Kägi, Schulthess, Zürich 1979*, pp. 267-299; Hans Haug, "Die Schweiz, das humanitäre Kriegsvölkerrecht und die Konventionen über Menschenrechte", in *Recht als Prozess und Gefüge: Festschrift für Hans Huber zum 80. Geburtstag*, Stämpfli, Bern 1981, pp. 577-593.

¹⁶ For an overview of the relations between Switzerland and the Council of Europe, see Rudolf Wyder, *Die Schweiz und der Europarat 1949-1971: Annäherung und zehn Jahre Mitarbeit in der parlamentarischen Versammlung*, Paul Haupt, Bern 1984; Peter Hilfiker, *Die Schweiz und der Europarat 1949-1963: Aspekte eines aussenpolitischen Entscheidungsprozesses*, Lizentiatsarbeit Universität Bern, Bern 1987.

the Convention. Once most legal impediments had been resolved – Switzerland introduced women's suffrage in 1971 and lifted some ordinances hostile to the Jesuits – the Council made another attempt to ratify the European Human Rights Convention. This time, parliament voted relatively strongly for ratification, and on 28 November 1974 Switzerland joined the Convention. However, ratification was bought at a price: in order to assure passage, Protocols 1 and 4 – because hotly contested – were not presented to parliament.¹⁷

Adhesion to the European Social Charter was even more controversial. It is true that in the early 1970s the Federal Council was favourably disposed toward this charter and signed it in 1976 after internal clarification of its compatibility with Swiss law. Yet difficulties began when it came to ratification. Legal uncertainties, domestic political resistance and indecisiveness on the part of the Council stood in the way of ratification. However, this was just the beginning of a long and painful process. No one suspected that by 2002, Switzerland would have still not ratified the Charter.¹⁸

All in all, there was considerable distrust of the CoE supervisory bodies and the various conventions, particularly on the part of the parliament. Opponents to ratification argued that the "foreign judges" sitting in Strasbourg were infringing upon Swiss sovereignty. The Federal Council sought to eliminate the opposition by playing down the possibility of unfavourable judgements, but it was wrong. Over the years, the European Court of Human Rights (ECHR) repeatedly decided against Switzerland, which led to defensive reactions and to a flare-up of the "foreign judges" debate in parliament. The Swiss had to recognise that from a human rights perspective, their legal system was not as perfect as assumed and that it had to be adapted to ECHR standards.¹⁹ However, the experience with the convention helped Switzer-

¹⁷ The ECHR Protocol guarantees property rights, the right to education and the right to free elections. Protocol 4 guarantees among other things free movement and the prohibition of collective expulsion of aliens. Some of these rights were at odds with Swiss law at the federal and cantonal levels. For an overview of the parliamentary debates concerning ECHR ratification, see Claudia Weiss, *Die Schweiz und die Europäische Menschenrechtskonvention*, Basler Schriften zur europäischen Integration Nr. 20, Europainstitut an der Universität Basel, Basel 1996.

¹⁸ For Switzerland's attitude towards the Social Charter in the 1970s, see Jörg Paul Müller, "Die Schweiz und die Europäische Sozialcharta", in Alois Riklin, Hans Haug and Hans Christoph Binswanger (eds.), *Handbuch der schweizerischen Aussenpolitik*, Paul Haupt, Bern/Stuttgart 1975, pp. 389-395; Bernardo Zanetti, "Die Schweiz und die Ratifizierung der Europäischen Sozialcharta", in *Schweizer Rundschau*, Nr. 1, 1978, pp. 13-17.

¹⁹ Therefore, the ECHR had a far-reaching positive effect on Swiss legislation from a human rights point of view. For an analysis of the ECHR on Switzerland's legislative and legal practice, see Arthur Häfliger and Frank Schürmann, *Die Europäische Menschenrechtskonvention und die Schweiz*, zweite völlig neu bearbeitete Auflage, Stämpfli, Bern 1999.

land to overcome its deep scepticism regarding international human rights protection. Conquering that reticence, along with a willingness to limit national sovereignty, was a core factor in promoting Swiss human rights policy. By joining the European Convention on Human Rights Switzerland recognised these changes.

3.2 The Importance of CSCE

The issue of human rights and fundamental freedoms became an important part of the CSCE process. With the inclusion of Principle Nr. VII in the 1975 Helsinki Final Act, the Member States declared that human rights are an indispensable prerequisite to international peace and stability. The importance of human rights was further emphasized in the "third basket" of the Final Act, which addressed humanitarian and human rights issues.²⁰

In contrast to its long abstinence from the Council of Europe, Switzerland was engaged in the CSCE process from the start.²¹ Switzerland participated actively in the human rights debates during the CSCE follow-up conferences, stressing that the upholding of human rights was an indispensable prerequisite to peace and security. It also made efforts to ensure that as many citizens as possible in the participating states would profit from the results of the CSCE process. Its efforts were focussed on human contacts, the reuniting of families, travel, visits and religious freedoms. As a result Switzerland – like the other countries – came to recognize that human rights are a legitimate foreign policy concern. The same issues also began to influence Switzerland's bilateral relations with East bloc countries. The Federal Council intervened on a number of occasions for the promotion of human rights.

In the 1970s, Switzerland laid important foundations for its future human rights policy. CoE membership and CSCE participation allowed the country to take part in multilateral efforts to protect human rights. This was all the more important given that non-membership in the UN restricted Swiss possibilities to make a contribution in this field. For many years the European

²⁰ An excellent analysis of the role and the effects of human rights in the Helsinki Process is found in Daniel C. Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*, Princeton University Press, Princeton/Oxford 2001.

²¹ Christoph Breitenmoser, *Sicherheit für Europa: Die KSZE-Politik der Schweiz bis zur Unterzeichnung der Helsinki-Schlussakte zwischen Skepsis und aktivem Engagement*, Zürcher Beiträge zur Sicherheitspolitik und Konfliktforschung, Nr. 40, Zürich 1996; Hans-Jörg Renk, *Der Weg der Schweiz nach Helsinki: Der Beitrag der schweizerischen Diplomatie zum Zustandekommen der Konferenz über Sicherheit und Zusammenarbeit in Europa (KSZE), 1972-1975*, Paul Haupt, Bern/Stuttgart/Wien 1996.

Convention on Human Rights and the Helsinki Final Act formed the most important instruments permitting Switzerland to intervene in cases of human rights violations in other countries. These positive aspects could not disguise that Switzerland remained an outsider to the international human rights regime. Until the 1980s Switzerland did not ratify any major UN human rights convention and observed UN efforts towards international human rights protection from a distance. Generally speaking at that time there was no Swiss human rights policy worth its name.

4 Activating Human Rights Policy in the Eighties

In part at least, 1978 saw the birth of a Swiss human rights policy worthy of its name. It was the year in which the new foreign minister, Pierre Aubert, put human rights on his foreign policy agenda. The issue was part of Aubert's ambition to activate Swiss foreign policy in general. However, his efforts encountered strong political resistance and, with the public rejection of UN membership in 1986, it experienced a severe setback. Nevertheless, human rights slowly became a policy area of its own.

4.1 The 1982 Human Rights Report

Pierre Aubert succeeded Pierre Graber as Federal Councillor and Head of the Foreign Ministry in February 1978. While for Graber human rights had not been a serious issue, it was one of Aubert's declared foreign policy priorities. Involvement in international human rights protection was an important component of Aubert's plan to "energize" Swiss foreign policy.²² On his very first day in office, Aubert instructed his department to prepare a report on the country's previous activities in the area of human rights and to suggest ways in which Switzerland could increase its engagement. A departmental working group was formed, which presented its findings in April 1978. The report concluded that rather than being a temporary fad, human rights policy was a firmly established part of the international agenda. It cited as examples the CSCE process and President Carter's activation of American human rights policy. Swiss human rights policy was found to be lacking, and the report proposed increased involvement.

²² Pierre Aubert, "Pour une politique étrangère plus active", in Amnesty International, Swiss Section (ed.), *Menschenrechte im Spannungsfeld: Eine Herausforderung für die Schweiz*, Paul Haupt, Bern/Stuttgart 1978, pp. 15-24.

In the second half of the 1970s, the Federal parliament also showed an increasing concern for human rights. It demanded information on Swiss human rights policy and made proposals for improvements. Gabrielle Nanchen, Social Democratic Member of the National Council requested the government in October 1978 to submit a report setting out the options for increased efforts. Pierre Aubert accepted the proposal since it accorded well with his own initiative. This gave the government an opportunity to outline its own human rights policy in a public report.

With the preparations for a vote on UN membership taking priority, it was unfortunately another four years before the Federal Council in 1982 responded to Nanchen's postulate and presented its human rights report.²³ The study traced the development of international human rights since the Second World War and stressed their increased importance. The Federal Council criticised its own former handling of human rights: While Switzerland had pioneered international humanitarian law, it was slow when it came to international human rights protection. The report mentioned the many non-ratified human rights conventions and non-membership in the UN as the crucial organisation for global human rights concerns. The report concluded that Switzerland could and should do more. The global promotion of human rights had to be part of a coherent foreign policy. The Federal Council based this conclusion explicitly on Switzerland's long humanitarian tradition and the maxim of solidarity. Moreover, the upholding of human rights was an indispensable prerequisite to global peace and security.

The report proposed increased activity at the bilateral, European and international levels and placed the Swiss human rights concept on three pillars: 1) ratification of regional and universal human rights conventions; 2) active participation in international organisations and conferences including the development of new instruments and the financing of international and non-governmental organisations in the field of human rights; 3) increased bilateral interventions against human rights violations.²⁴ The Federal Council had created a solid human rights conception whose main features are still valid today. However, in the 1980s human rights

²³ Bundesrat, Bericht über die schweizerische Menschenrechtspolitik vom 2. Juni 1982, in *BBl* 1982 II, pp. 729-790. For an account of Swiss human rights policy in the late 1970s and in the 1980s, consult Walter Kälin, "Die Menschenrechtspolitik der Schweiz", in *Schweizerisches Jahrbuch für Politische Wissenschaft*, Vol. 28, 1988, pp. 185-207; Amnesty International, *Menschenrechte im Spannungsfeld*; Mathias Krafft and Jean-Daniel Vigny, "La politique suisse à l'égard des droits de l'homme", in Riklin, *Neues Handbuch*, pp. 223-245; Erwin H. Hofer, "Menschenrechte und schweizerische Aussenpolitik", in *Schweizer Monatshefte* No. 11, 1982, pp. 931-943.

²⁴ Bundesrat, *Bericht über die Menschenrechtspolitik 1982*, pp. 740-743 and 788-790.

policy lacked an institutional and financial foundation. The issue was handled ad hoc by individuals in the Foreign Ministry's International Law Division until finally, in 1986, a small office for human rights was set up. It took another three years for the Federal Council to appropriate funding for human rights, which in 1989 was limited to a budget of 500'000 Swiss francs.²⁵

4.2 Ratification Attempts and Multilateral Activities

For a long time, one of the greatest weaknesses of Swiss human rights policy was its narrow foundation in international law. Other than the European Human Rights Convention, Switzerland had ratified no relevant instruments. In the 1980s, therefore, the Federal Council made the ratification of conventions a priority. Uppermost on the agenda was the ratification of the two UN Human Rights Covenants of 1966²⁶ as well as adherence to the European Social Charter mentioned above.

The Foreign Ministry dealt already in the early 1970s with the two 1966 UN Human Rights Covenants, and the Federal Council announced adherence to the Covenants in 1977. In subsequent years, the government repeated its intention to sign the two Covenants. In the 1980s, however, ratification proved to be impossible. In late 1984, preparations for the ratification of the Covenants were well advanced within the Foreign Ministry. The matter was put off, however, because the referendum on UN membership was pending. For political reasons, there was no intention to push ratification of the UN conventions prior to the membership decision. When membership was turned down in 1986, the Federal Council announced that it would take an increasing part in UN legal activities, but the heavily negative vote meant that quick ratification of the UN Covenants was politically excluded.

²⁵ In October 2002 the Federal Council proposed a global credit for measures in the field of peace promotion and strengthening human rights. The credit line is 240 million Swiss francs for the years 2004-2007. If the credit passes parliament this will improve the current situation and provide human rights activities with a solid financial basis. However, Switzerland still lags significantly behind the spending of comparable states such as Norway or Finland. See Bundesrat, Botschaft über einen Rahmenkredit für Massnahmen zur zivilen Konfliktbearbeitung und Menschenrechtsförderung, in *BBJ* 2002, pp. 7975-8058 (<http://www.admin.ch/ch/d/ff/2002/7975.pdf>).

²⁶ International Covenant on Economic, Social, and Cultural Rights and International Covenant on Civil and Political Rights. These two treaties, together with the Universal Declaration of Human Rights, make up the "International Bill of Human Rights."

Efforts towards ratification of the European Social Charter, which Switzerland had signed in 1976, were equally difficult. A rather positive review by cantons, parties and interested associations in 1978/79 was encouraging. In parliament, however, the Social Charter met resistance. Both chambers turned down ratification resoundingly: the Council of States in 1984 and the National Council in 1987. Plans to ratify other treaties also came to nothing, including the UN Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination Against Women (1979) and Protocols No. 1 and 4 of the ECHR.

The reasons for the non-ratification were various. Cantonal reservations on specific points slowed down the process. Another impediment was the Swiss practice of revising domestic laws not conforming to treaties prior to ratification. But beyond these more legalistic causes, the main reasons were political. Throughout the 1980s, parliament became increasingly uncomfortable with Aubert's foreign policy opening in general and his human rights policy in particular. The non-ratification of the European Social Charter showed specific distrust in matters of social rights.²⁷ The high point resistance came in 1988, when Hans Danioth in the Council of States demanded that the Federal Council withdraw from the ECHR. The background of the demand was a judgement of the European Court of Human Rights unfavourable to Switzerland in a case involving the right of public demonstration. The outrage was massive, and the Council of States turned down the demand by only one vote, thanks to a tie-breaking decision by its chairman.²⁸

The government's efforts against torture were more successful. On 29 September 1988, only two days after the narrow rejection of the Danioth request, the same Council of States approved the 1987 European Convention for the Prevention of Torture. One year earlier, Switzerland had been one of the first states to ratify the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment of 1984. It was the first important UN human rights treaty that Switzerland approved. Both torture conventions did not threaten Swiss sovereignty, which may explain why they passed so easily. Moreover, Switzer-

²⁷ For an account of the Swiss attitude towards social rights, see Walter Kälin, "Soziale Menschenrechte ernst genommen", in Caritas Schweiz (ed.), *Sozialalmanach 2000*, Caritas-Verlag, Luzern 2000, pp. 69-82; Luzius Wildhaber, "Soziale Grundrechte", in Peter Saladin and Luzius Wildhaber (eds.), *Der Staat als Aufgabe: Gedenkschrift für Max Huber*, Helbing & Lichtenhahn, Basel/Stuttgart 1972, pp. 371-391.

²⁸ See on this issue Weiss, *Europäische Menschenrechtskonvention*, pp. 13-37.

land had played an active role in launching them. The struggle against torture was one of the few areas of human rights in which Switzerland participated actively in the 1970s and 1980s. This was not at the initiative of the Swiss government, however, but of Jean-Jacques Gautier of Geneva, who founded the *Comité Suisse Contre la Torture*.²⁹ Gautier proposed a treaty with an effective control system committing all ratifying member states to allow international experts access to their penal institutions. After some initial hesitation, Switzerland actively promoted the concept. Within the Council of Europe Switzerland took a leading role in developing the torture convention.³⁰

At the universal level things were more difficult, because many non-European countries questioned the idea of an effective torture convention. For Switzerland it was even harder to get through its initiatives for a torture convention on the global level, because of its non-membership in the UN. It is true that Swiss officials had participated in the drafting of the torture convention with a working group of the Human Rights Commission since 1979. However, their activities were restricted mainly to the lobbying with like-minded states and to promoting the convention behind the scenes. It was Costa Rica that in 1980 submitted the proposal formally to the United Nations, although it was primarily Switzerland who had worked out the draft.³¹

4.3 Bilateral Human Rights Policy

Given Switzerland's limited options at the multilateral level, first of all non-membership in the UN, bilateral efforts to promote human rights were of particular importance. The basic instruments were public or discreet human rights interventions. Since the late 1960s, the Federal Council has made some public declarations on human rights issues, for instance in connection with the Soviet invasion of Hungary (1956) or the crushing of the reform movement in

²⁹ See Claudine Haenni (ed.), *20 ans consacrés a la réalisation d'une idée: Recueil d'articles en l'honneur de Jean-Jacques Gautier*, Association for the Prevention of Torture, Geneva 1997; see also Walter Kälin, "The Struggle against Torture", in *International Review of the Red Cross*, No. 324, 1998, pp. 433-444; Hans Haug, "Efforts to Eliminate Torture through International Law", in *International Review of the Red Cross*, No. 775, 1989, pp. 9-27.

³⁰ For an overview of the Swiss efforts, consult Jean-Daniel Vigny, "La Convention européenne de 1987 pour la prévention de la torture et des peines ou traitements inhumains ou dégradants", in *Schweizerisches Jahrbuch für internationales Recht*, 1987, pp. 62-78.

³¹ An overview of the Swiss efforts is given by Jean-Daniel Vigny, "L'action de la Suisse contre la torture", in Haenni, *20 ans consacrés a la réalisation d'une idée*, pp. 69-76.

Czechoslovakia known as the "Prague Spring" (1968). However, such declarations were exceptional because of reservations imposed by neutrality. A further difficulty was that the Federal Council could not base its interventions on human rights conventions, such as the 1966 UN Human Rights Covenants, because Switzerland had not ratified them. Political recognition of human rights in the Helsinki Final Act of 1975 improved the situation, and the Federal Council intervened – usually discreetly – on various occasions to support victims of human rights violations in East bloc countries.

Such interventions became an issue with the activation of Swiss human rights policy in the late 1970s. The question of whether and how Switzerland should support human rights in other states was a key concern of Aubert's human rights policy. The Foreign Ministry's working group dealt intensively with the problem. The 1982 human rights report summed up the findings. Credibility and coherence were to be the foremost criteria. In order to fulfil this objective, interventions should first of all not be directed against any particular form of government. Second, they should rest upon accepted international law and the most comprehensive and objective information possible. Third, general Swiss interests, neutrality and sensitive public opinion at home should be taken into account. And finally, interventions should differentiate between various types of violations, especially between occasional and systematic practices. This last criterion led the Federal Council to conclude that only systematic violations warrant public interventions. As a general rule discreet interventions were considered to be more effective. Public exposure of a country might entail counterproductive results and could be to the detriment of those affected by the violations.³²

How did the Federal Council actually practise intervention? The bits of official information available on discreet diplomatic interventions make an assessment more or less impossible. However, we know that since the late 1970s, the government had made more frequent public condemnations of events abroad in general and of human rights violations in particular. The Swiss government found it increasingly difficult not to speak out on massive violations, especially since the signing of the CSCE Final Act of 1975. Human rights could no longer be viewed as a domestic matter. The pressure to take a stand stemmed mainly from within

³² Bundesrat, *Bericht über die Menschenrechtspolitik 1982*, pp. 740-743. For a discussion of this topic, see the various contributions in Schweizerische Gesellschaft für Aussenpolitik (ed.), *Möglichkeiten und Grenzen der schweizerischen Aussenpolitik*, Bern/Lenzburg 1985.

Switzerland itself, and it grew through the 1970s. Parliament, non-governmental organisations and citizens were now playing a part in areas of foreign policy that had once been the exclusive domain of the Federal Council.

The increasing number of government statements on human rights violations caused domestic controversy. The ideological trenches of the Cold War made themselves felt; right-wing politicians reproached the Federal Council when it spoke out on Apartheid or on South American dictators. Criticism of East bloc countries, on the other hand, found conservative support. Left-wing politicians, in contrast, demanded a clear condemnation of Apartheid politics and human rights violations in South America.³³ Aside from ideologically motivated critique there was also a more general opposition coming from the centre and the right, or what in Switzerland is called the "bourgeois majority." The argument was that public condemnation of other governments did not accord with the restraint expected of a neutral state. Disagreement on human rights policy also reigned in the Foreign Ministry and was one of the unspoken reasons that led to the involuntary early retirement of State Secretary Albert Weitnauer in 1980.³⁴

The Federal Council's official standpoint was to play down the tensions between active promotion of human rights and its traditional neutrality policy by emphasising the humanitarian and therefore non-political dimension of human rights. From a humanitarian point of view this might have been appropriate. However, because of the tensions between human rights and state sovereignty and in the context of the opposing ideological blocs, this position hardly accorded with the matter at hand. The artificial separation of non-political and political involvement could at best work when applied to international humanitarian law or good offices.

³³ The Swiss government did intervene publicly on several occasions involving human rights violations, for example in 1977, 1979 and 1985, when the Federal Council condemned Apartheid in South Africa or in 1981 when the government denounced human rights violations in connection with the proclamation of martial law in Poland. For a brief analysis of the intervention practice, see Kälén, *Menschenrechtspolitik*, pp. 199-202.

³⁴ While Foreign Minister Pierre Aubert was – as described above – in favour of an active human rights policy, State Secretary Albert Weitnauer was opposed, especially to public human rights interventions. Weitnauer spoke out for a low-profile foreign policy centred on traditional neutrality. For some hints on the controversy in the Foreign Ministry, consult Edouard Brunner, *Lambris dorés et coulisses: Souvenirs d'un diplomate*, Georg, Genève 2001, pp. 34-37. On Weitnauer's foreign policy thinking, see his autobiography: Albert Weitnauer, *Rechenschaft: Vierzig Jahre im Dienst des schweizerischen Staates*, Artemis, Zürich. For the standpoint stressing the dangers of an active human rights policy with respect to the credibility neutrality policy, see Luzius Wildhaber, "Neutralität, Aussenpolitik und internationale Organisationen aus Schweizer Sicht", in Friedrich Koja and Gerald Stourzh (eds.), *Schweiz – Österreich: Ähnlichkeiten und Kontraste*, Hermann Böhlau, Wien/Köln/Graz 1986, pp. 209-227.

It failed, however, with respect to human rights, because these are not only humanitarian but also political in nature.

4.4 Reluctance Regarding Human Rights Conditionality

Attempts to link human rights to other political issues began in the late 1970s and at times led to public and parliamentary debates. In parliament there were requests to create a link between human rights and development assistance. In a 1982 human rights report, the government addressed the problem. It emphasised the similar objectives pursued by development and human rights and argued that the upholding of human rights was an important precondition to economic development. The two should consequently be combined, and serious human rights violations could result in the termination of aid. Moreover, the Federal Council as early as 1984 made respect for human rights an explicit criterion for determining countries with which Switzerland would enter into development co-operation.³⁵

However, despite these conceptual guidelines, human rights concerns were of little practical importance in development assistance. Consequently the list of main recipients of development assistance hardly changed over the years. The argument was that development co-operation should not be used to exert pressure. For humanitarian reasons, development co-operation projects should be maintained even in countries where human rights were seriously violated, as long as the projects continued to help people in need. Co-operation should be interrupted or terminated only where severe and systematic human rights violations made the attainment of development goals impossible. This position reflects Switzerland's understanding of development co-operation as something that is non-political and technical. Its responses to political problems in recipient countries were highly pragmatic.³⁶

With regard to foreign economic policy, the government was emphatically opposed to using economic sanctions as an instrument to enforce human rights. The reasons given were the

³⁵ Bundesrat, *Bericht über die Menschenrechtspolitik 1982*, pp. 772-774; Bundesrat, Botschaft über die Weiterführung der technischen Zusammenarbeit und der Finanzhilfe zugunsten von Entwicklungsländern vom 19. März 1984, in *BBl* 1984 II, pp. 52 and 57.

³⁶ Switzerland stopped co-operation with Vietnam (1979), Bolivia (1980) and Haiti and Myanmar (1988), but not with Turkey (after the 1980 military coup). For a short overview of the main features of Swiss development assistance and for the role of political conditionality, compare Jacques Forster, "Conditionality in Swiss Development Assistance", in Olav Stokke (ed.), *Aid and Political Conditionality*, Frank Cass, Geneva/London 1995, pp. 201-224.

universal nature of international business and the preservation of jobs at home. This separation of human rights from foreign economics was part of a more comprehensive attempt to isolate foreign trade from the rest of foreign policy. However, the separation was difficult to maintain during the Cold War: Switzerland, by quietly co-operating with COCOM (Coordinating Committee for Multilateral Export Controls), joined NATO countries in sanctioning the Soviet bloc economically and, in fact, supported some UN sanctions against Rhodesia.³⁷

The Federal Council's separation of human rights and foreign economic policy was criticised by the parties on the left as well as by non-governmental organisations (NGO). Armaments exports and the governmental Export Risk Guarantee (ERG) came under special attack.³⁸ The protest against the export of arms had shown results in the early 1970s. In response to a public initiative asking for a complete prohibition of the export of arms, parliament passed a law on war material in 1972. In the future no export licences would be issued for exports to zones of war and conflict. Moreover, the law contains a clause on human rights and development. It stipulates that the export of war material must not be to the detriment of human dignity and efforts in the area of humanitarian and development assistance.

In practice, this clause was more or less insignificant. Arms could be exported to countries violating human rights but not at war, a practice criticised sharply over the years by both parliament and human rights organisations. There was also a demand for a stricter implementation of the law. At the beginning of the 1990s, the law on war material was submitted to a total revision. Among other things, the government proposed the adoption of rather broad definition of war material and linked export authorisations more explicit to the human rights situation in the country of destination. On both the issues the Federal Council was defeated by parliament, which decided on a narrower definition of war material and an elimination of the reference to human rights. However, the Federal Council reintroduced the human rights crite-

³⁷ For an overview of the Swiss attitude towards economic sanctions, see Jürg Martin Gabriel, "Switzerland and Economic Sanctions – The Dilemma of a Neutral", in Marko Milivojevic and Pierre Maurer (eds.), *Swiss Neutrality and Security, Armed Forces, National Defense and Foreign Policy*, Berg, Oxford 1990, pp. 232-245. For a discussion of the Swiss co-operation with COCOM, see André Schaller, *Schweizer Neutralität im West-Ost-Handel: das Hotz-Linder-Agreement vom 23. Juli 1951*, Paul Haupt, Bern/Stuttgart 1987. For the Swiss policy towards Rhodesia, see Rudolf Letsch, *Rhodesien, die Vereinten Nationen und die Schweiz: Konzepte und Inkonsistenzen der Rhodesienpolitik*, Dissertation Universität St. Gallen 1983.

³⁸ The ERG was founded in 1934 as an instrument to fight unemployment in the export-oriented machine industry. The guarantee has a double purpose: it aims to maintain jobs in Switzerland and to promote exports. The ERG insures exporters against certain risks that can arise with countries where political or economic

tion in its regulation on armaments exports. Under these circumstances these exports continued to be an issue where foreign trade, human rights and development policy conflicted.³⁹

Efforts to introduce human rights and humanitarian criteria into the ERG legislation had little success. In fact, Aubert directed his department to analyse this question. Nanchen's parliamentary postulate to the Federal Council, mentioned above, had similar objectives. However, the 1982 report on human rights policy hardly dealt with the matter. It was confined to a presentation of legal regulations already in place. These stipulated only that exports to poorer developing countries should take the principles of Switzerland's foreign aid policy into account.⁴⁰

To sum up, the attempt to bind development aid and foreign economic policy to human rights caused controversy in the 1980s. The Federal Council pleaded for separation of the various policy areas. Swiss development assistance was understood to be humanitarian and non-political. Only with respect to arms exports was there an explicit link between human rights and foreign economic policy. In all other areas, foreign policy was separated from human rights policy, most particularly in the general area of foreign economic policy.⁴¹ The universality principle inherent in free trade took precedence over the equally propagated principle of the universality of human rights. From a human rights point of view this policy was neither consistent nor credible.

conditions are uncertain (non-payment due to political problems, foreign exchange restrictions, inability or unwillingness to pay on the part of public or public guaranteed debtors, etc.).

³⁹ For an overview and a critical analysis of Switzerland's legislation concerning military export controls, compare Urs Cipolat, *Nonproliferation and Switzerland: a Critical Analysis of Switzerland's Legislation concerning Military Export Controls*, NFP 42 Synthesis, No. 39, Bern. (<http://www.snf.ch/NFP/nfp42/synthese/39Cipolatsynthesis42.pdf>). For a critical analysis of the topic with regard to human rights policy, see Amnesty International, Swiss Section (ed.), *Menschenrechte und Waffenexport: Eine Darstellung der Zusammenhänge, Gesetzgebung und Praxis in der Schweiz*, Bern 1988; Walter L. Bernecker and Thomas Fischer (eds.), *Unheimliche Geschäfte: Schweizer Rüstungsexporte nach Lateinamerika im 20. Jahrhundert*, Chronos, Zürich 1991.

⁴⁰ Bundesrat, *Bericht über die Menschenrechtspolitik 1982*, p. 772.

⁴¹ For the official viewpoint, see Franz Blankart, *Handel und Menschenrechte*, Basler Schriften zur europäischen Integration, Nr. 25, Europainstitut an der Universität Basel, Basel 1997. For an analysis and a critic of Federal Council's policy, compare Erika Schläppi and Walter Kälin, *Schweizerische Aussenwirtschaftshilfe und Menschenrechtspolitik: Konflikte und Konvergenzen*, Rüegger, Chur/Zürich 2001.

5 Promotion of Human Rights as a Foreign Policy Objective

With the redrawing of the world's political map in the early 1990s, Switzerland developed a new foreign policy orientation. The formerly dominant maxim of neutrality lost some of its weight and made way for a strategy of increased international co-operation. Human rights, too, gained in importance. Switzerland began to catch up with the ratification of human rights conventions, and it generally intensified its human rights involvement.

5.1 New Foreign Policy Directions

The end of the Cold War effected a lasting change in international relations. The 1990s were characterised by the end of ideologically opposed blocs, far-reaching political, social and economic revolutions in Central and Eastern Europe, advancing European integration, globalization of the economy and – not least – a UN with a greater ability to act. The end of the Cold War also had a positive effect on international human rights protection. The ideological dispute over human rights receded into the background. Human rights gained a firm place on the international agenda and – despite a number of enforcement problems – have become a widely accepted normative principle guiding international relations.

These developments constituted a challenge to Swiss foreign policy. The Federal Council responded relatively quickly to the changed international parameters and in 1993 presented a new foreign policy report.⁴² The document signalled a conceptual break with the past. Instead of emphasising neutral abstinence, it was oriented towards co-operation and participation. The new conception based on trust in international law and multilateral institutions. This stands in marked contrast to Switzerland's previous view of the international environment as an anarchic system characterised by a security dilemma. Also, the Federal Council explicitly gave up

⁴² Bundesrat, Bericht über die Aussenpolitik der Schweiz in den 90er Jahren vom 23. November 1993, in *BBl* 1994 I, p. 153. In the year 2000, the Federal Council issued a new report, Foreign Policy Report 2000. The report confirms the 1993 conceptual framework. It describes European and world-wide changes that took place in the 1990s, draws conclusions about Swiss foreign policy activities in that decade and sets out some accents for future objectives and priorities. Compare here Federal Council, *Foreign Policy Report 2000, Presence and Cooperation: Safeguarding Switzerland's interests in an integrating world*, from November 15, 2000 (http://www.eda.admin.ch/eda/e/home/recent/rep/forpol.Par.0003.UpFile.pdf/rp_001113_foreignpol_e) (unofficial English translation).

An analysis of the 1993 report can be found in Jürg Martin Gabriel, "Neutralität für den Notfall: Der Bericht des Bundesrats zur Aussenpolitik der Schweiz in den 90er Jahren", in Jürg Martin Gabriel, *Sackgasse Neutralität*, pp. 129-158; Fanzun and Lehmann, *Die Schweiz und die Welt*, pp. 77-86.

the distinction between foreign and domestic politics typical of the realist worldview, and it stressed that in an interdependent world the two were increasingly becoming one. Generally speaking, the 1993 foreign policy conception represents a departure from the realist worldview and signals a shift to a more idealist perspective.

For human rights the foreign policy reorientation was highly significant. The Federal Council raised the promotion of human rights, democracy and the rule of law to one of five foreign policy objectives.⁴³ Now a foreign policy priority, human rights also became an explicit part of the new 1999 Federal Constitution. This document contains the five foreign policy objectives of the 1993 report and defines the goals of Swiss foreign policy in Article 54 Par. 2 as follows:

The Confederation strives to preserve Swiss independence and welfare; it helps to alleviate suffering and poverty in the world, to promote respect for human rights, democracy, the peaceful coexistence of nations, and the preservation of natural resources.

Furthermore, the Federal Council in October 2002 put forward a federal law codifying the field of peace promotion and human rights. This new law will become effective in 2004, provided that it will be adopted by the parliament.⁴⁴ The anchoring of human rights in the constitution and in the new federal law provides a solid legal foundation for their inclusion in foreign policy, something that had been lacking so far. In addition, the mention of human rights as a foreign policy objective is a commitment to a foreign policy guided by ethical principles. It is an important departure from Switzerland's long disinclination to restrain the Federal Council's freedom of action by legal binding norms.⁴⁵

The upgrading of human rights was accompanied by the Federal Council's admission that conflicts can arise between human rights and other foreign policy goals. Previously, such conflicts had been negated or played down. With the introduction of a multidimensional goal

⁴³ The five objectives outlined in the foreign policy report of 1993 are (1) preservation and promotion of peace and security, (2) promotion of human rights, democracy, and the rule of law, (3) promotion of prosperity, (4) alleviation of poverty and inequality and (5) protection of the ecological bases of life. See Bundesrat, *Bericht über die Aussenpolitik 1993*, p. 159.

⁴⁴ Bundesrat, Botschaft zum Bundesgesetz über Massnahmen zur zivilen Friedensförderung und Stärkung der Menschenrechte vom 23. Oktober 2002, in *BBJ* 2002, pp. 7611-7621 (<http://www.admin.ch/ch/d/ff/2002/7611.pdf>).

⁴⁵ Compare on this issue Schläppi and Kälin, *Aussenwirtschaftshilfe*, pp. 24-40.

agenda this was no longer possible. The Federal Council declared its intention to make goal conflicts visible and to strive towards a more coherent foreign policy. The search for coherence, an important topic throughout the 1990s, implied the linking of policy areas and the explicit integration of human rights into other fields of foreign affairs.⁴⁶

At first glance this looks like a break with the past, but a closer look reveals that the human rights objective did not emerge out of a void. It had its roots in the solidarity maxim and the human rights foundations laid down in the 1980s. Seen historically, the embedding of human rights in a general foreign policy framework and in constitutional law is the culminating point of a development that began in the 1960s and led to an increasing recognition of the importance of human rights for foreign policy.⁴⁷

It also affected institutional arrangements. In 1995 the Foreign Ministry's Human Rights Section was divided into two parts, one responsible for legal, another for political questions. Later on the latter was upgraded to become the Section for Human Rights and Humanitarian Policy. However, the funding and personnel resources currently appropriated are very limited, thereby restricting human rights activities.⁴⁸ A planned credit for the years 2004-2007 for international peace and human rights promotion will hopefully improve the current situation and strengthen the financial basis for such activities.

⁴⁶ On the problem of goal conflicts in Swiss foreign policy, see Jürg Martin Gabriel, "Zielkonflikte in der schweizerischen Aussenpolitik", in *Schweizerisches Jahrbuch für Politische Wissenschaft*, Vol. 28, 1988, pp. 17-31. On coherence in Swiss foreign policy from the viewpoint of development assistance, see Jacques Forster, "The Coherence of Policies Towards Developing Countries: The Case of Switzerland", in Jacques Forster and Olav Stokke, *Policy Coherence in Development Co-operation*, Frank Cass, London 1999, pp. 295-322.

⁴⁷ Kälin, *Verfassungsgrundsätze*, pp. 298-312.

⁴⁸ At the start of 2002, six persons made up the staff of the Human Rights Section of Political Affairs Division IV of the Federal Department of Foreign Affairs (DFA). They follow the human rights situation in all countries of the world and, should the need arise, take the measures required by Swiss foreign policy. The DFA Section for Human Rights and Humanitarian Law deals with legal questions relating to human rights and international humanitarian law. It is to this Section that all relevant requests for legal information are passed. For up to date information on this topic, see the DFA Web page at <http://www.eda.admin.ch>.

5.2 The Human Rights Conception 2000

In spring 2000 the Federal Council prepared a new report on human rights policy. It gave an account of human rights practice in the 1990s and adjusted some of the objectives of the 1993 foreign policy report.⁴⁹ It reiterated the fundamentals of the 1982 human rights concept and mentioned new elements that had developed in the 1990s. The new concept distinguishes various human rights instruments. It includes the classical legal and diplomatic means already mentioned in the 1982 report. These comprise the ratification of conventions, the participation in multilateral organisations as well as bilateral and multilateral interventions in cases of human rights violations. These classical mechanisms are accompanied by new instruments such as so-called "human rights dialogues" with selected countries as well as missions by teams of human rights experts.⁵⁰ In addition, the expanded concept encompasses a set of means ranging from foreign economic policy and development assistance to the co-operation with Eastern European countries.

The government distinguishes between positive and negative instruments to implement human rights. For states that do not protect human rights sufficiently, the Council recommends constructive measures. These include support for specific projects to promote human rights, development co-operation aimed at supporting human rights and political dialogue on human rights conceptions. In the case of serious and systematic human rights violations, the Council foresees the employment of negative measures, such as economic sanctions within the UN framework, reduction or termination of development aid, rejection of export and investment risk guarantees or declining permits for the export of war material.⁵¹

This recognition of human rights conditionality in the early 1990s took on concrete form towards the end of the decade. With the aim to increase coherency, the Federal Council decided on 20 September 1999 to generalise political conditionality in certain cases. Only humanitar-

⁴⁹ Bundesrat, Bericht über die Menschenrechtspolitik der Schweiz vom 16. Februar 2000, in *BBl* 2000, pp. 2586-2609 (<http://www.admin.ch/ch/d/ff/2000/2586.pdf>).

⁵⁰ In 1990, the DFA launched its first bilateral human rights dialogue with China. This also led to the opening up of a dialogue with Morocco, Pakistan, Vietnam and Cuba, the contents of which remain confidential. An evaluation of the efforts led the Foreign Ministry in autumn 2000 to concentrate on the dialogue with China and to terminate those with the other countries.

⁵¹ Bundesrat, *Bericht über die Aussenpolitik 1993*, pp. 181-183; Bundesrat, *Bericht über die Menschenrechtspolitik 2000*, pp. 2590-2597.

ian aid was to be excluded. Accordingly the respect for human rights is one of several criteria determining relations with another state.⁵² As a completely new development the Federal Council also decided to integrate human rights clauses in state treaties.

If the conditionality criteria are not upheld, development co-operation is to be either reduced or terminated. The cessation of relations, however, is to serve as an absolute *ultima ratio*. Constructive measures are to be preferred. Moreover, the government emphasised that conditionality should not be applied automatically. It reserves the right to decide each case individually and under consideration of all relevant factors. In the 1980s the government had rejected human rights conditionality, but in the 1990s it became a guiding principle. This was – at least at the conceptual level – a break with the past and the attempt to separate the various foreign policy areas. Switzerland finally followed the international trend in the area of human rights.

5.3 Catching up on Ratifications

As shown, plans to sign human rights agreements in the 1980s were not fulfilled. By European standards Switzerland lagged far behind and needed to catch up. Closing the ratification gap was therefore a priority for the Federal Council in the 1990s.⁵³ The efforts were now more successful than in the previous decade. Some important international and regional human rights conventions were ratified. Of particular importance was ratification of the two 1966 UN Human Rights Covenants. The Federal Council had recommended ratification of

⁵² In cases of serious violations of peace and security or infringements of fundamental principles by individual countries the Federal Council conducts an in-depth review and decides on the basis of different criteria to stop co-operation either in part or totally. The criteria applied are: (1) grave violations of peace and security, (2) serious infringements of human rights, especially grave discrimination against minorities, (3) absence of efforts to achieve good governance, (4) interruption or reversal of democratisation processes, (5) lack of willingness on the part of a state to accept the return of its own nationals. See Federal Council, *Foreign Policy Report 2000*, p. 26.

⁵³ For up-to-date information on human rights treaties ratified (or not) and for an analysis of the implementation of these treaties in Switzerland, compare the information provided on the official Web page of the Foreign Ministry at <http://www.eda.admin.ch>. For the standpoint of Swiss human rights NGOs, see the comprehensive information provided on the electronic human rights platform at <http://www.humanrights.ch>. Of particular interest are the Swiss reports on specific treaties (for example, the UN Human Rights Covenants), the "shadow reports" by Swiss human rights organisations, and the decisions, observations and comments by the responsible international bodies (for example, the UN Human Rights Committee, the Council of Europe Anti-Torture Committee or the European Court of Human Rights).

these two covenants as early as the 1970s; they were finally ratified in 1992.⁵⁴ It is noteworthy that parliament passed ratification with an overwhelming majority. However, Switzerland is still not a party to the first Optional Protocol to the Covenant on Civil and Political Rights, which guarantees the rights of individuals to address complaints to the UN Human Rights Committee, although the Federal Council announced its intention to accede to the Protocol already in its 1995-1999 and 1999-2003 policy agendas. Swiss NGOs criticized the absence from the Optional Protocol, and the UN Human Rights Committee itself recommended more than once that Switzerland adhere to it.⁵⁵

In 1994 Switzerland adhered also to the 1965 UN Convention on the Elimination of All Forms of Racial Discrimination. As early as 1971, Foreign Minister Graber wanted to sign the convention as soon as possible, based on reasons of international solidarity. However, it took twenty years for the discrimination issue to surface again, this time for domestic reasons. An increase in racist violence created a need for action. The Federal Council seized the opportunity and laid the ratification of the convention before parliament in 1992. While the legislature approved, right-wing conservative circles organised a referendum against the Swiss criminal law that needed adaptation. The results of the 1994 vote backed the Federal Council by only a slim margin of 55%. This strong opposition to one of the most fundamental international human rights conventions reflects the prevailing mistrust of the UN and its conventions. The attitude is underlined by the fact that parliamentary opposition also arose against the government's intention to adopt the communications procedure according to Article 14 of the convention.⁵⁶

⁵⁴ For an in-depth analysis of the two Covenants from a Swiss perspective, see Walter Kälin, Giorgio Malinverni and Manfred Nowak, *Die Schweiz und die UNO-Menschenrechtspakte*, 2. erweiterte Auflage, Helbing & Lichtenhahn, Basel/Frankfurt a. M. 1997.

⁵⁵ By the end of 2002, Switzerland had presented two reports (in 1995 and 1998) under Article 40 of the Covenant. The Human Rights Committee treated the reports in 1996 and 2001. The related documents can be found on the Internet at <http://www.eda.admin.ch> and <http://www.humanrights.ch>.

⁵⁶ By adopting this procedure a state recognizes the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in the convention. In August 2001 the government proposed the acceptance of the named procedure. While the National Council adopted this decision in December 2001, the Council of States rejected the government's proposal in June 2002 upon recommendation of its Foreign Affairs Committee. In November 2002 this Committee reconsidered the matter and proposed to adopt the communications procedure according to Article 14 of the convention.

For details of the implementation of the convention in Switzerland, especially the periodic reports by the Swiss government and the according observations of the UN Committee against Torture, see information

Other global human rights conventions were ratified more easily. These included the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (ratified in 1997), the 1989 Convention on the Rights of the Child (ratified in 1997) and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (ratified in 2000). Finally, Switzerland ratified the Rome Statute of the International Criminal Court (ICC) on 12 October 2001.

At the European level, Switzerland adhered to a number of CoE conventions,⁵⁷ but there are still some serious ratification gaps. Switzerland has up to today neither ratified the European Social Charter nor Protocols 1 and 4 to the European Convention on Human Rights. The story of non-ratification of these instruments is an odyssey: on innumerable occasions the Federal Council placed a priority on these three instruments, announced soon-to-be ratification, and then proceeded to shelve the matter once again. Parliament showed similar ambivalence: while numerous demands for ratification of the conventions were submitted, it was the legislative branch that was often responsible for dragging out and rejecting ratification. Switzerland is practically the only Western European country that has not ratified the Social Charter and Protocols 1 and 4. Even some young democracies in Central and Eastern Europe – that joined the Council of Europe only in the 1990s – have done so.⁵⁸ Given the opposition ratification of the Social Charter is unlikely in the next few years. Unfortunately, the same may be true for the Protocols 1 and 4. Because of parliamentary opposition, the government again lags behind its own timetable. The Federal Council had planned to ratify the two protocols by the end of 2003.⁵⁹

provided on the Internet at <http://www.eda.admin.ch> and <http://www.humanrights.ch>. For an overview of the parliamentary debates, compare the Swiss Parliaments Web page at <http://www.parlament.ch>.

⁵⁷ Most particularly the European Charter for Regional or Minority Languages (ratification 1997), the Framework Convention for the Protection of National Minorities (ratification 1998) and Protocol Nr. 11 to the European Convention on Human Rights concerning reorganisation of the control mechanisms (ratification 1998).

⁵⁸ Up-to-date information on the status of ratification of CoE conventions can be found on the Internet at <http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm>.

⁵⁹ See the Legislative Planning Report by the Federal Council (1999-2003), the reports on the objectives of the Federal Council (2000, 2001 and 2002) and the annual reports of the Federal Council (2000 and 2001). The reports are available on the Internet in full-text at <http://www.admin.ch/ch/d/cf/rg/index.html#lp>.

5.4 Human Rights Activities

Subsequent to the negative outcome of the first UN membership referendum on 16 March 1986, the Federal Council decided to improve its relations with the UN through selective participation. Among other things, Switzerland focussed its activities on the United Nations Commission on Human Rights. As an observer, the country had followed the Commission's work since the 1970s, and on occasions it managed to take the floor. Starting in 1987, the Swiss Delegation participated more actively by supporting practically all resolutions that foresaw political control mechanisms for the safeguarding of human rights. Not least because of Switzerland's support, the Commission has in recent years given a number of UN Special Rapporteur mandates to Swiss citizens.⁶⁰

In March 2002 Switzerland voted to enter the UN and thus ended an anomaly that had persisted since the Second World War. Since the formal disadvantages of non-membership are now a thing of the past, the decision should have a positive effect on Switzerland's human rights engagement. In fact, the government declared the strengthening of human rights a core element of its UN policy. Switzerland can now come forward with its own initiatives and can be voted to all UN bodies, including the Human Rights Commission.⁶¹ As to the further development and codification of international law, Switzerland will now work on an equal footing with others. The importance of this cannot be underestimated, for the country's abstinence from the development of the human rights conventions was in part responsible for the scepticism exhibited vis-à-vis these conventions.

In the CSCE, now OSCE, Switzerland continued its previous efforts to promote human rights. As part of the organisation's "human dimension" it aimed at the protection of minorities by

⁶⁰ The UN entrusted the following Swiss citizens with UN Special Rapporteur mandates: Joseph Voyame on the situation in Rumania (1990); Walter Kälin on Kuwait (1992); René Felber on the Israeli-occupied territories (1993-1994); Michel Moussali on Rwanda (since 1997). For an overview of the Swiss participation in UN human rights activities, see Jean-Daniel Vigny, "La Suisse et la politique des Nations Unies à l'égard des droits de l'homme", in Riklin, *Neues Handbuch*, pp. 265-275.

⁶¹ The election of Switzerland to the Economic and Social Council (ECOSOC) and to the Human Rights Commission are declared priorities of the Swiss government. See *First session of the United Nations General Assembly with Switzerland as a member: Background and Swiss priorities and perspectives, 2002* (http://www.eda.admin.ch/sub_uno/e/uno/publi/doc/pdf.Par.0011.UpFile.pdf/dc_020729_goverdoc_e).

There is a first Swiss success worth mentioning. On 9 September 2002 Walter Kälin, professor of international law at the University of Bern, was elected a member of the UN Human Rights Committee. It was established to monitor the implementation of the Covenant and the protocols to the Covenant on Civil and Political Rights in the territory of States parties. The Committee is composed of 18 independent experts of high moral character and having demonstrated competence in the field of human rights.

actively backing the High Commissioner on National Minorities (HCNM). In 1996 Switzerland held the OSCE chairmanship. Its programme included the protection of minorities, the promotion of democratic values and the strengthening of civil society. The programme found its main application in the 1996 elections in Bosnia-Herzegovina.⁶²

Switzerland intensified other related activities as well and continued to build up the human rights instruments at its disposal. These include financial support for the activities of NGOs, the establishment of an Expert Pool for Civilian Peace Building and several projects in the field of "human security." Two further examples are worthy of mention. The first relates to the reform of the European Convention on Human Rights and the installation of a European Court of Human Rights, a process initiated in 1998 by Switzerland. The second example is Switzerland's support for the establishment of international criminal courts. Bern supports the work of the Ad Hoc Tribunal for former Yugoslavia and for Rwanda. Switzerland also played an active role in the working out of the Rome Statute of the International Criminal Court (ICC) in 1998. Despite massive obstruction, particularly by the United States, the establishment of a "toothless" court was prevented. After the entry into force of the Statute on 1 July 2002, the United States in particular continued to put pressure on the ICC. Switzerland on its part pursued its policy to back the Court.⁶³

Compared to the limited human rights involvement in the 1980s, Switzerland played an active role in the 1990s. The intensification went hand in hand with a greater willingness to take a political stand. It is true that Switzerland rarely came forward in the 1990s with its own initiatives or with critique of other nations. But in general, Switzerland joined the WEOG (Western European and Other States Group) in supporting a common position, as for example in the UN Human Rights Commission. Neutrality considerations were now less important than multilateral co-ordination with like-minded nations.

⁶² In terms of personnel resources, Switzerland made available to the OSCE 160 experts in connection with the 1996 elections. Human rights observers, elections experts, financial administrators and logistics specialists were in action in Bosnia. Switzerland's Gret Haller was appointed by the OSCE as ombudswoman for human rights in Bosnia-Herzegovina and served from 1995-2000. Furthermore, Gérard Stoudmann, a Swiss diplomat, served as Director of the Office for Democratic Institutions and Human Rights (ODIHR) from 1997 to 2002. For an overview of the Swiss contributions to OSCE, and especially of the 1996 chairmanship, see Laurent Goetschel (ed.), *Vom Statisten zum Hauptdarsteller: Die Schweiz und ihre OSZE-Präsidentschaft*, Paul Haupt, Bern/Stuttgart/Wien 1997.

⁶³ Comprehensive up to date information on the ICC can be found on the official Web page of the ICC at <http://www.icc.int> and on the Web page of the Coalition of the ICC, a network of over 1000 NGOs at <http://www.iccnw.org>.

5.5 Human Rights, Development and Foreign Economic Policy

As shown, the human rights policy as developed in the 1990s established a link with other issues. The objective was to increase coherency within and among the various policy areas. This goal was put into practice particularly in development assistance and in co-operation with Eastern Europe. At a time when international practice began to make economic aid dependent upon political conditions, and in accordance with the 1993 foreign policy report, the government declared that the guiding principles of Swiss development co-operation would be the promotion of good governance, human rights, the rule of law and democracy.⁶⁴

Once again a dual strategy embracing positive and negative measures is envisaged. On the positive side development co-operation should promote good governance, human rights and the rule of law. On the negative side sanctions, such as termination of co-operation, can be employed in case of gross human rights violations. Co-operation with Eastern Europe is even more directly contingent upon such requirements. The promotion of human rights and the rule of law were anchored in law. Moreover, in relation to the first war in Chechnya (1994-1996) parliament attached a special conditionality clause to the law, authorising the Federal Council to interrupt co-operation, in part or wholly, in case of gross human rights violations and discrimination of minorities.⁶⁵

However, the government applied conditionality only in isolated cases. Constructive measures still dominate. Rwanda, for many years a priority recipient of Swiss development assistance, is a case in point. Switzerland attempted to maintain a dialogue with the regime until the very end, without interrupting development co-operation. Only with the outbreak of genocide and faced with a disaster did the Federal Council terminate co-operation in 1994.⁶⁶ Switzerland showed similar patience – as did other Western countries – in the case of Russia. Neither the first nor the second Chechen war (since September 1999) has led to an interruption of co-

⁶⁴ Federal Council, "North-South Guidelines", Report on Switzerland's North-South Relations in the 1990s, 7 March 1994 (http://www.deza.ch/ressources/deza_product_e_21.pdf). Swiss Agency for Development and Cooperation, (SDC), *Promoting Human Rights in Development Cooperation*, Guidelines approved on February 24, 1997. For an overview of Swiss development assistance in the 1990s, see Forster, *Coherence*; Fanzun and Lehmann, *Die Schweiz und die Welt*, pp. 271-305.

⁶⁵ Compare Articles 2 and 4 of the Federal decree on co-operation with countries of Eastern Europe, 24 March 1995.

⁶⁶ For a discussion of Swiss development assistance to Rwanda, see Joseph Voyame, Richard Friedli, Jean-Pierre Gern and Anton Keller, *La coopération Suisse au Rwanda*, Rapport du Groupe d'Étude par le Département fédéral des affaires étrangères, 1996.

operation with Russia, although legally possible. The Federal Council countered domestic objections by mentioning commercial, foreign policy and security interests. When it comes to positive measures, it is noteworthy that human rights and good governance have been integrated into various development programmes, including those with Eastern European countries. However, this is still a step removed from systematic integration of human rights and good governance into such programmes. Only in recent years have the responsible federal authorities undertaken efforts in this direction.

Generally speaking there has been much reluctance to implement the human rights guidelines. Even after the conceptual shift in the 1990s, the traditional humanitarian approach ignoring the political conditions prevailing in the recipient nation has the upper hand. Human rights and good governance considerations continued to play a minor role in development assistance, as evidenced by the nearly unchanged list of major recipients. The Chechen example illustrates the limits and problems of political conditionality. The Federal Council strained the credibility and coherence of its policy by maintaining co-operation with Russia, despite the clear breach of the co-operation criteria as laid down in the decree of 1995. Still, there are positive effects. Goal conflicts and coherency problems were addressed more openly than in the decades before. Moreover, there is a recognisable trend towards a heavier weighting of political conditions and human rights criteria in development co-operation.

In the 1990s goal conflicts arose most noticeably between human rights and foreign economic policy. The Federal Council addressed such conflicts and admitted that there were problems with coherency. As shown, in the 1993 foreign policy report the government rejected its former separation between human rights and foreign economic policy and declared that in cases of gross human rights violations it would consider participating in UN sanctions and reject credit guarantees. In its North-South Guidelines, the Federal Council mentioned specifically that human rights would be taken into account when granting export risk guarantee for poorer developing countries.⁶⁷

Interestingly enough, Switzerland's participation in UN economic sanctions since the 1990s did not give rise to domestic criticism, at least not at first, even though this policy was in con-

⁶⁷ Bundesrat, *Bericht über die Aussenpolitik 1993*, pp. 182-183; Federal Council, *North-South Guidelines*, pp. 15-16; Bundesrat, *Bericht über die Menschenrechtspolitik 2000*, p. 2595.

trast to its traditional course of neutrality. In addition to the longstanding issue of armaments exports it was the granting of ERG that caused a stir. Business circles and bourgeois parties criticised what to them was a detrimental mixing of politics and economics. On the other side, development and human rights organisations, joined by the political left, demanded that foreign economic policy be guided by development and human rights principles.

The granting of export credit guarantees for two large dam projects in China (Three Gorges Dam) and in Turkey (Ilisu Dam) proved to be important test cases for the Federal Council's new policy. Both projects were and are extremely controversial. NGOs demanded that human rights and development concerns be incorporated, and even within the administration the projects were contested.⁶⁸ In the case of the Three Gorges Dam Project, a number of administrative offices apparently opposed export risk guarantees to Asea Brown Boveri (ABB) and Sulzer Hydro. Yet the Federal Council approved export credit guarantees to the two Swiss companies in 1996 and 1999 (Three Gorges) and in 1998 (Ilisu), and thereby gave priority to economic considerations over human rights and development concerns. The government felt that a refusal to grant credit guarantees would not stop the projects but merely give foreign exporters the advantage over Swiss firms. With a view to the human rights situation in China, the Federal Council argued that intensifying economic relations would better serve the realisation of human rights than an economic boycott against China. Against the background of a worsening Chinese human rights record in the last ten years and the relatively poor results of the "human rights dialogues" with China, this policy is far from credible and effective.

All told it is clear that in recent years there has been intensive discussion on the integration of human rights issues in foreign economic policy. Non-governmental organisations have made a contribution by highlighting goal conflicts and by pushing the debate forward. Government agencies have increasingly had to face human rights issues and coherency problems and can no longer base their arguments upon the separation of economics and politics. But in general, human rights were and are still subordinated to security and to economic interests. This is especially true of highly contested and sensitive issues like ERG and armaments exports. In part this is due to the fact that human rights are insufficiently anchored in political concepts and in the law. In particular, human rights are not firmly included in foreign economic policy

⁶⁸ Forster, *Coherence*, pp. 313-315. See the Berne Declaration's (BD) – a Swiss NGO – comprehensive dossier on the dam projects and on the export risk guarantee, available on the Internet at <http://www.evb.ch>.

decision-making. As long as this remains the case, it will hardly be possible to meet the challenge of developing a coherent human rights policy.⁶⁹

Conclusions

Like that of other countries, Swiss foreign policy is marked by both a realist and idealist tradition. The relative weighting of idealist openness and realist closure has shifted over the years. During the time of the League of Nations idealism was the driving force in Swiss foreign policy, but a realist perspective dominated for many years after the end of the Second World War. It implied Swiss abstinence from the UN, which had a negative effect on human rights policy. The country's participation in the development and codification of human rights was necessarily restricted. Furthermore, Switzerland refused to promote human rights, because the issue conflicted with neutrality and an outdated conception of national sovereignty. Rather than to venture into the politically difficult field of human rights, Switzerland limited its activities to the promotion of humanitarian law and to development assistance. These did not endanger sovereignty and neutrality.

This unusually sceptical posture began to change in the late 1960s. In cautiously opening up its foreign policy, Switzerland gradually became involved in international human rights protection. Joining the European Convention on Human Rights and the corresponding willingness to submit to international jurisdiction was an important step. Switzerland gradually overcame its classical understanding of national sovereignty, according to which human rights was a domestic matter. Just a few years later, during the CSCE process, Switzerland joined other Western nations in emphasising the importance of human rights as an element in international politics.

Switzerland undertook its first efforts to link human rights to foreign policy only in the late 1970s. During Pierre Aubert's time of office, important human rights principles were estab-

⁶⁹ For proposals to include human rights concerns in foreign economic decision-making, see Schläppi and Kälin, *Aussenwirtschaftshilfe*, pp. 261-275. Incoherence and goal conflicts are, of course, not a specific problem of Swiss foreign policy. Compared to other states, Switzerland received good marks from the Development Assistance Committee (DAC) of the OECD. In its 2000 review the DAC came to the conclusion that Switzerland has one of the most coherent policies regarding development co-operation of all OECD Member States. See Development Assistance Committee (DAC), Development Co-operation Review Switzerland, in *DAC Journal*, Vol. 1, No. 4, 2000. A summary of the review can be found on the Internet at <http://www.oecd.org/EN/document/0,,EN-document-67-2-no-3-1894-67,FF.html>.

lished. However, Aubert's idealist and outward-looking foreign policy was hotly disputed, which hindered the activation of human rights policy. Still, human rights became firmly established on the foreign policy agenda. Although important steps were undertaken, the move toward normalisation came only in the 1990s. Given the end of the Cold War, Switzerland was forced to rethink and redesign its foreign policy. Since then Switzerland is trying to overcome its passive and inward-looking foreign policy and to give more weight to international co-operation. Human rights policy is a part of this new strategy. Within just a few years, Switzerland ratified a series of important human rights conventions and stepped up its engagement for human rights. Switzerland is on the way to a comprehensive human rights policy, although there are of course still various shortcomings.

Objectives and concepts are one thing; implementation is another. In Switzerland there is often a long delay before foreign policy objectives are implemented. Observe the two attempts that were required for UN membership. Further steps toward normalisation are needed, particularly with respect to the European Union. Fortunately, human rights policy is further along. In this field, Switzerland is no longer a special case. At long last it practices a human rights policy comparable to that of other Western countries, with all its strengths and weaknesses. This means that human rights have gained a firm place in Swiss foreign policy although, unfortunately, they are usually subordinate to other foreign policy interests. This, however, should not disguise the fact that human rights policy has worked its way up the Swiss foreign policy agenda and is likely to gain additional weight, particularly thanks to UN membership.