



Switzerland and European Integration: Change Through Distance

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I Introduction

Switzerland¹ is part of Europe. It is economically more integrated within the European Union (EU) than many of the EU's own Member States. But Switzerland is not a member of the institutional integration process that has been underway now for a good 50 years. The reasons for standing on the sidelines are many, and little likelihood exists that something will change in the next few years.

Despite this sobering finding, Switzerland's relationship to the EU has changed over time. And the reasons for Switzerland staying on the sidelines and its relative weight have not remained the same. The following describes selected corner pillars of Switzerland's relationship to the European integration process from an historic standpoint based on five theses. A few elements are provided for analysis of current and future integration policy. From this it follows that Switzerland's ties to European integration is rich in changes and contradictions. No great shifts are expected in the near future.

II Five Theses on Switzerland's Relationship to European Integration

- 1. Switzerland greeted the European integration process from the outset with a mixture of suspicion and attraction that has led to a pragmatic middle-of-the-road approach*

Switzerland's reaction to the initial steps of the European integration process were marked by concerns. The founding of the European Coal and Steel

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¹ See F. Emmert, 'Switzerland and the EU: Partners, for Better or for Worse' (1998) 3 EFA Rev, pp. 367–398; R. Schwok and N. Levrat, 'Switzerland's Relations with the EU after the Adoption of the Seven Bilateral Agreements' (2001) 6 EFA Rev, pp. 335–354.

Community (ECSC) in 1952 affected Switzerland. Two-thirds of the coal and four-fifths of the steel imported came from the six states joined in the mining union. Moreover, Switzerland closed bilateral trade agreements with these six states that granted all involved most-favoured-nation treaty status. Even though Swiss entry into the ECSC was out of the question (simply because it lacked the basic industries involved), it still pursued the development with concern.² The Swiss authorities also feared a spread of sector-based preference treaties with discriminatory effects on non-participating third states. As a result, they sought with all means to complicate ECSC functions. The Confederation was the only European country (and the only country worldwide except for the USA) to possess a freely convertible currency in 1945. It also had a functioning and durable financial centre, which could contribute greatly to lending for reconstruction.³ Hence Switzerland exercised considerable power in demand and loan influence during the first years after World War II ended.

Thus Swiss authorities tried repeatedly since 1952 to use the so-called loan weapon in order to extract foreign-trade policy concessions – and especially toward the newly founded European Coal and Steel Community (ECSC) and its six Member States.⁴ For instance, the Federal Council stalled for ages on an ECSC loan application in order to exert pressure on the mining union. However, the ECSC withdrew its application to Switzerland and met its needs on the American financial market.⁵ As the ECSC sought to negotiate a second round of talks on loans with Swiss banks in 1956, the Swiss government again tried to stop it but unsuccessfully.

Yet Switzerland did not see only negative elements in the European integration process. Efforts to form a large free-trade zone that would parallel the supranational ECSC process aroused great interest and support in Switzerland. They reflected the Swiss vision of European cooperation. Switzerland was basically interested in liberalizing trade. So-called negative economic integration steps aimed at removing trade barriers met with Swiss full approval. But Switzerland was not interested in positive political

² H.-U. Jost, *Europa und die Unabhängigkeit der Schweiz 1945–1950: Europarat, Supranationalität und schweizerische Unabhängigkeit* (Chronos, Zurich, 1999), pp. 120–121.

³ P. Hug, T. Gees and K. Dannecker, *Die Aussenpolitik der Schweiz im kurzen 20. Jahrhundert: Antibolschewismus, Deutschlandpolitik und organisierte Marktintegration – segmentierte Praxis und öffentliches Ritual* (49 NRP 42 Synthesis, Berne, 2000), pp. 28–29; R. Maurhofer, 'Vom Goodwill-Kredit zum Embargo – Der Kapitalmarkt als Instrument der schweizerischen Europapolitik 1945–1960' (1999) 54 *Aussenwirtschaft*, pp. 225–268 at pp. 226 et seq.

⁴ D. Dirlewanger, S. Guex, and G.-F. Pordenone, *La politique commerciale de la Suisse 1945–1966* (43 NRP 42 Synthesis, Berne, 2000), pp. 14–15; Maurhofer, note 3 above, pp. 237 et seq.

⁵ Maurhofer, note 3 above, pp. 240–241.

integration measures that attempted to harmonize and formulate common policies.

At the same time it feared that such developments within its immediate surroundings would give rise to discrimination against Switzerland. The founding of the European Free Trade Association (EFTA) in 1960 traced back to the collapse of negotiations on a continental European free-trade zone. Conceived as an industrial free-trade area it corresponded completely to Switzerland's passive integration concept. A parallel customs reduction in the industrial goods sector could limit the distance of integration between the EEC and the EFTA states. The EFTA even ought to serve as a potential base for a later multilateral bridge to the EEC.

After the initial basic distrust of the ECSC and the failed vision of a large European free-trade zone, Switzerland even allowed itself to prepare for association with the EEC at the start of the 1960s. As a consequence of Britain's application to enter the EEC, the three neutral EFTA states (Austria, Sweden, and Switzerland) sought to negotiate for acceptance as associate members. But a customs union and a general trade policy toward third nations were ruled out.

Nonetheless, the EFTA neutrals strove for as inclusive participation as possible in the EEC's Common Market. Accordingly they applied for negotiations with the EEC on 15 December 1961. With assumption of the EEC founding treaties' economic content, a concept completely new to Swiss integration policy lay beneath the association attempt: it sought a comprehensive and positive integration that was not only based on the mere lifting of trade barriers but also actively assumed commonly designed policies aimed at sharing an integrated European market.⁶

Numerous hurdles were linked to the plan in both the content and institutional senses. Difficulties surfaced – especially in the competition and agricultural policies, and in the area of freedom of movement, since Swiss associations affected by liberalization turned against adaptation of European regulations.

Two institutional questions arose: Under what conditions must the associated states adapt future EEC law? And to what extent could they exert influence on the form of this law? It soon became apparent that the EEC would hardly accept an associate partner's right of joint decision-making. It was also unclear if the EEC would accept complete freedom in adapting its laws.⁷ The plan ended abruptly in January 1963 when French President de

⁶ M. Zbinden, 'Von der Neutralität zur direkten Demokratie: Die Entwicklung der schweizerischen Integrationspolitik' in T. Cottier and A.R. Kopse (eds), *Der Beitritt der Schweiz zur Europäischen Union. Brennpunkte und Auswirkungen* (Schulthess Polygraphischer Verlag, Zurich, 1998), pp. 213–269 at p. 232.

⁷ *Ibid.*, pp. 233–234.

Gaullé vetoed acceptance of Britain in the EEC. General relief reigned in Switzerland.

This second disillusionment after failure of the large free-trade zone resulted in continuation and expansion of the principles upon which the EFTA had been founded. This pragmatic policy led to conclusion of a free-trade agreement with the EEC in 1972. It aimed at free trade in the industrial goods sector. From the Federal Council's standpoint, the treaty corresponded to a new compromise solution between entry and standing on the sidelines. It allowed the country to preserve its political and economic freedom of action as a neutral state.⁸

Several EFTA states strived to enter other bilateral treaties with the EC in various fields. The EC wanted to conduct negotiations as simultaneously as possible in areas where several EFTA countries sought to close sector agreements. The EC and EFTA decided in 1984 to intensify their cooperation in the so-called Luxembourg Process. This was based on a sector approach while strengthening multilateral components at the same time. Yet the Luxembourg Process was soon overtaken by the acceleration and intensifying of European integration that resulted from signing the Single European Act (SEA) in 1986. Its goal to realise the EC internal market by the end of 1992 was established by treaty.

2. While foreign-trade interests had confronted foreign-policy fears at the outset of the integration process, this situation tended to reverse itself

Switzerland, as described, had a certain foreign-trade interest in the European integration process from the outset. However, political doubts emerged opposing a stronger economic integration of the country. Priority lay rather on maintaining the foreign-policy maxim of neutrality as Switzerland's unique trait in foreign policy. Already in 1947 the Federal Council had listed the related principles at Switzerland's accession to the Organisation for Economic Cooperation in Europe (OECE). These were:

- no change in neutrality policy;
- preservation of autonomy in economic policy; and
- maintenance of autonomy in trade policy.

Linked to this was the fundamental rejection of surrendering rights of sovereignty that could affect the credibility of neutrality. This particularly meant that Switzerland was not prepared to subjugate itself to majority rule

⁸ Message of the Federal Council and Federal Assembly on approving the treaty between Switzerland and the European Community of 16 August 1972 (1972) II BBl, pp. 653–999 at pp. 656–657.

or to enter a customs union.⁹ From that point on, the Swiss government distinguished in practice between technical or economic organizations, in which Switzerland could fundamentally take part from a neutrality policy standpoint, and political or even military organizations, where participation was out of the question.

In view of neutrality, the European integration process posed a special challenge to Switzerland, since it was not primarily the substance of cooperation that prevented entry but the declared finality of the process and the supranational form of cooperation. The Federal Council justified the Swiss spectator role in the case of the EEC but not by invoking the technical and political criteria. Instead its 1960 message on Swiss participation in the European Free Trade Association (EFTA) stated frankly that the EEC envisioned setting up a European super-state, and thus the independence of the Swiss people stood in the way of entry.¹⁰

The implicitly strong political dimension of the unification process would result in the autonomy between foreign trade and foreign policies vanishing and making the policies indivisible. This did not merely form a point of departure for the political union of EEC Member States but also presented a means of realising their common political goals in Europe.

Swiss entry into such an organization with open political character and a restricted circle of participants linked by a partial ceding of national sovereignty would erode Swiss neutrality and independence, even if neutrality obligations could still be maintained in wartime. The interdependence between autonomy in foreign trade and foreign policy was narrow in the sense that ceding one sector could greatly complicate maintaining the other. Such a step could shake international trust in the status of Swiss neutrality.

The Federal Council in 1988 published its most comprehensive report on Switzerland's relations with the EC to this point. Even a year after the Single European Act took effect, and given the prospects of realizing the domestic market, there could be no doubt about neutrality's value as the determining factor in shaping Swiss integration policy.

'In the economic area,' it said, 'Switzerland, as a neutral state, should agree to no obligations that could result in it no longer being able to fulfil its duties emanating from neutrality law in case of war.'¹¹ As a neutral state, Switzerland often does more than required under international law in order to

⁹ Zbinden, note 6 above, pp. 218–219.

¹⁰ Federal Council message to the Federal Assembly on Switzerland's involvement in the European Free Trade Association of 5 February 1960 (1960) I BBl, pp. 841–1104 at pp. 888–889.

¹¹ *Bericht über die Stellung der Schweiz im europäischen Integrationsprozess* (EDMZ, Berne, 1988), p. 89.

do everything possible to strengthen trust in its neutrality and the credibility of its neutrality policy.¹²

Meanwhile, as a point of interest, the situation has largely reversed itself. It is no longer mainly economic reasons that make the European integration process appear attractive, since important steps in the area of trade liberalization are implemented within the GATT and WTO frameworks.

Switzerland has also continued to improve economic framework conditions in its ties with EU states through the 1972 free-trade agreement, later steps during the Luxembourg Process, and a new series of bilateral treaties that took effect in June 2002.¹³ In general the economic benefits of Switzerland entering the EU could never be identified convincingly and therefore were never conveyed properly either. Even during debate on Switzerland entering the EEA, related estimates contributed more to confusion than clear argumentation due to the low significance of their content.¹⁴

In the years after the 'No' to the EEA, several sector surveys highlighted the economic impact of Switzerland remaining on the sidelines. They hardly managed to pinpoint notable negative results. Without doubt, remaining on the EEA sidelines was linked to a few added hurdles (e.g. for public bidding or product testing). But, aside from a few economic sectors, it had no quantitatively significant results demonstrating economic drawbacks.¹⁵

By contrast, the costs of entry were relatively easy to quantify. The government's 1999 integration report, supported by figures from 1997, managed to conclude that the annual cost of Switzerland entering the EU amounted to CHF4 billion in outlays opposed to about CHF1 billion in revenue. Thus the country's net yearly payments to the EU would amount to CHF3 billion.¹⁶

At the same time, comparable data between Switzerland and EU Member States provided good arguments to opponents of EU entry in terms of inflation and unemployment rates as well as an envisioned doubling of the value-added tax. However, they certainly offered no basis for an entry strategy.

On the other hand, a reverse trend had developed on the political side: Neutrality had lost much of its practical relevance in shaping Swiss foreign policy – even if it was maintained by the government and described as important. Reducing neutrality to the core of its content under international

¹² Ibid.

¹³ A. Brunetti, 'Die wirtschaftlichen Effekte der bilateralen Abkommen' in D. Felder and C. Kaddous (eds), *Bilaterale Abkommen Schweiz–EU (erste Analysen)* (Helbing & Lichtenhahn, Basel, 2001), pp. 25–39.

¹⁴ L. Goetschel, *Zwischen Effizienz und Akzeptanz: Die Information der Schweizer Behörden im Hinblick auf die Volksabstimmung über den EWR–Vertrag vom 6. Dezember 1992* (Haupt, Berne, 1994).

¹⁵ The textile and machinery industries are an exception.

¹⁶ *Schweiz–Europäische Union. Integrationsbericht 1999* (EDMZ, Berne, 1999), pp. 248–259.

law and Switzerland's systematic enforcement of UN sanctions since the outset of the 1990s made its foreign policy basically compatible with the EU common foreign and security policy (CFSP).

Moreover, CFSP treaty regulations envision unanimous decision-making as well as an added 'opting-out' possibility for all military and defence-policy issues. This allows neutral states to preserve their obligations under international law without them appearing to be placed under overwhelming collective pressure by the other Member States.¹⁷

If foreign-policy reasons preventing EU entry have been reduced, it should be noted that foreign-policy incentives to take part in the CFSP have increased. EU foreign-policy goals are nearly the same as Switzerland's. The Swiss position is usually compared and harmonized with that of the EU on relevant multilateral issues. This ranges from measures on arms export controls to imposing economic and political sanctions.

The importance of the EU for Switzerland may increase more – especially in the sector of civil peacebuilding – because the Union is in the process of further strengthening its related capacities. And Switzerland too has expressed a marked interest in these issues. Given its institutional outsider role, Switzerland waives the option of taking an active part in defining its interests and policies within the European framework. A retrospective look shows that the EU's interests are most of the time identical to those of Switzerland. But this should not be confused with the influence that it could exert on the decision-making process as a member.¹⁸

Moreover, despite notable financial contributions after the EEA rejection, it has often been difficult for Switzerland to find common activities it can join the EU in implementing. The roundtable on democratization and human rights in the Balkan Pact provides a good example of this: Despite announcing its interest early and a willingness to share in financial support, a long process had to occur before the Swiss offer was accepted.

Furthermore, Switzerland also announced interest in cooperating in the third pillar sphere (Justice and Home Affairs). In preparing for the second round of bilateral negotiations with the EU, beginning in the summer of 2002, the government had approved a negotiating mandate to involve Switzerland fully or partially in the Dublin Convention on the country of first reception for asylum seekers as well as the Schengen agreement on exchange of police information. The Swiss government felt the rise in organized crime and efforts to combat illegal immigration called for increased international cooperation – and especially with the EU.

¹⁷ L. Goetschel, 'Die Zukunft der Neutralität im Rahmen der GASP: Widerspruch, Gleichgültigkeit oder Ergänzung?' in Cottier and Kopse (eds), note 6 above, pp. 637–661.

¹⁸ L. Goetschel, *Power and Identity: Small States and the Common Foreign and Security Policy (CFSP) of the EU* (33 NRP 42 Synthesis, Berne, 2000).

For the time being, Switzerland is largely prevented from using the related EU tools, which persistently weakens its position. Bilateral police agreements with neighbouring states could only create limited assistance. Therefore, Switzerland is interested in increased police and justice system cooperation that could result in accepting the Schengen *acquis* and taking over the Dublin agreement on the country of first reception for asylum. A new approach toward checking people entering at the border is also covered.¹⁹

This might result in Switzerland opening its borders to EU Member States without itself becoming a member of the Union. Even if this approach seems unlikely to win over a majority of the electorate, just the fact that such an alternative is being weighed and dealt with at Switzerland's highest level is noteworthy.

3. Switzerland was never prepared to give up its domestic-policy exceptions in favour of taking part in the integration process

In contrast to the case of varying foreign-trade and –policy issues, Switzerland has never been prepared so far to consider major reforms of its unique domestic policy as a trade-off to gain EU entry. This primarily affects direct democracy and federalism. Also linked to this is the image of Switzerland as a self-confident small state, which is so important to the national political identity.

Already in the case of EEA negotiations the Federal Council had made clear that success in negotiating depended upon Switzerland being guaranteed this unique aspect of domestic policy.²⁰ This was not linked to the opinion that nothing in these regulations and structures could be altered. However, the foundations of Switzerland's national political identity should not be shaken. In its most recent foreign-policy report the Federal Council again held that one condition for opening negotiations on entry would be to review the effects of entry on the Swiss political system.²¹

Many studies have already been completed on the impact of entering the EU on direct democracy.²² The traditional law school argues chiefly from a European legal viewpoint and sets its goal on a stable functioning of the legal

¹⁹ DFA Integration Office, *Neue bilaterale Verhandlungen Schweiz–EU* (Fact sheets, Berne, 2001), p. 11.

²⁰ *Informationsbericht des Bundesrates über die Stellung der Schweiz im europäischen Integrationsprozess* (EDMZ, Berne, 1990), p. 70.

²¹ *Aussenpolitischer Bericht 2000. Präsenz und Kooperation: Interessenwahrung in einer zusammenwachsenden Welt* (EDMZ, Berne, 2000), p. 318–319.

²² For an overview, see L. Goetschel, M. Bernath, and D. Schwarz, *Schweizerische Aussenpolitik. Grundlagen und Möglichkeiten* (Verlag Neue Zürcher Zeitung, Zurich, 2002), pp. 78–81.

system.²³ From this perspective, areas of potential incompatibility should be removed as obstacles as far and as soon as possible by designing the Swiss system to be 'compatible with Europe' on all essential points.

The most important points concern limitations on the referendum when related to the enforcement of European law. A more flexible tone is found by Epiney and Siegwart and Epiney et al.:²⁴ Indeed they too focus on guaranteeing acceptance of EU law as a consequence of entry, yet they assume a moderating position by taking the identity-establishing function of direct democracy into account. No collapse would occur in the existing forms of legitimizing democracy in Switzerland. However, the material scope of application would be restricted according to the preconditions of Community law. Changes of an isolated nature would be necessary.

In the case of referenda (mandatory or optional), if the European law indeed gives no leeway, the Federal Council would be empowered to enact the necessary provisions itself to avoid invalid referenda. As for the popular initiative, the Constitution should list Community law as a material barrier for the initiative right.²⁵ This stance is based on retrospective studies showing that only a fraction of direct-democracy voting proposals had actually been found to conflict with European regulations. Therefore, direct democracy should only be limited when federal legislators have absolutely no flexibility.

Exponents of a notably pragmatic line, who calmly look forward to EU entry, take an even more flexible position. Regarding institutional pressures due to accession, they represent a minimalist view for differing reasons. Yet all judge the impact of a temporary contradiction between Swiss and European law as far less serious than it appears from a legal standpoint.²⁶

National law and European law may also collide, particularly if a plebiscite stands behind national law. It is pointed out that many EU Member States

²³ R.J. Schweizer, 'Die Auswirkungen einer Mitgliedschaft in der Europäischen Union auf das schweizerische Verfassungsrecht' in Cottier and Kopse (eds), note 6 above, pp. 515–542; D. Schindler, 'Verfassungsrecht' in D. Schindler, G. Hertig, J. Kellenberger, D. Thürer and R. Zäch (eds), *Die Europaverträglichkeit des schweizerischen Rechts* (Schulthess Polygraphischer Verlag, Zurich, 1990), pp. 21–43.

²⁴ A. Epiney and K. Siegwart, 'Direkte Demokratie und Europäische Union – ein Problemaufriss' in A. Epiney and K. Siegwart (eds), *Direkte Demokratie und Europäische Union* (Universitätsverlag, Freiburg, 1997), pp. 117–139; A. Epiney, K. Siegwart, M. Cottier, and N. Refaeil, *Schweizerische Demokratie und Europäische Union: Zur demokratischen Legitimation in der EU und den Implikationen eines EU-Beitritts der Schweiz für die schweizerische Demokratie* (Stämpfli, Bern, 1998).

²⁵ Epiney et al., note 24 above, pp. 41–343.

²⁶ W. Linder, 'Erfordert die Mitgliedschaft in der Europäischen Union eine Anpassung des schweizerischen Regierungssystems?' in Cottier and Kopse (eds), note 6 above, pp. 427–447; W. Linder, *Schweizerische Demokratie: Institutionen – Prozesse – Perspektiven* (Haupt, Berne, 1999); P. Mahon and C. Müller, 'Adhésion de la Suisse à l'Union européenne et démocratie directe' in Cottier and Kopse (eds), note 6 above, pp. 449–485.

are running years behind schedule in implementing regulations concerning EU law – sometimes consciously opposing them being incorporated into national law.²⁷ Therefore adapting formal direct-democracy tools is largely unnecessary. This applies for referenda as well as popular initiatives that require no new nullification criteria. The ‘price’ for emphatically self-confident maintenance of direct democracy in its present form lies in the fact that Switzerland may not shy away from financial sanctions due to delayed implementation of EU law.

It is indisputable that EU entry would lead to an exchange of national autonomy for increased participation and influence at the European level. To some extent it would be an exchange of sovereignty through bargaining away legal authority in return for influence over the policies of others.²⁸ In contrast to the executive, legislative, and judicial branches, which would all be able to compensate in varying ways for any loss of their national authority by a ‘surplus’ at the European level, Switzerland’s actual sovereign, the electorate, would temporarily be left empty-handed. This would apply as long as no corresponding direct-democracy compensation mechanisms exist at the European level.

In case Switzerland were to enter the EU, the cantons too would have to give up authority at the European level. Representatives of the cantons accept the overriding position of European law as a consequence of EU entry. Yet, on the other hand, they stress the need for internal institutional reforms all the more. As a footnote, the cantons’ goal is to offset the decision-making flexibility they would lose.²⁹

Along with discussion on the EEA, questions were also raised on intensified participation of the cantons in foreign policy conducted at the federal level. The cantons criticized the federal government for having presented the negotiating results as a *fait accompli* that affected several areas of their authority directly, whereas they have to implement it.³⁰

²⁷ See also T.A. Börzel, ‘Pace-Setting, Foot-Dragging, and Fence-Sitting: Member State Responses to Europeanization’ (2002) 40 *Journal of Common Market Studies*, pp. 193–214.

²⁸ R.O. Keohane, ‘Hobbe’s Dilemma and Institutional Change in World Politics: Sovereignty in International Society’ in H.-H. Holm and G. Sørensen (eds), *Whose World Order? Uneven Globalization and the End of the Cold War* (Westview Press, Boulder, 1995), pp. 165–229 at p. 177.

²⁹ T. Pfisterer, ‘Der schweizerische Föderalismus vor der Herausforderung eines möglichen Beitritts der Schweiz zur Europäischen Union’ in Konferenz der Kantonsregierungen (ed.), *Die Kantone vor der Herausforderung eines EU-Beitritts: Bericht der Arbeitsgruppe ‘Europa-Reformen der Kantone’* (Schulthess Polygraphischer Verlag, Zurich, 2001), pp. 287–338.

³⁰ D. Freiburghaus, ‘Differenzierte Integration und europäische Verfassung’ in NRP 42 program management (ed.), *Europäische Integration/Intégration européenne* (11 NRP 42 Working Paper, Berne, 1999), pp. 2–8.

Several new studies concluded that a practice-oriented structure of the cantons' involvement would need to offset the partial loss of the cantons' autonomous options to shape decisions that have resulted from the growing importance of international agreements.

The Federal government, which is responsible for monitoring implementation of international agreements, also depends on the cantons' readiness to carry them out. The model of a federalism exclusively defined by strong self-determination can no longer continue within the previous framework. It must be supplemented by adequate options for cantonal participation in the federal government's foreign-policy decision-making process. The premise here is a readiness for dialogue between the federal government and cantons as well as between the cantons themselves. The consequence of this could also be a revitalization of federalism by strengthening its content.³¹

For the sake of completeness, isolated approaches are also mentioned that favour using the prospect of EU entry differently than those who would preserve or revitalize direct democracy and federalism. From their standpoint, on the contrary, EU entry would help as a breakthrough for long-overdue radical reforms.³²

They demand the introduction of a permanent federal president or prime minister, the expansion of the number of federal councillors in order to overcome the work burden resulting from Council of Ministers meetings, a new concept of direct democracy with a higher hurdle to qualify popular initiatives and abolition of the optional referendum, and a fundamental reform of federalism that reduces the cantons' weight in federal legislation and advances a medium-term transition from a concordance system to a competitive one. EU entry should impart the necessary motivation for these changes.

The third and final point after direct democracy and federalism concerns the image of the self-confident small state. Here it deals with the view that large countries such as the United Kingdom, Germany and France dominate the EU, and small states could have a tough time defending their interests. To remedy this and link it with Switzerland's direct democratic tradition, the EU is called upon to democratize more intensively prior to Switzerland's entry. This deliberately overlooks the fact that:

³¹ Goetschel, Bernath and Schwarz, note 22 above, p. 124.

³² R.E. Germann, *Staatsreform: Der Übergang zur Konkurrenzdemokratie* (Haupt, Berne, 1994); A. Brunetti, 'Der "Status-Quo-Bias" und die bremsende Wirkung des fakultativen Referendums' in S. Borner and H. Rentsch (eds), *Wieviel direkte Demokratie verträgt die Schweiz?* (Rüegger, Chur, 1997), pp. 167–181.

- small states are always disproportionately well-represented in EU institutions; this affects weighting of their votes in the Council of Ministers, their seating in the European Parliament, and finally their number of members on the European Commission.³³
- Each further institutional democratizing of the EU would also compel a relative loss of the small Member States' power in comparison to their previous disproportionate power position. Yet the electorate's perception does not follow rational criteria. The EEA plebiscite has already shown that voting behaviour primarily reflects the voters' cultural identity rather than a cost-benefit ratio.³⁴

Thus understanding the small state self-image (compared to larger countries) – one linked to more highly pronounced withdrawal into self-interest, collective defence reflexes, and the subjective sense of vulnerability – touches an emotional nerve and not a rational foundation.³⁵

Nor does it matter that the power dimensions of present-day Switzerland are of great importance in the international setting – say, in direct investment abroad, volume of trade, or research and development – and make it anything else but a small state.

4. Clinging to the concept of bilateralism hides Switzerland's material and qualitative change of relationships within the integration process

After voters rejected the EEA treaty at the polls on 6 December 1992, Switzerland turned back to the proven bilateral and sector-related approach. Negotiations on a first block of topics began at the end of 1994 and lasted about four years. As in earlier years, Switzerland's goal was to counteract economic discrimination in regard to the ongoing integration process. In contrast to the bilateralism of the 1970s and 1980s, however, the 'new bilateralism' differed in several respects.

This first concerned the topical breadth of the negotiations conducted: For the first time seven areas (agriculture, public procurement, research, land transport, air transport, free movement of persons, and technical barriers to trade) were negotiated jointly and in parallel. The reason for this was the principle of 'appropriate parallelism' introduced by the EU. It meant that

³³ L. Goetschel (ed.), *Small States inside and outside the European Union: Interests and Policies* (Kluwer Academic Publishers, Dordrecht, 1998).

³⁴ A. Vatter, 'Der EWR-Entscheid: Kulturelle Identität, Rationales Kalkül oder Struktureller Kontext?' (1994) 20 *Schweizerische Zeitschrift für Soziologie*, pp. 15–42.

³⁵ L. Neidhart, 'Aspekte der politischen Kommunikation in der Schweiz' (1992) 22 *Schweizerisches Jahrbuch für Politische Wissenschaft*, pp. 11–33.

the various sector agreements were regarded as an intact package and could therefore only take effect together and at the same time.

In this way the EU wanted to avoid a situation in which some agreements would be concluded prematurely, while others of special interest to the EU might not be finalized until later or could be torpedoed by a referendum.³⁶ The same applied for withdrawal from the treaty. The agreements also remain dependent on each other after taking effect. At the same time it achieved the desired breadth: the 'new bilateralism' not only touches on a purely passive concept of cooperation aiming at removing trade barriers but also contains elements of active or positive integration that form joint policies and, if possible, taking over EC law as well.

The air traffic agreement will give Swiss airlines step-by-step access to the liberalized European air-transport market based on mutuality. After a long transitional phase, the agreement on free passenger movement will establish completely free movement of people between Switzerland and the EU countries.

Despite the increase in overland transit in the foreseeable future, the land transport agreement guarantees various measures that shift this transport to the railways without discrimination against foreign carriers compared to Swiss providers. At the same time Swiss carriers are guaranteed free access to the EU market, and Swiss railway enterprises are assured corresponding access to rail networks.

Removing trade barriers in a technical sense has resulted in mutual recognition of conformity assessments (tests, product licenses, etc.) for most industrial products. The agreement in the public procurement sector extends mutual outreach between Switzerland and the EU on public tenders and thus goes further than the WTO treaty regarding equal treatment of domestic and foreign providers. The research agreement enables Switzerland to participate as an equal partner in ongoing EU research programmes. Simplified market entry is also guaranteed in certain farming sectors.

The second important difference concerns the depth of regulation: Switzerland basically assumes regulations comparable to EC standards in the policy sectors involved. The fact that it does this autonomously or within the framework of implementing negotiated accords under international law has no impact on the related content.

The agreements' content delves deeply into the inner-state 'everyday law' of the federal government and cantons. In comparison to other state treaties that Switzerland has concluded previously, the complexity and high degree of detail within the directly applicable regulations of the new agreements stand out – especially in the agreements on freedom of movement, agriculture, and

³⁶ Zbinden, note 6 above, p. 262.

the two on transport issues. In the air transport agreement Switzerland adopts the core content of European rules governing freedom and competition for air transport. The accord corresponds to a partial integration agreement with uniform agencies for applying and developing law. Hence it shows the limits of 'de-institutionalized' agreements with the EC.³⁷

At a certain level of regulatory depth, implementation and control of the related standards presume joint and uniform institutions. This finding already emerged from negotiations on the EEA treaty. This addresses the third point – the issue of monitoring bodies. Ordinary authorities and courts of the parties to the agreements basically oversee how they are applied and enforced. However, in the case of public procurement, the parties are obligated to introduce special monitoring authorities. And the EU (particularly the Commission and European courts) assume enforcement of the air transport agreement. This also applies to areas important to Swiss airlines, especially where law on competition is affected.³⁸ Swiss officials are indeed consulted but have no independent authority.³⁹

In return, the EU has given Switzerland the right to send observers to advise committees and expert groups dealing with issues that also affect Switzerland. Representatives of the European Commission and the Council, as well as authorities from Member States, take part in these meetings. Affected by this are research issues, free movement of people, and air transport.⁴⁰ However, even though Switzerland receives a right to speak through this form of involvement in EU 'commitology', it cannot take part in any decision-making.

The first series of bilateral agreements strengthened Switzerland's ties with the EU in regard to both the breath of topics treated and the depth of their regulation. It again became clear regarding enforcement and control mechanisms for these agreements that even partial adoption of EC law makes equal participation of third states impossible in terms of control and jurisdiction. The same experience had been noted during negotiation of control over rules in connection with the EEA treaty.⁴¹

The chance to participate in parts of the commitology does, however, not alter the fact that genuine 'joint decision-making' will not be possible for non-Member States regarding further development of relevant EC norms. At best

³⁷ B. Spinner, 'Rechtliche Grundlagen und Grenzen für bilaterale Abkommen' in Felder and Kaddous (eds), note 13 above, pp. 13–19 at pp. 15–16.

³⁸ T. Jaag, 'Institutionen und Verfahren' in D. Thürer, R.H. Weber and R. Zäch (eds), *Bilaterale Verträge Schweiz–EG: Ein Handbuch* (Schulthess Polygraphischer Verlag, Zurich, 2002), pp. 39–64 at p. 42.

³⁹ S. Hirsbrunner, 'Die kartellrechtlichen Bestimmungen des Abkommens über den Luftverkehr' in Felder and Kaddous (eds), note 13 above, pp. 463–477 at p. 475.

⁴⁰ Jaag, note 38 above, p. 43.

⁴¹ Zbinden, note 6 above, pp. 254–255.

some 'shaping influence'⁴² might occur, and even this only if it concerns items falling within the content of existing sector agreements.

5. *The gap between the increasing depth of Swiss ties to the EU and the political rhetoric insisting on self-sufficiency continues to widen, yet no scenarios for accession can be derived from it*

Implementation of the seven bilateral sector agreements⁴³ that took effect on 1 June 2002 allowed Switzerland to enhance and extend its ties to the EU. Switzerland has already initiated other bilateral negotiations. Talks have opened since 18 June 2002 in sectors combating customs fraud and governing pensions, environmental policy, processed agricultural products, taxation on interest payments, dual taxation, services, education, the news media, and the areas of justice and police as well as asylum and migration (Schengen and Dublin treaties).

In addition to these issues that are topics of bilateral negotiations, Switzerland continues to introduce norms compatible with EC law. An EC reflex is linked to this 'autonomous implementation' (*Nachvollzug*) in ongoing Swiss legislation. Accordingly, no new law has been passed in roughly ten years without its content having been compared to related EC regulations, at least if there have been any points of overlap.

There are still no empirical data available on the impact of content and the precise quantity of this voluntary adaptation to EC standards. But it's a fact that they are ongoing and go almost unnoticed by the public. Parallel to these developments within the scope of the EU community pillar, Switzerland cultivates systematic reflections on the relations of Swiss foreign- and security-policy stances to those of the EU second pillar. Switzerland's DFA has developed a political 'EU reflex' that is hardly inferior to that within the legislative process.

In contrast to this genuine ongoing *rapprochement* of Switzerland to the EU, the official policy rhetoric has increasingly distanced itself from the goal of EU entry. Switzerland's entry application was submitted to Brussels in May 1992 but actually put on ice after the electorate rejected the EEA treaty in December of that same year. The 1993 foreign policy report declared entry to be a strategic goal of Swiss integration policy.⁴⁴

⁴² F. Blankart, *30 Jahre Europapolitik*. Address before the chamber of commerce of Basel city and suburbs and the Statistical Society for Economics in the University of Basel auditorium, 9 November 1998, p. 7.

⁴³ See Schwok and Levrat, note 1 above.

⁴⁴ *Bericht über die Aussenpolitik der Schweiz in den 90er Jahren* (EDMZ, Bern, 1993), p. 47.

Since then, however, the entry goal has only been mentioned on rare occasions. It was noted in the 2000 foreign policy report that a decision on opening entry negotiations would occur at latest during the course of the following legislative period (i.e., between 2003 and 2007).⁴⁵

Yet after the electorate's clear rejection of an initiative on 4 March 2001 – one seeking to obligate the Federal Council to take up negotiations with the EU on Switzerland's entry immediately – the government became even more reserved. In fact, it even moved away from setting up a schedule for dealing with the entry issue.

The consequences resulting from this are twofold: First, Switzerland's integration policy has been characterized mainly by a lack of strategy. Discussion of individual parts – for example, cooperation in the asylum sector or in combating fraud – takes place due to domestic policy interest and considerations. Switzerland continues to negotiate bilaterally, but a clear concept where the trip ought to end cannot be recognized.

Continuing bilateralism obviously forms the lowest common denominator at which political forces can agree. This also appears in the integration report of the Council of States' foreign policy committee, which was released in connection with hearings involving numerous experts.⁴⁶

Which issues should be dealt with in the future? Or what should happen in those areas such as foreign and security policy in which bilateral agreements cannot form a cooperative foundation? The committee remains silent on this. Still current new negotiations – for instance, on the Schengen topic – do show an area in which no viable policy can be agreed to within Switzerland at present. On the contrary, for various reasons there were clear signals even before the negotiations started of clear rejections from both the left and right wings.⁴⁷

Secondly, aside from the domestic-policy discussions mentioned on individual issues being negotiated, Swiss ties to the EU have become depoliticized to a large extent. Integration policy occurs as 'daily business' with implementation taking place and being reworked within the framework of existing agreements to which 'autonomous implementation' of law and policy described become joined.

Largely lacking is a *meta* discourse on integration dedicated to the overriding goals of this policy and vision on developing European integration. Preventing discrimination against Switzerland represents the only binding programmatic peg within the integration policy's component parts. The only

⁴⁵ Foreign Policy Report 2000 (EDMZ, Bern, 2000), p. 319.

⁴⁶ Council of States' Foreign Policy Committee, *Die Optionen der schweizerischen Integrationspolitik* (EDMZ, Berne, 2002). Also see coverage in *Neue Zürcher Zeitung*, 27 March 2002, p. 13.

⁴⁷ R. Zeller, 'Niemand will nach Schengen' in *NZZ am Sonntag*, 17 March 2002, p. 13.

exceptions are pro- and anti-European movements that constantly announce the same truths to their circle of regular customers. Thus Swiss relations with the EU can better be described as 'policy' than as 'politics' or even 'polity'. It is less concerned with discussions involving ideas and fundamental interests and issues than administering technical sub-sectors in various actors' constellations.

III Conclusions

What conclusions can be drawn from this? On one hand, it is regrettable that discussions on political fundamentals governing Switzerland's relation to the EU hardly occur. On the other hand, discussions on such issues would hardly lead to fruitful results but only encourage trench warfare with all too familiar arguments from both sides.

Government and Parliament called to make the discussion more objective. This can only occur by further practice of cooperation between Switzerland and the EU as well as gathering related experiences. Implementing total freedom of movement for persons step by step, as foreseen by 2009 in the related bilateral agreement, and the conduct of Switzerland in the UN, where it has had to define its behaviour toward that of EU countries since September 2002, are pragmatic steps that can contribute to further clarification of the relations between Switzerland the EU.

By contrast, forward-looking conceptual reflections only create a fuss and political infighting. This can be seen, for instance, in news media coverage of a strategic paper on future ties in the UN between Switzerland and the EU.⁴⁸ Thus the growing gap between official abstinence rhetoric and an actual increase in the depth of ties probably provides the best basis for continuing constructive development of links between Switzerland and the Union.

Finally, further development between both partners at the domestic level – in the EU case particularly on matters of democratic support and expansion and in Switzerland on matters of political party power relationships – will give an insight into further development of mutual relations. The fact is that Switzerland – for the time being – experiences no serious problems in its relations with the EU. This could change if, for example, the extension of the existing bilateral agreement on free movement of persons to the new central and eastern European Member States should fail due to a negative popular referendum. That might jeopardize the other six bilateral agreements as well. But the logic, which enabled the acceptance of the original version of these agreements by the population, should also allow their adaptation to the enlarged EU. If, however, the second round of the ongoing bilateral

⁴⁸ *SonntagsZeitung*, 26 May 2002, pp. 1 and 3.

negotiations should fail in part, such as the negotiations on the liberalization of services, or even as a whole, no essential Swiss interests would be affected. Thus, only a clear increase in problems or an independent emergence of a clear political desire to enter could prompt Switzerland to move institutionally nearer to European integration. At the moment neither of these appear to be in sight.