

# REPRESENTING FOREIGN INTERESTS: REBIRTH OF A SWISS TRADITION?

The importance of Switzerland's work as a protecting power, once a central element in its repertoire of good offices, has diminished. This general loss of significance contrasts with the great diplomatic relevance of individual mandates. One current example is the reciprocal representation of Russia's and Georgia's interests. A general trend reversal is not imminent, though. Switzerland should make use of advantageous opportunities without overestimating the strategic importance of protecting power activities for its foreign policy.



Swiss Ambassador to Tehran Livia Leu Agosti successfully lobbied for the release of US citizens Shane Bauer and Josh Fattal, who were being held in Iran. Tehran, 21 September 2011. *REUTERS/Handout*

On a number of occasions in 2011, Switzerland generated positive headlines with its activities as a protecting power. One outstanding diplomatic success was the mediation between Russia and Georgia. Based on Swiss proposals, the remaining stumbling blocks preventing Russia's WTO accession were removed. After agreement had been reached, Russia was admitted to the organization on 16 December 2011. Switzerland's mediation efforts contributed significantly to this breakthrough. Its acceptance as a third party rested mainly on its function as a protecting power representing the mutual interests of both Russia and Georgia in the respective countries. Switzerland had accepted this role after the two states had broken off diplo-

matic ties in the aftermath of their war in the summer of 2008.

Switzerland was also actively involved in the release of US citizens Shane Bauer and Josh Fattal in 2011. The two had been arrested after crossing the border to Iran while hiking on the Iranian-Iraqi border in 2009. Because Washington has maintained no official diplomatic relations with Tehran since the Iranian revolution and the hostage crisis of 1978/79, Switzerland as the representative of US interests had strongly lobbied for their release. The year 2011 also marked the 50<sup>th</sup> "anniversary" of the longest mandate of a protecting power in history: Since 1961, Switzerland has been representing US interests in Cuba.

Is this traditional instrument of Swiss foreign policy about to experience a renaissance? This is not to be expected, despite headlines to the contrary. The number of Swiss protecting power mandates has remained at a continuously low level for the past 15 years. The structural factors that brought about the demise of this instrument after 1989/91 remain in effect: Declining demand and the decrease of the inter-state wars that necessitate protecting power activities. Nevertheless, this is not to say that Switzerland should not continue to offer its services as a representative of other parties' interests, provided circumstances are promising. For such mandates not only benefit the countries in questions, but occasionally are also useful for Switzerland: Mandates as protecting power can be a starting point for further-reaching Swiss peace initiatives. Also, from time to time, this role gives Switzerland access to the highest levels of power, such as in the White House or the Kremlin.

## The instrument of the protecting power

The instrument of engaging a protecting power serves to ensure a minimum of mutual contact between two states that maintain no diplomatic and/or consular relations or have broken off relations. There are two basic types of mandate, the "Geneva Mandate" and the "Vienna Mandate". The "Geneva Mandate" is based on international humanitarian law. The primary task of the protecting power is to ensure the correct application of the 1949 Geneva Conventions and the appropriate

## Legal basis of protecting power engagements

### Vienna Convention on Diplomatic Relations 18 April 1961

#### Art. 45

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:

- (a) The receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;
- (b) The sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;
- (c) The sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

#### Art. 46

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

### Vienna Convention on Consular Relations 24 April 1963

#### Art. 8 Exercise of consular functions on behalf of a third State

Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State.

treatment of civilians, prisoners of war, and injured persons. It is rare, however, for a state to serve as protecting power under the Geneva Mandate. This task is usually taken on by the ICRC. Most contemporary discussions of protecting power mandates apply to the representation of interests under the "Vienna Mandate". Such arrangements refer to the diplomatic and consular relations between two states and are based on Articles 45 and 46 of the 1961 Vienna Convention on Diplomatic Relations and Article 8 of the 1963 Vienna Convention on Consular Relations (see Box).

As far as the substance of a protecting power engagement is concerned, we can distinguish between more technical-humanitarian and more political aspects. The technical-humanitarian side is mostly concerned with taking on traditional diplomatic and consular tasks on behalf of a represented state, such as delivery of messages, providing care to citizens, protecting the property of a represented state, handling passport and visa issues, and executing civil registry functions. In practice, consular tasks are today often handled by the "interest sections" of the represented states. For example, as part of Switzerland's mandate for the US in Cuba, a US interests section attached to the Swiss embassy has been handling the demanding consular work since 1977. This section is also operated by US citizens. In political terms, a protecting power is often tasked with keeping open a discreet and reliable channel of communications between the two states despite the termination of diplomatic relations. Though this function essentially consists of passive service

provision, it may occasionally result in a further-reaching mediation activity by the protecting power, which will have established close contacts to both sides.

The representation of interests by a third state only takes effect if the governments of the protecting power, of the sending state, and of the receiving state agree to the conferral of the mandate. These mandates may be more or less comprehensive, depending to some extent on whether the protecting power also handles the consular activities of a state or whether an interest section is established. The precise scope and tasks of the protecting power are established in an agreement. Defining the mandate and securing the required consent of all governments may be an extended procedure. Occasionally, de-facto mandates establish themselves.

In principle, a protecting power is entitled to reimbursement of its expenditures by the sending state. However, if the consular work is handled by interest sections of the sending states, the financial expenditures and personnel requirements of the protecting power are usually limited. This is why Switzerland, for example, to some extent waives its right to be reimbursed for its mandates, for instance in the mutual representation of interests of the US and Cuba or Russia and Georgia. For its representation of US interests in Iran, which also includes consular activities, Berne sends Washington a bill of around CHF2 million per year.

### Switzerland as a protecting power

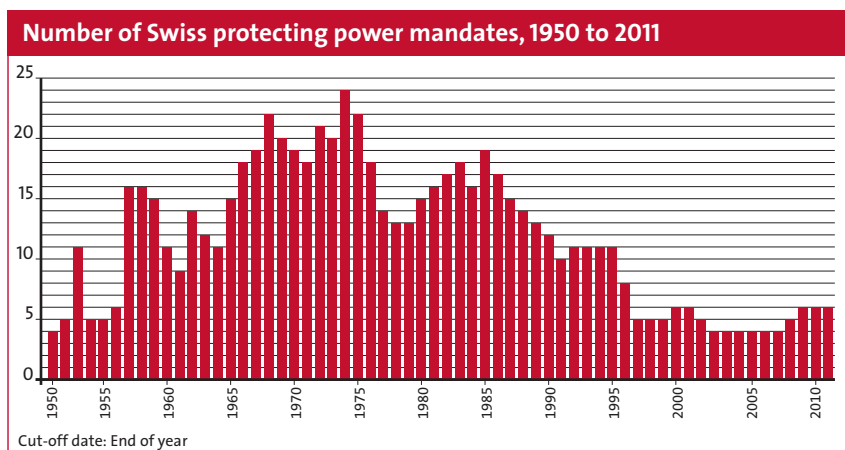
For Switzerland, the country's activities as a protecting power are a traditional ele-

ment of its good offices that is of great historical importance. The roots of the Swiss Confederation's tradition as a protecting power go back to the 19th century. However, Switzerland laid the main foundations of its reputation as a "protecting power par excellence" in the first half of the 20th century. During the First World War, it accepted 36 mandates for representing interests. During the Second World War, by 1943/44, Switzerland's activities as a protecting power reached its apex with 219 mandates for 35 states. After the end of the Second World War, the number of mandates rapidly dwindled.

During the Cold War, too, representation of interests was a highly sought after Swiss service, even though the number of mandates never again reached the high wartime numbers. Switzerland was by far the country most frequently contacted about such mandates because of its experience, its neutral stance, its extensive network of representations, and Switzerland's interest in signalling availability and demonstrating the usefulness of neutrality to a sceptical environment. However, Switzerland never had a monopoly on the role of protecting power: Between 1952 and 1991, Sweden served 21 times as representative of foreign interests; while Austria took on the same role six times between 1960 and 1991. A number of other countries such as the UK, Czechoslovakia, Poland, or Brazil accepted individual mandates for such services during the Cold War and later.

The high point during the Cold War was the year 1973, when Switzerland held 24 mandates (cf. illustration: Number of Swiss protecting power mandates, 1950 to 2011). The numerical development was influenced by several clearly identifiable events and processes. For instance, the Suez Crisis of 1956, the Cuban Revolution of 1956/60 (with some delay), the Six-Day War of 1967, and the October War of 1973 brought about a clear increase of interest representations. At the beginning of the 1980s, another increase resulted in particular from the Iran-Iraq War and the Falklands War.

After the end of the Cold War, the instrument of interest representation diminished in importance. This can be seen in the strongly decreasing number of mandates – a trend that did not only affect Switzerland. The reasons for this decline were both external and internal ones. On the one hand, international demand for this service decreased, since many coun-



tries re-established direct diplomatic contacts after the end of the Cold War and the abolition of Apartheid in South Africa. Furthermore, there was a decrease of inter-state conflicts during the 1990s, while the share of intra-state conflicts increased. However, protecting power activities, being an instrument of international diplomacy, cannot contribute to the resolution of intra-state conflicts. On the other hand, in Switzerland itself, the Federal Council during this time had very little taste for accepting additional mandates. This stance could be seen, for instance, in the reluctance to engage in the representation of Germany and UK interests in Serbia in the context of the NATO intervention in Kosovo of 1998/99. At the time, critics suspected that this stance signalled a change of tack from traditional passive neutrality policy towards stronger adaptation to the policies of the EU and NATO.

In the meantime, the Federal Council has become more accommodating again towards the idea of accepting interest representations, without any discernible effect on the total number of mandates. Currently, Switzerland exercises six mandates as a protecting power: It represents the US in Cuba (since 6 January 1961), Cuba in the US (1 April 1991), the US in Iran (24 April 1980), Iran in Egypt (9 May 1979), Russia in Georgia (13 December 2008), and Georgia in Russia (12 January 2009). However, the mandate for Iran in Egypt is of no great practical importance any more.

**Great relevance in selected cases**

Thus, numerically speaking, the importance of protecting power mandates for Switzerland has decreased significantly. Selected mandates do, however, acquire great individual relevance from time to time. This is true in particular when its activity as a protecting power gives Swit-

zerland the opportunity to engage in further action. Because Switzerland has the chance to demonstrate reliability, impartiality, and discretion through its work as a protecting power, it comes as no surprise that it is occasionally also asked by the two parties to a conflict to take on an facilitation or mediation role or itself actively seeks such a role.

One example of such initiatives can be seen in the Swiss mediation activity between Moscow and Tbilisi, which aimed to bringing about the necessary conditions for Russia’s WTO accession. In this context, Switzerland organised a whole series of talks in 2011. In the final stage, the main sticking point was control of trade between Russia and the separatist Georgian provinces of Abkhazia and South Ossetia. Resolution of this question ultimately contributed to Georgia’s decision to end its blockade of a Russian WTO accession. Another example is the promotion of dialogue between the US and Iran in the context of the Iranian nuclear dossier and the topics suggested by Switzerland in this context (cf. CSS Analyses No. 43). Such initiatives, however, go far beyond an actual mandate for representation of interests. According to the traditional definition, representation of interests includes no actions or mediation proposals on the protecting state’s own initiative.

The fact that Switzerland to some extent uses its mandate as protecting power for further-reaching peace initiatives is a double-edged affair. Some experts warn of potential conflicts of interests and criticise that such Swiss initiatives, should they fail, would inevitably have negative repercussions for the country’s activity as a protecting power. On the other hand, Switzerland as protecting power occasionally has promising opportunities to at least contrib-

ute to the introduction of diplomatic initiatives, as it has well-established contacts and ideally also enjoys the trust of both sides. Therefore, general recommendations are difficult to make. Decisions must be made on a case-by-case basis and after carefully weighing the pros and cons of engagement in the area of peace support.

**Swiss interests**

Switzerland has a range of motives for accepting representations of interests between states that have broken off relations. Among these are peace support in accordance with the foreign-policy goals set out in the Swiss federal constitution, the ability to offer a channel for dialog between mutually hostile parties, and enhancing human security for the citizens of the states involved.

From the Swiss perspective, however, the most important argument is probably a different one: On occasion, accepting mandates as protecting power also gives Switzerland itself good opportunities to pursue its own interests and to promote issues of its own with the sending and/or receiving state. As a protecting power, Switzerland enjoys access to the highest corridors of power. In a way, such mandates therefore open doors for bilateral Swiss concerns as well. Such advantages also explain, for instance, why Sweden competed with Switzerland for the representation of Georgia’s interests in Moscow and was far from pleased when Switzerland ultimately received the mandate.

Especially in relations with states such as the US, Russia, or Iran, such a privileged position represents an advantage for Swiss foreign policy that is not to be underestimated. For instance, former Swiss foreign minister Micheline Calmy-Rey used a meeting with her Russian counterpart Sergei Lavrov in December 2011, which marked the official sealing of Switzerland’s mandate for representation of Russian interests in Georgia, to take up bilateral matters such as easing of visa procedures or the treaty on repatriation of refugees. Good contacts to the highest levels of the Kremlin will also be useful for Switzerland with a view to Russia’s G-20 presidency in 2013, since the presidency largely determines whether and how Switzerland can introduce its concerns in this body, which is of great importance to Switzerland.

Mixing its role as protecting power with the pursuit of its own political or for-

foreign trade interests is not unproblematic, however. This could be seen in the occasionally harsh domestic and international reactions to the signing of a gas deal – currently suspended – between EG Laufenburg AG and the National Iranian Gas Export Company (cf. CSS Analyses No. 35 [↗](#)). Also, access to high-ranking officials especially at the foreign ministry does not necessarily translate into assertion of own interests, especially in matters that come under the purview of another ministry. Evidence of this can be seen in the severe dispute between Switzerland and the US over taxation and the role of Swiss banks. But at least such contacts create opportunities to have one's concerns heard at the highest levels of power.

As shown, the political relevance of Switzerland's activities as protecting power has diminished. They are not expected to be reinvigorated on a grand scale, barring major shifts in the geopolitical constellation. Switzerland should therefore not overemphasise the long-term strategic importance of this instrument for shaping its foreign policy. At the same time, it should exploit promising opportunities arising in connection with mandates as protecting power – in the interests of others and in its own national interest.

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