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Permanent Neutrality of the Republic of Moldova in the Context of European Geopolitics

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Neutrality describes the formal position taken by a State which is not participating in an armed conflict or which does not want to become involved. This status entails specific rights and duties. On the one hand, the neutral State has the right to stand apart from and not be adversely affected by the conflict. On the other hand, it has a duty of non-participation and impartiality. The institution of neutrality in international law has always aroused heated discussions among doctrine. However, there was no international treaty or at least a soft law instrument, thus today is difficult to discern the content of this legal concept. Therefore, today's lawyers frequently resorts to concepts of geopolitical fully argue the need, but also the content of permanent neutrality status. The neutrality of The Republic of

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Moldova explicitly exclude: participation in armed conflicts; participation in any political or economic alliance with purposes of initiating wars; stationing of any foreign military troops on its territory.

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Introduction

In this paper, we explore the content of the permanent neutrality status of the Republic of Moldova, the rationale behind the adoption of neutrality, as well as the perspectives of this status within the current European geopolitical context. We also compare the status of neutrality of the Republic of Moldova with the status of other countries, relying on the statement that "only comparable things can be compared". To apply the experience of Austria and Switzerland to the context of the Republic of Moldova would not be correct; however, this experience cannot be cast off, since the neutrality models of the two states enable the disclosure of similar perspectives for the Republic of Moldova.

The conceptual framework of the institution of permanent neutrality

Nowadays, the institution of permanent neutrality is very important and it implies certain commitments in relation to the quality of being a legal entity. Despite the fact that the concept of permanent neutrality has been used for more than two centuries, the disputes related to its legal nature and content and to the rights and obligations ensuing from the status of permanent neutrality are still ongoing. We consider relevant to explore this category, given that there are no international treaties that would regulate this institution and that neutrality is not viewed as an attractive research matter for the western doctrinaires.

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To a great extent, the topicality of this subject ensues from the fact that lately we have witnessed dramatic developments and changes that in a way jeopardise the international security, namely - multiplication of armed conflicts, infringements to the environment, terrorism acts etc. The response to these threats could be enabled only through international cooperation and the status of permanent neutrality provides this means to maintain the international security.

For the purposes of the present research, we depart from the well-established assertions of Karsh's study entitled "Neutrality and Small States" (1990), adjusting them to the case of the Republic of Moldova. This is one of the fundamental works in terms of geopolitical and legal aspects of the status of permanent neutrality, especially of the small states.

Before describing the evolution of the permanent neutrality status of the Republic of Moldova, we will briefly analyse the neutrality of small states. The international practice in this field showed that highly developed states cannot be neutral, as they pursue economic, geostrategic and political interests which do not allow them to adopt a neutral attitude towards the events taking place on the international arena.

In order to be understood correctly, we would like to highlight that the above mentioned rule is not absolute. Thus, the status of neutrality is not always a sign of a state's insignificant

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power. Big states can be neutral too, however, it is more difficult for a powerful state to stay in a state of peace on the long term. [1]

Therefore, we tackle the issue from various angles, departing from geopolitical arguments, being fully aware and only for the purposes of a clear and comprehensive elucidation of the domain under research.

From the beginning, we shall mention that the public international law doctrine lacks a unanimously accepted definition of small states, although we could formulate their characteristic peculiarities, such as: limited power generating a substantial difference in the prerogative of action, as opposed to large states. And we would like to rightly point, that small states are entities with psychological and behavioural characteristics that distinguish them from other states. [2] The first goal of a small state is to survive. The Czech writer Milan Kundera defined the small states as the "*ones whose existence may be put in question at any moment*".[3] This explains why one of the characteristic features of small states is that they opt mainly for neutrality as a

[1] Bernard Bacot, *Des neutralitŭs durables. Origine, domaine et efficacitŭ* (Paris: Librairie du Recueil Sirey, 1943), p. 20.
[2] Efraim Karsh, *Neutrality and Small States* (London and New York: Routledge, 1988), pp. 3-4.
[3] Jean-François Gribinski, " L'Autriche, La Finlande, La Suède Et La Sécurité Européenne, " Actes Du Colloque Organisé LeAu Sénat Par l'Institut de Relations Internationales et Stratégiques et le Centre de Réflexion et d'Etudes sur les Problèmes Internationaux (Paris: La Documentation Française, 30 Avril 1996), p. 55.

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direction of their foreign policy, and in separate cases, they choose the permanent, legally enshrined neutrality status.

As a rule, small states attempt refraining from war, but their capacity to accomplish this depends on the interests of belligerents. Hence, there is a huge difference between the neutrality of small and large states: for the big powers, neutrality represents a matter of simple costs and benefits, while for small states neutrality is a means of existence. Moreover, should neutrality be infringed, the big powers have the necessary capacity and forces to defend their territorial sovereignty. The small states, on the contrary, have limited means to respond and accordingly, the maintenance of the neutrality status becomes a complex issue. [4]

Viewed from another point of view, the problem under research can be presented positively. Certainly, due to their nature, the small states will never be considered enough important for the belligerents, during a war involving the great powers – so that the latter direct their full power against them; rather, they will be viewed as peripheral objects, which in the worst case, requires a secondary effort be taken by the belligerents. [5]

In general, a problem that all small states face with is the *security*, since their territorial dimension, the geopolitical

[4] Karsh, *op.cit.*, p. 4.
[5] Karsh, *ibid.*, p. 64.

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situation, their demographic status and their military weakness do not allow them to self-secure. Therefore, they are vulnerable or dependent. Consequently, one solution can be brought forward by the legally enshrined neutrality – the case of Switzerland or by the neutrality policy – the case of Finland and Sweden – during the East-West conflict. [6] It is in the interest of the small state to have the international relationships regulated by the international law, which substantiates, among others, its neutrality and not through power, which will significantly reduce the small state's operation margin on the international arena. [7]

In exceptional cases, and namely, in relation to small states, neutrality is prone to breach because of two reasons: strategic and/or economic. Strategically speaking, neutrality can be violated as a consequence of belligerent states' motivation to use the territory of the neutral state for military purposes. The economic aspect implies the fact that the non-observance of neutrality can serve as a means to gain certain benefits, such as: access to mines, raw materials, and economic infrastructure, considered vital by at least one of belligerents. [8]

It is possible that after the measures undertaken by the civilization, the rights of the states with a reduced military

[6] Serge Sur, *Relations internationales*, 4-e édition (Paris : Montchrestien, 2006), p. 271.
[7] Marianne Lange, *L`Autriche : un etat neutre dans L`Union Europeenne* (Paris: L'Harmattan, 2006), pp. 31-32.
[8] Karsh, *op.cit.*, p. 42.

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potential could be respected more. In anticipation of this, we express our hope that their neutrality will contribute to the sustainable peace in Europe better than all associations concluded in the name of peace. [9]

Therefore, the conclusion is that to reduce the potential threat against their neutrality, the small states have to put into effect the status of permanent neutrality, considering the following rules:

The neutral state renounces war as a foreign policy instrument, exception being the wars of self-defence, when the state will use the force to self-defend. The other states shall be convinced of this due to a series of measures taken by the neutral states on the external and internal planes: from non-participation in alliances, blocs or any other forms of military cooperation, including renouncement to territorial claims towards neighbours to the inclusion of neutrality into the social and cultural heritage of the state and into its legal and political system.

At war time, the state could be obliged by the content of traditional neutrality, with all its requirements, beginning with the impartiality obligation.

Neutrality is not an ideological expression, but rather, a

[9] H. Regnaut, *Des effets de la neutralité perpétuelle en temps de paix* (Paris : V. Giard et E. Brière, 1898), p. 43.

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practical one. In other words, opting for permanent neutrality does not exclude the possibility of sympathising with one of the belligerents. Therefore, neutrality implies adoption of an attitude inferring an appropriate and balanced policy towards both sides of the conflict, without prejudicing either of them in any way. [10]

Once the neutral states manage to strengthen the credibility of belligerents and of the entire international community into their neutrality, the latter will act in such a way as to exclude potential cases of neutrality violation.

Ensuing from the idea that neutrality is a means to ensure independence and is construed as a guarantee of absence of any foreign interference, we consider that this special legal status significantly contributes to the achievement of these principles, in particular, with young states, securing them independence in foreign policy and making possible the mutual favourable cooperation with all the states in the world. Therefore, we express our strong disagreement with Martin Wight's statement: "*Neutral are states without an active foreign policy at all*", [11] putting, at the same time, an emphasis on the fact that the Republic of Moldova's foreign policy shall preserve its independence and individuality.

In the beginning of the present study, we assume it is worth

[10] Karsh, *op.cit.*, pp. 38-39.
[11] *Ibid., p. 32.*

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setting our views on the rationale of the Republic of Moldova for adopting the status of permanent neutrality, which may be reduced to the following ideas:

a) Geopolitical realities. The Republic of Moldova is a new European state that emerged after the Soviet Union's collapse. At that time, the self-determination process of former Soviet republics and of the entire post-socialist area represented the goal of the fights led for spheres of influence;

b) Moldova's deficient economic, political and military potential in relation with the neighbouring countries that have attempted achieving their interests in the Republic of Moldova, relying also on major ethno-national groups, which now and then display separatist trends. Therefore, a sudden change of the foreign policy might induce a prompt response from these groups, which could question even the country's territorial integrity. In order not to become a convergent point of certain political pressures, it was considered that the adoption of the neutrality status would be the paramount decision;

c) The situation of the neighbouring countries, such as Romania and Ukraine, subjected to certain pressure stemming from the interests of major powers;

d) The need of the Republic of Moldova to direct its economy towards external markets. It was deemed that the

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neutrality status, by fostering the cooperation (including the economic one) with no political preferences, would considerably boost the development of the national economy and support its integration into the European economic framework. [12]

Still, the status of permanent neutrality that the Republic of Moldova opted for does not enjoy an international application and we consider that the grounds of delayed recognition of the Republic of Moldova's permanent neutrality are: deployment of Russian military troops on the territory of Moldova; constant tensioned relationships between the Moldovan Government and the Transdniestrian authorities.

The above mentioned issues seriously affect the situation of the Republic of Moldova and have a severe negative impact on the efforts aiming at strengthening the stability and security in the region, determining the choice of ways to ensure the international recognition of country's permanent neutrality status. [13]

Regarding the legal framing of the permanent neutrality status, it was enshrined in the Constitution of the Republic of Moldova of 29th of July, 1994, which, in article 11 "*The Republic of Moldova – a neutral state"* provides that: *The Republic of*

[12] Victor Moraru, "La République de Moldova à la recherche des voies vers la stabilité et la sécurité de la région dans le contexte des relations entre l'OTAN et la Russie," *NATO*, http://www.nato.int/acad/fellow/99-01/Moraru.pdf . (Accessed April 15, 2016)
[13] Moraru**,** *op.cit*, pp. 13-14.

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Moldova declares its permanent neutrality. The Republic of Moldova shall not admit the deployment of military troops of other states on its territory. According to Part 1, article 142 of the Constitution, the provisions on the state's permanent neutrality can be reviewed only after their approval via a referendum implying the majority of citizens included on the electoral lists.

The Republic of Moldova's permanent neutrality status was officially proclaimed as a means to reach specific foreign policy-related goals. Hence to ensure the national security, the Parliament of the Republic of Moldova passed a Decision on the Military Doctrine of the Republic of Moldova no. 482-XIII of 06.06.1995, which foresees that "*The military doctrine of the Republic of Moldova is determined by its domestic and foreign policy, by the permanent,_constitutionally proclaimed neutrality, and has an exclusive defensive character..."*

Subsequently, the Decision of the Government of the Republic of Moldova on the Activity Programme of the Government of the Republic of Moldova for the period January, 1997- March, 1998 no. 30 of 05.02.1997, in the chapter "The Activity in the Area of Foreign Policy" provided that "*The Strategy and the major directions of the external policy of the Republic of Moldova – as a sovereign, independent and neutral state – shall remain unchanged. In the implementation of definite actions externally, the focus will be on their pragmatic and realistic character*". The Permanent Neutrality Conception was

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intended to be adopted through the above-mentioned Governmental Decision, based on which, "*actions shall be undertaken to obtain the consent of other states to become states-guarantors and recognize the neutrality of the Republic of Moldova at the level of major international organisations. The cooperation with the North Atlantic Organization shall be conducted in line with the Individual Plan developed through the Partnership for Peace"*. The adoption of the Permanent Neutrality Conception was planned for the fourth quarter of 1997 and it had to be the responsibility of the Ministry of Foreign Affairs. However, no results have been achieved so far in this sense.

It follows from above that the permanent neutrality status is expressly enshrined as a means to ensure the state's security. Later on, this idea was expanded in the Law no. 112 of 22.05.2008 on the approval of the National Security Conception of the Republic of Moldova, published on 3.06.2008 in *Monitorul Oficial* (Official Gazette) no. 97-98. According to point 1.1 of the Law, *the Republic of Moldova is a sovereign, independent, unitary and indivisible state. Its territory is inalienable. In accordance with art.11 of the Constitution, the Republic of Moldova proclaims its permanent neutrality, which implies that our country is not a party to military blocs and does not admit the deployment of military troops or weapons of other states and other military blocs on its territory.*

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The permanent neutrality status constitutes the basic principle, the cornerstone of the national security concept. Therefore, all actions carried out by the entire national security system of the Republic of Moldova and aiming at ensuring the national security ensue from this principle.

In this connection, the Republic of Moldova takes efforts to ensure the observance of its permanent neutrality by the subjects of International Law.

One essential condition of neutrality implies the insurance of inviolability of the state's territory. In the case of the Republic of Moldova, however, we cannot speak about inviolability, since there is a secessionist formation on the left bank of the River Dniester: the self-proclaimed Dniester Moldovan Republic.

In this study, our goal is not to explore the lawfulness of the situation on the left bank, this is a matter of more comprehensive researches and debates, but rather, we will focus on the assessment of the impact of the current situation on the permanent neutrality status of the Republic of Moldova.

To remove the main impediment for the international assertion of the neutrality status, in our opinion – the Transdniestrian conflict, it is worth mentioning that the Republic of Moldova has undertaken a series of measures to settle it. At the OSCE Summit in Istanbul in 1999, efforts were undertaken with

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view of signing by the Russian Federation of the obligation on withdrawal of military troops from Moldova. Two were the reasons that would dictate the need for troops' withdrawal: 1) the state's constitutional neutrality, which prohibits the deployment of any military formations belonging to other countries on its territory; 2) the expectation that the withdrawal of the 14th Army would lead to the settlement of the crisis in the Transdniestrian region. [14] Unfortunately, so far, the Russian Federation has not met its commitments assumed in Istanbul in 1999.

Whatever might be the further evolution of events, we are firmly convinced that the international recognition of the neutrality status will make our state of interest in all respects – political and economic and first of all, for the foreign capital. Moldova will only be in a winning position when different international institutions, for which the state's neutrality status is important, establish on its territory. [15] Moreover, the settlement of the Transdniestrian issue should become the objective of other countries in the region, as well as international organisations, because if the crisis in the Transdniestrian region remains unsolved, it will develop into "an outbreak of insecurity" for the

[14] С. Михаил, "Внешние решения внутренних проблем и шаткость молдавского нейтралитета," *Кишиневский обозреватель*, Nr. 7 (March 02, 2006), http://www.ko.md/cgi/article.pl?id=502312. (Accessed March 3, 2006)
[15] I. Guțu, "Евроинтеграция плюс восточный вектор," *Кишиневский обозреватель*, Nr. 11 March 30, 2006, http://www.ko.md/cgi/article.pl?id=5608. (Accessed July 20, 2016)

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whole South-eastern Europe. [16]

As for the participation of a neutral state in the military alliances, we would like to point out that contrary to the Austrian Constitution, which expressly foresees that Austria does not take part in any military alliances, a fact that is determining the basis of its obligation of neutrality, [17] the Constitution of the Republic of Moldova lacks such an express provision, which gives rise to heated discussions.

Lately, the topic of the accession of the Republic of Moldova to NATO has been strongly promoted by politicians, this being probably due to the fact that currently, the Republic of Moldova intends to get involved in the reform of all national security and defence structures in view of building the right capacities to ensure the nation's security and to contribute to international operations at the appropriate level. Therefore, the cooperation with the North Atlantic Treaty Organization offers a number of advantages: consultations, expertises, access to information, application of NATO's experience in crisis management, reinforcing the capacity to face the new international challenges to the national security of any state (e.g. terrorism), etc. We shall underline that the cooperation with NATO does not absolutely

[16] Михаил, *op.cit.*
[17] Francis S. Wagner ed., *Toward a New Central Europe: A Symposium on the Problems of the Danubian Nations* (Astor Park, Florida: Danubian Press, Inc., 1970), p. 41.

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imply relinquishing the state's neutrality status. Thus, the Partnership for Peace (PfP) is the main mechanism of translating into practice the relations between the Alliance and its partners in the area of security, as well as of increasing the interoperability between the partners and NATO. Through detailed programmes that reflect partners' individual capacities and interests, the allies and the partners collaborate for the promotion of transparency, planning and budgeting of the national defence, democratic control of armed forces, preparedness for civilian disasters and other emergencies and for developing the capacity to work jointly. The Individual Partnership Action Plans (IPAPs) were launched in November 2002, at the Prague Summit. The IPAPs are documents intended for countries having a political will and competences to deepen its relations with NATO. Conceived for a two-year period, these plans aim at introducing various cooperation mechanisms between the partner-state and the Alliance into one single document, focusing mainly on the domestic reforms. Georgia was the first state to sign an IPAP with NATO on the 29th of October, 2004, being followed later by Azerbaijan, Armenia, and Kazakhstan. The Republic of Moldova signed the Individual Partnership Action Plan Moldova – NATO on the 19th of May, 2006. The Individual Partnership Action Plan (IPAP) is a new, qualitative stage in expanding the relations with NATO and implies a joint development of Action Programmes (Plans) which provide the achievement of reforms in the area of security and defence, in line with the specific needs of each state. In the light

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of its neutrality status, Moldova, by implementing the Individual Partnership Action Plan (IPAP), does not pursue the objective of joining the North Atlantic Treaty Organization, but expects using the Plan to accelerate the reforming process in the area of national security and defence. [18]

Therefore, the Governmental Decision on the approval of the Individual Partnership Action Plan Republic of Moldova - NATO no. 641 of 30.07.2014 foresees that:

"*European integration and strengthening political dialogue and practical cooperation with Euro-Atlantic structures remain the major strategic objectives of the Republic of Moldova. Ensuing from its neutrality status, the Republic of Moldova, by implementing the Individual Partnership Action Plan, does not pursue the goal of joining the North Atlantic Alliance, but rather of using the Action Plan to make progress in the process of reforming and modernising the national security and defence sector in line with the new developments and demands of the present security environment. For this purpose, the Republic of Moldova shall apply the necessary political and legal basis, including the relevant institutional mechanisms that were set during the previous stages of IPAP implementation. Likewise, Moldova will examine the opportunities of taking part in allies' new cooperation initiatives together with partners. At the same*

[18] http://www.nato.md/index.php?option=com_content&task=section&id=3&Itemid=46 (Accessed April 15, 2016).

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time, in parallel with IPAP implementation, Moldova will collaborate with EU and other international organisations actively present in our country, to ensure complementarity between IPAP, the EU-Moldova Association Agreement and the National Development Strategy."

Regarding the domestic legal framework in the area of neutrality, as a desideratum, we propose the adoption, based on the Austrian model, of provisions that would penalize any action breaching the neutrality. [19] Austria introduced those provisions in 1991, after the review of article 320 of the Criminal Code. Additionally, the Federal Law on Imports, Exports and Transit of War Material was passed. Also, it would be necessary to provide expressly that the state should authorise the carrying out of any types of actions on its territory that are decided upon by the UN Security Council, based on Chapter VII of the Charter. These shall not be considered as acts of war under international law, but rather as police actions carried out against the states responsible for the violation of international law and hence, these do not fall within the scope of neutrality, being therefore considered as compatible with the collective security system.

The accession of the Republic of Moldova to the European Union is "*...an important, future goal...*" of the foreign policy that is foreseen in the Foreign Policy Conception of the Republic of

[19] Lange, *op.cit.*, pp. 34-35.

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Moldova, adopted through the Decision of the Parliament of the Republic of Moldova as of 08.02.1995. Hence, for the future, when this goal is achieved, we propose to enclose the letter of the Minister of Foreign Affairs to the application for accession, which will state: "*The Republic of Moldova, expressing its willingness to become a Member State of the European Union, starts from the fact that its permanent neutrality principle shall be observed*". Furthermore, this is how Austria has done, when in 1989, it voiced its willingness to become a Member State of the European Union.

In addition, it should be recalled that currently, there is an urgent need to layout the concept of Moldova's permanent neutrality. Nowadays, we are witnessing the development of the Foreign Policy Conception of the Republic of Moldova, a fact which has already lasted for a while. In overall, the draft proposed for public consultation is successful, but there are certain unclarities in relation to the subject matter of this research. Thus, the text of the future conception does not provide for all the necessary details on the internationally enshrined mechanisms related to the permanent neutrality of the Republic of Moldova. When emphasising that "*The Republic of Moldova shall never take part in political, military and economic alliances aiming at preparing for war...*" some commentators of the Draft Concept have noticed an ambiguity related to the established formula which could imply, in their opinion, the danger of state

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association to the CIS Treaty. [20] Consequently, when developing the Foreign Policy Conception of the Republic of Moldova, we have to be aware of the fact that realism should be at its core, especially, the realism embedded into the attitude towards the international situation, the realism of concrete tasks, as well as the realism in assessing our own capabilities. The Foreign Policy Conception shall contribute to country's unification processes, to its sovereignty and territorial integrity and to the assertion of its permanent neutrality status. The Republic of Moldova needs a pragmatic, predictable path built on objective opportunities of the Republic of Moldova and on its real national interests and not on illusions. Only by taking into account the political, economic and cultural relations with other states and nations, the Republic of Moldova could secure its harmonious ingress into the international society. [21] In that way, the Republic of Moldova's concept of neutrality will acquire specific traits.

As for the role of the Republic of Moldova in maintaining international security, it is appropriate to mention the participation of soldiers of the Republic of Moldova's National Army in national and international peacekeeping operations and missions, which remains one of the priorities of the National Army. The participation of Moldovan military in peacekeeping missions demonstrates the country's aspirations to promote peace, stability

[20] Moraru**,** *op.cit.,* p. 8.
[21] Guțu, *op.cit.*

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and security nationally and internationally, thus becoming a state contributing to peace consolidation. Starting with 1997, the Republic of Moldova has actively contributed to OSCE-led international missions to the Chechen Republic, Kosovo, Macedonia, Georgia, Tajikistan, and Ukraine; to NATO-led international missions to Bosnia and Herzegovina; to UN missions to Liberia, Ivory Coast, Sudan, South Sudan, Central African Republic and Georgia, as well as to multinational forces in Iraq and of the UN Department of Peacekeeping Operations (DPKO), New York, US. [22]

In the light of matters set out above, we can conclude that the neutrality status is perceived as a tool to run the state's foreign policy, to ensure national security and also as a foreign policy objective, which has a unique value for our statehood. And this is a ground for the guarantee foreseen in article 11 of the Law of the Republic of Moldova No. 595-XIV of 24.09.1999 on International Treaties of the Republic of Moldova, which stipulates that: "*No ratification, adoption, approval of or accession to an international treaty shall be allowed if the treaty limits the sovereign, independent or unitary character of the state, and affects its permanent neutrality ...*"

Therewith, concerning the international treaties matters, we determined that the international treaties the Republic of Moldova

[22] http://www.army.md/?lng=2&action=show&cat=163 (Accessed April 15, 2016).

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has signed with the neighbouring states are perfectly in line with the permanent neutrality status, with the UN Charter principles, with the general norms of international law and with the imperatives of building security and confidence relations in Europe. Therefore, in legal terms, save for some geopolitical reservations, there are perspectives for the Republic of Moldova to make use of its permanent neutrality status internationally.

Concerning the very research into the content of the permanent neutrality status of the Republic of Moldova - a small, relatively young state, which has proclaimed this status for more than 20 years, we will depart from the idea that neutrality is viewed as a means to ensure independence and to guarantee the absence of any foreign interference. The neutrality position noticeably contributes to the implementation of these principles, in particular in the case of young states, guaranteeing independence in foreign policy and making possible the favourable mutual cooperation with the entire world. [23] Therefore, we firmly express our disagreement in relation to Martin Wight's opinion - "*Neutral are states without an active foreign policy at all*", [24] putting emphasis on the fact that our country's foreign policy shall preserve its independence and individuality, which is expressed, to a great extent, through its permanent neutrality

[23] Б. М. Клименко, *Словарь международного права. 2-ое издание переработанное и дополненное* (Москва: Международные отношения, 1986), pp. 29-30.
[24] Karsh, *op.cit.*, p. 32.

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status.

To understand the content of permanent neutrality of the Republic of Moldova, it is necessary to start with the international practice. Looking at the Swiss and Austrian models, it is worth mentioning that the supreme interests of humankind comply to the **"absolute" permanent neutrality** of Switzerland, which implies a ban on joining defensive and offensive alliances, as well as customs and economic unions, susceptible of implying obligations incompatible with the neutrality status. Thus, we are absolutely against the "military neutrality" status adopted by Austria, which reveals only the military sides of neutrality. It is essential to mention that this status was enforced after the adoption of the constitutional act in 1955 which proclaimed Austria's permanent neutrality status, setting as rationale – the country's aspirations to join the EU. On November 9, 1993, the Austrian Council of Ministers adopted a statement which comprised a restrained definition of neutrality. According to the statement: "*Austria refrains from military participation in wars, from joining military alliances and deployment of military troops on its territory*, however, that did not lead to the review of the 1955 constitutional act. Prior to joining the EU on January 1, 1995, Austria carried out one single constitutional review (1994) that took place within the context of legislative amendments adopted during the Gulf War. That review had an important impact: the new 23 F article reduced neutrality to its military core,

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authorizing Austria to join the economic embargos. Thus, neutrality became differentiated. Based on the above, in the opinion of many Austrian jurists, from the Constitutional Law perspective, that review led to the absolute abandonment of neutrality. In absence of an EU joint action in relation to the security policy or a UN Security Council Resolution, neutrality should be always observed. Therefore, we could formulate the conclusion that Austria cannot be qualified today as a neutral state, it is rather, a non-aligned state. [25]

The "manifestation" of the permanent neutrality on the international level: recognition and guarantee

Regarding the **recognition and guaranteeing the permanent neutrality status** on the international level, we would like to highlight that the Republic of Moldova, by providing the permanent neutrality status in the Constitution, did not request its confirmation at the UN.[26] Thus, in the opinion of the Romanian author Al. Bolintineanu, the neutrality that is not recognised and safeguarded on the international level, does not generate legal effects - a statement that is supported by the Moldovan examples. Another Romanian author - S. Scăunaş, speaking about the situation of the Republic of Moldova, specified that so far, the state did not sign agreements with other countries based on which

[25] Lange, *op.cit.*, pp. 54-62.
[26] I. Diaconu, *Tratat de drept internaţional public,* volumul I (Bucureşti: Lumina Lex, 2002), p. 415.

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the status could be recognized and guaranteed, which means it is not efficient. [27]

We assume these statements are not precise, because, as previously proven, the legal fundament of the viable permanent neutrality status could be the unilateral declaration of the country; however, the international recognition of neutrality allows the state to make use of the permanent neutrality status on the international arena.

Concerning this topic, comparatively, we could mention the example of Luxemburg, whose permanent neutrality status was breached during WWI and subsequently, it had to forward a note to the League of Nations on April 23, 1923, declaring that the 1867 Treaty was still valid and that Luxemburg is a permanently neutral state. Nevertheless, even if we consider Luxemburg being neutral during that time, that status was proclaimed unilaterally, since other states did not confirm the legal force of the 1867 Treaty. In the opinion of the Soviet authors, this neutrality did not have legal effects generated by the permanent neutrality.

Contrary to the opinion of Takacs, that the guarantees is not an essential condition for the existence and validity of the permanent neutrality status, [28] we would like to affirm that the

[27] S. Scăunaş, *Drept internaţional public* (Bucureşti: ALL BECK, 2002), p. 93.
[28] L. Takacs, M. I. şi Niciu, *Drept Internaţional Public* (Bucureşti: Editura didactică şi pedagogică, 1976), p. 71.

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international recognition of the permanent neutrality status does not enable our state to benefit from the range of advantages and opportunities provided by the permanent neutrality status. For instance, the permanent neutrality of Turkmenistan is not only a recognised phenomenon in the system of international relationships, but also a mechanism regulating geopolitical interests, which is a very important thing, considering its geographical position and the general regional context, including the entire Asia. [29]

Certainly, the young state assumed obligations related to the permanent neutrality status, initiating the configuration of its foreign policy in view of complying with the respective principles. Such an option shall go beyond the simple unilateral statement made by the state, if we want to obtain the guarantees of the international community (which might not be compulsory for certain states, but absolutely necessary for the Republic of Moldova, due to its geographical position that implies pressure and instability risks which could come from interested sides, depending on their own geopolitical interests. Subsequently, the Republic of Moldova, despite its occasionally reserved and inconsistent statements, has not yet acquired the official recognition of its permanent neutrality, this reflecting a rather

[29] "Partenariat stratégique en matière d'idéaux de paix et d'humanisme," *Natinal Unies*, http://www.un.org/french/pubs/chronique/2004/numero2/0204p62.html. (Accessed April 15, 2016)

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obvious complexity of the problem and ambiguous assessment of efforts taken by the Moldovan diplomacy. Moreover, the external guarantees are very important, considering the weak economic possibilities of the country that do not enable the appropriate contribution to the establishment and reinforcement of its own defence system. [30]

Concerning the actions undertaken to promote the status of neutrality, we could state that the concept applied to such a state as the Republic of Moldova, implies some limitations in its application. It means that the state adopting such a status has to have real resources that can be applied, i.e. an advanced economic, political and military potential. As for the case of the Republic of Moldova, it does not fully meet these parameters, which makes its neutrality status vulnerable. The rationale of inopportunity of this status for Moldova could be explained by its geographical position. Situated in the South-Eastern Europe, Moldova has a relief which is predominantly slopes and fields and lacks natural defensive barriers that would protect the state from any potential interventions. Moreover, we could point to the proximity of the Black Sea and the vicinity of countries with great military potential. [31]

Studies regarding Moldova's capabilities potential have found them being rather weak, especially in relation to the

[30] Moraru, *op.cit.*, pp. 12-13.
[31] *Ibid.*, p. 14.

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EPOCC model (Equipment Potential Capability Comparisons). Thus, the potential of the armed forces was assessed and scored 655 points, while the Ukrainian indicator constituted 38590 points, Romania's – 25922 points, and the Russian contingent deployed in Transdniestria – 578 points. [32]

The permanent neutrality status provides that the country shall refrain from joining military blocs or alliances. And it is known that each country, large or small, has a certain responsibility in relation to maintaining the regional and international security and stability etc. Since the army is a core element in maintaining countries' security and stability, the responsibility of neutral states will be even greater to sustain their own military troops in order to secure its neutrality status. [33]

The Republic of Moldova will be recognized internationally as having the permanent neutrality status only if it is capable of securing its armed defence with its own forces, its sovereignty, independence, and territorial integrity. [34]

One of the basic conditions of neutrality consists in **securing the state's territorial inviolability**. But, in the situation of the

[32] Moraru**,** *op.cit.*, p. 15.
[33] *Apărarea şi securitatea naţională a Moldovei. Anul 2001.* Studiu elaborat de Institutul de Politici Publice în cadrul proiectului internaţional Evaluarea strategică a securităţii şi apărării naţionale a Republicii Moldova (Chişinău: Institutul de Politici Publice, 2001), p. 8.
[34] *Ibid.*, pp. 7-8.

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Republic of Moldova, we cannot speak about inviolability, since there is a secessionist formation on the territory of the left bank of the river Dniester – the so-called Transdniestrian Moldovan Republic – an issue that our state has been facing with for the last 15 years. In this paper, we do not pursue the goal of researching the lawfulness of the Transdniestrian situation, this topic being tackled by comprehensive researches and debates. We rather focus on assessing the impact of the current situation on Moldova's permanent neutrality status.

We could state that a specific series of internal and external factors (geostrategic position, lasting interests of the Russian Federation in the region, along with the Russian troops deployed in Transdniestria, the conflict, the economic and political instability and dependence on external energy sources), to which we could add the participation in GUAM (a political-military structure comprising Georgia, Ukraine, Azerbaijan and Moldova – states which are not part to the Community of Independent States Treaty on Collective Security signed in 1992 –[35] and which was established in 1997) and the CIS, which impedes Moldova from enjoying the advantages of a genuine permanent neutrality status, although it was constitutionally proclaimed.[36] Nevertheless, the

[35] "Tratatul Comunităţii Statelor Independente privind securitatea colectivă," *Taşkent*, 1992, http://11.strana.ru/stories/01/09/11/1534/60114.html. (Accessed April 15, 2016)
[36] Al. Bolintineanu et al, *Drept internaţional contemporan* (Bucureşti: All Beck, 2000), p. 90.

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neutrality status shall have a decisive effect on the Transdniestrian issue. This could be reflected positively in relation to our strategic partners and neighbours. The full implementation of the neutrality status will enable obtaining the final decision on the complete demilitarization of the Republic of Moldova (both banks of the river). But this idea always emerges when solutions to the Transdniestrian crisis are looked for.

Contrary to the Austrian Constitution, which clearly provides that Austria does not take part in any military alliance (this determines the basis of its neutrality obligation), [37] the Constitution of the Republic of Moldova lacks such a direct provision, a fact that actually generates strong debates.

Regarding our permanent neutrality status, we would like to emphasize upon a fundamental obligation which provides that the **belligerents shall not use the territory of the neutral state for military purposes**. According to some authors, although enshrined in the Constitution it does not guarantees that in case of potential military conflicts on the European continent the territory of Moldova will not be used as a theatre of operations. Moldova is not Switzerland and its neutrality is not limited by the need to secure the integrity of the safest banks in the world. When the interests of big powers clash, nobody can stop them from

[37] Wagner, *op.cit.,* p. 91.

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infringing the neutrality status. [38]

Summing the above-said, we would like to highlight that currently, an ideal neutrality model does not exist, and each state comes with its own formula, based on which it manages the relationships with other countries and international organisations. The fact that the neutral states' politics is not similar ensues from further examples: Austria has been a member of the Council Europe since 1956, while Switzerland refused to be part of the Council, rooting its refusal in its neutrality status. But, it became part of the organisation in 1963. Austria became a UN Member long before Switzerland, which at that time, refused to be part of the organisation due to its neutrality. Therefore, it is possible for a neutral state to share interests with other neutral states, while disregarding the others. Neutrality represents an international obligation assumed by each state, which contains standards and assets, and is shaped by every state within the regional framework of the political structure. This is the case of Austria, as it was mentioned in the Moscow Memorandum,[39] which strove to reconfigure its neutrality policy in line with the Swiss model. The above-mentioned in relation to the quality of CoE and UN Member proves that the implementation and the content of the

[38] Михаил, *op.cit.*.

[39] " Mémorandum sur le résultat des négociations entre les délégations du gouvernement autrichien et de l'Union soviétique," *CVCE*, 15 avril 1955, http://www.ena.lu/europe/1950-1956-formation-europe-communautaire/autrichien-union-sovietique-moscou-1955.htm. (Accessed April 15, 2016)

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neutrality policy do not accept rules that could be applied to every state to the same extent. [40]

Conclusions

Based on the above-mentioned, we would like to state that currently, Moldova goes through an incipient phase of permanent neutrality and namely – *passive neutrality*, a stage conditioned by the emergent character of the status. At present, it is necessary to set up the internal and external legal framework of permanent neutrality. We express our hopes that this period will not last for long and the second phase will begin, i.e. that of *active neutrality*, which will imply major efforts to peace and international security promotion, efforts which will lead to reaching the permanent neutrality peak – the *realistic foreign policy* – an ideal achieved by Austria in 1983.

As for the independent defence, when developing the draft concept of permanent neutrality of the Republic of Moldova, the example of Austria (prior to the constitutional amendment) could be used, which did not limited only to the military dimension, but also implied economic measures, for instance, the control of vital sources; civil protection, for example, asylums construction and psychological actions. The aim was to gain maximum credibility in relation to how determined and capable the state is in obtaining, preserving and protecting its territorial integrity, its political

[40] Wagner, *op.cit.,* p.40.

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independence and neutrality. We assume that when the neutrality of the Republic of Moldova enables the preservation of its independence and credibility, Moldova, along with other European states, will considerably contribute to the political stability of Europe.

And, to benefit from the credibility of the international community into the permanent neutrality status of the Republic of Moldova, it is necessary that the local population be aware of the material value of this concept. Neutrality shall become an essential part of the legal culture and of the national politics. Hence, it is essential to widely promote the idea that permanent neutrality of the state is a guarantee of the Republic of Moldova's welfare.

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