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**DREPT INTERNAȚIONAL PUBLIC
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МЕЖДУНАРОДНОЕ ПУБЛИЧНОЕ ПРАВО**

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LIGHT OF INTERNATIONAL PUBLIC LAW**

**ВОПРОС ПОСТОЯННОГО НЕЙТРАЛИТЕТА ТУРКМЕНИСТАНА В
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**PROBLEMA NEUTRALITĂȚII PERMANENTE A TURKMENISTANULUI ÎN
CONTEXTUL DREPTULUI INTERNAȚIONAL**

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ABSTRACT:

**THE QUESTION OF PERMANENT NEUTRALITY OF TURKMENISTAN IN THE LIGHT
OF INTERNATIONAL PUBLIC LAW**

The permanent neutrality of a state is an institution of public international law that embraces both treaty and customary norms. In the modern history it is related mainly to the case of Switzerland that was recognized as a permanent neutral in 1815. With the adoption of the UN Charter and the abolishment of the use of force some scholars argued that the permanent neutrality is obsolete. Despite that, only after the end of the ‘cold war’ growing interest to the permanent neutrality was expressed by various nations. This paper sheds a light on a less known case of Turkmenistan, a country that declared itself as permanent neutral in 1990s. Actually the country fulfils are requirements for being recognized as a neutral. Since it was not directly recognized by any state, and only two UN General Assembly resolutions called its members to do so, its status as a permanent neutral country is disputable. Overall, the paper concludes that one can assert that this country is not permanent neutral, nevertheless it may open a new possibility of obtaining this status through recognition by the international organization.

Key words: permanent neutrality, international security, permanent neutrality of Turkmenistan, Central Asia.

JEL Classification: K33, K12, F53

РЕЗЮМЕ:

**ВОПРОС ПОСТОЯННОГО НЕЙТРАЛИТЕТА ТУРКМЕНИСТАНА В КОНТЕКСТЕ
МЕЖДУНАРОДНОГО ПРАВА**

Постоянный нейтралитет государства является институтом международного права, регулируемым договорным и обычным правом. В современной истории он связан главным

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образом со Швейцарией, которая статус постоянно нейтральной приобрела в 1815 г. С принятием Статута ООН и запретом использования силы в международных отношениях появился тезис о “престарелости” данного института. Несмотря на это, с конца “холодной войны” разные страны стали проявлять к нему интерес.

В данной статье рассмотрен случай Туркменистана, который в 90-х гг. объявил о своем нейтралитете. В связи с тем, что декларация Туркменистана не была признана ни одним государством, зафиксирована только двумя резолюциями ГА ООН и местным законодательством, данный статус страны неоднозначный. В статье утверждается, что хотя на данный момент Туркменистан не является постоянно нейтральным, то его опыт открывает возможность приобретения такого статуса посредством признания со стороны международной организации.

Ключевые слова: постоянный нейтралитет, международная безопасность, постоянный нейтралитет Туркменистана, Центральная Азия.

JEL Classification: K33, K12, F53

УДК: 341.9, 341.924, 341.983.42

REZUMAT:

PROBLEMA NEUTRALITĂȚII PERMANENTE A TURKMENISTANULUI ÎN CONTEXTUL DREPTULUI INTERNAȚIONAL

Neutralitatea permanentă a unui stat este o instituție a dreptului internațional guvernată de tratat și dreptul cutumiar. În istoria modernă această instituție este asociată în principal cu Elveția, care a dobândit statut neutru permanent în 1815. Odată cu adoptarea Statutului ONU și interzicerea utilizării forței în relațiile internaționale, a apărut teza "bătrâneții" acestei instituții. În ciuda acestui fapt, de la sfârșitul Războiului Rece, diferite țări au început să-și manifeste interesul față de această instituție.

Acest articol examinează cazul Turkmenistanului, care și-a declarat neutralitatea în anii ' 90. Datorită faptului că declarația Turkmenistanului nu a fost recunoscută de nici un stat, stabilită doar prin două rezoluții ale AA a ONU și legislația locală, acest statut al țării este ambiguu. Articolul susține că, deși Turkmenistanul nu este permanent neutru în acest moment, experiența sa deschide posibilitatea dobândirii unui astfel de statut prin recunoașterea de către o organizație internațională.

Cuvinte-cheie: neutralitate permanentă, securitate internațională, neutralitatea permanentă a Turkmenistanului, Asia Centrală.

JEL Classification: K33, K12, F53

CZU: 341.9, 341.924, 341.983.42

1 Introduction

The question of permanent neutrality of a state only rarely attracts the interest of jurists and political scientists¹. The reasons for this state of affairs undoubtedly include the belief of some scholars in the “obsolescence” of permanent neutrality² and the small number of states currently having this status (Switzerland, Austria and Cambodia). It should be noted in this respect that permanent neutrality of a state as an institution of international law is not the same as a policy of neutrality or a policy of non-alignment. Permanent state neutrality is an institution of law, i.e. a set of norms defining rights and obligations, which has been present in international relations for many centuries; however, it acquired its contemporary meaning on the basis of the case of Switzerland, permanently neutral since the 1815 Congress of Vienna,

¹ I.S. Novaković, *Neutrality in the 21st Century. Lessons for Serbia*, ISAC Fund, Beograd 2013; A. Spring, *The International Law Concept of Neutrality in the 21st Century. An Analysis of Contemporary Neutrality with a Focus on Switzerland*, Zürich 2014; A. Burian, O. Dorul, *Permanent Neutrality of the Republic of Moldova in the Context of European Geopolitics*, “Tamkang Journal of International Affairs” 2016/07, no. 1(20), pp. 61-94; K. Wani, *Neutrality in International Law. From the Sixteenth century to 1945*, London-New York 2017; R. Czachor, *Stala neutralność państwa w prawie międzynarodowym publicznym*, Instytut Profesjonalnego Rozwoju, Wrocław 2021.

² L. Goetschel, “Neutrality, a Really Dead Concept?”, *Cooperation and Conflict* 1999, vol. 34, pp. 115-286; G.C. Petrochilos, *The relevance of the concepts of war and armed conflict to the law of neutrality*, *Vanderbilt Journal of Transnational Law* 1998, no. 38(3), pp. 575-616.

and on the basis of customary law. On the other hand a policy of neutrality and a policy of non-alignment are not regulated by international law and are merely a political declaration concerning the priorities in a country's international activity. The group of states pursuing a policy of neutrality without having the relevant status in international law is quite large (and includes Sweden, Finland, Ireland, Malta, Moldova, Costa Rica and Mongolia). In view of the above it seems important to verify the status of the Central Asian Republic of Turkmenistan as a permanently neutral state as declared by its government. The first thesis formulated in the article is that in the light of the legal nature of permanent neutrality, regulated mainly by the norms of customary international law, Turkmenistan does not have this status. The second thesis is that since the international law can "harden", Turkmenistan may acquire such a status, which would lead to the emergence of a new customary norm concerning permanent neutrality of a state.

2 The content of permanent neutrality of a state

From the beginning the purpose of state neutrality was to guarantee the security and non-involvement of the neutral entity in question in armed conflicts. This applied either to a specific conflict – in which case wartime neutrality was declared – or any other conflict that would happen in the future – in which case permanent (perpetual) neutrality was proclaimed.

The modern content of permanent state neutrality as an institution of public international law developed on the basis of the international agreement of 1815 concerning the recognition of permanent neutrality of Switzerland by all European powers at that time and on the basis of Switzerland's subsequent practice, i.e. customary norms of international law. The custom emerged from the Swiss government's consistent and uniform actions in its foreign policy, which was in line with the will of the so-called Concert of Powers of nineteenth-century Europe, and from a lack of any protest by third countries. As Switzerland was for a long time the only state with such a status (the cases of Belgium and Luxembourg, permanently neutral since 1831, are far less relevant), its practice in this respect is the basis for the claim that there exists a universal customary law of permanent state neutrality¹. It can, therefore, be concluded that customary norms regulating permanent state neutrality – norms that emerged as a result of Switzerland's practice – constitute the core of this neutrality. The basic components of permanent neutrality of a state as an institution of international law include the following obligations:

- a) to refrain from getting involved in armed conflicts and from any action likely to lead to such conflicts;
- b) not to participate in military alliances, not to make the country's territory available for foreign military bases to be located within it;
- c) to pursue a policy of neutrality, i.e. balanced political and economic relations with other, primary and secondary subjects of international law.

Other obligations associated with permanent neutrality, regulated in each case by treaties, should be regarded as going beyond the core of permanent neutrality and as having the value of *lex specialis*. Their contemporary scope can be found in acts of international law establishing permanent neutrality of Austria and Cambodia². It may include banning the possession of a certain type of weapons, reporting on the human rights situation and building the institutions of a democratic state. Today's development of the practice of permanently neutral states suggests that they may play an important role in peace-keeping and humanitarian activities, although

¹ M. Abbenhuis, *An Age of Neutrals: Great Power Politics 1815-1914*, Cambridge University Press, Cambridge 2014.

² State Treaty on the Rebuilding of an Independent and Democratic Austria), https://www.cvce.eu/en/obj/state_treaty_for_the_re_establishment_of_an_independent_and_democratic_austria_vienna_15_may_1955-en-5c586461-7528-4a74-92c3-d3eba73c2d7d.html; Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, www.usip.org/sites/default/files/file/resources/collections/peace_agreements/agree_comppol_10231991.pdf

such activities are not considered obligatory nowadays. The catalogue of obligations of permanently neutral states seems open and was defined individually in each case, wherever permanent neutrality was introduced. What is beyond doubt, however, is that it must not clash with the norms making up the core of permanent state neutrality.

Adopting the status of permanent neutrality may also lead to the entity concerned acquiring specific rights, as the recognition of permanent neutrality of a state by other states may be accompanied by guarantees of its observance, that is protection of this status and, more broadly, of national sovereignty, protection provided by the entities according to the recognition. Yet the guarantees are not the *sine qua non* of permanent neutrality. In view of the universal validity of the Charter of the United Nations (hereinafter: UN Charter)¹, which outlaws the use of armed force and threats to use it against other states, they somehow lose their original dimension and meaning. Today it does not seem possible that guarantors of permanent neutrality would resort to military coercion without the sanction of the UN Security Council. Any breach of neutrality is always – irrespective of whether any guarantees are in place – an act that makes the aggressor liable in line with the existing UN mechanisms.

3 Ways of acquiring permanent neutrality

Given the fact that there have been many cases in history of governments of various countries – guided by the political needs of the day – proclaiming permanent neutrality, it is necessary to define a legally effective way of acquiring the status of a permanently neutral state. Declarations of governments based solely on unilateral acts can be regarded as only statements of intent to pursue a policy of neutrality.

The acquisition of the status of a permanently neutral country implies the existence of certain facts concerning, in particular, the country's foreign and security policy, as well as related legal consequences. For permanent neutrality to arise, the following elements are necessary: a state pledging to pursue a policy of permanent neutrality, and a state or a group of states – more broadly, the international community – for which this policy has specific political and legal consequences.

The practice so far clearly shows that in order to speak of permanent neutrality of a state this neutrality must be explicitly or implicitly recognised by other entities. Thus its nature is constitutive. At present there is no evidence of the declaratory nature of permanent neutrality, i.e. possibility of neutrality being effectively acquired through a unilateral act of a state. The principles governing the recognition of permanent neutrality of a state are similar to the principles of the recognition of a state under international law. In line with the *ius cogens* norm of state sovereignty, states are not bound in any way in this respect. Consequently, there is no obligation to recognise permanent neutrality and, as a result, such an act is voluntary. Implicit recognition may give rise to doubts. It occurs *per facta concludentia*, but in the case of the recognition of permanent neutrality this option is really out of the question, because the absence of aggression or interference in the internal affairs of a state cannot – given the contents of Article 2 of the UN Charter – testify to an implicit recognition of permanent neutrality. In view of the above, the acquisition of the status of a permanently neutral state is possible:

- a) through a multilateral act of recognition, i.e. agreement of states interested in the existence of a state with such a status (the case of Switzerland and Cambodia);
- b) through unilateral acts of recognition which follow a unilateral declaration of a state interested in acquiring such a status (the case of Austria).

¹ The Charter of the United Nations, Statute of the International Court of Justice, https://popp.undp.org/_layouts/15/WopiFrame.aspx?sourcedoc=/UNDP_POPP_DOCUMENT_LIBRARY/Public/Charter%20of%20the%20United%20Nations.pdf&action=default&utm_source=EN&utm_medium=GSR&utm_content=US_UNDP_PaidSearch_Brand_English&utm_campaign=CENTRAL&c_src=CENTRAL&c_src2=GSR&gclid=EAIaIQobChMIsebb15DH8wIV6UeRBR34GgtsEAAYASAAEgKG1vD_BwE; Agreement establishing the Preparatory Commission of the United Nations, <https://ask.un.org/faq/43522>

It remains debatable whether a unilateral declaration of permanent neutrality not recognised by any state denotes the acquisition of such a status. Examples of such a situation include Turkmenistan (as well as Mongolia and Costa Rica) and this will be the focus of the following part of the article.

In the case of a multilateral agreement on the recognition of permanent neutrality of a given state, it is usually an element of peaceful conflict resolution, which should be considered in the context of spheres of influence and interests of powers. There are three known circumstances and variants of such an agreement.

The first is a treaty on the establishment of a new state which is obliged to maintain permanent neutrality. In this case its existence is inextricably linked to and dependent on its pursuit of a policy of permanent neutrality. Such a solution was applied in the case of Belgium in 1831¹.

The second, more common mechanism of the recognition of permanent neutrality is an international agreement or declaration in this matter concerning an already existing entity which has unilaterally declared permanent neutrality. Such a declaration should first of all become part of the domestic law of the country in question, that is become a binding legal instrument – and not, for example, only a political declaration – and stem from the country's own will. This variant was applied in the case of Laos. In 1962 the Laotian government proclaimed permanent neutrality. The content of this declaration was repeated *in extenso* in the Geneva Declaration of 23 July 1962² signed by fourteen states, including Laos. Thus, a piece of domestic legislation effectively became part of international law³.

The third possible variant of the recognition of permanent neutrality of a state is prior recognition, through a international declaration or agreement, before the state concerned has adopted a relevant act of national law. This is a solution applied in the case of Austria in 1955⁴.

There is no clear position among jurists regarding states that have unilaterally declared permanent neutrality, but have not achieved international recognition of this fact. Thus, while the constitutive nature of permanent neutrality does not raise any doubts, these do arise in the context of the admissibility of the declaratory nature of recognition. An example of a state that expressed its will to adopt the status of permanent neutrality but did not gain international recognition was Iceland. The Danish–Icelandic Act of Union of 1 December 1918 confirmed the rebirth of Iceland as an independent – though still in a personal union with Denmark – and neutral state. With the exception of Denmark, which was a party to the document, no other third country responded in any way to the proclamation of Iceland's permanent neutrality. In 1949 Iceland joined NATO, which effectively put an end to its policy of neutrality. In 1984 Costa Rica proclaimed “permanent, active and unarmed neutrality”, which could be viewed as another stage in the development of its foreign and security policy after it had given up its regular army in 1948. The Costa Rican declaration was notified to other states, but these – if responded at all – left aside the matter of recognising this status, limiting themselves to expressing their “sympathy” or “support”.

There is no doubt that international recognition is a prerequisite for acquiring the status of a permanently neutral state. In order to maintain definitional clarity and to avoid overusing and instrumentalising the category of permanent state neutrality, it seems reasonable that only those states which have obtained recognition of this status from other entities (states or international organisations) should be treated as permanently neutral states. States which have not had their

¹ A. Fuehr, *The Neutrality of Belgium*, New York-London 1915.

² Declaration on the Neutrality of Laos. Signed at Geneva on 25 July 1962, <https://treaties.un.org/doc/publication/unts/volume%20456/volume-456-i-6564-english.pdf>

³ Today Laos is no longer a permanently neutral state. During the civil war which resumed in the 1970s the King of Laos was overthrown and the existing political system was abandoned. Since 1975 Laos has been a socialist country.

⁴ J.L. Kunz, *Austria's Permanent Neutrality*, “American Journal of International Law” 1956, vol. 50, pp. 418-425.

permanent neutrality recognised by other states can be seen as, at best, pursuing a policy of neutrality and cannot be regarded as permanently neutral under international law¹.

4 The problem of legal regulation of Turkmenistan's permanent neutrality

The Republic of Turkmenistan emerged after the collapse of the Soviet Union. On 27 October 1991 the local parliament proclaimed the country's independence. Shortly after that, on 4 January 1992, it ratified the Agreement Establishing the Commonwealth of Independent States, although it never ratified its statute and, therefore, the country did not become a member of this integrating body *de jure*. The authorities of the republic also became party to the Tashkent Treaty, which was signed on 15 May 1992 and which became the basis for the establishment of the Collective Security Treaty Organisation, a political-military group of countries closely cooperating in this sphere with Russia. On 2 March 1992 Turkmenistan became a member of the United Nations, together with other former Soviet republics, including Kazakhstan and Uzbekistan. In view of the unstable international situation at the country's borders – civil war in Tajikistan and very tense situation in Afghanistan – the Turkmen government began to call for the country to be made permanently neutral, a move that would also justify the course it was taking towards self-isolation and the construction of a political system modelled on that of countries ruled by oriental despots. The call to be accorded the status of a permanently neutral state was expressed in public by the President of Turkmenistan Saparmurat Niyazov as early as in June 1992 at a summit of the Conference on Security and Cooperation in Europe. Niyazov repeated it on 14 March 1995 during a meeting of the presidents of member states of the Central Asian Organisation for Economic Cooperation in Islamabad. In point 12 of the Islamabad Declaration concluding the meeting Saparmurat Niyazov's declaration was welcomed and the participants expressed their readiness to give maximum support to the initiative. In addition, it was said that the capital city of Turkmenistan, Ashgabat, should be used as a place for international meetings and conferences².

In turn, the 11th Conference of Heads of State or Government of the Non-Aligned Movement, which took place on 18–20 October 1995 in Colombia and during which Turkmenistan was admitted as a member, adopted the Call from Colombia, Annex No. 3 of which contained a point (176) concerning Turkmenistan³. In it, the country was welcomed among the movement members, and support and full understanding were expressed in relation to Turkmenistan's commitment to play a constructive, peaceful role in providing stability and mutual understanding on the basis of the principles of positive neutrality. In addition, hope was expressed that Turkmenistan's initiatives would be supported by all UN members and the international community⁴.

As a result of the efforts of Turkmen diplomats, and with the support of about 25 states, the question of Turkmenistan's permanent neutrality was discussed during the 50th session of the General Assembly of the United Nations (UNGA). On 12 December 1995 the UNGA adopted –by consensus, that is, without a vote – Resolution no. 50/80, “Permanent neutrality of Turkmenistan”⁵. The resolution comprises an extensive preamble and two very short articles. In the preamble the UNGA welcomes the legislative confirmation by Turkmenistan of its status of permanent neutrality, as well as Turkmenistan's desire to play an active and positive role in

¹ P. Чахор, *Актуальность института постоянного нейтралитета государства в современном международном праве*, „Московский журнал международного права” 2021, no. 3, pp. 20-30.

² Islamabad Declaration, https://web.archive.org/web/20160912181303/http://www.ecosecretariat.org/ftproot/High_Level_Meetings/Summits/3rd_summit/ISLAMABAD%20DECLARATION.doc

³ 11th Summit Conference of Heads of State or Government of the Non-Aligned Movement, The Call from Colombia, http://cns.miis.edu/nam/documents/Official_Document/11th_Summit_FD_Cartagena_Declaration_1995_Whole.pdf

⁴ Ibidem.

⁵ Resolution of the UNGA A/RES/50/80A, Permanent neutrality of Turkmenistan, <https://undocs.org/en/A/RES/50/80>

developing peaceful relations with countries in the region, and expresses the hope that this status will contribute to the consolidation of peace and security. In addition, the UNGA recognises that the adoption by Turkmenistan of permanent neutrality does not affect the fulfilment of its obligations under the UN Charter and will contribute to the achievement of UN goals. In Article 1 the UNGA recognises and supports the status of permanent neutrality declared by Turkmenistan, and in Article 2 it calls upon its members to respect and support this status, and to respect Turkmenistan's independence, sovereignty and territorial integrity¹.

Turkmenistan's permanent neutrality was regulated in its domestic legislation by a constitutional act of the local parliament adopted on 27 December 1995². It defined a number of issues, which, according to the Turkmen legislator, were associated with permanent neutrality. Permanent neutrality is declared as the basis of the country's internal and foreign policy aimed at strengthening stability and social harmony, developing friendly and mutually beneficial relations with the countries of the region and the world (Article 1). The adoption of the status of a permanently neutral state does not interfere with the fulfilment of Turkmenistan's commitments imposed by the UN Charter. According to the law in question, Turkmenistan will use all means to contribute to the achievements of the UN goals and acknowledges the priority of the UN legislative acts (Article 2). In addition, Turkmenistan will pursue a peaceful foreign policy, and will shape its relations with other states on the basis of the principles of equality, mutual respect and non-interference in their internal affairs (Article 3). Turkmenistan will not participate in military blocs or alliances providing for collective responsibility of their members (Article 4). It pledges not to start wars or armed conflicts, not to take part in them (except in the exercise of its right of self-defence), and not to take political, diplomatic or other steps that could lead to a war or an armed conflict. In the event of aggression against Turkmenistan, the country reserves the right to seek assistance from other states or the UN (Article 5). Turkmenistan has also pledged not to possess, produce or proliferate nuclear, chemical, bacteriological and other weapons of mass destruction, and not to locate foreign military bases on its territory (Article 6). In addition, the Turkmen authorities are obliged to develop economic cooperation on the basis of equality and mutual benefit, treating it as an important instrument for increasing trust between states and regions as well as maintaining peace and stability (Article 7). Turkmenistan also provides access to its financial and economic system, cooperates with all states as well as international economic and financial organisations, and works with the international community to solve economic problems. It considers it unacceptable for one country to use economic pressure on another country as a tool to achieve political objectives, and does not take part in economic blockades (Article 8)³.

The constitution of Turkmenistan has also been amended – its Article 4 now states that Turkmenistan has the status of a permanently neutral country, confirmed by the UNGA resolution, which is the basis of its internal and foreign policy⁴.

What emerges from both documents is a very broad understanding of permanent neutrality, going beyond the issues of national and international security. The matter becomes clearer as we analyse official speeches by government members, and the Turkmen doctrine. This institution is – and was, especially during S. Niyazov's rule – used as an element of maintaining the status quo in internal politics, as well as a tool of state propaganda. Permanent neutrality of Turkmenistan is among measures employed to mobilise society: the day on which the UN resolution on the matter was adopted is a public holiday⁵.

¹ Ibidem.

² Конституционный закон Туркменистана от 27 декабря 1995 г. N99-1, www.base.spinform.ru

³ Ibidem.

⁴ Конституция Туркменистана 2003, www.turkmenistan.gov.tm

⁵ R. Czachor, *Postradzieckie reżimy polityczne w perspektywie neopatrymonialnej. Wstęp do badań*, Wrocław 2015, pp. 166-180.

In June 2015 the question of Turkmenistan's permanent neutrality was again discussed by the UNGA. The draft resolution A/69/L.70¹ was initiated by Turkmenistan as well as 33 other states including Austria, China, France, Iran, Japan, Poland, Uzbekistan and Italy. When presenting the draft, Turkmenistan's Permanent Representative to the UN, AksoltanAtayeva stressed the importance of permanent neutrality as an unchanging legal basis for the country's foreign policy over the previous 20 years and the compatibility of its goals with those of the UN Charter². On 3 December 2015 the UN GA adopted, again by consensus, without a vote, Resolution no. 69/285, "Permanent neutrality of Turkmenistan"³, on the basis of the draft. The document noted Turkmenistan's positive role in the ongoing peace processes in Tajikistan and Afghanistan as well as other international security initiatives, expressed support for Turkmenistan's permanent neutrality, reiterated its call on UN members to respect and support this status, and noted with satisfaction the declaration of Turkmenistan's authorities making 2015 the year of neutrality and peace. In 2016 Turkmenistan's constitution was amended with its Article 2 being thoroughly revised. It now proclaims that the country is permanently neutral and that this status is the basis of its internal and foreign policy; it cites two UN resolutions on the matter⁴.

Under these resolutions UN members are called – but not obliged – to respect and support Turkmenistan's neutrality. No state in the world has explicitly recognised Turkmenistan's status as a permanently neutral country. Although by adopting the resolution, the member states expressed their support for Turkmenistan's permanent neutrality, from the legal point of view any obligations arise only through recognition. Similarly, the constitutional norm whereby the President of Turkmenistan is a guarantor of the country's permanent neutrality (Article 50) seems not to convey the essence of the guarantee. It is not a state body but another subject of international law that can act as a guarantor of permanent neutrality.

At this point it seems relevant to refer to positions present in the Turkmen doctrine. It accepts and supports the position of Turkmenistan's authorities, stressing the unique status of the state as permanently neutral (of significance in this case is undoubtedly the country's extreme ideologisation of scholarship and absolute lack of pluralism). Above all, Turkmen jurists point out that the very fact of launching efforts to obtain the status of a permanently neutral country and obtaining this status is fundamental to its security, but is also a value in itself, a value shaping Turkmenistan's identity today⁵. They note the unique circumstances of the acquisition of this status by Turkmenistan, namely through international organisations: the United Nations, Non-Aligned Movement and Organisation for Economic Cooperation. They also stress its "positive" nature, understood as "constructive, assuming an active role of the state in matters of maintaining peace, stability and development of friendship and cooperation between countries"⁶. They even argue, in a rather unusual manner, that there exist guarantees of the respect for Turkmenistan's permanent neutrality (without, of course, specifying the scope of the obligations within these guarantees): "this guarantee is contained in the fulfilment by all UN members of their obligations towards Turkmenistan, in the unity of their actions to preserve and strengthen this status"⁷. This can hardly be accepted, as no legal instrument specifies what obligations the other members of the UN have towards Turkmenistan, obligations that would go beyond the norms of the UN Charter and derive directly from the status of a permanently neutral state. Moreover, the UNGA resolutions of 1995 and 2005 did not specify any actions that would have to be taken to support the permanent neutrality of this

¹ United Nations General Assembly Sixty-Ninth session, 92nd plenary meeting Official Records, <https://undocs.org/en/A/69/PV.92>

² Ibidem.

³ Resolution of the UNGA A/RES/69/285, Permanent neutrality of Turkmenistan, <http://undocs.org/A/RES/69/285>

⁴ Конституция Туркменистана 2016, www.turkmenistan.gov.tm

⁵ Е.А. Кепбанов, *Статус Туркменистана как постоянно нейтрального государства*, "Московский журнал международного права" 1998, no. 4, p. 35.

⁶ З. Агамамедова, *Нейтралитет Туркменистана*, "Международные процессы" 2003, no. 3, p. 47.

⁷ Ibidem.

Central Asian country. Some Turkmen jurists claim that the country cannot give up the status of permanent neutrality without the consent of all UN members, because the status “stems from an agreement, as it were, between Turkmenistan and the UN”¹. It is hard to accept such a view – no actual agreement regulating the issue was concluded between these entities, and the call, included in the UN resolutions, to respect Turkmenistan’s sovereignty, territorial integrity and permanent neutrality is not legally binding. Therefore, at the moment we cannot speak of any concrete obligations of the UN towards Turkmenistan. The country’s authorities have expressed the view that “the legal confirmation of Turkmenistan’s policy of neutrality in the form of UNGA resolutions and the adoption of a corresponding piece of domestic legislation provide a comprehensive guarantee of neutrality. The guarantee provided by the international community is that all UN members respect their commitments to Turkmenistan”². This cannot be accepted either, because any guarantees of permanent neutrality would make it obligatory for other entities to take specific actions when permanent neutrality has been breached. Criticism of such a position of the Turkmen authorities has been expressed by a Kazakh scholar³, which has not influenced official declarations of the country’s government, however.

5 The question of permanent neutrality of Turkmenistan in the light of the “hardening” of international public law

Notwithstanding the reservations indicated in the article and concerning the legal effect of the Turkmen government’s declaration of permanent neutrality, the recognition of this fact in the form of UNGA resolutions constitutes an important event relating to the permanent neutrality of a state as a legal institution in itself, especially in the case in question. As has been noted earlier, some scholars point out that thanks to the UN resolutions it is possible to speak in Turkmenistan’s case of a qualitatively new formula of neutrality guaranteed by the international community, that is members of the United Nations. The claim is not entirely groundless, if we take into account the concept of the “hardening” of international law and view the practice relating to Turkmenistan’s permanent neutrality from such a perspective. The country may eventually acquire the status of permanent neutrality as a result of the “hardening” of international law. The concept should be understood as a transformation of soft law norms, of non-binding acts – which include resolutions of international organisations and thus also resolutions of the UNGA – into binding norms of a dispositive nature (hard law).

The “hardening” of international law can take two forms. First of all, non-binding acts of international law may be transformed into binding instruments. Secondly, the “hardening” can concern specific norms included in non-binding acts but not these acts as in their entirety and under their original name⁴.

With regard to the case of the UNGA Resolutions 50/80 and 69/285 on the permanent neutrality of Turkmenistan, it is important to underline the manner of their adoption. Both resolutions were initiated by a broad circle of entities, including permanent members of the Security Council – France and China. They were adopted the UNGA without a vote, by consensus. Although such a mode was not explicitly defined in the Rules of Procedure of the UNGA, that is in document A/520, it is understood as “the absence of objection rather than a particular majority”⁵. This means that no UN member objected to the contents of the

¹ A.B. Кондаков, *К вопросу о гарантиях постоянного нейтралитета Туркменистана*, “Московский журнал международного права” 2001, no. 3, pp. 64-65.

² E.A. Кепбанов, *Статус Туркменистана*, pp. 35-47.

³ Ж.М. Аманжолов, *Туркменистан и его постоянный нейтралитет: международно-правовой статус современного государства*, “Государство и право” 2012, no. 6, pp. 90-98.

⁴ For more on this, see J. Barcik, *Techniki twardnienia prawa, czyli kilka uwag o technologii produkcji norm prawa międzynarodowego*, in: B. Kuźniak, M. Ingelevic-Citak (ed.), *Ius cogens, soft law. Dwa bieguny prawa międzynarodowego publicznego*, Kraków 2017, pp. 81-89.

⁵ See Note to the President of the General Assembly regarding voting procedures on a resolution related to the equitable representation on and increase in the membership of the Security Council, https://legal.un.org/unjuridicalyearbook/pdfs/english/by_chapter/chpVI/2005/chpVI.pdf

resolutions. Thus, no persistent objector emerged, if we were to assume that the contents of the two UNGA resolutions were the basis for the formation of a customary norm, and thus “hardening” of soft law, regarding Turkmenistan’s acquisition of permanent neutrality.

The long-standing and consistent practice of Turkmenistan’s government, as well as the attitude of other entities towards it, may be an argument in favour of the thesis that there has emerged a customary norm concerning the permanent neutrality of this state. This would be a new case of the acquisition of such a status without a treaty. However, it can be difficult to prove the existence of such a customary norm. The difficulties stem, first of all, from the overlapping scope of states’ commitments under the UN Charter as well as those relating to permanent neutrality. Their observance – in particular observance of the *ius cogens* norms concerning respect for state sovereignty, territorial integrity and non-interference in internal affairs – does not necessarily imply that third countries implicitly recognise Turkmenistan’s permanent neutrality. In this case it is impossible to conclude that their respect stems from implicit recognition of the permanent neutrality of Turkmenistan or only from the observance of the norms of the UN Charter.

Undoubtedly, the Turkmen authorities can take a number of political steps that will contribute to the formation of the norm of customary law in question. These would be steps which are taken by the governments of Switzerland and Austria as permanently neutral states, steps including commitment to peaceful resolution of armed conflicts, provision of mediation, hosting of peace conferences and provision of humanitarian aid. In some respects the Turkmen government is already undertaking such activities, declaring its willingness to be a mediator in regional conflicts and a responsible partner in international energy security¹.

6 Conclusion

The significance of permanent neutrality of a state is marginal in contemporary international public law. This is determined primarily by the universal application of the UN Charter. In addition, so far only three countries have acquired this status beyond doubt: Switzerland, Austria and Cambodia. The case of Turkmenistan does not fit in with the existing mode of acquiring this status. This does not prevent the government of Turkmenistan from claiming that the country has this status and from pursuing a policy that should be defined as one of neutrality. The current practice regarding Turkmenistan’s international policy and its confirmation in the form of resolutions of international organisations, including two UNGA resolutions, suggest that the country may acquire a permanently neutral status as a result of the “hardening” of soft international law. In this case the process would imply the formation of a customary norm determining Turkmenistan’s effective acquisition of the status of a permanently neutral state. At present, however, we can only speak of Turkmenistan’s permanent neutrality *in statu nascendi*, which nevertheless has a good chance for consolidation and emergence of a relevant norm of customary international law.

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¹ Resolution of the UNGA RES/67/263, Reliable and stable transit of energy and its role in ensuring sustainable development and international cooperation, <https://undocs.org/en/A/RES/67/263>

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