

## **THE PERMANENT NEUTRALITY OF STATES AND INTERNATIONAL RESTRICTIVE MEASURES**

**Olga DORUL, PhD, associate professor**

**Andrei NASTAS, PhD, associate professor**

“Dunarea de Jos” University of Galați (Romania)

Received on May 10, 2025

Accepted on May 30, 2025

### **Abstract**

The institution of state neutrality dates back to ancient times. Since then, neutrality has been influenced by the circumstances that have marked the evolution of international society. However, the fundamental obligations of permanently neutral states have always been recognized as abstention and impartiality. Abstention from any form of involvement in armed conflict and the non-discriminatory treatment of belligerents. While abstention has, to this day, had a well-defined legal content, with state practice being consistent on this matter, impartiality, in light of the new challenges to state security, has sparked heated debates among scholars.

The main goal of this scientific approach is to demonstrate the viability of the institution of permanent neutrality of states in light of recent events on the world stage. Neutrality, in the case of certain states, is not merely a political tool, but a legal status founded not only on the unilateral declaration of the state, but also guaranteed by the agreement of the states that undertake commitments to defend this status.

Contemporary international society aims to achieve the imperatives of international peace and security. These ideals can only be achieved through the collective efforts of all international actors, including the cooperation of permanently neutral states. As a case study in this article, we will analyze Switzerland's participation in the process of implementing international restrictive measures.

Your abstract should present your aims, methods, and findings (200 to 250 words). Please do not repeat paragraphs from the paper. Use Times New Roman 10, spacing: 1, justified.

**Keywords:** European Union, neutrality, sanctions, security, United Nations.

### **Introduction**

Originating in Ancient Greece, frequently invoked during the Middle Ages, and legally established in the modern period, permanent neutrality as a form of manifestation of a state's international legal personality has gained clear content and recognition as an inherent right of state sovereignty.

In the absence of official codification regarding the permanent neutrality of states, studies in the fields of constitutional law and public international law allow for the determination of the legal content of the neutrality status. Moreover, practice shows that each state opting for this status manages to approach neutrality in a unique manner, with the essential pillars remaining the legal obligations of abstention and impartiality.

In the contemporary world, marked by numerous armed conflicts and regional crises, permanently neutral states do not remain indifferent to issues related to peace and security. These states choose to develop friendly relations between states and to maintain international peace, security, and stability.

In these conditions, it becomes imperative to research the participation of states in international restrictive measures applied by international organizations against entities that violate imperative norms of international law.

## **Materials and methods**

### ***Materials***

The development of this study, particularly the section concerning the evolution and codification of the institution of permanent state neutrality, was inherently dictated by the need to examine inter-state agreements concluded in the context of the discussions held during the 19th century, as well as the works of legal scholars who addressed the historical circumstances that led to the adoption of international instruments containing provisions on permanent neutrality. This approach was essential for enabling a teleological interpretation of those instruments. Ultimately, in order to illustrate the theses advanced in this article, we also employed a case study involving the qualitative analysis of unilateral acts adopted by a permanently neutral state when participating in actions of the international community to enforce restrictive international measures.

### ***Methods***

In order to fully reveal the forms of participation of permanently neutral states in the implementation of international restrictive measures, we have relied on methodological research methods such as observation, comparative analysis, induction and deduction, and the analytical method. Additionally, staying faithful to the historical method, we aimed to present undisputed data that would allow for the formulation of conclusive opinions. After conducting extensive documentation work, we found it interesting to provide our opinion and present conclusions, which, in fact, can be drawn in a retrospective aspect.

## **Results and discussion**

### **The evolution of permanent neutrality in European states: a historical perspective**

On November 20, 1815, in Paris, the Declaration of the Powers recognizing and guaranteeing Switzerland's permanent neutrality and the inviolability of its territory was adopted. Based on this text, Austria, France, Great Britain, Portugal, Prussia, and Russia formally and authentically recognized Switzerland's permanent neutrality and guaranteed the integrity and inviolability of its territory within its new borders. The signatory Powers authentically acknowledge that Switzerland's neutrality, inviolability, and independence from any foreign influence are in the true interests of the entire European policy. They declare that no unfavorable inference regarding Switzerland's rights, in relation to its

neutrality and the inviolability of its territory, can or should be drawn from the events that led to the passage of allied troops over part of Swiss soil. The Powers recognized that Switzerland's conduct in testing circumstance showed that it was willing to make great sacrifices for the general good and in support of a cause defended by all the European Powers; and that finally, Switzerland was worthy of receiving the benefits assured to it, either by the provisions of the Congress of Vienna, or by the Treaty of Paris of this day, or by this act to which all the European Powers are invited to accede.

Later, through the Treaty of Peace at Versailles, the High Contracting Parties, while recognizing the guarantees stipulated by the Treaties of 1815, and especially by the Act of November 20, 1815, in favor of Switzerland, with these guarantees constituting international obligations for the maintenance of peace (art. 435).

In 1830, another European state obtained the recognition from the great powers of its permanent neutrality. Belgium's neutrality emerged as a new solution of those times, namely, the neutrality of a new state was guaranteed by Europe. (Fourgassié, 1902) In the opinion of Georges Fourgassié, Belgium's neutrality was determined within the context of the *système de la Barrière*, the reasons and occasion of its birth, its constitution, the negotiations that established and sustained it in the 18th century; its temporary downfall, and then, after Napoleon's fall, the formation of a new Barrier, and finally, after 1830, the recognition of Belgium's independence and neutrality under Europe's guarantee. These events, in their details and in their sequence, make up the entire history of the precedents of Belgium's neutrality. (Fourgassié 1902, p. 10) Even at that time, the idea of a buffer state was considered advantageous for the neutral state itself. In these circumstances, Talleyrand invented Belgian neutrality by imitating Swiss neutrality.

As a result of World War II, Belgium and Luxembourg renounced their permanent neutrality status and became founding members of the North Atlantic Treaty Organization. In the European space, Liechtenstein and Switzerland maintains its permanently neutral status, while another state - Austria, in accordance with the Soviet-Austrian Memorandum concluded in April 1955, committed to declaring its neutrality status similar to that of Switzerland. The status was established to secure the withdrawal of occupying troops from its territory. (Diaconu, 2002, p. 414) On May 15, 1955, the State Treaty regarding the restoration of an independent and democratic Austria was signed, which did not contain provisions regarding Austria's permanent neutrality status. However, on October 26, 1955, the Austrian Parliament adopted the Federal Constitutional Law on Austria's neutrality, which already established this status, with neutrality being recognized by the four major powers (England, France, the United States, and the Soviet Union) through an agreement concluded between them and Austria. By this law, Austria committed not to join any military alliance and not to accept military bases on its territory. Subsequently, the neutrality status was also recognized by other states. (Popescu, Năstase și Coman 1994, p. 66)

On August 1, 1975, through the adoption of the Final Act of the Conference on Security and Cooperation in Europe, the signatory states managed to regulate, in the context of sovereign equality and respect for the inherent rights of sovereignty, the right to belong or not to international organizations, to be or not to be a party to bilateral or multilateral treaties, including the right to be or not to be a party to alliance treaties; as well as the right to neutrality. In this way, the European legal order established the legal foundation of neutrality as an inherent right of state sovereignty.

The permanent neutrality of the Republic of Moldova, not being recognized and, even more so, guaranteed, has remained, for over 30 years, an ideal toward which the young state, emerged after the dissolution of the USSR, strives. The presence of Russian military troops on the left bank of the Dniester makes it impossible at the moment to implement this legal status.

### **The meaning of impartiality as an essential obligation of permanently neutral states.**

The fundamental obligation of a neutral state, as declared by practically all authors, drawing inspiration from the concept of occasional neutrality, is to maintain a strictly impartial attitude. Some authors have even argued that impartiality and neutrality are synonymous terms. However, we cannot accept this fact, neither from a historical nor a semantic perspective, because these two words have never meant the same thing. (Bacot, 1943, p. 54) In fact, during wartime, all neutral states are required not to participate directly or indirectly in a war, in other words, to adopt non-belligerence. More specifically, a neutral state must be cautious not to support in any way a belligerent state (the obligation of abstention), to defend its territorial integrity by all means (the obligation of defense and prevention), to tolerate certain actions by the belligerents, such as, for example, the inspection of neutral vessels at sea (the obligation of tolerance), as well as to treat other states equally and impartially, regardless of whether they are belligerent or not (the obligation of equal treatment or impartiality). (Lange 2006 p. 13-14)

However, due to their general nature, the obligations of a neutral state can be reduced to two essential ones: impartiality and abstention. It was Grotius who established two cardinal principles of neutral conduct, which he referred to as in bello medii: the neutral must not support the "unjust cause" in a war; if the neutral has doubts regarding which side's cause is just, the neutral will treat both sides equally.

Thus, Grotius achieved the first codification of the medieval theory of the "just war" (*jus ad bellum*). However, the points mentioned by Grotius lacked two important aspects of contemporary neutrality. First, there was no rule stating that the territory of a neutral state should be considered inviolable. Second, the link between the assistance provided by the neutral and the just cause raised the issue of who would determine which cause was just. As a result, neutrality remained subject to the interpretations made by the parties to each conflict. (Ross 1989, p. 4)

The modern notion of impartiality as a mandatory condition of neutrality was developed in the works of several positivist authors in the 18th century. Among these scholars was Samuel Pufendorf, whose theory stems from the same concept of "just war," and he also argued that granting neutral states the permission to decide which cause in a war is just is dangerous. A somewhat clearer interpretation was provided by Cornelius von Bynkershoek in his work *Quaestiones Juris Publici* (1737). He argued that neutral states were *non hostis*, meaning "on no side" in a conflict, and in this capacity, they must help both parties impartially. He also argued that a neutral state alone cannot determine the justice of the cause pursued in a war; at the same time, his formulation was inconsistent when he also acknowledged that a neutral state could refuse to allow the passage of troops from any belligerent whom it considered to be acting for an unjust cause. (Chang Hung Yeh, 1941, p. 5)

In this form, the principle of impartiality was enshrined in international law in the 18th century. The United States of America, in 1793, followed the doctrine of impartiality, thus

reaffirming the precedent set by the Italian states a few years earlier and by the members of the Armed Neutrality League in 1780. "This is an essential feature of neutrality: not to provide any assistance, unless it is expressly stipulated in a treaty, to one of the belligerents, when we are not prepared to provide equal assistance to the other belligerent," wrote President Jefferson on September 7, 1793. (Chang Hung Yeh, 1941, p. 14)

In 1899, F. Despagne defined a permanently neutral state as a state that, following an agreement made between it and other powers, has committed to never waging an offensive war (underlined by authors) and, in return, receives a collective or individual guarantee from the states that have recognized its situation, resulting from this commitment, that this situation will be respected by them by refraining from any attack against the neutralized country, or even that they will defend it against anyone who would seek to compromise it. (Despagne, 1899)

Subsequent practice and doctrine have reached the conclusion that the position of impartiality must be treated as total non-participation in war, which implies the obligation not to provide assistance to either of the belligerents. In this way, states that have no particular interests in an armed conflict tend to defend their own interests.

Today, based on the importance of this obligation, the principle has emerged in specialized literature: "There is no neutrality without impartiality" (Birch 1939, p. 37) in international law doctrine, two aspects of the obligation of impartiality are distinguished: active and passive. The passive aspect takes the form of a prohibition for the neutral state regarding the provision of support to one of the belligerents in any form that could harm the enemy; the neutral must be absolutely impartial towards both rivals. For example, the Hague Conventions do not prohibit the neutral state from trading arms and ammunition with belligerents, but when the neutral state decides for any reason to impose restrictions in this area, the restrictions must be applied with full reciprocity, without prejudicing or privileging any party. (Karsh, 1990, p. 24)

The active aspect of the obligation of impartiality entails the duty of the neutral state to prevent the use of its territory for military purposes by rival states. In this regard, the neutral state must prevent belligerents from transporting military forces and equipment through its territory, recruiting military personnel on its territory, etc. (Karsh, 1990, p. 24)

To conclude, the obligation of impartiality requires neutral states to treat all belligerents equally. Strict neutrality, whose remnants still exist from the XIX century, the "non-belligerence" theory, is unacceptable, as acts of goodwill towards one belligerent are necessarily followed by acts of ill will or disrespect towards another. Impartiality serves as an essential guarantee that neutral states will not compromise the interests at stake in a conflictual situation. (Androne, 2006, p. 8)

### **The participation of permanently neutral states in the implementation of international coercive measures established within the universal collective security system.**

Today, the UN Charter does not contain any provisions regarding the status of neutrality. Therefore, the absence of an express provision on this matter in the founding document of the organization with a universal mandate, and the need for a new conception of neutrality, has sparked numerous debates among scholars. Discussions on this topic have led some

authors to mention a third type of neutrality, in addition to complete and differentiated or qualified neutrality, which arises from the functioning of the UN. (Quoc Dinh, 1999, p. 944) Since collective security, organized by the United Nations Charter, involves the collective prevention of aggression, some Western authors, such as H. Kelsen, P. Potter, and H. Taubenfeld, have argued that neutrality would be incompatible with membership in the UN. Indeed, Article 2, paragraph 5 of the UN Charter establishes the obligation of all UN members to provide the organization with full assistance in actions undertaken by it, in accordance with the provisions of the Charter. Interpreting this provision, one could assert that the Charter abolished the institution of neutrality (Quoc Dinh, 1999, p. 944). Furthermore, during the proceedings of the San Francisco Conference in 1945, the representative of France proposed adding a provision to paragraph 5 of Article 2, which would state the incompatibility of neutrality with participation in the UN (Ганюшкин 1965, p. 211). However, later on, four of the five permanent members of the UN Security Council – the United Kingdom, France, the USSR, and the United States – abandoned this opinion, as they supported Austria's request to become a UN member despite its status of permanent neutrality.

When the United Nations decides to impose sanctions on states that violate the UN Charter, the issue of compatibility between the obligations arising from the status of permanent neutrality and the obligations resulting from UN membership must be clearly addressed. Thus, in public international law, the elements of punishment and education do not carry as pronounced a character as in domestic law, being closely linked to elements of moral condemnation. Without these, the respective legal system would not have been viable. The primary goal of all international law sanctions—prevention of violations—is reflected differently in the content of certain sanctions. Therefore, all the measures that form the content of international law sanctions, as reflected in international agreements, carry a character of imposition and represent a voluntary reaction of international legal subjects in response to unlawful conduct. These measures aim at preventing violations, eliminating consequences, and thus express a particular legal evaluation of unlawful conduct (Нешараева, 1992, p. 20-21). When assessing the role of UN system sanctions and the prospects for increasing their effectiveness, it must be emphasized that these sanctions, in any circumstances, are measures in response to violations of international legal order. Even in situations where the imposition of sanctions does not lead to the optimal desired result, they always affect the state that has violated international law norms and create a negative image of it as a member of the intergovernmental international organization or international society. Furthermore, UN system sanctions also have a preventive function. The mere possibility of their application disciplines states, forcing them to comply with statutory requirements and other international law norms. Considering these circumstances, we can assume that UN system sanctions can and must become a viable element of the universal collective security system. However, in order to achieve the desired outcome, the sanctioning mechanism of the UN system must be more coordinated and effective. (Нешараева, 1992, p. 97).

### **Switzerland's participation in the process of implementing international restrictive measures.**

In the context of the armed conflict in the Balkans in the late 2000s, Switzerland participated in the sanctions (compatible with its neutrality status) imposed by the European Union

against the Federal Republic of Yugoslavia. Thus, between April and June 1998, the Swiss Federal Council implemented sanctions including: prohibition of arms exports, prohibition of granting export credits, prohibition of exporting materials that could be used for repression, entry ban for ten Yugoslav leaders involved in the events in Kosovo, freezing of Serbian government assets, and halting investments. This list was extended in 1999. (*Sanctions contre la République fédérale de Yougoslavie*, 1999) In this context, it is interesting to examine the approach based on the obligations stemming from Switzerland's permanent neutrality regarding oil deliveries. Switzerland did not apply the ban on oil deliveries. Thus, no embargo was declared on the export and transit of oil and petroleum products to Yugoslavia. In any case, Switzerland no longer exports such products. However, contracts concerning the trade, brokerage, and transport of oil and petroleum products to Yugoslavia were subject to declaration. Contracts that were concluded but not yet fulfilled were also subject to declaration. If registered declarations or information from authorities revealed transactions carried out from Switzerland related to the trade, brokerage, and transport of oil and petroleum products to Yugoslavia that circumvented the sanctions, a ban on such transactions would be imposed. (*Sanctions contre la République fédérale de Yougoslavie* 1999)

The Federal Council issued the ordinance on June 23, 1999 (repealed in 2015) establishing measures against certain individuals from the former Federal Republic of Yugoslavia in response to the conflict in Kosovo and based on sanctions imposed by the EU. Initially, the ordinance provided for broad commercial and financial restrictions targeting the Federal Republic of Yugoslavia and the Republic of Serbia. Subsequently, the ordinance and its annexes were repeatedly adapted in line with political developments and to align with EU sanctions. Since the end of 2001, the ordinance only provided for the freezing of assets and financial transactions of thirteen individuals, including former President Slobodan Milosevic, members of his family, and close associates. The State Secretariat for Economic Affairs (SECO) received no declarations regarding the freezing of assets for these individuals. (*Mesures en lien avec la situation en Ukraine* 2025)

On February 28, 2022, the Federal Council decided to adopt the European Union (EU) sanctions against Russia in order to strengthen their impact.

On March 4, 2022, the Swiss Federal Council adopted the Ordinance on measures in relation to the situation in Ukraine, which imposes trade restrictions on the belligerents in the armed conflict between the Russian Federation and Ukraine, specifically concerning the sale, delivery, export, and transit of military equipment of all kinds, including weapons and ammunition, vehicles and military equipment, paramilitary equipment, as well as their accessories and spare parts, to the Russian Federation or Ukraine, or intended for use in these countries, which are prohibited. The ordinance also includes a restriction specifically targeting the Russian Federation: the purchase, acquisition, import, and transit of military equipment of all kinds, including weapons and ammunition, vehicles and military equipment, paramilitary equipment, as well as their accessories and spare parts, originating from or coming from the Russian Federation, is prohibited.

In this context, it is worth mentioning that the rules applicable to the sale, delivery, transportation, or transit of goods usable for civil and military purposes, goods intended for military and technological reinforcement or the development of the defense and security sector in the territory of Switzerland, entail a differentiated treatment, thus being absolutely

prohibited for the Russian Federation and largely subject to the authorization regime when they are intended for Ukraine or for use in Ukraine.

## Conclusions

From the findings of this scientific endeavor, we deduce that, both from a theoretical and practical perspective, permanent neutrality—when implemented in accordance with the fundamental principles of international law—effectively contributes to the maintenance of international peace and security. Moreover, for a permanently neutral state to fully and properly exercise its status, it must respect its obligations of abstention and impartiality in the context of armed conflict. At the same time, as a member of an international organization dedicated to preserving peace and security, a neutral state may participate in coercive measures adopted under the organization's mandate. According to contemporary legal scholars, such participation does not constitute involvement in warfare and therefore does not breach the fundamental obligation of abstention.

## References

- Androne, A. F. 2006. Țările neutre europene și politica externă și de securitate comună. Lucrare de disertație. Universitatea din București.
- Bacot, B. 1943. Des neutralités durables: origine, domaine et efficacité. Paris: Librairie du Recueil Sirey.
- Birr, G. 1939. Fortune et Infortune de la neutralité. Thèse pour le doctorat soutenue le 28 mars. Paris: Imprimerie Les Presses Modernes.
- Chang Hung Yeh. 1941. Déclaration de guerre et déclaration de neutralité. Leurs effets. Thèse pour le doctorat soutenue le 14 mars. Paris: Editions A. Pedone.
- Déclaration des Puissances portant reconnaissance et garantie de la neutralité perpétuelle de la Suisse et de l'inviolabilité de son territoire, Paris, le 20 novembre 1815. Available at: <https://mjp.univ-perp.fr/constit/ch1815n.htm> (04.01.2025).
- Despagnet, F. 1899. Cours de droit international public (2e édition complètement revue et mise au courant). Paris: Sirey, pp. 131–132.
- Diaconu, I. 2002. Tratat de drept internațional public, vol. I. București: Lumina Lex.
- Fourgassié, G. 1902. La Neutralité de la Belgique. Thèse pour le doctorat. Faculté de droit de l'Université de Paris. Paris: L. Larose.
- Ганюшкин, Б. В. 1965. Нейтралитет и неприсоединение. Москва: Международные отношения.
- Karsh, E. 1990. Neutrality and Small States. London, New York: Routledge.
- Lange, M. 2006. L'Autriche: un Etat neutre dans l'Union Européenne. Paris: L'Harmattan.
- Mesures à l'encontre de la Yougoslavie. Available at: [https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/sanktionsmassnahmen/massnahmen-gegenueber-jugoslawien.html](https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/sanktionsmassnahmen/massnahmen-gegenueber-jugoslawien.html) (04.01.2025).
- Mesures en lien avec la situation en Ukraine. Available at: [https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/sanktionsmassnahmen/massnahmen-zur-vermeidung-der-umgehung-internationaler-sanktionen.html#:~:text=Le%2028%20f%C3%A9vrier%202022%2C%20le,totale%20le%204%20mars%202022](https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/sanktionsmassnahmen/massnahmen-zur-vermeidung-der-umgehung-internationaler-sanktionen.html#:~:text=Le%2028%20f%C3%A9vrier%202022%2C%20le,totale%20le%204%20mars%202022) (04.01.2025).

- 
- Нешатаева, Т. 1992. Санкции системы ООН (международно-правовой аспект). Издательство Иркутского Университета.
- Ordonnance instituant des mesures en lien avec la situation en Ukraine du 4 mars 2022. Available at: <https://www.fedlex.admin.ch/eli/cc/2022/151/fr> (04.01.2025).
- Popescu, D., Năstase, A., Coman, F. 1994. Drept internațional public. București: Casa de editură „Șansa”.
- Quoc Dinh, N. 1999. Droit international public. Paris: L.G.D.J.
- Ross, J. F. L. 1989. Neutrality and International Sanctions. Sweden, Switzerland and Collective Security. New York, Connecticut, London: Praeger.
- Sanctions contre la République fédérale de Yougoslavie (19.05.1999). Available at: <https://www.admin.ch/cp/f/374aa440.0@fwsrvg.bfi.admin.ch.html> (04.01.2025).