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The Principle "Pacta Sunt Servanda" in the Relationship of the Russian Federation - Republic of Moldova

Svetlana CEBOTARI[1], Sergiu PLOP[2]

Abstract: In the literature, the relations between the Republic of Moldova and the Russian Federation were examined from a triple perspective: political-military, economic and socio-cultural. To the aspect regarding the observance of the provisions stipulated in the Moldovan-Russian inter-state treaties was practically not paid attention. This article provides a political and legal analysis of the relations between Russian Federation and the Republic of Moldova through the observance of the "pacta sunt servanda" principle, and provides an attempt to analyze the principle of observance of the obligations stipulated in the Moldovan-Russian interstate treaties.

Keywords: treaty, interstate relations "pacta sunt servanda", international law principle, provision, Republic of Moldova.

Relations between the Republic of Moldova and the Russian Federation have become the subject of numerous discussions both among the politicians and on the discussion tables of the academic community. In the literature, the Moldovan-Russian relations were examined from a triple perspective: political-military, economic and socio-cultural. To the aspect regarding the observance of the provisions stipulated in the Moldovan-Russian inter-state treaties was practically not paid attention. Thus, a first issue to be overlooked is the political-legal framework of Moldovan-Russian relations, in particular, the aspect of respecting the treaties signed between the Republic of Moldova and the Russian Federation. The attempt of such an analysis is justified by the need to highlight the main aspects of respecting or violating the obligations assumed by the signatory states of the Treaties, in the given case, those assumed by the Republic of Moldova and the Russian Federation.

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Over the years, in the practice of interstate relations, the „pacta sunt servanda" principle has been presented as a rule of international law. Initially as a non-coded rule, then found in Manu's old Indian laws, in Confucius' ideas, by the Greek philosophers, by the Cartagena Sobor from 438, and by the epoch code of the feudal knights, the Peace of Westphalia in 1648. This principle is also found in the London Declaration of 1871. The „pacta sunt servanda" principle has now become a norm of international law which regains its reflection in the United Nations Charter Preamble (Dic.acadamic.ru). The preamble of the UN Charter reflects the decision of the states, „to create conditions in which to respect the law and respect for the obligations deriving from the treaties or other sources of international law". The same provisions are also stipulated in 2nd paragraph of the Article 2 of the Charter by which are set out the obligations of the UN member states to exercise their obligations in good faith „in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter" (www.un.org).

"Pacta sunt servanda" principle is considered a fundamental one not only in the the law of treaties but also in the international relations in general. It is expressly enshrined in 26th article of the 1969 Vienna Convention, according to which "any treaty in force is binding for those who are parties to it and must be executed by them in good faith". Good faith is itself a legal principle and an integral part of the principle pacta sunt servanda (*Conventia de la Viena cu privire la dreptul tratatelor, 1969*).

Thus, the principle of free consent, good faith and norm pacta sunt servanda has gained international recognition. The same principle is enshrined in the Declaration regarding the Principles of International Law of 1970, and in the Helsinki Final Act of 1975. The essence of this principle lies in the fact that recognition of all states it's an universal rule, expressing the legal obligation of States and other legal subjects to execute the obligations stipulated in the UN Charter, which is based on the principles and norms recognized by international law and international treaties or other sources of international law.

The principle of the good faith execution of bonds serves as a criterion for the legality of the state's activity in international and state relations. The principle becomes a condition of stability, the effectiveness of international law, based on a common agreement between states. Through this principle, the subjects of international law receive the legal right to

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demand from other members of the community respect for the conditions and obligations stipulated in the treaties. This principle allows the limitation of illegal or prohibited activity, and becomes an imperative of the rule of international law. This principle prevents states from escaping from the execution of the treaties stipulated in the treaties expressing the interests of the international community, highlights the preventive function of the *jus cogens* norm. The principle of respecting in good faith the international obligations unifies the norms into a single site and becomes an integral part of it. If some rules of the co-genus can be replaced by others on the basis of interstate agreements, such replacement is impossible with reference to the principle that its cancellation would mean the abolition of international law. Serious violation of the principle of good faith of obligations is the inadmissibility of the refusal or unilateral indictment of the legal obligations assumed.

Returning to the analysis of the relations between the Republic of Moldova and the Russian Federation, especially the analysis of the provisions stipulated in the Moldovan-Russian inter-state treaties, there is a need to highlight the degree of compliance with the obligations assumed by the signatory states or the observance of the international law principle „pacta sunt servanda". As a result of the collapse of the USSR and as a result of independence, the Republic of Moldova obtained the declarative recognition of its sovereignty on the part of the Russian Federation on December 18th, 1991 (Gribincea, 1999, p. 3).

Over several years, Russia has declared that it will not ratify the interstate treaty until the issue of the special legal status of the alleged "state of the Transdniestrian Moldovan Republic" will not be resolved and until will not be clear defined the Russian speaker population rights, the problems of their language and culture . The Moscow authorities considered that ratifying the Treaty would automatically recognize Moldova's territorial integrity, which was a very important and expected step in the West. Moreover, in the case of ratification, the Transnistrian issue will become an internal issue of Moldova, and Russia will lose the opportunity to influence its solution, to defend the interests of the Russian-speaking population (Deutsch, 2006, pp. 19-21).

However, by signing in Moscow on November 19th, 2001, the issue of the Treaty of Friendship and Cooperation between the Republic of Moldova and the Russian Federation is resolved. Thus, according to the text of the Treaty, the Republic of Moldova and the Russian Federation, starting

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from the traditions of friendship, collaboration and good communication, are convinced that the further development and consolidation of friendship and strategic partnerships corresponds to the interests of the peoples of both states and contributes to welfare and their prosperity. The Moldovan-Russian Treaty serves the cause of strengthening international peace and security, confirming the states' attachment to the general human values: peace, freedom, democracy and social equity, respectation of fundamental human rights and freedoms. Taking into account the important political and economic transformations that have taken place lately in both countries and in Europe as a whole, it is possible to develop relations at a new quality level, as well as, the establishment of capable mechanisms of guaranteeing the security of all states at European level, the extension of interstate cooperation in various fields.

Reaffirming the attachment of both States to the aims and principles of the UN Charter, to the generally recognized principles and norms of international law, and to respecting the commitments made in accordance with the provisions of the Final Act of the Conference on Security and Cooperation in Europe, the Paris Charter for a Nine Europe, the Charter of European Security and other fundamental documents of the Organization for Security and Cooperation in Europe, and recognizing the principle of the supremacy of international law in relations between states, the process of political settlement of the Transnistrian problem in which the Russian Federation participates in the capacity of one of the mediators and guarantors, on the basis of respect for the sovereignty and territorial integrity of the Republic of Moldova, is firmly committed to promot bilateral relations in various fields (*Tratat de prietenie și cooperare între Republica Moldova și Federația Rusă*).

An important moment, stipulated in article 1 of the Treaty, is that states will develop their relations on the basis of mutual respect, trust and collaboration. The Republic of Moldova and the Russian Federation will observe the generally accepted principles and norms of international law: sovereign equality, non-use of force or threat of violence, inviolability of borders, territorial integrity, political independence, peaceful settlement of disputes, non-interference in internal affairs, the fundamental freedoms of population, equality of rights and the right of peoples to self-determination, cooperation between states and the fulfillment in good faith of the commitments assumed under international law (*Tratat de prietenie și cooperare între Republica Moldova și Federația Rusă*).

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Thus, according to article 2 of the document, the Parties will contribute to the development of international collaboration for the purpose of peace and stability in Europe, considering this as an important contribution to the cause of peace and general security. To this goal, the Republic of Moldova and the Russian Federation will contribute in all ways to the speedy regulation of local and regional conflicts based on respecting the UN Charter, the goals and principles set out in the Organization for Security and Cooperation in Europe documents, as well as international protection of fundamental human rights and freedoms.

Also noteworthy and the provisions of the Treaty that the Contracting Parties will continue to support international efforts in the future to disarm, control arms, and strengthen confidence and security in the military field. In this context, the provisions of article 3, through which the parties, being deeply interested in ensuring peace and security, will regularly hold consultations on important international issues, as well as, on issues related to bilateral relations. These consultations and exchange of views will include:

- international issues, including tension-causing situations in various parts of the world, especially in the Eastern European region, in order to contribute to promot international cooperation and strengthening international and regional security;
- cooperation issues within the Organization for Security and Cooperation in Europe, the Council of Europe and other European structures;
- issues that are the subject of multilateral negotiations, including those examined in international organizations and international conferences;
- issues concerning the extension and deepening of bilateral cooperation in the political, economic, legal, technical, scientific, ecological, cultural and humanitarian fields.

These consultations will take place at different levels, including in the meetings of senior state dignitaries of the Contracting States, as well as, during official delegations and special representatives visits.

Interstate relations are strengthened by signing cooperation agreements in areas of common interest. Starting from the premise that the signatory states are obliged to respect each other's provisions of the agreements, the treaties to which they are party, it is necessary to examine the degree of compliance with the provisions, the conditions set. In this context, it is necessary to be subject to the analysis and the degree of

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compliance with the provisions stipulated in the treaties signed between the Russian Federation and the Republic of Moldova. Both the Russian Federation and the Republic of Moldova will promote equal and mutually beneficial cooperation in the fields of politics, economy, commerce, defense, energy, environmental protection, science, technology, culture, health, humanitarian and other fields.

The Parties will sign separate agreements in these and other areas of mutual interest (Article 6) and will promote and expand bilateral economic relations on the basis of the principle of equality, mutual benefit and trust based partnership. The main directions of the interstate cooperation in the economic sphere will be the development and functioning of the goods, services, capital and labor market, the promotion of a coordinated policy in the field of fiscal, financial-credit, financial-valutary, commercial, customs and tariff, development of the transport network, energetical and informational (Article 7).

Thus, referring to the text of the Treaty of friendship and cooperation between the Russian Federation and the Republic of Moldova from 2001, according to article 5, each State shall abstain from any action that would cause prejudice to the other State, sovereignty, independence and territorial integrity. In this context, according to the provisions of the Treaty, the parties condemn separatism in all its forms of expression and undertake not to support separatist movements (*Tratat de prietenie şi cooperare între Republica Moldova şi Federaţia Rusă*).

The issue of the Russian military presence appeared from a political and legal point of view when the President of the Republic of Moldova, by Decree no. 234 from November 14th, 1992, according to which the weapons, ammunition, means of transport, military technique, military bases and other assets belonging to the military units of the Soviet Army deployed on the territory of the republic were declared property of the Republic of Moldova. On March 18th, 1992, the Decree No.73 issued by President Snegur stipulated that „in order to create the basis for the establishment of the Armed Forces of the Republic of Moldova", ex-Soviet military units deployed in Moldova were transferred under the jurisdiction of the Republic of Moldova and transmitted to the Ministry of Defense of the Republic Moldova „with all the equipment, weapons, buildings and other goods at the balance of military units".

Ignoring the decrees of President Mircea Snegur, on April 1st, 1992, Boris Eltin, President of the Russian Federation, issued the decree no. 220

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"Regarding on taking under jurisdiction of Russian Federation the former USSR Armed Forces Military Units which are temporarily on the territory of the Republic of Moldova". In Accordance with this decree, the "14th Guard Army, Formations, Military Units and Ex-Soviet Armed Forces institutions, located on the territory of the Republic of Moldova and not being part of its armed forces, were transferred under the jurisdiction of the Russian Federation and under the supreme command of Unified Armed Forces of the Comonwelth of the Independent States. The transfer of troops under the jurisdiction of the Russian Federation is explained by the following reasons: to maintain a stable leadership and to ensure the functioning of the troops, not to allow the involvement of troops in interethnic conflicts; to social protection of the soldiers and their family's members. Although the decree from April 1st, 1992 was an illegal and unfriendly act from the Russia part, the Moldovan leadership did not contest it. This is probably due to the fact that the decree was issued in a very tense period of Moldovan-Russian relations, one of its purposes being to not allow the involvement of troops in the conflict. There are a number of reasons to consider President Eltin's decree illegal. It is unanimously accepted that within the territory of a state the internal laws and the international law rules that the state has accepted by adhering to certain conventions, international treaties. President Yeltsin's decree, however, despite this unanimously accepted rule, extended to a territory that was not part of the Russian Federation, to organizations and wealth not belonging to Russia. Thus, taking into the above mentioned consideration, the decree from April 1st, 1992 can not be considered legal and, at the same time, the military equipment, armaments, ammunition and other assets of the ex-Soviet troops deployed on the territory of the Republic of Moldova at the date of issuing this decree belonged to Moldova, but Russia appropriated a wealth that did not belong to it (Gribincea, 1999, pp. 124-125).

The Transnistrian conflict reprezents only a geopolitical conflict. Talking about the geopolitical and geostrategic value of the conflict, Transnistria is a „Russian knife shot behind Ukraine", and it was a base of Russia for the Balkan „direction". Today, Russia enters the Balkans rather through Ukraine, or South Bessarabia is no longer part of the Republic of Moldova. The Transnistrian conflict is one of the basic problems of the Republic of Moldova. Even if, according to opinion polls, this dispute only occupies the eighth place in the hierarchy of the most pressing problems facing the Moldovan society, no political force, no government of the

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Republic of Moldova can afford to treat it as a matter of second plan. This is also understood by the Russian Federation, which, being involved in the initial stages of this conflict, manages very skillfully, arguing when official Chisinau, when the Tiraspol administration succeeds through the country's eastern zone to control the whole Moldova (*Europa Războiul hibrid al lui Putin amenință Moldova, avertizează Pentagonul și NATO,* 2015*).*

The Russian Federation's dual policy towards the Republic of Moldova can be seen in Russia's official documents. Thus, according to article 58 of Chapter IV, „Regional policy priorities of the Russian Federation". Russia actively decides to settle conflicts in the post-communist space, in particular contributing within the limits of the negotiation mechanism to the settlement of the Transnistrian conflict in the basis of respecting the sovereignty, territorial integrity and the status of neutrality of the Republic of Moldova. The Russian Federation is also in favor of maintaining the special status of Transnistria (*Conventia de la Viena cu privire la dreptul tratatelor,* 1969).

Referring to the international practices regarding the observance of the law of treaties concluded between signatory states, it is worth mentioning that the Russian Federation, in its relations with the Republic of Moldova, violates one of the main principles of international law – „pacta sunt servanda". The phrase has its origin from Latin and signifies the observance of treaties. Also, „pacta sunt servanda" is the key principle of international law underlying the whole system of relations between sovereign states.

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