ROMANIAN
JOURNAL OF INTERNATIONAL LAW

ISSN 2559 – 3846

Constitutional Landmarks and de lege ferenda Proposals on the Relationship between International Law and Domestic Law in Romania

Professor Dr. Bogdan AURESCU

Senior Lecturer Dr. Ion GÂLEA

RJIL No. 16/2016

Pages 20-35

ARTICOLE/ARTICLES

Constitutional Landmarks and *de lege ferenda* Proposals on the Relationship between International Law and Domestic Law in Romania[1]

*Professor Dr. Bogdan AURESCU**
*Senior Lecturer Dr. Ion GÂLEA***

Abstract: *An important part of a Constitution is represented by the relationship between international law and domestic law. The relevant provisions of the Constitution of Romania cover the status of international customs and treaties (depending on whether the latter regulate fundamental human rights or not), as well as the powers of the President concerning treaty conclusion. However, these constitutional provisions may require amendments in order to reflect the current trends in State practice, in order to avoid any divergent interpretations and ensuring respect for international law by all State authorities.*

Key-words: *Constitution; revision; primacy; monism; dualism; de lege ferenda; incorporation*

I. Introduction

The basis for fulfilling international obligations, according to international law, is good faith. Good faith is reflected in the well-known principle *pacta sunt servanda*,[2] considered the 'fundamental principle of the law of treaties',[3] even if it is, at the same time, a fundamental principle of international law as such. Given that the international legal system does not embody the existence of any compulsory

[1] This study has been presented during the International Conference "Interaction between Domestic Law and International Law: Challenges and Solutions", Chisinau, Republic of Moldova, 14 November 2014.

* *Bogdan Aurescu is Professor of Public International Law of the University of Bucharest. Member of the International Law Commission of the UN. President of the International Law Section of the Romanian Association of International Law and International Relations (the Romanian Branch of the International Law Association – London) and editor-in-chief of the Romanian Journal of International Law. He is also member of the Permanent Court of Arbitration, substitute member of the Venice Commission of the Council of Europe. Former Government Agent for the European Court of Human Rights (2003-2004), former Secretary of State for European Affairs (2004-2005), former Secretary of State for Strategic Affairs (2009-2010, 2012-2014), former Secretary of State for Global Affairs (2012) within the Ministry of Foreign Affairs, former Agent of Romania before the International Court of Justice in the Maritime Delimitation in the Black Sea case (2004-2009). Former Minister of Foreign Affairs of Romania (2014-2015). Currently, he is Presidential Advisor for Foreign Policy to the President of Romania.*The opinions expressed in this article are solely the author's and do not engage the institutions he belongs to.

** *Ion Gâlea is Senior Lecturer in Public International Law and International Organizations at the Faculty of Law of the University of Bucharest. Fotrmer director general for legal affairs (legal advisor) within the Ministry of Foreign Affairs of Romania. Currently, he is the Romanian Ambassador to the Republic of Bulgaria.* The opinions expressed in this paper solely the author's and do not engage the institutions he belongs to.

[2] The *pacta sunt servanda* principle is codified in: Article 26 of the 1969 Vienna Convention on the Law of Treaties; the Charter of the United Nations, Article 2(2); the UN General Assembly Declaration 2625 (XXV)/1970 on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, item 7; the principle was also recognised by the International Court of Justice in the *Case concerning rights of nationals of the United States of America in Morocco,* ICJ Reports, 1954, p. 212.

[3] 1966 Draft articles with commentaries, Yearbook of the International Law Commission, 1966, vol II, p. 211, para. (1).

jurisdictions or of any constraint mechanisms forcing States to perform international provisions, good faith remains the 'basic principle' governing the creation and performance of legal obligations, whatever their source.[4]

The effects of international law *within* a State's domestic legal system represent an essential part of the good faith observance of international legal provisions. In several situations, international law forces States to adopt a conduct which necessarily creates effects in their internal legal order. In all cases where individuals (or any private entities) are the addressees of international legal norms,[5] either by being granted rights or by being imposed obligations, a legal framework hasto exist within domestic law in order for those norms to be applied. At the same time, there are situations where even the commitment to international obligations of a strictlyexternal nature entails effects within the internal legal order to ensure their observance.From this perspective, the answer to whether international legal provisions have any effect within the national legal order is essential for the effective application thereof.

A hypothetical example may be represented by a bilateral treaty prohibiting the expropriation of the other Party's investors, without establishing an investor-State dispute settlement mechanism.[6] In the event that one State, in spite of the treaty provisions, expropriates the goods of one of the other Party's investors, the only jurisdiction that investor might have access to would be the national courts of the investment host State. Thus, the courts may act as liaison between the international legal order and the individuals' rights when State organs breach their duties. In such a situation, the national courts, which act completely independently and impartially, represent a link in the application of the rule of law at an international level.[7] An essential condition for the fulfilment of this role is represented by the effects of international law within domestic law.

The present paper aims at analysing the possible answers given by the Romanian constitutional system to questions such as: are international legal norms sources of domestic law, susceptible of being applied before a court of law? What would be the solution given by a national court in case of a conflict between international and national provisions? Furthermore, given that during 2013-2014 Romania witnessed a comprehensive project of constitutional revision, we consider utterly useful to draft several *de lege ferenda* proposals, able to improve the way Romania grants full effect within its domestic legal order to the provisions of international law.

The paper aims to discuss the relevance of the theoretical models which, undoubtedly, have made their mark upon the constitutional concepts regarding the relationship between international and national law (I), to (critically) analyse the current Romanian constitutional model (II) and to present *de lege ferenda* proposals in view of a constitutional revision (III).

II. The relevance of the theoretical models

II.1. The traditional dualism/monism distinction

[4] *Nuclear Tests* (New Zealand v. France), ICJ Reports, 1974, p. 473, para. 49.
[5] Ian Brownlie, *Principles of Public International Law,* 7th Ed., Oxford University Press, 2008, p. 519;
[6] Some examples can be mentioned in this sense: The Agreement between the Government of Romania and the Government of the People's Republic of China concerning the encouragement and mutual protection of investments, signed in Bucharest, on 12 July 1994, ratified by Law no. 8/1995, published in the Official Journal no. 7/17.01.1995 (the Agreement stipulates that a dispute between aninvestor and a State may be submitted to ICSID international arbitration 'if the parties to the dispute so agree', thus effectively granting a 'veto' right to the State Party to the dispute); The Agreement between the Government of the Socialist Republic of Romania and the Government of the Gabonese Republic concerning the encouragement, the promotion and the guarantee of investments, signed in Libreville, on 11 April 1979, ratified by Decree no. 418/1979, published in the Official Bulletin no. 97/08.12.1979.
[7] André Nollkaemper, *National Courts and the International Rule of Law,* Oxford University Press, 2012, p. 6.

The concepts regarding the relationship between international law and national law have traditionally been based on two known theoretical models: dualism and monism, the latter having the following varieties: monism with the primacy of international law and monism with the primacy of domestic law. The origin of these theoretical models can be traced to the understandings of the two legal systems: the international and the domestic one. However, the theoretical models certainly have important consequences over the wording of the constitutional provisions concerning the relationship between international and domestic law.[8]

According to the dualist doctrine, the differences between the two systems lie in their sources of law, the field of their regulated relations and the substance of the regulations.[9] The two legal orders are therefore completely separated, independent, without influencing each other.[10] Consequently, the most important element of the dualist theory is that the substance of international law does not allow it to be applied within domestic law *per se*. From a conceptual point of view, two conditions must be met in order for international law to become part of domestic law: i) the existence of the Statal authority's decision regarding the *legal reception* of the norms into that State's national law (the basis of applying international law is not its value, but the State's decision) and ii) the existence of a conversion of the legal provision, by means of a domestic statute restating the content of the international provision, but having the changed nature of a domestic one. This statute thus modifies the provision's formal value, its addressees and its character, in order to adapt it to the particularities of domestic law.[11] As a consequence, the essential character of the dualist theory is that the international legal provision does not apply within a State's domestic legal order as an international provision: it needs to be captured and transformed or adapted by a source of national law.

Monism is the ideology according to which the legal order is a singular one, including both international and domestic law. Arguments brought in its favour include: i) the object of the regulations refers essentially to the conduct of individuals, whether expressed in Statal form or not,[12] as both international and national law have the same purpose: the well-being of individuals as a value in itself;[13] ii) the essence of the provision is the same, both systems being an expression of the legal order;[14] iii) the basis of the domestic legal order can be traced to international law, which stipulates State sovereignty. Thus, international law is the one determining the limits of State jurisdiction. The internal legal order cannot exist without a superior legal provision, identified within international law as either the sovereign equality of States[15] or Hans Kelsen's 'Basic Norm' ('the States ought to behave as they have customarily behaved').[16] The main consequence of the monist theory is that international law applies *per se* within the domestic legal system, with no adaptation required. The primacy of the international law, in case of conflict with the domestic legal order, is ensured by the superior character of the international legal provision.[17]

---

[8] Ion Gâlea, *Analiză critică a normelor Constituţiei României referitoare la relaţia dintre dreptul internaţional şi dreptul intern*, The Annals of the University of Bucharest, no. I/2009, p. 22.

[9] Dionisio Anzilotti, *Cours de droit international*, Sirey, Paris, 1925, p. 62; H. Triepel, *Volkerrecht und Landesrecht*, 1899 ; H. Triepel, *Volkerrecht und Landesrecht*, Recueil des Cours de l'Academie de la Haye, vol. 1, 1923, p. 77-121.

[10] Ian Brownlie, *op. cit.*, p. 32.

[11] Dionisio Anzilotti, *op. cit.*, p. 63.

[12] Walz, *Das Wesen des Volkerrechts und Landesrechts*, Leipzig, 1968, p. 98.

[13] Hersch Lauterpacht, *International Human Rights*, Oxford, 1950, p. 29.

[14] Oppenheim, *International Law, A Treatise*, Longman, London, 1967, p. 47.

[15] Schwarzenberger, *Power Politics*, 2nd Ed., Oxford, 1951, p. 218-231; Wenzel, *Juristische Grundbegriffe*, 1920, p. 387.

[16] Hans Kelsen, *General Theory of Law and State*, London, 1945, p. 363.

[17] We point out that a number of authors, the representatives of the « Bonn School » – Kaufmann, *Volkerrecht und Landesrecht*, 1897, p. 69; Wenzel M., *op. cit.*, p. 20; Zonn, *Das Wesen des Volkerrechts*, 1891, p. 80 – have also argued for a monist theory with the primacy of domestic law, being based on the sovereignty of each State. We will not insist on this theory, as it is of few practical consequences.

II.2. The actual impact of the theoretical models. Practical trends

Do the 'monist' and 'dualist' models have any direct impact regarding the drafting of a State's Constitution in respect of the relationship between international and domestic law? Definitely, these models can influence the phrasing of a Constitution. For example, starting from the monist doctrine with the primacy ofinternational law, certain Constitutions of European States provide that, in the event of an inconsistency between treaties and domestic laws, treaties shall prevail.[18] Moreover, the theoretical models are important as they can assist in the process of interpretation of a constitutional system when there are no explicit provisions therein: for example, inmost common law systems customary international law is part of the domestic law on the basis of the incorporation doctrine, without the requirement of any 'reception', insofar as custom does not contravene any Acts of Parliament.[19]

The provisions of each Constitution must be analysed pragmatically through the perspective of the obtained result. Furthermore, a jurisprudential interpretation of the constitutional provisions – where the theoretical models may have a noteworthy influence – is essential in order to determine a general trend. As such, we believe all disagreements as to whether certain constitutional provisions reflect monism or dualism should be set aside,[20] as the analysis should necessarily focus on their actual effects.

However, we cannot ignore that, at international level, there are two trends established in State practice, trends which are not necessarily determined by the theoretical models, and yet may be 'influenced' by them. These trends or elements of State practice are developed from the idea that Public International Law does not impose a particular method of bringing domestic law in line with international law,[21] the only general duty States have being *to fulfil their international obligations in good faith*, backed by the impossibility of invoking municipal law as justification for the failure to perform international obligations.[22]

The first practice trend is that of 'automatic incorporation'. As such, a vast number of States adopt a domestic legal provision, most often a constitutional one, according to which the rules of international law are part of national law *without the requirement of any transposition or implementation legislation*. The mere existence of this constitutional norm ('reference provision') determines that international law is a part of domestic law and has effects before national courts.[23]

---

[18] Bulgaria (Article 5 (4)), Cyprus (Article 169.3), the Czech Republic (Article 10), Greece (Article 28 (1)), Estonia (Article 123), France (Article 55), Poland (Article 91 (2)), Croatia (Article 134), Germany (Article 25 – a particular case, referring to the general rules of international law, and not to treaties); other Constitutions include provisions with similar effects: Spain (Article 96), Slovenia (Article 153 (2)); see Ion Gâlea, Bogdan Biriş, Irina Munteanu, Radu Şerbănescu, *Aplicarea tratatelor în dreptul intern al statelor membre ale Uniunii Europene. Studiu comparat al prevederilor constituţionale relevante*, in Cezar Manda, Cristina Nicolescu, Crina-Ramona Rădulescu (eds.), *Probleme actuale ale spaţiului politico-juridic al UE*, Romanian Journal of European Law Supplement, 2013, p. 117.

[19] Ian Brownlie, *op. cit.*, p. 41.

[20] For example, regarding the solution set forth by the Romanian Constitution, there have been arguments about it reflecting the monist theory – Ion Gâlea, *Analiză critică a normelor Constituţiei României referitoare la relaţia dintre dreptul internaţional şi dreptul intern*, p. 24; for arguments in favour of Article 11(2) expressing the dualist doctrine: Ioan Muraru, Simina-Elena Tănăsescu, *Drept constituţional şi instituţii politice*, vol. I, Ch. Beck, 2011, p. 32.

[21] André Nollkaemper, *op. cit.*, p. 68-70; *Interpretation of the Statute of the Memel Territory* (United Kingdom v France), PCIJ, Ser A/B, no. 49, p. 336-337.

[22] Articles 26 and 27 of the 1969 Vienna Convention on the Law of Treaties; Ian Brownlie, *op. cit.*, p. 35; Oppenheim, *op. cit.*, p. 82-86.

[23] André Nollkaemper, *op. cit.*, p. 73-74: cites cases of constitutional and jurisprudential recognition in Benin (Article 147), Cape Verde (Article 11), China, Ivory Coast (Article 87), the Czech Republic (Article 10), the Dominican Republic (Article 3), Egypt (Article 151), Ethiopia (Article 9 (4)), France (Article 55), Japan, the Netherlands, Portugal (Article 8(2)), the Russian Federation (Article 15 (4)), Senegal (Article 91), Switzerland, Turkey (Article 90 (5)), the United States (Article VI); Ion Gâlea, Bogdan Biriş, Irina Munteanu, Radu Şerbănescu, *loc. cit.*, p. 116 – the following EU Member States

A second 'technique' used by States is the 'conversion' of the international duties into domestic law. In these cases, national courts may apply an international treaty only following the adoption of a municipal statute, even if an international legal provision – found within a treaty, for example – would be in force for that State.[24] An example in this sense is Ireland, where the national courts have only been able to apply the provisions of the European Convention of Human Rights from 2003 onwards, when the 'ECHR Act' was adopted incorporating the Conventional rights into the domestic system.

Starting from these trends, we propose a critical examination of the provisions of the Romanian Constitution, in order to identify the *de lege lata* solutions and to suggest new proposals for improvement.

III. A critical analysis of the provisions of the Romanian Constitution

III.1. The types of provisions

The Constitution of Romania may be analysed from the perspective of how it approaches the different sources of international law: particularly international customs and treaties. Moreover, the provisions regarding treaties may be classified taking into consideration their scope of regulation.

International custom is dealt with by the Constitution of Romania, in a general way, under Article 10.[25] Unlike other Constitutions[26], Article 10 does not represent an 'automatic incorporation' of international custom, as it only expressly refers to the application of 'principles and other generally recognised provisions of international law' into the domestic legal order. Insofar as international custom is concerned in Romania, we consider it has been incorporated into the national legal order through caselaw. The Supreme Court has directly applied customary international law provisions regarding, *e.g.*, State immunity, in order to declare actions brought against foreign States as inadmissible[27].

The Constitution of Romania deals with international treaties in Articles 11 and 20, regulating the legal status of *two categories of treaties*: i) the 'special' category, represented by the fundamental human rights treaties, the object of theconstitutional regime expressed by Article 20, and ii) treaties subject to the 'general status' regulated by Article 11.[28]

In addition, Article 91(1) is relevant to the general legal status of treaties, as it regulates the powers of the President of Romania in the field of treaty conclusion, as well as the Parliament's power to ratify treaties concluded on behalf of Romania

---

are mentioned: Bulgaria, the Czech Republic, Greece, Spain, Finland, Croatia, Hungary, Lithuania, Portugal, Poland, Romania.

[24] André Nollkaemper, *op. cit.*, p. 77, points to the following cases: Australia, Botswana, India, Israel, Italy (Article 10 of the Constitution referring exclusively to the norms of general international law, and not to treaties), Kenya, Malawi, Norway, Uganda, the United Kingdom, and Zambia.

[25] *Article 10 states: 'Romania fosters and develops peaceful relations with all the States and, in this context, good neighbourly relations, based on the principles and other generally recognised provisions of international law'.*

[26] The Basic Law of Germany states, in Article 25, that 'the general rules of international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory'; The Constitution of Italy states in Article 10 that 'the Italian legal system conforms to the generally recognised principles of international law'.

[27] In its Decision no. 1292/2003, pronounced in case no. 1781/2002, the Court analysed an action for the annulment of a decision given by the Local Court for the First District of Bucharest, which set aside the termination of an employment contract between a citizen and the Canadian Embassy. The Court noted: « A foreign State's jurisdictional immunity expresses the principle *par in parem non habet juridictionem*. In other words, there is no jurisdiction amongst equals. *This rule has been recognised by the domestic courts of various States that have applied it as customary in nature. » (emphasis added).*

[28] We note the present paper does not analyse the relationship between European Union law and domestic law – which is regulated by Article 148(2) of the Constitution of Romania.

III.2. The general legal status of treaties

Insofar as treaties are concerned, the Constitution of Romania adopts the 'automatic incorporation' method, provided in Article 11(2) thereof: '*Treaties ratified by Parliament, according to the law, are part of national law*'. Pursuant to this constitutional provision, the Romanian judge applies the treaty, as source of national legal order, and not the ratification law, without causing the international norm to lose its international legal character. The ratification law does not « transform » the international norm into domestic law; rather it represents the act expressing the consent of the Romanian State and causing the international legal provision to be brought within the national legal order.

An issue arises regarding the interpretation of the *scope of application* of Article 11(2). Can one accept the opinion according to which *only* the treaties subjected to Parliamentary ratification (and not the ones in respect of which consenthas been expressed through approval or signature, or those ratified by means of emergency Governmental Ordinances) are part of domestic law?[29] We consider that such an opinion would entail an unreasonable result. Article 11(2) must be broadly interpreted in the sense of referring to all the treaties Romania is a Party to.[30] In any event, 'subsidiary' to this, we may argue that *the legal basis for the automatic incorporation* of treaties, regardless of the manner of expressing consent, can be found *within the law*, in the provisions of Article 35 paragraphs (1) and (2) of Law no. 590/2003 on treaties.[31]

Such a solution, objectionable as it may be because the legal basis thereof is not found within a constitutional text, but rather within a law, would still be able to « cover » the legal gaps resulting from a narrow reading of Article 11(2). In any event, the mere fact of having to interpret this text draws attention to the necessity of drafting *de lege ferenda* proposals, in order to regulate « the treaties in force » – regardless of the way of expressing consent.

One of the most difficult issues is resolving a potential conflict between the provisions of a treaty and those of municipal law. The constitutional text offers two possible solutions: i) it may be inferred that treaties have a legal power equal to that of a law; arguments in this sense may be drawn from a *per a contrario* interpretation of Article 20(2) which offers precedence only to fundamental human rights treaties, as well as from the fact that, since treaties are ratified *through laws*, there is a presumption the treaty gains the same legal value as the ratification act;[32] ii) it may be inferred that, in the event of an inconsistency, treaties prevail over municipal law irrespective of their area of regulation and irrespective of the domestic law being anterior or posterior thereto, the solution being constitutionally based on the provisions of Article 11(1): '*The Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to'.*

We contend the second interpretation is the correct one. Accepting the first one may lead, in the hypothetical event there is a contradiction between a treaty provision and a *subsequent* municipal law, to the treaty being left void of any effects within domestic law. Such a solution would not be in accordance with the general

---

[29] Opinion expressed by Ioan Muraru, Simina-Elena Tănăsescu, *op. cit.*, p. 32.

[30] Arguments in this sense might be the following: the first paragraph of Article 11 refers to the treaties Romania is a party to, without any distinction; secondly, it is noted Article 146(b) of the Constitution grants the Constitutional Court the power to adjudicate on the constitutionality of all treaties, irrespective of the manner of expressing consent – see Gheorghe Iancu, *Drept constituţional şi instituţii politice*, CH Beck 2011, p. 22.

[31] Published in the Official Journal, Part I, no. 23 of 12/01/2004. We hereby include the respective texts, because of their importance: '(1) The obligations provided by the treaties in force shall be fulfilled as such and in good faith. (2) The application and observance of the provisions of treaties in force represents a duty for all the authorities of the Romanian State, including the judiciary, as well as for all Romanian natural and legal persons or for those located on the territory of Romania'.

[32] Ioan Muraru, Simina Elena Tănăsescu, *op. cit.*, p. 33.

international law principle of *pacta sunt servanda* and would entail the Romanian State's international legal responsibility.

Several legal arguments can be brought in favour of the second opinion, that of an implicit primacy of international treaties, regardless of their object: i) Article 31(2) of Law no. 590/2003 stating that *'the application and observance of treaties in force represents a duty for all the authorities of the Romanian State, including the judiciary, as well as for all Romanian natural and legal persons or those located onthe territory of Romania';*[33] *ii)* Article 31(4) of Law no. 590/2003 stating that *'the provisions of treaties in force may not be modified, amended or repealed by means of domestic laws subsequent to their entry into force'; iii)* Article 31(5) of Law no. 590/2003 stating that *'internal legal provisions may not be invoked as justification for the failure to perform a treaty in force'; iv)* Article 21 of Law no. 24/2000 concerning legislative technique norms for legislation drafting, stating*: '(1) The legislative solutions envisioned by the new regulation must take into account the relevant European Union regulations, ensuring their compatibility thereto. (2) The provisionsof paragraph (1) also apply, respectively, concerning the provisions of the international treaties Romania is a party to.'*[34]

The issue with these provisions, which, in any event, only apply the international law principle *pacta sunt servanda*, lies in the fact they are of a legal (statutary) character, and not of a constitutional one. As such, an inconsistent subsequent law might not be set aside for the reason of breaching the (legal as well) provisions mentioned above.[35] For this reason, we consider the value of these legal provisions is the fact they may represent an interpretation, a development of Article 11(1) of the Constitution. In effect, to 'fulfil as such and in good faith the treaties' (as provided by Article 11(1) of the Constitution) means not to modify their effect or not to leave a treaty void of any effects through legal provisions to the contrary (Article 31(4) of Law no. 590/2003).

The possibility of a jurisprudential interpretation of the primacy of international law, even in the absence of an explicit constitutional provision, has been accepted in other legal systems. For example, the Constitutional Court of Latvia set aside a 1998 law (The Code of Administrative Penalties) containing provisions contrary to the Convention on Facilitation of International Maritime Traffic, adopted atLondon on 9 April 1965 (in force for Latvia since 1997), on the basis of the State's international duty to observe its international obligations in good faith, even if the Constitution did not have any express provision regulating the primacy of treaties over domestic law.[36]

Consequently, pursuant to Article 11(1) of the Constitution, we consider the Constitutional Court may declare the unconstitutionality of a law contradicting an

[33] It would have been desirable for Article 11 of the Constitution to provide that international treaties create rights and duties for individuals. However, the caselaw of the Supreme Court has noted this fact, which results implicitly from an interpretation of Article 11: The High Court decided that '*The international treaties ratified by the Parliament of Romania are an integral part of the domestic law, according to Article 11 of the Constitution of Romania, and they are thus also applicable to Romanian natural and legal persons.*' – Decision no. 331/2014, case no. 24165/3/2011, issued publicly on 31 January 2014.

[34] For a commentary on Article 31 of Law no. 590/2003 concerning treaties, see Irina Niţă, Bogdan Aurescu, *Comentariul Legii nr. 590/2003 privind tratatele (continuare – art. 25-34),* Romanian Journal of International Law, no. 3 – July-December 2006, p. 219-222.

[35] In the Decision of the Constitutional Court no. 47/25.04.1996, published in the Official Journal no. 293/19.11.1996, the Constitutional Court stated the following, in relation with an alleged breach of Law no. 4/1991 (the law concerning the conclusion and ratification of treaties, repealed by Law no. 590/2003): '*in any event, that particular law, not having a constitutional character, may not be opposed to the lawmaker who, as a principle, has the power to derogate at any time it adopts a new law from the provisions of another one'*; see also the Decision of the Constitutional Court no. 94/1996concerning the recourse declared by Panaitescu Edmond against the Decision of the Constitutional Court no. 47 of 25 April 1996.

[36] Linija v Latvia, Judgment of the Constitutional Court of the Republic of Latvia on a request for constitutional review, Case No 2004-01-06, Latvian Herald, No 108, 3056, ILDC 189 (LV 2004), 7th July 2004 – available at http://opil.ouplaw.com/view/10.1093/law:ildc/189lv04.case.1/law-ildc-189lv04?rskey=zFoToi&result=5&prd=ORIL (subscriber), accessed 3 November 2014.

international treaty even if, hypothetically, that law would be subsequent.[37] The idea is confirmed by recent constitutional caselaw: in its Decision no. 2/2014,[38] the Constitutional Court relied on the United Nations Convention against Corruption[39] and on the Criminal Law Convention on Corruption[40] in order to declare the unconstitutionality of the provisions of the Law for amending the Criminal Code, provisions that would have narrowed down the scope of application for some acts of corruption. In this sense, the Court ruled:

'the privileged legal status granted to persons occupying the elected offices excepted from the scope of Article 147 of the current Criminal code and Article 175 of the new Criminal code also contradicts the provisions of Article 11(1) of the Constitution, according to which *'The Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to.'* As such, by ratifying or acceding to the above-mentioned international conventions, the Romanian State has assumed the duty to respect and transpose as such the international provisions into its domestic law, *i.e.* the duty to criminalise the active and passive corruption of the persons falling under the notions of '*public agent'/'member of the national public assemblies'/'national civil servant'/'public officer',* notions corresponding to the Romanian criminal law concepts of *'public civil servant'/'civil servant'*.'

Regarding the general legal status of treaties, the 2003 constitutional revision introduced the filter of an *ex ante* review by the Constitutional Court. By following the model of Article 54 of the Constitution of the French Republic, Article 11(3) was introduced, which states: *'If a treaty Romania is to become a party to compriseprovisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution*.' This text does not entail a superiority of treaties over the Constitution; it just ensures the application of a filter, a review before the ratification,in order to prevent a potential conflict between the treaty and the Constitution.[41] Indeed, this review is performed by the Constitutional Court pursuant to Article 146(b).[42]

III.3. The provisions concerning the powers of the President of Romania

A constitutional provision relevant for the general legal status of treaties is Article 91(1) of the Constitution, which states that '*The President shall, in the name of Romania, conclude international treaties negotiated by the Government, and thensubmit them to the Parliament for ratification, within a reasonable time limit. The other treaties and international agreements shall be concluded, approved, or ratified according to the procedure set up by law*'.

[37] In its Decision no. 180/2000 of 10.10.2000, published in the Official Journal no. 642/08.12.2000, the Court analysed the application of a treaty in a field other than human rights, *i.e.* the Convention between the Government of Romania and the Government of the Republic of Korea for the avoidanceof double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,ratified by the Parliament of Romania through Law no. 18/1994, from the perspective of Article 11(1)of the Constitution, but, by interpreting the Convention, reached the conclusion the provisions of the contested law were not contrary to the Convention. Therefore, the Court accepted to examine the merits of the relationship between the law and the treaty.

[38] Decision no. 2 of 15 January 2014 regarding the unconstitutionality objection of Art.I pt.5 and Art.II pt.3 of the Law amending and supplementing certain normative acts and of the single Article ofthe Law amending Article 253[1] of the Criminal code, Published in the Official Journal no.71 of 29.01.2014.

[39] Adopted at New York on 31 October 2003, ratified by Romania by Law no. 365/2004, published in the Official Journal of Romania, Part I, no. 903 of 5 October 2004.

[40] Adopted by the Council of Europe on 27 January 1999, at Strasbourg, ratified by Romania through Law no. 27/2002, published in the Official Journal of Romania, Part I, no. 65 of 30 January 2002.

[41] Ioan Muraru, Simina Elena Tănăsescu, *op. cit.*, p. 33.

[42] Without detailing too much, we note that the proposal of amending the Constitution of Romania submitted to the Constitutional Court on 7 February 2014 discussed the amendment of Article 146(b), in order for the Court to be able to perform its review both *ex ante* and *ex officio*. We consider the *ex officio* review of the constitutionality of an international treaty may create supplementary difficulties. Besides, in its Decision no. 80/2014, published in the Official Journal, Part I, no. 246 of 07.04.2014, the Constitutional Court itself unanimously requested the rephrasing of Article 146(b).

Some explanations are required regarding the notion of 'treaties concluded in the name of Romania', related to 'the other treaties and international agreements'. The provision represents the constitutional basis for a *classification* of treaties, detailed by the special law: State-level treaties, Government-level treaties and department-level treaties.[43] As such, the Parliament's duty to ratify State treaties is a constitutional one, even if it also derives from Article 19(1)(a) and (3) of Law no. 590/2003 concerning treaties.

We stress that this classification only has effects within domestic law, and not within international law. Only the State is a subject of international law, therefore, irrespective of the 'level' the treaty is concluded at, it imposes duties upon the State, as subject of international law. Anthony Aust shows 'there is no difference in international law between treaties concluded on behalf of the State and those concludedon behalf of Governments, Ministries or agencies, because a treaty concluded by a Government, a Ministry or an agency obliges the State'.[44] Indeed, this classification appeared as a consequence of the State practice to conclude treaties having as 'parties' States, Governments or Ministries. Therefore, although in practice the importance ofthe area regulated by a treaty may influence the parties' decision upon choosing the 'level' of its conclusion, the option between a Statal, Governmental or (less often) departmental treaty is a strictly formal one (covering the manner of drafting the title, the preamble and the final clauses).

The issues raised by Article 91(1) relate to the phrasing according to which the President of Romania 'concludes' a treaty. The notion may entail certain difficulties, being mentioned in the very definition of a treaty offered by the 1969 Vienna Convention on the Law of Treaties ('*international agreement concluded between States*'). At a first glance, one might be tempted to consider the 'conclusion' of a treaty equivalent to the signing thereof, opinion expressed by the first Rapporteur of the International Law Commission, James Brierly.[45] However, the conclusion of a treaty must correctly be seen as comprised of a series of steps and procedures leading to a treaty 'coming into existence', *i.e.* becoming binding.[46] A treaty is 'concluded' when it enters into force. For this reason, the phrasing according to which the President concludes treaties does not appear to be strictly correct, taking into account that *consent is expressed* by Parliament, through a law. (It is true that, in the international legal order, the ratification is materialised through the deposit of an *instrument of ratification* with a depositary or through an exchange of instruments.[47] In Romania, the instruments of ratification are signed by the President[48] and countersigned by the Minister of Foreign Affairs. However, it is not always that the treaties subject to ratification also entail a deposit or an exchange of instruments of ratification. Most often, in the case of bilateral treaties, the fulfilment of the ratification procedure is notified by means of a diplomatic note issued by the Ministry of Foreign Affairs.) [49]

The term of 'conclusion' also creates difficulties regarding the second part of Article 91(1). As the 'conclusion' of a treaty implies a series of steps finalised with the entry into force of said treaty, the usage of the term associated with *only two* ways of expressing consent (ratification and approval) seems inadequate.[50] Also, the text seems

[43] The classification is developed by Article 1(1) and Article 2 of Law no. 590/2003 concerning treaties.
[44] Anthony Aust, *Modern Law and Treaty Practice*, Oxford University Press, 2009, p. 58; Oppenheim, *op. cit.*, p. 346-348.
[45] Second Report of the Special Rapporteur J. Brierly, A/CN.4/43, Yearbook of the International Law Commission, 1951, vol. II, p. 70.
[46] Mark E. Villiger, *Commentary to the Vienna Convention on the Law of Treaties*, Martinus Nijhoff, 2009, p. 78.
[47] Anthony Aust, *op. cit.*, p. 103.
[48] Article 25(4) of Law 590/2003 concerning treaties; Irina Niță, Bogdan Aurescu, *loc. cit.*, p. 209;
[49] Article 25(2) and (3) of Law 590/2003 concerning treaties; Irina Niță, Bogdan Aurescu, *loc.cit.*, p. 208 – for examples of clauses regarding the entry into force.
[50] In general international law, the ways of expressing consent are ratification, approval, accession, acceptance, signing, exchange of instruments (notes, letters).

to use this term as referring to the signature, which is only one phase in the conclusion of the treaty. Consequently, one might feel the need for proposals to improve the text.

III.4. Fundamental human rights treaties

The Constitution of Romania provides for two rules regarding fundamental human rights treaties: the rule of consistent interpretation (Article 20(1)) and the rule of primacy of international law over domestic law in the field of human rights (Article 20(2)).[51] Paragraph (1) stipulates the mandatory interpretation of the constitutional provisions in accordance with the Universal Declaration of Human Rights and the relevant international treaties Romania is a party to. We believe the most important provision is that of paragraph (2), which states: *'Where any inconsistencies existbetween the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions'*. We shall not insist on this provision, which we consider clear and welcome.

When the Constitution was amended in 2003, the text of Article 20(2) was supplemented with the phrase '*unless the Constitution or national laws comprise more favourable provisions*'. We consider the added value of this provision is minimal from the perspective of our discussion. It is very possible national laws might contain more favourable provisions, though these would not generate any 'inconsistencies' with international law insofar as human rights are concerned. In the field of human rights, international law provides for the duty of States to grant *a minimum level of protection*. A higher level of human rights protection within domestic law will never generate any 'inconsistencies' with international law.[52]

IV. *De lege ferenda* proposals

IV.1. The context of and the approach towards the *de lege ferenda* proposals

The drafting of *de lege ferenda* proposals must take into account the context of the constitutional amendment process they are presented in. Such a process started in 2012, as a consequence of, *inter alia*, the recommendations of the Venice Commision expressed in opinion no. 685/17 December 2012.[53] Parliament Decision no. 17/2013 created the *Common Commission of the Chamber of Deputies and of the Senate for the development of the draft law amending the Constitution of Romania*, whose structure

[51] We hereby include the provisions of Article 20(2): *'Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions'*. The text has been interpreted by the High Court as expressing 'the principle of primacy of international law over domestic law insofar as human rights are concerned' – Decision no. 1011/2012, case 2496/115/2010, issued publicly on 16 February 2012.

[52] Some relevant provisions of related international treaties may be: The European Convention on Human Rights, whose Article 53 states: 'Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party […]'; The Framework Convention for the Protection of National Minorities states in Article 22: 'Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party […]'.

[53] Opinion no. 685/17 December 2012 on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency Ordinance on amendment to the Law No. 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency Ordinance on amending and completing the Law No. 3/2000 regarding the organisation of a referendum of Romania, Adopted by the Venice Commission at its 93rd Plenary Session (Venice, 14-15 December 2012), para. 77-82.

was modified through later decisions (24/2013,[54] 35/2013[55] and 49/2013[56]). On 4 February 2014, the *Common Commission of the Chamber of Deputies and of the Senate for the development of the draft law amending the Constitution of Romania* completed the text of the revisional draft law, which was submitted to the Constitutional Court pursuant to the provisions of the second phrase of Article 146(a)of the Constitution. In addition, on 7 February 2014, the English version of the draftlaw on the review the Constitution of Romania was submitted, through a letter sent by the Prime Minister of Romania, to the European Commission for Democracy through Law (the Venice Commission), in order for it to issue an opinion. The text of the constitutional revisional proposal was extensive from the point of view of the number of amendments (128 amendments being proposed). The Venice Commission issued its opinion on 24 March 2014,[57] remarking both critical and appreciative elements in respect of the project. Furthermore, prior to the opinion of the Venice Commission, the Constitutional Court adopted Decision no. 80/2014 on the draft law reviewing the Constitution of Romania.[58] In this decision, the Court noted that 26 revisional proposals were inconsistent with the limits of constitutional revision stated by Article
152. At the same time, the Court expressed a significant number of suggestions amending or repealing certain articles of the revisional draft law.

Given the conditions of the Venice Commission opinion of 24 March 2014 and the Decisions of the Constitutional Court no. 80/2014, the constitutional revisional process seems to be a long and complex one. We also note that, even though a number of proposals regarding the relationship between international law and domestic law had been drafted during the initial interinstitutional consultation process initiated by the Common Commision of the Chamber of Deputies and of the Senate, the draft law on the review of the Constitution brought no amendments to Articles 11, 20 or 91.**[59]**

In these circumstances, the *de lege ferenda* proposals should follow a pragmatic and realistic approach. On the one hand, an 'ideal solution' might be identified – resulted from a comparative study of the Constitutions of different States and the identification of a *new* model, answering as much as possible to the necessityof ensuring as much compliance with international law as possible. On the other hand, aware of the very large number of amendments drafted during the revisional proposal, as well as of the complex character of the reviewing process, a pragmatic and realistic approach would be based on a *'de minimis'* solution: reaching the target – guaranteeingthe primacy of international law over domestic law in case of any inconsistencies – through as few amendments as possible in the given *de lege lata* situation. Furthermore, the *de minimis* approach might also encompass the proposal of inserting within the Constitutional text certain provisions already existing at legal level – using the 'accepted language' should facilitate their acceptance.

Based on a preliminary analysis, an 'ideal solution' would be characterised by the following elements: a) regulating the primacy of international law over domestic law in respect of all areas, not just human rights; b) regulating the fact that international treaties create rights and duties for subjects of domestic law; c) providing that all 'treaties in force' for the Romanian State are part of its national law,in order to remove the difficulties related to the interpretation of the notion 'ratified by Parliament'; d) providing that 'the principles and other generally recognised provisions of international law' – customary international law, respectively, are partof domestic law; e) keeping a constitutional provision related to international human rights treaties – relevant especially for interpreting domestic law and for identifying a

[54] Published in the Official Journal no. 111/26 February 2013.
[55] Published in the Official Journal no. 237/24 April 2013.
[56] Published in the Official Journal no. 364/19 June 2013.
[57] Opinion no. 731/2013 on the Draft Law on the Review of the Constitution of Romania, adopted by the Venice Commission at its 98th Plenary Session (Venice, 21-22 March 2014).
[58] Published in the Official Journal no. 246/7 April 2014.
[59] As mentioned above, the only relevant amendment referred to Article 146(b), granting the Constitutional Court the possibility of examining the constitutionality of a treaty *ex officio*, through an *ex ante* constitutional review.

constitutionally – expressed message of attachment towards the fundamental values of human rights.

However, we suggest choosing a 'pragmatic solution', considering its greater chances of being accepted by the factors involved in the constitutional reviewing process. We present below the text of this proposal, mentioning that it focuses on the most significant provisions which raise the greatest issues of interpretation.

IV.2. The text of the *de lege ferenda* proposals

a. Rephrasing paragraph 2 of Article 11 as follows:

'(2) Treaties *consented to by the Romanian side*, according to the law, are part of national law *from the moment they enter into force*.'[60]

Arguments:

The amendment is required in order to remove the interpretation issues which exist in respect of the scope of application of Article 11(2). As shown above, there are opinions according to which *only* the treaties ratified by the Parliament are part of national law – which leaves outside of the 'automatic incorporation' technique those treaties in respect of which the Romanian side has expressed its consent through other means provided by international law, especially through approval, signature, exchange of notes or letters. The exclusion of those treaties from automatic incorporation into domestic law *on the basis of a constitutional provision* does not represent a normal situation.

The suggested phrase of 'consented to by the Romanian side' is meant to cover, in a broad way, all forms of expressing consent. Moreover, the notion 'the Romanian side' is a wide one, intended to surpass the difficulties related to the classification of treaties into State-level, Government-level or department-level: thus, all treaties imposing any duties upon the Romanian State, regardless of their level,must fall under the scope of Article 11(2).

Currently, Law no. 590/2003 on treaties stipulates, in an express and exhaustive way, the treaties in respect of which consent must be given through ratification by Parliament. Article 19 includes all treaties concluded on behalf of Romania, regardless of the domain they regulate, as well as a number of Governmentaltreaties the importance of which requires them to be ratified by Parliament.[61] Article 20of Law no. 590/2003 concerning treaties provides that 'Government level treaties not falling under the scope of Article 19, as well as department level treaties are submitted to the Government for approval through a decision'.

The mere express of consent by the Romanian side, regardless of its form (ratification, accession, approval, acceptance, signature, exchange of notes or letters) is not always enough in order for the treaty to have legal effects in international law. As such, the treaty needs to be 'in force' in accordance with its provisions. This is the reason why it has been suggested to supplement Article 11(2) with the phrase '*from themoment they enter into force*'.

b. Supplementing Article 11 with two new paragraphs, (4) and (5), with the following content:

'(4) *The provisions of treaties in force may not be amended, supplemented or repealed except in accordance with the provisions thereof or through the agreement of the parties.*

---

[60] '(2) Tratatele *cu privire la care partea română şi-a exprimat consimţământul*, în condiţiile legii, fac parte din dreptul intern *din momentul intrării lor în vigoare*.'

[61] The areas for which Government-level treaties must be ratified are, pursuant to Article 19(1)(b) – (h): political cooperation, military cooperation, the legal status of the State border, the areas upon which Romania exercises sovereign rights and jurisdiction, treaties related to the status of individuals and fundamental human rights and freedoms, those referring to the membership of international intergovernmental organisations, treaties referring to the undertaking of a financial commitment, those whose provisions require, for the application thereof, the adoption of new norms of legal power or new laws, or the amendment of existing laws.

(5) *The provisions of the domestic law may not be invoked as justification for the failure to perform a treaty in force for the Romanian side.'*[62]

Arguments:

The phrasing of paragraph (4) is a direct consequence of the international law principle *pacta sunt servanda* as stated by paragraph (1), ensuring its observance, *i.e.* the prohibition of amending, supplementing or repealing treaties by means of domestic laws, which would equate to a unilateral amendment or supplementing of a treaty.

The impossibility of invoking domestic legislation as justification for the non-performance of the provisions of a treaty – paragraph (5) – represents a rule established in international law, codified in Article 27 of the 1969 Vienna Convention on the Law of Treaties.

Furthermore, the two paragraphs acknowledge international rules recognised by a constant international jurisprudence: the *Alabama Claims arbitration*, [63] the case of *Certain German Interests in Polish Upper Silesia*,[64] the *Factory at Chorzow* case,[65] the Advisory Opinion concerning the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*. [66]

The pragmatic and realistic approach is applied through the fact that the two proposed paragraphs are identical to existing legal norms: paragraphs (4) and (5) of Article 31 of Law no. 590/2003 on treaties.

The direct consequence of the two paragraphs will be to ensure an explicit primacy of treaties over inconsistent domestic laws, regardless of their area of regulation and regardless of the national law being prior or subsequent. We alsomention that the constitutional solution would be similar to that provided by Article 96 of the Spanish Constitution.[67]

c. Rephrasing Article 91(1) as follows:

'(1) The President *shall approve the signing of international treaties* at State level, negotiated by the Government, and then submit them to the Parliament for ratification, within a reasonable time limit. *The procedure required for negotiating, signing and expressing consent in respect of treaties, regardless of their level, shall be regulated by law.*'[68]

Arguments:

---

[62] '(4) Dispoziţiile tratatelor în vigoare nu pot fi modificate, completate sau scoase din vigoare decât în conformitate cu dispoziţiile acestora sau prin acordul părţilor.
(5) Prevederile legislative interne nu pot fi invocate pentru a justifica neexecutarea dispoziţiilor unui tratat în vigoare pentru partea română.'

[63] *The Alabama Claims* (1872), Moore Arbitrations, p. 653.

[64] PCIJ Ser. A, 1928, p. 16.

[65] PCIJ Ser. A, no. 17, 1928, p. 33.

[66] ICJ Reports 1989, p. 177.

[67] Taking these proposals into account, Article 11 would have the following content:
'(1) The Romanian State pledges to fulfil as such and in good faith its obligations as deriving the treaties it is a party to.
(2) Treaties consented to by the Romanian side, according to the law, are part of national law from the moment they enter into force.
(3) If a treaty Romania is to become a party to comprises provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution.
(4) The provisions of treaties in force may not be modified, supplemented or repealed except in accordance with the provisions thereof or through the agreement of the parties.
(5) The provisions of the domestic law may not be invoked as justification for the failure to perform a treaty in force for the Romanian side.'
We mention that Article 96 of the Spanish Constitution states: 'Validly concluded international treaties, once officially published in Spain, shall be part of the internal legal system. Their provisions may only be repealed, amended or suspended in the manner provided for in the treaties themselves or in accordance with the general rules of international law'.

[68] '(1) Preşedintele *aprobă semnarea tratatelor* internaţionale la nivel de stat, negociate de Guvern, şi le supune spre ratificare Parlamentului, într-un termen rezonabil. *Prin lege se reglementează procedura necesară pentru negocierea, semnarea şi exprimarea consimţământului cu privire la tratate, indiferent de nivelul acestora.*'

The proposal is intended to exclude from the text certain phrases which are not strictly representative of the legal reality.

Firstly, as already shown, the term 'conclusion' is not used correctly from a legal point of view. The 'conclusion' of a treaty represents a series of steps and procedures, ending with the entry into force of the treaty. For this reason, we consider it necessary to use the phrase 'approve the signing' – taking into account the President's constitutional power, and 'negotiating, signing and expressing consent' regarding the elements to be regulated by law.

Secondly, the phrase 'treaties and agreements' is not strictly correct, because the notion of 'treaty' must be used in a general way in order to designate « *an international agreement concluded between States [or other subjects of international law] in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation* » (the 1969 Vienna Convention on the Law of Treaties, Article 2(1)(a)).

Thirdly, the phrase 'ratification or approval' does not comprise all forms of expressing consent provided by international law. Consequently, we propose to use the term 'expressing consent', thus covering all forms allowed by international law.

Fourthly, the phrase 'the *other* treaties and agreements' may generate confusion, which is why we suggested the phrase 'regardless of their level' in order to reflect the classification of treaties into State level, Governmental level and departmental level (Articles 1(a) and 2 of Law no. 590/2003 concerning treaties).

V. Conclusions

The current system created by the Constitution of Romania has the advantage of allowing a jurisprudential interpretation of the primacy of international law over domestic law, regardless of the area of regulation. The interaction between Articles 11 and 20 of the Romanian Constitution in force determines a solution based on two categories of treaties: human rights treaties, in respect of which there is no doubt regarding their primacy over domestic provisions, as well as treaties regulating other areas (than human rights), in respect of which some interpretation difficulties might arise. These difficulties might concern, on the one hand, the scope of application of the 'automatic incorporation' within domestic law (two opinions have been argued regarding the interpretation of the phrase 'treaties ratified by Parliament […] are a part of national law') and, on the other hand, the legal force treaties have over domestic provisions. Obviously, in order to avoid different interpretations, it would be desirable for Article 11 to be clearly drafted in the sense of the primacy of international law over national law. This interpretation does not always seem obvious.

Because of this, we have drafted a *de lege ferenda* proposal amending Article 11 as little as possible, but intended to reach the main objective: removing any doubts as to the interpretation that international legal provisions, regardless of their field, prevail over domestic laws in the event of any inconsistencies. Furthermore, we have suggested the removal of any doubts over the scope of application of Article 11, in the sense of encompassing all treaties creating rights and duties for the Romanian State, regardless of the way of expressing consent. In addition, we have proposed technical amendments to Article 91, in order to remove all drawbacks caused by the inaccurate usage of terms.

These proposals fit within a trend of strengthening the observance of international law, both for the executive and legislative authorities and for the judiciary. Given that respect for international law is one of the main coordinates of Romania's foreign policy,[69] it is only natural to reflect this trend at domestic level through a broad application of the international legal provisions within the national legal order.

[69] Bogdan Aurescu (ed.), *Romania and the International Court of Justice*, Ed. Hamangiu, Bucharest, 2014, Foreword by the Editor, p. 1.

Bibliography

Doctrine

Dionisio Anzilotti, *Cours de droit international*, Sirey, Paris, 1925
Anthony Aust, *Modern Law and Treaty Practice*, Oxford University Press, 2009
Bogdan Aurescu (ed.), *Romania and the International Court of Justice*, Ed. Hamangiu, Bucharest, 2014
Ian Brownlie, *Principles of Public International Law*, 7th Ed., Oxford University Press, 2008
Ion Gâlea, *Analiză critică a normelor Constituţiei României referitoare la relaţia dintre dreptul internaţional şi dreptul intern*, The Annals of the University of Bucharest, no. I/2009
Ion Gâlea, Bogdan Biriş, Irina Munteanu, Radu Şerbănescu, *Aplicarea tratatelor în dreptul intern al statelor membre ale Uniunii Europene. Studiu comparat al prevederilor constituţionale relevante*, in Cezar Manda, Cristina Nicolescu, Crina-Ramona Rădulescu (eds.), *Probleme actuale ale spaţiului politico-juridic al UE*, Romanian Journal of European Law Supplement, 2013
Gheorghe Iancu, *Drept constituţional şi instituţii politice*, CH Beck 2011
Hans Kelsen, *General Theory of Law and State*, London, 1945
Hersch Lauterpacht, *International Human Rights*, Oxford, 1950
Ioan Muraru, Simina-Elena Tănăsescu, *Drept constituţional şi instituţii politice*, vol. I, Ch. Beck, 2011
Irina Niţă, Bogdan Aurescu, *Comentariul Legii nr. 590/2003 privind tratatele (continuare – art. 25-34)*, Romanian Journal of International Law, no. 3 – July-December 2006
André Nollkaemper, *National Courts and the International Rule of Law*, Oxford University Press, 2012
Mark E. Villiger, *Commentary to the Vienna Convention on the Law of Treaties*, Martinus Nijhoff, 2009

Case law

The Alabama Claims (1872)
Linija v Latvia, Judgment of the Constitutional Court of the Republic of Latvia on a request for constitutional review, Case No 2004-01-06, Latvian Herald, No 108, 3056, ILDC 189 (LV 2004), 7 July 2004
Case concerning rights of nationals of the United States of America in Morocco, ICJ Reports, 1954
Decisions of the Romanian Constitutional Court and of the Romanian High Court of Cassation and Justice (see footnotes above)

Treaties and other documents

Opinion no. 731/2013 on the Draft Law on the Review of the Constitution of Romania, adopted by the Venice Commission at its 98th Plenary Session (Venice, 21-22 March 2014)
Opinion no. 685/17 December 2012 on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergencyOrdinance on amendment to the Law No. 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency Ordinance on amending and completing the Law No. 3/2000 regarding the organisation of a referendum of Romania, Adopted by the Venice Commission at its 93rd Plenary Session (Venice, 14-15 December 2012)

The European Convention on Human Rights, Article 53
The Framework Convention for the Protection of National Minorities, Article 22
Vienna Convention on the Law of Treaties of 1969, Article 26
Charter of the United Nations, Article 2(2)
UN General Assembly Declaration 2625 (XXV)/1970 on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations