

ROMANIAN **JOURNAL OF INTERNATIONAL LAW**

ISSN 2559 – 3846

Events of Relevance in the Romanian Practice of Implementing International Law

Bogdan AURESCU

RJIL No. 19/2018

Pages 39-48

Evenimente relevante din practica românească a aplicării dreptului internațional

Events of Relevance in the Romanian Practice of Implementing International Law

Events in the Romanian Practice of Implementing International Law (June-December 2017)

Bogdan AURESCU¹

Faculty of Law, University of Bucharest

Abstract: *This brief presentation of the Romanian practice during the second semester of 2017² in implementing international law tries to give an overview of what can be termed as a very rich activity of the Romanian authorities in this field. The paper describes the legal positions expressed on various occasions regarding events with relevance to international law, legal procedures regarding important agreements signed by Romania, Romania's participation to the most important international organizations etc.*

Key-words: *Consular Agreements, East Ukraine, Ballistic/Nuclear Test, North Korea, Joint Investigation Team, crime of terrorism, EU-Ukraine Association Agreement, Agreement on privileges and immunities*

¹ Bogdan Aureescu is Professor of Public International Law of the Faculty of Law, University of Bucharest and 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), for Strategic Affairs (2009-2010, 2012-2014), 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.

² Parts of this presentation were already published, in Romanian, in the *Judicial Courier* review issues of the second semester of 2017 by the same author, in the section "International Actuality".

between the Government of Romania and the Organisation for the Prohibition of Chemical Weapons (OPCW), Ukrainian Law on Education, UN Security Council, Romanian-Ukrainian Joint Intergovernmental Commission on national minorities, independence, Catalonia.

1. The signing of two consular Agreements between Romania and Portugal

On **18 July 2017**, the Romanian and Portuguese MFAs signed, in Bucharest, two legal cooperation documents regarding assistance and consular protection for Romanian and Portuguese citizens located in areas where the two countries do not have resident diplomatic missions.

According to a press release of the Romanian MFA, the two signed documents are the Memorandum of Understanding between the Ministry of Foreign Affairs of Romania and the Ministry of Foreign Affairs of the Portuguese Republic on the Protection of Romanian Interest in the Republic of Guinea-Bissau and the Republic of Mozambique by the Portuguese Republic and the Memorandum of Understanding between the Ministry of Foreign Affairs of Romania and the Ministry of Foreign Affairs of the Portuguese Republic on the protection of Portuguese interests in the Syrian Arab Republic by Romania.

According to the cited source, taking into account both the Portuguese Republic's traditional presence in the two African states and the possibilities of managing consular situations by the Portuguese diplomatic missions in the two mentioned states, through the provisions of the first document the Portuguese side will take over the assistance and protection of the Romanian citizens in the two countries. At the same time, the Romanian MFA shows in the cited press release that the second document sets forth the granting of consular protection and assistance for the benefit of Portuguese citizens by Romania, the only EU Member State with a fully operational diplomatic mission to Damascus.

2. Romania condemns the proclamation by the separatists of Donetsk of a new so-called state in Eastern Ukraine

On **19 July 2017**, the Ministry of Foreign Affairs condemned, through a press release, the proclamation on 18 July 2017, by the separatists in Donetsk of a new so-called state in Eastern Ukraine, called 'Little Russia'. The MFA shows that this act flagrantly violates the norms of international law and violates Ukraine's sovereignty and territorial integrity, and reiterated that Romania firmly supports the implementation of 2015 Minsk

Agreements, urging their implementation. According to the press release, these Agreements are the only viable and recognized framework allowing for a political settlement of the Donbass conflict. Furthermore, it is shown that Romania supports the need to respect Ukraine's independence, sovereignty and territorial integrity, within its internationally-recognized borders.

3. Romania condemns the conduct of a new ballistic test by North Korea

On **29 July 2017**, the Romanian MFA condemned through a press release the conduct of a new ballistic test by North Korea on 28 July 2017. This action represents, according to the cited source, a new escalation of the tensions within the Korean Peninsula and a major challenge against global peace. Furthermore, through the cited press release, the MFA reiterates its call towards the Pyongyang authorities to fully respect international norms in force and to initiate concrete measures towards denuclearizing the Korean Peninsula in a complete, verifiable and irreversible manner.

4. Romania supports the decision of the *Joint Investigation Team* to conduct criminal proceedings in the territory of the Netherlands in order to clarify the circumstances of the crash of flight MH-17

On **3 August 2017**, Romania, through a MFA press release, showed its support for the decision of the *Joint Investigation Team/JIT*, composed of the Netherlands, Ukraine, Malaysia, Australia, Belgium, to initiate criminal proceedings within the territory of the Netherlands, for the clarification of the circumstances of the crash of flight MH-17, pursuant to Dutch law. According to the press release, Romania asked all states able to support this procedure to fully cooperate, in order to identify, establish and bring to justice the responsible persons, in accordance with the provisions of Security Council resolution 2166 of 2014.

According to the cited source, on 17 July 2014 flight MH-17 belonging to Malaysia Airlines crashed in Eastern Ukraine, while performing an Amsterdam – Kuala Lumpur flight. 298 people on board lost their lives (283 passengers and 15 crew members). A person with double citizenship, including Romanian citizenship, also lost his life in this incident. The criminal investigation is coordinated by a *Joint Investigation Team* composed of representatives of judicial and police authorities from the Netherlands, Ukraine, Australia, Belgium and Malaysia.

5. Romania condemns the launch, by North Korea, of a ballistic missile that overflew Japan

On **29 August 2017**, the Romanian MFA condemned through a press release the launch by the Democratic People's Republic of Korea, at the same date, of a ballistic missile that overflew Japan. This action represents, according to the cited source, a very serious escalation of the tensions within the Korean Peninsula. The MFA also reiterated its call towards the Pyongyang authorities to fully comply with the international norms and the UN Security Council resolutions in force.

At the same time, the MFA press release considers that the new provocative action by North Korea also represents an unprecedented threat against Japan and expresses its full solidarity with Japan, a special partner of our country.

6. The entry into force of the EU – Ukraine Association Agreement

On **1 September 2017**, Romania welcomed the entry into force at the same date of the Association Agreement between Ukraine and the European Union and the European Atomic Energy Community and their Member States.

According to a press release of the Romanian MFA, it is shown that Romania further supports Ukraine's European journey and that the conclusion of the Agreement's ratification process by all the 28 Member States and the European Parliament represents an achievement that will allow the realization of the full cooperation potential between Ukraine and the European Union. Moreover, it is mentioned that the entry into force of the Association Agreements with the Republic of Moldova, Georgia and Ukraine is a moment of reference for achieving the objective actively and constantly supported by Romania within the European Union about promoting European values and standards with our Eastern neighbors.

The referenced source reminds that the Association Agreement with Ukraine was signed on 21 March 2014 (the political part) and 27 June 2014 (the economic part). The political part of the Association Agreement with Ukraine has been provisionally applied since 1 November 2014, and the economic part (Deep and Comprehensive Free Trade Area – DCFTA) since 1 January 2016. The Association Agreements with the Republic of Moldova and with Georgia have been in force since 1 July 2016.

7. Romania condemns the nuclear test conducted by North Korea on 3 September 2017

On **3 September 2017**, Romania condemned, through a press release of the Romanian MFA, in the strongest terms, the nuclear test conducted by the Democratic People's Republic of Korea at the same date, qualified as a new major threat against regional and international peace and security.

Through the referenced press release, the MFA expresses its deep concern at the continued provocative actions of the North Korean authorities, representing serious violations of UN Security Council resolutions and leading to an unprecedented increase in the tensions within the Korean Peninsula. Moreover, it reiterates the firm call addressed to the Pyongyang Government to implement all of the UN Security Council and International Atomic Energy Agency resolutions, to abandon all existing nuclear programs in a complete, verifiable and irreversible manner and to abstain from any actions affecting regional and global stability. The press release also states Romania will continue to actively support international efforts regarding the peaceful denuclearization of the Korean Peninsula.

8. The signing of the Agreement on Privileges and Immunities between the Government of Romania and the Organisation for the Prohibition of Chemical Weapons

On **6 September 2017**, according to a press release of the Romanian MFA, the Agreement on Privileges and Immunities between the Government of Romania and the Organisation for the Prohibition of Chemical Weapons was signed.

The OPCW is, according to the referenced source, an international institutions based in The Hague, whose main objective is the implementation of the Convention on the prohibition of chemical weapons (CWC). According to the MFA press release, the Agreement establishes the privileges and immunities enjoyed by the OPCW staff, in accordance with international law, for the effective exercise of their attributions, both during the verification activities on the territory of Romania, and during other activities related to the object and purpose of the Convention.

According to the MFA, the entry into force of the Agreement on Privileges and Immunities will open the way for a closer collaboration between Romania and the OPCW, by developing specific joint projects, aimed at increasing the preparation of the Romanian authorities and OPCW staff, within the current context marked by security challenges stressing the role of the OPCW in combating the proliferation and use of chemical weapons. Moreover, the press release mentions that taking into account the OPCW's specifics as a global organization, signing the Agreement reconfirms Romania's commitment to actively contribute to multilateral diplomacy in order to maintain and promote world peace.

The press release mentions that 29 April 2017 marked the 20th anniversary of the CWC's entry into force and OPCW's establishment, the CWC being the first treaty expressly including the aim and the calendar of eliminating

an entire category of weapons of mass destruction – chemical weapons, under firm international control. This has been a definite success of postwar multilateralism, through the dynamics of ratifications, the efficiency of the verification system and the speed of adapting to new challenges of research, science and technology in the matter. 192 states are parties to the CWC, continuing the efforts for the universalization of this legal instrument. So far, 53 states parties to the Convention, including 16 EU Member States, have concluded such agreements with the OPCW.

9. Romania’s reaction regarding Ukraine’s adoption of the new Law on Education

On **7 September 2017**, the Romanian MFA took note with concern, through a press release, of the form adopted on 5 September 2017 by the Verkhovna Rada of Ukraine of the new Law on Education, particularly Article 7 thereof, concerning education in the languages of the national minorities.

The MFA reminds in the press release that, according to the provisions of the 1995 Council of Europe Framework Convention for the protection of national minorities, states parties undertake to recognize the right of any person belonging to a national minority to learn in their mother tongue. Also, the necessity to conform to the relevant international norms has been permanently stressed by the Romanian party in its dialogue with the Ukrainian party regarding promoting and protecting the rights of persons belonging to the Romanian national minority in Ukraine. At the same time, the MFA expresses its expectation that the rights of persons belonging to the Romanian national minority in Ukraine be preserved and underlines the Romanian authorities’ constant concern regarding this issue.

On **14 September 2017**, the MFA informed by a press release that the Romanian Minister for Foreign Affairs, together with his counterparts in Bulgaria, Greece and Hungary, sent the Ukrainian Minister for Foreign Affairs, the Secretary General of the Council of Europe and the OSCE High Commissioner for National Minorities, a joint letter expressing their concern and deep regret regarding the recent adoption by the Verkhovna Rada of the Ukrainian Law on Education project on 5 September 2017.

This common enterprise takes into account, according to the cited source, the signatories’ interest in ensuring the protection of the rights of persons belonging to national minorities and appeals to the Ukrainian authorities for identifying concrete measures / solutions in this sense, in the spirit of cooperation, and with Ukraine’s firm respect for the relevant international norms and standards. Moreover, the letter supports the need to use all instruments available to the Council of Europe and OSCE in order to ensure

that the new restrictive provisions introduced by the Ukrainian Law on Education will not affect the proper protection of the fundamental rights of persons belonging to national minorities.

According to the MFA press release, Romania reiterates its availability to support Ukraine in its extended process of legislative, institutional and economic reforms and to contribute to the international support efforts, together with our partners, in order to efficiently meet the Ukrainian side's needs.

Subsequently, on **26 September 2017**, the MFA expressed, through a press release, its regret that, despite all of the efforts of the Romanian authorities regarding the Ukrainian side (which reported that the current form of the Law on Education significantly diminishes the rights of the persons belonging to the Romanian minority), the Ukrainian President promulgated the law on 25 September.

The MFA press release reminds that Ukraine has constantly expressed to the Romanian side during all official contacts its engagement to respect the relevant international norms and standards regarding the protection of the rights of persons belonging to national minorities, as well as its assurance that the level and quality of the Romanian-language education will not be affected by the new norms. At the same time, it is mentioned the MFA will continue its actions, including within international organisations with attributions in the field (the Secretary General of the Council of Europe, the OSCE High Commissioner for National Minorities and the Venice Commission), to report the negative impact of these legislative changes on Ukrainian education.

Furthermore, the MFA press release firmly asks the Ukrainian authorities to adopt all necessary measures to ensure the right of persons belonging to the Romanian national minority of learning in their mother tongue.

10. The conference on the launch of the campaign for promoting Romania's candidacy for a seat as Non-Permanent Member in the UN Security Council

On **12 September 2017**, the Romanian MFA launched, according to its press release, the campaign for promoting Romania's candidacy for a seat as Non-Permanent Member of the UN Security Council between 2020-2021, in the presence of high dignitaries from the institutions of the Romanian state, political personalities from our country, representatives of the civil society, of the educational, business and media environment, as well as of the Diplomatic Corps accredited in Bucharest.

According to the MFA press release, on this occasion, the Romanian diplomacy's efforts in its campaign for the UN Security Council (the main global forum with responsibilities in the maintenance of international peace and security) were stressed, especially the importance of a joint effort and sustained support on behalf of all segments of Romanian society in order to achieve this objective. In this context, it was also stressed that respect for international law has been and continues to be one of the Romanian foreign policy's constants.

The slogan of the campaign, 'Romania for UN SC: A Long-Term Commitment in Favour of Peace, Justice and Development' reflects, according to the cited source, the attention our country pays to the complexity of the topics taking place on the international stage and represents Romania's firm commitment to principles meant to ensure peace, stability, respect for universal human rights and the reduction of global development disparities.

11. Session of the Romanian-Ukrainian Intergovernmental Commission regarding the protection of persons belonging to national minorities

On **13 September 2017**, the Sixth Session of the Joint Romanian-Ukrainian Intergovernmental Commission regarding the protection of persons belonging to national minorities took place in Kiev. According to a MFA press release, the delegation was comprised of representatives of the Ministry of Foreign Affairs, the Ministry for Romanians Abroad, the Ministry of National Education, the Ministry of Culture and National Identity, the Department for Inter-ethnic Relations, the State Secretariat for Religious Denominations and the Union of Ukrainians in Romania.

The mentioned source states that, on the occasion of resuming its activity, the Commission agreed and signed a Joint Declaration closing the Commission's 2002 and 2006 sessions and assuming on the 2017 agenda all topics of interests to the two Parties beginning with 1997. At the same time, the 2017 session was closed by signing a protocol noting both the Parties' joint conclusions and their divergent opinions.

The MFA press release underlines that, during the negotiations in Kiev, but also in the period prior to the reunion of the Joint Commission, the Romanian delegation's mandate sought to promote the good faith application of international norms and standards relevant to the protection of rights of persons belonging to national minorities in order to ensure the ethnic, cultural, linguistic and religious identity of the Romanian minority in Ukraine and of the Ukrainian minority in Romania.

The MFA states in the mentioned press release that special attention was paid to the adoption by the Verkhovna Rada of the Ukrainian Law on Education on 5 September 2017. According to the cited source, the Romanian delegation expressed its deep regret concerning the fact that the adoption of the new Law on Education and particularly its Article 7, concerning the language of the educational process, was made without consulting the representatives of the organisations of the Romanian minority in Ukraine, and requested that the Ukrainian authorities ask the opinion of the European Commission for Democracy through Law (the Venice Commission) and of the OSCE High Commissioner for National Minorities before the new law is promulgated by the Ukrainian President. Moreover, it expressed the Romanian side's determination for identifying, in cooperation with the competent Ukrainian authorities, solutions to ensure respect for the right to education in the Romanian language of all persons belonging to the Romanian minority in Ukraine.

The press release also presents the history of the Romanian-Ukrainian Joint Intergovernmental Commission regarding the protection of persons belonging to national minorities: it was established pursuant to Article 13 of the Treaty on good neighbourliness and cooperation between Romania and Ukraine, signed on 2 June 1997, which is the main bilateral framework of consultation and cooperation in the field of protecting the rights of persons belonging to national minorities.

12. Romania's position regarding Catalonia's declaration of independence

On **28 October 2017**, the Romanian MFA expressed, through a press release, its position of rejecting 'firmly and irrevocably' the so-called 'unilateral declaration of independence' of Catalonia from the previous day. The press release reaffirms Romania's firm support for Spain's sovereignty and territorial integrity and shows that Spain is an important ally and a strategic partner of our country, relationship reflected both at a bilateral level, as well as within EU and at an international level.

In addition, the press release underlines that the legitimacy of any process or action regarding a state's internal order resides in its complete accordance with the fundamental law, and with the rule of law in that state. At the same time, Romania's constant position is mentioned in favour of respecting international law, which does not allow territorial modifications without the consent of the affected state. Last but not least, the MFA mentions that the situation generated in Catalonia is related to the Spanish internal order and expresses hope that it will soon return to the parameters of that country's constitutional order.

Prior to this position, through the press release of the Presidential Administration of **18 October 2017**, with the occasion of the welcoming by the President of Romania of the Spanish Minister for Foreign Affairs during the latter's visit to Bucharest, the President of Romania underlined the excellent character of the strategic partnership between the two countries, a fact shared by the Spanish Minister, and reaffirmed Romania's firm support for Spain's sovereignty and territorial integrity, underlining the need, in the context of the events in Catalonia, for the Constitutional framework and the principles of international law to be respected. The President of Romania also stressed, according to the same source, that in our country's view this topic represents an internal issue for Spain and expressed his confidence that, within this framework, the best solutions will be found to return to the Spanish constitutional order.