Opening Statement to the Conference "Romania and the International Court of Justice. 5 years since the Maritime Delimitation in the Black Sea"

(Bucharest, 3 February 2014)

Titus Corlățean,
Minister of Foreign Affairs of Romania

I would like to welcome you all at this International Conference dedicated to the relationship between Romania and the International Court of Justice over time. It is an auspicious moment, as we celebrate today 5 years since the World Court, the principal judicial organ of the United Nations and the most prestigious international forum of dispute settlement, issued its Judgment in the case on the *Maritime Delimitation in the Black Sea*.

The exceptional result of this case, which took a lot of efforts by the two States parties to the dispute, and by the Court, all along the almost 4 years and a half of its proceedings, represented, first and foremost, a success of International Law. The solution provided by the Court was solid and equitable. It was accepted and implemented smoothly by both Romania and Ukraine, as it represented the end of a longstanding dispute, inherited by the two parties since the times of the former Soviet Union. Several generations of lawyers and diplomats worked hard to achieve this outcome and, when the resources of a negotiated solution were exhausted, the international justice – through The Hague Court – managed to finalize this case brilliantly and in a sustainable manner.

As a career diplomat and lawyer myself, I would like to express my gratitude to all those who, over the years, have worked passionately to bring this dispute to an end. A special word goes to the Team of Romania before the Court – many of them are here, with us, today –, both to the Romanian, but also to the foreign experts who have done their best to make sure that the interests of Romania are properly defended.

The *Maritime Delimitation in the Black Sea* was the only contentious case brought by Romania before ICJ, but it was not the only experience of my country in relation to international justice. To the contrary, Romania has a long and rich history of contacts with the international jurisdictions of The Hague, and it brought a solid contribution, over time, to the development of International Law.

You will hear, during today's conference, the presentations and analyses of the other cases – Advisory Opinions – where Romania was either directly or indirectly involved before the Permanent Court of International Justice and the ICJ. All of them show what an important place International Law plays in the Foreign Policy of Romania – whether it is about the *Jurisdiction of the European Commission of the Danube*, the issue of the *admission of Romania as a full member of the United Nations* or the *interpretation of the 1947 Peace Treaty with Romania*, the famous "*Mazilu case*" of 1989 or the participation of Romania in the proceedings regarding the Advisory Opinion concerning the *Accordance with international law of the unilateral declaration of independence in respect of Kosovo.*

As Minister of Foreign Affairs of Romania, let me reiterate firmly my country's solid attachment to International Law, as instrument of the Romanian diplomacy. It is a constant of the Romanian conduct in international relations, and therefore I had the initiative to include it as such, in very clear terms, in the Foreign Policy chapter of the current Government Programme.

As a token of this commitment, on the occasion of the *High Level Meeting on the Rule of Law at the National and International Levels*, which took place under the aegis of the United Nations, on 24 September 2012, I have reaffirmed Romania's firm support for the work of the Court and I have announced the intention of the Romanian MFA to start a process of national debate on the possible acceptance by Romania of the compulsory jurisdiction of the International Court of Justice.

This public debate was opened on 4 February 2013 with the organization in Bucharest of a Conference titled *The Compulsory Jurisdiction of the International Court of Justice. Four Years since the Judgment of the International Court of Justice in the Case "Maritime Delimitation in the Black Sea"*. This event had a twofold significance: recalling – as we do today, as well – the delivery of the ICJ Judgment on the delimitation of the continental shelf and the exclusive economic zones of Romania and Ukraine in the Black Sea, and the proper opening of the public debate on the acceptance by Romania of the ICJ jurisdiction. The connection between these two issues is obvious – the Judgment of 2009 represents an undeniable proof of the impartiality and professionalism of the World Court, which strongly advocates for the acceptance by Romania of the jurisdiction of the ICJ.

Other public conferences on this subject were organized in March 2013 by the *Babeş-Bolyai* University in Cluj, in April 2013 by the *Transilvania* University in Braşov, and the debate was closed by the Bucharest conference of 14 June 2013, with the special participation of the President of the International Court of Justice, Judge Peter Tomka. We are now at the end of the national procedure of legislative transparency regarding the draft Law on the acceptance by Romania of the ICJ compulsory jurisdiction, and I hope its adoption by the Parliament will be smooth. This decision will connect even better Romania to the international

justice. It will add my country to the 22 EU Member States (out of 28) who already accepted the compulsory jurisdiction, thus showing – also in this way – the values we believe in.

Allow me to conclude this intervention by reiterating my conviction that the strict respect for International Law is a precondition for the proper functioning of the international society. It is Romania's firm belief that strengthening the rule of law should be a permanent process both at national and international levels.

This vision was best captured in Nicolae Titulescu's words. Allow me to quote these words, a fragment from a speech Titulescu delivered in 1937, which are now inscribed next to its effigy within the courtyard of the Peace Palace, the headquarters of ICJ: "(…) *only when law will shine like a rising sun in the soul of all people, like a guideline, like a categorical imperative, like an obedience perceived as organized freedom, only then will mankind be saved, because it is in the peace created by the legal order that the human being can fulfill his/her destiny (…).*"

I wish every success to the works of the Conference! Thank you.

Introductory Remarks to the Conference "Romania and the International Court of Justice. 5 years since the Maritime Delimitation in the Black Sea"

(Bucharest, 3 February 2014)

Judge Kenneth Keith,
International Court of Justice

I bring you greetings from the President of the International Court of Justice, His Excellency Judge Peter Tomka. He greatly regrets that he cannot be here. Along with other members of the Court, President Tomka is encouraged by the indications that Romania will soon file a declaration accepting the compulsory jurisdiction of the Court under Article 36 (2) of the Statute. Those indications were given added force by Minister Corlatean in the address he gave this morning, in which he also emphasised Romania's solid attachment to international law and he recalled his address to the Rule of Law Summit at the United Nations last year. In that context we were very pleased to read what Mrs Alina Orosan, Director for International Law and Treaties of your Ministry of Foreign Affairs, said in the UN General Assembly of the United Nations following the presentation by Judge Tomka of the Court's Annual Report last October. She recalled, as did the Minister earlier today, the conferences which had been held here last year on the compulsory jurisdiction of the Court. She again thanked President Tomka for participating in one of them. She said this:

> "The public discussion generally evinced support for the initiative of accepting the compulsory jurisdiction of the Court, an approach shared by the Romanian authorities, the specialists in the fields of international law and the general public.
> We can, thus, envisage that, soon, Romania will join the group of countries which have accepted the compulsory jurisdiction of the Court."

If I might very briefly put on my national hat, I note that the speaker immediately before her encouraged Member States who have not yet accepted the Court's jurisdiction by depositing a declaration of acceptance of the Court's compulsory jurisdiction to do so. That speaker was the Permanent Representative of New Zealand, a country which accepted that jurisdiction over 80 years ago and has maintained that acceptance ever since, with changes to its terms, for instance in respect of the law of the sea, as circumstances appeared to require. When Romania, in terms of its strong legal tradition and rich experience, takes that action, it will then be the 22nd or 23rd of the 28 members of the EU to become subject to the compulsory jurisdiction.

This morning, I will address two matters – the first, in a general way, the Judgment in the *Black Sea* case[1] given exactly five years ago, on 3 February 2009, and the second, more specifically, the advisory jurisdiction of the Court.

My comments on the Judgment will be general because I have taken the vow since I first became a judge, now over 30 years ago, that I will not speak in any specific way about judgments in which

1 *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, p. 61.

I have been involved. So far as I am concerned, the judgments must speak for themselves, for better or for worst.

I do, however, have three reflections on the *Black Sea* case.

The first is to recall that the Court, including the two judges *ad hoc*, was unanimous and that there was no separate opinion or declaration – a first. I still remember the note of joy in the voice of President Rosalyn Higgins, as she announced that fact – almost the last words she delivered as President from the bench in the Great Hall of Justice – and a very large smile on the face of Professor Alain Pellet.

The choice of the *ad hoc* judges helps make another point and it is not that the Court had two French judges and two judges of US nationality, though this was a first for the Court. More significant for me was that both ad hoc judges were, as duly installed members of the Court for the purposes of the case, real experts on the Law of the Sea. Judge Oxman has demonstrated that most recently by deciding with colleagues the challenge by the Russian Federation to a decision by the South Pacific Regional Fisheries Management Commission[2] and Judge Cot at the moment is on the Bangladesh/India tribunal and is a member of ITLOS. States before the Court no doubt consider the different qualities and competencies of those they might appoint as judges *ad hoc*, helped in that by their public record over the past decade or two. A prior question is of course whether they should appoint a judge *ad hoc*, a matter on which there are different views. I would also stress that judges *ad hoc* are installed as full members of the Court for the purposes of the case. They make the same solemn declaration as the regular judges and have equal rights and responsibilities with them.

[2] *The Objection by the Russian Federation to a Decision of the Commission by the South Pacific Regional Fisheries Management Organisation* (Findings and Recommendations of the Review Panel) Permanent Court of Arbitration, The Hague, 5 July 2013.

My second reflection relates to the law applied in the *Black Sea* case and applied and developed in many other cases decided over the last four decades. It has also been applied, clarified and developed through extensive State practice dating back even further, and through major multilateral law-making efforts undertaken since the 1950s. In 1969, the Court in the *North Sea Continental Shelf* cases rejected the argument based on the 1958 Continental Shelf Convention that customary international law contained a rule requiring an equidistance method of delimitation.[3] Rather, the Court called for the application of equitable principles. It set out three ideas in broad terms, declared that more than one method might be used concurrently and stated that there was no limit to the circumstances that might be taken into account and that they might be given different weights.

I remember thinking in 1969 that the law stated in those terms seemed very indefinite. But since then the law has been developed and clarified in a fascinating way, among other ways through over 20 judgments and awards of the Court, ad hoc tribunals and ITLOS. I have been a member of the Court in four of those cases, most recently, exactly a week ago, in the Judgment delivered in the case between Peru and Chile.[4] In that case, the Court proceeded on the basis of customary international law as reflected in the United Nations Convention on the Law of the Sea. Citing the *Black Sea* case among others, it set out the three step methodology which it usually applies in seeking an equitable solution. It applied that methodology, noting, however, the difficulty, even the impossibility, of undertaking the proportionality calculation often involved in the third phase.

[3] *North Sea Continental Shelf (Germany v. Denmark; Germany v. The Netherlands), Judgment, I.C.J. Reports 1969*, p.3.

[4] *Maritime Dispute (Peru v. Chile), Judgment, International Court of Justice, 27 January 2014* (not yet reported).

It is striking, looking back, at how all the processes have led to a consolidated body of law, practice and procedure. A central element is the role of principle, another, close attention to the facts. So my third reflection, arising from the Judgment of five years ago and those other cases and practice, is to emphasise the role of principle in international law as well as in national law.

Turning now to my second area, the advisory jurisdiction of the Court, I will continue with that emphasis on principle. Fifty years ago a very young law teacher in Wellington, New Zealand, was preparing a thesis on the advisory jurisdiction of the International Court of Justice. One of his nine principal secondary sources was the important set of Hague lectures given in 1936 by a distinguished son of Romania, Judge Demetru Negulescu, a long time judge of the PCIJ.[5] It is a personal pleasure for me to be able, in the city of his birth, to pay tribute to him and to his memory. I recall the event at the Peace Palace and others in The Hague in his memory in 2006. His Hague lectures were the third most cited secondary source in that thesis, submitted in 1964, exceeded only by publications by Judge Manley O. Hudson and Shabtai Rosenne, both of which were more recent. According to Judge Negulescu, advisory opinions of the Court fell into two categories: those with no connection to a certain dispute, and those where an international dispute already existed and by answering the question the Court was, implicitly, solving the dispute between two parties. He helped develop and apply that distinction in the practice and the rules of the Court.

[5] "L'Évolution de la Procédure des Avis Consultatifs de la Cour Permanente de Justice Internationale" (1936 III) 57 The Hague Receuil des Cours, p. 1; see Bogdan Aurescu in 2006 – 1 RRDI, p. 220. The thesis was published some years later as *The Extent of the Advisory Jurisdiction of the International Court of Justice* (1971).