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Court/Tribunal: International Court of Justice

Case: Maritime Delimitation in the Black Sea (*Romania v. Ukraine*)

On 16 September 2004, Romania filed in the Registry of the Court an Application instituting proceedings against Ukraine concerning the delimitation of the continental shelf and the exclusive economic zones of Romania and Ukraine in the Black Sea.

The two States had concluded in the Treaty on Good Neighbourliness and Co-operation and in the Additional Agreement, on 2 June 1997, to negotiate a single maritime boundary delimiting the continental shelf and exclusive economic zones between the two States in the Black Sea. The Additional Agreement further provided that if the States did not reach an agreement within two years since the initiation of negotiations (January 1998), the issue would be settled by the United Nations International Court of Justice.

The applicable law included Article 74 (pertaining to the delimitation of the exclusive economic zone) and Article 83 (pertaining to the delimitation of the continental shelf) of the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”). Also, the 2003 State Border Regime Treaty delimited the maritime boundary up to the outer limit of the territorial sea at the point of intersection of Romania’s territorial sea with the 12-nautical-mile arc drawn around Serpents’ Island. Serpents’ Island belongs to Ukraine and is situated approximately 20 nautical miles off its coast, with a surface area of approximately 0.17 square kilometers.

The Parties disagreed as to whether there already existed an agreed upon maritime boundary around Serpents’ Island. The Court concluded that under the Procès-Verbeaux of 1949, the boundary between Romania and the USSR would follow the 12-mile arc around Serpents’ Island, without any endpoint being specified. Under the 2003 State Border Regime Treaty, the endpoint of the State border was fixed at the point of intersection where the territorial sea boundary of Romania meets that of Ukraine. The Court held that the 1949 agreement related only to the demarcation of the State border, not to any maritime limits. Therefore, contrary to Romania’s contention, there was no existing boundary separating the territorial sea of Ukraine from the continental shelf and the exclusive economic zone of Romania.

It was necessary for the Court to ascertain the relevant coasts as well as the relevant maritime area in order to determine what constitutes the overlapping claims to these zones. The relevant coasts and maritime area are also important in order to test for disproportionality in the ratios of the coastal length of each State and in the areas on either side of the delimitation line.

With regard to the Romanian coast, it was undisputed that the whole coast constituted the relevant coast for the purposes of delimitation. Thus the length of the Romanian relevant coast was found to be approximately 248 km. With regards to the Ukrainian coast, the Court found that the coastlines of the Karkinit’ska Gulf, Yahorlyts’ka Gulf, Dnieper Firth, and Dniester Firth did not constitute a part of the relevant coast because they do not project into the area to be delimited. However, the other sectors of the Ukrainian coast between Dniester Firth and Cape Tarkhankut were found to be relevant because they generate projections that overlap with the maritime projections of the Romanian coast. Also, the coast of Serpent’s Island is so short that it makes no real difference to the overall length of the relevant coasts. As a result, the length of the

relevant coast of Ukraine is approximately 705km. Thus, the ratio for the coastal lengths between Romania and Ukraine was approximately 1:2.8.

The Court's methodology consisted of three stages. First, it established a provisional delimitation line, which consisted of geographically equidistant lines between various points along the Romanian and Ukrainian coasts. Second, the Court weighed any factors that might make the provisional delimitation line inequitable. And finally, the Court checked the provisional line against these other factors to confirm the provisional line's fairness and proportionality.

In order to draw a median line between the two coasts, the Court had to first establish proper base points along the coastal lines. For Romania, the Court easily decided on the Sacalin Peninsula as one base point. While its significance was contested by Ukraine, the Sacalin Peninsula had already been described as a base point by Romania under Article 16 of UNCLOS, so the Court considered it an appropriate base point for further delimitations.

Both parties recognized that the Sulina Dyke, which begins at the border between Romania and Ukraine, was an appropriate base point. The Court held that as a permanent structure serving no purposes as a port, landward end of the dyke would be Romania's other base point. Ukraine suggested several points of significance both on and off its coast. Kubansky and Serpents' Island were deemed irrelevant to the issue of base points. But one island – Tsyganka Island – did constitute a base point, as did Cape Tarkhankut and Cape Khersones.

With base points established, the Court drew a provisional equidistance line in the Black Sea. It is a path connected between several points of equidistance between the base points of the two nations, continuing south into the sea until the point where it might affect any third nation's interest.

For the second stage of its deliberations, the Court considered any relevant circumstances that might call into question the justice of the provisional equidistance line. The Court weighed the effect of the Black Sea being a closed body of water, economic activities, any cutting off effects of the line, and various security interests. None was significant enough to affect the provisional equidistance line. Ukraine contended that because its coastal border is much longer than that of Romania, it should be granted a larger portion of the sea. Romania agreed that coastal length should be one of many relevant circumstances, but ultimately it was not influential. Ukraine also argued that Serpents' Island should play a much larger role in delimitations. Both parties acknowledged that the island had a territorial sea of 12 nautical miles, and Romania ceded that it may be a relevant circumstance. Ukraine had wished to include Serpents' Island as a base point, which the Court did not accept. Ukraine instead contended that the island's role was significant enough to make the provisional equidistance line, which at one point lies at the maritime border of Serpents' Island, inequitable.

The Court found that the preliminary line was equitable even after considering Serpents' Island. All the other base points were in both the exclusive economic zones and the continental shelf areas of either country's mainland. Serpents' Island is nearly 20 nautical miles off Ukraine's mainland, and as such falls into neither of those zones. Further, Serpents' Island is not

particularly significant to Ukraine outside of these delimitations, so the provisional line cannot be said to interfere with Ukraine.

In the final stage of delimitations, the Court considered whether the provisional equidistance line would be disproportionate to relevant factors like respective coastal lengths and apportionment areas. The Court found that no man-made line will ever be exact but that the provisional line posed no significant threat to equitable results.

The maritime boundary delimiting the continental shelf and exclusive economic zones therefore begins at the point of intersection of the outer limit of the territorial seas of Romania and Ukraine, follows the arc of the 12-nautical-mile territorial sea of Serpents' Island, and continues along the provisional equidistance line established by the Court.

The Court thus implemented a successful process of delimitation in the Black Sea, resolving a long-unsettled border issue. The ruling has provided greater certainty for both countries, allowing them to carry out state functions without fear of future inadvertent violations.

Written By: Jessica Cooper and Nina Mohseni