



INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928

Website: www.icj-cij.org

Press Release

Unofficial

No. 2009/9
3 February 2009

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

The Court establishes the single maritime boundary delimiting the continental shelf and exclusive economic zones of Romania and Ukraine

THE HAGUE, 3 February 2009. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today rendered its Judgment in the case concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine).

In its Judgment, which is final, binding and without appeal, the Court unanimously

“Decides that starting from Point 1, as agreed by the Parties in Article 1 of the 2003 State Border Régime Treaty, the line of the single maritime boundary delimiting the continental shelf and the exclusive economic zones of Romania and Ukraine in the Black Sea shall follow the 12-nautical-mile arc of the territorial sea of Ukraine around Serpents’ Island until Point 2 (with co-ordinates 45° 03' 18.5" N and 30° 09' 24.6" E) where the arc intersects with the line equidistant from Romania’s and Ukraine’s adjacent coasts. From Point 2 the boundary line shall follow the equidistance line through Points 3 (with co-ordinates 44° 46' 38.7" N and 30° 58' 37.3" E) and 4 (with co-ordinates 44° 44' 13.4" N and 31° 10' 27.7" E) until it reaches Point 5 (with co-ordinates 44° 02' 53.0" N and 31° 24' 35.0" E). From Point 5 the maritime boundary line shall continue along the line equidistant from the opposite coasts of Romania and Ukraine in a southerly direction starting at a geodetic azimuth of 185° 23' 54.5" until it reaches the area where the rights of third States may be affected.”

Three of the nine sketch-maps included in the Judgment are attached to this press release:

- Sketch-map No. 1: The maritime boundary lines claimed by Romania and Ukraine;
- Sketch-map No. 5: The delimitation area as identified by the Court;
- Sketch-map No. 9: Course of the maritime boundary as established by the Court in its Judgment.

Reasoning of the Court

Preliminary legal questions

The Court recalls that the dispute between Romania and Ukraine concerns the establishment of a single maritime boundary delimiting the continental shelf and exclusive economic zones between the two States in the Black Sea (paras. 17-19 of the Judgment).

The Court notes that Romania has sought to found the Court's jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on the compromissory clause contained in paragraph 4 (h) of the Additional Agreement concluded pursuant to Article 2 of the Treaty on Good Neighbourliness and Co-operation of 2 June 1997. It follows from the text of the compromissory clause that two conditions have to be met before either of the Parties is entitled to submit the case to the Court. The first condition is that no delimitation agreement should have been concluded "in a reasonable period of time, but not later than 2 years" since the start of negotiations. No agreement was reached between the Parties in the six years during which the negotiations were held. The second condition is that the Treaty on the Régime of the State Border should have entered into force. The Court notes that this condition has also been fulfilled, the said Treaty having entered into force on 27 May 2004. However, it observes that the Parties differ as to the exact scope of the jurisdiction conferred upon the Court (para. 22). The Court points out that, contrary to what has been suggested by Ukraine, nothing hinders its jurisdiction from being exercised so that a segment of the line drawn may result in a delimitation between, on the one hand, the exclusive economic zone and the continental shelf of one State, and, on the other hand, the territorial sea of the other State at its seaward limit (para. 30).

The Court then turns to the applicable law. It observes that, while the principles listed in subparagraphs 4 (a) to (e) of the Additional Agreement may apply to the extent that they are part of the relevant rules of international law, the principles of maritime delimitation to be applied by the Court in this case are determined by paragraph 1 of Articles 74 and 83 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (para. 41).

The existing maritime delimitation between the Parties

The Court notes that the Parties disagree as to whether there already exists an agreed maritime boundary around Serpents' Island for all purposes. They therefore disagree also on the starting-point of the delimitation to be effected by the Court. The Court states that to this end it must begin with "the determination of the starting-point of the delimitation as a function of the land boundary and territorial sea boundary as already determined by the Parties". It concludes that "in 1949 it was agreed that from the point represented by border sign 1439 the boundary between Romania and the USSR would follow the 12-mile arc around Serpents' Island, without any endpoint being specified". It adds that "[u]nder Article 1 of the 2003 State Border Régime Treaty the endpoint of the State border between the Parties was fixed at the point of intersection where the territorial sea boundary of Romania meets that of Ukraine", a point referred to by the Court as "Point 1" (para. 66).

The Court next turns to the question of whether, as Romania claims, a boundary delimiting the exclusive economic zones and continental shelf beyond Point 1, and extending around Serpents' Island, was established by the 1949 instruments (para. 69). It points out that paragraph 4 of Articles 74 and 83 of UNCLOS is relevant in this respect, since it provides that where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone and the continental shelf "shall be determined in accordance with the provisions of that agreement" (para. 69). The Court notes that the 1949 instruments "make no reference to the exclusive economic zone or the continental shelf" (para. 70). It further observes that, while the 1997 Additional Agreement is the only agreement expressly dealing with

delimitation of the exclusive economic zone and the continental shelf, “[i]t does not establish a boundary but rather a process for arriving at one” (para. 70). The Court concludes that “the 1949 instruments related only to the demarcation of the State border between Romania and the USSR, which around Serpents’ Island followed the 12-mile limit of the territorial sea” (para. 76). Consequently, according to the Court, “there is no agreement in force between Romania and Ukraine delimiting between them the exclusive economic zone and the continental shelf” (para. 76).

Relevant coasts

The Court begins by pointing out that, from a legal point of view, the relevant coasts can play two roles in relation to the delimitation of the continental shelf and the exclusive economic zone: “First, it is necessary to identify the relevant coasts in order to determine what constitutes in the specific context of a case the overlapping claims to these zones. Second, the relevant coasts need to be ascertained in order to check, in the third and final stage of the delimitation process [see “Delimitation methodology” below], whether any disproportionality exists in the ratios of the coastal length of each State and the maritime areas falling either side of the delimitation line.” (Para. 78.)

The Court notes that the Parties are in agreement that the whole Romanian coast constitutes the relevant coast for the purposes of delimitation. As a result, the length of the relevant coast of Romania is approximately 248 km (para. 88).

The Court further notes that both Parties consider “the coast of the Crimean Peninsula between Cape Tarkhankut and Cape Sarych, as well as the Ukrainian coast from their common territorial boundary running for a short distance in a north and subsequently in a north-easterly direction until the Nistru/Dniester Firth (Romania designates this point as Point S) as the relevant Ukrainian coast”. It observes that their disagreement in this respect concerns the coast extending from that point until Cape Tarkhankut (para. 98). The Court takes the view that the coasts of Karkinits’ka Gulf do not form part of the relevant coast, since they do not project in the area to be delimited; the coastline of Yahorlyts’ka Gulf and Dnieper Firth is to be excluded for the same reason. However, the Court considers the sectors of the Ukrainian coast between Point S and Cape Tarkhankut to be relevant, as they generate projections which overlap with the maritime projections of the Romanian coast. As a result, the length of the relevant coast of Ukraine is approximately 705 km.

The Court notes that “on the basis of its determination of what constitutes the relevant coasts, the ratio for the coastal lengths between Romania and Ukraine is approximately 1:2.8” (para. 104).

Relevant maritime area

The Court observes that the Parties hold different views as to whether the south-western and south-eastern “triangles” (as described in paragraphs 107 and 109) should be included in the relevant area. It notes that in both these triangles the maritime entitlements of Romania and Ukraine overlap. The Court finds that it is appropriate in the circumstances of this case to include both the south-western and the south-eastern triangles in its calculation of the relevant area (para. 114) (see sketch-map No. 5).

Delimitation methodology

The Court sets out the delimitation methodology in the present case. It will begin by drawing a provisional equidistance line between the adjacent coasts of Romania and Ukraine, which will then continue as a median line between their opposite coasts. At the second stage, it will consider whether there are factors calling for the adjustment or shifting of the provisional equidistance line in order to achieve an equitable result (para. 120). Third, it will verify that the said line does not lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line (para. 122).

Establishment of the provisional equidistance line

— Selection of base points

The Court observes that its task is firstly to identify “the appropriate points on the Parties’ relevant coast or coasts which mark a significant change in the direction of the coast, in such a way that the geometrical figure formed by the line connecting all these points reflects the general direction of the coastline” (para. 127). After examining at length the characteristics of each base point relied upon by the Parties for the establishment of the provisional equidistance line, the Court decides to use the Sacalin Peninsula and the landward end of the Sulina dyke on the Romanian coast (para. 141), and Tsyganka Island, Cape Tarkhankut and Cape Khersones on the Ukrainian coast (para. 148). It considers it inappropriate to select any base points on Serpents’ Island (para. 149).

Relevant circumstances

— The presence of Serpents’ Island in the area of delimitation

The Court recalls that, as its jurisprudence has indicated, it may on occasion decide not to take account of very small islands or decide not to give them their full potential entitlement to maritime zones, should such an approach have a disproportionate effect on the delimitation line under consideration (para. 185). It notes that all of the areas subject to delimitation in this case are located in the exclusive economic zone and the continental shelf generated by the mainland coasts of the Parties and are moreover within 200 nautical miles of Ukraine’s mainland coast. The Court observes that Serpents’ Island is situated approximately 20 nautical miles to the east of Ukraine’s mainland coast in the area of the Danube delta. Given this geographical configuration and in the context of the delimitation with Romania, any continental shelf and exclusive economic zone entitlements possibly generated by Serpents’ Island could not project further than the entitlements generated by Ukraine’s mainland coast because of the southern limit of the delimitation area as identified by the Court. Further, any possible entitlements generated by Serpents’ Island in an eastward direction are fully subsumed by the entitlements generated by the western and eastern mainland coasts of Ukraine itself. The Court also notes that Ukraine itself, even though it considered Serpents’ Island to fall under Article 121, paragraph 2, of UNCLOS, did not extend the relevant area beyond the limit generated by its mainland coast, as a consequence of the presence of Serpents’ Island in the area of delimitation. In the light of these factors, the Court concludes that the presence of Serpents’ Island does not call for an adjustment of the provisional equidistance line (para. 187). The Court further recalls that a 12-nautical-mile territorial sea was attributed to Serpents’ Island pursuant to agreements between the Parties. It concludes that, in the context of the present case, Serpents’ Island should have no effect on the delimitation in this case, other than that stemming from the role of the 12-nautical-mile arc of its territorial sea (para. 188).

— Other possible relevant circumstances

Besides the presence of Serpents' Island in the area of delimitation, the Court considers five other factors: the possible disproportion between lengths of coasts (paras. 158-168), the enclosed nature of the Black Sea and the delimitations already effected in the region (paras. 169-178), the conduct of the Parties (oil and gas concessions, fishing activities and naval patrols) (paras. 189-198), any cutting off effect (paras. 199-201) and certain security considerations of the Parties (paras. 202-204). However, the Court does not see in these various factors any reason that would justify the adjustment of the provisional equidistance line.

The line of delimitation

The delimitation line decided by the Court, for which neither the seaward end of the Sulina dyke nor Serpents' Island is taken as a base point, therefore begins at Point 1 and follows the 12-nautical-mile arc around Serpents' Island until it intersects with the line equidistant from Romania's and Ukraine's adjacent coasts; from there, it follows that line until it becomes affected by base points on the opposite coasts of Romania and Ukraine. From this turning point the delimitation line runs along the line equidistant from Romania's and Ukraine's opposite coasts (para. 206). The Court considers that the delimitation line follows the equidistance line in a southerly direction until the point beyond which the interests of third States may be affected (para. 209) (see sketch-map No. 9).

The disproportionality test

The Court checks finally that the result arrived at, so far as the envisaged delimitation line is concerned, does not lead to any significant disproportionality by reference to the respective coastal lengths and the apportionment of areas that ensue (para. 210). It indicates that this checking can only be approximate (para. 212). Noting that the ratio of the respective coastal lengths for Romania and Ukraine, as it has measured them, is approximately 1:2.8 and the ratio of the relevant area between Romania and Ukraine is approximately 1:2.1 (para. 215), the Court is not of the view that the line it has constructed requires any alteration (para. 216).

Composition of the Court

The Court was composed as follows: President Higgins; Vice-President Al-Khasawneh; Judges Ranjeva, Shi, Koroma, Buergenthal, Owada, Tomka, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; Judges ad hoc Cot, Oxman; Registrar Couvreur.

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A summary of the Judgment appears in the document "Summary No. 2009/2". In addition, this press release, the summary and the full text of the Judgment can be found on the Court's website (www.icj-cij.org) under "Cases".

Information Department:

Messrs. Boris Heim and Maxime Schoupe, Information Officers (+31 (0)70 302 2337)
Ms Joanne Moore, Assistant Information Officer (+31 (0)70 302 2394)
Mrs. Barbara Dalsbaek, Administrative Assistant (+31 (0)70 302 2396)

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