

POLITICAL-GEOGRAPHICAL FEATURES OF THE UKRAINIAN-ROMANIAN MARINE BORDER DEFINITION AND ESTABLISHMENT WITHIN THE BLACK SEA

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Abstract: The political-geographical features of the Ukrainian-Romanian marine border formation are considered. The normative framework in the establishment of the Ukrainian-Romanian maritime border is studied. The basic problems which in the process of the Ukrainian-Romanian marine border delimitation and demarcation arised are analyzed. The features of the delimitation of the continental shelf and the exclusive economic zone between Ukraine and Romania are researched. The effect of the decision of the International Court in The Hague for the further conduct of bilateral relations between Ukraine and Romania within the Black Sea is studied.

Key words: Ukraine, Romania, normative framework, continental shelf, exclusive economic marine zone, delimitation, demarcation

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INTRODUCTION

With the announcement of independence of Ukraine in 1991 the area which included marine internal waters and territorial sea of the total area of 40 thousand sq. km. became part of Ukraine. Besides marine waters, on which the full sovereignty of Ukraine extended, the country got right on the exclusive (marine) economic zone, located in outer limits of the territorial sea, the economic sovereignty of the country exteneded on it in accordance with the UN Convention on the Law of the Sea from 1982. Together with marine territory Ukraine received from the Soviet Union the legal basis of its management which didn't fulfill the contemporary political and socio-economic conditions and peculiarities of Ukraine. This resulted the emergence of a number of problems associated with the marine borders of the state formation. Therefore, political-geographical study about the problems associated with the marine borders of Ukraine formation in terms of national security, marine safety, the delimitation of the continental shelf, the protection of the economic rights and interests in the Azov-Black Sea region is important nowadays.

Ukraine is a marine country, has access to the Black and Azov Seas. However, the north-western part of the Black Sea (the distinction between Ukraine and Romania) has the particular interest of the delimitation procedures. Geographical conditions in the area absorbed almost all the possible problems in terms of delimitation. The situation is also complicated by a number of additional circumstances that affect the determination of approaches to the determination of the boundary line. The question about Ukrainian-Romanian border determination was not so complicated, as the question about the continental shelf and the exclusive economic zones delimitation.

THE HISTORY OF THE TERRITORIAL DISPUTE

The territorial dispute with Romania was inherited from the Soviet times. On September 15, 1947 the Paris Peace Treaty between the USSR and Romania, which established the land Soviet-Romanian border (incl. border on the river Tisza, Prut and Danube) came into force (Копачинська Г. В., 2010). This agreement summarized the Second World War and established bases postwar territorial division in Europe. For its delimitation on large-scale maps and demarcation on the ground, on February 4, 1948 the Protocol on the passing of the Soviet-Romanian border between the Governments of the USSR and Romania was signed. On May 23, 1948 the Soviet Union and Romania signed another protocol, whereby Snake Island "was returned to the Soviet Union by the Romanian People's Republic and was comprised into the USSR." On February 27, 1949 as a result of mixed Demarcation Commission, the Act of demarcation and the protocol-description of the tract of the Soviet-Romanian border was signed. On February 27, 1961 in Bucharest the Treaty on the regime of the Soviet-Romanian border, cooperation and mutual assistance on border issues was signed.

This document completed formation of the legal framework of the Soviet-Romanian border. The process of the Soviet-Romanian marine border in the northwestern part of the Black Sea was more complex and controversial, lasted twenty years - from 1967 to 1987, moreover it was not completed at the beginning of 90th. The Romanian side claimed on several islands in the mouth of the Danube and the Snake Island (0.17 sq. km.), what contradicted to the visions of the USSR. The situation about the establishment of the marine border in the north-western part of the Black Sea changed after the fall of the communist regime in Romania and when Ukraine gained independence.

THE FEATURES OF UKRAINIAN-ROMANIAN MARINE BORDER DEFINITION AND ESTABLISHMENT

Ukraine's independence was recognized by Romania in early 1992. On February 1, 1992 in Davos (Switzerland) presidents and foreign ministers of Ukraine and Romania met, there the Joint Communiqué on the Establishment of Diplomatic Relations was signed.

However, territorial issues have not been removed from the agenda of bilateral relations. Romanian diplomacy has chosen a policy of constant reminding about the existence of unresolved territorial issues with Ukraine, addressing these messages as Ukraine itself and the international community as well. Such persistent behavior and pressure on official Kyiv undoubtedly exacerbated relations between the two countries, evidence of which was delaying the signing of the Ukrainian-Romanian border. During 1993-1995, the Romanian side sent to the MFA of Ukraine several notes, declaring unilaterally

that the Treaty about the Soviet-Romanian border regime from 1961 and the Protocol about the Soviet-Romanian border line specification from 1948 lost validity (Караман І., 2007).

In November-December 1995, the Ukrainian-Romanian relations deteriorated due to the new applications from the Romanian side about Snake Island belonging to her. However, the active negotiations that took place in Europe in the French initiative about the European Stability Pact development forced European countries to recognize the existing borders and abide to European standards of national minorities rights abidance. Therefore, Romania agreed on a compromise solution: do not consider in the agreement the number of articles dealing with the Ukrainian-Romanian borders. However, as a result of NATO's decision to review Romania nominations for membership, Romania agreed to conclude the main basic agreement in the new version.

In 1997 the base Ukrainian-Romanian Treaty, which confirmed legally existing border between the two countries was signed, but the agreement about the description of border delimitation lasted until 2003. This event took place in 2003 when the President of Ukraine Leonid Kuchma and the President of Romania I. Iliescu signed in Chernivtsi the Treaty on the Ukrainian-Romanian border. This agreement provided the final legal registration of the Ukrainian-Romanian border with the fixing the exact geographical coordinates of its extreme point in the sector of the Black Sea.

The question concerning the delimitation of the exclusive economic zone and the continental shelf of the Black Sea, including Snake Island was the controversial point in the Ukraine-Romanian border determining. On December 12, 2004 in Romania the second round of the presidential elections took place, the results were won by the candidate from the opposition alliance of the National Liberal Party-Democratic Party mayor of Bucharest, Traian Basescu. In welcoming the newly elected President the President of Ukraine expressed the hope that relations between Ukraine and Romania would open a new page, which must be marked by solving the "problem" of Ukrainian-Romanian bilateral relations in the spirit of partnership and friendship. Also the new Romanian government had to revise foreign policy, the basic principles of which were to intensify relations with her neighbors.

However, on 16 September 2004 despite government statements about the intensification of relations with neighbors Romania addressed the International Court of Justice to hear the case about the continental shelf and the exclusive economic zone between Ukraine and Romania in the Black Sea delimitation. On October 25, 2004 in The Hague (Netherlands) at the Peace Palace (seat of the International Court of Justice) the Commissioner of Ukraine (from MFA) with the Commissioner of Romania (from MFA) met. The meeting discussed the procedure of the Memorandum of Romania and counter-memorandum of Ukraine sending in the International Court of Justice. Preparation of these documents was an important stage because they contained detailed justification for the positions of each party (Бойко О. С., Николаенко Д. В., 2010).

In parallel in Kiev on April 14-15, 2005 and in Constanta on June 2-3, 2005 bilateral consultations about the delimitation of the continental shelf and the exclusive economic zones of Romania and Ukraine in the Black Sea were held. The sides discussed a number of issues of hydrographic and geodetic nature what was necessary for resolving the problem of marine spaces delimitation and for the International Court of Justice consideration.

The suggested delimitation of the continental shelf and the exclusive economic zone between Ukraine and Romania in the Black Sea are depicted in Figure 1.



Figure 1. Ukrainian and Romanian versions of delimitation

(Source: БОЙКО О. С., НИКОЛАЕНКО Д. В., (2010), *Проблеми делімітації спорних акваторій и освоєння шельфа*, in *Науковий вісник Волин. нац. ун-ту ім. Лесі Українки. Серія: Географічні наук*, № 3 , 76-93, Вежа, Луцьк)

On May 6, 2006 after reviewing the memorandum of Romanian, Ukraine sent counter-memorandum to the International Court of Justice. After that, the parties started the court side of the dispute. The cornerstone of the dispute was the status of Snake Island. Romania insisted on the wording "rock", which proved useless territory for residence and business. Ukraine also argued that Snake is an island with the population of 30 persons and with active development of tourism infrastructure. Island status had to consolidate the Ukraine's right to the Sea area next to the disputed territory, shelf of which was rich in natural resources (in 2001, 40 km from Snake deposits of 10 million tons of oil and 10 billion cubic meters of gas were found) (Николаєнко Д. В., Бойко О. С., 2009).

There are no geographical or scientific criteria of differentiation of the island or the rock. Yet the difference between them exists. According to the UN Convention on the Law of the Sea from 1982 the international legal regime of islands is governed by a single article - art. 121 "regime of islands", which specifies the basic requirements that relate to the island. Snake Island fully

satisfies all the three requirements of the position 1 article 121: 1) island really is naturally created part of land with a rich cultural, archaeological, geological, and biological heritage, 2) island is surrounded by the Black Sea, and 3) it always rises to several tens of meters above the ordinary level of the Black Sea.

With geographic and environmental attitudes island is full of all ecosystem components. It has a certain relief, geological structure, geostructural features, largely covered with sedimentary layer, on which soil develops, is inhabited by island complex animals, undergoes significant effect of the atmosphere and the sea.

In addition, for Snake as Island recognition, the Ukrainian authorities have built around it the lighthouse, standing there for 150 years, border crossing, mail, church, etc., and settled on the island 53 residents, calling it the village White of Kili area in Odessa region.

It was the most important for Ukraine to confirm the status of an island and incorporate it into its coastline. This had to provide increasing of the territory of the Ukrainian exclusive economic zone, in which the state could safely conduct business activities. Action and legal justification for Ukraine were made by the famous British lawyer Sir Arthur Oatess. Ukrainian representatives also were advised by British lawyer Michael Wood, Frenchman Jean-Paul Kennedek and the representative of one of the largest law firms Eversheds Rothman Band.

Romanian side tried to prove that Snake Island was the "rock" in accordance with Art. 121 (3) of the UN Convention of the Law of the Sea from 1982. If the Romanian side could prove it, the "rock" couldn't have the exclusive economic zone and the shelf, but only the territorial sea and contiguous zone around it. In addition to the minimal impact of this "rock" on the delimitation of the continental shelf and the exclusive economic zones of the two countries, there would not be necessary any Ukrainian permit for exploration and production of natural resources of shelf around the island, as well as licenses to conduct fishing activities in its exclusive economic zone (Хіцькевич В. І., 2009).

Together with concern about the legality of Snake Island the exclusive (maritime) economic zone and its continental shelf presence, Ukraine faced another problem connected with international legal delimitation of marine spaces between Ukraine and Romania. A number of issues about this problem were necessary to be taken into account, some of them are:

- the choice of the starting point for the beginning of the boundary line of exclusive (maritime) economic zone of Ukraine and Romania, and hence the separation of their continental shelf;
- the choice of marine spaces separating method;
- the question about characterization of the general coast configuration of Ukraine and Romania in the area of division.

The whole problem solving depended upon these issues.

In September 2008, the hearing of the marine border between Ukraine and Romania establishment began. It should be noted that there was no decision on the delimitation of marine spaces between states in international practice, which would not have been built on the basis of compromise.

Always the Court accepts compromise decision, so any of the party can be satisfied for 100%. This decision which concerned the question of the continental shelf and the exclusive economic zones of Romania and Ukraine delimitation was not an exception (Копачинська Г. В., 2010).

THE INTERNATIONAL COURT OF JUSTICE DECISION ABOUT THE UKRAINIAN-ROMANIAN MARINE BORDER DELIMITATION

On February 3, 2009 the decision was adopted by the Court and had the following meaning: "From the point 1, as the Parties agreed in Article 1 of the Treaty on the Ukrainian-Romanian border in 2004, the lines of a single marine border of the continental shelf delimitation and the exclusive economic zones of Romania and Ukraine in the Black Sea will be held in the territorial sea of Ukraine, covering 12 nautical miles around Snake Island, to a point 2 (coordinates: 45°03'18.5" N. Lat. to 30°09'24.6" E. Lon.), and the zone crosses the line equidistant from the adjacent coasts of Romania and Ukraine. From point 2 the delimitation line will be equidistant, passing through point 3 (coordinates: 44°46'38.7" N. Lat., And 30°58'37.3" E. Lang.) and point 4 (coordinates: 44°44'13.4" N. Lat., and 31°10'27.7" E. Long.) to point 5 (coordinates: 44°02'53.0" N. lat., and 31°24'35.0" E. Long.). With point 5 the marine border line runs along the line equidistant from the opposite coasts of Romania and Ukraine to the south, since the geodetic azimuth of 185°23'54.5" to areas where they can touch the interests of third parties" (figure 2). The court determined the marine border that divided the continental shelf and the exclusive economic zones of Romania and Ukraine in the Black Sea. This border almost recreated the line offered by the Soviet side in the negotiations about the delimitation with Romania in 1987.

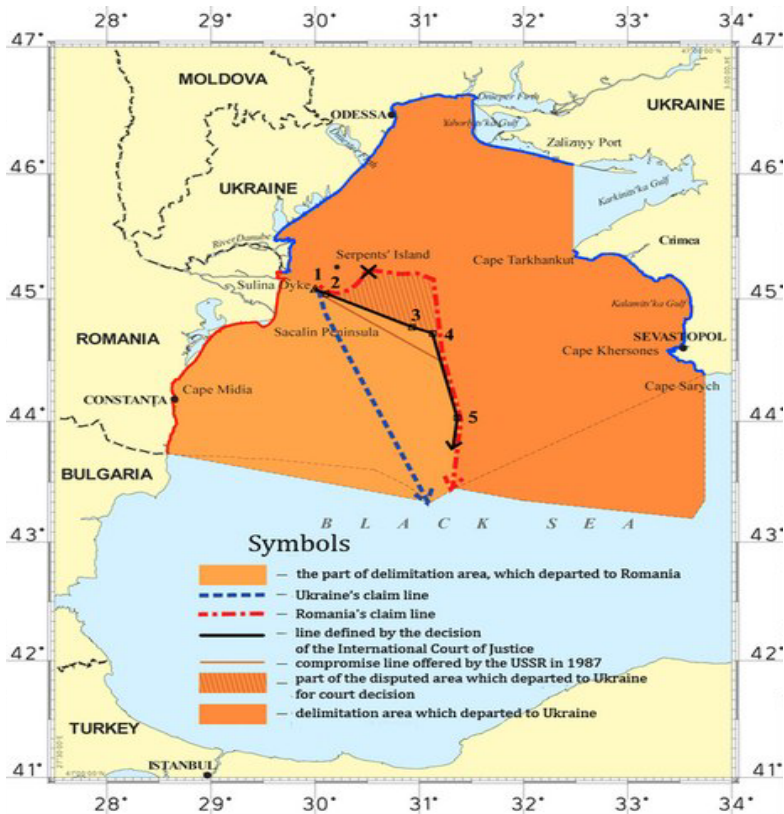


Figure 2. The line of delimitation in accordance with the decision of the Hague Court (Source: КОПАЧИНСЬКА Г. В., (2010), *Проблеми формування морських кордонів України*, in *Науковий вісник Волин. нац. ун-ту ім. Лесі Українки. Серія : Географічні науки*, № 15, 78–85, Вежа, Луцьк)

The Hague Court decided the status of the island favorably for the Ukrainian side, but the decision about the coastal area was profitable for the Romania side. Ukraine wanted to divide the dispute territories in the ratio of 1 to 3: 53.3 thousand sq. km for Ukraine, 21.9 thousand sq. km for Romania. But the court decided the opposite. Delimitation line drawn by the court showed that Ukraine got 12-mile area that included a territorial sea. However, outside of this line around the Snake Island the exclusive economic zone was. "The exclusive economic zone of Ukraine" is a marine zone, width of it is 200 miles (370.4 km), it is measured from the same baselines from which the breadth of the territorial sea is measured.

The exclusive economic zone is wider than the territorial sea (which is up to 12 miles), so it goes beyond the outer boundary of the territorial sea and is not part of the state.

Therefore, the court's decision was a compromise for both states.

CONCLUSIONS

The study of the political-geographical features of the marine borders of Ukraine definition and establishment is extremely important at the present stage of its development as an independent European state. After all, Ukraine is a sea state and its active and effective marine policy is one of the important conditions for ensuring economic, military, political, and national security. Since independence, Ukraine had to decide the definition and establishment of marine borders with two neighboring states Russia and Romania. However, the Ukrainian-Romanian section of the marine border has the particular interest in terms of delimitation procedures and approaches of its determination. Moreover, the territorial dispute with Romania concerning distinctions in the Black Sea was inherited from the Soviet times. It was not solved when Ukraine got independence and the communist regime in Romania was overthrown. The identification and establishment of the Ukrainian-Romanian marine border was settled as a result of a decision by the International Court of Justice on the delimitation of the marine boundary between Romania and Ukraine on February 3, 2009. As a result of the adoption of this decision two neighboring states were able to establish and develop bilateral relations within the Black Sea, to continue to develop the Black Sea shelf belonging to them which was closed at the time of this case in court and to concentrate their efforts on the problems of security and stability in the Black Sea region. Hence this decision had a positive impact on the Ukrainian-Romanian bilateral cooperation and further development as active actors of international relations, including marine.

REFERENCES

- БОЙКО О. С., НИКОЛАЕНКО Д. В., (2010), *Проблеми делимитації спорних акваторій і освоєння шельфа*, in Науковий вісник Волин. нац. ун-ту ім. Лесі Українки. Серія: Географічні наук, № 3 , 76-93, Вежа, Луцьк.
- ДНІСТРЯНСЬКИЙ М. С., (1992), *Кордони України*, Світ, Львів.
- КАРАМАН І., (2007), *Міжнародно-правовий статус острову Зміїний*, in Право України, № 9, 118-122, Київ.
- КОПАЧИНСЬКА Г. В., (2010), *Проблеми формування морських кордонів України*, in Науковий вісник Волин. нац. ун-ту ім. Лесі Українки. Серія : Географічні науки, № 15, 78–85, Вежа, Луцьк.

- КУЛИК М. З., (2007), *Шляхи вирішення проблеми розмежування морських просторів України*, in Держава і право: Зб. наук. Праць, Вип. 35, 595-600, Київ.
- НИКОЛАЕНКО Д. В., БОЙКО О. С., (2009), *Новая конфликтность и картографическое обеспечение делимитации государственных границ в мировом океане*, in Градостроительство и территориальное планирование, Выпуск 34, 37-45, КНУБА, Киев.
- ХІЛКЕВИЧ В. І. (2009), *Основні тенденції розвитку ситуації в Чорноморському регіоні. Загрози і виклики Україні*, in Держава та регіони, №3, 23-42, Київ.
<http://www.hiv-aids-epidemic.com.ua/new%20articles-100.htm>.
<http://news.finance.ua>
<http://glavred.info/archieve/2009/02/04/1702398.html>.

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