THE STRIFE REGARDING THE SEA DELIMITATION IN THE BLACK SEA BETWEEN ROMANIA AND UKRAINE – DEVELOPMENT AND PERSPECTIVES -

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Abstract

The continental stage and the exclusive economical area's delimitation in the North sector of the Black Sea's West basin was the object of a long negotiation process, developed between 1967-1987, between Romania and the Union of Soviet Socialist Republics (USSR), without getting to an agreement. After USSR's teasing, these problems had been tackled in relation with the Ukrainian party. Unfortunately, the bilateral negotiations related to the Agreement regarding the delimitation of the continental stage and Romania and Ukraine's exclusive economical areas in the Black Sea, developed between 1998-2004 and did not lead to concrete results because this document text was not agreed, fact that made Romania to send to International Justice Court in Hague its demand to initiate the procedures in order to solve jurisdictionally the problems of the delimitation of the continental stage and Romania and Ukraine's exclusive economical areas. The process found on the role of International Justice Court in Hague since September 16th, 2004 is now in stage of consultations and decision's pronunciation after the oral procedure's stage ended, on September 19th, 2008.

General considerations. Since ancient times, mankind has manifested a constant interest in sea problems and nature laws proving that the world's great civilisations were born and thrived because of the exploitation both of the fertile lands encouraged by the navy air and of the seas and oceans' resources[1]. The existence of certain unsuspected resources in the world's seas and oceans and the real possibilities to cover an important part of the food and energy that humanity requires, risking to use up all of land resources[2], in a short time, made the interest in world's ocean to grow up continuously[3]. All of these justified the pointing out of all states' concerns to capitalize these splendours, developing lately not only navy researches, but also a real industry of extracting and processing the minerals from the bottom of the seas and oceans, from the continental stages of the states or from the areas beside their national jurisdiction limits. However, this new sea spaces use has created several technical, economical and juridical problems that have caused the need to appear a new ensemble regulation of all sea space activities. The special interest to establish certain adequate juridical framework has also been determined by the fact that, in the absence of relevant regulations, the competition between the states searching economical resources and willing to ensure their control and supremacy to sea spaces, having strategic positions, could bring about lack of

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[1] *J. P. Beurier ş.a.*, Droits maritimes, Dalloz, Paris, 2007, p. 16-18, 26-27.

[2] Some experts assess that the nature "worked" over a million of years for the fossil fuel exploited every year. (*M. T. Snarr, D. N. Snarr*, Introducing global issues, Lynne Rienner Publishers, London, 2005, p. 293).

[3] *D. Mazilu*, The Law of the Sea – concepts and institutions sanctioned by the Montego-Bay Convention, Lumina Lex Publishing house, Bucharest, 2002, p. 13. Fr. Ratzel in "Sea, source of people's power" work (1902) wrote that the ideal for a political sea that claims the world power represents the continental and sea factors' combination. (*S. Tămaş*, Geopolitics, Noua Alternativă Publishing house, Bucharest, 1995, p. 29).

poise or even armed conflicts[4]. Therefore, under UNO's auspices, since 1958, they have organized several conferences discussing the sea problems, but these have been only the first steps in the long and, often, difficult road to consolidate the world seas and oceans' administration and rule system. In 1973, they convened the third Conference of UNO about the Sea's Right having an extremely difficult mission, namely to elaborate a convention that can regulate and reflect finding certain solutions mutually favourable to all the problems created ever by sea spaces. The third Conference of UNO about the Sea's Right managed, after complex, constant and long negotiations, to elaborate a new right of the sea, sanctioned in one convention[5], namely the United Nations' Convention about the Sea's Right in 1982 that represents nowadays the most important accomplishment of international community after UNO Charter, being the first comprehensive treaty that treats every utilisation's aspect of seas and oceans resources[6]. The 1982 Convention regulates all the sea spaces (it even sets up two new spaces: the exclusive economical area and the submarine territories' international area), establishing the specific fundamental juridical frame, starting with the sovereignty areas and going on by jurisdiction, the utilisation of states' sovereign rights and also by their obligations[7]. But, even if, nowadays, the 1982 Convention is known as a reference juridical frame for any kind of international regulations in order to define rights, obligations and responsibilities regarding the sea and oceanic space, although the problems' complexity regarding the sea spaces, the different interpretation and even the insufficiency of certain comprehensive and clear regulations determine the appearance of certain outstanding situations between states as the strife existent between Romania and Ukraine regarding the continental stage and the exclusive economical area's delimitation in Black Sea. However, we mention that the 1982 Convention's negotiators considered both the appearance possibility and the ways to solve certain potential strives related to the future sea Convention's interpretation or application. Therefore, the 1982 Convention also contains a complex disposals set referring to solving different litigations[8] that may appear, related to the

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[4] *Al. Bolintineanu, A. Năstase, B. Aurescu*, Contemporary International Law, All Beck Publishing house, Bucharest, 2000, p. 218. Also see *M. T. Snarr, D. N. Snarr*, op. cit., p. 277-278.

[5] *M. Popescu*, The Law of the Sea: national jurisdiction areas, Artprint Publishing house, Bucharest, 2000, p. 38; 41. *D. R. Rothwell*, Building on the strengths and addressing the challenges: the role of Law of the Sea institutions, Ocean Development&International Law, vol. 35, Issue 2, Apr-Jun 2004, p. 131.

[6] *E. P. Andreyev, ş.a.*, The International Law of the Sea, Translated from Russian by Dimitry Belyavsky, Progress Publishers, Moscow, 1988, p. 5.

[7] *B. Boutros Ghali*, A dream becomes a reality: Sea Law Convention enters into force, United Nations Chronicle, New-York, vol.32, Issue 1, Mar. 1995, p. 8.

[8] The system provided by 1982 Convention sanctions the principle of solving the strives between the states parties to 1982 Convention peacefully, as well as the freedom to choose the peaceful way to solve the strives related to the interpretation or the application of Convention's disposals (article 279 and 280 in 1982 Convention). The 1982 Convention also specifies that, if there is a strife related to 1982 Convention's interpretation or application, the procedures provided by this Convention do not apply if the parties had chosen another way to solve the strife. However, the ways provided by 1982 Convention interfere only if they do not find a solution by the way previously chosen by the parties and only if the agreement between the parties does not exclude the possibility to start another procedure (if the parties agreed about a term, then the Convention's procedures apply only after this term expires – article 281, paragraph 2 in 1982 Convention). At the same time, strife between the states parties related to 1982 Convention's interpretation or application may be liable to the procedures provided by this international document only after they use up all the intern last appeals according to international rights' demands (article 295 in 1982 Convention). The states parties also have the possibility to agree in certain general, regional or bilateral agreements' frame that the strives can be liable, at one of the parties' demand, to a procedure that involves a compulsory decision, and this shall apply instead of the one provided by 1982 Convention. In the absence of this agreement, if strife appears, the states parties have to go through a conciliation procedure, and in its frame they will contact the conciliators. The ways to solve the strives

interpretation and the application of Convention's foresights, creating a complete and original system that can solve peaceably the international strives and that completes common models in matter foreseen by article 33, paragraph 1 in UNO Charter. Considering these and the fact that both Romania and Ukraine are parties of 1982 Convention, we specify that both of them have chosen the strife's peaceful solving according to UNO Charter and 1982 Convention's foresights.

Evolutionary look on the strife regarding continental stage and the exclusive economical areas' delimitation between Romania and Ukraine. Continental stage[9] and exclusive economical area's delimitation[10] in the North sector of Black Sea's West basin was the object

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related to 1982 Convention's interpretation or application that lead to compulsory decisions (according to the foresights of article 296 in 1982 Convention the decisions pronounced by a qualified court or law court are irrevocable and all the strife parties must accept them; these decisions have a compulsory force only for the strife parties and only regarding the litigation) are the following: International Court for Sea's Right, International Justice Court, an arbitral Court formed according to 1982 Convention's Annex VII. (*T. Treves*, The International Tribunal for the Law of the Sea, în The Italian Yearbook of International Law, Kluwer Law International, The Hague, vol. 10, 2000, p. 233).

[9]**From the geological point of view, the continental stage or platform represents the land's natural prolongation of the riparian state that goes down under the sea, until the continental border, where the sea usually is not deeper than 150-200 meters, and then the steep continental gradient begins, to the seas and oceans' great depths. From the juridical point of view, article 76, paragraph 1 in 1982 Convention shows that the continental stage of a riparian state contains the bottom of the sea and submarine areas' subsoil situated beyond its territorial sea, all over the natural prolongation of that state's land territory, until the external limit of the continental border or until a 200 sea miles distance from the base lines from which we measure territorial sea's breadth when the outside limit of the continental borders is at an inferior distance. The riparian state exerts sovereign rights over the continental stage, in order to explore and exploit its resources. Riparian state's rights about the continental stage are exclusive, meaning that if he does not explore or exploit its resources, nobody can do it without his consent (*E. du Pontavice, P. Cordier,* La mer et le droit, Presses Universitaires de France, Paris, 1984, p. 71). At the same time, these rights do not depend either on its job or any declaration; the riparian state's rights about the continental stage are known automatically in 1982 Convention's base, considering the fact that the continental stage is a natural prolongation of the land space and there is a unity between the land resources and the continental stage's ones. The riparian state also has the exclusive right to build and to authorize and regulate the artificial islands' building, exploitation and utilisation and works to exploit or explore the continental stage's resources. Around these installations it has to establish security areas that do not cross over a 500 meters distance from every point of their outside border. Exerting its rights, the riparian state must behave so that it does not touch the system of free sea of the waters above, the air space above, the sailing and other rights and freedoms known by other states' 1982 Convention (article 78 in 1982 Convention).**

[10] The exclusive economical area (EEA) was defined as representing the area beyond the territorial sea and contiguous to it, that lays on a 200 sea miles distance, measured from the base lines of the territorial sea (article 5 in 1982 UNO's Convention about the Sea's Right). EEA's juridical system is a special system defined by exclusive economical rights known by riparian states about the resources' ensemble in the area, inclusively the jurisdiction in the area, but it excludes the claims of territorial sovereignty from these states' part. Inside this space, the riparian state has sovereign rights only regarding the exploitation, the conservation and the administration of natural, biological and non-biological resources. The riparian state also has the right to develop other activities to explore and exploit the area, in economical purposes, like producing energy by using water, sea currents and wind. So that the riparian state has the right to regulate by intern laws the exertion of its sovereign rights and jurisdiction, establishing administrative, judiciary and punishing measures against any violation of EEA's juridical system. (*M. Popescu*, op.cit., p.236-240). We specify that the established juridical system related to EEA regards only the surface waters because land and subsoil's resources in EEA's limit are liable to the juridical system applicable to continental stage (paragraph (3) in article 56 in 1982 Convention). Exerting EEA resources' administration right, the riparian state establishes the total authorized volume of biological resources captures, especially fish, and it determines its own capture volume (article 62, paragraph 2 in 1982 Convention). If this one is smaller than the total allowable volume of settled captures, the riparian state

of a long negotiation process, developed between 1967-1987, between Romania and the Union of Soviet Socialist Republics (USSR), without getting to an agreement. After USSR's teasing, these problems had been tackled in relation with the Ukrainian party and Romania was one of the first countries that recognized Ukraine as an independent state after the events in ex-USSR[11]. Bilateral relations had been developed during the last years so that, nowadays, the juridical frame of Romanian-Ukrainian relations contains about 40 agreements and conventions that regulate the political, economical, cultural-scientific humanitarian cooperation. And in their framework, the most important of them is, of course, signing, on June 2nd, 1997, at Constanța, the Treaty regarding the neighbourhood and cooperation relations between Romania and Ukraine (The Fundamental Political Treaty)[12]. But the problems regarding the frontier's system between the two states have not been solved by this treaty[13] because disposals of article 2, point 2 specify that "contracting parties will contract a separate treaty regarding the frontier's system between the two states and they will solve the problem of continental stage and exclusive economical areas' delimitation in Black Sea, basing on principles and procedures agreed by letters exchange between the extern business ministers, when signing the current treaty. The deals agreed in this letters exchange will be valid when this treaty will be valid"[14]. Therefore, at the same time, they signed the Agreement

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may authorize other states, basing on special agreements or other kind of arrangements, to exploit the difference remained from the total allowable volume settled initially. (*J. Combacau, S. Sur*, Droit international public, Edit. Montchrestien, Paris, 2006, p. 489). At the same time, exerting its sovereign rights, the riparian state has the right to build, authorize and regulate the artificial islands, installations and economical works building, exploitation or utilization and to establish 500 meters security areas around them, being forced not to prejudice the international sea navigation. In EEA only the riparian state may develop freely the scientific research, and the other states may do it only with its consent (article 246, paragraph 2 in 1982 Convention).

[11]After establishing the diplomatic relations between the two states on February 1st, 1992, they founded Romania's Embassy in Kiev, instead of Romanian General Consulate, that was founded in 1971. In April 1995 they opened Romania's General Consulate in Odessa and in Mai 1999 they opened officially Romania's General Consulate in Cernăuți. (*Şt. Diaconu*, Romania's Treaties with Neighbours, Lumina Lex Publishing house, Bucharest, 2001, p. 121).

[12] This Treaty has been ratified by Romania's Parliament by Law no. 129 / July 14th, 1997 to ratify the Treaty regarding the neighbourhood and cooperation relations between Romania and Ukraine. The Law has been published in Romania's Official Gazette, part I, no. 157 since July 16th, 1997. .

[13]After 1991, the Romanian-Ukrainian reports are taxed by several delicate conflict situations. From their long list, we mention: South Bessarabia's "problem", North Bukovina's "problem", Hertsa and Snake Island's "problem"; Romanian minority's situation in Ukraine, Ukraine's will to build the canal Danube-Black Sea, named "Bâstroe"; the compensations that Romania must receive after the investments for Krivoi Rog mining exploitation combine in Dolinska; delimitation of exclusive economical areas and of continental stage of the two countries in Black Sea. Ukraine, as a new independent state on Europe's political map after 1991, assumed the quality of "heir" of ex-Soviet Union, adjudging the Romanian territories eradicated by ex-USSR. Ukraine has seen the Romanian territories that it incorporated in the good Soviet tradition, as inseparable parties of the new Ukrainian state, so as a "legal succession" from ex-USSR. It had been normal if all these "problems" would have been solved in 1991, in neighbourhood's spirit, respecting Romania's historic and juridical rights, Paris Peace Treaty (February 10th, 1947) and the other juridical documents that govern the international life. (*D. Pădurean*, Strategic War between Ukraine and Romania - http://www.studiidecaz.ro).

[14] Every community marked its presence in a territory by natural or artificial delimitations. During the dispute for spaces and resources, the frontiers were and still are sources of conflicts. The stakes in these conflicts' framework can be hegemonic (imperial extensions), economical (the resources' control), symbolic (areas that are important to people's genesis) or can hint at its own homeland's constitution. The frontier disputes also have as an object the sea spaces. Every snapshot of human history has known processes of remarking the frontiers, of frontier delimitations' disappearance, in the same time as the process of establishing new ones. History can be regarded, from this point of view, as a continuous dispute to establish the frontiers. (*S. Tămaş*, op. cit., p. 149-157).

connected to Fundamental Political Treaty, contracted by letters exchange between outside business ministers of the two countries. This last document contains foresights related to the parties' duty to start the negotiations in order to contract a Treaty regarding the state frontier's system and an Agreement for the continental stage and exclusive economical areas' delimitation between Romania and Ukraine in Black Sea[15]. At the same time, the Connected Agreement contains a series of principles that the two parties agreed to use to accomplish the delimitation[16].

The examination of the foresights of letter h in article 4 in the Connected Agreement relief the fact that the Agreement also included a compromising clause[17] that establishes every party's possibility to inform unilaterally the International Justice Court in Hague (IJC) to solve the sea spaces' delimitation, by meeting cumulatively two conditions: the negotiations regarding the sea spaces' delimitation have to be developed for more than two years and the Treaty regarding state frontier's system has to be valid or they have to prove that it is not valid because of the other party.

About the Treaty regarding the state frontier' system, the two documents contracted in 1997 contain foresights referring to the two states' duty to contract a new treaty basing on the state's succession principle, according to which the proclamation of Ukraine's independence does not affect the frontier between Romania and Ukraine, as it is defined and described in the Treaty between Romanian Republic's Government and USSR's Government regarding the system of the Romanian-Soviet state frontier in 1961, as in all suitable delimitation documents, valid on July 16th, 1990, when adopting the Declaration regarding Ukraine's state sovereignty (article 2 in the Political Treaty, article 1 in the Connected Agreement).

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[15] Black Sea's reduced sizes do not allow the riparian states to have national areas of continental stage and exclusive economical area extended on 200 sea miles, needing delimitation between each riparian state's spaces. (www.mae.ro).

[16] The examination of the Agreement's foresights allows the identification of two types of principles considered when delimiting the sea frontiers, namely general and specific principles. We mention some of the general principles: the states' succession principle regarding the state frontiers (article1 in the Connected Agreement), the navigation's freedom principle both for river ships and for sea ships on Chilia canal of the Danube (article 2 in the Connected Agreement), the principles regarding ensuring the discipline and the security at the common frontier (article 3 in the Connected Agreement). The specific principles are presented in article 4 in the Connected Agreement and they establish the concrete criteria that have to be considered when delimiting the sea spaces: the principle established in article 121 in UNO's Convention about the Sea's Rights in 1982, the equidistance principle in contiguous coasts' case and the median line principle in face to face coasts' case, the equity principle and the proportionality method, the sovereignty principle uncontested by any of the contracting parties regarding the surface contiguous to sea spaces of the parties liable to delimitation, the resources' non-exploitation in the sea areas involved in the bilateral delimitation process until getting to a mutually agreed solution.

[17] The *a priori* acceptance of International Justice Court's jurisdiction may be achieved in two different ways: - by a unilateral declaration, also named optional clause, that must be laid down at UNO's General Secretariat and that contains a state's duty to make all the juridical strives, that may appear in reports to another state, liable to the Court's jurisdiction, that accepts the same duty; - also, the acceptance may result from certain bilateral or multilateral treaties regarding the peaceful solving of the strives that establish the Court's competency. There also can be the situation, more frequent in recent conventional practice, where the states parties of a treaty, having as an object a certain cooperation field between them, include in its content a compromising clause, by which they accept the strives between them to be liable to International Justice Court's jurisdiction. (*R. Miga-Beşteliu*, International Law. Introduction in International Public Law, All Beck Publishing house, Bucharest, 1998, p. 324).

After these, in 1998, the negotiation started both for the Treaty regarding common frontier's system and for the Agreement regarding sea spaces' delimitation[18].

Since 1998 until 2003, there were 19 negotiation rounds and the discussions developed simultaneously, both about the Treaty regarding the frontier's system and the Agreement about the delimitation. The last negotiation round, developed in Kiev, on June 13th, 2003 was exclusively dedicated to signing the Treaty regarding the Romanian-Ukrainian state frontier's system, the collaboration and the mutual assistance in frontier problems. After the negotiations, they signed the Treaty regarding the Romanian-Ukrainian state frontier's system, the collaboration and the mutual assistance in frontier problems[19] in Cernăuți[20], on June 17th, 2003. The agreed text corresponds to international right's principles and the duties assumed by the two states by bilateral and multilateral instruments. The treaty regulates a modern frontier's system, according to European Union's standards, considering the fact that the Romanian-Ukrainian frontier was to become east outside frontier of European union and of NATO. The Treaty also contains foresights related to its application's adoption depending on the relevant community acquis of European Union. At the same time, the Treaty offers the two parties guarantees referring to the potential correction of frontier's route, depending on the objective evolutions in river and sea frontier areas. Therefore, regarding the last point of the sea frontier, we foresee the possibility to change its position depending on the potential objective changes in the area, so that the territorial sea[21] of the both states has permanently a 12 sea miles breadth, according to the international right (UNO's Convention about Sea's Right in Montego Bay in 1982)[22]. At the same time, connected to the problems of sea spaces' delimitation, contracting the Treaty also offered the possibility to inform unilaterally the International Justice Court for sea Spaces' delimitation, if bilateral negotiations would not lead to satisfying results in a reasonable time[23].

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[18] www.mae.ro

[19] The Treaty was signed by Romania's President, Mr. Ion Iliescu, and by Ukraine's President, Mr. Leonid Kucima and it became valid after ratification instruments' exchange, accomplished in Mamaia, Romania, at the European Central Summit, on May 27th, 2004. (http://www.cdep.ro/proiecte/2004/000/60/0/eml_pl060_04.pdf).

[20] In Ukraine.

[21] Since the 17th century, they have formulated several criteria to delimit the territorial sea from the free sea: the gun shot, the horizon line, the three sea miles rule etc. Since then, the states delimited this area by internal laws, establishing non-uniform limits between 3 and 200 sea miles. 1982 Convention regulates this problem in article 3 where it specifies that every state has the right to set its territorial sea's breadth, and this breadth cannot cross 12 sea miles, from the fundamental lines established according to 1982 Convention. (*D. Popescu, A. Năstase,* International Public Law, Șansa Publishing house, Bucharest, 1997, p. 203).

[22] Also, by the Treaty, they found a Mixed Frontier Committee that has to check periodically the state frontier's route and to found, depending on these checks' results, new documents about the delimitation of frontier's route, according to the foresights of article 1-4 in the Treaty regarding the Romanian-Soviet state frontier system in 1961. The reference to the respective provisions in 1961 Treaty, that regulates the river frontier's correction depending on the natural changes that can interfere, basing on maintaining the frontier in the centre of the main shipping channel – on navigable waters – and, respectively, in the centre of the water sail – on non-navigable waters, ensures the observance of Romanian party's interests regarding the juridical system to correct the frontier if such natural morphological evolutions happen. Also, article 1 in the Treaty specifies that the frontier can be changed only if the parties agree, according to the Final Document of CSCE in Helsinki in 1975. (http://www.cdep.ro/proiecte/2004/000/60/0/eml_pl060_04.pdf).

[23]Knowing the connection that could be invoked by the Ukrainian party between the Treaty regarding state frontier's system and the process of continental stage and exclusive economical areas delimitation between Romania and Ukraine in Black Sea, when signing, the Romanian party transmitted the Ukrainian party the following declaration: "The Romanian party hopes that, if signing here, in Cernăuți, by the two states'

Even if they made all these efforts, the bilateral negotiations referring to the Agreement regarding the continental stage and the exclusive economical areas' delimitation between Romania and Ukraine in Black Sea, developed between 1998-2004, did not lead to any concrete results because this document's text was not accepted [24]. The aspects regarding to which the parties' positions remained divergent considered the delimitation method (localizing the point from where the delimitation should start) and, on the other hand, the question of determining the lands relevant for the delimitation (Snake Island's position had a crucial role).

During the negotiations, the Romanian party asserted permanently the necessity to apply the delimitation method established by International Justice Court in their Previous decisions[25], namely the "equidistance/median – special/relevant circumstances" method. Therefore, in Romanian party's view, the delimitation process supposes complying with the following stages: determining the lands relevant for the delimitation; establishing a provisional delimitation line, equidistant for the relevant lands; identifying the potential special circumstances of the area liable to delimitation; correcting the provisional equidistance line, considering the special circumstances, and establishing a final delimitation line, so that they get to a fair result. At the same time, in Romanian party's vision, it would be very unfair that two injustices (1948 – annexing Snake Island by USSR and 1949 – unilateral establishment of its territorial waters' limit at 12 sea miles), old for more than half a century, made when Romania was under Soviet military occupation, become the juridical base to commit a bigger non-equity.

Compared to Romania's suggestions, the Ukrainian party suggested, while negotiating, a delimitation method different of the Romania's one. Thus, it results a delimitation line that claims a surface of continental stage and unjustified exclusive economical area that has to be twice bigger than the one claimed by ex-USSR while negotiating between 1967-1987[26]. At the same time, the way that the two parties report to Snake Islands presence in the

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presidents, the Treaty between Romania and Ukraine regarding Romanian-Ukrainian state frontier's system, the collaboration and the mutual assistance in frontier problems will impel the Romanian-Ukrainian negotiations regarding the continental stage and the exclusive economical areas' delimitation between the two states in Black Sea, so that the Agreement between Romania's Government and Ukraine's Cabinet of Ministers regarding the continental stage and the exclusive economical areas' delimitation between Romania and Ukraine in Black Sea can be signed as soon as possible. At the same time, the Romanian party wants to strengthen its position according to which none of the foresights of the Treaty regarding state frontier's system, inclusively mentioning the geographical coordinates of the last point of Romanian-Ukrainian frontier, does not affect the sea spaces' delimitation process and does not prejudice this process' solutions." (http://www.cdep.ro/proiecte/2004/000/60/0/eml_pl060_04.pdf).

[24] The Romanian party proved permanent availability to a peaceful solving of the litigation. A last Romanian-Ukrainian negotiation round developed between July 9th – 10th, 2004, in Yalta, the Romanian deputation being lead by Bogdan Aurescu, State Secretary in Romanian External Business Ministry, and the Ukrainian deputation being lead by Oleksandr Motsik, assistant of External Business Ukrainian Minister. Nevertheless, like the other rounds, although they examined some of the delimitation solutions and technical methods, because of the Ukrainian party's inflexibility, they did not arrive to a common solution in order to contract an agreement regarding the exclusive economical area and the continental stage's between the two countries in Black Sea. (*D. Pădurean*, Strategical War between Ukraine and Romania - http://www.studiidecaz.ro).

[25] Denmark versus Norway – 1993, Canada versus USA – 1998, Bahrain versus Qatar – 2001, Cameroon versus Nigeria – 2002.

[26] The difference between Romania's suggestions and Ukraine's ones regarding the delimitation line's route determine a continental stage surface – "the disputed area" or "the delimitation area" – for more than 12.000 km² about which the parties have rival demands. (www.mae.ro).

delimitation area is directly connected to each one's position regarding the lands depending on which they would accomplish the delimitation[27].

The Romanian party, maintaining the positions expressed by our country since the negotiations of the third UNO Conference about Sea's Right but also when signing the ratification of UNO's Convention about Sea's Right in 1982, considers that, because of its natural features, Snake Island must be considered as a rock, if applying the juridical system established by article 121, paragraph 3 in UNO's Convention about Sea's Right in Montego Bay in 1982. According to the article mentioned in the Convention – the rocks that do not allow human living because they do not have the natural resources needed for living and that cannot maintain their own economical life, do not have the right to an exclusive economical area or a continental stage, but they have the right to 12 sea miles territorial sea[28].

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[27] We specify that the strife between Romania and Ukraine that CIJ has to solve refers exclusively to the continental stage and the exclusive economical areas' delimitation of the two parties in North-West Black Sea, namely the exact establishment of the continental stage surface and the exclusive economical area surface in Romania and, respectively, the continental stage surface and the exclusive economical area surface in Ukraine, according to the international right applicable in sea delimitations matter. Thus, the International Justice Court in Hague is not able to pronounce about Snake Island's ownership. The parties' agreement to establish the IJC's competence in Hague process was expressed in the 1997 Connected Agreement (in the "compromising clause" in article 4 (h)), where Romania and Ukraine agreed about the instance that can solve the strife – namely the International Justice Court, respectively about International Justice Court's competence – namely only the problem of the continental stage and the exclusive economical areas' delimitation. Therefore, we cannot demand the International Justice Court to solve other aspects that have not been included in the "compromising clause". Considering the foresights of 1997 Treaty and of the Connected Agreement, the International Justice Court cannot solve during the 2004 process more than the parties agreed, in 1997, that this jurisdictional forum could solve. We specify that Snake Island – that belonged to Romania – was transferred to USSR in 1948 contrary to 1947 Paris Peace Treaty (that according to article 1 gave Romania the island), by the Protocol that specifies the state frontier's line since February 4th, 1948, when Soviet Red Army occupied Romania. Later, this document, non-ratified by the Romanian Parliament at that moment, has been assumed in the treaties regarding Romanian-Soviet frontier's system in 1949 and 1961. On the other hand, article 3 in the 1997 Agreement Connected to the Political Treaty with Ukraine, document that contains the two states' agreement about the possibility to solve the problem of continental stage end exclusive economical areas' delimitation by resorting to the International Justice Court, provides that Snake Island "belongs to Ukraine". Also, the Connected Agreement stipulates in article 4, letter (d) that, *in the process of sea spaces' delimitation, none of the parties can contest the other one's sovereignty about any part of its territory, contiguous to the area liable to delimitation* (Snake Island and its 12 sea miles territorial waters are in this area). The 1997 Fundamental Political Treaty also provides in Preamble and in articles 1, 2 and 3 the fact that *the parties have to respect the sovereignty principles, the territorial integrity principles and the frontier's inviolability principles.* The Treaty between Romania and Ukraine regarding the Romanian-Ukrainian state frontier's system, the collaboration and the mutual assistance in frontier problems mention in Preamble the sovereign equality principles, the territorial integrity principles, the existent frontiers' inviolability principles and it refers to the principles and foresights in the Political Treaty and the Connected Agreement. Thus, in 1997 Connected Agreement, the two states established International Justice Court's competence only to delimit the continental stage and the exclusive economical areas of the two parties, without foreseeing the International Justice Court's jurisdiction to decide about Snake Island's ownership. (www.mae.ro).

[28] Romania signed UNO's Convention about the Sea's Right on December 10th, 1982, and by Law no. 110 since October 10th, 1996, adopted by the Parliament, Romania ratified the Convention and joined the 1994 Agreement regarding the application of the 9th Party in UNO's 1982 Convention about Sea's Right. When ratifying, Romania strengthened the Declaration formulated when signing the Convention on December 10th, 1982, where paragraph 3 says that "Romania says that, considering the equity claims, as it results from articles 74 and 83 in 1982 Convention, the uninhabited islands and with no own economical life cannot affect the sea spaces' delimitation, spaces that belong to the riparian states' main lands".

But Ukraine wants the delimitation to be accomplished considering the entire land of the Black Sea and, on the other hand, it says that Snake Island must be considered in this process. However, according the foresights of UNO's 1982 Convention about Sea's Right, to consider it to delimit the continental stage and Ukraine's exclusive economical areas in Black Sea, Snake Island should allow human living and it should have all the resources needed for its own economical life. But Snake Island is only a little rocky island where there is only small vegetation, there is no drinking water, in the summer the temperatures are very high and the food for the solders is brought weekly by helicopter. However, Ukraine tries artificially to prove the possibility to develop a social and economical life on the island. They brought land to create an artificial pontoon, they have opened a bank branch they even inaugurated a medical office. In fact, Ukraine says that, there is a real town named Belii (even if the civilians are not allowed to get to the island because a frontier guards military base functions on Snake Island) and they want to open museums and luxury hotels soon [29]. Of course, they do all of these to accredit the idea of living on Snake Island because if an island is lived and has its own economical life, the international regulations give it the right to a continental stage[30].

The peaceful solution of the strife regarding the sea delimitation in the Black Sea between Romania and Ukraine by resorting to the International Justice Court. Considering the opposite positions of the parties involved in negotiations, the absence of the progress in bilateral negotiations (24 rounds, completed by 10 other expert rounds)[31], considering the fact that both conditions regarding informing the International Justice Court were achieved, on September 16th, 2004, Romania[32] acted according to the fundamental principle of the international public right referring to the peaceful solving of international strives and it sent the International Justice Court in Hague a demand to initiate the procedures in order to solve the problems of the continental stage and the exclusive economical areas' delimitation between Romania and Ukraine in Black Sea[33]. Resorting to International Justice Court's jurisdiction presents the

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[29] „Romania Liberă" Journal since June 19th, 2008.

[30] Article 121 in UNO's Convention about the Sea's Right says in paragraph 2 that, under the condition of the paragraph 3 (the rocks that do not allow human living or their own economical life do not have either an exclusive economical area, or a continental stage), the territorial sea, the contiguous area, the exclusive economical area and the continental stage of an island are delimited according to the Convention's disposals.

[31] Unfortunately, none of the litigious questions between Romania and Ukraine found solutions by negotiations, peaceably, in historical truth's spirit. In spite of this unfavourable situation for our country, in spite of the inflexibility and the tergiversations that the Ukrainian party used constantly, the Romanian party, being morally, historically and juridically right, decided to continue the negotiations with Kiev in order to find a correct solution. After 1997, the bilateral negotiations continued with no notable results because the Ukrainian party proved a total inflexibility. After every negotiation round regarding the exclusive economical areas and the continental stage's delimitation between the two countries in Black Sea, the Romanian party saw Kiev's dishonesty, the fact that the negotiations were actually a loss of time because of the essential difference of tackling between the two parties regarding the delimitation process. (*D. Pădurean*, Strategical War between Ukraine and Romania - http://www.studiidecaz.ro).

[32] That is a plaintif, while Ukraine is a defendant.

[33] The Romanian party's agent was Mr. Bogdan Aurescu, general manager in External Business Ministry, ex-State Secretary inside the same ministry, and the co-agents were Mr. Cosmin Dinescu, general manager for juridical business in External Business Ministry and Mr. Călin Fabian, Romania's Ambassador in Hague. Ukraine's Agent for Hague process is Mr. Volodomir Vasilenko, special ambassador in Ukrainian External Business Ministry. Ukraine's co-agents for Hague process are the manager of the juridical Department and Treaties in Ukrainian External Business Ministry and the ex-ambassador of Ukraine in Hague. (www. mae.ro).

advantage of guaranteeing the pronunciation of a fair solution according to international right's regulations[34].

According to the information delivered both by the Romanian External Business Ministry and the International Justice Court's official site, by an order since November 19th, 2004, the International Justice Court established the date of August 19th, 2005 as a date when we could lay down Romanian party's Complaint, respectively the term of May 19th, 2006 to lay down the Ukrainian party's Counter-Complaint. On August 15th, 2005 – before expiring the term set by the Court's Order -, the Romanian party's Agent for the procedures in front of International Justice Court in the Sea Delimitation in Black Sea (Romania versus Ukraine) case, Bogdan Aurescu laid own, at Hague, at Court Clerk's Office, Romania's Complaint, containing Romanian party's position[35]. On May 16th, 2006, they laid down, at International Justice Court Clerk's Office, the Ukrainian party's Counter-Complaint – natural stage of the process found on Court's roles, following the procedures written in this Court. After examining this document, the Romanian party decided, according to the International Justice Court's Procedure Rules, to elaborate a Retort to express its reaction for the elements in the Counter-Complaint and to counter-motivate them and the Ukrainian party would also lay down, at Court Clerk's Office, a Duplicate. Thus, by an Order of Hague Court, since July 3rd, 2006, they established the terms to lay down Romanian party's Retort (December 22nd, 2006), respectively Ukrainian Party's Duplicate (June 15th, 2007). On December 19th, 2006, we laid down at International Justice Court Clerk's Office Romania's Retort that includes Romanian Party's counter-motivation reported to Ukrainian party's assertions in the Counter-Complaint, and also a strengthening of the position exposed by the Romanian part in the Complaint. By an order since June 8th, 2007, the Court extended the term of laying down the Duplicate by Ukraine until July 6th, 2007. The Ukrainian party laid down the Duplicate at the International Justice Court Clerk's Office on July 5th, 2007. After finishing the written stage, the procedures' oral stage followed (the two parties' pleadings) that developed since September 2nd until September 19th, 2008[36]. The ending of the procedures' oral stage[37], on

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[34] During the meeting, on January 15th, 2007, when opening the frontier point from Sighetu Marmației – Solotvino, Romania's President, Mr. Traian Băsescu, and Ukraine's president, Mr. Victor Iușcenko, pointed out that resorting to the International Justice Court's jurisdiction corresponds to a civilized bilateral relation. Also, the Ukrainian president Victor Iușcenko confirmed that Ukraine would respect the International Justice Court's decision. (See „Evenimentul zilei" Journal since April 3rd, 2008).

[35] The Complaint is accompanied by annexes including documents and maps that represent the proving elements on which Romanian party's motivation is based.

[36] The oral procedures developed in two rounds: September 2nd – 5th, 2008 – Romania's first pleading round, as a plaintif; September 9th – 12th, 2008 – Ukraine's second pleading rounds, as a defendant; September 15th – 16th, 2008 – Romania's second pleading round and conclusions regarding the delimitation solution that it considers to be fair and according to the international right in process; September 18th – 19th, 2008 – Ukraine's second pleading round and its conclusions. (www.mae.ro, www.icj-cij.org).

[37] When Mr. Mihai – Răzvan Ungureanu, Romania's External Business Minister, visited Kiev on March 22nd, 2005, they decided to restart the Romanian-Ukrainian bilateral discussions related to sea spaces' delimitation, while developing the procedures at International Justice Court. There were also the conclusions of these discussions that took place when Romania's president, Mr. Traian Băsescu, and Ukraine's president, Mr. Victor Iușcenko met (in Bucharest, on April 21st, 2005 and in Kiev, on February 2nd, 2006). Therefore, when the procedures and the bilateral discussions had place at International Justice Court, four expert meetings developed in Kiev (on April 12th – 15th, 2005 and, respectively on October 31st – November 1st, 2005), in Constanța (on June 2nd – 3rd, 2005) and in Bucharest (on March 28th-29th, 2006). While the meeting in Odessa (on July 4th, 2006) of the two countries' external business ministers, they agreed that the new bilateral negotiation rounds would develop only if necessary. At present, there is not this kind of negotiation. (www.mae.ro).

September 19th, 2008, will be followed by Court's consultations and a decision's pronunciation that will be irrevocable, compulsory and binding for the parties[38]. According to the International Justice Court's practice until present, a decision's pronunciation in a solving case has place in 3-6 months from the procedures ending, depending on the case's complexity.

Estimations regarding the solution that shall be pronounced by International Justice Court in the strife regarding the sea delimitation between Romania and Ukraine in Black Sea. In Sea delimitation in Black Sea (Romania versus Ukraine) case, Hague International Justice Court will establish a unique delimitation line of the two parties' continental stage and of the exclusive economical areas in North-West Black Sea, by showing the concrete geographical coordinates of the points that form it (defined by latitude and longitude). This line will determine the exact establishment of continental stage and exclusive economical area's surface in Romania and, respectively, in Ukraine[39].

We point out that, according to the experts who assert Romania's cause at International Justice Court, the state activities invoked by Ukraine (the exploiting or exploring activities of hydrocarbons warehouse or Ukrainian frontier police's acts in Black Sea's disputed area) cannot have any juridical effect because all these Ukraine's acts took place after the critical date of the strife's crystallization with Romania and they do not accomplish the conditions that could make them relevant for the delimitation, so that the Court cannot consider them. In the sea's international right, the activities exerted by the states in the delimitation area are not relevant, the sea delimitation processes and they cannot be considered as special circumstances to establish the delimitation line, as Ukraine wants. Besides, after 1997 – when the Agreement Connected to the Fundamental Treaty between Romania and Ukraine became valid, these activities' development had a special system, regulated by the Connected Agreement – agreement that confirmed the Romanian-Ukrainian sea dispute's existence. The exploring activities and the concessions in order to exploit, invoked by Ukraine (Delfin perimeter's concession – 1993, Olimpiska perimeter's concession – 2001 and Gubkina perimeter's concession – 2003) had place after 1995, when the strife is mentioned for the first time in a Romanian-Ukrainian diplomatic documents exchange. More than that, the Romanian agents proved that the activities invoked by Ukraine could not be relevant because they do not accomplish the necessary conditions to be considered (respectively, to express a gentlemen's agreement between the two parties). These activities developed on a limited period, they do not cover geographically the area according to Ukraine's demand (the perimeters where Ukraine granted such concessions or accomplished ship patrolling actions are not parts of the delimitation area) and Romania protested constantly to any concession document from Ukraine. Regarding the disputed area's exploration, the Romanian party showed that Romania exerted scientific activities (allowed activities, according to the Agreement Connected to 1997

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[38] International Justice Court's decision enjoys the authority of judging. The decision is opposable only for the litigious parties and only for the solving cause (article 59 in International Justice Court's Status). The parties must comply exactly and immediately (IJC have not a recommendation value). The Court decisions' coercitiveness is provided directly in article 94 in UNO's Charter where it shows that « every UNO's member has to respect the Court's decision in every case where it is a party ». The compulsory feature of Court's decisions is emphasized by another Charter's foresight according to which a strife's party can inform UNO's Security Council if the other party does not execute its duties. In this situation, the Security Council may, if it considers as necessary, make recommendations or decide the decision's accomplishment (article 94, paragraph 2 in UNO's Charter).

[39] www.mae.ro. Votes of the majority of present judges adopt the Court's decisions. In case of parity, the president's vote is crucial. (article 55 in International Justice Court's Status).

Political Treaty and in conditions of strife's existence) substantially and much more constantly than Ukraine. Regarding frontier police's activities in the area, conjured up by Ukraine, the Romanian spokesmen proved that, if they were true (they are certified only by Ukrainian sea officers' declarations, for the current procedure at International Justice Court), we cannot consider them because they occurred after 1998, so after crystallizing the strife contracting the Connected Agreement[40].

At the same time, regarding Snake Island's status and its role in the sea delimitation in Black Sea, we mention that, until present, the International Justice Court, when it judged the litigations related to sea delimitation, did not consider certain little islands' existence, even if they had their own economical life and they were lived. For example, it is about Italian islands named Lampedusa, Linosa and Pantelleria in Mediterranean Sea. When Hague Court established the delimitation line between Italy and Tunis, it did not grant a continental stage to these islands, but only the territorial sea. The Arbitration Court did the same thing ignoring the English – Norman islands near the French land when it established the delimitation line between France and Great Britain. It is remarkable the fact that these islands have a 195 km surface and a 130.000 habitants population. The Hague Court did not consider the little Maltese island named Filfa when it established the delimitation line of the continental stage between Malta and Lebanon. And this delimitation line was not a median one, but it was much more moved near Malta because the Court considered that the Maltese islands appeared as "a relatively modest accident in a semi-closed sea"[41]. Depending on the status established for Snake Island by the International Justice Court – rock or living island with its own economical life -, they will decide who will own the 12.000 square km in the Black Sea. If the International Justice Court considers that at 45 km from Sulina – Romanian town – there is only a rock, the discussed continental stage will belong to Romania. If, contrary, the instance decides that it is a living place, this will remain in Ukraine's property[42].

Conclusions. If we should conclusion, beside the objective aspects required by the sea space's delimitation (until the delimitation, none of the two states could exert its sovereign rights in the two areas), the Romanian-Ukrainian dispute regards the oil and natural gas resources in the continental stage. Since the 70s, the prospecting in the area proved the existence of important hydrocarbon resources, fact that is recognized by Romania's External Business Ministry, in an official document that proves that "in the disputed area, there are medium hydrocarbon deposits". In fact, according to the estimations, under the 12.000 square km of water, there are ten million of tons of petroleum and one hundred billion cubic meters of natural gas. Therefore, if International Justice Court grants Romania the stage or most of the stage, our petroleum resources would grow at 84 million tons, and the natural gas resources, at 285 billion cubic meters. Talking about money, the deposits in the disputed area mean about 37 billion dollars where the petroleum values 7 billion dollars and the gas values the rest. The minimal costs involved by exploiting the deposits are estimated to 1,5 billion dollars. Reported to Romania's current resources, the ones in the Black Sea are big enough to determine a substantial mutation in the country's status of hydrocarbon net importer. In fact, the 100 billion cubic meters of natural gas would cover the national consumption for almost

[40] http://www.ziare.ro

[41] D. Pădurean, Strategical War between Ukraine and Romania - http://www.studiidecaz.ro.

[42] „Romania Liberă" Journal since June 19th, 2008.

10 years, if it would remain at the level of the total quantity distributed in 2007, of 11,9 billion cubic meters[43].

But, no matter the stake on the discussed strife's base, we must appreciate the fact that the both states have chosen the conflict's peaceable solving in a time when most of the experts appreciate that the concern because of using up the resources necessary to satisfy the human needs may represent the future conflicts' source, fact that may become the main challenge of 21st century.

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