

SNAKE ISLAND IN THE ROMANIAN AND UKRAINIAN NARRATIVE IN THE INTERNATIONAL COURT OF JUSTICE

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ABSTRACT. In 1948 Romania ceded Snake Island to the Soviet Union, which established a 12-mile maritime zone around the island. After the collapse of the USSR, the island was incorporated into Ukraine. Romania recognized that the island belonged to Ukraine, but a long-running dispute began between Ukraine and Romania over the delimitation of the shelf and the exclusive economic zone. Snake Island became part of this dispute because Ukraine considered it a reference point for the delimitation of the maritime waters. Romania strongly disagreed and referred the dispute to the International Court of Justice in The Hague. Both countries presented their arguments not only from the legal, but also historical point of view. They drew completely different conclusions from the same historical sources while presenting their interpretations of the past regarding Snake Island. The dispute ended when the ICJ announced its verdict on February 3, 2009. Both countries accepted it.

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LOCATION OF SNAKE ISLAND

Snake Island is located in the Black Sea, about 21 nautical miles east of the Romanian coast, at the location defined by the coordinates: 45°15'53" north latitude and 30°14'41" east longitude. The total area of the island is 0.17 km² (east-west length 662 m, north-south width 440 m, coastal length 1973 km). The island was probably a part of the continent until about 9,800 BC, and it separated due to changes in the water level of the Black Sea. Sailors sailing from the mouth of the Danube are shown its



white coast which Euripides is supposed to have called the white shore of Achilles. Hence its name Leuce (white island), or Nisi (white land), although it was also called lucky (Macaron Nessos). The Greeks used the name Fidonisi (Snake Island), the Turks İlan Adası, İlanda, İlanada.¹

LEGENDS AND POLITICAL HISTORY OF SNAKE ISLAND

The earliest references to the island are linked to Greek colonization in the Black Sea region, which lasted from the 7th century BC. For the Greeks of that time, it was the edge of the known world, where they set many of their religious myths: about Prometheus, about Heracles, about the Amazons, about Taurids and about Achilles, the son of Thetis, who lifted the present-day Snake Island from the sea for her son. A temple dedicated to Achilles was erected on the island along with an oracle – they were sustained by offerings made by travelers. The information about Snake Island appeared in the *Compasso de navigare*, published in Pisa between 1250 and 1265 for Venetian and Genoese merchants coming to the Black Sea. From the 16th century onward, Snake Island has already appeared regularly on maps of the region.²

In 1830, in a guidebook for sailors (*Portulan de la mer Noire et de la mer d'Azov ou description des côtes de ces deux mers à l'usage des navigateurs*, Odesa 1830), Édouard Taitbout de Marigny (1793–1852) reported that the island could be reached in three places, and that there was a wide well, together with the foundations of an ancient building. Some improbable tales circulated about the then uninhabited island. Baron d'Avril Adolphe Lévesque, the author of the account *De Paris à l'Île des serpents à travers la Roumanie, la Hongrie et les bouches du Danube* (Paris 1876) relayed a story, quoting Turkish sources, about Captain Hasan and his crew of twenty-five who spent a year on Snake Island after the wreckage of their ship. The castaways were said to have fed on hard-earned fish, as well as fellow shipmates. Captain Hasan was said to have personally fought a duel with a shark weighing 900 pounds. The stay on the island was survived by four people rescued by a Turkish ship.³ Adolphe Lévesque, an officer of the The European Danube Commission established in 1856,

¹ E. Baude, *L'île aux Serpents, Danube culture. Site d'information liées au fleuve Danube*, <http://www.danube-culture.org/lile-dachille-ile-des-ou-aux-serpents-a-45-km-au-large-du-delta-du-danube-ister-haut-lieu-de-la-mythologie-grecque/> [accessed 2.08.2023]. *Case Concerning Maritime Delimitation in the Black Sea. Romania v. Ukraine. Counter-Memorial Submitted by Ukraine*, vol. 1, 19.05.2006, <https://www.icj-cij.org/sites/default/files/case-related/132/14699.pdf> [accessed 2.08.2023], p. 232 [further Ukrainian memorandum]; *Case Concerning Maritime Delimitation in the Black Sea. Romania v. Ukraine. Memorial submitted by Romania*, 19.06.2005, signed by Bogdan Aurescu, <https://www.icj-cij.org/sites/default/files/case-related/132/14697.pdf> [accessed 2.08.2023], p. 17 [further Romanian memorandum].

² Ch. King, *Dzieje Morza Czarnego*, transl. Z. Piotrowska, Warsaw 2006, p. 38, 68–71; E. Baude, *op. cit.*; Ukrainian memorandum, p. 233.

³ E. Baude, *op. cit.*

expressed ironical remarks on the story, assuring that he found no sharks in the waters surrounding the island, and when it comes to the island itself – there are no legendary snakes, as, in his opinion, they ate each other, like Captain Hasan's sailors, and the last one died of boredom.⁴

Adolphe Lévesque's appearance on Snake Island was a consequence of the major political and territorial changes that occurred in the region after the Crimean War. These were reflected in the *Universal Treaty of Peace and Friendship* (hereafter the Treaty of Paris) signed on March 30, 1856. The Black Sea was neutralized and opened to general navigation and trade (Article 11). For the Danube, the provisions on freedom of navigation worked out in the *Final Act of the Congress of Vienna* were applied (Article 15). The European Danube Commission (EDC) was established to remove all natural obstacles to navigation from Isaccea to the mouth (Article 16). Russia lost the southern part of Bessarabia, which was granted to the Principality of Moldavia remaining under Turkish sovereignty (Articles 20 and 21), and the entire Danube delta, granted under a treaty with Turkey signed in Adrianople on September 2, 1829.⁵

The provisions of Articles 20 and 21 of the Treaty of Paris became the subject of controversy between Turkey and the Principality of Moldavia. Turkey took the position that the Principality of Moldavia received southern Bessarabia, but that the islands forming the Danube delta should return to its direct sovereignty. Moldavia believed that it could incorporate, along with southern Bessarabia, the entire Danube delta and Snake Island. Russia, on the other hand, tried to retain the reign over Snake Island, since the Treaty of Paris did not mention it by name. Although the Treaty of Adrianople did not bring it up either, Russia ruled the island from 1829, erected a lighthouse on it and temporarily (1841–1851) maintained a quarantine post, a corporal and 12 soldiers. In 1856, a Russian ship with a repair crew to repair the lighthouse attempted to reach the island, but was turned back by the British fleet.⁶

In this situation, on January 6, 1857, the signatories of the Treaty of Paris signed a protocol in which Snake Island was transferred directly under Turkish rule. It was considered a part of the Danube delta, which should share its fate. These provisions were confirmed by the Border Treaty of June 19, 1857. The Danube Delta and Snake Island came under direct Turkish sovereignty. The operation of the lighthouse, on the

⁴ Ibid.

⁵ *Traité général de paix et d'amitié, 30 mars 1856, Digithèque MJP*, articles 15, 16, 18, <https://mjp.univ-perp.fr/traites/1856paris.htm> [accessed 2.08.2023]; Romanian memorandum, p. 21; Ukrainian memorandum, p. 235; C. Ardeleanu, *The Making of the Romanian-Ukrainian-Moldovan Border at the Maritime Danube in the Nineteenth and Twentieth Centuries* [in:] *Making Ukraine: negotiating, contesting and drawing the borders in the twentieth century*, eds. O. Palko, C. Adreleanu, introduction U. Schmidt, Montreal-Quebec 2022, p. 311–312, https://web-1p-1ebscohost-1com-1fpm2wft367a7.hps.bj.uj.edu.pl/ehost/ebookviewer/ebook/bmx1YmtfXzM1NDY3NjJfJfX0FO0?sid=8921b87a-cc4c-4115-a939-5ff3efb694@redis&vid=0&format=EB&lpid=lp_307&rid=0 [accessed 2.08.2023].

⁶ S.G. Focas, *The Lower Danube River*, New York 1987, p. 246–247; Romanian memorandum, p. 21; Ukrainian memorandum, p. 235.

other hand, was entrusted to the European Danube Commission, as agreed on January 6, 1857.⁷

Russia reached for Snake Island again after defeating Turkey in the War of 1877–1878. Under the Treaty of San Stefano of March 3, 1878, it was obtaining the Sandžak of Tulcea, the islands on the Danube and Snake Island. At the same time, it reserved the possibility of exchanging these territories for southern Bessarabia, reaching south to the middle course (thalweg) of Kilia and its Old Istanbul branch. This position was presented by Russia at the Berlin Congress on June 29, 1878. The powers accepted it, recognizing that the transfer of southern Bessarabia to Russia did not jeopardize freedom of navigation on the Danube, for which EDC was responsible. Romania, to which the territory belonged, was to receive in return the Sandžak of Tulcea, islands on the Danube and compensation on the area of Dobruđa. At the request of the British representative, Snake Island was added to Romania's acquisitions, to which the Russian delegate agreed. The powers agreed to recognize Romania's independence on the condition that she accepts the agreed territorial changes.⁸

Romania took possession of the acquired territories on April 12, 1879, but in practice the Snake Island lighthouse continued to be managed by the EDC. This state of affairs lasted until August 18, 1938, when, under the so-called Sinaia Agreement agreed upon between Romania, France and Britain, Romania took over most of its powers, including the jurisdiction over Snake Island.⁹

The peace treaty that Romania signed on February 10, 1947 left Snake Island within its borders. However, on February 4, 1948, Romania and the USSR agreed on a *Protocol on the strict delimitation of the Romanian-Soviet border*. At the level of the mouth of the Danube, the border ran from Pardina along the Danube to the Black Sea, leaving the islands of Tataru Mic, Daleru Mic, Daleru Mare, Maican, Limba on the Soviet side and Tataru Mare, Cernovca, Babina on the Romanian side. Snake Island was incorporated into the USSR. The protocol was signed on May 23, 1948, by the deputy foreign minister of Romania and the first secretary of the Soviet embassy in Bucharest. It stated that at 12⁰⁰ on May 23, 1948, Snake Island was returned to the USSR by the People's Republic of Romania and became an integral part of it. The signing of this protocol was tantamount to completing the formalities for the trans-

⁷ S.G. Focas, op. cit., p. 248; J. Nouzille, *La Bessarabie, le Danube et les relations roumano-russes de 1918 à 1940*, "Revue Roumaine d'Histoire" 2004, vol. 40–41, p. 237; C. Ardeleanu, op. cit., p. 311; Romanian memorandum, p. 21–24; Ukrainian memorandum, p. 235; E. Baude, op. cit.

⁸ *Les Protocoles du Congrès de Berlin avec le traité préliminaire de San-Stefano du 19 février (3 mars) 1878 et Le traité de Berlin du 13 Juillet 1878*, St. Petersburg 1878, p. 47–49, 55; W. Waddington to J. Dufaure 1 July 1878, *Documents Diplomatiques Français*, I serie (1871–1900), vol. 2 (1 July 1875 – 31 December 1879), Paris 1930, doc. 323, p. 347–348.

⁹ Ukrainian memorandum, p. 236; J. Nouzille, op. cit., p. 237–238; Romanian memorandum, p. 24–25. The Sinaia Agreement had to be signed by all members of the EDC, including Italy, which only signed after forcing Germany's admission to the EDC. Thus, the Sinaia Agreement was also signed by Germany; A. Kastory, *Żegluga dunajska w polityce międzynarodowej w XX wieku*, Krakow 2011, p. 130–139.

fer of the island. For the Romanian side, the use of the phrase “returned” was particularly humiliating, since Snake Island had never formally belonged to Russia or the USSR.¹⁰

Although Romania did not ratify the May 23, 1948 protocol, it repeatedly confirmed the cession of Snake Island in subsequent documents signed with the USSR: September 27, 1949 in the *Protocol for the Description of the State Boundary Line between the People’s Republic of Romania and the Union of Soviet Socialist Republics signed by the joint Soviet-Romanian delimitation commission on September 27, 1949*, and in the Border Treaties of November 25, 1949 and February 27, 1961.¹¹

In 1991, taking advantage of the USSR’s plight, Romania informed the Soviet ambassador that it considered the border acts of 1940–1948, including the 1948 protocol, null and void. The Soviet response did not come again due to the disintegration of the state, while on September 12, 1991, the Verkhovna Rada of Ukraine adopted the Law on the State Succession of Ukraine and accepted the borders it had under the USSR as of July 16, 1990. Snake Island thus remained a part of the Ukrainian region of Odesa Oblast.¹² Romania informed the Ukrainian government on July 28, 1995, that it considered the 1948 Protocol invalid, incompatible with the provisions of the 1947 Peace Treaty, concluded under pressure from the USSR, and never ratified by the Romanian parliament. The Ukrainian government reacted with indignation and demanded proof of the USSR’s coercion of Romania in 1948, stating that the May 23, 1948 protocol did not violate the peace treaty, but only clarified its general provisions, which Romania recognized in the 1949, together with 1961 border treaties, which it ratified.¹³

Romania eventually withdrew territorial claims against Ukraine in connection with the efforts to join NATO.¹⁴ The two countries signed a *Treaty on Good Neighborly Relations and Cooperation* and a *Supplementary Agreement* in Constanta on June 2, 1997. In these documents, Romania recognized the belonging of Snake Island to Ukraine. The two countries recognized their borders as immutable and renounced any territorial claims. Subsequently, on June 17, 2003, the two countries signed a border treaty in Chernivtsi (entered into force on May 27, 2004), which con-

¹⁰ Romanian memorandum, p. 29–30; C. Ardeleanu, op. cit., p. 315.

¹¹ Romanian memorandum, p. 31–32, 34, 39, 51.

¹² Ukrainian memorandum, p. 147, 151, 238, 240.

¹³ Ibid, p. 113–114.

¹⁴ A. Kruglashov, *Troublesome neighborhood: Romania and Ukraine relationship*, “New Ukraine. A Journal of History and Politics” 1011, vol. 11, p. 120; L. Donaj, *Spór ukraińsko-rumuński o wyspę węzową. Zarys problem wraz z wyrokiem Międzynarodowego Trybunału Sprawiedliwości w Hadze z 3 lutego 2009 roku*, “Історичний архів” 1013, vol. 10, https://www.researchgate.net/publication/357776606_SPOR_UKRAINSKO-RUMUNSKI_O_WYSPE_WEZOWA_Zarys_problemu_wraz_z_wyrokiem_Miedzynarodowego_Trybunalu_Sprawiedliwosci_ONZ_w_Hadze_z_3_lutego_2009_roku [accessed 3.07.2024].

firmed the course of the border established by the 1961 treaty and delimitation acts valid on July 16, 1990.¹⁵

THE PROBLEM OF MARITIME BOUNDARY AND DELIMITATION OF WATERS AROUND SNAKE ISLAND

The handover of Snake Island to the USSR put Romania at a disadvantage in terms of the maritime boundary and the division of waters. The Soviet Union demarcated a 12-mile maritime zone around Snake Island. In later years, it was increasingly referred to as the USSR's territorial sea, in accordance with international nomenclature. The maritime border with Romania was established on September 27, 1949, based on the three easternmost border points: 1437 located in the middle reaches of the Musura Canal; 1438 located in the sea, 1439 located in the sea at the point where Romania's territorial sea (then nine-mile long) met the 12-mile long Soviet maritime zone. In 1963 Romania expanded its territorial sea to 12 miles, but the point of contact with the territorial sea around Snake Island, with coordinates 45°05'21" north latitude and 30°02'27" east longitude, was already established with Ukraine in the 2003 border treaty.¹⁶

A separate problem was the division of the shelf. Romania held talks with the USSR on this issue (without the participation of the Ukrainian Soviet Socialist Republic) from 1967 to 1987, without any result. After the collapse of the USSR, Ukraine adopted a law on the Exclusive Economic Zone on May 16, 1995, indicating its desired extent without setting precise boundaries, which it informed Romania of on November 7, 1995.¹⁷

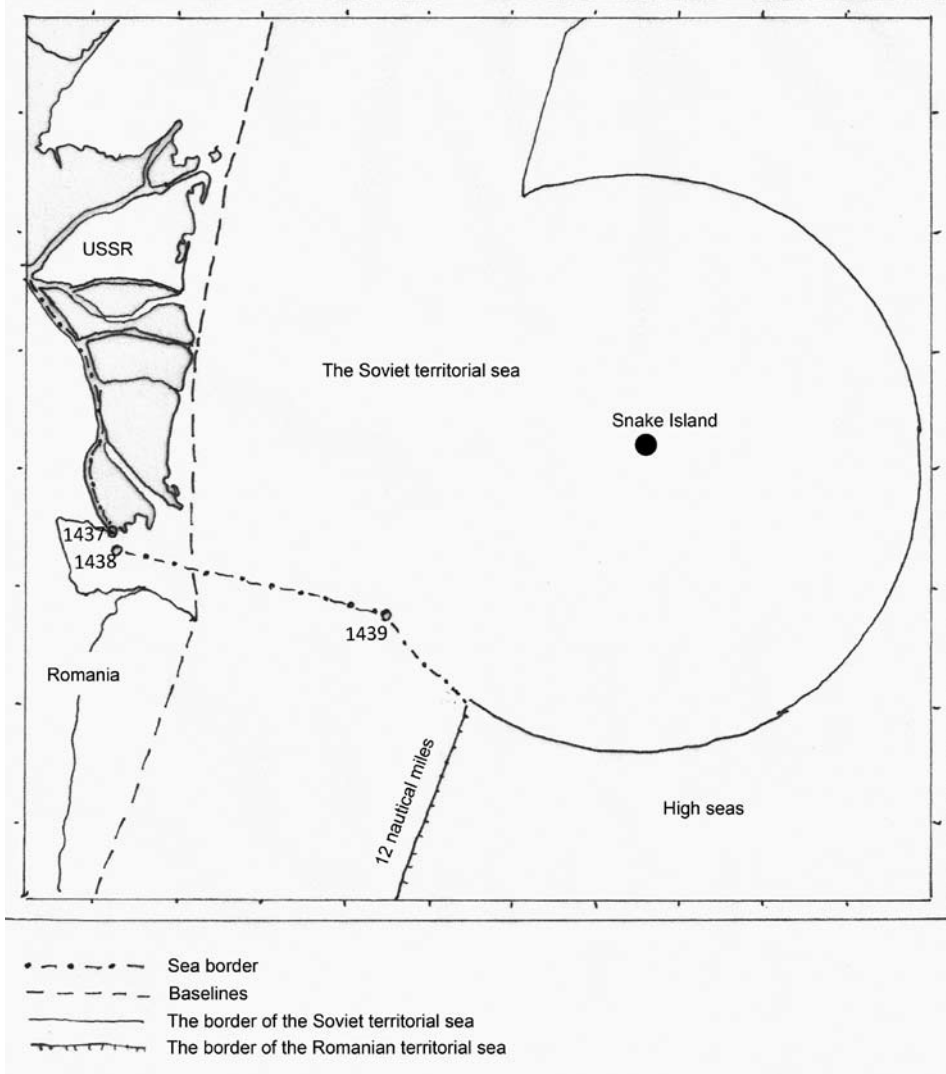
The delimitation of the shelf was of vital importance to both countries, which were developing oil and gas production. Romania had been doing so since 1976 in blocks: Ovidiu, Midia, Lebada, Pelican, Istria, Neptune. And Ukraine in 1993 granted a license to the Crimean Petroleum Company to produce oil in the Dolphin Block, southeast of Snake Island. October 12, 2001 Chornomonaftogaz Company was granted a license in the Olimpiysky Block, and on August 12, 2003 in the Gubkin Block.¹⁸

¹⁵ Romanian memorandum, p. 43–45; Ukrainian memorandum, p. 152; L. Donaj, *op. cit.*, p. 105.

¹⁶ Romanian memorandum, p. 31–32, 35, 39–40; Ukrainian memorandum, p. 104, 107, 110, 115–116, 136.

¹⁷ Romanian memorandum, p. 41, 43; Ukrainian memorandum, p. 148, 273; Ukraine designated the following coordinates of its EEZ: 45°05'5"N, 30°01'0"E; 44°54'0"N, 30°06'0"E; 43°42'6"N, 31°27'8"; 43°27'0"N, 31°20'8"E.

¹⁸ Ukrainian memorandum, p. 269–270, 272.



Map 1. The maritime boundary around Snake Island¹⁹

¹⁹ See *ibidem*, p. 90.

SNAKE ISLAND IN THE PROCESS OF DEMARCATION OF THE SHELF AND EXCLUSIVE ECONOMIC ZONE OF UKRAINE AND ROMANIA

In the process of demarcating the shelf, it is of the utmost and decisive importance to identify the base points based on which the dividing lines are drawn. Romania intended to get Ukraine to omit the point where Romania and Ukraine's territorial sea meet on the arc around Snake Island when setting its baselines. This was made clear in a note to the Ukrainian government on June 17, 2003. Ukraine intended to treat it, however, as a starting point for further delimitation. In this situation, twenty-four rounds of Romanian-Ukrainian talks on delimitation of the sea ended in failure.²⁰

The Romanian concept of dividing the shelf with Ukraine envisaged dividing the coast of the two countries into two sectors: contiguous and opposing. The Romanian contiguous sector was to extend from the border point with Ukraine to the tip of the Sacalin Peninsula. Romania's opposing sector ran from the end of the Sacalin Peninsula to the border with Bulgaria. Romania identified the end of the dam running from the mouth of the Sulina River into the sea and the end of the Sacalin Peninsula as the base points. At the same time, it expected Ukraine to adopt a similar procedure and not to designate any base point either on Snake Island or on the coast that extended northward of the line connecting the mouth of the Dniester River with Cape Tarchankut. It proposed that, on the Ukrainian side, the base points be on Kuban Island and Cape Burnas (adjacent sector) and on Cape Tarchankut and Kherson (opposite sector). Romania thus ruled out Snake Island as a baseline, arguing that it could not be considered because it is an uninhabited rock that is not entitled to either a continental shelf or an exclusive economic zone under the 1982 Law of the Sea Convention.²¹ Romania's proposal sought to shorten the Ukrainian baseline and thus the extent of its shelf.

Ukraine rejected the Romanian proposal as extremely unfair. It did not intend to demarcate any sectors, took its entire coastline as a basis, and set base points at Cape Kherson and Snake Island. It wanted to make a division based on a centerline drawn between the Romanian coast and the coast of Snake Island and the coast of Crimea, and based on a line drawn according to the principle of proportionality, meaning the size of the coast would affect the extent of the shelf. Ukraine argued that it could designate a baseline on Snake Island, since Romania had designated one point on the

²⁰ Ibid, p. 157; Romanian memorandum, p. 47–48.

²¹ *Cour Internationale de Justice, Recueil des arrêts, avis consultatifs et ordonnances. Délimitation maritime en Mer Noire (Roumanie c. Ukraine). Arrêt du 3 février 2009*, <https://www.icj-cij.org/sites/default/files/case-related/132/132-20090203-JUD-01-00-FR.pdf> [accessed 29.04.2023] [further Judgment], p. 33, 38, 46–47; Article 121 of the Convention on the Law of the Sea provides definitions of an island (p. 1), grants the right to designate a territorial sea, contiguous zone, exclusive economic zone and shelf around an island (p. 2). On the other hand, rocks that are unsuitable for human habitation and do not allow for independent economic activity cannot have an exclusive economic zone or a shelf (p. 3).

Sulina Dam, which is a man-made creation, and another on the Sacalin Peninsula, which is an uninhabited sandbank.²²

Ukraine rejected the Romanian argument that the USSR did not aspire in the past to waters extending further than the 12-mile maritime zone designated around Snake Island. The Romanian side relied on the definition of those waters as a maritime zone used in the documents, albeit not all of them. Ukraine countered this argument by pointing out that with the development of the law of the sea after World War II, states introduced universally applicable nomenclature in their legal acts and used the powers available to them in relation to maritime areas. The waters around Snake Island, initially called a maritime zone, turned into a territorial sea, which Romania must have been aware of, as the term still appeared in Romanian-Soviet agreements.²³ The arc delineated around Snake Island was thus only a maritime state border, which gave both the USSR and Ukraine the right to own the shelf.²⁴

With compromise proving impossible, Romania on September 16, 2004, turned to the ICJ on the delimitation of the shelf boundary and the exclusive economic zone between it and Ukraine.²⁵

HISTORICAL ARGUMENTS OF ROMANIA AND UKRAINE PRESENTED TO THE INTERNATIONAL COURT OF JUSTICE

In the documentation submitted to the ICJ, Romania and Ukraine, in addition to legally justifying their position, devoted a great deal of space to Snake Island, to the point that the two countries' dispute was seen as a dispute over the island. Romania argued that Snake Island, built of the same material as Dobrudja, broke away from the mainland in the past, so it was not a part of the shelf. Instead, it had been treated as part of the Danube delta since 1856, which was evidenced by entrusting the care of the lighthouse perched on it to the European Danube Commission. The Soviet Union did not treat it as an area related to Bessarabia and omitted Snake Island from its ultimatum of June 26, 1940, in which it demanded that Romania surrender the province.²⁶

Romania portrayed the decision to "return" Snake Island to the USSR as a rape perpetrated by the occupying state which took advantage of its position to deprive Romania of a number of important territories in order to secure a favorable starting point for the delimitation of its maritime border. Romania accepted these unfavorable arrangements only because of the USSR's imposition of Petru Groza's government

²² Ukrainian memorandum, p. 66–67, 71; Romanian memorandum, p. 48; Judgment, p. 39, 47.

²³ Romanian memorandum, p. 31–32, 34–35, 39–40, 49–50; Ukrainian memorandum, p. 107, 116, 153.

²⁴ *Ibid.*, p. 96, 127–128, 133, 141–142, 147.

²⁵ Judgment, p. 13.

²⁶ Romanian memorandum, p. 17, 22, 24–27; J. Nouzille, *op. cit.*, s. 237.

which did not represent the interests of Romanians. The Soviet-Romanian agreements of 1948–1949 were not concluded by equal parties, and the reaffirmation of their provisions in subsequent years happened due to the Romania's persistent vassalization toward the USSR. Eventually, however, valuing international law and order above its own interests (as it emphasized in its memorandum), Romania recognized in the 1997 treaty the belonging of Snake Island to Ukraine, but could not accept that the unjust and arbitrary decision of years ago would entail further disadvantages. The territorial sea boundary around Snake Island could not be the reference point for determining the extent of the shelf.²⁷

The Ukrainian side claimed that Snake Island was morphologically connected to the Ukrainian coast, and that Romania had exercised sovereign authority over it only once between 1700 and 1939. Romania's exorbitant claims to the shelf were, according to Ukraine, an expression of continued Romanian possessiveness. Its proof was Romania's inclusion after World War I of Northern Bukovina and Southern Bessarabia, inhabited by the Ukrainian population. In doing so, Romania passed over the protests of the Ukrainian People's Republic, the West Ukrainian People's Republic and Soviet Ukraine. The Ukrainian memorandum described Romania's actions as illegal because they violated the rights of the successor states, the right of Ukrainians to self-determination, and went beyond the arrangements Romania had made with other states before World War I. In the territories occupied by Romania, the Ukrainian population was subjected to denationalization.²⁸

The Ukrainian side, treating Romania's incorporation of Bessarabia and Bukovina as an illegal act, regarded the Soviet ultimatum of June 26, 1940 at 22⁰⁰ as legal. It ordered the Romanian government to surrender Bessarabia and northern Bukovina to the USSR by the end of the following day. Ukraine viewed the events as the result of "geopolitical changes in Europe", as a result of which northern Bukovina and Bessarabia were "returned" to the USSR. According to the Ukrainian side, the USSR's incorporation of the two provinces did not result from the provisions of the Molotov-Ribbentrop Pact, since it did not contain territorial clauses, while the secret protocol attached to it was admittedly illegal. Romania, however, was not mentioned in it after all. It only mentioned Bessarabia, which the USSR had been interested in long before. Thus, the illegality of the secret protocol did not undermine Soviet claims to Bessarabia. On the other hand, the treaties signed by Romania after World War II were, in the view of the Ukrainian side, fair compensation for the wrongdoings Romania had inflicted on the USSR and Ukraine during World War II. The occupation of defeated Romania, after World War II, was thus legal.²⁹

The interpretation of historical events by both countries for the use of the International Tribunal in The Hague was biased and twisted. Romania created itself as

²⁷ Romanian memorandum, p. 51, 53–60.

²⁸ Ukrainian memorandum, p. 47, 97.

²⁹ *Ibid.*, p. 102–105.

a victim of the powers imposing unfavorable territorial solution, additionally deprived of sovereignty after World War II. The Ukrainian argumentation based on the notion of legalism was also perverse. Romania's incorporation of Bessarabia and Bukovina after the first war was treated as illicit, while the USSR's taking of the two provinces from Romania by ultimatum was viewed as legally valid, even though the USSR was a signatory to the Briand–Kellogg Pact and the Convention on the Definition of the Aggressor. This kind of argumentation raises the question what criteria the Ukrainian memorandum used to assess the legality or illegality of international decisions. A sad reflection emerges that this criterion was the interest of Soviet Russia and Ukraine, represented by numerous state centers after World War I, and then the *raison d'être* of the USSR and the Ukrainian SSR, which was a part of it.

TWO “TRUTHS” ABOUT ONE ISLAND

The picture of Snake Island presented by Romania and Ukraine in the trial documents before the ICJ is another example of manipulation. Romania tried to prove that Snake Island was nothing more than a marine formation, a rock. The selected testimony showing its waterless, uninhabited and awe-inspiring character, resulting in the past from the cult of Achilles and the difficulty of maintaining communication with the mainland.³⁰

The Romanian memorandum cited an 1857 opinion by EDC chief engineer Charles A. Hartley, who ruled out the possibility of using Snake Island's siliceous rocks as construction material because of transportation difficulties. The cliff coastline of Snake Island allowed ships to approach the shore no further than 50 meters, on top of which frequent and violent storms occurred in the area.³¹ In 1929, when the sea around Snake Island froze over for two months, the lighthouse crew was threatened by food shortages. In 1935, one lighthouse keeper, with a complicated leg fracture and the threat of gangrene, waited several days for the “sea bosses in Sulina”, as Romanians referred to EDC officials, to send a rescue ship to the island. Romania, when taking over the island from the EDC in 1938, inherited these problems. It is evidenced by the case of Major Silviu Ștefănescu, who arrived with a group of soldiers on Snake Island on June 8, 1944, to repair the lighthouse, and was taken from it on August 22, 1944, after an alarming radiotelegram about the barage of both water and food.³² Interestingly, a description of the same expedition was included in a Ukrainian memorandum. It cited the information about water rationing among the crew members, which was supposed to prove the presence of water on the island,

³⁰ Romanian memorandum, p. 17.

³¹ *Ibid.*, p. 146–148.

³² *Ibid.*, p. 174–175.

which Romania treated as waterless.³³ Indeed, Romania went to great lengths to prove the island's waterlessness. It used a description dating back to 1810 by Edward Daniel Clark, who stated that the only source of water on Snake Island was rainwater, and that the relatively infrequent rains during the growing season of the plants, the high sunlight and the shallow soil layer allowed only dry-loving plants to survive. Similar observations were made by Alexandru Vlahuță (*România Pitorescă*, 1901) and Prof. Alexandru Borza of Cluj, who surveyed the island in 1926. The island's waterless nature was described in 1931 by Raul I. Călinescu (*Insula Șerpilor. Schiță monografică*, 1931), as well as D. L. Stahiescu (1938) and George Rașcu (*Insula Șerpilor* of 1940).³⁴ In 1942, Ion Simionescu (*Pictures of Romania*, vol. I., *Between Danube and the Sea* from 1942) wrote that the island was almost empty, not only because of its distance from the mainland, but also due to its dry nature. In summer it looked scorched, as did the hills of Dobruđa. This condition was confirmed by Mihai Drăghicescu (*The History of the main landmarks on the Danube, from the Tisa's Mouth to the Sea and on the Sea Shore from Varna to Odesa* in 1943), who admittedly found four reservoirs on the island, but water flowed into them from the roof of the lighthouse with all the impurities. According to the Romanian side, this condition persisted until modern times, as reported in 2002–2003 by the Ukrainian press.³⁵

Romania portrayed Snake Island as not only waterless, but also uninhabited land. It cited descriptions by ancient scholars, which indicated that potential settlers were discouraged not only by communication difficulties and lack of water, but also by the sacred nature of the island. It was feared to remain on the island for any purpose other than making sacrifices and longer than until nightfall, and women were forbidden to enter the island. Aside from cult traces, archaeological evidence of permanent settlement was lacking. Romania pointed out that repellent legends about giant snakes and spirits inhabiting Snake Island also discouraged potential settlers during Turkish rule, and 20th-century guides from the UK Hydrographic Department (*Black Sea Pilot* of 1920 and 1930) reported that only lighthouse keepers and sentinels lived on Snake Island. In 1931, there was an additional Romanian corporal, three soldiers and an additional two who were serving their sentences on the island. Such a state of affairs was also confirmed by Ion Simionescu, who stated that no one lived on the island except lighthouse keepers, a goat and a donkey constantly starving from the lack of food.³⁶

There is a noteworthy Romanian report on Snake Island made for Romania's Interior Minister on May 14, 1938, which described the island as a large oval stone monument with a lighthouse, swept by waves, covered with a thin layer of loess and bird droppings. It pointed out the acute shortage of water, which, although collected

³³ Ukrainian memorandum, p. 238.

³⁴ Romanian memorandum, p. 146–148, 155–157.

³⁵ *Ibid.*, p. 159–161.

³⁶ *Ibid.*, p. 151, 163–168, 171.

in four cisterns, had an unpleasant taste, and its consumption risked food poisoning. It was also stated that the island's seclusion, inhospitable climate, storms and the incessant noise of waves hitting the shore had an adverse effect on human life, and a prolonged stay there could be deadly.³⁷

The Romanian side did not explain the circumstances of the report, but it can be suspected that it was written in connection with the planned foundation on Snake Island of a prison for political enemies of the Charles II dictatorship. In any case, this is what the Ukrainian side claimed, not without malice, recalling Romanian plans to build a prison, an Orthodox church, a rescue station, or a hospital for lepers managed by the Order of the Knights of Malta.³⁸ Polish soldiers interned in Romania in 1939 were also threatened with exile to Snake Island. Such an incident took place at the Caracal garrison against officers who refused to sign a pledge not to leave their place of internment.³⁹

The Ukrainian side, on the other hand, tried to show that Snake Island was vibrant. It used the information provided by Raul I. Călinescu. According to them, in the 1930s there were eight people on the island, including four lighthouse keepers and four members of military personnel. Also, archaeologists and castaways appeared. In 1922 and 1925, Russian emigrants stayed on the Island. Călinescu was said to have recognized the natural, tourist, meteorological, ornithological, and even balneological qualities of the Island.⁴⁰ The fact that it was only possible to arrive at the Island in three places within a distance of 50 meters, according to the Ukrainian side, testified to the Island's accessibility to any ship.⁴¹

The Ukrainian side, using the same historical accounts as the Romanian side, disputed the claims that Snake Island was waterless and deserted. The island was not deserted, since there was a cult of Achilles on it. Ammianus Marcellinus is supposed to have written about it: "Ibi et aque sunt" and mentioned two cisterns near the temple.⁴² Ukrainians also cited the testimony of Romanian writer Gheorghe Popa-Lisseanu in 1925, who mentioned the existence of two wells on the island, and in 1931 Raoul Călinescu wrote about a heavy rainfall over the island, which filled four water tanks, sufficient for drinking and washing for 10 people. Finally, in 2003, Ukraine drilled three boreholes 40 to 60 meters deep on the island, and each borehole was filled with fresh water at a tide of two cubic meters per hour, which could meet the needs of the residents.⁴³

³⁷ Ibid, p. 150, 156, 160–161, 168–169.

³⁸ Ukrainian memorandum, p. 237.

³⁹ Testimony of Capt. Bojomir Gorski, 22 October 1939: *Polscy uchodźcy w Rumunii 1939–1947. Dokumenty z narodowych archiwów Rumunii*, part 1, vol. 1, Warsaw–Bucharest 2013, no. 89, p. 331.

⁴⁰ Ukrainian memorandum, p. 237.

⁴¹ Ibid, p. 40–41.

⁴² Ibid, p. 231.

⁴³ Ibid, p. 46, 48.

UKRAINIAN INVESTMENTS ON SNAKE ISLAND

The reason for Romanian irritation was the work on Snake Island undertaken by Ukraine during the period of the dispute over delimitation of waters. The Ukrainian government issued a decree on December 18, 1995 on the development of infrastructure and economic life on Snake Island and the continental shelf. In it, they stipulated the construction of wind and oil power plants, the erection of additional premises with funds from the Defense Ministry, as well as a seismic, hydrological and meteorological station for the Black and Azov Seas. Funds for these tasks were secured by the Decrees of the Cabinet of Ministers of Ukraine of June 18, 1996 and October 8, 1997 on infrastructure modernization and economic development of the island and on the adoption of a comprehensive program for infrastructure development. On December 13, 2001 the Cabinet of Ministers of Ukraine adopted a new decree on the comprehensive development of Snake Island, and on February 19, 2002 a decree on securing funds for the construction of a marina. As a result, a mooring complex for receiving cargo shipments was established in November 2004, and construction of a small mooring complex began.⁴⁴ On May 31, 2002 the Cabinet of Ministers of Ukraine adopted a decree on the overall development of infrastructure and economy on Snake Island and the continental shelf for 2002–2006. It envisaged improving maritime communications with the island by building a pier, establishing a border post and a fishing guard, developing work on providing water access, restoring the lighthouse, providing a satellite link, renovating the post office, establishing a medical post, building a scientific and teaching complex with a museum, and adopting a tourist development program. Communication with the island has been provided by mail, telephone and electronic means. A satellite dish and post office were placed in the lighthouse complex. The island was given the status of a State Zoological Reserve, listed in the Geological Register of Ukraine and the State Register of National Heritage of Ukraine as a historical monument. In 2003 alone, the island was to be visited by six scientific expeditions in hydrobiology, microbiology, ichthyology, marine geology, soil science, archaeology, astronomy, and ornithology. On January 10, 2003 Odesa Regional Council established the “Ostrov” Regional Utility Company to manage Snake Island. The Chairman of the Odesa Regional State Administration issued a decree on August 29, 2003, according to which any visit to the Island required his approval. As of August 20, 2002, a 30-person detachment of the Ukrainian Border Guard was stationed on the island. By a decree dated July 12, 2004, Odesa regional authorities established rules for tourist traffic on the Island, taking into account the protection of its ecosystem, and adopted a decision to build a monument commemorating the cult and temple of Achilles. On September 21, 2004, a branch of Aval bank was opened on the Island by decision of the National Bank of Ukraine. In the same year, permanent con-

⁴⁴ Romanian memorandum, p. 180, 240.

nections to the Island were established, and conditions for resting on the Island were created.⁴⁵ The operation of the lighthouse was taken over by the Ukrainian National Hydrological Service, which renovated the entire lighthouse complex in 2002–2003.⁴⁶

Romania viewed these actions as a tool to strengthen Ukraine's position before the ICJ. It sought out comments from the Ukrainian press attesting to the political nature of these investments. The delivery of land and tree seedlings to the island was being watched with exasperation. The Romanian side also mocked the opening of a gynecology station for the island's only female resident in 2004. It did not escape Romania's notice that a branch of Aval bank appeared on the island immediately after she filed a complaint with the ICJ on September 16, 2004. Ukrainian plans to build a bakery, a diving point, a marina and a hangar for small yachts and ships were also likened to the erection of Potemkin villages.⁴⁷

On the other hand, the unfavorable reports by the Ukrainian media were disavowed before the ICJ as unreliable, given the dependence of the Ukrainian media on the government. In doing so, there was cited the Opinion of the Committee on Culture and Education of the Parliamentary Assembly of the Council of Europe of January 23, 2001 (reported by Andrzej Urbańczyk of the Socialist Group), which addressed the lack of media freedom in Ukraine. Also, Romania recalled the Council of Europe Parliamentary Assembly's Resolution 1346 of 2003, which stated the dependence of Ukrainian media on the government's position.⁴⁸

INTERNATIONAL COURT OF JUSTICE RULING

The International Court of Justice announced the verdict on February 3, 2009. It accepted the Romanian baseline on the Sacalin Peninsula, while it questioned the end of the Sulina Dam and moved it to where the dam connected to the mainland. The court rejected the Romanian concept of dividing the coast into contiguous and opposite sectors.⁴⁹ The ICJ took its entire coast from the border point with Romania to Cape Saritsa with the exception of the Gulf of Karkinitza as the baseline on the Ukrainian side. The Court considered the Snake Island coast too short to affect the shape of the actual coastline.⁵⁰

⁴⁵ Ukrainian memorandum, p. 241–243, 246.

⁴⁶ *Ibid.*, p. 47.

⁴⁷ Romanian memorandum, p. 162, 170, 178, 181–182, 185–188, 190, 193–194.

⁴⁸ *Ibid.*, p. 145. The Parliamentary Assembly of the Council of Europe has a Committee on Culture, Science, Education and the Media, with a Subcommittee on Media and Public Information; <https://pace.coe.int/en/pages/committees> [accessed 30.08.2023]; *Résolution 1346 (2003), Respect des obligations et engagements de l'Ukraine*, <https://pace.coe.int/pdf/e527c75e58383604c9fed50c35de2f8771db9632e657f21608586860692fcb30/r%C3%A9s.%201346.pdf> [accessed 24.01.2023].

⁴⁹ Judgment, p. 51.

⁵⁰ *Ibid.*, p. 40–41; L. Donaj, *op. cit.*, p. 105.

The ICJ accepted Gypsy Island as a Ukrainian base point, but excluded Kuban Island and accepted Cape Tarchankut and Cape Kherson. As for Snake Island, the Court found that due to its seclusion, it is not connected to the Ukrainian coast and cannot be counted as a coastal island. Therefore, it cannot be considered a point that marks the line of equal distances, as this would mean artificially attaching it to the Ukrainian coast through a court judgment in violation of the geographic state. The Court also held that the principle of proportionality based on the size of the coast cannot be taken into account, since the size of the coast does not determine the size of the exclusive economic zone.⁵¹

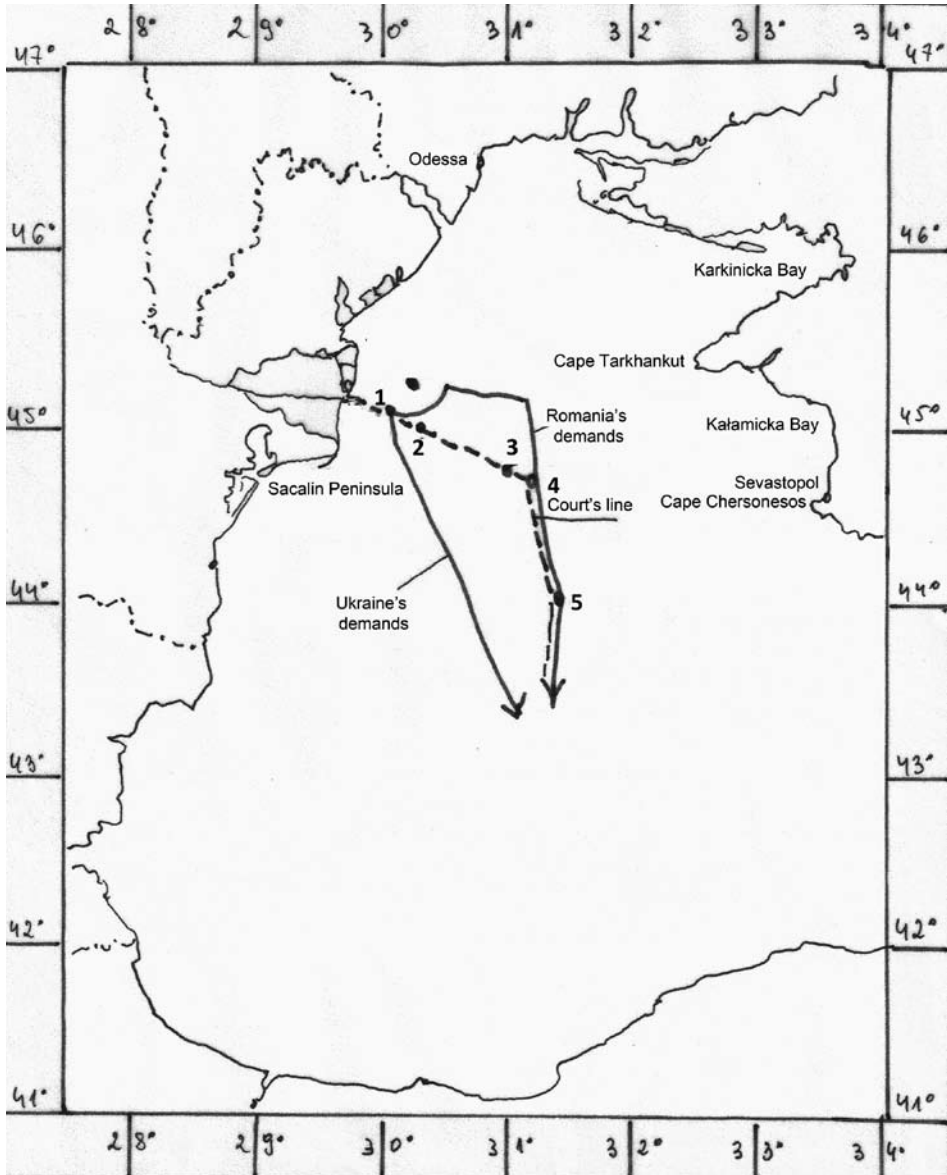
A separate justification was drawn up by the Court for Snake Island. It ruled that the location of Snake Island disqualified it as part of the delimitation, even if it had been granted a shelf and an exclusive economic zone, because the delimitation was decided by points and lines set by the ICJ. The Court did not rule on whether Snake Island falls under paragraph 2 of Article 121 of the Convention on the Law of the Sea, and thus whether it is an island, but recalled that the states themselves delimited the 12-mile territorial sea around it. The Court held that Snake Island does not create a right to any waters other than territorial.⁵²

The ICJ determined the line of demarcation between the two countries' water areas as follows: the starting point (point 1) became the point where the territorial seas of Romania and Ukraine meet on an arc around Snake Island; the second point of demarcation was determined at a location with coordinates: 45°03'18.5" north latitude and 30°09'24.6" east longitude based on the base points at Sulina Dam and Gypsy Island. The line of demarcation then ran southeast at an equal distance from the coasts of the two countries to the third point at coordinates: 44°46'38.7" north latitude and 30°58'37.3" east longitude, determined based on the base point on the Sacalin Peninsula. From there, it continued in a southeast direction at an equal distance to point 4 at coordinates: 44°44'13.4" north latitude and 31°10'27.7" east longitude, determined based on a point on Cape Tarchankut, and then to point 5 with coordinates: 44°02'53.0" north latitude and 31°24'35.0" east longitude, determined based on points on the Sacalin Peninsula, Cape Kherson and Tarchankut. From there it ran south to the border of the maritime zones of third countries. The verdict was passed unanimously and accepted by Romania and Ukraine. The settlement was favorable to Romania, as it granted it most of the disputed territory.⁵³

⁵¹ Judgment, p. 52–53, 59.

⁵² *Ibid.*, p. 65–66.

⁵³ *Ibid.*, p. 73–74.



Map 2. The line of demarcation established by the International Court of Justice⁵⁴

⁵⁴ Ibid, p. 12, 57.

SUMMARY

The nationality of Snake Island was not of any controversial nature until the Black Sea was opened to general shipping and trade in 1856. The powers, who were then anxious to move Russia away from the Danube delta and open it to general shipping, recognized it as part of the delta and placed it under EDC control. Although Romania conquered the island in 1878, it practically did not govern it until 1938. The rapid rise in importance of Snake Island after World War II was associated with the development of the rights of coastal states to exploit the maritime waters stretching around them. The desire of Ukraine and Romania to favorably delimit the extent of the shelf and exclusive economic zone is therefore understandable. Still, it is puzzling how the two countries used historical sources they presented before the ICJ to defend their position. Both the Romanian and Ukrainian trial arguments exemplify manipulation of facts, the use of biased interpretation of historical sources, and the derivation of completely different conclusions from identical texts. The catalog of manipulations in this case included not only the selection of sources, but also the omission of inconvenient facts, the highlighting of favorable ones, and the perfunctory treatment of inconvenient ones. The Ukrainian side additionally shrugged off the notion of the legality of the actions and the realization of the principle of justice in a way that was not always justified or fair. Reading these documents allows one to understand how deep is the sense of harm and injustice in the relations between the two countries. Fortunately for their societies, the governments of Ukraine and Romania accepted the ICJ verdict, which not only ended one of the conflicts in the Black Sea basin but quieted the nationalistic emotions developing in Romania and Ukraine during the dispute.⁵⁵

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