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International Court
of Justice

Cour internationale
de Justice

THE HAGUE

LA HAYE

YEAR 2008

Public sitting

held on Wednesday 3 September 2008, at 10 a.m., at the Peace Palace,

President Higgins presiding,

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

VERBATIM RECORD

ANNÉE 2008

Audience publique

tenue le mercredi 3 septembre 2008, à 10 heures, au Palais de la Paix,

sous la présidence de Mme Higgins, président,

*en l'affaire relative à la Délimitation maritime en mer Noire
(Roumanie c. Ukraine)*

COMPTE RENDU

Present: President Higgins
 Vice-President Al-Khasawneh
 Judges Ranjeva
 Shi
 Koroma
 Buergenthal
 Owada
 Tomka
 Abraham
 Keith
 Sepúlveda-Amor
 Bennouna
 Skotnikov
Judges *ad hoc* Cot
 Oxman

 Registrar Couvreur

Présents : Mme Higgins, président
M. Al-Khasawneh, vice-président
MM. Ranjeva
Shi
Koroma
Buergenthal
Owada
Tomka
Abraham
Keith
Sepúlveda-Amor
Bennouna
Skotnikov, juges
MM. Cot
Oxman, juges *ad hoc*

M. Couvreur, greffier

The Government of Romania is represented by:

Mr. Bogdan Aurescu, Director General, Ministry of Foreign Affairs of Romania, Professor Lecturer, Faculty of Law, University of Bucharest, President of the Romanian Branch of the International Law Association, member of the Permanent Court of Arbitration, substitute member of the Venice Commission,

as Agent, Counsel and Advocate;

Mr. Cosmin Dinescu, Director General for Legal Affairs, Ministry of Foreign Affairs of Romania,

as Co-Agent, Counsel and Advocate;

H.E Mr. Călin Fabian, Ambassador of Romania to the Kingdom of the Netherlands,

As Co-Agent;

Mr. James Crawford, S.C., F.B.A., Whewell Professor of International Law, University of Cambridge, member of the Institut de droit international, Barrister, Matrix Chambers,

Mr. Vaughan Lowe, Q.C., Chichele Professor of International Law, University of Oxford, member of the English Bar, associate member of the Institut de droit international,

Mr. Alain Pellet, Professor at the University Paris Ouest, Nanterre-La Défense, member and former Chairman of the International Law Commission, associate member of the Institut de droit international,

as Senior Counsel and Advocates;

Mr. Daniel Müller, Researcher at the Centre de droit international de Nanterre (CEDIN), University of Paris Ouest, Nanterre-La Défense,

as Counsel and Advocate;

Mr. Simon Olleson, member of the English Bar, 13 Old Square Chambers,

as Counsel;

Mr. Gicu Boroși, Director General, National Agency for Mineral Resources,

Mr. Mihai German, Deputy Director General, National Agency for Mineral Resources, member of the United Nations Commission on the Limits of the Continental Shelf,

Mr. Eugen Laurian, Counter-Admiral (retired),

Mr. Octavian Buzatu, Lieutenant Commander (retired),

Mr. Ovidiu Neghiu, Captain, Ministry of Defence of Romania,

as Technical and Cartographic Experts;

Mr. Liviu Dumitru, Head of the Borders and Maritime Delimitation Unit, Ministry of Foreign Affairs of Romania,

Le Gouvernement de la Roumanie est représenté par :

M. Bogdan Aurescu, directeur général au ministère roumain des affaires étrangères, chargé de cours à la faculté de droit de l'Université de Bucarest, président de la section roumaine de l'Association de droit international, membre de la Cour permanente d'arbitrage, membre suppléant de la Commission de Venise,

comme agent, conseil et avocat ;

M. Cosmin Dinescu, directeur général des affaires juridiques du ministère roumain des affaires étrangères,

comme coagent, conseil et avocat ;

S. Exc. M. Călin Fabian, ambassadeur de Roumanie auprès du Royaume des Pays-Bas,

comme coagent ;

M. James Crawford, S.C., F.B.A., professeur de droit international à l'Université de Cambridge, titulaire de la chaire Whewell, membre de l'Institut de droit international, avocat, Matrix Chambers,

M. Vaughan Lowe, Q.C., professeur de droit international à l'Université d'Oxford, titulaire de la chaire Chichele, membre du barreau d'Angleterre, membre associé de l'Institut de droit international,

M. Alain Pellet, professeur à l'Université de Paris Ouest, Nanterre-La Défense, membre et ancien président de la Commission du droit international, membre associé de l'Institut de droit international,

comme conseils principaux et avocats ;

M. Daniel Müller, chercheur au Centre de droit international de Nanterre (CEDIN), Université de Paris Ouest, Nanterre-La Défense,

comme conseil et avocat ;

M. Simon Olleson, membre du barreau d'Angleterre, 13 Old Square Chambers,

comme conseil ;

M. Gicu Boroși, directeur général de l'agence nationale des ressources minières,

M. Mihai German, directeur général adjoint de l'agence nationale des ressources minières, membre de la Commission des limites du plateau continental de l'ONU,

M. Eugen Laurian, contre-amiral (en retraite),

M. Octavian Buzatu, capitaine de corvette (en retraite),

M. Ovidiu Neghiu, capitaine, ministère roumain de la défense,

comme experts techniques et cartographes ;

M. Liviu Dumitru, chef de l'unité frontières et délimitation maritime du ministère roumain des affaires étrangères,

Ms Irina Niță, Second Secretary, Legal Adviser, Embassy of Romania in the Kingdom of the Netherlands,

Ms Catrinel Brumar, Third Secretary, Borders and Maritime Delimitation Unit, Ministry of Foreign Affairs of Romania,

Ms Mirela Pascaru, Third Secretary, Borders and Maritime Delimitation Unit, Ministry of Foreign Affairs of Romania,

Ms Ioana Preda, Third Secretary, Borders and Maritime Delimitation Unit, Ministry of Foreign Affairs of Romania,

Ms Olivia Horvath, Desk Officer, Public Diplomacy Department, Ministry of Foreign Affairs of Romania,

as Advisers.

The Government of Ukraine is represented by:

H.E. Mr. Volodymyr A. Vassylenko, Adviser to the Minister for Foreign Affairs of Ukraine, Ambassador Extraordinary and Plenipotentiary of Ukraine, Professor of International Law, National University of Kyiv Mohyla Academy,

as Agent;

H.E. Mr. Oleksandr M. Kupchyshyn, Deputy Foreign Minister of Ukraine,

Mr. Volodymyr G. Krokhmal, Director of the Legal and Treaty Department of the Ministry of Foreign Affairs of Ukraine,

as Co-Agents;

Mr. Rodman R. Bundy, *avocat à la Cour d'appel de Paris*, Member of the New York Bar, Eversheds LLP, Paris,

Mr. Jean-Pierre Quéneudec, Professor emeritus of International Law at the University of Paris I (Panthéon-Sorbonne),

Sir Michael Wood, K.C.M.G., Member of the English Bar, Member of the International Law Commission,

Ms Loretta Malintoppi, *avocat à la Cour d'appel de Paris*, Member of the Rome Bar, Eversheds LLP, Paris,

as Counsel and Advocates;

H.E. Mr. Vasyl G. Korzachenko, Ambassador Extraordinary and Plenipotentiary of Ukraine,

Ms Cheryl Dunn, Member of the State Bar of California, Eversheds LLP, Paris,

Mr. Nick Minogue, Solicitor of the Supreme Court of England and Wales,

Mr. Oleksii V. Ivaschenko, Acting Head of International Law Division, Legal and Treaty Department of the Ministry of Foreign Affairs of Ukraine,

Mme Irina Niță, deuxième secrétaire, conseiller juridique à l'ambassade de Roumanie au Royaume des Pays-Bas,

Mme Catrinel Brumar, troisième secrétaire, unité frontières et délimitation maritime du ministère roumain des affaires étrangères,

Mme Mirela Pascaru, troisième secrétaire, unité frontières et délimitation maritime du ministère roumain des affaires étrangères,

Mme Ioana Preda, troisième secrétaire, unité frontières et délimitation maritime du ministère roumain des affaires étrangères,

Mme Olivia Horvath, responsable du département des relations diplomatiques du ministère roumain des affaires étrangères,

comme conseillers.

Le Gouvernement de l'Ukraine est représenté par :

S. Exc. M. Volodymyr A. Vassylenko, conseiller du ministre des affaires étrangères de l'Ukraine, ambassadeur extraordinaire et plénipotentiaire d'Ukraine, professeur de droit international à l'Académie Mohyla (Université nationale de Kiev),

comme agent ;

S. Exc. M. Oleksandr M. Kupchyshyn, vice-ministre des affaires étrangères de l'Ukraine,

M. Volodymyr G. Krokmal, directeur du département des affaires juridiques et des traités du ministère des affaires étrangères de l'Ukraine,

comme coagents ;

M. Rodman R. Bundy, avocat à la cour d'appel de Paris, membre du barreau de New York, cabinet Eversheds LLP, Paris,

M. Jean-Pierre Quéneudec, professeur émérite de droit international à l'Université de Paris I (Panthéon-Sorbonne),

sir Michael Wood, K.C.M.G., membre du barreau d'Angleterre, membre de la Commission du droit international,

Mme Loretta Malintoppi, avocat à la cour d'appel de Paris, membre du barreau de Rome, cabinet Eversheds LLP, Paris,

comme conseils et avocats ;

S. Exc. M. Vasyl G. Korzachenko, ambassadeur extraordinaire et plénipotentiaire d'Ukraine,

Mme Cheryl Dunn, membre du barreau de Californie, cabinet Eversheds LLP, Paris,

M. Nick Minogue, *Solicitor* à la Cour suprême d'Angleterre et du pays de Galles,

M. Oleksii V. Ivaschenko, directeur par intérim de la division du droit international, département des affaires juridiques et des traités du ministère des affaires étrangères de l'Ukraine,

Mr. Maxime O. Kononenko, First Secretary of the Embassy of Ukraine in the French Republic,

Ms Mariana O. Betsa, Second Secretary of the Embassy of Ukraine in the Kingdom of the Netherlands,

as Legal Advisers;

Mr. Robin Cleverly, M.A., D. Phil, C. Geol, F.G.S., Law of the Sea Consultant, Admiralty Consultancy Services,

Major General Borys D. Tregubov, Assistant to the Head of the State Border Protection Service of Ukraine,

as Technical Advisers.

M. Maxime O. Kononenko, premier secrétaire à l'ambassade d'Ukraine en France,

Mme Mariana O. Betsa, deuxième secrétaire à l'ambassade d'Ukraine au Royaume des Pays-Bas,

comme conseillers juridiques ;

M. Robin Cleverly, M.A., D. Phil., C. Geol., F.G.S., consultant en droit de la mer, Admiralty Consultancy Services,

M. Borys D. Tregubov, général de division, assistant du chef du service de protection des frontières d'Etat de l'Ukraine,

comme conseillers techniques.

The PRESIDENT: Please be seated. The sitting is open and we meet for the continuation of the first round presentation of Romania and we are to hear Professor Crawford.

Mr. CRAWFORD:

**IV. THE RELEVANT COASTS AND THE RELEVANT AREA
(CONTINUED)**

1. Madam President, Members of the Court, yesterday I analysed the approach you have taken to relevant coasts in previous cases. In this second part of my first presentation I move to the present controversy.

The relevant coasts and area for the present dispute

[Slide 10: the claim lines of the Parties and the mainland coast equidistance/median line]

2. You can now see illustrated on the screen the respective claim lines of the Parties, as well as the mainland coasts equidistance line; this is tab IV-11 in your folders. The first point to stress is that some relevant coasts here are adjacent to each other and some are opposite. The land boundary of the Parties terminates at the Danube delta. That being so, the respective east-facing coasts of the Parties on the delta are obviously relevant: they look directly on to the area to be delimited, they produce overlapping entitlements in that area, and they provide base points for a mainland coast provisional equidistance line.

3. The provisional equidistance/median line reflects the distinction between opposite and adjacent coasts. I have already mentioned point T. To the west of point T the provisional equidistance line is determined by points on the adjacent coasts of the Parties on the delta; after point T is reached, the provisional median line is determined by points on the opposite coasts of the Parties.

4. When it comes to opposite coasts, the Crimean coastline of Ukraine south of Cape Tarkhankut is obviously relevant — it too faces on to the delimitation area, produces an entitlement overlapping with that produced by the opposite Romanian coast —

The PRESIDENT: Professor Crawford, I am sorry to interrupt you so early but I am already hearing from the interpreters that they would appreciate your going more slowly.

Mr. CRAWFORD: I am sorry. I will. — and provides the base points on the Ukrainian side for construction of the median line. When one is running the marathon it is wise to start slowly!

The PRESIDENT: And continue slowly!

Mr. CRAWFORD: On the Romanian side, the relevant coast is the entire Romanian coast from the border with Ukraine in the north, down to the land border with Bulgaria in the south, near Vama Veche, all of which projects into the relevant area of opposite coasts.

[End slide 10]

5. In its Rejoinder, Ukraine objects that this distinction is artificial, that it ignores Serpents' Island, and that it double counts the Romanian coast¹. Let me deal with these objections.

6. First, as to artificiality. If it is an artificial distinction then it is one that Ukraine has expressly accepted. I recall the 1997 Additional Agreement, paragraph 4 (*b*) of which mandated the Parties to apply:

“the principle of the equidistance line in areas submitted to delimitation where the coasts are adjacent and the principle of the median line in areas where the coasts are opposite”

[“le principe de la ligne d'équidistance dans les zones à délimiter lorsque les côtes sont adjacentes et le principe de la ligne médiane lorsque les côtes se font face”].

Clearly the Parties envisaged that they would first have to distinguish these “areas submitted to delimitation” in the case “where the coasts are adjacent” (“les zones à délimiter lorsque les côtes sont adjacentes”) and the case where they “are opposite” (“lorsque les côtes se font face”) and secondly that they would apply the corresponding principles of “the equidistance line” (“la ligne d'équidistance”) or “the median line” (“la ligne médiane”). The distinction is clear.

7. Moreover the distinction between the two has always been recognized in maritime delimitation, and indeed, it is recognized in Ukraine's domestic legislation². Each of the relevant articles of the 1982 Convention concerning delimitation expressly mentions “States with opposite or adjacent coasts” (“Etats dont les côtes sont adjacentes ou se font face”): Article 15 (territorial sea), Article 74 (exclusive economic zone), Article 83 (continental shelf). The same was true of

¹See RU, paras. 4.57-4.64.

²CMU, Ann. 47.

the 1958 Conventions³. As the Court of Arbitration held in the *Anglo-French* case, there is no third category⁴, no geographical situation where the delimitation is to be effected between coasts that are neither adjacent nor opposite⁵. Thus in that case the Tribunal considered that the coasts of the two parties in the Channel (la Manche) were opposite, notwithstanding the presence of the Channel Islands, while their coasts as the delimitation moved out into the Atlantic Ocean were to be regarded as standing more in a relation of adjacency⁶.

8. Ukraine's second objection is that Serpents' Island is ignored in determining relevant coasts⁷. There are a number of mutually reinforcing answers to this, which we will give you over the next few days. But my concern just now is with relevant coasts and relevant areas, and it is common to determine these without regard to small offshore features, as you did with respect to Filfla in the *Libya/Malta* case, for example (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 50, para. 68). I would simply point out that it is not in dispute that Serpents' Island is located in the relevant area for the delimitation. If it were not, we would have no problem. In fact if we were to add to the total coastal length asserted by Ukraine, which is 1058 km, the south-facing "coasts" of Serpents' Island, that would add 450 m to the total, that is 0.0004 per cent of the total length, measured to four decimal places. It gives some idea how small a feature it is — but it adds nothing to the relevant coasts equation. Nor, of course, was Serpents' Island included as a base point in Ukraine's list of territorial sea co-ordinates submitted under Article 16 of the 1982 Convention⁸.

9. Ukraine's third objection is that Romania double counts its coastline, once for the purposes of determining adjacent coasts and once for the purpose of determining opposite coasts. But of course the same coast will often count twice in this way. Romania's coastal frontage generates a lateral maritime boundary vis-à-vis its adjacent Danube coast, and an opposite maritime

³Convention on the Continental Shelf, Geneva, 29 April 1958, 499 *UNTS* 312, Art. 6; Convention on the Territorial Sea and the Contiguous Zone, Geneva, 29 April 1958, 516 *UNTS* 205, Art. 12.

⁴*Delimitation of the Continental Shelf (United Kingdom of Great Britain and Northern Ireland and the French Republic)*, Decision of 30 June 1977, 54 *ILR* 6, pp. 118-119, para. 237.

⁵*Ibid.*, pp. 63-65, paras. 89-94, p. 105, para. 206.

⁶*Ibid.*, p. 125, para. 253; cf. p. 120, para. 242.

⁷RU, paras. 75-79.

⁸Cf. RR, paras. 8.11-8.16.

boundary vis-à-vis its Crimean coast. To read Ukraine's pleadings was to gain an impression of a Romanian coastline exhausted by the stress of a single delimitation, unable to withstand the onslaught of further coastlines. But coastlines do not get used up in this way. If — and I say this entirely hypothetically — the Crimean peninsula was still part of the Russian Federation, Romania's coastline would have effect as an opposite coastline vis-à-vis Russia and an adjacent coastline vis-à-vis Ukraine. The position is no different where the coasts are under a single sovereign.

[Slide 11: comparative illustration of the relevant/irrelevant coasts in the *Tunisia/Libya* case and the *Libya/Malta* case]

10. Let us take another hypothetical. Let us assume that Malta and Tunisia formed a single State; the slide on the screen is tab IV-12 in your folders. On that hypothesis, could it seriously be disputed that the relevant Libyan coast west of Ras Tajoura was relevant both for the delimitation of the boundary based on the adjacent coast of the Tunisian mainland, as you found in *Libya/Tunisia*, while all of the coast from Ras Ajdir as far as at least Ras Zarruq, including the same sector up to Ras Tajoura, was relevant in determining the boundary based on the opposite coast of Malta, as you found in *Libya/Malta*? Such an approach does not involve any “double counting” of the portion of coast which is common to the two delimitations.

[End slide 11]

11. In short — and it seems obvious — in this case there are relevant adjacent *and* opposite coasts.

12. I turn to the identification of these coasts, and let's start with the Romanian coastline, which is much simpler than that of Ukraine.

[Slide 12: the Romanian coast]

13. In terms of the sector of the equidistance line based on adjacent coasts, the Romanian coast consists of two distinct segments. As you can see on the screen, and at tab IV-13, starting from the border with Ukraine, the coast of Romania stretches in a southerly direction for a distance of about 70 km to the Sacalin peninsula. The only major features in this stretch of coast are the Sulina dyke and the mouth of the St. George arm of the Danube, located slightly to the north of the Sacalin peninsula. The Sacalin peninsula forms the southern limit of this section: it is a narrow

promontory, as you saw yesterday. Then from that peninsula, the coast proceeds in a westerly direction until it reaches the Razim Lake, a brackish Romanian lake separated from the sea by a narrow strip of land. The coast then gradually curves to the south, and proceeds in a broadly southerly direction until it reaches the land border with Bulgaria, south of Vama Veche. This portion of the Romanian coast forms another single segment.

14. There is no reason to take account of the Romanian coast behind and to the west of the Sacalin peninsula in relation to the sector governed by the adjacent coasts. Whereas the 70 km stretch of Romanian coast on the delta looks almost due east, the coastline further south trends south-west, just as the Crimean coastline lying opposite trends south-east. You will recall that the Court disregarded the Tunisian coastline north of Ras Kaboudia in the *Tunisia/Libya* case — Ras Kaboudia marking a shift in the orientation of the coastline so that it looked more away than towards the delimitation area. So here. *Tunisia/Libya* was likewise a case of adjacent coasts.

[End slide 12]

[Slide 13: the opposite coasts of the Parties]

15. By contrast, as you can see on the screen, and at tab IV-14, the entire coastline of Romania stands in opposition to the southwest-facing coast of the Crimean peninsula south of Cape Tarkhankut, generating a zone of overlapping potential EEZ entitlements between those opposite coasts. The distance between Vama Veche and Cape Sarych is 226 miles. The whole of Romania's coastal frontage is relevant vis-à-vis the opposite coast of the Crimean peninsula.

16. Turning to the Ukrainian coast itself, here the cartographic imagination of our colleagues opposite has run wild. But it has to be said that they had some material to work with. Ukraine's coast is deeply indented all around with major gulfs and firths. There is no particular problem with the Kalamits'ka Gulf but others, especially the Karkinitsk'a Gulf, raise significant issues.

[End slide 13]

[Slide 14: the segments of the Ukrainian coast]

17. On the screen now is the coast of Ukraine adjacent to that of Romania — this is at tab IV-15 in your folders. Let me start with the stretch of adjacent coastline along the Danube delta itself that appertains to Ukraine. This is what we have referred to as segment 1. That it is relevant cannot be doubted.

18. Immediately to the north there is a complex series of coastal lakes cut off from the sea by narrow strips of land — a common phenomenon around the Black Sea. The coastline here faces to the south-east and generates areas of overlapping maritime entitlement. There is no doubt that segment 2, extending up to point S, the entrance to the Dniester Firth, is equally relevant to the delimitation.

19. Ukraine's criticism of so-called suppression of Ukrainian coastline relates rather to Romania's treatment of segment 3, which you can see on the screen now — the stretch of coast from the Dniester Firth — extending north-east to Odessa where the coast turns further to the east.

20. Of course, we are concerned for the moment only with delimitation between adjacent coasts. To appreciate this more clearly, we now see the coastal frontages, as it were, looking directly out to sea and without any opposite coastlines. Frankly, I fail to see the relevance as adjacent coastline either of the Romanian coastline to the west and south-west of the Sacalin peninsula, or of the Ukrainian coastline to the north of the Dniester Firth. These coastlines look away from the area of the Danube delta, which is the area where the delimitation has to occur. Assume again, for the sake of argument, that the Crimean peninsula still belonged to the Russian Federation and that the land boundary between Ukraine and Russia lay just to the north of Odessa, so that all the Court had to do as between Romania and Ukraine was to delimit the boundary between their adjacent coasts. Could it really be said that the existence of the Ukrainian coastline around Odessa bore any relevance to the issue, any more than the Romanian coastline around Constanța, approximately the same distance away from the terminus of the land boundary? On what possible ground could it be argued that the much more remote segment 3 makes the slightest difference to the delimitation between adjacent coasts? It is inclined further to the north, faces away from the delimitation area, and does not project in such a way as to overlap with any entitlement generated by the Romanian coast. It is also comparatively far more remote from the delimitation area when compared to other segments of Ukraine's coast which *are* relevant — the principle of comparative proximity.

21. Let me put the same point another way. Segment 3 looks straight across the extreme north-western part of the Black Sea at the Crimean gulfs. There are simply no overlapping

potential entitlements generated by Ukraine's segment 3 and the 70 km sector of the Romanian coast south of the border, considered as potentially adjacent coasts.

22. The position is similar to that dealt with by the Court in the *Tunisia-Libya* case, and to use your words in that case

“there comes a point on the coast of each of the two Parties beyond which the coast in question no longer has a relationship with the coast of the other Party relevant for submarine delimitation. The sea-bed areas off the coast beyond that point cannot therefore constitute an area of overlap of the extensions of the territories of the two Parties, and are therefore not relevant to the delimitation.” (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, *Judgment*, *I.C.J. Reports 1982*, pp. 61-62, para. 75.)

[“sur la côte de chacune des deux Parties, l'existence d'un point au-delà duquel ladite côte ne peut plus avoir de lien avec les côtes de l'autre Partie aux fins de la délimitation des fonds marins. Au-delà de ce point, les fonds marins au large de la côte ne peuvent donc pas constituer une zone de chevauchement des extensions du territoire des deux Parties et, de ce fait, n'ont aucun rôle à jouer dans la délimitation.”]

Now, in assessing whether this is so — which is an exercise of judgment, not mathematics — you have to take into account the configuration and orientation of the coasts and their distance away from the scene of the action.

23. For these reasons, what we have called segment 3 of the Ukrainian coast is not relevant to the delimitation of adjacent coasts. I will return to it in the context of opposite coasts shortly.

24. Now, in keeping with the maxim that we work from the secure to the less secure, I want to take the opposite Crimean coast of Ukraine, south of Cape Tarkhankut. That this stands opposed to the opposite Romanian coast — and further north, the opposite Ukrainian coast — cannot be doubted. We have called it segment 8.

25. But it seems obvious that the next segment, which we have numbered segment 7, is irrelevant. It is the northern coastline of the Crimean peninsula. It faces north-west. Its opposite coast is the other side of the Karkinit'sk's gulf. It faces on to the deep recesses of the Gulf and not at all onto the area of the delimitation. Yet Ukraine persists in including it in the relevant coastal length. No doubt we will hear from counsel for Ukraine how this essentially north-facing coastline, far away from the scene of the delimitation and entirely tangential to it, could be relevant.

26. The position is quite different from that in the *Gulf of Maine* case on which Ukraine relies. If the Ukraine/Romania land boundary — to continue my series of politico-geographical hypotheticals — had been somewhere around the Ukrainian city of Skadovsk, which you can now see on the screen, no doubt the opposite coast to the north-east of Cape Tarkhankut located some 45 miles away, would have been relevant. But that is not what the boundary is.

27. What goes for segment 7 must apply also to the large part of segment 6, which lies opposite segment 7 in the Karkinit'sk'a Gulf. It does not look on to the far-distant area of the provisional equidistance line and it is, I would say, evidently irrelevant for present purposes.

28. As to segment 3 itself, which we now revisit, it is obviously not an opposite coast to any Romanian coastline. Rather, in part, it is opposite to segment 5, in part to segment 7, the southern shore of the Karkinit'sk'a Gulf. Segment 4, the short segment north-east of Odessa, is again neither opposite nor adjacent to any part of the Romanian coast. Moreover, it is extremely remote from the delimitation area, when compared to other sections of the Ukrainian coast that are undoubtedly relevant. If the coast south of Odessa is irrelevant to the delimitation in both of its aspects — as it surely is — so, too, is the coastline to the north-east of Odessa.

29. That leaves us with the western part of segment 6, which at least looks on to the open sea and not some other Ukrainian coast. As such, it may be of present interest. But four points need to be made about this segment. First, it is remote from the relevant area — nearly 120 nm away. Secondly, other portions of the coast, in particular, those south of point S and Cape Tarkhankut, project on to the area to be delimited and are much closer to it. Thirdly, this short coastline is eclipsed by segments 1, 2 and 8. Fourthly, this segment lies in no specific relationship with the Romanian coast; it is neither an opposite nor an adjacent coast.

[End slide 14]

30. Before reaching any conclusions on these points, I should say something about the Ukrainian approach to its own coastline.

[Slide 15: The projection of the Ukrainian coast, as presented by Ukraine in its Counter-Memorial (CMU, figure 3-4)]

31. In its Counter-Memorial, Ukraine produced figure 3.4, which boiled down its coastline to three sectors, the baselines of those sectors bearing no close relationship to its actual coastline —

this is tab IV-16 in your folders. In our Reply, we criticized this graphic in a number of respects — inconsistency, arbitrariness, and so on. We pointed out, among other things, that the arrow drawn from Ukraine’s south-facing coast extended as far as 223 nm in length⁹.

[End slide 15]

[Slide 16: The projection of the Ukrainian coast, as presented by Ukraine in its Rejoinder (RU, figure 4-4)]

32. Now, this tab IV-17 in your folders is Ukraine’s second attempt. It corrects some of the errors of the first — the claim is now limited to 200-mile arcs, for example. But it also demonstrates the futility of this sort of graphical work in the relatively confined areas of the Black Sea. The following points may be noted:

1. The angles subtended from the baselines vary quite widely — from 65° of arc to about 160°.
2. The bases from which two of the arcs are drawn (in the central and eastern sector) are unrelated to any actual coasts.
3. The base of the central arc, on the crucial western side, is drawn many miles in front of the coast and in a way which completely fails to reflect the coastal morphology.
4. Almost the entire coastline of the Karkinitz’ka Gulf, as well as the segment of coast between Odessa and the Yavorlytska Gulf are omitted. Nonetheless Ukraine counts the length of these segments of coast as relevant for the purposes of its proportionality test: it seems to want to simplify its coast while having it, in all its complexity, too!
5. And finally, implicit in the graphic is that it does not matter how coasts are analysed or what their special relationships are; computer-generated 200-mile arcs are all we need.

[End slide 16]

[Slide 17: map of the western basin of the Black Sea showing 200 nautical miles projections, drawn in a manner similar to Ukraine’s approach to the projection of its coast]

33. But of course two can play such games. Not the least of the problems with Ukraine’s projection method is that it does not go far enough. I have already remarked on every aspect of the Black Sea as a semi-enclosed sea in which virtually every maritime space is within 200 miles of two, three or even four coastal States. The graphic on the screen now shows this; it is tab IV-18 of

⁹RR, paras. 3.41-3.46, and see figure RR4.

your folders. We have projected coastal fronts for 200 miles *à la Ukraine* all the way round, though we have been, I think, more faithful to the coastal geography than Ukraine managed to be in the region between Odessa and Cape Sarych. You can see the resulting mess. At most, it portrays the problem of delimitation in relatively confined seas. It does nothing whatever to solve them.

[End slide 17]

[Slide 18: map of the western basin of the Black Sea showing 200 nautical miles projections drawn from Romania's coast]

34. The same point can be made bilaterally, between only Romania and Ukraine. A 200-mile projection of Romanian coastal fronts drawn *à la Ukraine* — which you can now see on your screen, and at tab IV-19 — covers vast swathes including all the waters in the northern part of the western basin which Romania does not claim. If this is a way of identifying relevant coasts and relevant areas, then the concept has lost its utility.

[End slide 18]

35. I turn to the relevant area, which — based on an analysis of your jurisprudence — I have defined as the areas in which the projections of the relevant coasts of the Parties create overlapping entitlements, in the region where the delimitation is to be effected, and taking into account the maritime spaces within which the delimitation must occur.

[Slide 19: the differences between the positions of the Parties regarding the relevant area for the delimitation (based on figure RR 11)]

36. As analysed in the pleadings¹⁰, there are three points of disagreement as to the relevant area: *first*, the limit with Bulgaria; *second*, the eastern limit; and *third*, the northern limit. You can see these depicted on the screen now; this is tab IV-20 in your folder — and figure 4-11 in the Rejoinder¹¹.

37. The smallest and least significant of these disagreements relates to the area south of the Bulgaria-Romania provisional equidistance line. Ukraine persists in counting this area in the delimitation¹². For our part we have explained our reasons for excluding it. But the point to be made is this: a State which continues to insist on such a small difference in relevant areas is using

¹⁰Most recently RU, paras. 4.70-4.83.

¹¹*Ibid.*, opposite p. 84.

¹²*Ibid.*, paras. 4.81-4.83.

relevant areas for impermissible purposes — it is seeking to divide the relevant areas by reference to an arithmetical formula, otherwise it wouldn't matter. Since that is an impermissible procedure, we leave this point for the Court to decide.

38. The second difference between the two approaches to the relevant area relates to the south-eastern part. To justify excluding this triangular area, Ukraine explains that it has “nothing to do” with Romania, concerning a maritime area lying between Ukraine and either Turkey or Bulgaria¹³. The line it purports to draw to exclude this area has no legal significance; it is simply the line joining Cape Sarych with the tripoint between Romania, Ukraine and Turkey¹⁴. Further, the maritime areas within this triangle represent overlapping potential entitlements of both Romania and Ukraine (and Turkey and, in part, of Bulgaria)¹⁵; it is one of these four-State situations. Subject to a minor qualification it forms part of the relevant area in the present case.

39. The qualification concerns a small triangle in the south-east, which is beyond 200 miles from the Romanian coast. You can see it on the screen. It is not part of the relevant area.

40. I turn to the third and the most important disagreement, which relates to the area north of the line between point S and Cape Tarkhankut. As I have explained, the coasts looking on to this area are all Ukrainian, and there are none of them relevant to this delimitation. If the criterion for an irrelevant area is that it has “nothing to do” with the other State — which is Ukraine's criterion for excluding the south-eastern triangle — then the northerly area should certainly be excluded, as well, it has “nothing to do” with Romania.

[End slide 19]

Conclusion

[Slide 20: The relevant coasts and the relevant area]

41. Madam President, Members of the Court, to summarize, this is a two-sector delimitation. As shown on the screen, and at tab IV-21, in the sector of adjacent coasts, the relevant coasts are, on the Romanian side, the coastline from the international land boundary to the Sacalin peninsula. On the Ukrainian side it is the stretch of coast from the land boundary up to point S on the Dniester

¹³See CMU, para. 3.71.

¹⁴RR, para. 3.82.

¹⁵*Ibid.*, para. 3.83.

Firth. In the sector of opposite coasts, the relevant coasts are, on the Romanian side, its entire coastline, on the Ukrainian side, the south-west-facing coastal frontage from Cape Sarych to Cape Tarkhankut. The relevant area is the area projecting in front of the relevant coasts, as far as the maritime entitlement of the two parties extends. It is as simple as that.

[End slide 20]

V. THE AGREED DELIMITATION AROUND SERPENTS' ISLAND

Introduction

1. Madam President, Members of the Court, I turn now to address, this is a change of theme and it was originally planned to be a change of day but it has not worked out that way. I turn now to address the initial portion of the maritime boundary between the maritime zones of the Parties, starting from the intersection of the outer points of their territorial seas, as agreed in 2003; that point has been referred to by Romania as point F.

2. I will show that the first portion of the boundary was delimited by agreement in 1949 as a 12-mile arc drawn around Serpents' Island. In its pleadings, Ukraine accepts the benefits of that agreement. It accepts that it has a 12-mile arc around Serpents' Island when, but for the agreement, it would have been entitled to less. Even in 1949 the distance between Serpents' Island and the Romanian coast was less than 24 miles. But Ukraine does not accept the other side of the coin — that the boundary delimited the maritime domain of the island as between the two States for all purposes — and this despite the fact that such a delimitation was clearly shown on authoritative maps of the time.

[Slide 1: the agreed boundary around Serpents' Island; extract from the publication *Lighthouses of Ukraine*]

3. As the Court will be aware, a number of agreements were entered into between Romania and the Soviet Union in relation to the boundary. The most important is the 1949 general procès-verbal of 27 September 1949, which embodies the work of the Joint Soviet-Romanian Commission for Delimitation of the State Border. The boundary fixed by that agreement was confirmed in all the later agreements, which I can therefore discuss more briefly. Taken together, these agreements show unequivocally three things:

First, there was an agreement in treaty form. Second, it was an agreement effecting an *all-purpose* delimitation, not just a unilateral delimitation determining settling the Soviet entitlement to a 12-mile territorial sea but leaving it open for the Soviet Union to claim further areas to the south. Third, it was an agreement delimiting the boundary *around* Serpents' Island: it was not limited to an initial short sector in the west leaving everything else at large.

4. Those are the three points: you can see them all illustrated on the screen and in tab — we are now up to V-1 — in your folders. This is a map published by the State Hydrographic Service of Ukraine in their beautiful illustrated book, *Lighthouses of Ukraine*, published in 2007¹⁶. We have given the Court a copy of it and we recommend it as bedtime reading! It shows a boundary round the island. It separates Romanian from Ukrainian waters. It does not stop short; it goes all the way round: this is what a State agency of Ukraine published in 2007.

[End slide 1]

5. Before I set out to discuss the 1949 Agreement, and Ukraine's disagreements about it, I should record two points on which there is no dispute. First, whatever agreement was reached in 1949 is still in force. Secondly, that Agreement is binding on Ukraine as the successor to the Soviet Union in respect of the island. Ukraine expressly recognizes the binding character of these earlier agreements in the 1997 Additional Agreement¹⁷. It did so by reference to the 1961 Border Régime Treaty, which itself expressly affirmed the applicability of the 1949 *procès-verbal* and subsequent agreements¹⁸. It did so again in 2003, since the 2003 Border Régime Treaty delimits the land and territorial sea boundary by reference to the 1961 Treaty¹⁹.

6. This presentation is in two parts. First, I will take you through the agreements and the maps in chronological order; I am afraid it is the only way to do it. Secondly, I will respond to the various points made by Ukraine in seeking to avoid the significance of the agreements and maps.

¹⁶Ministry of Transport and Communications of Ukraine, State Hydrographic Service of Ukraine, *Lighthouses of Ukraine* (Reference Photoinformation Edition, Logos Publishers, Kyiv, 2007: ISBN 966-581-842-2), p. 50.

¹⁷MR, Ann. 2.

¹⁸*Ibid.*, Ann. 18.

¹⁹*Ibid.*, Ann. 3.

A. The 1949 Agreement and its endorsement in subsequent practice

1. The 1949 general procès-verbal

7. Madam President, Members of the Court, the 1949 general procès-verbal on the border between the Soviet Union and Romania was signed at Bucharest on 27 September 1949²⁰. It covers the entire boundary between the two States, from the tripoint with Hungary in the west all the way to the maritime border in the Black Sea. It is absolutely meticulous.

8. The relevant part of the 1949 general procès-verbal in relation to the maritime portion of the boundary is at tab V-2 in your folders. Starting from border sign 1437, which is the last boundary marker on the land, it sets out the boundary in the Black Sea between the areas which the Parties agreed would appertain to each of them. The course of the boundary on the sea can be followed in two maps — with which, I am afraid, a good deal of your time over the next two weeks will be occupied. Map 133, tab V-3, and 134, tab V-4, in your folders. Now as you know, there is a dispute between the Parties as to how far the boundary shown on map 134 proceeds. But let us read the procès-verbal while looking at these two maps, starting with map 133. The procès-verbal is perhaps not a model of concision, but it is a model of precision: the Parties went to great care to set out what they were doing and we say the result is clear.

[Slide 2: map 133 annexed to the 1949 general procès-verbal]

9. The procès-verbal reads as follows:

“From the border sign No. 1437 the boundary goes through the middle of the Musuna (Musura) channel in a south-south-east direction, until the mouth of the Musuna (Musura) channel on the alignment no. 1 leaving Limba Island on the USSR side, and the island No. 3 on the PRR [that is, the Romanian] side going to border sign no. 1438 (buoy).

The border sign no. 1438 is fixed (anchored) in water in the point of the change of the direction of the boundary line in the Black Sea.”

[«A partir de la borne frontière n° 1437, la frontière traverse le milieu du chenal de Musuna (Musura) dans une direction sud-sud-est jusqu’à l’embouchure de ce chenal en suivant l’alignement n° 1, l’île de Limba revenant à l’URSS et l’île n° 3 à la RPR» c’est à dire, à la Roumanie «jusqu’à la borne frontière n° 1438 (bouée).

La borne frontière n° 1438 est fixée (ancrée) dans l’eau au point d’inflexion de la ligne frontière dans la mer Noire.»]

So we get to 1438.

²⁰MR., Ann. 13.

[End slide 2]

[Slide 3: map 134 attached to the 1949 general procès-verbal]

10. Having set out the co-ordinates of border sign No. 1438, the procès-verbal then proceeds — and at this point we have to shift to map 134, tab V-4:

“From the border sign no. 1438 (buoy) the State boundary passes in the Black Sea in a straight line, on the azimuth of 102° 30' 0" to the border sign no. 1439 (beacon).

The border sign No. 1439 (beacon), is fixed in water, in the point where the State boundary line going through the Black Sea changes its direction, at the intersection of the straight line going from the border sign no. 1438 (buoy) on the azimuth of 102° 30' 0", with the outer margin of the Soviet marine boundary zone of 12 miles, surrounding Serpents' Island.”

[«A partir de la borne frontière n° 1438 (bouée), la frontière d'Etat traverse la mer Noire en suivant une ligne droite de 102° 30' 0", d'azimut jusqu'à la borne frontière n° 1439 (balise).

La borne frontière n° 1439 (balise) est fixée dans l'eau au point d'inflexion de la ligne frontière d'Etat dans la mer Noire, à savoir à l'intersection de la ligne droite qui suit l'azimut 102° 30' 0", à partir de la borne frontière n° 1438 (bouée) avec la limite extérieure de la zone frontière maritime soviétique de 12 milles qui entoure l'île des Serpents.»]²¹

The intersection of the azimuth with the outer margin of the Soviet marine boundary zone of 12 miles surrounding Serpents' Island. Having set out the co-ordinates of border sign No. 1439, the procès-verbal continues:

“The State boundary line, from the border sign No. 1439 (beacon), goes on the exterior margin of the marine boundary zone, of 12 miles, leaving Serpents' Island on the side of the USSR.”

[«La ligne frontière d'Etat, à partir de la borne frontière n° 1439 (balise), suit la limite extérieure de la zone frontière maritime de 12 milles, attribuant l'île des Serpents à l'URSS.»]²²

11. Now a number of points can be made in relation to the procès-verbal:

First, the language is clear. The “State boundary line” (“ligne frontière d'Etat”) — the line dividing areas appertaining to Romania from those appertaining to the Soviet Union — runs from border sign 1438 to border sign 1439. The “State boundary line” (“ligne frontière d'Etat”) does not terminate at border sign No. 1439; it is expressly stipulated to follow — to “go on” (“suit”) — “the

²¹Romania's translation.

²²*Ibid.*

exterior margin of the marine boundary zone, of 12 miles” (“la limite extérieure de la zone frontière maritime de 12 milles”).

Second point, the “State boundary line” (“ligne frontière d’Etat”) is undifferentiated along its entire length, including the portion beyond border sign 1439.

Third, the “marine boundary zone, of 12 miles” (“zone frontière maritime de 12 milles”), along the exterior margin of which the State boundary line runs, is the same as the 12-mile zone referred to earlier as “surrounding” or “around” (“qui entoure”) Serpents’ Island.

12. In other words, the Parties agreed that the boundary would go on “the exterior margin of the marine boundary zone” (“la limite extérieure de la zone frontière maritime”). That zone is the 12-mile “marine boundary zone” (“zone frontière maritime”) earlier referred to in the procès-verbal as “surrounding” (“qui entoure”) — Ukraine’s translation has “around” — Serpents’ Island²³. The effect of these words is undeniable. The agreed boundary follows the “exterior margin of the marine boundary zone” (“la limite extérieure de la zone frontière maritime”). The marine boundary zone itself surrounds or goes round Serpents’ Island, and the boundary likewise “surrounds” or goes “round” Serpents’ Island along its exterior margin with it. You cannot have a zone without a boundary. It follows the 12-mile arc, forming the outer limit of that 12-mile “marine boundary zone” (“zone frontière maritime”) shown on every map.

13. Ukraine argues that the use of the word “surrounding” or “around” (“qui entoure”) in the procès-verbal does not actually define the course of the boundary, but only the point at which point 1439 is located; it argues that the relevant paragraph of the general procès-verbal describes the arc, and not the boundary²⁴.

14. It is true that the word “surrounding” or “around” (“qui entoure”) is used in the paragraph describing border sign 1439 in order to define the point of intersection between the azimuth running from border sign 1438 and the 12-mile arc. But one cannot interpret the subsequent paragraphs, describing the continuation of the boundary after border sign 1439, in isolation. The 12-mile “marine boundary zone” (“zone frontière maritime”) is the same in both cases; in both cases it must be understood to be a marine boundary zone going “around” or

²³CMU, para. 5.43.

²⁴RU, para. 3.24.

“surrounding” (“qui entoure”) Serpents’ Island. To use the word “surrounding” or “around” (“qui entoure”) merely to describe the arc, as Ukraine proposes, would have been completely superfluous.

[End slide 3]

2. The individual procès-verbaux

15. The individual procès-verbaux of description in relation to border signs 1438 and 1439 are in similar terms and confirm this interpretation²⁵. The individual procès-verbal of description of border sign 1438²⁶ (at tab V-5 of your folders) provides that

“from the Border Sign 1438 (buoy), the State boundary in the Black Sea passes in a straight line, on the azimuth of 102° 30' 0", till it reaches the exterior limit of the Soviet marine boundary zone, of 12 miles, surrounding Serpents’ Island, to the Border Sign No. 1439 (beacon)”.

[“à partir de la borne frontière n° 1438 (bouée), la frontière d’Etat dans la mer Noire poursuit une ligne droite de 102° 30' 0" d’azimut, jusqu’à ce qu’elle atteigne la limite extérieure de la zone frontière maritime soviétique de 12 milles qui entoure l’île des Serpents, la borne frontière n° 1439 (balise)”²⁷.]

16. The individual procès-verbal of description of border sign 1439²⁸ (tab V-6 of your folders) likewise provides clearly that after border sign 1439 the State border continues around the 12-mile arc surrounding Serpents’ Island. It stipulates:

“the boundary line, from the Border Sign No. 1438 (buoy) passes in the Black Sea in a straight line, on the azimuth of 102°30'0" till it reaches the exterior limit of the Soviet marine boundary zone of 12 miles surrounding Serpents’ Island, to the Border Sign 1439 (beacon) and from the Border Sign No. 1439 (beacon), the boundary passes on the exterior margin of the Soviet marine boundary zone of 12 miles, leaving Serpents’ Island on the USSR side.”

[“la ligne frontière, à partir de la borne frontière n° 1438 (bouée) traverse la mer Noire suivant une ligne droite de 102° 30' 0" d’azimut jusqu’à ce qu’elle atteigne la limite extérieure de la zone frontière maritime soviétique de 12 milles qui entoure l’île des Serpents, à la borne frontière n° 1439 (balise), et de la borne frontière n° 1439 (balise), la ligne frontière longe la limite extérieure de la zone frontière maritime soviétique de 12 milles, attribuant l’île des Serpents à l’URSS”²⁹.]

²⁵MR, paras 4.7, 4.8.

²⁶*Ibid.*, Ann. 14.

²⁷Romania’s translation.

²⁸MR, Ann. 15.

²⁹Romania’s translation.

17. Once again, the individual procès-verbal, like the general procès-verbal, expressly provides that the boundary continues after border sign 1439, and follows the “exterior margin” (“la limite extérieure”) of the 12-mile “Soviet marine boundary zone” (“zone frontière maritime soviétique”) surrounding Serpents’ Island.

[Slide 4: sketch included in the 1949 individual procès-verbal of border sign 1439]

18. Now, here was a sketch forming part of the individual procès-verbal for border sign 1439. As you can see from the slide, and as appears in the individual procès-verbal itself, this sketch was located within the body of the text of the procès-verbal, was not an addendum or an annex, it is an integral part of the text. The boundary is depicted in the same way, using dots and dashes, along its entire length. It is depicted as continuing around a portion of the 12-mile arc around Serpents’ Island, and the depiction continues until it reaches the end of the sketch, the border of the sketch to the east, it does not stop short. Abbreviations are used to the north and south of the boundary, indicating the appurtenance of the waters on either side, for the Soviet Union to the north, for Romania to the south — you can see those on the screen as well.

19. Ukraine criticizes Romania’s reference to the sketch-maps on the basis that they do not “establish” a maritime boundary³⁰. It argues that the sketch-maps are “substantially inaccurate”, and “must yield to the final comprehensive boundary line as definitively shown on the maps — including the geographically reliable map 134 — which define the boundary as agreed in the general 1949 procès-verbal”³¹. There are at least three responses to this argument:

1. first, the sketch-maps form an integral part of the individual procès-verbaux and have to be given a corresponding weight. Moreover the sketches confirm the meaning of the text of the procès-verbaux, namely that the State boundary line extends beyond border sign 1439 along the 12-mile arc around Serpents’ Island, and that it has the same character along its entire length. The value of the sketch-maps is independent of whether they are to scale or are geographically accurate;

³⁰RU, para. 3.47.

³¹*Ibid.*

2. second, Ukraine's suggestion that map 134 "definitively" shows the "final comprehensive boundary line"³² is simply untrue. Its sole stated purpose is to depict the boundary between border signs 1438 and 1439. Ukraine's suggestion that map 134 "defines" the boundary is also untrue: map 134 has no special status in defining the boundary other than in the sector between the two points to which it relates. It is certainly not stipulated as depicting the boundary definitively beyond border sign 1439, and it does not describe any terminal point along that boundary;
3. third, even if there were any inconsistency between the sketches within the individual procès-verbaux and map 134, which there is not, there could be no question of the sketches, which form an integral part of the individual procès-verbaux of description, "yielding" to map 134. What map 134 and the sketches taken together show is an interstate boundary going around this 12-mile arc and not stopping at any defined or stipulated point. But even if—which is not the case—even if map 134 was to be regarded as showing a definite stopping point, it would, in light of the purpose for which it was prepared, have to be treated as subordinate to the text of the 1949 general procès-verbal and the individual procès-verbal of description, which are the operative texts, and which do not describe any particular stopping point.

[End slide 4]

3. Map 134

[Slide 5: map 134 attached to the 1949 general procès-verbal]

20. Let me explain the particular function of map 134 in its context. It forms part of a catalogue of maps—a weighty catalogue—accompanying the 1949 procès-verbal. That catalogue consists of 134 detailed maps depicting sectors of the boundary between pairs or a restricted number of boundary signs, as well as a number of maps showing larger segments of the border. Map 134 is the last in the series of detailed maps. The catalogue is a weighty document: it takes two international lawyers to carry it, which is probably good for employment!

³²*Ibid.*

21. Ukraine suggests variously that map 134 is the “map intended to be referred to in the procès-verbal as the map covering this maritime sector of the border”³³, that “it showed that boundary as agreed”³⁴, that it showed the “final comprehensive boundary line” and that it “defined the boundary as agreed in the general 1949 procès-verbal”³⁵. These suggestions are without any foundation.

22. This can be seen from the fact that the catalogue of maps which accompanied the 1949 general procès-verbal was signed by the representatives of Romania and the Soviet Union. The catalogue is *part* of the Agreement — weighty though it is. It forms part of the “demarcation documents” which established the course of the boundary, together with the procès-verbaux themselves. It is recognized as such by both the 1997 and 2003 Treaties between the two Parties. For instance, Article 1 of the 2003 Border Régime Treaty specifies that:

“[t]he State border between Romania and Ukraine passes on the ground as defined and described in the [1961] Treaty . . . as well as in all the corresponding demarcation documents, *the maps of the State border between the former People’s Republic of Romania and Union of the Soviet Socialist Republics*, the protocols of the border signs with their draft sketches, the corresponding annexes and their additions, as well as the documents of verifications of the State border line . . .”

[“[I]a frontière qui sépare la Roumanie et l’Ukraine passe par les endroits définis et décrits dans le traité [de 1961] . . . ainsi que dans tous les documents de démarcation correspondants, *les cartes sur lesquelles figure la frontière d’Etat entre l’ancienne République populaire de Roumanie et l’ancienne Union des Républiques socialistes soviétiques*, les protocoles relatifs à l’emplacement des bornes, avec leurs croquis, annexes correspondantes et documents additionnels, de même que dans les documents approuvés . . . relatifs à l’inspection de leur frontière commune . . .”].

All of those elements, including the catalogue of maps, are listed and they are given co-ordinate status.

23. The maps contained in the catalogue therefore cannot be read in isolation. They have to be interpreted in the light of the purpose for which they were created — to accompany the 1949 general procès-verbal and to depict the various sectors of the boundary whose delimitation was agreed in that procès-verbal.

[End slide 5]

³³RU, para. 3.27.

³⁴*Ibid.*, para. 3.40.

³⁵*Ibid.*, para. 3.47.

24. Once this is understood, it is clear that there is no conflict between the text of the procès-verbaux and map 134. In this regard, it is useful to look again at the last two maps in the catalogue, map 133 and map 134, again they are at tabs V-3 and V-4 in your folders.

[Slide 6: map 133 attached to the 1949 general procès-verbal]

25. As appears from its title³⁶, the purpose of map 133 is to depict the boundary between border signs 1436 and 1438. Some of these maps depicted one sector, some depicted two. Map 133 depicts part of the land boundary, and the beginning of the maritime boundary, showing the elbow in the boundary at border sign 1438. The symbol used to depict the boundary along its entire length is the same — in the final section of the Danube, where it follows the course of the Musura mouth of the Danube, the border is indicated by dots and dashes; where the boundary divides areas of open water, the boundary uses the same sign. Also of relevance in this regard is the key to the right of the chart — the relevant markings in Romanian are indicated as being, and I hope Romanian speakers will excuse my pronunciation, “*linia frontierei de Stat*” for the marking used to depict the boundary on land, and “*linia frontierei de Stat pe apă și adâncimi*” for the marking used to depict the boundary in the sea. These may be translated, I am told, as “the State boundary line” and “the State boundary line on water and in the water column”.

[End slide 6]

[Slide 7: map 134 attached to the 1949 general procès-verbal]

26. The final map in the series, map 134, is entitled “Map of the State Border between the Union of Socialist Soviet Republics and People’s Republic of Romania from border signs no. 1438 to no. 1439”. The title makes its purpose clear: to depict the boundary between those two border signs and nothing else.

27. Although there is no key on map 134, the boundary is depicted by the same dots and dashes symbol as used for the maritime portion of the boundary in map 133; and it is marked along its same length with no interruptions. It will also be noted that, again, the continuation of the boundary on either side of the border signs is depicted using the same marking — before border sign 1438, going towards the Musura mouth of the Danube; and after border sign 1439, passing

³⁶RU, para. 3.27.

along the 12-mile arc around Serpents' Island. Again the maritime areas on either side of the boundary are clearly marked with abbreviations showing the appurtenance of the relevant areas. Not once but twice. In particular, it will be noted that one pair of these abbreviations is positioned on the sector of the boundary after border sign 1439 running around the 12-mile arc around Serpents' Island.

28. In a map depicting the boundary between border signs 1438 and 1439, it is not surprising that the boundary beyond those points was not shown in complete detail. Contrary to Ukraine's suggestion, map 134 was not intended "specifically to show the boundary which had been agreed in the procès-verbal"³⁷ in its entirety, nor was it a general "boundary map"³⁸.

29. Ukraine bases its whole case in relation to this issue on the fact that the boundary depicted on the 12-mile arc around Serpents' Island on map 134, terminates short of the edge of the map, leaving a gap. But nothing is to be read into that fact.

30. That less attention was paid to depicting the boundary to the east of border sign 1439 on map 134 can be seen by examining how the boundary to the west of border sign 1438 is depicted. Here there is undoubtedly an agreed boundary, one which extends up the Danube. But on map 134, the boundary is not depicted as extending the full distance back to border sign 1437, located some distance up the Musura branch. Rather the line terminates, as you can see, in the entrance to the Musura mouth. It would be absurd to suggest that this means that the border only extends as far as is shown on map 134. The same reasoning applies to the boundary to the east of border sign 1439.

[End slide 7]

[Slide 8: plate I annexed to the 1949 general procès-verbal (fig. RR18)]

31. The fact that map 134 was not intended to depict the full extent of the boundary on the 12-mile arc surrounding Serpents' Island is confirmed by other maps included in the catalogue. Plate I in the catalogue, which is tab V-7 in your folders, gives an overview of the course of the border from its origin at the tripoint between Romania, the Soviet Union and Hungary in the west, all the way to the Black Sea. It is true it is on very small scale, but it is clear that the sector of arc depicted as going around Serpents' Island is substantially greater than that shown on map 134.

³⁷RU, para. 3.40.

³⁸*Ibid.*

[End slide 8]

[Slide 9: plate V annexed to the 1949 general procès-verbal]

32. Similarly, plate V (tab V-8), which serves as a key to the detailed maps covering the eastern part of the boundary, from border sign 1230 up to border sign 1439, equally shows the boundary after border sign 1439 extending substantially further around the 12-mile arc drawn from Serpents' Island.

[End slide 9]

[Slide 10: difference between the positions of the final point of the boundary as depicted on map 134, plate I and plate V]

33. The difference in the extent of the boundary after border sign 1439 as depicted on these three different maps in the catalogue, is shown if map 134 is juxtaposed to plates I and V on the same scale, and we do this in tab V-9 of your folders. The arc of circle depicted on map 134, the shortest of the three arcs, is roughly 23°. You can now see superimposed on map 134 the extent of the boundary as shown on plate V of the catalogue; it subtends an angle of approximately 37°. Undertaking the same process in relation to plate I, you can see that the extent of the boundary is considerably more — it is almost 63°. The end of the depicted boundary on map one is located at a point on the arc to the south-south-east of Serpents' Island.

34. Ukraine argues that plates I and V are of no value³⁹. But each of these three plates form part of the catalogue, which itself forms part of the overall delimitation agreement. The fact that two other maps contained in the same catalogue depict a boundary extending further around the 12-mile arc than map 134 confirms there was no intention that map 134 should “define” the extent of the boundary around the island.

[End slide 10]

4. Subsequent agreements

35. Following the conclusion of the 1949 procès-verbaux, the border as so agreed was formally confirmed in the 1949 Treaty on the Régime of the Romanian-Soviet State Border, which was signed at Moscow on 25 November 1949⁴⁰. This Treaty referred back to and confirmed the

³⁹RU, para. 3.36.

⁴⁰MR, Ann. 16.

boundary as it “passes in the field as it is determined in the demarcation documents signed on 27 September 1949 at Bucharest . . .” (“est tracé sur le terrain tell qu’elle a été déterminée dans les documents de demarcation signés le 27 septembre 1949 à Bucarest . . .”). The Moscow Treaty in other words confirmed the whole of the operation carried out by the general and special procès-verbal and the attached maps. This was a case of demarcation first together with elements of delimitation confirmed by a later treaty.

36. That was the position as it stood in 1949. The 1949 procès-verbal taken together with the Moscow Treaty established a maritime boundary extending beyond border sign 1439, around the exterior margin of the 12-mile “marine boundary zone” surrounding Serpents’ Island. After the Moscow Treaty, after the general procès-verbal, it was not open to Romania to argue that there was no marine boundary zone surrounding Serpents’ Island. It still seems to be open to Ukraine to argue that.

[Slide 11: map 134 annexed to the 1949 general procès-verbal, with the 6-nautical-mile Romanian territorial sea according to the 1949 coastal situation]

37. In 1949, Romania only claimed a 6-mile territorial sea, and you can see this now superimposed on map 134 (tab V-10); the final point of the 6-mile territorial sea as it was in 1949 we have referred to as point A. As is clear from the use of the symbols on the sketch-maps contained in the individual procès-verbaux of description, as well as from maps 133 and 134, the maritime boundary so delimited was undifferentiated along its entire length. This is so despite the fact that only in this inner section to the west of point A did it separate the territorial seas of Romania and the Soviet Union, as they then were. In its outer portion, to the south and east of point A, there was a zone beyond the Romanian 6-mile territorial sea which was clearly marked nonetheless as Romanian. As you can see, on map 134, the initials “RPR”, denoting the Republica Populară Română, are located beyond the 6-mile line, while the initials “URSS” are used in the corresponding position to the north of the boundary, situated in the 12-mile “marine boundary zone” around Serpents’ Island.

38. The natural interpretation of the 1949 Agreement is that Romania and the Soviet Union thereby intended to fix an all-purpose maritime boundary between zones appertaining to them, and that Serpents’ Island was to be limited to a 12-mile “marine boundary zone” (zone frontière

maritime”). As a result, the parties agreed that whatever future developments might take place, in terms of entitlement to maritime zones, Serpents’ Island was to be entitled only to that 12-mile strip.

[End slide 11]

39. After 1949, the Soviet Union and Romania concluded a number of further agreements, but none of them affected the maritime boundary as agreed in 1949.

40. A number of further bilateral agreements were concluded in 1954, including an Act redemarcating the location of the buoy constituting border sign 1439, which had disappeared⁴¹. No matter how careful the demarcators, there is a tendency for border signs to disappear! The 1954 Agreement substantially repeated the terms of the 1949 *procès-verbal*.

41. The 1961 Border Régime Treaty⁴² did not affect the course of the maritime boundary in the relevant sector at all; it affirmed the continued validity of the 1949 *procès-verbal*. It envisaged further demarcation work, and this was carried out in 1961-1962, resulting in a final *procès-verbal* signed in 1963⁴³.

42. The terms of the 1963 *procès-verbal* were substantially the same as those used in 1949, except that the general description of border sign 1439 now makes reference to a 12-mile “Soviet territorial sea” (“la mer territoriale soviétique”) rather than a 12-mile “marine boundary zone” (“zone frontière maritime”). This was the first reference in any of the boundary agreements to a 12-mile Soviet territorial sea. Nothing in the text of the 1963 *procès-verbal* gives any reason to believe that it was the intention of the Parties to modify the 1949 Agreements. And this is confirmed by subsequent events.

43. There was a further demarcation process — it seemed to happen on a decadal basis — in 1972-1973, resulting in a further general *procès-verbal* signed in 1974, together with individual *procès-verbaux* of description of the border signs. The description of border sign 1439, in the general *procès-verbal* of 1974, as in 1963, likewise referred to a 12-mile Soviet “territorial sea”⁴⁴.

⁴¹MR, Ann. 17.

⁴²*Ibid.*, Ann. 18.

⁴³*Ibid.*, Ann. 19.

⁴⁴*Ibid.*, Ann. 21.

However, on this occasion, a further individual procès-verbal of description was concluded in relation to border sign 1439 — you will find the text at tab V-11. That document referred, as of old, to the Soviet “marine boundary zone” (“zone frontière maritime”), as the initial individual procès-verbal of border sign 1439 had done in 1949. And, again, it provided that — this is in 1974:

“from the border sign no. 1439 (beacon) the boundary passes on the exterior margin of the USSR marine boundary zone of 12 miles, leaving Serpents’ Island to the USSR side”⁴⁵

[“de la borne frontière n° 1439 (balise), la ligne frontière longe la limite extérieure de la zone frontière maritime de l’URSS de 12 milles, attribuant l’île des Serpents à l’URSS”⁴⁶.]

A picture of complete continuity, despite supervening changes in the law of the sea.

[Slide 12: sketch included in the 1974 individual procès-verbal of border sign 1439]

44. As in 1949, a sketch-map was included as an integral part of the 1974 individual procès-verbal. As with the sketch-map from 1949, it depicts the boundary with the same symbol running along its entire length, including after border sign 1439, for a distance along the 12-mile arc until it reaches the edge of the map. And once again, abbreviations of the names of the parties are located on either side of the boundary in order to indicate the State to which the area in question appertains.

[End slide 12]

45. For the sake of completeness, it is necessary to recall subsequent events following Ukraine’s independence — that was the situation to which Ukraine succeeded and it is not in dispute, but it did succeed to that situation:

First, in the 1997 Additional Agreement, Ukraine expressly affirmed the binding character of the border as agreed in the 1961 Border Régime Treaty, as well as in the 1949 procès-verbaux and catalogue.

Secondly, the binding character of the previous delimitation and demarcation exercises was again expressly reaffirmed, in so far as they delimited the State border between Ukraine and

⁴⁵MR, Ann. 22.

⁴⁶Romania’s translation.

Romania out to the intersection of the outer limits of their territorial seas, in 2003. I have already referred to the 2003 Treaty⁴⁷. Article 1 of that Treaty provides that the boundary

“continues, from the border sign 1439 (buoy) on the outer limit of Ukraine’s territorial waters around the Serpents’ Island, up to the point of 45° 05' 21" north latitude and 30° 02' 27" east longitude, which is the meeting point with the Romanian State border passing on the outer limit of its territorial sea. The territorial seas of the Contracting Parties measured from the baselines shall permanently have, at the meeting point of their outer limits, the width of 12 maritime miles.”

[“continue, depuis la borne 1439 (bouée) indiquant la limite extérieure de la mer territoriale de l’Ukraine autour de l’Ile aux serpents, jusqu’au point situé à 45° 05' 21" de latitude nord et 30° 02' 27" de longitude est, qui est le point de jonction avec la frontière d’Etat de la Roumanie à la limite extérieure de sa mer territoriale. Les mers territoriales des parties contractantes mesurées à partir des lignes de base auront toujours, au point de jonction de leurs limites extérieures, une largeur de 12 milles marins.”]

46. The 2003 Treaty was not a withdrawal of anything agreed in earlier instruments. Its purpose was limited to fixing the border out to the intersection of the outer limits of the territorial seas — the point we have referred to as point F. It had no consequences for the 1949 procès-verbal and later documents to the extent that they determined the course of the maritime boundary between the Parties beyond that point.

47. At the time of conclusion of the 2003 Border Régime Treaty⁴⁸, and again on its entry into force⁴⁹, Romania reiterated its position that the specification of the co-ordinates of the last point of the territorial sea boundary between the Parties did not affect in any way the process of delimitation of the respective continental shelves and exclusive economic zones of the Parties.

5. Conclusion on the 1949 Agreements

48. Madam President, Members of the Court, the procession of agreements starting with the 1949 procès-verbaux, together with their accompanying maps and sketches, shows that the Soviet Union and Romania agreed a boundary which, after border sign 1439, continued along the 12-mile arc “surrounding” or “around” Serpents’ Island, without the determination of any terminal point. The maps accompanying the 1949 procès-verbal depict that boundary in varying ways and no significance was attached to the endpoints depicted on those three maps. What did not vary, what

⁴⁷MR, Ann. 3.

⁴⁸*Ibid.*, Ann. 23.

⁴⁹*Ibid.*, Ann. 24.

was invariant throughout this long process, was the express attribution to Serpents' Island of a 12-mile "marine boundary zone" ("zone frontière maritime") around the Island. The outer limit of that 12-mile zone marked the maritime boundary; to the south was an area appertaining to Romania. In these circumstances, the undefined, innominate, unREFERRED to, undescribed, endpoint of the line shown on map 134, did not "define" the extent of the boundary. The boundary was the boundary of the zone and the zone went around the island. It is as simple as that.

Madam President, it is ten minutes past 11. This would be a convenient moment to break — or you may like to break in 20 minutes?

The PRESIDENT: I think if you would find it convenient — you have been at it for a good period — the Court will accommodate such a preference. The Court will rise.

The Court adjourned from 11.10 to 11.25 a.m.

The PRESIDENT: Please be seated.

Mr. CRAWFORD: Madam President, Members of the Court, after the coffee break time for the maps.

6. Depictions of the 1949 Agreement line on later maps

(a) Arguments of principle

49. The situation I described before the coffee break is shown on many maps. These, produced by Romania and the Soviet Union and, after 1990, by Ukraine itself as well as by third States, confirm what is clear from the 1949 procès-verbal — that there is a 12-mile zone around Serpents' Island, and that all the waters to the south of that zone appertain to Romania.

50. In this regard, there is a clear difference of principle between the Parties. Ukraine takes the position, relying on the dictum of the Chamber in the *Frontier Dispute* case (*Frontier Dispute (Burkina Faso/Republic of Mali)*, *Judgment*, *I.C.J. Reports 1986*, pp. 582-583, paras. 54-56) that only maps forming part of an agreement between the Parties are of any relevance⁵⁰.

⁵⁰CMU, para. 5.129; RU, para. 3.52 (ii).

51. But Ukraine's approach is highly selective. It gives weight only to map 134, while denying any value to plates I and V, which form part of the same catalogue. It also ignores the sketch-maps which form an integral part of the individual procès-verbaux of description.

52. In any case Ukraine's argument misunderstands both the Chamber's dictum and Romania's argument.

53. The Chamber in the *Frontier Dispute* case observed:

“in some cases maps may acquire such legal force [sc. of a territorial title], but where this is so the legal force does not arise solely from their intrinsic merits: it is because such maps fall into the category of physical expressions of the will of the State or States concerned. This is the case, for example, when maps are annexed to an official text of which they form an integral part.” (*Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, I.C.J. Reports 1986, p. 582, para. 54.)

[“dans quelques cas, les cartes peuvent acquérir une telle valeur juridique [c'est à dire, celle d'un titre territorial] mais cette valeur ne découle pas alors de leurs seules qualités intrinsèques : elle résulte de ce que ces cartes ont été intégrées parmi les éléments qui constituent l'expression de la volonté de l'Etat ou des Etats concernés. Ainsi en va-t-il, par exemple, lorsque des cartes sont annexées à un texte officiel dont elles font partie intégrante.”]

As is clear from the words “for example”, the Chamber envisaged other circumstances where maps may constitute the physical expression of the will of the State.

54. One such circumstance is where the map in question is produced by a State and depicts without qualification a boundary between itself and another State. In those circumstances, the depiction of the boundary constitutes an expression of the will of the State itself in so far as, to quote your judgment in *Minquiers and Ecrehos* case, the map in question must be considered as “evidence of the [State's] official view at that time” (*Minquiers and Ecrehos (France/United Kingdom)*, Judgment, I.C.J. Reports 1953, p. 71), (“la preuve des vues officielles [de l'Etat] à l'époque”). You have recently recognized the relevance of such maps in the *Malaysia/Singapore* case (*Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, Judgment of 23 May 2008, para. 271). Another instance in which reliance on maps may be appropriate is where the map in question may be taken to constitute an admission against interest, as you also recently recognized in *Malaysia/Singapore*, making reference to the decision of the Eritrea/Ethiopia Boundary Commission (*ibid.*, quoting the Decision regarding

Delimitation of the Border between the State of Eritrea and the Federal Democratic Republic of Ethiopia, 13 April 2002, p. 28, para. 3.28).

55. Now I do not suggest that the later maps constitute a source of title, or that they can override the express terms of the 1949 procès-verbaux by which the boundary was fixed. Rather, they help in clarifying or confirming the interpretation of the 1949 procès-verbaux, and showing the understanding of the parties. It is for this purpose that we rely on the various subsequent maps produced by the Soviet Union, Romania, and later Ukraine.

56. In similar fashion, maps produced by third parties may be relevant as indicating the understanding of informed observers.

57. The use of maps for this purpose is aptly summed up by the observations of the Court of Arbitration in the *Beagle Channel* case:

“it is not a matter of setting up one or more maps in opposition to certain Treaty attributions or boundary definitions, but of the elucidation of the latter — in which task map evidence may be of assistance”⁵¹.

The Court of Arbitration continued:

“maps published after the conclusion of the Treaty can throw light on what the intentions of the Parties in respect of it were and, in general, on how it should be interpreted. But the particular value of such maps lies rather in the evidence they may afford as to the view which the one or the other Party took at the time, or subsequently, concerning the settlement resulting from the Treaty.”⁵²

58. These observations are particularly apposite in relation to the maps and charts produced by Romania and the Soviet Union, and by Ukraine following its independence, which depict the boundary as extending around the 12-mile arc around Serpents’ Island to a point to the east. Any map by any of the States’ parties to the 1949 agreement which depicts the boundary as extending far beyond the extent shown on map 134 is of particular relevance as constituting an admission in the case of Ukraine and admission against interest. Such a map will be of even greater relevance if it was produced at a time when either the Soviet Union or Ukraine was aware that there was a difference of opinion.

⁵¹*Beagle Channel Arbitration between the Republic of Argentina and the Republic of Chile*, Report and Decision of the Court of Arbitration, 18 February 1977, 21 *RIAA* 57, at 163-4 (para. 137).

⁵²*Ibid.*, p. 164, para. 137.

(b) A review of the map evidence

59. Madam President, Members of the Court, I do not propose — you will be relieved to hear — to take you through each of the relevant maps, which have been filed with the Registry. A table summarizing each of them, each of those maps which show a maritime boundary around Serpents' Island, is at tab V-13 in your folders. There are 30 such maps in the file before the Court in addition to the map from the *Lighthouses of Ukraine* volume which I showed you at the beginning of this presentation; 30 maps showing a boundary around Serpents' Island. I will do no more than comment briefly on the more striking examples contained in the publicly available maps produced by the Soviet Union, Ukraine and Romania, and then extremely briefly, those produced by other States.

60. The first group of maps dates from the period shortly after the conclusion of the 1949 Agreement: they may be taken as evidence of the understanding of the parties to that agreement as to its effect.

[Slide 13: chart entitled “Black Sea. The Western Bank. From the Sulina Mouth to Cape Midia” produced by the Hydrographical Service of the Black Sea Navy of the Soviet Union (1957)]

61. We start with the chart, entitled “Black Sea. The Western Bank. From the Sulina Mouth to Cape Midia”, produced by the Hydrographical Service of the Black Sea Navy of the Soviet Union in 1957. It is entry 5 in the table, and at tab V-14 in your folders; it was submitted to the Court and admitted by you last year. The chart shows the maritime boundary proceeding on the 12-mile arc around Serpents' Island to a point roughly east-south-east of the island, at which point it is curtailed by the edge of the chart. The boundary extends far beyond the point shown on map 134.

[End slide 13]

[Slide 14: chart entitled “Western Part of the Black Sea” produced by the Hydrographical Service of the Black Sea Navy of the Soviet Union (1957)]

62. A second chart, located at tab V-15, is entitled “Western Part of the Black Sea”, and was likewise produced by the Hydrographical Service of the Black Sea Navy of the Soviet Union. This is the second edition of a chart which was produced in its first edition in 1951 and which Ukraine produced⁵³. The 1951 chart did not show any maritime boundaries at all, it only contained

⁵³RU, Ann. 3.

navigational data. The 1957 chart, the second edition, is entry 6 in the table. It shows the boundary as going around the 12-mile zone around Serpents' Island all the way to a point due east of the island.

[End slide 14]

[Slide 15: chart entitled "North-Western Part of the Black Sea from Constanța to Sevastopol" produced by the Maritime Hydrographic Directorate of the People's Republic of Romania (1958)]

63. The third chart is at tab V-16, entitled "North-Western Part of the Black Sea from Constanța to Sevastopol". It was produced by the Maritime Hydrographic Directorate of the People's Republic of Romania in 1958 and is entry 7 in the table. It also shows the boundary line as going around the 12-mile arc and stopping at a point due east of the island.

[End Slide 15]

[Slide 16: chart entitled "Western Coast of the Black Sea from the Dniester Estuary to Sulina" produced by the Maritime Hydrographic Directorate of the People's Republic of Romania (1959)]

64. A fourth chart, similarly depicting such a boundary, is entitled "Western Coast of the Black Sea from the Dniester Estuary to Sulina". It was produced likewise by Romania in 1959 — it is entry 8 in the table and at tab V-17 in your folders.

[End slide 16]

65. These charts illustrate the understanding of the Parties to the 1949 Agreement, in the period shortly after its conclusion.

66. A second group of maps to which I would draw attention are those produced by Romania and Ukraine within the last ten years, during the period of delimitation talks.

[Slide 17: charts entitled "Black Sea and Sea of Azov", produced by the State Hydrographic Service of Ukraine (2000) and "Black Sea Western Part", produced by the Ukrainian State Hydrographic Institution Branch "Ukrmorcartographia" (2003)]

67. A number of Ukrainian charts were produced by the State Hydrographic Service and the State Hydrographic Institution Branch "Ukrmorcartographia", and they depict the boundary as extending along the 12-mile arc around Serpents' Island to a point due east of the island. This is the case with a chart produced in 2000, and a further Ukrainian chart produced in 2003 — these are at tabs V-18 and V-19.

[End slide 17]

[Slide 18: chart entitled “Western Part of the Black Sea from Odessa to the Sulina Mouth”, produced by the Ukrainian State Hydrographic Institution Branch “Ukrmorcartographia” (2001)]

68. Of particular relevance is the Ukrainian chart of 2001 — which is table entry 27 and tab V-20 in your folders. It depicts the boundary as extending to a point on the 12-mile arc located east of the island; the boundary up to that point is depicted using the symbol for “international maritime boundary”. The 12-mile arc is then shown as continuing north and west until it meets the outer limit of the territorial sea of mainland Ukraine to the north. The arc in this sector is depicted using the symbol for “seaward limit of territorial sea” — a deliberate distinction.

69. This chart, produced and published by Ukraine, shows a clear understanding that the boundary to the south of Serpents’ Island goes well beyond the extent shown on map 134. Further, given the clear differentiation of markings in the north, as compared in the south, it demonstrates that the boundary to the south of the island, was not seen merely as a territorial sea boundary, but an international maritime boundary for all purposes. This is a clear admission against interest.

[End slide 18]

[Slide 19: charts entitled “Western Area of the Black Sea” and “Black Sea Romanian Coast; From the Kaliakra Cape to the Danube Delta” produced by the Romanian Maritime Hydrographic Directorate (2003)]

70. Two charts produced by Romania in 2003 (tabs V-21 and V-22) also depict a boundary line extending along the 12-mile arc around Serpents’ Island to a point located due east.

[End slide 19]

71. A number of observations are called for in relation to these charts:

1. they were produced by relevant official bodies of Romania and the Soviet Union, and subsequently Ukraine;
2. they consistently show the boundary as extending beyond the point depicted on map 134, and as having the same character along its entire length up to the point due east of the boundary;
3. the depiction of the boundary is consistent;
4. the Soviet Union and subsequently Ukraine did not at any stage object to the depiction of the extent of the boundary on the maps produced by Romania;
5. not only did they not object, they produced maps of their own which depicted the boundary as extending around Serpents’ Island to a point located to the east. These maps constitute a series of admissions against interest over a lengthy period of time.

72. Finally, I refer, but more briefly, to the charts produced by third States. By France (table entry 17); by Germany (entry 18); by Bulgaria (entry 20); and by the Russian Federation in 1994, at which point it was a third State in relation to the boundary (entry 21).

[Slide 20: chart entitled “Black Sea Map. Soviet and Romanian Coasts from Danube Delta to Il’icevsk”, produced by the German Federal Institute for Maritime Navigation and Hydrology (1991)]

73. I am only going to show you one of these: the chart produced by Germany in 1991, which is tab 23. It depicts the boundary around Serpents’ Island until a point located due east; it uses the same symbol along the entire length of the boundary, both on land and over water. What is of particular relevance is the marking located to the south-east of Serpents’ Island, which you can see now enlarged; you can see clearly that on the Serpents’ Island side of the boundary, the waters are marked as appertaining to the USSR, while on the other side they are marked as appertaining to Romania. A similar marking is used on the portion of boundary between border signs 1438 and 1439.

[End slide 20]

74. Taken together, these maps evidence the understanding of the Parties, and of third States, that there was an agreed boundary extending along the 12-mile arc at least as far as a point located to the east of Serpents’ Island. The maps confirm the clear meaning of the 1949 Agreement.

75. All of the maps I have referred to use a single symbol to depict the boundary up to the point in the east where it stops. Evidently that boundary was thought to have the same character throughout its entire length; it divided areas appertaining to Romania from areas appertaining to the Soviet Union and subsequently to Ukraine.

76. Ukraine, of course, questions the relevance of the maps and charts produced to the Court by Romania, but, and this is crucial, it has been unable to produce a single later map or chart which supports its position that the boundary agreed in 1949 extended no further than as shown in map 134 — not a single map. All it can do is to produce a few maps which show no maritime boundary at all. These maps are irrelevant. They say neither one thing nor the other. They are like calling a witness who remains silent.

77. I repeat: Ukraine has not been able to produce a single chart — not one — from the period since 1949, which depicts the boundary in the way it proposes.

B. Ukraine's objections

78. Madam President, Members of the Court, I now come to the second part of this presentation, which will be much briefer: a consideration of Ukraine's objections to the positive case of Romania which I have just endeavoured to state. Romania makes six objections— sorry, Ukraine makes six objections: haven't changed sides!

1. Delimitation agreements within the meaning of Articles 74 (4) and 83 (4)

79. First, Ukraine, while accepting that the various agreements are valid and binding upon it, argues that they do not constitute "delimitation agreements" within the meaning of Articles 74 (4) and 83 (4) on the basis that they do not separate the continental shelves or exclusive economic zones of the Parties, but rather separate those zones from the 12-mile territorial sea appertaining to Ukraine around Serpents' Island. Professor Pellet has dealt with that argument as it goes to jurisdiction, I will deal with it as it goes to merits.

80. Articles 74 (4) and 83 (4) do not stipulate that an agreement to which they refer should delimit zones having the same character. To the extent that the 1949 general procès-verbal and subsequent agreements resulted in a delimitation of the maritime zones of the Parties, and the boundary delimits on at least one side either a continental shelf or an exclusive economic zone, then they are agreements "delimiting" a continental shelf or exclusive economic zone within the meaning of Articles 74 (4) and 83 (4), and within the ordinary meaning of those terms they delimit the zone.

81. A moment's reflection will reveal how often this occurs, for example when a small island belonging to one State is close to the mainland equidistance or median line. In such circumstances, it is usual, if not invariable, that the small island be restricted to a 12-mile enclave or semi-enclave. Such a boundary undoubtedly constitutes a delimitation of the continental shelf and economic zone of the opposite State, even if along part of that course it has on one side only a territorial sea. Ukraine's argument can be taken to the absurd extreme: an agreement drawing a line 13 miles or 12-and-a-half miles around an island is a delimitation agreement, or 12 miles and 1 m, but not 12 miles alone, and yet 12 miles is the common form.

2. The lack of any express agreement in relation to point X and the lack of contemporaneous maps showing the extension of the boundary as far as point X

82. Secondly, Ukraine argues that none of the agreements stipulates that the agreed boundary extends as far as the point due east of Serpents' Island — the point we have called point X⁵⁴.

83. But the extent of the agreed boundary is fixed by the language of the 1949 general procès-verbal itself, and confirmed in subsequent agreements. It is clear in providing that the boundary goes along the exterior margin of the 12-mile marine boundary zone *around* Serpents' Island, it extends as far as the zone, vis-à-vis Romania.

84. In any case, Ukraine's argument cuts both ways; neither is there any express limitation of the boundary. A boundary encompassing less than 23° of arc cannot be said to be one "surrounding" Serpents' Island.

85. Ukraine stresses that none of the maps accompanying the procès-verbal shows the agreed boundary extending as far as point X⁵⁵. But again the starting-point must be the actual language of the procès-verbal: what did it mean? Plates I and V show the agreed boundary as extending beyond the point shown on map 134: it is clear that the map is not limited as shown on map 134. Moreover, the charts produced by the parties to the 1949 procès-verbal show their clear understanding that the agreed boundary was not so limited.

3. The mandate of the Joint Boundary Demarcation Commission

86. Thirdly, Ukraine suggests that the task of the Joint Soviet-Romanian Boundary Demarcation Commission, which produced the 1949 package, "did not include coverage of the maritime sector of the boundary"⁵⁶: the Commission "was only entrusted with the task of demarcating the State boundary as far as Boundary Point 1439".

87. The first suggestion of course is without foundation. After all the Demarcation Commission fixed the location of two border signs located at sea: 1439 and 1438.

88. As to the second suggestion, it is true that the border sign 1439 was the last border sign *demarcated*. But the fact that border sign 1439 was the "last point of the *demarcated* border line"⁵⁷

⁵⁴RU, para. 3.12.

⁵⁵*Ibid.*, paras 3.25-3.28.

⁵⁶*Ibid.*, para. 3.14.

⁵⁷See *ibid.*, para. 3.15.

has no consequences for the *delimitation* effected by the 1949 general procès-verbal, and confirmed without qualification in the Moscow Treaty.

89. On the clear terms of the 1949 general procès-verbal, and as depicted on the accompanying maps forming part of the agreement, the boundary delimited by agreement extends beyond border sign 1439 following the exterior margin of the 12-mile marine boundary zone around the island. The conclusion that the procès-verbal *delimited* the boundary beyond border sign 1439 is entirely consistent with a *demarkation* of the border signs in terms which also covered a process of delimitation.

90. Ukraine argues that “the Joint Commission regarded border sign 1439 as ‘the *final* point of the *demarkated* border line’”⁵⁸. It was certainly the final demarcated point, but the fact is that the Parties agreed upon and thereby inevitably delimited the course of the boundary around Serpents’ Island. It is expressly referred to as “the exterior margin of a marine boundary zone of 12 miles”. (“suit la limite extérieure de la zone frontrière maritime de 12 milles”) The *zone* was agreed, and not merely as a zone appertaining to the Soviet Union. The boundary stipulated to go along its outer margin separated the “marine boundary zone” (“la zone frontrière maritime”) appertaining to the Soviet Union from areas appertaining to Romania.

91. Whatever the scope of the mandate of the Joint Commission may have been, Ukraine is unable to escape the fact that the Commission did delimit the boundary beyond border sign 1439 and what it did was explicitly endorsed to its full extent in a series of subsequent agreements.

4. The preparatory work of the Joint Commission

92. Fourthly, Ukraine refers to the preparatory materials produced by the Commission: it notes that the *travaux* say nothing about the boundary going as far as point X⁵⁹.

93. But, equally, the preparatory works say nothing as to the limitation of the boundary on which Ukraine relies. What they do — and all they do — is to stipulate that the boundary is “on the exterior margin of the 12-mile marine boundary zone”. The zone did not stop just after it had

⁵⁸RU, para. 3.19; emphasis in original.

⁵⁹*Ibid.*, paras. 3.20-3.21.

started in the south-west sector of the circle, and if the zone did not stop, neither did the boundary going along its exterior margin.

94. In fact, little assistance is to be derived one way or another from the preparatory works. The only indisputable point is that the Joint Commission agreed that the maritime boundary “runs along the Serpents’ Island from beyond point 1439”⁶⁰. In that regard, the *travaux* are consistent with Romania’s position and inconsistent with that of Ukraine.

5. Ukraine’s reliance on map 134

95. Fifthly, Ukraine is forced to make the best of a bad job. It accepts that the 1949 procès-verbal resulted in an agreed boundary going “some distance along the arc around Serpents’ Island”⁶¹. But it carefully abstains from saying the precise point to which that was agreed, and it does not assert that the boundary agreed extended even as far as is depicted on map 134. You will search in vain in the Rejoinder for a clear statement on that point: if beyond sign 1439, where does the boundary stop? Ukraine never tells you. Rather, it asserts negatively that “there is no agreement taking the agreed boundary further along the Serpents’ Island than the point of intersection . . .”⁶²; that there is no evidence “that the agreed boundary extends as far as point X”⁶³; that “there is no agreed maritime boundary running further east than the point agreed in the 2003 Ukraine-Romania Treaty”⁶⁴. A series of negatives does not make a positive case.

96. In support, Ukraine relies on the supposed coincidence between the point of intersection of the outer limits of the territorial seas of the Parties, as agreed in 2003, and the supposed terminal point — as allegedly depicted on map 134. On the basis of that apparent coincidence, it constructs an elaborate hypothesis, unsupported by any evidence, that the reason why the Soviet Union and Romania may have agreed to depict the boundary as extending only so far as depicted on map 134, was because the parties were already contemplating that Romania might extend its territorial sea to

⁶⁰RU, para. 3.21.

⁶¹*Ibid.*, para. 3.7 (emphasis in original); see also paras. 3.22 and 3.35; cf. para. 3.17.

⁶²*Ibid.*, para. 3.7.

⁶³*Ibid.*, para. 3.25; see also paras 3.22, 3.49 and 3.50.

⁶⁴*Ibid.*, para. 3.2; see also paras 2.12, 3.5 (a), 3.65, 3.67.

12 miles. In short, it suggests that the boundary depicted on map 134 was intended to anticipate this possibility.

97. Ukraine's hypothesis is, however, untenable as soon as one looks at the actual geography and the configuration of the coast in 1949.

[Slide 21: effects of the extension of the Sulina dyke]

98. In 1949, Romania claimed a 6-mile territorial sea — and you see, again, the outer limit of that 6-mile territorial sea, drawn on the basis of the coastline as it existed at that time — this and the following slides are at tab V-24 of your folders. It will be seen that border sign 1439 was well outside the territorial sea, and that the outer limit of the 6-mile territorial sea bisected the boundary at a point between border signs 1438 and 1439. A number of observations are called for.

99. First, it will be recalled that border sign 1439 is expressly stipulated to constitute one of the turning points of the State boundary line, and this despite the fact that it was clearly situated outside Romania's territorial sea at the time.

100. Secondly, as I have said, the boundary is marked using the same symbols which undergo no change at any point in its length even though, considering the maritime zones at the time, it constituted a boundary which separated waters subject to different legal régimes.

101. Thirdly, the waters to the north and south of the boundary are clearly marked as appertaining to the two States; one set of abbreviations is located either side of the section where it runs along the 12-mile arc, well outside Romania's territorial sea.

102. As to Ukraine's suggestion that the point shown on map 134 was contemplated because of the 12-mile extension, it is said that point coincides with the point where a 12-mile territorial sea would have ceased.

103. But if the 1949 general procès-verbal had been intended to fix a final point for the boundary, the Parties would certainly have made reference to that point in the text and would have identified it with co-ordinates, as they did with care in relation to all other 1439 turning points. They did no such thing.

104. Further, the alleged final point shown on map 134 is in a different place from the final point of the outer limit of the Parties' territorial sea, as agreed in 2003. I set out the co-ordinates of the two points in the text of my speech; I will not read the list of numbers, but I would be grateful if

the Registry would include them in the printed version. Final point of boundary depicted on map 134, 45° 05' 24" N, 30° 02' 17" E; point F (2003), 45° 05' 21" N, 30° 02' 27" E. What I can tell you is that the difference between the end point on 134 and the point agreed in 2003 is 93 m north-south and 219 m east-west — a non-trivial difference that would have been picked up by the Parties had it existed⁶⁵.

105. But more important than that, Romania and the Soviet Union could not have foreseen the point which would be agreed in 2003 as the intersection of the outer limit of the 12-mile territorial seas of Romania and Ukraine. Point F is only located where it is as a result of substantial physical modifications to the Sulina dyke — the Romanian base point.

106. These modifications took place between the 1950s and the 1980s. They resulted in the extension of the dyke by approximately 1.5 miles. The extensions did not follow any schedule or predetermined plan, because they resulted from the gradual and uneven deposit of sediments. The Parties could not have foreseen, in 1949, where the Sulina dyke would end in 2003.

107. In fact, the point 12 miles from the end of Sulina dyke, as it was in 1949, would have been a substantial distance to the north-west of both point F, as agreed in 2003, and the supposedly final point of the boundary depicted on map 134 — you can see this on the screen now. The last point agreed on map 134 was actually 13.4 nautical miles from the base point at the end of the Sulina dyke, as it was in 1949.

108. If it had been the intention of the Parties to allow for the eventual extension of Romania's territorial sea to 12 miles, then the boundary agreed by them would have been substantially shorter than that depicted on map 134.

109. In short, given the actual coastal configuration, even on Ukraine's case as to the effect of map 134, the Parties nevertheless agreed a relatively substantial length of border, more than 1 mile in length, which separated areas outside Romania's putative 12-mile territorial sea and the 12-mile maritime zone around Serpents' Island.

⁶⁵RU, para. 3.45.

6. Ukraine's position as to the status of the waters on each side of the agreed line

110. Sixthly and finally, Ukraine argues that the parties could not have intended to agree an all-purpose maritime boundary given that, at the time, beyond the territorial seas the area was regarded as high seas⁶⁶. Rather, the Soviet Union and Romania agreed a boundary separating maritime zones appertaining to the Soviet Union from the high seas, without any limitation on subsequent claims by the Soviet Union to further maritime zones to the south.

111. In support of this thesis Ukraine suggests that the 1949 procès-verbal makes no reference to the status of the waters to the south of the agreed boundary outside the Romanian territorial sea of 12 miles, which the parties, it alleges without any evidence, were supposedly contemplating⁶⁷. But this can only be relevant if the parties had in mind the extension of the territorial sea and, as I have said, there is no evidence of that. Moreover, the suggestion is inconsistent with the extent of the boundary depicted on map 134 taking into account the geography as it was in 1949. The fact remains that the "RPR" abbreviation on the sketch included on map 134 as well as on the individual procès-verbal, is situated *beyond* the 6-mile limit. What is more, it is more or less bisected by what would have been a 12-mile Romanian territorial sea based on the extent of the Sulina dyke in 1949.

[End slide 21]

112. Ukraine protests that the 1949 procès-verbal does not indicate that it was the intention of the parties to delimit a single all-purpose boundary. But neither did it make any reference to the fact that the maritime border was intended to have a different character along various parts of its length. All it does is show the same symbol. Nor does it specify at what point the change occurred, as one would have expected if, in such a meticulous agreement, that had been the intention of the parties.

113. If the intention of the parties had been as Ukraine suggests, they would not have described the boundary as being the "State boundary line". Moreover, Ukraine has not been able to put forward a single case of State practice embodying agreement on a unilateral boundary which has no incidence for the other State.

⁶⁶RU, para. 3.73.

⁶⁷*Ibid.*, para. 3.95 and cf. para. 3.88.

114. In fact, the term “marine boundary zone” used in the 1949 Agreement was special to the occasion. It was not used by the Soviet Union, whether in treaties or other agreements, or its own decrees, at that time or since. It does not appear to have been a synonym for “territorial sea”⁶⁸. In 1949 the Soviet Union did not claim a territorial sea as such. Rather, following the approach previously taken by Imperial Russia⁶⁹, it claimed a number of different zones of jurisdiction over waters contiguous to the coast. Those zones related to customs control, fishing, regulation of radio communications, icebreakers, prevention of damage to submarine cables, and so on⁷⁰. The footnotes refer to the English language literature on the Soviet law of the sea. On the basis of Soviet practice, Professor Butler, writing in 1968, said “[i]t could be argued that the Soviet Union did not acquire a belt of territorial waters twelve miles wide until 1960”⁷¹. Nineteen sixty was the date the Soviet Union adopted new legislation on the Protection of the State boundary. This coincided with its ratification of three of the Geneva Conventions of 1958.

115. It is significant that by 1949, the Soviet Union was well aware of the developing institution of the continental shelf. It did not take the position that you had a fixed territorial sea and nothing beyond. In 1944 it had been given a draft of the Truman Proclamation on the continental shelf, issued the next year and it had commented on it⁷². If the Soviet Union had wanted to reserve to itself the right to claim continental shelf or other maritime zones beyond 12 miles to the south of Serpents’ Island, there were many ways it could have done so.

116. In the circumstances, the natural interpretation of the 1949 procès-verbaux is that the boundary was to constitute an all-purpose maritime boundary dividing areas appertaining to the Soviet Union from those appertaining to Romania. The consequence would be, whatever developments were to occur in the future, developments of which the Soviet Union was already potentially aware, the Soviet Union would make no claim south of the agreed line.

⁶⁸W. E. Butler, *The Soviet Union and the Law of the Sea* (Baltimore: Johns Hopkins Press, 1971), p. 21; W. E. Butler, “The Legal Regime of Russian Territorial Waters”, *American Journal of International Law*, Vol. 62 (1968), pp. 59-60.

⁶⁹*Ibid.*, pp. 52-54.

⁷⁰*Ibid.*, pp. 59-61; see also L. B. Schapiro “The Limits of Russian Territorial Waters in the Baltic”, *British Year Book of International Law*, Vol. 27 (1950), p. 447.

⁷¹W. E. Butler, “The Legal Regime of Russian Territorial Waters”, *American Journal of International Law*, Vol. 62 (1968), p. 75.

⁷²See *Foreign Relations of the United States*, 1945, Vol. 2, pp. 1496, 1507, 1508, 1510, 1511.

117. Ukraine is dismissive of the State practice invoked by Romania of all-purpose maritime boundaries on the basis that the examples cited are all later than 1949⁷³. But even before 1949 the practice of maritime zones was in flux. The divergences in State practice, which preoccupied this Court in *Anglo-Norwegian Fisheries* in 1951 (see e.g., *I.C.J. Reports 1951*, pp. 129-131), were already very much evident.

Conclusion

118. In conclusion, Madam President, Members of the Court, the text of the 1949 procès-verbal, as confirmed by the annexed and accompanying maps, resulted in the delimitation of an all-purpose maritime boundary along the 12-mile arc around Serpents' Island. That there was such a boundary around Serpents' Island was confirmed by subsequent agreements and in the mapping practice of the parties, as well as of third States. In accordance with the primacy of agreement in international maritime delimitation, Romania requests the Court to confirm that this boundary constitutes the initial part of the first sector of the delimitation between the Parties.

Madam President, Members of the Court, thank you for your attention. I would now ask you to call upon Dr. Aureescu to continue Romania's presentation.

The PRESIDENT: Thank you, Professor Crawford. We now call upon Dr. Aureescu.

Mr. AURESCU:

CHARACTERISTICS OF SERPENTS' ISLAND

1. Madam President, Members of the Court, my task today is to present the factual characteristics of Serpents' Island. This will lay the ground for two core legal contentions of Romania. The first is that Serpents' Island should be disregarded as a coastline for the purposes of maritime delimitation beyond the 12 miles territorial sea it already has. Professor Pellet, who will follow me tomorrow, will deal with this point. Secondly, as will be shown by Professor Lowe, also tomorrow, the characteristics of this feature — a small rock, unable to sustain human habitation or

⁷³RU, para. 3.93.

an economic life of its own — have as a consequence that under the 1982 Convention it generates no legal entitlement to continental shelf or exclusive economic zone, thus confirming the effect of the Romanian-Soviet Agreements of 1949, 1963 and 1974.

2. But beforehand, and as a factual matter, I will show four things about this Island:

- first, it is a small rocky formation, which is not integrated with the mainland coast;
- secondly, it never has had and does not now have a population, as it cannot sustain any;
- thirdly, it is devoid of soil, of vegetation, of animals, of water; and further, it has a very harsh climate and is inaccessible;
- fourthly, it has no resources of any kind, it can produce nothing and it cannot and does not sustain any economic life of its own.

1. Serpents' Island is a small rocky feature, non-integrated with the mainland coast

3. Madam President and Members of the Court, I turn then to my first point — Serpents' Island is a small rocky feature.

(a) *The geographic position of Serpents' Island*

4. The maritime formation called Serpents' Island is located in the north-western basin of the Black Sea, 46.5 km from the Romanian port town of Sulina; the closest Ukrainian town is Vilkovo, 60.2 km away. The city of Odessa, the capital of the administrative region which includes Serpents' Island, is 165 km away, thus making Serpents' Island the remotest point of that region.

[Slide 1: Satellite picture of the Danube delta, publicly available on the NASA site <http://earth.jsc.nasa.gov/sseop/EFS/lores.pl?PHOTO=NASA7-720-6> (RR, p. 142) (judges' folder, tab VI-1)]

5. The position of Serpents' Island may be seen from the satellite picture which is now on the screen.

6. Madam President and Members of the Court, I know that being a judge requires perspicacity, but this is not an ophthalmology test. Even if the ancient Romans, the ancestors of the Romanians, used to imagine "Justice" as a blind goddess, I assure you that your eyes are in perfect condition. The fact is that Serpents' Island — now being pointed out — is completely insignificant in the context of the geography of the area. Moreover, it is not integrated at all with the coast of

Ukraine. Indeed, as stated by a Ukrainian press agency in June 2006⁷⁴, Serpents' Island is nothing but "a rocky protuberance" in the Black Sea.

[Slide 2: figure 3-5 titled "Population Centres on Ukraine's Black Sea Coast" (CMU, p. 21) (judges' folder, tab VI-2)]

7. This reality is implicitly confirmed by Ukraine itself. Figure 3-5 from the Counter-Memorial, titled "Population Centres on Ukraine's Black Sea Coast", now on the screen, simply ignores Serpents' Island.

(b) *The smallness of Serpents' Island*

8. Ukraine asserts that "the dimensions of Serpents' Island are significant"⁷⁵. But this is contradicted by the facts⁷⁶. The island is about 662 m long and 440 m wide⁷⁷. Its area is only 0.17 sq km.

9. Because of the natural effects of erosion by waves and the winds, the surface of the island is shrinking. This process was already recorded in the nineteenth century⁷⁸: and this process continues. A Ukrainian article of 2007, to be found in your folders at tab VI-3⁷⁹, shows that the surface of the island is getting smaller — now being of only 16 hectares, due to this continuous erosion and rising sea levels. This fact is mentioned by various Ukrainian officials, concerned with the consolidation of the shores in order to prevent the erosion and the splitting of Serpents' Island in two, as recorded by Ukrainian press articles⁸⁰. In fact, the State budget of Ukraine for 2007⁸¹ and 2008⁸² both included special financing of a programme of shore consolidation for the island.

⁷⁴RR, Anns. 12 and 13. See also RR, p. 169, para. 5.124.

⁷⁵RU, p. 76, para. 4.40.

⁷⁶RR, pp. 136-137, paras. 5.30-5.34; pp. 139-141, paras. 5.38-5.41; pp. 166-170, paras. 5.109-5.125. See also RU, p. 115, para. 6.63 and RU, p. 116, para. 6.69.

⁷⁷MR, p. 17, para. 2.10.

⁷⁸MR, Anns. 6, 44, 45, 46. See also MR, pp. 151-154, paras. 10.22-10.27.

⁷⁹Article titled "The Island of Misfortunes", author Vladimir Katkevich, newspaper *Zerkalo Nedeli* No. 19 (648), 19-25 May 2007, <http://www.zn.ua/1000/1550/59326/>.

⁸⁰RR, Anns. 7, 27. See also RR, p. 140, para. 5.40 and pp. 170-171, paras. 5.127-5.128.

⁸¹Annex No. 3 to Law No. 489-V, published in the *Official Bulletin of Ukraine (Ofitsiniy Vistnik Ukrainy)* No. 52/2006, available at <http://www.gdo.kiev.ua/files/db.php?st=3477&god=2006> (judges' folder, tab VI-4).

⁸²Annex No. 3 to Law No. 107-VI, available at <http://www.gdo.kiev.ua/files/db.php?st=1&god=2008> (judges' folder, tab VI-5).

10. Ukraine's own annexes — the Counter-Memorial — refer to Serpents' Island as “a small . . . plot of land . . . situated lonely amidst the immense water space”⁸³, “a small island”⁸⁴ (“un rocher solitaire et isolée”)⁸⁵, “so small, that as we passed, we could view its whole extent . . . a secluded spot . . .”⁸⁶ (“la petite île des Serpents”)⁸⁷, having “negligible dimensions” and “negligible size”⁸⁸, “[a] secluded small plot of land”⁸⁹, an “isolated corner of land”⁹⁰. The Ukrainian media views Serpents' Island as a “minuscule part of the Ukrainian territory”⁹¹, “an islet” and a “rocky patch of land”⁹², “a very little piece of land”⁹³, “a little island”⁹⁴, a “small piece of land in the sea”⁹⁵, a “little hunchback in the waves”⁹⁶. A Ukrainian newspaper of 2002 is categorical: “even to denominate Serpents' Island an ‘island’ is excessive”⁹⁷.

[Slide 3: graphic comparing the sizes of Serpents' Island, of Filfla and of Abu Musa]

11. You can see now on the screen, and in your folders at tab VI-6, a graphic comparing the size of Serpents' Island with two other maritime formations — the Maltese island of Filfla, having an area of 0.06 sq km, that is 35 per cent of the surface of Serpents' Island, and the island of Abu Musa, having 12 sq km, that is 70 times bigger than Serpents' Island. Both were considered — by this Court in the *Libya/Malta* continental shelf case, in the case of Filfla, and by the Arbitral Tribunal in the maritime delimitation between Dubai and Sharjah, in the case of Abu Musa — as having no effect upon the delimitation process.

⁸³CMU Ann. 11; RR, p. 136, para. 5.31 and p. 166, para. 5.111.

⁸⁴CMU, Ann. 48; RR, p. 137, para. 5.33 and p. 167, para. 5.113.

⁸⁵CMU, Ann. 49; RR, p. 167, para. 5.115.

⁸⁶CMU, Ann. 50; RR, p. 140, para. 5.39 and p. 167, para. 5.116.

⁸⁷CMU, Ann. 54; RR, p. 140, para. 5.39 and p. 168, para. 5.117.

⁸⁸CMU, Ann. 57; RR, p. 168, para. 5.119.

⁸⁹CMU, Ann. 60; RM Ann. 42; RR, p. 167-168, para. 5.120.

⁹⁰CMU, Ann. 63; RR, p. 168, para. 5.122.

⁹¹MR, Ann. 57.

⁹²*Ibid.*, Ann. 71.

⁹³*Ibid.*, Ann. 36.

⁹⁴*Ibid.*, Ann. 56.

⁹⁵RR, p. 141, para. 5.41 and pp. 169-170, para. 5.125.

⁹⁶Article titled “The Island of Misfortunes”, author Vladimir Katkevich, newspaper *Zerkalo Nedeli* No. 19 (648), 19-25 May 2007, <http://www.zn.ua/1000/1550/59326/> (judges' folder, tab VI-3).

⁹⁷MR, Ann. 33; MR, p. 143, para. 10.5.

(c) *Serpents' Island as a rocky feature*

12. Ukraine claims that the fact that Serpents' Island is rocky does not make it a rock in the legal sense of Article 121 (3) of the 1982 Convention. But this is not the present point. Romania refers not only to the geological composition of Serpents' Island — and indeed its subsoil and almost its entire surface are rocky — but also to the consequences of this fact: and these consequences can be defined in one word: uninhabitability.

13. Thus an article in *The New York Times* of 29 August 1856, titled “Russian Infracton of the Treaty of Paris. Russian occupation of Serpents' Island”⁹⁸, reproduced in your folders at tab VI-7, calls Serpents' Island “nothing but a bare rock of very limited size”⁹⁹. This perception is also reflected in the Ukrainian press: Serpents' Island is a “sea rock”¹⁰⁰, “a rock of compact stone”¹⁰¹, a “rocky island”¹⁰², an “island-rock”¹⁰³, a “mere rocky surface . . . constituted of hard rocks”¹⁰⁴. A description dating from August 2007 — it is in your folders at tab VI-8¹⁰⁵ — provides that “[f]rom the height of a bird flight, Serpents' Island looks exotic. But from closer distance — you are in the middle of deserted rocks.”

[Slide 4: interwar pictures of the rocky surface of Serpents' Island (MR, figure 18, p. 153; figure 15, p. 149, reproduced from the 1931 volume of R.I. Călinescu, *Insula Șerpilor. Schiță monografică*, also included in MR, Ann. 6) (judges' folder, tab VI-9)]

14. Madam President, Members of the Court, you can see with your own good eyes the hostile and arid features of this small rocky piece of territory on the pictures, now on the screen, taken by Romanian scientists in the interwar period, more precisely, in 1931. Ukraine accuses Romania of a “highly selective” approach in presenting the image of Serpents' Island¹⁰⁶. But this is not correct. In fact, these pictures are quite revealing, as they were taken at a time when the

⁹⁸<http://query.nytimes.com/gst/abstract.html?res=9F01E3DC113CEF34BC4151DFBE66838D649FDE>.

⁹⁹Other sources are cited in the Memorial (MR, pp. 146-154, paras. 10.12-10.27) and in the Reply (RR, pp. 136-141, paras. 5.30-5.41 and p. 166-171, paras. 5.109-5.128).

¹⁰⁰MR, Ann. 57.

¹⁰¹MR, Ann. 36. See also MR, p. 146, para. 10.13.

¹⁰²MR, Ann. 58.

¹⁰³RR, Ann. 8. See also RR, p. 141, para. 5.41 and pp. 169-170, para. 5.125.

¹⁰⁴MR, Ann. 56.

¹⁰⁵News item titled “The inhabitants of Serpents' Island do not live an easy life”, the Ukrainian Press Agency *Podrobnosti*, 30 August 2007, <http://www.podrobnosti.ua/podrobnosti/2007/08/30/452743.html>, judges' folder, tab VI-8.

¹⁰⁶CMU, p. 24, para. 3.45 .

appurtenance of Serpents' Island to Romania was under no dispute and there was no question as to the role eventually to be played by Serpents' Island in any maritime delimitation process. Their accuracy and the intentions of their authors cannot be doubted. It is obvious that what they show are the real natural features of Serpents' Island. The same cannot be stated about the recent artificial image Ukraine would like to project of this naturally inhospitable spot. I will come back tomorrow on this issue.

[Slide 5 — Photographs of Serpents' Island and Filfla (judges' folder, tab VI-10)]

15. Finally I note the close resemblance of Serpents' Island to the Maltese island of Filfla, which was described by this Court in the *Libya/Malta* case as an “uninhabited rock” (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 20, para. 15). In that case, you did not find it equitable “to take into account Filfla in the calculation of the provisional median line between Malta and Libya” (*ibid.*, p. 48, para. 64). You can see now on the screen both Filfla and Serpents' Island. They have the same rocky and arid features, hostile to any human habitation or economic activity.

(2) Serpents' Island has never had and does not now have a population

16. Madam President and Members of the Court, my second point is that Serpents' Island has never had, and does not now have a population. And there is a simple reason for this. It never had a population because it cannot sustain human habitation. This objective situation is due to its arid features and lack of any kind of resources, including water, its small size, its remote isolation and inaccessibility, its rough and hostile climate. All these combined factors make Serpents' Island, naturally, a place unbearable for people to stay even for short periods of time. These factors also result in an acute sense of seclusion, and medical problems, including especially psychological ones for those who are forced because of their official duty to spend some limited time on Serpents' Island.

17. Thus a Romanian author writing in 1940 described Serpents' Island as “secluded in the middle of waves that nobody ever visits, that nobody ever asks about”; a potential visitor “would find himself as isolated as on the Robinson's island”¹⁰⁷. Another Romanian source of 1942 writes

¹⁰⁷MR, Ann. 46.

that the “guardian of the lighthouse . . . [and] the couple of border patrols can be found there living like exiled people”¹⁰⁸, while the Romanian soldiers sent there in 1944 to rebuild the lighthouse felt, in their own words, “completely isolated from the rest of the world”¹⁰⁹.

18. That is why it is no surprise that the European Danube Commission — charged with the maintenance of the lighthouse — encountered many problems, many difficulties, in finding employees for the post of lighthouse keeper. A 1920 report of the European Danube Commission states that “les gens ne veulent pas s’engager par le motif que devant être isolés du commerce des hommes, ils n’ont pas le confort nécessaire au logement à l’île, lequel laisse beaucoup à désirer”¹¹⁰. Another Danube Commission document, from 1923, mentions that the lighthouse keeper abandoned his post after only a couple of months. The reason: “he cannot live in continuous isolation”¹¹¹. In fact, Ukraine itself quotes a Romanian source of 1938: “neither the guards, nor the soldiers do resist much to the solitude . . . Life is neurasthenic because of its exaggerated monotony.”¹¹²

19. But perhaps the best description of the negative influence of Serpents’ Island is given by the Medic-in-chief of the Romanian Ministry of Home Affairs in a report of 1938:

“the influence of Serpents’ Island, situated on rocks, . . . away from the shores of [the] mainland, which can never be seen, and with the perspective of seeing and hearing only the rhythm of waves, almost always stormy and accompanied by continuously changing winds, is damaging, affecting the human nervous system . . ., [provoking] a specific debility, consisting of a general depression, nervous breakdown, physical asthenia, insomnia etc. . . . The influence of marine currents and of the salted air of the island is even worse [for] the human respiratory system . . ., provoking lung respiratory modifications, dry and liquid pleurisies, these diseases being likely to aggravate if the staying on the island of those affected is prolonged, and even likely to provoke death.”¹¹³

20. Madam President and Members of the Court, it is the same today. The title of a Ukrainian article of 2005 well describes the position. This is the title of the article: “I find myself

¹⁰⁸MR, Ann. 43.

¹⁰⁹*Ibid.*, Ann. 10.

¹¹⁰RR, Ann. 9. See also RR, p. 153, para. 5.71.

¹¹¹Romanian translation of the original text in French (“il ne peut pas vivre en isolement continuuel”); RR, Ann. 11. See also RR, p. 153-154, para. 5.72.

¹¹²CMU, Ann. 63. See also, RR, p. 178, para. 5.153.

¹¹³MR, Ann. 40.

again at the end of the world”.¹¹⁴ That is why it is no surprise that Serpents’ Island was never inhabited.

21. The ancient Roman and Greek authors concur in this respect. The Roman historian Ammianus Marcellinus mentions the island of Leuce (the old name for Serpents’ Island) as being “without inhabitants”, and I quote again but in Latin now: “*insula Leuce sine habitatores*”. He adds that “those who by hazard are thrown here . . . go in the evening at their ships, because it is said that who spend their night here put their life in danger”¹¹⁵. The Greek philosopher Maximus of Tyre comments that “no man willingly goes there”¹¹⁶. The Roman philosopher and historian Flavius Arrianus, contemporary with the Emperor Hadrian, informs us that “the island is empty of people”¹¹⁷.

22. A Romanian author, who in 1894 published a well-documented monograph on Serpents’ Island, concluded, after carefully assessing all ancient sources, that “[t]here were no inhabitants on Leuce, according to all quoted writers” and that “there were no permanent dwellings on Leuce”¹¹⁸. According to him, the adverse conditions on Serpents’ Island “have always prevented people to settle their dwellings on this solitary island”. In short— I quote from an annex to the Counter-Memorial in French — “aucun homme n’habitoit Leuce . . . les anciens auteurs nous disent que l’île d’Achille étoit déserte et sans habitants . . .”¹¹⁹. In fact, according to the same source, “l’île de Leuce n’étoit qu’un lieu qui réunissoit les âmes ou les esprits des héros décédés”¹²⁰.

23. No sources mention any population on Serpents’ Island in the Middle Ages. The same is true for sources from the nineteenth century. For instance, an English traveller wrote in 1810 that “no human being dwells there”¹²¹.

¹¹⁴MR, Ann. 71.

¹¹⁵*Ibid.*, Ann. 44. See also MR, p. 163, para. 10.51.

¹¹⁶*Ibid.*. See also MR, p. 163-164, para. 10.56.

¹¹⁷*Ibid.*. See also MR, p. 163, para. 10.51.

¹¹⁸*Ibid.*. See also MR, pp. 163-164, para. 10.53.

¹¹⁹CMU, Ann. 49. See also RR, pp. 175-176, para. 5.146.

¹²⁰H. Koehler, “Mémoire sur les îles et la course consacrées à Achille dans le Pont-Euxin”, in *Mémoires de l’Académie Impériale des Sciences de St. Petersburg*, Tome X, p. 571. This volume was deposited with the Registry by Ukraine.

¹²¹CMU, Ann. 50. See also RR, p. 153, para. 5.68 and p. 176, para. 5.147.

24. Only after the lighthouse was built were a few people sent there on duty, and then on a rotational basis, for short periods. But these few persons did not amount to a population. Russian and Soviet Sailing Directions of 1903 and 1931 — included in Annexes 12 and 13 of the Counter-Memorial of Ukraine — use the same language: “Except civilian lighthouse watches and the sentry composed of four Romanian border guards nobody dwells on the island.”¹²² Two editions of a *Black Sea Pilot* issued by the British Admiralty in 1920 and 1930 provide confirmation¹²³, as does the *Great Soviet Encyclopaedia* of 1933: “[e]xcept for the guardians of the lighthouse and for the Romanian border patrols, there is no population”¹²⁴.

25. Madam President, Members of the Court, Serpents’ Island never had a population, and this remains the case today. There is no population on the island; only officials (border guards, lighthouse keepers) and scientists sent there on a rotational basis, for short periods of time, due to the hostile environment¹²⁵.

26. Madam President, it is idle to pretend that a few border guards and scientists, staying on Serpents’ Island on official duty or under contract for short periods of time, amount to a population. Take the demonstrative delivery of identity documents by Ukraine’s President during his visit to Serpents’ Island in November 2007. The relevant press article is at tab VI-12 in your folders. It reads that:

“The president formally strengthened the right of Ukraine over Serpents’ Island . . . [H]e handed IDs to a group of 6 border guards. Commenting this moment, a representative of the Presidential Administration declared . . . : ‘At first sight, this ceremony is an ordinary one, but in reality it is very important for our country. The fact that we started to issue ID’s for the inhabitants of the island confirms its status, which is yet another argument in the negotiations with Romania for delimitation of its continental shelf.’”¹²⁶

[Slide 6 — Photograph showing the delivery of an ID card to a border guard during the visit of the Ukrainian President to Serpents’ Island (6 November 2007), available on the website of the

¹²²CMU, Anns. 12 and 13. See also RR, p. 153, para. 5.69 and p. 175, para. 5.145.

¹²³MR, Ann. 59. See also MR, Ann. 60.

¹²⁴*Ibid.*, Ann. 41.

¹²⁵RR, Anns. 11, 12, 13, 14, 15. See also RR, p. 154, para. 5.73 and p. 177, para. 5.151. See also the news item titled “The Regional Council established the limits of the settlement of Serpents’ Island”, the Ukrainian Press Agency *Reporter*, 6 June 2008, http://www.reporter.com.ua/cgi-bin/view_material.pl?mt_id=33071, judges’ folder, tab VI-11.

¹²⁶Article titled “Viktor Yushchenko takes care of handing passports”, author Sergei Sidorenko, the newspaper *Kommersant* No. 197, 7 November 2007, <http://www.kommersant.ua/doc.html?DocID=822876&IssueId=41431>, judges’ folder, tab VI-12.

President of Ukraine, at <http://www.president.gov.ua/gallery/892.html#11592> (judges' folder, tab VI-13)]

Madam President and Members of the Court, you can see with your own eyes this “population”, in this picture, now on the screen and in your folders at tab VI-13, from the official website of the Ukrainian President. Six border guards do not make a population.

27. In its Rejoinder, Ukraine persists in claiming that the Island is inhabitable, but hardly produces any new arguments or evidence¹²⁷. Instead it continues to place great emphasis on the historical importance¹²⁸ of Serpents' Island in terms of its notoriety and strategic relevance.

28. In Ukraine's view, this historical notoriety proves the significance of the Island and, consequently, its entitlement to continental shelf and EEZ. But the historical importance has no relevance whatever as to demonstrating the capacity to sustain human habitation or economic life. In fact, all historical sources from antiquity to the present times note its lack of any such capacity. The notoriety of Serpents' Island in antiquity was only linked with its religious importance due to the after-life cult of Achilles, and we owe this information to the same authors who revealed that it is deserted and uninhabited. Madam President, I think it is a bold move to build an argument of life sustainability on after-life notoriety!

29. The strategic-military importance of Serpents' Island, which explains its geopolitical history in the last two centuries, including its seizure from Romania in 1948, similarly has no relevance, and is incapable of proving either its capacity to sustain human habitation or economic life; it has no connection to it. The temporary occupations of Serpents' Island by soldiers of various countries during war campaigns or in the Soviet era¹²⁹ — dictated by purely military considerations of those respective moments — were entirely supported by external means.

30. In support of its thesis that Serpents' Island was historically inhabited, Ukraine's Rejoinder cites only one new document. This is an 1885 text relating to an inscription concerning Serpents' Island, which reads as follows:

“Elle n'est plus aujourd'hui habitée, dit-on, que par quelques pêcheurs; mais, comme tant d'autres localités, jadis peuplées d'Hellènes, elle avait sans doute gardé,

¹²⁷CMU, p. 116, para. 6.69.

¹²⁸See CMU, paras. 7.50-7.71, plus some 23 Annexes.; RU, paras. 4.41, 6.68, 6.71.

¹²⁹RU, p. 118, para. 6.71 (3), (4), (6), (7).

durant le premier siècle de notre ère, une population assez nombreuse, et elle continuait de jouir d'une certaine prospérité.”¹³⁰

The quotation selected by Ukraine is part of a text commenting on a badly-damaged ancient inscription — in the author’s words, “très mutilée”. In fact, as the author of the comment notes, the inscription does not originate from Serpents’ Island. The comment itself is not a study on the history or archaeology of Serpents’ Island, and the author, Emile Egger, was not a historian, but a philologist — he was a professor of Greek literature at the Faculté des Lettres in Paris¹³¹. It is merely a personal supposition of the author that Serpents’ Island had a population in the first century AD, based on analogy “mais, *comme tant d'autres localités*, jadis peuplées d’Hellènes, elle avait *sans doute* gardé . . .”¹³². This supposition was not drawn from the text of the inscription and is not supported by historic facts: there was no settlement on the island in antiquity; it was never inhabited by the Greeks or by anyone else. All the authors of antiquity give the same information: Serpents’ Island was “*sine habitatores*”, in the words of Ammianus Marcellinus.

31. In its Rejoinder Ukraine refers¹³³ to a so-called “necropolis” unearthed on Serpents’ Island, showing — in Ukraine’s view — “that communities resided there in ancient times”. This relies on a Russian study of 2002 which also recalled the information — overlooked by Ukraine — of “the testimonies of antique authors who wrote about forbiddance to settle on Leuce”. What kind of “necropolis” it is, from what period, what remains were discovered — the study does not reveal any scientific data and, indeed, any data at all. The 2002 study only mentions that the “discovery” was made by a quarantine commissioner, who was not an archaeologist, in 1842 and that “its examination was not completed”. According to the study, only one urn was found, and, in different locations, a vault with a human skeleton and other “8 burials”. The Romanian scientists who undertook extensive researches on Serpents’ Island during the 70 years of Romanian sovereignty found no trace of any “necropolis”, or of any settlement. But the fact — if it is a fact — that a few human remains are found in a certain place — in the absence of any trace of a settlement — does not prove that the place was inhabited. An urn does not amount to a “necropolis” and certainly

¹³⁰RU, p. 118, para.6.71 (1).

¹³¹*Encyclopedia Britannica*, 11th edition, Vol. V09, 1911, p. 17, http://encyclopedia.jrank.org/ECG_EMS/EGGER.html.

¹³²Emphasis added.

¹³³RU, para 6.71 (2), referring to the 2002 Russian study included as CMU, Ann. 57.

does not prove the island's capacity to sustain life. A place where people die, but are never born — this is Serpents' Island.

32. Also in its Rejoinder¹³⁴, Ukraine repeats its claim, already made in the Counter-Memorial¹³⁵, that between the two world wars “according to Romanian sources, 8 people resided permanently on the Island” and that “Romania planned to build a complex on the island, including a hospital, a chapel, a small monastery and a lifeguard station”. I respectfully refer the Court to what we said on these points in our Reply¹³⁶. As to the first point, the people on Serpents' Island during the Romanian period were sent there on official duty, exactly as Ukraine sends its officials now: to maintain the lighthouse and to guard the border. They were rotated frequently, as now, due to the rough environment on the island. They were not “permanent residents” and certainly did not represent a population. As to the second point, it has to be noted that the so-called “plan” was a pure fantasy. The reason it failed — in the early 1930s and not because of the war — was — and I quote the same author invoked by Ukraine — “the very tough and irregular winds, which blow terribly from autumn to spring, the difficulty to bring supplies and especially the costs of building”¹³⁷.

(3) Serpents' Island is incapable of sustaining human habitation

33. Madam President and Members of the Court, the reason for the failure of such plans is that without 100 per cent external life support, Serpents' Island is uninhabitable. And this brings me to my third point: the island is devoid of water, of soil, of vegetation, of animals. Instead, it is “gifted” with a rough, unbearable climate.

34. The lack of natural water sources on Serpents' Island is well documented in the pleadings¹³⁸. All sources, both older and more recent, show that water on Serpents' Island is provided either by occasional rainfall or must be imported from the mainland, and even then it is insufficient. According to an annex to the Ukrainian Counter-Memorial, in June 1841 some

¹³⁴RU, para 6.71 (5).

¹³⁵CMU, para. 7.64.

¹³⁶RR, pp. 154-155, paras. 5.74-5.76.

¹³⁷RR, p. 175, para. 5.144.

¹³⁸MR, pp. 159-161, paras. 10.39-10.46 and MR, Anns. 6, 40, 45, 50, 51; RR, pp. 143-150, paras. 5.44-5.58 and pp. 171-174, paras. 5.129-5.138. See also CMU, Anns. 9, 57, 62, 63, 68, 73, 84, 91.

Russian scientists visited Serpents' Island for a couple of days to search for antiquities — and I quote from this Ukrainian annex: “The lack of fresh water and the hardly endurable heat made the travellers hasten their departure.”¹³⁹ The 1938 report of the Romanian Ministry of Home Affairs reads that “[t]he lack of fresh water on the island is hard to bear . . . the rain water, which is collected in some big cement reservoirs . . . can affect, in a negative way, the alimentary canal, as a consequence of its strange taste and of its specific chemical composition”¹⁴⁰.

35. In its Counter-Memorial, Ukraine argues that fresh water had previously existed on Serpents' Island¹⁴¹, and that a drilling programme started in 2003 found further supplies¹⁴². The first claim is vitiated by evidently inaccurate translations of the two Romanian interwar authors cited by Ukraine¹⁴³. The second is vitiated by Ukraine's misuse of the scientific data provided by Ukraine itself¹⁴⁴. As shown in the Reply, a chemical comparison of the fluid extracted and “treated” by Ukraine with Black Sea water shows that what Ukraine extracted is nothing more than sea water plus further harmful substances. The extract falls well below the accepted health standards for drinking water. Instead of trying to extract this “muddy” fluid — to quote Ukraine's Counter-Memorial, Annex 9 — it would be easier for Ukraine to purify sea water, which is, of course, abundant in the Black Sea¹⁴⁵.

36. In its Rejoinder Ukraine did not contest any of these conclusions, which are, moreover amply confirmed by the Ukrainian press. An article of 2005 reads that

“[t]he water is lacking. Water, water, all around water... But it is marine, salted water, not good to drink. For a long time water was brought here from the mainland, and the reserves were kept in water tanks. Doubtless it was as precious as gold.”¹⁴⁶

According to a 2006 article¹⁴⁷, the head of the Odessa Regional Department for Ecology and Natural Resources declared that “the island continues to suffer because of the lack of potable

¹³⁹CMU, Ann. 57.

¹⁴⁰MR, Ann. 40.

¹⁴¹CMU, p. 23, paras. 3.40-3.41.

¹⁴²CMU, p. 23, para. 3.42.

¹⁴³RR, pp. 143-145, paras. 5.45-5.48.

¹⁴⁴See CMU, Ann. 9 *versus* para. 3.42 of the CMU, p. 23. See also RR, paras. 5.50-5.56.

¹⁴⁵See RR, p. 147-149, paras. 5.53-5.54.

¹⁴⁶MR, Ann. 71.

¹⁴⁷RR, Ann. 7.

water”, which is brought from the mainland. The Ukrainian Accounting Chamber, in a press release of June 2007, this is last year — tab VI-14 in your folders — also notes that “[w]ater supply, water purification . . . are still not available on the island”¹⁴⁸.

37. Madam President and Members of the Court, Serpents’ Island is practically devoid of soil and has very poor vegetation, withered and burnt during summertime. This is confirmed by many sources dating from all periods, including Ukrainian ones¹⁴⁹. For instance, two Ukrainian articles of 2007 — they are in tabs VI-15 and VI-3 in your folders — state that “the isle has no vegetation”¹⁵⁰ and that the only flowers on the island are those painted by a midshipman stationed there¹⁵¹.

38. Despite the efforts by Ukraine to bring soil and plant trees, all these attempts to “improve” the hostile conditions on this piece of rocky territory failed due to the rough and inhospitable climate on Serpents’ Island¹⁵².

39. During his visit to Serpents’ Island in November 2007, the President of Ukraine planted a pine and asked the border guards and the regional department for forests to plant more trees on the island. The Ukrainian press criticized these initiatives as futile. An Odessa journal stated that: “[t]he idea of the president has few chances to succeed. Serpents’ Island . . . is blown by many winds. On this piece of rocky land . . . no tree ever existed.” In that regard, it referred to “a morello cherry tree, planted some years ago by a team of scientists . . . which got withered last year, even if it was taken care heartedly . . .”¹⁵³.

¹⁴⁸Press release of the Accounting Chamber of Ukraine of 26 June 2007, “Great problems of a small island”, in English, available on the official website of this institution at http://www.ac-rada.gov.ua/achamber/control/en/publish/article/main?art_id=953260&cat_id=335.

¹⁴⁹MR, Anns. 6, 40, 42, 43, 44, 46, 47, 48, 49. See also MR, pp. 154-159, paras. 10.29-10.38; RR, pp. 174-175, para. 5.142.

¹⁵⁰Article titled “Ukraine and Romania Struggle Over Status of Strategic Achilles Isle”, the English language Ukrainian weekly *What’s On*, issue No. 5 of 16-27 February 2007, judges’ folder, tab VI-15.

¹⁵¹Article titled “The Island of Misfortunes”, author Vladimir Katkevich, newspaper *Zerkalo Nedeli*, No. 19 (648), 19-25 May 2007, <http://www.zn.ua/1000/1550/59326/>, judges’ folder, tab VI-3.

¹⁵²MR, Anns. 36, 52, 53. See also MR, p. 162, paras. 10.47-10.49.

¹⁵³Article titled “Planning to get to Odessa, Yushchenko only visited Serpents’ Island”, author Dmitri Orlov, the Ukrainian newspaper *Novii Region* of Odessa, 6 November 2007, <http://www.nr2.ru/148600.html>, judges’ folder, tab VI-16.

40. Similarly, the fauna of Serpents' Island is very limited¹⁵⁴. Ukraine's "List of Island's Flora, Fauna and Fish Species" included in one annex to the Counter-Memorial, shows that there are no mammals there, with the exception of two species of rat and two types of bat¹⁵⁵. Madam President, even the serpents that gave the Island its name are now extinct.

41. Not only is it the case that Serpents' Island is very small, rocky, without water, soil, vegetation, and fauna; it also has an appalling climate. This is attested by many and various sources stretching back to ancient times and confirmed by the annexes to the Counter-Memorial¹⁵⁶. By comparison with this centuries-long litany of complaints, the weather in The Hague (of which judicial notice was once taken by Judge Schwebel (*Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, *I.C.J. Reports 1993*, separate opinion of Judge Schwebel, p. 120) is clement and constant.

42. Serpents' Island "is situated in the driest area of the East-European steppes", having a "total amount of precipitations . . . which is very low and unequally distributed during the year, as it rains mostly during spring and late autumn, thus determining an extremely dry and draughty summer", with storms and strong hurricanes "blowing . . . by day and night, continuously and irritating"¹⁵⁷. The Romanian author I just quoted noted in 1931 that "[i]t was almost impossible for us to leave the dwelling — while our going down on the western side was met by a fierce and almost unimaginable resistance of the strong cold damp hurricane". These "hurricanes are not rare at all on Serpents' Island especially during winter", "fog is a frequent phenomenon in winter and spring, presenting great hazards for navigation"¹⁵⁸ and "during some hard winters, Serpents' Island . . . experience(s) the most terrible frosts", so as the "sea (is) frozen for several kilometres around the island, a real ice bank building around it, which needed a long time to be broken"¹⁵⁹.

43. By contrast "[d]uring summer, the island looks like burnt off, . . . (because) the steppe sun quickly burns it, while the tree shadow is unknown there". That is why, according to another

¹⁵⁴MR, Anns. 42, 44, 46. See also MR, pp. 155-156, paras. 10.32, 10.34, 10.36.

¹⁵⁵CMU, Ann. 85. See also RR, p. 151, para. 5.63 and p. 175, para. 5.143.

¹⁵⁶See CMU, Anns. 9, 10, 63.

¹⁵⁷MR, Ann. 6. See also MR, p. 169, para. 10.68.

¹⁵⁸*Idem.* See also MR, Ann. 54.

¹⁵⁹*Idem.*

author, “[t]he island is empty or almost empty . . . the inhospitable soil, rock burnt by the steppe sun, [is] little sprinkled by rain and randomly covered by a thin layer of red soil, always dry”. He also mentions “the furious torment of the waves, pouring over the island a rain of salted water as pernicious to the life of plants as is the burning sun”¹⁶⁰.

44. The same is true today. Ukrainian press articles of 1995 and 2003 refer to “bad weather, [when] the island is hit by winds from everywhere, . . . storms”¹⁶¹, “strong marine winds [which] blow incessantly” and also a temperature of the soil up to 50°-60° C during summer¹⁶²: “[i]n the summer the sun is merciless, while in the winter a piercing wind blows . . .”¹⁶³. In two words, according to another Ukrainian press article, “extreme conditions”¹⁶⁴. A Ukrainian article of February 2008 (tab VI-17 in your folders) describes the “adventures” of a temporary “inhabitant” of the Island, and the quotation is quite serious: “during storms, the toilets [on Serpents’ Island] are dangerous. ‘Recently, being next to one of them, I was almost pushed by the wind into the sea and I saved myself only by grabbing firmly the handle of the door.’”¹⁶⁵

(4) Serpents’ Island has no resources of any kind and it can sustain no economic life of its own

45. Madam President and Members of the Court, my fourth point is that the Island cannot support and, in fact, has no economic life of its own. Indeed, it cannot sustain any economic activities, as it has no resources of any kind and is incapable of producing anything at all.

46. Its tiny size, the rocky infertile ground of Serpents’ Island, the lack of fresh water and its hostile climate represent an insurmountable barrier for agriculture on any scale, in the absence of which human survival is impossible without constant supplies from outside. In these circumstances, cultivation for commercial purposes, so as to produce some economic life, is unthinkable. For instance, a source of 1940 states that because of the “barren rocks all over the

¹⁶⁰MR, Ann. 43. See also MR, p. 159, para. 10.38.

¹⁶¹*Ibid.*, Ann. 56. See also MR, p. 170, para. 10.69.

¹⁶²*Ibid.*, Ann. 56. See also MR, p. 170, para. 10.70.

¹⁶³*Ibid.*, Ann. 57. See also MR, p. 170, para. 10.71.

¹⁶⁴*Ibid.*, Ann. 52.

¹⁶⁵Article “Houses and sauna for the inhabitants of Serpents’ Island”, author Aleksandr Sibirtzev, the Ukrainian newspaper *Segodnia*, 25 February 2008, <http://www.segodnya.ua/news/903291.html>, judges’ folder, tab VI-17.

place” and the absence of soil, “man can cultivate nothing on this ingrate land”¹⁶⁶. As stated in Annex 57 of the Ukrainian Counter-Memorial, “the island is improper to any agriculture”¹⁶⁷. There are no other natural resources, which makes economic life impossible, and this is also acknowledged by Ukraine: according to another annex to the Counter-Memorial, the arid rocks and stones of the island, though “abundant in quantity”, are “absolutely unsuitable” even for construction purposes¹⁶⁸.

47. Because Serpents’ Island can produce nothing, all supplies are brought from the mainland — with considerable difficulty — for those few who are obliged to stay there to maintain the lighthouse and guard the border. There is an abundance of evidence for this situation in the written pleadings of both Parties¹⁶⁹ and in the Ukrainian media¹⁷⁰. For instance, an official Russian document of 1903 witnesses the dependence of Serpents’ Island upon the mainland: “foodstuff for those [lighthouse keepers] is delivered from Sulina”. A Romanian document of 1938 reports that “supplies are very hard to get, because of the very difficult transportation, while fishing is very hard in the proximity of the island”¹⁷¹. Another Romanian source of 1943 reads that Serpents’ Island “sits as deserted as it was at the time of Herodotus’s trips. At various, rather long periods of time, a small ship brings the necessary supplies to the lighthouse keeper, to the patrols taking care of the light . . .”¹⁷².

48. It is the same in our times. A 2002 Ukrainian article reads that the few transports between the Island and mainland are done by helicopter which “secures . . . only a minimum of all that is needed”¹⁷³. A Ukrainian newspaper tells us in 2003 that “[b]ecause of the bad weather and storms, all supplies, including potable water, are brought from the continent to last for several months”¹⁷⁴. A 2006 article published in the same Ukrainian newspaper reports that “as climate

¹⁶⁶MR, Ann. 46.

¹⁶⁷CMU, Ann. 63; RR, Ann. 16. See also RR, p. 178, para. 5.153.

¹⁶⁸*Ibid.*, Ann. 57. See also RR, p. 184, para. 5.176.

¹⁶⁹MR, Anns. 40, 43, 45, 49, 62; CMU, Anns. 5, 12, 66, 96.

¹⁷⁰See MR, Anns. 50, 51, 65, RR, Ann. 15.

¹⁷¹MR, Ann. 40.

¹⁷²*Ibid.*, Ann. 43.

¹⁷³*Ibid.*, Ann. 65.

¹⁷⁴*Ibid.*, Ann. 51.

dictates its own conditions . . . there are permanent deposits of supplies for 3-4 months”¹⁷⁵. The same situation was reported in June 2008 — that is only two months ago — when a Ukrainian press agency wrote (it is tab VI-11 in your folders) that “supplying with all that is necessary, including potable water, is done by helicopter and by sea”¹⁷⁶.

49. In the absence of external supplies, life is impossible on Serpents’ Island¹⁷⁷. A French traveller who published his travels in 1876 tells about the survivors of a Turkish crew, shipwrecked on Serpents’ Island after a terrible storm, who “ended by eating one another” due to the lack of supplies on the Island, called by him a “desolated place”. Of the 25 shipwrecked, only four survived, “when the arrival of a ship saved them from hopelessness and a certain death”¹⁷⁸.

50. Due to its isolated position, the dangerous rocks in the surrounding waters and its rough climate, Serpents’ Island always was — and still is — almost inaccessible¹⁷⁹ or, as a Ukrainian article reads, “a remote, difficult to reach spot”¹⁸⁰, either by sea or by air.

51. Indeed, according to a 2002 Ukrainian article, “[i]n case of a more or less serious storm the ships cannot remain near the shore”¹⁸¹. Another 2002 article states that, “the island . . . is currently inaccessible from the sea. The rocky vertical shores and the underwater rocks do not permit the maintaining of regular links with the continent. The main means of transportation to the island . . . currently remains the helicopter”¹⁸² but these flights are rare¹⁸³ and dangerous. Another article from 2004 reads that the “access to the island is very difficult. . . . An unimpeded communication with Serpents’ Island remains only a project”¹⁸⁴, which is confirmed by another

¹⁷⁵RR, Ann. 15. See also RR, p. 183, para. 5.172.

¹⁷⁶News item titled “The Regional Council established the limits of the settlement of Serpents’ Island”, the Ukrainian Press Agency *Reporter*, 6 June 2008, http://www.reporter.com.ua/cgi-bin/view_material.pl?mt_id=33071, judges’ folder, tab VI-11.

¹⁷⁷See, for instance, CMU, Ann. 52. See also RR, p. 176, para. 5.149.

¹⁷⁸MR, Ann. 55.

¹⁷⁹*Ibid.*, Anns. 38, 39, 40, 43, 45, 46, 47; CMU, Anns. 12, 13, 14, 50. See also RR, p. 176, para. 5.148; RR, pp. 181-182, paras. 5.164-5.166.

¹⁸⁰MR, Ann. 57.

¹⁸¹*Ibid.*, Ann. 33.

¹⁸²*Ibid.*, Ann. 64.

¹⁸³*Ibid.*, Ann. 51.

¹⁸⁴*Ibid.*, Ann. 66.

piece of news of 2007, showing that “(a) problem of priority importance still is the transport connection”¹⁸⁵.

52. Despite Ukraine’s efforts to build a berth there, the results proved to be unsatisfactory in terms of safe access to Serpents’ Island, due to its natural features¹⁸⁶; and the situation was still the same in November 2007 when Ukraine’s President asked that the “local moorage” issue be solved¹⁸⁷. According to the official website of the President of Ukraine, “he thinks it is important . . . to ensure that its residents can travel to the continental part of the country regularly”¹⁸⁸. I note that even the official press release avoids using the word “population”, as the so-called “residents” — some border guards, lighthouse keepers, scientists, isolated on this remote place for short periods — do not represent a population.

53. Madam President and Members of the Court, a place which cannot sustain human life cannot have an economic life, because the economy is a social phenomenon, intrinsically linked with human life. The smallness of the island, its remoteness and isolation, the great difficulty of access to it, either by sea or by air, its arid and hostile climate, the fact that it produces nothing, its lack of any kind of resources, the fact that all supplies, including food and water, must be brought with considerable difficulty from the mainland — all these are well documented¹⁸⁹. They cannot be changed by the recent attempts by Ukraine to create another, artificial, “reality”, as I will show in my speech tomorrow. These natural characteristics of Serpents’ Island are enough to exclude *a priori* any possibility that it can sustain economic life of its own even at the most basic level.

54. Faced with this unmistakable fact, Ukraine is reduced to the unsupported assertion that “Serpents’ Island is fully capable of having an economic life of its own”¹⁹⁰. But in its Rejoinder,

¹⁸⁵News item titled “The inhabitants of Serpents’ Island do not live an easy life”, the Ukrainian Press Agency *Podrobnosti*, 30 August 2007, <http://www.podrobnosti.ua/podrobnosti/2007/08/30/452743.html>, judges’ folder, tab VI-8.

¹⁸⁶CMU, Ann. 5. See also RR, p. 181, para. 5.163.

¹⁸⁷Press Communiqué “President wants to develop Zmiynny” (in English in the original), official website of the President of Ukraine, 6 November 2007, <http://www.president.gov.ua/en/news/8061.html>, judges’ folder, tab VI-18.

¹⁸⁸Press Communiqué “President visits Zmiynny Island” (in English in the original), official website of the President of Ukraine, 6 November 2007, <http://www.president.gov.ua/en/news/8057.html>, judges’ folder, tab VI-19.

¹⁸⁹See, for example, MR, pp. 173-179, paras. 10.80-10.100; RR, pp. 156-160, paras. 5.80-5.93 and pp. 181-187, paras. 5.162-5.184; CMU, Anns. 5, 9, 12, 13, 14, 57, 67, 68, 74, 84, 87, 88, 95, 96.

¹⁹⁰RU, p. 116, para. 6.69.

there is no single document or piece of evidence in support of this assertion. That being so, there is, quite simply, nothing for me to respond to.

Conclusions

55. Madam President, Members of the Court, according to the data and indeed the abundance of evidence displayed, it is as clear as may be that Serpents' Island is incapable of sustaining any human habitation or economic life of its own because:

- first, it is a very small rocky feature in the Black Sea, insignificant in the context of the geography of the area; it is not integrated with the coast, it is secluded, access to it being very difficult;
- second, it never had and does not now have a population, and it is incapable of sustaining one;
- third, it is devoid of soil, of vegetation, of animals, of water, it has a very rough, unbearable climate;
- fourth, it has no resources and is incapable of producing anything at all; and is thus incapable of sustaining any economic activities.

56. Madam President, that concludes my presentation and, with your permission, the pleadings of Romania today. I am grateful to the Court for its attention and patience. Thank you.

The PRESIDENT: Thank you, Dr. Aurescu. The Court now rises and will resume tomorrow morning at 10 o'clock.

The Court rose at 12.50 p.m.
