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*CR 2008/26*

**International Court of Justice**

**THE HAGUE**

**Cour internationale de Justice**

**LA HAYE**

**YEAR 2008**

***Public sitting***

***held on Wednesday 10 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)**

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**VERBATIM RECORD**

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**ANNÉE 2008**

***Audience publique***

***tenue le mercredi 10 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)**

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**COMPTE RENDU**

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| *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

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

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Mr. Octavian Buzatu, Lieutenant Commander (retired),

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The PRESIDENT: Please be seated. We meet this morning, with the sitting now open, to continue the first round of pleadings of Ukraine and I call Professor Quéneudec.

M. QUÉNEUDEC : Thank you, Madam président.

## IV. LE DROIT APPLICABLE À LAL DÉLIMITATION MARITIME ENTRE L'UKRAINE ET LA ROUMANIE

### (SUITE)

40. Madame le président, Messieurs les juges, à la fin de l'audience d'hier matin, j'ai abordé la deuxième partie de mon exposé sur le droit applicable en l'espèce. Cette partie comporte les trois points suivants :

1) le processus de délimitation prescrit par le droit international ;
2) l'établissement d'une ligne provisoire d'équidistance ;
3) l'examen des circonstances pertinentes.

### 1) Le processus de délimitation prescrit par le droit international

La règle applicable en matière de délimitation prescrit aujourd'hui le recours soit à la méthode associant équidistance et circonstances spéciales, soit à la méthode combinant principes équitables et circonstances pertinentes. Bien qu'elles soient en principe applicables à la délimitation de zones maritimes différentes, ces deux méthodes sont cependant intimement et étroitement liées entre elles.

41. Ce que la Cour elle-même a d'ailleurs expressément souligné en 2001 dans l'affaire *Délimitation maritime et questions territoriales entre Qatar et Bahreïn (Qatar c. Bahreïn)* (*fond, arrêt, C.I.J. Recueil 2001*, p. 111, par. 231).

42. Lorsqu'il s'agit, comme en la présente espèce, de déterminer une ligne unique délimitant des zones maritimes situées au-delà de la limite extérieure de la mer territoriale des deux Etats, «les critères, principes et règles applicables» en pareil cas «trouvent leur expression dans la méthode dite des principes équitables/circonstances pertinentes», pour reprendre les termes employés par votre arrêt dans l'affaire de la *Frontière terrestre et maritime entre le Cameroun et le Nigéria*

*(Cameroun c. Nigéria ; Guinée équatoriale (intervenant))* (*C.I.J. Recueil 2002*, p. 441, par. 288). Et, dans cet arrêt du 10 octobre 2002, vous en avez donné la définition suivante :

> «Cette méthode, très proche de celle de l'équidistance/circonstances spéciales applicable en matière de délimitation de la mer territoriale, consiste à tracer d'abord une ligne d'équidistance puis à examiner s'il existe des facteurs appelant un ajustement ou un déplacement de cette ligne afin de parvenir à un «résultat équitable».» *(Ibid.)*

43. Ces deux méthodes sont d'ailleurs si proches l'une de l'autre qu'elles finissent par se confondre. Derrière l'incontestable différence des formules, on trouve en définitive un seul et même processus.

44. Se référant précisément à vos deux arrêts de 2001 et 2002, le tribunal arbitral chargé de la délimitation maritime entre la Barbade et la République de Trinité-et-Tobago a donné une description détaillée du processus de délimitation dans sa sentence du 11 avril 2006 :

> «The determination of the line of delimitation … normally follows a two-step approach. First, a provisional line of equidistance is posited as a hypothesis and a practical starting point. While a convenient starting point, equidistance alone will in many circumstances not ensure an equitable result in the light of the peculiarities of each specific case. The second step accordingly requires the examination of this provisional line in the light of relevant circumstances, which are case specific, so as to determine whether it is necessary to adjust the provisional equidistance line in order to achieve an equitable result.»[1]

45. La raison essentielle de ce recours à un processus en deux étapes est à rechercher avant tout dans l'exigence d'objectivité et de certitude qui imprègne aujourd'hui le droit de la délimitation maritime. «[T]he need to avoid subjective determinations requires that the method used start with a measure of certainty that equidistance positively ensures, subject to its subsequent correction if justified»[2], a encore fait valoir la sentence précitée *Barbade/Trinité-et-Tobago*.

46. Votre jurisprudence reconnaît certes que cette démarche en deux temps peut être tenue en échec dans des cas tout à fait exceptionnels. Il en est ainsi notamment lorsqu'un ou plusieurs éléments de la situation géographique rendent impossible ou extrêmement malaisé le tracé d'une ligne d'équidistance provisoire.

47. Dans la dernière affaire de délimitation maritime que vous avez été appelés à trancher, entre le Nicaragua et le Honduras, vous avez été confrontés en particulier au phénomène de

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[1] *International Legal Materials (ILM)*, vol. 45 (2006), p. 798, par. 242.

[2] *Op. cit.*, par. 306.

l'instabilité de la ligne côtière des deux Etats dans la région du cap Gracias a Dios. Vous avez été amenés à constater que des difficultés d'ordre géographique et géologique rendaient impossible la détermination de points de base stables et fiables dans cette région. Et en conséquence, avez-vous dit, «la Cour se trouve dans l'impossibilité de définir des points de base et de construire une ligne d'équidistance provisoire pour établir la frontière maritime unique délimitant les espaces maritimes au large des côtes continentales des Parties» (*Différend territorial et maritime entre le Nicaragua et le Honduras dans la mer des Caraïbes*, arrêt du 8 octobre 2007, par. 280).

48. Mais, ce faisant, la Cour a cependant reconnu que commencer par la construction d'une ligne provisoire d'équidistance était bien la manière normale de procéder. Et que, après avoir noté qu'elle se trouvait «face à des circonstances spéciales qui ne lui permett[aient] pas d'appliquer le principe de l'équidistance», la Cour a tenu à préciser : «Ce dernier [c'est-à-dire le principe de l'équidistance] n'en demeure pas moins la règle générale.» (*Ibid.*, par. 281.)

49. La règle générale consiste donc bien à établir en premier lieu une ligne d'équidistance provisoire.

**2) L'établissement d'une ligne provisoire d'équidistance**

50. Dans cette première étape du processus, la seule difficulté qui peut se présenter tient à l'identification et au choix des points de référence à partir desquels sera établie la ligne d'équidistance et, points de référence que l'on désigne traditionnellement sous le nom de points de base.

51. Eu égard à l'importance que ce problème revêt pour la solution à retenir dans la présente affaire, la Cour me permettra sans doute de consacrer à présent quelques développements aux données générales qui président à la détermination des points de base.

**a) *Détermination des points de base***

52. Pour déterminer l'emplacement des points qui serviront d'ancrage terrestre à la ligne maritime d'équidistance, il convient naturellement de ne pas perdre de vue que le processus de délimitation par voie judiciaire est entièrement gouverné par le droit. Dès lors, il est à la fois nécessaire et suffisant de se fonder sur la notion première qui préside à la définition des différentes zones maritimes sur lesquelles un Etat côtier exerce sa souveraineté ou sa juridiction. De ce point

de vue, la notion de côte est bien entendu la notion essentielle ; car c'est la côte qui est déterminante pour créer le titre juridique de l'Etat.

53. Or, chacun sait que, pour définir l'étendue des zones maritimes d'un Etat côtier, la côte est représentée par les lignes de base définies par l'Etat côtier lui-même. Lorsque ces lignes de base sont constituées par la laisse de basse mer, elles sont le reflet du trait de côte, dont elles suivent plus ou moins les contours. Lorsqu'il s'agit de lignes de base droites, elles apparaissent comme des figures plus ou moins stylisées de la côte qui ne peuvent pas normalement s'écarter de la direction générale de celle-ci. Cependant, dans l'un et l'autre cas, les lignes de base sont la représentation du rivage physique par l'intermédiaire duquel s'engendrent les droits de l'Etat côtier sur la mer adjacente. Ce sont, en effet, les lignes de base que l'on utilise, non seulement pour mesurer la largeur de la mer territoriale, mais aussi pour déterminer l'étendue de la zone économique exclusive et du plateau continental.

54. C'est pourquoi, lorsqu'il s'agit d'identifier les points de base qui serviront à tracer une ligne d'équidistance provisoire, ces points de base seront choisis sur les lignes de base à partir desquelles est mesurée la largeur de la mer territoriale. C'est ce que prévoit d'ailleurs expressément l'article 15 de la convention des Nations Unies sur le droit de la mer, relatif à la délimitation de la mer territoriale, pour la mise en œuvre de la méthode associant équidistance et circonstances spéciales. Cet article parle de «la ligne médiane dont tous les points sont équidistants des points les plus proches des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale de chacun des deux Etats».

55. Toutefois, en dehors de cette indication assez générale, il n'existe dans le droit de la mer contemporain aucune disposition écrite ni aucune règle coutumière précisant de quelle manière doit ou peut être choisi tel ou tel point sur une ligne de base. Cela tient au fait que la sélection des points qui vont servir à déterminer le tracé d'une ligne d'équidistance n'est pas en soi une question appelant une réponse juridique. La détermination de ces points de base soulève une question essentiellement technique.

56. Ce sont, en effet, des experts hydrographes et cartographes qui sont en mesure de procéder à l'identification des points susceptibles d'être retenus à cette fin sur une laisse de basse mer ou sur des lignes de base droites. Ce sont ces experts qui définissent par des coordonnées

géographiques les points de base qu'ils considèrent comme techniquement pertinents pour tracer la ligne provisoire d'équidistance.

57. La pertinence de ces points est alors appréciée du seul point de vue de leur distance respective par rapport à la ligne dont il revient aux experts de calculer le tracé. En effet, comme l'avait noté la Cour à l'occasion de l'affaire *Libye/Malte*, «une ligne d'équidistance repose sur un principe de proximité» (*Plateau continental (Jamahiriya arabe libyenne/Malte), arrêt, C.I.J. Recueil 1985*, p. 44, par. 56).

58. Le droit international n'ordonne rien d'autre en cette matière. Celle-ci relève avant tout de la géométrie et de la mathématique, comme le montre clairement le recours systématique que l'on fait aujourd'hui aux ordinateurs pour calculer de façon précise le tracé d'une ligne provisoire d'équidistance.

59. Ce n'est qu'à un stade ultérieur, lors de la deuxième étape du processus de la délimitation, que des considérations d'équité peuvent conduire à corriger éventuellement l'effet produit par certains points de base, parce que la règle de droit applicable oblige à tenir compte de circonstances spéciales ou de circonstances jugées pertinentes au regard de la norme fondamentale du résultat équitable. Mais, au stade initial de l'établissement de la ligne provisoire d'équidistance, ce sont des considérations d'ordre purement technique qui dominent l'opération de sélection des points de base servant à déterminer le tracé de cette ligne.

60. Si le droit international ne comporte pas de règles précisant de quelle manière sont définis ou choisis les points de base, il ne fixe pas non plus d'exigence quant au nombre de points de base appropriés qu'il convient de retenir sur les côtes pertinentes. On peut seulement affirmer que, pour des raisons évidentes, il en faut au moins deux, un sur chacune des côtes en présence. C'est ainsi que, dans l'affaire *Cameroun c. Nigéria*, la Cour n'a retenu que deux «points d'ancrage terrestre pour la construction de la ligne d'équidistance» (*Frontière terrestre et maritime entre le Cameroun et le Nigéria (Cameroun c. Nigéria ; Guinée équatoriale (intervenant)), arrêt, C.I.J. Recueil 2002*, p. 443, par. 292), selon ses propres termes. Tout dépend de la configuration côtière et de l'étendue de la zone maritime dans laquelle doit intervenir la délimitation.

61. De même, le droit international n'exige pas que soit fixé un nombre égal de points de base sur chacune des côtes pertinentes. Le nombre de points de base retenus sur chaque côte

dépend ici aussi de la situation géographique, c'est-à-dire de la configuration réelle des côtes et de l'étendue plus ou moins grande de la zone maritime en cause. Les sentences arbitrales rendues récemment entre la Barbade et Trinité-et-Tobago, d'une part, et le Guyana et Suriname, d'autre part, en fournissent une bonne illustration.

62. De l'ensemble de ces constatations portant sur la manière dont sont déterminés les points de base découle une conséquence importante quant au rôle que ces points de base sont appelés à jouer dans le processus de délimitation.

**b)** ***Rôle des points de base***

63. Les points de base jouent un rôle purement technique et ne servent qu'à calculer le tracé de la ligne provisoire d'équidistance. On ne saurait leur conférer une valeur juridique intrinsèque d'où il résulterait, par exemple, qu'ils pourraient influer sur la définition des côtes pertinentes.

64. C'est notamment ce qu'a tenu à souligner le tribunal d'arbitrage *Barbade/Trinité-et-Tobago* en récusant la thèse d'une des parties, qui avait prétendu que la ligne de côte à prendre en considération pour la comparaison des longueurs côtières était seulement la portion de littoral sur laquelle se trouvaient les points de base pertinents. Le tribunal a considéré, en effet, que les points de base ne pouvaient pas jouer un rôle déterminant pour l'identification des façades côtières. Selon lui :

> «basepoints have a role in effecting the delimitation and in the drawing of the provisional equidistance line. But relevant coastal frontages are not strictly a function of the location of basepoints, because the influence of coastlines upon delimitation results not … from their contribution of basepoints to the drawing of an equidistance line, but from their significance in attaining an equitable and reasonable outcome.»[3]

65. Cette jurisprudence arbitrale n'a toutefois fait que développer sur ce point ce qui était en germe dans votre propre jurisprudence. Les arbitres se sont en quelque sorte bornés à expliciter ce que votre Cour avait déjà laissé entendre dans l'affaire *Qatar c. Bahreïn*, lorsqu'elle avait décidé qu'il convenait de déterminer «en premier lieu les côtes pertinentes des Parties, à partir desquelles sera fixé l'emplacement des lignes de base ainsi que des points de base appropriés permettant de construire la ligne d'équidistance» (*Délimitation maritime et questions territoriales entre Qatar et Bahreïn (Qatar c. Bahreïn), fond, arrêt, C.I.J. Recueil 2001*, p. 94, par. 178).

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[3] Sentence du 11 avril 2006, par. 329, *ILM*, vol. 45 (2006), p. 798.

66. Il est donc clair que la définition des côtes pertinentes aux fins de la délimitation doit intervenir avant et précéder la détermination des points de base.

67. Et une fois que la ligne provisoire d'équidistance a été établie, il faut encore procéder à son évaluation et évaluer et apprécier son caractère équitable à la lumière des circonstances pertinentes. C'est la deuxième étape du processus et le troisième point de mon exposé de ce matin.

**3) L'examen des circonstances pertinentes**

68. Madame le président, Messieurs les juges, la deuxième étape du processus, c'est-à-dire l'examen de l'ensemble des circonstances pertinentes de la région maritime concernée par la délimitation, cette deuxième étape est aussi la plus délicate. C'est celle à l'occasion de laquelle se manifeste le plus fréquemment ce que trois éminents juges particulièrement inspirés avaient naguère appelé le «subjectivisme prétorien» (affaire du *Plateau continental (Jamahiriya arabe libyenne/Malte*), opinion conjointe de MM. Ruda, Bedjaoui et Jiménez de Aréchaga, *C.I.J. Recueil 1985*, p. 90, par. 37).

69. La raison en est qu'il n'existe pas et qu'il ne peut sans doute pas exister de définition générale de la notion de circonstances pertinentes. Celles-ci sont, en effet, éminemment variables d'une affaire à l'autre. Elles apparaissent comme spécifiques à chaque affaire de délimitation, parce que le cadre dans lequel doit intervenir la délimitation n'est pas le même d'une affaire à l'autre. La situation de chaque cas présente des caractéristiques qui lui sont propres. Et ce sont ces éléments de variabilité et de spécificité des circonstances qui font dire souvent que chaque cas est un «*unicum*».

70. Pourtant, on observe quelques constantes dans l'examen que fait le juge ou l'arbitre des circonstances propres à chaque affaire de délimitation qui lui est soumise. Ainsi est-il désormais bien établi que seules peuvent être retenues des circonstances qui apparaissent comme *juridiquement* pertinentes, c'est-à-dire des circonstances qui ont un rapport avec la juridiction maritime qui est en cause dans la délimitation.

71. En d'autres termes, seront donc regardés comme présentant un certain degré de pertinence des éléments, des facteurs ou des considérations qui sont liés au titre juridique dont peuvent se prévaloir les Etats Parties à l'instance. Cela résulte de la mise en garde faite par votre

Cour dans l'affaire *Libye/Malte* lorsqu'elle bannissait le recours à des considérations étrangères à la notion de plateau continental : «bien qu'il n'y ait certes pas de liste limitative des considérations auxquelles le juge peut faire appel, de toute évidence seules pourront intervenir celles qui se rapportent à l'institution du plateau continental telle qu'elle s'est constituée en droit…» (*Plateau continental (Jamahiriya arabe libyenne/Malte), arrêt, C.I.J. Recueil 1985*, p. 40, par. 48).

72. Ici aussi, la côte, en tant qu'elle est à la base du titre, constitue donc la référence essentielle. C'est pourquoi les circonstances qui peuvent apparaître pertinentes doivent avant tout être recherchées dans les caractéristiques des côtes des Etats en cause, c'est-à-dire dans les particularités de la géographie côtière. Ainsi, se penchant sur l'identification de ces circonstances et se fondant sur la jurisprudence de votre Cour en ce domaine, le tribunal arbitral *Barbade/Trinité-et-Tobago* — encore lui — a-t-il pu souligner : «That determination has increasingly been attached to geographical considerations, with particular reference to the length and the configuration of the respective coastlines and their characterization as being opposite, adjacent or in some other relationship.»[4]

73. Rares sont en effet les décisions judiciaires ou arbitrales dans lesquelles le juge ou l'arbitre a constaté l'absence de toute particularité dans la géographie côtière qui serait de nature à entraîner une quelconque modification de la ligne d'équidistance provisoire, à l'instar de votre arrêt dans l'affaire *Cameroun c. Nigéria*, par exemple ou de la sentence *Guyana/Suriname*.

74. Dans presque toutes les affaires de délimitation maritime qui ont été jusqu'à ce jour soumises à la Cour ou à une instance arbitrale, la comparaison des longueurs des côtes pertinentes a tenu une place non négligeable et a même joué un rôle décisif dans plusieurs des décisions qui ont été prises.

75. Le fait que les côtes en présence soient d'égales longueurs ou de longueurs comparables a pu, par exemple, être retenu comme un facteur conduisant à écarter ou rectifier le tracé d'une ligne d'équidistance qui ne reflétait pas cette égalité géographique de départ. C'est notamment ce qui s'est produit dans l'*Arbitrage franco-britannique* de 1977 s'agissant de la délimitation du plateau continental dans le secteur Atlantique (dans les «*Western approaches*»).

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[4] Sentence du 11 avril 2006, par. 233.

76. Et l'on rappellera, dans le même ordre d'idées, le constat que la Cour avait dressé à ce sujet, dans les affaires du *Plateau continental de la mer du Nord* où étaient en présence

> «trois Etats dont les côtes sur la mer du Nord sont justement d'une longueur comparable et qui par conséquent ont été traités à peu près également par la [géographie], sauf que l'une de ces côtes par sa configuration priverait l'un des Etats d'un traitement égal ou comparable à celui que recevraient les deux autres si l'on utilisait la méthode de l'équidistance» (*Plateau continental de la mer du Nord (République fédérale d'Allemagne/Danemark) (République fédérale d'Allemagne/Pays-Bas), arrêt, C.I.J. Recueil 1969*, p. 50, par. 91).

77. Inversement, une inégalité flagrante ou même une simple disparité des longueurs côtières a été regardée à plusieurs reprises comme une circonstance appelant une modification plus ou moins importante de la ligne d'équidistance. Il suffit de mentionner les exemples des décisions prises par votre Cour dans les affaires *Golfe du Maine*, *Libye/Malte* ou *Jan Mayen*.

78. Et précisément dans cette dernière affaire, vous aviez notamment relevé dans votre arrêt de 1993 que «les différences de longueurs des côtes … sont si importantes que cette caractéristique est un élément à prendre en considération lors de l'opération de délimitation» (*Délimitation maritime dans la région située entre le Groenland et Jan Mayen (Danemark c. Norvège), arrêt, C.I.J. Recueil 1993*, p. 68, par. 68) ; et vous en aviez tiré une conséquence immédiate : «à la lumière de la disparité des longueurs des côtes, la ligne médiane devrait être ajustée ou déplacée» (*ibid.*, p. 69, par. 69).

79. Quant au rôle susceptible d'être joué par la configuration côtière, présentée quelquefois comme une catégorie particulière de circonstance pertinente, on se bornera à noter que, sous cette expression, peuvent se dissimuler différentes approches.

80. Tantôt, on y verra avant tout le caractère concave ou convexe de la côte, comme c'était principalement le cas dans les affaires du *Plateau continental de la mer du Nord*. Tantôt, on y fera entrer le changement radical de la direction générale du littoral d'une des parties, comme dans les affaires *Tunisie/Libye* et *Nicaragua c. Honduras*. Tantôt, encore, on englobera dans cette expression à la fois la relation d'opposition des côtes et leur situation respective dans un cadre géographique particulier, comme dans l'affaire *Libye/Malte*. Tantôt, enfin, on élargira cette notion à la configuration géographique générale de la zone maritime où doit intervenir la délimitation,

comme cela fut fait dans l'affaire *Cameroun c. Nigeria* et, dans une certaine mesure, dans l'arbitrage *Guyana/Suriname*.

81. Il y a là incontestablement une marge d'appréciation assez grande à l'intérieur de laquelle peut et sans doute doit s'exercer la «discrétion judiciaire» (the «judicial discretion») à laquelle faisait allusion la sentence rendue il y a deux ans par un tribunal présidé par un ancien président de la Cour[5].

82. Cette même possibilité d'appréciation discrétionnaire se retrouve également face à l'existence dans la région d'une ou de plusieurs formations insulaires.

83. Un examen attentif de la jurisprudence en matière de délimitation maritime révèle que des traitements différents peuvent être appliqués aux îles, surtout lorsqu'il est possible de distinguer différentes sortes d'îles, comme l'avait fait le tribunal arbitral pour la *Délimitation de la frontière maritime Guinée/Guinée Bissau* (sentence du 14 février 1985, par. 95). Cette différence de traitement entre les îles se fait, semble-t-il, moins en fonction de la taille des îles en cause qu'en raison de leur localisation géographique et de leur rapport avec la côte continentale, comme on a encore pu le constater dans l'affaire *Qatar c. Bahreïn*.

84. Il apparaît aussi que c'est surtout la situation d'une île dans le contexte géographique général et par rapport à l'ensemble des autres circonstances pertinentes qui peut conduire le juge ou l'arbitre à en faire ou non soit une circonstance spéciale, soit une circonstance particulièrement pertinente. Et c'est cet élément qui est, en définitive, pris en considération pour décider quel effet attacher à l'île.

85. On retrouvera naturellement encore cette grande marge d'appréciation du juge lorsqu'il s'agira de mettre en balance l'ensemble des circonstances qui auront été considérées comme pertinentes. Dans cette opération, ce qui importe, c'est de parvenir à «déterminer l'équilibre entre diverses considérations», selon la formule de l'arrêt *Jan Mayen* (*Délimitation maritime dans la région située entre le Groenland et Jan Mayen (Danemark c. Norvège), arrêt, C.I.J. Recueil 1993*, p. 63, par. 58). La prise en compte de l'ensemble des circonstances a en effet pour fin ultime le tracé d'une ligne qui soit équitable au regard de toutes les particularités factuelles du cas d'espèce,

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[5] Arbitrage *Barbade/Trinité-et-Tobago*, par. 244.

et pas seulement au regard d'un facteur particulier. En effet, comme vous l'avez souligné dans l'affaire *Qatar c. Bahreïn*, le but est de parvenir à «une solution équitable qui tienne compte de tous les autres facteurs pertinents» (*Délimitation maritime et questions territoriales entre Qatar et Bahreïn (Qatar c. Bahreïn), fond, arrêt, C.I.J. Recueil 2001*, p. 115, par. 248).

86. L'un des moyens mis au point par votre jurisprudence afin d'apprécier la conformité d'une ligne de délimitation à la norme fondamentale de la solution équitable réside bien entendu dans le test de proportionnalité. Il en a déjà été question dans l'exposé introductif présenté par M[e] Bundy ; il y reviendra à la fin de la présentation des thèses de l'Ukraine. Aussi n'est-il pas besoin d'en dire davantage ici. Je me permettrai de renvoyer respectueusement la Cour à cette autre plaidoirie.

87. Madame le président, Messieurs les juges, parvenu au terme de mon exposé, je voudrais remercier la Cour pour l'attention qu'elle a bien voulu me prêter et pour la patience dont elle a fait preuve à l'égard de cet exposé un peu théorique.

88. Madame le président, M[e] Bundy doit poursuivre les arguments de l'Ukraine en présentant le contexte géographique de l'affaire.

Could you please give the floor now to Mr. Bundy. Thank you, Madam.

The PRESIDENT: Thank you, Professor Quéneudec. We now call Mr. Bundy.

Mr. BUNDY: Thank you, Madam President.

## V. THE GEOGRAPHICAL CONTEXT: THE RELEVANT COASTS AND THE RELEVANT AREA

### Introduction

1. Madam President, Members of the Court, as Professor Quéneudec has explained, the application of the principles and rules of international law relating to maritime delimitation depends primarily on the geographical characteristics of the area to be delimited, particularly the coasts of the Parties. Now this is true with respect to a coastal State's entitlement to maritime areas lying off its coasts, and it is equally true with respect to questions of delimitation in situations where the legal entitlements generated by the coasts of two States meet and overlap.

2. In the light of these considerations, my task this morning is to examine the coastal geography of the Parties in somewhat greater detail than I did in my opening presentation yesterday. The geographic area of concern is well defined in this case as lying in the north-west corner of the Black Sea. This area is bounded solely by the two States that are Parties to this case — Ukraine and Romania.

3. It is within this area that my discussion of the geographic facts will be focused. I will start by taking up the issues that divide the Parties in relation to the relevant coasts, in the first part of my presentation, and then subsequently I will deal with the identification of the relevant area.

4. With that introduction, let me turn directly to the relevant coasts of the Parties, starting with Ukraine's coast. I will first describe the characteristics of Ukraine's mainland coast, and then afterwards I'll turn to Serpents' Island.

## 1. The relevant coasts of the Parties

### A. Ukraine's relevant coast

[Slide]

#### (i) *Ukraine's mainland coast*

5. The map that now appears on the screen — which is in tab 20, which is where my tabs begin today — depicts the north-west corner of the Black Sea. As I pointed out in my earlier intervention, Ukraine's mainland coast borders three sides of this area. On the west, Ukraine's coast stretches from the end of the land boundary with Romania up to roughly the city of Odessa, and an important point — Illichivs'k [highlight in green on the map]. On the north, the coast then extends eastwards towards the Karkinits'ka Gulf [highlight on map]. On the east, Ukraine's coast then extends to Cape Sarych on the south-west tip of Crimea [highlight on map]. Both Parties agree that Ukraine's coast east of Cape Sarych is not relevant to the present dispute.

6. In considering the question of the identification of the relevant coasts, it is useful to recall the Court's statement in the *Tunisia/Libya* case that: "The geographic correlation between coast and submerged areas off the coast is the basis of the coastal State's legal title." (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 73.) And the Court added:

> "The coast of each of the Parties, therefore, constitutes the starting line from which one has to set out in order to ascertain how far the submarine areas appertaining to each of them extend in a seaward direction, as well as in relation to neighbouring States situated either in an adjacent or opposite position." (*Ibid.*, p. 61, para. 74.)

7. While the Court made these pronouncements in the context of a case involving continental shelf delimitation, they are all the more applicable to the delimitation of a single maritime boundary, where geographic factors play a predominant role. As Professor Lowe rightly emphasized last Friday: "It is the coastline that generates the maritime zones." (CR 2008/21, p. 56, para. 19.)

8. Each of the segments of Ukraine's coast generates 200-nautical-mile entitlements which extend over the entire area to be delimited with Romania. Professor Lowe seems to think that a State's entitlements can only extend in a perpendicular direction to its coastal front. But this is incorrect. The entitlement of a coastal State to continental shelf and exclusive economic zones is a spatial concept, and those entitlements extend in all directions from the coast. Perpendicular entitlements find no expression in the Law of the Sea Convention, and they find no expression under customary international law.

9. It is striking that Ukraine's south-facing coast — this is the part of the coast that Romania seeks to suppress — generates a 200-nautical-mile entitlement throughout the area of concern in this case. In fact, all three parts of Ukraine's coast give rise to maritime entitlements and project into the area to be delimited with Romania.

10. But contrary to the impression Romania seeks to convey, this underscores the relevance of the entirety of Ukraine's mainland coast bordering this part of the Black Sea for purposes of the present delimitation.

11. Now the length of Ukraine's mainland coast relevant to delimitation with Romania can be measured in at least three ways. The first way is to take account of the actual coast including its sinuosities. This has to be done reasonably, of course, and measured in this way, Ukraine's coasts from the land boundary with Romania, along the north-west corner of the Black Sea down to Cape Sarych, measures some 1,058 km in length, a figure that Romania has not challenged.

12. At the same time, Ukraine appreciates the fact that, for practical purposes, the Court has also considered a party's relevant coast in terms of the general direction that that coast assumes, or in relation to what is commonly known as its "coastal front" or "coastal facade". And it is possible

to simplify Ukraine's coast in this manner, as the graphic on the screen illustrates [slide: fig. 3-1 to Ukraine's Counter-Memorial]. Viewed in this way, the total length of Ukraine's mainland coast fronting the delimitation area, according with its general direction, is roughly 684 km.

13. The third way to assess Ukraine's coast is by taking into account the system of straight baselines that Ukraine enacted and notified to the United Nations in 1992. These baselines are now being shown on the screen — and you can find them at tab 21 of your folders — and Romania's system of straight baselines is also shown on the map [slide: fig. 3-2 to Ukraine's Counter-Memorial]. As you can see, Ukraine has a mixed system of baselines. Along some stretches of the coast, the baseline is the "normal" baseline — in other words, the low-water line along the coast. In other areas, Ukraine has employed the method of straight baselines in conformity with Article 7 of the Law of the Sea Convention. If Ukraine's coast is measured taking into account its straight baselines, the length of that coast is roughly 664 km.

14. Whichever method is employed, the fact remains that Ukraine's coast is substantial in length and all of it projects into the area relevant to delimitation to Romania, not to delimitation with third States.

**(ii) *Serpents' Island***

15. Having examined Ukraine's mainland coast, I would like now to turn to Serpents' Island. It is necessary for me to spend a few minutes on Serpents' Island, if only to respond to Professor Pellet's argument last week that Serpents' Island has no baseline (CR 2008/20, p. 19, para. 24), and to expand on this point from what I mentioned in my remarks yesterday morning.

16. The gist of my good friend's argument went as follows:

— First, Professor Pellet asserted that baselines established by the internal law of a State will only be opposable to other States if they are traced and notified in conformity with international law (CR 2008/20, p. 17, para. 19).

— Second, he pointed out that, while in 1992, Ukraine *did* notify the United Nations of the co-ordinates of its baselines used to measure the outer limit of its territorial sea, that notification made no reference to Serpents' Island (CR 2008/20, p. 18, para. 21).

— Third, and even more gravely according to Professor Pellet, Ukraine did not even *think* to include Serpents' Island in its system of baselines until it filed its Counter-Memorial in this case (CR 2008/20, p. 17, para. 20).

— Fourth, Professor Pellet considers that Ukraine has therefore admitted that Serpents' Island has no baseline, and that it is "abusive" — those were his words — for the island to provide any base points for the construction of the provisional equidistance line (CR 2008/20, p. 19, para. 24), and "artificial and illicit" — two more terms Professor Pellet used — to include it amongst Ukraine's baselines (CR 2008/20, p. 30, para. 90).

17. Every step in that line of argument is fraught with errors that I shall now seek to explain. Let me start with the most basic proposition — one that I mentioned yesterday.

18. Because Serpents' Island has a coast, it follows that it has a baseline. *All* islands have baselines. Indeed, even low-tide elevations, situated within the territorial sea of the mainland or of an island, have baselines under Article 13 of the Law of the Sea Convention. Romania accepts that Serpents' Island has at least a territorial sea and this presupposes, necessarily, the existence of a baseline for measuring the breadth of that territorial sea.

19. Ukraine's 1991 Law on the State Frontier stipulates that Ukraine has a 12-mile territorial sea — and I will quote from the law — "measured from the line of minimum low tide both on the mainland and on islands belonging to Ukraine, or from straight baselines joining the corresponding points" (Ukraine Counter-Memorial, Vol. 4, Ann. 46). As a matter of law, that provision is entirely proper and valid. Given that Serpents' Island has a baseline, it is obvious that there are base points on that baseline that can be used for plotting the provisional equidistance line.

20. Notwithstanding this, Professor Pellet contends that baselines established on the basis of a State's internal legislation are not opposable to other States unless they are traced and notified in accordance with international law. But that proposition is wrong when the baseline in question is the "normal" baseline — the low-water mark around the coast. Normal baselines do not have to be so notified.

21. As authority for his proposition, Professor Pellet cites the 1951 Norwegian *Fisheries* case. But that case concerned Norway's system of straight baselines, not "normal" baselines, and is thus totally inapposite to the situation involving Serpents' Island.

22. On Serpents' Island, there are no straight baselines. Thus, the figure that Professor Pellet displayed last week to show why it would be contrary to Article 7 of the United Nations Convention for Ukraine to have straight baselines connecting the island to the mainland is irrelevant (CR 2008/20, p. 20, para. 25). It is only in various locations along Ukraine's mainland coast that Ukraine has adopted a system of straight baselines, and simply because Serpents' Island is not part of a straight baseline system does not mean that the island has no baseline.

23. Counsel for Romania appears to have misunderstood this elementary point. He purports to find significance in the fact that, when Ukraine notified its straight baselines to the United Nations in 1992, those baselines did not include any reference to Serpents' Island. But as I just explained, there was no reason to refer to Serpents' Island in the notification because there were no straight baselines on the island or connecting the island to the mainland and, thus, no obligation to notify what was otherwise Ukraine's "normal baseline" around the island.

24. Article 16 of the Law of the Sea Convention provides that only baselines determined in accordance with Articles 7, 9 and 10 of the Convention need to be depicted on large-scale charts, or specified by a list of co-ordinates, deposited with the United Nations. With the exception of Article 7 dealing with straight baselines, which Ukraine *did* duly notify to the United Nations, neither of the other two Articles is relevant here. Article 9 deals with the mouths of rivers and is not at issue in this case. And Article 10 deals with bays, including historic bays, and is also not relevant.

25. Ukraine did notify its straight baselines in 1992. That notification identified the starting and end points of each straight baseline segment on Ukraine's mainland coast, which you can see at tab 21 of your folders and on the screen [place on screen fig. 5-2 to Ukraine's Rejoinder], and that was entirely proper.

26. Counsel argues that Ukraine's notification must have included all of its baselines because that notification indicates that, between various starting and end points of each straight baseline segment, the baseline follows the low-water mark (CR 2008/20, p. 18, para. 23). But that was also appropriate in order to highlight the location of each straight baseline segment. The fact that the low-water mark on Serpents' Island was not included in the notification is simply a function of the fact that there were no baselines on the island which represented either the starting or the end point

of a straight baseline segment. Once again, I need to stress the fact that there was no obligation under the 1982 Convention to notify baselines on Serpents' Island that were not part of a straight baseline system.

27. My learned friend then points out that Ukraine's notification did expressly mention five other islands but made no reference to Serpents' Island (CR 2008/20, p. 19, para. 24). And once again, this argument misses the mark. The reason why these five islands, which Professor Pellet identified, were mentioned in Ukraine's notification was because base points on each of them constituted either the starting or the end point of a straight baseline segment. But given that Serpents' Island was not in the same position — it was not situated at the beginning or the end of any straight baseline segment — it was not mentioned in the notification and it did not have to be.

28. The last point raised by Professor Pellet concerns the Sulina dyke. Counsel purports to find significance in the fact that Romania did specify a base point situated on Sulina dyke when it notified its own straight baselines to the United Nations in 1997, while Ukraine did not identify any base points on Serpents' Island (CR 2008/20, p. 21, para. 28). But the comparison is a false one. Sulina dyke forms part of Romania's straight baseline system, and therefore Romania was obligated to identify it as a base point when it notified those straight baselines. Serpents' Island does not form part of a straight baseline system, and there was accordingly no notification obligation on Ukraine to do the same.

29. Now I regret, Madam President, that this exposé has taken some time. But the point is an important one, and I trust that Ukraine has put to rest Romania's assertion that Serpents' Island has no baseline. The island most certainly does have a baseline, and having a baseline, it is entirely appropriate to use base points situated on that baseline for purposes of constructing the provisional equidistance line.

**B. Romania's coast**

30. Now, let me now move to the coasts of Romania.

[Place fig. 3-7 to Ukraine's Counter-Memorial on the screen]

31. The length and configuration of Romania's coast can be seen on the map that appears on the screen, and Romania divides its coast into two segments; first of all, from the land boundary

with Ukraine down to the Sacalin peninsula, and secondly, from that peninsula southwards to the boundary with Bulgaria. The total length of Romania's coast is approximately 258 km taking into account the sinuosities along that coast.

32. Despite the fact that significant portions of Romania's coast actually face south or south-east, and thus do not, if they were to be extended in a perpendicular direction as seen on the graphic that is at tab 22 in your folders and now on the screen, by projecting into a perpendicular direction under Romania's theory, they do not really project into the delimitation area. But nonetheless, Ukraine accepts that it is appropriate to treat all of Romania's coast as a "relevant coast" for purposes of the present delimitation, just as Ukraine considers that all of its coast fronting this part of the Black Sea also constitutes a relevant coast. This is because the projections from each Party's coast generate overlapping maritime entitlements and EEZ entitlements in this part of the Black Sea. But notwithstanding this, to the extent that Romania tries to exclude portions of Ukraine's south-facing coast because they are said to "face" in the wrong direction or to lie too far away, then the same criteria should be applied to Romania's southern coast below the Sacalin peninsula, most of which would also thereby be excluded under Romania's thesis.

33. Now there are three particular characteristics, or three particular features characterizing Romania's coastal front which deserve to be highlighted. The first concerns the presence of the Sulina dyke just south of the terminal point on the State boundary between Ukraine and Romania [arrow pointing to the Sulina dyke on the map]. The second concerns the Sacalin peninsula which lies about 45 km south of the Sulina dyke [arrow pointing]. And the third concerns the orientation of Romania's much longer stretch of coast south of the Sacalin Peninsula.

34. The Sulina dyke extends some 7.5 km out to sea. And it is a feature which, although forming part of what Romania says are permanent harbour works, is an artificial structure which departs radically from what is otherwise the general configuration of the Romanian coast. Now a photo of the end of the dyke now appears on the screen and at tab 23 [photo]. It shows that the dyke consists of two, thin and very low, parallel stone embankments about 150 m apart. Not surprisingly, the use of a base point located at the very end of the dyke has a material effect — indeed, a materially distorting effect — on the course of an equidistance line.

35. What is striking is the fact that Romania uses the Sulina dyke as a key base point controlling, as I said yesterday, 160 km of its provisional equidistance line while, at the same time, Romania fails to give any effect to Serpents' Island (beyond a 12-mile territorial sea) despite the fact that Serpents' Island is a natural feature. This is just one example, we would suggest, of Romania's reliance on double standards in this case.

36. The Sacalin peninsula also has a significant effect on Romania's claim line to the south-east of Serpents' Island. Yet the peninsula itself is no more than a narrow uninhabited sand spit, as the photo on the screen illustrates [photo], and it is at tab 24.

37. As for the southern stretch of Romania's coast, it is displaced by a distance of over 70 km to the west of Romania's coastal front between the land boundary with Ukraine and the Sacalin peninsula. Most of this part of Romania's coast does not project on to the relevant area under Professor Lowe's "perpendicular projection" theory, and none of that coast provides any base points for Romania's equidistance line.

38. Of course, Professor Lowe stresses that it is not base points which generate maritime entitlements, but rather: "It is the coastline that generates the maritime zones." (CR 2008/21, p. 56, para. 19.) He thus maintains that "the coastline south of Sacalin certainly *generates* the maritime zones" (CR 2008/21, p. 55, para. 15).

39. The Court will probably recall Professor Lowe's "wave map" that he used to illustrate the natural prolongation or projection of Romania's coast. That map is now being placed on the screen [Romania's tab XIII-2 map].

40. In presenting this map, Professor Lowe is making *exactly* the same point that Ukraine has made throughout these proceedings. It is the *coast* of a State — the whole coast — which generates continental shelf and exclusive economic zone entitlements.

41. The problem with my distinguished opponent's presentation is that it only presents one side of the equation. Ukraine's coast — including all of its south-facing coast — also generates similar maritime entitlements. Ukraine's coast, if I could put it this way, can make waves of its own.

42. The map on the screen illustrates the point [Ukraine's south-facing coast "waves"] (tab 25). The Court will see the entitlements generated by Ukraine's south-facing coast extend

throughout the relevant area. Of course, it is not simply Ukraine's south-facing coast but Ukraine's other coastal fronts generate similar entitlements — or waves, if you prefer. This only shows the south-facing coast up to a distance of 200 nautical miles.

43. A further point worth noting with respect to Romania's southern coast is that the last part of that coast near Bulgaria lies about 136 km from Romania's final base point used for its equidistance line on the Sacalin peninsula. That can be seen on the map on the screen, which is at tab 26 in your folders. If we turn to Ukraine's coast, it will be seen that *all* of that coast lies *less* than 136 km from the northernmost base points on Ukraine's coast that Romania uses for its version of the equidistance line — Cape Burnas and Cape Tarkhankut. Notwithstanding this, Romania urges the Court to treat its entire south coast as a relevant coast, but to exclude Ukraine's south-facing coast for the same purpose. And once again, we would suggest that double standards stand in stark relief.

44. As I mentioned a few moments ago, Romania's coast measures approximately 258 km taking into account the actual coastline with its sinuosities. If the coast is measured more generally according to its coastal front, then the length is 185 km. And as with Ukraine's coast, it is also possible to measure Romania's coast by reference to Romania's system of straight baselines, which I referred to a few minutes ago. Those baselines now appear on the map highlighted in blue [fig. 3-2 to Ukraine's Counter-Memorial], and taking them into account, Romania's baselines, including the low-water mark and the straight baseline segments, measure roughly 204 km in length.

45. Based on these measurements, the coastal relationship of the Parties can be summarized by the table which now appears on the screen and is also at tab 27 of your folders. It is a table that compares "like with like" — in other words, which compares all of the coasts of the Parties which generate maritime entitlements extending into the area to be delimited. I am not going to read out the figures as you have them before you [place on screen] (tab 27):

Coastal lengths in kilometres

| | Ukraine | Romania | Ratio |
|---|---|---|---|
| Overall coastal length: | 1,058 | 258 | 4.1 to 1 |
| Coastal fronts or facades: | 684 | 185 | 3.7 to 1 |

| | | | |
|---|---|---|---|
| Using the Parties' straight baselines: | 664 | 204 | 3.3 to 1 |

46. I would point out that whichever of these methodologies is used, the result is a relevant Ukrainian coast bordering the area to be delimited which is on average 3.7 times longer than the relevant coast of Romania.

## C. Romania's attempt to refashion geography by amputating Ukraine's relevant coast but not its own coast

47. Having described the coastal geography of the Parties, I would like now to focus for a few minutes on Romania's attempt to "refashion" that geography by eliminating from consideration over half of Ukraine's relevant coast while, at the same time, preserving Romania's entire coast. The stretch of Ukraine's coast that Romania tries to suppress extends from what Romania quite arbitrarily labels "point S" to Cape Tarkhankut: that is shown on the map on the screen [fig. 4-2 to Ukraine's Rejoinder] (tab 28). It is a stretch of coast about 600 km long.

### (i) *Romania's attempt to limit the relevant coasts to "opposite" or "adjacent" coasts*

48. Romania's first tactic is to argue that, in order to be relevant, the coasts of the Parties have to be either opposite or adjacent to each other. This argument was advanced by Professor Crawford last week who maintained that there is no third category of coasts (CR 2008/19, pp. 11-12, para. 7). Professor Crawford then pointed to certain "segments" of Ukraine's south-facing coast which, in his view, were neither opposite nor adjacent to Romania's coast and, by implication, must therefore be excluded.

49. That thesis is misconceived and it does not comport with the Court's own jurisprudence, which I will speak to in a few moments. While it is true that Articles 15, 74 and 83 of the Law of the Sea Convention refer to adjacent and opposite coasts, the fact is that nature is what it is, including the coasts of States that border the sea. In practice, coasts cannot always be slotted into convenient boxes labelled "adjacent" or "opposite" coasts. The maritime entitlements of a coastal State are not determined by the precise direction that a coast faces, but rather by the distance principle pursuant to which a particular stretch of coast generates continental shelf and exclusive economic zone rights out to a distance of 200 miles from the low-water line of that coast, or from an appropriate system of straight baselines, regardless of its orientation.

50. A question of delimitation arises when the maritime entitlements extending from one party's coast meet and overlap with those of a neighbouring State. It makes no difference if those coasts are labelled "opposite" or "adjacent", or, indeed — as is the case with Ukraine's south-facing coast — have an intermediate relationship evidencing characteristics of both "oppositeness" and "adjacency". What matters is that the coasts have to be capable of generating maritime entitlements, in which case they will be "relevant coasts" for delimitation purposes provided that they do not face, or are not more relevant to, delimitations with third States. That is the situation that exists with respect to all of Ukraine's coast facing the north-west corner of the Black Sea.

**(ii)** ***Romania's ill-founded effort to dissect Ukraine's coast***

51. In an effort to overcome this fact, Romania has deployed a second tactic pursuant to which it attempts to dissect Ukraine's coast into a number of segments — eight segments — and to argue that some of those segments do not project into the relevant area. [Place Romania's tab XIII-6 on screen] I am putting on the screen a graphic that Professor Lowe illustrated last week to show Romania's approach. By arbitrarily carving up Ukraine's coast in this fashion, and then drawing projections at 90° angles from each of the segments, Romania tries to create the impression that part of Ukraine's coast is not relevant — ostensibly because it "projects" in the wrong direction — and that there is no Ukrainian coast that generates maritime entitlements south of Serpents' Island.

52. The fundamental fallacy underlying this methodology is Professor Lowe's assumption that a coast can only project in a perpendicular direction from its general facade. As you can see from Romania's map, all of Romania's arrows — whether large or small — project at a 90° angle to Romania's segmented view of Ukraine's coastal fronts.

53. But that artifice bears no relation to the manner in which the law treats a State's entitlement to maritime areas generated by its coast. Moreover, as I have noted, Romania again engages in double standards. If it wishes to carve up Ukraine's coast into small segments, it should be prepared to accept the same approach for its own coast. And had it done so, it would be apparent that much of Romania's coast south of the Sacalin peninsula faces south or south-east and

would, under Romania's own theory, not constitute a relevant coast either. This can be seen from the map that now is being projected on the screen (tab 29) [slide based on Ukraine's Rejoinder fig. 4-9]. A 60-km stretch of coast lying immediately below the Sacalin peninsula actually faces south — not towards the area of concern [display projection]. A second stretch of Romania's coast faces south-east. also away from the delimitation area [arrow]. And a third segment — the very southernmost segment — projects east into an area that, at most, only faces the very southernmost part of the area to be delimited in this case.

54. Two can play this game of projecting 90° angles, but more importantly, under the Law of the Sea Convention, as well as under customary international law, the maritime entitlements generated by a coast are not limited to areas lying perpendicular to that coast. Maritime entitlements are a spatial concept extending from a State's baselines; they are not restricted to preconceived angles or projections. That is why Romania's piecemeal approach to the coastal geography has no role to play in this case, and does not succeed in somehow rendering half of Ukraine's coast superfluous.

Madam President, I am about to now embark on a discussion of some of the case precedents — the next section before I get to the relevant area at the end will probably take about 15 minutes. Perhaps it would be a convenient point to break now, but I am at the Court's disposal. I could go for another 15 minutes if the Court prefers?

The PRESIDENT: I think it will be better for you to continue, Mr. Bundy.

Mr. BUNDY: Very well, thank you, Madam President.

**(iii)** ***The Court's jurisprudence***

55. So, turning to the jurisprudence: counsel for Romania has sought support for its position in the jurisprudence of this Court and of arbitral tribunals. Let me start with the *Anglo-French* arbitration which Professor Crawford referred to in support of his proposition that a coast has to be either opposite or adjacent to be relevant.

56. According to counsel, the Court of Arbitration held in *Anglo-French* that "there is no third category, no geographical situation where the delimitation is to be effected between coasts

that are neither adjacent nor opposite" (CR 2008/19, p. 12, para. 7). But with the greatest respect, that does not give a full or balanced account of what the Court of Arbitration actually said in *Anglo-French*.

57. While it is true that the Court of Arbitration referred to the distinction that existed between cases of "opposite" or "adjacent" coasts without apparently envisaging a third category of geographical situation, it did go on to state in two separate places of its Award — and I am going to quote from the first part of the Award where it raises the point:

[Place quote on screen]

> "On the other hand, while stressing the distinction between 'situations' where the coasts are 'opposite' and where they are 'adjacent', the Court observed that this distinction may not always be uniform and clear-cut along the whole length of the boundary."[6]

58. The geographic configuration of a coast does not need to be "uniform" or "clear-cut" in order for that coast to be considered a relevant coast. Professor Quéneudec a few minutes ago referred to the *Barbados/Trinidad* arbitration where exactly the same point was made in the citation that he quoted. And it was also made clear in the Court's Judgments in both the *Tunisia/Libya* and in the *Gulf of Maine* cases, two further precedents that counsel for Romania has referred to.

[Fig. 4-5 to Ukraine's Rejoinder: *Tunisia/Libya*]

59. Let me start with *Tunisia/Libya*: a map of the relevant area in *Tunisia/Libya* taken from the Court's Judgment is on the screen and in tab 30 of your folders. The relevant coasts as defined or as identified by the Court are highlighted in red. As can be seen, they stretch from Ras Kaboudia in the north to Ras Tajoura in the east; and they also include the entire Gulf of Gabes despite the fact that, under Professor Crawford's "comparative proximity" theory, Tunisia's Gulf of Gabes coast should have been "eclipsed" by other parts of the Tunisian coast lying closer to the delimitation area. It was not eclipsed.

60. Notwithstanding the fact that the coast along the back of the Gulf of Gabes was, strictly speaking, neither "opposite" nor "adjacent" to Libya's coast, and did not project into the delimitation area under Professor Lowe's perpendicular projection theory, the Court had no

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[6] *Delimitation of the Continental Shelf (United Kingdom of Great Britain and Northern Ireland and the French Republic*, Decision of 30 June 1977, *RIAA*, Vol. XVIII, p. 55, para. 94 and p. 97, para. 206.

hesitation in treating the entire coast up to Ras Kaboudia as a "relevant coast". And if I can cite from paragraph 126 of the Court's Judgment, it stated:

> "The major change in direction undergone by the coast of Tunisia seems to the Court to go some way, though not the whole way, towards transforming the relationship of Libya and Tunisia from that of adjacent States to that of opposite States." (*I.C.J. Reports 1982*, p. 88, para. 126.)

A transformation — no precise point where you are either opposite or adjacent, but a transformation.

61. Now, I may be accused of refashioning geography here, but if we turn the *Tunisia/Libya* situation on its side, as is now being done on the screen [rotate slide], to appreciate the position as far as the present case is concerned. In this way, it can be seen that the configuration of the Tunisian coast around the Gulf of Gabes and up to Ras Kaboudia begins to resemble the configuration of Ukraine's south-facing coast between Odessa, heading towards Cape Tarkhankut. What now appears as Tunisia's south-facing coast was treated by the Court in *Tunisia/Libya* as a relevant coast in that case; and so, too, is Ukraine's south-facing coast a relevant coast in this case. [Place map back on proper orientation]

62. In *Tunisia/Libya*, it is apparent that the only coasts that the Court did not consider relevant were those outlined in blue on the map, which were more relevant to delimitations with third States because of the direction in which they faced. At several places in its Judgment, the Court emphasized that it was sensitive to the potential rights of third States and the Court circumscribed the relevant area in that case with this in mind. A glance at the map shows that north of Ras Kaboudia, Tunisia's coast clearly faced Italy, in fact an area that Tunisia had already delimited with Italy; east of Ras Tajoura, Libya's coast faced Malta, which had applied to intervene in the proceedings and whose position was well known at that point. In contrast, none of Ukraine's coast — including its south-facing coast — faces a third State whose interests could be impacted. Turkey, for example, has already delimited its boundaries far to the south. Thus there is no justification for Romania to exclude Ukraine's south-facing coast.

***Gulf of Maine***

63. Let me move to the *Gulf of Maine* case. As I shall show, that case also supports Ukraine's position as to the coasts of the Parties that should be considered to be relevant.

[Figure 4-6 to Ukraine's Rejoinder on the screen)

64. You have this at tab 31, the map that now appears on the screen. That map depicts the coasts of the Parties that were considered to be relevant coasts by the Chamber in the *Gulf of Maine* case and the resulting delimitation line. There are several aspects of the Chamber's treatment of these coasts which are relevant to the present delimitation.

65. First, the Chamber treated all of the parties' coasts which abut the Gulf of Maine as relevant coasts for delimitation purposes. These included a substantial portion of Canada's coast fronting the Bay of Fundy in the north-east corner, which the Chamber recognized as forming part of the coastal geography of the Gulf of Maine proper.

66. The relevant coasts also included the entire coast of the United States, from its land boundary with Canada down to the island of Nantucket below Cape Cod. This was done — treating all of this as a relevant coast — despite the fact that the United States coast started out as an "adjacent coast" to Canada near the land boundary, and ended up in an opposite relationship between Cape Cod and Nova Scotia. The Chamber felt no need to identify the precise point where the coastal relationship between the parties changed. It simply treated the entire United States coast as a relevant coast.

67. Second, the lengths of the coasts of the parties in *Gulf of Maine* stood in a relationship of 1.38 to 1 in favour of the United States. This magnitude of difference in overall coastal lengths was considered to be a key relevant circumstance justifying an important adjustment to the equidistance line in favour of the State with the longer coast — the United States.

68. Significantly, the Chamber identified the opposite coasts of the United States and Canada in the case with some precision — and those coasts are highlighted in red on the map [highlight Cap Ann to Nantucket and the southwest-facing coast of Nova Scotia]. Those coastal fronts were approximately the same length and, if we transpose the analogy to the present case, under Romania's theory, these red coasts could be equated with Romania's coast on the one side, and Ukraine's coast between Cape Tarkhankut and Cape Sarych, on the other side.

69. In our case, Romania contends that its "opposite coasts" sector, between its coast and the Cape Tarkhankut and Cape Sarych coast, should be delimited by an unadjusted median line without taking into account the marked disparity that exists between the overall lengths of the Parties'

coasts fronting the delimitation area. In *Gulf of Maine*, however, the Chamber rejected such an approach. It adjusted the median line so as to fall significantly closer to the Canadian coast all the way out to the endpoint on the boundary line in order to take into account the difference in the lengths of the parties' coast throughout the Gulf of Maine.

70. It is quite clear that the long United States coast at the back of the Gulf of Maine was not deemed to be irrelevant, or only relevant to the adjacent coasts sector. It had an influence on the entire seaward portion of the delimitation line, despite the fact that it was arguably far away. In other words, the Chamber did not adopt Professor Crawford's "principle of comparative proximity" to exclude that coast at the back of the Gulf for overall delimitation purposes. Nor did it adopt Professor Lowe's argument that coasts that are further away are somehow "eclipsed" by closer coasts. Clearly, there existed in *Gulf of Maine* parts of the United States coast, such as Cape Cod, that lay much closer to the seaward portion of the delimitation line than the United States coast situated at the back of the Gulf of Maine or of Canada's coast in the Bay of Fundy. Yet it was the sum total of these coasts, and the differences in their total respective lengths, that dictated the shifting of the equidistance line all the way to seaward to its furthest point. All of the coasts of the parties, the coasts at the back of the Gulf of Maine, the coasts in the Bay of Fundy, had an influence on where the delimitation line was oriented throughout its most seaward course.

71. If we return to our case, all of Ukraine's coast fronting the area to be delimited with Romania is similarly relevant, and that coast, being some four times longer than the relevant Romanian coast, also merits an important adjustment being made to the equidistance line in order to achieve an equitable result.

***Libya/Malta***

72. I turn briefly now to the *Libya/Malta* case. The relevant map is in tab 32 and is now on the screen [map of Libya/Malta taken from p. 27 of Judgment]. The point stressed by Professor Crawford last week was that the Court identified the relevant coast of Libya in that case as lying between Ras Ajdir — the land boundary with Tunisia — and Ras Zarruq, excluding any segment of Libya's coast east of Ras Zarruq (CR 2008/18, p. 67, para. 18). Although my colleague's argument was not entirely clear, it appears that what he was trying to do was to equate Libya's coast east of Ras Zarruq with Ukraine's south-facing coast in this case.

73. The reason why the Court limited Libya's relevant coast at Ras Zarruq was made very clear in its Judgment, and had nothing to do with Romania's argument that the coast in question was considered to be too remote to be relevant. As the Court stated at paragraph 22 of its Judgment in *Libya/Malta*:

> "The limits within which the Court, in order to preserve the rights of third States, will confine its decision in the present case, may thus be defined in terms of the claims of Italy, which are precisely located on the map by means of geographical co-ordinates." (*I.C.J. Reports 1985*, p. 26, para. 22.)

74. Obviously everyone will recall that Italy had applied to intervene in the case and its claims were known. Italy's claims on the east, as can be seen on the map, extended up to the 15° 10' E meridian. When it came to identifying the relevant coast of Libya, therefore, the Court noted that the 15° 10' E meridian, which defined the limits of the area in which its Judgment could operate, "crosses the coast of Libya not far from Ras Zarruq" (*I.C.J. Reports 1985*, p. 50, para. 68). That was why Libya's relevant coast was limited to Ras Zarruq in the case, because of the claims of the third State, a situation we do not have here.

***Nicaragua* v. *Honduras***

75. Lastly, I need to say a brief word about *Nicaragua* v. *Honduras*, to which counsel also referred in connection with his discussion of relevant coasts. The map from the Court's Judgment is on the screen [map from p. 82 of Judgment].

76. My first point is that the geographic context within which the *Nicaragua* v. *Honduras* case was decided obviously bears no relationship with the coastal geography in the present case. Here, one of the Parties — Ukraine — has a coast which fronts three sides of the area subject to delimitation — a situation which clearly did not exist in *Nicaragua* v. *Honduras*.

77. There is a further observation I would make regarding this case in response to Romania's position, illustrated so capably by Professor Lowe last week, that coasts should only be deemed to project at a 90° angle, or perpendicular, to their general direction. I would simply note that if Honduras and Nicaragua had been limited to 90° projections from their coastal fronts, there would have been no delimitation, as you can see on the map. The Court's bisector line would have fallen right in the middle of a kind of "no man's zone" (tab 33). Clearly coasts are not limited to

90° projections. Here the projection, if you take the bisector, was 124°. It could have been further, depending on the geography.

Madam President, it is at that point at which it might be appropriate to pause because I will now move to a briefer part of my presentation on the relevant area. Thank you.

The PRESIDENT: Very good. The Court will now rise.

*The Court adjourned from11.30 a.m. to 11.50 a.m.*

The PRESIDENT: Please be seated. Yes, Mr. Bundy.

Mr. BUNDY: Thank you, Madam President, Members of the Court.

**D. The relevant area**

78. Having dealt with the relevant coasts of the Parties, I now turn to a related concept — the "relevant area". And here, I can be quite brief, since there are a number of principles on which the Parties agree and the remaining differences between the Parties on this issue are readily identified.

**(i) *The relevant area as defined by Ukraine***

[Fig. 4-10 to Ukraine's Rejoinder on screen]

79. Last Friday, Professor Lowe offered three statements of principle with which Ukraine is in accord.

— First, Professor Lowe stated: "The relevant area is an area of overlapping entitlements of the Parties." (CR 2008/21, p. 61, para. 45.) Ukraine agrees.

— Second, my learned friend emphasized: "The correct approach — and the only rational approach — is evident when one recalls the fundamental principle — that each segment of the relevant coastline must be permitted to generate its own maritime zones." (CR 2008/21, p. 62, para. 52.) Once again, Ukraine agrees.

— Third, Professor Lowe concluded: "So, one looks at the whole of the zones generated by the coasts." (CR 2008/21, p. 62, para. 54.) Once more, Ukraine agrees.

80. The map now on the screen illustrates the position — it is also at tab 34. The relevant area extends off both Parties' relevant coasts abutting this corner of the Black Sea. All of the areas

shaded in green lie within the entitlements generated by the Parties' coasts. And to recall Professor Lowe's principles, each segment of the relevant coasts generates its own maritime spaces and one has to look at the whole of the zones generated by these coasts to identify the relevant area. Just as the relevant area in the *Tunisia/Libya* case encompassed the entire area, including the Gulf of Gabes, lying off the coasts of the parties to that case that were not relevant to delimitations with third States, so, also, does the relevant area in this case cover the entire north-west corner of the Black Sea, including all of Ukraine's south-facing coast.

81. On Friday, Professor Lowe presented an extended argument as to why the relevant area should not be defined by the claims of the Parties (CR 2008/21, pp. 61-62, paras. 45-51). While this presentation was most interesting, I was somewhat puzzled because it has nothing to do with our case, since neither Party in this case maintains that the relevant area should be so defined by the claims of the Parties. The only genuine issue is how this area should be circumscribed in the south, bearing in mind the presence of third States such as Bulgaria and Turkey.

82. The Court will observe that Ukraine has defined the southern limits of the relevant area by two straight lines. On the west [arrow pointing], Ukraine has adopted a straight line extending from the point where the Romania-Bulgaria land boundary meets the sea, out to a hypothetical meeting point in the middle of the sea, where the potential rights of Ukraine, Romania, Bulgaria and Turkey converge. This represents a line drawn seawards from the general direction of the coast, in much the same way as the Court established the seaward limits of the relevant area in the *Tunisia/Libya* case.

83. The eastern straight line [arrow] is drawn from Cape Sarych on Ukraine's Crimean coast to the same point where the interests of third States come into play.

84. These interests can be seen more clearly if the existing Turkey-Bulgaria and Turkey-Ukraine delimitations are added to the map, as is now being done [add the red and black lines as on fig. 8-1 to Ukraine's Rejoinder]. The black segments of both delimitations correspond to maritime boundaries that have actually been agreed, while the red extensions to both lines have been agreed on a provisional basis subject to future third State delimitations. As can be seen, the southern limit of the relevant area, as identified by Ukraine, respects both of these agreements, including their potential prolongation.

**(ii)** ***Romania's attempt to refashion the relevant area***

85. If I now turn to Romania's version of the relevant area, it will be seen that Romania's position differs from that of Ukraine in three respects. Two of these differences are significant; the third is relatively minor. For convenience, these areas of difference are now being highlighted on the map on the screen — which you can also find at tab 35 of your folders.

[Fig. 4-11 to Ukraine's Rejoinder]

86. The first significant difference concerns the area hatched in green on the map in the north, lying off Ukraine's south-facing coast. And just as Romania seeks to suppress all of this stretch of Ukraine's coast for delimitation purposes, so also does it eliminate the area lying off that coast from the relevant area. I have already explained earlier this morning why Romania's attempt to disregard this part of Ukraine's coast is misguided. And Romania's argument that the areas lying off this coast do not form part of the relevant area is, in Ukraine's submission, equally ill-founded. That part of Ukraine's coast generates its own maritime zones, according to Professor Lowe's principle, and the whole of such zones must be taken into account.

87. The second important difference between the Parties concerns a large triangle lying between Ukraine and Turkey, which is hatched in red on the map. While Romania argues that this triangle — or at least most of it, they excluded a small part last week for the first time — should be included as part of the relevant area, a glance at the map, we would suggest, reveals why the argument is unsound.

88. The area in question has already been subject to a prior delimitation between the former Soviet Union and Turkey to which Ukraine has succeeded. The Court will note that the southern limits of the triangle coincide with the Ukraine-Turkey maritime boundary — a delimitation agreement as to which Romania has neither protested nor reserved its position. I will come back to this on Friday when we discuss the application of the proportionality test, but the short answer is that this red-hatched area in question has nothing at all to do with Romania. It involves an area delimited with a third State and, thus, does not form part of the relevant area in this case.

89. The last difference between the Parties, as you can see, concerns a small sliver of area situated off the coasts of Romania and Bulgaria — in solid light green on the map. Here, the

difference has arisen because Ukraine has limited the relevant area by a straight line, while Romania has posited an equidistance line boundary between itself and Bulgaria.

90. Now, Romania and Bulgaria have not delimited their maritime boundary in this area, and it follows that the respective limits to the relevant area drawn by each of the Parties in this sector are, to some extent, hypothetical. As the Court can see, however, the difference between the Parties' positions is small in terms of area and, given the fact that application of the proportionality test does not depend on what the Court has termed "nice calculations of proportionality", this difference is immaterial and has no real bearing on the case.

91. For these reasons, Ukraine stands by its identification of the relevant area, which is based on a rational and reasonable approach consistent with the law. And, as I said, we shall come back to this issue in our final presentation on Friday when we discuss the application of the test of proportionality.

**E. Conclusions**

92. Madam President, Members of the Court, this morning I have addressed the relevant coasts of the Parties for the present delimitation and the relevant area. I believe that the facts speak for themselves and that these facts have legal consequences for the delimitation of an equitable boundary. These have been noted by my colleague Professor Quéneudec earlier this morning, particularly the relevance that a marked disparity in coastal lengths have, and they will be discussed further by my colleagues in subsequent presentations.

93. For present purposes, what is of crucial importance is, as the Court held in the *Cameroon* v. *Nigeria* case, that "[t]he geographical configuration of the maritime areas that the Court is called upon to delimit is a given" (*I.C.J. Reports 2002*, p. 443, para. 295). And as I also recalled in my opening presentation, the application of equitable principles militates against treating a State with an extensive coastline similar to that of a State with a restricted coastline.

94. Ukraine has followed this approach and has formulated its delimitation based on the geographic facts. Unlike our colleagues on the other side of the Bar, Ukraine has not tried to refashion geography by eliminating long stretches of relevant coast or by ignoring a natural feature — Serpents' Island — while attributing significance to an artificial feature — the Sulina

dyke — and elevating that artificial structure to a status which is more important than an island. Nor has Ukraine attempted to form or posit a hierarchy between the Parties' coasts whereby the entire coast of one Party is taken into consideration while only half of the other Party's relevant coast is afforded similar treatment.

95. Madam President and Members of the Court, that concludes my presentation on the relevant geographical facts, and I would be grateful if you could now call on Sir Michael Wood to continue with Ukraine's presentation. Thank you very much.

The PRESIDENT: Thank you, Mr Bundy. We now call Sir Michael Wood.

Sir Michael WOOD:

## VI. ABSENCE OF A PRE-EXISTING ALL-PURPOSE MARITIME BOUNDARY AROUND SERPENTS' ISLAND

### A. Introduction

1. Madam President, Members of the Court, yesterday I took you through the principal instruments referred to by the Parties. I pointed to the two separate strands of negotiations and agreements: those relating to the State border, and those concerning delimitation of the continental shelf and EEZs. For convenience, we have once again included the same list of instruments, the one you saw yesterday, in the folders for today and it is at tab 36.

2. The Court's task in this case is to delimit the Parties' respective continental shelf and exclusive economic zones. This morning, I shall address the question of the starting-point. In particular, I shall show that there is no basis for Romania's thesis that the Parties have already agreed a partial delimitation of maritime zones beyond point F. Point F, the final point on the State border agreed by the two Parties, was fixed by co-ordinates, for the first time, in the 2003 Treaty. It is common ground that point F is the starting-point for the delimitation to be effected by the Court.

3. But Romania now claims, for the first time in these proceedings, that there is a pre-existing agreement, in force between the Parties, providing for a maritime boundary running along the outer limit of Ukraine's 12-mile territorial sea around Serpents' Island. This, they say,

ends in what they call "point X", or — as Professor Crawford put it last Friday — perhaps at some point "located thereabouts"[7]. This line, according to Romania, is an all-purpose maritime boundary between the outer limit of Ukraine's 12-mile territorial sea and Romania's continental shelf and exclusive economic zone.

4. Madam President, this is a new claim, which seems to have been developed with these proceedings in mind. Indeed, Romania itself insisted in the past that bilateral agreements from 1948 and 1949, which anyway, for a time, it claimed were invalid, did not incorporate provisions referring to the delimitation of the continental shelf, and Romania took the position that there was no agreement on the delimitation of the shelf between Romania and the former Soviet Union. We saw yesterday, by way of example, a Note Verbale of July 1995, in which the Foreign Ministry of Romania said "there is no agreement between Romania and Ukraine on the delimitation of maritime spaces in the Black Sea"[8].

5. As I recalled yesterday, in your Judgment in *Nicaragua* v. *Honduras*, you stated that "[t]he establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed"(para. 253). Romania, the Party asserting the existence of an agreement, has the burden of establishing it. Romania has not done so. That is clear, if one looks at the two strands of negotiations that I described yesterday: the State border, and the shelf and the EEZs. It is also clear from the complete absence of any language in the text of any of the agreements relied upon by Romania that even hints at such an agreement. And it is clear from the insistence by Romania, in the past, that there was no such agreement. That is surely an "admission against interest", if we can borrow a term from our opponents.

6. Madam President, Members of the Court, it is tempting to stop here. There really is no case to answer. Romania has not discharged the burden upon it. The establishment of a pre-existing maritime boundary would be "a matter of grave importance . . . not easily to be presumed".

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[7]CR 2008/21, p. 40, para. 13.

[8]CMU, Ann. 25.

7. Nevertheless, out of respect for our opponents' submissions, I shall try to tackle their arguments. But I would ask the Court to bear in mind that our principal submission is that Romania has not discharged the heavy burden needed to establish an agreed maritime boundary.

8. Romania seems to appreciate the weakness of its new argument, for it makes alternative arguments. The alternative argument that "the maritime boundary around Serpents' Island would be the same independent of any agreement between the Parties"[9]. Mr. Bundy will be dealing with that. And it even makes the bold claim that Serpents' Island is an Article 121, paragraph 3, "rock". Ms Malintoppi will deal with that. My task today is simply to refute Romania's thesis of a pre-existing agreement on an all-purpose maritime boundary running along the outer limit of the 12-mile territorial sea around Serpents' Island — a boundary which, they say, goes around to the mythical and appropriately named "point X".

**B. Reasons why Romania's argument fails**

9. There are, in summary, at least ten reasons why Romania's thesis does not begin to get off the ground, why they have not begun to discharge the heavy burden upon them:

(i) There is nothing in the 1997 Exchange of Letters, concerning the future delimitation of the continental shelf and EEZs, that even hints at a partial agreement already in place between the Parties. If there had been such an agreement, it would surely have been mentioned in what was, after all, quite a detailed text.

(ii) There is nothing in the text of the 1949 procès-verbaux, or associated maps, that indicates an intention to do anything other than to delimit the "State border", including the territorial sea (and Romania's prospective territorial sea).

(iii) There is nothing in the subsequent instruments to which Romania refers (those of 1954, 1963 and 1974) that "confirms" its interpretation of the 1949 procès-verbaux.

(iv) The relevant rules of the international law of the sea applicable between the Parties in 1949 make it improbable in the extreme that they would, at that date, have agreed on the delimitation of maritime zones beyond the territorial sea, that is the continental shelf and

[9] *Ibid.*, paras. 11.45-11.50.

exclusive economic zones. Such zones were not accepted as part of international law at that time, and certainly were not then recognized by either the Soviet Union or Romania.

(v) The only maritime area that the Parties had in mind in 1949 were their respective internal waters and territorial seas. This is confirmed by their subsequent statements and actions, most recently by the terms of the 1997 Exchange of Letters and the fixing of the precise co-ordinates of the last point of the territorial sea border — point F — in the 2003 Treaty.

(vi) Romania has referred the Court to a certain number of carefully selected charts, of miscellaneous origin. But the earliest ones on which they rely date from 1957, some eight years after the supposed agreement. Romania's interpretation of the charts is unconvincing. The charts are not referred to in any agreements or diplomatic correspondence. Romania's attempt to seek confirmation of an agreement dating from 1949 from these charts simply does not convince.

(vii) Romania has given no serious explanation for the construction of "point X". It originally relied upon various marks on various charts. Later it relied on an artificially constructed line, a construct that could not possibly have been agreed by the two Parties without much discussion and joint technical work, of which there was none.

(viii) Romania's own legislation makes it clear that the 1949 Agreements did no more than delimit the territorial sea. You will find at tab 37 the 1956 Romanian Decree on the régime of the territorial waters. As you will see, Article 1 provides that "[t]he territorial waters of the People's Republic of Romania . . . are delimited . . . in the north by a line determined by agreement between the People's Republic of Romania and the Union of Soviet Socialist Republics"[10]. This clearly refers to the territorial sea determined by agreement in 1949. Could I now invite you to look at tab 38, which contains Romania's EEZ Decree of 1986? This Decree, unlike the Territorial Waters Decree, makes no reference to any EEZ delimitation having been agreed. On the contrary, Article 2 provides that the extent of the EEZ

> "shall be determined by delimiting it within the framework of negotiations with the neighbouring States with coasts opposite or adjacent

[10]MR, Ann. 81.

> to the Romanian Black Sea coast. [And it continues] The delimitation shall be carried out . . ., by means of agreements with those States, through the application, according to the specific circumstances of each area to be delimited, of the delimitation principles and criteria recognized in international law and in the practice of States, in order to arrive at equitable solutions."[11]

That clearly reflects the fact that there were no such agreements yet. The contrast between the Territorial Waters Decree and the EEZ Decree could not be clearer, and correctly reflects the actual position.

(ix) The activities of the Parties in the relevant area — essentially petroleum and coastguard activities — including Romania's failure to react to Ukraine's activities, are hardly consistent with Romania's thesis. My colleague, Ms Malintoppi, will discuss these activities later.

(x) And, finally, as I have said already, Romania appears to have devised its argument based on the 1949 Agreements, to the effect that there is a pre-existing agreement for the purposes of these proceedings. The first appearance of such a claim seems to have been made in the Memorial, lodged in August 2005[12]. There is no mention of it in the Application. Indeed, as we have already pointed out, Romania is on record as saying that the bilateral agreements from 1948 and 1949 did not incorporate provisions referring to the delimitation of the continental shelf, and that there was no agreement on the delimitation of the continental shelf between Romania and the former USSR. Romania's protracted efforts at the Conference on the Law of the Sea to secure a special position for categories of islands that would have included Serpents' Island would have been pointless had there been a prior agreement.

### C. Point F and "point X"

[Slide: sketch of points F and "point X"]

10. Madam President, Members of the Court, you are already familiar with point F and the so-called "point X". They are now shown on the sketch appearing on the screen and it is also at tab 39.

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[11]RR, Ann. 4.

[12]MR, paras. 11.5-11.25.

11. Just to recall, point F is a point agreed by the Parties. It is the point at which the State border between the 12-mile territorial seas of the two Parties terminates. Its co-ordinates were agreed in 2003. As we noted yesterday, point F is very close indeed to the final point on the line depicted on map 134, the only relevant and authoritative map annexed to the general procès-verbal of 1949. A copy of map 134 is again in your folders at tab 40. It is common ground that point F is the starting-point for the delimitation before the Court.

12. And then there is the aptly named "point X". "Point X" is apparently located somewhere on the outer limit of Ukraine's 12-mile territorial sea, to the east of Serpents' Island. "Point X" is pure invention, it is a mythical point. It does not feature in any agreement. Romania itself admits that it was not identified in the 1949 procès-verbaux[13]. The only justification given in Romania's Memorial for "point X" seems to be the depiction of what I will later refer to as a "hook" in some later charts, the earliest of which, as I have said, dates from 1957, eight years after the procès-verbaux.

13. In its Reply, on the other hand, Romania has come up with a new and highly artificial construct to justify "point X". Mr. Bundy will be referring to this and I do not need to go into details.

14. Then on Friday, we heard yet another "explanation" of "point X" or rather of points "located thereabouts". We were told by Professor Crawford that

> "[a]s soon as you accept that the Parties agreed a 12-mile marine boundary around Serpents' Island; as soon as you accept that that zone did not stop after a short space around point F — then as a matter of logic, there must be a point from which the boundary running along the exterior margin of the marine boundary zone would depart from this 'exterior margin' and join the mainline coasts provisional equidistance line . . . there must be a point X. Whether or not point X is located precisely where we propose, it must be located thereabouts."

But the premise is not accepted, and there is no "logic" or "must" in this matter. Professor Crawford's explanation, I would suggest, demonstrates just how mythical "point X" is. Based on a false premise, it does not even have a fixed location.

### D. Outline of remainder of speech

15. Madam President, the remainder of my speech will be in two parts.

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[13]MR, para. 11.51.

16. *First*, I shall say just a few words about the jurisdiction of the Court, as set out in paragraph 4 *(h)* of the 1997 Exchange of Letters.

17. *Second*, and this will be the main part of my speech, I shall deal with Romania's interpretation of the 1949 procès-verbaux and of map 134 annexed thereto. I will show that it is clear from the texts that in 1949, and subsequently, the Soviet Union and Romania intended only to delimit their "State border". As I set out yesterday, they were concerned to delimit areas under their sovereignty: the land border, and the maritime border out to the furthest point where their territorial seas would meet once Romania extended its territorial sea to 12 nautical miles. There was no intention to delimit anything beyond the State border; no intention to delimit the continental shelf; no intention to delimit any other maritime zone.

18. I shall also show that neither the subsequent agreements between the Parties, nor the various non-contemporaneous maps produced by Romania, lend any credence to Romania's thesis.

19. And, much more briefly, I shall describe the inconsistency of Romania's thesis with the Parties own actions and recent agreements.

### E. Jurisdiction of the Court

20. If I may turn then, Madam President, first to the jurisdiction of the Court. The case was submitted to the Court pursuant to a special agreement (a *compromis*). The Court's jurisdiction is governed by the terms of the *compromis*. The provision in question is paragraph 4 *(h)* of the 1997 Exchange of Letters. The Exchange of Letters — or Additional Agreement as it is also called — is at tab 41 in your folders. You are already very familiar with it. Romania's Application to the Court relies only on this sub-paragraph[14]. What has been referred to the Court is, in the words of the sub-paragraph, "the case on delimitation of continental shelf and exclusive economic zones"[15]. The translation supplied by Romania says "the problem of delimitation of the continental shelf and the exclusive economic zones". The paragraph itself implements Article 2 of the 1997 Treaty, which likewise refers to "the problem of the delimitation of their continental shelf and of economic exclusive zones".

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[14]Application, paras 4-6.

[15]MR, Ann. 2.

21. In other words, in our submission, the Court has jurisdiction to delimit the continental shelf and the EEZs between the two States. It does not have jurisdiction to delimit other maritime areas pertaining to either of the Parties, and in particular to delimit the territorial sea of either Party. Notwithstanding the forceful arguments presented by Professor Pellet last Tuesday[16], Ukraine's position remains, as it was put in the Counter-Memorial, that "[t]he Court is . . . excluded from drawing a boundary line in any maritime area where the continental shelf and exclusive economic zone of one of the Parties would be adjacent to the territorial sea of the other Party"[17]. This position is based on the wording of the *compromis*. We stand accused by Professor Pellet of deliberately not citing the words of paragraph 4 *(h)*, and of reading into them the words "exclusively" and "between the parties". But what we have done is to interpret the treaty in good faith. As it was put in the Rejoinder, "[n]o mention is made of boundaries involving the territorial sea of either State, and such boundaries are therefore excluded from the Court's jurisdiction"[18]. This is not, as Professor Pellet rather unfairly characterized it, "une pure pétition de principe" or "self-serving"[19], but a perfectly reasonable interpretation of paragraph 4 *(h)*. We accept of course, that the terms of the *compromis* in the *Anglo-French* case were not identical, and we have not suggested otherwise. But they were not so different, and that case is a useful example of a court, in a matter of delimitation, taking care to stay within the bounds of the jurisdiction conferred upon it by the agreement of the Parties.

22. But Madam President, at the very least, we would say, the terms of the *compromis* in the present case suggest that the Parties did not anticipate that the Court would be called upon to delimit an all-purpose maritime boundary along the outer limit of Ukraine's territorial sea. Had they done so, they would surely have drafted the *compromis* so as to cover this eventuality.

23. However, in our submission, this jurisdictional question does not need to be decided because, from point F, the line proceeds in a south-easterly direction as a line delimiting areas of continental shelf and the EEZs appertaining to each of the Parties.

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[16]CR 2008/18, pp. 33-42, paras. 3-25.

[17]CMU, paras. 2.18 *et seq*.

[18]RU, paras. 2.2 *et seq.*

[19]CR 2008/18, p. 35, para. 7.

**F. Interpretation of the 1949 procès-verbaux and map 134**

24. Madam President, I will now turn to Romania's arguments for a pre-existing all-purpose maritime boundary, which is based essentially on its interpretation of the 1949 procès-verbaux. As stated by Professor Crawford at the end of his speech last Wednesday, the thesis goes as follows:

> "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."[20]

25. With all due respect, this seems to me to be a carefully crafted example of what I sometimes call the "accumulation of bad arguments" approach to international law. It is difficult to disentangle the line of thought, but it seems to be that the text of "the 1949 procès-verbal" provided for an all-purpose maritime boundary, when the text patently did no such thing. That it did so was confirmed, so it is said "by the annexed and accompanying maps", when in fact they show no such boundary. That this boundary was confirmed by "subsequent agreements", when these agreements by Romania's own admission changed nothing. Which leaves us with "the mapping practices of the parties, as well as third States", that in our submission is a most uncertain basis on which to construct a pre-existing boundary agreement.

26. Before turning to look in a little more detail at the terms of the 1949 procès-verbaux, I should briefly like to refer once again to your Judgment in *Nicaragua* v. *Honduras*, a Judgment that was of course delivered after the submission of Ukraine's Rejoinder. There are some extracts at tab 43. As you will recall, the Court considered the Honduran claim to a "traditional" maritime boundary along the 15th parallel. After dismissing the claim based on the principle of *uti possidetis*, the Court went on to consider a separate argument that there was "a *de facto* boundary based on the tacit agreement of the Parties"[21]. After examining the practice of the two States, you concluded "there was no tacit agreement in effect between the Parties . . . of a nature to establish a legally binding maritime boundary"[22].

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[20]CR 2008/19, p. 52, para. 118.

[21]Paras. 237-258.

[22]Para. 258.

27. At paragraph 253, which is on page 69, you said: "The Court must now determine whether there was a tacit agreement sufficient to establish a boundary. Evidence of a tacit legal agreement must be compelling." And then comes the sentence I have already quoted: "The establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed." This well illustrates the Court's position that a tacit maritime delimitation agreement will not be found absent the most compelling evidence.

28. In *Nicaragua* v. *Honduras* you were concerned with the Honduran claim that there was a "tacit agreement" based on the practice of the Parties over a period. In the present case, Romania appears to argue that there is a written agreement establishing the maritime boundary in question. There is of course no such written agreement. The words of caution in your Judgment last year are equally applicable to the present case, if not more so. What Romania seeks to do is to read into the 1949 instruments what could at the most have been an implicit agreement on the delimitation of future maritime zones. That indeed is "a matter of grave importance . . . not easily to be presumed".

29. Romania's thesis, based on their interpretation of the relevant instruments, is unconvincing. It depends, *first*, upon misreading the plain text of the 1949 procès-verbaux and ignoring the map — map 134 — expressly annexed thereto. *Second*, it depends upon misleading speculation about the intentions of the negotiators, which ignores the state of the international law of the sea in 1949. *Third*, it depends upon "map evidence", said to derive from maps that are not contemporaneous and which do not form part of any agreement or official contact between the Parties. And *fourth*, it is wholly inconsistent with recent agreements entered into by the Parties, in particular those of 1997, and with their activities, or absence of activities. I shall deal with each of these four points in turn.

**(i)** ***Romania's assertion is based upon a misreading of the 1949 procès-verbaux and ignores the annexed map 134***

30. The Parties seem to agree that, for the purpose of assessing Romania's thesis, the key documents are the two 1949 procès-verbaux: the "general procès-verbal", and the individual procès-verbal of border sign 1439 (beacon). Both Parties concur that subsequent agreements or instruments, in particular those of 1954, 1961, 1963 and 1974, did not alter the effect of the

1949 procès-verbaux, but simply confirmed whatever it was that was agreed in 1949. I shall therefore concentrate on the two 1949 procès-verbaux.

31. The general procès-verbal[23], which as I mentioned yesterday is in three volumes, was drawn up by the Mixed Soviet-Romanian Commission on the Demarcation of the State Border. I referred you to the relevant passages yesterday. You will recall that the task of the Commission was to demarcate the State border.

32. In its ordinary meaning, in 1949 as today, the term "State border" refers to the border between areas under the sovereignty of the States concerned, their land territory, internal waters and territorial sea. And that is precisely what was covered by the 1949 general procès-verbal.

33. The most relevant passage from the general procès-verbal comes at the end of Volume III, and you will find the key passage at tab 45 of your folders. I should explain that for convenience, we have reproduced in one place the original, and authentic, Russian and Romanian texts, with the rather different — but not I think substantively different — English translations submitted by Ukraine and Romania, as well as the French translations prepared by the Registry, all of these texts as they appear in the written pleadings. Of course it is the original texts in Russian and Romanian which are the ones that have to be interpreted.

34. The two sentences, relied upon by Romania, read as follows — and I am using the English translation annexed to Ukraine's Rejoinder, which you will find on the first page of the tab:

> "The state border mark No. 1439 (pole) is placed on water in a turning point of state border line which passes in the Black Sea, at the intersection of a direct line, which goes from state border mark No.1438 (buoy) in azimuth 102° 30' 0", with the external edge of 12-mile maritime border strip of the USSR around of Zmiinyi Island."[24]

After giving the co-ordinates of mark 1439, and the length of the line between marks 1438 and 1439, the procès-verbal concludes with the following sentence: "*The state border* [in French translation *la frontière d'état*] from state border mark No. 1439 (pole) passes along external line of a 12-mile maritime border strip, leaving Zmiinyi Island on the side of the USSR." (Emphasis added.)

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[23]RU, Ann. 1.

[24]The English translation submitted by Romania is somewhat different, and ends with the words "with the exterior margin of the Soviet marine boundary zone, of 12 miles, surrounding Serpents' Island": see RU, para 3.23.

35. The first of these two sentences which I quoted simply describes the location of border mark 1439. The second, on the other hand, indicates what will happen to the State border beyond border mark 1439.

36. I would next invite you to glance at the individual procès-verbal of border mark 1439, which you will also find in the same tab after the divider. Once again we have prepared a similar multilingual version.

37. I will not take you to the sentences concerned, but the individual procès-verbal also contains two separate sentences which mirror those in the general process-verbal. The first paragraph of the extract we have provided describes the location of border mark 1439. The last paragraph describes the line, including its continuation along the outer limit of the 12-mile territorial sea, beyond border mark 1439.

38. I would now like to return, Madam President, to the two sentences in the general procès-verbal relied upon by Romania. Romania suggested that the first of these sentences means that the border line goes all the way round the outer limit of Ukraine's territorial sea around Serpents' Island, or at least to "point X". This is wholly unconvincing. It ignores the general economy of the procès-verbal, and the purpose and plain meaning of the sentence, which is simply to locate border mark 1439 on the outer limit. We dealt with that argument fully at paragraph 3.24 of our Rejoinder.

39. The second sentence, on the other hand, does appear to address the continuation of the State border around the territorial sea outer limit, in that it says that it goes on or along the limit. But it says nothing about how far the State border continues. For that we need to consider the object and purpose of the procès-verbal — demarcation of the State border — and the map referred to therein, map 134. So far as concerns the maritime area, "State border", as I have said, refers to the Parties' common border between internal waters and territorial seas, and no more. This is confirmed by map 134, which was referred to in, and annexed to, the procès-verbal. Map 134 clearly indicates an endpoint approximately where — it was anticipated — the State border would terminate.

40. Romania places considerable weight on the terminology used in the 1949 procès-verbaux, and subsequent documents, to describe the 12-mile territorial sea area around

Serpents' Island. In Ukraine's English translation of the two sentences I just quoted from the general procès-verbal, the area within the 12-mile limit is described as "12 mile maritime border strip"; somewhat confusingly, in the individual procès-verbal exactly the same Russian and Romanian terms are translated — badly translated, I think — as "maritime borderland". In the case of each procès-verbal, Romania's translation has "marine boundary zone, of 12 miles". The Registry's French translation seems to be "zone frontière maritime de 12 miles".

41. Romania argues, largely on the basis of this terminology, that the intention in 1949 was to refer to the totality of the Soviet Union's entitlement to maritime areas, whatever that entitlement might be in the future, with the consequence that any maritime rights or jurisdiction that might exist south of the 12-mile limit would belong to Romania, not to the Soviet Union. Romania asserts that "the maritime zone around Serpents' Island was established in 1949, in terms not limited to a territorial sea"[25]. There was, Romania boldly asserts, "an *all-purpose* maritime boundary"[26].

42. There is, I respectfully submit, nothing in this terminological point. There is nothing in the terminology used in the procès-verbaux that dictates the conclusion that, in 1949, the Parties intended such an extraordinary result (and in our submission, very clear language indeed would have been required).

43. In fact, of course, in 1949 the terminology used in the Soviet Union — and indeed elsewhere — to refer to what we would now call the territorial sea was nothing like as uniform as it is today. Now we have the work of the International Law Commission from the 1950s, and the 1958 and 1982 Law of the Sea Conventions, to guide us on terminology. In earlier days, terms were used much more fluidly to describe the territorial sea.

44. Professor William Butler described the uncertain Soviet terminology in his 1971 book on *The Soviet Union and the Law of the Sea*. You will find the relevant extract at tab 46 — i.e., pages 19 to 22 of the book. The whole passage is interesting, but I would draw attention to the first full paragraph on page 21, and I quote:

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[25]MR, para 4.50.

[26]MR, para 11.20; emphasis in original.

> "Soviet legislators have employed several terms for waters washing Soviet shores. These include 'coastal waters' *[pribrezhnye vody]*; 'territorial belt of waters'; 'sea border belt' *[morskaia pogranichnaia polosa]*; 'sea belt'; 'coastal waters' *[beregovye vody]*. 'Territorial waters' has been used most often by Soviet legislators, although not in the majority of instances. . . . it was not used in the 1927 statute on the state boundary, which after 1948 was cited by the Soviet government as having codified the 12-mile breadth of Soviet territorial waters."

The term *morskaia pogranichnaia polosa* is the term used in the 1949 procès-verbaux, translated as "maritime border strip", "zone frontière maritime", etc. It seems clear that *morskaia pogranichnaia polosa* was one of a number of terms used in Soviet practice to refer to the territorial sea.

45. The fact that in some later documents agreed by the Parties we find the terms "territorial sea" and "maritime boundary zone" used interchangeably merely confirms that the intention throughout, since 1949, had been to refer to what today, using modern terminology, we would call the territorial sea. So, in our submission, there is nothing in Romania's terminological point.

**(ii)** ***Assertion that the 1949 negotiators had in mind the continental shelf and the EEZ***

46. I turn next, Madam President, to the assertion that in 1949, the negotiators had in mind the continental shelf and the EEZ. Romania appears to assert that the negotiators had in mind the then inchoate concept of the continental shelf. It would be even more extraordinary if, as Romania implies, they were thinking of some future notion of entitlement to an exclusive economic zone, a concept whose birth lay decades in the future. Not only that, but according to the Romanian thesis, the Parties must be deemed to have been ready to agree, back in 1949, how entitlement to these future zones of sovereign rights would be shared, if and when they became established in international law. And further they must be deemed to have agreed that all such rights would go to Romania, and none to the Soviet Union. Merely to state this line of speculation is to show how far-fetched it is.

47. You will find at tab 47 in the bundles an extract from the Award in the *Guinea-Bissau* v *Senegal* maritime boundary arbitration[27]. We have included both the original French as well as an English translation. This case well illustrates the need to interpret maritime boundary agreements in the light of the law applicable at the time of their conclusion. The parties in the

[27] XX *RSA* 119 (French original); 83 *International Law Reports* 1 (English translation).

*Guinea-Bissau* v. *Senegal* case first asked the Tribunal whether a delimitation Agreement of 1960 had the force of law in the relations between them. The Tribunal ruled that the Agreement was valid and binding on the parties so far as concerned the maritime zones known in 1960, i.e., the territorial sea, the contiguous zone, and the continental shelf. But it did not establish a boundary in relation to zones which in 1960 were not known to exist, that is, the EEZ and the exclusive fisheries zone.

48. Having concluded that the 1960 Agreement was valid, the Tribunal considered four arguments put forward by Senegal to the effect that the Agreement must be interpreted as applying to the delimitation of the EEZs even though in terms it only referred to the territorial sea, the contiguous zone, and the continental shelf. These three domains constituted — according to the Tribunal — "the law of the sea in 1960", date of the Agreement. The fourth Senegalese argument was that "the 1960 Agreement must be interpreted taking into account the evolution of the law of the sea"[28]. The Tribunal disagreed. At paragraph 85 it said:

> "The Tribunal considers that the 1960 Agreement must be interpreted in the light of the law in force at the date of its conclusion. It is a well established general principle that a legal event must be assessed in the light of the law in force at the time of its occurrence and the application of that aspect of intertemporal law to cases such as the present one is confirmed by case-law in the realm of the law of the sea . . . [Here the Tribunal makes reference to the *Abu Dhabi* case].
>
> In the light of the text [the Tribunal continued], and of the applicable principles of the intertemporal law, the Tribunal considers that the 1960 Agreement does not delimit those maritime spaces which did not exist at that date, whether they be termed 'exclusive economic zone', 'fishery zone' or whatever . . ."

49. These words, we submit, Madam President, are equally applicable to our case. In our case, far from being established in 1949, the doctrine of the continental shelf was still in its infancy. As Lord Asquith put it in his celebrated Award of 1951 in the *Abu Dhabi* case, "in no form can the doctrine [of the continental shelf] claim as yet to have assumed hitherto the hard lineaments or the definitive status of an established rule of International Law"[29]. It was not yet accepted in State practice. It did not become so until the mid- to late-1950s, at the earliest, and not fully until the work of the 1958 Conference was completed with the adoption of the Convention on the Continental Shelf. This is clear, for example, from a reading of O'Connell's description of the

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[28]Para. 84.

[29]*Petroleum Development Ltd* v. *Sheikh of Abu Dhabi* case, 18 *ILR* 144, at 155.

evolution of the doctrine of the continental shelf in his great work on *The International Law of the Sea*. For example, referring to the Australian Proclamation of 1953, he writes: "In the uncertainty surrounding the continental shelf doctrine at that time, which was still strongly challenged, the Australian proclamation exercised a stabilizing influence by endowing the doctrine of the International law Commission with the valuable benefit of State practice."[30] He continues, "[a]fter the Geneva Conference had adopted the Continental Shelf Convention, controversy was immediately allayed as to the status of the continental shelf . . ."[31]

50. The Soviet Union, for its part, seems to have been sceptical of the Truman Proclamation and the new concept of the continental shelf, until the 1958 Conference. If I could invite you to look at another extract from the book by Professor Butler, at tab 46. This is at pages 139 to 144, where he describes Soviet attitudes to the continental shelf. In the second paragraph on page 140, we read that in 1950, Professor Koretsky, later, of course, judge and Vice-President of this Court, published the first Article in the Soviet Union on the continental shelf. As explained by Butler — you will find this half way down the second paragraph on page 140,

> "Koretskii surveyed postwar claims to the shelf in considerable detail. The claims of Saudi Arabia, Argentina, and Peru, he noted, were examples in which 'sea spaces are usurped and are transformed into "national waters"'. In making its 1945 proclamation, the United States [so said Koretskii] 'simply dictated its will to international law, proclaiming *its* "policy" with respect to the continental shelf . . .' in response to pressures from oil monopolies and to its aspirations for world domination."

By the time of the 1958 Conference, as we see at the bottom of page 141 and the top of page 142, the representative of the Soviet Union found the ILC text "largely satisfactory" because it "guaranteed the exclusive right of the coastal state to utilize the wealth of the continental shelf while limiting that right to a definite purpose, thus making any claim of the coastal state to superjacent waters or air space juridically untenable". I pause here to note that those concluding words make it clear that the Soviet Union would not have accepted any EEZ-type jurisdiction even in 1958, let alone in 1949.

51. The fact that, by 1949, and in reaction to the Truman Proclamation, a small number of countries were beginning to assert jurisdiction over sea-bed and even the water column out to

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[30] D. P. O'Connell, *The International Law of the Sea*, 2 Vols., 1984, 474.

[31] *Ibid.*, 475.

200 nautical miles in no way means that the Soviet Union would have been ready to foreshadow such claims in its own 1949 delimitation agreement. The fact, referred to by Professor Crawford last week[32], that in 1945, just before the Truman Proclamation was issued, the United States informed the Soviet Union and others of what was proposed, tells us nothing about the Soviet Union's attitude to the concept of the continental shelf, and is neither here nor there.

52. In conclusion on this point, Madam President, it seems unlikely in the extreme that the Soviet Union and Romania would in 1949 have been willing to delimit areas with a view to the possible emergence of new zones in the law of the sea.

Madam President, the next section of my speech is a rather long one about sketches and maps and I would be happy to break here if that would be convenient for the Court.

The PRESIDENT: Yes, I do see there is a significant amount more you wish to tell the Court and we will therefore hold that until the morning. The Court will resume at 10 o'clock for the continuation.

The Court now rises. Thank you.

*The Court rose at 12.55 p.m.*

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[32]CR 2008/19, p. 51, para. 115.