

Title: Territorial Rights in the Black Sea: The Snake Island Dispute

Author details

Michael KOCSIS
Department of Political Studies
Queen's University, Kingston ON, K7L3N6
msk3@queensu.ca

Definition

The Snake Island dispute is a conflict between Romania and Ukraine about legitimate title and access to resources in an area of the Black Sea thought to be rich in petroleum deposits. After years of negotiations and numerous attempts at bilateral resolution, the International Court of Justice (ICJ) was asked by Romania to preside over the case in 2004. The ICJ issued a ruling in February 2009 that is hailed as a precedent for international disagreements about maritime delimitation and boundaries of the continental shelf. This dispute is typical of the complexity and multidimensionality of conflicts over territorial access to natural resources. Because the ICJ decision is considered final by major stakeholders, the Snake Island case may be a blueprint for resolving territorial conflicts in other strategic areas.

Description

The court was asked to rule on the boundary dividing Romanian and Ukrainian waters in the Black Sea. Here as elsewhere, the maritime boundary is normally drawn from the furthest limit or 'baseline' of the continental shelf. By international convention, the baseline of the continental shelf provides the threshold from which a twelve nautical mile perimeter is drawn to mark each state's Exclusive Economic Zone (EEZ). Inclusion of Snake Island in a determination of the two countries' EEZs would have considerable impact on the areas in which the states are able to extract natural resources and conduct activities in the Black Sea.

The island was generally considered part of Ukraine's territory, but disagreement persisted for decades about its international legal status (Pereltsvaig 2014). According to the United Nations Convention on the Law of the Sea (UNCLOS), boundary determination issues can be addressed by deciding if the feature in question properly qualifies as an 'island' or whether it should be considered merely an 'islet'. If the former is held true, Ukraine's EEZ would extend outward from the island to confirm the expansive region currently considered to belong to Ukraine. A determination that Snake Island is an islet would concede greater territorial waters to Romania.

The repercussions of this regional dispute went beyond the windfall likely to follow petroleum exploration. According to European Union (EU) law, resolution of all territorial disputes with neighboring states is a condition of EU accession (Eggleston 1996). Consequently, when they signed their bilateral '*Basic Treaty*' in 1997, Romania and Ukraine attached their future relationship with the EU to their ability to resolve the Snake Island issue.

Facts of the case

With an area of less than one square mile, Snake Island (*Ostriv Zmiinyi* in Ukrainian, *Insula*

serpilor in Romanian) is located at the terminus of the Danube delta several dozen kilometers from the European Black Sea coast. The island was historically Romanian but became *de facto* territory of the U.S.S.R. in the twentieth century. After the Soviet Union's dissolution, Snake Island became a possession of the state of Ukraine.

The list of treaties and agreements that discuss Snake Island extends back to the Russian and Ottoman Empires (Pereltsvaig 2014). It is a reminder that Ukraine, Romania, and their rulers over the centuries have struggled over title to this small island throughout their histories.

During the Soviet era, a naval installation, radar base and lighthouse were installed on the island. A small settlement called "Bile" was established by Ukraine in February 2007. Snake Island's resident population of a few hundred people are predominantly members of Ukraine's armed services.

The states affirmed in Article 2 of their *Basic Treaty* that "the existing border between them is inviolable and therefore, they shall refrain, now and in the future, from any attempt against the border" (ICJ 2004). Romania therefore yielded title to Snake Island to Ukraine in 1997 pending resolution of the Snake Island issue. The states also affirmed in their 1997 agreement that if no agreement was concluded in two years, either party could petition the ICJ for final determination. Following two dozen rounds of bilateral negotiations, and with the parties unable to find agreement on a permanent maritime boundary, Romania launched a case against Ukraine at the ICJ in September 2004 to dispute the maritime boundary and resolve associated issues (Elferink 2009).

Legal issues

The court faced a jurisdictional question concerning Romania's rationale for bringing their claim to the ICJ. Romania invoked Article 36, paragraph 1 of the *ICJ Statute*, which allows petitioning states to seek resolution on maritime delimitation issues but not necessarily to establish a new distribution of territorial waters. The court acknowledged that its mandate did not extend to determination of territorial waters as such, but it decided nevertheless to consider the dispute on the grounds that the court's authority to adjudicate UNCLOS authorizes petitioning states to seek resolution on conflicting claims to the continental shelf and EEZ (Elferink 2009).

In relation to these claims, Romania argued Snake Island was merely an "uninhabitable rock" as defined by international custom and specified in standards set down in UNCLOS. Agreement with that interpretation would bring to Romania a wider area for resource exploration, commercial fishing, and Naval activities. Ukraine's response emphasized pre-existing title to the island which Ukraine claimed had transmitted to the U.S.S.R. after the collapse of the Russian Empire and continued throughout the Soviet period. Ukraine's delegation claimed that title remained fundamentally intact when it passed to Ukraine with the Soviet Union's demise in 1991. Agreement by the court with Ukraine's claim about transmission of title would preserve the extensive area of access currently possessed by Ukraine.

In its 2009 final judgment the ICJ decided that Snake Island does not constitute an adjoining feature of Ukraine's coastal boundaries (ICJ 2009b). Therefore determination of the continental

shelf should begin from the European mainland coast rather than the furthest point east on Snake Island. The judgment is significant because the court did not render a decision on whether Snake Island is an islet or island properly so-called. It relied instead on the argument that Snake Island failed to qualify as a contiguous feature of Ukraine's coastline. In the words of the court;

To count [Snake Island] as a relevant part of the coast would amount to grafting an extraneous element onto Ukraine's coastline; the consequence would be a judicial re-fashioning of geography, which neither the law nor practice of maritime delimitation authorizes (ICJ 2009b).

In other words, because of the "considerable distance between the island and the mainland coast" Snake Island should not determine the respective countries' EEZ (Elferink 2009). Hence, the judgement would call for adjustment of territorial waters in the Black Sea, but it would not reverse the customary interpretation of existing territorial claims. Neither Ukraine's sovereignty nor the customary view of existing title to Snake Island were brought into question. The court made use of international conventions like UNCLOS to establish a permanent resolution of the respective claims.

The new dividing line between Romanian and Ukrainian waters in the western Black Sea extends from the states' inland boundary, granting Romania access to 80% of disputed waters. The decision was applauded, however, because it dispersed desirable, resource-rich zones in a manner that brings significant benefits to both parties (Pereltsvaig 2014).

The remaining legal issue concerned possible adjustment of the new determining line to account for a "disproportionate" impact on coastal waters of either state (Elferink 2009). By international convention, disputes about maritime delimitation are followed by a consideration of potential consequences of the recommended boundary, including adjustments if necessary to mitigate unfair outcomes for state parties. The ICJ concluded in its ruling that adjustment was unnecessary given the details of the new coastal boundary.

International precedents

What lessons should be taken away from this territorial conflict? The legal precedent could hardly be clearer. Prior to the Snake Island dispute, neither the ICJ nor any other International Organization (IO) had been asked to decide the legal significance of a feature of maritime geography (Elferink 2009). It is fair to say after the ICJ decision that the formula for maritime delimitation passed a vital test; the language of UNCLOS was reaffirmed as the method to resolve disagreements about maritime delimitation. Such disagreements should be dealt with initially through bilateral negotiation, and if negotiations break down, through involvement by multilateral institutions like the ICJ. The delimitation process confirmed in the Snake Island decision will play an important role in deciding future disputes about maritime boundaries.

The parties' early submissions included claims about Snake Island's population and social activity (ICJ 2005; 2006a). The ruling gave these claims marginal attention. It is worth noting that Snake Island's population, patterns of life, and settlement of Bile did not factor in the 2009 decision (Elferink 2009).

A measure of promise may be drawn from the strategies adopted by these post-Communist states. To be sure, certain organizations in Romania and Ukraine persist in regarding Snake Island as part of the sovereign territory of one state or the other (Pereltsvaig 2014). But since the ruling, the new boundary has been endorsed and validated by the actions of both governments and relevant IOs. This indicates that the Black Sea boundary between Romania and Ukraine, at least with respect to the impact of Snake Island, was resolved by the 2009 decision.

The trajectory of events demonstrates to other governments that parties to future disputes about territory may realize considerable benefits if they work in partnership with global institutions that adjudicate conventions like UNCLOS. The two states set aside short-term strategic advantages in order to pursue a relationship of mutual security. By sending their languishing negotiations to the ICJ, Romania and Ukraine offered assurance of their respect for the integrity of territorial boundaries; they demonstrated capacity to fulfill obligations under international law; and they strengthened their positions as members of the international community (ICJ 2004, 12).

Conclusions

It is too early to tell if the Snake Island case is a prototype for dealing with disputed territorial claims in other regions. It seems reasonable, however, to believe that states in Eastern Europe, Central Asia and elsewhere may realize the advantages of pursuing a global strategy as they manage ongoing disputes about sovereign territory and resource extraction.

1668/1500-5000w

Cross-references: Boundary disputes, Snake Island, maritime delimitation, continental shelf, UNCLOS.

References

Eggleston, Roland (1999) Romania and Ukraine argue over control of Snake Island. Radio Free Europe. April 9, 1999.

Elferink, Alex Oude (2009) Maritime delimitation in the Black Sea (Romania v. Ukraine): a commentary. The Hague Justice Portal. March 27, 2009. Retrieved from: <http://www.haguejusticeportal.net/index.php?id=10407>

International Court of Justice (2004) Application instituting proceedings. Maritime delimitation in the Black Sea (Romania v. Ukraine). Retrieved from: <https://www.icj-cij.org/files/case-related/132/1697.pdf>

International Court of Justice (2005) Case concerning maritime delimitation in the black sea (Romania v. Ukraine); Memorial submitted by Romania. Retrieved from: <https://www.icj-cij.org/files/case-related/132/14697.pdf>

International Court of Justice (2006a) Case concerning maritime delimitation in the black sea (Romania v. Ukraine); Counter-memorial submitted by Ukraine. Retrieved from: <https://www.icj-cij.org/files/case-related/132/14699.pdf>

International Court of Justice (2006b) Case concerning maritime delimitation in the black sea (Romania v. Ukraine); Reply submitted by Romania. Retrieved from: <https://www.icj-cij.org/files/case-related/132/14701.pdf>

International Court of Justice (2007) Case concerning maritime delimitation in the black sea (Romania v. Ukraine); Rejoinder submitted by Ukraine. Retrieved from: <https://www.icj-cij.org/files/case-related/132/14699.pdf>

International Court of Justice (2009a) Press Release: Maritime delimitation in the Black Sea (Romania v. Ukraine). Retrieved from: <https://www.icj-cij.org/files/case-related/132/14985.pdf>

International Court of Justice (2009b) Judgment of 3 February 2009: Maritime delimitation in the Black Sea (Romania v. Ukraine). Retrieved from: <https://www.icj-cij.org/files/case-related/132/132-20090203-JUD-01-00-EN.pdf>

Pereltsvaig, Asya (2014) Ukraine-Romania border conflict over islands. Languages of the World. June 25, 2014.

Runner, Philippa (2009) EU's Black Sea borders set in stone. EUobserver. February 3, 2009.