



**Romania,  
Applicant**

**v.**

**Ukraine,**

**Respondant**

**Memorial of the Government of Romania**

COMES NOW the Government of Romania and for their Memorial to the Court states the following:

**STATEMENT OF LAW**

- 1) International Law applicable in this case appears in the Additional Agreement concluded between the parties in 1997, in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and in the Treaty on the Relations of Good Neighborliness and Cooperation between Romania and Ukraine.
- 2) Specifically:
  - a) article 121 of the United Nations Convention on the Law of the Sea signed into effect on December 10, 1982, as applied in State practice and in international case-law;
  - b) article 83 of the United Nations Convention on the Law of the Sea, as applied in State practice and in international case-law
  - c) the principle of equidistant lines in areas submitted to delimitation where the coasts are adjacent and the principle of the median line in area where the coasts

- are opposite;
- d) the principles of equity and proportionality, as applied in State practice and the decisions of international courts regarding the delimitation of continental shelf and exclusive economic zones and as outlined in UNCLOS;
  - e) the principle that neither of the Contracting Parties shall contest the other Party's sovereignty over its territory neighboring the areas submitted;
  - f) the principle of taking into account the special circumstances of the area submitted to delimitation.
- 3) The Additional Agreement signed between Romania and Ukraine in 1997 represents a special agreement between the two States, and the delimitation requested of the Court must be determined with the five principles of Article 4 of the Additional Agreement taken into consideration
- 4) The Government of Romania considers that the method of delimitation of the disputed maritime areas in the Black Sea, as well as the resulting boundary, as proposed by Ukraine during the negotiations, do not correspond to the relevant provisions of the Additional Agreement that have to be applied to the case.
- Consequently, Ukraine has failed to respect Article 4 of the Additional Agreement.
- Furthermore Ukraine's position does not produce an equitable solution as between the two States as required by Articles 74 and 83 of the 1982 Convention on the Law of the Seas.

#### STATEMENT OF FACT

- 5) In 1997 Romania and Ukraine concluded two legal agreements, these being the Treaty on Relations of Co-operation and Good-Neighborliness between Romania and

Ukraine, signed at Constanta on 2 June 1997 (the “Treaty on Relations”) and an Additional Agreement to this Treaty, concluded by an exchange of letters of the Ministers of Foreign Affairs of the two States (the “Additional Agreement”). Both entered into force on 22 October 1997. According to these agreements, the two States took on the obligation to conclude a separate Treaty on the State Border Regime between Romania and Ukraine, which was concluded and entered into force on May 27, 2004. The Additional Agreement also requires the creation of an Agreement for the delimitation of the continental shelf and exclusive economic zones of the States in the Black Sea. The Additional Agreement also provided for the principles of article 4, section (h) to be applied in the delimitation of the above mentioned maritime areas, and set out the commitment of the two countries that the dispute could be submitted to the ICJ, subject to the fulfillment of article 4. Both the Treaty on Relations and the Additional Agreement were registered by Romania with the Secretariat of the United Nations Organization in accordance to Article 102 of the Charter of the United Nations, legitimizing them as recognized international law.

- 6) Between 1998 and 2004 the States held 24 rounds of negotiations to attempt to resolve the subject of the delimitation of the maritime boundary. No result was obtained from these negotiations and the expected agreement on delimitation of the maritime areas in the Black Sea was not developed. It is the opinion of the Romanian government that to avoid indefinite prolongation of these discussions, that obviously cannot lead to any agreeable outcome, Romania hereby seizes the Court with the dispute between the two Parties concerning the delimitation of their maritime boundary in the Black Sea, and respectfully requests the Court to proceed to an agreement on the delimitation of the respective continental shelf and the exclusive

economic zones of the two States in the Black Sea and to establish a single maritime boundary for this purpose.

## THE JURISDICTION OF THE COURT

- 7) Article 4, section (h) of the Additional Agreement concluded by Romania and Ukraine in 1997 states that:

*“If these negotiations shall not determine the conclusion of the above-mentioned agreement in a reasonable period of time, but not later than 2 years since their initiation, the Government of Romania and the Government of Ukraine have agreed that the problem of delimitation of the continental shelf and the exclusive economic zones shall be solved by the UN International Court of Justice, at the request of any of the parties, provided that the Treaty on the regime of the State border between Romania and Ukraine has entered into force. However, should the International Court of Justice consider that the delay of the entering into force of the Treaty on the regime of the State border is the result of the other Party’s fault, it may examine the request concerning the delimitation of the continental shelf and the exclusive economic zones before the entering into force of this Treaty”*

- 8) The negotiations on the Agreement for the delimitation of the continental shelf and the exclusive economic zones of Romania and Ukraine have far exceeded the two year period specified in Article 4, section (h) of the Additional Agreement agreed upon in 1997. Furthermore the treaty referred to in the Additional Agreement, the Treaty between Romania and Ukraine on the Romanian-Ukrainian State Border’s Regime, Collaboration and Mutual Assistance in Border Issues- was signed at Cernauti, on 17 June 2003 and entered into force on 27 May 2004, the date of the exchange of the instruments of ratification.

- 9) Therefore, Romania feels that the two conditions set forth in the Additional Agreement, article 4, section (h) have been fulfilled, and that the Court has jurisdiction over the present dispute between Romania and Ukraine in accordance with article 36, section 1 of the Statute of the International Court of Justice.

## **ARGUMENTS**

1. Ukraine has renounced claims to the Snake Island as inhabitable, therefore it should not be brought into consideration of the exclusive economic zones and continental shelves.

Article 121, paragraph 3, of the UNCLOS states that “rocks which cannot sustain human habitation or economic life of their own, shall have no exclusive economic zone or continental shelf.” In the negotiations of the 1997 Treaty on the Relations of Good Neighborliness and Co-operation between Romania and Ukraine, Ukraine did not claim Snake Island as an inhabitable body. Again in the Additional Agreement to the Treaty, Ukraine did not contest the designation of Snake Island as an uninhabitable body. The fact that Snake Island served as a shrine for the ancient Greeks does not constitute precedence for habitation, as the island is and has always been incapable of sustaining habitation without external support.

II. The International Court of Justice should consider the special circumstances set forth in the bi-lateral agreements between the States in its ruling on delimitation.

The Additional Agreement of 1997 constitutes a special and legally binding agreement between the two States involved, therefore it, and specifically article 4 and the five principles set out therein, should be considered in the ruling of the Court.

III. Romania requests that the Court draws lines of delimitation in accordance with international law, taking into account the bi-lateral agreements between the two States.

The Court should draw lines of delimitation in accordance with Article 83 of the UNCLOS, signed into effect 10 December 1982 as applied in State practice. In addition to the UNCLOS, the Court should take into account the bi-lateral agreements between the States in its consideration of delimitation.

### **SUMMARY AND PRAYER FOR RELIEF**

The International Court of Justice has jurisdiction in this case as provided for by the Additional Agreement of 1997, article 4, section (h) and in Article 36, section 1 of the Statute of the International Court of Justice. Ukraine has renounced claims to Snake Island as an inhabitable island, as set out in the Additional Agreement of 1997 and the discussions leading to the Agreement, therefore it should not be taken into account in the Court's ruling. The Additional Agreement of the Treaty on the Relations of Good Neighborliness and Co-operation between Romania and Ukraine states that if no suitable delimitation can be decided upon by the two States within two years of the date of the Treaty Between Romania and Ukraine on the Romanian-Ukrainian State Border Regime, Collaboration, and Mutual Assistance on Border Matters coming into effect, either party shall be able to bring the case before the International Court of Justice and request a ruling on delimitation in accordance with codified international law. Therefore, Romania, while reserving the right to complement, amend, or modify its request at any time in the course of proceedings, requests the Court to draw a single maritime boundary between the continental shelf and the exclusive economic zones of the two States in the

Black Sea, in accordance with international law, specifically Articles 83 and 121 of UNCLOS and the criteria outlined in Article 4 of the Additional Agreement of 1997.