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Abstract (English)

Romania and Ukraine are two of the coastal states at the Black Sea. The two countries and the relations between them are one of the handful regional-political contexts which display the complex phenomenon of power game between the two camps of the Cold War era and consequently two invisible camps of the post-Cold War era.

Especially in the aftermath of the Cold War and the dramatic ideological transition within the international system, the Black Sea region has emerged as a significant phenomenon to be studied and comprehended as a whole, owing to its geopolitical importance as a central location for both the victorious West and the 'defeated' East.

Both Romania and Ukraine were potential actors of the post-Cold War processes of transition. Two countries, which presumably shared a similar destiny as well as similar aspirations in the aftermath of the Cold War, deserve particular attention for the comprehension and solution of the post-Cold War challenges and opportunities.

This master's thesis will seek to analyze the relevance of Romania-Ukraine relations to global politics in the post-Cold War era. While seeking to do so, it is going to focus on the politics and international relations of the Black Sea region and the role of Romania, Ukraine and the relations thereof within the importance of the region. In the light of that, it is going to pick the international legal case between Romania and Ukraine concerning the maritime dispute, respectively the maritime delimitation between the two countries in the Black Sea.

Presumably it will help us understand the global politics of Romania-Ukraine relations and the Black Sea region in general a step further.

Abstract (Deutsch)

Rumänien und die Ukraine sind zwei der Küstenstaaten am Schwarzen Meer. Die beiden Länder und ihre Beziehungen zueinander sind eine der wenigen regional politischen Zusammenhänge, die das komplexe Phänomen des Machtspiels zwischen den zwei Lagern in der Zeit des Kalten Krieges beziehungsweise den zwei unsichtbaren Lagern in der Zeit nach dem Kalten Krieg zeigen.

Die Schwarzmeerregion hat sich im Nachspiel des Kalten Krieges und des dramatischen ideologischen Übergangs im Rahmen des internationalen Systems als ein Phänomen, das im Ganzen untersucht und nachvollzogen werden muss, gezeigt, und zwar dank ihrer geopolitischen Wichtigkeit in einer zentralen Lage nicht nur für den siegreichen Westen, sondern auch für den 'besiegten' Osten.

Sowohl Rumänien als auch die Ukraine waren potentielle Akteure der Übergangsprozesse nach dem Kalten Krieg. Beide Länder, die nach dem Kalten Krieg mutmaßlich ein ähnliches Schicksal sowie ähnliche Ansprüche geteilt haben, verdienen besondere Aufmerksamkeit für das Begreifen und die Lösung der Herausforderungen und Chancen nach dem Kalten Krieg.

In dieser Masterarbeit wird angestrebt, die Bedeutung der Beziehungen zwischen Rumänien und der Ukraine für die globale Politik in der Zeit nach dem Kalten Krieg zu analysieren. Dabei liegt der Fokus auf der Politik und den internationalen Beziehungen der Schwarzmeerregion sowie auf der Rolle Rumäniens, der Ukraine und den Beziehungen zwischen den beiden Ländern im Rahmen der Wichtigkeit der Region. Hierzu wird als Fallstudie der internationale Rechtsfall zwischen Rumänien und der Ukraine bezüglich der gemeinsamen Meeresgrenze am Schwarzen Meer ausgewählt.

Dies soll uns helfen, die globale Politik der Beziehungen zwischen Rumänien und der Ukraine sowie der Schwarzmeerregion im Allgemeinen besser zu verstehen.

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I hope we will manage to make sense of the next chapters of our lives.

Burak Ünveren
Istanbul, 05.08.2016

*to my beautiful mom, Gülbin
who made everything possible
out of nothing*

güzel annem Gülbin'e
her şeyi mümkün kılan
hiçbir şeyden

1.

Introduction

International relations are a long-standing global fact which has been practically constituted and tried to understood by humans and international law is a recent human construction, which is designed to serve as one of the main benevolent instruments to improve those international relations. Being primarily based on the case law system, international law has been, is still being and will be constructed in accordance with and in the light of further judgments of international law institutions and designated authorities, e.g. the International Court of Justice (ICJ).

The problem of mapping the sea, i.e. constructing the maritime boundaries between sovereign states, is one of the important dimensions and subject matters of international law, which still is in the process of being constructed and written. Given the water, seas and oceans are significantly important for national and international political power, trade, and more crucially, biological survival. The need for mapping the seas, thus defining -this time maritime- spaces on which complete or partial legitimate sovereignty can be performed, emerges to be of primary importance for the global political and economic agenda. That is why the maritime borders are internationally legally constructed, and as we have argued, this process has a long way down the road before itself.

The case law principle, upon which international law is built, naturally requires all cases important, given it automatically provides them with the natural capability to keep constructing the existing and the future international law.

Romania and Ukraine are two of the coastal states at the Black Sea. The two countries and the relations between them are one of the handful regional-political contexts which display the

complex phenomenon of power game between the two camps of the Cold War era and consequently two invisible camps of the post-Cold War era.

Especially in the aftermath of the Cold War and the dramatic ideological transition within the international system, the Black Sea region has emerged as a significant phenomenon to be studied and comprehended as a whole, owing to its geopolitical importance as a central location for both the victorious West and the 'defeated' East.

Both Romania and Ukraine were potential actors of the post-Cold War processes of transition. Two countries, which presumably shared a similar destiny as well as similar aspirations in the aftermath of the Cold War, deserve particular attention for the comprehension and solution of the post-Cold War challenges and opportunities.

This master's thesis will seek to analyze the relevance of Romania-Ukraine relations to global politics in the post-Cold War era. While seeking to do so, it is going to focus on the politics and international relations of the Black Sea region and the role of Romania, Ukraine and the relations thereof within the importance of the region. In the light of that, it is going to pick the international legal case between Romania and Ukraine concerning the maritime dispute, respectively the maritime delimitation between the two countries in the Black Sea.

In the light of this perspective, the ICJ case of the maritime delimitation in the Black Sea between Romania and Ukraine is thought to be highly fruitful for this study. The reasons behind this positioning is, before all else, that it was brought to Court in 2004 and given the judgment for in 2009, which perfectly allows us to make an appropriate analysis of the before of a case, and an after, considering what we are

dealing with in the framework of this study is an international maritime case which is both contemporary and recently historical.

This master's thesis is going to seek to examine the ICJ case of maritime delimitation in the Black Sea between Romania and Ukraine in the broader framework of the politics and international relations of the Black Sea region as well as the relations between the two countries. This analysis, furthermore, is going to help us understand the global politics of Romania-Ukraine relations in the post-Cold War era.

In the light of that, firstly we will try to position Romanian-Ukrainian relations in a regional and global perspective, i.e. the meaning, relevance, and importance of the relations between these two countries for the globe, secondly we will do the analysis of the legal case of maritime delimitation in the Black Sea which directly concerned the two countries, and thirdly, we will try to answer our main research question, i.e. we will try to explain the relevance of this particular case for global politics.

2. Conceptual and legal framework

As regards to the relevant international texts on which maritime law is built, indisputably, we have to mention the United Nations Convention on the Law of the Sea¹. This particular text has been and is still regarded as the primary legal text of maritime issues. Carrying the quality of being internationally acknowledged in the international society and even the system, the UNCLOS manages to define maritime terminology in a way as neutral and understandable as possible and offer certain legal solutions to possible disputes.

The UNCLOS was adopted by the Third United Nations Conference on the Law of the Sea in New York, the United States, on 30 April 1982, and the requirements for entry into force thereof were finally met on 16 November 1994, the Agreement was signed, and the Convention finally came into force after a process of 12 years, within which a certain number of UN member states signed the convention.²

Still today, although numerous states recognised the Convention as a party or a signatory³, which means they are either fully bound by the treaty there are still a number of states which are none of the two. One of the most remarkable ones among these states are the United States, given their mass in the game of international politics.

“Public international law regulates the relations among States, through treaties and customary norms. The international

¹ Abbr.: UNCLOS.

² Renate Platzöder (ed.). The 1994 United Nations Convention on the Law of the Sea. Basic Documents with an Introduction, Dordrecht: Martinus Nijhoff Publishers, 1995.

³ The states which are a party to the Treaty are legally bound by the Treaty, whereas the signatory ones are still in the process of ratifying it.

law of the sea is one of the key areas of public international law and the United Nations Convention on the Law of the Sea...is its cornerstone. UNCLOS is one of the most important and most widely ratified multilateral treaties.”⁴

I consider it essential to explain a certain conceptual framework in advance which in my view has the very tendency to confuse the reader throughout this study. Within the framework of this study, the International Court of Justice, abbreviated as the ICJ, regarded as the international legal authority, will simultaneously be referred to as 'the Court'. In parallel, the United Nations Convention on the Law of the Sea, abbreviated as the UNCLOS, will simultaneously be referred to as 'the Convention'.

Studying the UNCLOS is of primary importance given it established the currently legitimate system of the international law of the sea. It is essential to be able to understand the further discussions with regards to maritime delimitation, as well as our specific case of maritime delimitations in the Black Sea between Romania and Ukraine.

In the preamble of the UNCLOS⁵, the focus on universality claims is observable. A good laboratory in which the social scientist or historian can analyse the clear attempt of the Western-led new world order, which was planned to be based on collective security after the World War II, to universalise the law of the sea, establishing a consolidated,

⁴ United Nations, “The Law of the Sea: Training Manual for Delineation of the Outer Limits of the Continental Shelf Beyond 200 Nautical Miles and for Preparation of Submissions to the Commission on the Limits of the Continental Shelf”, 2006.

⁵ United Nations Convention on the Law of the Sea (UNCLOS). http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf , p. 25.

legitimate and globally acknowledged and implemented law framework, is the UNCLOS.

This document considers itself to help serving the interests and "the needs of mankind as a whole", legally providing "the peaceful uses of the seas and oceans" on a global basis. This global basis, in the meanwhile, is discursively built upon the emphasis that the Convention concerns "all nations" and "all peoples of the world" in various manners.⁶

Nonetheless, the widely argued, now-mainstream discourse that the UN system is de facto ineffective remains intact. When we focus on this specific document bearing that perspective, we realise that the claims are expressed through words like "believing", "desiring", "bearing in mind", "noting" or being "conscious"⁷. Even though it goes without saying that the fact that the overwhelming majority of nations are relevant parties to this convention is remarkable and historically significant in the context of the global relevance of the UNCLOS as an international law document, it is just as possible to argue that the working used within the document makes it relatively less powerful especially regarding the fact that it is supposed to be regulating a global phenomenon.

A reasonable amount of the important concepts which are in direct relevance linkage with the context of this study are commonly defined within the UNCLOS. It is fair to suggest that the definitions which are provided by and in the UNCLOS are the most widely acknowledged ones, thus these can primarily be taken for granted as widespread definitions in a global context.

⁶ Renate Platzöder. The 1994 United Nations Convention on the Law of the Sea. Basic Documents with an Introduction, p. 1-2.

⁷ UNCLOS, p. 25.

In this regard, I consider it beneficial to mention the scientific-legal concepts which are relevant to our topic:

"The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to this distance." Additionally, "the continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof."⁸

"The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal régime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention... In the exclusive economic zone, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to the other activities for the economic exploitation and exploration and exploration of the zone, such as the production of energy from the water, currents and winds."⁹

However, before all else, continental shelf is a geological reality. The fact that it does not only concerns geology and geologists but it is directly and primarily their subject matter to

⁸ Platzöder, *The 1994 United Nations Convention...*, p. 31.

⁹ Platzöder, *The 1994 United Nations Convention...*, p. 31-32.

study required the involvement of the scientific knowledge and opinion within the process of the legal construction of the scope of the term continental shelf. Mouton's and Platzöder's works enlighten in this regard.

As the scholar M.W. Mouton begins to write his significant work *The Continental Shelf*, which was awarded one of the most prestigious prizes in the field of international law, the Grotius Prize, in 1952: "The notion 'continental shelf' is of purely geological, geographical and oceanographical origin"¹⁰ as well as with regard to the history of the term he writes: "For the purpose of this study mainly the geomorphological facts are important".¹¹

It is inarguably important to bear this scientific dimension in mind before and while studying the international politics and law of the sea, given the whole context of the law and politics their exist almost entirely owing to the scientific dimension of the seas, oceans, and in general, water. In other words, certain states attempt to claim and perform sovereignty over certain waters, and other states directly or indirectly want to determine through international law and take it for granted which state shall perform this sovereign rule over which waters, mainly because of the very fact that they want to know it for sure which scientifically exploitable aspects of the seas can now legitimately exploited by whom.

These aspects include the energy dimension, before all else: digging for petroleum, gas and minerals. The organic relationship between "the composition of the shelf and the probabilities of the occurrence of oil"¹² is undeniable. A

¹⁰ M.W. Mouton. *The Continental Shelf*, The Hague: Martinus Nijhoff, 1952, p. 6.

¹¹ M.W. Mouton, *The Continental Shelf*, p. 32.

¹² M.W. Mouton, *The Continental Shelf*, p. 37.

derivative function of this dimension is, understandably, international trade.

This fact, by the way, relates to our specific context directly, considering the fact that the Black Sea, regardless of whether it is known or unknown, is home to an extensive amount of resources.

"The continental shelf is a 'fait accompli', a natural feature of the earth, which we have to take or to leave as it is."¹³ For all of the capacities and possibilities of maritime exploitation, of course, natural sciences play the roles of both a basis and a method. The states need science to know what under the water is, and more importantly, how to make use of it. That is partially why there is an ongoing international legal construction regarding this very topic. "If we are going to introduce a 'legal edge' of the 100-fathom line, we do that in order to obtain a uniform and easily discernable limit, realizing that it is at the same time the outermost limit for exploitation possibilities for a long time to come"¹⁴.

"The continental shelf is the relatively flat and shallow... submerged part of the continent. A thick layer of sediments that may contain hydrocarbon resources usually covers it."¹⁵

Beyond the aforementioned dimensions of the continental shelf, we need to remember that the term has a history, and a pretty recent one of that. Mouton writes that "... in some governmental documents and publications and discussions the continental shelf is referred to as 'submerged lands'", and

¹³ M.W. Mouton, *The Continental Shelf*, p. 37.

¹⁴ M.W. Mouton, *The Continental Shelf*, p. 28.

¹⁵ United Nations, "The Law of the Sea: Training Manual for Delineation of the Outer Limits of the Continental Shelf Beyond 200 Nautical Miles and for Preparation of Submissions to the Commission on the Limits of the Continental Shelf", 2006, p. 11.

the fact that the term contains 'lands' in it "suggests that this term is used to strengthen the idea that it once belonged to the riparian State and there is nothing streams in the fact that a State claims control and jurisdiction over the resources in the shelf, or even sovereignty over the shelf".¹⁶

¹⁶ M.W. Mouton, *The Continental Shelf*, p. 34.

3. A history of Romanian-Ukrainian relations in regional and global perspective

According to both academic work and average social opinion, it is historically given that Ukraine and Romania are two countries which have been socially, culturally, politically, commercially and even ethnically interconnected. The historical and contemporary entanglement between the politics and societies of the two parties are undeniable. "Ukraine and Romania are neighbouring European countries sharing significant common cultural, historical, and civilisational heritage. They have a lot in common in their national development, cultural values, and in the level and issues of economic and social development."¹⁷

Both countries are coastal states at the Black Sea. In this regard, the two countries neighbour Bulgaria, Turkey, Russia and Georgia in a maritime respect.

Needless to say, the Black Sea displays significant importance for regional and global politics and trade relations, considering its great potential for gas and oil reserves as well as its geopolitical position which allows and requires not only neighbouring regional actors but also international actors to take their place in the competition and pursue various forms of power politics in the Black Sea region.

¹⁷ Anatolii Kruglashov, "Troublesome neighbourhood: Romania and Ukraine relationship", *Nowa Ukraina*, p. 114.



Figure 1. The Black Sea region.¹⁸

Being two neighbouring countries which geographically and politically form one of the handful of bridges between Europe and Asia, the relations between the two countries were not only influenced and determined by their untouched internal dynamics and mere foreign policies, but they were determined, influenced and shaped by various pursuits of interest by different countries in and outside of the region. Whereas Romania is officially regarded as part of the eastern-Black Sea border of the European Union, Ukraine appears to be very interesting considering its historical ties with Russia and independent identical positioning. In this perspective, arguably, Romania is the most eastern part of the West and Ukraine is the most western part of the East. In this regard, it is fair to argue that the relationship of these two states need to be contextualized in a global perspective in order to be better evaluated and understood. In this regard, Romania and Ukraine seem to be the very region between the bound-to-be trading

¹⁸ Source: https://upload.wikimedia.org/wikipedia/commons/5/52/Black_Sea_map.png

partners and historical-ideological rivals European Union and the United States of America versus Russia. Although this 'rivalry' has its ups and downs, i.e. becomes severer or softer from time to time in the long history of transforming and consolidating relations, the geopolitical significance of the region this Romanian-Ukrainian relations remain intact.

"After NATO's and EU's expansion to the East (or enlargement, to put politically and contemporarily correct), Ukraine found itself between the borders of the past-Soviet countries, on the one hand, and borders of the North Atlantic Treaty Organisation (NATO) and the EU, on the other hand. That made its strategic position somewhat ambivalent what concerns the guarantees of own national security."¹⁹

For instance, the attention paid by the inarguable superpower and arguable leader of the past - Cold War order, the United States of America to Romania "is influenced by Romania's gear geopolitical importance in the Black Sea region". In the meanwhile "Romania is actively developing political and military-technical cooperation with the USA... the USA has high appreciation for Romania's geopolitical location and wants a trustworthy ally in the Black Sea region".²⁰ This fact is, though, just a minor exhibit of the broader picture of Realpolitik.

The above-mentioned reason is exactly why the relations between two countries are very relevant for global politics, which is the same reason why the eastern border of the European Union is very important: energy security. Given the Black Sea is both a practical and potential significant gas supplier, the boundary between these two worlds emerge to be

¹⁹ Anatolii Krugashlov, *Troublesome neighbourhood...*, p. 115.

²⁰ Viktor Pavlenko, Sergey Sveshnikov, et. al. "An Analysis of Romania's Foreign Policy Relations in the Context of Ukraine's European Integration", p. 123.

very globally relevant. In this respect we have to remember that "Russian gas is being supplied to Romania via the Ukrainian pipeline in amounts of more than 2 billion cubic metres per year". And the same Russian gas "is transported through Romania to Turkey, Macedonia, Bulgaria and Greece in amounts of 12 to 15 billion cubic metres per year"²¹.

This very context itself the significance of the primary subject matter of this study. It is a known or at least a presumable fact that there may exist significant gas and oil deposits under the continental shelves of both parties in the Black Sea. This point of view does not only present another Realpolitik of the general topic of study of ours, but it is capable of explaining the very reasoning behind the dispute itself in the first place.

There are reasons why "among all European states, Ukraine's relations with Romania are the most complex and contradictory". In this perspective, Kruglashov's description 'troublesome neighbourhood' explains the Ukrainian-Romanian relationship already pretty well. The two parties have been neighbours all along, which requires and let them to be relevant and meaningful for world politics not merely alone and individually but predominantly as a whole. In other words, they mostly meant whatever they meant for the globe together, as a broader context of two neighbouring states. This neighbouring relationship, on the other hand, has been troublesome indeed. But in my point of view we have to see the positive side of this description: that what we are talking about here is not a neighbourhood that is based on complete and constant set of disputes, challenges, and oppositeness, but it is a possibly

²¹ Viktor Pavlenko, Sergey Sveshnikov, *An Analysis...* p. 119.

fruitful neighbourliness which certainly experiences problems which, though, can and need to be solved.

"However, relations between the two independent states have not always been built on the basis of good neighbourliness and mutual assistance, and reached the phase of maximum proneness to conflict in their history at the beginning of the 1990s. Since 1997 and until present those relations have inclined to gradual rapprochement. Both states' search for mutually acceptable pragmatic partnership in issues ranging from regional security in the Black Sea basin, to securing their energy independence, implementation of joint commercial and economic initiatives and projects, and finally to furthering their quest for a worthy place within European and Euro-Atlantic processes."²²

There have been no profound land border disputes between Romania and Ukraine since the relevant foundational international treaties were signed, despite the fact that there were minor disagreements ever since. However before that, "implicit territorial disputes between Romania and Ukraine emerged almost immediately after the collapse of the USSR"²³. These disputes were solved in the process. "The present borders in Europe (including those of the Ukraine) were secured by a number of international treaties and agreements which were recognised and ratified by Romania. That is in particular the Paris Peace Treaty of 1947, Helsinki Final Act of 1975, and the OSCE Charter of Paris for New Europe, etc."²⁴

A year after the Paris Peace Treaty became effective, which defined the border of the Ukraine and Romania in general

²² Pavlo Baylyk. Impact of Putin's Foreign Policy on the Security of Ukraine, Master's thesis, Vienna, 2002.

²³ Viktor Pavlenko, Sergey Sveshnikov, *An Analysis...*, p. 108.

²⁴ Anatolii Krugashlov, *Troublesome neighbourhood...*, p. 116.

terms, the Protocol on Clarification of the Soviet-Romanian Border entered into force "for the border delimitation on large-scale maps and demarcation afield".²⁵

In the same year another protocol was entered into force, which directly related to our topic of study in the framework of this study. On May 23, 1948, this very protocol stated that the Snake Island (the Serpents' Island) " was returned to the Soviet Union by the People's Republic of Romania and was included into the USSR"²⁶.

After one year, in 1949, the Demarcation Act and List Protocol of the Soviet-Romanian State Border Passing was signed and it constituted a further step towards the fixed border regime between the two countries.

Finally, in the year 1961, the Treaty on the Regime of the Soviet-Romanian State Border, Co-Operation, and Mutual Assistance in Border Issues was signed in Bucharest. Thus, the legal basis for the current Ukrainian-Romanian border was shaped.

In the course of recent history of the relations between two parties a number of border disputes emerged, indeed. Among these disputes there is the maritime dispute concerning the continental shelf and respective exclusive economic zones of the two countries in the Black Sea, which was successfully and peacefully resolved at the International Court of Justice upon the joint request of the two parties, which is the main subject matter, i.e. the case study of this study.

Other disputes mainly stemmed from the introduction of the Romania Mare ideology in Romania, which translates 'Greater Romania' and requires certain territorial claims on

²⁵ Anatolii Krugashlov, *Troublesome neighbourhood...*, p. 117.

²⁶ Anatolii Krugashlov, *Troublesome neighbourhood...*, p. 117.

the side of Ukraine. The "concept of 'Greater Romania' has been formed gradually over the 150 years", presupposing "the consolidation of all territories inhabited by orthodox Romanians".²⁷

These territories were claimed to be 'ethnic Romanian lands'. In the meanwhile the Romanian parliament officially supported this expansionist position, "reconsidering the legal bases for the existing border"²⁸. The Romanian state performed the practice of this standpoint through a certain set of public statements, and more importantly, through approving the Declaration of the Romanian Parliament as to the Ribbentrop-Molotov Pact (1939) and its Consequences for the Country in 1991. This declaration was "an appeal to the president, government, and all the political forces of the country to return to Romanian lands annexed as a result of the Ribbentrop-Molotov Pact.

Observably, the Romanian state desired to re-include the alleged Romanian lands which were at the time not a part of Romania owing to an agreement between Germans and Russians of a previous time. One should also keep in mind that this tension takes place right after the dissolution of the Soviet Union, i.e. the relatively young independent republic of Ukraine. One can argue that Romania had regarded Ukraine as weak, and as a result of that point of view, decided to officially and harshly act against Ukraine bearing an expansionist mindset back in the beginning of the 1990s, i.e. the new unipolar world order. "Such an approach, openly instigating tensions, was pronounced in contrast to the current norms of international law, and threatened South- East Europe with the

²⁷ Viktor Pavlenko, Sergey Sveshnikov, *An Analysis...*, p. 106.

²⁸ Anatolii Krugashlov, *Troublesome neighbourhood...*, p. 118.

appearance of instability and conflict in the region laden with potential conflicts"²⁹.

In the course of time though, this idea lost its power within the Romanian society. "Gradually the political ideal of restoration of Greater Romania states losing its magnetism in the opinion of the pragmatic part of the national elite which understood well its unreliability as well as negative consequences for the country's status and prestige" in case of the further pursuit of this policy. This particular mindset was inarguably "inconsistent with Euro-Atlantic and European aspirations of the Romanian elite and society."³⁰

This very analysis successfully teaches us two certain things which are interconnected. First of all, both Romania and Ukraine became more and more aware of their global relevance and respectively decided to make their policies in accordance with their global aspirations in the new world order. Second of all, and accordingly, Romanian-Ukrainian relations are by all means global. They have global implications, i.e. they influence various courses of global politics and international relations. This is very much where the Realpolitik steps in again. In perfect accordance with the newly emerged world order after the Cold War, the ideal of collective security which was intended to be established by the Western camp after the two world wars and was partially succeeded, finally had reached the historical point at which it could be established once and for all, strongly. At this very global moment, the two countries, Romania and Ukraine define their current and intended positionings in the new global order, and pressure policies in accordance with those self-definition.

²⁹ Anatolii Krugashlov, *Troublesome neighbourhood...*, p. 118.

³⁰ Anatolii Krugashlov, *Troublesome neighbourhood...*, p. 120.

Romania, historically and linguistically, defined itself as a natural part of the West, and at the same time Ukraine, historically derived from the Russian world but now independent, decided to define itself as a possibly integrable part of the same West. Considering both sides now declared their sincere intentions to be parts of the same family, it read not only consistent but also an essential requirement for these two brothers-to-be to stop fighting with each other, physically and mentally, over the old issues, within the now-dead paradigm and culture of global politics which was sharply in opposition with the new global status quo.

"For many years Ukraine has not been able to improve relations with Romania on a bilateral level. Hence, resolution of the problem resolution should be moved to a multilateral level."³¹ And the undeniable EU involvement in the relevance of these two countries is a solid proof of that.

Still today, some of the disputes between Romania and Ukraine remain unresolved. Nevertheless, it is undisputable that the two countries manage to coexist in a very peaceful manner. One of the best exhibits of this peaceful coexistence and relatively successful good neighbourhood is the very focus of this study. As we will be discussing thoroughly in the next chapter, the two parties brought the dispute between them concerning maritime delimitation in the Black Sea to the International Court of Justice, as a result of their failed yet peaceful bilateral negotiations regarding the issue, and they both respected the arguably fair judgment of the Court, which is officially a concrete legal institution of the aforementioned collective security system in the new world that was established under the umbrella of the United Nations.

³¹ Viktor Pavlenko, Sergey Sveshnikov, *An Analysis...*, p. 123.

Further resolution of the disputes between the parties will, by all means, contribute to the further and deeper establishment of stabilised bilateral relations. The international cooperation and peaceful coexistence of the two countries under the flag of the Western-originated collective security system will possibly lead towards a normal and stable neighbourhood as well as a European partnership.

As discussed, it is difficult to consider the current status of Romanian-Ukrainian relations perfectly satisfactory, however it goes without saying that there is extensive progress as regards to the normalisation of the relations between the two countries. "... Ukrainian-Romanian relations are steadily entering a phase of constructive and mutually beneficial development despite the heavy historical legacy, current difficulties and problems. There are signs that owing to the geo-strategic position of both countries their objective national interests in key strategic issues gradually drew near. Deepening reforms in both countries should provide the basis for constructive Romanian-Ukrainian relations."³² In the light of this analysis, we can fairly argue that, now, both Ukraine and Romania are legitimate and components of international society which is established upon the collective security ideal imposed the Western world, positively, negatively or neutrally. Their cooperation in terms of the assigned global power of the International Court of Justice on the purpose and method of the proper functioning of international law is a successful example in this regard, as we will discuss in the upcoming chapter more thoroughly.

In this chapter I have tried to make it clear that the Ukrainian-Romanian relations definitely constitute a global

³² Vladlen Makoukh, Artem Filipenko. "Ukraine-Romania: Issues and Challenges of Bilateral Relations", p.6.

relevance. This global relevance, by its very name, does not only influence the dynamics, actors and processes of international politics and trade relations, but sometimes even determines it. The Black Sea is located in the middle of Russia, European Union, and the Middle East, and moreover it has significant oil and gas reserves, thus it displays great importance for the running mechanism and processes of global politics and a wider context of international relations, such as international trade, which are, in my perspective, entangled. Furthermore, not only regional actors, but also global actors undertake and play a role regarding the relationship of these two countries.

Another aspect of the global relevance of Ukrainian-Romanian relations is the Russian annexation of Crimea in the recent years. As widely known, Crimea is Ukrainian territory in the light of the commonly acknowledged border regimes by the international society, however it is currently *de facto* under Russian control. The Russian military and political presence in Crimea brings Romanian-Ukrainian relations a step further in terms of their global relevance. This political-military situation does not only bring the encountering of Russia and European Union into the play, but also, minorly, Turkey, given the existence of Crimean Tatars in Crimea, which are a Turkic people historically inhabited in Crimea. Not only politically and culturally, but also in terms of international law and trade, the Russian occupation of Crimea appears to be relevant. Particularly in the framework of this study, the Russian annexation of Crimea directly concerns Ukraine's sovereignty and practical activity in a certain maritime area, which is currently under illegal rule of Russia. One important implication thereof is that "basing the Russian Black Sea Fleet and other troops there provides control over the entire north-

western part of the Black Sea"³³ for Russia. Furthermore, "the combat potential of the Black Sea Fleet considerably exceeds the combat potential of the naval forces of Romania", and "the strengthening of Romania does not corresponds with Russian interests. Therefore, Romania considers the Russian Black Sea Fleet as a counterbalance to its own naval forces and is concerns about Russia's presence in Crimea" as all the members of international society are.³⁴

In this multidimensional context, we need to focus on both Romania and Ukraine, both separately and the relationship between them. This multilayer framework contains, of course, the outer and inner dynamics of both actors.

"In part driven by the desire for membership of the EU, the country has been transformed during the last decade. Democracy has established firm roots in the country."³⁵

Right before the Romanian accession to the EU, it was scholarly proven that "... the fact that 70% of Romanian trade is with the EU, and the expansion of the private sector in Romania" made the necessary environment possible and existent for the desired compatibility of the two parties. In the same regard, the EU was regarded to possess a crucial role for the establishment of "functioning domestic institutions" for the economy.³⁶ In accordance with that, Negrescu finds that Romania already was much integrated with the EU economically, even before their accession to the EU.³⁷

³³ Viktor Pavlenko, Sergey Svешnikov, *An analysis...*, p. 111.

³⁴ Viktor Pavlenko, Sergey Svешnikov, *An analysis...*, p. 111.

³⁵ David Phinnemore (ed.). *The EU and Romania: Accession and Beyond*, European Union: The Federal Trust, 2006, xiii.

³⁶ David Phinnemore, *The EU and Romania...*, xv.

³⁷ Dragos Negrescu, in Phinnemore, *The EU and Romania...*, p. 113-124.

Another important international dimension of the global positioning of Romania becomes visible in the framework of international organisations. "An over dependency on international funding by non-governmental organisations, exacerbated by a number of historical factors, has arguably restricted the emergence of the robust civil society that would be so beneficial to Romania society and politics".³⁸ Even though the interior politics and sociological study of Romania does not constitute an integral part to our context, I consider this argument to be very beneficial for grasping a certain cornerstone in our context, taking into consideration that we can at some level conclude that the Romanian politics gets developed within the almost undeniable and established internationality of Romania, which is possible to be read either positively or negatively depending on the standpoint. Thus, Romania, evidently, stands in some sort of dependency relationship with international organisations.

In parallel, gain, before the Romanian accession to the EU, and arguably at the time of the first years of the existence of it, the European Neighbourhood Policy was welcomed and there was a call for a greater EU presence"³⁹. We can thus argue that the Romanian society was in the place of finding the EU accession of their country very much desirable. This EU presence, furthermore, was to be implemented "through the European Security and Defence Policy"⁴⁰, and most importantly, in perfect accordance with our study topic, this presence was to be established and improved "in the Black Sea region as well as EU support in resolving outstanding issues with Ukraine".⁴¹

³⁸ David Phinnemore, *The EU and Romania...*, xv.

³⁹ David Phinnemore, *The EU and Romania...*, xvii.

⁴⁰ David Phinnemore, *The EU and Romania...*, xvii.

⁴¹ David Phinnemore, *The EU and Romania...*, xvii.

“...(T)he fact that 70% of Romanian trade (was) with the EU...”⁴² as well as “how much Romania (was) already integrated economically with the EU” definitely made major contribution to the integration process of Romania in European Union structures.

“In part driven by the desire for membership of the EU, the country has been transformed during the last decade. Democracy has established firm roots in the country.”⁴³

“An over dependency on international funding by non-governmental organizations, exacerbated by a number of historical factors, has arguably restricted the emergence of the robust civil society that would be so beneficial to Romania society and politics.”⁴⁴

“...the European Neighbourhood Policy is welcomed and there is a call for greater EU presence – through the European Security and Defence Policy – in the Black Sea region as well as EU support in resolving outstanding issues with Ukraine.”⁴⁵

“(The Black Sea) is seen as of vital strategic importance for the EU and Romania, given energy supplies emanating from the Caspian Sea.” Therefore, “a more constructive EU engagement with the Black Sea region and the development of existing cooperation instruments such as Black Sea Economic Cooperation”⁴⁶ are called for.

On the side of Romania, the Accession Treaty with the European Union was signed in April 2005.⁴⁷

⁴² David Phinnemore, *The EU and Romania...*, xv / xvii.

⁴³ David Phinnemore, *The EU and Romania...*, xviii.

⁴⁴ David Phinnemore, *The EU and Romania...*, xv.

⁴⁵ David Phinnemore, *The EU and Romania...*, xvii.

⁴⁶ David Phinnemore, *The EU and Romania...*, xvii.

⁴⁷ Alina Mungiu-Pippidi, “Europeanization without Decommunization: a case of elite conversion”, in Phinnemore, *The EU and Romania...*, p. 17.

“The Ceaușescu government had borrowed heavily from western banks between 1967 and 1980 to finance investment in engineering industries, refineries and petrochemical plants and a number of grandiose construction projects including the Danube-Black Sea Canal and the construction of the House of the People in Bucharest, while neglecting the production of consumer goods.”⁴⁸

It is fair to argue that the victorious post-Cold War Western world exercised their political and economic soft power on both Romania and Ukraine, basing their self-confidence upon the fact that both countries were wholeheartedly willing to join the unipolar Western club. “Reforms accelerated between 2000 and 2004 under pressures from the IMF, the World Bank and the EU resulting in an acceleration of privatisation and the progressive reduction of inflation.”⁴⁹

Within the framework of the post-Cold War Western geopolitical strategy towards the consolidation of a status quo in terms of global security in a uni-polar world order, both Romania and Ukraine have had deep longstanding efforts and a frank attitude aiming at integrating themselves into the Trans-Atlantic community, i.e. becoming a part of the West, leaving their Communist, 'non-Western', 'unlikable' pasts behind.

This so-called new uni-polar world order under the de facto leadership of the USA has displayed itself with two main institutional entities at which post-communist countries like Romania and Ukraine could have the ideological and international opportunity to integrate themselves into the newly all-embracing Western world: the NATO and the EU – the earlier to ensure establishing a consolidated framework of

⁴⁸ Alan Smith, „The Romanian Economy since 1989“, in Phinnemore, The EU and Romania..., p. 29.

⁴⁹ Alan Smith, The Romanian Economy..., p. 37.

collective defense, and the latter that of a collective security, just like the UN, and additionally, regional cooperation and integration as deep as possible.

As widely-known, the NATO decided not to dissolve itself as a result of the Cold War at the end of which the West, thus the NATO, were militarily and ideologically victorious, but redefine its purpose and positioning, and continue to exist as an institution. Under these circumstances, the new goals of NATO were made public in the organisation's London Summit Declaration of July 1990, i.e. soon after the end of Cold War. In this document, NATO "announced a new program for cooperation open to all the former communist states of the East".⁵⁰

This publicly-announced attitude of the newly victorious Western bloc to incorporate the formerly socialist parts of the world, which were basically exhausted of the directly or indirectly Soviet-imposed totalitarian regimes, expectedly found attraction and mutual keenness in the eyes of the sociopolitical entities of the former Eastern bloc. It is fair to assume that these fallen-apart newly-independent previously-suppressed countries wanted to be a part of the about-to-be-established new world order.

Both Romania and Ukraine were in position to display this aforementioned enthusiasm to take their parts in the Western world. This very fact is one of the most major global dimensions of the subject matter of this study, given it is of primary importance while explaining the global relevance and positioning of Romania, Ukraine as well as their relations.

⁵⁰ Pavlo Baylyk. Impact of Putin's Foreign Policy on the Security of Ukraine, Master's thesis, Vienna, 2002, p. 4.

"The study of the Black Sea as a region is a largely neglected phenomenon within the discipline of international relations."⁵¹

"For many decades, the southern and northern sites of the Black Sea remained separated by the division of Europe. The east-west division was the main axis of events and developments, and the politics of the Black Sea was subordinated to superpower rivalries."⁵²

"Historically speaking, the Black Sea has been a medium for economic and social interaction between different cultures and nations, as well as acting as a barrier between countries."⁵³ There is no wonder that this very characteristic of the Black Sea region still exists today, within the framework of a condition which displays an even more globally-interconnected network of peoples, cultures, countries and other various subjects and processes.

If we attempt to periodise Romania-Ukraine relations so that it leads to the point where we have the first phase as pre-Cold War period, it is crucial to talk a little bit about the Great Game. Not specifically referring to the Black Sea but to the greater region or arguably to Russia, the so-called Great Game has been primarily influential for the fate of the region. The Great Game was a period "in which the British and Russian empires had fought each other for political power and military influence in the same reason during the nineteenth century".⁵⁴

⁵¹ Tunç Aybak (ed.). *Politics of the Black Sea: Dynamics of Cooperation and Conflict*, London/New York: I.B. Tauris, 2001, p. xi.

⁵² Tunç Aybak, *Politics of the Black Sea...*, p. xi.

⁵³ Tunç Aybak, *Politics of the Black Sea...*, p. 1.

⁵⁴ Gökay, in Aybak, *Politics of the Black Sea...*, p. 16.

Having gone through various periods of "Greek, Roman, Byzantine and Ottoman dominance"⁵⁵ every single of which has provided the region with another distinguishable sociopolitical, commercial and/or cultural quality, the Black Sea region has "remained a divided and semi-closed sea for the greater part of the twentieth century".⁵⁶

"Under Cold War circumstances, the faultlines dividing the Black Sea were mainly ideological. In the south, Turkey belonged to the Western capitalist camp, whereas in the north, the Soviet Union, Romania and Bulgaria belonged to the Socialist camp. In this period, there was minimal interaction across the Black Sea and it was divided between two rival military blocs. The end of the Cold War, however, has transformed the Black Sea from a dividing mass of water, into a potential regional entity."⁵⁷

As an organic result of the one of the inarguable breaking markers in recent global history, i.e. the end of the Cold War and the respective end of the bipolar world system, it was not difficult to assume at that time and understand now that the Black Sea region, as many others, would/will face a period or condition of instability. "On the systemic level, the collapse of the Soviet Union, and the end of the bipolar world, has created a volatile international environment that has not yet been replaced by more stable structures."⁵⁸

This potential has openly been planned to be practically realised, out of doubt. Knowing the geopolitical significance of the Black Sea, the actors of world politics have undertaken initiatives to create a collaborative politics operating in the

⁵⁵ Tunç Aybak, *Politics of the Black Sea...*, p. 1.

⁵⁶ Tunç Aybak, *Politics of the Black Sea...*, p. 1.

⁵⁷ Tunç Aybak, *Politics of the Black Sea...*, p. 1-2.

⁵⁸ Tunç Aybak, *Politics of the Black Sea...*, p. 2.

Black Sea region in the post-Cold War era. These intentions emerged in various forms, some of which were international and regional organisations or cooperation institutions, or more importantly, so to speak, the national consciousnesses, respectively foreign policy-making mechanisms and standpoints of specific post-Cold War, i.e. post-communist nation-states.

In this regard, we consider it essential to mention one of the first findings of this study, which is not shocking to grasp but at the same time of primary importance to position the politics and history of this study at an intellectual level.

Both Romania and Ukraine, the relations and legal case between which we are primarily focusing on in the framework of this study, have followed an questionably pro-Western path in the aftermath of the Cold War. In the new-at-the-time unipolar world order was by all means to be established in the place of the ruins of the bipolar world order which was built upon the principle of ideological as well as military blocs. Ukraine, a newly-independent post-Soviet state, and Romania, a newly-democratic post-communist state (even though communist Romania was not an integral part of the Soviet Union, it is almost impossible not to regard this country as a satellite state of the USSR, within the USSR-led bloc of communism.), have made it very clear from the very first moment of their independence forward, that they were openly enthusiastic to become a part of the Western world, the bloc that succeeded.

This conception of the Western world by all means refers newly-expanding, or enlarging Trans-Atlantic community and structures.

This Trans-Atlantic community and structures obviously consist of North American and Western-Northern European powers, needless to be referred to.

In order to provide the reader with a more comprehensive historical and political background, we should go a bit deeper in this very regard and try to explain the post-Cold War pro-Western aspirations of both Romania and Ukraine, considering the fact that this phenomenon is central to the possibility of grasping the global relevance of the two countries, their relations and their greater region, the Black Sea.

First of all, in my observation provided in the light of my extensive research, the two countries evidently and primarily have followed the policy of trying to prove themselves Western, but not assuring others that they would Westernise themselves entirely. This is essential to understand the global positioning of both countries: it is obviously a more convincing policy mindset to claim that oneself is already there or so, instead of claiming that they are willing to be so.⁵⁹

In order to base the main arguments of their policy, Romania mainly looked into their past in a linguistic determination perspective. Given they spoke a language which was a member of the same family as those spoken by most of the Western European countries, it was relatively easier for Romania to base their argument well.⁶⁰

In the case of Ukraine, though, it was not that easy, given they have been on the side or under the dominance of Russia for a long time. Especially since the historical ancestors of the contemporary Russians were basically the 'Kyivan Rus', by its very name it was not that easy to expect to convince others that they 'were actually not Russians'. That is exactly why the Ukrainians chose more of the path of expressing their

⁵⁹ Viktor Pavlenko, Sergey Sveshnikov, An analysis..., David Phinnemore, The EU and Romania..., Irina Maksimenko, "Ukrainian-Romanian relations in the context of European Union extendin to the East", Anatolii Krugashlov, Troublesome neighbourhood...

⁶⁰ David Phinnemore, The EU and Romania...

enthusiasm to be unrelated to Russia again. Moreover, we think that they implicitly instrumentalised their 'conversion' to attract the Western world even more: since it is always even more valuable to have someone from the enemy on your side from a moment forward.⁶¹

It is also very important to focus on the institutional settings with regard to the politics of the Black Sea or more specifically the relevance of Ukraine and Romania for global politics.

"Black Sea world is sometimes defined and described as "a civilisation gulf between the East and the West".⁶² "... (A)s a result of the collapse of the Soviet Union, the number of Black Sea countries who wanted to join the European integration project multiplied (and) the political economy of the Black Sea has been opened up to the dynamics of European integration and globalisation."⁶³

"Since the end of the Cold War six new regional cooperation frameworks have appeared in the pan-European space stretching from the far north, to the Black Sea, these are the Barents European Atlantic Council (BEAC), Council of Baltic States (CBS), Central European Free Trade Area (CEFTA), Central European Initiative (CEI) and the Black Sea Economic Cooperation (BSEC)." As Aybak analyses, "[t]he emergence of regional cooperation initiatives in the 1990s can be best explained in the context of the sense of isolation for these countries, who felt that they had been left outside the process of European integration".⁶⁴

⁶¹ Viktor Pavlenko, Sergey Sveshnikov, *An Analysis...*

⁶² Tunç Aybak, *Politics of the Black Sea...*, p. 2.

⁶³ Tunç Aybak, *Politics of the Black Sea...*, p. 4.

⁶⁴ Tunç Aybak, *Politics of the Black Sea...*, p. 4.

"The BSEC plays a central role in the promotion of peace in the region. The BSEC has no security mandate on security issues. Given the existence of sensitive trouble spots in the former Yugoslavia, Nagorno-Karabakh, Transnistria, Abkhazia and Chechnya it would not be very easy to build a hard security agenda and conflict-resolution mechanisms into the BSEC's structures. Much of the cooperation within the BSEC structures has no direct relevance to security issues."⁶⁵ In accordance with that, "[t]he other European security organizations provide concepts and mechanisms for conflict prevention and resolution."⁶⁶ In this regard, we can mention the European Union, the Organisation for Security and Cooperation in Europe (OSCE), NATO, EAPC and PfP among the aforementioned organisations. "... (O)ne of the stated objectives of the BSEC was 'to transform the Black Sea into a region of peace, freedom, stability and prosperity'". Nevertheless, "(d)espite the emergence of new regional rivalries, the political and economic interdependence between Russia and the newly-independent states persisted."⁶⁷

"The politics of Caspian oil is directly related to the Black Sea. Competition between rival powers, particularly, revolves around the exploration, distribution and transportation of Caspian oil. ... The Black Sea basin lies at the centre of three strategically crucial sub-regions: the Balkans, the Caspian Sea basin and the Caucasus."⁶⁸

"The Black Sea has played a central and strategic role in Russia's history and national identity. For Russians the Black Sea was a vital route and gateway to the warm seas... With the

⁶⁵ Tunç Aybak, *Politics of the Black Sea...*, p.6.

⁶⁶ Tunç Aybak, *Politics of the Black Sea...*, p. 7.

⁶⁷ Tunç Aybak, *Politics of the Black Sea...*, p. 2-3.

⁶⁸ Tunç Aybak, *Politics of the Black Sea...*, p. 6.

collapse of the Soviet Union (though), Russian access to the Black Sea has diminished substantially and the common Soviet borders on the sea have been divided between Russia and the newly-independent Black Sea littoral states of Georgia and Ukraine... The Russian presence in the Black Sea is a dominant one". Yet, "[s]ince the collapse of the Soviet Union, Russia has been coming to terms with post-Cold War Black Sea realities."⁶⁹

In the 1990s, i.e. right after the end of the Cold War, "the greatest Russian concern in the Black Sea has been the increasing physical military presence of the West", i.e. the expansion of the NATO to the Black Sea."⁷⁰ This expansion directly and definitely concerns both Ukraine and Romania, given the NATO and the relevant parties undertook certain partnership agreements after the Cold War, which understandably constituted a threat to Russian security.

"With the collapse of the Soviet Union, Ukraine has become an important player in the political economy of the Black Sea... Since its independence in 1991, Ukraine has found itself caught between two opposing, although not necessarily mutually exclusive, tendencies. Ukraine's foreign policy agenda was determined by the political desire to join Europe on one hand and its growing economic and political role in the Black Sea area, in particular balancing Russia's political weight."⁷¹

After the independence, Ukraine has started to engage in a bilateral agreements with the neighbouring regional powers such as Turkey and developed subregional groupings with Georgia, Azerbaijan, Moldova, and Uzbekistan. Being a country which remains in constant dependence on the Black Sea for its politics

⁶⁹ Tunç Aybak, *Politics of the Black Sea...*, p. 5-7.

⁷⁰ Tunç Aybak, *Politics of the Black Sea...*, p. 8.

⁷¹ Tunç Aybak, *Politics of the Black Sea*, p. 9.

and trade, Ukraine perceived and acknowledged the significance of the region as the extension of its pro-European policies. "Ukraine's quest to join European institutions, particularly after signing the Partnership Agreement with NATO was not without strategic implications for the region. Ukraine's security policy developed along the lines of strengthening the relationship with Turkey, Azerbaijan and Georgia. This implied that Russia's political influence and its developing relationship with Bulgaria, Greece and Armenia, needed to be counterbalanced. Despite the configuration of the new balance of power politics in the Black Sea, Ukraine had recognised the necessity to build a security dimension into the BSEC structures to avoid the escalation of conflict".⁷²

In an environmental perspective, the Black Sea had inarguably been home to industrial waste and pollution owing to the rapid industrialisation in recent history. In that regard, in 1992, "the Black Sea littoral states met in Bucharest to sign the 'Convention on the Protection of the Black Sea against Pollution' and common rules and regulations were adopted in order to prevent further pollution".⁷³

"To a considerable extent the future of the region seems to be dependent on the management of Caspian oil and gas resources."⁷⁴

Turkey's foreign policy stance towards the post-communist states including Romania and Ukraine is very important to understand the regional power politics dynamics in the early post-Cold War era. As we have been discussing already, with the collapse of the Soviet Union, it appeared to be

⁷² Tunç Aybak, *The Politics of the Black Sea*, p. 6-10.

⁷³ Tunç Aybak, *The Politics of the Black Sea...*, p. 8-10.

⁷⁴ Bülent Gökay, "The Politics of Oil in the Black Sea Area: Turkey and Regional Power Rivalries", in Aybak, *Politics of the Black Sea...*, p. 16.

inevitable that a new world order was to be established. This possibly widest order, very naturally, necessitated the emergence of new and potentially stable regional institutions, mechanisms and power equations, as well. Within the framework of this game which was certainly required to be played by the relevant states as immediate and accurate as possible, an important regional actor, namely Turkey, has taken its stance, too.

We have to bear in mind the fact that Turkey already at that time had been a longstanding ally of the NATO since the end of the Second World War. As an understandable result of that, in this new world order which was expectedly to be led by the victorious United States, Turkey did not neglect implicitly playing the card of having been on the side of the victor all along. "In serving its own interests, Turkey also acted on the United States' behalf. In this way, both states' policies and expectations, as well as failures, overlapped to some degree".⁷⁵ This is important to bear in mind in order to grasp the non-explicit camps of the post-Cold War Black Sea game.

Turkey, in this period of time, desired to undertake a central role and image for the new Black Sea region. Nevertheless, as we can observe from history and the current state of international politics, she pretty much failed to do so. However, this failure was of course not an absolute one.

"In this period Turkey launched several initiatives for increased economic cooperation and shared prosperity in Eurasia. The most important of these was to constitute the 'Black Sea Economic Cooperation Zone' for multilateral dialogue and cooperation. In 1992, Turkey introduced the Black Sea Economic Cooperation Project (BSEC)... the member states of Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece,

⁷⁵ Bülent Gökay, "The Politics of Oil in the Black Sea Area: Turkey and Regional Power Rivalries", in Aybak, *Politics of the Black Sea...*, p. 16.

Moldova,"⁷⁶ and, regarding the specific focus of our study, most importantly, Romania and Ukraine.

Nonetheless, it is also not very reliable to regard the BSEC as a considerable success. From the first day forward, Russia has appeared to be reluctant to picture and acknowledge the possible success of this institution, because it was created on the initiative of Turkey, not Russia.

On the other hand, one can argue that "Ankara naively underestimated the functional and operational ties that continued to bind the newly-independent states to Moscow".⁷⁷

"Given the existence of fragile and conflict-ridden political circumstances in the Black Sea area, the initiation and the following institutionalisation of the Black Sea Economic Cooperation (BSEC) has been an important achievement."⁷⁸

"The idea of the Black Sea Economic Cooperation was conceived by a senior Turkish diplomat, Şükrü Elekdağ and adopted by the then President Turgut Özal in 1990. It had been originally proposed by Turkey to Bulgaria, Romania and the Soviet Union.

Although it is argued by some that the "BSEC was conceptualised as an alternative regional initiative to European integration", we tend to regard the idea and efforts of the establishment of such a regional cooperation institution rather as a parallel, contributive, contingent policy-making mindset. Thus, we find it more credible to argue that the BSEC was intended to be an integral part of the new political and economic structure in and around Europe in the past-Cold War period.

⁷⁶ Bülent Gökay, "The Politics of Oil in the Black Sea Area: Turkey and Regional Power Rivalries", in Aybak, *Politics of the Black Sea...*, p. 18.

⁷⁷ Bülent Gökay, "The Politics of Oil in the Black Sea Area: Turkey and Regional Power Rivalries", in Aybak, *Politics of the Black Sea...*, p. 19.

⁷⁸ Bülent Gökay, "The Politics of Oil in the Black Sea Area: Turkey and Regional Power Rivalries", in Aybak, *Politics of the Black Sea...*, p. 31.

It is both possible and necessary to state that the institutional entities of the Western political hemisphere have been directly interested in the post-Cold War status of the region, too. "Other organisations concerned with trade issues have also been active in the promotion of trade liberalisation in the Black Sea area. In particular the Commission of the EU, OECD and WTO representatives helped to organize seminars and discussions on trade liberalisation and harmonisation of the trade regimes of the BSEC countries."⁷⁹

It is important to remember that Ukraine was one of the initial signatories to the Bosphorus Declaration of 1992, which marked the start of the BSEC.⁸⁰

"Since the collapse of the Soviet Union, Turkey's exports to the Black Sea countries in manufactured goods have been expanding rapidly."⁸¹

If we may briefly look into the Russian-Turkish relations during the time when the BSEC had recently emerged, we can see that the "early optimism about the positive role of the BSEC has been replaced by the pessimist view that the BSEC was mainly Turkey's regional lever for exerting its regional influence and hegemony"⁸² in the eyes of Russia.

In addition to that, the emergence of Ukrainian-Turkish cooperation in the early 1990s caused a certain amount of concern on the side of Russia, which led Russia to cautiously treat Turkey's Black Sea policy. In addition to that, one should also mention "the suspicion that NATO could be extended to the Black Sea area through the admission of new members and

⁷⁹ Tunç Aybak, *Politics of the Black Sea...*, p. 39.

⁸⁰ Tor Bukkvoll, "Ukraine and the Black Sea Region", in Aybak, *Politics of the Black Sea...*, p. 86.

⁸¹ Tunç Aybak, *Politics of the Black Sea...*, p. 48.

⁸² Tunç Aybak, *Politics of the Black Sea...*, p. 46-47.

partnership agreements and eventually directly threaten the Russian interests in the Black Sea."⁸³ At this point we are required to grasp the other side of the post-Cold War story: not the victorious, but the defeated side of the newly-emerging equation.

"...(T)he BSEC has also been seeking the EU's support for its long-term objective: integration into Europe... The BSEC is not a regional security organisation. However, it offers an external regional environment within which the smooth transition to democracy and Marley economy can be accelerated."⁸⁴

Meanwhile Romania and Ukraine were expressing their enthusiasm for becoming a part of the Western-centred new world order both at discursive and high-political levels, Russia, the country who had possessed and exercised political, social and economic power and even superiority on these newly-independent countries, which now had the potential power to have their own international voices, had realistically speaking every right to be strategically concerned.

"Since the collapse of the Cold War the EU has emerged as an important actor in the Black Sea region. The EU has been developing bilateral relationships with the Black Sea countries through cooperation and association agreements... The EU has come to realize that the Black Sea has a specific role in overcoming the divisions of the Cold War. Indeed, in 1997, the European Commission in its report to the Council affirmed that 'Enlargement will further increase the Black Sea region's significance to the European Union. The EU has a major interest in promoting political stability and economic prosperity in the

⁸³ Tunç Aybak, *Politics of the Black Sea...*, p. 47.

⁸⁴ Tunç Aybak, *Politics of the Black Sea...*, p. 55-56.

Black Sea region and stimulating the development links both within the region and with the EU."⁸⁵

Furthermore, the Black Sea has since the beginning constituted the quality of being "a potentially important economic market for EU goods". In addition to these security and commercial dimensions discussed above, the energy dimension has been just as of primary importance. In the intersecting perspective of commercial and energy dimensions, "modernisation of the regional infrastructure in energy and transportation facilities has taken priority in the EU's emerging strategy towards the Black Sea region"⁸⁶. In addition to that, the EU has also been actively and eagerly providing financial as well as technical assistance to the actors of the Black Sea region.

This whole picture fairly proves the anticipated interests and accordingly political aspirations of the EU in the Black Sea region. As a result of that, getting a bit of distant from the whole picture, we can conclude that the West, i.e. the European Union as well as the United States, and the post-communist Black Sea region countries, specifically Romania and Ukraine, have possessed and displayed a reciprocal enthusiasm and aspiration for the possible to-be-built collaborative alliance between each other at different levels, e.g. trade, politics, technology, and even society. As a result, if we look from the perspectives from the two parties, we can fairly and legitimately talk about a win-win situation in the post-Cold War era. However, if we switch perspectives and adopt the state outlook of Russia, the conclusion we come up with would be directly the opposite.

There is no wonder that the end of the Cold War constituted a turning point in our global history. The global meaning of Ukraine, Romania and their relations with each

⁸⁵ Tunç Aybak, *Politics of the Black Sea...*, p. 53.

⁸⁶ Tunç Aybak, *Politics of the Black Sea...*, p. 54-55.

other and third and fourth parties, therefore, appears to be a significant phenomenon with regard to the regional and world politics given they basically constitute one of the most important borders between the West and the East.

In the framework of the win-win post-Cold War reciprocal policy-making mindsets, we need to mention Turkey's role in that regard, too. Given the country has initiated the idea of a Black Sea intergovernmental cooperation framework, regardless of what mundane political reasons, it has overlapped with the political and social needs and aspirations of both the established West and the Western-aspirated East, thus the Turkish role in this respect is unneglectable. Being a longer aspiration-holder for the Western world and a self-Westerniser, Turkey also has played an inspirational role for Romania and Ukraine with regard to their post-Cold War foreign and domestic policy standpoints. Because what Romania and Ukraine desire and decided to do after the Cold War, a turning point in global history, was pretty similar to what Turkey did so after another turning point in global history, the First World War: dedicating one's all intellectual and material resources and energy to the cause of proving themselves a part of the Western culture and politics.

It is at some level possible though to argue that the Black Sea region constituted and displayed less significance during the period of Cold War. This is a perspective which is generally acknowledged and argued: in an entirely-centralised totalitarian system, possessing the title of 'autonomous' is not very genuine, but to the contrary, the smaller entities within the whole political machine are understandably unable to have their independent voice on many levels. "The recent dismemberment of the Soviet Empire had simulated a renewed interest, academic or otherwise, in the Black Sea region. This is a radical change since

the Black Sea, under the shadow of the Soviet Union, had remained in virtual obscurity after the Second World War and indeed for the much of the twentieth century."⁸⁷

As a result of this set of arguments, it is fair to argue or at least necessary to bear in mind that the Black Sea region has not always been an issue as well as a unit or analysis or regional phenomenon to point the political focuses at all along.

It is interesting to study the historical background and arguably evolution of the perception of the conception of the Black Sea region. Braudel, a prominent second-generation member of the Annales School of history, in his two-volume work of history of the Mediterranean, had chosen to treat the Black Sea as "an extension of the Mediterranean".⁸⁸ In the same work of him, he does not neglect to define the Black Sea as "the preserve of Constantinople". Considering the extensive and undeniable global geopolitical significance of Constantinople, or as we have been officially calling it for a little bit less than a century, Istanbul, this definition of Braudel's is worth being paid attention to. Istanbul has served as the capital of two great empires, namely Byzantine and Ottoman ones, and its geographic distinguishable quality of literally being the bridge between Europe and Asia, as well as the Black Sea and the Mediterranean, owing to its Bosphorus, had to be taken into account while carrying out an intellectual debate on the global relevance of the relations of two Black Sea coastal countries, and beyond.

"Ukrainian politicians and foreign policy analysts often speak of the Black Sea region as the 'third vector' of Ukrainian foreign policy. The 'first vector' is the Eurasian one (Russia and

⁸⁷ Eyüp Özveren, "The Black Sea World as a Unit of Analysis", in Aybak, *Politics of the Black Sea...*, p. 61.

⁸⁸ Reference to Braudel, in Aybak, *Politics of the Black Sea...*, p. 109.

the other former Soviet republics) – foremost of which is Russia. It is a goal of Ukrainian foreign policy to reduce the importance of the vector. The 'second vector' is the EuroAtlantic one (USA, Western and Central Europe). Ukraine is attempting to increase the importance of this particular vector."⁸⁹ It is this pretty clear that Ukraine is indeed both eastern and western in various aspects and levels, historically and synchronically, Russia or the influence thereof is a player or factor in that regard no matter what, and Ukraine, as Romania, has been keen on becoming or proving itself an integral part of the Western world in the post-Cold War era.

In parallel, Ukraine can be characterised by its "attempts to find its place within the East-West divide".⁹⁰

In the light of the discussions above though, we can conclude that these attempts indisputably embedded in such a manner that in the post-Cold War era Ukraine has rather adopted a policy approach to define her position within the limits of the West, domestically as well as internationally. However, the "East or West debate in Ukraine is very much a question of identity. Consequently, debates on foreign policy become highly emotional, which leaves less room for pragmatic considerations. Ukrainian policy in the Black Sea region is affected by this problem only to the extent that Black Sea policy is seen as part of the East-West struggle."⁹¹

It would not be fair to argue that the Black Sea constitutes the uttermost important dimension to undead foreign policy, it is still necessary to emphasise that Ukraine, all along since gaining

⁸⁹ Tor Bukkvoll, "Ukraine and the Black Sea Region", in Aybak, *Politics of the Black Sea...*, p. 85.

⁹⁰ Tor Bukkvoll, "Ukraine and the Black Sea Region", in Aybak, *Politics of the Black Sea...*, p. 85.

⁹¹ Tor Bukkvoll, "Ukraine and the Black Sea Region", in Aybak, *Politics of the Black Sea...*, p. 87.

independence in 1991, has been conscious of her potential and observable role as a regional power in the Black Sea region. In this period, Ukraine signed multiple agreements and treaties with neighbouring countries in the Black Sea to ensure security, coexistence and cooperation in the region, among of which to be counted the Bosphorus Declaration of 1992 or of the same year the Treaty of Friendship and Good Neighbourly Relations with Turkey.⁹²

One interesting regional security analysis as regards to the Black Sea region is carried out by Bukkvoll within the framework of a balance of power mindset: that no country or block of countries have become so strong in the Black Sea region to threaten the security of any other country.

"Russia and Ukraine have continually fought over ownership of the Black Sea fleet ... which was established by Catherine the Great in 1771 ... since the demise of the Soviet Union, and many Russian politicians have repeatedly questioned the Ukrainian status of Crimea"⁹³, which, from today's perspective, observably has resulted by the annexation of Crimea into the Russian Federation owing to the aggressive policy of Putin's leadership. The "conflict over the future of the fleet was a recurring problem in Russian-Ukrainian relations after the Ukrainian declaration of 1991 that all military hardware on Ukrainian territory belonged to Ukraine"⁹⁴, which was finally settled in 1997, upon the mutual agreement and parliamentary ratification of the two parties.

⁹² Tunç Aybak, *Politics of the Black Sea...*, p. 50-55.

⁹³ Tor Bukkvoll, "Ukraine and the Black Sea Region", in Aybak, *Politics of the Black Sea...*, p. 86-89.

⁹⁴ Tor Bukkvoll, "Ukraine and the Black Sea Region", in Aybak, *Politics of the Black Sea...*, p. 86-89.

Following the increasing strategic intimacy between Ukraine and Romania and the NATO in the post-Cold War era, Russia started righteously regarding this development disturbing and threatening. "The increased presence of NATO warships in the Black Sea has heightened Russian concerns. Some of these warships were invited by Ukraine to participate in naval exercises under the Partnership for Peace (PfP) programme. Russia, however, regard[ed] the warships as tokens of NATO expanding its sphere of influence".⁹⁵

It is also noteworthy that another important actor in the region, Turkey, has been a longstanding political-military ally of the West, thus a member of the NATO, from early on. Hence we can argue that the Romanian as well as Ukrainian preference to define themselves as a part of the West has doubled the concerns and disturbance on the side of Russia, arguably the most important influential actor in the Black Sea region.

In accordance with that debate it is important to mention the early post-Cold War Ukrainian attempts to build up a friendship - active alliance with Turkey with the goal of achieving a balance of power with Russia in the Black Sea region. "The pursuit of special relations with Turkey had remained a popular idea in the Ukrainian foreign policy establishment"⁹⁶. One can mention former Ukrainian President Kravchuk's visit to Turkey in 1992. This pursuit, on the other hand, was not unilateral, but it received positive response and attitude from Turkish side. Again in 1992, Turkish Minister of Defense expressed their support for Ukraine in terms of joining the NATO. One should remember that "this mutual appreciation has not developed into anything that could be called an anti-

⁹⁵ Tor Bukkvoll, "Ukraine and the Black Sea Region", in Aybak, Politics of the Black Sea..., p. 86-89.

⁹⁶ Tor Bukkvoll, "Ukraine and the Black Sea Region", in Aybak, Politics of the Black Sea..., p. 90.

Russian politico-military alliance"⁹⁷. Nevertheless, observably the realist policy-making mindsets came into play and took over on both sides. This completely non-naïve attitude is respectable and understandable as related to the both sides' intentions to not to make the big regional brother angry, even though they were technically and globally on the side of the opposite side. Thus, they decided to take things slowly.

"Romania was the only country besides Russia to make territorial claims on Ukraine after Ukraine became independent. In 1940, as a result of the Molotov-Ribbentrop Pact, the Red Army moved into Romania and annexed several territories to the Soviet Union. ... [including] the little Serpent Island just off both countries' Black Sea Coast, reported to contain rich oil and gas deposits. On 24 June 1991 the Romanian parliament condemned the annexation, and that November both the Romanian government and parliament protested the former Romanian territories' participation in the Ukrainian independence referendum. Romania demanded that any major treaty between the two countries should include a clause condemning the results of the Molotov-Ribbentrop treaty. This demand was interpreted in Ukraine as a badly-disguised territorial claim and for a long time it precluded the signing of a major friendship treaty between Romania and Ukraine."⁹⁸

At present and this ongoing so for a long time since the beginning of the post-Cold War period, Romanian-Ukrainian relations can be regarded to have been peaceful in general. "Harmonious relations, combined with a common suspicion of Russia and a common desire for integration to the West, could

⁹⁷ Tor Bukkvoll, "Ukraine and the Black Sea Region", in Aybak, Politics of the Black Sea..., p. 91.

⁹⁸ Tor Bukkvoll, "Ukraine and the Black Sea Region", in Aybak, Politics of the Black Sea..., p. 91-92.

have led to Romanian-Ukrainian balancing against Russian influence in the Black Sea region."⁹⁹

⁹⁹ Tor Bukkvoll, *Politics of the Black Sea...*, p. 86-92.

4. The analysis of the ICJ case *Maritime Delimitation in the Black Sea*

The two parties signed a number of treaties and made agreements with regard to the maritime boundary dispute which existed between them. These treaties indisputably establish the political background and legal basis of the topic of this study.

Romania and Ukraine signed the Treaty on Relations of Co-operation and Good-Neighbourliness on 2 June 1997, as well as the Additional Agreement, by exchange of letters between their respective Ministers for Foreign Affairs, by which the two states committed themselves to find agreements on the matters which we will discuss right below. As Romania explained later in its application at the ICJ regarding the dispute, the two parties had engaged in a complex process of negotiations beforehand.

"If these negotiations shall not determine the conclusion of the above-mentioned [delimitation] agreement in a reasonable time, but no 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."¹⁰⁰ In perfect accordance with the UNCLOS, the two states undertook a certain set of negotiations

¹⁰⁰ Coalter G. Lathrop. "Introductory Note to International Court of Justice: Maritime Delimitation in the Black Sea (Romania v. Ukraine), *International Legal Materials*, 48/3, 2009, p. 691.

on the purpose of finding a solution for the problem between themselves. In the meantime though, the parties stated their decision on an international legal basis that they had agreed to bring the maritime disagreement between them to the International Court of Justice in the case of they could not end up in a position in which they could not have come up with a rational, equitable solution which is accepted by both parties. The negotiations between the two parties held since the year 1998 were inconclusive.

As a result the unsuccessful negotiations which took six years, in accordance with the Article 4 (h) of the Additional Agreement, on 16 September 2004, Romania filed an application instituting proceedings against Ukraine in the respect of the dispute between them. The dispute concerned "the establishment of a single maritime boundary between the two States in the Black Sea, thereby limiting the continental shelf and the exclusive economic zones appertaining to them"¹⁰¹. The legal basis thereof is that the Additional Agreement provided "inter alia that the dispute be brought to the International Court of Justice at the request of any of the Parties if unresolved in a reasonable period of time, not later than two years after the initiation of negotiations"¹⁰².

These negotiations opened in January 1998. The two parties held a total number of 24 negotiations in the process, which, as we have discussed above, could not produce a result. According to Romania, "no result was obtained and an agreed delimitation of the maritime areas in the Black

¹⁰¹ International Court of Justice, "Maritime Delimitation in the Black Sea (Romania v. Ukraine). Summary of the Judgment of 3 February 2009", <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=9.&case=132&code=ru&p3=4> (last accessed on 19.01.2016)

¹⁰² International Court of Justice, "Maritime Delimitation in the Black Sea (Romania v. Ukraine)..."

Sea was not accomplished"¹⁰³. The last negotiation between them took place in September 2004.

In addition to the Article 4 (h) of the Additional Agreement, in its application at the ICJ Romania invoked Article 36, paragraph 1 of the Statute of the Court. This paragraph "in principle allowed either of the parties to submit the matter of delimitation of the continental shelf and the exclusive economic zone to the Court if the bilateral negotiations would have remained without result for more than two years"¹⁰⁴. While bringing the matter to the Court, Romania argued that it was bringing the dispute to the ICJ "in order to avoid the indefinite prolongation of discussions that, in [its] opinion, obviously cannot lead to any outcome"¹⁰⁵. Although the parties agreed in the sense that the conditions for submitting the dispute to the Court has been perfectly met, they disagreed about "the exact scope of the jurisdiction conferred on the Court under the Additional Agreement"¹⁰⁶.

Ukraine's stance was that "the jurisdiction of the Court was restricted to delimiting the continental shelf and exclusive economic zone between the parties"¹⁰⁷. As a consequence, "it would be possible to start the boundary between these two zones at a point on the outer limit of the territorial sea, but it was excluded that the boundary of the continental shelf and

¹⁰³ Alex Oude Elferink. "Maritime Delimitation in the Black Sea (Romania v. Ukraine). A commentary", The Hague Justice Portal, 2009, p. 1.

¹⁰⁴ David J. Bederman, Coalter G. Lathrop. "Maritime Delimitation in the Black Sea (Romania v. Ukraine)", *The American Journal of International Law*, 103/3, 2009, p. 543-549.

¹⁰⁵ David J. Bederman, Coalter G. Lathrop. "Maritime Delimitation in the Black Sea (Romania v. Ukraine)"..., p. 543-549.

¹⁰⁶ David J. Bederman, Coalter G. Lathrop. "Maritime Delimitation in the Black Sea (Romania v. Ukraine)"..., p. 543-549.

¹⁰⁷ David J. Bederman, Coalter G. Lathrop. "Maritime Delimitation in the Black Sea (Romania v. Ukraine)"..., p. 543-549.



Figure 2. The maritime boundary lines claimed by Romania and Ukraine¹⁰⁸

exclusive economic zone would in part coincide with the outer limit.”

¹⁰⁸ ICJ, Judgment, p. 69.

Whereas the argument of Romania was that "the Court would be in the position to establish such a boundary for the continental shelf and exclusive economic zone"¹⁰⁹.

This difference of stances between the two states particularly concerned the potential role of the Serpents' Island on the course of the maritime boundary to be established between the two states.

Serpents' Island is a "maritime feature situated in the north-western part of the Black Sea, approximately 20 nautical miles east of the Danube delta"¹¹⁰. The particular maritime feature is also known as the 'Snake Island'. In addition to that, in Ukrainian it is called 'Ostriv Zmiinyi', and in Romanian 'Insula serpilor'. Geographically speaking, it is located on the coordinates 45 15 N 30 12 E. It is 0.17 km² (0.066 sq mi), the length of which is 0.662 km (0.4113 mi) and the width of which is 0.440 km (0.2732 mi). Politically, it belongs to Ukraine, specifically the Odessa Oblast, Kiliya Raion and Municipality of the city of Vylkove. The maritime feature is populated; around 100 people live on it. The rural settlement Bile was established in February 2009. This population is mainly frontier guard servicemen with their families and technical personnel.

Romania filed its Memorial and Ukraine its Counter-Memorial within the time limits fixed by the Court by an Order on 19 November 2004.¹¹¹

In order to have a good picture of the background, it is essential to take into consideration the then-existing maritime delimitation between Romania and Ukraine.

¹⁰⁹ David J. Bederman, Coalter G. Lathrop. "Maritime Delimitation in the Black Sea (Romania v. Ukraine)"..., p. 543-549.

¹¹⁰ Alex Oude Elferink. "Case concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine), Merits, Judgment, 3 February 2009, p. 1.

¹¹¹ Alex Oude Elferink. "Case concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine)..." p. 1.

Before all else, the parties disagreed as to whether there already existed an agreed maritime boundary around Serpents' Island for all purposes". Therefore, they also disagreed on the starting point of the delimitation which was to be effected by the Court. In this regard, the Court decided that they had to distinguish between these two different matters in order to clarify the issues.

We have to bear in mind that the Court delivered an unanimous decision at the end with regard to the case of maritime delimitation in the Black Sea between Romania and Ukraine. This fact is important to take into account while performing an analysis of this case, given the fact that the ultimate decision was unanimous has provided the relevant parties and the experts as well as observers with some kind of insurance policy as regards to the legitimacy of the decision which was met by the International Court of Justice.



Figure 3. The relevant coasts and delimitation area according to Romania¹¹²

¹¹² ICJ, Judgment, p. 91.



Figure 4. The relevant coasts and delimitation area according to Ukraine¹¹³

¹¹³ ICJ, Judgment, p. 92.

This very fact, on the other hand, has influenced the stance, expression of satisfaction or dissatisfaction, and reactions from the directly relevant parties, i.e. Romanian and Ukrainian officials, as I argue. As we have been able to follow from the media, both sides at the end expressed their satisfied stances with regard to the decision made by the ICJ and recognised the legitimacy of the decision as they promised in the beginning.

This quality of this decision was a "first for the Court", i.e. has happened for the first time within the framework of all the cases judged by the ICJ. "This unanimity on the one hand send to be explained by the large measure of agreement presently existing on the role of equidistance in the delimitation process and circumstances possibly justifying the adjustment of the line. On the other hand, the delimitation between Romania and Ukraine certainly is not of such a complexity that it easily could have led to serious controversy during the delimitations of the Court."¹¹⁴

Agreeing with Elferink in this regard, I consider his analysis particularly important regarding his emphasis on the relative non-complexity of the case. In comparison and contrast to many other cases of maritime delimitation, the context of our case required the evaluation of the relevance, classification and the disputable influence of only one island – whereas many cases contain that of many thereof, such as the case between Indonesia and Malaysia.¹¹⁵

There is no wonder that the Court's evaluation regarding the relevance of Serpents' Island was of great importance as

¹¹⁴ Alex Oude Elferink. "Case concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine)...", p. 4.

¹¹⁵ Alex Oude Elferink. "Case concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine)...", p. 4.

well. As we discussed above, as well as we are conceptually familiar with the question of relevance of maritime features, i.e. islands or rocks, the issue of categorisation of the island was quite decisive in our context given the standpoint to be adopted by the Court would directly influence and even determine the maritime boundary between the two countries.

The Court eventually "reached the conclusion that Serpents' Island should be disregarded in drawing the provisional equidistance line"¹¹⁶, which partially but primarily influenced the final decision on the maritime delimitation between the two parties. The Court based this decision mainly on the fact that "Serpents' Island could not be considered to form part of 'the coast' of Ukraine"¹¹⁷, which on the other hand was based on the "considerable distance between the island and the mainland coast".¹¹⁸

The publication of the ICJ states: "To count Serpents' 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 refashioning of geography, which neither the law nor the practice of maritime delimitation authorizes"¹¹⁹.

According to Lathrop, "[t]he fact that base points on Serpents' Island were given no effect in the delimitation is not surprising"¹²⁰. That is because "[t]he Court followed the common practice of discounting, partly or entirely, the effect of

¹¹⁶ Alex Oude Elferink. "Case concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine)...", p. 4-5.

¹¹⁷ Alex Oude Elferink. "Case concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine)...", p. 4-5.

¹¹⁸ Alex Oude Elferink. "Case concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine)...", p. 4-5.

¹¹⁹ International Court of Justice, "Maritime Delimitation in the Black Sea (Romania v. Ukraine). Summary of the Judgment of 3 February 2009".

¹²⁰ Coalter G. Lathrop. "Introductory Note to International Court of Justice: Maritime Delimitation in the Black Sea (Romania v. Ukraine)", *International Legal Materials*, 48/3, 2009, p. 692.

small features such as islands or low-tide elevations, especially those situated at a distance from the mainland coast"¹²¹, which very directly applies to the very island that is our subject matter in the scope of this case study, Serpents' Island. The Court "eliminated Serpents' Island before the initial construction of the provisional equidistance line. The Court may have taken this approach in order to avoid the question of the status of Serpents' Island under Article 121 of the Law of the Sea Convention, a question that, while not central to this case, has implications for territorial and delimitation disputes beyond the Black Sea."¹²²

In the light of Lathrop's argument, I consider a more general but directly relevant international maritime law perspective very much needed. Specifically speaking, that perspective would refer to the differentiation between an island and a rock. The Article 121 of the UNCLOS distinguishes "rocks which cannot sustain human habitation or economic life of their own"¹²³ from islands, which can do so. Derivatively, rocks are "not entitled to an exclusive economic zone or continental shelf", whereas "islands are".¹²⁴

Understandably, the two countries regarded and claimed the Serpents' Island in accordance with their legal arguments regarding delimitation to be judged by the Court: Ukraine argued that it was an island and Romania argued that it was a rock.

In the light of certain calculations and aspects taken into consideration, "the Court concluded that the presence of

¹²¹ Coalter G. Lathrop. "Introductory Note to International Court of Justice: Maritime Delimitation in the Black Sea (Romania v. Ukraine)", p. 692.

¹²² Coalter G. Lathrop. "Introductory Note to International Court of Justice: Maritime Delimitation in the Black Sea (Romania v. Ukraine)", p. 692.

¹²³ Coalter G. Lathrop. "Introductory Note to International Court of Justice: Maritime Delimitation in the Black Sea (Romania v. Ukraine)", p. 692.

¹²⁴ Coalter G. Lathrop. "Introductory Note to International Court of Justice: Maritime Delimitation in the Black Sea (Romania v. Ukraine)", p. 692.

Serpents' Island does not call for an adjustment of the provisional equidistance line".¹²⁵

When it comes to the question of methodology the Court has used while determining the ultimate maritime boundary between Romania and Ukraine, we can argue that the Court used the equidistance method while doing so.

The Court used the equidistance method to delimit a five point boundary, in other words they practically drew the maritime border between Romania and Ukraine dividing the expected borderline into five pieces.

Between Point 1 and Point 2, the maritime border follows the twelve-nautical-mile territorial sea outer limit of Serpents' Island. Beyond Point 2, the maritime boundary is an equidistance line measured from the adjacent mainland coasts of Romania and Ukraine. This counts for the line(s) between Point 2 – Point 3 and Point 3 – Point 4, respectively. Moreover, between Point 4 and Point 5, another equidistance line is drawn between the opposite mainland coasts of Romania and Ukraine's Crimean Peninsula. However, the maritime border beyond Point 5 is undecided thus ambiguous¹²⁶.

In a more general perspective regarding the methodology that was used within the framework of our case of choice, we observe that "[t]he Court followed a standard, three-stage delimitation methodology, first establishing a provisional equidistance line based on 'methods that are geometrically objective'¹²⁷, second considering 'whether there are factors calling for the adjustment or shifting of the provisional

¹²⁵ ICJ, Summary, 9.3, para. 179-188.

¹²⁶ David J. Bederman, Coalter G. Lathrop. "Maritime Delimitation in the Black Sea (Romania v. Ukraine)", *The American Journal of International Law*, 103/3, 2009, p. 543.

¹²⁷ ICJ Summary, para. 116.

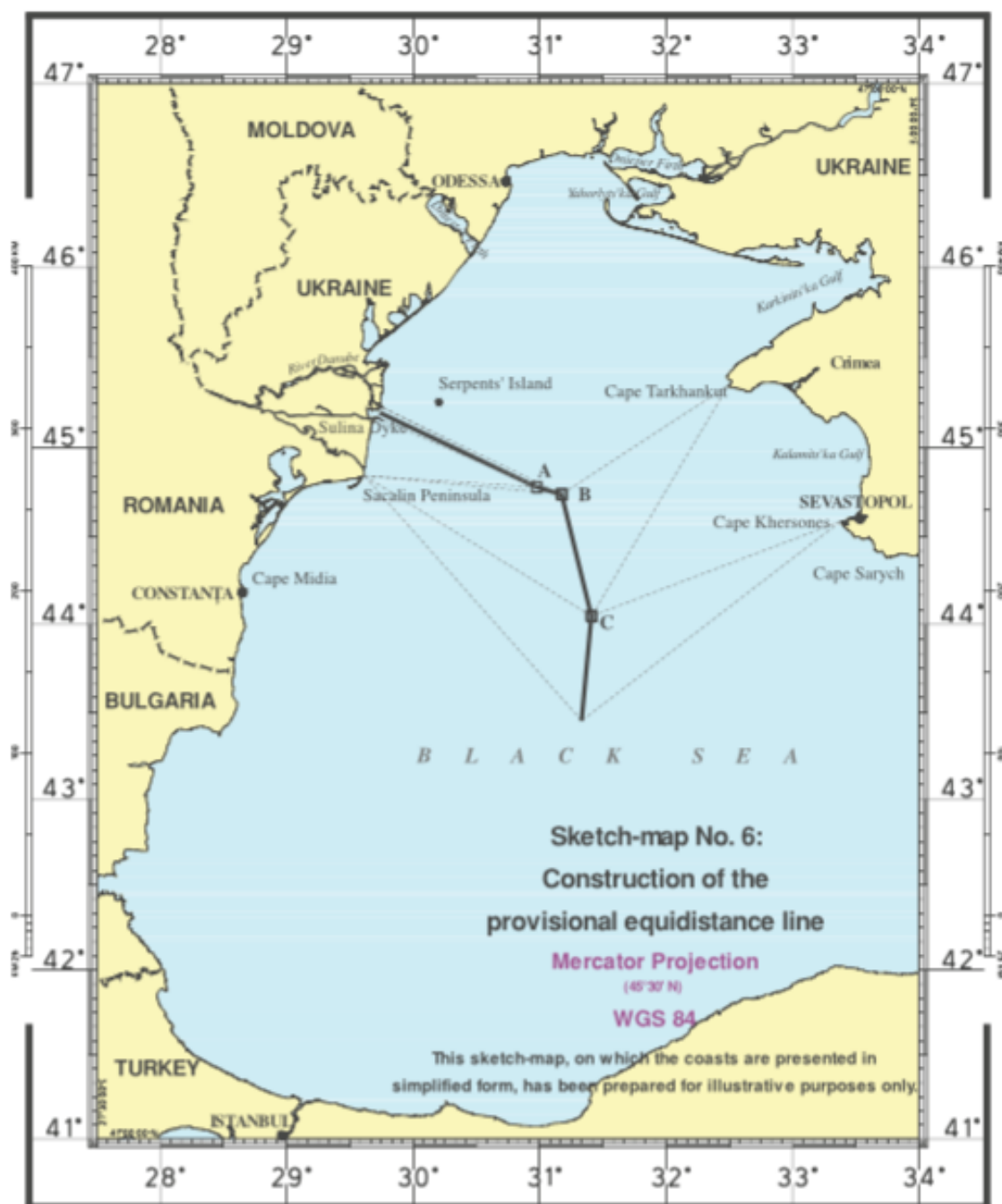


Figure 5. Construction of the provisional equidistance line¹²⁸

¹²⁸ ICJ, Judgment, p. 114.

equidistance line in order to achieve an equitable result¹²⁹, and third verifying that the provisional equidistance line, adjusted or not, 'does not lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State'".¹³⁰

As we have started above, the maritime boundary beyond Point 5 is ambiguous. The Court preferred to state that the boundary continues in a specified direction "until it reaches the area where the rights of third States may be affected"¹³¹. As we can observe here, even the phrase 'maybe' proves the untouched and later deliberately-consolidated ambiguity regarding the further continuation of the maritime boundary between Romania and Ukraine.

If we look into the relevant scholarly literature regarding this specific problem, we can observe that the issue and the possible future of it has been studied and interpreted in different yet inter-consistent ways.

First of all, Lathrop argues that "[t]he Court's delimitation completes the maritime boundary between Romania and Ukraine, although the final location of the seaward endpoint must be negotiated with a third state, probably Turkey."¹³² Turkey, being the southern maritime neighbour of Romania and Ukraine, one of the eastern borders of the European Union and possessing the longest coastal line at the Black Sea, is a fair actor to assume that they will be a relevant part regarding the possible future discussions regarding the continuation of the

¹²⁹ ICJ Summary, para. 120.

¹³⁰ ICJ Summary, para. 122.

¹³¹ ICJ Summary, para. 219.

¹³² Coalter G. Lathrop. "Introductory Note to International Court of Justice: Maritime Delimitation in the Black Sea (Romania v. Ukraine)", p. 692.

maritime border between Romania and Ukraine, which, as we have discussed in the first chapter, too, has a greater effect and importance regionally and even globally.

Furthermore, Lathrop continues with stating that "two other bilateral delimitations with unspecified seaward endpoints also have been negotiated in this part of the Black Sea, between Ukraine and Turkey and between Turkey and Bulgaria."¹³³ Accordingly, he concludes his analysis by arguing that "[t]he seaward endpoint of the as yet unlimited Romania-Bulgaria boundary will probably be located the vicinity of the other three"¹³⁴.

When we look into the joint study of Bederman and Lathrop, we see a parallel evaluation and a bit of a deeper analysis. The co-study follows a similar and consistent argumentative path as the previous one, beginning their analysis stating "[t]he third states whose rights may be affected are Bulgaria and Turkey."¹³⁵ As they find, "[t]hese two states have delimited most of their maritime boundary, leaving the endpoint along the northeasternmost segment to be 'finalized later at subsequent negotiations'"¹³⁶. This conscious postponement of the finalisation of the maritime border in the Black Sea was legally decided in the Agreement Between the Republic of Turkey and the Republic of Bulgaria on the Delimitation of the Boundary in the Mouth of the Rezovska/Mutludere River and Delimitation of Maritime Areas Between Two States in the

¹³³ Coalter G. Lathrop. "Introductory Note to International Court of Justice: Maritime Delimitation in the Black Sea (Romania v. Ukraine)", p. 692.

¹³⁴ Coalter G. Lathrop. "Introductory Note to International Court of Justice: Maritime Delimitation in the Black Sea (Romania v. Ukraine)", p. 692.

¹³⁵ Coalter G. Lathrop. "Introductory Note to International Court of Justice: Maritime Delimitation in the Black Sea (Romania v. Ukraine)", p. 692.

¹³⁶ Coalter G. Lathrop. "Introductory Note to International Court of Justice: Maritime Delimitation in the Black Sea (Romania v. Ukraine)", p. 692.

Black Sea, specifically by its Article 4(1) on December 4, 1997.¹³⁷

Bederman and Lathrop continue with the second dimension of the issue: "Similar language is used to describe the endpoint in the westernmost segment of the maritime boundary between Ukraine and Turkey,"¹³⁸ specifically by the Article 1 of the Agreement Concerning the Delimitation of the Continental Shelf in the Black Sea, the parties thereof being Turkey and the USSR. And thirdly, the two scholars write that "Romania and Bulgaria have not yet delimited their maritime boundary"¹³⁹.

Ergüven, legal scholar who studied the case in the context of its possible future influence to Turkey's maritime borders and foreign policy as well as the current issues in international maritime law in general, has found that "the stance adopted by the ICJ is of vital importance within the context of the Aegean Sea territorial waters/continental shelf dispute between Turkey and Greece, and of the Eastern Mediterranean Sea delimitation of continental shelf and exclusive economic zone dispute between Greece, Greek Cypriot Administration of Southern Cyprus¹⁴⁰ and Turkey."¹⁴¹

¹³⁷ Coalter G. Lathrop. "Introductory Note to International Court of Justice: Maritime Delimitation in the Black Sea (Romania v. Ukraine)", p. 692.

¹³⁸ David J. Bederman, Coalter G. Lathrop. "Maritime Delimitation in the Black Sea (Romania v. Ukraine)", *The American Journal of International Law*, 103/3, 2009, p. 543, see footnote 3.

¹³⁹ David J. Bederman, Coalter G. Lathrop. "Maritime Delimitation in the Black Sea (Romania v. Ukraine)", *The American Journal of International Law*, 103/3, 2009, p. 543, see footnote 3.

¹⁴⁰ "Greek Cypriot Administration of Southern Cyprus" is the name the Turkish foreign policy prefers to refer to the Greek-governed southern part of the island with. This expression would refer to the "Republic of Cyprus", as almost the entire part of the international community, except for Turkey, recognises it.

¹⁴¹ Nasih Sarp Ergüven. "The case of Maritime Delimitation in the Black Sea (Romania v. Ukraine) and Its Effects in Terms of International Law", Ankara: *AÜHFD*, 63/2, 2014, p. 309.

With regard to the regional relevance of the case between Romania and Ukraine, Ergüven detects: “Further, in the case of maritime delimitation in the Black Sea, the verdict of delimitation may reach up to a certain extent so long as the third parties’ interests are not affected, the lack of determination of an absolute *terminus ad quem*, is of particular concern to Turkey and Bulgaria as the disputes over the exclusive economic zone and continental shelf boundaries between these States have not been settled. Forthwith execution of the accentuated delimitation process shall provide a certain determination of the boundaries, of which the *terminus ad quem* was not established by the verdict, and shall prevent the probable disputes amongst the regional nations.”¹⁴²

When we intend and attempt to study the relevance thus positioning of an international legal case within the greater yet specific context of its, i.e. more specifically the relevance of the case of maritime delimitation in the Black Sea which occurred as a result of the dispute between Romania and Ukraine for international maritime law. As we have discussed in the previous chapters, the fact that international law, in general, is based on the case law system, theoretically every single case which has been a part and subject matter of international law is or necessarily has the potential to determine future cases as long as their content is relevant. It goes without saying that this fact applies to the subfield of international law, i.e. international maritime law, or the international law of the sea.

Before all else, within the framework of the study of the relevance of our international legal case of choice, we are required to position or case in the history of its context, briefly. "This was the Court's eighth maritime boundary case since the

¹⁴² Nasih Sarp Ergüven. “The case of Maritime Delimitation in the Black Sea (Romania v. Ukraine) and Its Effects in Terms of International Law”, p. 311.

North Sea Continental Shelf cases of 1969."¹⁴³ In the meanwhile, [s]ix international maritime boundaries have also been decided by arbitration this period"¹⁴⁴, but not by the judgment of the ICJ.

Another uniqueness of this particular case is that for the first time in its history, regarding the decision made by the group of appointed judges at the ICJ, none of them appended a declaration or individual opinion to the decision¹⁴⁵ as we have mentioned in the previous chapter. This aspect in our framework displays a distinguishing characteristic for our case of choice, especially as regards to the fact that our research question mainly concerns the relevance of this very case for the further or constantly-ongoing construction of international maritime law.

In the process of studying the relevance of our international legal case of choice, we have been able to observe two main distinguishable conceptions stated from the Court's side. First of all, the Court prefers calling the Serpents' Island a maritime feature, instead of defining it purely as a rock or an island. Second of all, the Court states that it would be a "judicial refashioning of geography"¹⁴⁶ to take the disposable Serpents' Island as an influential factor in the process of drawing a maritime border between Romania and Ukraine.

I consider it meaningful to dig and attempt to provide the students of this particular topic, including myself, with a deeper

¹⁴³ Coalter G. Lathrop. "Introductory Note to International Court of Justice: Maritime Delimitation in the Black Sea (Romania v. Ukraine)", p. 692.

¹⁴⁴ Coalter G. Lathrop. "Introductory Note to International Court of Justice: Maritime Delimitation in the Black Sea (Romania v. Ukraine)", p. 692.

¹⁴⁵ Alex Oude Elferink. "Case concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine)...", p. 4.

¹⁴⁶ David J. Bederman, Coalter G. Lathrop. "Maritime Delimitation in the Black Sea (Romania v. Ukraine)", *The American Journal of International Law*, 103/3, 2009, p. 546.

insight regarding the genealogy of the aforementioned conceptions in order to have a better, a more solid and sharp understanding of the relevance of this particular topic in its broader context.

As Bederman detects, "[t]he phrase 'refashioning of geography' has more often been used in arguments against reducing the effect of a naturally occurring features or coastal configuration"¹⁴⁷

In terms of delimitation methodology, our case is found to be relevant for a number of cases.

Firstly, as the Court explicitly expresses it¹⁴⁸, they proceed in defined separate stages, which are broadly explained in the case concerning continental shelf between Libyan Arab Republic and Malta¹⁴⁹, when they are "called upon to delimit the continental shelf or exclusive economic zones, or to draw a single delimitation line" between two countries. The Court explicitly states that these stages "have in recent decades been specified with precision. Remarkable is that we observe that this specification in recent decades took place in official documents of different international legal cases, i.e. it directly concerns our discussion given its emphasis on case law system¹⁵⁰.

Secondly, while the Court states that they had made the decision to establish a provisional delimitation line, they explicitly refer to the fact and principle that "an equidistance line will be drawn unless there are compelling reasons that make

¹⁴⁷ David J. Bederman, Coalter G. Lathrop. "Maritime Delimitation in the Black Sea (Romania v. Ukraine)", *The American Journal of International Law*, 103/3, 2009, p. 546.

¹⁴⁸ ICJ Summary, p. 12.

¹⁴⁹ "Continental Shelf (Libyan Arab Jamahiriya/Malta)", Judgment, ICJ Reports, 1985, p. 46, para. 60

¹⁵⁰ ICJ Summary, p. 12.

this unfeasible in the particular case"¹⁵¹. Within the framework of the case law system of international maritime law, this principle is attributed to and therefore has its roots in the Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea.¹⁵²

With regard to the establishment of the final line, on the other hand, again in the Summary of the Judgment regarding our case, the Court cites the Articles 74 and 83 of the UNCLOS with regard to the principle that "[t]he course of the final line should result in an equitable solution"¹⁵³. In that respect, the Court states that they will "consider whether there are factors calling for the adjustment or shifting of the provisional equidistance line in order to achieve an equitable result"¹⁵⁴ – which was the case in the case Land and Maritime Boundary between Cameroon and Nigeria¹⁵⁵ and came up as a rule in our case of choice later.

¹⁵¹ ICJ Summary, p. 12.

¹⁵² Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, 8 October 2007, para. 281.

¹⁵³ Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening, Judgment, I.C.J. Reports, 2002, p. 441, para. 288.

¹⁵⁴ Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening, Judgment, I.C.J. Reports, 2002, p. 441, para. 288.

¹⁵⁵ Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening, Judgment, I.C.J. Reports, 2002, p. 441, para. 288.



Figure 6. The delimitation area as identified by the Court¹⁵⁶

Moreover, as the ICJ expresses it themselves, "[t]he Court has also made clear that when the line to be drawn covers several zones of coincident jurisdictions, 'the so-called equitable principles/relevant circumstances method may usefully be applied, as in these maritime zones this method is also united to

¹⁵⁶ ICJ, Judgment, p. 102.

achieve an equitable result""¹⁵⁷. As we observe, this principle has its origins in the case Territorial and Maritime Dispute between Nicaragua and Honduras.

¹⁵⁷ ICJ, Judgment, p. 102.

5.

Conclusion

In the light of the greater context combining the analyses above we can conclude that Romania-Ukraine relations constitute a certain amount and quality of significance for global politics.

Although they have not seemed of primary importance in the last decades, it is easily presumable that the both countries and their relations will have a gradually increasing importance and meaning for regional and global politics owing to their geopolitical importance, the political, economic and military power games which are based upon the Black Sea region they constitute together and their self-definitions of identity which basically sets up the basis for their domestic and, more importantly, foreign policies, which eventually determine how they position themselves within the framework of these complex entanglement of the dynamics of global politics.

Besides, we can also conclude that the maritime delimitation in the Black Sea has not yet come to an end. Presumably and fairly, the involvement of other regional actors who have coasts at the Black Sea, such as Bulgaria, Turkey and Russia, and in the light thereof, certain negotiations between two or more parties regarding the ultimate shaping and consolidation of maritime borders in the Black Sea is very much expectable in the future. This, the regional actors in the Black Sea region currently seem to be relevant for specifically this case or the greater framework of maritime delimitations in the Black Sea. The future will show us if the need for these negotiations will be initiated by legal, political or economic necessities, or all.

Especially the recent developments in Crimea and the two dramatic turning points with regard to Russia-Turkey relations within the past year, and accordingly the new stream projects,

the Black Sea region and the maritime boundaries might and most probably will play a significant role for the balance of power and the implications thereof in global politics in the nearest future.

Nevertheless, the politics of the Black Sea region with regard to its strategic, economic and symbolic significance were, are and most possibly will be more relevant in the future. The observable and possible influences of regional and global powers in the Black Sea region is, at the same time, worth further studying.

The globe is not as easy as it seems as well as not undisputably Eurocentric as it used to be, that is why we are and will be facing the dramatic emergence of new regions on the globe, and the Black Sea region is definitely one of them.



Figure 7. The final course of the maritime boundary¹⁵⁸

¹⁵⁸ ICJ, Judgment, p. 133.

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