CHAPTER 26

Comments on the Three-stage Approach of Maritime Delimitation

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Abstract

In recent years, the International Court of Justice as well as various tribunals have tried to develop the three-stage approach in the juridical practice of maritime delimitation. Although the three-stage approach can provide legal certainty and predictability for the process of delimitation to a certain degree, many questions can be raised in each stage. Among these questions are the legal basis for the construction of the provisional equidistance line in the first stage, the reasons for the adjustment or shift of the provisional line in the second stage, and the problem with having the disproportionality test remain unused in the third stage.

1 Introduction

In 2014, the International Court of Justice (hereafter the ICJ or the Court), following judicial precedents, applied the three-stage approach of maritime delimitation in Peru v. Chile, observing that “[T]he methodology which the Court usually employs in seeking an equitable solution involves three stages.”1 For broader considerations relating to maritime delimitation, an equitable solution can only be obtained by applying the UN Convention on

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the Law of the Sea (UNCLOS, hereafter the Convention).\textsuperscript{2} Articles 74 and 83 of the Convention stipulate the methods of delimitation for the continental shelf and the EEZ respectively between States with opposite or adjacent coasts. However, due to the vast differences between the States advocating the delimitation by equidistance line or median line and those advocating equitable delimitation, the Convention only gives ambiguous rules for solving the delimitation of both the continental shelf and the EEZ. It provides that the delimitation “shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.”\textsuperscript{3}

Tracing the judicial practices concerning maritime delimitation of the ICJ and other international tribunals over the past several decades, it is clear that the ICJ applied the three-stage approach earlier than the 2014 \textit{Peru v. Chile} case. As early as 2009, the Court put forward the three-stage approach in \textit{Romania v. Ukraine}. Chronologically speaking, it is reasonable to conclude that the judicial practice of international maritime delimitation has transited through a period from the result-oriented-equity approach\textsuperscript{4} to the corrective-equity approach\textsuperscript{5} which concerns some procedural norms in maritime delimitation. During this process, more explicit procedural rules were gradually formed, the most important of them being the three-stage approach for maritime delimitation.

Following the introduction (section 1), this paper will feature five additional sections, dealing, respectively, with the formation of the three-stage approach (section 2), the content and judicial practice of the three-stage approach (section 3), a review of the existing problems of the three-stage approach of the ICJ and other tribunals (section 4) and the prospects for the future of the three-stage approach (section 5). Finally, a number of conclusions will be drawn in section 6.


\textsuperscript{3} Articles 74 and 83 of the UN Convention on the Law of the Sea.
