

Legal Standards and Dispute Resolution in Exclusive Economic Zone Delimitation: A Critical Analysis of Article 74 of the United Nations Convention on the Law of the Sea

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Abstract

This paper critically examines the legal standards and dispute resolution mechanisms for the delimitation of Exclusive Economic Zones (EEZs) as outlined in Article 74 of the United Nations Convention on the Law of the Sea (UNCLOS). It explores the challenges associated with the application of the equity principle, highlighting its inherent ambiguity and the difficulties it poses in achieving consistent and fair outcomes. The paper also analyzes the limitations of voluntary dispute resolution mechanisms, such as negotiation and conciliation, particularly in cases involving significant power imbalances between states. Furthermore, the procedural complexities and costs associated with formal legal processes, such as arbitration and adjudication, are discussed as barriers to effective dispute resolution. The analysis underscores the need for reform and greater clarity in the application of Article 74, advocating for the development of more precise guidelines and the enhancement of regional cooperation frameworks to ensure equitable and sustainable resolutions to maritime boundary disputes.

Keywords: UNCLOS, EEZ, dispute resolution

1. Introduction

The United Nations Convention on the Law of the Sea (UNCLOS), adopted in 1982, represents a landmark in international maritime law, establishing a comprehensive legal framework governing the rights and responsibilities of states concerning the world's oceans and seas. Often referred to as the "constitution for the oceans," UNCLOS delineates various maritime zones, including the Exclusive Economic Zone (EEZ), which extends up to 200 nautical miles from a state's baseline, granting sovereign rights for the exploration and exploitation of marine resources. Within this context, Article 74 of UNCLOS plays a pivotal role in addressing the delimitation of EEZs between states with opposite or adjacent coasts.

Article 74 emphasizes that delimitation should be effected by agreement based on international law to achieve an equitable solution. This provision is designed to prevent and resolve disputes, encouraging states to engage in negotiations in good faith. However, the application of Article 74 is not without challenges, as the concept of an "equitable solution" is inherently subjective and open to varying interpretations. The principle of equity, while central to maritime boundary delimitation, lacks a precise definition within UNCLOS, leading to divergent views and protracted disputes among states.

The evolution of international jurisprudence, particularly through cases adjudicated by the International Court of Justice (ICJ) and other international tribunals, has significantly influenced the interpretation and application of Article 74. For instance, the Gulf of Maine case highlighted the importance of equitable principles, such as proportionality and non-encroachment, in resolving maritime boundary disputes. The development of jurisprudence since UNCLOS III has underscored the role of international law in shaping the outcomes of EEZ delimitations, as states seek to navigate the complex interplay of geographical, political, and economic factors in

achieving equitable solutions.

Despite these legal advancements, the reliance on negotiation and voluntary dispute resolution mechanisms as outlined in Article 74(3) and Article 83(3) of UNCLOS presents significant challenges. States often face difficulties in reaching agreements due to the subjective nature of equity and the varying national interests at stake. Furthermore, the procedural complexities and costs associated with formal dispute resolution mechanisms, such as arbitration or adjudication by the ICJ or the International Tribunal for the Law of the Sea (ITLOS), can deter states from seeking legal remedies, leading to unresolved or politically driven outcomes.

In summary, while Article 74 of UNCLOS provides a framework for the peaceful and equitable delimitation of EEZs, its application is fraught with challenges. The ambiguity surrounding the concept of an equitable solution, coupled with the procedural hurdles in dispute resolution, underscores the need for greater clarity and consistency in the application of international maritime law. As states continue to navigate the complexities of EEZ delimitation, the principles enshrined in Article 74 will remain central to ensuring that maritime boundaries are established in a manner that is fair, just, and consistent with international law.

2. Legal Standards in EEZ Delimitation

The delimitation of Exclusive Economic Zones (EEZs) under Article 74 of UNCLOS is governed by the overarching principle of equity. This principle, which seeks to ensure that maritime boundaries are established in a manner that is fair and just to all parties involved, is the cornerstone of legal standards in EEZ delimitation. However, the application of equity is far from straightforward, as it is a flexible and inherently subjective concept, leading to diverse interpretations and approaches by the states involved.

2.1 The Principle of Equity and Its Interpretation

The principle of equity in the context of EEZ delimitation requires states to negotiate in good faith with the aim of reaching an agreement that is equitable. This notion of equity does not prescribe a specific formula or method, but rather emphasizes the need for fairness and justice in the outcome. The lack of a concrete definition or formula has resulted in a wide array of interpretations, making the application of equity a complex and often contentious process.

One of the key challenges in applying the principle of equity is the balancing of relevant factors, such as geographical configurations, the presence of islands, and the proportionality of the coastline lengths of the states involved. The International Court of Justice (ICJ) and other international tribunals have played a critical role in providing guidance on how these factors should be considered. For instance, in the *Gulf of Maine* case, the ICJ emphasized the importance of proportionality as a means of ensuring that the outcome of delimitation is equitable. The Court noted that the delimitation should result in a maritime boundary that is proportional to the relevant coastlines of the states involved, thereby preventing any undue advantage to one state over the other (S. Kaye, 2008). However, the ICJ's jurisprudence also highlights the limitations of applying equity in a uniform manner. The Court has recognized that each delimitation case is unique, requiring a tailored approach that takes into account the specific circumstances of the case. This has led to a degree of unpredictability in the outcomes of EEZ delimitation disputes, as the application of equity is highly context-dependent. For example, in the *Maritime Delimitation in the Black Sea* case, the ICJ adopted a different approach to proportionality, reflecting the distinct geographical and historical context of the region (Quyen Mai Nguyen & Linh Thao Nguyen, 2022).

2.2 The Role of International Jurisprudence

International jurisprudence, particularly from the ICJ and the International Tribunal for the Law of the Sea (ITLOS), has been instrumental in shaping the legal standards for EEZ delimitation. These bodies have developed a body of case law that provides guidance on the application of equitable principles in maritime boundary disputes.

A critical aspect of this jurisprudence is the emphasis on the principle of non-encroachment, which seeks to prevent one state's EEZ from unduly encroaching upon the maritime area of another state. This principle is closely related to the concept of proportionality, as it ensures that the delimitation does not result in an inequitable distribution of maritime space. The ICJ has frequently invoked the principle of non-encroachment in its judgments, such as in the *North Sea Continental Shelf* cases, where the Court stressed the need to avoid any significant encroachment by one state on the natural prolongation of another state's territory (Stephen C. Nemeth et al., 2014). In addition to the ICJ, ITLOS has also contributed to the development of legal standards in EEZ delimitation through its advisory opinions and judgments. For instance, in the *Bangladesh/Myanmar* case, ITLOS elaborated on the importance of achieving an equitable solution by considering factors such as the disparity in coastal lengths and the presence of concave coastlines, which could distort the equidistance line. ITLOS's approach in this case underscored the need for flexibility in applying equitable principles, taking into account the specific geographical features and economic interests of the states involved (S. Basir & S. Aziz, 2020).

2.3 Challenges and Contentions in Applying Equity

Despite the guidance provided by international jurisprudence, the application of equity in EEZ delimitation remains a contentious issue. One of the primary challenges is the inherent subjectivity of the equity principle, which allows states to interpret it in ways that align with their national interests. This has led to disputes where states have adopted divergent positions on what constitutes an equitable solution. The absence of a clear and consistent methodology for applying equity has resulted in a lack of predictability in the outcomes of EEZ delimitation disputes. While the ICJ and ITLOS have sought to develop coherent principles, the unique circumstances of each case mean that these principles cannot be applied mechanically. As a result, states may be reluctant to submit their disputes to adjudication, preferring instead to negotiate bilaterally or resort to other dispute resolution mechanisms.

In conclusion, the legal standards governing EEZ delimitation under Article 74 of UNCLOS are deeply rooted in the principle of equity. However, the application of this principle is fraught with challenges due to its inherent flexibility and subjectivity. International jurisprudence has provided valuable guidance on how to navigate these challenges, but the unique circumstances of each case continue to make EEZ delimitation a complex and often contentious process. As states continue to grapple with these issues, the development of more consistent and transparent standards for applying equity in EEZ delimitation may help to reduce disputes and promote more predictable outcomes in international maritime law.

3. Dispute Resolution Mechanisms under Article 74

When states are unable to reach an agreement on the delimitation of their Exclusive Economic Zones (EEZs), Article 74(2) of the United Nations Convention on the Law of the Sea (UNCLOS) mandates that they shall resort to dispute resolution mechanisms provided under Part XV of the Convention. These mechanisms include negotiation, conciliation, arbitration, and adjudication by the International Court of Justice (ICJ) or the International Tribunal for the Law of the Sea (ITLOS). This section delves deeper into the effectiveness, challenges, and specific cases related to these dispute resolution mechanisms.

3.1 Negotiation as a Primary Dispute Resolution Mechanism

Negotiation is the most common and preferred method for resolving disputes under Article 74. It allows states to maintain control over the outcome and to reach a mutually acceptable solution without third-party intervention. The principle of good faith underpins the negotiation process, requiring states to engage sincerely and with the intention of reaching an agreement. However, the effectiveness of negotiation can be hampered by power asymmetries between states. For instance, in disputes involving smaller or economically weaker states, the negotiation process may be skewed in favor of more powerful nations. This imbalance can lead to agreements that are not truly equitable, thereby undermining the spirit of Article 74. Additionally, the subjective nature of the equity principle, as discussed earlier, can complicate negotiations, as states may have divergent interpretations of what constitutes an equitable solution (Stephen C. Nemeth et al., 2014).

3.2 Conciliation as an Alternative Dispute Resolution Mechanism

Conciliation is a less formal and more flexible dispute resolution mechanism compared to arbitration and adjudication. It involves the appointment of a conciliatory commission that assists the parties in reaching a settlement by proposing terms of agreement. Under Annex V of UNCLOS, conciliation is non-binding, meaning that the parties are not obliged to accept the recommendations of the commission. While conciliation offers a less confrontational approach to dispute resolution, its non-binding nature can be both a strength and a weakness. On one hand, it encourages cooperation and compromise, as states are not bound by the outcomes. On the other hand, the lack of binding force can lead to the failure of the conciliation process if one or both parties reject the proposed terms. This was evident in the Timor Sea Conciliation between Timor-Leste and Australia, where initial disagreements over maritime boundaries and resource sharing led to a protracted process that ultimately required significant diplomatic efforts to reach a final agreement (Rita El Murr, 2022).

3.3 Arbitration and Adjudication: Binding Mechanisms for Dispute Resolution

Arbitration and adjudication provide binding decisions that are enforceable under international law. These mechanisms are particularly useful when negotiations or conciliation have failed, or when a definitive legal resolution is necessary. Arbitration is conducted under Annex VII of UNCLOS, and it allows for greater flexibility in terms of procedural rules and the selection of arbitrators. Adjudication, on the other hand, involves submitting the dispute to a judicial body such as the ICJ or ITLOS, where judges or arbitrators deliver a binding verdict based on international law. One of the key advantages of arbitration and adjudication is their ability to provide a clear and final resolution to disputes. For instance, the ICJ's judgment in the Maritime Delimitation in the Black Sea case between Romania and Ukraine provided a definitive boundary, which both parties accepted, thereby preventing further conflict (Quyen Mai Nguyen & Linh Thao Nguyen, 2022).

However, the reluctance of states to submit to binding arbitration or adjudication poses a significant challenge to the effectiveness of these mechanisms. Many states prefer to retain control over the outcome of the dispute, fearing that a binding decision could result in an unfavorable outcome. This reluctance is further compounded by the procedural complexities and significant costs associated with arbitration and adjudication, which can be particularly burdensome for smaller or less economically developed states.

3.4 The Role of the International Tribunal for the Law of the Sea (ITLOS)

ITLOS plays a crucial role in the adjudication of disputes related to the interpretation and application of UNCLOS. The Tribunal has developed a significant body of case law that provides clarity on the application of Article 74, particularly in cases where the principle of equity is at the forefront of the dispute. ITLOS's judgments often emphasize the need for a balanced approach that considers the specific geographical, economic, and political contexts of the states involved. In the Bangladesh/Myanmar case, ITLOS established a maritime boundary that took into account the concave nature of the coastline, which would have otherwise disadvantaged Bangladesh if a strict equidistance line were applied. This judgment highlighted ITLOS's commitment to achieving equitable solutions while adhering to the principles of international law (S. Basir & S. Aziz, 2020).

3.5 Challenges and Limitations of Dispute Resolution Mechanisms

Despite the availability of various dispute resolution mechanisms under Article 74, several challenges limit their effectiveness. The procedural complexities, costs, and potential for prolonged litigation can deter states from pursuing arbitration or adjudication. Moreover, the non-binding nature of conciliation may lead to inconclusive outcomes, particularly when one or both parties are unwilling to compromise. The reluctance of states to submit to binding dispute resolution mechanisms reflects a broader tension between state sovereignty and the international legal order. Many states are hesitant to cede control over maritime delimitation issues to international tribunals, preferring instead to resolve disputes through bilateral negotiations, even when these negotiations are protracted or unsuccessful.

While Article 74 of UNCLOS provides a comprehensive framework for the peaceful resolution of EEZ delimitation disputes, the effectiveness of its dispute resolution mechanisms is often undermined by the reluctance of states to engage in binding processes and the inherent challenges associated with complex maritime disputes. To enhance the effectiveness of these mechanisms, there may be a need for reforms that streamline procedures, reduce costs, and encourage greater acceptance of binding arbitration and adjudication as viable means of resolving maritime boundary disputes.

4. Critical Analysis of Article 74

Article 74 of the United Nations Convention on the Law of the Sea (UNCLOS) is pivotal in the context of Exclusive Economic Zone (EEZ) delimitation. However, its application and effectiveness are subject to significant limitations and challenges. This critical analysis delves into the key issues surrounding Article 74, including the ambiguity of the equity principle, the limitations of voluntary dispute resolution mechanisms, and the procedural challenges associated with formal legal processes.

4.1 Ambiguity of the Equity Principle

One of the most significant criticisms of Article 74 is its reliance on the principle of equity without providing clear guidelines or criteria for what constitutes an equitable solution. The vagueness of this principle allows states to interpret equity in ways that align with their national interests, often leading to divergent and conflicting claims. This flexibility, while intended to accommodate the unique circumstances of each case, can result in protracted disputes where parties are unable to agree on what is fair. The lack of a standardized approach to equity has been highlighted in various maritime delimitation cases. For instance, in the Gulf of Maine case, the International Court of Justice (ICJ) emphasized the need for proportionality and non-encroachment as guiding principles for achieving equity. However, the Court also acknowledged that each case must be decided on its own merits, leading to a situation where the application of equity can vary significantly from one case to another (S. Kaye, 2008). This variability can create uncertainty and hinder the resolution of disputes, as states may find it difficult to predict the likely outcome of a legal adjudication based on past decisions.

Moreover, the subjective nature of equity means that states with greater political or economic power can leverage their influence to secure outcomes that are more favorable to them, even if these outcomes are not strictly equitable from a legal perspective. This has been observed in cases where larger states have used their negotiating power to impose terms that disadvantage smaller or less economically developed states. The reliance on equity, therefore, can sometimes undermine the very fairness it is supposed to ensure.

4.2 Limitations of Voluntary Dispute Resolution Mechanisms

Article 74 emphasizes the importance of resolving EEZ delimitation disputes through negotiation and voluntary dispute resolution mechanisms. While this approach encourages peaceful resolution and cooperation, it also has

significant limitations, particularly in situations where there is a substantial power imbalance between the states involved. In such cases, the more powerful state may dominate the negotiation process, leading to an outcome that is far from equitable. This was evident in the negotiations between Timor-Leste and Australia over the Timor Sea, where the disparity in economic and political power between the two countries raised concerns about the fairness of the resulting agreements. Although the conciliation process eventually led to a more balanced outcome, the initial negotiations highlighted the challenges of relying on voluntary mechanisms in situations where one party holds significantly more power (Rita El Murr, 2022). The non-binding nature of conciliation and other voluntary dispute resolution mechanisms can lead to inconclusive outcomes, particularly if one or both parties are unwilling to compromise. The voluntary nature of these processes means that states are not obligated to accept the recommendations of conciliators or mediators, which can result in prolonged disputes and further instability. This issue is particularly acute in regions with complex geopolitical dynamics, where states may be reluctant to cede any perceived advantage through compromise.

4.3 Procedural Challenges in Formal Legal Processes

While Article 74 provides for the use of formal dispute resolution mechanisms, such as arbitration and adjudication, the procedural complexities and costs associated with these processes can act as significant deterrents. Smaller or less economically developed states may find it challenging to bear the financial and logistical burdens of pursuing legal action through the International Court of Justice (ICJ) or the International Tribunal for the Law of the Sea (ITLOS). The length of time required to resolve disputes through formal legal processes can exacerbate tensions between states. Prolonged litigation can lead to uncertainty and hinder the development of maritime resources, as states may be reluctant to invest in disputed areas until a final resolution is reached. This was evident in the South China Sea disputes, where overlapping claims and the lengthy legal process have created significant challenges for regional stability and resource management (Stephen C. Nemeth et al., 2014). The reluctance of states to engage in binding arbitration or adjudication also reflects a broader concern about the potential for unfavorable outcomes. Many states prefer to retain control over the resolution of maritime disputes, fearing that a binding legal decision could impose terms that are detrimental to their national interests. This reluctance is particularly pronounced in cases involving complex or sensitive issues, where states may be unwilling to accept the risks associated with third-party adjudication.

4.4 The Need for Reform and Clarity

Given the challenges and limitations associated with Article 74, there is a growing recognition of the need for reform and greater clarity in the application of legal standards for EEZ delimitation. One potential avenue for reform is the development of more precise guidelines or criteria for the application of the equity principle. This could involve the establishment of a standardized approach to proportionality and non-encroachment, which would provide greater predictability and consistency in the resolution of maritime boundary disputes. Efforts to streamline the procedural aspects of formal dispute resolution mechanisms could help to reduce the financial and logistical barriers that currently deter states from pursuing legal action. This could include measures to simplify the arbitration and adjudication processes, as well as the provision of financial assistance to smaller or less economically developed states to help them access these mechanisms. There may be a need to strengthen the role of regional organizations and frameworks in facilitating EEZ delimitation. Regional bodies could play a more active role in mediating disputes and ensuring that the outcomes are consistent with both regional stability and international legal standards. This approach would recognize the importance of regional dynamics in maritime disputes and provide a more localized context for the application of Article 74.

In conclusion, while Article 74 of UNCLOS provides a crucial framework for the delimitation of Exclusive Economic Zones, its effectiveness is constrained by the ambiguity of the equity principle, the limitations of voluntary dispute resolution mechanisms, and the procedural challenges associated with formal legal processes. Addressing these issues through reform and greater clarity could enhance the ability of states to resolve EEZ delimitation disputes in a manner that is both equitable and consistent with international law.

5. Conclusion

Article 74 of the United Nations Convention on the Law of the Sea (UNCLOS) stands as a cornerstone in the legal framework governing the delimitation of Exclusive Economic Zones (EEZs). Its importance in promoting peaceful and equitable resolutions to maritime boundary disputes cannot be overstated. However, the application of Article 74 is fraught with challenges that must be critically addressed to enhance its effectiveness in achieving just and equitable outcomes. The principle of equity, which lies at the heart of Article 74, is both its greatest strength and its most significant limitation. On one hand, the flexibility of equity allows for tailored solutions that take into account the unique circumstances of each dispute. On the other hand, the lack of clear guidelines or criteria for determining what constitutes an equitable solution has led to varied interpretations, often resulting in prolonged disputes and inconsistent outcomes. The subjective nature of equity can also be exploited by more powerful states, leading to outcomes that favor national interests over true fairness.

The reliance on voluntary dispute resolution mechanisms under Article 74 further complicates the process of EEZ delimitation. While negotiation and conciliation promote peaceful settlement and cooperation, they are often inadequate in situations where there is a significant power imbalance between the parties. The non-binding nature of these mechanisms can also lead to inconclusive results, leaving disputes unresolved and creating potential for further conflict. This is particularly problematic in regions where geopolitical tensions are high, and where the stakes involved in maritime boundary delimitation are considerable. Moreover, the procedural challenges associated with formal dispute resolution mechanisms, such as arbitration and adjudication, present additional barriers to the effective application of Article 74. The complexities, costs, and time-consuming nature of these processes can deter states, especially smaller or less economically developed ones, from pursuing legal remedies. This reluctance undermines the rule of law in international maritime disputes and can perpetuate instability in regions where clear and definitive boundaries are essential for the sustainable management of marine resources.

Given these challenges, there is an urgent need for reform and greater clarity in the application of Article 74. The development of more precise guidelines for the application of the equity principle could provide states with a clearer understanding of the legal standards that should guide the delimitation process. This, in turn, could lead to more consistent and predictable outcomes, reducing the likelihood of protracted disputes. Additionally, efforts to streamline the procedural aspects of formal dispute resolution mechanisms could help to lower the barriers to legal adjudication, making these processes more accessible to all states. There is a need to strengthen the role of regional organizations and frameworks in facilitating EEZ delimitation. By providing a more localized context for dispute resolution, regional bodies could help to ensure that outcomes are not only consistent with international law but also aligned with the specific needs and dynamics of the region. This approach could enhance the legitimacy of the delimitation process and foster greater cooperation among states.

In conclusion, while Article 74 of UNCLOS is essential for the equitable delimitation of EEZs, its full potential has yet to be realized. The challenges posed by the ambiguity of the equity principle, the limitations of voluntary dispute resolution mechanisms, and the procedural hurdles of formal adjudication must be addressed to ensure that maritime boundary disputes are resolved in a manner that is both fair and just. Only through concerted efforts to clarify and reform the existing legal framework can the promise of equitable solutions in EEZ delimitation be fully realized, safeguarding the rights and interests of all states and contributing to the stability and sustainability of the global maritime order.

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