The nexus between the law of the sea and human rights law in the context of maritime occupation: The case of Palestine

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Abstract

The law of the sea, when it comes to Palestine, is, at its core, a *human right*. The maritime rights of the Palestinian people have been overshadowed and pushed to the margins due to a tremendous humanitarian crisis that risked the existence of the Palestinians as a people. Palestinians have been denied access to their rights in the sea for over a century. Palestine was colonised at a time when Britain was the global maritime hegemon, which used Palestine's sea to serve its colonial interests. With its declaration in 1948, Israel controlled over 80% of Palestine's coast. Only a small fraction of the coast on the Mediterranean Sea, about 40 kilometres long, was left to the Palestinians offshore Gaza. Even in this limited portion, the Palestinians have been deprived of using the sea. With the 2014 accession of Palestine, as a State, to the UN Convention on the Law of the Sea, possibilities for Palestine to declare its prerogatives under the Convention are legally available. However, the ability to exercise actual control over Palestine's maritime zones offshore Gaza con-

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tinues to face enforcement challenges due to the Israeli naval blockade, military occupation and, now, genocide. This article addresses the law of the sea from the lens of human rights and humanitarian law in relation to the Palestinian people, with a focus on three aspects: Palestine's maritime legal history, maritime boundary delimitation and claims, and settlements of disputes.

Keywords: Maritime occupation, Palestine, self-determination, marine resources, Gaza, maritime claims, maritime boundary.

1. Introduction

The 2023-2025 Israeli genocidal war on Gaza has led to calls for the recognition of the State of Palestine in the West Bank, including East Jerusalem, and the Gaza Strip.[1] After the UN General Assembly's resolution of May 2024, which affirmed that Palestine qualifies for full membership in the UN,[2] an increasing number of States are recognising the State of Palestine, the most recent of which are Ireland, Norway, and Spain.[3] Such recognitions have implications not only for the status of Palestine's land territory, but also for the sea offshore Gaza in the Mediterranean. That brings to the fore the status of the Gaza Sea under the 1982 UN

1. United Nations, 'Secretary-General Underscores Two-State Solution Only Way to End Israeli-Palestinian Conflict, One-State Formula Inconceivable, in Day-Long Debate', Security Council Meeting No. 9534, UN Doc SC/15569 (23 January 2024); Margaret Besheer, 'Nations Reaffirm Urgency of Two-State Solution for Israel and Palestine', *Voice of America* (23 January 2024); Anna Gordon, 'U.K. Will Consider Recognizing Palestinian State, Foreign Secretary David Cameron Says', *Time* (30 January 2024).

2. UN Doc A/ES-10/L.30/Rev.1, 9 May 2024.

3. Rory Carroll and Sam Jones, 'Ireland, Spain and Norway to recognise Palestinian state', *The Guardian* (22 May 2024).

Convention on the Law of the Sea (the Convention or the UNCLOS),[4] to which Palestine acceded on 2 January 2015.

On 19 July 2024, the International Court of Justice (ICJ), in its advisory opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, concluded that the Israeli occupation of the Palestinian territory is unlawful.[5] Following this Advisory Opinion, the UN General Assembly on 18 September 2024 instructed Israel to bring "an end without delay to its unlawful presence in the Occupied Palestinian Territory, which constitutes a wrongful act of a continuing character entailing its international responsibility, and do so no later than 12 months from the adoption of the present resolution".[6] This adds another layer of legal rights for Palestine pertaining to, amongst other things, its maritime engagements.[7]

The UNCLOS creates a set of rights for State Parties regarding maritime activity. As a party to the Convention, Palestine can delimit its offshore maritime zones, namely the Gaza Strip ('Gaza'), which extends for 40 kilometres along the Mediterranean Sea.[8] As "the land dominates the sea", according to the ICJ,[9] in the sense that maritime zones are a natural extension of land, it is imperative to look at the status of the Gaza land

4. United Nations Convention on the Law of the Sea, adopted 10 December 1982, entered into force 16 November 1994, 1833 UNTS 397.

5. *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, 19 July 2024, Advisory Opinion, ICJ Rep (2024), para 261.

6. UN Doc A/RES/ES-10/24, 18 September 2024, para 2.

7. Mutaz M. Qafisheh, Jinan Bastaki, and Victor Kattan, 'Gaza Marine: The Facts and the Law' (2025) Leiden Journal of International Law (forthcoming).

8. UNCLOS entered into force with regard to Palestine on 2 January 2015, in accordance with article 308(2).

9. *North Sea Continental Shelf (Federal Republic of Germany v Denmark and Federal Republic of Germany v Netherlands)*, ICJ Rep (1969) para 96.

boundary, especially its terminus on the coast.[10]

The territorial extent of Gaza is defined by two land borders drawn up in the first half of the past century, one with Egypt and the other with Israel.[11] Based on the UNCLOS specifications, the Palestinian territorial sea would reach approximately 888 square kilometres and enlarge the size of Gaza's 365 square kilometres of territory by 241 per cent. The extension of the exclusive economic zone (EEZ) and continental shelf would more than double the entire size of Palestine's territory, up to 14,800 square kilometres.

With the discovery of gas reserves in the Eastern Mediterranean,[12] the region has recently become a canter for global attention, particularly in light of world gas supply shortages in the wake of the Russian war on Ukraine.[13] By exercising its sovereign rights over its maritime zones, Palestine could become one of the major global gas and petroleum States. The U.S. Energy Information Administration indicates that the Gaza Marine field holds an estimated 1.6 trillion cubic feet (about 500 billion cubic meters) in recoverable natural gas resources.[14] In addition to framing claims to underwater gas reserves, the UNCLOS sets out Palestine's ability to establish ports and harbours, to register ships that fly its flag,

10. The International Criminal Court (ICC) decided that 'the Court's territorial jurisdiction in the Situation in Palestine extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem'. *Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine*, ICC-01/18-143, Pre-Trial Chamber I (5 February 2021) 51.

11. Abu Lafi, *Legal Consequences of Succession on Maritime Zones and Delimitations under the United Nations Convention on the Law of the Sea* (International Maritime Law Institute 2021) 7-9.

12. James Stocker, 'No EEZ Solution: The Politics of Oil and Gas in the Eastern Mediterranean' (2012) 66 Middle East Journal 579.

13. Jokull Johannesson and D Clowes, 'Energy Resources and Markets – Perspectives on the Russia–Ukraine War' (2022) 30 European Review 4.

14. U.S. Energy Information Administration (EIA), *Palestinian Territories* (March 2014), available at <<https://www.eia.gov/international/analysis/country/PSE>>.

to export and import freely, to fish in Palestine's maritime zones and the high seas, as well as to control the entry, departure, navigation, security and flights over its waters.

Notwithstanding Israel's prolonged occupation and its ongoing blockade of Gaza, Palestine retains the right to exercise legislative jurisdiction over its coastline and maritime zones in accordance with the UNCLOS, irrespective of its current capacity to enforce such laws.[15] While Israel is not a party to the UNCLOS, neighbouring States with overlapping maritime claims – namely Egypt and Cyprus – are.[16] The key issue thus concerns Palestine's ability to operationalise its maritime entitlements under international law in light of the Israeli blockade, compounded by Israel's continued denial of Palestinian statehood.[17]

This article examines the legal avenues available to Palestine to assert its maritime rights in the eastern Mediterranean under the UNCLOS, with a view to advancing the rights and welfare of the Palestinian people. In this context, the law of the sea, as it pertains to Palestine, must also be understood through the lens of human rights – particularly the principle of self-determination.

To identify how Palestine can navigate this process and where the primary legal and political challenges lie, the analysis proceeds in three parts. Section 2 provides an overview of the evolution of Palestine's maritime legislation, starting from the Ottoman times, through British and Egyptian as well as Israeli rules, to the current state that was shaped by

15. Susan Power, 'War, Invasion, Occupation - A Problem of Status on the Gaza Strip' (2009) 12 Trinity College Law Review 25; Sari Bashi, 'Controlling Perimeters, Controlling Lives: Israel and Gaza' (2013) 7 Law & Ethics of Human Rights 243; Roi Bachmutsky, 'Otherwise Occupied: The Legal Status of the Gaza Strip 50 Years after the Six-Day War' (2018) 57 Virginia Journal of International Law 413.

16. Nicholas A. Ioannides, *Maritime Claims and Boundary Delimitation: Tensions and Trends in the Eastern Mediterranean Sea* (Routledge 2020) 10-12.

17. Safaa Sadi Jaber and Ilias Bantekas, 'The Status of Gaza as Occupied Territory under International Law' (2023) 72 International & Comparative Law Quarterly 1069.

the Oslo Accords and the Palestinian Authority and Hamas rules. Section 3 explores the maritime claims that Palestine made with regard to its maritime boundary delimitation with neighbouring States: Israel, Egypt, and Cyprus. Lastly, Section 4 addresses the various mechanisms available to Palestine for the dispute settlement in the eastern Mediterranean with regards to its maritime delimitation.

2. Maritime legal framework in Palestine

This Section explores the emergence and evolution of Palestine's maritime legislation at the domestic level and its external implications. It does so by first addressing the pre-Israeli occupation legislation (under the Ottomans, British, and Egyptians) regulating the maritime affairs and its impact on the Israeli maritime approach to the Gaza Sea. It then elaborates on the Israeli-Palestinian interim peace treaties, signed in Oslo, and their approach to the Gaza offshore, while reflecting on the consistency of the maritime arrangements of the Oslo Accords with the UNCLOS and the international humanitarian law applicable to the occupied territory. Finally, the Section ends with outlining how the accession of Palestine to the UNCLOS may offer a tool to develop a legislative framework based on the Convention and considers future reform actions while scrutinising what Palestine may do legislatively as part of its commitments under the law of the sea.

2.1 Development of maritime legislation in Palestine

Gaza's boundary with Egypt, like the rest of the pre-1948 Palestine-Egypt frontier, dates back to the late nineteenth century. This border was initially drawn up on a *de facto* basis as the Ottoman Empire acknowledged

Egypt's autonomy under Britain's protection.[18] Two border agreements between the Ottomans and Egypt were reached in 1906. The first came in the form of an 'Exchange of Notes between Britain [which occupied Egypt from 1882] and Turkey relative to the Maintenance of the Status Quo in the Sinai Peninsula' (Istanbul, 14 May 1906).[19] The second was the 'Agreement between Egypt and Turkey for the fixing of an Administrative Line between the Vilayet of Hejaz and the Governorate of Jerusalem and the Sinai Peninsula' (Rafah, 1 October 1906).[20] The 1906 treaties continue to govern the borders between Egypt, on one side, and both Israel and Gaza, on the other.[21] Accordingly, Egyptian borders with the pre-1948 Palestine, including the region that was later named the 'Gaza Strip', were definitively fixed.

A separate process led to the demarcation of the Gaza frontier with Israel. Gaza, like the rest of Palestine, was occupied by Britain in December 1917 and remained under the League of Nations Mandate until 14 May 1948.[22] During its 1948-9 war with Israel, Egypt controlled Gaza, which emerged within its current boundary after the armistice agreement signed between Egypt and Israel (Rhodes, 24 February 1949),[23] followed by a 'Modus vivendi to the Egyptian-Is-

18. Aimee M. Genell, *Empire by Law: Ottoman Sovereignty and the British Occupation of Egypt, 1882-1923* (Columbia University 2013).

19. Clive Parry (ed.), *The Consolidated Treaty Series, Volume 23* (Oceana 1969) 190.

20. Ibid., 19.

21. UN, 'Case concerning the Location of Boundary Markers in Taba between Egypt and Israel' (2006) XX Reports of the International Arbitral Awards 18.

22. William Basil Worsfold, *Palestine of the Mandate* (Fisher Unwin 1925); Jacob Stoyanovsky, *The Mandate for Palestine: A Contribution to the Theory and Practice of International Mandates* (Longmans 1928); Bernard Wasserstein, *The British in Palestine: The Mandatory Government and the Arab-Jewish Conflict, 1917-1929* (Royal Historical Society 1978).

23. *Israel and Egypt General Armistice Agreement*, entered into force 24 February 1949, 42 UNTS 252.

raeli General Armistice Agreement' (El Auja, 22 February 1950).[24] The latter agreement reduced the Gaza territory to the current 365 km^2, including the loss of about two km from the northern Gaza coast. Egypt administered Gaza without annexing it.[25] A constitutional instrument that Egypt proclaimed in 1962 provided that "the Gaza Strip forms an integral part of Palestine".[26] Since then, the lines separating Gaza and Israel as erected in 1949 have been duly reaffirmed as *de jure* borders.[27]

No power that governed Palestine over the last century had attempted to delimit the territorial waters or other maritime zones. Under the Ottoman Empire (1516-1917), the Palestinian sea had no separate status, as Palestine formed part of the Eastern Mediterranean coast that stretched from Anatolia in the north to the Sinai Peninsula in the south.[28] With the dismantling of the Ottoman Empire during World War I, Britain ruled Palestine from 1917 to 1948, a time when the British were the world's greatest military and naval power.[29] It seems that Britain, like its Ottoman predecessor, left maritime boundaries to the customary law

24. UN Doc S/1471, 17 March 1950.

25. Ilana Feldman, *Governing Gaza: Bureaucracy, Authority, and the Work of Rule, 1917–1967* (Duke University Press 2008).

26. 'Proclamation of the Constitutional System of the Gaza Strip' (5 March 1962), Palestine Gazette, Extraordinary Issue, 29 March 1962, 664, article 1.

27. Mutaz M. Qafisheh, 'What is Palestine? The *de jure* Demarcation of Boundaries for the ICC's *ratione loci* Jurisdiction and Beyond' (2020) 20 International Criminal Law Review 908, 119 ff.

28. Vital Cuinet, *Syrie, Liban et Palestine, géographie administrative: statistique, descriptive et raisonnée* (Leroux 1896); Ellsworth Huntington, *Palestine and its Transformation* (Mifflin 1911); Alexander Scholch, *Palestine in Transformation 1856-1882: Studies in Social, Economic and Political Development* (Institute for Palestine Studies 1993).

29. Norman Bentwich, *Palestine* (Benn 1934) 31-72; Herbert Sidebotham, *Great Britain and Palestine* (Macmillan 1937); Nevill Barbour, *Nisi Dominus: A Survey of the Palestine Controversy* (Harrap 1946) 42-87.

of the sea of the time.[30] The Egyptian administration of Gaza (1948-67) and its subsequent occupation by Israel from 1967 until the onset of the Oslo Accords in 1994 led to a range of restrictions on the use of Gaza's coast and territorial waters. However, for over a century, the various powers that controlled Palestine adopted a range of legislative enactments related to the use of the sea, many of which are still applicable in Gaza at present. Thus, the regulation of the maritime affairs of Gaza today, as with the rest of the Palestinian legal system, reflects an aggregation of international and State law.[31]

On 6 August 1863, the Ottoman Empire adopted a detailed Code of Maritime Commerce, which applied to Palestine and the rest of the Turkish domains.[32] This code, inspired by the maritime law of France, Sardinia, and Sicily,[33] remains in force today, as it has never been repealed by any power that ruled Palestine. The code set up rules for, *inter alia*, ships' registration system, ownership of ships, labour law at sea, civil and criminal liability of ships' crew, marine insurance, sea transport of persons, shipment of goods and vessel collision. The Ottomans updated this code through the Law of Promotion and Development of Maritime Commerce of 21 November 1885, which comprised provisions pertinent to customs, taxes, and port systems.[34] Another Ottoman law, passed on 8 January 1882, regulated the "fishing in land and sea" without ad-

30. Tommy B. Koh, 'The Origins of the 1982 Convention on the Law of the Sea' in D Rothwell, ed, *Law of the Sea* (Elgar 2013) 48-64.

31. Mutaz M. Qafisheh, 'Legislative Drafting in Transitional States: The Case of Palestine' (2014) 2 International Journal of Legislative Drafting and Law Reform (2014) 7.

32. Aref Ramadan (ed.), *Completion of Laws: Ottoman Laws Enforced in Arab States Detached from the Ottoman Empire* (Science Press 1928) vol 2, 161.

33. Majid Khadduri and Herbert J. Liebesny, *Law in the Middle East: Origin and Development of Islamic Law* (Middle East Institute 1955) 289.

34. Ramadan (n 32) vol 2, 233.

dressing any aspect relating to maritime zones where fishers navigate.[35]

The British authorities in Palestine elevated the codification of maritime affairs beyond that of their predecessor, likely because Palestine under the League of Nations Mandate acquired its distinctive territorial status and because the British Empire stood alone as the world's maritime hegemon.[36] While retaining the aforementioned Ottoman legislation, British High Commissioner for Palestine enacted provisions for Palestinian ports under the Ports Ordinance No. 114 of 1 April 1926.[37] Based on the latter, a British Order inaugurated the Gaza Port on 4 October 1945.[38] Britain simultaneously adopted legislation relative to the carriage of goods by sea on the first day of 1926,[39] and established a maritime court in February 1937.[40] Fisheries Ordinance No. 6 of 18 February 1937 equated the territorial waters of Palestine as the zone reserved for fishing and fixed the breadth of the zone at three nautical miles offshore measured from the lowest point of the tide.[41] Less than one month later, on 2 March 1937, the rules adopted by the British-run government defined the 'internal merchant journey' as "any trip that a ship makes from a port in Palestine to a port or location outside Palestine situated in the Mediterranean east of longitude degree No. 28 eastward of Green-

35. Ibid., vol 3, 237.

36. Gabriela A. Frei, *Great Britain, International Law, and the Evolution of Maritime Strategic Thought, 1856–1914* (OUP 2020).

37. Robert H. Drayton (ed.), *The Laws of Palestine in Force on the 31st Day of December 1933* (Waterlow 1934) 1340.

38. Gaza Port (Water Limit) Order, Palestine Gazette (Supplement 2), No. 1445, 11 October 1945, 1444.

39. Carriage of Goods by Sea Ordinance No. 43 of 1 January 1926, Drayton (n 37) 113.

40. Palestine Admiralty Jurisdiction Order of 2 February 1937, Palestine Gazette, Supplement 2, No. 673, 269.

41. Palestine Gazette, Supplement 1, No. 667, 18 February 1937, 210, article 2.

wich".[42] As the west coast of Palestine lies at approximately longitude degree 34, and as each degree equals about sixty nautical miles, the limits of Palestine's internal waters were extended to about 360 nautical miles.

When Egypt administered Gaza after the British withdrawal in May 1948 until the Israeli occupation in June 1967, the Gaza Sea had not been a priority because Egypt possessed enough and approximate ports that left Gaza's port unnecessary, especially given its presumed high security considerations. Indeed, almost immediately, the Egyptian governor of Gaza shut down the city's port for merchant ships arriving or departing.[43] However, as early as June 1948, the Egyptians permitted fishing boats to sail up to three nautical miles measured from Gaza offshore seaward, but only in designated areas and during daylight, subject to "firing at those who fail to comply".[44] Shortly after that, the Egyptian governor allowed fishing boats to sail at night with their boat lights continuously illuminated.[45] In 1951, Egypt eased the closure somewhat but continued to criminalise the entry of merchant ships into, or departure from, Gaza port without a permit "from competent authorities".[46] These restrictions, motivated by security concerns as Egypt remained in a state of war with Israel, barred the development of the Gaza maritime zones for two decades.

From the outset of its occupation in 1967 until the withdrawal of its forces from parts of Gaza after the establishment of the Palestinian

42. Ports (Seagoing Vessels) (Amendment) Rules of 2 March 1937, Palestine Gazette, Supplement 2, No. 672, 11 March 1937, 211, article 2.

43. Order No. 41 Relating to the Prohibition of Mooring of Merchant Ships at the Ports under the Egyptian Forces Control in Palestine of 12 September 1948, Palestine Gazette No. 2, 31 March 1950, 61.

44. Order No. 9 of 3 June 1948, Palestine Gazette No. 1, 31 December 1949, 12.

45. Order No. 14 of 12 June 1948, Palestine Gazette No. 2, 31 March 1950, 27.

46. Order Relating to Prohibition of the Transport of any Persons by Sea Save under Special Permit No. 194 of 24 November 1951, Palestine Gazette No. 8, Supplement 3, 15 October 1951, 298.

Authority in 1994, Israel imposed a blockade on the Gaza coast with a complete ban on entry or departure of ships from Gaza territorial waters.[47] While leaving the previous law technically in place, Israel enacted a series of military orders to codify the issue of fishing, focusing on a permission regime for the fishers.[48] Without abolishing the three-mile limit designated for fishing that existed for decades before its occupation, Israel restricted the fisheries and prohibited fishing boats from entering specific locations.[49] It banned fishers from exiting the zone beyond the three-mile seaward, and it halted fishers from using boats with specific engines, focusing on slow boats with maximum speeds of 20 horsepower.[50] Several Israeli military orders were dedicated to the 'regulation' of swimming on beaches, prohibiting the entry of swimmers to more than 300 metres seaward even in the designated swimming blocks.[51] Obviously, these measures were introduced chiefly for security purposes, namely to prevent the use of the sea by resistance groups to enter Israel or attack Israeli targets. With its establishment per the framework of the 1993 Oslo Accords, signed by Israel and the Palestine Liberation Organisation (PLO), the Palestinian Authority attempted to develop certain aspects of maritime legislation.

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47. Bob Labes, 'The Law of Belligerent Occupation and the Legal Status of the Gaza Strip' (1988) 9 Michigan Yearbook of International Legal Studies 383.

48. Order Concerning Fishing Instructions (Gaza Strip and North Sinai) No. 69 of 27 August 1967, Israeli Army, *Proclamations, Orders and Appointments*, No. 3, 31 December 1967, 211.

49. General Permit for Fishermen Exit from the Area (Gaza Strip Area) No. 144 of 18 April 1985, Israeli Army, *Proclamations, Orders and Appointments*, No. 75, 16 November 1986, 8045, Article 1.

50. Ibid.

51. Regulations for the Implementation of the Order concerning the Regulation of Bathing Areas in the Sea (Gaza Strip and North Sinai) No. 66 of 31 August 1967, Israeli Army, *Proclamations, Orders and Appointments*, No. 3, 31 December 1967, Article 13.

2.2 The Oslo Accords and the law of the sea

Article IV of the Declaration of Principles on Interim Self-Government Arrangements, signed at Washington, DC, between Israel and the PLO on 13 September 1993, known as 'Oslo I', reserved the issue of borders for further negotiation.[52] Article IV did not indicate what would follow if the negotiation did not resume or if the negotiation brought no agreement on boundaries. The latter scenario now persists with the negotiation deadlocked, making it possible to argue that the status of borders remains as it existed under international law before the signing of the Oslo Accords. Three explanations drawn from international law and the Oslo Accords themselves support this assertion. The first stems from the aforementioned Article IV, by which the "two sides view[ed] the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved". The second draws from Oslo I, which is based on UN Security Council resolutions 242 (1967) and 338 (1973), and states that "the negotiations on the permanent status [between Israel and Palestine] will lead to the implementation of [these] Security Council resolutions"; namely the withdrawal of Israel from the territories that it occupied in June 1967.[53] Third, much of State practice, backed, among other bases, by judgements of the ICJ,[54] the International Criminal Court (ICC),[55] as well as ample UN Security Council and General Assembly resolutions, recognises the "State of Palestine on the Palestinian territory occupied

52. 32 ILM 1525 (1993).

53. Article 1 of Oslo I.

54. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, Advisory Opinion, ICJ Rep (2004) 167.

55. ICC, *Prosecution Response to the Observations of Amici Curiae, Legal Representatives of Victims, and States*, ICC-01/18-131, 30 April 2020.

since 1967".[56] Because the sea forms an extension of the landscape,[57] Palestinian maritime areas encompass the Gaza internal waters and territorial sea, as well as the powers of control in the contiguous zone and sovereign rights in the EEZ and the continental shelf.

The issue of boundaries that defines the territory of Palestine was debated before the ICC for the purpose of the Court's territorial jurisdiction in the State of Palestine as a Member State in the Rome Statue in 2021. It was argued before the ICC that the lack of an agreed-upon solution to the territorial scope of the State of Palestine would lead to the preservation of the *status quo* relating to Palestine's land under international law until after a change of the territorial limits would be reached by an agreement between the State of Israel and the State of Palestine. Indeed:

> The fact that Palestinians and Israelis are undergoing a negotiation process to set the final boundaries between the State of Palestine and the State of Israel does not change Palestinian territorial title over the West Bank, including East Jerusalem, and Gaza Strip. Naturally, negotiation might yield an agreed-upon solution that may modify Palestine-Israel borders, for example, by land swap or special arrangement of joint control in certain religious sites. Until that solution materializes, the status quo regarding Palestine's borders remains intact.[58]

The ICC Prosecutor, and subsequently the Court itself, endorsed this argument in its entirety.[59]

Despite the fact that the occupying power is disregarding the ICC-recognition of Palestinian territorial title, this Section examines the current

56. UN Doc A/RES/67/19, 29 November 2012.

57. *North Sea Continental Shelf* (Federal Republic of Germany *v* Denmark and Federal Republic of Germany *v* Netherlands), Judgement of 5 February 1969, ICJ Rep (1969), para 96.

58. Mutaz M. Qafisheh, *Borders of the State of Palestine under International Law for the Purpose of ICC Territorial Jurisdiction*, *Amicus Curiea* (ICC 2020) ICC-01/18-72, para 46.

59. *Prosecution Response to the Observations of Amici Curiae* (n 55) 48 (fn 278).

state of affairs of the maritime regime of the Gaza Sea as enshrined in the Oslo Accords, agreed to by the State of Israel and the PLO. Article VII, paragraph 4, of Oslo I provided the basis for the Palestinian Authority to establish 'a Gaza Sea Port Authority'. In Annex III, titled 'Protocol on Israeli-Palestinian Cooperation in Economic and Development Programmes', the parties agreed to establish an Israeli-Palestinian Continuing Committee for Economic Cooperation, which empowered the Palestinians to establish 'a Gaza Sea Port Area'.[60] Indeed, on 8 December 1999, late Palestinian President Yasser Arafat founded the 'Sea Port Authority' and named its chairperson.[61] Shortly thereafter, Arafat reinstated the 'Port of Gaza' through Decree No. 1 of 30 April 2000.[62] Article 2 of the latter decree provided that the Port Authority shall enact "bylaws and instructions to give effect to the decree". In practice, such "bylaws and instructions" have never been adopted. Despite enacting these instruments, the Sea Port Authority or the Port of Gaza did not materialise for two reasons. First, Arafat's enactments coincided with the outbreak of the second uprising (*intifada*) from 2000 to 2005 that led to the deterioration of relations between Palestine and Israel, during which time the latter imposed a fresh set of restrictions on the Gaza coast. Second, the Sea Port Authority has been accorded a limited mandate under the Oslo Accords offshore Gaza.

Regardless of the Oslo stipulations, the Port of Gaza has existed for decades. Its creation and dimensions had been fixed by the British-enacted Gaza Port Order of 1945, under the Ports Ordinance of 1926, both mentioned above. The purpose of establishing the Sea Port Authority and the new Gaza Port served to enlarge and modernise the port and enable Palestinian and foreign ships to navigate Gaza shores. This pro-

60. Annex III.

61. Palestine Gazette, No. 34, 30 September 2000, 38.

62. Palestine Gazette, No. 33, 30 June 2000, 30.

jected function proved impracticable due to strict Israeli control over the sea following the Oslo Accords. Thus, the Palestinian government decided to merge the Ports Authority on 23 May 2006 with the Ministry of Transport.[63]

Significantly, the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995, known as 'Oslo II', elaborated details regarding the 'Sea of Gaza'.[64] Article XIV, titled 'Security along the Coastline to the Sea of Gaza', recognises a fishing limit of 20 nautical miles from the Gaza shore seaward. However, in the north of Gaza, a maritime zone marked as 'K', with 1.5 nautical miles breadth, was designated as a buffer space along the Israeli side of the sea. In the south, a zone called 'M', one nautical mile wide, was allocated as a buffer area along the Egyptian waters. Both zones were assigned as "closed areas, in which navigation was to be restricted to activity of the Israel Navy". The offshore area between these two zones was designated as 'Zone L', open for Palestinian fishing, recreation, and economic activities.

Article XIV added further restrictions on Palestinian activities in 'Zone L'. Fishing boats, for instance, "will not exit Zone L into the open sea and may have engines of up to a limit of 25 HP [horsepower] for outboard motors and up to a maximum speed of 18 knots for inboard motors".[65] In addition, recreational boats and yachts were limited to sailing within a distance of six nautical miles. Finally, motorbikes and water jets were altogether forbidden from Zone L.[66]

As for incoming ships to Gaza from various destinations, Oslo II provided that "[f]oreign vessels entering Zone L will not approach

63. Council of Ministers Decision No. 46 Concerning the Merger of the Civil Aviation Authority and the Ports Authority with the Ministry of Transportation, Palestine Gazette No. 68, 7 March 2007, 92.

64. 36 ILM 551 (1997).

65. Oslo II, Article XIV/1/a(2)(b)(i).

66. Ibid., Article XIV/1/a(2)(b)(ii).

closer than 12 nautical miles from the coast".[67] An exception had been made for such ships to enter the Gaza Port after its establishment,[68] but, as noted above, the new Port has never been established. Despite the Palestinian Naval Police being formed to address maritime concerns and criminal activity, Oslo II permitted the "Israel Navy vessels [to] sail throughout these [three] zones, as necessary and without limitations, and may take any measures.... [with the proviso that] The Palestinian Police will be notified of such actions".[69] The Palestinian Police were allowed to operate only ten boats, with limited speed and weapons, up to six nautical miles. In extraordinary cases and, with special Israeli permission, the range could extend to 12 nautical miles.[70] Pending the construction of the Gaza Port, "arrangements for entry and exit of vessels, passengers and goods by sea, as well as licenses for vessels and crews sailing on international voyages in transit to the West Bank and the Gaza Strip, shall be through Israeli ports under the relevant rules and regulations applicable in Israel", a situation that maintained Israel's commercial security monopoly.[71] See *Figure 1* for the Gaza fishing limits under Oslo II.

In less than a decade since the signing of Oslo I and Oslo II, at the end of April 2002, Israel foisted tighter limits on Palestinian fishing. In August 2002, UN Secretary-General Humanitarian envoy Catherine Bertini reported that she obtained a commitment from Israel to permit a 12-mile fishing zone offshore Gaza.[72] Despite Israel's so-called 'Disengagement Plan' in September 2005, Israel has retained its siege on

67. Ibid., Article XIV/1/a(2)(b)(iv).

68. Ibid., Article XIV/4(c).

69. Ibid., Article XIV/1/b(4).

70. Ibid., Article XIV/2/a and b.

71. Ibid., Article XIV/4(c).

72. Catherine Bertini, Mission Report (UN, 11-19 August 2002) para 8.

Gaza,[73] while claiming that it ended its occupation.[74] In the *Al-Bassiouni* case,[75] which the Israeli Supreme Court confirmed the narrative alleging an end to Israel's occupation, stating that Israel no longer had effective control over Gaza. Against all the odds of international law, Israel's High Court of Justice ruled that "the State of Israel does not have a general duty to ensure the welfare of the residents of the Gaza Strip or to maintain public order... according to the laws of belligerent occupation".[76] In April 2006, the Israeli navy began enforcing a ten-mile limit on Gaza fishers, and in October of that year, it reduced the limit to six miles.[77]

According to Article 42 of the Hague Convention IV, Respecting the Laws and Customs of War on Land, and its regulations of 18 October 1907,[78] a "territory is considered occupied when it is placed under the authority of the hostile army". The end of occupation occurs when the occupier's military ceases holding any *de facto* control.[79] Thus, Gaza remains an occupied territory according to international law.[80] As recently

73. Shane Darcy and John Reynolds, 'An Enduring Occupation: The Status of the Gaza Strip from the Perspective of International Humanitarian Law' (2010) 15 Journal of Conflict and Security Law 14.

74. Iain Scobbie, 'An Intimate Disengagement: Israel's Withdrawal from Gaza, the Law of Occupation and of Self-Determination' (2005) 11 Yearbook of Islamic and Middle Eastern Law 3; Benjamin Rubin, 'Disengagement from the Gaza Strip and Post-Occupation Duties' (2009) 42 Israel Law Review 528; Elisabeth Samson, 'Is Gaza Occupied: Redefining the Status of Gaza under International Law' (2010) 25 American University International Law Review 915.

75. Yuval Shany, 'The Law Applicable to Non-Occupied Gaza: A Comment on Bassiouni v. the Prime Minister of Israel' (2009) Israel Law Review 101.

76. Israeli High Court of Justice, *Jaber Al-Bassiouni Ahmed and others v Prime Minister and Minister of Defense*, Case No. 9132/07, 27 January 2008, para 12.

77. Sharat G. Lin, 'Gaza's Shrinking Borders: 16 Years of the Oslo Process', 27 December 2009, available at <<https://www.countercurrents.org/lin271209A.htm>>.

78. 2 American Journal of International Law (Supplement) (1908) 90.

79. John Dugard, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967*, UN Doc A/HRC/4/17, 29 January 2007.

80. Yoram Dinstein, *The International Law of Belligerent Occupation* (CUP 2009) 276–279.

as in its July 2024 advisory opinion, the ICJ rendered the Israeli occupation unlawful and reiterated the contiguous nature of the Palestinian territory, including the West Bank, East Jerusalem, and Gaza.[81]

Israel maintained its military dominance over Gaza's territorial waters, along with its airspace, while also restricting the entry of persons and the supply of products and services.[82] It upheld the ban on foreign ships that attempted to enter the Gaza Port, attacking such ships or dragging them into Israeli ports.[83] A notable instance of this policy occurred with the Turkish Mavi Marmara and accompanying flotilla on 31 May 2010, during which the Israeli navy raided the ship and killed nine international peace activists aboard.[84] This incident triggered considerable global attention, including UN probes that addressed the legality of the blockade,[85] and involved ICC proceedings.[86] The incident led to considerable diplomatic tensions but no prosecutions.

The above discussion reveals that the issue of the Gaza Sea appeared in the Oslo Accords as a matter of security and, at best, as a potential for economic development, particularly fishing. It largely maintained the

81. ICJ Advisory Opinion 2024 (n 5) para 78.

82. Nicholas Stephanopoulos, 'Israel's Legal Obligations to Gaza after the Pullout' (2006) 31 Yale Journal of International Law 524 (2006); Solon Solomon, 'Occupied or Not: The Question of Gaza's Legal Status after the Israeli Disengagement' (2011) 19 Cardozo Journal of International and Comparative Law 59.

83. Daniel Benoliel, 'Israel, Turkey and the Gaza Blockade' (2011) 33 University of Pennsylvania Journal of International Law 615.

84. Andrew Sanger, 'The Contemporary Law of Blockade and the Gaza Freedom Flotilla' (2013) 13 Yearbook of International Humanitarian Law 397; Douglas Guilfoyle, 'The *Mavi Marmara* Incident and Blockade in Armed Conflict' (2011) 81 *British Yearbook of International Law* 171; George Bisharat, Carey James and Rose Mishaan, 'Freedom Thwarted: Israel's Illegal Attack on the Gaza Flotilla' (2011) 4 Berkeley Journal of Middle Eastern and Islamic Law 79.

85. UN Doc A/HRC/15/21, 27 September 2010.

86. *Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation*, ICC-01/13-34, 16 July 2015.

status quo created by Israel during the years of occupation beginning in 1967. For example, the maximum that the Oslo Accords gave to the Palestinians concerning fishing (20 nautical miles) equals ten per cent of the 200 miles of the EEZ under the UNCLOS. The Oslo-allocated zone has been shrunk, in reality, to much less than 20 nautical miles.

The Oslo Accords, contrary to international law prescriptions, do not contemplate any sovereign rights for the Palestinian people along the Gaza coast. Although its entry into force at the global level coincided with the adoption of the Accords, the UNCLOS was entirely off the negotiation agenda. Nevertheless, are the maritime arrangements of the Oslo Accords, as a bilateral treaty between two international law entities, consistent with the Convention?

Israel contends that Palestine has no maritime powers except those stipulated in the "Israeli-Palestinian agreements which clearly define the scope of rights and obligations in the relevant maritime area",[87] unequivocally asserting that the 'Palestinian entity' cannot claim any maritime rights based on the UNCLOS.[88] Indeed, under the law of the sea, a range of issues can be regulated by regional, sub-regional or bilateral treaties in lieu of the Convention arrangements.[89] But can the Oslo Accords stipulations relating to the maritime arrangements as detailed above be considered a *lex specialis* that overturns the application of the UNCLOS concerning Palestine?

87. Israel, *Note verbale dated 14 January 2020 from the Permanent Mission of Israel to the United Nations addressed to the Office of the Secretary-General*, Law of the Sea Bulletin No. 102 (2020) 25.

88. Ibid.

89. For example, Article 51 (existing agreements, traditional fishing rights and existing submarine cables), Article 237 (obligations under other conventions on the protection and preservation of the marine environment), Article 270 (ways and means of international co-operation) and Article 282 (obligations under general, regional or bilateral agreements). This principle of special agreements was also embedded in the ILC work on the codification of law of the sea. ILC, 'Articles concerning the Law of the Sea' (1959) II Yearbook of the International Law Commission 256, Article 14.

An analysis of the Oslo Accords themselves indicates a negative answer to that question, based on two grounds. First, the Oslo Accords stipulated a period limited to five years for implementation, ending in May 1999 and leading to a permanent settlement. The Accords by no means intended to create a perpetual or permanent status. On the contrary, as indicated above, the issue of borders (including maritime zones) was reserved for further negotiation, indicating that the *status quo* remained intact. Hence, the Oslo arrangements merely constituted security and economic aspects that the sides were projected to coordinate as a preparation for an elevated stage leading to Palestinian independence, which implied sovereignty over, among other areas, maritime zones. Secondly, and more importantly, various provisions of the Geneva Convention IV relative to the Protection of Civilian Persons in Time of War of 12 August 1949[90] stipulate, for example, that "[n]o special agreement shall adversely affect the situation of protected persons..., nor restrict the rights which it confers upon them".[91] As the territorial sea and other maritime zones constitute part of the territory of a State and the resources on which the Palestinian people have the right to self-determination,[92] which, in turn, forms a peremptory rule of international law (or *jus cogens*),[93] then any special agreement, or a provision thereof, that restricts this right must be void.[94] In this connection, it was aptly concluded that "the conventional rules [of the Oslo Accords] on the governance

90. 75 UNTS 287, entry into force 21 October 1950.

91. Article 7. See also Article 8 (non-renunciation of rights) and Article 47 (inviolability of rights).

92. Irini Papanicolopulu, 'Human Rights and the Law of the Sea' in David Attard, Malgosia Fitzmaurice and Norman Gutiérrez (eds.), *The IMLI Manual on International Maritime Law: The Law of the Sea* (OUP 2014) 509-32.

93. *Wall* (n 54) 199.

94. Ki-Gab Park, 'The Right to Self-Determination and Peremptory Norms' in Dire Tladi, ed, *Peremptory Norms of General International Law (Jus Cogens): Disquisitions and Disputations* (Brill 2021) 689-712.

of the territorial sea off the Gaza Strip cannot derogate from the law of occupation".[95]

As part of the Accords, Palestine acquired powers to perform a set of State-like functions. The lack of control over certain issues does not imply Palestinian concordance with the ongoing situation but merely reflects an occupier's forceful domination.[96]

Indeed, "[n]o territorial acquisition resulting from the... threat or use of force shall be recognized as legal".[97] Occupation thus does not legally diminish statehood entitlement or alter the sovereignty of the occupied State.[98]

Since the temporal lapse of the Oslo Accords over two decades ago, circumstances have substantially changed.[99] Palestine has behaved as a State and performed most of the State's functions. Externally, it became a member of a dozen international organisations and acceded to over a hundred treaties.[100] It established or enhanced its diplomatic missions

95. Marco Longobardo, 'The Occupation of Maritime Territory under International Humanitarian Law' (2019) 95 International Law Studies 322, 354.

96. John Quigley, 'The Palestine Declaration to the International Criminal Court: The Statehood Issue' (2009) 35 Rutgers Law Record 1, 6-7.

97. General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, UN Doc A/RES/2625(XXV), 24 October 1970.

98. Conor McCarthy, 'Paradox of the International Law of Military Occupation: Sovereignty and the Reformation of Iraq' (2005) 10 Journal of Conflict and Security Law 43; Salvatore F. Nicolosi, 'The Law of Military Occupation and the Role of De Jure and De Facto Sovereignty' (2011) 31 Polish Yearbook of International Law 165.

99. Oliver Lissitzyn, 'Stability and Change: Unilateral Denunciation or Suspension of Treaties by Reason of Changed Circumstances' (1967) 61 American Society of International Law Proceedings 186.

100. Basheer Al-Zoughbi, 'The *de jure* State of Palestine under Belligerent Occupation: Application for Admission to the United Nations' in Mutaz M. Qafisheh (ed.), *Palestine Membership in the United Nations: Legal and Practical Implications* (CSP 2013) 162.

worldwide. It hosts numerous embassies.[101] It may, equally, delimit its maritime zones under the UNCLOS and codify its maritime affairs thereof as in the case of any other State.[102]

Lastly, the accession of Palestine to the UNCLOS in 2015 can form a new obligation towards other States of the Convention that prevails over the Oslo Accords as an old treaty. Articles 309-311 are clear in this respect. Palestine has made no reservation or exception to modify or alter the application of the UNCLOS upon its accession to the Convention. More significantly, Article 311(2) clearly stated that the "Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention". Thus, the Oslo maritime provisions that deny or restrict the enjoyment of Palestine's rights under the UNCLOS cannot bind Palestine under the Convention itself, as that would lead to the inability of Palestine to perform its duties towards other States parties. On the contrary, Palestine carries a burden of reforming its domestic law in order to perform the obligations set forth in the Convention *vis-à-vis* other States parties, as will be explained next.

101. Qafisheh, 'What is Palestine?' (n 27) 931-2.

102. Clive Symmons, 'Article 15: Delimitation of the Territorial sea between States with Opposite or Adjacent Coasts' in Alexander Proelss, ed, *United Nations Convention on the Law of the Sea: A Commentary* (Beck 2017) 165.

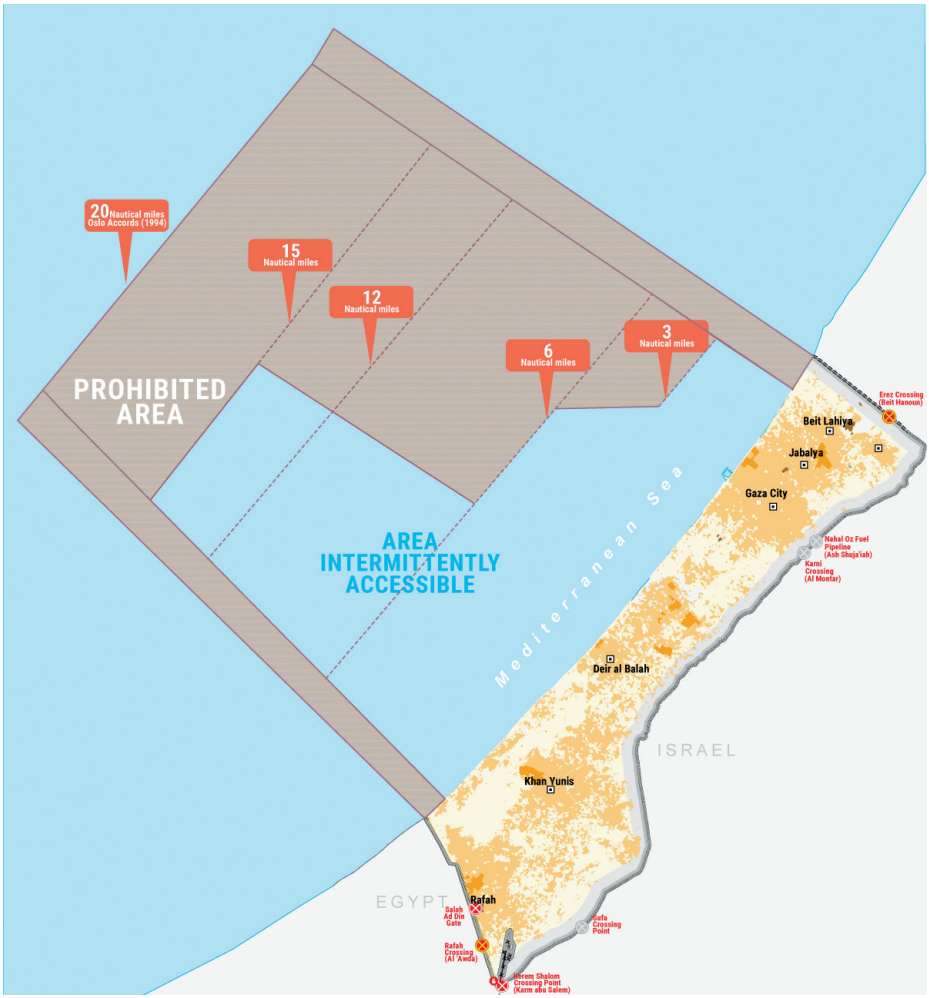

Figure 1: Gaza Fishing Limits according to Oslo Accords II (1995)[103]

103. OCHA, *The Monthly Humanitarian Bulletin*, 19 November 2019, available at <<https://www.ochaopt.org/content/gaza-s-fisheries-record-expansion-fishing-limit-and-relative-increase-fish-catch-shooting accessed>>.

2.3 UNCLOS-based legal reform in Palestine

Under the UNCLOS, a riparian State party reserves a power to take a range of measures through its domestic law to enforce the Convention. Besides unilateral maritime boundary delimitation,[104] examples of these measures relate to ports (Article 11), the right to innocent passage of foreign ships in the territorial sea (Articles 17-26), including the passage of nuclear ships (Article 23) and submarines (Article 20), jurisdiction on criminal law and civil law aboard ships (Articles 27-28), rights in the contiguous zone (Article 33), law on the use of EEZ (Articles 58-59), obligations of foreign citizens regarding fishing in EEZ (Article 62), laws to protect EEZ (Article 73), rights in relation to the continental shelf (Article 76), nationality and registration of ships (Article 91), jurisdiction in high seas: penal jurisdiction, marine assistance and salvage, collision, combating slavery, piracy, trafficking, trade in drugs, unauthorised broadcasting and rights of visit and hot pursuit (Articles 97-111), punishing the breaking or injury of submarine cables or pipelines (Article 113), preservation of marine environment (Articles 192-195) and the prevention of pollution from land-based sources (Articles 207, 210 and 213). Few of these issues have been regulated in Palestine due to its colonial heritage,[105] as observed above.

Palestine's accession to the UNCLOS offers an opportunity to craft comprehensive Palestinian legislation that may give rise to the domestication of the international law of the sea, a harmonisation called for annually by the UN General Assembly.[106] The reform process is imperative despite the inability of Palestine to enforce these stipulations at the

104. See Proelss (n 102).

105. Rashid Khalidi, *The Hundred Years' War on Palestine: A History of Settler Colonialism and Resistance, 1917–2017* (Metropolitan 2020).

106. J. Ashley Roach, *Excessive Maritime Claims* (Brill Nijhoff 2020) 7-8.

present time due to the restrictions of the Israeli occupation forces. Some of these prospective laws might accord Palestine the means of claiming certain maritime rights towards other State parties to the UNCLOS, relevant international organisations or law of the sea tribunals, or even companies operating ships, submarines, oil rigs and so on.[107] Domestication gives a positive image of the State at the global stage, increasing the State's credibility and contributing to its independence.

Due to the fact that the maritime legislative pieces were enacted several decades before the adoption of the UNCLOS by States that controlled Palestine, most legislation does not cohere with the Convention. Some provisions of previous legislation reflect circumstances no longer relevant to the current time. For example, the maritime commerce laws enacted towards the end of the nineteenth century, highlighted in Section 2.1 above, have become outdated. No provision in Palestine's Labour Law No. 7 of 30 April 2000 addresses the rights of workers on board of ships.[108] British mandate-era Penal Code Ordinance No. 74 of 14 December 1936,[109] applicable in Gaza, still defines the territorial sea as three nautical miles from the baseline (Article 6). By contrast, Jordan-era Penal Code No. 16 of 10 April 1960 of the West Bank fixes the territorial sea at five nautical miles.[110] In the *Majalle*, the Ottoman Civil Code of 15 September 1876,[111] also applicable to Palestine today, is silent when it comes to civil jurisdiction in maritime areas or on ships.

Reference to EEZ has been made in two separate Palestinian laws enacted at the close of the past century. The first is Natural Resources

107. Dana Weiss and Ronen Shamir, 'Corporate Accountability to Human Rights: The Case of the Gaza Strip' (2011) 24 Harvard Human Rights Journal 155.

108. Palestine Gazette No. 39, 25 November 2001, 7.

109. Palestine Gazette, Supplement 1, No. 652, 14 December 1936, 399.

110. Jordan Official Gazette No. 1487, 1 May 1960, 374, Article 7(3).

111. Ramadan (n 32) vol 6, 1.

Law No. 1 of 24 January 1999.[112] However, while listing EEZ (without defining it), among other 'definitions' in Article 1 of this law, it includes no particular provision related to other maritime zones or natural resources thereof. Environment Law No. 7 of 28 December 1999[113] provided detailed rules pertinent to the preservation of the marine environment in various maritime zones (Articles 31-39). The latter law mentions other maritime zones without defining them: the territorial sea, continental shelf and seabed.[114] Regarding the preservation of the marine environment, with the exception of the precise prohibition of oil pollution of the sea (Article 38),[115] the law sets out general principles that were presumed to be materialised through the enactment of detailed regulations, bylaws, instructions and standards envisaged to be drafted by the Ministry of Environmental Affairs.[116] Such instruments have never been passed.

The foregoing shows the long path ahead for Palestine to harmonise its laws in line with the law of the sea. Such domestication can be crystalised on two fronts. The first, which may consist of a single law named 'Maritime Zones Law', can relate to the delimitation of maritime zones offshore Gaza based on the UNCLOS and the sovereign rights of Palestine and obligations. The second, more comprehensively, can transfer other technical (*vis-à-vis* sovereign) aspects of the Convention into national legislation through a set of laws as detailed in the series of treaties that have been adopted by the International Maritime Organization (IMO) since the middle of the twentieth century.

112. Palestine Gazette No. 28, 13 March 1999, 10.

113. Palestine Gazette No. 32, 29 February 2000, 38.

114. Article 1 (definition of EEZ), and Articles 35 and 37.

115. This Article stated: "It shall be prohibited for all parties including ships, irrespective of their nationality, to dispose or throw oil, oil mix or any other pollutants in the territorial waters or the exclusive economic zone of Palestine".

116. Articles 31-33, 35-37.

With regard to the 'Maritime Zones Law', Palestine started to regulate and reclaim sovereignty over its maritime areas through declarations upon its accession to the UNCLOS. On 31 August 2015, Palestinian President Mahmoud Abbas communicated a declaration to the then-UN Secretary-General Ban Ki-moon defining Palestine's maritime zones.[117] The declaration extended Palestine's sovereignty up to 12 nautical miles into Gaza's shore measured from the baseline that was set as a 'low-water line along the coast'.[118] Palestine claimed a 24-mile contiguous zone and 200 miles for both EEZ and the continental shelf combined.[119]

On 24 September 2019, the Palestinian Minister of Foreign Affairs and Expatriates, Riad Maliki, deposited a more precise declaration with the UN Secretariat.[120] The declaration marked the baseline offshore Gaza and the breadth of seaward maritime zones with specific geographical points of coordinates based on the World Geodetic System 1984,[121] which links national to global datum systems.[122] The declaration was professionally illustrated by a chart drawn by a cartographic consulting

117. State of Palestine, *Declaration of the State of Palestine regarding the Maritime Boundaries of the State of Palestine in accordance with the United Nations Convention of the Law of the Sea* (Ramallah, 31 August 2015), Law of the Sea Bulletin No. 89 (2017) 18, hereinafter 'Abbas Declaration'.

118. Ibid.

119. Kriangsak Kittichaisaree, *The International Tribunal for the Law of the Sea* (OUP 2021) 195.

120. Palestinian Ministry of Foreign Affairs and Expatriates, *Declaration of the State of Palestine regarding the Maritime Boundaries of the State of Palestine in accordance with the United Nations Convention of the Law of the Sea* (Ramallah, 24 September 2019), Law of the Sea Bulletin No. 101 (2020) 46, hereinafter 'Ministry of Foreign Affairs Declaration' or 'Declaration'.

121. Ibid., 47.

122. Jonathan Myres, 'Survey Tasks Arising from the United Nations Convention on the Law of the Sea' (1986) 63 International Hydrographic Review 65, 69; Muneendra Kumar, 'World Geodetic System 1984: A Modern and Accurate Global Reference' (1988) 12 Marine Geodesy 117; Ahmed El-Rabbany, 'Geomatics Aspects of the UN Convention on Law of the Sea – A Case Study' (2002) 55 Journal of Navigation 443, 445.

firm,[123] 'International Mapping'.[124] The declaration encompasses six tables that listed geographical coordinates, defining Palestine's baseline and other zones offshore Gaza. It marked the 'Southern Limits of Maritime Areas of the State of Palestine', i.e. the seaside line boundary of Gaza with Egypt. It likewise demarcated the 'Northern Limits of Maritime Areas of the State of Palestine', that is, the seaside-line of Gaza along the coastal frontier with Israel. On 27 April 2022, Palestine filed a communication at the UN Secretariat with respect to the potential use of Gaza's maritime zones by third parties (States, companies or individuals) without Palestinian consent.[125]

The Division for Ocean Affairs and the Law of the Sea (DOALOS) of the UN Secretariat published these declarations under the heading 'National Legislation' in the *Law of the Sea Bulletin* and on the DOALOS's website.[126] Nevertheless, the declarations have not been published in the Palestine Official Gazette as in the case of other national legislation. The declarations do not contain detailed provisions, rights and obligations for the activities carried out by various actors in each Palestinian maritime zone. No penalties that sanction those who breach Palestinian law in the designated areas can be found. Although a step towards the right direction in the sense that claiming and demarcating maritime zones protects such zones from conflicting claims by other States,[127] such declarations need to be converted into binding law, incorporating specific

123. Interview with Ambassador Omar Awadallah, Assistant Minister for United Nations and International Organizations, Ministry of Foreign Affairs and Expatriates (Ramallah, 14 June 2022).

124. The homepage of this company is <<https://internationalmapping.com>>.

125. State of Palestine, *Note verbale dated 27 April 2022 from the Permanent Observer Mission of the State of Palestine to the United Nations addressed to the Secretary-General*, Law of the Sea Bulletin No. 108 (2022) 19.

126. See <<https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/PSE.htm>>.

127. Roach (n 106) 6.

provisions based on the UNCLOS, sanctioning those who violate the law, and, finally, be published in the official gazette.

The proposed maritime legislation would largely translate the UNCLOS stipulations on maritime areas, as reflected in the above declarations, into a domestic law.[128] The law could define the internal waters, baseline, territorial sea, contiguous zone, EEZ and continental shelf.[129] It may specify the outer limits of each zone with specific geographical coordinates and the boundaries of Palestine with adjacent States (Israel and Egypt) as well as opposite neighbouring States, particularly Cyprus and, possibly, Turkey. The law must indicate that the unilateral delimitation of maritime zones might be modified based on agreements with other States or pursuant to decisions of competent international courts or tribunals.[130] The law can define the prerogatives of Palestine in each zone, along with the high seas and seabed. The rights and duties in Palestinian maritime zones of national or foreign entities operating boats, ships, vessels, warships, artificial islands, underwater vehicles, submarine cables and pipelines, aircraft, oil rigs, fisheries, or conducting marine scientific research may be equally specified in the Palestinian domestic law. These entities may include governments, companies, research institutions or individuals in each of the maritime areas. The Palestinian law needs to incorporate concrete provisions pertinent to each maritime zone in detail. Proportionate penalties and civil liability pronouncements for those who breach Palestinian law can be similarly introduced. The law needs to name the governmental bodies that would regulate maritime affairs in relation to foreign entities, for example, the Ministry of Foreign Affairs

128. Yoshifumi Tanaka, *The International Law of the Sea* (CUP 2019) 236-78.

129. Satya N. Nandan et al., *United Nations Convention on the Law of the Sea 1982: A Commentary* (Nijhoff 1993) vol II, 148.

130. *Fisheries* (United Kingdom *v* Norway), Judgement of 18 December I95I, ICJ Rep (1951) 116, 132.

in connection to boundary delimitation, the Council of Ministers in relation to the adoption of regulations towards law enforcement and the Energy and Natural Resources Authority concerning gas and oil exploration and exploitation. In this law, Palestine may revoke provisions of previous legislation that contradict the new law or the UNCLOS or are no longer relevant. In developing this law, Palestine's legislators may learn from and be guided by the national maritime zone legislation of other States.[131] Finally, the Palestine Gazette must publish the UNCLOS in its entirety, following the ruling of the Palestinian Constitutional Court No. 4 of 19 November 2017 that requires gazetting international treaties and converting them into domestic law as a pre-requisite for the enforcement of such instruments at the national level.[132]

Besides the first proposed law that centres on the sovereignty, sovereign rights and jurisdiction of Palestine over its maritime zones, another proposed set of laws may cover technical aspects. As a framework instrument, many of the UNCLOS "provisions can be implemented only through specific operative regulations in other pertinent international agreements".[133] The IMO as a UN agency has developed over 50 conventions relating to the use of the sea since the adoption of the UNCLOS.[134] Many of these conventions are considered complementary law

131. Mutaz M. Qafisheh, 'From Constantinople to Oslo to Gaza: Developments of Palestine's Maritime Legislation under Colonization' (2024) 160 *Marine Policy: The International Journal of Ocean Affairs*, DOI: 10.1016/j.marpol.2023.105954.

132. Palestine Gazette No. 138, 29 November 2017, 84.

133. Gaetano Librando, 'The International Maritime Organization and the Law of the Sea' in David Attard et al. (n 92) 577-605, 580.

134. IMO, 'List of Conventions, Other Multilateral Instruments and Amendments in respect of which the Organization Performs Depository and Other Functions' (London, February 2022), available at <<https://wwwcdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/List%20of%20the%20Conventions%20and%20their%20amendments.pdf>>.

for the UNCLOS.[135] The IMO conventions fall into four categories: (1) maritime safety, (2) preservation of the marine environment, (3) liability and compensation over damages, and (4) other issues, namely shipping facilitation, tonnage measurement, unlawful acts against shipping and salvage.

As in the case of over a hundred other treaties and organisations that it has acceded to in the past decade,[136] Palestine can become the 176th member of the IMO and, thereafter, join the instruments and standards that were adopted under its auspices. Articles 4-9 of the IMO Convention, signed at Geneva on 6 March 1948,[137] set out procedures for a State to become an IMO member. Palestine meets the requirements of Article 7, which reads:

> Any State... may apply through the Secretary-General of the [International Maritime] Organization to become a Member and shall be admitted as a Member upon its becoming a party to the Convention... provided that, upon the recommendation of the Council, its application has been approved by two thirds of the Members.

Palestine is currently contemplating applying for the IMO membership.[138] Through UNCLOS, as complemented by the IMO, its conventions and standards that can be transferred to domestic law, Palestine would be legally empowered to act as a coastal, port and flag State across the globe.[139]

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135. Ilker Basaran, 'The Evolution of the International Maritime Organization's Role in Shipping' (2016) 47 Journal of Maritime Law and Commerce 101.

136. Shadi Sakran and Mika Hayashi, 'Palestine's Accession to Multilateral Treaties: Effective Circumvention of the Statehood Question and its Consequences' (2017) 25 Journal of International Cooperation Studies 81.

137. 298 UNTS 3, entry into force 17 March 1958.

138. Second interview with Ambassador Omar Awadallah, Assistant Minister for United Nations and International Organizations, Ministry of Foreign Affairs and Expatriates (Ramallah, 2 July 2022).

139. Librando (n 133) 598-605.

3. Palestine maritime boundary delimitation

As outlined in the introduction, the post-October 7, 2023, Israeli assault on Gaza, the discovery of gas reserves in the Eastern Mediterranean, the ICJ Advisory Opinion rendering the Israeli occupation unlawful, and the UN General Assembly resolution calling for the end of occupation, it is critical for Palestine to define its maritime zone. Thus, this Section argues that Palestine's accession to the UNCLOS and its claims to maritime zones will change the Eastern Mediterranean Sea *status quo*.[140] We will explore the potential delimitation process for Palestine's overlapping boundaries with neighbouring States: Israel, Egypt and Cyprus. The discussion will then proceed to the implications of Palestine's unilateral claims to maritime zones under the Convention.

3.1 Unilateral delimitation of Palestinian maritime zones

A State possesses the competence to define its maritime zones in accordance with the UNCLOS parameters.[141] Palestine can, first and foremost, draw its baseline from the low-water line of the Gaza coast, from which all maritime zones are measured. In this respect, Article 5 of the UNCLOS provides that "the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognised by the coastal State". Palestine may subsequently locate the zones where it is entitled to assert full sovereignty, namely over the internal waters and territorial sea, in addition to a contiguous zone and then the areas reserved for exercising sovereign

140. Ioannin N. Grigoriadis, 'The European Union in the Eastern Mediterranean in 2020: Whither Strategic Autonomy' (2021) Journal of Common Market Studies 1.

141. Stephen Fietta and Robin Cleverly, *A Practitioner's Guide to Maritime Boundary Delimitation* (OUP 2016) 32.

rights: EEZ and continental shelf.[142]

Six months after the entry into force of UNCLOS with regard to Palestine, on 31 August 2015, Palestinian President Mahmoud Abbas communicated a Declaration to the then UN Secretary-General Ban Ki-moon regarding Palestine maritime zones based on the Convention's modalities.[143] In the Declaration, Abbas proclaimed that Palestinian sovereignty extends 12 nautical miles offshore, measured from the baseline set as a "low-water line along the coast"[144] and that Palestine exercises sovereignty over the territorial sea, its bed and subsoil as well as the airspace above it. He similarly claimed a 24 nautical mile contiguous zone and a 200 nautical-mile combined EEZ and continental shelf. The Declaration indicated that when Gaza's maritime boundaries overlap with those of other States, delimitation "should be resolved on the basis of equity and the principles of international law".[145] Probably owing to its generic character that replicates UNCLOS, this Declaration received no reaction from neighbouring States.

As mentioned above, in September 2019, the Palestinian Minister of Foreign Affairs and Expatriates, Riad Maliki, took the significant step of depositing a second Declaration with the DOALOS.[146] This Declaration set out the baseline for the Gaza offshore maritime zones and the breadth of the seaward maritime zones using specific geographical points of coordinates based on the World Geodetic System 1984 (WGS 84), as a datum system. The WGS 84 incorporates all national datum systems into a global system.[147] Indeed, "[w]ith the introduction of the Navstar Global

142. Tanaka (n 128) 145.

143. Abbas Declaration (n 117).

144. Ibid.

145. Ibid.

146. Ministry of Foreign Affairs Declaration (n 120).

147. Kumar (n 122) 117.

Positioning Systems (GPS), any surveyor navigation undertaken using GPS receivers will give positions related to WGS 84".[148] The coordinates and maritime zones set out in the Declaration were technically designed by using the professional service of Maryland-based cartographic consulting firm,[149] 'International Mapping'.[150] The chart attached to the 2019 declaration is reproduced in *Figure 2* below.

The said Declaration encompasses six tables that list points of geographical coordinates along the globe's latitude and longitude.[151] It defined Palestine's baseline (Table 1), territorial sea (Table 2) and contiguous zone (Table 3). Table 4 merged the breadth of both the EEZ and continental shelf. While Table 5 drew the 'Southern Limits of Maritime Areas of the State of Palestine', namely the sea lateral boundary of Gaza with Egypt, Table 6 fixed the 'Northern Limits of Maritime Areas of the State of Palestine', that is, the lateral line of Gaza along the coastal frontier with Israel. Following this Declaration, Israel and Egypt took little time in lodging protests.

148. Neil R. Guy, 'The Relevance of Non-Legal Technical and Scientific Concepts in the Interpretation and Application of the Law of the Sea: An Analysis of the United Nations Convention on the Law of the Sea' (University of Cape Town 2000) 48-9.

149. Awadallah (n 123).

150. The homepage of this company is <<https://internationalmapping.com>>.

151. These tables, originally annexed to the declaration, did not appear in the Law of the Sea Bulletin No. 101 (n 120) in which the declaration was published. The tables are available on the website of DOALOS at <<https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PSE_Deposit_09-2019.pdf>>. However, the Ministry of Foreign Affairs Declaration (n 120) 46 stated that such tables 'constitute an integral part of this Declaration'.

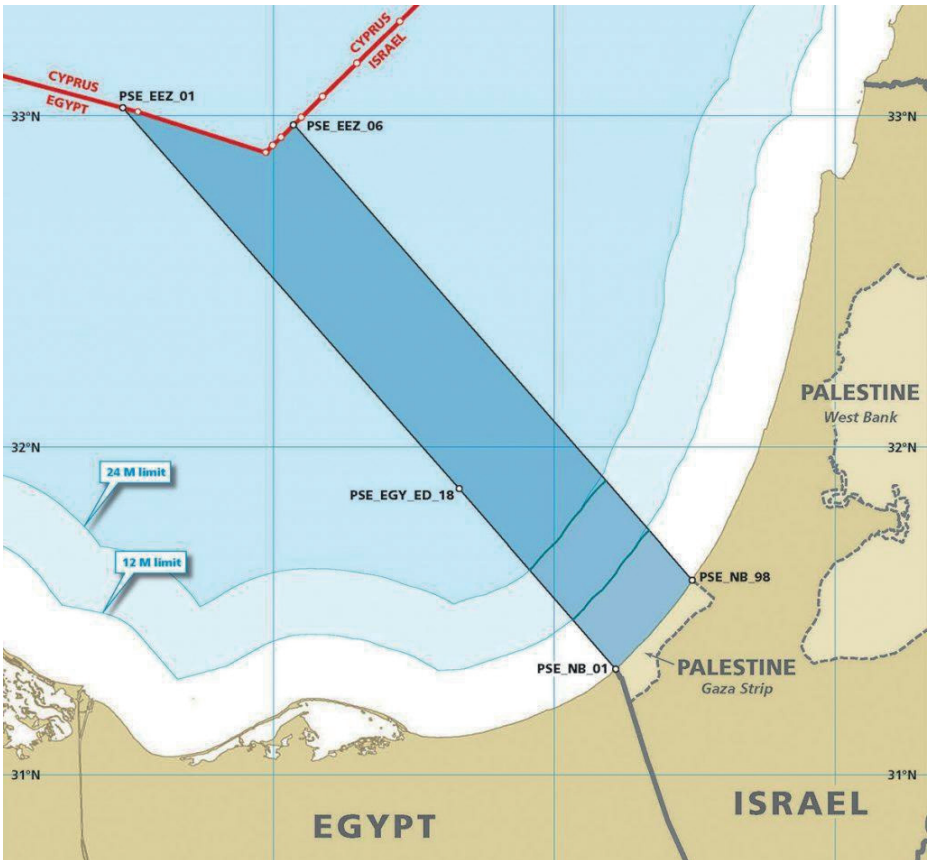

Figure 2: Chart on Palestine's Maritime Zones submitted by the Palestinian Ministry of Foreign Affairs to the United Nations Secretariat on 24 September 2019.

3.2 Palestinian boundaries with Israel

In reaction to Palestine's 2019 Declaration, on 14 January 2020, the Mission of Israel to the UN communicated to the office of the UN Secretary-General, through a note verbal, a memorandum to reject the Palestinian Declaration "on its purported maritime

boundaries".[152] Israel objected to the Declaration in its entirety without indicating particular concerns around any zone or point of geographical coordinates. Israel based its view on two grounds. One is that the Declaration contradicts the Oslo Accords' maritime stipulations that give the Palestinian Authority limited access to the sea, largely for fishing in an area up to 20 nautical miles offshore. Secondly, that Palestine lacks statehood as a prerequisite for maritime claims. The Israeli communication reads:

> It is a well-established and basic principle, both under customary international law of the law of the sea [sic] and relevant treaty law, that only sovereign states have the right to maritime zones, including territorial seas and exclusive economic zones, as well as the right to declare maritime boundaries. The Palestinian entity does not satisfy the established criteria for statehood under general international law and therefore lacks the legal entitlement to such maritime zones.[153]

This Israeli claim is ill-founded. Despite being a non-UN member State and its UN observer status, Palestine has been treated as a *de jure* State for the purposes of dozens of treaties and the UNCLOS is no exception.[154] If Palestine is not a State, how have all these treaties and their mechanisms dealt with it as such?[155] Why would the UNCLOS be different from other treaties? The logical answer is that the UNCLOS is just like any other treaty when it comes to Palestine's status as a contracting State. This has become more tangible with Palestine's participation in the

152. *Communication dated 14 January 2020 from the Permanent Mission of Israel to the United Nations addressed to the office of the Secretary-General of the United Nations*, *Law of the Sea Bulletin* No. 102 (2020) 25, hereinafter 'Israel Communication'.

153. Ibid.

154. Al-Zoughbi (n 100) 162.

155. Alice M. Panepinto, 'Jurisdiction as Sovereignty over Occupied Palestine: The Case of Khan-al-Ahmar' (2017) 26 Social & Legal Studies 311.

annual meetings of the Convention's State parties in New York since the twenty-fifth meeting (June 2015), in accordance with Article 319/2(e) of the Convention,[156] through the last meeting that took place in June 2024.[157]

As one can sense from the tone of its communication, Israel objects to any plans to explore resources within Palestinian maritime zones. Its communiqué firmly expressed the view that Israel "will not allow any non-consensual or unauthorised activities, including by third actors, in its maritime areas".[158] Using the phrase 'its maritime areas',[159] while responding to the Palestinian maritime proclamation, indicates that 'it' (Israel) either considers Palestinian zones as its own or, at best, that Israeli zones overlap with those of Palestine. However, it appears that Israel has no intention to discuss the "invalid and devoid […] alleged delimitation lines submitted in the Palestine declaration".[160] Nonetheless, Israel retains "its readiness to engage in good faith with relevant third parties".[161] It seems that the reference to 'third parties' pre-empts the leaked reports on Palestine's periodic negotiations with Turkey in regard to a bilateral pact on the EEZ.[162]

In practice, Israel deals with other States concerning maritime delimitation as if it has no boundary with Palestine. On 17 December 2010, for instance, Israel and Cyprus signed an agreement concerning the de-

156. UN Doc SPLOS/INF/29, 15 July 2015, 33.

157. UN Doc SPLOS/34/INF/1, 10 October 2024, 37.

158. Israel Communication (n 152).

159. Ibid.

160. Ibid.

161. Ibid.

162. S. Sadri Alibabalu and T. Sarkhanov, 'Geopolitics and Geoeconomics of the Eastern Mediterranean Gas Conflict: Analysis of Turkey's Policy' (2023) 18 Geopolitics Quarterly 94, 106.

limitation of their respective EEZs.[163] Article 1(e) of the Agreement referred to the possibility of reaching a complimentary agreement with Egypt. It provided that:

> [T]he geographical coordinates of points 1 or 12 [agreed upon by Cyprus and Israel] could be reviewed and/or modified as necessary in light of a future agreement regarding the delimitation of the Exclusive Economic Zone to be reached by the three States concerned.

This reference to 'three States concerned', meaning Cyprus and Egypt as well as Israel that share the same points of coordinates 1 to 12, was made as if Palestine does not exist. We will discuss certain means available for Palestine to challenge this Israeli position in Section 4 below.

3.3 Palestinian-Egyptian maritime boundaries

Unlike Israel, Egypt's objection to the September 2019 Palestinian Ministry of Foreign Affairs Declaration, through a communication deposited with the UN Secretariat on 31 December 2019, focused on specific points of geographical coordinates.[164] It seems that this opposition came after the unsuccessful attempts to reach an amicable understanding on the maritime delimitation, apparently through Palestine's coordination with the League of Arab States.[165] Thus, Egypt rejects Palestine's unilateral delimitation because the Palestinian "boundary overlaps with the east-

163. *Agreement between the Government of the State of Israel and the Government of the Republic of Cyprus on the delimitation of the exclusive economic zone* (Nicosia, adopted 17 December 2010, entered into force 25 February 2011, 2740 UNTS 55.

164. *Communication from the Permanent Mission of Egypt to the United Nations transmitted to the Secretary-General on 31 December 2019*, Law of the Sea Bulletin No. 102 (2020) 22, hereinafter 'Egypt Communication'.

165. 'Palestine Officials Take Steps to Demarcate Maritime Borders', Middle East Monitor (8 October 2019).

ern maritime boundary of the Arab Republic of Egypt in the Mediterranean".[166] From the language of its reaction, one can adduce that Egypt recognises the Palestinian maritime zones as a matter of principle, but it objects to the boundary specified in the Declaration. This approach was expected, as Egypt, unlike Israel, is a State party to the UNCLOS, according to which parties are bound to solve maritime disagreements through peaceful dispute settlement. Currently, Palestine, for the sake of retaining close relations with Egypt on multiple fronts,[167] is reportedly not contemplating legal action against its neighbouring Arab State, preferring to negotiate overlapping zones.[168]

On 16 February 2017, in an apparent response to Palestine's accession to the UNCLOS and less than two years after President Abbas's Declaration regarding Palestine's maritime zones of August 2015 discussed above, Egypt issued a Declaration under Article 298 of the UNCLOS[169] stating that:

> The Government of the Arab Republic of Egypt declares that, pursuant to article 298 paragraph 1 of the United Nations Convention on the Law of the Sea signed on 10 December 1982, it does not accept any of the procedures provided for in section 2 of part XV of the Convention with respect to all the categories of disputes specified in article 298, paragraph 1 (a), (b) and (c) of the Convention.

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166. Egypt Communication (n 164).

167. Jeremy Sharp, 'The Egypt-Gaza Border and its Effect on Israeli-Egyptian Relations' (CRS Report for Congress, Order Code RL34346, 1 February 2008); Anais Antreasyan, 'Gas Finds in the Eastern Mediterranean: Gaza, Israel, and Other Conflicts' (2013) 42 Journal of Palestine Studies 29.

168. Mutaz M. Qafisheh, 'Law of the Sea Dispute Settlement in Eastern Mediterranean with Particular Reference to Palestine: Negotiation, Conciliation, Arbitration or Adjudication?' (2024) 6 Diplomatica: A Journal of Diplomacy and Society 201.

169. Egypt's Article 298 Declaration is available at <<https://www.itlos.org/en/main/jurisdiction/declarations-of-states-parties/declarations-made-by-states-parties-under-article-298/>>.

This demonstrates that Egypt will not accept adjudication or arbitration relating to its maritime boundary delimitation disputes with neighbouring States, including Palestine. The Egyptian declaration seems to be a pre-emptive measure in response to Palestine's 2019 Declaration concerning the Gaza Sea claims. Egypt's position will make it difficult for Palestine to launch proceedings to obtain a binding decision regarding maritime boundary delimitation with Egypt other than conciliation, should negotiations fail, as we will explain in Section 4 below.

3.4 Palestinian boundary delimitation with Cyprus

Cyprus, whose EEZ and continental shelf overlap with Palestine,[170] has not reacted to the 2019 Ministry of Foreign Affairs Declaration. However, in its communication objecting to the Declaration, Egypt referred to its EEZ agreement with Cyprus that potentially overlaps with Gaza:

> Part [of] the northern boundary of that [exclusive economic] zone, bordering Cyprus, was defined in the agreement on the delimitation of the exclusive economic zone concluded between Egypt and Cyprus on 17 February 2003, which entered into force on 7 March 2004.[171]

Be that as it may, Palestine's overlapping EEZ and continental shelf with Cyprus are not expected to generate major disagreement, as both are State parties to the UNCLOS. But Palestine may resort to arbitration with Egypt indirectly through its objections to the aforesaid 2003 Cyprus-Egypt delimitation agreement to the extent that it affects Gaza's maritime zones.[172] Cyprus' EEZ as delimited by this agreement, as ev-

170. Kittichaisaree (n 119) 36, 196.

171. Egypt Communication (n 164).

172. *Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone* (Cairo, 17 February 2003, entered into force 7 March 2004), *Law of the Sea Bulletin* No. 52 (2003) 45.

ident from the chart annexed thereto,[173] overlaps with Gaza's maritime claims. Article 1(e) of the Agreement recognised this fact by stipulating that:

> [G]eographical coordinates of points 1 and 8 [of the chart annexed to the agreement] could be reviewed and/or extended as necessary in the light of future delimitation of the exclusive economic zone with other concerned neighbouring States and in accordance with an agreement to be reached in this matter by the neighbouring States concerned.

As neither Cyprus nor Palestine have deposited declarations under Article 298 of the UNCLOS, arbitration will be the residual mechanism for resolving any dispute between the two States, as we will discuss in some detail in Section 4 below.

3.5 Fixing maritime zones of Palestine

The 2019 Ministry of Foreign Affairs Declaration started by defining the State of Palestine's offshore baseline.[174] Baselines constitute the basic limit from which the breadth of other maritime zones is measured.[175] Table 1 of the Declaration specified the Gaza baseline by listing 98 points of geographical coordinates along the globe's latitude and longitude. The adoption of the 'normal baseline', which is shown in an illustrative chart annexed to the Declaration, is a direct application of Article 5 UNCLOS. In the *South China Sea Arbitration*, the tribunal held that the "Convention gives important weight to published nautical charts... [in] a situation in which a State is presenting information concerning its

173. Ministry of Foreign Affairs Declaration (n 120) 47.

174. Ibid., 46.

175. Coalter Lathrop, 'Baselines' in Donald Rothwell et al. (eds) *The Oxford Handbook of the Law of the Sea* (OUP 2015) 69.

own coastlines".[176] Hence, as a coastal State, Palestine has exercised its normal right under UNCLOS. Egypt did not object to the geographical coordinates of the Palestinian baseline as set out in the Declaration, indicating consent.

The Palestinian Ministry of Foreign Affairs Declaration extended the Gaza territorial sea from 68 geographical points to 12 nautical miles seaward as measured from the baseline, claiming full sovereignty therein.[177] Palestine has acted unilaterally in delimiting its territorial sea, as there are no agreements in place with neighbouring States, which is a normal state of affairs that States often revert to. In this respect, it has been pointed out that "[i]n the absence of any delimitation treaty, some States have acted to unilaterally delimit the boundary of their territorial seas".[178]

The process of Palestinian designation accords with Article 16(1) UNCLOS, which stipulates that "baselines for measuring the breadth of the territorial sea... shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, a list of geographical coordinates of points, specifying the geodetic datum, may be substituted."

Indeed, any "coastal State may create and publish its own charts".[179] Article 16(2) adds that the "coastal State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations".[180] To this effect, Palestine transmitted the Declaration on maritime bound-

176. PCA Case No. 2013-19, *The South China Sea Arbitration* (Philippines *v* China), Award of 12 July 2016, 142.

177. Ministry of Foreign Affairs Declaration (n 120) 46.

178. Symmons (n 102) 165.

179. Nandan et al. (n 129) 148.

180. Clive Symmons and Michael Reed, 'Baseline Publicity and Charting Requirements: An Overlooked Issue in the UN Convention on the Law of the Sea' (2010) 41 Ocean Development & International Law 77.

ary delimitation, its annexed tables of geographical coordinates and an illustrative chart to the UN Secretariat, which subsequently posted the document on its website,[181] and published the text of the Declaration in the *Law of the Sea Bulletin*.[182] The purpose of such publicity is "to ensure that the international community is adequately informed of the boundaries of the territorial sea of a coastal State, including the baselines, the outer limit lines and lines of delimitation".[183] Palestine specified the 'datum'[184] upon which the chart annexed to the declaration and the list of points of coordinates were drawn, namely the WGS84. On this point, it has been observed:

> Whereas charts give a visual representation of the limits of the territorial sea, a list of geographical coordinators provides greater precision [emphasis added]... While article 16 [of UNCLOS] provides that either way of giving the limits is acceptable, in fact it may be most beneficial to use both a chart for illustrative purposes and a list of coordinates for definitive positions.[185]

By releasing both lists of coordinates and a chart annexed to its Declaration, Palestine has provided 'greater precision' with regard to its maritime zones.

The UNCLOS rule regarding delimitation of the territorial sea is also accepted under customary international law. With regard to the issue of delimitation between Palestine and Israel and Palestine and Egypt, the content of Article 15 governs all States, including non-State parties

181. DOALOS (n 152).

182. Law of the Sea Bulletin No. 89 (n 117).

183. Nandan et al. (n 129) 145.

184. Ibid., 148.

185. Clive Symmons, 'Article 16: Charts and Lists of Geographical Coordinates' in Proelss (n 102) 167.

owing to its status as part of customary international law.[186] Article 15 provides:

> Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line, every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured…

There is no State opposite Palestine that may claim an overlapping territorial sea. Article 15 thus pertains only to the territorial sea boundaries with adjacent States;[187] namely between Palestine, on one side, and both Israel and Egypt, on the other sides.

Notwithstanding its recognition of the Palestinian territorial sea as a matter of principle, Egypt filed reservations partially targeting nine of the 68 basepoints in respect of the claimed Gaza territorial sea.[188] By implication, it may be inferred that Egypt consents to the other coordinates determined by the Ministry of Foreign Affairs Declaration, namely basepoints 10 to 68. That may in principle satisfy the meaning of 'agreement' under Article 15 UNCLOS.[189] The divergent positions on the nine remaining basepoints can be resolved by, for example, a formal delimitation agreement. The Palestinian unilateral delimitation of its territorial sea is intended to "protect the sovereignty of the coastal State".[190] This act is not, however, without limitations. As the ICJ has remarked:

186. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (Qatar *v* Bahrain), Merits, Judgment of 16 March 2001, ICJ Rep (2001) 40, 93-4.

187. Symmons (n 102) 151 and 157.

188. Egypt Communication (n 164).

189. *Cf Delimitation of the Maritime Boundary in the Bay of Bengal* (Bangladesh *v* Myanmar), Judgment of 14 March 2012, ITLOS Reports (2012) 4, 24.

190. Nandan et al (n 129) 74, 145.

> The delimitation of sea areas... cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of delimitation with regard to other States depends upon international law.[191]

Evidently, Palestine was aware of this aspect when it formulated its declaration. In this connection, the declaration announced that:

> [I]n cases where the maritime zones of the State of Palestine overlap with those of other States, maritime delimitation shall take place on the basis of equity and the principles of international law... If an agreement cannot be reached, then recourse may be had to a competent international court or body for a final decision.[192]

This approach reflects a policy embraced by most States that have issued unilateral claims.[193]

The Declaration – in its Table 3 – defined the Gaza contiguous zone as 24 nautical miles measured from the baseline through 50 geographical points of coordinates.[194] It follows that Palestine "has the right to establish appropriate mechanisms to prevent and penalize violations of international law and national Palestinian law and regulations within this zone".[195] This clause echoes the wording of Article 33(1)(a) UNCLOS that vests the coastal State with a power to undertake control to "prevent infringement of its customs, fiscal, immigration or sanitary laws and reg-

191. *Fisheries (United Kingdom v Norway)*, ICJ Rep (1951) 116, 132.

192. Ministry of Foreign Affairs Declaration (n 120) 47.

193. *Continental Shelf* (Tunisia *v* Libyan Arab Jamahiriya), ICJ Rep (1982) 18, 66-7; *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Canada *v* United States of America), ICJ Rep (1984) 246, 292, 299; *Bay of Bengal* (n 191) 106, 165.

194. Ministry of Foreign Affairs Declaration (n 120) 46.

195. Ibid.

ulations within its territory or territorial sea".[196] While Egypt rejected points 1-10 listed in the Declaration with respect to the territorial sea,[197] as explained above, it may be inferred that Egypt consents to a substantial area claimed by Palestine as the Gaza contiguous zone.

The Declaration extended the EEZ through six geographical points of coordinates listed in its Table 4, "beyond and adjacent to the territorial sea, up to 200 nautical miles measured from the baseline".[198] These phrases reflect the substance of Articles 55 and 57 UNCLOS. In the EEZ, Palestine asserts that it exercises

> [S]overeign rights in relevance to exploring and exploiting natural resources... of the waters superjacent to the seabed and of the seabed and its subsoil, as well as with regard other activities for the purpose of the economic exploration and exploitation of the zone.[199]

This quotation reflects the text of Article 56(1)(a) UNCLOS. However, it is evident that Palestine, in common approach with the majority of coastal States, expects to have to delimit its EEZ to address overlapping areas with its neighbouring States.

For this reason, the Declaration adds that "Palestine shall have due regard to the rights and duties of other states... and shall act in accordance with the provisions of the United Nations Convention on the Law of the Sea".[200] This sentence slightly reframes Article 56(2) UNCLOS. By mentioning 'other states', the declaration hints at Israel, Egypt and Cyprus. In its communication in response to the Palestinian Declaration, Egypt

196. *M/V "SAIGA" (No. 2)* (Saint Vincent and the Grenadines *v* Guinea), Judgment of 1 July 1999, ITLOS Rep (1999) I0, 57-61.

197. Egypt Communication (n 164).

198. Ministry of Foreign Affairs Declaration (n 120) 46.

199. Ibid.

200. Ibid.

refused to recognise basepoints 1-3 (out of six) of the claimed EEZ listed in Table 4 of the Declaration.[201] In anticipation of overlapping claims among neighbouring States, Article 74(1) UNCLOS requires that the "delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law… to achieve an equitable solution". Article 74, which is reflected in customary international law,[202] asserts that in the absence of agreement, the "parties concerned shall resort to the procedures provided for in Part XV" of the Convention.

Table 4 of the Declaration merges both the EEZ and the continental shelf, listing six identical points of geographical coordinates for both areas. As both the continental shelf and the EEZ are part of customary international law,[203] their provisions apply to all States, even non-UNCLOS parties such as Israel. In its Declaration, Palestine asserted that its continental shelf "includes the seabed and subsoil of the submarine areas up to 200 nautical miles measured from the baseline".[204]

It is likely that Palestine has no intention to claim an extended continental shelf beyond 200 nautical miles, as provided for in Article 76(4-7) UNCLOS. That is due to the fact that "in the Mediterranean... there is no point in which two coasts are more than 400 nautical miles... apart".[205] In this respect, Palestine is no different from other Mediterranean States. Indeed:

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201. Egypt Communication (n 164).

202. *Maritime Delimitation in the Area between Greenland and Jan Mayen* (Denmark *v* Norway), ICJ Reports (1993) 38, 59.

203. *Territorial and Maritime Dispute* (Nicaragua *v* Colombia), ICJ Rep (2012) 624, 666; *Continental Shelf* (Libya *v* Malta), ICJ Rep (1985) 3, 33.

204. Ministry of Foreign Affairs Declaration (n 120) 47.

205. Umberto Leanza, 'The Delimitation of the Continental Shelf of the Mediterranean Sea' (1993) 8 International Journal of Marine and Coastal Law 373, 375.

> Almost all legislation passed by the Mediterranean coastal states on the exploration and exploitation of mineral resources... in the continental shelf contains a declaration of intent to reach a consensual delimitation of the continental shelf with interested neighbouring states.[206]

In relation to the continental shelf, the Palestinian Declaration satisfies the requirements of Article 76(9) UNCLOS which stipulates that "[t]he coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf". Unlike for the EEZ, the text of the Declaration does not refer to disputes with other States that have overlapping continental shelf boundaries with Palestine. This is apparently due to the identical method applied to both areas.

Mixing points of geographical coordinates of the continental shelf with those of EEZ in an annexed table of the Declaration indicates a likely significant overlap between the two zones. Such overlap is not without precedent, as "there is a clear trend that States draw a single maritime boundary for the continental shelf and the EEZ".[207] It has been observed that "the relationship between the EEZ and the continental shelf has presented international lawyers with the knotty problem of how these zones of maritime jurisdiction are to be reconciled with each other."[208]

Egypt has refused to recognise points 1-3 (again, out of six) of the geographical coordinates of the claimed Palestinian continental shelf in the same paragraph in which it objected to the purported EEZ listed in Table 4.[209] Consequently, Article 83(1) UNCLOS requires that the "delimitation of the continental shelf between States with opposite or

206. Ibid.

207. Tanaka (n 128) 238.

208. Stuart Kaye, 'The Use of Multiple Boundaries in Maritime Boundary Delimitation: Law and Practice' (1998) 19 Australian Yearbook of International Law 49, 49.

209. Egypt Communication (n 164).

adjacent coasts shall be effected by agreement… to achieve an equitable solution".

As to the northern maritime borderlines of Gaza with Israel and the southern boundary with Egypt, the Declaration lists points of geographical coordinates that fix boundaries in Table 5 with Egypt and Table 6 with Israel. These boundaries reflect the content of Article 15 UNCLOS on the delimitation of territorial sea, Article 33 on the contiguous zone, Article 74 on the EEZ, and Article 83 on the continental shelf.[210] As discussed above, these provisions represent customary international law that binds State parties and non-parties to UNCLOS alike.[211]

Table 5 in the Declaration draws a straight line that begins at the land border point separating Israel from northern Gaza based on the 1951 armistice agreement through 109 nautical miles towards the sea until it reaches the EEZ of Cyprus. Table 6, similarly, produces a parallel line that commences at the land point separating Egypt from Rafah city in the southern Gaza based on the 1906 agreements between Egypt/Britain and the Ottomans, explained above, and continues 136 nautical miles unto the sea until the border with Cyprus.[212] Both lines are illustrated by a chart annexed to the Declaration (*Figure 1* above).[213] Egypt has rejected three out of five points indicated on its seaside-line with Gaza listed in the Declaration,[214] while Israel rejected the Declaration *in toto*; that rejection includes the Gaza sea line adjacent to all southern Israeli maritime zones.

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210. Shunji Yanai, 'International Law Concerning Maritime Boundary Delimitations' in Attard et al. (n 92), vol I, 304, 313-16.

211. Tanaka (n 128) 238.

212. The measurement of the two parallel polygon lines between Gaza on one side and both Israel and Egypt were made by using Google Maps GPS coordinates.

213. Ministry of Foreign Affairs Declaration (n 120) 48.

214. Egypt Communication (n 164).

4. Law of the sea dispute settlement with Palestine's neighbouring States

As outlined in the previous Sections, it is promising and challenging for Palestine to delimit its maritime boundaries, access its rights and discharge its obligation as per the applicable international law frameworks, including UNCLOS. Thus, it is crucial to test the UNCLOS dispute settlement mechanisms in relation to East Mediterranean overlapping maritime zones. This Section focuses on this aspect of dispute settlement with a particular reference to the delimitation of Palestine's maritime boundaries and the possible methods of dispute settlement, including negotiation, conciliation, arbitration and adjudication. The Section discusses the available dispute settlement channels between Palestine and neighbouring States: Egypt, Israel and Cyprus.

4.1 UNCLOS dispute settlement modalities: Application to Palestine

UNCLOS sets out a comprehensive scheme for dispute settlement among States regarding the interpretation or application of the Convention.[215]

215. Marianne P. Gaertner, 'The Dispute Settlement Provisions of the Convention on the Law of the Sea: Critique and Alternatives to the International Tribunal for the Law of the Sea' (1982) 19 San Diego Law Review 577; Andronico O. Adede, *The System of Settlement of Disputes under the United Nations Convention on the Law of the Sea* (Brill 1987); Adam Boyle, 'Dispute Settlement and the Law of the Sea Convention: Problem of Fragmentation and Jurisdiction' (1997) 46 International and Comparative Law Quarterly 37; Thomas Mensah, 'The Dispute Settlement Regime of the 1982 United Nations Convention on the Law of the Sea' (1998) 2 Max Planck Yearbook United Nations Law 307; Rosemary Rayfuse, 'The Future of Compulsory Dispute Settlement under the Law of the Sea Convention' (2005) 36 Victoria University Wellington Law Review 683; Natalie Klein, *The Dispute Settlement in the UN Convention on the Law of the Sea* (CUP 2005); Igor V. Kataman, *Dispute Resolution in the Law of the Sea* (Nijhoff 2012); Robin Churchill, 'The General Dispute Settlement System of the UN Convention on the Law of the Sea: Overview, Context, and Use' (2017) 48 Ocean Development & International Law 216.

UNCLOS directs parties to solve conflicts by any peaceful means of their own choice.[216] The Convention offers a roster of peaceful channels listed in Article 33 of the UN Charter:[217] "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice".[218] Anticipating this framework may not succeed in relation to the law of the sea disputes, and in an attempt to adopt binding mechanisms and reduce protracted standoffs, the UNCLOS advanced a range of specific compulsory settlement processes. It starts from the 'obligation to exchange views',[219] into two types of conciliation (voluntarily and compulsory),[220] through instituting proceedings before courts or tribunals:[221] ITLOS,[222] ICJ, general arbitration,[223] or special arbitration for certain types of technical themes enumerated in the Convention.[224]

Since its accession to the UNCLOS in 2015, Palestine currently holds contractual relations with 169 States regarding the law of the sea.[225] UNCLOS dispute settlement mechanisms may vary depending on the means each State has opted for explicitly or by implication. In order to pick a preferred mechanism for solving inter-State conflicts, a party should deposit a written declaration with the UN Secretary-General.[226]

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216. Articles 280 and 281.

217. San Francesco, 26 June 1944, entry into force 24 October 1945.

218. UNCLOS, Article 279.

219. Ibid., Article 283.

220. Ibid., Articles 284 and 298(1) and Annex V.

221. Ibid., Article 287.

222. Ibid., annex VI.

223. Ibid., annex VII.

224. Ibid., annex VIII.

225. As of April 2025, there are 170 States Parties to UNCLOS, according to the UN Treaty Collection.

226. UNCLOS, Article 287(8).

Thus far, according to DOALOS, Palestine did not deposit any declaration regarding the choice of procedure for settling disputes upon its accession to UNCLOS. Palestine is thus "deemed to have accepted arbitration" by default concerning disputes with all State parties.[227] Palestine, like any other State Party, can still deposit a declaration to activate other procedures available under UNCLOS, as the declaration can be communicated upon acceding to the Convention "or at any time thereafter".[228] Consequently, the only available process for compulsory dispute settlement for Palestine at this time is arbitration *vis-à-vis* all State parties with regard to all types of disputes.

However, Palestine's neighbouring States have different approaches. While Egypt declared that it does not accept arbitration regarding boundary delimitation with other State parties, Israel is not a party to UNCLOS and thus does not recognise any of its dispute settlement mechanisms. Against this backdrop, how can disputes be resolved? Would conciliation work? What are other available pacific mechanisms? This Section attempts to answer these questions.

4.2 Palestinian-Israeli maritime dispute settlement

As indicated above, on 14 January 2020, the Permanent Mission of Israel to the UN communicated to the Secretary-General a memorandum to reject the 4th of September 2019 Palestinian Declaration on 'purported maritime boundaries'.[229] Israel objected Declaration in its entirety without indicating particular contention pertinent to any zone or point of geographical coordinate. Israel attributed its position to the assertion

227. Ibid., Article 287(3).

228. Ibid., Article 287(1).

229. Israel Communication (n 152) 25.

that the Declaration contradicts the Oslo Accords and the claim that Palestine lacks sovereignty over Gaza.[230]

As outlined in the previous Section, this claim is manifestly ill-founded. Despite being a non-UN Member State and its observer status, Palestine has been recognised and treated as a *de jure* State concerning dozens of treaties, and UNCLOS is no exception. As one can sense from the tone of its objection and what was discussed above in Section 3.2, Israel took an offensive position towards any plans to explore Palestinian maritime zones.

The foregoing shows that the conflict resolution between Palestine, as a UNCLOS State Party, with Israel, as a non-State Party,[231] will be more complex than that with other neighbouring States. The Israeli-Palestinian relations on the Gaza Sea have reached a deadlock over three decades. Even minor agreements relating to the use of the sea, such as operating a port, fishing, sailing of ships, receiving foreign vessels and marine imports or exports, were heavily restricted if at all permitted. These limitations carry serious human rights implications for the Palestinian population. One can predict that it would be even more difficult for Palestine to exercise sovereign powers over the sea, particularly the delimitation of maritime boundaries with Israel.

Yet the law pertinent to the Gaza Sea is clear-cut. Gaza, its land and sea, forms a part of Palestine. Under UNCLOS, Palestine possesses all sovereign prerogatives, including title over, and exploration of, Gaza gas fields, on the same footing as any other State party. Palestine can claim and delimit the maritime zones off Gaza, and it did so pursuant to its accession to UNCLOS as we discussed above. Palestine can, in law, grant

230. Elai Rettig, Shani Friedman and Benny Spanier, 'Postwar development of offshore energy resources: Legal and political models for developing the Gaza Marine gas field' (2024) Leiden Journal of International Law 1-16, DOI: 10.1017/S0922156524000359.

231. Yael Teff-Seker, Ehud Eiran and Aviad Rubin, 'Israel Turns to the Sea' (2018) 72 Middle East Journal 610.

contracts to any State or company to explore Gaza gas fields. Preventing Palestine from exercising its sovereign maritime rights and exploiting its resources is due to the State of Israel's unlawful acts that violate international law, seemingly with impunity. This wrongfulness, in turn, triggers State responsibility of Israel towards Palestine as an injured State, with its attendant legal consequences. Accordingly, the State of Israel must cease its wrongful acts by lifting the Gaza blockade, removing the unlawful restrictions on Palestine's usage of its maritime zones and its access and use of its natural resources, and compensating Palestine for the losses sustained from denying the exploration of its natural gas.[232]

Consequently, it is crucial to explore instruments within the law of the sea that may open avenues for Palestine to claim and exercise maritime rights indirectly through, for example, the conflict relation mechanisms with Egypt and Cyprus, as we will explore next.

4.3 Palestinian-Egyptian maritime dispute settlement

As discussed above, three months after the September 2019 unilateral declaration of Palestine's maritime zones, Egypt communicated with the UN Secretariat an opposition to a number of geographical coordinates fixed in the Ministry of Foreign Affairs Declaration.[233] It appears that the Egyptian stance came after the unsuccessful attempts to reach an amicable understanding on the maritime delimitation with Palestine. Egypt refused the Palestinian unilateral delimitation.[234]

As State parties to UNCLOS, Palestine and Egypt may resort to the Convention's dispute settlement mechanisms entailing binding decisions after exhausting diplomatic and bilateral arrangements. For a State to re-

232. Qafisheh et al. (n 7).

233. Egypt Communication (n 164).

234. Ibid.

vert to one of the UNCLOS dispute settlement platforms (ITLOS, ICJ, arbitration or special arbitration), the two disputing parties should have chosen an identical procedure under Article 287(1) UNCLOS. In case of a different procedure chosen by parties or if one party does not identify a preferred mechanism, arbitration remains the residual choice based on Article 287(4) and (5). While Egypt opted for arbitration, Palestine did not indicate a preference. Hence, arbitration between the two sides ends up being the default channel to settle disputes.

Nonetheless, concerning disputes involving boundary delimitation (and a few other disputes), Article 298 UNCLOS empowers States to cast a declaration to oppose the Convention's compulsory dispute resolution avenues. To this effect, as discussed above, in February 2017, in a presumable response to Palestine's accession to UNCLOS and less than two years after the 2015 Palestinian President declared maritime zones, Egypt filed an objection to adjudication in resolving, among other disputes, maritime delimitation disputes under UNCLOS.[235] This indicates that Egypt does not accept adjudication or arbitration relating to its maritime boundary delimitation with its neighbouring States, including Palestine. The Egyptian objection seems to be a pre-emptive move to Palestine's 2019 Declaration. Such a position would make it difficult for Palestine to launch judicial proceedings entailing a binding decision with regard to maritime boundary delimitation with Egypt other than conciliation. But what if conciliation fails? Are we facing a deadlock that keeps the boundary unfixed indefinably? Is there an exit channel in such a hypothesis? Can Palestine still approach an arbitral tribunal? To answer these questions, we start with conciliation before heading towards the debate on potential arbitration.

In its aforementioned declaration of February 2017, Egypt announced that "it does not accept any of the procedures provided for in

235. According to the UN Treaty Collection website (under Egypt), <<https://treaties.un.org>>.

Section 2 of part XV of the Convention with respect to all the categories of disputes specified in Article 298, paragraph 1 (a), (b) and (c) of the Convention".[236] This means that Egypt does not accept arbitration over boundary delimitation with Gaza. Egypt rejected Palestine's unilateral declaration of September 2019 regarding its geographical points of coordinates pertinent to the lines defining contiguous zone, EEZ and continental shelf. Thus, the residual dispute settlement mechanism would be the 'compulsory' conciliation.[237]

As a general rule, should a conflict arise between Palestine and Egypt in connection to boundary delimitation, the two States need to undergo four stages within the conciliation process. These stages can be identified for such a particular and unique scenario,[238] by reviewing the various provisions of UNCLOS along with relevant aspects of its drafting history and examination of a number of the Convention's commentaries. These stages can be enumerated as follows: (1) exchange of views, (2) voluntary conciliation, (3) delimitation conciliation in lieu of arbitration, and (4) negotiation to reach an agreement on boundary delimitation. The two neighbours have the potential to settle disputes through, or after, each stage. We here take the case to the end, presuming that the two parties fail to reach a mutual consent upon the conclusion of each of the four stages.

To start with, if a dispute concerning boundary delimitation arises, Article 283 UNCLOS comes into play. Here the "parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means".[239] This exchange of views, or 'con-

236. Ibid.

237. Roberto Lavalle, 'Conciliation under the United Nations Convention on the Law of the Sea: A Critical Overview' (1997) 2 Austrian Review of International & European Law 25; Sienho Yee, 'Conciliation and the 1982 UN Convention on the Law of the Sea' (2013) 44 Ocean Development & International Law 315.

238. Philippe Gautier, 'The Settlement of Disputes' in Attard et al. (n 92) 533-76, 552.

239. UNCLOS, Article 283(1).

sultation',[240] is "mandatory [and] is not restricted to negotiations but also includes... some other means, such as good offices, mediation, fact finding...".[241] Indeed, 'the compulsory procedures', in this case the compulsory conciliation regarding boundary delimitation as an alternative to adjudication/arbitration, "would be invoked only where the exchange of views disclosed that no other course could appropriately settle the dispute".[242]

The exchange of views,[243] as a prerequisite act preceding conciliation, can be considered fulfilled if Palestine, as an applicant State in this scenario, concludes that there is no point in prolonged negotiation, taking into account the dispute history and the various diplomatic attempts to solve it.[244] This is also the case when Palestine finds that "this exchange could not yield a positive result".[245] It would always be useful for an applicant State for compulsory conciliation to make the 'exchange of views' as explicit as possible to avoid the invocation of such a procedure and therefore declare the lack of jurisdiction by the conciliation commission or a court or tribunal.[246]

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240. Andrew Serdy, 'Article 283: Obligation to Exchange Views' in Proelss (n 102) 1830-8, 1832.

241. Myron H. Nordquist, Shabtai Rosenne and Louis Sohn, eds, *United Nations Convention on the Law of the Sea 1982: A Commentary* (Nijhoff 1989) vol V, 29.

242. Serdy, 'Article 283' (n 240) 1832.

243. Mariano J. Aznar, 'The Obligation to Exchange Views before the International Tribunal for the Law of the Sea: A Critical Appraisal' (2014) 47 Belgium Review of International Law 237; Deyi Ma, 'Obligation to Exchange Views under Article 283 of the United Nations Convention on the Law of the Sea: An Empirical Approach for Improvement' (2019) 12 Journal of East Asia & International Law 305.

244. *Southern Bluefin Tuna Cases* (New Zealand *v* Japan; Australia *v* Japan), Provisional Measures, Order of 27 August 1999, ITLOS Rep (1999) 280, 295.

245. *Land Reclamation in and around the Straits of Johor* (Malaysia *v* Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Rep (2003) 10, 20.

246. *The M/V 'Louisa' Case* (Saint Vincent and the Grenadines *v* Kingdom of Spain), Provisional Measures, Order of 23 October 2010, Dissenting Opinion of Judge Wolfrum, ITLOS Rep (2010) 77, 85; *The M/V 'Louisa' Case* (Saint Vincent and the Grenadines *v* Kingdom of Spain), Judgment of 28 May 2013, Separate Opinion of Judge Ndiaye, ITLOS Rep (2013) 57, 62.

After the exchange of views procedure comes to an end, Palestine may resort to 'voluntary conciliation'[247] regulated in Article 284 and Section 1 of Annex V UNCLOS. Although general conciliation may occur anytime, "[t]he placement of this article [284] immediately after Art. 283 which requires a preliminary exchange of views may... suggest that this exchange is the most likely juncture for one of the parties to issue the invitation [for voluntary consultation]".[248] This mechanism aims to submit the dispute to a conciliation commission that may contribute to the delimitation of boundaries by mutual consent between the parties. Such conciliation "implies the use of a more institutionalized procedure than the political or diplomatic processes of good offices or mediation".[249] If one State invites the other for this type of conciliation proceedings, "by written notification addressed to the other party",[250] the latter may accept or refuse to conciliate.[251] If it accepts, both parties may concur on the conciliation procedures.[252]

Annex V UNCLOS sets out the steps for the constitution of a five-member conciliation commission. After getting the parties' views and examining their claims and objections, the commission proposes an amicable settlement to the parties.[253] The commission would submit its non-binding findings, i.e. recommendations, on resolving the dispute through a report that it communicates to the parties through the UN Secretary-General.[254] If, however, one of the parties turns down the invi-

247. Nordquist et al. (n 241) 33.

248. Andrew Serdy, 'Article 284: Conciliation' in Proelss (n 102) 1838-1841, 1839.

249. Nordquist et al. (n 241) 310.

250. UNCLOS, annex V, Article 1.

251. Ibid., Article 282, paras 2 and 3.

252. Ibid., annex V, Article 4.

253. Ibid., annex V, Article 6.

254. Ibid., annex V, Article 7(2).

tation to voluntary conciliation, no commission would be constituted.[255] Even after the release of the commission's report, either party can accept or reject the report's findings.[256] The commission's report, if accepted by the parties, may end the dispute.[257] The report may incorporate "recommendations as the commission may deem appropriate for an amicable settlement",[258] which "could be acceptable to all parties".[259] Although the parties have the choice to reject the findings of the conciliation commission, such rejection "may incur a political cost".[260]

Compulsory conciliation involves the intervention of a conciliation commission, despite the objection of the other State. The latter cannot challenge the conciliation's formation, although it has a choice to refuse the implementation of the commission findings. However, is it possible to recourse to the two types of conciliation? In this connection, it was observed that nothing precludes such a course, "particularly if the preliminary conciliation has failed to settle the dispute and there is the possibility that a second similar procedure could be successful".[261]

The scenario of compulsory conciliation between Palestine and Egypt stems from Article 298(1)(a)(i) UNCLOS, which permits States to deposit declarations providing exceptions from the jurisdiction of courts or tribunals entailing binding decisions. Hence, State parties to "disputes concerning the interpretation or application of Articles 15, 74 and 83 relating to sea boundary delimitations..., at the request of any party to the dispute, [shall] accept submission of the matter to conciliation". Pal-

255. Ibid., Article 284(3).

256. Annex V, Article 8.

257. Nordquist et al. (n 241) 310.

258. UNCLOS, annex V, Article 7(1).

259. Nordquist et al. (n 241) 310.

260. Serdy, 'Article 284' (n 248) 1841.

261. Nordquist et al. (n 241) 313.

estine may, therefore, institute conciliation proceedings "by written notification",[262] addressed to Egypt. Egypt "shall be obliged to submit to such proceedings".[263] Accordingly, a five-member conciliation commission would be formed.[264]

Palestine, as the party instituting proceedings, can appoint two conciliators, one of whom may be a Palestinian citizen,[265] to be chosen preferably from the list "maintained by the Secretary-General of the United Nations".[266] Egypt can similarly appoint two conciliators within 21 days of receipt of the Palestinian notification. If the appointments are not made within that period, Palestine may, within one week following the period of expiration, "request the Secretary-General of the United Nations to make the appointments".[267] Within 30 days after all four conciliators have been appointed, they shall appoint a fifth conciliator who shall be chairman. If the appointment is not made within that timeframe, "either party may, within one week of the expiration of that period, request the Secretary-General of the United Nations to make the appointment".[268] After hearing the parties, the commission makes "proposals to the parties with a view to reaching an amicable settlement".[269] Henceforth, the "Commission shall report within 12 months of its constitution".[270]

When the conciliation commission presents its report and one of the parties rejects its findings, the situation shifts to stage 4, viz., negotiation to reach an agreement. At this stage, summed up in Article 298(1)(a)(ii),

262. UNCLOS, annex V, Article 11(1).

263. Ibid., annex V, Article 11(2).

264. Ibid., annex V, Article 3(a).

265. Ibid., annex V, Article 3(b).

266. Ibid., annex V, Article 2 and Article 3(b).

267. Ibid., annex V, Article 3(c).

268. Ibid., annex V, Article 3(d).

269. Ibid., annex V, Article 6.

270. Ibid., annex V, Article 7(1).

Palestine and Egypt "shall negotiate an agreement on the basis of that report". If negotiation does not lead to an agreement, "the parties shall, by mutual consent", submit the question to a court or tribunal whose findings entail a binding decision.[271] However, what if the parties fail to reach 'mutual consent'? In this respect, it was correctly observed: "[T]he provision in subparagraph (a)(ii) [of Article 298] is not perfectly clear since it obliges States to submit the dispute to a compulsory procedure entailing binding decisions while at the same time providing that this should take place 'by mutual consent'."[272]

This ambiguous provision has triggered scholars to express diverse interpretations on the next step following the rejection of compulsory conciliation. In this hypothesis between Palestine and Egypt, the case may move to a fifth stage which would involve the composition of an arbitral tribunal. We will explore this scenario in accordance with the available doctrinal views.

Some early scholarly writings, such as the 1989 UNCLOS commentary by Nordquist, Rosenne and Sohn, were of the view that after the conclusion of compulsory conciliation and the refusal to implement the findings of the conciliation commission, the case would face a standstill, leaving the maritime boundary dispute to last indefinably. Here "the only obligation that remains is... to proceed expeditiously to an exchange of views regarding the settlement of the dispute by further negotiations".[273] Writing in 1982, Adede also cast some doubt that "the system established under the above paragraph [(1)(a) of Article 298] non-compulsory".[274] Lastly, Klein, in her monograph on the law of the sea dispute settlement

271. Ibid., Article 298(1)(a)(ii).

272. Gautier (n 238) 134.

273. Nordquist et al. (n 241) 134.

274. Andronico O. Adede, 'The Basic Structure of the Disputes Settlement Part of the Law of the Sea Convention' (1982) 11 Ocean Development & International Law 125, 139.

system and after reviewing a range of scholarly views,[275] captured the classical position on this debate and concluded that the "end result is that if States cannot reach agreement and one State has opted to exclude compulsory jurisdiction, there is no mandatory mechanism for decision and the dispute can be left unresolved".[276]

A more careful analysis, however, leads in a different direction. Gautier, in his chapter edited in 2014 by Attard, Fitzmaurice and Gutierrez, pointed out:

> If there is no consent between the parties, for example because one of the parties is reluctant to submit the dispute to a judicial body, it could be argued that this would constitute a new dispute, not relating to the delimitation of maritime boundaries, which could then be subject to the compulsory mechanism contained in section 2 of Part XV.

In the 2017 commentary on the UNCLOS edited by Proelss, Serdy elegantly underscored:

> [T]here would seem to remain scope for an argument, based on the warnings sounded by some States in the negotiations of the dangers of letting maritime boundary disputes persist indefinitely, that the effect of a declaration under Art. 298 (1)(a) is merely to interpose a compulsory conciliation before the more normal course of events under section 2 of Part XV can proceed.[277]

Five reasons can be advanced to reinforce the position that there should be adjudication or arbitration entailing a binding decision following the conclusion of compulsory conciliation.

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275. Klein (n 215) 227-315.

276. Ibid., 263.

277. Andrew Serdy, 'Article 298: Optional Exceptions to Applicability of Section 2' in Proelss (n 102) 1930.

One emanates from the obligation of the parties to a dispute to reach an agreement by mutual consent and will miss its binding value if the dispute cannot be referred to a mandatory adjudication.[278] Secondly, the purpose of UNCLOS is to settle maritime disputes through a peaceful means to end inter-State conflicts.[279] Leaving delimitation issues unresolved indefinably would run counter to that purpose and render the Convention largely superfluous, as there are "more judgments and awards on maritime boundary disputes than on any other subject of international law".[280] Thirdly, States in the negotiation process of UNCLOS that advocated binding third-party adjudication accepted the resort to compulsory conciliation as a preliminary step that precedes referral to a court or tribunal entailing binding decisions.[281] It is unrealistic to go back to the first square of negotiation and the 'exchange of views' after the failure of compulsory conciliation. Fourthly, earlier drafts of Article 298(1)(a) provided that, in the event of unsuccessful compulsory conciliation, the parties had to specify regional or third-party mechanisms entailing a binding decision.[282] The acceptance of the clause on compulsory conciliation was contingent on the availability of such regional mechanisms, provided that State parties have been presumed to accept adjudication after exhausting the chance of compulsory conciliation. In other words, compulsory conciliation was not made as an alternative to adjudication or arbitration altogether. Finally, the essence of UNCLOS "dispute settlement regime is the right of disputants to settle any dispute,

278. *Maritime Delimitation in the Area between Greenland and Jan Mayen* (Denmark *v* Norway), Judgment of 14 June 1993, ICJ Rep (1993) 38, 78.

279. Robin Churchill, 'The 1982 United Nations Convention on the Law of the Sea' in Donald Rothwell et al. (n 175) 24-45, 27.

280. Jonathan Charney, 'Progress in International Maritime Boundary Delimitation Law' (1994) 88 American Journal of International Law 227, 227.

281. Nordquist et al. (n 241) 109-113.

282. Ibid.

at any time, by any mutually acceptable legal mode".[283] Making the compulsory conciliation non-binding would, arguendo, "seem to contribute absolutely nothing",[284] as States can anyway resort to conciliation anytime without a need for such a pronunciation.

It is to be noted that the foregoing arguments might be opposed by some standard views in this regard, but this analysis is based on the current writers' findings and represents an opinion to which some writers might disagree. Others, however, might perceive such arguments as a new way of approaching conciliation alternatives in order to avoid a deadlock in settling disputes.

Indeed, Article 298(1)(a) has been characterised as "one of the most bizarre passages in the entire Convention".[285] The inability to reach a unified scholarly position on the interpretation of the provision is attributable to the fact that no cases have yet to involve compulsory conciliation that resulted in disagreement on the conciliation outcome.[286] Although, in the Timor Sea dispute, where Timor-Leste submitted a request for compulsory conciliation against Australia concerning a boundary delimitation that was rejected by the latter,[287] both parties reached an agreement based on the findings of the conciliation commission's report on 6 March 2018.[288] This case is "the first instance of conciliation, whether

283. John K. Gamble, 'The 1982 UN Convention on the Law of the Sea: Binding Dispute Settlement?' (1991) 9 Boston University International Law Journal 39, 51.

284. Ibid.

285. Ibid.

286. Bernard Oxman, 'Courts and Tribunals: The ICJ, ITLOS, and Arbitral Tribunals' in Rothwell et al. (n 175), 394-415, 406.

287. Donald K. Anton, 'Negotiating the Settlement of the Timor Sea Boundary Dispute between Australia and Timor Leste' (2017) 2 Asia-Pacific Journal of Ocean Law & Policy 187.

288. Permanent Court of Arbitration (PCA) Case No. 2016-10, *Report and Recommendations of the Compulsory Conciliation Commission Between Timor-Leste and Australia on the Timor Sea* (9 May 2018), Annex 28.

voluntary or compulsory, under UNCLOS".[289]

Thus, it would be left for the determination of a court or tribunal to which a dispute might be referred subsequent to a failed compulsory conciliation to settle this question, based on the principle *compétence de la compétence* that UNCLOS itself embraced.[290] In *Arctic Sunrise* (The Netherlands *v* Russia), as a case in point, an issue was raised of whether the dispute submitted to arbitration would fall within the category of disputes exempted from compulsory procedures under Article 298(1)(b) UNCLOS concerning Russia's law enforcement activities against the Netherlands Arctic Sunrise vessel in the Russian EEZ.[291] Interestingly, the arbitral tribunal upheld its competence to deal with the dispute, notwithstanding the Russian declaration to exclude such a dispute from adjudication or arbitration.[292] The tribunal found that the "Declaration of Russia upon ratification of the Convention does not have the effect of excluding the present dispute from the procedures… and, therefore, does not exclude the dispute from the jurisdiction of the Tribunal".[293]

In sum, after exhausting negotiation with Egypt at the diplomatic level, formally exchanging views, inviting Egypt for voluntary conciliation and then to compulsory conciliation, Palestine can still explore the arbitration option for a binding decision on boundary delimitation. It would be up to the tribunal to decide whether it has jurisdiction to resolve the dispute and, simultaneously, settle the dust off the debate relating to the nature of compulsory conciliation.

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289. Dai Tamada, 'The Timor Sea Conciliation: The Unique Mechanism of Dispute Settlement' (2020) 31 European Journal of International Law 321.

290. UNCLOS, Article 288(4): 'In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal'.

291. PCA Case No. 2014-02, *Arctic Sunrise Arbitration*, Award on Jurisdiction, 26 November 2014, 12, 15-16.

292. Tanaka (n 128) 507-10.

293. *Arctic Sunrise* (n 291) 16.

Arbitration with Egypt can also be indirectly foreseen through reservations that Palestine may cast towards the Cyprus-Egypt delimitation agreement of 17 February 2003 as far as this instrument affects Palestine's title in the common EEZ and continental shelf.[294] The EEZ (and, by extension, continental shelf) fixed by this agreement, as one can notice from the chart annexed thereto,[295] considerably overlaps with the Egypt-Cyprus-Palestine zone as it cuts across the Palestinian EEZ.

As both Cyprus and Palestine have not deposited any declaration under UNCLOS, including in relation to Article 298, arbitration will be the residual mechanism for settling any dispute between the two parties. It is likely that the arbitration tribunal that would be formed under Annex VII UNCLOS would simultaneously decide upon the Egyptian-Palestinian zones, as such areas form an integral and natural part of the Palestinian-Cypriot zone.

Article 4(b) of the Cyprus-Egypt agreement has opted for arbitration to resolve the potential conflict between the two States. This particular consent regarding arbitration would still function despite the 2017 Egyptian declaration under Article 298 UNCLOS, as such declaration does not apply to "any sea boundary dispute finally settled by an arrangement between the parties or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties".[296] In this case, Palestine may call for the formation of an arbitral tribunal that would involve both Cyprus (under general UNCLOS rules regarding settlement of disputes for the Palestine-Cyprus relations) and Egypt after exhausting the compulsory conciliation procedure under Article 298(1)(a) UNCLOS as detailed above.

294. Agreement between Cyprus and Egypt (n 172) 45.

295. Ibid., 47.

296. UNCLOS, Article 298(1)(a)(iii).

In case arbitration covers the three States in this scenario,[297] the tribunal would consist of five arbitrators if both Egypt and Cyprus opt to join forces against Palestine as parties of the same interest. Both States can appoint one arbitrator, and Palestine would appoint its arbitrator. The parties would then agree on the three other arbitrators.[298] Similar arbitration occurred in the *Southern Bluefin Tuna* case, where Australia and New Zealand appointed a joint arbitrator as parties in the same interest *vis-à-vis* Japan.[299] The tribunal may, however, be composed of seven arbitrators if each of the three parties believes it holds a divergent interest.[300] This composition would set an unprecedented model in the history of maritime arbitration.[301]

4.4 Palestine's settlement of disputes with Cyprus

As it is clear from its response to the 2019 Ministry of Foreign Affairs Declaration, Israel does not recognise 'the legal entitlement'[302] of Palestinian maritime zones. Even though it is not a party to the Convention, Israel claims rights and privileges from UNCLOS indirectly by recognising certain customary aspects of the Convention. Israel, for example, defined its territorial sea at 12 nautical miles based on UNCLOS as early as 5 February 1990, before even the Convention entered into force.[303] On 12 July 2011, Israel communicated a unilateral list of geographical

297. Nordquist et al. (n 241) 428.

298. UNCLOS, annex VII, Article 3(a) to (e).

299. Charlotte Burke, 'Arbitration' in Proelss (n 102) 2465-90, 2473.

300. UNCLOS, annex VII, Article 3(g) to (h).

301. Nigel Bankes, 'The Jurisdiction of the Dispute Settlement Bodies of the Law of the Sea Convention With Respect to Other Treaties' (2021) 52 Ocean Development and International Law 346.

302. Israel Communication (n 152) 25.

303. Israel, *Territorial Waters (Amendment) Law, 5750-1990* (5 February 1990).

coordinates for the delimitation of the northern limit of the territorial sea and EEZ based on UNCLOS modalities to the UN Secretariat.[304] In most of its maritime zone actions, Israel refers to 'international law' or 'international customary law of the sea', not UNCLOS.[305] However, Israel (as the case with some other States) uses definitions, terms, concepts and administrative forums established under the Convention, notably the UN Secretariat as a depository of the Convention,[306] and other communications that normally UNCLOS State parties undertake.[307]

Interestingly, on 17 December 2010, Israel and Cyprus signed a maritime delimitation agreement, whose preamble directly referred to the EEZ as regulated in UNCLOS.[308] It seems that Israel is ready to apply the Convention as a matter of principle, particularly when UNCLOS serves Israeli interests. However, it is widely believed that Israel did not become party to the Convention owing to its boundary dispute settlement processes, which "would allow other states to determine its [i.e. Israel] borders".[309] Nevertheless, Israel has reached boundary delimitation agreements with Cyprus (2010), as indicated above, and with Jordan (1996).[310] In October 2022, Israel and Lebanon signed a maritime de-

304. Israel, *List of Geographical Coordinates for the Delimitation of the Northern Limit of the Territorial Sea and Exclusive Economic Zone of the State of Israel* (UN, 12 July 2011).

305. Israel Communication (n 152) 25.

306. David Attard, Malgosia Fitzmaurice and Norman Gutiérrez, 'The United Nations Division for Ocean Affairs and the Law of the Sea' in Attard et al. (n 92) 606-17.

307. See series of Israeli legislation, agreements, declarations, letters, notes verbale and other communications posted at the website of DOALOS <<www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/ISR.htm>>.

308. Agreement between Israel and Cyprus (n 163).

309. Teff-Seker et al. (n 231) 613.

310. *Maritime Boundary Agreement between the Government of the State of Israel and the Government of the Hashemite Kingdom of Jordan* (Aqaba, 18 January 1996), entry into force 17 February 1996, Law of the Sea Bulletin No. 32 (1996) 97.

limitation agreement based on the UNCLOS parameters.[311] Hence, the remaining border is the joint Israel-Palestine-Egypt boundary that drove Israel's hesitation to access UNCLOS.

Palestine cannot directly use any of the UNCLOS dispute settlement mechanisms explained above in relation to Israel as a non-State party to the Convention. There is no room to resort to the ITLOS, the ICJ, arbitration or special arbitration or even to compulsory or voluntary conciliation without Israeli consent. However, Palestine may challenge the Israeli control of the Gaza Sea through certain procedures pertinent to Cyprus, Egypt or others. In general, it is crucial for Palestine to keep opposing other States' claims affecting its maritime zones because "[u]nless these excessive claims are actively opposed, the challenged rights will be effectively lost".[312]

As the EEZ of Palestine overlaps with Cyprus and Egypt as well as Israel, Palestine could assert its maritime boundary with Israel by instituting an arbitration procedure against the 17th of December 2010 agreement that Israel signed with Cyprus (above) concerning the delimitation of the EEZ between the two States. The arbitration tribunal that may be set up to decide on the dispute between Palestine and Cyprus would also inevitably rule on the Israeli-Palestinian boundary. In this case, Cyprus might invoke Article 4(b) of its agreement with Israel that permits both States to revert to arbitration to settle their disputes. A scenario of mixed arbitration might arise here, as we explained concerning the possibility of arbitration between Palestine and Egypt.

There are three differences relating to this scenario. One is that the arbitration between Cyprus and Israel will not be conducted under the

311. Hamza Haşil, 'Lebanon – Israel Maritime Border Agreement: From the Line of Tension to the Regional Stability' (2022) Policy Brief, No. 226 (Ankara: Center for Middle Eastern Studies).

312. Roach (n 106) 6.

UNCLOS formula, as Israel would not be a party to that process. Secondly, Article 4(b) of the Israeli-Cypriot agreement made arbitration contingent on prior consent between the two sides: "The terms of reference and the procedure of the arbitration shall be determined by the Parties, by mutual agreement, prior to the commencement of the arbitration". That might render the possibility of arbitration impracticable. Thirdly, even if Cyprus and Israel agree on arbitration in relation to each other, Palestine cannot initiate mixed arbitration towards them, as that arbitration will be confined to both contractual States. In this case, we might reach a scenario of two parallel arbitral tribunals: one based on UNCLOS between Palestine and Cyprus; and another grounded on the 2010 agreement between Israel and Cyprus.

However, both tribunals might find it unavoidable to determine the status of the overlapping EEZ and continental shelf among all States sharing the same maritime areas (Cyprus, Egypt, Israel and Palestine). Article 3 of the Cyprus-Israel 2010 agreement hinted at that possibility by stating that "if either of the two Parties is engaged in negotiations aimed at the delimitation of its [EEZ] with another State, that Party, before reaching a final agreement with the other State, shall notify and consult the other Party". This means that Cyprus and Israel are prepared for the scenario of a common EEZ with other States, including Egypt and Palestine. For long, the ICJ has been of the position that "the validity of delimitation with regard to other States depends upon international law",[313] namely not based on an agreement that affected the rights of other States.

If Palestine manages to initiate arbitration proceedings with Egypt, as detailed above, that would affect Palestine's boundary with Israel and Cyprus. Although it is unprecedented to activate three arbitral tribunals

313. *Fisheries* (United Kingdom *v* Norway), Judgement of 18 December I95I, ICJ Rep (1951) 116, 132.

simultaneously concerning a single maritime zone, that scenario is hypothetically conceivable. The triple tribunals could be: (1) tribunal between Palestine and Egypt as discussed above, (2) tribunal between Palestine and Cyprus based on UNCLOS, and (3) tribunal between Israel and Cyprus based on the 2010 agreement. The four States may elect a more rational path and agree to alternatively establish one arbitral tribunal.

If a single UNCLOS-based arbitration is instituted upon agreement, the tribunal would likely be composed of at least nine members.[314] One arbitrator would be appointed by each of the four States (Cyprus, Egypt, Israel, Palestine). The other five would be agreed upon jointly between the parties or through the President of ITLOS following the technicalities of Article 3 of Annex VII of the UNCLOS. In this connection, Article 1(e) of the 2010 agreement between Israel and Cyprus, while being ignorant to the Palestinian EEZ, hinted at the possibility of agreement with Egypt. It provided that

> [T]he geographical coordinates of points 1 or 12 [agreed upon by Cyprus and Israel] could be reviewed and/or modified as necessary in light of a future agreement regarding the delimitation of the Exclusive Economic Zone to be reached by the three States concerned with respect to each of the said points.

Reference to 'three States', namely Cyprus and Egypt as well as Israel that share the coordinates of points 1 to 12, was made as if Palestine does not exist. Such an attitude might leave no choice for Palestine but to turn on the UNCLOS binding dispute settlement mechanisms, at least in relation to Cyprus and, by implication, to Israel.

314. Nordquist et al. (n 241) 428.

5. Conclusion

The law of the sea, when it comes to Palestine, is, at its core, a *human right*. The maritime rights of the Palestinian people have been overshadowed and pushed to the margins due to a tremendous humanitarian crisis that risked the existence of the Palestinians as a people. Palestinians have been denied access to their rights in the sea for over a century. Palestine was colonised at a time when Britain was the global maritime hegemon, which used Palestine's sea to serve its colonial interests. With its declaration in 1948, Israel controlled over 80% of Palestine's coast. Only a small fraction of the coast on the Mediterranean Sea, about 40 kilometres long, was left to the Palestinians offshore Gaza. Even in this limited portion, the Palestinians have been deprived of using the sea. With the 2014 accession of Palestine, as a State, to UNCLOS, possibilities for Palestine to declare its prerogatives under the Convention are legally available. However, the ability to exercise actual control over Palestine's maritime zones offshore Gaza continues to face enforcement challenges due to the Israeli naval blockade, military occupation and, now, genocide.

Significant changes in the Middle East have marked the last few years. From the accession of Palestine to UNCLOS in 2015 to the ICJ advisory opinion on the illegality of Israeli occupation in 2024, and from the discovery of gas reserves in the eastern Mediterranean to the escalation of the Israeli genocidal assault on the Gaza Strip after 7 October 2023, the *de jure* and *de facto* status of the occupied Palestinian territory has altered. The UNGA resolutions affirming the qualification of Palestine for full membership in the UN and the resolution calling for the withdrawal of Israel from the occupied Palestinian territory by 18 September 2025, the paradigmatic shift in the approach of member States of the UN towards Palestine is substantial.

The colonial history of Palestine, extending over more than a century, precluded the development of national legislation relating to the law

of the sea. Palestine inherited an outdated body of maritime law from the Ottoman and British empires. The Israeli occupation and blockade of Gaza made, and continue to make, it impossible for Palestine to modernise its harbour, port, fishing, navigation and trade. Palestine remains unable to explore and exploit its natural maritime resources. The Oslo Accords maintained the status quo, with little jurisdiction given to the Palestinians offshore Gaza. This limitation has impeded the systematic development of maritime legislation, thereby affecting the full realisation of human rights linked to the use of maritime spaces and resources.

The accession of Palestine to UNCLOS offers an opportunity to craft a comprehensive legal system. This system could comprise two dimensions. One relates to Palestinian sovereignty over its internal waters and territorial seas, along with its airspace, submarine activity, and subsoil usage, as well as its sovereign rights in the contiguous zone, EEZ and continental shelf. These areas and the rights and obligations of Palestine as well as other States and entities thereof need to be clearly codified, defined and sanctioned with proper penalties by domestic law. The second dimension pertains to more technical aspects of the use of the sea beyond maritime zones, including *inter alia* harbour and port affairs, ship registration and nationality, criminal, civil and labour law aboard ships, navigation, shipping, commerce, customs, marine environment and scientific research, security, fighting piracy, terrorism, trafficking, ship collision and hot pursuit.

While Palestine can assert its sovereignty over its maritime zones through its accession to UNCLOS, the ability to accede to the IMO would raise the potential to become a party to a series of conventions that may reinforce sovereign rights through the technical materialisation of various aspects relating to the use of the sea. These aspects may not only have domestic value via legislation but may also create inter-State relations between Palestine and other States worldwide,

which, in turn, may effectively contribute to Palestine's independence.

The Israel-Palestinian negotiations, including the relations regarding the Gaza coast, have encountered an impasse over the past three decades. Even small-scale agreements on the use of the sea, such as operating a port, fishing, sailing of ships, receiving external vessels and marine imports or exports, have been heavily restricted, if permitted at all. It has been and continues to be challenging to exercise Palestinian sovereignty or sovereign rights in the maritime zones off Gaza in the absence of delimited maritime zones. With the Israeli genocidal war on Palestine that began after the 7 October 2023 attack and the ICJ advisory opinion of July 2024, along with the UN General Assembly resolution of September 2024 instructing an end to Israeli presence in Palestine, the boundary delimitation with Israel does not seem to be a priority at the current time. Simultaneously, the boundary delimitation with Egypt and Cyprus cannot be taken for granted, either.

However, Palestine's accession to UNCLOS has opened avenues for potential maritime arrangements, including boundary delimitation, not only in relation to the Gaza neighbouring States, but also for the Eastern Mediterranean region at large. In some ways, the boundary of the overlapping in the Gaza coast is less complex than in other regions of the world; there are no islands, archipelagos, straits, mouths of rivers, bays or landlocked States to contend with. But the protracted pending territorial disagreement necessarily overshadows the maritime front. The accession of Palestine to UNCLOS, after the discovery of gas reserves that promise to benefit the entire region, may offer an opportunity to restart negotiations that may contribute to the development of innovative cooperative options.

At the same time, it is crucial for Palestine to explore routes within the law of the sea, specifically the UNCLOS, that may crystallise the exercise of maritime rights. The Convention establishes a comprehen-

sive mechanism for settling disputes among States, including those related to maritime zones. As the Gaza Sea is still occupied, it might also be relevant to refer to international humanitarian law rules relating to maritime belligerent occupation.[315] The ICJ advisory opinion of July 2024 that rendered the Israeli occupation of Palestinian territory unlawful also reiterated the Palestinian people's right to self-determination as a peremptory norm of international law.[316] The Court identified "the right to exercise permanent sovereignty over natural resources, which is a principle of customary international law",[317] a key element of the right to self-determination. Human rights law,[318] with a focus on the right to self-determination that implies independence and control over marine resources, is therefore critically relevant here as well.[319] Other fields of international law may also be activated, such as the law of State responsibility for breaches of maritime law, international criminal law, IMO conventions, and air law over the territorial sea.

The East Mediterranean region after Palestine's accession to UNCLOS is not as before. The Convention creates a series of rights for Palestine in various maritime zones which overlap with the zones of neighbouring States: Egypt, Israel and Cyprus.[320] At a certain point, conflicting interests would come to the fore, and the need for dispute settlement would

315. James Kraska, 'Rule Selection in the Case of Israel's Naval Blockade of Gaza: Law of Naval Warfare or Law of the Sea? (2010) 13 Yearbook of International Humanitarian Law 367.

316. ICJ Advisory Opinion 2024 (n 5) para 233.

317. Ibid., para 240.

318. Papanicolopulu (n 92) 509.

319. Pal Wrange, 'Self-Determination, Occupation and the Authority to Exploit Natural Resources: Trajectories from Four European Judgments on Western Sahara' (2019) 52 Israel Law Review 3.

320. Irini Papanicolopulu, 'The Note on Maritime Delimitation in a Multizonal Context: The Case of the Mediterranean' (2007) 38 Ocean Development & International Law 381.

arise. At this point, political realities in the region overshadow the law, and UNCLOS remains largely unenforced.[321] However, the discoveries of gas resources in the eastern Mediterranean might accelerate the process for finding solutions to pending maritime conflicts in parallel to the gas exploration. That renders the Convention dispute settlement scheme more relevant than ever.[322]

The UNCLOS dispute settlement mechanisms apply to other States parties that share no border lines with Palestine. Disputes with other States are perceived with regard to potential actions by such States in zones whereby Palestine qualifies to exercise sovereignty or sovereign rights. Such disputes can be resolved through arbitration, as it is currently the residual means that Palestine has implicitly opted for. Examples of such disputes include infringement of innocent passage and overflight and navigation in the Palestinian territorial sea, security and illegal immigration and trafficking in drugs in the contiguous zone, fishing, and navigation as well as artificial islands in the EEZ, gas and oil exploration and exploitation in Palestinian-claimed continental shelf, and collision and boarding of ships as well as the misuse of flags in the high seas. Such operations might include works carried out by commercial ships, military vessels, submarines, aircraft, and oil rigs owned or operated by UNCLOS State parties either directly or through concessions given to companies or individuals belonging to, or contracted or authorised by, these States.[323]

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321. Walid Khadduri, 'East Mediterranean Gas: Opportunities and Challenges' (2012) 17 Mediterranean Politics 111.

322. Kimberlyn Hughes, 'Solving the Unsolvable? How a Joint Development Zone Could Extinguish the Natural Gas Conflict in the Eastern Mediterranean' (2021) 54 Vanderbilt Journal of Transnational Law 1041.

323. James Kraska, *Maritime Power and the Law of the Sea: Expeditionary Operations in World Politics* (OUP 2011); H Esmaeili, *The Legal Regime of Offshore Oil Rigs in International Law* (Ashgate 2001).

Palestine seems to be aware of third-party actions in its offshore Gaza maritime zones. To this effect, it has issued warnings to such parties. In April 2022, for instance, Palestine, through a communication to the UN Secretariat, alerted all States and other entities against unauthorised and non-consensual maritime activities in the Palestinian maritime zones.[324]

324. Mission of Palestine to the UN, *Communication dated 12 April 2022 from the Ministry of Foreign Affairs and Expatriates of the State of Palestine addressed to the Secretary-General* (New York, 27 April 2022), available at <<https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/20220427PseNvUn.pdf>>.