




5-1-2016

Blessings and Curses: Israel and Lebanon's Maritime Boundary Dispute in the Eastern Mediterranean Sea

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Andrew Shibley, *Blessings and Curses: Israel and Lebanon's Maritime Boundary Dispute in the Eastern Mediterranean Sea*, 5 Global Bus. L. Rev. 50 (2016)
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BLESSINGS AND CURSES: ISRAEL AND LEBANON'S MARITIME BOUNDARY DISPUTE IN THE EASTERN MEDITERRANEAN SEA

ANDREW SHIBLEY

ABSTRACT

This note argues that Israel and Lebanon should submit their maritime border dispute to an arbitral tribunal under the United Nations Convention on the Law of the Sea. Before submitting the dispute to the tribunal, the two countries should agree upon an exclusive appellate remedy, to be used in the event that at least one country is unsatisfied with the decision of the arbitrators. Alternatively, Israel and Lebanon could employ other dispute resolution options under the United Nations Convention on the Law of the Sea, or submit to the International Court of Justice. It is important that Israel and Lebanon find a speedy resolution to their maritime conflict, so that both countries can fully exploit their offshore natural resources, without the need to worry about violating international law and encroaching upon the other state's Exclusive Economic Zone.

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I. INTRODUCTION

“Love one another but make not a bond of love: Let it rather be a moving sea between the shores of your souls. Fill each other's cup but drink not from one cup. Give one another of your bread but eat not from the same loaf. Sing and dance together and be joyous, but let each one of you be alone.”¹

One of the largest offshore discoveries of natural gas in the last decade is located in the Eastern Mediterranean Sea.¹ Because of this discovery, Israel could realistically transition from an energy dependent state to an energy exporter.² Lebanon too has claimed legal ownership over a portion of the natural gas, based on the Lebanese government’s interpretation of their national maritime borders in the Mediterranean Sea.³ Cyprus presents a third and less controversial dimension to the conflict. Unlike the relationship between Israel and Lebanon, Cyprus has signed maritime delimitation agreements with both Israel and Lebanon.⁴

Perhaps the key moment in igniting the maritime border dispute occurred when the United States Geological Survey published an assessment in 2010,⁵ estimating that the Levant Basin Province holds, “a mean of 1.7 billion barrels of recoverable oil and a mean of 122 trillion cubic feet of recoverable gas.”⁶ Israel and Lebanon believe that these discoveries will help

¹ Khalil Gibran, *On Marriage*.

² Ethan Bronner, *Gas Field Confirmed Off The Coast of Israel, Middle East*, THE NEW YORK TIMES (Dec. 30, 2010) http://www.nytimes.com/2010/12/31/world/middleeast/31leviathan.html?_r=2&.

² *Id.*

³ See Martin Wählisch, *Israel-Lebanon Offshore Oil and Gas Dispute – Rules of International Maritime Law*, Amer. Soc. of Int’l L., Dec. 5, 2011, available at <http://www.asil.org/insights/volume/15/issue/31/israel-lebanon-offshore-oil-gas-dispute-%E2%80%93-rules-international-maritime>.

⁴ Simon Henderson, *Cyprus Helping with Israel-Lebanon Maritime Dispute, Policy Analysis*, THE WASHINGTON INSTITUTE (Jan. 10, 2013), <http://www.washingtoninstitute.org/policy-analysis/view/cyprus-helping-with-israel-lebanon-maritime-dispute>.

⁵ U.S. Geological Survey, *Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean*, (Mar. 2010) <http://pubs.usgs.gov/fs/2010/3014/pdf/FS10-3014.pdf>.

⁶ *Id.*

sustain their national economies long-term due to the current lack of significant gas or oil production in either state.⁷ The enormous economic potential,⁸ and the poor political relationship that exists between Israel and Lebanon,⁹ create the need for international law to provide a solution to the conflict.

Section II of this note will discuss the political history and tension between Israel and Lebanon. Section II will also provide a brief history of Cyprus, and explain how it has come to be a politically divided country. Finally, Section II will discuss the nature and current condition of the energy sectors in Cyprus, Israel and Lebanon. Section III of this note will provide an overview of how the United Nations Convention on the Law of the Sea (“UNCLOS” or “the convention”) operates to resolve maritime disputes, including a discussion of the judicial body under UNCLOS, the International Tribunal for the Law of the Sea (“ITLOS”). Section III will also discuss the International Court of Justice (“ICJ”) and the role that the ICJ could play in a maritime dispute case. Section IV will address the recently resolved Indonesia-Philippine maritime boundary conflict. Section IV will also elaborate on the current state of the Cyprus-Israel-Lebanon maritime dispute. Section V will discuss the viability of the dispute resolution options discussed in Section III, in the context of the Cyprus-Israel-Lebanon maritime conflict. Finally, Section VI will recommend the most optimal dispute resolution alternative as applied to the maritime dispute in the Eastern Mediterranean.

It is imperative that Israel and Lebanon come to a binding and final resolution to their maritime boundary dispute. Maritime delimitation law has become increasingly well settled, and therefore, most of the procedural options will produce substantially similar results. The most ideal method of resolution for Israel and Lebanon would involve submitting the dispute to an international tribunal. That tribunal would issue a binding decision, and that decision could be

⁷ Israel relies on oil imports for 99% of its national consumption. Daniel Engber, *Where Does Israel Get Oil?*, SLATE.COM, (July 14, 2006, 6:19 PM), http://www.slate.com/articles/news_and_politics/explainer/2006/07/where_does_israel_get_oil.html. Lebanon too relies mostly on oil imports. In 2010, Lebanon imported 120,000 barrels per day of refined oil, which satisfied over 90% of the country’s primary energy needs. U.S. Energy Info. Admin., *Country Analysis Note, Lebanon*, (last updated Mar. 2014), <http://www.eia.gov/countries/country-data.cfm?fips=le>.

⁸ See Wählisch, *supra* note 3.

⁹ See generally Simon Murden, *Understanding Israel’s Long Conflict in Lebanon: The Search for an Alternative Approach to Security During the Peace Process*, 27:1 Brit. J. of Middle Eastern Stud. 25 (May 2000).

appealed by an unsatisfied party, pursuant to a previously agreed upon exclusive appellate procedure. Ideally, the appellate procedure would involve a secondary and separate tribunal, which could in turn review the decision of the initial tribunal, then come to its own binding and non-appealable decision.

II. ISRAEL, LEBANON, AND CYPRUS:
POLITICAL HISTORIES, RELATIONS, AND THE ENERGY SECTORS

A. *Context of Israeli-Lebanese Relations*

Lebanon and Israel have officially been in a constant state of war since 1948.¹⁰ In 1948, Israel declared its independence from the British Mandate, which was carried over from World War II.¹¹ Within a year, the first Arab-Israeli war broke out, resulting in Israel obtaining more land than it was originally promised, Jordan annexing the West Bank and East Jerusalem, and Egypt occupying the Gaza Strip.¹² In 1967, the Six Day War broke out between Israel and multiple Arab states, most prominently Egypt, Jordan, and Syria.¹³ After six days of fighting, Israel regained control of East Jerusalem, the Gaza Strip, Golan Heights, Sinai, and the entire West Bank.¹⁴

The Israeli-Palestinian conflict has directly and indirectly led to a great deal of Israel's security concerns. The Palestinian Liberation Organisation ("PLO") was founded in 1964 by Arab governments that wanted to create a Palestinian organization, "that would remain essentially under their [the Arab governments'] control."¹⁵ However, by 1969, Yasser Arafat became the chairman of the PLO and brought with him a sense of independence from other Arab governments.¹⁶

¹⁰ Associated Press, *History of the Lebanese-Israeli Conflict, World*, THE WASHINGTON POST (July 17, 2006, 12:48 PM) <http://www.washingtonpost.com/wp-dyn/content/article/2006/07/17/AR2006071700340.html>.

¹¹ Brit. Broad. Co., *Israel Profile: A Chronology of Key Events, Middle East*, BBC.COM (last updated Jan. 28, 2015) <http://www.bbc.com/news/world-middle-east-29123668>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Brit. Broad. Co., *A History of Conflict: Israel and the Palestinians, Middle East*, BBC.COM (last updated 2005) http://news.bbc.co.uk/2/shared/spl/hi/middle_east/03/v3_ip_timeline/html/.

¹⁶ *Id.*

In the late 1960's, Lebanon began to allow Palestinian militants access to a region in Southern Lebanon in order to infiltrate and attack Israel.¹⁷ The fifteen-year Lebanese Civil War, which began in 1975, decimated Lebanon.¹⁸ The beginning of the Lebanese Civil War arguably led to the demise of the socioeconomic identities and divisions within the country and reaffirmed the traditional, "...rigid sectarian divisions," relating to religion, tribe, and region.¹⁹

The Israeli invasion of Lebanon in 1982 led to a roughly three-year period where Israel and the United States were heavily involved in the internal affairs of Lebanon.²⁰ The Israeli invasion was intended to remove the Palestinian guerillas from Southern Lebanon, but Israel surpassed its original goal and eradicated the PLO from Lebanon.²¹ However, in 1984, most Israeli forces withdrew from Lebanese territory, except for maintaining a small presence in an area of Southern Lebanon.²² The withdrawal of Israeli forces from Lebanon allowed Syria to regain most of the power and influence that it had over Lebanon before the Israeli invasion.²³

Political turmoil and violence continued during the 1980's. In 1989, Lebanese Army commander Michael Aoun declared a, "'War of Liberation' ostensibly against all foreign forces," but in essence, this movement was directed at ousting the Syrian presence in Lebanon.²⁴ In spite of the intended goal, the "War of Liberation" led to an increase in Syrian troops within Lebanese borders.²⁵ The Lebanese Civil War continued with devastating, "intra-confessional clashes," between the Maronite and the Shia sects.²⁶ The United States gained interest and

¹⁷ *History of the Lebanese-Israeli Conflict, World*, THE WASHINGTON POST (July 17, 2006, 12:48 PM) <http://www.washingtonpost.com/wp-dyn/content/article/2006/07/17/AR2006071700340.html>.

¹⁸ Brit. Broad. Co., *Lebanon Profile, Middle East*, BBC.COM (last updated Nov. 4, 2014) <http://www.bbc.com/news/world-middle-east-14649284>.

¹⁹ Hassan Krayem, *The Lebanese Civil War and the Taif Agreement*, American University of Beirut, <http://ddc.aub.edu.lb/projects/pspa/conflict-resolution.html>.

²⁰ *Id.*

²¹ Brit. Broad. Co., *A History of Conflict: Israel and the Palestinians*, *supra* note 15.

²² Krayem, *supra* note 19.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

influence in the region due to the Gulf War, and the demise of the Soviet Union.²⁷ Because of these circumstances and the general belief among the Lebanese that no side could truly win the Civil War, the Taif Agreement was signed on October 22, 1989 in Taif, Saudi Arabia.²⁸ The Taif Agreement, which represented, “a compromise among the Lebanese deputies, political groups and parties, militias and leaders,” effectively ended the Civil War, although it did not resolve all of the political issues within Lebanon.²⁹

By 1993, the peace process between Israel and the Palestinians had also gained steam.³⁰ The new leftist Israeli government was ready to talk peace with the Palestinians, and the PLO was more inclined to engage in the peace process due to the unfavorable results of the first Gulf War and the PLO’s consequentially weakened position in the region.³¹ The Palestinians agreed to recognize the state of Israel in exchange for Israel’s promise to begin removing its occupying presence in Palestinian-claimed territories.³² The PLO and Israel reached an agreement in 1993, and by 1994, the Palestinian National Authority was born and Arafat was elected President of that Authority, which was to control the autonomous areas vacated by Israel.³³ The Israeli-Palestinian agreement proved unsuccessful because neither side was able to fully fulfill its commitments, and certain Palestinian factions rejected the terms of the peace agreement; thus, violence continued.³⁴

The rise of the Lebanese guerilla group Hezbollah, and more military exchanges throughout the 1990’s and in 2006, have contributed to the inability of the two states or groups within the states to refrain from violence for any extended period of time.³⁵ Hezbollah, a group

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ See generally Brit. Broad. Co., *A History of Conflict: Israel and the Palestinians*, *supra* note 15.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*; Brit. Broad. Co., *Israel Profile: A Chronology of Key Events*, *supra* note 11.

³⁵ See generally Associated Press, *History of the Lebanese-Israeli Conflict*, *supra* note 10; See generally Brit. Broad. Co., *Lebanon Profile*, *supra* note 18.

that represents a “radical Shiite movement,” rose to power in Lebanon in the early 1980’s during the Lebanese Civil War.³⁶ Hezbollah was formed with the goal of completely destroying and removing the Israeli presence in Lebanon, and doing so by any means necessary.³⁷ Hezbollah emerged as a powerful force due to its bombing of the United States Marine Barracks in Beirut.³⁸ The attack on the Marine Barracks killed 241 American servicemen in a single attack, “the largest single-day death toll for the Marine Corps since Iwo Jima.”³⁹

Under the leadership of the then newly selected (and current) Secretary-General Hassan Nasrallah, Hezbollah began successfully involving itself in Lebanese politics and political elections by 1992.⁴⁰ Hezbollah’s goal of eradicating Israeli forces from Lebanon was achieved in 2000 when Israeli Prime Minister Ehud Barak ordered the removal of the Israeli forces in Southern Lebanon.⁴¹ Because of Hezbollah’s success against Israel, other anti-Israeli governments, such as those in Iran and Syria, continued to support Hezbollah’s efforts against the Israeli state.

The assassination of Lebanese Prime-Minister Rafik Hariri in 2005, which was widely blamed on the Syrians, led to a vacuum in power which was to be filled either by Hezbollah and its allies or by Hariri’s son, Saad Hariri, who was supported by Saudi Arabia and many Western governments.⁴² By 2006, Hezbollah and Israel were again engaged in a war that ended in a United Nations sponsored cease-fire that came roughly a month after the beginning of the war.⁴³ Since 2006, Lebanon has been hampered with political gridlocks, such as those that occurred in

³⁶ Robert F. Worth, *Hezbollah’s Rise Amid Chaos*, N.Y. TIMES, Jan. 15, 2011, available at http://www.nytimes.com/2011/01/16/weekinreview/16worth.html?_r=0.

³⁷ Alyssa Fetini, *A Brief History of Hizballah*, TIME, June 8, 2009, available at <http://content.time.com/time/world/article/0,8599,1903301,00.html>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Worth, *supra* note 36.

⁴³ Fetini, *supra* note 37.

2008, 2011, and 2013, respectively.⁴⁴ The Syrian conflict has further destabilized Lebanon, in part, due to the some 700,000 Syrian refugees that were reported to have fled to Lebanon after the Syrian crisis broke out in 2011.⁴⁵

B. A Brief History of Cyprus

Although the primary issue here concerns finding a proper resolution to the maritime boundary dispute between Israel and Lebanon, Cyprus is still relevant to this discussion because Cyprus, Israel and Lebanon all share Exclusive Economic Zones (“EEZ’s”).⁴⁶ Therefore, each country must make an agreement with each of the other two countries, in order to finalize the coordinates of each country’s EEZ.⁴⁷

An initial issue with many problems involving Cyprus is that the country is divided between the Greek Cypriot south and the Turkish Cypriot north.⁴⁸ Turkey has a long history of involving itself in Cyprus, dating back to the Ottoman Empire.⁴⁹ In the early to mid 20th century, Cyprus was under rule as a British colony, after having been annexed from the Ottoman Empire by Great Britain in 1914.⁵⁰ In 1955, Greek Cypriots launched a war against the British in an attempt to become unified with Greece.⁵¹

Although initially Britain resisted, by 1960, Cyprus gained its independence because of the signing of the Treaty of Guarantee, along with the creation of the Cypriot constitution.⁵² Britain, Greece, and Turkey came together to sign the Treaty of Guarantee, which contained

⁴⁴ Brit. Broad. Co., *Lebanon Profile*, *supra* note 18.

⁴⁵ *Id.*

⁴⁶ See Henderson, *Cyprus Helping with Israel-Lebanon Maritime Dispute*, *supra* note 4.

⁴⁷ *Id.*

⁴⁸ John Deferios and Eoghan Macguire, *Cypriot President: Underwater gas field can help unite the island*, CNN.COM (last updated Aug. 25, 2014), <http://edition.cnn.com/2014/04/23/business/cyprus-president-energy-gas-oil/>.

⁴⁹ Brit. Broad. Co., *Cyprus Profile, Middle East*, BBC.COM (last updated Nov. 11, 2014) <http://www.bbc.com/news/world-europe-17219505>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

provisions giving each of the three signatory countries a right to intervene in Cypriot affairs under certain enumerated circumstances.⁵³ Archbishop Makarios, who was the leader of the Greek unification movement, was elected as the first president of an independent Cyprus in 1959.⁵⁴ In 1963, Makarios proposed constitutional changes that were unwelcomed by Turkey, and therefore, the Turkish Cypriots withdrew from the “power sharing” government that had just been established a few years earlier.⁵⁵ The Greek government led an unsuccessful coup against Makarios, causing Turkey to send troops to the northern area of Cyprus.⁵⁶ Turkey then occupied a northern portion of Cyprus, where the dividing line was based on a ceasefire line, “the Green Line,” set up by United Nations peacekeepers in 1963.⁵⁷ The international community failed to persuade Turkey to withdraw from the island, and the Turkish Cypriot’s proceeded to establish a government in the north, separate from the original unified Cypriot government.

Till this day, Cyprus is still not a unified country.⁵⁸ In 2003, the border restrictions on the Green Line were finally eased, and Turkish and Greek Cypriots were allowed some access to either side of the island.⁵⁹ Cyprus joined the European Union (“EU”) in 2003 as one entity; however, in practicality, the Greek Cypriot government maintains the seat in the EU, and most EU law is suspended in Turkish Cyprus until the two Cypriot governments reach a formal settlement and reunification.⁶⁰

⁵³ *Id.*

⁵⁴ The Editors of Encyclopædia, *Makarios III*, ENCYCLOPÆDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/359142/Makarios-III> (last visited Mar. 8, 2015).

⁵⁵ See Brit. Broad. Co., *Cyprus Profile*, *supra* note 49.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See generally *id.*

⁵⁹ *Id.*; see also Brit. Broad. Co., *Emotion as Cyprus Border Opens, Europe*, BBC.COM (Apr. 23, 2003) <http://news.bbc.co.uk/2/hi/europe/2969089.stm>.

⁶⁰ Brit. Broad. Co., *Cyprus Profile*, *supra* note 49; see also *Turkish Cypriot Community, Cyprus, European Commission*, available at http://ec.europa.eu/cyprus/turkish_cypriots/index_en.htm (last visited Mar. 8, 2015).

C. Nature and Condition of the Israeli, Lebanese and Cypriot Energy Sectors

1. Israeli Energy Sector

Israel's geopolitical location in the Middle East has led the state to function "as an energy island," without an energy infrastructure connecting it to other oil-rich neighboring states, with the exception of its energy-related relationship with Egypt.⁶¹ Furthermore, Israel has two acute energy concerns involving security.⁶² Israel must ensure that it maintains a supply of energy in times of war or military conflict, while also maintaining security over its energy infrastructure.⁶³ Because of these security concerns, Israel appears to handle its energy policies as issues of security rather than economics.⁶⁴ Countries that treat energy as a security issue may break down energy security into three components: "...reliability, affordability, and environmental sustainability."⁶⁵ Israel has historically demonstrated a clear focus on the reliability aspect of energy security, which has led the country to prioritize coal and oil.⁶⁶ Natural gas on the other hand requires a greater level of long-term infrastructure and supply contracts, which has made Israeli investments in this resource less common.⁶⁷

Israel's concerns about its energy security are well founded considering the prominent role that Arab oil producers maintain in the world oil market, as well as the tactics that those countries have used to block or attempt to block energy resources from entering Israel during critical violent conflicts.⁶⁸ Changes in the landscape of the world oil market since the 1970's may be viewed as advantageous to Israel, but Israel's energy policy has been slow to react to

⁶¹ Brenda Shaffer, *Israel: New Natural Gas Producer in the Mediterranean*, 39:9 Int'l J. of the Political, Econ., Planning, Envtl. and Soc. Aspects of Energy 5379 (Sept. 2011). The Israeli-Egyptian Peace Treaty of 1979 guaranteed Israel the right to bid for, "Egyptian-origin oil not needed for Egyptian domestic oil consumption;" however, as Israeli energy needs have increased, Egyptian oil exports began to account for far less of Israel's total oil consumption. See Engber, *supra* note 7.

⁶² Shaffer, *supra* note 61.

⁶³ *Id.*

⁶⁴ *Id.* at 5380.

⁶⁵ *Id.*

⁶⁶ *Id.* at 5379-80.

⁶⁷ *Id.* at 5380.

⁶⁸ *Id.*

these changes.⁶⁹ Some of these “dramatic changes” to the world oil market include how oil trade is now mainly conducted, “between companies on spot markets” and the decline of the Organization of the Petroleum Exporting Countries’ influence and market dominance.⁷⁰

Israel’s strategy regarding the development of its energy resources has involved mainly a privatization approach, subsequently precluding most state involvement in the energy development field.⁷¹ One major drawback to this policy relates back to Israel’s poor relationship with many Arab and oil-rich countries.⁷² Some private companies may choose not to seek potentially attractive opportunities for energy development in Israel because other oil-rich and anti-Israeli countries might prevent those companies that do invest in Israel from investing in their own countries.⁷³

Beginning in 1999, Israel discovered its first commercially recoverable fossil fuel.⁷⁴ In 2009 and 2010, more natural gas was discovered off of Israel’s coast in the Tamar, Dalit, and Leviathan gas fields.⁷⁵ Those three fields are collectively estimated to hold 714 billion cubic meters (“BCM”) of natural gas, with the majority of that gas lying in the Leviathan field.⁷⁶ While Israel’s domestic consumption of natural gas stood at about 5.2 BCM per year in 2010, the Israeli

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

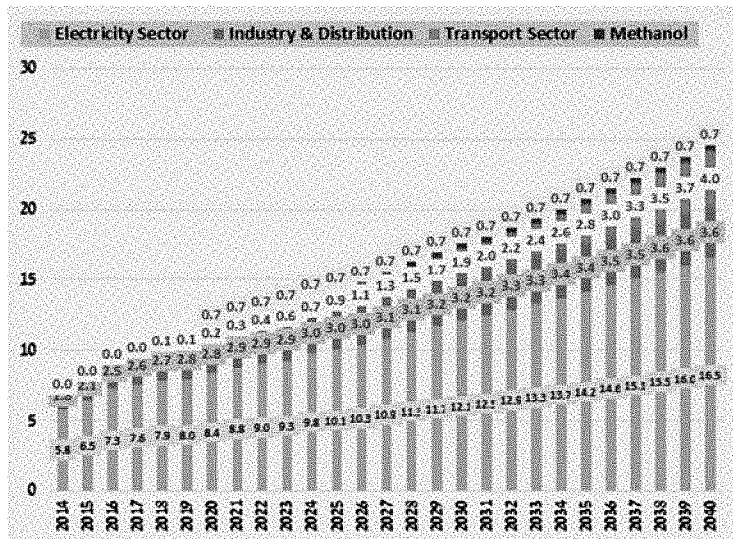
⁷³ *Id.*

⁷⁴ *Id.* The Noa and Mari-B fields, together known as Yam Tethys contained 32 billion cubic meters of natural gas in 1999. Both fields were used to provide electricity in Israel billion over the next decade, and both have been mostly depleted since 2013. *Id.*; See also Sara Toth Stub, *Well in Yam Tethys gas reserve to be abandoned*, NEWS, WORLD OIL.COM (Aug. 5, 2013), <http://www.worldoil.com/news/2013/8/5/well-in-yam-tethys-gas-reserve-to-be-abandoned>.

⁷⁵ Shaffer, *supra* note 61, at 5380-81. The Gaza Marine Field, discovered in 2000, holds about 35 billion cubic meters of natural gas; however, this field lies within the occupied territory of the Palestinian authority. Therefore, Israel could not legally treat this field as within its maritime territory. *Id.*; See also Simon Henderson, *Natural Gas in the Palestinian Authority: The Potential of the Gaza Marine Offshore Field*, THE GERMAN MARSHALL FUND OF THE UNITED STATES: MEDITERRANEAN POLICY PROGRAM, Mar. 2014, at 1, available at <http://www.washingtoninstitute.org/uploads/Documents/opeds/Henderson20140301-GermanMarshallFund.pdf>.

⁷⁶ Shaffer, *supra* note 61, at 5380-81. The Tamar field is estimated to hold 240 BCM of natural gas, the Dalit field is estimated to hold 14 BCM of natural gas, and the Leviathan field is estimated to hold 460 BCM of natural gas. *Id.*

Ministry of National Infrastructure projects this to increase to 12.1 BCM per year by 2020 and 17.9 BCM per year by 2030.⁷⁷ Please see the attached graphic for the full projections.⁷⁸



Two unusual issues relating to Israel’s energy needs concern Israel’s method of water production, as well as Israel’s energy relationship with the Palestinian Authority.⁷⁹ Israel produces much of its water by desalinating seawater, and that process comes at a cost and requires a great deal of energy.⁸⁰ The State of Israel’s Water Authority estimates that the, “energetic and financial cost of production per cubic meter of desalinating water in Israel is respectively, 3.5 kilowatt hours and US 65¢.”⁸¹ Compared to other similar desalination facilities in the world, Israel’s energy and cost efficiency is relatively strong.⁸² The Sorek desalination plant, one of a handful of large desalination plants in Israel, produces about 20% of Israel’s

⁷⁷ Ministry of National Infrastructures, Energy and Water Resources, *Forecast Demand, The Natural Gas Sector*, <http://energy.gov.il/English/Subjects/Natural%20Gas/Pages/GxmsMniNGEconomy.aspx>.

⁷⁸ *Id.*

⁷⁹ Shaffer, *supra* note 61, at 5380.

⁸⁰ *Id.*

⁸¹ Abraham Tenne, State of Israel Water Authority, Desalination Division, *Sea Water Desalination in Israel: Planning, coping with difficulties, and economic aspects of long-term risks*, (Oct. 2010) <http://www.water.gov.il/hebrew/planning-and-development/desalination/documents/desalination-in-israel.pdf>. The energetic and financial costs provided are estimates as of October 2010. *Id.*

⁸² *See id.*

municipal water, totaling, “624,000 cubic meters of potable water each day.”⁸³ The Sorek plant is able to meet a typical family’s water needs for \$300 to \$500 per year.⁸⁴ While desalination is usually a costly and sometimes inefficient method for obtaining drinkable water, it appears that Israel is successfully leading the way to cut down the costs of desalination.⁸⁵

The other unusual energy issue facing Israel is the country’s relationship with the Palestinian Authority. The Palestinian territories of the Gaza Strip and the West Bank face large challenges in providing sufficient electricity for the inhabitants.⁸⁶ In 2010, Palestinian territories were only able to produce electricity to cover 10% of demand.⁸⁷ The other 90% of the electricity demand was supplied through electricity imports, mostly originating from Israel, with some minor support from Jordanian and Egyptian power grids.⁸⁸

Although the Palestinians have been unable to cover their own energy needs, the Gaza Marine field provides hope for the future.⁸⁹ The Gaza Marine field, discovered in 2000 and containing 31 BCM of natural gas, is one of the earlier discoveries of untapped natural gas in the Eastern Mediterranean.⁹⁰ Since the discovery, the gas in the Gaza field has remained unexploited due to failed negotiations between the Palestinian Authority and prospective developers.⁹¹ Political factors may also be playing a role, as Israel could have concerns about the ability of Palestinian political and militant organization Hamas to control and profit from the Gaza field.⁹²

⁸³ Associated Press, *Israel’s desalination program averts future water crises*, Haaretz, May 31, 2014, available at <http://www.haaretz.com/life/nature-environment/1.596270>.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See generally Henderson, *Natural Gas in the Palestinian Authority: The Potential of the Gaza Marine Offshore Field*, *supra* note 75, at 3.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See *id.*

⁹⁰ Jennifer Baker, *Bombing for Oil: Gaza, Israel, and the Levant Basin*, REVOLUTION NEWS, (July 22, 2014), <http://revolution-news.com/bombing-oil-gaza-israel-levant-basin/>.

⁹¹ Dania Akkad, *Dispute breaks out over Palestinian-Israeli gas deal*, News, MIDDLE EAST EYE, (Feb. 25, 2015), <http://www.middleeasteye.net/news/palestinian-israeli-gas-deal-still-despite-claims-top-pa-official-1202224801>.

⁹² Allison Good, *A War over Energy in Gaza?*, THE NATIONAL INTEREST, July 22, 2014, available at <http://nationalinterest.org/feature/war-over-energy-gaza-10923>.

It is legally unclear whether Israel has rights to exploit any part of the Gaza field; however, it appears that the Palestinians could benefit from the field more, considering the Israeli fields of Tamar and Leviathan contain 30 times more natural gas than the Gaza field.⁹³

Although Israel appears to have much to be optimistic about considering the offshore natural gas discoveries,⁹⁴ there are still many obstacles that may prevent Israel from quickly becoming a relevant energy exporter.⁹⁵ Like any state seeking a transition from energy importer to energy exporter, Israel should prioritize and form policy regarding domestic needs, before moving forward with exportation.⁹⁶ Despite the lack of any Israeli laws relating to the consumption of the natural gas, Delek Energy, a private, Israeli owned company with a major stake in the new discoveries, has already announced its plans to export those resources.⁹⁷ Other concerns, such as a European market already flooded with natural gas and issues relating to the infrastructure of potential importing states, may also diminish Israel's ability to capitalize on their offshore resources.⁹⁸

2. Lebanese Energy Sector

Just as Israel's energy policies are highly dependent on political and security issues,⁹⁹ so too are Lebanese energy policies.¹⁰⁰ Unlike Israel, however, much of Lebanon's political issues stem from their own internal governmental ineffectiveness. Such political ineffectiveness has, "proved to be highly disruptive to government projects, and the country's nascent oil and gas sector has been hit with delays."¹⁰¹ For example, the Lebanese government's political deadlocks

⁹³ *Id.*

⁹⁴ U.S. Geological Survey, *supra* note 5.

⁹⁵ Shaffer, *supra* note 61, at 5386.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *See id.* at 5380.

¹⁰⁰ *See generally* MENA industry report: Lebanon's oil and gas potential remains untapped amid tension, *Oil and Gas*, HSBC GLOBAL CONNECTIONS, (Sept. 12, 2014), <https://globalconnections.hsbc.com/uae/en/articles/lebanons-oil-and-gas-potential-remains-untapped-amid-tension>.

¹⁰¹ *Id.*

have led to the postponement of, “the licensing of 10 offshore blocks.”¹⁰² These political issues have also had the effect of dissuading foreign investment into the offshore resources.¹⁰³

The root cause of Lebanon’s political ineffectiveness can be traced to the demographics of the country and the confessionalist republic that has existed since the state’s creation. The United States Central Intelligence Agency provides the following breakdown of Lebanon’s religious sects: Muslim 54% (27% Sunni, 27% Shia), Christian 40.5% (21% Maronite Catholic, 8% Greek Orthodox, 5% Greek Catholic, 6.5% other Christian) Druze 5.6%, and very small numbers of Jews, Baha’is, Buddhists, Hindus, and Mormons.¹⁰⁴ All of these groups coexist in a country that is smaller than the state of Connecticut.¹⁰⁵ Further, the confessionalist system integrates these religious divides into one government, where a given religion is entitled to a certain seat in the government.¹⁰⁶ The president must be a Maronite Catholic, “the Prime Minister a Sunni Muslim and the Speaker of the Chamber of Deputies a Shia Muslim.”¹⁰⁷ Finally, to complicate the sectarian tensions that manifest themselves in the structure of the government, the powerful Shia political and militant group Hezbollah has become a key player in Lebanese politics.¹⁰⁸

Aside from Lebanon’s political struggles, its natural resources have historically been scarce.¹⁰⁹ Lebanon has often been considered a water-rich country in a water-deficient region; however, recent projections demonstrate that Lebanon could encounter a critical water shortage

¹⁰² *Id.*

¹⁰³ *See generally id.*

¹⁰⁴ *Lebanon*, Library, Publications, The World Factbook, CENTRAL INTELLIGENCE AGENCY (last updated June 20, 2014), <https://www.cia.gov/library/publications/the-world-factbook/geos/le.html>.

¹⁰⁵ Lebanon is 5,405 square miles including water, whereas Connecticut is 5,544 square miles including water. *Id.*; *See also US States, Area and Ranking*, ENCHANTED LEARNING, (last accessed Jan. 26, 2014), <http://www.enchantedlearning.com/usa/states/area.shtml>.

¹⁰⁶ *See Brit. Broad. Co., Lebanon Profile, supra* note 18.

¹⁰⁷ *Id.*

¹⁰⁸ *See id.*

¹⁰⁹ U.S. Energy Information Administration, *Overview/Data, Lebanon*, <http://www.eia.gov/countries/country-data.cfm?fips=le> (last updated Mar. 2014).

as soon as 2020.¹¹⁰ Although Lebanon has never produced energy from petroleum, natural gas, or coal, the country is now equipped with the offshore resources to begin development.¹¹¹ Unlike Israel, Lebanon has yet to begin to capitalize on these recoverable resources due to political gridlock.¹¹²

The Lebanese Parliament has yet to approve two pieces of legislation that are critical to the development of the even territorially undisputed marine oil and gas fields.¹¹³ One piece of legislation relates to the, “division of Lebanon’s Exclusive Economic Zone into blocs.”¹¹⁴ The other involves Lebanon’s legal relationship to the bid-winning companies that will be developing the resources in their respective blocs.¹¹⁵ The reason for the political ineffectiveness regarding this legislation is unclear; however, political corruption and external political influences are likely playing a role.¹¹⁶ This stalemate is leaving Lebanon behind while countries in relatively similar energy situations, like Israel and Cyprus, continue to push forward with licensing and exploitation of energy resources.¹¹⁷

Despite Lebanon’s political obstacles, the country may still be optimistic about its future in energy considering the still unknown quantity of recoverable resources, as well as Lebanon’s connection to the Arab Gas Pipeline.¹¹⁸ The connection to the Arab Gas Pipeline could serve as a potentially lucrative tool for Lebanon to use to export energy to Europe through Turkey.¹¹⁹

¹¹⁰ Lebanese Centre for Water Conservation and Management, United Nations Development Programme in Lebanon, http://www.lb.undp.org/content/lebanon/en/home/operations/projects/environment_and_energy/lebanese-centre-for-water-conservation-and-management--lcwcm-.html.

¹¹¹ See generally *MENA industry report: Lebanon’s oil and gas potential remains untapped amid tension*, *Oil and Gas*, *supra* note 100.

¹¹² See generally *id.*

¹¹³ Carine Torbey, *Political impasse stops Lebanon exploiting oil resources*, *Middle East News*, BBC.COM, (Feb. 24, 2015) <http://www.bbc.com/news/world-middle-east-31604143>.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ See *id.*

¹¹⁷ See *id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

European countries in general would like to decrease their reliance on Russia for energy and could turn to a country like Lebanon, with some preexisting infrastructure in the Arab Gas Pipeline.¹²⁰ The political instability in Syria, however, could become devastating to Lebanon's European exportation prospects.¹²¹ In order to export to Europe, Lebanon can only go through Syria to the North, which can in turn go through Turkey, and thus to Europe.¹²² Therefore, Lebanon's ability to rely on Syria as an economic partner is largely connected to Lebanon's future in energy exportation.¹²³

3. Cypriot Energy Sector

Cyprus has traditionally relied on tourism, business services, and shipping to support its national economy,¹²⁴ but much changed in 2011, when Noble Energy announced its discovery of the Aphrodite natural gas field, contained within Cyprus' EEZ.¹²⁵ Reports as of early 2015 indicate that the Aphrodite field contains around 127 BCM of natural gas.¹²⁶ This discovery affords Cyprus an incredible opportunity to secure national energy stability and enter into the world energy trade.¹²⁷

Cyprus has considered building a liquefied natural gas ("LNG") terminal in order to liquefy and export to Europe and East Asia.¹²⁸ Though such a project would cost billions of dollars, Cyprus could reach out to Israel, Lebanon, large international oil and gas companies, and other parties that could benefit from the terminal, in order to attract financial assistance for the

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *See generally id.*

¹²³ *See generally id.*

¹²⁴ *UPDATE 1-Noble set to declare Cyprus natural gas find viable –minister*, REUTERS.COM, (Mar. 17, 2015), <http://www.reuters.com/article/2015/03/17/cyprus-natgas-noble-idUSL6N0WJ1RI20150317>.

¹²⁵ Karen Ayat, *Cyprus' LNG project continues despite complicating factors*, TOPICS, NATURAL GAS EUROPE, (Jan. 21, 2014), <http://www.naturalgaseurope.com/cyprus-Ing-project-continues>.

¹²⁶ *Noble Energy: No Intention to Depart Cyprus*, CYPRUS GAS NEWS, (Feb. 3, 2015), <http://www.cyprusgasnews.com/archives/7100/noble-energy-no-intention-to-depart-cyprus/>.

¹²⁷ Ayat, *supra* note 125.

¹²⁸ *Id.*

project.¹²⁹ Israel and Lebanon might be inclined to participate because Cyprus could offer those countries the opportunity to have their own natural gas liquefied by the Cyprus terminal, and then distributed to other markets.¹³⁰ As of now, Cyprus has tabled this option,¹³¹ but building the LNG pipeline certainly remains a unique possibility.

In 2015, Greek Cyprus President Nicos Anastasiadis reached out to Russia in an attempt to find a new mediator to resolve the increasingly burdensome governmental divide on the island.¹³² The lack of governmental unity in Cyprus is becoming increasingly problematic because Turkey has maintained the position that Greek Cyprus should not begin exploiting the country's offshore oil and gas until a final settlement between both sides of the island is completed.¹³³ As of now, peace talks between the Greek and Turkish Cyprus governments have been suspended; however, United Nations Special Adviser on Cyprus, Espen Barth Eide, is optimistic that talks will resume at some point in the spring of 2015.¹³⁴

III. RESOLVING MARITIME DISPUTES WITH INTERNATIONAL LAW

A. UNCLOS

UNCLOS¹³⁵ is, “comprehensive attempt to deal with... issues concerning the high seas and territorial and coastal areas, including ownership, resource exploitation, and passage rights.”¹³⁶ UNCLOS sets forth six general categories of territorial waters, including one category that is only relevant to archipelagic states.¹³⁷ The other five main categories, beginning from

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *UPDATE 1-Noble set to declare Cyprus natural gas find viable –minister, supra* note 124.

¹³² Emre Diner, *Greek Cyprus wants Russia to mediate reunification of island*, DAILY SABAH, Mar. 9, 2015, <http://www.dailysabah.com/politics/2015/03/09/greek-cyprus-wants-russia-to-mediate-reunification-of-island>.

¹³³ Agence France-Presse, *Israel urges Turkey to respect Cyprus gas exploration*, Agence France-Presse, THE TIMES OF ISRAEL, Nov. 5, 2014, <http://www.timesofisrael.com/israel-urges-turkey-to-respect-cyprus-gas-exploration/>.

¹³⁴ *Cyprus peace talks to resume soon, says UN envoy*, ANADOLU AGENCY, Mar. 17, 2015, <http://www.aa.com.tr/en/politics/479885--cyprus-peace-talks-to-resume-soon-says-un-envoy>.

¹³⁵ *See generally* United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

¹³⁶ Jay M. Zitter, *Construction and Application of United Nations Convention on the Law of the Sea—Global Cases*, 21 A.L.R. Fed. 2d 109 (2007).

¹³⁷ *See generally* 1833 U.N.T.S. 397.

nearest to the coast and extending outward toward international waters, consist of internal waters,¹³⁸ territorial waters,¹³⁹ contiguous zone,¹⁴⁰ EEZ,¹⁴¹ and continental shelf.¹⁴²

Under UNCLOS, a country's EEZ, "shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured."¹⁴³ Further, the EEZ will be found beyond and adjacent to the territorial waters,¹⁴⁴ which also includes the contiguous zone.¹⁴⁵ Another important EEZ provision provides that, "the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources [in the EEZ]."¹⁴⁶

Cyprus and Lebanon have both ratified UNCLOS,¹⁴⁷ however, Israel is not a party to the convention.¹⁴⁸ Nevertheless, UNCLOS is an important guide to resolving the dispute because of its mostly agreed upon status as customary, and therefore binding, international law.¹⁴⁹ Regardless of how Israel and Lebanon eventually agree upon their maritime boundaries, it is likely that the principles of UNCLOS will play a major role.¹⁵⁰

¹³⁸ *Id.* at Part II, Sec. 2, Art. 8.

¹³⁹ *Id.* at Art. 3.

¹⁴⁰ *Id.* at Sec. 4, Art. 33.

¹⁴¹ *See generally id.* at Part V.

¹⁴² *See generally id.* at Part VI.

¹⁴³ *Id.* at Part V, Art. 57.

¹⁴⁴ *Id.* at Art. 55.

¹⁴⁵ *See id.* at Part II, Sec. 4, Art. 33.

¹⁴⁶ *Id.* at Part V, Art. 56.

¹⁴⁷ Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as at 3 October 2014, Oceans & Law of the Sea, United Nations (last updated. Jan. 7, 2015).

¹⁴⁸ Wählich, *supra* note 3.

¹⁴⁹ *Id.*

¹⁵⁰ Henderson, *Cyprus Helping with Israel-Lebanon Maritime Dispute*, *supra* note 4. UNCLOS is likely to play a major role because Lebanon is a ratified party to the convention, Israel accepts most of the convention's principles, and UNCLOS is generally considered binding customary international law. *Id.*

1. Annex V Conciliation

Because Lebanon is a party to UNCLOS,¹⁵¹ conciliation would be one of the various procedural options available to resolve the dispute under UNCLOS.¹⁵² A state party to UNCLOS, “may invite the other party [to the dispute]...to submit the dispute to conciliation.”¹⁵³ If Israel accepted Lebanon’s invitation, and the two states could agree upon the conciliation procedure, then either state could submit the dispute to the chosen procedure.¹⁵⁴ However, if Israel either rejected Lebanon’s invitation, or if the two countries could not agree upon a conciliation procedure, then conciliation would be terminated.¹⁵⁵

The parties to the conciliation would have flexibility in choosing their conciliators because the parties are free to choose from a list of conciliators that is maintained by the United Nations Secretary-General;¹⁵⁶ however, the conciliators from the list are only preferred by UNCLOS, not required.¹⁵⁷ Furthermore, each party may choose one conciliator who is a state national of that party,¹⁵⁸ which could provide a good balance between purely bilateral negotiations on the one hand and mere third party dictation of the final resolution on the other. If the state parties cannot agree upon the chairman of the conciliation within 30 days of when the other conciliators have been chosen, then either state may request that the United Nations Secretary-General appoint the chairman of the conciliation from the United Nations maintained list, and with consultation of the parties.

The conciliation commission has a maximum of 12 months to provide, “conclusions on all questions of fact or law relevant to the matter in dispute,” including recommendations deemed appropriate for an amicable settlement, if no agreement has already been reached.¹⁵⁹ Although

¹⁵¹ Wählisch, *supra* note 3.

¹⁵² 1833 U.N.T.S. 397 at Annex XV, Sec. 1, Art. 284.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at Annex V, Sec. 1, Art. 3.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at Art. 7.

there are many benefits to the conciliation procedure, the main disadvantage is that the final report of the commission is not binding on the state parties.¹⁶⁰

2. Arbitration under UNCLOS

An arbitral tribunal under UNCLOS is substantially similar to conciliation with regard to the procedure involved in appointing arbitrators.¹⁶¹ The main difference between these two methods of dispute resolution boils down to the binding nature of arbitral decisions.¹⁶² Unlike conciliation under UNCLOS,¹⁶³ the parties to the dispute shall comply with the decision of the arbitral tribunal and that decision is final.¹⁶⁴

3. ITLOS

If all peaceful negotiations have failed, and recourse to conciliation pursuant to UNCLOS was unsuccessful or cannot be procedurally agreed upon by Israel and Lebanon, then UNCLOS provides that the parties should resort to one of the following options: (a) ITLOS;¹⁶⁵ (b) the International Court of Justice;¹⁶⁶ (c) an arbitral tribunal;¹⁶⁷ and or (d) a special arbitral tribunal.¹⁶⁸

¹⁶⁰ *Id.*

¹⁶¹ *See generally id.* at Annex VII; *see id.* at Annex V.

¹⁶² *Id.* at Annex VII, Art. 10-11.

¹⁶³ *See generally id.* at Annex V.

¹⁶⁴ *Id.* at Annex VII, Art. 11. If, however, appellate procedures are agreed upon in advance, then those appellate procedures may be employed. *Id.*

¹⁶⁵ In accordance with Annex VI of UNCLOS (concerning the organization, competence and procedure of ITLOS, as well as the Seabed Disputes Chamber, and procedure of amendments). *See generally id.* at Annex VI, Sec. 2, Art. 21.

¹⁶⁶ *See generally* Statute of the International Court of Justice, (June 26, 1945), available at <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>.

¹⁶⁷ In accordance with Annex VII of UNCLOS (concerning arbitration). *See generally* 1833 U.N.T.S. 397 at Annex VII.

¹⁶⁸ In accordance with Annex VIII of UNCLOS (concerning special arbitration). *See generally id.* at Annex VIII. This special arbitration provision is not applicable to the context of the Israeli-Lebanese maritime border conflict because the special arbitral tribunal would not have subject-matter jurisdiction over a maritime delimitation dispute. *Id.* at Annex VIII, Art. 1.

ITLOS is a judicial body that was created through UNCLOS for the purpose of adjudicating conflicts that are based on the interpretation and application of the convention.¹⁶⁹ ITLOS consists of 21 members, who are elected in consideration of equitable geographical fairness and, “among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea.”¹⁷⁰ The members of ITLOS retain the authority to decide the procedure of the tribunal.¹⁷¹ ITLOS must decide the legal issues by a majority vote of the present members; the President of the tribunal is given the deciding vote in the event of a tie.¹⁷² Finally, ITLOS’ decision as to any case brought before it is, “...final and shall be complied with by all the parties to the dispute.”

B. The International Court of Justice

Although ITLOS was created as a specialized judicial body tasked with resolving maritime disputes, other international tribunals exist. UNCLOS provides that states need not automatically submit their dispute to ITLOS once settlement negotiations break down.¹⁷³ When a state signs, ratifies or accedes to UNCLOS, the state is free to declare which of four general adjudicatory procedures it wishes to abide by in the event of a conflict regarding the interpretation and application of the convention.¹⁷⁴ In this case, neither Lebanon nor Cyprus have submitted any type of declaration, reservation, or understanding with respect to the choice of procedure provision or any other provision in the convention.¹⁷⁵

The ICJ is another international tribunal that would be available to Lebanon and Israel. The ICJ is the United Nations judicial tribunal tasked with deciding cases involving state

¹⁶⁹ *The Tribunal, International Tribunal for the Law of the Sea*, <https://www.itlos.org/index.php?id=15&L=0>; see generally 1833 U.N.T.S. 397 at Annex VI.

¹⁷⁰ 1833 U.N.T.S. 397 at Part XV, Sec. 2, Art. 287.

¹⁷¹ *Id.* at Annex VI, Sec. 1, Art. 16.

¹⁷² *Id.* at Annex VI, Sec. 3, Art. 29.

¹⁷³ *See id.* at Annex VI, Sec. 1, Art. 2.

¹⁷⁴ *See id.* at Part XV, Sec. 2, Art. 287.

¹⁷⁵ United Nations, *United Nations Conventions on the Law of the Sea, Declarations made upon signature, ratification, accession, succession, or anytime thereafter*, OCEANS & LAW OF THE SEA, UNITED NATIONS, available at http://www.un.org/depts/los/convention_agreements/convention_declarations.htm.

parties.¹⁷⁶ Neither Lebanon nor Israel has declared the ICJ's jurisdiction to be compulsory;¹⁷⁷ therefore, both of these United Nations member states would have to consent to the jurisdiction of the court, in the context of the maritime conflict, in order for the ICJ to decide the case under proper jurisdictional grounds.¹⁷⁸

The ICJ's statute provides that the Court will decide cases in accordance with international law.¹⁷⁹ Further, the Court will apply international conventions, international custom, the general principles of law recognized by civilized nations, and the judicial decisions and teachings of the most highly qualified personnel from the various nations.¹⁸⁰ The Court would likely give great weight to the maritime delimitation provisions contained in UNCLOS because the convention is both an international convention and is generally considered to be customary international law.¹⁸¹

Although the ICJ is likely to apply the same law as ITLOS, there are still important factors that may influence which of these judicial alternatives are more favorable to Israel and Lebanon. The tribunals differ greatly in their length of existence, number of cases decided, and judicial membership. First, the ICJ was established in 1945;¹⁸² whereas ITLOS was created in conjunction with UNCLOS in 1982.¹⁸³ Second, the ICJ has decided well over 100 cases and has given 26 advisory opinions,¹⁸⁴ whereas ITLOS has decided 23 cases and has given two advisory

¹⁷⁶ 33 U.N.T.S. 993 at Art. 36.

¹⁷⁷ United Nations, *International Court of Justice, Declarations Recognizing the Jurisdiction of the Court as Compulsory*, available at <http://www.icj-cij.org/jurisdiction/?p1=5&p2=1&p3=3>.

¹⁷⁸ 33 U.N.T.S. 993 at Art. 36.

¹⁷⁹ *Id.* at Art. 38.

¹⁸⁰ *Id.*

¹⁸¹ Wählisch, *supra* note 3.

¹⁸² 33 U.N.T.S. 993.

¹⁸³ 1833 U.N.T.S. 397 at Annex VI.

¹⁸⁴ United Nations, *International Court of Justice, List of Cases referred to the Court since 1946 by date of introduction*, available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=2>; United Nations, *International Court of Justice, List of Advisory Proceedings referred to the Court since 1946 by date of introduction*, available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=4>.

opinions.¹⁸⁵ Third and finally, the ICJ consists of 15 judicial members, each from a different country, and each elected for possessing, “the qualifications required in their respective countries for appointment to the highest judicial offices, or [those who] are jurisconsults of recognized competence in international law.”¹⁸⁶ Thus, no specialized expertise in the field of the law of the sea is necessarily required for membership on the ICJ.¹⁸⁷ Whereas, the judicial membership of ITLOS is composed of members who, “are of recognized competence in the field of the law of the sea.”¹⁸⁸

IV. BREAKING DOWN RECENT MARITIME CONFLICTS

A. *Indonesia-Philippine Maritime Conflict*

Reference to another recently resolved maritime dispute might help clarify how Cyprus, Israel and Lebanon can work to resolve their current maritime dispute. After 20 years of uncertainty and negotiations, Indonesia and the Philippines delimited their maritime boundaries in May of 2014 by means of mutual agreement.¹⁸⁹ Similar to the Eastern Mediterranean conflict, Indonesia and the Philippines have overlapping EEZ’s.¹⁹⁰ The conflict was by no means identical, as Indonesia and the Philippines are both archipelagic states;¹⁹¹ however, there are sufficient similarities that provide a helpful comparison.

Indonesia and the Philippines are both ratified members of UNCLOS, but even with that mutual starting point, the agreement still took 20 years to negotiate.¹⁹² Indonesia and the

¹⁸⁵ United Nations, *International Tribunal for the Law of the Sea*, List of Cases, available at [http://www.itlos.org/index.php?id=35&L=1AND1%253D1-](http://www.itlos.org/index.php?id=35&L=1AND1%253D1-;); United Nations, *International Tribunal for the Law of the Sea*, Advisory Proceedings, available at <http://www.itlos.org/index.php?id=38&L=1onfocus%3DblurLink%28this%29%3B>.

¹⁸⁶ 33 U.N.T.S. 993 at Art. 2.

¹⁸⁷ *See id.*

¹⁸⁸ 1833 U.N.T.S. 397 at Annex VI, Sec. 1, Art. 2.

¹⁸⁹ Philippines Dept. of Foreign Affairs, *Q&A on the Philippines and Indonesia agreement on the Exclusive Economic Zone Boundary*, OFFICIAL GAZETTE, (May 23, 2014), <http://www.gov.ph/2014/05/23/faqs-on-the-philippines-and-indonesia-agreement-on-the-delimitation-of-eez-boundary/>

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

Philippines established the Joint Permanent Working Group on Maritime and Ocean Concerns in 1994 to facilitate their bilateral negotiations.¹⁹³ After years of negotiations, and the decision to accelerate negotiations in 2011, Indonesia and the Philippines were finally able to peacefully resolve their maritime border dispute in 2014.¹⁹⁴ Indonesian President, Susilo Bambang Yudhoyono stressed the importance of peaceful resolution, especially in the context of maritime disputes.¹⁹⁵ Philippine President Benigno Aquino also emphasized the benefits of peaceful negotiations, as well as the need to uphold the rule of law.¹⁹⁶

Perhaps the key lesson to take away from the Indonesia-Philippine conflict is the persistence of the two countries in maintaining peaceful negotiations, even after years of unsuccessful negotiations. The diplomatic relationship between Indonesia and the Philippines is not comparable to seemingly nonexistent diplomatic relationship between Israel and Lebanon; however, the maritime conflict is similar and the operating body of customary international law, UNCLOS, is the same. Therefore, it would be prudent for Israel and Lebanon to observe the patience and persistence of Indonesia and the Philippines in resolving their maritime conflict, in order to reach the economic benefits that come along with peaceful resolution and exploitation of undisputed resources.

B. State of the Cyprus-Israel-Lebanon Maritime Conflict

In 2007, Lebanon and Cyprus negotiated an agreement delimiting their maritime boundaries.¹⁹⁷ While the Cypriot government ratified the 2007 agreement, the Lebanese government has still not ratified the agreement.¹⁹⁸ Lebanon did, however, twice submit coordinates to the United Nations Secretary-General in 2010, indicating the Lebanese view of its maritime boundaries with Israel to the south and Cyprus to the southwest.¹⁹⁹ The issue with the

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Delon Porcalla and Pia Lee-Brago, *Phl, Indonesia delineate maritime boundaries*, THE PHILIPPINE STAR, May 24, 2014, available at <http://www.philstar.com/headlines/2014/05/24/1326584/phl-indonesia-delineate-maritime-borders>.

¹⁹⁶ *Id.*

¹⁹⁷ Wählisch, *supra* note 3.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

coordinates that Lebanon submitted to the United Nations is not only that they are different from the coordinates specified in the 2007 Lebanon-Cyprus agreement, but that they also include an area that overlaps with territory claimed by Israel.²⁰⁰

In 2010, Israel and Cyprus completed an agreement delimiting their maritime borders.²⁰¹ The 2010 agreement, “used similar coordinates to the Lebanon-Cyprus Maritime Agreement.”²⁰² Nevertheless, Lebanon continues to dispute the validity of the 2007 Lebanon-Cyprus agreement by providing various arguments regarding the conditions under which the agreement was negotiated.²⁰³ Lebanon apparently considered the 2007 agreement with Cyprus a temporary solution, subject to a future agreement between Lebanon and Israel.²⁰⁴

The main issue with the inconsistent coordinates involves “Point 1”.²⁰⁵ Point 1 refers to the southern most coordinate that was agreed to in the 2007 Lebanon-Cyprus agreement.²⁰⁶ Three years later, Cyprus, “negotiated a line with Israel that begins at Point 1 and stretches further south.”²⁰⁷ Lebanon now disputes the Israel-Cyprus agreement and characterizes the agreement as contrary to international law and as representing an, “assault on Lebanese sovereignty.”²⁰⁸

Lebanon’s argument, with respect to the principles of international law, is based on a plain reading and application of UNCLOS and the location of a country’s EEZ. With regard to EEZ’s, UNCLOS provides that, “the exclusive economic zone shall not extend beyond

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Henderson, *Cyprus Helping with Israel-Lebanon Maritime Dispute*, *supra* note 4.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ Letter from the Republic of Lebanon to United Nations Secretary-General (Sept. 3, 2011) http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/lbn_re_isr__listofcoordinates_e.pdf.

200 nautical miles from the baselines from which the breadth of the territorial sea is measured.”²⁰⁹ However, when states lie within 400 nautical miles of each other, those states are expected to come to a mutual agreement.²¹⁰ Israel borders Lebanon to the South, the Mediterranean lies to the west, and the island of Cyprus also lies to the west, within 400 nautical miles of both Israel and Lebanon. UNCLOS also suggests that the maritime border between three countries such as these should be located at a point equidistant between the three countries.²¹¹ Point 1, however, lies about eleven miles north of where the UNCLOS contemplated point would be.²¹² This eleven-mile gap created a 300 square mile area that remains in dispute.²¹³

V. ANALYSIS OF POTENTIAL DISPUTE RESOLUTION ALTERNATIVES

Although a multitude of methods exist for resolving maritime disputes, the tense political relationship between Israel and Lebanon,²¹⁴ limits the prospects of bilateral negotiations. Therefore, options such as referring the dispute to an international tribunal, or proceeding to arbitration, seem to have the best likelihood of occurring and succeeding.

A. Options Under UNCLOS

1. Eliminate Non-peaceful Alternatives

UNCLOS provides that any dispute over the interpretation or application of the convention shall be settled by peaceful means in accordance with the United Nations Charter.²¹⁵ Although this may be one of the more obvious and self-explanatory rules provided by the convention, it cannot be stressed enough in the context of an Israeli-Lebanese territorial dispute. Both countries are likely fearful of what the other may do considering the history of Israeli invasions, countless bombings and attacks launched from both countries, and the rise of Hezbollah in Lebanon and its opposition to the Israeli state.²¹⁶ Both Israel and Lebanon have the

²⁰⁹ 1833 U.N.T.S. 397 at Part V, Art. 57.

²¹⁰ Henderson, *Cyprus Helping with Israel-Lebanon Maritime Dispute*, *supra* note 4.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *See generally* Murden, *supra* note 9.

²¹⁵ 1833 U.N.T.S. 397 at Part XV, Sec. 1, Art. 279.

²¹⁶ *See generally* Murden, *supra* note 9.

chance to turn the natural gas sector of their economies into important pieces of their long-term national economic stability;²¹⁷ therefore, Israel and Lebanon would be wise to eliminate all violent dispute resolution options.

2. Annex V Conciliation

Annex V Conciliation under UNCLOS does not appear to be a well-suited dispute resolution procedure for the Israeli-Lebanese maritime conflict. The main issue with Annex V conciliation is the non-binding nature of the conciliators' decision. Assuming Israel and Lebanon successfully submitted the dispute to conciliation, an unsatisfied state would not be incentivized to follow the conciliator's non-binding report. Either state could simply reject the conciliator's recommendations, and conciliation would be terminated.²¹⁸ Finding a binding dispute resolution alternative is pragmatic in situations involving diplomatically adverse countries; however, Lebanon should at least consider initiating conciliation with Israel in order to begin a diplomatic relationship over this dispute, and possibly reach a non-binding result that could create a path toward an amicable resolution.

3. ITLOS

The initial issue with resolution under ITLOS is that Israel is not a state party to UNCLOS.²¹⁹ Therefore, ITLOS may only obtain jurisdiction to decide a case involving Israel if Israel expressly agrees to confer jurisdiction over the dispute to ITLOS.²²⁰ Consistent with the subject of the dispute, Lebanon and Israel could confer jurisdiction to ITLOS by signing a bilateral treaty.²²¹ However, due to the rough political relationship between the two countries, a third-party state, such as the United States, could help facilitate this agreement.²²² By involving a third-party state, Israel and Lebanon would avoid the unnecessary frustrations that come with

²¹⁷ Wählisch, *supra* note 3.

²¹⁸ 1833 U.N.T.S. 397 at Annex V, Sec. 1, Art. 8.

²¹⁹ Wählisch, *supra* note 3.

²²⁰ 1833 U.N.T.S. 397 at Annex VI, Sec. 2, Art. 20.

²²¹ *Id.*

²²² UNCLOS does not limit agreements conferring jurisdiction to ITLOS to only agreements directly between the states involved in the dispute. *See id.*

bilateral negotiations. Assuming the jurisdictional issue could be resolved, once ITLOS heard and decided the case, the decision of the tribunal would be final and binding on both Israel and Lebanon.²²³ The binding nature of the tribunal's decision,²²⁴ the relevant expertise of the judges,²²⁵ as well as existing precedent regarding a maritime delimitation case,²²⁶ create an appealing, albeit far less than perfect, resolution option that Israel and Lebanon should seriously consider.

4. Arbitration Under UNCLOS

Arbitration, rather than conciliation, would better serve the interests of Lebanon and Israel. If either party ignored the decision of the arbitral tribunal, then that party would be in direct violation of binding international law,²²⁷ whereas, either party would be legally within its rights to ignore the decision of the conciliation commission.²²⁸ Israel and Lebanon might have some concerns about submitting this dispute to binding arbitration, and therefore, it would be prudent for the two parties to agree to an appellate procedure.²²⁹

Israel and Lebanon could agree to an exclusive appellate procedure that would require the unsatisfied party or parties to submit the dispute to a separate tribunal, perhaps ITLOS or the ICJ. If either country decided to seek an appeal of the arbitrators' decision, then the other country would also be legally required to follow through with the previously agreed upon appellate procedure. Submitting to arbitration, with the option of appeal, may very well be the best compromise that Israel and Lebanon can find. Because both the arbitrators and any appellate body would likely apply UNCLOS as customary international law, Israel and Lebanon would gain the opportunity to

²²³ 1833 U.N.T.S. 397 at Annex VI, Sec. 3, Art. 33.

²²⁴ *Id.*

²²⁵ *Id.* at Annex VI, Sec. 1, Art. 2.

²²⁶ Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh v. Myanmar), Case No. 16, Order of Mar. 14, 2012, judgment and other related documents available at <http://www.itlos.org/index.php?id=108&L=1AND1%253D1->. The tribunal decided its first maritime delimitation case in 2012, in the case concerning Bangladesh and Myanmar. *Id.*

²²⁷ *See* 1833 U.N.T.S. 397 at Annex VII, Art. 11.

²²⁸ *See id.* at Annex V, Sec. 1, Art. 7.

²²⁹ *Id.* at Annex VII, Art. 11.

better understand how their dispute should be decided according to the applicable body of law, while at the same time maintaining the option of overriding the initial binding decision.

B. The International Court of Justice

It is unlikely that ITLOS and the ICJ would come to substantially differing conclusions regarding the placement of Israel and Lebanon's maritime boundaries. Because ITLOS would apply UNCLOS, and the ICJ would most likely apply the convention as customary international law, Israel and Lebanon must think pragmatically, and find a way to agree on a binding settlement procedure. Both countries might agree that the ICJ is the most ideal of the available alternatives due to its history and legacy in international law, at least as compared to the less experienced ITLOS. One fresh scar that might deter Israel from agreeing to submit to the ICJ relates to the wall that Israel is constructing throughout the country. In 2004, the ICJ rendered an advisory opinion, finding the wall unlawful as a violation of the Palestinian's right to self-determination.²³⁰ Israel maintains that the wall serves to provide security to citizens.²³¹ The 2004 ICJ decision is sufficiently concerning to raise questions as to whether Israel would agree to submit their maritime dispute to the Court.

VI. CONCLUSION

The discoveries of natural gas in the Eastern Mediterranean are both blessings and curses for the people and governments in the region. The discoveries have given Cyprus, Israel and Lebanon a tremendous opportunity to bolster their economies and become self-sufficient with regard to their energy needs. On the other hand, the troublesome political histories of the countries have, in some ways, cursed their ability to both agree on maritime boundaries and begin to exploit the resources.

The discussion of the various procedural alternatives available to Israel and Lebanon for resolving their dispute demonstrates that it will be difficult to escape the language and force of UNCLOS. Bilateral negotiations would allow Israel and Lebanon to avoid the legal principles in UNCLOS and determine their own boundaries; however, a bilateral agreement delimiting the boundaries appears unlikely considering the present diplomatic relationship. Because submitting

²³⁰ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136 (Sept. 7).

²³¹ Connor Gaffey, *Israeli Separation Barrier Threatens to Divide Bethlehem Christians*, NEWSWEEK, Feb. 23, 2015, available at <http://www.newsweek.com/israeli-separation-barrier-threatens-divide-bethlehem-christians-308787>.

the dispute to one binding tribunal might scare away one or both countries, the best option may be a more fragmented approach. Israel and Lebanon should submit their dispute to a binding tribunal, such as an arbitral tribunal under UNCLOS, and then provide for an exclusive appellate procedure, through which a second, and superseding, binding decision would be given. Whatever decision the countries ultimately make, it would be prudent to dispose of non-peaceful alternatives and seek resolution through an unbiased international body, in order to begin to realize the full economic potential of the offshore fields.