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The Naval Blockade of the Gaza Strip: A Law of the Sea Perspective

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INTRODUCTION

Since the early Nineties the Gaza Strip, an area of forty-two kilometers of coast facing the Eastern Mediterranean Sea belonging to the State of Palestine, has undergone increasing limitations of jurisdiction over its maritime zones generated under international law. These limitations have been imposed unilaterally by the State of Israel through the instrument of the naval blockade, an instrument that has been used several times throughout history in different declinations and with different modalities. The Israeli blockade over the maritime zones of Gaza affects most of the aspects, if not all of them, of Palestine and other States' uses of the seas that otherwise would have been allowed under the law of the sea in the area. The research question that this work will try to answer to is primarily whether or not the Israeli naval blockade on Gaza is allowed with the current modalities under international law, and subsequently how the naval blockade influences the legal status of and the access to the maritime zones of the Gaza Strip. These issues will be analyzed under the lens of the law of the sea which, given its nature as a branch of international law open for integration, will be interconnected in the research with other branches of international law, mainly humanitarian and environmental.

The consequences that the naval blockade entails for the main aspects of ocean usage will be analyzed in two separate parts. Firstly, the focus will be on the legal basis of the Israeli naval blockade on the Gaza Strip and the legality of its enforcement: after a brief background description of the historical use of a naval blockade and the legal basis that allows for its use under international law, the analysis will focus on the legal basis of the Israeli blockade itself and on the legality of its enforcement. In this case it will be helpful to recall a recent case that focused the attention of the international community on these issues, the 2010 *Mavi Marmara* case. Following the track of other assessments of the case that have already been thoroughly made, after describing the facts, the reactions of the Parties to the dispute and of the international community, the focus will be on whether or not the Israeli modalities of the naval blockade are licit under international law and whether or not Israel is allowed to interfere with the jurisdiction of the flag State in international waters in order to ensure its national security against an armed attack by terrorist groups. In this analysis the legal instruments that will be used are mainly the 1982 United Nations Convention on the Law of the Sea (UNCLOS)¹, a framework convention considered widely as the 'constitution of the seas' and source of international customary law, and the 1994 San Remo Manual on International Law Applicable to Armed Conflicts at Sea, a manual created

¹ United Nations Convention on the Law of the Sea, signed 10 December 1982, entry into force 16 November 1994, full text available at: http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

by naval and legal experts listing the principles of humanitarian law that are applicable to an armed conflict taking place in marine and coastal areas.

In the second part the analysis will move its focus to the Gaza Strip access to the sea and its resources under the naval blockade. Before anything else, the primary task is to identify which are the maritime zones that the Gaza Strip generates, and which should be their boundaries under international law, in interaction with the other boundaries in the Eastern Mediterranean. The focus will then move on how the blockade influences this delimitation, analyzing the treaties and the sources of customary international law that apply to this case, mainly UNCLOS and the Oslo Peace Agreements between Israel and Palestine. Once the maritime zones of Palestine in the Mediterranean are described, the attention will be on the modalities by which Palestine can access to the resources contained in these zones. Firstly, the focus will be on how the naval blockade affects the access to living resources and the consequences that the restrictions have on the marine environment of the Gaza Strip. Here the main instruments used will be UNCLOS and instruments of international environmental law, e.g. the 1992 Convention on Biological Diversity (CBD)², UNEP's 1992 Agenda 21³ and the 1995 FAO Code of Conduct for Responsible Fisheries⁴. Subsequently, the scope of the analysis will move on how the blockade affects Gaza's access to non-living resources: using UNCLOS, there will firstly be a description of what would be Palestine's right to exploit its resources under international law, to secondly move on to what the actual access to non-living resources is, using the several reports published concerning oil and gas in the area. To conclude, the analysis will focus also on how the limited access to energy sources affects the population of the Gaza Strip.

² Convention on Biological Diversity, signed 5 June 1992, effective from 29 December 1993, full text available at <https://www.cbd.int/convention/text/default.shtml>.

³ A non-binding, voluntarily implemented action plan of the United Nations with regard to sustainable development. It is a product of the Earth Summit (UN Conference on Environment and Development) held in Rio de Janeiro, Brazil, in 1992. Full text available at <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=52>.

⁴ This Code is voluntary. However, certain parts of it are based on relevant rules of international law, including those reflected in the UNCLOS. The Code also contains provisions that may be or have already been given binding effect by means of other obligatory legal instruments amongst the Parties. Full text available at <http://www.fao.org/docrep/005/v9878e/v9878e00.htm>.

1. ASSESSMENT OF THE NAVAL BLOCKADE ON THE GAZA STRIP UNDER A LAW OF THE SEA PERSPECTIVE

1.1 INTRODUCTION

The main principle of the law of the sea that is to be known here is that all vessels sailing on the high seas are required to fly the flag of the State in which the vessel is registered. Once on the high seas, vessels are under the exclusive jurisdiction of the flag State, thus entailing that any unauthorized interferences with the vessel will result in a violation of the sovereignty of the flag State. This principle is stated at Article 92 of UNCLOS, a framework convention that was intended to be a codification of the existing customary international law. Although Israel is not a Party to the Convention⁵, the fact that more than a hundred and fifty States have signed it reflects the fact that it is well established international customary law. UNCLOS is usually referred to as a typical example of a convention that codifies the existing customary international law and that is therefore applicable to all States. In the specific, it is widely accepted that Parts II and VII regulating the territorial sea and the high seas codified pre-existing customary law while the ‘new regimes’, as those in Part V (EEZ) and XII (protection of the marine environment), were part of a group of norms that was crystallizing into customary law.⁶ It should not surprise to see that the Part of UNCLOS that has encountered the most reservations, Part XI on the International Seabed Area, was the one created without a counterpart in customary law.⁷

There are nevertheless exceptions to the exclusive jurisdiction of the flag State. Part VII of the Convention entails enforcement provisions built upon state practice deriving from international customary law and the 1958 Geneva Convention. Article 110 confers upon authorized ships the right of visit of certain ships under certain criteria. Starting from the basis of freedom of navigation on the high seas, warships or other authorized ships according to Article 110 have the right to interfere with such freedom when there are reasonable grounds to believe that a vessel is engaged in those activities enlisted at paragraph 1, e.g. piracy, slave trade, unauthorized broadcasting or sailing without nationality. The right of visit can also be extended to a further inspection if that is considered necessary to confirm or remove suspicion. If a right of visit is exercised against a vessel and the suspicion proves to be unfounded, the UNCLOS makes clear that the delayed ship shall be compensated for any loss or

⁵ Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as at 3 October 2014 available at http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm.

⁶ H. RINGBOM, *European Union Maritime Safety Policy and International Law*, Leiden, 2008, p.21.

⁷ Idem. For a closer look on the *status* of UNCLOS under international law see also E. J. MOLENAAR, *Coastal State Jurisdiction over Vessel-Source Pollution*, The Hague, 1998.

damage.⁸ The International Law Commission commented that this penalty is justified as a safety measure against an abuse of the right of visit.⁹

Another exception to the principle of exclusive flag State jurisdiction is represented by international humanitarian law, which allows the stopping, boarding and inspection of a vessel on the high seas in cases where there are reasonable grounds to believe that the vessels has breached a naval blockade, or that it intends to. Examples of this practice are mainly represented by the Israeli unilateral enforcements of its blockade on Gaza throughout the late 2000's, some examples of which will be analyzed in the following parts of this chapter. Moreover, the stop and search of a vessel are allowed during an armed conflict in order to prevent war material ('contraband') from being delivered to the belligerent.¹⁰

To assess whether or not a blockade is in accordance with international law a useful legal instrument is the 1994 San Remo Manual on International Law Applicable to Armed Conflicts at Sea, which enlists in detail the customary principles of naval warfare. Although not bearing any juridical value, it nevertheless represents a remarkable effort of the best doctrine to collect all the rules and principles applicable to armed conflicts at sea.¹¹ The San Remo Manual was prepared during the period 1988-1994 by a group of legal and naval experts in a series of Round Tables convened by the International Institute of Humanitarian Law. The Manual includes a few provisions which might be considered progressive developments in the law but most of its provisions are considered to state the law which is currently applicable. The Manual is viewed by the participants of the Round Tables as being in many respects a modern equivalent to the Oxford Manual on the Laws of Naval War Governing the Relations Between Belligerents adopted by the Institute of International Law in 1913.¹² A contemporary manual was considered necessary because there has not been a development for the law of armed conflict at sea similar to that for the law of armed conflict on land with the conclusion of Protocol I of 1977 additional to the Geneva Conventions of 1949. Although some of the provisions of the Protocol affect naval operations, its Part IV, which protects civilians against the effects of hostilities, is applicable only to naval operations which affect civilians and civilian objects on land.¹³

In Part IV the Manual enlists the allowed methods and means of warfare at sea, and in Part II it focuses on the naval blockade. According to customary law, a blockade must be declared and notified in all its details to all belligerent and neutral States, in particular to those neutral vessels inside the blockaded

⁸ UNCLOS, Art. 110 (3).

⁹ ILC, *Articles Concerning the Law of the Sea with Commentaries*, 1956, Yearbook of the International Law Commission, vol. 2, p. 281.

¹⁰ San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 12 June 1994, Art. 148.

¹¹ A. FARAONE, *Diritto Umanitario e Guerra Navale*, in I. PAPANICOLOPULU, T. SCOVAZZI (eds.), *Quale Diritto nei Conflitti Armati? – Relazioni e Documenti del Ciclo di Conferenze Tenute nell' Università di Milano-Bicocca (Marzo-Maggio 2005)*, Milano, 2006, p.69.

¹² Full text available at <https://www.icrc.org/ihl/INTRO/265?OpenDocument>.

¹³ International Committee of the Red Cross, at <https://www.icrc.org/ihl/INTRO/560?OpenDocument>.

area at the time of the imposition, and any alteration must be promptly notified.¹⁴ To enforce the blockade, a combination of legitimate methods of warfare may be used, provided that these methods are in accordance with the rules set out in the Manual, it must be effective, the effectiveness of it being a question of fact, and the force needed to impose the blockade may be stationed at a distance determined by military requirements.¹⁵ Merchant vessels that are believed on reasonable grounds to be breaching the blockade may be captured, and those vessels that after prior warning clearly resist capture may be attacked.¹⁶ The blockade must be imposed impartially on vessels of all States and it must not bar access to neutral ports and coasts.¹⁷ The establishment of a blockade is prohibited if it has the sole purpose of starving the civilian population or denying it other objects essential for its survival, or if the damage to the population is, or is expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade.¹⁸ If the civilian population of the territory that is blockaded is inadequately provided with food and other essential supplies for its survival, the blockading party must provide for free passage of such goods, subject to the right to prescribe the technical arrangements, including search, under which such passage is permitted, and to the condition that the distribution of such supplies shall be made under the local supervision of a Protecting Power or a humanitarian organization which offers guarantees of impartiality, e.g. the International Committee of the Red Cross or the Red Crescent.¹⁹ Moreover, the blockading belligerent shall allow the passage of medical supplies for the civilian population or for the wounded and sick members of armed forces, subject also in this case to the right to prescribe technical arrangements under which this passage is permitted.²⁰

For what regards the rights of visit and search of merchant vessels, they are enlisted in the Manual at Section II, Articles 118 to 124. These provisions allow military ships and aircrafts to visit and search merchant vessels outside neutral waters if there are reasonable grounds to believe that they are subject to capture. Alternatively to capture, a vessel may also be diverted from its destination. A neutral merchant vessel is exempt from the right of search and visit if it is bound to a neutral port, is under a convoy accompanying a neutral warship, the neutral warship's flag State warrants that the vessel is not carrying contraband, or otherwise is not engaged in activities that are not neutral and the commander of the neutral warship provides, if requested by the belligerent State, all the information as to the character of the merchant vessel and its cargo as could otherwise be obtained by visit and search.²¹ A belligerent warship or aircraft may divert a merchant vessel to an appropriate area or port to exercise search and visit if it is impossible or unsafe to exercise it at sea. Finally, as measures of supervision belligerent

¹⁴ San Remo Manual, Art. 93-94, 101.

¹⁵ *Ibid.*, Art. 95-97.

¹⁶ *Ibid.*, Art. 98.

¹⁷ *Ibid.*, Art 99-100.

¹⁸ *Ibid.*, Art 102.

¹⁹ See *Supra*, at 5.

²⁰ *Ibid.*, Art. 103-104.

²¹ These conditions are cumulative.

States may establish reasonable measures for the inspection of the cargo of a merchant vessel in alternative to visit and search, the compliance of which is not to be considered as an act of un-neutral nature with regard to an opposite belligerent. In addition, neutral States are encouraged to enforce adequate measures control and certification procedures to ensure that the merchant vessel is not carrying contraband.

The law of armed conflict thus is an exception to what would be regarded as a violation of the rule of exclusive flag State jurisdiction, exception in fact created by the law of naval blockades itself.²² The Maritime Neutrality Committee of the International Law Association (ILA) has stated that in times of an armed conflict international humanitarian law prevails over the law of the sea, as *lex specialis derogat legi generali*.²³

The law of the sea related questions that will be tackled in this chapter are: is the unilateral imposition of the naval blockade on Gaza in accordance with international law? And if so, under which circumstances is Israel committing an international illicit or is in accordance with international law when enforcing the blockade?

1.2 BACKGROUND OF THE NAVAL BLOCKADE²⁴

Israel has effectively occupied the Gaza Strip from June 1967 until its first disengagement from May 1994 as part of the peace process. A series of peace agreements between Israel and the Palestinian Liberation Organization (PLO), often collectively referred to as the Oslo Accords, included *inter alia* arrangements for security cooperation, including the policing of borders, maritime waters and airspace. Under the Oslo Accords, the territorial waters off Gaza would have been included in the territorial jurisdiction of the Palestinian Authority (PA)²⁵, created with the Oslo accords. However, the external security of the Gaza Strip was specifically excluded from the PA's functional jurisdiction²⁶, would have been retained by Israel.²⁷ Foreign vessel were not allowed to approach closer than twenty nautical miles from the coast. Regardless of the breakdown of bilateral peace negotiations in 2002, significant aspects

²² T.D. JONES, *The international Law of Maritime Blockade – A Measure of Naval Economic Interdiction*, 26 Howard LJ, 1983, p. 760.

²³ International Law Association (ILA), Committee on Maritime Neutrality, *Final Report: Helsinki Principles on Maritime Neutrality*, in *Report of the Sixty-Eighth Conference held at Taipei, Taiwan, Republic of China 24-30 May, 1998*, pp. 496-498.

²⁴ This section is mostly based on the Report of the Human Rights Council *Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance*, 27 September 2010, text available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf.

²⁵ Gaza-Jericho Agreement, Art. 5, para. 1(a).

²⁶ Gaza-Jericho Agreement, Art. 5, para. 1(b).

²⁷ Gaza-Jericho Agreement, Art. 5, para. 3.

of the Oslo Accords remain in force, including several provisions on the territorial waters off Gaza. Fast-forwarding to 2006 for the sake of the subject of this chapter, following the victory of Hamas in the legislative elections economic and political measures started to be imposed on Gaza. The apex was reached with the restriction on the movement of goods following the declaration of Gaza as ‘hostile territory’ by Israel in September 2007, after Hamas had taken control of the Gaza Strip in July 2007.

From mid-2008, in response to the Free Gaza Movement’s attempts to enter Gaza by sea, Israel took a series of steps aimed initially at deterring flotillas to access Gaza: a Notice to Mariners (NTM) was issued, stating that the central zone of the Gaza Maritime Area would have been subject to supervision and inspection. After the Operation ‘Cast Lead’ in 2008, the naval blockade on Gaza was established by Israel on 3 January 2009. The advisory states that ‘the Gaza maritime area is closed to all maritime traffic and is under blockade imposed by [the] Israeli Navy until further notice’.²⁸ This advisory was publicized among others in a NTM and twice through the NAVTEX broadcast system.

A military closure order was signed by the Commander of Israeli Navy on 28 May 2010, prohibiting persons from entering a specified ‘closed area’ (Area A) and advising all ships to stay far from a ‘dangerous area’ (Area B).

Since the imposition of the blockade there have been several attempts to force the blockade with merchant vessels carrying humanitarian aid: the first and most important represented by the *Mavi Marmara*, the only attempt that ended up with civilian victims and that will be analyzed later, until recently with the seize on June 29, 2015, of the Swedish trawler *Marianne av Götheborg* at roughly one hundred nautical miles from the coast of Gaza, where the crew and vessel have been rerouted to the port of Ashdod by the Israeli Defence Force without casualties. After temporary imprisonment part of the crew, Dr. Bassel Ghattas (Member of Knesset), Dr. Moncef Marzouki (former President of Tunisia), Ana Miranda (Member of European Parliament) and Ohad Hemo (journalist), were released and repatriated, while the rest were moved to Givon prison at Ramla area, where they remain arrested.²⁹ At the time of the writing, the only country that has officially protested the Israeli action is the flag State of the Marianne, Sweden.³⁰

Unilateral naval blockades have been used often in history as a strategic tool and they are a well-established concept in conflicts between States. A blockade is used to prevent the movement of any

²⁸ NO.1/2009 Blockade of the Gaza Strip. Available on the Israeli Ministry of Transports website at <http://asp.mot.gov.il/en/shipping/notice2mariners/547-no12009>.

²⁹ Coalition Statement of the Freedom Flotilla Coalition after the seize of the *Marianne*, 1 July 2015, statement available at <https://freedomflotilla.org/coalition-statements/26-press-release-marianne-sailors-still-imprisoned-in-israel>.

³⁰ *Sveriges regering protesterer mot Israel*, article of 29 June, 2015, available at: <http://www.nrk.no/verden/sveriges-regjering-protesterer-mot-israel-1.12434262>, <https://shiptogaza.se/>. Websites last accessed on July 7, 2015.

vessel from and to the ports of a belligerent State, and it is governed by rules of customary international law³¹. They were imposed in the conflict between the People's Republic of China and the Republic of China (Taiwan) in 1949-1958, in the Korean War (1950-1953), during the Cuban Missile Crisis in 1962, in the Vietnam War, during the sanctions against Iraq (1990-2003), in the Bangladesh Liberation War (1971), by Egypt against the city of Eliat and the Gulf of Aqaba in 1967 and in 1973 on the Bab el-Mandeb Strait, during the Iran-Iraq War (1980-1988), and by Israel on the coasts of Lebanon during the Second Lebanon War (March 2006).³²

The Israeli blockade over the maritime zones of Gaza is particularly hard to compare to the other cases aforementioned, given the fact that the international subjectivity of Hamas (and of the conflict in general) is still uncertain to international law. The case that has most characteristics in common is probably the blockade imposed on the coasts of Lebanon in 2006 by Israeli Navy Forces during the war against Hezbollah. In this case we see a State entity (Israel) unilaterally imposing a naval blockade as a strategic tool against a non-State entity (Hezbollah, literally 'Party of God'), but the similarities end here since the blockade against Lebanon included also an embargo on the sale of weapons and it was endorsed by a number of States and by Resolution 1701/2006 of the United Nations Security Council. The main issue regarding the blockade on Gaza is that, in the words of Professor Natalino Ronzitti, 'in the case of Gaza there is a conflict between Israel and a non-recognized entity (Hamas), which Israel considers to be a terrorist organization. There are practically no precedents; the practice has had, as its unique object, the blockade of ports controlled by insurgents of the legitimate Government, beginning with the blockade of the Confederate ports during the American Civil War (1861). More recent examples refer to the blockade of the ports of Biafra by Nigeria (1967), which provoked the protests of the United Kingdom, or the factual blockade of the Croatian ports by the Federal Republic of Yugoslavia (1991)'.³³

The San Remo Manual has been used thoroughly in the several reports on an international incident that is extremely relevant when analyzing the principles of law applicable to the blockade of Gaza: the *Mavi Marmara* case, which will be now described in detail. The analysis of the case will follow the line of those that have already been made in the past by the current doctrine, describing the facts, the reactions of the main subjects involved in this case (Turkey and Israel) and the reaction of the international community, as well as analyzing the law applicable to the case and the reports issued by governmental, non-governmental and academic institutions on the matter.

³¹ Exception made for the Declaration of Paris of 16 April 1856 on the Principles of the Maritime War and the London Declaration of 26 February 1909 on the Law of Maritime War, although the latter never came into force.

³² For an analysis see, *inter alia*, M. BIANCHI, *Mavi Marmara Case: State Security and Human Rights at Sea*, in E. M. VAZQUEZ GOMEZ, C. CINELLI (eds.), *Regional strategies to Maritime Security – A Comparative Perspective*, Valencia 2014, pp.169 - 187, esp. p.180, note 33.

³³ See N. RONZITTI, *E' Legittimo il Blocco di Gaza?*, in *Affari Internazionali, rivista online di politica, strategia ed economia* on 14th June 2010. English translation cured by M. BIANCHI in her work, cit. p. 181. The full text of the article is available in Italian on <http://www.affarinternazionali.it/articolo.asp?ID=1476>.

1.3 THE *MAVI MARMARA* CASE

1.3.1 *The case*

The facts that originated the case took place on 31 May 2010, in an area at approximately seventy-two miles from the coast of Israel. The special forces of the Israeli Navy took action against a convoy of eight vessels part of the non-profit organization Freedom Flotilla³⁴ and flying the flag of the Union of Comoros, Kiribati, Turkey, Greece, Togo, United States of America and Cambodia. During the operation, aimed at stopping the convoy and escorting the vessels to the port of Ashdod, about 70 kilometers from Jerusalem, nine civilians aboard the *Mavi Marmara* were killed: eight of Turkish nationality and one of dual Turkish and U.S. nationality. Moreover, according to the criminal trials injuries have been suffered from 156 passengers, together with 10 members of the Israeli Defence Forces (IDF). The other members of the convoy were arrested and held in custody for some days in the Ashdod prison before repatriation, and the ship's cargo was confiscated. During the period of custody, according to the arrested members of the coalition there have been ill treatment and torture, in addition of the theft of personal belongings, in particular of all their recorded material and equipment.³⁵ The group aimed, as stated in their International Committee's oral and written statements, to break the isolation of the Gaza Strip as an act of political denunciation against the blockade and the embargo, both considered in violation of international law. At the same time, Israel had stated several times its intention to not tolerate any trespassing of the blockaded area, referring to their need defend Israel's national safety and integrity by checking the cargoes of the ships directed towards the Strip.³⁶

1.3.2 *Reactions of the Parties and of the International Community*

The Government of Turkey immediately condemned Israel's action and at the same time, through the Istanbul Public Prosecutor's office, opened a case on the incident. Pursuant to the Turkish penal code n. 5237, Article 8, Turkish Courts are enabled to proceed for each crime committed in Turkey. Cases of attacks on ships or aircrafts in international waters or airspace are considered as attacks on Turkish territory. In addition, in the cases provided by Article 13, Turkish law prosecutes anyone who has committed a crime abroad, even in cases of citizens of another State. Part of the doctrine has added to this possibility also the principle of universal jurisdiction to strengthen the legitimacy of the Tribunal of Istanbul. In the current international context, in order to prosecute the perpetrators of gross violations of human rights, to protect people from these violations and assure an adequate compensation, the concept of universal jurisdiction in its purest definition has developed as an important tool to end impunity for

³⁴ The Freedom Flotilla Coalition includes several associations from different nationalities and it aims to bring humanitarian aid to the Gaza Strip via the Mediterranean Sea, breaking the Israeli blockade and the embargo. Other than merely bringing humanitarian aid to the Gaza Strip, the Flotilla's true objective is to focus the world's attention on the blockade and on its effect on the population of the Strip.

³⁵ M. BIANCHI, cit., p.170.

³⁶ Ibid., p. 171.

serious international crimes.³⁷ The purest interpretation of universal jurisdiction is in opposition to the conditioned interpretation, which represent the most used practice of States and determines the exercise of internal criminal jurisdiction only in cases where the alleged violator is possible to reach within that State's borders.³⁸

The Turkish choice represents a procedure that is a minority among State practice, but that is not insignificant. An important precedent relevant to the case is the 1927 *Lotus* case³⁹, where in fact Turkey claimed to exercise its criminal jurisdiction over the commander of the *Lotus*, while France invoked the predominance of flag State jurisdiction. In that case the Permanent Court of International Justice ruled in favour of Turkey, stating that the practice of Member States to reserve criminal jurisdiction to the flag State for crimes occurred in international waters is to be interpreted not as a binding international custom but as a practice set in the agreement of the Parties involved.⁴⁰

Another example of State practice related to the purest interpretation of the concept of international jurisdiction is found in Spanish law: Article 23.4 of the Judicial Power Organization Act (LOPJ), enacted on 1st July 1985, established the jurisdiction of Spanish Courts over crimes committed by Spaniards or other foreign citizens outside the borders of Spain in cases of, *inter alia*, severe war crimes, genocide and terrorism.⁴¹ Another precedent is found in Belgian law: in 1993 Belgium approved the so called 'Genocide Law', a law for universal jurisdiction that regulates the judgment of individuals accused for serious crimes against humanity.⁴² Worth of mention are the decisions of the Belgian Supreme Court that applied the concept of universal jurisdiction for war crimes committed in Rwanda or in the indictment of former Israeli Prime Minister Ariel Sharon for the massacres Sabra and Shatila of 1982.⁴³ The lesson that these cases teach under a law of the sea perspective is that a State could have the possibility under international law to prosecute another State even if it is not the actual flag State of the vessel where the alleged illicit has taken place. As shown by the *Lotus* case, criminal jurisdiction of the flag State on the high seas is subject to previous agreement of the Parties, thus, in the *Mavi Marmara* case, the Comoros would not necessarily be the only State that could take Israel to an International Court.

³⁷ *Idem*.

³⁸ Definition of pure and conditioned interpretation of the concept of universal jurisdiction taken from A. CASSESE, P. GAETA, *Le Sfide Attuali del Diritto Internazionale*, (1st ed., 2008), at 203 ff.

³⁹ *Lotus Case* (Turkey vs France), PCIJ, judgment of 7 September 1927, text available at http://www.icj-cij.org/pcij/serie_A/A_10/30_Lotus_Arret.pdf.

⁴⁰ M. BIANCHI, *cit.*, p.175.

⁴¹ *Ley Orgánica N° 6/1985 de 1 de julio de 1985 del Poder Judicial*, full text available at http://www.wipo.int/wipolex/en/text.jsp?file_id=181467.

⁴² *Loi relative à la répression des infractions graves aux Conventions internationales de Genève du 12 août 1949 et aux Protocoles I et II du 8 juin 1977, additionnels à ces Conventions*, 16 June 1993, full text available at <https://competenceuniverselle.files.wordpress.com/2011/07/loi-du-16-juin-1993-texte-de-loi.pdf>.

⁴³ See *supra*, at 32.

In the specific, Turkey opened a case at the High Criminal Court of Istanbul against four Israeli commanders for willful killing, attempting to willful killing, intentionally causing serious injury to body or health, plundering, maritime hijacking, intentionally causing damage to property, restriction to freedom of expression, and instigating violent crimes. In order to strengthen the legitimacy of the Turkish accusations, reference to the criminal trial following the Sabra and Shatila massacres was made, as well as reference to the *Lotus* case.⁴⁴

Israel did not recognize the legitimacy of the Turkey's accusations, claiming its right to legitimate defence in cases of violation of the maritime space under its control. Through its Government led by Prime Minister Benjamin Netanyahu, Israel decided to tackle the case merely on a diplomatic and a political level. The day after the interception of the *Mavi Marmara*, Netanyahu's spokesperson Mark Regev explained:

“We were acting totally within our legal rights. The international law is very clear on this issue [...] if you have a declared [naval] blockade, publicly declared, legally declared, publicized as international law requires, and someone is trying to break that blockade and you have warned them [...] you are entitled to intercept even on the high seas.”⁴⁵

Regardless of the attempts at reconciliation of the respective Foreign Affairs Ministers, Israel refused to publicly apologize to Turkey, reaching point break when Istanbul dismissed the Israeli ambassador from Ankara, dismissing following the day of the publication of the Palmer Report, a report issued by the United Nations that will be analyzed in the next part.

Israel based its justification of the seize of the *Mavi Marmara* on the fact that, since it was engaged in an armed conflict against Hamas at the relevant time, the imposition of the naval blockade on the Gaza Strip and enforcement on the vessel was a method allowed by international humanitarian law, which derogates the law of the sea as an exception to the principle of exclusive sovereignty of the flag State on the high seas entailed in Article 92 UNCLOS.⁴⁶

While the diplomatic crisis was undergoing, Israel opened an investigation on the conduct of the IDF and on whether or not its officials had acted in accordance with international law. The judging committee also included two international members, Lord David Trimble and Brigadier-General Kenneth Watkin, although they were admitted only as observers and they did not have power to vote. According to the investigation, the muscular reaction of the IDF had been caused by the violent conduct of the ship's

⁴⁴ M. BIANCHI, cit., p.172.

⁴⁵ Mark Regev, spokesman for Israeli Prime Minister Benjamin Netanyahu, quoted in The Washington Post, 1 June 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/06/01/AR2010060102934.html>.

⁴⁶ R. BUCHAN, *The International Law of Naval Blockade and Israel's Interception of the Mavi Marmara*, Netherlands International Law Review, 58, 2011, pp. 209-241.

crew and the consequent need of the soldiers to defend themselves, basing the Israeli position on self defence of individuals and the legitimate defence of the State. The results of this inquiry became the Turkel Report⁴⁷, published in January 2011, which also analyzed in a more general view the legality of the naval blockade on Gaza.⁴⁸

The Report refers to the testimonies, according to which ‘the naval blockade was not imposed to disrupt the commercial relations of the Gaza Strip, for the reason that there is no commercial port on the coast of the Gaza Strip, and therefore there has been no maritime commerce via the coast of the Gaza Strip in the past. As a result, maritime activity in the Gaza Strip was limited to fishing, whereas any maritime commerce went via the Israeli port of Ashdod or the Egyptian port of El Arish’ [...] ‘A naval blockade was regarded as the best operational method of dealing with phenomenon – meaning the flotillas bound to the Strip – because other solutions, such as the right of visit and search, were proved to be problematic, and other sources of authority were regarded as weaker’.⁴⁹ The General Military Advocate also explains the concept of *dual strategy* as ‘the need to impose a naval blockade on the Gaza Strip aris[ing] from security and military considerations of great weight, which are mainly the need to prevent a military strengthening of terrorists in the Gaza Strip, the entry of terrorists and the smuggling of weapons into the Gaza Strip by sea, and also to prevent any legitimization and economical and political strengthening of Hamas and strengthening in the internal Palestinian area’.⁵⁰

The Israeli action has been condemned in several occasions worldwide, both by politicians and non-profit organizations. The Turkish choice of setting aside a diplomatic resolution and opt for an international trial has also found some opposition and criticism, the main one referring to the fact that the legal basis was considered not solid enough, thus making the value of the condemnation merely symbolic.

Nevertheless, regardless of the diplomatic and political implications, the international community has shown the necessity of opening an investigation on the *Mavi Marmara* case. Applying its wider interpretation of the principle of universal jurisdiction for war crimes, Spain’s National Court judge Jose de la Mata has called the country’s government to submit the case regarding three citizens, two activists

⁴⁷ Full text available on <http://www.turkel-committee.gov.il/index.html>

⁴⁸ *Turkel Report*, 25-111.

⁴⁹ *Ibid.*, at 54.

⁵⁰ *Ibid.*, at 58. From the Israeli reaction it emerges that the parties focus not so much on the legitimacy of the action of the IDF in the *Mavi Marmara* case, whether on the legitimacy of the naval blockade that enabled the Special Forces to take action. It should not surprise that, in reaffirming its full right to impose the blockade on Gaza with a second version of the Turkel Report issued on February 2013 which strengthens the findings of the first Report, after the diplomatic tension that was lasting for more than two years, Netanyahu in March 2013 apologized to Ankara ‘[...] for any errors that may have led to the loss of life’ and announced the government’s plan to compensate the families of the dead activists paying up to six million dollars. Reconciliation came mostly after heavy pressures of U.S. President Barack Obama, who called for a resolution of the issue in the interest of the international community and of the relations within NATO.

and a journalist who were detained by Israeli authorities after the seizure of the *Mavi Marmara* aid flotilla. Six Spanish ministers and the citizens submitted a case against Israeli Prime Minister Benjamin Netanyahu with charges of illegal arrest, torture and deportation. However, because of Spain's legislative reforms in March 2014 restricting court's power in international trials, the investigation has been closed. Judge de la Mata sent all documents involving the case to the Ministry of Justice for Spanish government to report its complaint to the International Criminal Court (ICC), affirming that there would be the possibility to start the trial again if Netanyahu and Israeli ministers set foot on Spanish soil. The ICC opened a preliminary investigation in May 2013 against Israel⁵¹. In November 2014, the court stopped investigation, saying the case "would not be of sufficient gravity to justify further action by the ICC."⁵²

The United Nations Secretary-General Ban Ki-moon decided on August 2nd 2010 to set up a Panel of Inquiry (POI) to 'examine and identify the facts, circumstances and context of the incident' and to 'consider and recommend ways of avoiding similar incidents in the future'.⁵³ The outcome of the work of the POI resulted in the publication in September 2011 of the Palmer Report⁵⁴, named after the head of the commission Sir Geoffrey Palmer, which however has shown to be inadequate to resolve the dispute since no clear responsibility emerged from it. Although it focused on the illicitness of the blockade modalities enforced on the Freedom Flotilla convoy, it did not focus on whether or not the IDF had legal basis and a legitimate right of enforcement on vessels bound to and from the Gaza Strip. It states that a disproportionate use of force against civilians of third States is to be condemned, and at the same time that the intention of the POI is to not ascertain the juridical reasons of the incident, i.e. the naval blockade. In confirmation of its purpose as a diplomatic instrument, the Report was a first step towards the public apology declaration made by Israel, which only concerned the specific incident.

The Report has been in fact defined as a masterpiece of diplomacy, establishing that Israel was in full right especially for what regards the legality of the blockade, as much as Turkey was right in relation to the *Mavi Marmara* incident.⁵⁵ In the words of Professor Richard Falk⁵⁶:

⁵¹ *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on concluding the preliminary examination of the situation referred by the Union of Comoros: "Rome Statute legal requirements have not been met"*, available at: http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/pages/otp-statement-06-11-2014.aspx.

⁵² *Judge Jose de la Mata calls on Spanish government to report Mavi Marmara case to International Criminal Court*, article of June 11, 2015, available at: <http://beta.trtworld.com/news.php?q=europe-spanish-judge-calls-govt-to-file-mavi-marmara-case-to-icc-2976>.

⁵³ *UN chief announces panel of inquiry into Gaza flotilla incident*, article of 2nd August 2010, source: http://www.un.org/apps/news/story.asp?NewsID=35607#.VYp_pfntmko.

⁵⁴ *Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident*, full text available at: http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf.

⁵⁵ M. BIANCHI, cit., p.176, note 22.

⁵⁶ Professor Emeritus of international law at Princeton University and UN Special Reporter on the situation of human rights in the occupied Palestinian Territory.

‘The Palmer Report was aimed at political reconciliation between Israel and Turkey. It is unfortunate that in the report politics should trump the law’ [...] ‘the most questionable move of the Palmer Panel was to separate the naval blockade from the overall closure of Gaza to a normal supply of humanitarian supplies, including supplies needed for medical operation and sanitation. The flotilla incident was about the effort to circumvent this aspect of Israeli policies, and the organizers posed no objection to inspection carried out to prevent weapons from entering Gaza’.⁵⁷

On June 2nd 2010, the United Nations Human Rights Council decided to adopt Resolution 14/1⁵⁸ which set up an investigation commission on the incident. The commission issued a fifty-eight page report⁵⁹ significantly different from the Palmer Report that examined not only the violations committed in the Israeli action, but also the violations of human rights law and humanitarian law after the attack, underlining that ‘the conduct of the Israeli military and other personnel towards the flotilla passengers was not only disproportionate to the occasion but demonstrated levels of totally unnecessary and incredible violence. It betrayed an unacceptable level of brutality. Such conduct cannot be justified or condoned on security or any other grounds’⁶⁰. It also concluded that ‘there is clear evidence to support prosecutions of the following crimes within the terms of article 147 of the Fourth Geneva Convention: willful killing, torture or inhuman treatment, willfully causing great suffering or serious injury to body or health’.⁶¹ In its analysis, the commission describes the juridical flaws of the naval blockade, the embargo and the humanitarian situation of Gaza, making a clear reference to the United Nations Security Council condemnations⁶², as well as those pronounced within other international agencies, such as the Red Cross and the United Nations Relief and Works Agency for Palestine Refugee in the Near-East (UNRWA).⁶³

1.4 FINAL REMARKS

The *Mavi Marmara* incident is surely useful to draw out conclusions on whether or not the naval blockade on the maritime zones of the Gaza Strip is in accordance with the principles of international

⁵⁷ *How can Israel’s blockade of Gaza be legal? – UN independent experts on the “Palmer Report”* - See more at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11363&LangID=E#sthash.C4ysw1pp.dpuf>.

⁵⁸ Text available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/RES.14.1_AEV.pdf.

⁵⁹ *Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance*, text available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf.

⁶⁰ Paragraph n. 264 of the report.

⁶¹ Paragraph n. 265 of the report.

⁶² Resolutions 1850 (2008) and 1860 (2009).

⁶³ The commission also complained about the lack of cooperation from Israeli authorities in the investigations, in contrast with the high level of collaboration shown by Tel Aviv in the investigations that have brought to the Palmer Report.

law, thanks to the several analysis that have been done by governmental, non-governmental, and academic institutions. The consideration made by the various crews of the Flotillas that the modalities of the blockade are not in accordance with international law are to be considered the reason why the vessels did not comply with the requests of the IDF to divert to Ashdod. In this case, the seizure of the vessels and the arrest of the crew can be considered lawful or not depending on whether the blockade is considered legal or not.

For what regards the strategic tool of the naval blockade itself, customary international law of the sea, State practice and historical examples show that it has been used in several occasions and that it is a legit method of warfare in a conflict between States.⁶⁴ The issue that arises in the blockade on Gaza, however, is that the blockade has been instituted after the election of Hamas in Gaza in 2007, thus giving the impression that the blockade has been imposed as a mean of retaliation against the organization, which resulted in a collective punishment with devastating collateral impacts on the civilian population of the Strip. From the explanation given by Israeli authorities of the military concept of ‘*dual strategy*’, it is clear that the starving and the extremely poor conditions of the population of Gaza caused by the blockade is somewhat a strategy used on purpose to indirectly hit terrorist groups that threaten Israel’s national security, in addition to the explicit ban on military equipment. The problem that arises here, however, is that the impact on the civilian population is way heavier than the actual military advantage gained or than the levels of protection of Israel’s national security. If the ban on goods that have a dual usage (wood, cement, iron) could be understood, the ban on other goods (chocolate, fishing rods, toys) just confirms the author’s impressions.⁶⁵

As previously mentioned, UNCLOS clearly states that on the high seas the flag State has exclusive jurisdiction⁶⁶, although the freedom of the high seas is also subject to limitations such as the right of visit for the cases of piracy, slave trade, unauthorized broadcasting and when a vessel has no nationality or is flying a false flag.⁶⁷ The actions of the various flotillas never fell under these categories; nevertheless there are other limits to the freedom of navigation that Israel could invoke in order to enforce its naval blockade on Gaza. The principle by which *lex specialis derogat lex generali* allows the possibility for exceptions to the freedom of the high seas, such as those arising from a treaty or a Convention. In the specific case, *prima facie*, Israel has violated the Comoros’ freedom of the high seas and sovereignty, committing an international illicit. However, Israel declared that at the time of the incident it was involved in an armed conflict against Hamas, thus making the imposition and

⁶⁴ See L. GREEN, *The Contemporary Law of Armed Conflict*, Manchester University Press, 2008, p.204 et seq.

⁶⁵ For the complete list of products subjected to trade restriction see the website of the Israeli non-profit organization Ghisha <http://gisha.org/UserFiles/File/HiddenMessages/ItemsGazaStrip060510.pdf>.

⁶⁶ UNCLOS, Article 92.

⁶⁷ UNCLOS, Article 110.

enforcement of the naval blockade in accordance with international humanitarian law.⁶⁸ These exceptions would apply to the *Mavi Marmara* case and to Israel's blockade over Gaza in general if Israel had maintained a proportionality both in the modalities of the blockade in its enforcement over third State vessels.

According to the San Remo Manual, a naval blockade that has the purpose of starving the civilian population or denying it other objects essential to its survival is prohibited. It is also prohibited if the damage to the civilian population is excessive in relation to the concrete and direct military advantage arising from the blockade. The extremely precarious condition of the civilian population of Gaza has been confirmed by several reports of several international organizations, e.g. Red Cross, Amnesty International, and even by the United Nations Security Council, which in its resolution 1860 recognized the humanitarian emergency of the Gazan people and requested Israel to levy the blockade for humanitarian purposes.⁶⁹ Israel could easily improve the condition of the population of the Strip and at the same time defend its national security by simply prescribing technical arrangements for the movement of the supply of food and medicines, including visit and search, and requiring a neutral organization to give guarantee of impartiality and supervision on the transfer of aids (e.g. Red Cross or Red Crescent). These actions would be in accordance with Article 103 of the San Remo Manual, which although not being a binding document, it is a corollary of the principles of customary law created by legal and naval experts, applicable also to naval blockades and the vessels that operate in the blockaded area.⁷⁰

Another exception to the freedom of the high seas can be represented by the concept of legitimate defence, as entailed in the United Nations Charter, Article 51. The assumption that the blockade is in accordance with international law on the basis of the concept of legitimate defence loses credibility in this case, given the fact that the modalities by which the blockade is enforced are disproportionate compared to the actual threat, as stated in the *Mavi Marmara* incident. The main source of law that permits use of force for self-defence and is recalled by Israel as the legal basis of the blockade, Article 51 of the United Nations Charter, is in any case limited by the Charter itself, through the concepts of proportionality and the humanitarian exceptions. On the matter, Guilfoyle states that there are some uncertainties in the applicability of the law of blockade to Israel's conflict with Hamas and on whether the blockade was legally established and implemented. Referencing the San Remo Manual he concluded that the naval blockade was part of a comprehensive closure regime which entailed disproportionate

⁶⁸ R. BUCHAN, *The International Law of Naval Blockade and Israel's Interception of the Mavi Marmara*, p. 213.

⁶⁹ Text of the Resolution available at <http://www.un.org/press/en/2009/sc9567.doc.htm>.

⁷⁰ L. DOSWALD BECK, *Commentary on the San Remo Manual on International Law Applicable to Armed Conflict at Sea*, International Review of the Red Cross, 1995, No.309, available at <https://www.icrc.org/eng/resources/documents/misc/57jmst.htm>.

effects on the civilian population of the Gaza Strip. A maritime blockade in support of other measures causing disproportionate damage must itself be disproportionate.⁷¹

To conclude, it is worth of mention also Prof. Ronzitti's zonal analysis on blockades and their enforcement. According to him, supposing that a blockade is legitimate, any merchant vessel flying any flag that breaches it can be rerouted to the belligerent's port and, in case it resists the seize or it does not obey to the order of diversion, it can be attacked. In this case the seize and the rerouting has happened at around seventy miles from the coast, fifty miles from the blockade line. International law allows to take necessary measures not only when a ship crosses the blockade line, but also when an "attempt of breach" occurs. He then underlines the two antipodes in the legal doctrine for what regards the question on what represents an attempt to breach the blockade. He exemplifies the two extremes first with the Italian War Law of 1938, which condemns the tentative of a ship to breach the blockade, referring anyway to the blockade line and therefore to a distance from the blocking force. On the opposite antipode lies the United States Navy War Manual⁷², according to which an attempt to breach would occur as soon as the vessel has left the port with a clear intention of breaching the blockade. But on the issue the U.S. Manual, which of course is not a source of international law, is not in accordance with the more accredited internationalist doctrine. He assumes then that an extensive interpretation of the notion of "attempt to breach the blockade" ends up to narrow excessively the right to freedom of the high seas.⁷³

⁷¹ D. GUILFOYLE, *The Mavi Marmara Incident and Blockade in Armed Conflict*, The British Yearbook of International Law, 2011, pp. 171-223. Available at <http://bybil.oxfordjournals.org/content/81/1/171.abstract>.

⁷² Quoted also by the Israeli Ministry of Foreign Affairs supporting the action against the *Mavi Marmara*.

⁷³ English translation of the text found in N. RONZITTI, *E' Legittimo il Blocco di Gaza?*

2. MARINE DELIMITATION AND ACCESS TO NATURAL RESOURCES UNDER THE BLOCKADE

2.1 INTRODUCTION

The coast of the Gaza Strip extends for forty-two kilometers facing the eastern Mediterranean Sea and generates maritime zones open for exploitation of living and non-living resources in accordance with the sovereign rights of the coastal state that these zone entail in accordance with international law.⁷⁴ Although some negotiations for the delimitation of the respective areas of jurisdiction are pending, the eastern Mediterranean Sea is an area where maritime boundaries have not yet been fully established given the ongoing political tensions, affecting the access to resources of the interested States, i.e. Egypt, Palestine, Israel, Lebanon, Syria, Turkey and Cyprus. UNCLOS provides a two-tiered dispute settlement mechanism applicable to the delimitation of the Exclusive Economic Zones (EEZ) and the exercise of State jurisdiction over its continental shelf.⁷⁵ According to Rothwell and Stephens, the first tier could be defined as the ‘endogenous’ system, provided for in Part XV and regarding disputes concerning the provision in the Convention, under which Parties to the UNCLOS can refer disputes to a new body, to the International Tribunal for the Law of the Sea (ITLOS), to ad hoc arbitration, or to the ICJ. The second tier is the so called ‘exogenous’ system, represented by the other means of dispute settlement allowed by international law, i.e. negotiation, arbitration and judicial settlement, including by the ICJ.⁷⁶ Given the fact that UNCLOS has such a widespread ratification, the exogenous system is less used now, nevertheless the dispute settlement mechanism of Part XV has some mandatory limitations, making the exogenous system still of relevance in some circumstances.⁷⁷ For example, Parties to the UNCLOS may exclude the resolution of maritime boundaries disputes from the application of part XV.⁷⁸ Only three disputes of such have been submitted under the UNCLOS system,⁷⁹ instead the Parties have preferred resorting to ad hoc arbitrations or the ICJ.⁸⁰

⁷⁴ UNCLOS, Artt. 2, 56, 77.

⁷⁵ D. R. ROTHWELL, T. STEPHENS, *The International Law of the Sea*, Oxford and Portland, 2010, p. 439.

⁷⁶ *Ibid.*, pp. 439-440

⁷⁷ UNCLOS, Artt. 297, 298.

⁷⁸ *Ibid.*, Art. 298 (1)(a)(i).

⁷⁹ *Barbados v Trinidad and Tobago*, judgment of 11 April 2006, 45 ILM 798, available at http://legal.un.org/riaa/cases/vol_XXVII/147-251.pdf; *Guyana/Suriname Arbitration*, judgment of 17 September 2007, available at http://www.pca-cpa.org/Guyana-Suriname%20Award70f6.pdf?fil_id=664; *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal*, ITLOS, judgment of 14 March 2012, available at https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_16/1-C16_Judgment_14_02_2012.pdf.

⁸⁰ D. R. ROTHWELL, T. STEPHENS, *The International Law of the Sea*, p. 440.

Part IX of UNCLOS deals with the subject of semi-enclosed seas and imposes upon coastal States a general obligation to cooperate on a regional level among each other “in the exercise of their rights and in the performance of their duties”.⁸¹ Article 122 defines as an enclosed or a semi-enclosed sea a gulf or basin surrounded by two or more States that is connected to another sea or ocean by a narrow outlet, or that is completely or primarily formed by territorial seas and EEZs of two or more States. This is in fact the case of the Mediterranean Sea. Regional cooperation has an essential role in the Mediterranean given the vicinity of States and the high possibility of shared resources, thus it is important to resolve overlapping claims; failure to do so may hinder exploration work and licensing activities.⁸² Among the eastern Mediterranean countries involved in these disputes, Israel, Syria and Turkey have not signed UNCLOS, whereas Egypt, Lebanon and Cyprus have done so.⁸³ On January 2015, the State of Palestine acceded the Convention. ‘Accession’ is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other States. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force.⁸⁴

This chapter will focus on how the blockade over Gaza is influencing the status firstly of the maritime zones of the Strip, and secondly on the status of the right of access to marine living and non-living resources of those zones.

2.2 MARITIME BOUNDARIES

Under UNCLOS States have the right to claim EEZs up to 200 nautical miles (nm) from a low-water baseline⁸⁵ and, in particular circumstances, to claim a part of the continental shelf exceeding 200 nm.⁸⁶ In cases where coastal States face each other and the distance between the two coasts is less than 400 nm, as it is the case in the eastern Mediterranean Sea, EEZs have to be delimited by bilateral agreement⁸⁷. UNCLOS provides that the delimitation is to be “effected by agreement on the basis of international law ... in order to achieve an equitable solution”. In the absence of an agreement, delimitation should take place on the basis of the median line or the equidistance line from the baselines.⁸⁸ What would be an

⁸¹ UNCLOS, Art. 123.

⁸² *The Legal Framework of Lebanon’s Maritime Boundaries: The Exclusive Economic Zone and Offshore Hydrocarbon Resources*, ASDEAM, 2012, p 15. Report available at <http://bric.lebcsr.org/bric/img/LegalFramwork.pdf>.

⁸³ Respectively in 1983, 1995 and 1988. P. DE MICCO, *The Prospect of Eastern Mediterranean Gas Production: an Alternative Energy Supplier for the EU?*, Policy Department, Directorate – General for External Policies, Brussels, 2014, p.8. Report available at http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2014/522339/EXPO-AFET_SP, 2014, 522339_EN.pdf.

⁸⁴ Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969.

⁸⁵ UNCLOS, Art. 57.

⁸⁶ *Ibid.*, Art. 76.

⁸⁷ *Ibid.*, Art. 74.

⁸⁸ UNCLOS, Artt. 74 and 83.

equitable solution depends on each maritime delimitation case, so these rules leave a large margin of discretion for interpretation by negotiating States, mediators or judges, thus resulting in innovative approaches often brought about by geographic, historical and other types of factor at play.⁸⁹ For example, in the Torres Strait Treaty between Australia and Papua New Guinea, the interests of the indigenous peoples and their transnational fishing activities in the area were taken into account in the delimitation.⁹⁰

From the numerous cases brought before the International Court of Justice, arbitral tribunals and International Tribunal on the Law of the Sea, one can draw the main principles which have been applied to such delimitation. In several decisions, international courts have chosen to draw first an equidistance line and then to consider whether or not there were factors calling for the adjustment or shifting of that line in order to achieve an equitable result.⁹¹ Relevant circumstances may include: the general configuration of the coast, its length, the presence of islands, the economic activities in the area, such as fishing, and legitimate security considerations. If even an interim agreement is not possible, States shall recourse to peaceful means of dispute settlement.⁹² Dispute settlement mechanisms can include the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea or arbitration. Such mechanisms have been used successfully before: In 2002, the ICJ ruled that the sovereignty over the Bakassi peninsula lies with Cameroon, settling a dispute between Nigeria and Cameroon.⁹³ More recently, the ICJ defined in 2009 a maritime boundary delimiting the continental shelf and the exclusive economic zones of Romania and Ukraine, where they agreed in advance that if their bilateral negotiations failed they would have a right to turn to the ICJ and both countries accepted the verdict.⁹⁴ ITLOS published its first decision dealing with maritime delimitation in 2012, ruling on a sea border dispute between Bangladesh and Myanmar.⁹⁵

⁸⁹ D. R. ROTHWELL, T. STEPHENS, *The International Law of the Sea*, p. 409. For the doctrine of maritime boundaries delimitations see also D. COLSON, *The Legal Regime of Maritime Boundary Arrangements*, in J. A. CHARNEY, L. M. ALEXANDER (eds.), *International Maritime Boundaries*, Dordrecht, 1993.

⁹⁰ 1978 Treaty Concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, Including in the Area Known as the Torres Strait, and Related Matters, Artt. 10-16. Available at <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-PNG1978TS.PDF>.

⁹¹ See e.g. *Continental Shelf case* (Tunisia and the Libyan Arab Jamahiriya), ICJ Report 1982, para.109, available at <http://www.icj-cij.org/docket/files/68/9577.pdf?PHPSESSID=d6bfcde045ed3d3fc73635f896457894>; *Qatar v. Bahrain*, ICJ Reports 2001, para. 176, available at <http://www.icj-cij.org/docket/files/87/7027.pdf>.

⁹² UNCLOS, Art. 74 (2).

⁹³ *Land and Maritime Boundary between Cameroon and Nigeria* (Cameroon v. Nigeria: Equatorial Guinea intervening), ICJ, judgment of 10 October 2002, summary available at <http://www.icj-cij.org/docket/files/94/13803.pdf>.

⁹⁴ *Maritime Delimitation in the Black Sea* (Romania v. Ukraine), ICJ, judgment of 3 February 2009, available at <http://www.icj-cij.org/docket/files/132/14987.pdf>.

⁹⁵ *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal*, see *supra*, at 73.

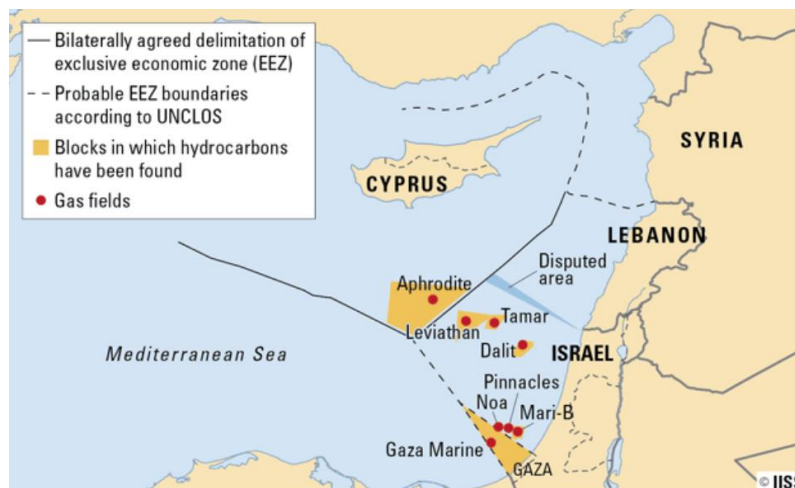


Fig. 1: Eastern Mediterranean EEZs

Five States of the region have declared an EEZ: Egypt (1983), Syria (2003), Cyprus (2005), and more recently Israel and Lebanon in 2011 (Fig. 1⁹⁶). The concept of the EEZ forms nowadays part of customary international law and can be therefore contested by States that, as in the case of Israel, are not party to UNCLOS.⁹⁷ As previously stated,

where claims overlap States have to resolve the dispute through bilateral agreement or by arbitration before an international court. Existing agreements delimiting the EEZ which are of relevance are Lebanon's unratified treaty with Cyprus (2007), the agreement between Cyprus and Egypt (2003), and between Cyprus and Israel (2010). In all these, the equidistance line has been the basic reference.⁹⁸

According to the Convention, Gaza would be entitled to a territorial sea of 12 nautical miles with full sovereignty over the resources found within, a contiguous zone of not more than 12 nm, and a part of the zone confining with the maritime zones of Israel northwards and Egypt southwards. The political situation of the area, however, changes significantly the outcome of the delimitation of Gaza's maritime zones. After the Oslo Agreements, with particular reference to the Gaza – Jericho Agreement, the Palestinian Authority was granted maritime jurisdiction over the waters up until 20 nm seawards of the coast, including jurisdiction over the activities in the area.⁹⁹ Following the worsening of the situation between Israel and Palestine, Israel has incrementally reduced Gaza's jurisdiction through the instrument of the naval blockade: first in 2002 with the so called Bertini Commitment (12 nm), twice in 2006, to 10 nm and then to 6 nm, and finally in 2009 to 3 nm after the Operation 'Cast Lead'.¹⁰⁰ Since the Gaza – Jericho Agreements, the areas adjacent to Egyptian and Israeli waters have been declared

⁹⁶ P. DE MICCO, *The Prospect of Eastern Mediterranean Gas Production: an Alternative Energy Supplier for the EU?*, April 2014, p. 10. Available at [http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2014/522339/EXPO-AFET_SP\(2014\)522339_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2014/522339/EXPO-AFET_SP(2014)522339_EN.pdf).

⁹⁷ *Ibid.*, p. 9.

⁹⁸ *The Legal Framework of Lebanon's Maritime Boundaries: The Exclusive Economic Zone and Offshore Hydrocarbon Resources*, ASDEAM, 2012, p 15. Available at <http://bric.lebcsr.org/bric/img/LegalFramework.pdf>.

⁹⁹ Gaza – Jericho Agreement, Art. XI.

¹⁰⁰ See *supra*, at 91.

‘no fishing’ zones for security reasons (see M and K on Fig. 2, respectively 1 and 1.5 nm wide). Data show that there has been an incremental reduction up to 85% (from 20 nm to 3 nm).¹⁰¹

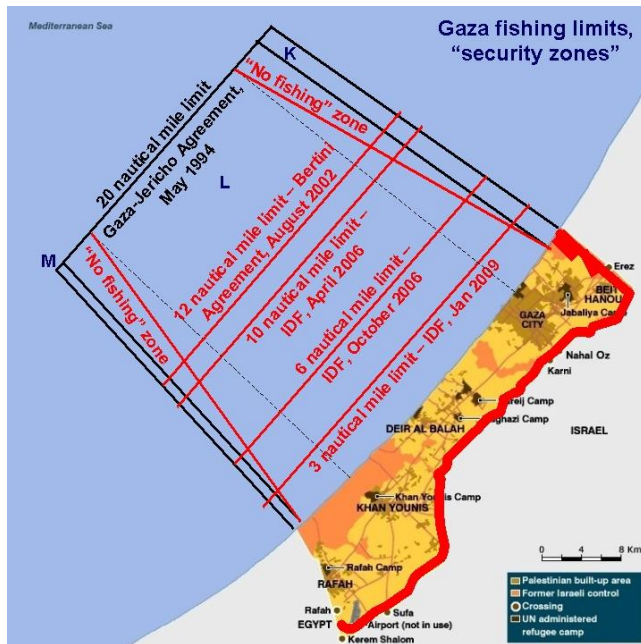


Fig. 2: Progression of Gaza's maritime restrictions

The maritime areas belonging to Palestine off the coast of the Gaza Strip, as established under the Agreement between Israel and the Palestine Liberation Organization are a special situation in Eastern Mediterranean. Another peculiar issue in this case is that Lebanon, since it does not recognize the State of Israel, in 2010 deposited with the secretary-general of the United Nations the charts and lists of geographical coordinates for the delimitation of the exclusive economic zone between Lebanon and Palestine¹⁰², and that there is a dispute between Israel and Lebanon concerning the delimitation of their respective

EEZ.¹⁰³ The countries have avoided direct or even indirect negotiations to settle the maritime border. Despite the ongoing dispute, negotiations seem unlikely at this juncture, although recently it has been reported that Cyprus is attempting to mediate between the countries, given the fact that it has a clear interest in defining a definite border between all three countries, to attract investors and promote joint exploration ventures.¹⁰⁴ Global actors are ready to exploit the Eastern Mediterranean's strategic implications. Russia aims to safeguard its gas monopoly, the United States to support its business interest, and Europe to increase its energy security and reduce dependence on Russia in the light of the Crimean crisis. In this context, the European Union could back the strategic triangle of the Levant as a first step towards the construction of an Eastern Mediterranean energy corridor.¹⁰⁵

¹⁰¹ Map source of figure 2: <http://www.countercurrents.org/lin271209A.htm>. A more detailed map is available at http://www.ochaopt.org/documents/ocha_opt_gaza_access_and_closure_map_december_2012.pdf.

¹⁰² Full text available at http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/lbn_mzn79_2010.pdf.

¹⁰³ T. SCOVAZZI, *Maritime Boundaries in the Eastern Mediterranean Sea*, German Marshall Fund, Eastern Mediterranean Energy Policy, Policy Brief June 2012, p. 9.

¹⁰⁴ R. NATHANSON, R. LEVY (eds.), *Natural Gas in the Eastern Mediterranean - Casus Belli or Chance for Regional Cooperation?*, IEPN, INSS, Tel Aviv, 2012, pp. 22-23. Available at <http://library.fes.de/pdf-files/bueros/israel/09591.pdf>.

¹⁰⁵ P. DE MICCO, cit., p. 1.

2.3 LIVING RESOURCES

According to conventional law of the sea, as entailed mainly in UNCLOS, with regard to fisheries, the Convention establishes for States a regime for the conservation and management of fisheries resources on the basis of the area over which they exercise their sovereign rights and their jurisdiction (internal waters, archipelagic waters, and territorial seas, exclusive economic zones, continental shelf areas and high seas) or of the types of fish stocks¹⁰⁶ that occur in them. States are required to conserve and manage living marine resources in the areas that are within their jurisdiction or the areas over which they exercise sovereign rights.¹⁰⁷ States are also required to cooperate to conserve and manage specific stocks, particularly straddling fish stocks and highly migratory species without prejudice to the rights of the coastal state where such stocks occur within their jurisdiction or in areas where the coastal state exercises sovereign rights.¹⁰⁸ In his accession to UNCLOS, the State of Palestine did not accede also to the 1994 implementation agreement relating to the conservation and management of straddling and migratory species (UN Fish Stocks Agreement)¹⁰⁹. Nevertheless, the term ‘fishing entity’ appears in the Fish Stocks Agreement when requesting them “to cooperate fully”¹¹⁰, thus making the conservation measures arising from the Agreement applicable in theory also to the State of Palestine regardless of its status under international law and its adherence to the Agreement. The wording ‘fishing entities’ is found also in the FAO Code of Conduct, at Article 1.2, stating that it is directed to “members and non-members of FAO, fishing entities [...] and all persons concerned with the conservation of fishery resources and management and development of fisheries, such as fishers, those engaged in processing and marketing of fish and fishery products and other users of the aquatic environment in relation to fisheries”, making it applicable to a wide range of subjects.

Under the Convention, Gaza’s EEZ could be possible to exploit by the Palestinians after being officially claimed. In the case of overlapping EEZs, Palestine should avoid fishing in those areas that overlap in order to not hamper the reaching of an agreement on delimitation.¹¹¹ In the specific case, this is not even a remote possibility, since the area accessible to fishermen is limited by the naval blockade.

Under the Gaza-Jericho Agreement, areas within 20 nm off Gaza’s coast should be open to Palestinian use for fishing, recreation and economic activity. Since the beginning of the second Intifada in 2000, there has been a progressive restriction of fishermen’s access to the sea, prohibiting their access to the

¹⁰⁶ Straddling stocks, highly migratory species, marine mammals, anadromous stocks and catadromous species, Artt. 63-67.

¹⁰⁷ UNCLOS, Art. 61, Art. 62.

¹⁰⁸ Ibid., Art. 63, Art. 64.

¹⁰⁹ *The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (UN Fish Stocks Agreement), effective from 11 December 2001, full text available at http://www.un.org/depts/los/convention_agreements/texts/fish_stocks_agreement/CONF164_37.htm.

¹¹⁰ Fish Stock Agreement, Art. 17.

¹¹¹ Ibid., Art.74 (3).

areas bordering the Israeli and the Egyptian borders using military force. The aim of the restrictions for Israel was and is to avoid the smuggling of weapons and dual usage material to the Gaza Strip that could favour the organized terrorist groups, thus undermining Israel's national security. As previously mentioned, in 2002 Israel committed to allow fishing activities in sea areas up to 12 nm from shore ('Bertini Commitment'); this commitment was never implemented and more severe restrictions were imposed during most of the time subsequently. Khan Yunis wharf, for example, was entirely closed by Israel during 2003 and 2004 and open for only 95 days in 2005, making adjacent sea areas totally inaccessible.¹¹²

Access to other areas along the coast also fluctuated over the years, often in response to concerns that weapons were being smuggled into Gaza by sea. In mid-2006, Israel announced that fishing activities beyond 6 nm from the coast were forbidden. The latest expansion of the restricted sea areas can be dated to late 2008, following the "Cast Lead" offensive. Along most of Gaza's coast, the restricted areas begin at 3 nm from shore. In the north, Palestinians are totally prevented from accessing a strip of 1,5 nm along the maritime boundary with Israel, and a strip of 1 nm along the maritime boundary with Egypt, as established in the 1994 Gaza-Jericho Agreement. Overall, Palestinians are totally prevented from accessing 85 percent of the sea areas on which they are entitled to carry out maritime activities, including fishing. Under the blockade, Palestinian fishermen entering the restricted sea areas are regularly exposed to warning fire by the IDF, and in some cases, directly targeted. Fishing boats intercepted by the Israeli military in these areas are regularly confiscated, along with their fishing equipment, and fishermen are detained. Between 1 May 2009 and 30 April 2011, there were 75 attacks against fishermen that resulted in the death of two fishermen, while eight others were injured. At least 65 fishermen were arrested, four of whom were minors.¹¹³

Traditionally the Palestinian fisheries and fishing-related activities have a major role in the activities of the national economy.¹¹⁴ Most of the high value fishes are the demersal species which were the main exports to foreign markets, whilst the pelagic landings were consumed locally providing an important source of protein in the diet of the inhabitants. The restriction on fishermen's access to sea areas beyond three nautical miles from Gaza's shore has had a severe impact on the livelihoods of Palestinians working in the fishing industry. Confinement to the allowed areas has led to overfishing and consequently to a depletion of fish breeding grounds in shallow coastal waters, and a reduction in the

¹¹² *Between the Fence and a Hard Place – The Humanitarian Impact of Israeli Imposed Restrictions on Access to Land and Sea in the Gaza Strip*, UNOCHA and WFP, n. 39, 2010, p.11. Available at https://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf.

¹¹³ *Parallel Report to the Committee on Economic, Social and Cultural Rights on the Occasion of the Consideration of the Third Periodic Report of Israel*, Al-Haq, Occupied Palestinian Territories, 2011, available at http://www2.ohchr.org/english/bodies/cescr/docs/ngos/Al-Haq_ISRAEL_CESCR47.pdf.

¹¹⁴ *Restricted Livelihood: Gaza's Fishermen*, UNOCHA Case Study of July 2013, p. 1. Available at https://www.ochaopt.org/documents/ocha_opt_gaza_fishermen_case_study_2013_07_11_english.pdf.

number of people able to gain a living from fishing activities, as fishermen are prevented from reaching the richest shoals found between 5-8 nautical miles from Gaza's shoreline. Thousands of fishermen have abandoned the sector. In recent years, sardine catch has consisted of undersized, juvenile fish, caught using nets with smaller mesh. Overall, an estimated 35,000 people depend on the fishing industry as their primary source of income, and are directly affected by the Israeli restrictions on access to the sea.¹¹⁵

The problem of overfishing is tackled by several environmental institutions, in particular the provisions arising from UNCLOS¹¹⁶ and the Fish Stocks Agreement¹¹⁷, the 1992 Convention on Biodiversity¹¹⁸, Agenda 21¹¹⁹ and the 1995 FAO Code of Conduct for Responsible Fisheries¹²⁰, all instruments which both Israel and Palestine have signed, ratified or acceded. These instruments adopt a holistic environmental approach that comprises every aspect of the ecosystem in order to have a wider scope of application in the protection of the environment. A definition of "marine ecosystem" is found in the Report of the UN Secretary-General, which defines it as:

"[...] the sum total of marine organisms living in a particular sea area, the interactions between those organisms and the physical environment in which they interact. A vulnerable marine ecosystem could be defined as one that is particularly susceptible to disruption, to damage or even to destruction due to its physical characteristics, the activities and interactions of the organisms therein and the impacts they suffer from human activities and the surrounding environment."¹²¹

For what regards the ecosystem approach, the Biodiversity Committee of the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention)¹²² of 1992 defined it as:

"The comprehensive integrated management of human activities based on the best available scientific knowledge about the ecosystem and its dynamics, in order to identify and take action on influences which are critical to the health of marine ecosystems, thereby achieving sustainable use of ecosystem goods and services and maintenance of ecosystem integrity."¹²³

¹¹⁵ *The Monthly Humanitarian Monitor*, November 2011, UNOCHA, Occupied Palestinian Territories, p. 6-7. Available at http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2011_12_15_english.pdf.

¹¹⁶ Although the term 'overfishing' does not appear in the Convention, the obligation to ensure a sustainable utilization of the living resources is derivable from the provisions arising from Article 192 and 193.

¹¹⁷ Article 5.

¹¹⁸ Article 8, Article 10.

¹¹⁹ Part 17.72.

¹²⁰ Article 6.3.

¹²¹ *Oceans and the Law of the Sea*, Report of the Secretary-General of the United Nations, A/58/65, p. 53, para. 172. Text available at <http://www.eurocean.org/np4/file/129/N0446458.pdf>.

¹²² The Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention), open for signature 22 September 1992, entry into force 25 March 1998. It replaced the 1972 Oslo Convention against dumping and the 1974 Paris Convention covering land-based sources and the offshore industry. Full text available at http://www.ospar.org/html_documents/ospar/html/ospar_convention_e_updated_text_2007.pdf.

¹²³ Meeting of the Biodiversity Committee (BDC), Dublin, 20-24 January 2003, Summary Record BDC 2003, BDC 03/10/1-E, Annex 13, *Ecosystem Approach to Management of Human Activities*, p. 1.

In accordance with this definition, the ecosystem approach focuses on biological interactions between all marine species in the same as well as in neighbouring zones, and the ecological conditions of the physical surroundings.¹²⁴

The importance of a holistic approach is underlined by the aforementioned instruments by referring to the concept of "integrated management approach" or "integrated ocean management". For instance, paragraph 17.1 of Agenda 21 stated that:

“The marine environment-including the oceans and all seas and adjacent coastal areas-forms an integrated whole that is an essential component of the global life support system and a positive asset that presents opportunities for sustainable development” [...] “This requires new approaches to marine and coastal area management and development, at the national, sub-regional, regional and global levels, approaches that are integrated in content and are precautionary and anticipatory in ambit, as reflected in the following programme areas.”¹²⁵

The integrated management approach is at issue in the management of living resources, including marine biological diversity. It is becoming apparent that the intricate relationship of marine ecosystems and the environments that support them are important elements in establishing an effective ocean management regarding marine living resources as well as marine biological diversity.¹²⁶ On this point, an integrated management approach focusing on ecological unity is required.¹²⁷

Other than specifically prohibiting the fishing of a determinate specie above sustainable levels, these environmental instruments also provide obligations to not endanger the environment in which these species are found.

Another environmental issue that is connected to fisheries other than overfishing and that is influenced, if not created, by the naval blockade on Gaza is the precarious condition of the waters off the Gaza Strip. The sewage system of the Strip is designed in a way to directly discharge sewage at sea. The seawaters of Gaza strip is highly polluted from the sewage flow into the sea and from the flooding of Gaza valley

¹²⁴ Y. TANAKA, *Zonal and Integrated Management Approaches to Ocean Governance: Reflections on a Dual Approach in International Law of the Sea*, *The International Journal of Marine and Coastal Law*, Vol 19, No 4, 2004, p. 497.

¹²⁵ With respect to the impact of UNCED upon ocean management, see B. CICIN-SAIN, R.W. KNECHT, *Implications of the Earth Summit for Ocean and Coastal Governance*, 1993, ODIL Vol. 24, pp. 323-353; B. CICIN-SAIN, R.W. KNECHT, G.W. FISH, *Growth in Capacity for Integrated Coastal Management Since UNCED: An International Perspective*, 1995, *Ocean and Coastal Management* Vol. 29, pp. 93-123.

¹²⁶ Y. TANAKA, *cit.*, p. 496.

¹²⁷ The need for an ecosystem approach is often stressed by writers in the context of the management of marine living resources. See for instance, E. J. MOLENAAR, *Ecosystem-Based Fisheries Management, Commercial Fisheries, Marine Mammals and the 2001 Reykjavik Declaration in the Context of International Law*, 2002, *IJMCL* Vol. 17, pp. 561-595.

presenting chemical wastes from the other side of the border. The discharge of untreated wastewater into the shallow waters of Gaza strip is a serious problem for the status of the marine ecological system. The untreated sewage discharge affects the complete marine food chain (phytoplankton, zooplankton, crustaceans, fish and mammals). Important effects are the decrease of the dissolved oxygen content of the water, due to the breakdown of organic material in the sewage water, and eutrophication (the increase of nutrient concentration) which in a sea characterized by low presence of nutrients can bring to a dramatic change in the fauna and flora of the marine ecosystem.¹²⁸ Also in this case Part XII of UNCLOS¹²⁹, the CBD¹³⁰, the FAO Code of Conduct¹³¹ and Agenda 21¹³² cover the issue of land based pollution in the specific or in a generic way of protecting the environment with the obligation of preserving the natural habitat of marine species and avoiding those activities that could constitute a hazard to the ecosystem and its biodiversity. The instruments, moreover, call upon States to apply the most environment-friendly techniques and practices in the undergoing of their activities.

The naval blockade in these cases is impeding, or at least heavily conditioning, the possibility for Palestine to fix these problems, since overfishing is caused by the high concentration of fishermen in the 3 nm zone from the coast open for fishing, where juvenile stocks are found, and the block on the import of construction materials impedes the repair and upgrade of the sewage system to the environmental standards entailed in the instruments cited above.

2.4 NON-LIVING RESOURCES

The relation between the law of the sea and the exploitation of non-living resources is mainly described in the part of UNCLOS concerning the regime of the continental shelf, as entailed in its part VI, Articles 77 to 85. States have exclusive jurisdiction for the exploration, extraction and exploitation of the resources of the continental shelf, including those living species that are in constant contact with the bottom of the sea, which are not included in the regime of the EEZ.¹³³ The main difference between the regime of the continental shelf and the regime of the EEZ is that, while the EEZ needs to be claimed in order for the coastal State to exercise its sovereign rights, the continental shelf is under the jurisdiction of the coastal State *ipso facto, de iure, and ab initio*, meaning that its exploration and exploitation are not subjected to previous claim.¹³⁴ This means that in absence of an official claim by the coastal State,

¹²⁸ A. MAHMOUD, *The Coastal Zone of Gaza Strip - Palestine Management and Problems*, Paris, Gaza, 2002, pp.18, 23. Available at http://overfishing.org/interesting/documents/fisheries_gaza/2002_gaza_briefing_paper.pdf.

¹²⁹ Article 207.

¹³⁰ Article 8.

¹³¹ Article 2.

¹³² Chapter 17.

¹³³ UNCLOS, Art. 77.

¹³⁴ D. R. ROTHWELL, T. STEPHENS, *cit.*, p. 409.

other States are in any case prohibited from engaging in activities on the continental shelf of that State. This approach reflects the consideration under international law that the continental shelf is a natural prolongation of the land territory of a State, which thus has full sovereignty over it, as stated by the ICJ in the *North Sea Continental Shelf* case of 1969.¹³⁵ The concept of natural prolongation was stated as the main of all the rules concerning the continental shelf, relevant both to the issue of delimitation between adjacent coastal States and the entitlement rights of a coastal State.¹³⁶

The coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes.¹³⁷ As for what regards other States, Article 78 seeks to safeguard their interests stating that the sovereignty of the coastal State over the continental shelf does not affect the status of the water column and airspace above it.¹³⁸ Moreover, the exercise of coastal State sovereignty must not interfere with navigation or other rights laid down in UNCLOS.¹³⁹ Other States have also the right to lay submarine cables and to operate their maintenance on the continental shelf of the coastal State, the delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State.¹⁴⁰

A common feature between the legal regime of the EEZ and the continental shelf concerns the situation when a resource is shared between two States with adjacent or opposite boundaries. While the Convention has provisions regarding the procedures applicable to the sharing of fish stocks between two EEZ¹⁴¹, the same does seem to apply for the case of joint development of non-living resources. This is because Article 74 (3) and 83 (3) of UNCLOS provide that, pending an agreement on delimitation of the continental shelf, States shall enter into provisional agreement of a practical nature in a spirit of cooperation and understanding. It is clear, however, that such agreements amount to nothing more than *modi vivendi*, as the wording of the Articles clearly states that they shall be without prejudice to the final delimitation.¹⁴²

¹³⁵ Here the Court affirmed that: “the rights of the coastal States in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exists *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is an inherent right”. *North Sea Continental Shelf*, decision of 20 February 1969, ICJ Rep. 3, para. 19. Full text available at <http://www.icj-cij.org/docket/files/52/5561.pdf>.

¹³⁶ D. P. O’CONNEL, *The International Law of the Sea*, n. 2, vol. 1, Oxford, 1984, p. 495.

¹³⁷ UNCLOS, Art. 81.

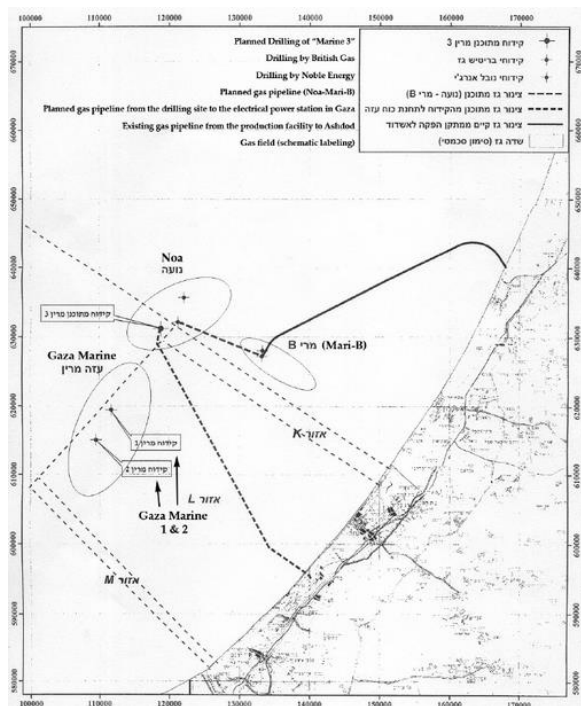
¹³⁸ *Ibid.*, Art. 78 (1).

¹³⁹ *Ibid.*, Art. 78 (2).

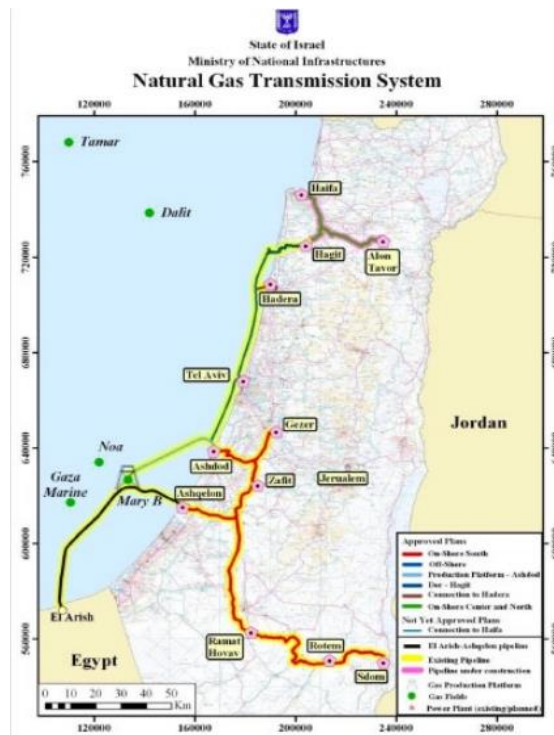
¹⁴⁰ *Ibid.*, Art. 79.

¹⁴¹ *Ibid.*, Art. 63.

¹⁴² D. R. ROTHWELL, T. STEPHENS, *cit.*, p. 290.



3: Gaza Marine, Noa and Mari-B Fields.



4: Israeli pipeline infrastructure.

Even in the more specific provisions applicable to the present case concerning enclosed or semi-enclosed seas, Article 123 UNCLOS mentions only the obligation of regional cooperation only for what regards living resources. Given the proximity of States in the Mediterranean, it is highly likely that natural gas and oil fields are transboundary and that agreements for the exploitation and the sharing of the revenues are needed. Figure 3¹⁴³ and 4¹⁴⁴ show the Israeli assessment of the resources around the maritime boundaries of the Gaza Strip and the submarine cabling system that connects Israel to Egypt bypassing the State of Palestine.

The first relevant resource field found off the coast of the Gaza Strip is the natural gas field called Gaza Marine, discovered in late 2000 at approximately 22 nm from the coast, thus slightly outside the borders of the blockaded area and far beyond reach of the Palestinians under current circumstances. Additionally, developers would still need clearance from Israel to export the gas because Israel controls the pipes, according to Palestinian officials.¹⁴⁵

Palestinians have sought to explore their own gas reserves in Gaza Marine for more than a decade and a half. The resources of Gaza Marine account to a total of 1.4 trillion cubic feet of gas and are located

¹⁴³ J. STOCKER, *No EEZ Solution: The Politics of Oil and Gas in the Eastern Mediterranean*, The Middle East Journal, Vol. 66, No. 4, Autumn 2012.

¹⁴⁴ S. POWER, *Preventing the Development of Palestinian Natural Gas Resources in the Mediterranean Sea - Implications for Multinational Corporations Operating in Israel's Gas Industry*, Special Report for 2014 UN Forum on Business and Human Rights, 2014, Ramallah, p. 33.

¹⁴⁵ D. AKKAD, *Why Hasn't Gaza Marine Produced Gas?*, article of 26 April 2015, Middle East Eye, available at <http://www.middleeasteye.net/news/why-hasnt-gaza-marine-produced-gas-257418634>.

less than 20 kilometers off the coast of Gaza, within Palestinian territories according to the Gaza-Jericho Agreement. The late Palestinian President Yasir Arafat called them a “gift from God to our people.”¹⁴⁶

In 2003, Israeli Prime Minister Ariel Sharon blocked a proposal that would have allowed the Palestinians to sell their Gaza gas to electric power plants in Israel. BG (former British Gas Group) had proposed a pipeline to carry the Gaza gas ashore using the infrastructure previously mentioned, where most of it would be used by the Israelis. The pipe would also have carried gas to the Palestinians and meant USD 50 million per year in revenue to the Palestinian Authority.¹⁴⁷ In January 2013, the Palestine Power Generation Company signed with Israel a \$1.2 billion contract for 168 billion cubic feet 4.75 billion cubic meters of gas over 20 years.¹⁴⁸

In March 2010, the U.S Geological Survey published a study assessing the presence of non-living natural resources in the Levant Basin Province, Eastern Mediterranean, estimating that there was “a mean of 1.7 billion barrels of recoverable oil and a means of 122 trillion cubic feet of recoverable gas”, placing the region among the most important sources of natural gas in the world. The map provided in the assessment indicates that there are potentially eight gas fields off the coast of Gaza, one gas field on the border of the West Bank, and potentially two or more oil fields bordering the northern and southern boundaries of the Gaza Strip and a cluster of gas and oil deposits around the Dead Sea.¹⁴⁹

Recently, after the conflict reignited in the summer of 2014 there has been little interest in Palestinian–Israeli cooperation in developing Gaza Marine.¹⁵⁰ Annex III of the Oslo Agreement provides the legal basis for a cooperation agreement on the management of industrial quantities of oil and gas resources “particularly in the Gaza Strip and in the Negev”.¹⁵¹ Since the Oslo Agreements, the State of Palestine has been dependent from Israel for the supply of energy. Prior to the conflict in the summer of 2014, the Gaza Strip had only one gas fired power plant in operation. Since the conflict, its operation has been

¹⁴⁶ *Idem*.

¹⁴⁷ R. BRYCE, *Oil, Peace and Palestine: Energy Key to Holy Land's Past, Future*, 2005, World Energy Monthly Review, Vol. 1, n. 4, p. 10. Available at <http://www.epalestine.com/PalestineEnergy.pdf>.

¹⁴⁸ T. BACONI, *A Pipeline Against Peace, Israel's Recent Gas Deals May Exacerbate Tensions in the Middle East*, article of 26 January 2015, Foreign Affairs, available at <https://www.foreignaffairs.com/articles/middle-east/2015-01-26/pipeline-against-peace>.

¹⁴⁹ U.S Department of the Interior, U.S Geological Survey, *Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean*, Fact Sheet 2010-3014, March 2010, p. 1, available at <http://pubs.usgs.gov/fs/2010/3014/pdf/FS10-3014.pdf>.

¹⁵⁰ T. BOERSMA, N. SACHS, *Gaza Marine: Natural Gas Extraction in Tumultuous Times?*, Foreign Policy at Brookings, n.36, February 2015, p. 7. Available at <http://www.brookings.edu/~media/research/files/papers/2015/02/eastern-mediterranean-papers/gaza-marine-natural-gas/gaza-marine-web.pdf>.

¹⁵¹ Article 3, Oslo Agreement, Annex III, Protocol on Israeli-Palestinian Cooperation in Economic and Development Programs. “Cooperation in the field of energy, including an Energy Development Program, which will provide for the exploitation of oil and gas for industrial purposes, particularly in the Gaza Strip and in the Negev, and will encourage further joint exploitation of other energy resources. This Program may also provide for the construction of a Petrochemical industrial complex in the Gaza Strip and the construction of oil and gas pipelines.”

intermittent. Natural gas cannot be supplied to the Gaza Strip owing to the current lack of infrastructure, which adds significantly to the costs of electricity and contributes to air pollution in the crowded Strip (since diesel fuel is more expensive and polluting).¹⁵² Energy supply in Gaza is thus heavily reliant on imports of electricity, from Israel and Egypt, which supply 120 MW and 28 MW per annum, respectively. Yet even at this rate, the imported electricity satisfies less than half of total demand.¹⁵³

The already fragile power generation in the Gaza Strip suffered another setback during the 2014 conflict when an Israeli airstrike hit the power plant, further compounding the crippling power shortages and affecting numerous aspects of life in the Strip, including its limited water supply. Beyond basic household consumption and medical usage, large amounts of energy are needed for sewage treatment and sanitation. It is estimated that it will take at least one year to fully repair the plant, underscoring the vulnerability of infrastructure in this area to civil conflict. Currently the plant is operating as a result of temporary fixes.¹⁵⁴ Given these data, it is of vital importance for the Gazan population to develop and exploit the resources off its coast.

2.5 FINAL REMARKS

In this chapter the maritime boundaries of the Gaza Strip have been analyzed, as well as how the Israeli naval blockade has influenced the access and exploitation of the Palestinian maritime zones in the Mediterranean. The maritime boundaries that generate from the Gaza Strip differ widely from what they could be under UNCLOS and international customary law, what they should be in accordance with the Oslo Accords (the 20 nm line from the coast, or at least the 12 nm mile line decided with the Bertini Commitment), and what they actually are under the naval blockade following current events (a limit varying from three to six nm from the coast). As in the case analyzed in the previous chapter regarding the legal basis of the blockade and its enforcement, also in this circumstance whether or not the unilaterally imposed limitations on access are in accordance with international law are determined on whether one considers the naval blockade on Gaza lawful. If not so, then the lawfulness of the limitations imposed on Gaza is missing, thus making the imposition of the blockade and its repercussions on maritime delimitation and access to natural resources not in accordance with international law.

¹⁵² T. BOERSMA, N. SACHS, *Gaza Marine: Natural Gas Extraction in Tumultuous Times?*, Foreign Policy at Brookings, n.36, February 2015, p. 5.

¹⁵³ *Water and Energy Crisis in Gaza: Seeking a multi-stakeholder partnership for solutions*, UNICEF, May 16, 2014, http://www.unicef.org/oPt/Outcome_document_on_Water_and_Energy_in_Gaza_-_16_May_2014.pdf

¹⁵⁴ H. SHERWOOD, *Gaza's only power plant destroyed in Israel's most intense air strike yet*, The Guardian, July 29 2014, available at www.theguardian.com/world/2014/jul/29/gaza-power-plant-destroyed-israeli-airstrike-100-palestinians-dead.

Although Israel is not a party to UNCLOS, it is nonetheless a party to the 1958 Geneva Convention on the Continental Shelf and has signed or ratified all the instruments concerning the protection of the marine environment that in this case are applicable to fisheries and to the extraction of non-living resources. Moreover, as previously stated, the provisions contained in UNCLOS are considered nowadays part of customary international law applicable to all States, in particular those regarding the high seas. This circumstance make it so that Israel, although not formally bound to the provisions contained in UNCLOS, still has to comply with those norms that are considered international customary law, some of which originated from state practice based on the Geneva Conventions or on the principles of international environmental law.

There is a need for an agreement between Israel, Lebanon and the State of Palestine for the delimitation of the respective maritime boundaries. This is unlikely to happen without Lebanon's recognition of Israel, and Israel's recognition of the State of Palestine. A bilateral agreement between Israel and Palestine could draw from the historical examples of agreements on delimitation that took in consideration special circumstances, as in the case of the Torres Straight Treaty between Australia and Papua New Guinea, modifying the boundary in accordance with the special composition of both the States. In this way both the Palestinian need for access to natural resources and the Israeli need for national security could be taken into account for the provisional agreement while waiting for a definitive delimitation. The limits here are once again represented by the fact that for this type of solution there must be a political will moving in that direction from all the Parties, which at the moment is lacking.

For what regards the access to living resources, the blockade has posed a strict limitation to the sovereign rights of the State of Palestine to explore, exploit, conserve and manage its living resources in its EEZ¹⁵⁵. Moreover, because of the blockade Palestine is unable to comply with the obligation to ensure proper conservation and management measures in its EEZ in accordance with article 61 UNCLOS. The naval blockade has also created a precarious situation for the Gazan fishermen and for the marine environment of the area. The concentration of fishing activities in the 3 nm wide area that is accessible is way too high and has created a serious hazard to the fisheries of the area, mainly caused by overfishing of juvenile stocks and water pollution from land based sources, compromising the sustainable development of the maritime economy of the Gaza Strip and the quality of life of its population. An activity, in this case the naval blockade, which has as a result an international illicit cannot be considered itself as a licit activity under international law.

The same reflections can be done for what regards Palestinian access to non-living resources. The naval blockade heavily limits the sovereign right of the State of Palestine to access the resources of its continental shelf as entailed in article 77 UNCLOS. While for the cases of living resources jurisdiction

¹⁵⁵ UNCLOS, Art. 56.

and exploitation are in any case subject to previous claim, in this case Israel is unilaterally posing a limit on Palestine's customary right to engage in activities on its continental shelf. Moreover, the map at fig. 4 shows that Israel has laid submarine cables on the State of Palestine's continental shelf. While this activity itself is permitted under the law of the sea, there has been no consent from the coastal state regarding the modalities and the direction of those cables passing through Gaza's territorial sea, not respecting the obligation arising from article 79 of the Convention. In this instance Palestine could hypothetically request to exercise its jurisdiction in its territorial sea and require a connecting cable to connect the coast of Gaza to the Gaza Marine field and the Israeli cable infrastructure for the supply of energy that the Gaza Strip is so desperately in need, in joint cooperation with Israel. This, however, would require a stronger political will from both sides and a more stable geopolitical situation, although it has been stated that the economic and social benefits of the proven reserves could provide a strong incentive for cooperation, even short of a full-fledged peace agreement between the parties. Moreover, production from Gaza Marine could also help accelerate the repayment of debts by the PA to the Israel Electric Corporation (IEC). The IEC could produce electricity with the natural gas coming from Gaza Marine and send it to Gaza and the West Bank. Revenues could then be used to pay the outstanding debt. In the long term, the PA would produce its own electricity. According to Boersma and Sachs, an agreement on joint cooperation could also reduce the risk of reigniting the hostilities, although this option now appears distant.¹⁵⁶

¹⁵⁶ T. BOERSMA, N. SACHS, *Gaza Marine: Natural Gas Extraction in Tumultuous Times?*, Foreign Policy at Brookings, n.36, February 2015, p. 11.

CONCLUSIONS

In this work the law of the sea has been used as a pivotal point to analyze the different issues arising under international law for what regards the Israeli naval blockade on the maritime zones of the Gaza Strip. Given the fact that the law of the sea easily interconnects with other branches of international law, it has been a useful lens under which we can tackle the problems that the modalities by which the blockade is carried out create.

The analysis made in the previous chapters focused on how the naval blockade influences the main aspects tackled by the law of the sea: jurisdictional and enforcement powers at sea, maritime delimitation and access to living and non-living resources. In the chapter dedicated to the legal assessment of the naval blockade on Gaza after describing the historical background of the naval blockade itself and of the naval blockade in the specific case of the Israeli one, the analysis then moved onto the modalities by which the blockade is enforced by the IDF on Palestinian and third State flagged vessels, using the example set by the *Mavi Marmara* incident and the legal consequences among the Parties and the international community. Basing the research on the analysis previously made by other scholars, the case has been used to describe the applicability of the concept of universal jurisdiction for actions taking place on the high seas in order to allow the possibility for States different that the flag State to exercise jurisdiction in accordance with international law, using the examples set by national juridical practice by courts and tribunals.

Moreover, the study focused on whether or not the instrument of the naval blockade can be enforced to ensure the national security of a State and under which modalities. From the analysis made in the first part, the deciding factor in assessing the legality of a blockade is the proportionality of the of the measures undertaken in comparison to the threat to national security and in relation to the effect that a naval blockade can have on the civilian population. From the several reports issued in occasion of the *Mavi Marmara* incident by governmental and intergovernmental organisations, and in general by humanitarian and human rights associations, the effects of the blockade on the civilian population are way too disproportionate in comparison with the effective advantages in terms of national security. In particular, the block of the shipment of humanitarian aid cannot be considered in accordance with international law under these modalities. In this assessment the law of the sea plays a fundamental role in identifying which modalities of the naval blockade are in accordance with international law and which are not, in particular the relationship between the law of the sea and the law of armed conflicts. In this case a heavy reference has been made to the San Remo Manual which, although not a binding document, is nevertheless a valuable instrument in assessing the applicable law and that has been mentioned by the reports made by all the parties to the *Mavi Marmara* incident and by the international community. Using

the Manual, this research also focused on which could be the modalities under which Israel could still ensure the protection of its national security and at the same time permitting humanitarian organisations to alleviate the humanitarian emergency that the Gaza Strip is undergoing.

The research then moved in the second part to analyze the applicable law in the delimitation of the maritime zones generate by the Gaza Strip, and in the access to the natural resources within these zones by the Palestinian population. For what regards maritime delimitation, after describing the legal status of the maritime zones of the eastern Mediterranean Sea, a description has been made of which could be the maritime zones generated by the Strip and which would be the modalities and the principles to decide the boundaries under international law, in particular UNCLOS, customary international law and several judicial decisions. Then the focus moved to which are the actual boundaries that the Strip generates and the modalities under which these boundaries should be respected under the Oslo Agreements, to then focus on which are the limitations that Israel has unilaterally imposed following the recent events in order to protect its national security. From analyzing the current legal status of the maritime boundaries in the eastern Mediterranean Sea it emerged that there is the need for a delimitation agreement in particular between Lebanon, Israel and the State of Palestine in order to clarify who as a right of access and where in order to attract investments from abroad, in particular the EU, given the presence of Cyprus in the area. In addition, the possible modalities under the law of the sea by which this agreement could take place have been analyzed. This agreement, however, is subject to a political will oriented in that direction and to a more stable situation of the relations between these States.

Subsequently, the focus has been moved to how the Israeli naval blockade is affecting the Palestinian access to the living resources in the maritime zones of the Gaza Strip. In particular, after describing the applicable law of the sea instruments, using the reports done by FAO and UNOCHA the analysis focused on how these restrictions affect the civilian population of the Strip, its fishing industry and the environmental issues that arise as a consequence. It has been shown that the blockade is influencing heavily the fishing activities of the Gazan fishermen, resulting in overfishing and depletion of the local species and in a severe hazard to the marine and coastal environment and its biodiversity. Moreover, the blockade is impeding the State of Palestine to comply with the environmental obligations that arise from the environmental legal instruments that both Israel and Palestine have signed, ratified or acceded, i.e. the Fish Stock Agreement, the CBD, Agenda 21 and the FAO Code of Conduct. Under international law, an activity that results in an illicit cannot itself be considered lawful.

To conclude, an analysis on the relationship between the blockade and access to natural non-living resources has been made. Under the lens of the law of the sea, in the specific the provisions of UNCLOS relating to the continental shelf, the research moved on how the naval blockade affects the access to the natural resources of the continental shelf off the coast of Gaza and how the restrictions affect the energy supply of the population of the Strip. Using several reports, a description of which resources are present

and hypothetically possible to exploit has been done, as well as what could be the possibility for Palestine to use international law, in particular UNCLOS, to request an upgrade of its energetic situation, alleviating among others the situation of the civilian population of the Gaza Strip. A more stable energetic supply would mean access to a cleaner form of energy, a less serious emergency for the civilian population, a lower risk of reigniting of the hostilities and a reduction of the debt that Palestine has with the IEC for the furniture of electricity, although these effects are subject to a stronger political will moving towards that direction on both sides.

After analyzing and describing in this work which are the aspects under the law of the sea that are influenced or restricted by the Israeli blockade over the Gaza Strip it became more and more evident to the author that Palestine is undergoing a situation where, although being entitled under international law to a coast and to the maritime zones this coast generates, it is limited or even impeded to access them. Moreover, the absence of a functioning port make it so that the Palestinians are obligated to conduct trade and access to the sea through the territory of another State, when that is made possible.

Hence the question: given the very limited access that the Palestinian people have to the marine resources of the Gaza Strip, whether living or non-living, could it be possible for the State of Palestine to seek *status* as a land-locked State? And if that were proved to be the case, what are the implications of this under a law of the sea perspective?

For what regards whether or not Palestine is a land-locked State it could be said that, since the State of Palestine has effective access to a portion of the Mediterranean Sea and of the Dead Sea it would not fall into the quite self-explanatory criterion of “no sea-coast” enlisted in Part X of UNCLOS, at Article 124. However, a wider interpretation of the concept of land-locked State itself could also allow to consider as such also a State that, although having a geographical access to the sea, it is somehow hindered from effectively exercising its jurisdiction and sovereign rights. A move towards that interpretation is easily readable in the statement of the United Nations Conference on Trade and Development (UNCTAD) about the low market access conditions and about the Palestinian effective status as a landlocked State:

“Although the occupied Palestinian territory (oPt) has a seacoast of its own, the continued delays in the construction of a seaport in Gaza have rendered it a *de facto* land-locked territory, isolated from global trade. Palestinian enterprises’ participation in international trade is therefore conducted via the neighbouring countries of Egypt, Jordan and Israel. Historically, Palestinian trade has transited mainly through Israeli port facilities. Palestinian traders are faced with prohibitive transaction costs, however, in view of Israel’s security measures and cumbersome customs and overland transport procedures at the main borders. The intensification of the Palestinian-Israeli conflict since late September 2000 has resulted in isolating Palestinian enterprises from the rest of the world, as it brought a tightening of the movement of Palestinian labours and goods at the oPt’s main commercial crossing points with Israel, Jordan and Egypt. In 2005, Israel and the Palestinian Authority signed the Agreement on

Movement and Access (AMA) to facilitate the flow of Palestinian labour and goods between Gaza and Israel. However, the agreement is yet to be fully implemented.”¹⁵⁷

Under a law of the sea perspective, this interpretation would imply that the State of Palestine could be able to exercise its rights as a land-locked State as entailed in Part X of UNCLOS, mainly at Article 125 where land-locked States are given the right of access to and from the sea for the purpose of exercising the rights provided for in UNCLOS, including freedom of the high seas and common heritage of mankind, and freedom of transit through the territory of transit States by all means of transport.

Nevertheless, Article 125 also safeguards the transit States in its second and third part, subjecting the rights of land-locked States to an agreement and to the respect of the transit State’s legitimate interest. In accordance with the law of the sea Israel could then protect its need for national security by prescribing an agreement for the Palestinian access to the sea through its ports and facilities and by taking all measures needed to defend its interests, in respect of course of the principle of proportionality and letting at the same time international organizations alleviate the humanitarian emergency of the Gaza Strip.

A balanced agreement on the base of equity would then be a way for the Palestinians to turn the naval blockade and the limitations imposed on the maritime zones of the Gaza Strip into the keys to regain access to the sea and its resources, although once again this agreement is subject to a strong and common political will moving towards that direction.

From this work we see that the law of the sea is a useful tool to address in an integrated way those issues that arise when analyzing the naval blockade on Gaza. These issues, mainly humanitarian and environmental, if solved could alleviate the weight that the civilian population of the Strip is bearing, and at the same time guarantee the Israeli need for national security in a proportionate way. Using customary international law and instruments of law of the sea, human rights law, humanitarian law, and environmental law the State of Palestine and Israel could step by step find a balance between Israel’s need for security and Palestine need for development and humanitarian assistance on the base of equality. As stated before the limits are of a political nature, since the instruments of law for such a collaboration already exist and some of them are even part of customary international law.

¹⁵⁷ *Poor Market Access Conditions and Effective Landlocked Status*, UNCTAD, Assistance to the Palestinian People Unit (APPU), available at <http://unctad.org/en/pages/gds/Assistance%20to%20the%20Palestinian%20People/Poor-market-access-conditions-and-effective-landlocked-status.aspx>. The APPU was established in 1985 by UNCTAD with a specific mandate to monitor and investigate the social and economic impact of policies of the Israeli occupation authorities in the Palestinian territories.

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Fig. 4:

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