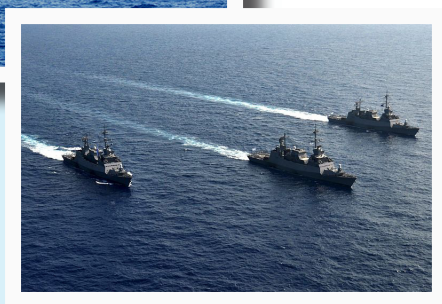
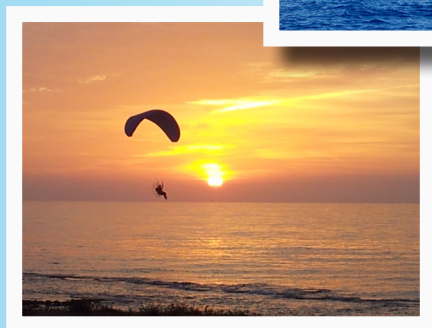
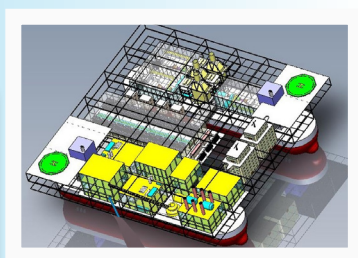


# MARITIME STRATEGIC EVALUATION FOR ISRAEL 2016

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## Chapter 15: Management of Israel's maritime territory – a review of the legal situation

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*The following chapter is based on a report from within the Israel Marine Plan prepared at the Technion.<sup>1</sup>*

### Introduction

Until the end of the 20<sup>th</sup> century, most of Israel's activity in its coastal waters (territorial waters) in the Mediterranean occurred up to 12 nautical miles (about 22 km) from the coast. However, during the past decade, as a result of the discoveries of natural gas in the Israeli Exclusive Economic Zone (EEZ), accelerated activity began in the development of the Israeli maritime domain (including drilling, building of facilities and laying of pipeline). Israel's EEZ extends over an area of about 27,000 square kilometers, which is larger than Israel's dryland territory. Currently, there is drilling activity at a distance of more than 100 km from the coast in deep water (more than 1,700 meters) and underneath the ocean floor (to a depth of over 6 kilometers). This development creates new challenges for Israel, which involve not only security, technological and policy aspects, but also legal ones, which will constitute the basis for the planning of sustainable policy that will prevent environmental disasters such as that which occurred in the Gulf of Mexico.

In contrast to the global trend in recent years, whose goal is the development of integrative-spatial maritime policy based on ecosystem-based management and integrated coastal management,<sup>2</sup> Israeli policy is still primarily sectoral. This

- 1 The Israel Marine Plan was written at the initiative of a group of researchers and planners at the Center for Urban and Regional Studies of the Faculty of Architecture and Town Planning at the Technion and was intended to integrate, accompany and support the parallel processes of planning, legislation, research and teaching of the sea in the State of Israel, both now and in the future. Participating in this initiative were professional consultants in a variety of maritime fields, both from Israel and abroad, and also a broad forum of interested parties (representatives of government ministries and government bodies, environmental organizations, municipalities and representatives of the business sector with an interest in the sea) who were part of the plan's preparation during its various stages. The plan can be found at <http://msp-israel.net.technion.ac.il>
- 2 See Robin Kundis Craig, *Comparative Ocean Governance: Place-Based Protections in an Era of Climate Change* 91–111 (2012). Among the tools commonly used today to implement this trend is the declaration of marine protected areas (MPA) and marine spatial planning (MSP). This policy is also reflected in institutional regulation, including the creation of regulatory frameworks with a broad and holistic view of marine management.

policy results in regulatory chaos, in which numerous authorities are responsible for different aspects (sometimes conflicting) of the same marine environment. Each has its own narrow perspective and there is no clear order of preferences. Furthermore, there is high degree of uncertainty in all aspects of legislative regulation of activity in Israel's EEZ. This uncertainty has broad economic, regional and international consequences.

The United Nations Convention on the Law of the Sea (UNCLOS) from 1982 (herein: the Convention) serves an international maritime constitution, whose role is to specify the rights and obligations of nations in the various maritime regions. It creates a framework for the management, protection and sustainable development of the maritime environment and its resources. The Convention went into effect in 1994 and since then has been ratified by 166 nations (including Lebanon, Egypt and Cyprus).<sup>3</sup> Israel is not signed on the Convention but has declared more than once that it "accepts upon itself the stipulations of the Convention, including those that relate to the coastal regions."<sup>4</sup>

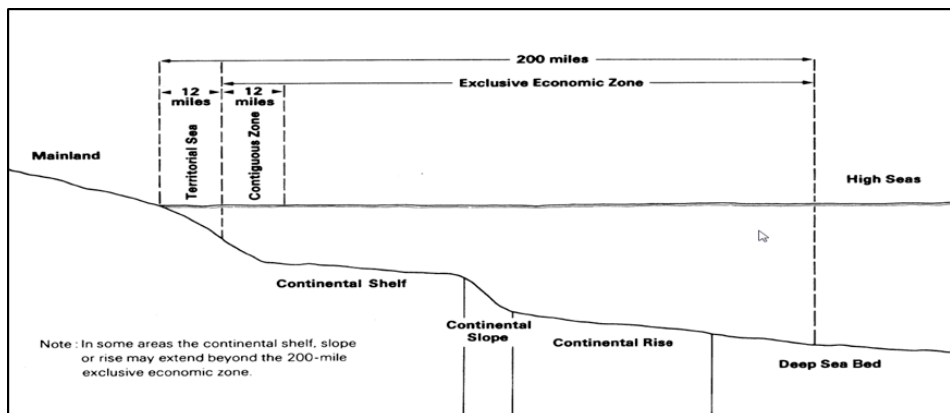


Figure 15.1 Maritime Zones (Churchill and Low 1999).

## Baselines

The baselines are the lines that extend along a county's coast from which is measured a country's coastal waters or territorial waters (defined below). The other

<sup>3</sup> As of January 10, 2014, [www.un.org/Depts/los/reference\\_files/status2010.pdf](http://www.un.org/Depts/los/reference_files/status2010.pdf).

<sup>4</sup> See the foreword to the draft of the Law the Maritime Zones 5773-2013 page 4. See also the agreement between the government of Israel and the government of Cyprus regarding the demarcation of the EEZ from December 17, 2010.

maritime zones are also measures from the baselines. The Convention defines the methods for determining the baselines: the normal baseline and the straight baseline.

Paragraph 3 of the Law of Interpretation, 5741-1981 specifies that the "coastal waters" (territorial waters of Israel) extend from "the low water point on the coast". In other words, in the current legal situation, the baseline for measuring maritime zones is the normal baseline. Nonetheless, according to the explanation of the proposed Law of Maritime Zones, 5775-2014 (herein: the proposed Maritime Zones Law), there is a desire to change the system to one of straight baselines. It appears that policy makers in Israel are aware of the fact that the geographic characteristics of Israel's coast are not suited to the system of straight baselines according to the Convention. However, according to the proposal's foreword, Israel is basing itself on the practices of neighboring countries in the region.<sup>5</sup> Figure 15.2 illustrates the straight baselines for Israel.

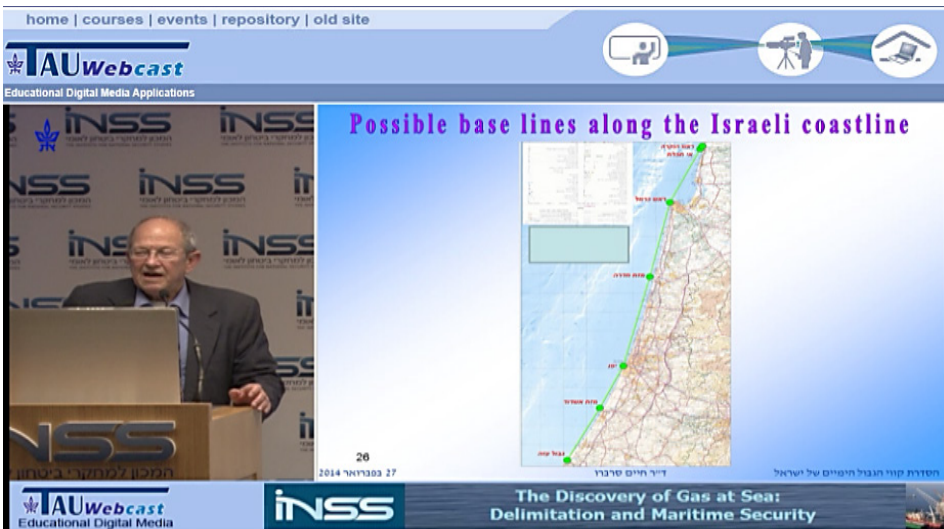


Figure 15.2 Possible straight baselines<sup>6</sup>

If and when Israel changes the system for drawing the baselines there it will be necessary to examine the implications for the demarcation of Israel's maritime

- 5 It should be mentioned that Israel has not yet published the actual coordinates between which the baselines will be drawn.
- 6 According to Dr. Haim Serbaro, Director of the Israel Mapping Center, at the conference of the Institute for National Security Studies, February 27, 2014.

zones, the agreement with Cyprus, the dispute with Lebanon on the demarcation of the EEZ and other issues. In addition, it should be taken into account that the determination of straight baselines requires a public declaration that is liable to meet with opposition from neighboring states.<sup>7</sup>

## Territorial Waters

The territorial waters are a strip of the Mediterranean Sea adjacent to Israel's coast, which stretch for 12 nautical miles westward from the baselines. In this territory, Israel has complete sovereignty, including over the airspace above it, the water column, the seabed and under the seabed. In this zone, foreign countries have the right of innocent passage of sea vessels, which do not disturb the peace or security of the coastal nation.

Over the years, Israel has expanded its territorial waters and they currently extend to 12 nautical miles from the low water mark (covering an area of about 4000 square kilometers).<sup>8</sup> Paragraph 3 of the Law of Interpretation, 5771-1981 defines "coastal waters" as an open strip of ocean along a country's' coast, with a width 12 nautical miles from the low water point on the coast." In Israel there are no additional laws that regulate the territorial waters.<sup>9</sup>

A relevant issue in this context is the demarcation of the territorial waters between neighboring countries. Paragraph 15 of the Convention specifies that neighboring countries are not permitted to expand their territorial water to beyond the "median line"<sup>10</sup> except in the case of an agreement between the nations, historical ownership or special circumstances. Paragraph 16 of the Convention states that the state must publicize the list of coordinates or the map of its territorial waters

7 In this context, it is important to mention that Israel signed and also ratified the Geneva Convention that specifies almost identical principles with respect to baselines.

8 The Coastal Waters Law, 5717-1956, expanded the territorial waters from three to six nautical miles and the Coastal Waters Law (amendment), 5750-1990 extended them to 12 nautical miles.

9 Thus, for example, the existing definition does not relate to the airspace or the seabed and under the seabed of the strip of open sea and also not to the rights of innocent passage for foreign nations.

10 "...the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured." For other system to determine the median line see: ABLOS (2006), A Manual on Technical Aspects of the United Nations Convention on the Law of the Sea - 1982 (4<sup>th</sup> ed.)

and submit a copy to the UN Secretary. Israel declared in 2011 its northern coastal boundary, but has yet to declare the southern one.<sup>11</sup>

## Contiguous Zone

The contiguous zone is the strip extending for an additional 12 nautical miles beyond the territorial waters (i.e. to 24 nautical miles from the baseline) and it must be declared in order to be recognized. This zone is not part of the state's territory; but the state can employ limited enforcement powers with the goal of preventing violations of the law in its territory. This includes: customs, fiscal matters, immigration, public health and also archaeological and historical artifacts found on the seabed in this zone. Israel has yet to declare its contiguous zone. The contiguous zone is part of the EEZ (defined below) and therefore all of the powers a country has in the EEZ also apply in the contiguous zone.

## Exclusive Economic Zone

The EEZ ("economic waters") extends for 200 nautical miles beyond the baselines, or up to a distance determined in an agreement with another coastal country. In this zone, the state does not have sovereignty, but rather only sovereign economic rights: the rights to search for, exploit and manage fish and mineral resources on and under the seabed and in the water above it, as well as the right to exploit waves, currents and wind to produce energy. In addition, the state is given the powers needed to realize its rights, such as building of facilities and artificial islands and also judicial powers in the areas of the facilities, with respect to customs, fiscal matters, health, safety and immigration, and the power to determine a safety zone around the facilities with a radius of up to 500 meters. The state also has powers to oversee and enforce in order to realize its right to fishing resources and the right to engage in scientific research and to protect the marine environment. In parallel to these rights, the state has the obligation to preserve the ocean environment and fishing resources. Foreign nations also have defined rights in a country's EEZ. Thus, for example, countries have the right of passage by sea and by air in the EEZ and the right to lay underwater pipelines and cables. Israel has not yet declared its EEZ.

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11 Decision 3452 of the 32<sup>nd</sup> government: "Determination of northern maritime demarcation of the coastal water and the exclusive economic zone of the State of Israel in the Mediterranean" (July 10, 2011) [pmo.gov.il/Secretary/GovDecisions/2011/Pages/des3452.aspx](http://pmo.gov.il/Secretary/GovDecisions/2011/Pages/des3452.aspx). The decision was submitted to the UN.

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## Continental shelf

As in the EEZ, a state has only sovereign economic rights to search for and exploit natural resources (although only on the seabed and underneath it) including mineral and other inorganic resources, as well as sedentary species on the seabed. The state has the exclusive right to regulate drilling on the continental shelf.

There is overlap between the continental shelf and the EEZ of up to 200 nautical miles from the baselines, regardless of the geological characteristics of the continental shelf. However, a nation that is interested in extending its continental shelf to beyond 200 nautical miles (not relevant in Israel's case) must demonstrate geological continuity. Although practically there appears to be an overlap between the EEZ and the continental shelf with respect to seabed and under the seabed rights, these are still two different regimes. The main relevant difference for our purposes is that the rights on the continental shelf (up to a range of 200 nautical miles) are not conditional on a declaration and they exist for the state merely by the continental shelf's existence. In contrast, the state is required to publicly declare its EEZ. The International Court has determined that there is the possibility of a continental shelf without an EEZ but not an EEZ without a continental shelf.

## Demarcation of Israel's EEZ and continental shelf in the Mediterranean

The short distance between Israel and Cyprus does not allow the two countries to exploit the full 200 nautical miles that is specified in the Convention for the EEZ and the continental shelf. In addition, Israel's EEZ is bordered on the north by Lebanon and in the south by the Palestinian Authority and Egypt. In cases of overlap between the EEZ's and continental shelves of two or more countries, the Convention specifies that the matter should be resolved by an agreement between the countries that is fair and just.<sup>12</sup> In the event that such an agreement is not reached, the matter will be resolved by the process for adjudicating conflicts set

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12 "The delimitation... between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law... **in order to achieve an equitable solution.**" This formulation is a convenient compromise for the countries, since it permits negotiations over the demarcation of desired boundaries and is applicable according to the circumstances of each case. States can determine the method for arriving at an agreement that is desired by them (and can also take into account geological structures and geographic characteristics). Nonetheless, it appears that countries generally adopt the median line as the starting point of negotiations. For a review of the various methods, see: Nugzar Dundua, *Delimitation of maritime boundaries between adjacent States* (United Nations – The Nippon Foundation Fellow 2006–2007).



out in the Convention.<sup>13</sup> Since Israel is not signed on the Convention, the option open to it is to determine the boundaries by means of agreements in accordance with international law.<sup>14</sup>

In order to determine its maritime boundaries, Israel relies on a number of bilateral agreements in which Cyprus is a party (the Cyprus-Egypt agreement from 2003<sup>15</sup> and the Cyprus-Lebanon agreement from 2007 which was not ratified by Lebanon<sup>16</sup>). The agreement signed between Israel and Cyprus in 2010 is tangent to these agreements (as can be seen Figure 15.4 – point 12 in the south and point 1 in the north).<sup>17</sup> Meanwhile, paragraph 1(e) of the agreement states that points 1 and 12 are not conclusive points and that they can be changed in a future agreement between the three relevant countries. In addition, paragraph 3 of the agreement allows the sides to negotiate the boundaries of the economic waters with other countries but requires the two sides of the agreement to consult with one another prior to reaching a final agreement if the demarcation hinges on points 1 and 12.

13 Paragraphs 74(2) and 83(2) of the Convention. Chapter 15 of the Convention specifies the mechanism for resolution of conflicts. Paragraph 287 of the Convention lists four different possibilities for resolution of conflicts in the absence of an agreement between the countries, where in the absence of agreement over the desired mechanism the default will be mediation (paragraph 287(5)).

14 It should be mentioned that paragraph 6 of the Convention regarding the continental shelf specifies a different solution for the demarcation of boundaries. It states that the rule is an agreement between the countries and in the absence of such an agreement the median line will be the boundary between them. It should be mentioned that Israel and Cyprus ratified this Convention but not Lebanon and Egypt. [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXI-4&chapter=21&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-4&chapter=21&lang=en)

15 Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone (17 February 2003). A copy of the agreement appears on the UN website: [www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EGY-CYP2003EZ.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EGY-CYP2003EZ.pdf)

16 This agreement did not go into effect and therefore not only are its instructions not binding on Lebanon and Cyprus, they have no validity for a third party (such as Israel). On the status of the agreement with respect to Israel see: E.S. Abu Gosh and R. Leal-Arcas, *Gas and Oil Explorations in the Levant Basin: The Case of Lebanon and Israel*, Oil, Gas & Energy Law Intelligence (2013); Martin Wählisch, *Israel-Lebanon Offshore Oil & Gas Dispute – Rules of International Maritime Law*, 15 ASIL Insights (2011).

17 Agreement between the Government of Israel and the Government of the Republic of Cyprus regarding demarcation of the Exclusive Economic Zone dated December 17, 2010. The agreement was ratified in Government decision 2794 from February 3, 2011. The agreement appears on the UN site: [www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/cyp\\_isr\\_eez\\_2010.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/cyp_isr_eez_2010.pdf)





Figure 15.3 Appendix 2 to the agreement between Israel and Cyprus

This situation creates uncertainty with regard to the boundaries of Israel's EEZ. Israel depends on Cyprus as an "anchor", while Cyprus itself is subject to diplomatic attack in this context from Turkey. In addition, the arrangement between Israel and Cyprus with regard to the point of the northern boundary is not recognized by Lebanon, while the demarcation of the northern maritime border is a subject of international dispute. Figure illustrates the dispute between Israel and Lebanon.

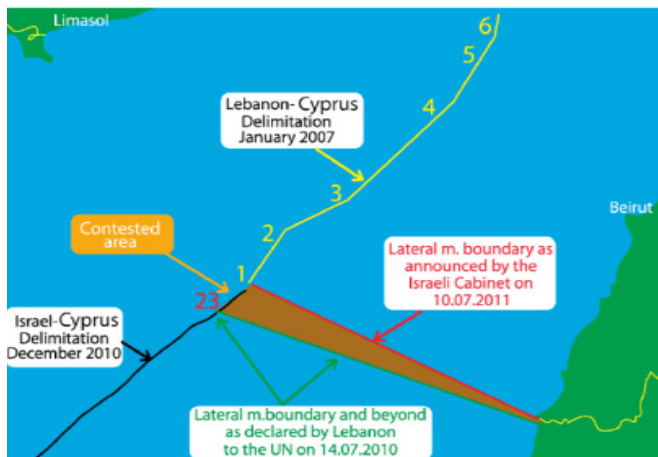


Figure 15.4 The boundary dispute with Lebanon (the disputed area is about 850 square kilometers)

The lack of certainty with respect to the demarcation of Israel's maritime boundaries has not only political and security implications, but also economic one (since Israel refrains from granting exploration licenses in the disputed area and therefore the uncertainty also influences the pricing of exploratory and production activities in other areas, etc.).

## Which law applies to Israel's EEZ and continental shelf?

Currently, apart from the Underwater Territories Law, 5713-1953, there is no law in Israel that deals with the EEZ or the continental shelf. This situation is meant to change with the passage of the Maritime Zones Law, the legislative process for which began several years ago.<sup>18</sup>

The question arises as to which laws apply in Israel's EEZ. Do the planning and building laws apply in this zone? And what is the status of the antitrust laws, the environmental protection laws, the labor laws and the tax laws in the EEZ? It should be recalled that in contrast to territorial waters in which Israel has full sovereignty and all of its laws apply, in the EEZ the country has only limited sovereign rights. Essentially, there is currently no legal certainty regarding which laws apply in Israel's EEZ. From time to time, Israel decides to apply one law or another based on interpretation, but there are no set guidelines. The proposed Maritime Zones Law was meant to introduce order in this context, including the application of Israeli law; however, the legislation has been delayed. This reality creates legal chaos that harms public interests. The issue brings up the question of the basis on which the government can decide to apply certain laws in Israel's EEZ.

Currently the government bases its authority to apply certain laws in the EEZ primarily on the interpretation of an old law from 1953—the Law of Underwater Territory which includes only one paragraph:

*1.(a) "The territory of the State of Israel will include the seabed and under the seabed of marine territories adjacent to the coast of Israel, which are beyond the territorial waters, to where the depth of the water above them allows the exploitation of natural resources in those territories."*

*(b) "Nothing mentioned in subparagraph (a) will detract from the character of the water above these marine territories and beyond the territorial waters of Israel, in the open sea."*

According to a legal opinion published in January 2013 by the Assistant Attorney General, Avi Licht,<sup>19</sup> the interpretation of this paragraph in the spirit of the

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<sup>18</sup> Two previous memos of the Law were published in 2008 and 2011.

<sup>19</sup> "The law applying in maritime zones", opinion of the Assistant Attorney General (Economic-Fiscal), January 15, 2013.

Convention leads to the conclusion that Israel has the authority to apply a particular law in its EEZ.<sup>20</sup>

## Maritime environmental management in Israel

The Convention provides a framework for the protection of the marine environment and the management of ocean resources, which imposes obligations on nations and sets down general principles, while leaving the detailed regulation to specific international and regional conventions and local legislation. This allows countries to adopt various management approaches. In the past, countries have adopted management methods that are characterized by sectoral management, i.e. focus on specific sources and uses (fishery management, management of resources such as oil and gas, the regulation of shipping and commerce, protection of certain species, prevention of pollution from certain sources, etc.). In recent decades there has been a shift toward integrative management methods that are based on ecological systems.

In Israel, the numerous uses of the maritime environment are regulated by a large number of authorities (the Ministry of Agriculture, the Ministry of Transportation, the Ministry of Health, the Ministry of Energy, the Israel Nature and Parks Authority, municipalities, etc.). The Israel Marine Plan mapped 15 different regulators that are connected to the management of the maritime environment in Israel.

From the regional point of view, the recognition of the economic, social, ecological and cultural value of the Mediterranean marine environment and of the threats to it, have led the Mediterranean nations to take on joint responsibility and management of the Mediterranean region as part of the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean.<sup>21</sup> The Convention is intended to achieve the sustainable management of marine and coastal resources and sets out principles for cooperation, with the goal of preserving the marine environment and encouraging scientific and technological development. The parties are obligated to take all appropriate measures, jointly or

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20 The opinion discusses environmental legislation, tax laws and petroleum laws. However, this is not a close-ended list. According to the opinion, each paragraph of the legislation needs to be considered on its own.

21 Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (1995). The original convention from 1967 was called Convention for the Protection of the Mediterranean Sea Against Pollution, and already from the name one can see that the amended Convention adopts the more integrative approach. The amended convention from 1995 went into effect in 2004. Israel is signed on the Convention and ratified the amendments to the 2005 Convention.

on their own, in order to prevent and minimize pollution in the Mediterranean and protect the marine environment, with the goal of sustainable development. To this end, the parties agreed to apply the principles of "precaution" and "the polluter pays"; to carry out evaluations of environmental consequences; to promote integrative management of the coastal regions; to use the best environmental methods and practices; and to cooperate in the formulation and adoption of the protocols.

According to paragraph 1, the Convention applies to the entire territory of the Mediterranean (without distinguishing between the different maritime regions), and the states have the right to expand the application of the Convention to other coastal regions as well (integrative management, sea-land interface). In addition, the geographic application of the Convention can be expanded using a protocol in accordance with the goals of the protocol (for example, on the seabed and under the seabed of the continental shelf).

The parties to the Convention are obligated to adopt environmental legislation that implements the Convention and its protocols, to facilitate transparency and involvement of the public in the implementation of the Convention and to use any means necessary to implement the Mediterranean Action Plan (MAP), which is meant to specify practical steps for the implementation of the Convention and its accompanying seven protocols.

## Conclusion

Israel must shift to an integrative-spatial marine development policy that involves ecosystem-based management and integrative planning of the coastal areas, in contrast to the existing sectoral policy, in which at least 15 regulators operate in the maritime domain with only partial coordination.

The lack of legal certainty regarding the application of Israeli law to the economic waters of Israel has economic and other implications (standards, work safety) for the natural gas companies and others that operate in this domain (regulatory stability was one of the major issues related the Natural Gas policy Outline that was recently approved). The State of Israel must create legal certainty in its marine territory, first and foremost by promoting the proposed Marine Zones Law, 5775–2014 (currently in the process of being legislated).

The lack of clarity regarding the boundaries of Israel's EEZ—in the north due to the dispute with Lebanon and in the south due to the lack of a declaration on

the matter—has economic implications in the context of natural resources that perhaps are located in these areas (Israel has refrained from issues licenses for exploration in these areas), and also additional aspects, such as shipping, fisheries, marine agriculture, etc.

Table 15.1 Listing the protocols of the Convention and their implementation in Israel:

Name of the protocol	Status of assimilation in Israeli law	Implementation in Israel
Protocol for the Protection of the Mediterranean Sea from Pollution from Land-Based Sources and Activities – 1980 (amended in 1996, the amendments went into effect in 2008). Deals with the prevention of dumping of waste into the sea from any human source. Quantitative targets to reduce pollution and a defined timetable.	Ratified the original protocol in 1991 and the amendments in 2009.	Law to Prevent Pollution of the Sea from Land-Based Sources, 5748-1988 and regulations based on it. Responsibility: Branch for the Ocean and Coastline in the Ministry of Environmental Protection.
Protocol for the Prevention of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft – 1976 (amended in 1995; the amendments have not yet gone into effect).	Ratified the original protocol in 1984. Amendments have yet to be ratified.	Law for the Prevention of Sea Pollution (Waste Disposal), 5743-1983 and regulations based on it. Responsibility: Branch for the Ocean and Coastline in the Ministry of Environmental Protection
Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean – 1995 (in effect since 1999, replaced the original protocol from 1982). Deals with the protection of fish nurseries and species in danger of extinction.	Ratified the original protocol in 1987.	Law for National Parks, Nature Reserves, National Sites and Memorial Sites, 5758-1998 and regulations based on it. Responsibility: Nature and Parks Authority.
Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea – 2002 (in effect since 2004). Requires the countries to cooperate in the event of accidents that cause a spill of oil or dangerous materials.	Ratified in 2014.	Memorandum of proposed Law for Preparedness and Response to Incidents of Pollution of the Sea and the Coastal Environment, 5772-2012. Responsibility: Branch for the Ocean and Coastline in the Ministry of Environmental Protection

Name of the protocol	Status of assimilation in Israeli law	Implementation in Israel
Protocol for the Protection of the Mediterranean Sea from Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil – 1994 (in effect since 2011). Deals with the prevention of pollution from oil and gas exploration activities and various quarries in the sea.	Signed Not yet ratified	
Protocol on Integrated Coastal Zone Management in the Mediterranean – 2008 (ICZM) (in effect since 2011). Deals with the integrative management of the coastal environment with emphasis on an overall view of the ecological system and sustainable development.	Ratified in 2014	Law for the Protection of the Coastal Environment, 5764-2004. Responsibility: Ministry of Environmental Protection
Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal – 1996 (in effect since 2008). Deals with pollution of the sea as a result of the export and import of hazardous waste (primarily waste that is transported from developed to undeveloped countries for purposes of disposal and burial).	Not signed	