

Chapter 15: Management of Israel's Maritime Zones – An Overview of the Legal Framework

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the following chapter is based on a report from within the Israel Marine Plan prepared at the Technion.¹

Introduction

Until the end of the 20th century, most of Israel's activity in the Mediterranean occurred in its coastal waters (territorial Sea) 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 (known as economic waters), accelerated activity began in the development of the Israeli maritime space (including drilling, building of facilities and laying of pipeline). Israel's maritime space 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 require not only security, technological and professional adaptations, 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 integrated marine spatial planning based on ecosystem-based management and integrated coastal zone management,² 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 entered into force in 1994 and since then has been ratified by 166 nations (including Lebanon, Egypt and Cyprus).³ Israel is not signed on the Convention but has declared more than once that it "accepts upon itself the customary provisions of the Convention, including those that relate to the maritime zones."⁴

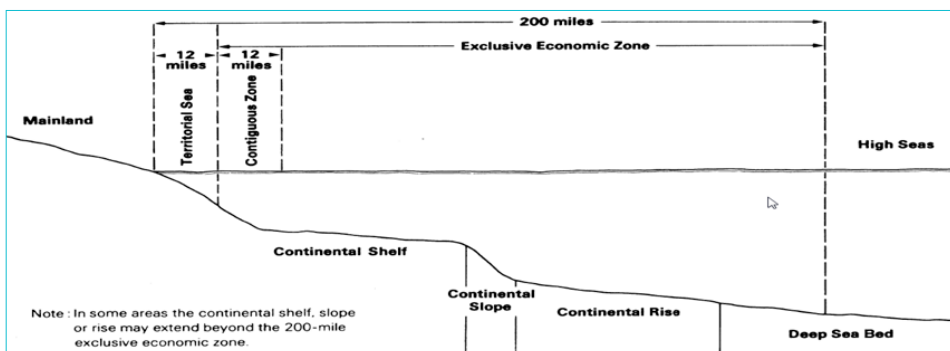


Figure 15.1 Maritime Zones (Churchill and Low 1999).

Baselines

The baselines are the lines that extend along a country's coast from which is measured a country's costal waters or territorial sea (defined below). The other maritime zones are also measures from the baselines. The Convention defines the two methods for determining the baselines: the normal baseline and the straight baselines.

3 As of January 10, 2014, www.un.org/Depts/los/reference_files/status2010.pdf

4 See the preface to the draft of the Maritime Zones Act 5773-2013 page 4. See also the agreement between the government of Israel and the government of Cyprus regarding the delimitation of the EEZ from December 17, 2010.

Section 3 of the Interpretation Law, 5741–1981 specifies that the "coastal waters" (territorial sea 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 words of explanation of the Maritime Zones Bill, 5775–2014 (herein: Maritime Zones Bill), 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 Bill's words of explanation, Israel is basing itself on the practices of neighboring countries in the region.⁵ Figure 15.2 illustrates the straight baselines for Israel.

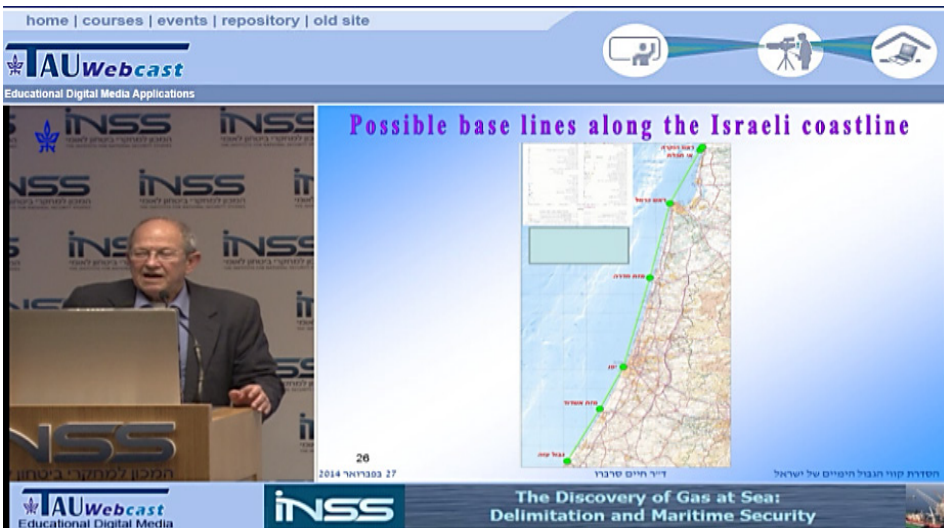


Figure 15.2 Possible straight baselines⁶

If and when Israel changes the system for drawing the baselines there it will be necessary to examine the implications for the delimitation of Israel's maritime zones, the agreement with Cyprus, the dispute with Lebanon on the delimitation of the EEZ and other issues. In addition, it should be taken into account that the

- 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.

determination of straight baselines requires a public declaration that is liable to meet with opposition from neighboring states.⁷

Territorial Sea

The territorial sea is 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 the subsoil. 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 sea and they currently extend to 12 nautical miles from the low water mark (covering an area of about 4000 square kilometers).⁸ Section 3 of the Interpretation Law, 5771-1981 defines "coastal waters" as an open sea strip 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 sea.⁹

A relevant issue in this context is the delimitation of the territorial sea between neighboring countries. Article 15 of the Convention specifies that neighboring countries are not permitted to expand their territorial sea to beyond the "median line"¹⁰ except in the case of an agreement between the nations, historical title or special circumstances. Article 16 of the Convention states that the state must give due publicity to the charts of a scale or the list of geographical coordinates of its territorial sea and deposit a copy with the Secretary General of the UN.

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 Act, 5717-1956, expanded the territorial sea from three to six nautical miles and the Coastal Waters Act (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 subsoil 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 (4th ed.)

Israel declared in 2011 its northern maritime boundary, but has yet to declare the southern one.¹¹

Contiguous Zone

The contiguous zone is the strip extending for an additional 12 nautical miles beyond the territorial sea (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 exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws within its territory. In addition, the state has jurisdiction over an 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 the rights, jurisdiction and duties the state 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 full sovereignty, but rather sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources (living or non-living) of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.

In addition, the state is given the authority required to realize its rights, such as establishment and regulation of installations and artificial islands and also exclusive jurisdiction over such installations, with regard to customs, fiscal, health, safety and immigration laws, and the power to determine a safety zone around them with a radius of up to 500 meters. The state also has powers for conservation and utilization of living resources and the right to engage in scientific research and to protect the marine environment. In parallel to these rights, the state has the duty to preserve the ocean environment and living resources. All states enjoy certain freedoms in the EEZ, such as freedoms of navigation and overflight, and laying of submarine cables and pipelines, Israel has not yet declared its EEZ.

11 Decision 3452 of the 32nd government: "Determination of northern maritime delimitation 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. The decision was submitted to the UN.

Continental shelf

As in the EEZ, a state exercises in the continental shelf only sovereign economic rights to explore and exploit natural resources (although only on the seabed and its subsoil) including mineral and other non-living resources, as well as sedentary species on the seabed. The state has the exclusive right to regulate drilling on the continental shelf.

There is an 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 subsoil rights, these are still two different regimes. The main relevant difference for our purposes is that the rights on the continental shelf (up to 200 nautical miles) are not conditional on a declaration of the continental shelf. In contrast, the state is required to publicly declare its EEZ. Thus, there is the possibility of a continental shelf without an EEZ but not an EEZ without a continental shelf.

Delimitation 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.¹² In the event that such an agreement

12 See articles 74(2) and 83(2) of the Convention: "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 delimitation 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).

is not reached, the matter will be resolved by the procedure for settlement of disputes set out in the Convention.¹³ 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.¹⁴

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 2003¹⁵ and the Cyprus-Lebanon agreement from 2007 which was not ratified by Lebanon¹⁶). The agreement signed between Israel and Cyprus in 2010 is tangent to these agreements (as can be seen Figure 15.4 – coordinate 12 in the south and coordinate 1 in the north).¹⁷ Meanwhile, article 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, article 3 of the agreement requires a Party that negotiates the delimitation of its EEZ with another State to consult the other Party prior to reaching a final agreement if the such delimitation is in connection with coordinates 1 and 12.

- 13 Part 15 of the Convention specifies the procedure for settlement of disputes. Article 287 of the Convention list 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 procedure the default will be *special arbitral tribunal* (article 287(5)).
- 14 It should be mentioned that article 6 of the Convention on the Continental Shelf (1958) specifies a different solution for the delimitation of the continental shelf. 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
- 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
- 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 delimitation 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



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 (coordinate 1) is not recognized by Lebanon, while the delimitation of the northern maritime border is a subject of international dispute. Figure illustrates the dispute between Israel and Lebanon.

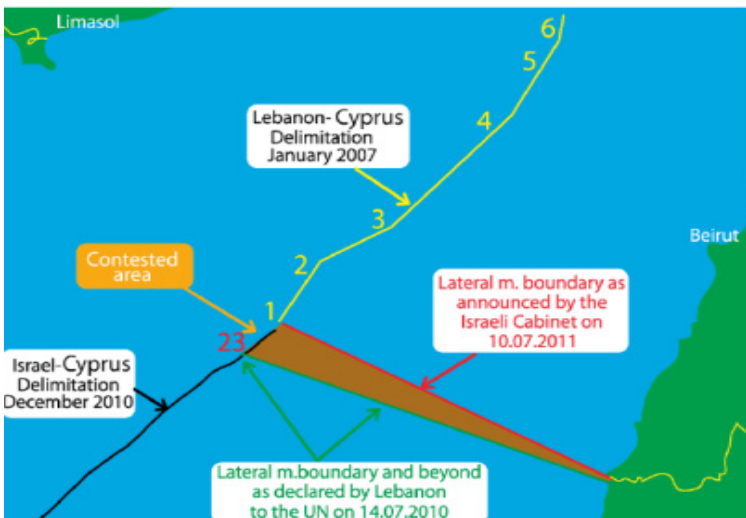


Figure 15.4 The boundary dispute with Lebanon (the disputed area is about 850 square meters)

The lack of certainty with respect to the delimitation of Israel's maritime boundaries has not only political and security implications, but also economic one (since Israel refrains from granting petroleum exploration licenses in the disputed area).

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.¹⁸

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 sea 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 Maritime Zones Bill 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 Underwater Territories Law which includes only one paragraph:

1. (a) *"The territory of the State of Israel shall include the seabed and subsoil of the underwater territories adjacent to the coast of Israel, which are beyond the territorial waters, wherever the depth of the water above them allows the exploitation of natural resources in those territories."*
(b) *"Nothing stated in subsection (a) shall affect the characterization of the water above these underwater territories and beyond the territorial waters of Israel, as high seas."*

According to a legal opinion published in January 2013 by the Assistant Attorney General, Avi Licht,¹⁹ the interpretation of the Underwater Territories Law in the

18 Two previous drafts of the Law were published in 2008 and 2011.

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

spirit of the Convention leads to the conclusion that Israel has the authority to apply a particular laws in its EEZ.²⁰

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 ecosystems.

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.²¹ The Convention is intended to achieve the sustainable development of marine and coastal resources and sets out principles for cooperation, with the goal of protecting the marine environment and encouraging scientific and technological development... To this end, the parties agreed to apply the precautionary principle

20 The opinion discusses environmental legislation, tax laws and petroleum laws. However, this is not a close-ended list. According to the opinion, each 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 1976 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 entered into force in 2004. Israel is signed on the Convention and ratified the amendments in 2005.

and the polluter pays principle; to undertake environmental impact assessment; to promote integrated management of the coastal zones; to utilize the best available techniques and the best environmental practices; and to cooperate in the formulation and adoption of the protocols.

According to article 1, Barcelona Convention applies to the entire maritime waters of the Mediterranean Sea (without distinguishing between the different maritime zones). The application of the Convention may be extended to coastal areas and protocols may extend its geographical coverage (for example, on the seabed and subsoil 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 protocols.

Conclusion

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

The lack of legal certainty regarding the application of Israeli law to the EEZ of Israel has economic and other implications (environmental standards, work safety) for the natural gas companies and others that operate in this domain. The State of Israel must create legal certainty in its maritime zones, first and foremost by promoting the Marine Zones Bill, 5775–2014.

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 issuing licenses for exploration in these areas), and also additional aspects, such as shipping, fisheries, marine agriculture, security, etc.

Following is a table listing the protocols of the Barcelona Convention and their implementation in Israel:

Name of the protocol	Legal Status in Israel	Implementation in Israeli legislation
Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities – 1980 (amended in 1996, the amendments entered into force in 2008).	Ratified the original protocol in 1991 and the amendments in 2009.	Prevention of Sea Pollution from Land-Based Sources Law, 5748-1988 and its regulations.
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 entered into force t).	Ratified the original protocol in 1984. Amendments have yet to be ratified.	Prevention of Sea Pollution (Dumping of Waste) Law, 5743-1983 and its regulations.
Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean – 1995 (entered into force in 1999, replaced the original protocol from 1982).	Ratified the original protocol in 1987.	National Parks, Nature Reserves, National Sites and Memorial Sites Law, 5758-1998 and its regulations.
Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea – 2002 (entered into force in 2004).	Ratified in 2014.	Draft of the Preparedness and Response to Incidents of Oil Pollution of the Sea and the Coastal Environment Law, 5772-2012.
Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil – 1994 (entered into force in 2011).	Signed Not yet ratified	
Protocol on Integrated Coastal Zone Management in the Mediterranean – 2008 (ICZM) (entered into force in 2011).	Ratified in 2014	Protection of the Coastal Environment Law, 5764-2004.
Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal – 1996 (entered into force in 2008).	Not signed	