

## PALESTINE'S MARITIME RIGHTS VS. ISRAEL'S BULLY TAKEOVER: AN INTERNATIONAL FRAMEWORK

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### Introduction

With the discovery of tremendous gas reserves in the Eastern Mediterranean, this region has become a globally attractive destination. This geopolitical situation has gained a new dimension with the 2014 accession of Palestine to the 1982 UN Convention on the Law of the Sea (UNCLOS). The Convention not only provides an opportunity for Palestine to declare its maritime zones, such as a territorial sea, contiguous zone, and Exclusive Economic Zone (EEZ), in accordance with international law, but also opens the door for Palestine to claim access to significant economic resources, particularly the natural gas reserves of the Gaza Marine.

The maritime rights of Palestine have been overshadowed by the tremendous humanitarian crisis that risked the very existence of the Palestinians as a people. Palestinians have been denied access to their rights in the sea for over a century. With its declaration in 1948, Israel controlled over 80% of Palestine's coast. Only a small fraction of the coast on the Mediterranean Sea, about 40 kilometers long, was left over to the Palestinians offshore Gaza. Even in this limited portion, the Palestinians have been for long deprived from controlling their sea. With its accession to UNCLOS, prospects for Palestine to declare its prerogatives under the Convention were vivid. However, the ability to exercise actual control over Palestine's maritime zones offshore Gaza continue to face enforcement challenges due to Israeli naval blockade, military occupation and, now, genocide. After providing a brief historical context to the sea of Palestine, this article focuses on Palestine's maritime boundary delimitation, its claims to maritime zones, and settlements of disputes with neighboring states.

### Historical Context

The roots of Palestine's maritime affairs lie in the legal system of the Ottoman Empire, which governed the region from 1516 until 1917. A key factor in this legal legacy was the detailed Ottoman Maritime Code adopted in 1863 and applied to Palestine like the rest of Turkish domains. This Code set up rules for, *inter alia*, ship registration system, ownership of ships, labor law at the sea, civil and criminal security of ships' crew, marine insurance, sea transport of persons, shipment of goods, and vessel collision. Another Ottoman law, passed in 1882,

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regulated the issue of fishing without addressing maritime zones where fishermen operate. As a natural result of the British Empire standing as the world's maritime hegemon, British rule in Palestine (1917-1948) advanced the codification of maritime affairs, while leaving the regulation of maritime zones to customary international law. The British High Commissioner for Palestine enacted the Ports Ordinance in 1926, while leaving the aforesaid Ottoman law intact. Based on the Ordinance, Britain inaugurated the Gaza Port in 1945. The Brits simultaneously adopted legislation related to the carriage of goods by sea. The management of fisheries was addressed by the 1937 Fisheries Ordinance.

Historical and legal features that affected Palestine's maritime rights have continued under the rules of Egypt and Israel. Gaza came under Egyptian military rule after the 1948 conflict. Although Egypt did not formally annex Gaza, it imposed restrictions on Gazans' maritime activities. The Egyptians permitted fishing boats to sail up to three nautical miles measured from Gaza offshore seaward, but only in designated areas and during daylight. After that, they allowed fishing boats to sail at night with their lights on, and they also continued to criminalize the entry of merchant ships into Gaza port without a permit from the competent authorities. These limitations barred the development of the Gaza maritime zones for two decades.

From the outset of its occupation in 1967 until 1994, Israel imposed a full blockade on the Gaza coast with a complete ban on the entry or departure of ships. Israel enacted a series of military orders to codify the issue of fishing, restricting the fisheries and prohibiting fishing boats from entering specific locations. These measures were introduced chiefly for security purposes, namely to prevent the use of the sea by resistance groups to attack Israeli targets. Although the Palestinian Authority made efforts after 1995 to improve the maritime law in accordance with the Oslo Accords, Israeli restrictions on the use of the Gaza Sea by Palestinians persisted.

The Oslo Accords significantly restricted Palestine's rights over its maritime zones. Palestine was able to operate in a narrow area offshore Gaza, and most of the time these limitations did not exceed 20 nautical miles. Moreover, Palestinians were often denied the use of the sea in toto, contradicting international law, especially UNCLOS that vests states with the rights to a minimum of 12 nautical miles of territorial waters and 200 nautical miles of EEZ. Thus, the Oslo regime restricted the access of Palestine to the natural resources, particularly the Gaza Marine gas reserves, by preventing Palestine from utilizing those universally-recognized rights. This state of affair demonstrates that even though the Oslo Accords were set to form transitional political regulation, they contradicted fundamental principles of international law.

#### **Palestine Maritime Zones and Boundary Delimitation**

The restrictions imposed by Israel through the Oslo Accords prevented Palestine from exercising sovereignty over its maritime zones. Such restrictions led Palestine to take fresh legal initiatives. After becoming a party to UNCLOS, Palestine attempted to overcome the Israeli restrictions by claiming sovereignty over its sea through declarations filed in 2015 and 2019 at the UN headquarters in New York that defined Palestinian maritime zones as part of the process to

assert statehood; Palestine is now recognized by 157 states in the territory occupied by Israel in 1967, including the Gaza Sea.

Palestine's declarations are based on UNCLOS regarding maritime zones, particularly the 12-nautical mile territorial waters and the 200-mile EEZ. The unilateral declarations can be viewed as an attempt to assert the minimum rights under the international law of the sea, despite the Israeli obstacles. The declarations offer not only technical aspects for delimitation but also foundations that empower Palestine to act as a coastal state on the same footing as other states.

One of the remarkable dimensions of the Palestine declarations is the special emphasis on resources located in the Gaza coast. The Gaza Marine gas field, located approximately 37 kilometers offshore, carries a vital potential for Palestine's economic independence. Palestine underlined its right of accessibility to marine natural resources in its declarations of maritime areas. Such accessibility is not limited to energy resources. It also extends to other Gazan resources by including fishing and other maritime activities.

While providing a solid legal foundation, Palestine's declarations have been confronted by political obstacles. Israel's military control over the Gaza Sea chiefly hindered the de facto enforcement of Palestinian declarations. Egypt's reservations regarding Palestinian maritime zones add another challenge for effective crystallization of Palestine's rights under UNCLOS.

#### Potential Dispute Settlements with Neighboring States

As a non-member of UNCLOS, Israel contends that Palestine lacks sovereignty and statehood and, by extension, the legal rights to maritime zones. It claims that "only sovereign states have the right to maritime zones... as well as to declare maritime zones." Israel maintains that the Palestinians possess no maritime titles except those spelled out in the 'Israeli-Palestinian agreements', claiming that its position is grounded in bilateral agreements rather than universal treaties. This position poses an obstacle for Palestine to exercise its rights under UNCLOS.

Unlike Israel, Egypt is an UNCLOS party. However, shortly after Palestine's accession to the Convention, in 2017 Egypt declared, under Article 298 of UNCLOS, that it does not accept adjudication or arbitration in relation to maritime boundary delimitation with its neighboring states, including Palestine. In particular, Egypt rejected the Palestinian unilateral declaration of 2019 regarding the geographical points of coordinates pertinent to the lines defining the Palestinian contiguous zone, EEZ, and continental shelf adjacent to the Egyptian border. This dispute becomes critical when it comes to natural gas fields such as Gaza Marine, which equals billions of dollars. Although Palestine possesses rights over these resources under UNCLOS, the lack of agreed-upon maritime boundaries and the objections of Palestine's neighbors de facto prevent Palestinians from accessing these vital economic assets.

Although Cyprus is an UNCLOS member, it has not recognized Palestine's maritime claims in practice. An agreement on EEZ was signed between Israel and Cyprus in 2010 without reference to Palestine, despite the fact that Cypriot EEZ overlaps with that of Palestine. In the

delimitation treaty, only Israel, Egypt, and Cyprus were recognized as the relevant three states. By doing so, Palestine was removed from the equation. Significantly in this regard, Cyprus referred to UNCLOS Articles 281 and 282, which address the peaceful settlement of disputes. UNCLOS provides various mechanisms for the settlement of disputes among contracting states: negotiation, consultation, conciliation, arbitration at the option of parties, reverting to the International Tribunal for the Law of the Sea, or to the International Court of Justice (ICJ). However, activating these mechanisms within the scope of Palestine has been confronted with critical restrictions, because Israel is not a party of UNCLOS and Egypt has excluded the compulsory arbitration with its declaration under Article 298. Yet Palestine may challenge the boundary delimitations of its three neighbors by filing arbitration proceedings against Cyprus, whose borders overlap with both Israel and Egypt, based on the aforesaid 2010 agreement.

The foregoing shows that disputes between Palestine and neighboring states can be evaluated with diverse scenarios. The realistic way to resolve a dispute with Egypt is through conciliation or negotiation, since binding arbitration is not an option. In the event of a potential dispute with Cyprus, the arbitration mechanism remains as a residual channel. The relation of Palestine maritime entitlements with Israel should be viewed as part of the overall question of illegal occupation, of the land and sea, which needs to be addressed based on the ICJ 2014 advisory opinion that instructed Israel to terminate its occupation of Palestine, including the Gaza Sea.

### Conclusion

Palestine's accession to UNCLOS has opened avenues for potential maritime arrangements, including boundary delimitation, not only in relation to the Gaza neighboring States, but also for the Eastern Mediterranean region at large. In some ways, the boundary overlapping in the Gaza coast is less complex than in other regions of the world as there are no islands, archipelagos, straits, river mouths, bays or landlocked states to contend with. But the protracted pending territorial disagreement necessarily overshadows the maritime law. Thus, the legal boundary delimitation in the Eastern Mediterranean is possible should political actors agree.

It is crucial for Palestine to explore routes within the law of the sea, specifically UNCLOS, that may crystallize the exercise of its maritime rights. The Convention establishes a comprehensive mechanism for settling disputes among states, including those related to maritime zones. As the Gaza Sea is still occupied, it might also be relevant to refer to international humanitarian law rules relating to maritime belligerent occupation, and the ICJ advisory opinion of July 2024 that rendered the Israeli occupation of Palestine unlawful and reiterated the Palestinian people's right to self-determination as a peremptory norm of international law. The Court also identified "the right to exercise permanent sovereignty over natural resources, which is a principle of customary international law" (para 240), a key element of the right to self-determination.

The Eastern Mediterranean region after Palestine's accession to UNCLOS is not as before. The Convention creates a series of rights for Palestine in various maritime zones which overlap with the zones of neighboring states: Egypt, Israel and Cyprus. At a certain point, conflicting interests would come to the fore, and the need for dispute settlement would arise. At this point, political realities in the region overshadow the law, and UNCLOS remains largely unenforced. However,

the discoveries of gas resources in the Eastern Mediterranean might accelerate the process for finding solutions to pending maritime conflicts in parallel to the gas exploration. That renders the Convention dispute settlement scheme more relevant than ever.

UNCLOS dispute settlement mechanisms apply beyond state parties that share border lines with Palestine. Disputes with other states are perceived with regard to potential actions by such states in zones whereby Palestine qualifies to exercise sovereignty or sovereign rights. Such disputes can be resolved through arbitration. Examples of such disputes include infringement of innocent passage, over flight, navigation in territorial sea, security and illegal immigration and trafficking in drugs in contiguous zone, fishing, gas exploration, exploitation of the continental shelf, collision, boarding of ships, and the misuse of flags in the high seas. Such operations might include works carried out by commercial ships, military vessels, submarines, aircrafts, and oil rigs owned or operated by UNCLOS state parties either directly or through concessions given to companies or individuals belonging to, or contracted or authorized by, these states. Palestine seems to be aware of third-party actions in its offshore Gaza maritime zones. To this effect, it has issued warnings to such parties. In April 2022, for instance, Palestine, through a communication to the UN Secretariat, alerted all states and other entities against unauthorized and non-consensual maritime activities in the Palestinian maritime zones.

The gap between law and reality in the case of Palestine maritime continues to deny the Palestinian people of their right to self-determination over their natural resources. Even though the Gaza Marine field offers huge potential in terms of economic independence and may contribute to the reconstruction of post-genocide Gaza, the field resources are not utilized due to Israel's blockade and military occupation. Thus, the struggle of Palestine over maritime areas and the utilization of natural resources thereof is not merely a matter of technical delimitation, but also of political independence, and economic and legal self-determination. The limitations imposed by Israel's control are incompatible with international law. The exercise by Palestine of its maritime rights are decisive factors for regional stability, and the global legal order, and are likely to continue playing a central role in diplomatic negotiations in the years to come.

### Note on References

This article is a summary of these five studies by Mutaz M. Qafisheh and co-authors:

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