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Blakely Elizabeth Whilden

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Navigating the Conflict Over Natural Gas Reserves in the Levant Basin of the Mediterranean Sea

BLAKELY ELIZABETH WHILDEN†

I. Introduction .............................................................................................................. 928
II. Setting the Stage: The Political and Economic Context for Natural Gas and Oil Exploration in the Levant Basin 931
   A. History of the Israel-Lebanon Conflict ..................................................... 932
   B. Current Political & Economic Situation: Lebanon .......................... 940
   C. Current Political & Economic Situation: Israel .............................. 942
      i. Territorial Demarcation Provisions ................................................. 947
      ii. Dispute Resolution .......................................................................... 951
   B. International Court of Justice and Customary International Law .......................................................... 954

   III. Recent Attempted Resolutions to Maritime Boundary Disputes in the Mediterranean Sea and Elsewhere ............... 957
   B. Resolution of the Arctic Maritime Boundary Dispute ........................................ 960

IV. Options for Resolving the Israel-Lebanon Maritime Boundary Dispute in the Eastern Mediterranean ................. 962
      i. Israel to Ratify the Convention ..................................................... 966

† B.A., University of North Carolina at Chapel Hill, 2006; J.D. Candidate, University of North Carolina School of Law, 2014. The author would like to thank her family and especially her fiancé, Asher Hildebrand, for their unending love and support. The author would also like to thank Rebecca Yang for her guidance during the writing and editing process.
I. Introduction

In April 2012, forty percent of Israel’s natural gas supply was cut off almost instantly. After months of supply interruptions and allegations of self-dealing on the part of Egyptians in forging a natural gas deal with the Israeli government, the Egyptian government reneged on its agreement to supply Israel with natural gas to meet its energy needs. Nearly overnight, Israel was left to figure out how to supply almost half of its energy needs.

In 2010, the United States Geological Survey (USGS) estimated that the Levant Basin in the eastern Mediterranean Sea holds approximately 1.7 billion barrels of recoverable oil and 122 trillion cubic feet (cf) of recoverable gas. Since the discovery of these reserves, countries bordering the Levant Basin, including Israel and Lebanon, have laid a claim to those resources and have begun a publicity battle to gain international support for the exploration and development of oil and gas in the eastern Mediterranean. It is no surprise that Israel and Lebanon have

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3 Id.


claimed part of the resources as their own: experts claim that the natural gas reserves are the largest offshore reserves discovered in the last decade and by far the largest reserves discovered in the Mediterranean. For these neighboring states, both of which rely on energy imports to meet energy consumption demands, this reserve of natural gas has the potential to address long-running energy security—and national security—concerns.

The Israeli government rushed to run a string of buoys into the Mediterranean originating at its northern coastal border with Lebanon. The Lebanese claim that this string of buoys is “angled too far northward,” effectively cutting off Lebanon’s access to the reserves. Unsurprisingly, both countries claim that the other has infringed its maritime boundaries. Lebanon and Israel have yet to establish maritime boundaries under any existing international agreement.

Given the absence of a diplomatic relationship between Lebanon and Israel, the economic and political instability of the region, and the potential value of the yet undeveloped energy resources, both sides have a strong incentive to resolve this dispute peacefully.

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7 See id.


9 What a Gas!, supra note 8, at 57.

10 See id.


12 Id. (noting that Israel and Lebanon do not enjoy diplomatic relations and, after decades of conflict, remain formally at war). For a more thorough discussion of the Israel-Lebanon conflict, see infra Part II.

13 Both Israel and Lebanon rely on oil and gas imports to meet energy demands, and in a region rife with conflict, sources for oil and natural gas are unreliable at best. For a more detailed discussion of the political and economic situation in these two countries, see infra Part II.
resources, existing international law frameworks must be used to mediate between the countries and divide access to the reserves equitably. It is imperative that Israel and Lebanon jointly submit this dispute to a formal dispute resolution tribunal or mediator in order to resolve this increasingly contentious maritime border dispute, rather than leaving the state of the unresolved border ambiguous, which could devolve into military conflict. Successful resolution of the Lebanon-Israel maritime boundaries in the eastern Mediterranean is essential for the economic, political, and environmental viability of the region.

This Comment will elucidate and critically evaluate the options for resolving the Israel-Lebanon maritime boundary dispute in the eastern Mediterranean as those boundaries affect the exploration and development of existing natural gas reserves in the Levant basin. Part I will provide a brief history of the relationship between Israel and Lebanon and an analysis of the economic and political impact of natural gas exploration in the region. Part II will provide an overview of the United Nations Convention on the Law of the Sea (UNCLOS). Lebanon is a signatory to UNCLOS and Israel is not; however, UNCLOS is the only international convention that provides internationally accepted standards for drawing maritime boundaries. Part III will discuss recent

16 See infra Part I.
17 See infra Part II.
19 See generally UNCLOS, supra note 14, pmbl. ("Developments since the United Nations Conferences on the Law of the Sea held at Geneva in 1958 and 1960 have accentuated the need for a new and generally acceptable Convention on the law of the sea"); Julia Lisztwan, Note, Stability of Maritime Boundary Agreements, 37 YALE J. INT’L L. 153, 156 (2012) (observing that "UNCLOS is a formidable attempt to provide a comprehensive regime for management of the oceans" that "interacts with the larger body of international law, including the Vienna Convention on the Law of Treaties").
diplomatic agreements reached regarding the drawing of maritime boundaries between Lebanon and Cyprus in 2007 and Israel and Cyprus in 2010, and discuss the ongoing dispute over oil and natural gas in the Arctic.\(^{20}\) Part IV will outline and evaluate five alternative options to settle this maritime boundary dispute, including available remedies under the UNCLOS, at the International Court of Justice (ICJ), and through mediation by the United Nations, and arbitration.\(^{21}\) This Comment will conclude with a brief commentary on the viability of these options and what the international community can expect moving forward.\(^{22}\)

II. Setting the Stage: The Political and Economic Context for Natural Gas and Oil Exploration in the Levant Basin\(^{23}\)

Israel and Lebanon have never enjoyed good diplomatic relations and have been involved in multiple military conflicts with each other since the 1940s.\(^{24}\) While outside the scope of this Comment, the bilateral conflict between the countries must also be viewed with an eye toward conflict throughout the region.\(^{25}\) Much of the conflict between the countries has centered on the demarcation of the terrestrial border, often referred to as the Blue Line.\(^{26}\) While the Blue Line has been largely demarcated, the maritime boundary dispute has just begun.

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\(^{20}\) See infra Part III.

\(^{21}\) See infra Part IV.

\(^{22}\) See infra Conclusion.

\(^{23}\) Volumes have been written on the history of the Middle East, and by no means does this Comment intend to provide a comprehensive history of the region. Instead, what follows is a brief discussion of the history of the relations between Israel and Lebanon and the political and economic forces currently at play, all of which provide a context for the current dispute over maritime borders.

\(^{24}\) See, e.g., Lebanon Profile, BBC News (Oct. 24, 2012), http://www.bbc.co.uk/news/world-middle-east-14649284 (outlining Lebanon’s history since 1516 and noting multiple points in time in which Israel and Lebanon have been in direct conflict).

\(^{25}\) Some scholars argue that the bilateral conflict between Israel and Lebanon can be viewed as a proxy for Israel’s conflict with Syria and Iran, both of which have supported Hezbollah in one way or another. See generally Casey Addis, Cong. Research Serv., R40054, Lebanon: Background and U.S. Relations 2 (Feb. 1, 2011).

A. History of the Israel-Lebanon Conflict

A basic understanding of the complex history of Israel-Lebanon relations is essential to understanding the context of and evaluating the viable solutions to the current maritime boundaries dispute. These bordering countries have been involved in almost continuous conflict since Israel’s founding in 1948, highlighted by multiple military conflicts, kidnappings, assassinations, and the

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loss of many innocent lives.\textsuperscript{28}

The State of Israel was established following intense negotiations between the United States and the British governments, a study conducted by the U.N. Special Commission on Palestine, and over the objections of Arab states, including Lebanon, Jordan, and Syria.\textsuperscript{29} The United Nations adopted Resolution 181\textsuperscript{30} (also known as the Partition Resolution), which divided Palestine—once claimed by the United Kingdom—into Jewish and Arab states in 1948.\textsuperscript{31} The Arab states strongly objected to the agreement and, following the announcement of the establishment of the state of Israel, joined forces and fought a war with the newly established nation.\textsuperscript{32} Tensions in the region were later exacerbated by the Arab-Israeli war in 1967, during which time the Israeli government “gained control over the Sinai Peninsula, the Golan Heights, the West Bank, the Gaza Strip, and East Jerusalem.”\textsuperscript{33} The geographical boundaries established following the 1967 war have remained a point of controversy in the region and are a central focus in ongoing peace talks.\textsuperscript{34} The Arab-Israeli wars and other military conflicts since 1948 reflect the violent history between Israel and its neighbors.

Lebanon, to Israel’s north, was occupied by multiple empires and settled by the French as a Christian enclave in a predominantly Muslim region.\textsuperscript{35} The independent state of Lebanon was established after claiming independence from France in 1943, just a few years before the founding of the state of

\textsuperscript{28} See Lebanon Profile, supra note 24.


\textsuperscript{31} Creation of Israel, supra note 29.


\textsuperscript{35} See Lebanon Profile, supra note 24.
Israel. The French left an indelible mark on the culture and politics of Lebanon, including Lebanon’s notability as one of the only Middle Eastern countries with a sizable Christian population and Christian participation in government.

During the 1950s, Lebanon enjoyed relative political and economic stability. However, political tensions began to rise as regional influences strengthened, internal migration from rural areas of Lebanon to Beirut continued, and politics and religion became further intertwined. Lebanon endured a long and bloody civil war between 1975 and 1990, which finally ended with the signing of the Ta'if Agreement. In short, the Agreement equalized the ratio of Christians to Muslims in Parliament, called for fully ending the Israeli and Syrian occupation of Lebanon, and provided for the disbandment of private militias.

36 See id.
39 In 1975 the Lebanese civil war was set off when Phalangist (Christian) gunmen attacked a bus in Beirut, killing twenty-seven, mostly Palestinian, passengers. Lebanon Profile, supra note 24. By the time of the Lebanese civil war, Syria, Lebanon’s neighbor to the north, was a prominent participant in the country’s military landscape. Id. Additionally, a significant population of Palestinians displaced from the Arab-Israeli war remained in the country and allied themselves with the leftist political parties and the Lebanese National Movement. See Krayem, supra note 38; Lebanon Profile, supra note 24.
40 See Krayem, supra note 38.
41 The Ta’if Agreement, Nov. 4, 1989, available at http://www.un.int/wcm/webdav/site/lebanon/shared/documents/Constitution/The%20Taif%20Agreement%20(English%20Version)%20.pdf (“Until the Chamber of Deputies passes an election law free of sectarian restriction, the parliamentary seats shall be divided . . . [e]qually between Christians and Muslims.”). The political power sharing agreement has not necessarily aligned with the religious affiliation of Lebanon’s citizens. See generally Bernard Gwertzman, Hezbollah: Most Powerful Political Movement in Lebanon, COUNCIL ON FOREIGN REL. (May 29, 2008), http://www.cfr.org/lebanon/hezbollah-most-powerful-political-movement-lebanon/p16378?breadcrumb=%2F (interviewing Daniel L. Byman, Professor at Georgetown University and Research Director of the Saban Center at the Brookings Institution). For instance, it is estimated that Shiite Muslims make up approximately forty percent of the population of Lebanon. Id. Nevertheless, Muslims—including Sunnis and Shiites—account for only fifty percent of the positions in
political system has been largely characterized as a "confessional system," which guarantees parliamentary representation for each of the nation's religious "confessions," or groups, and sets aside certain government positions for various political and religious groups. Under the current system, the president of Lebanon is a Maronite Christian, the Speaker of Parliament a Shi’a Muslim, and the prime minister a Sunni Muslim.

A discussion of Israel-Lebanon relations over the last thirty years is incomplete without mention of Hezbollah. Hezbollah, which translates to "Party of God" in Arabic, made its first distinctive mark in the region in 1983, when the group was blamed for suicide attacks at the U.S. marine barracks in Beirut, claiming the lives of 240 U.S. soldiers. The organization is a political party, social welfare organization, and Shiite Islamist militia group based in southern Lebanon. The U.S. Department of State considers it a terrorist organization. It was founded in southern Lebanon, a region historically ignored by the Lebanese government, which left room for anti-Israeli groups to assert their influence. Hezbollah filled the void left by the Lebanese government and established its stronghold in the south following the expulsion of the Palestinian Liberation Organization in 1982.
The organization’s goals include the “liberation of Jerusalem, the destruction of Israel, and the establishment of an Islamic State in Lebanon.” It is well financed and supported by the Iranian and Syrian governments. Beyond its military objectives, Hezbollah has been active in providing humanitarian aid and social services to southern Lebanon and is a major political force. In fact, it has been labeled the “most powerful single political movement in Lebanon.” Since 2008, there has been little debate over whether this is true. After the organization took over West Beirut and pushed the country to the brink of another civil war, Lebanon’s Cabinet granted it effective veto power in exchange for drawing down its troops across the city.

Between 1982 and 2000, Israel occupied southern Lebanon. The U.N. Security Council engaged in the withdrawal effort by adopting Resolutions 425 and 426 in 1978 and 1981, respectively. It was not until 2000 that Israel ended its occupation of southern Lebanon.
occupation of southern Lebanon in compliance with Resolution 425. The border along Lebanon’s southern border and Israel’s northern border has been referred to as the “Blue Line” since then. Hezbollah, angered by what it viewed as an incomplete withdrawal effort and backed by the Syrian government, filled the “security vacuum” following the withdrawal, mounting attacks on Israeli targets, including Israeli civilians. The assassination of Lebanese Prime Minister Rafiq al-Hariri in 2005 escalated anti- and pro-Syrian tensions within Lebanon, setting the stage for Hezbollah to demonstrate its ability to wield power in the country. The ensuing “Cedar Revolution” ushered in an anti-Syrian government and temporarily weakened Hezbollah’s political standing as a supporter of Syria’s presence in the country. In response, Hezbollah and pro-Syrian protestors took to the streets across Lebanon and Hezbollah walked out on the National Assembly when it voted to pursue a case against Prime Minister Hariri’s assassin. The prime minister was forced to

supra note 48, at 130.

61 Schmitt, supra note 48, at 131. The occupation of Sheeba Farms (also spelled Shib’a Farms) is an ongoing controversy between Israel, Lebanon, and Syria. Jeremy M. Sharp et al., Cong. Research Serv., RL33566, Lebanon: The Israel Hamas-Hezbollah Conflict 8-10 (2006). The United States and Israel regard the area as Israeli-occupied Syrian territory, but Syria and Lebanon insist that the territory rightly belongs to Lebanon. See Schmitt, supra note 48, at 131-32. Hezbollah uses Israel’s continued occupation of Sheeba Farms as a justification for remaining armed. Sharp et al., supra note 61, at 8.

62 The “Blue Line” refers to the United Nations-determined border between Israel and Lebanon as of the Israeli withdrawal in 2001, but is not the internationally recognized border between the countries. See Addis & Blanchard, supra note 26, at 28, n. 77.

63 See Sharp et al., supra note 61, at 5.

64 See Schmitt, supra note 48, at 132. Israel and the Security Council implored the Lebanese government to take action to prevent further attacks, but their requests fell on deaf ears; then-President Emile Lahoud did little to temper the increasing violence. Id. At the time, Syria was exerting a great degree of control over the political situation. See id. Under that country’s influence, President Lahoud’s reign was extended for an additional term. See id.

65 See Schmitt, supra note 48, at 133.

66 See id. The Cedar Revolution ushered in an anti-Syrian coalition government in Lebanon in 2005. Sharp et al., supra note 61, at 2. Syria was allegedly involved in Prime Minister Hariri’s assassination, though no formal charges have been brought against anyone involved in the assassination. Id. at 17.

67 Schmitt, supra note 48, at 133.
make significant concessions to Hezbollah to keep a fragile political coalition—and the potential for peace—intact.\textsuperscript{68} This political play by Hezbollah is a significant example of the power of the organization within the Lebanese government and the organization’s status as a symbol of national sovereignty.

In August 2006, the U.N. Security Council adopted Resolution 1701,\textsuperscript{69} which called for the cessation of attacks by both Hezbollah and Israel.\textsuperscript{70} Shortly after the adoption of Resolution 1701, the countries agreed to a ceasefire.\textsuperscript{71} Since the adoption of Resolution 1701, military skirmishes largely have ended, though the countries remain officially at war.\textsuperscript{72} The Security Council’s resolution also increased the size and mandate of the United Nations Interim Force in Lebanon (UNIFIL) to monitor the ceasefire, support humanitarian effort, and restore peace in the area once again.\textsuperscript{73}

U.N. Security Council Resolutions 425 and 426, which were passed in 1978 and 1981, respectively, prior to Israel’s first withdrawal from southern Lebanon, created UNIFIL.\textsuperscript{74} UNIFIL was created to monitor Israel’s initial withdrawal from southern Lebanon, help restore security and peace in the region, assist Lebanon in securing its southern region, and monitor the Blue Line.\textsuperscript{75} Neither the Lebanese government nor UNIFIL forces—

\textsuperscript{68} Id. Arguably, Prime Minister Siniora’s most significant concession at this time was to agree not to refer to Hezbollah as a “militia” but rather as a “resistance group,” effectively shielding Hezbollah from U.N. Resolution 1559, which called for the disarmament of militia in the country. Id.


\textsuperscript{70} See Schmitt, supra note 48, at 135; S.C. Res. 1701, supra note 69, ¶ 11.

\textsuperscript{71} See Schmitt, supra note 48, at 135.

\textsuperscript{72} See Lebanon Profile, supra note 24.

\textsuperscript{73} See S.C. Res 1701, supra note 69, ¶ 11. See also Rami G. Khori, A Polarized Middle East Will Remain Volatile for Years to Come, WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS, MIDDLE EAST PROGRAM OCCASIONAL PAPER SERIES 7 (Fall 2006), available at http://www.wilsoncenter.org/sites/default/files/ramikhouri.pdf.


\textsuperscript{75} See UNIFIL Mandate, supra note 74; Mary E. Stonaker, Massive Energy Discoveries Complicate Relations Between Israel and Lebanon, AL ARABIYA (June 24,
reinforced with troops from France, Italy, and other European nations—made any immediate efforts to disarm Hezbollah in 2006, claiming that Hezbollah had cooperated with the Lebanese government.\textsuperscript{76} UNIFIL’s mandate addresses only the territorial border between Israel and Lebanon and does not provide for monitoring any established maritime border between the countries.\textsuperscript{77} Resolution 1701 did expand the mandate of UNIFIL to include a Maritime Task Force (MTF), however, the MTF is tasked only with monitoring territorial waters, “securing the coastline,” and “preventing the unauthorized entry of arms” into Lebanon.\textsuperscript{78} UNIFIL has been largely successful at securing the border and ensuring relative peace along the Blue Line since 2006.\textsuperscript{79}

Today, Lebanon and Israel remain at odds and do not enjoy a diplomatic relationship. This historical tension has only escalated since the discovery of natural gas and oil in the eastern Mediterranean in 2010, and the tension between the countries will influence the prospects for a resolution to their maritime boundary dispute.\textsuperscript{80} In July 2011, the U.N. Special Coordinator for Lebanon put it this way: “major issues—including the existence of arms outside State control, [the] use [of arms] as a political instrument and Israel’s presence... must be tackled in order for Lebanon to

\textsuperscript{76} See Kifner, supra note 49. While Israel was involved in the negotiation over the mandate of UNIFIL under Resolution 1701, Israel’s attitude toward UNIFIL is not entirely positive. See Elron, supra note 74 (pointing to Israel’s criticism that UNIFIL is negotiating with Hezbollah rather than the Lebanese Armed Forces, as required by its mandate).

\textsuperscript{77} See UNIFIL Mandate, supra note 74.


\textsuperscript{79} This is evident from the low number of border conflicts and skirmishes with Israeli, Lebanese, and Hezbollah forces along the border. See generally Lebanon Profile, supra note 24.

\textsuperscript{80} See Press Conf. U.N. Lebanon, supra note 15.
exercise full sovereignty over its territory."  

**B. Current Political & Economic Situation: Lebanon**

Lebanon’s history has been rife with turmoil, periods of unrest, and political instability. Leading up to the Lebanese civil war, Lebanon was considered the “most stable democracy in the Arab World.” The political situation since the signing of the Ta’if Agreement in 1989 has been unstable and the Agreement itself has yet to be fully implemented. With the assassination of Prime Minister Rafik al-Hariri in 2005, Lebanon devolved into political conflict again. The 2009 elections were the first democratic elections in post-war Lebanon to be held in one day, and the election resulted in a new parliament, speaker of parliament, and prime minister. The government under the leadership of Prime Minister Najib Makati and President Michel Sulayman has taken steps to ready the country for oil and natural gas exploration off its coast, including appointing a committee to review the maritime border. Parliamentary elections were originally scheduled for June 2013; the election has since been postponed to November 2014.

Just as Lebanon’s political system has experienced nearly constant disruptions, so too has its economy. The country carries...
almost $50 billion in national debt.\textsuperscript{89} Foreign direct investment in the country is limited because of continued political instability, corruption, high tariffs and taxes, and bureaucratic uncertainty.\textsuperscript{90} Significant physical infrastructure damage resulted from the civil war, forcing the country to borrow from allies to fund the effort to rebuild.\textsuperscript{91} This effort has been largely responsible for driving up national debt and limiting economic growth in the country.\textsuperscript{92} Public debt now constitutes 128 percent of the nation’s GDP, the sixth highest debt-to-GDP ratio in the world.\textsuperscript{93}

Like Israel, Lebanon is a net-importer of oil and natural gas. Lebanon’s oil and natural gas consumption needs are met almost entirely by imports.\textsuperscript{94} Lebanon has relied on Syria, its neighbor to the east and north, to help meet its energy demands.\textsuperscript{95} The country has long relied on imports of oil, but in recent years has started to transition to natural gas.\textsuperscript{96} The country’s Energy and Water Minister estimates the transition will save the country $1 billion and “[enhance] energy supply security.”\textsuperscript{97} The Lebanese cabinet is very aware of the potential value of the natural gas resources, and it has taken multiple steps to establish its maritime border in the eastern Mediterranean.\textsuperscript{98}

Given the political and economic situation in Lebanon, and the conversion of its power plants from oil to natural gas, the potential for Lebanon to move toward a balanced production-consumption
scale is real, and a matter of pressing urgency.99 Tensions between Israel and Lebanon are already high.100 While the prospect of developing natural gas off their coasts holds enormous potential for both countries, Iran’s involvement in Lebanon’s development of the resources will undoubtedly escalate tensions between Israel and Lebanon.101

C. Current Political & Economic Situation: Israel

In January 2013, Benjamin Netanyahu was elected to his third term as Israel’s prime minister.102 Netanyahu has been a staunch and vocal advocate of Israel’s exploration of the natural gas reserves in the Levant Basin, vowing to defend the offshore gas fields in furthering Israel’s “strategic objectives” since the reserves were discovered in 2010.103 His strong stance has only hardened.104 In August 2011, Netanyahu’s government took the extreme measure of ordering the Israeli Defense Force (IDF) to dispatch drones to protect the offshore natural gas fields from threats by Lebanon and Hezbollah leaders.105 The IDF was to maintain twenty-four hour surveillance over the disputed area.106

Israel’s assertive stance and military action make sense given what the country stands to gain if the reserves are explored and developed. Israel produces approximately 55 billion cubic feet of

99 See id.
100 See What a Gas!, supra note 8.
101 See generally id. (discussing the geopolitical dynamics in the region in light of the natural resource discovery); see also Blanford, supra note 8.
103 “There is no doubt these resources are a strategic objective that Israel’s enemies will try to undermine, and I have decided that Israel will defend its resources.” Netanyahu Vows to Defend Med Gas fields, CUMHURIYET (Jan. 19, 2011), http://www.cumhuriyet.com/?hn=209634.
105 See id.
106 Id.
natural gas annually. Production has increased dramatically since 2003, when the country was producing virtually no natural gas. In contrast, the country consumes 117 billion cubic feet of natural gas annually, a number that has also risen dramatically since 2003. With consumption outpacing production, Israel imported approximately 74 billion cubic feet of natural gas in 2010 and 25 billion cubic feet in 2011. As a net importer of natural gas (and oil), the potential to develop natural gas off its coast could transition Israel from a net-importer to a net-exporter of energy.

Egypt, Israel’s neighbor to the south, met almost forty percent of Israel’s natural gas needs until 2012. The Arab Gas Pipeline (AGP) was the primary means for transporting natural gas between the countries. Israel’s agreement with Egypt was reportedly initiated in 2005, though the pipeline connecting Sinai, Egypt, to Ashkelon, Israel, was not complete until 2008. Israel and Egypt have maintained relatively peaceful relations, and the gas deal certainly ran the risk of escalating tensions between the neighboring countries. Additionally, Egyptians highly disfavored the deal. After repeated interruptions along the AGP,
the fall of Egyptian President Hosni Mubarak during the Arab Spring, and disputes over gas pricing between the neighboring countries, Egypt called off the gas supply deal in April 2012. In one fell swoop, forty percent of Israel’s natural gas supply and one third of Israel’s total fuel supply was cut off.

The discovery of natural gas in the eastern Mediterranean in 2009 changed Israel’s prospects for energy and economic security. In 2010, Israel’s energy costs amounted to $10 billion—five percent of the country’s GDP. Experts claim that the Levant Basin holds the largest natural gas reserve discovered in the last decade and the largest known reserve in the Mediterranean. If the experts are correct in estimating the volume of recoverable oil and natural gas in the Levant Basin, Israel’s development of those resources could satisfy the country’s domestic electricity needs for an estimated twenty-five years, and enable Israel to transition from an energy-importing to an energy-exporting nation. Without question, this discovery holds enormous potential for economic growth and promise for Israel’s energy security in the decades to come. Whether this discovery ensures Israel’s national security is another issue altogether, and one that Middle East geopolitical experts debate. Experts are not debating the potential for this

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117 The Israel-Egypt gas deal was negotiated under former Egyptian President Mubarak’s regime, and allegedly negotiations involved business people close to the Mubarak family. See Conan, supra note 114, at 226. Following Mubarak’s fall from power in 2011, the AGP was attacked fourteen times, resulting in significant disruptions in the supply of gas to Israel. See Egypt Scraps Israel Gas Supply Deal, supra note 116.


119 See What a Gas!, supra note 8.

120 See Tobias Buck, Field of Dreams: Israel’s Natural Gas, FINANCIAL TIMES MAGAZINE (Aug. 31, 2012) http://www.ft.com/cms/s/2/1dbda574-f16d-11e1-a553-00144feda0.html#axzz2Hex5DyzY.

121 See O’Sullivan, supra note 1. See also Buck, supra note 120. In December 2012, the CEO of Episol Mutual Funds estimated that the reserves may contribute up to $3.2 billion to Israel’s GDP in 2013. See Eran Azran, Impact of Israeli Gas Fields Has Been Hugely Underestimated, Says Analyst, HAARETZ (Dec. 12, 2012), http://www.haaretz.com/business/impact-of-israeli-gas-field-has-been-hugely-underestimated-says-analyst.premium-1.484253.

122 See Buck supra note 120.

123 See generally O’Sullivan, supra note 1 (highlighting the likelihood of a
resource discovery to move the region toward peace—certainly “plentiful, economical gas should be enough to push conflicts to resolution,” as one commentator has observed.124


UNCLOS125 is the modern legal framework used by coastal States to resolve maritime boundary conflicts.126 The Convention was signed by 119 countries in 1982 and has since been ratified by 165 nations in all.127 Neither Israel nor the United States is party to the Convention.128 Analysts have dubbed the UNCLOS one of the “most comprehensive treaties of all time,”129 culminating thousands of years of “international relations, conflict, and... nearly universal adherence to an enduring order for ocean space.”130 The Convention, commonly referred to as the “constitution of the oceans,”131 is broad in scope and covers territorial sea limits,132 conservation and management of the high seas,133 protection of the marine environment,134 the definition and

boundary dispute when and if Israel’s hostile neighbors make a claim to the reserves).124

Id.


Id.


See Status of the Convention, supra note 18.


UNCLOS, supra note 14, Part I.

Id. Part VII, Section 2.
rights of a state over the continental shelf, and the limits of the territorial seas among many other maritime issues. The Convention is the result of an "unprecedented attempt" by the international community to manage and regulate every aspect of ocean and marine life and resources, and "bring a stable order to mankind's very source of life." The exclusive economic zone (EEZ) regime under Part V of the Convention, and the settlement of disputes provisions under Part XV providing for a binding procedure for settlement of disputes are arguably the most relevant provisions under the Convention in resolving the escalating Israel-Lebanon maritime boundary dispute. A brief discussion of the history, scope, and applicability of UNCLOS will inform the later discussion that evaluates the viable options in resolving Lebanon and Israel's maritime boundary dispute.


The Convention was adopted in 1982 and entered into force in 1994. By the latter date, sixty states had ratified the Convention. Its adoption followed centuries of evolving maritime law, beginning with the Doctrine of Discovery, which employed a "first come, first served" approach to territorial and sea claims, to the more modern Freedom of the High Seas Doctrine, which denied any individual country jurisdiction over

134 Id. Part XII.
135 Id. Part VI.
136 Id. Part II, Section 2.
137 Id. passim.
139 Id.
141 UNCLOS Historical Perspective, supra note 138.
142 Wilder, supra note 130, at 517.
the ocean beyond a narrow strip of sea along a nation’s coastline.\textsuperscript{143} Competing demands for fish and other natural resources, the prospect of access to vast reserves of oil and natural gas, increasing concerns over water pollution, revolutionary technology, and ineffective legal means for dealing with the increasing number of maritime conflicts all led Arvid Pardo, Malta’s Ambassador to the United Nations, to call for “an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction.”\textsuperscript{144} The demarcation of three areas of territorial waters resulted.\textsuperscript{145}

\textit{i. Territorial Demarcation Provisions}

The Convention defines four distinct maritime boundaries—the territorial sea, the contiguous zone, the continental shelf, and the exclusive economic zone—each of which dictate the area over which a coastal state may exert its authority.\textsuperscript{146} The process of marking these boundaries, called delimitation, creates “varying degrees of control for individual coastal states.”\textsuperscript{147} UNCLOS’s framework for dividing sea territory between neighboring coastal states sharing common water is mostly consistent with the customary international law that existed prior to the ratification of the Convention, and provides a specific regime that allows for varying jurisdictional rights in each coastal zone.\textsuperscript{148} Each of these four zones is measured against a baseline, which generally follows the contours of the coast.\textsuperscript{149} These contours are not static, however, and may fluctuate because of destruction of the coastline, erosion, mining, melting of glaciers, political decisions, or other events.\textsuperscript{150} Prior to the adoption of UNCLOS, coastal states claimed jurisdiction of the seas based on the “cannon shot rule,” which included all sea territory over which a cannon could

\textsuperscript{143} Id. at 519.
\textsuperscript{144} UNCLOS Historical Perspective, supra note 138.
\textsuperscript{145} Id.
\textsuperscript{146} Wilder, supra note 130, at 522-23.
\textsuperscript{148} Id.
\textsuperscript{149} Lisztwan, supra note 19, at 154.
\textsuperscript{150} See id.
be launched from shore.\textsuperscript{151} Needless to say, the cannon shot rule was imprecise, and its use resulted in conflicting claims to sea territory.\textsuperscript{152}

An extreme example of a changing coastline and the subsequent impact on its territorial zones occurred off the coast of Yemen. An arbitral tribunal concluded that a small island halfway between Yemen and Eritrea belonged to Yemen, which allowed Yemen to adjust and expand its four maritime zones to take the tiny island into account.\textsuperscript{153} In 2007, that tiny island all but disappeared when a once-dormant volcano exploded.\textsuperscript{154} Because the tiny island was not completely destroyed, Yemen continues to maintain control over its maritime zone as measured by the tiny island.\textsuperscript{155} Despite UNCLOS’s comprehensive treatment, it does not address the notion of an “ambulatory” baseline—a baseline that shifts because of geographical changes,\textsuperscript{156} nor a baseline that shifts (or is in flux) due to geopolitical changes.\textsuperscript{157}
The Convention defines a nation’s “territorial sea” as the territory extending no more than twelve nautical miles from the nation’s baseline, or the “low-water line along the coast.” This area essentially “functions as a continuation of the nation’s land territory,” irrespective of any extension of the continental shelf. A nation may exert complete sovereignty over its territorial sea area, including subsurface resources, under UNCLOS Article 2.

The contiguous zone extends a nation’s territorial waters an additional twelve nautical miles; the contiguous zone cannot extend beyond twenty-four nautical miles from the baseline from

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159 UNCLOS, supra note 14, Part II, Sect. 2, art. 3.
160 Id. at Part II, Sect. 2, art. 5.
161 Wilder, supra note 130, at 522.
162 Sanei, supra note 147, at 790.
which the territorial sea is measured. In this area, nations may “prevent and punish infringement of its customs or laws.” In short, the coastal nation may exert “police power” over the contiguous zone, whereas the nation may claim full sovereign rights to the ocean space covered in the territorial sea.

The continental shelf is defined by Article 76 of the Convention as the “seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines.” The coastal state may exert sovereignty for the “purpose of exploring . . . and exploiting . . . natural resources” of the continental shelf. Disputes over the demarcation of the continental shelf for coastal states sharing ocean space remain. In the event that a nation extends the bounds of its continental shelf beyond 200 nautical miles from the baseline, that coastal state must divide and share revenue from the exploitation of minerals beyond the 200 mile marker. These funds are to be distributed equally among the parties to the Convention.

The EEZ under Part V of the Convention “is one of the most revolutionary features” of UNCLOS. The EEZ extends between twenty-four nautical miles—the contiguous zone—and up to no more than 200 nautical miles from the nation’s baseline from which the territorial sea is measured. The coastal state has

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163 UNCLOS, supra note 14, art. 33.
164 Wilder, supra note 130, at 523.
166 UNCLOS supra note 14, Part VI, art. 76. The continental shelf can be extended up to 350 nautical miles in the case of “submarine ridges.” Duong, supra note 165, at 1118.
167 UNCLOS supra note 14, Part VI, art. 77.
168 For a brief discussion about the Denmark-Netherlands continental shelf dispute and continuing questions as to the “equidistance rule,” see Sanei, supra note 147, at 790-98.
169 UNCLOS Historical Perspective, supra note 138.
170 See id.
171 Id. at 5.
172 UNCLOS, supra note 14, art. 57.
“sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources . . . 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 . . .”

A nation must “proclaim” the EEZ—the zone is not automatically granted when a nation ratifies UNCLOS. The outer limit of the continental shelf is designed to coincide with the EEZ. The EEZ regime allows a coastal State to “explore and exploit, conserve and manage” natural resources in its EEZ, as defined by UNCLOS. Under Article 58, all states have the right of “navigation and overflight and the laying of submarine cables and pipelines” within a state’s EEZ.

The EEZ is a significant development in international maritime law. With vast reserves of oil and natural gas located offshore, coastal nations have been eager to lay claim to ocean resources to meet domestic energy needs and to boost exports.

**ii. Dispute Resolution**

The conflict resolution provisions are relatively straightforward. Unlike many international agreements, UNCLOS’s dispute resolution mechanism is incorporated into the Convention itself, and makes binding any resolution agreed to under its provisions, requiring signatories to use the mechanisms provided for in the Convention to resolve disputes with other signatories over issues arising under the Convention. The Convention sets up two approaches for conflict resolution.

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173 Id. art. 56.
174 Duong, supra note 165, at 1120.
175 See UNCLos Historical Perspective, supra note 138.
176 Wählisch, supra note 11, at 2.
177 UNCLos, supra note 14, art. 58.
178 See UNCLos Historical Perspective, supra note 138.
179 See Wählisch, supra note 11, at 2.
180 See Lisztwan, supra note 19, at 179-80 (“Boundaries established by an I.C.J. judgment or by a decision of an arbitral body under UNCLOS are certainly binding, final, and not appealable.”).
181 See UNCLos, supra note 14, Part XV. Article 279 obligates member states to settle disputes by peaceful means, while Article 287 outlines the options from which member States may choose as each state’s binding dispute resolution procedure. Id.
182 See id.
First, signatories may attempt to directly negotiate a settlement between the parties. In the event that direct talks fail, parties have four options: “submission of the dispute to the International Tribunal for the Law of the Sea, adjudication by the ICJ, submission to binding international arbitration procedures, or submission to special arbitration tribunals” with expertise in resolving the specific issue in dispute. While the Convention provides for the possibility that parties adjudicate the matter before another tribunal, like the ICJ, the Convention also creates a separate adjudicative body—the International Tribunal for the Law of the Sea (ITLOS)—to settle matters under the Convention. In practice, the disputing parties either must agree to one of these four options to resolve their dispute; otherwise the Convention provides the default of arbitration.

Before the Convention was adopted and came into force, the ICJ had jurisdiction and considerable experience in deciding maritime law issues. The jurisdiction of the ICJ and other international tribunals depends in large part on parties voluntarily submitting a dispute to the tribunal after it arises. UNCLOS is

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183 See UNCLOS, supra note 14, arts. 279-80.
184 See UNCLOS, supra note 14, Part XV, Sect. 2, art. 287. Exceptions to these options may apply if parties are disputing fisheries within a state’s EEZ. See John E. Noyes, The International Tribunal for the Law of the Seas, 32 CORNELL INT’L L.J. 109, 122 (1998).
185 See UNCLOS, supra note 14, art. 287. The Statute of the International Tribunal for the Law of the Sea is included in Annex VI of the Convention. Id. Annex VI. Article 298, the Convention’s “opt-out” provision, allows a signatory to declare that it will not accept any of the procedural choices under Article 287, which would include disputes regarding sea boundary delimitations. See id. art. 298.
186 See Noyes, supra note 184, at 120. Article 298 of the Convention allows signatory states to opt out of any of the dispute resolution options outlined in Article 287. See UNCLOS, supra note 14, art. 298. Some argue that the Convention should be amended to remove this opt-out provision, which allows parties to avoid binding arbitration to settle disputes under the Convention. See generally Wilder, supra note 130, at 536 (arguing that rescinding the opt-out exception in Article 298 will encourage a “fair and equitable” dispute resolution framework under the Convention).
187 See Noyes, supra note 184, at 111. The ICJ and its predecessor decided forty cases concerning the law of the sea. Id. at 111, n. 9.
188 The Statute of the International Court of Justice provides that parties may enter into special agreements to submit their dispute to the Court for resolution. See id. at 114 (distinguishing the process by which disputing parties submit their conflict to the ICJ from the International Tribunal for the Law of the Sea). For additional discussion of the ICJ, see infra Part IV, B.
unique in including a compulsory dispute resolution provisions, requiring parties to the Convention to submit themselves to the Tribunal or another resolution mechanism outlined in the Convention even before a dispute with another member state arises.189

Historically, the compulsory nature of the third-party dispute settlement mechanisms had both supporters and detractors. Supporters argued that the requirement equalized the playing field for developed and developing signatories to the Convention and that the requirements legitimize the Convention’s “compromise ‘package deal.’”190 Those initially against the dispute resolution mechanisms favored less formal “consensus building methods” for resolving disputes arising under the Convention.191 Despite these concerns, all parties to the Convention have accepted its conflict resolution provisions.192

The ITLOS was established under Annex VI of the Convention as one of the compulsory third-party dispute resolution procedures.193 The Tribunal itself is located in Hamburg, Germany, and was established in 1994, when the Convention itself came into force.194 The Tribunal has jurisdiction over all disputes relating to the interpretation and application of the Convention.195 It is comprised of twenty-one members, each with “recognized competence in the field of the law of the sea” and no two members are from the same member state.196

Some raised concerns that the establishment of a new tribunal would lead to divergent jurisprudence in law of the seas cases.197 Proponents, however, asserted that the Tribunal would have jurisdiction over cases that the ICJ otherwise would not—

189 See UNCLOS, supra note 14, Part XV, art. 287. See also Noyes, supra note 184, at 114 (noting that this provision of the Convention is unique compared to other international agreements of similar scope).
190 Noyes, supra note 184, at 115.
191 See id.
192 See id. at 117.
193 UNCLOS, supra note 14, Annex VI, art. 1.
194 See Noyes, supra note 184, at 110.
196 UNCLOS, supra note 14, Annex VI, arts. 2-3.
197 See Noyes, supra note 184, at 111.
including over international organizations—and also argued that the benefits of a tribunal composed of experts in this field of law would be tremendous.\textsuperscript{198}

The dispute between Lebanon and Israel falls squarely within the Convention's provisions regarding the EEZ,\textsuperscript{199} and potentially, the continental shelf.\textsuperscript{200} The ITLOS, the ICJ, and multiple arbiters have jurisdiction to resolve this dispute under the Convention.\textsuperscript{201}

\section*{B. International Court of Justice and Customary International Law}

Prior to the enactment of UNCLOS and the creation of the ITLOS, the ICJ handled maritime and law of the sea disputes.\textsuperscript{202} Article 287 of UNCLOS allows for parties to the Convention to choose to settle their dispute in the ICJ, the ITLOS, or through arbitration.\textsuperscript{203}

The ICJ, located at The Hague, is the primary adjudicative body of the United Nations.\textsuperscript{204} The ICJ both settles legal disputes between states and provides advisory opinions on legal issues presented to it by states and U.N. agencies.\textsuperscript{205} The Court is composed of fifteen judges, each serving a term of nine years; judges are chosen by the U.N. General Assembly.\textsuperscript{206} The ICJ has jurisdiction over conflicts involving individual states, but not over conflicts involving international organizations.\textsuperscript{207} States that are members of the United Nations can be party to contentious cases before the Court.\textsuperscript{208}

The ICJ, under its statute, applies “international custom, as

\begin{itemize}
\item \textsuperscript{198} See id.
\item \textsuperscript{199} See UNCLOS, supra note 14, arts. 55-75.
\item \textsuperscript{200} See id. arts. 76-85.
\item \textsuperscript{201} See id. arts. 55-75.
\item \textsuperscript{202} See generally Jonathan Charney, Progress in International Maritime Boundary Delimitation Law, 88 A.J.I.L. 227 (1994) (describing the history of ICJ's jurisdiction over maritime boundary disputes).
\item \textsuperscript{203} UNCLOS, supra note 14, Part XV, Sect. 2, art. 287.
\item \textsuperscript{205} See id.
\item \textsuperscript{206} See id.
\item \textsuperscript{207} See Noyes, supra note 184, at 111.
\item \textsuperscript{208} See The Court, supra note 204.
\end{itemize}
evidence of a general practice accepted by law." Customary international law is "the law that is derived from state custom or practice." Customary international law may, but does not always, derive from international agreements, including conventions like UNCLOS. Article 38 of the Vienna Convention on the Law of Treaties provides that a provision of an international treaty may become binding on a third party to the treaty as a "customary rule of international law." For a provision of a treaty to qualify as applicable customary international law, the ICJ requires the following: (1) that the treaty codify "existing customary international law"; (2) that the treaty "crystallize" emergent law as customary international law; and (3) that the treaty "initiate[] the progressive development of new customary international law." UNCLOS arguably meets all of these requirements. First, the Convention is recognized as a landmark international agreement, codifying centuries of maritime law, from the rule of innocent passage, to freedom of the high seas, to state sovereignty over


211 See id. at 407-08. What qualifies as customary international law has evolved over time and remains a subject of debate among international law scholars. See generally Jonathan I. Charney, International Agreements and the Development of Customary International Law, 61 WASH. L. REV. 971 (1986) (outlining various frameworks through which scholars work to define what constitutes customary international law and how the Law of the Sea treaty fits into various conceptions of customary international law).


Second, the Convention brings together in comprehensive form centuries of maritime law in one document receiving broad acceptance. The ICJ has acknowledged that a rule can become part of customary international law even before the agreement goes into effect; and thus, that emergent law can become part of customary international law. The EEZ is an emergent international legal norm that UNCLOS codified, and is widely accepted by its signatories and non-signatories alike. Finally, the ICJ recognizes that progressive international legal norms may be considered customary international law where there is “widespread and representative participation of States” and “uniform state practice,” even if the particular norm in question has not been accepted by all nations. UNCLOS has been signed by 157 and ratified by 166 nations, demonstrating its broad worldwide support. While the United States is not a signatory to the Convention, the Restatement of Foreign Relations recognizes the concept of the EEZ as customary international law, as well as many other provisions of the Convention.

Some scholars caution international tribunals against adopting international treaties as customary international law. For one, there is always the risk that tribunals will do so without scrutinizing the treaty under the rigors of the standards discussed above. There is also concern about imposing rules arising from international agreements on non-parties that actively dissent from

214 See e.g., Lee, supra note 210, at 410 (describing the many provisions of UNCLOS that are derived from historic maritime law). See also Wilder, supra note 130, at 517-18 (providing a legal history of the Convention).
215 The Convention has been ratified by 166 nations. Status of the Convention, supra note 18.
216 See Lee, supra note 210, at 414.
217 See Chamey, supra note 211, at 987 (noting that the Restatement of Foreign Relations Law of the United States has accepted the EEZ as customary international law); see also Lee, supra note 210, at 414-15.
218 See Lee, supra note 210, at 417.
219 See Status of the Convention, supra note 18.
220 See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102(3)-(4).
221 See Chigara, supra note 129, at 451-52 (discussing the risk that ITLOS and ICJ will adopt the Convention as customary international law without formally evaluating whether the treaty meets the requirements of the ICJ).
222 Id.
those agreements.\textsuperscript{223}

Nevertheless, it is likely, if not certain, that any tribunal, including the ICJ, adopting "customary international law," will apply UNCLOS provisions to a dispute concerning the interpretation and application of the provisions of the Convention.\textsuperscript{224} As Israel and Lebanon are debating the delineation of their respective EEZs, any tribunal mediating a conflict between these two nations likely will be responsible for applying the Convention.\textsuperscript{225}

III. Recent Attempted Resolutions to Maritime Boundary Disputes in the Mediterranean Sea and Elsewhere

Turkey, Syria, Cyprus, Israel, and Lebanon border the Mediterranean's eastern shore, and each country at one time or another has claimed some portion of the eastern Mediterranean as its own.\textsuperscript{226} Lebanon and Cyprus attempted to demarcate a maritime boundary dividing the countries' territorial seas, but were unsuccessful.\textsuperscript{227} Israel and Cyprus, however, successfully reached agreement on their maritime boundaries, despite strong protests in the region.\textsuperscript{228}


Lebanon and Cyprus agreed to the geographical coordinates of their respective maritime boundaries in the eastern Mediterranean

\textsuperscript{223} See e.g., Charney, supra note 211, at 981 (noting that international agreements addressing extradition, taxation, and international trade are rarely adopted as customary international law).

\textsuperscript{224} See infra Part IV(ii).

\textsuperscript{225} See infra Part III.

\textsuperscript{226} See Beth Gardiner, \textit{New Energy Opportunities and Old Disputes}, N.Y. TIMES (Nov. 12, 2012) (discussing the various claims by Israel, Lebanon, and Cyprus to energy reserves in the eastern Mediterranean and Turkey’s concern over Cyprus’s exploration efforts).

\textsuperscript{227} Id.

in 2007.\textsuperscript{229} The Cypriot government ratified the agreement almost immediately, but the Lebanese government failed to do the same.\textsuperscript{230} It is possible that the Lebanese government was anxious to commit to a so-called “Point 1,” the agreed division between Cyprus and Lebanon in the 2007 negotiations, before the maritime border with Israel was established.\textsuperscript{231} Others speculate that Lebanon was under pressure from Turkey not to ratify the agreement.\textsuperscript{232} Lebanon’s hesitation may also be attributable to a fractured and dysfunctional government.\textsuperscript{233}

Three years later, in December 2010, Israel and Cyprus entered into a binding agreement demarcating each country’s EEZ in the eastern Mediterranean.\textsuperscript{234} Cyprus and Israel ratified the agreement and the agreement went into force in February 2011.\textsuperscript{235} The Agreement “recall[s]” the UNCLOS and uses the Convention to establish each country’s EEZ.\textsuperscript{236} In July 2011, Israel submitted a list of coordinates for its EEZ to the United Nations, based on its earlier agreement with Cyprus.\textsuperscript{237}

Almost immediately, Lebanon protested to the Israel-Cyprus

\textsuperscript{229} See Wahlisch, supra note 11, at 2.

\textsuperscript{230} See id.

\textsuperscript{231} See Michal Shmulovich, Cyprus Offers to Mediate Between Israel and Lebanon Over Offshore Gas Dispute, TIMES OF ISRAEL (Dec. 3, 2012), http://www.timesofisrael.com/cyprus-offers-to-mediate-between-israel-and-lebanon-over-offshore-gas-dispute/ (noting that Lebanon’s failure to ratify the agreement may be motivating Cyprus to offer to mediate the conflict between Israel and Lebanon). See also Wahlisch, supra note 11, at 2.


\textsuperscript{233} See generally Waled Hazbun, From Lebanon, With Pessimism and Hope, N.Y. TIMES (Mar. 3, 2011), http://opinionator.blogs.nytimes.com/2011/03/03/from-lebanon-with-pessimism-and-hope/?_r=0 (describing Lebanon’s political tumult and the despondent and pessimistic attitudes many Lebanese share as a result).

\textsuperscript{234} See Israel-Cyprus EEZ Agreement, supra note 228.

\textsuperscript{235} See Wahlisch, supra note 11, at 3.

\textsuperscript{236} Israel-Cyprus EEZ Agreement, supra note 228.

boundary agreement. The Lebanese government issued a formal complaint to the United Nations in June 2011, claiming that the agreement between Israel and Cyprus violated the agreement made between Lebanon and Cyprus and violated Lebanon’s "sovereignty and economic rights." Lebanon claimed that the Israel-Cyprus delimitation agreement moved the median unitary line, depriving Lebanon of more than 850 square kilometers of its EEZ. Cyprus was eager to reach agreement with one of the parties and begin exploration of natural resources in its territorial seas and moved forward with its agreement with Israel, despite protests from the Lebanese government. While Israel and Cyprus have both begun exploration and development activities in the disputed waters, Lebanon has yet to make any meaningful progress in development or exploration. The resolution of the disagreement between Cyprus and Lebanon will inform any agreement with Israel, as the location on the coast between Israel and Lebanon is the reference point from which the EEZ is drawn.

In addition to submitting a formal complaint to the United Nations over the Cyprus-Israel EEZ delimitation, Lebanon proceeded to submit three proposals for its EEZ between August 2010 and November 2011. The most recent submission to the United Nations indicated that the boundaries submitted to the United Nations may be amended "in the light of negotiations with the relevant neighbouring States," suggesting Lebanon’s openness.

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239 Id.
241 See Kossayfi, supra note 232.
243 See Cyprus-Lebanon, Cyprus-Israel Offshore Delimitation, supra note 240.
to negotiation in establishing a binding maritime boundary.245

While both Israel and Lebanon have submitted their respective proposals to the United Nations, without a formal agreement between the countries, the proposals remain non-binding and subject to amendment.246

B. Resolution of the Arctic Maritime Boundary Dispute

The eastern Mediterranean is not the only body of water in which multiple bordering countries dispute maritime boundaries, nor is it the only area for which a resolution over maritime boundaries has been difficult to achieve.247 The Arctic, like the Mediterranean, holds vast, valuable reserves of oil and natural gas.248 Climate change, resulting in the melting of ice in the arctic region, has made the area more navigable and conducive to mining activities.249 The region has been considered international territory since 1997.250 Each of five nations, including Russia, Canada, Norway, Denmark, and the United States, have taken steps to lay claim to territory in the area in what has been called the "Cold Rush."251 Each nation claims that its continental shelf—one of the four maritime boundaries provided for under UNCLOS—extends to the Arctic, and thus that each should have the right to explore

246 See Wählisch, supra note 11, at 3.
247 See infra notes 248-252 and accompanying text.
248 The Arctic is estimated to hold ninety billion barrels of oil, 1,760 trillion cubic feet of natural gas, and forty-four billion barrels of natural gas liquids, accounting for a total of approximately twenty-two percent of the "undiscovered, technically recoverable" natural resources in the world. 90 Billion Barrels of Oil and 1,670 Trillion Cubic Feet of Natural Gas Assessed in the Arctic, U.S. GEOLOGICAL SURV. (July 23, 2008), http://www.usgs.gov/newsroom/article.asp?ID=1980&from=rss_home.
249 See Wilder, supra note 130, at 512.
250 The Arctic became international territory upon the signing of UNCLOS. Id. at 507.
251 See id. at 512-13. Russia has attempted to claim the Arctic and North Pole as its own by planting a Russian flag on the sea floor beneath the North Pole. See David Greene, Russia Pushes to Claim Arctic As Its Own, NAT'L PUB. RADIO (Aug. 16, 2011, 9:01 AM), http://www.npr.org/2011/08/16/139577789/russia-pushes-to-claim-arctic-as-its-own.
and develop the resources in its continental shelf area in the Arctic.\textsuperscript{252}

The Convention provides multiple options for delineating the continental shelves of each of these countries and is useful for resolving disputes among member nations. Russia, Norway, Denmark, and Canada are all parties to the Convention.\textsuperscript{253} The United States, however, has yet to ratify the Convention.\textsuperscript{254} Denmark and Norway have chosen the ICJ to resolve any dispute arising under the Convention.\textsuperscript{255} Canada has chosen the ITLOS and an arbitral tribunal under Article 287 of Annex VII.\textsuperscript{256} Upon its signature to the Convention in 1982, Russia chose an arbitral tribunal under Article 287 of Annex VII of the Convention.\textsuperscript{257} While the United States has not ratified the Convention and is not required to choose a procedure by which to resolve this dispute under the Convention, the United States signed the Ilulissat Declaration\textsuperscript{258} with the other four Arctic nations claiming territory

\textsuperscript{252} See Wilder, \textit{supra} note 130, at 513-17.
\textsuperscript{253} Norway ratified the convention in 1996, Russia in 1997, Canada in 2003, and Denmark in 2004. \textit{Status of the Convention, supra} note 18.
\textsuperscript{254} While each of the last three sitting U.S. presidents has supported ratifying the Convention, the U.S. Senate has yet to take any action. \textit{U.S. Leaders Support Law of the Sea Treaty}, \textit{WORLDWATCH INST.}, http://www.worldwatch.org/node/5993. See also \textit{President's Statement on Advancing U.S. Interests in the World's Oceans}, \textit{THE WHITE HOUSE} (May 15, 2007), http://georgewbush-whitehouse.archives.gov/news/releases/2007/05/20070515-2.html (stating President Bush's reasons for supporting the Convention); Josh Rogin, \textit{Clinton: Ratify the Law of the Sea Treaty This Year}, \textit{FOREIGN POL'Y} (May 23, 2012, 10:00 AM), http://thecable.foreignpolicy.com/posts/2012/05/23/clinton_ratify_law_of_the_sea_treaty_this_year (stating Secretary of State Hillary Clinton's reasons for supporting the Convention). President Obama is expected to encourage the U.S. Senate to take action on the Treaty in his second term. See John B. Bellinger III, \textit{Obama’s Weakness on Treaties}, \textit{N.Y. TIMES} (Dec. 18, 2012), http://www.nytimes.com/2012/12/19/opinion/obamas-weakness-on-treaties.html (discussing the need for President Obama to push for approval of the Convention). See also Wilder, \textit{supra} note 130, at 532-33 (describing the benefits of adopting the Convention).

\textsuperscript{256} \textit{Id.}
\textsuperscript{257} \textit{Id.} Upon ratification, however, Russia opted out of the binding dispute resolution provisions of the Convention in regards to sea boundary delimitations. \textit{Id.}

in the Arctic.\footnote{259} The Declaration explicitly provides that the dispute over the Arctic will be resolved using the existing framework provided by the Convention.\footnote{260} As of this writing, no progress has been made in negotiating the maritime boundaries in the Arctic.\footnote{261} Progress on the Declaration could be expected once the United States ratifies the Convention and chooses a procedure for dispute resolution under Article 287.\footnote{262} With many scholars, the business community, environmentalists, and the energy industry supporting ratification of the Convention, the U.S. Senate very well may take action in the 113th Congress.\footnote{263}

IV. Options for Resolving the Israel-Lebanon Maritime Boundary Dispute in the Eastern Mediterranean

The demarcation of the EEZ is the primary point of disagreement between Lebanon and Israel.\footnote{264} The accessible reserves of natural gas and oil are approximately forty to eighty nautical miles off the coast of the two countries, putting the reserves squarely within the 200-mile EEZ of one or both countries.\footnote{265} Israel has moved quickly both to claim the reserves


\footnote{260} Id. at 2.


\footnote{262} See Wilder, supra note 130, at 539-40 (discussing the benefits to all parties if U.S. ratifies the Convention).


\footnote{264} See Cyprus-Lebanon, Cyprus-Israel Offshore Delimitation, supra note 240 (discussing the dispute over the demarcation line).

\footnote{265} Estimates as to the distance between the natural gas field and Israel’s coast vary from 45 to 80 miles. See generally John C.K. Daly, Israel Eyes Gas Reserves in
as its own and to lay the foundation for the development of the offshore resources.\textsuperscript{266} As of mid-2012, Israel was contracting with U.S.-based Nobel Energy to develop all portions of the Levant Basin reserves.\textsuperscript{267} The Israeli cabinet is actively defending the reserves, which would significantly expand the territory over which the Israeli Defense Force (IDF) has responsibility.\textsuperscript{268} In fact, the IDF is pushing for a share of any future royalties for oil and natural gas exploration off its coast.\textsuperscript{269}

For its part, the Lebanese government has requested that the U.N. Secretary General pressure Israel to put an end to border violations and to cease exploration of resources Lebanon claims as its own.\textsuperscript{270} Specifically, former Prime Minister Sa‘ad Hariri asked the United Nations to enforce U.N. Resolution 1701 and to put pressure on Israel to “cease its violations in the air, on land and at sea.”\textsuperscript{271} As noted by a spokesperson for Secretary-General Ban Ki Moon, Resolution 1701 addresses only the land border between the two countries and not the maritime border.\textsuperscript{272} Internally, the
Lebanese government has created the Petroleum Administration Authority and staffed the board with six members, each of which will lead a unit with specified duties in exploration and development of natural resources off its coast.273

Disputes over the maritime boundary threaten the economic and political stability of the region.274 Countries in the Middle East have often resorted to military conflict to resolve their differences, as evidenced by the ongoing conflict between Israel and its neighbors, including Lebanon.275 Israel’s other neighbor to the north, Syria, is currently involved in an intense and bloody civil war.276 There is enormous incentive for Israel and Lebanon


274 See Press Conf. U.N. Lebanon, supra note 15 (discussing the threat to security created by the maritime dispute). See also Stonaker, supra note 266 (discussing the maritime boundary dispute’s potential to cause further military conflict).

275 See generally Wählisch, supra note 11 at 1, 4 (summarizing the history of conflict between Israel and Lebanon, noting that disputes over natural resources in the Middle East have often resulted in military conflict); see also O’Sullivan, supra note 1 (describing the threat of military conflict over the reserves in the Mediterranean as real but not necessary to resolve the maritime boundary dispute in the region).

276 See, e.g., Michael Pizzi, Hopes fade for Syria peace talks next month, AL JAZEERA AMERICA (Oct. 31, 2013), http://america.aljazeera.com/articles/2013/10/30/hopes-fade-for-syriapeacetalksnexthmonth.html (discussing the ongoing efforts to peacefully resolve the Syrian civil war and noting the likelihood that a November 2013 peace conference wherein negotiators had hoped to move toward resolution would be
to resolve their differences peacefully, given the economic implications and potential for energy security in developing the natural gas and oil resources of the eastern Mediterranean.  

Private sector actors, including U.S.-based Nobel Energy, may also want to see this dispute resolved peacefully, given the large investments already made in developing the existing natural resources.  

As one commentator has put it, “going to court is always cheaper than going to war.”  

What follows is an evaluation of Israel’s and Lebanon’s options, given existing international law frameworks and dispute resolution options.  

First, this section discusses what, if any, options the countries have under UNCLOS.  

Following the discussion of options under UNCLOS, this section explores whether the ICJ is an appropriate forum for the resolution of this dispute.  

Finally, this section discusses the possibility of mediation by the United Nations and international arbitration as delayed).  See also Babak Dehghanpisheh, Bombings, Clashes Reported in Syrian Capital, WASHINGTON POST (Feb. 21, 2013), http://www.washingtonpost.com/world/middle_east/bombings-clashes-reported-in-syrian-capital/2013/02/21/d40a3232-7c20-11e2-a044-676856536b40_story.html (detailing the attacks in the Syrian capital, Damascus, in the ongoing conflict between the Free Syrian Army and the government forces backing Syrian President Bashar al-Asad). Syria has historically been one of Lebanon’s primary sources for energy, and the resolution of the conflict in Syria will have implications for Lebanese energy security, regardless of whether Lebanon develops any natural gas off its coast.  See generally Syria, U.S. ENERGY INFORMATION ADMIN. (Feb. 20, 2013), http://www.eia.gov/countries/cab.cfm?fips=SY (noting that Syria’s energy sector is suffering significant damage as internal fighting continues).  

Multiple countries are disputing maritime borders in the South China Sea, and some scholars argue that the private sector will play a large role in mediating the competing maritime claims.  See generally Duong, supra note 165 (arguing that the private sector will play a “crucial” role in negotiating bilateral and multilateral agreements over maritime disputes when energy resources are at stake).  

Lebanese Foreign Affairs and Immigration Minister, Adnan Mansour, has expressed the nation’s intention to take steps to resolution “within a legal framework.” Lebanon Files UN Complaint over Israel-Cyprus EEZ Deal, supra note 238.  

See infra notes 284-332 and accompanying text.  

See infra notes 333-351 and accompanying text.
alternative options for resolution.\textsuperscript{283} Important to consider under each option is whether Israel is willing to consent to an arbitral body’s mediation and whether the Lebanese government would allow the arbitration or mediation to proceed given the veto power wielded by Hezbollah within the government.


As discussed above, the Convention requires peaceful resolution of disputes arising under its provisions. Below is a brief discussion of the viability of these options including conciliation, utilization of the ITLOS, and arbitration.\textsuperscript{284} Many parties to the Convention have chosen one of the four dispute resolution mechanisms outlined in Article 287 of the Convention when disputes with other member states have arisen.\textsuperscript{285} Lebanon has not made such a choice under Article 287.\textsuperscript{286}

\textit{i. Israel to Ratify the Convention.}

Israel has yet to sign or ratify the Convention.\textsuperscript{287} Other nations joining Israel in their resistance to the Convention include the United States, Turkey, Syria, and a number of landlocked nations.\textsuperscript{288} In the United States, the topic of signing and ratifying the treaty has come up numerous times in the Convention’s thirty-year history and, despite the United States’ status as a non-party, the Convention has broad support among U.S. politicians, environmentalists, and diplomats.\textsuperscript{289} During the 112th Congress, a

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{283} The United Nations Interim Force has already played a significant role in facilitating peaceful dispute resolutions between the two nations in other areas. \textit{See infra} notes 352-373 and accompanying text.
\item \textsuperscript{284} \textit{See infra} notes 285-332 and accompanying text.
\item \textsuperscript{285} "When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose . . . one or more of the following means for settlement of disputes." UNCLOS, \textit{supra} note 14, art. 287. For a list of member states’ choice of procedure, see \textit{Settlement of Disputes Mechanism, U.N. DIV. FOR OCEANS AND THE LAW OF THE SEA} (Apr. 10, 2013), http://www.un.org/Depts/los/settlement_of_disputes/choice_procedure.htm. It is important to note that Lebanon has not chosen a primary means of dispute resolution under the Convention. \textit{Id.}
\item \textsuperscript{286} \textit{See Declarations and Statements, supra} note 255.
\item \textsuperscript{287} \textit{Status of the Convention, supra} note 18.
\item \textsuperscript{288} \textit{Id.}
\item \textsuperscript{289} \textit{See Keith Johnson, GOP Scuttles Law-of-the-Sea Treaty, WALL ST. J.} (July 16,
group of Republican senators rebuffed Senate Majority Leader Harry Reid's efforts to bring the treaty to the floor for a vote, citing concerns over U.S. national sovereignty, and the potential taxation implications. Whether Israel shares these same concerns is unclear.

Some in Israel are calling for the country to ratify the Convention. Citing the delicate political situation, the recent cut-off in energy supply to Israel, and the promise of energy security from the natural resource reserves in the Mediterranean, some suggest that ratification may be in Israel's best interest.

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291 The specific reason or reasons for Israel's failure to ratify are outside the scope of this Comment; however, one can speculate that the failure of Israel's closest ally, the U.S., to ratify, has influenced Israel's decision to withhold its support. See generally Clyde Mark, Israeli-United States Relations, POL'Y ALMANAC (Oct. 17, 2002), http://www.policyalmanac.org/world/archive/crs_israeli-us_relations.shtml (describing the development of a special relationship between the United States and Israel regarding international policies). Perhaps also influencing Israel's hesitation to ratify is the fact that numerous countries that are party to the convention are hostile to Israel. See Declarations and Statements, supra note 255 (listing statements by Iraq, Kuwait, Qatar, and Yemen stipulating that their ratification of the Convention does not imply a recognition of the state of Israel). Finally, one may argue that it is in Israel's self-interest to resist ratification, given that the country has had few maritime disputes. But see David Newman, Israel's Maritime Disputes, THE JERUSALEM POST (July 11, 2011, 9:51 PM), http://www.jpost.com/Opinion/Columnists/Israel's-maritime-boundaries (arguing that "[i]n the present international climate, Israel does not do itself any favors by refusing to play ball, or by making demands not in accordance with accepted regulations.")

292 See Newman, supra note 291 (discussing the reasons why Israel should sign the Convention).

293 See generally id. (describing the circumstances that make signing the Convention a quality option for Israel).
Other scholars call for universal ratification of the Convention, noting the economic and political security concerns that arise when parties act in their self-interest in developing natural resources in what they claim to be their maritime territory. It is also important to note that Israel has implicitly accepted the terms of the Convention by demarcating its EEZ with Cyprus.

Other nations bordering the Mediterranean, including Lebanon, Egypt, Cyprus, and Greece, have accepted the Convention, demonstrating the Convention’s support in the region. Additionally, given that Israel may be held to the Convention as customary international law before the ICJ or another arbitral tribunal, it is unclear what, if any, harm may come from its ratification of the Convention in the specific context of dispute resolution. Finally, it is possible that ratification by Israel’s close ally and supporter, the United States, may prompt Israel to reconsider its resistance to the Convention.

ii. Conciliation under Article 284 and Annex V

Article 284 of the Convention provides that a signatory to the Convention can submit any dispute “concerning the interpretation or application” of the Convention to conciliation. This means of resolving a dispute does not require both parties to be signatories to the Convention. Exercising this option would require

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294 Wilder observes:

Abandoning UNCLOS would only weaken current international . . . law, create economic uncertainty, and pose potential security issues . . . . Considering the enormous economic wealth at stake, coupled with the political power of today’s oil, abandoning UNCLOS might erroneously be interpreted by some as encouraging military solutions to . . . territorial disputes.

Wilder, supra note 130, at 532. See also Duong supra note 165, at 1133-36 (discussing the significance of the U.S.’s reluctance to ratify the Convention).

295 See supra notes 234-237 and accompanying text.

296 See Status of the Convention, supra note 18.

297 See supra notes 202-225 and accompanying text.

298 See generally Mark, supra note 291 (discussing the close relationship between the U.S. and Israel).

299 UNCLOS, supra note 14, art. 284.

300 Article 284 provides that “a State Party” may submit the dispute to conciliation proceedings under Annex V, Sect. 1 of the Convention. Id. Other sections under this part require that both parties in the dispute be parties to the Convention. See, e.g., UNCLOS, supra note 14, Annex 2, Sect. 2.
Lebanon to invite Israel to enter into conciliation proceedings, and for Israel to accept the invitation in writing.\(^{301}\) Each party may nominate four conciliators among the list maintained by the Secretary-General, and a total of five conciliators would mediate the dispute between the countries.\(^{302}\) These requirements are not procedurally onerous, and conciliation should be the first step in attempting to resolve disputes under the Convention.\(^{303}\) Article 279 provides that parties are to resolve disputes “by peaceful means,” and if peaceful means, including conciliation, are not successful, the parties must choose between ITLOS, ICJ, and arbitration.\(^{304}\) The likelihood of a voluntary resolution of the dispute, without the assistance of arbitrators or an international tribunal, is unlikely given the history between the two countries.\(^{305}\) One would expect the groundwork for a friendly resolution to have been laid at this stage were this option pursued.\(^{306}\) Additionally, since conciliation under the Convention does not produce a result binding on either party, this is the least likely of the options available to produce a meaningful result.\(^{307}\)

iii. International Tribunal for the Law of the Sea

As previously noted, Lebanon is a party to the Convention, and thus the ITLOS would have jurisdiction over a dispute arising under the Convention.\(^{308}\) Despite Israel’s failure to ratify the

\(^{301}\) See UNCLOS, supra note 14, Annex V, Sect. 1, art. 1 (stating the need for written acceptance in a conciliation).

\(^{302}\) Id. art. 2.

\(^{303}\) See id. Part XV, Sect. 1, art. 279 (stating the desire to peacefully negotiate solutions).

\(^{304}\) Id.

\(^{305}\) See generally Cyprus-Lebanon, Cyprus-Israel Offshore Delimitation, supra note 240 (describing the tension between Lebanon and Israel, and the nations’ lack of a willingness to negotiate in an effort to resolve the territorial dispute).

\(^{306}\) See supra notes 229-246 and accompanying text.


\(^{308}\) See UNCLOS, supra note 14, Annex VI, Sect. 2, art. 21 (providing that the
Convention, ITLOS remains an option for dispute resolution if Israel were to voluntarily submit itself to the jurisdiction of the Tribunal.\textsuperscript{309} ITLOS, like the ICJ, has the potential to become a "rule interpreter" and public forum for highly politicized international disputes,\textsuperscript{310} which increases the chance that Israel would voluntarily submit to its jurisdiction.\textsuperscript{311}

To date, only twenty cases have been submitted to the Tribunal, none of which have involved Lebanon or Israel.\textsuperscript{312} The Tribunal resolved its first border dispute in March 2012 between Bangladesh and Myanmar.\textsuperscript{313} This is the first and only maritime boundary dispute the Tribunal has heard since its creation in 1997.\textsuperscript{314}

With the Tribunal’s first binding decision behind it, Israel and Lebanon stand to gain immensely from submitting their dispute to the Tribunal. Perhaps most importantly, consistency in setting maritime boundaries in the eastern Mediterranean is essential for peace and full utilization of each country’s resources.\textsuperscript{315} Israel and

\textsuperscript{309} See id. art. 20 ("The Tribunal shall be open to entities other than States Parties . . . in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case.").

\textsuperscript{310} Noyes, supra note 184, at 155.

\textsuperscript{311} See infra notes 337-351 and accompanying text.


\textsuperscript{314} See Maritime Boundary Between Bangladesh and Myanmar Judgment Delivered, supra note 313. Certainly, it is reasonable to expect Lebanon and Israel to hesitate to submit this dispute to a tribunal that has only handled one similar case, especially given the high political and economic stakes. See supra Part II.

\textsuperscript{315} See Wählisch, supra note 11, at 4 (discussing the region’s history of conflict
Cyprus have established maritime boundaries according to the standards outlined in the Convention.\textsuperscript{316} Finally, Lebanon and Cyprus attempted to set maritime boundaries under the Convention in 2007.\textsuperscript{317} With extensive resources in the Mediterranean and numerous countries laying claim to those resources, an equitable and consistent standard for delineating maritime boundaries is critical.

If and when Israel and Lebanon come to an agreement regarding their maritime boundary, and the demarcation of the EEZ specifically, the Convention’s dispute resolution mechanisms will likely have jurisdiction over any disputes arising under such an agreement.\textsuperscript{318}

\textit{iv. International Court of Justice.}

The ICJ is listed as a means to settle disputes under Article 287 of the Convention.\textsuperscript{319} A more detailed discussion of the viability of the ICJ as a means of dispute resolution is discussed below.\textsuperscript{320}

\textit{v. Arbitration under Annexes VII or VIII}

Disputes pertaining to fisheries, protection and preservation of the marine environment, marine scientific research, and navigation are turned over to “special” arbiters for resolution under Annex VIII.\textsuperscript{321} All other arbitration under the Convention is governed by Annex VII, which provides all parties to the Convention with the option of submitting a dispute to arbitration.\textsuperscript{322} Because the

\textsuperscript{316} See Israel-Cyprus EEZ Agreement, supra note 228.

\textsuperscript{317} See Wählisch, supra note 11, at 2 (discussing the agreement that was ratified by Cyprus, but not by Lebanon).

\textsuperscript{318} “A court or tribunal referred to in Article 287 shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement.” UNCLOS, supra note 14, Part. XV, Sect. 2, art. 288. The courts referred to in Article 287 include ITLOS, ICJ, an arbitral tribunal under Annex VII of the Convention, and a special arbitral tribunal under Annex VIII of the Convention. See id. art. 287.

\textsuperscript{319} Id.

\textsuperscript{320} See infra notes 333-351 and accompanying text.

\textsuperscript{321} UNCLOS, supra note 14, Annex VIII, art. 1.

\textsuperscript{322} See id. Annex VII, Sect. 2, art. 287.
dispute between Lebanon and Israel does not include any of the issues listed under Annex VIII, it is most likely that the countries would seek arbitration under Annex VII of the Convention.

Arbitration under Annex VII is the default dispute resolution mechanism for cases arising under the Convention if parties do not express a preference under Article 287(1).\textsuperscript{323} Like the conciliation process, parties who submit to arbitration are able to appoint arbiters authorized by the United Nations to settle the dispute.\textsuperscript{324}

Since the Convention came into force in 1994, only nine cases have been arbitrated under Annex VII of the Convention, eight of which have been arbitrated by the Permanent Court of Arbitration (PCA).\textsuperscript{325} All the parties to those eight disputes had ratified the Convention at the time the dispute was submitted to PCA.\textsuperscript{326}

Certainly, Israel could voluntarily consent to arbitration under Part XV and Annex VII of the Convention.\textsuperscript{327} In 1998, Eritrea, a non-party to the Convention, and Yemen, a party to the Convention, submitted a dispute over both territorial and maritime boundaries to PCA.\textsuperscript{328} The nations’ territorial dispute was handled in the first phase of arbitration; maritime boundaries were handled in the second phase of arbitration.\textsuperscript{329} In its arbitration agreement, Eritrea agreed to have the dispute resolved through the application of the provisions of the Convention that were relevant to the maritime boundary dispute, including the demarcation of its EEZ.\textsuperscript{330} This analysis remains essentially the same even if Israel

\textsuperscript{323} See id.
\textsuperscript{324} Id. Annex VIII, art. 2.
\textsuperscript{326} See id. (listing the cases arbitrated by the PCA under Annex VII); Status of the Convention, supra note 18 (listing the UNCLOS signatories).
\textsuperscript{327} See UNCLOS, supra note 14, arts. 286, 287 (enshrining parties’ right to arbitration).
\textsuperscript{329} Id.
\textsuperscript{330} See Maritime Delimitation (Eritrea v. Yemen), Award at ¶ 130 (Perm. Ct. Arb. 1996), http://www.pca-cpa.org/showpage.asp?page_id=1160 (follow link to Dec. 17, 1999 decision) (stating that the Tribunal will take into account the relevant provisions of UNCLOS).
and Lebanon submit to international arbitration outside the context of Annex VII of the Convention.

vi. Apply UNCLOS “Customary International Law”

Even though Israel is not a party to the Convention, Israel may be bound to the Convention because it constitutes binding customary international law.\textsuperscript{331} Scholars widely accept that the Convention is part of customary international law.\textsuperscript{332}

B. International Court of Justice

The next natural choice for dispute resolution is for Lebanon and Israel to submit the dispute to the ICJ, the primary tribunal of the United Nations. Both Lebanon and Israel are U.N. member states.\textsuperscript{333} Jurisdiction by the court would be proper in three instances: (1) where consent by both parties is expressed as a special agreement between the two nations;\textsuperscript{334} (2) where the dispute arises from a treaty or other international agreement;\textsuperscript{335} or (3) where either nation has already unilaterally declared the jurisdiction of the court to be compulsory for resolving disputes with other member nations.\textsuperscript{336} Given that neither country has made such a declaration, and that Israel is not party to UNCLOS, the most likely way for the court to exert jurisdiction over this dispute is for the parties themselves to agree to submit the issue to the Court.

The ICJ has long-established expertise in the resolution of maritime disputes; its jurisprudence has concerned the resolution

\textsuperscript{331} Wühlisch, supra note 11, at 2.

\textsuperscript{332} See supra notes 202-225 and accompanying text.


\textsuperscript{334} See Statute of the International Court of Justice, supra note 209, art. 36(1) (stating that the Court has jurisdiction over “all cases which the parties refer to it”).

\textsuperscript{335} Article 36, paragraph 1 of the ICJ’s jurisdictional statute provides that the ICJ’s jurisdiction includes “all matters specially provided for . . . in treaties and conventions in force.” Id. art. 36.

\textsuperscript{336} Id. art. 36(2). For further discussion about the compulsory jurisdiction of the Court in a maritime boundary dispute, see Charney, supra note 202, at 254-55 (discussing Denmark’s unilateral declaration of ICJ’s jurisdiction in its maritime boundary dispute with Norway).
of maritime boundary dispute more than any other subject in
international law. Since 2000, four maritime boundary disputes
have been submitted to it for resolution. The ICJ was the
primary adjudicatory body for the resolution of maritime
boundaries before the establishment of the ITLOS, and has
handled far more delimitation cases than the Tribunal.

While the ICJ has the expertise in resolving exactly the issue
Lebanon and Israel seek to resolve, the prospect of Israel
submitting to the ICJ’s jurisdiction is doubtful at best. Israel has
been before the ICJ for various disputes, most recently for
building a wall in the West Bank. The ICJ found building the
wall was “illegal” in this recent appearance before the court.
Israel’s reaction to the ICJ’s advisory opinion was strong and
defiant; Prime Minister Benjamin Netanyahu forcefully stated that
the government of Israel would “ignore” the finding of the ICJ and
continue with the construction of the wall. Also weighing
against Israel’s consent to the ICJ’s jurisdiction is the continuing
debate over whether the Palestinian territories will achieve the
status of a full independent member state at the United Nations.

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337 See generally Charney, supra note 202, at 254-55 (describing the history of
ICJ’s jurisdiction over maritime boundary disputes).
338 Since 1947, twelve maritime disputes have been submitted to the ICJ. List of
The following maritime disputes have been submitted to the I.C.J. since 2000: Nicaragua
v. Colombia (2001), El Salvador v. Honduras (2002), Romania v. Ukraine (2004), and
Peru v. Chile (2008). Id.
339 Noyes, supra note 184, at 111.
340 See U.N. Secretary-General, Illegal Israeli Actions in Occupied East Jerusalem
and the Rest of the Occupied Palestinian Territory: Report of the Secretary-General, ¶ 2,
files/131/1497.pdf.
341 Legal Consequences of the Construction of a Wall in the Occupied Palestinian
Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 142 (July 9, 2004), available at
342 “Because the court’s decision makes a mockery of Israel’s right to defend itself,
the government of Israel will ignore it.” Benjamin Netanyahu, Why Israel Needs a
Fence, N.Y. Times (July 13, 2004), http://www.nytimes.com/2004/07/13/opinion/why-
israel-needs-a-fence.html.
343 In November 2012, the U.N. General Assembly voted to recognize Palestine as
a nonmember observer state. Ethan Bronner & Christine Hauser, U.N. Assembly, In
Blow to the U.S., Elevates the Status of Palestine, N.Y. Times (Nov. 29, 2012),
http://www.nytimes.com/2012/11/30/world/middleeast/Palestinian-Authority-United-
Israel and the United States have sharply opposed the recognition of Palestine as a member or observer state at the United Nations.\(^{344}\) If Palestine were to become a full member state, Palestine could use the tools of the United Nations, including the ICJ, to hold Israel accountable for alleged human rights violations in the occupied Palestinian territories.\(^{345}\)

If Israel were to consent to the ICJ’s jurisdiction, UNCLOS likely would be controlling law. The ICJ applies “international custom, as evidence of a general practice accepted by law,”\(^{346}\) and, as discussed above, the Convention is widely accepted as customary international law.\(^{347}\) Under Article 59 of the Convention, “the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances” taking into account the “importance of the interests involved” for each of the parties and the “international community as a whole.”\(^{348}\) It is likely that Israel’s and Lebanon’s agreements with Cyprus and other established maritime boundaries delimited under the Convention in the eastern Mediterranean would be significant considerations of the Court as it marks the countries’ respective

\(^{344}\) See Bronner & Hauser, supra note 343.

\(^{345}\) In December 2000, Israel signed the Statute of the International Criminal Court (ICC) after years of resistance. See Daniel A. Blumenthal, The Politics of Justice: Why Israel Signed the International Criminal Court Statute and What the Signature Means, 30 GA. J. INT’L & COMP. L 593, 596 (2001-02). Israel’s primary concern with the ICC Statute was that Israel could be prosecuted for war crimes at the ICC for building settlements in the West Bank, Gaza, and the Golan Heights area. See id. In an effort to make progress in peace negotiations with Palestinian negotiators, Israel signed the Statute in 2000. See id. If Israel were able to put its concerns with the ICC aside for the sake of making progress in Israel-Palestinian peace negotiations, perhaps it would be able to set aside its general distaste for the ICJ to seek a peaceful resolution of this boundary dispute. Cf. id.

\(^{346}\) Statute of the International Court of Justice, supra note 209, art. 38(1).

\(^{347}\) See supra notes 202-225 and accompanying text.

\(^{348}\) UNCLOS, supra note 14, Part V, art. 59.
maritime boundaries.

Given the ICJ’s extensive experience in maritime delimitation and the binding nature of the Convention as customary international law, the ICJ is a viable option for resolving this dispute.\textsuperscript{349} If Israel is willing to submit to the Court’s jurisdiction and Hezbollah does not oppose such a move, the ICJ’s mediation of the border dispute could lead to a peaceful resolution of Lebanon’s and Israel’s maritime borders.\textsuperscript{350} If the Israeli government or Hezbollah opposes the Court’s mediation, Israel and Lebanon may have the option turn to the United Nations to mediate the conflict.\textsuperscript{351}

C. Mediation by the United Nations

The United Nations Interim Force (UNIFIL) in Lebanon has played a significant role in securing the territorial border in Lebanon and ensuring relative peace between the two nations along their shared territorial border, and remains a peacekeeping presence in southern Lebanon today.\textsuperscript{352} Under U.N. Security Council Resolutions 425 and 426, UNIFIL is tasked with monitoring the withdrawal of Israel from southern Lebanon and restoring peace and security along the southern border of Lebanon.\textsuperscript{353} In 2006, the scope of UNIFIL’s mandate was expanded to include the following: “monitor the cessation of hostilities”; support the Lebanese Armed Forces as they secure the southern border; ensure humanitarian access along the Blue Line, ensure peace and security between the Blue Line and the Litani

\textsuperscript{349} See Wählisch, supra note 11, at 2 (stating that the Convention is binding); see generally Charney, supra note 202 (discussing ICJ’s capacity to settle maritime boundary disputes).

\textsuperscript{350} See supra note 345 and accompanying text.


\textsuperscript{353} UNIFIL Mandate, supra note 74.
River; and secure the border of southern Lebanon. UNIFIL also includes a Maritime Task Force (MTF), which monitors the Lebanese coastline; however, the MTF is not explicitly tasked with protecting Lebanon’s maritime boundaries.

UNIFIL has offered to mediate the maritime boundary dispute between Israel and Lebanon, as an extension of their peacekeeping and monitoring duties associated with the countries’ territorial border. In July 2011, UNIFIL’s then-Commander Major General Alberto Asarta expressed interest in UNIFIL acting as the mediator between the countries as they come to an agreement over the maritime border. Israel may be more amenable to this arrangement than to mediation by other international bodies; Israel has been largely cooperative with UNIFIL’s efforts along its border with Lebanon, despite its concerns with UNIFIL’s communications with Hezbollah. UNIFIL is also a known quantity—the Force has been a presence in the region and along the border between Israel and Lebanon since 1978.

Hezbollah’s relationship with UNIFIL has been largely positive, so the organization may be less likely to object to UNIFIL’s mediation efforts in principle.

354 Id.
357 Anderson, supra note 356; UNIFIL Mediatory Role, supra note 351.
358 See e.g., Aluf Benn, Israel Accuses UN of Collaborating with Hezbollah, HAARETZ (Sept. 11, 2005, 12:00 AM), http://www.haaretz.com/news/israel-acuses-un-of-collaborating-with-hezbollah-1.169520. Cf. Linda Butler, “Mr. UNIFIL” Reflects on a Quarter Century of Peacekeeping in South Lebanon: An Interview with Timur Göksel, 36 J. PALESTINE STUD., no. 3, Spring 2007, at 50, 62 (“The Israelis were always deeply distrustful of the UN and mostly they didn’t distinguish between the organization and the individuals connected with it. . . . Israel’s proxy, the SLA, was a big problem. The UN forces hated the way the Israelis used these guys against the UN and the local population.”).
359 See UNIFIL Mandate, supra note 74 (noting that UNIFIL has been in the region since 1978).
360 See Elron, supra note 74 (describing the positive relationship between Hezbollah and UNIFIL). Sheik Hassan Nasrallah appointed an official Hezbollah liaison for UNIFIL after he took over leadership of the organization in the 1990s. See Butler,
Hezbollah views a possible outcome from UNIFIL's mediation as unfavorable, either because the predicted outcome does not benefit Lebanon or because the mediation legitimizes Israel, Hezbollah may object to UNIFIL's role as a mediator.

Potentially complicating this dispute resolution option are two primary concerns. First, setting the maritime border is not specifically included in UNIFIL's existing mandate, nor is it a duty entrusted to UNIFIL by U.N. Resolution 1701. The U.N. Security Council could vote to expand the scope of the mandate of UNIFIL to include mediation of this maritime border dispute, just as they have amended the Force's mandate in the past. While neither Israel nor Lebanon are current members of the U.N. Security Council, it is reasonable to expect the United States, as a permanent member, to support such a resolution if Israel is also in favor of the arrangement. After all, the energy company currently exploring and developing the reserves is U.S.-based Nobel Energy.

Second, it is unclear what procedures and standards UNIFIL would employ to mediate the conflict and establish a maritime boundary since the Force has never established such a border in the past. UNIFIL likely would turn to UNCLOS as controlling law in determining the border, given that the Convention is widely accepted as customary international law and that the United

supra note 358, at 72 (describing the relationship between Hezbollah and UNIFIL). Further supporting a civil relationship with UNIFIL is Hezbollah's transition to a military branch made up primarily of local men, most of whom grew up in the presence of UNIFIL. See id.

361 See UNIFIL Mandate, supra note 74.

362 U.N. Security Council Resolution 1701 expanded the mandate of Resolutions 425 and 426, which established UNIFIL and its original mandate, respectively. See id.


365 See Eastern Mediterranean, NOBLE ENERGY, http://www.nobleenergyinc.com/operations/international/eastern-mediterranean-128.html. While this U.S. company has made significant investments in the eastern Mediterranean, the U.S. government is unlikely to support any proposal not supported by the Israeli government. See id.

366 See Anderson, supra note 356 (stating that establishing such a border is outside the scope of UNIFIL's mission).
Nations endorses the Convention as the controlling law of the sea. If the Convention were adopted as UNIFIL’s standard, one would expect the outcome of the delimitation of the maritime boundary to mirror the outcome under the Convention’s dispute resolution options and adjudication by the ICJ.

**D. International Arbitration**

International arbitration is yet another viable alternative to resolve the maritime boundary dispute between Lebanon and Israel. The PCA, discussed in the context of arbitration under the Convention, has mediated numerous maritime boundary disputes and has at least two pending cases regarding the delimitation of maritime boundaries. There is little, if any, material difference between international arbitration under the Convention and outside the context of the Convention as long as Israel remains a non-party to the Convention. Because Israel is not a party to the Convention, the country may be willing to voluntarily submit to arbitration outside the requirements of Annex VII of the Convention. Additionally, the PCA is independent from the United Nations, and may not prompt the same Israeli concern that mediation by the United Nations or ICJ might in light of the ongoing debate over the status of the Palestinian territories at the United Nations.

367 See supra notes 202-225 and accompanying text.

368 See UNCLOS, supra note 14, Part XV, Sect. 2, arts. 281-87 (stating the dispute resolution procedures and naming the ICJ as one of the potential venues).

369 Wahlisch, supra note 11, at 4.

370 Arbitration between the Republic of Croatia and the Republic of Slovenia, as well as between Bangladesh and India is currently pending before the Permanent Court of Arbitration. See Pending Cases, PERMANENT CT. ARB., http://www.pca-cpa.org/showpage.asp?pag_id=1145.

371 See UNCLOS, supra note 14, Part I, art. 1 (defining “States Parties” as States that have signed the treaty); id. Part XV, Sect. 2, art. 287 (limiting Part XV’s arbitration provisions to “State Parties”).

372 See Newman, supra note 291 (discussing Israel’s need to approach international authorities to resolve the dispute, but the desire to do so outside of the UNCLOS).

373 See About Us, PERMANENT CT. ARB., http://www.pca-cpa.org/showpage.asp?pag_id=1027 (describing the PCA as an independent intergovernmental organization); Bronner & Hauser, supra note 343 (discussing the elevated status of Palestine at the United Nations, and what it means for Israel and
V. Conclusion

Lebanon and Israel have a number of viable options for resolving their existing maritime border dispute using existing international law frameworks: conciliation, submission to the ITLOS, submission to the ICJ, and arbitration under the UNCLOS; or submission to the ICJ separate and apart from the Convention; mediation by the United Nations; and international arbitration. Three years ago, submission to the ICJ separate from the Convention; mediation by the United Nations; and international arbitration.

The preceding discussion reveals that Lebanon, while a party to multiple international agreements and the UNCLOS, has a fractious and unstable government. As a result, Hezbollah holds an effective veto on any action that the Lebanese government may take in response to international action on the maritime boundary. Israel, on the other hand, is a more established, stable, and advanced democracy, but remains reticent to enter into international agreements or submit itself to international tribunals. Additionally, the current right-wing government of Israel, led by Benjamin Netanyahu, has aggressively pursued gas exploration in the areas that the country has claimed as its territorial sea and EEZ.

Recently, both Cyprus and the United States have indicated their willingness to participate in the mediation between Lebanon and Israel. Both countries stand to benefit if a peaceful resolution is found to this dispute. For its part, Cyprus is eager

Palestine).

374 See UNCLOS, supra note 14, Part XV, Sect. 2, arts. 281-87 (discussing conciliation, the International Tribunal for the Law of the Sea, the ICJ, and arbitration under the UNCLOS); Statute of the International Court of Justice, supra note 209, art. 36(1) (discussing submission to ICJ separate from the Convention); Wählisch, supra note 11, at 4 (discussing mediation by the United Nations and arbitration).

375 See supra notes 82-101 and accompanying text.

376 See id.

377 See Michael Oren, Israel’s Resilient Democracy, FOREIGN POL’Y (Apr. 5, 2012), http://www.foreignpolicy.com/articles/2012/04/05/Israel_Is_a_Democracy (discussing the relative stability of Israel’s democracy); Status of the Convention, supra note 18 (showing Israel’s reluctance to sign international agreements).

378 See supra notes 102-124 and accompanying text.


380 See Stocker, supra note 364, at 596 (describing the United States’ interest in a
to explore and develop its portion of the Levant Basin. With this in mind, the director of the Cypriot Department of Energy has offered to do "as much as it can" to mediate between the two countries. If the dispute between Israel and Lebanon can be peacefully resolved, Cyprus can fully utilize its portion of the reserves. The United States has also extended an offer to mediate between the countries, and has proposed a boundary between Israel’s and Lebanon’s EEZ. Details of the proposal by the United States are unavailable as of this writing, but such a proposal likely will inform any final agreement between Israel and Lebanon. Little progress in resolving the maritime boundary has been made since these entreaties by the United States and Cyprus. The resolution of this maritime boundary dispute may not be resolved quickly; after all, the demarcation of the Blue Line between Israel and Lebanon took over ten years to negotiate.

Whether the dispute will escalate into military conflict is unclear. Certainly the long history of military conflict between the countries does not bode well for a peaceful resolution. On the other hand, the economies of both countries are poised to benefit tremendously from the exploration of natural gas in the Levant
Both Lebanon and Israel have been forced to depend on unreliable sources of oil and natural gas to meet their energy demands. As war continues in Syria, threatening Lebanon’s energy supply, Israel also must fill the void left by its failed contract with Egypt: both countries are in need of a more reliable and consistent supply of oil and natural gas.

Existing international law frameworks provide workable options to resolve of this border dispute. It is unlikely that the various tribunals discussed above will come to significantly different outcomes because of the applicability of the Convention as customary international law. Given the UNCLOS’s status as customary international law and the fact that the ITLOS, the ICJ, and international arbiters likely will apply the Convention as customary international law in resolving the dispute, the countries have little to gain in delaying the decision over how to resolve this conflict.

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389 Wählisch, supra note 11, at 2.


391 See Wählisch, supra note 11, at 4 (discussing the need for both countries to secure resources due to regional instability).

392 See supra Part III(B).
Adjunct Faculty

MICHAEL R. ABEI, A.B., J.D., Adjunct Professor of Law
MICHAEL W. BALLANCE, B.A., J.D., Adjunct Professor of Law
ELIZABETH B. BRASWELL, Adjunct Professor of Law
MARY BETH CHOPAS, B.A., J.D., Adjunct Professor of Law
JOANNA CAREY CLEVELAND, B.A., J.D., M.P.A., Adjunct Professor of Law
KAREN DAVIDSON, Adjunct Professor of Law
MARK DORISIN, B.A., M.A., J.D., Adjunct Professor of Law and Managing Attorney for the Center for Civil Rights
JAMES C. DRENNAN, B.A., J.D., Adjunct Professor of Law and Albert Coates Professor of Public Law and Government, UNC School of Government
TRISTAN FEIERER, Adjunct Professor of Law
ANTHONY GAETA, JR., B.A., J.D., Adjunct Professor of Law
BETH YOUNG GRIMES, Adjunct Professor of Law
DAVID LOMBARD HARRISON, Adjunct Professor of Law
ROBERT HASKER HECKMAN, B.A., J.D., Adjunct Professor of Law
NORMA R. HOUSTON, B.S., J.D., Adjunct Professor of Law
ROBERT O. JENKINS, B.A., M.P.A., J.D., Adjunct Professor of Law
SALLY C. JOHNSON, B.S., M.D., Adjunct Professor of Law and Clinical Professor at the UNC School of Medicine

Department of Psychiatry

MICHAEL G. KADENS, A.B., J.D., Adjunct Professor of Law
MICHAEL KLINKOSUM, Adjunct Professor of Law
JOHN LOTTEN, Adjunct Professor of Law
RINA LYUBKIN, Adjunct Professor of Law
KELLIE D. MANNETTE, B.A., J.D., Adjunct Assistant Professor of Law
J. MATTHEW MARTIN, B.A., M.A., J.D., Adjunct Professor of Law
THE HONORABLE MARK D. MARTIN, B.S., B.A., J.D., LL.M., Adjunct Professor of Law
JONA MONAST, Adjunct Professor of Law
CHRISTINE C. MUMMA, B.S., J.D., Adjunct Professor of Law
BENTLEY OLIVE, Adjunct Professor of Law
SAMUEL T. OLIVER, JR., B.A., J.D., Adjunct Professor of Law
ROBERT F. ORR, A.B., J.D., Adjunct Professor of Law
JAMES D. PHILLIPS, Adjunct Professor of Law
FU QIANG, Adjunct Professor of Law
LISA C. SCHAYINATO, Adjunct Professor of Law
SCOTT L. SELMAN, A.B., J.D., Adjunct Professor of Law
ELLIOT M. SILVERSTEIN, B.A., J.D., PH.D., Adjunct Associate Professor of Law
ELIZABETH SIMPSON, Adjunct Professor of Law
HOACHEN SUN, Adjunct Professor of Law
KATHERINE TOPOLOS, B.A., M.A., M.S., J.D., Adjunct Professor of Law
MELVIN F. WRIGHT JR., B.A., J.D., Adjunct Professor of Law
POJEN YAP, Adjunct Professor of Law
Faculty Emeriti

WILLIAM BRANTLEY AYCOCK, B.A., A.M., J.D., LL.D., Kenan Professor of Law Emeritus
KENNETH S. BROUN, B.S., J.D., Henry Brandis Professor of Law Emeritus
LAURA N. GASAWAY, B.A., M.S., J.D., Paul B. Eaton Distinguished Professor of Law Emeritus
HARRY E. GROVES, B.A., J.D., LL.M., Henry Brandis Professor of Law Emeritus
PAUL HARDIN, B.A., J.D., Professor of Law Emeritus
PAUL G. HASKELL, A.B., LL.B., William Rand Kenan, Jr. Professor of Law Emeritus
JOSEPH JOHN KALO, B.A., J.D., Graham Kenan Professor of Law Emeritus
RONALD CHARLES LINK, A.B., M.A., J.D., Dan K. Moore Distinguished Professor of Law Emeritus
ARNOLD H. LOEWY, B.S., LL.M., Graham Kenan Professor of Law Emeritus
RUTH ANN MCKINNEY, B.A., M.Ed., J.D., Clinical Professor of Law Emeritus
RICHARD A. ROSEN, B.A., J.D., Professor of Law Emeritus