

## NEW LAND FOR PEACE: AN OVERVIEW OF INTERNATIONAL LEGAL ASPECTS

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A New Land for Peace project will require creative input from numerous disciplines. International law is one of those disciplines. But just what can international law and international lawyers contribute? The first section of this essay reflects broadly on the potential roles of international lawyers and the discipline of international law with respect to this project.

The subsequent sections of this essay introduce some of the particular legal issues that would arise in planning for an artificial island component of a New Land for Peace project. Section II highlights a few substantive legal issues, concerning especially the law of the sea and international environmental law. Section III looks to past examples concerning the governance of territory to suggest some different ways that an entity that builds or operates an artificial island or economic development zone could be structured. Finally, Section IV highlights some of the procedural contexts in which various international law issues may be raised.

### I. Roles of International Law and International Lawyers

Law offers a formal check on the exercise of real power. Legal rules and institutions provide a touchstone of legitimacy for the exercise of power, by stating limits on the exercise of power and by allocating roles to various actors.<sup>1</sup> Informal, social norms of course shape actions, but law and legal institutions can provide a particularly useful form of external authority to help allocate roles and transcend power-based decisions.<sup>2</sup> The norms and processes of international law come into play when different international actors interact, and may come into play even when a state's internal actions, directed at its own citizens, offend generally accepted international legal rules and values.<sup>3</sup>

International lawyers, as well as international law broadly conceived, may have much to contribute to a project such as New Land for Peace. First, lawyers, particularly Western lawyers, typically are trained to have a rather critical perspective about the world. That is, lawyers are good at spotting "obstacles" or problems that could stand in the way of the effective achievement of an objective. International lawyers will raise questions about whether a proposed project is consistent with generally accepted rules, values, and processes. In the field of public international law, these accepted rules, values, and processes derive

principally from treaties and customary international law, a source of law depending in large measure on consistent state practice. Many well-established “background” rules concern limits on the permissible activities of states. Deviation from or failure to take account of these rules could contribute to adverse reactions from other states and other international actors, in a variety of fora.

International lawyers may contribute to a New Land for Peace project in a second way, in addition to their role in recognizing potential obstacles to actions. International lawyers may help by envisioning different possible ways to structure relationships in light of the risks and benefits associated with different forms of relationships. Law does not typically command that relationships must be structured in only one fashion, and lawyers’ past exposure to numerous different relationship structures may help them to generate ideas about how to specify rights, obligations, and dispute settlement procedures for parties – private parties, states, and other entities – engaged in economic and political activities. International lawyers must be familiar with cross-cultural contexts that shape how formal relationships are understood and what risks attend different forms of relationships.<sup>4</sup>

With respect to a New Land for Peace project, legal problems would likely take a back seat to diplomatic problems. If all participants and interested observers conclude that a New Land for Peace project can contribute to an easing of tensions in the Middle East, any legal concerns may well seem minor. But if some important actors do not accept the desirability of the idea or structure of this project, legal concerns could be magnified, and could become focal points for challenges to the project.

## **II. International Law: Substantive Issues**

The international law issues related to the proposed New Land for Peace project concern two broad areas. These are, first, construction of the proposed land reclamation works, artificial island, and deepwater port; and, second, the operation of the port and the conduct of other activities on the artificial island.

### **A. Project Construction Issues**

Building structures in the oceans presents questions about international law of the sea and international environmental law. One major source of the law of the sea is the United Nations Convention on the Law of the Sea,<sup>5</sup> which entered into force in 1994. Egypt and 144 other states are parties to it,<sup>6</sup> and even nonparties regard most portions of the Convention as reflecting customary international law.<sup>7</sup>

Under the U.N. Convention on the Law of the Sea and customary international law, the rights and responsibilities of coastal states and other actors are linked to various maritime zones in which activities occur. One important zone is the territorial sea, which extends up to 12 nautical miles from a coastal state's baselines (generally, its coastline).<sup>8</sup> Both Israel and Egypt have claimed a 12-mile territorial sea.<sup>9</sup> The artificial island envisioned in one preliminary New Land for Peace plan, to be constructed 8-10 kilometers offshore and connected to the shore by a causeway,<sup>10</sup> would fall within the territorial sea.

It is, as a threshold matter, essential to determine in whose territorial sea an artificial island would be located. Because a coastal state has "sovereignty" in its territorial sea,<sup>11</sup> the decision to allow or approve construction of an artificial island in the territorial sea would belong to the coastal state. One proposed artificial island is described as being located "just north of the border" between Egypt's Sinai region and the Gaza Strip.<sup>12</sup> Would this artificial island certainly be located in Egyptian waters? Although an artificial island and causeway might be located in an area that observers would agree is "clearly" within Egyptian waters, it is important to note that no treaties or international arbitral or judicial decisions delimit the maritime boundary between Egypt and Gaza.<sup>13</sup>

If an artificial island were planned in the waters off the Gaza Strip, as some proposals envision,<sup>14</sup> uncertainty concerning the legal status of Gaza could lead to legal and political complications. To say that the legal status of, or sovereignty in, the Gaza Strip is uncertain is an understatement. Egypt has not claimed full sovereignty over Gaza; Israel operates as an occupying or administering power in Gaza rather than as a traditional sovereign power; and the Palestinian peoples there arguably have only limited autonomy.<sup>15</sup> Who would be authorized to approve construction of an artificial island in the waters off the Gaza Strip, and who would be responsible for the exercise of jurisdiction on the island with respect to criminal or security matters? The answers to those questions are politically sensitive and legally debatable.

Even if the issue of who has sovereignty over the relevant section of territorial sea is clarified, international law issues relating to the construction of an artificial island in the territorial sea remain. A coastal state's sovereignty over its territorial sea is conditioned by the right of vessels of other states to engage in innocent passage.<sup>16</sup> Innocent passage refers to the passage of foreign vessels in ways that do not prejudice "the peace, good order or security of the coastal State."<sup>17</sup> Would construction of an artificial island, particularly if it is built with a connecting causeway rather than a bridge, unreasonably interfere with innocent passage? Coastal states may, in the interest of safety, designate sea lanes allowing for

innocent passage in the territorial sea,<sup>18</sup> so the responsible coastal state presumably could arrange for sea lanes to the seaward side of an artificial islands. But coastal state requirements must not “have the practical effect of denying or impairing the right of innocent passage,”<sup>19</sup> and the designation of sea lanes must “take into account the recommendations of” the International Maritime Organization.<sup>20</sup>

Would construction of an artificial island affect the location of the territorial sea? If an artificial island were built 8-10 kilometers offshore, as suggested in one New Land for Peace proposal,<sup>21</sup> would the baseline from which the territorial sea and other maritime zones are measured be extended 8-10 kilometers farther out into the Mediterranean, potentially adversely affecting the navigation, fishing, and overflight rights of other states in this area? The general answer is “no,” according to Article 11 of the Law of the Sea Convention:

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast. Off-shore installations and artificial islands shall not be considered as permanent harbour works.

But might a causeway to an artificial island, or a portion of that causeway, if it helps to shelter a coastal port, be considered part of “permanent harbour works,” which would count as coast for purposes of determining the baseline?<sup>22</sup> Or if a causeway resulted in sedimentation that rose above sea level over the years, would that new sedimentation be regarded as part of the coast? Although construction of an artificial island most likely would not affect coastal baselines, given Article 11, questions could arise concerning the effects on baselines of a causeway that also served a port-protective function, or of new land created by sedimentation.<sup>23</sup>

The construction of an artificial island or a land reclamation project would also raise international environmental law issues. This subject is addressed in numerous treaties, other instruments, and international court and arbitral decisions. Late in 2003, for example, the International Tribunal for the Law of the Sea addressed claims by Malaysia that a Singapore land reclamation project would adversely affect the marine environment by, among other things, increasing sedimentation, increasing coastal erosion, and increasing salinity and pollution due to discharges.<sup>24</sup> The Tribunal focused on a variety of procedural obligations, found in the Law of the Sea Convention and in general international law, which require steps of assessment, notification, and cooperation. For example, potential effects of activities reasonably believed to cause significant and harmful changes to the marine environment must be assessed,<sup>25</sup> and other states must be notified about damage to the environment.<sup>26</sup> The Tribunal in the Malaysia-Singapore *Land Reclamation Case* also invoked what it termed the “fundamental” duty to

address environmental concerns through cooperation.<sup>27</sup> In addition, the Tribunal found that, “given the possible implications of land reclamation on the marine environment, prudence and caution require[d]” the establishment of certain risk-assessment mechanisms.<sup>28</sup> The Tribunal’s “prudence and caution” language indirectly echoed the still-evolving “precautionary principle.” This principle has been articulated in treaty law and discussed in the international legal literature with increasing frequency since its inclusion in the Rio Principles, which were developed at the 1994 U.N. Conference on Environment and Development (UNCED). Broadly speaking, this principle provides that “[w]here there are threats of serious . . . damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”<sup>29</sup> Among other broad principles of current significance in the field of international environmental law, the concept of “sustainable development,” articulated at UNCED, provides a procedural touchstone against which development proposals will be considered.<sup>30</sup> An artificial island would have effects on the marine environment, effects that would be evaluated in light of these established and asserted principles of international environmental law.

Egypt, Israel, and other states around the Mediterranean are parties to the 1976 Barcelona Convention, a multilateral standard-setting convention with a specific regional focus.<sup>31</sup> This Convention is a part of the U.N. Environment Programme’s Regional Seas Program.<sup>32</sup> Formal legal protocols related to the Barcelona Convention, not all of which have yet entered into force, address such matters as land-based pollution, specially protected marine areas, disposal of hazardous wastes, and pollution related to offshore activities on the continental shelf.<sup>33</sup> At least as significant as these formal legal commitments are a range of programs, recommendations, and proposals, under the broad heading of the “Mediterranean Action Plan,” which shape expectations concerning pollution, management of coastal areas, and the integration of environment and development.<sup>34</sup> Through the Mediterranean Action Plan and a related Mediterranean Commission on Sustainable Development, government officials, environmental experts, representatives of various intergovernmental organizations, and representatives of nongovernmental organizations all meet to shape policy on economic development and environmental matters. Is a major development project, such as New Land for Peace, compatible with the policies of the Mediterranean Action Plan? The issue would certainly be discussed in a variety of regional legal and policy settings.

## **B. Project Operation Issues**

A wide array of international law issues would come into play with respect to the operation of an artificial island. This brief section merely notes a few of them, by way of illustration. First, there are

obligations relating to environmental matters, such as the disposal of wastes or dumping at sea of materials used on the island.<sup>35</sup>

Second, a range of international trade law issues could arise. Economic activities on the island might be linked to a regional free trade agreement. Extensive World Trade Organization guidelines and notification procedures promote the GATT-compatibility of free trade agreements.<sup>36</sup> Bilateral agreements may allow goods manufactured in the Middle East to qualify for tariff reductions.<sup>37</sup> Trade matters are also addressed through bilateral Association Agreements between the European Union and non-EU Mediterranean states (under the umbrella of the 1995 Euro-Mediterranean Partnership).<sup>38</sup>

Third, how an artificial island's deepwater port facilities treated matters of vessel safety and vessel and port security would likely relate directly to international law. For example, the International Maritime Organization has recently adopted the International Ship and Port Facility Security Code,<sup>39</sup> which contains a variety of port security and ship security measures. These are made mandatory through their inclusion in amendments to the 1974 Safety of Life at Sea Convention,<sup>40</sup> to which Egypt, Israel, and almost all other countries are parties; the amendments took effect in July 2004. Detailed provisions of the 1982 Law of the Sea Convention and other marine pollution treaties specify the rights and responsibilities of port states with respect to substandard shipping.<sup>41</sup>

What entity would be charged with operating a New Land for Peace artificial island, and how would the choice of administrative structure affect responsibility for complying with international legal obligations? The next section of this essay notes various options for administering an offshore artificial island.

### **III. Structuring a New Land for Peace Administering Entity**

What might be the operating structure of an entity charged with building an artificial island or administering operations on it? The central consideration here is not so much legal as it is political or diplomatic: what sort of entity would have credibility or legitimacy in dealing with a project that has implications for sensitive issues in the Middle East? Nevertheless, the history of international law at least provides examples of possible models and may suggest some questions about the current viability of such models.

One possible model is a traditional, straightforward one: territory being administered by a unitary state. If an artificial island were to be constructed in Egyptian territorial waters, for example, that island could

be directly administered by the government of Egypt, consistently with Egypt's obligations under international law and Egypt's internal constitutional law.

Second, one state could create, pursuant to its national law, a governmental or quasi-governmental agency with authority to administer an artificial island, or its port and economic activities. This alternative is conceptually a small step from direct state administration of the artificial island. An example would be the Panama Canal Authority, created under national law, which has extensive authority with respect to the Canal. Article 4 of Panama's Organic Law establishing the Panama Canal Authority provides:

The Authority shall have the exclusive charge of the operation, administration, management, preservation, maintenance, improvement, and modernization of the Canal, as well as its activities and related services, . . . so that the Canal may operate in a safe, uninterrupted, efficient, and profitable manner. The Authority may delegate to third parties, either totally or partially, the implementation and performance of certain projects, works, or services according to this [Organic] Law and the Regulations [established under it].<sup>42</sup>

Third, one could in theory operate an artificial island through a United Nations agency. The recent U.N. Transitional Administration in East Timor (UNTAET), established by the U.N. Security Council, exercised full executive and legislative functions in East Timor in preparation for the independence of East Timor.<sup>43</sup> The United Nations has exercised administrative "capacity-building" functions in order to promote a transition to independence or self-governance, however, and not with a view to long-term administration of a territory. Long-term U.N. involvement with the operation of a New Land for Peace artificial island may be politically unlikely.

Fourth, there are historic examples of entities – neither traditional states nor intergovernmental organizations, though operating with links to them – that are sufficiently autonomous to be considered as having international personality.<sup>44</sup> One example is the Free City of Danzig, which operated after World War I. Despite having various links to the League of Nations and Poland, Danzig exercised significant autonomy with respect to many governmental functions.<sup>45</sup>

Fifth, several states operating under an international agreement could jointly exercise governmental powers over an artificial island. Various examples exist of states agreeing on joint development or joint management regimes relating to the economic exploitation of marine resources.<sup>46</sup> In such an interstate regime, the governments of states could either agree to manage an area jointly themselves, or they could delegate some management responsibilities to private entities.

Any entity administering an artificial island could invite the participation of various nongovernmental organizations, on an informal, consultative basis if not as formal members of the entity. Many NGOs concerned with the environment and economic development participate in Mediterranean Action Plan sessions (mentioned in Section II.A above in connection with the Barcelona Convention).<sup>47</sup> The significance of “transparency” in international decision making has gained increasing attention in political and legal circles, as a way to promote the legitimacy of decisions that may quite directly affect members of international civil society.<sup>48</sup>

If administration of a New Land for Peace artificial island were to be delegated to a private or quasi-private body, or if administration were in the hands of a non-state entity with international legal personality, some overarching international legal issues must be considered. First, exactly what would be the scope of activities in which this administering entity would be entitled to engage? Would it completely displace a state? For example, would a state retain jurisdiction in criminal matters? Even when a state delegates significant management responsibilities with respect to a portion of its territory – perhaps by establishing a governmental authority – the state may wish to retain most or all of the authority for maintaining order and administering its criminal laws there.

Second, who would be responsible – an international law term of art – for environmental damage or other harm occurring during the operation of an artificial island? Suppose Egypt incorporated a company or agency with development and management responsibilities for an artificial island. Egypt would not necessarily thereby be able to shield itself from liability for conduct leading to significant environmental damage to other states or the international commons.<sup>49</sup> Furthermore, a state may also be responsible at international law if it fails to act with due diligence to prevent a private entity subject to its jurisdiction from causing certain types of damage.<sup>50</sup>

If an intergovernmental organization were to administer the artificial island, difficult questions about the international legal responsibility of the organization would arise should damage to a protected interest occur. It is difficult to generalize about the responsibility of intergovernmental organizations and available remedies; the analysis of responsibility would vary depending on the particular attributes of the international personality of the organization, and on the particular issue involved. For example, the analysis would vary depending on whether the issue concerned the organization’s failure to follow its own internal operational procedures; or whether the organization contributed to some tortious injury, perhaps to someone working for it; or whether acts or omissions of the organization breached some substantive rule of international law.<sup>51</sup>

Significant flexibility exists with respect to how the governing authority of an artificial island could be structured. The choice among different governing options will likely be politically sensitive. International lawyers can evaluate the benefits and detriments of different governing options, and can point out the significance of background rules concerning state responsibility and responsibility of international organizations for operations conducted under different possible options.

#### **IV. International Law: Process**

One cannot understand international law rules without understanding the context in which they operate. Part of that context is procedural. In what settings would international law rules – for example, law of the sea rules concerning the implications of an artificial island for noncoastal state rights – be raised? And for what purposes would some procedural option be invoked? Would it be invoked in order to try to make sure that a New Land for Peace proposal can be integrated with preexisting international law rules or processes, or to clarify applicable legal requirements? To “force” some modification of plans, or some delay? As a public forum to complain about some controversial policy or to mobilize public opinion against some aspect of the proposal?

A range of different fora might consider international law issues. Many public international law concerns are raised quietly, and are dealt with via diplomatic negotiations. But complex multilateral legal regimes, especially environmental regimes, also often provide an array of settings, some quite formal and some informal, in which standards and goals are set. For example, the Mediterranean Action Plan, noted in Section II.A above, involves commissions and meetings that might well address “sustainable development” aspects of the New Land for Peace proposal.

Formal third-party dispute settlement procedures, especially those linked to treaties, have increased in number and prominence in recent decades. For example, by becoming a party to the 1982 Law of the Sea Convention, Egypt subjected itself to the Convention’s dispute settlement provisions,<sup>52</sup> which may involve the obligatory submission of disputes to formal, binding third-party procedures. In most cases, the third-party forum will be an arbitral tribunal.<sup>53</sup> But the International Tribunal for the Law of the Sea, an institution created by this Law of the Sea Convention,<sup>54</sup> would have residual compulsory jurisdiction to address requests for provisional measures. Article 290 of the Law of the Sea Convention authorizes the Tribunal to prescribe “appropriate” provisional measures, necessary either “to preserve the respective rights of the parties to the dispute *or* to prevent serious harm to the marine environment,”<sup>55</sup> pending a

third-party procedure addressing the full merits of the case. The Malaysia-Singapore *Land Reclamation Case*, discussed in Section II.A above, was a provisional measures case.<sup>56</sup>

The most prominent third-party forum is the International Court of Justice. Even if the requisite mutual consent necessary to bring a contentious interstate case to the I.C.J. is lacking,<sup>57</sup> it is at least conceivable that legal issues could be presented to the I.C.J. via a request from the U.N. General Assembly for an advisory opinion.<sup>58</sup> The recent case concerning the legality of Israeli barriers in the occupied West Bank<sup>59</sup> illustrates the potential for using the I.C.J. as a public forum to publicize or criticize controversial state actions. The possibility of an I.C.J. advisory opinion concerning legal aspects of the New Land for Peace initiative seems remote. Yet the potential use of various third-party dispute settlement mechanisms as public fora to complain about particular actions highlights the importance of diplomacy and the importance of seeking consensus among all interested groups concerning the design, construction, and operation of a New Land for Peace project.

## V. Conclusion

Many disciplines can help to envision and plan for the possibility of a New Land for Peace project. International law's rules, values, and processes form part of the background landscape for any such project. International lawyers can contribute their understanding of these rules, values, and processes, as well as their skills in planning transactions and assessing risks.

## Notes and References:

\* Thanks to Thomas Barton, James Cooper, and Katharine Rosenberry for their suggestions concerning this essay.

1. See, e.g., E. Adamson Hoebel, *The Law of Primitive man* 275-76 (Atheneum 1983).
2. See *id.* at 276-79.
3. Rules of international human rights law may apply to a state's treatment of its own citizens.
4. See, e.g., JEANNE M. BRETT, *NEGOTIATING GLOBALLY* (2001); MICHELLE LEBARON, *BRIDGING CULTURAL CONFLICTS* (2003).
5. Dec. 10, 1982, 1833 U.N.T.S. 3 [hereinafter *Law of the Sea Convention*].
6. For a list of parties, see *Status of the United Nations Convention on the Law of the Sea, of the Agreement relating to the implementation of Part XI of the Convention and of the Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly*

migratory fish stocks: Table recapitulating the status of the Convention and of the related Agreements, as at 16 July 2004, available at [http://www.un.org/Depts/los/reference\\_files/Status2003.pdf](http://www.un.org/Depts/los/reference_files/Status2003.pdf).

7. The policy of the most important nonparty, the United States, is “to act in a manner consistent with” the Convention’s “provisions relating to traditional uses of the oceans and to encourage other countries to do likewise.” Presidential Letter of Transmittal of the Law of the Sea Convention, 6 October 1994, SEN. TREATY DOC. No. 103-39, at iii (1994).

8. Law of the Sea Convention, *supra* note 5, art. 3.

9. *Oceans and the law of the sea: Report of the Secretary-General*, UN Doc. A/56/58 (2001), Annex II (Summary of national claims to maritime zones), at 119, 121.

10. See [Ernst Frankel,] *Conference on Macro Engineering and Diplomacy: Economic Prosperity – The Road to Peace in the Middle East*, at 5 (paper distributed at Center for Macro Projects and Diplomacy, Conference on New Land for Peace: Constructing Prosperity in the Middle East, Apr. 15-16, 2004) [hereinafter *Economic Prosperity*]. See also *Booklet Showing Seven Design Locations*, at 5 (distributed at Center for Macro Projects and Diplomacy, Conference on New Land for Peace: Constructing Prosperity in the Middle East, Apr. 15-16, 2004), which shows an offshore island located just beyond 3 miles from shore.

11. Law of the Sea Convention, *supra* note 5, art 2.

12. *Economic Prosperity*, *supra* note 10, at 5.

13. See 1-4 INTERNATIONAL MARITIME BOUNDARIES (Jonathan I. Charney et al. eds., 1993-2002). For discussion of the international law governing maritime boundary delimitation in the territorial sea, see CASES AND MATERIALS ON THE LAW OF THE SEA 284-87 (Louis B. Sohn & John E. Noyes eds., 2004).

14. See *Booklet Showing Seven Design Locations*, *supra* note 10, at 1 (design locations 3-6).

15. For overviews of the legal situation respecting sovereignty in Gaza, see PALESTINE AND INTERNATIONAL LAW (Sanford R. Silverburg ed., 2002).

16. Law of the Sea Convention, *supra* note 5, arts. 17-26. More attention must be accorded the rights of noncoastal states in maritime zones lying beyond the territorial sea. For an overview of legal issues that would arise should an artificial island be constructed in the exclusive economic zone or on the continental shelf, see Erik Jaap Molenaar, *Airports at Sea: International Legal Implications*, 14 INT’L J. MARINE & COASTAL L. 371 (1999).

17. Law of the Sea Convention, *supra* note 5, art. 19(1).

18. *Id.* art. 22.

19. *Id.* art. 24(1)(a).

20. *Id.* art. 22(3)(a). This Article refers to recommendations of “the competent international organization,” which in this case is the IMO. See “Competent or relevant international organizations” under the United Nations Convention on the Law of the Sea, LAW OF THE SEA BULL. NO. 31, at 79 (1996). Other treaties to which Egypt and Israel are both parties also address routing. See Chapter V, Regulation 10 of the International Convention on the Safety of Life at Sea (SOLAS), Nov. 1, 1974, 32 U.S.T. 47, 1184 U.N.T.S. 2; Rule 10 of the Convention on the International Regulations for Preventing Collisions at Sea (COLREGS), Oct. 20,

1972, 28 U.S.T. 3459, 1050 U.N.T.S. 16. *See also* IMO Res. A.572(14), as amended (General Provisions on Ships' Routing); IMO Doc. MSC/Circ. 1060 (2003) (Guidance Note on the Preparation of Proposals on Ships' Routing Systems and Ship Reporting Systems for Submission to the Sub-Committee on Safety of Navigation).

21. *See supra* note 10 and accompanying text.

22. According to one definition, harbor works have a clear harbor-protective function: "*Harborworks – Structures erected along the seacoast at inlets or rivers for protective purposes, or for enclosing sea areas adjacent to the coast to provide anchorage and shelter.*" 1 AARON L. SHALOWITZ, *SHORE AND SEA BOUNDARIES* 292 (1962). A member of the International Law Commission, whose 1956 work provided the basis for Article 8 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958, 15 U.S.T. 1606, 516 U.N.T.S. 205 (the text of which in turn carried over to the first sentence of Article 11 of the Law of the Sea Convention), stated: "The Commission's rule that jetties and piers be treated as part of the coastline [was] based on the assumption that those installations would be of such a type as to constitute a physical part of such coastline; it would indeed have been inconvenient to treat that kind of installation otherwise than in the manner advocated by the Commission." [1955] 1 Y.B. INT'L L. COMM'N 74 (comments of Sir Gerald Fitzmaurice).

23. Even if a baseline were pushed offshore by the construction of a causeway deemed to constitute part of harbor works, there need be no automatic effect on the breadth of the territorial sea. Egypt could choose to back away from its claim of the maximum permissible 12-mile territorial sea breadth. *See supra* note 9 and accompanying text; Law of the Sea Convention, *supra* note 5, art. 3. And a change in baseline would not affect any existing maritime boundary delimitations with other states. For example, the 2003 agreement between Egypt and Cyprus fixing the maritime boundary between their exclusive economic zones, *see Oceans and the law of the sea: Report of the Secretary-General*, para. 30, UN Doc. A.58.65/Add.1 (2003), would not be affected.

24. Case Concerning Land Reclamation by Singapore In and Around the Straits of Johor (Malaysia v. Singapore), available at [http://www.itlos.org/start2\\_en.html](http://www.itlos.org/start2_en.html).

25. Law of the Sea Convention, *supra* note 5, art. 206.

26. *Id.* art. 198.

27. Case Concerning Land Reclamation by Singapore In and Around the Straits of Johor (Malaysia v. Singapore), para. 92, available at [http://www.itlos.org/start2\\_en.html](http://www.itlos.org/start2_en.html).

28. *Id.* para. 99.

29. Principle 15, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/5/Rev.1 (1992), 31 I.L.M. 874, 879 (1992). For discussion of development of this concept in international law, *see, e.g.,* THE PRECAUTIONARY PRINCIPLE AND INTERNATIONAL LAW: THE CHALLENGE OF IMPLEMENTATION (David Freestone & Ellen Hey eds., 1996).

30. For discussion of the concept of sustainable development, *see, e.g.,* P.W. BIRNIE & A.E. BOYLE, INTERNATIONAL LAW AND THE ENVIRONMENT 40-46 (2d ed. 2002).

31. Convention for the Protection of the Mediterranean Sea Against Pollution, Feb. 16, 1976, 1102 U.N.T.S. 92. The Convention is to be replaced by the 1995 Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, available at

<http://www.unep.ch/seas/main/med/medconvii.htm>) (not yet in force), which incorporates principles articulated in Agenda 21 of UNCED. See Tullio Scovazzi, *The Recent Developments in the "Barcelona System" for the Protection of the Mediterranean against Pollution*, 11 INT'L J. MARINE & COASTAL L. 95 (1996).

32. See <http://www.unep.ch/seas>.

33. For a list of and the text of these protocols, see <http://www.unep.ch/seas/main/hconlist.html#med>.

34. See <http://www.unepmap.gr>.

35. See, e.g., Maria Gaavouneli, *Pollution from Offshore Installations* (1995).

36. See *Compendium of Issues Related to Regional Trade Agreements*, WTO Doc. TN/RL/W/8/Rev.1 (2002), available at <http://docsonline.wto.org/DDFDocuments/t/tn/rl/W8R1.doc>.

37. See Abeer Allam, *Egypt and Israel Discuss Industrial Trade Zone*, N.Y. TIMES, Mar. 17, 2004 (discussing the possibility of zones for the manufacture of Egyptian goods with Israeli content, in order for the goods to gain tariff-free access to the United States).

38. For a list of Association Agreements, see [http://europa.eu.int/comm/external\\_relations/euromed/med\\_ass\\_agreements.htm](http://europa.eu.int/comm/external_relations/euromed/med_ass_agreements.htm).

39. ISPS CODE (IMO Sales No. I116E, 2003).

40. *Supra* note 20.

41. See, e.g., Law of the Sea Convention, *supra* note 5, art. 218.

42. Panama Legislative Assembly Law No. 19 (of June 11, 1997), available at <http://www.pancanal.com/eng/legal/law/index.html> (English translation).

43. For background on UNTAET, see <http://www.un.org/peace/etimor/etimor.htm>.

44. For discussion of the contours of the concept of "international personality," see *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. 174; David J. Bederman, *The Souls of International Organizations: Legal Personality and the Lighthouse at Cape Spartel*, 36 VA. J. INT'L L. 275 (1996).

45. For discussion of the innovative legal arrangements for the governance of Danzig, the Saar, and Upper Silesia, see Nathaniel Berman, *"But the Alternative is Despair": Nationalism and the Modernist Renewal of International Law*, 106 HARV. L. REV. 1792, 1874-98 (1993).

46. See, e.g., Francisco Orrego Vicuña, *Regional Cooperation in Non-living Resources: Joint Management Zones*, in OCEAN GOVERNANCE: SUSTAINABLE DEVELOPMENT OF THE SEAS 171 (Peter Bautista Payoyo ed., 1994).

47. For a list of almost 100 NGOs concerned with the work of the Mediterranean Action Plan, see <http://www.unepmap.gr> (click on Partners; Non-Governmentals; MAP Partners).

48. See generally ANN FLORINI, *THE COMING DEMOCRACY* (2003).

49. See IAN BROWNLIE, *PRINCIPLES OF INTERNATIONAL LAW* 665 (6th ed. 2003).

50. For discussion of application of principles of state responsibility in the marine environment, and for consideration of the related topic of international liability for injurious consequences arising out of acts not prohibited by international law, see, e.g., BRIAN D. SMITH, STATE RESPONSIBILITY AND THE MARINE ENVIRONMENT (1988). See generally Int'l L. Comm'n, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, U.N. General Assembly Res. 56/83, Annex (2001), available at [http://www.un.org/law/ilc/texts/State\\_responsibility/responsibilityfra.htm](http://www.un.org/law/ilc/texts/State_responsibility/responsibilityfra.htm).
51. See generally KAREL WELLENS, REMEDIES AGAINST INTERNATIONAL ORGANIZATIONS (2002).
52. Law of the Sea Convention, *supra* note 5, arts. 279-299.
53. See *id.* art. 287(3), (5).
54. See *id.* Annex VI. For an overview of the Law of the Sea Tribunal, see John E. Noyes, *The International Tribunal for the Law of the Sea*, 32 CORNELL INT'L L.J. 109 (1998).
55. Law of the Sea Convention, *supra* note 5, art. 290(1) (emphasis added).
56. In a litigation context, rules of international law concern which entities have "standing" to raise legal issues. In the *Land Reclamation Case*, Malaysia had standing to challenge Singapore's land reclamation projects because Malaysia and Singapore were neighboring states, and Malaysia could claim direct adverse affects from sedimentation and other consequences of Singapore's proposed projects. With respect to a major development project in an enclosed sea and shared ecosystem such as in the Mediterranean, it is likely that other Mediterranean states would have standing to raise concerns about adverse environmental consequences before tribunals. See, e.g., *Case Concerning Land Reclamation by Singapore In and Around the Straits of Johor (Malaysia v. Singapore)*, available at [http://www.itlos.org/start2\\_en.html](http://www.itlos.org/start2_en.html), Separate Opinion of Judge Lucky, para. 12; Int'l L. Comm'n, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, *supra* note 50, art. 48.
57. See Statute of the I.C.J., art. 36. Egypt has accepted the compulsory jurisdiction of the I.C.J. under Article 36(2) of the Court's Statute only with respect to Suez Canal-related disputes. See I.C.J., YEARBOOK 2001-2002, at 127-28 (2002).
58. U.N. CHARTER, art. 96; Statute of the I.C.J., art. 65.
59. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories (2004), available at <http://www.icj-cij.org>.