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Dieser Fall behandelt den aktuellen Seerechtsstreit zwischen Israel und dem Libanon als Übung für Kandidaten im Schwerpunktbereich Völkerrecht. Fragen zum International Seerecht sind in Prüfungen beliebt, da sich die Lösungen systematisch anhand der Seerechtskonvention der Vereinten Nationen erarbeiten lassen. Materiell-rechtlich geht es in dem Fall vor allem um die Ausbeutung von Öl- und Gasvorkommen und die Bestimmung von Seegrenzen. Zudem gilt es, prozessuale Lösungen für eine friedliche Streitbeilegung zu erörtern und Detailkenntnisse zum Gewaltverbot unter Beweis zu stellen.

This case deals with the current maritime law dispute between Israel and Lebanon for training purposes for law candidates with a focus on international law. Questions about the International Law of the Sea are popular in exams, as legal briefs can be systematically developed on the basis of the United Nations Convention on the Law of the Sea. The scenario is based on the exploitation of oil and gas resources. The focus is on the maritime delimitation. Moreover, students have to elaborate on process solutions for the peaceful settlement of the dispute and provide detailed knowledge on the prohibition of the use of force.

Sachverhalt

Der Disput über die Seegrenze zwischen dem Libanon und Israel bleibt ungelöst. Beide Staaten beanspruchen potenzielle Öl- und Gasvorkommen im Mittelmeer. Geologische Studien schätzen, dass die unerschlossenen Ressourcen bis zu 1,7 Milliarden Barrel Öl und bis zu 122 Milliarden m³ Gas betragen könnten. Die Rohstoffquellen wären eine der weltweit größten Entdeckungen der letzten Jahre.

Israel und der Libanon sind seit Jahrzehnten formal im Kriegszustand und ohne diplomatische Beziehungen. Beide Staaten haben ihre Seegrenzen zueinander noch nicht festlegen können. Im Jahr 2010 schloss Israel ein Abkommen mit Zypern über die Abgrenzung der ausschließlichen Wirtschaftszone (AWZ) nach dem Prinzip der Äquidistanz. Nach monatelanger Debatte genehmigte die Regierung Israels die vorgeschlagene Seegrenze, die zu konkurrierenden libanesischen Ansprüchen im Widerspruch steht. Sowohl der Libanon als auch Israel übermittelten Koordinaten ihrer erklärten Seegrenzen an die Vereinten Nationen in New York.

Der Generalsekretär der libanesischen Partei Hisbollah, *Hassan Nasrallah*, verlaublich, gegebenenfalls Gewalt anzuwenden, um die natürlichen Ressourcen des Libanons zu schützen. Israelische Generäle haben gedroht, im strittigen Gebiet mit Kriegsschiffen zu patrouillieren. Sicherheitsexperten warnen, dass Hisbollah potenzielle israelische Bohrseln in dem Bereich mit kleinen Schnellbooten angreifen könnte, wogegen eine Verteidigung nur bedingt möglich ist. Der libanesischer Außenminister forderte in einem Brief an den Generalsekretär der Vereinten Nationen dazu auf, alle erforderlichen Maßnahmen zu ergreifen, um den Seerechtsstreit zu lösen und sicherzustellen, dass die Territorialrechte des Libanons gewahrt werden. Israel erklärte, es werde seine Seegrenze nur durch direkte Verhandlungen als Teil eines vollumfänglichen Friedensvertrags mit dem Libanon festlegen. Die libanesischer Regierung lehnt eine solche Gesamtlösung ab. Seit 2011 setzt Israel unbemannte Drohnen in dem umstrittenen Gebiet zur Überwachung der beanspruchten natürlichen Ressourcen ein, was die politischen Spannungen zwischen beiden Staaten verstärkt hat. Die von beiden Staaten eingeschaltete Blauhelmission der Vereinten Nationen im Libanon (UNIFIL) berät zur Zeit mit der israelischen und libanesischen Seite über ein weiteres Vorgehen hinsichtlich der Festlegung der Seegrenze.

Sie werden als unabhängiger internationale Berater beauftragt die Rechtslage zu erörtern und Optionen für die Lösung der Krise vorzuschlagen. Erstellen Sie ein Rechtsgutachten und gehen Sie dabei auf die folgenden drei Fragen ein:

A. Kann der Libanon die strittigen Öl- und Gasvorkommen im Mittelmeer ausbeuten? Bitte erörtern Sie hierbei auch die generellen Prinzipien für Seegrenzen und ihre Abgrenzung.

B. Welche internationalen Streitbelegungsverfahren könnten zur Lösung der Krise genutzt werden? Was sind ihre Bedingungen?

C. Könnten beide Staaten gegebenenfalls Gewalt anwenden, um ihre beanspruchten natürlichen Ressourcen zu schützen?

Case

Lebanon and Israel are in an unsolved dispute about their maritime boundaries. Both claim ownership over a potentially resource-rich offshore oil and gas area in the Levantine Basin located in the Mediterranean Sea. Geological surveys estimate that the unexplored reserves could cover up to 1.7 billion barrels of oil and 122 trillion cubic feet of recoverable gas. The resources would be one of the world's largest gas discovery of the last years.

Formally at war for decades, and without diplomatic relations, Israel and Lebanon have never agreed on a delimitation of their maritime boundaries. In 2010, Israel signed an agreement with Cyprus delimiting their Exclusive Economic Zone (EEZ) following the equidistant principle. After months of debate, Israel's cabinet approved the proposed maritime boundary that overlaps with a competing Lebanese claim. Both Lebanon and Israel sent coordinates of their proclaimed maritime boundaries to the United Nations in New York.

The Secretary General of the Lebanese political party Hezbollah, *Hassan Nasrallah*, announced the movement's readiness to use force to protect Lebanon's natural resources. Israeli generals threatened to patrol the area with warships. Security experts warn that

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Hezbollah could attack potential Israeli oil platforms in the disputed area with small speedboats, which will be difficult to defend. The Lebanese Minister of Foreign Affairs addressed a letter to the UN Secretary General requesting to take all needed measures to resolve the problem and ensure Lebanon's territorial rights. Israel stated that it would only demarcate a maritime border in direct negotiation with Lebanon, as a part of a comprehensive peace agreement. The Lebanese Government rejects such a package deal. Since 2011, Israel has deployed unmanned drones to the disputed area to monitor its natural resources, which intensified political tensions between both states. The UN peacekeeping force United Nations Interim Force in Lebanon (UNIFIL) is currently consulting with both the Israeli and Lebanese sides to demarcate the southern maritime border as per their request.

Serving as an independent international adviser, you are requested to assess the legal situation and comment on options to solve the crisis.

Draft a legal brief and address the following three questions:

- A. Can Lebanon exploit the oil and gas resources in the Levantine Basin? Please also elaborate on maritime limits and delimitation principles.
- B. What international dispute settlements procedures could be employed to solve the crisis? What are their conditions?
- C. If necessary, could both states use force to protect their claimed natural resources?

Gliederung

- A. Rechtlicher Status der libanesisch-israelischen Seegrenze
 - I. Anzuwendendes Recht
 - II. Seegrenzen
 1. Ausschließliche Wirtschaftszone
 2. Festlandsockel
 3. Definition der Basislinie
 - III. Abgrenzung von Seegrenzen (*Problem des Falls*)
 1. Rechtliche Rahmenbedingungen
 2. Fehlen eines libanesisch-israelischen Seerechtsabkommens
 3. Inter partes Wirkung von Seerechtsabkommen
 - IV. Equity- und Äquidistanzprinzip
 - V. Fazit
- B. Streitbeilegungsmechanismen
 - I. Verhandlungen
 - II. Schlichtung
 - III. Gerichtliche Beilegung (*Problem des Falls*)
 1. ITLOS
 2. IGH
 - IV. Schiedsgerichtsbarkeit
 - V. Mediation
 - VI. Untersuchungskommission
 - VII. Fazit
- C. Bedingungen für die Anwendung von Gewalt zwischen Staaten
 - I. Grundsätze
 - II. Ausnahmen
 1. Autorisierung durch den UN Sicherheitsrat
 2. Selbstverteidigung
 - a) Bewaffneter Angriff (*Problem des Falls*)
 - b) Direkte oder einem Staat zurechenbare Handlungen (*Problem des Falls*)
 - c) Fragen der Notwendigkeit und Verhältnismäßigkeit
 - III. Fazit

Structure

- A. Legal Status of the Lebanese-Israeli Maritime Boundary
 - I. Applicable Law
 - II. Maritime Limits
 1. Exclusive Economic Zone
 2. Continental Shelf
 3. Baseline Definitions
 - III. Maritime Boundary Delimitation

Problem: Maritime boundary submissions as unilateral proposals

 1. Legal Framework
 2. Absence of a Lebanese-Israeli Maritime Boundary Agreement
 3. Inter partes Effect of Delimitation Agreements
 - IV. Equity Principle and Equidistance Practice
 - IV. Conclusion

Problem: Exploitation of natural resources in disputed maritime areas
- B. Dispute Settlement Procedures
 - I. Negotiations
 - II. Conciliation
 - III. Judicial Settlement
 1. ITLOS
 2. ICJ
 - IV. Arbitration
 - V. Mediation
 - VI. Commission of Inquiry
 - VII. Conclusion

Problem: Dispute resolution mechanisms require consent of the parties
- C. Conditions for the Use of Force
 - I. Principles
 - II. Exceptions
 1. Authorization by the UN Security Council
 2. Self-Defence
 - a) Armed Attack

Problem: Exploitation of natural resources and deployment of drones in disputed maritime areas as an "armed attack"?
 - b) Conduct Directed or Controlled by a State

Problem: Attributed non-state actor conduct
 - c) Questions of Necessity and Proportionality
- III. Conclusion

Legal Assessment

Vorbemerkung: Die Lösungsskizze ist in englischer Sprache verfasst, da Veranstaltungen und Prüfungen im Völkerrecht an deutschen Universitäten zunehmend zweisprachig abgehalten werden. Zudem sollen deutsche Rechtskandidaten auf die englischsprachige Praxis in der internationalen Rechtsberatung vorbereitet werden.

A. Legal Status of the Lebanese-Israeli Maritime Boundary

Lebanon could exploit oil and gas resources in the Levantine basin, as long as the exploitation is carried out within the permitted legal framework of international law.

I. Applicable Law

Relevant and guiding for the legal assessment of this case are norms and practice of international maritime law. The United Nations Convention on the Law of the Sea (UNCLOS) is

only applicable as far as the concerned states to the dispute are signatory to the Convention¹. However, many provisions of the Convention relevant to this maritime delimitation case are regarded as binding customary international law².

II. Maritime Limits

1. Exclusive Economic Zone

Following Art. 56 para. 1 lit. a UNCLOS, a coastal State has the right to exploit natural resources of the seabed and subsoil in its Exclusive Economic Zone (EEZ). According to Art. 57 UNCLOS, the EEZ shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

2. Continental Shelf

Apart from the EEZ regulations, coastal states can exercise sovereign rights over the continental shelf for the purpose of exploring and exploiting its natural resources³. Following Art. 76 para. 1 UNCLOS, the continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas up to a depth of 200 nautical miles. If the continental margin geologically extends beyond this distance, the continental shelf can be claimed up to a limit of 350 nautical miles from the baselines from which the breadth of the territorial sea is measured⁴.

In comparison to EEZ rights, rights of the coastal state over the continental shelf do not depend on any expressed proclamation⁵. Regarding the scope, the coastal state has the exclusive right to authorize and regulate drilling on the continental shelf for all purposes⁶.

3. Baseline Definitions

The normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State⁷. Depending on the localities, coastal states may determine baselines in turn by any of the methods provided for in the Convention in order to suit different conditions⁸.

III. Maritime Boundary Delimitation

1. Legal Framework

Art. 74 para. 1 UNCLOS provides that the delimitation of the EEZ between States with adjacent coasts shall be affected by agreement on the basis of international law, as referred to in Art. 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution. Art. 83 para. 1 UNCLOS applies a similar legal framework for the continental shelf.

2. Absence of a Lebanese-Israeli Maritime Boundary Agreement

In the case at hand, the maritime boundary between Lebanon and Israel is disputed. Israel and Lebanon could not agree on a delimitation of the maritime boundary yet. Thus, Israel's and Lebanon's boundary submissions to the UN are only unilateral proposals and are not mutually binding.

3. Inter partes Effect of Delimitation Agreements

The 2010 EEZ Agreement between Israel and Cyprus does not create legal obligations for Lebanon. Under international treaty law, as stipulated in Art. 26 of the Vienna Convention on the Law of Treaties (VCLT), treaties are only in force upon the parties to it. Hence, the inter-state maritime agreement only has binding effect *inter partes* for Israel and Cyprus, but not for Lebanon.

IV. Equity Principle and Equidistance Practice

As UNCLOS emphasizes, the basis for the resolution of conflicts regarding the attribution of rights in the EEZ and the continental shelf is the principle of equity, which should take into consideration all relevant circumstances and the importance of the interests involved to the parties as well as to the international community as a whole⁹.

As the Convention leaves further modalities open, States are free during the negotiation process to agree on any method or methods for which they consider to be appropriate for the delimitation¹⁰.

In practice, States often use the equidistance line as the starting point in the delimitation process¹¹. The equidistance line is the median between two States, where every point of the line is equidistant from the nearest points on the baselines of the two States¹². This equidistance line is altered if it is found to produce inequitable results. Reasons can be, for instance, historic title or other special circumstances¹³. Among acknowledged circumstances in contemporary case law have been geographical circumstances, such as the existence of islands on the median line, concaved coastal constellations, the existence of maritime oil fields, or prior offshore oil exploitation practices¹⁴.

1 Preamble and Art. 1 para. 2 I UNCLOS. Lebanon ratified UNCLOS in 1995; Israel is not party to the Convention. However, as this information was not provided in the scenario description, students should indicate the fact that most UNCLOS norms constitute widely acknowledged customary international law.

2 *Shaw*, International Law, 2013, p. 556, 591.

3 Art. 77 para. 1 UNCLOS. It is important to mention that states possess two sources of rights with regard to natural resources in the seabed. *Shaw*, International Law, 2013, p. 586.

4 Art. 76 para. 5 UNCLOS.

5 Art. 77 para. 3 UNCLOS.

6 Art. 81 UNCLOS.

7 Art. 5 UNCLOS.

8 Art. 14 UNCLOS. As further knowledge about the geographical structure cannot be expected, a general reference to Art. 14 is sufficient. Students could, for instance, also refer to Art. 7 UNCLOS, which stipulates the method of straight baselines in localities where the coastline is deeply indented and cut.

9 Art. 59, 74 para. 1, 83 para. 1 UNCLOS.

10 The Division for Ocean Affairs and the Law of the Sea (DOALOS) of the Office of Legal Affairs at the United Nations Secretariat provides a comprehensive online database that gives insight into state practice concerning maritime delimitation treaties, which can be accessed under www.un.org/Depts/los/LEGISLATIONANDTREATIES.

11 *Shaw*, International Law, 2013, p. 605. See, e.g., Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar./ Bahrain), ICJ Judgment, March 16, 2001. ICJ case law can be accessed online under www.icj-cij.org/docket.

12 Art. 15 s. 1 UNCLOS.

13 Art. 15 s. 2 UNCLOS.

14 *Charney/Smith*, International Maritime Boundaries, Vol. IV (2002), 1710. See, e.g., Land and Maritime Boundary between Cameroon and Nigeria (Cameroon./ Nigeria), ICJ Judgment, Oct. 10, 2002.

All those legal and practical aspects can be taken into consideration for the delimitation of the maritime boundary between Lebanon and Israel.

IV. Conclusion

As the maritime boundary of Lebanon and Israel is disputed, the exploitation of oil and gas resources in the undefined boundary area could possibly violate the maritime rights of one or the other state. However, whether the exploitation of natural resources in such disputed maritime areas is prohibited *per se* is debated.

Some scholars argue that only oil and gas exploration but not exploitation efforts shall be carried out in disputed maritime areas¹⁵. An argument is that the distribution of offshore drilling fields and the assessment of irreversible environmental dangers should be left in the hands of the legitimate state¹⁶. Other commentators stress that the granting of oil and gas concessions in disputed areas is not an uncommon although provocative means for claimant states to assert their jurisdiction over maritime areas¹⁷. Otherwise states could endlessly prolong exploitation efforts of a neighbouring state, which could harm development and deteriorate the state's economy¹⁸.

Finally, while bearing both sides of the debate in mind, most important to consider is that the exploitation of natural resources in disputed areas could eventually risk an escalation of the conflict between Israel and Lebanon. This needs to be prevented in the spirit of peace and security as stipulated in the Preambles of UNCLOS and the UN Charter. In all circumstances, both parties have to refrain from any steps that would aggravate or extend the dispute¹⁹.

B. Dispute Settlement Procedures

In principle, states shall solve disputes between them by peaceful means²⁰. The settlement of a dispute can be achieved by any peaceful means chosen by the parties²¹. In the present case, direct negotiations, conciliation, judicial proceedings, arbitration, mediation, or fact-finding inquiry can be considered²².

I. Negotiations

As mentioned above, the delimitation of maritime boundaries is primarily achieved through a negotiated agreement²³. When a dispute arises between states, they are urged under international law to expeditiously proceed to an exchange of views regarding its settlement by negotiation or other peaceful means²⁴.

II. Conciliation

Apart from bilateral negotiations, an option to settle the dispute peacefully is conciliation²⁵. Conciliation usually entails the creation of a conciliation commission, which examines the claims of the parties and makes proposals for reaching an amicable settlement²⁶.

III. Judicial Settlement

Disputes about the delimitation of maritime boundaries can be also settled through judicial proceedings.

1. ITLOS

The *International Tribunal for the Law of the Sea (ITLOS)* can decide maritime boundary disputes²⁷. The Tribunal can be accessed by UNCLOS state parties and other states if there is consent by all participating parties to that case²⁸. The *ITLOS* judgments are binding and final decisions, which shall be complied with by all the parties to the dispute²⁹.

2. ICJ

The *International Court of Justice (ICJ)* can also serve for the pacific settlement of maritime boundary disputes³⁰. If no compulsory declaration of the concerned states has been made, the *ICJ* has also only jurisdiction on the basis of consent³¹. States can choose between the *ICJ* or the *ITLOS* for entrusting the solution of their differences³².

IV. Arbitration

Arbitration can be another option for the delimitation of maritime boundaries³³. In comparison to a conciliation commission, which presents proposals, an arbitration tribunal determines the maritime limitation through a final award³⁴. Different to judicial proceedings, states can nominate their arbitrators and define the statute of the arbitral tribunal and its procedures³⁵.

15 For the debate, see *Blyschak*, *J World Energy Law Bus* 6.3 (2013), 210.

16 *Churchill/Ulfstein*, *Marine Management in Disputed Areas*, 1992, p. 129.

17 *Chung*, in: *Tien/Cheng*, *The Security Environment in the Asia-Pacific*, 2000, p. 283.

18 See also *Dang*, *Marine Protected Areas Network in the South China Sea*, 2014, p. 26. For the opposite opinion, see *Churchill*, in: *Fox*, *Joint Development of Offshore Oil and Gas*, 1990, p. 57; *Antunes*, *Towards the Conceptualisation of Maritime Delimitation*, 2003, p. 139. Students can argue in both directions. Important is not their final decision but their way of argumentation.

19 *Churchill/Ulfstein*, *Marine Management in Disputed Areas*, 1992, p. 75.

20 Art. 2 para. 3, Art. 33 para. 1 UN Charter; Art. 74 Art. 279 UNCLOS.

21 Art. 280 UNCLOS. Direct negotiations are the only dispute resolution procedure in international law without the involvement of a third party.

22 Important is that students show that a multitude of mechanisms in the UN Charter and international maritime law exists, which states can relate to in order to settle disputes peacefully.

23 Art. 74 para. 1 UNCLOS.

24 Art. 283 para. 1 UNCLOS.

25 This requires the consent of both states (Art. 284 para. 2 UNCLOS). Details for conciliation processes are detailed in Annex 5 of UNCLOS.

26 Art. 3–6, Annex V UNCLOS.

27 Art. 21, Annex VI UNCLOS.

28 Art. 20, Annex VI UNCLOS.

29 Art. 30, 33 para. 1 UNCLOS.

30 Art. 287 para. 1 lit. b UNCLOS; Art. 33 para. 1 UN Charter.

31 Art. 36 para. 1 and 2 ICJ Statute. It was not provided in the scenario description whether or not Israel and Lebanon recognize the jurisdiction of the *ICJ* as compulsory. Hence, a general description of the students at this point is enough. In fact, both states abstained from such declaration. The list of declarations can be accessed online under www.icj-cij.org/jurisdicti-on.

32 Art. 95 UN Charter.

33 Art. 287 para. 1 lit. c UNCLOS; Art. 33 para. 1 UN Charter. Details for arbitration processes are detailed in Annex VI UNCLOS.

34 Art. 11, Annex VI UNCLOS.

35 Art. 2–5, Annex VI UNCLOS.

V. Mediation

The use of a mediator is also an option³⁶. Other states or international organizations could mediate as third parties³⁷. They could be either regional or international actors³⁸.

VI. Commission of Inquiry

The creation of a commission of inquiry is another possibility³⁹. In comparison to conciliation, an inquiry commission carries out fact-finding in order to establish the facts that give rise to the dispute without providing proposals for the solution. It is then up to the parties to negotiate a settlement on the basis of these facts, or proceed with other dispute settlement procedures. In practice, fact-finding inquiry commissions have been used in the context of maritime issues, but have been rare in delimitation cases⁴⁰.

VII. Conclusion

Given that Lebanon and Israel have no diplomatic relations and are still in a protracted war with each other, it is difficult for them to negotiate a comprehensive bilateral maritime settlement. An option is a provisional delimitation, but also this requires willingness of both sides to negotiate⁴¹. Whether the UN, which is already consulting with both sides, could serve as a mediating broker for a provisional and final delimitation depends on the consent of both states to settle the dispute with the help of a third party. Similarly, the *ICJ* and *ITLOS* have jurisdiction only on the basis of an agreement of the concerned states⁴². Conciliation, arbitration, or a commission of inquiry also do not appear as feasible options, as long as one side demands a package deal for the settlement of the dispute and the other side refuses it. Eventually, the solution of the Lebanon-Israel maritime dispute can hardly be detached from a settlement of the overall looming Middle East conflict. This, however, is more a political than a legal question.

C. Conditions for the Use of Force

Whether both states could use force to protect their natural resources is a problematic issue.

I. Principles

In principle, states shall refrain from the threat or use of force against the territorial integrity or political independence of any state⁴³.

II. Exceptions

1. Authorization by the UN Security Council

The UN Security Council can consider taking action by using force if there is a threat to or breach of peace, or an act of aggression, and alternative measures would be inadequate or have proven to be inadequate⁴⁴.

2. Self-Defence

Apart from an authorization by the Security Council, UN member states can only use force in individual or collective self-defence if an armed attack occurs⁴⁵.

a) Armed Attack

A definition of the parameters of an “armed attack” is not provided in the UN Charter, and is not part of any other treaty law⁴⁶. It is the state, which is the victim of a perceived armed attack, that must form and declare the view that it has been attacked⁴⁷. The decision is subject to consideration by the international community and particularly the Security Council under Art. 51 UN Charter. In international practice, an armed attack has been acknowledged in the moment of a massive armed aggression against the territorial integrity and political independence of a state that imperils its life or government⁴⁸. The effect of the attack must be serious and of such magnitude that it cannot be repelled otherwise⁴⁹. Singular frontier incidents usually do not amount to the scale of an armed attack, as long as they do not accumulate to a series of events⁵⁰.

Regarding the present case of the Lebanon-Israel maritime dispute, the mere exploitation of natural resources in a disputed maritime area does not constitute an armed attack in the sense of Art. 51 UN Charter, as the act of oil and gas drilling itself is not an armed act. The conditions for an armed attack have to remain limited, as the prohibition of the use of force would be otherwise undermined⁵¹.

Whether the deployment of unmanned Israeli drones to the disputed area constitutes an armed attack is doubtful. First, it is not clear whether or not the drones violate Lebanese airspace in the concrete case⁵². Second, whether the drones

36 Art. 33 para. 1 UN Charter.

37 An active mediator in the conflict have been, for instance, the United Nations. For more details, see *Waeblich*, ASIL Insights 15.31 (2011), 1.

38 For an overview about the role of third parties in international dispute resolution, see *Kirchhoff*, *Constructive Interventions*, 2008, p. 65.

39 Art. 33 para. 1 UN Charter.

40 *Caflisch*, in: *Magnus/Wolfrum*, *The Hamburg Lectures on Maritime Affairs* 2009/2010, 2012, p. 72.

41 Art. 74 para. 3 and 83 para. 3 UNCLOS. For details about provisional measures in maritime delimitation disputes, see *Bernárdez*, in: *Lagoni/Vignes*, *Maritime Delimitation*, 2006, p. 201.

42 So far, Israel has invoked the *ICJ*'s jurisdiction only once in 1957 in *Israel/Bulgaria*. Lebanon has been twice a party before the *ICJ* (*France/Lebanon* in 1953 and 1959). Since only Lebanon is a member to UNCLOS, Israel would have to expressly agree to the jurisdiction of the *ITLOS*.

43 Art. 2 para. 4 UN Charter.

44 Art. 42, 39 UN Charter. This part can be omitted by students in order to save time, but could be included to reflect the systematic implementation of the UN Charter.

45 Art. 51 UN Charter.

46 For an introduction, see *Gray*, *International Law and the Use of Force*, 2008, p. 173.

47 *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua/USA*), *ICJ Judgment*, June 2, 1986, para. 195.

48 *Cassese*, *International Law*, 2005, p. 354.

49 *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua/USA*), *ICJ Judgment*, June 2, 1986, para. 106.

50 *Gray*, *International Law and the Use of Force*, 2008, p. 177.

51 *Shaw*, *International Law*, 2013, p. 1133. See, e.g., *Oil Platforms* (*Islamic Republic of Iran/USA*), *ICJ Judgment*, Dec. 12, 1996, para. 51.

52 Students could argue both ways here. The scenario description only stated that Israel has deployed unmanned drones to “the disputed area” to monitor its natural resources, but did not detail to what extend Lebanese airspace is violated. In practice, overflights of Lebanese airspace by the Israel Defense Forces continue “almost daily by unmanned aerial vehicles and fixed-wing aircraft, including fighter jets, in violation of resolution 1701 (2006) and

are armed and could carry out armed operations is also uncertain. As reported, the drones only monitor maritime activities. The announcement of Israeli generals to patrol the area with warships is a threat, which needs to be taken seriously but does not permit self-defence⁵³.

b) Conduct Directed or Controlled by a State

If the prediction of security experts that Hezbollah will attack Israeli oil platforms in disputed maritime areas actually materializes, it is still disputable whether self-defence can be employed by Israel against Lebanon.

First, the disputed area must actually belong to Israel, which requires a clarification of the maritime boundaries. Second, self-defence under Art. 51 UN Charter could only be employed against Lebanon if the conduct of Hezbollah can be attributed to the Lebanese State as such⁵⁴.

The conduct of a group is considered an act of a state under international law only if the group is in fact acting on the instructions of or under the direction or control of that state in carrying out the conduct⁵⁵. In international practice, the active support of armed groups engaged in military and paramilitary activities by a state has been attributed to state conduct; such assistance may be regarded as a threat or use of force, or amount to intervention in the internal or external affairs of other states⁵⁶.

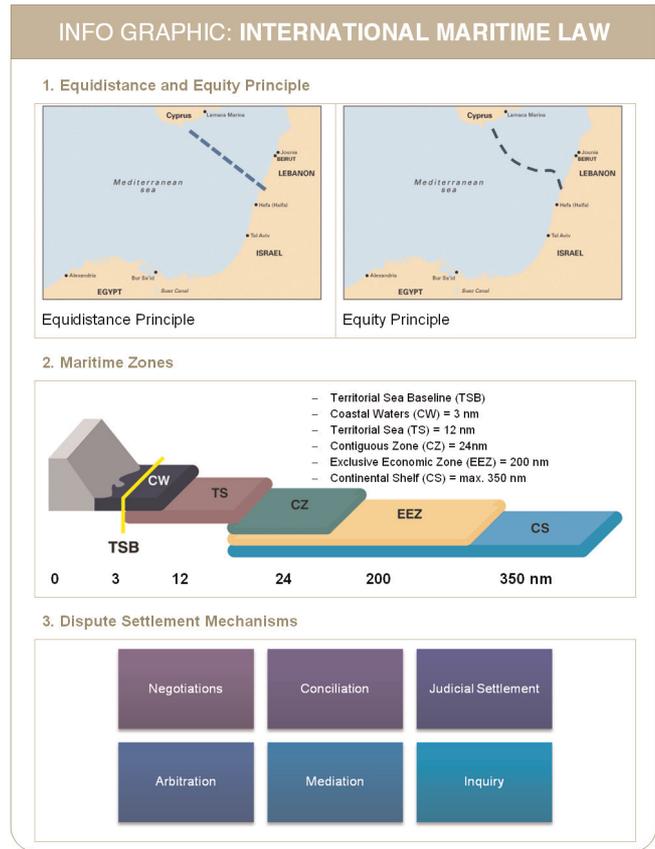
Whether potential actions of the Lebanese political party Hezbollah can be attributed to the Lebanese state is questionable. An attribution would require, for instance, a governmental consensus, consent of the Parliament, or an agreement that the group acts on behalf of the Lebanese state⁵⁷. Although Hezbollah has announced its intentions “to use force” to protect Lebanon’s resources, such threats of the group are not *per se* accounted to the Lebanese state⁵⁸.

c) Questions of Necessity and Proportionality

As a rule of customary international law, the measures taken in self-defence must be exercised in circumstances of necessity and in a manner that is proportionate to the armed attack⁵⁹. Among others, one criterion in self-defence is to consider the nature of the target that a state initiates actions against in its self-defence⁶⁰. Self-defence is necessary if the target is an “appropriate military target,” and not just a “target of opportunity”⁶¹. Self-defence is proportional if the scale of the whole operation and the destruction relates to the scale and destruction of the prior armed attack⁶². Ultimately, the conditions of necessity and proportionality depend on the specific situation of the armed attack.

III. Conclusion

The use of force is permissible in very limited circumstances. The permitted legal framework of international law is tight. In conclusion, both states in the present case can only use force to protect their natural resources if the above outlined conditions are fulfilled.



Lebanese sovereignty”, as the latest Report of the Secretary-General on the Implementation of Security Council Resolution 1701 (2006) notes. See UN Doc. S/2013/650, Nov. 13, 2013, para. 20. Official UN documents and reports can be accessed online under documents.un.org.

53 Students could include a debate on the issue of anticipatory and pre-emptive self-defence at this point.

54 For an introduction into the issue in the context of the 2006 Israel-Lebanon-Conflict, see *Scobbie*, in: *Wilmsburst*, International Law and the Classification of Conflicts, 2012, p. 402-407.

55 Draft Articles on the Responsibility of States for Internationally Wrongful Acts, GA Res. 56/83 of 12. 12. 2001, Art. 8 and Annex.

56 Military and Paramilitary Activities in and against Nicaragua (Nicaragua./USA), *ICJ Judgment*, June 2, 1986, para. 106.

57 This point can be discussed in greater depth, and students can argue in favour of one or the other direction. After the U.S.-post-9/11-intervention in Afghanistan, for example, some scholars argued that self-defence is permissible if the hosting State where the acting group is located failed to exercise due diligence to prevent the attack. For the debate, see *Tams*, EJIL 20.2 (2009), 359. Different interpretations are possible, which lastly depend on from which side the legal advice is provided (e. g. role of legal adviser of Lebanese or Israeli Government, and ‘independent’ legal adviser, or an international judge). For an introduction on the matter of different roles of lawyers and the interpretation of international law, see *Cheng*, When International Law Works, 2012.

58 Hezbollah members are currently represented in the Lebanese Government (Status: Feb. 2014), which could be raised as an argument to attribute actions of the group to the state. However, it is still under debate whether or not actions of a political party, to which only some members of the Government belong, can be attributed to the state as a whole. For the discourse, see *Shaw*, International Law, 2013, p. 1136, 1159.

59 See, e.g., Legality of the Threat or Use of Nuclear Weapons, *ICJ Advisory Opinion*, July 8, 1996, para. 41; Military and Paramilitary Activities in and against Nicaragua (Military and Paramilitary Activities in and against Nicaragua (Nicaragua./USA), *ICJ Judgment*, June 2, 1986, para. 176.

60 Oil Platforms (Islamic Republic of Iran./USA), *ICJ Judgment*, Dec. 12, 1996, para. 74.

61 *Ibid.*, para. 76.

62 *Ibid.*, para. 77. For example, the *ICJ* has previously held that the taking of airports and towns many hundreds of kilometres from the border would not seem proportionate to a series of transborder attacks. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo./Uganda), *ICJ Judgment*, Dec. 19, 2005, para. 147.