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Law of the Seas

The Dispute over the Israel – Lebanon Maritime Border – Legal Perspectives

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Background – The basic principle for delimiting economic waters in agreement between states

The significant discoveries of natural gas reserves in the maritime region of the eastern Mediterranean have boosted the need of states in the area to delineate their exclusive economic zones (EEZs),² with a view to developing and exploiting the resources in their areas.³ In cases where there is an overlap between the EEZs of neighboring states, the United Nations Convention on the Law of the Sea 1982 (UNCLOS),⁴ which is the international legal constitution that regulates the various maritime zones, stipulates that the issue should be solved through an agreement between the countries, in accordance with the principles of international law, in order to obtain a just and fair solution.⁵ The Convention states that as long as the agreement is pending, the states should make a joint effort to reach a temporary practical arrangement.⁶

This formulation constitutes a comfortable compromise for the countries, as it allows them to conduct negotiations on reaching a desired delineation of the borders, in line with their special circumstances.⁷ At the same time, due to the vagueness of this principle, it seems that it on many occasions countries tend to base their actions on the "median line"

1 Translated by Yaakov Lapin

2 EEZ – Exclusive Economic Zone

3 The exclusive economic zone stretches out beyond the territorial sea of a coastal state, and up to 200 nautical miles from the baseline, or up to a distance agreed upon with another coastal state. A state does not have full sovereignty in this area, but it receives sovereign economic rights, including rights to explore for and exploit gas and oil resources. For more on various maritime areas, see Nadia Tzimerman "Chapter 16: Managing Israel's maritime areas – a view of the legal situation" **A Grand Maritime Evaluation for Israel 2016** 188 (Shaul Horev, Ed.), 2017 <https://poli.hevra.haifa.ac.il/~hms/images/2016.pdf>

4 United Nations Convention on the Law of the Sea (UNCLOS)

5 The provision on this matter is similar to the EEZ and continental shelf. See Articles 74(1) and 83(1) of the Convention: "The delimitation... between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law... in order to achieve an equitable solution".

6 See Articles 74(3) and 83(3) of the Convention: "Pending agreement as provided for in paragraph 1, the states concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation".

7 For an analysis of the various techniques for delimiting maritime borders see: Nugzar Dundua, *Delimitation of maritime borders between adjacent States* (United Nations – The Nippon Foundation Fellow 2006–2007).

technique,⁸ as a starting point for negotiations.⁹ The median line technique has been used as a basis for agreements in our region.¹⁰

Although Israel has not signed UNCLOS, it has stated on more than one occasion that it "accepts the customary provisions of the Sea Convention (UNCLOS), including those that deal with maritime zones".¹¹ In addition, the Maritime Zones Bill of 2017 adopts the basic principle set in UNCLOS, regarding the delineation of EEZ by the agreement of states.¹²

To delineate its maritime borders, Israel relies on two bilateral agreements that Cyprus is a side to: The Cyprus–Egypt agreement from 2003,¹³ and the Cyprus–Lebanon agreement from 2007,¹⁴ which was not ratified by Lebanon.¹⁵ The agreement signed between Israel and Cyprus in 2010 in effect corresponds with those agreements – as can be seen in figure 1, coordinate 12 in the south and coordinate 1 in the north.¹⁶ However, Article 1(e)

- 8 The equidistance (or median) line technique is also the set formula in the Convention for the delineation of territorial sea of states. See Article 15 of the Convention: "Where the coasts of two states are opposite or adjacent to each other, neither of the two states is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest point on the baselines from which the breadth of the territorial seas of each of the two states is measured...". For a technical manual on the median line technique, see: ABLOS, *A Manual on Technical Aspects of the United Nations Convention on the Law of the Sea–1982* (4th ed., 2006).
- 9 For more on the principles set in the Convention, see also: Tullio Scovazzi, *Maritime Borders in the Eastern Mediterranean Sea*, Policy Brief 3–5 (The German Marshall Fund of the US, June 2012).
- 10 See further on the agreement between Israel and Cyprus, the agreement between Cyprus and Egypt, and the agreement between Cyprus and Lebanon.
- 11 See explanatory comments to the memorandum of the Maritime Zones Law–2013, p. 4. See also the agreement between the Government of the State of Israel and the Government of the Republic of Cyprus regarding delineation of the exclusive economic zone from December 17, 2010.
- 12 Article 9(B) in the bill stipulates the following: "Where the State of Israel's EEZ... overlaps with the EEZ of another country, the State of Israel's border for its EEZ will be set in the overlapping area between the EEZs, in agreement with the state in question, and so long as the said agreement is not reached – in accordance with the principles of international law."
- 13 Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone (17 February 2003) appears on the UN website: www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EGY-CYP2003EZ.pdf
- 14 Agreement between the Government of the State of Lebanon and the Government of the Republic of Cyprus on the Delimitation of the Exclusive Economic Zone (17 January 2007). The agreement was ratified by Cyprus, but not by Lebanon. The agreement's details can be seen on the website of the Middle East Economic Survey: <https://www.mees.com/2012/9/28/op-ed-documents/cyprus-lebanon-cyprus-israel-offshore-delimitation/f994d750-6d1a-11e7-9675-d5a0b0510107>.
- 15 For the implications of the lack of the ratification over the dispute between Israel and Lebanon, see further discussion.
- 16 The agreement between the government of the State of Israel and the government of the Republic of Cyprus regarding the delineation of the exclusive economic area from 17.12.2010. The agreement was ratified in Government Decision No. 2794 on 3.2.2011. The agreement appears on the UN website: www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/cyp_isr_eez_2010.pdf

of the agreement stipulates that Coordinates 1 or 12 are not conclusive, and that they are subject to change in a future agreement between the three relevant countries.¹⁷ In addition, Article 3 of the agreement allows the partners to conduct negotiations to set the borders of the EEZ with other states, through consultations in case the borders are linked to coordinates 1 and 12. In the absence of an agreement between Israel and Lebanon and Israel and Egypt, this situation creates uncertainty regarding the northern and southern borders of Israel's EEZ.



Figure 1 – Appendix 2 to the agreement between Israel and Cyprus

In light of the fact that for the time being, an open dispute exists between Lebanon and Israel, this chapter will focus on the dispute regarding the northern border alone.¹⁸ The basis of the dispute centers on the northern border point (coordinate 1), which touches on the three countries – Israel, Cyprus, and Lebanon. While Israel relies on the agreement with Cyprus as an anchor for delimiting its northern border, coordinate 1 is not recognized by Lebanon, and it is subject to international dispute. This dispute has led Israel and Lebanon to submit conflicting unilateral declarations to the UN regarding the delineation of their maritime borders. This series of events will be detailed below.

17 See Article 1(e) of the agreement: "Taking into consideration the principles of customary international law relating to the delimitation of the Exclusive Economic Zone between States, the geographical coordinates of points 1 or 12 could be reviewed and/or modified as necessary in light of a future agreement regarding the delimitation of the Exclusive Economic Zone to be reached by the three States concerned with respect to each of the said points".

18 Regarding the southern border – Israel has yet to declare its southern maritime border (which of course raises questions in relation to the maritime border line with the Palestinian Authority). As stated, the southern coordinate in the agreement between Israel and Cyprus (coordinate 12) touches on a point specified in the agreement between Cyprus and Egypt. Today, there is no Egyptian claim regarding this point. At the same time, it is possible that Egypt will raise claims in the future of the kind that Lebanon has raised regarding the joint border points between the three countries.

How events unfolded surrounding the dispute over the delimitation of the maritime border between Israel and Lebanon

In July and October 2010, Lebanon unilaterally submitted to the UN its coordinates for delimiting the EEZ borders with Israel and Cyprus respectively.¹⁹ In effect, continuing on from the (non-ratified) agreement between Lebanon and Cyprus, Lebanon declared 3 additional coordinates south of Point 1 (upon which Israel relied in the agreement with Cyprus). Lebanon claimed that "coordinate 23" is the southernmost point, which forms the median line between the three states.

Despite this declaration, as stated, in December 2010, an agreement was signed between Cyprus and Israel, in which "coordinate 1" was set as the northern border point of the delimitation of the maritime border between the countries. Coordinate 23, which Lebanon declared to be located some 17 kilometers south of coordinate 1, and which in effect creates a triangular area of 850 square kilometers, forms the disputed area. Figure 2 illustrates the dispute between Lebanon and Israel.

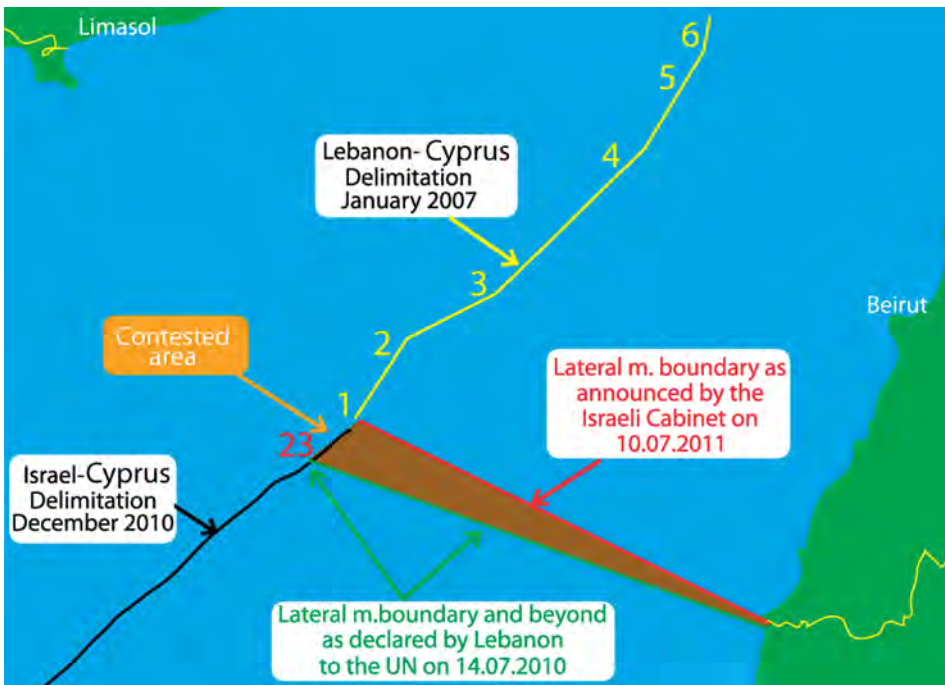


Figure 2: The border dispute with Lebanon (the disputed areas of some 850 square kilometers). Source: Daniel Meier Lebanon's Maritime Borders: Between Economic Opportunities and Military Confrontation (June 2013).

¹⁹ See: www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/lbn_mzn79_2010.pdf; www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/lbn_mzn79add1_2010.pdf

Following the agreement signed between Israel and Cyprus, Lebanon sent a letter to the UN in June 2011 objecting to the agreement with Cyprus, based on the claim that "coordinate 1" does not form the median line between the states, but rather, "coordinate 23" does.²⁰ A month later, in July 2011, Israel unilaterally submitted to the UN a list of coordinates that mark the country's northern maritime border, with "coordinate 1" listed.²¹ In September 2011, Lebanon reiterated its rejection of the maritime border line between Israel and Lebanon according to the coordinates submitted by Israel to the UN. In its letter, Lebanon repeated its demand to replace "coordinate 1" with "coordinate 23." In addition, Lebanon expressed its objection to the land coordinate from which the maritime border was stretched, as it appears in the Israeli document (marked in the government's decision as "coordinate 31."). Lebanon claimed that this coordinate violated international agreements on the land border between Israel and Lebanon.²²

In line with media reports, the Americans tried in the past to create a compromise map, on the basis of the Israeli and Lebanese versions, but thus far, unsuccessfully. According to geological surveys, it appears as if the disputed area contains the potential for discernible discoveries of natural gas. Up to now, Israel has not awarded gas and oil exploration rights in the disputed area, but from time to time, media reports surface indicating Lebanon's intention to distribute licenses in this area.²³ These developments should be monitored, as a lack of response by Israel could be seen by international law as consent to Lebanon's activity.²⁴

There is no doubt that the dispute over the maritime border conceals within it diplomatic, security, and economic aspects, but in this list, we will only focus on the legal aspect.

20 See: www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/lbn_re_cyp_isr_agreement2010.pdf

21 Israel declared its northern maritime border in the 32nd Government's Decision No. 3452, "Setting the northern maritime delimitation line of the coastal waters and the exclusive economic zone of the State of Israel in the Mediterranean Sea." (10.7.2011). This decision was sent to UN institutions. <http://www.pmo.gov.il/Secretary/GovDecisions/2011/Pages/des3452.aspx>; www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/isr_eez_northernlimit2011.pdf

22 See: www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/lbn_re_isr_listofcoordinates_e.pdf

23 See, for example, Amiram Barakat, "Lebanon will grant drilling rights in an Israeli maritime area," *Globes*, 29.9.2013 (Hebrew): www.globes.co.il/news/article.aspx?did=1000881564

24 For further readings on the development of the division between Israel and Lebanon, see: S. Abu Gosh and R. Leal-Arcas, *Gas and Oil Explorations in the Levant Basin: The Case of Lebanon and Israel*, Oil, Gas & Energy Law Intelligence (2013); Martin Wählisch, *Israel-Lebanon Offshore Oil & Gas Dispute – Rules of International Maritime Law*, 15 ASIL Insights (2011) Daniel Meier, *Lebanon's Maritime Borders: Between Economic Opportunities and Military Confrontation* (Center for Lebanese Studies, University of Oxford, June 2013).

The legal dispute

As stated, Israel relies on its stance in relation to "coordinate 1" in the agreement for delimiting the EEZ between Cyprus and Lebanon from 2007, which marks coordinate 1 as the southernmost coordinate in this agreement. According to Israel's claim, the agreement between Israel and Cyprus in effect touches on the agreement between Cyprus and Lebanon in "coordinate 1".²⁵

At the same time, relying on the agreement between Lebanon and Cyprus holds number of legal difficulties. The first central difficulty lies in the fact that this agreement has never been ratified by Lebanon, and did not actually entered into force. As a result, its provisions are neither obligatory for Lebanon and Cyprus, nor do they have any legal validity for third parties (Israel).²⁶

However, beyond the fact that the agreement has not entered into force, it appears as if there is a significant difficulty in relying on coordinate 1 set in the agreement between Lebanon and Cyprus as a conclusive coordinate for delimiting the border line between three countries. Lebanon claims that coordinate 1 does not represent the median line between the countries. According to its claim, this is only a temporary coordinate, which was deliberately set north of the median line between the three countries, in order to allow the relevant countries to negotiate over the final median line between them.²⁷ It appears as if Lebanon's stance matches international practice on this issue.²⁸ Also, the agreement between Lebanon and Cyprus states that coordinate 1 is not conclusive, and does not have legal validity regarding third parties.²⁹

In light of the above, it seems as if Israel's claim regarding the validity of coordinate 1 is flawed, and lacking a substantial legal basis beyond relying on the agreement between Lebanon and Cyprus. As stated, Lebanon bases its claim in relation to coordinate 23 on

25 See comments made by Prime Minister Benjamin Netanyahu on the day of the verification on setting the northern delimitation line, above, endnote 19, <https://news.walla.co.il/item/1839248>

26 For more on the legal standing of the agreement between Lebanon and Cyprus see endnote 23 above.

27 This is Lebanon's claim as it appeared in the letter sent to the UN in June 2011, see endnote 19 above: "Point 1 does not therefore represent the southern end of the median between the Lebanese Republic and the Republic of Cyprus that separates the exclusive economic zones of each country, and can only be viewed as a point that is shared by Lebanon and Cyprus. It is not a terminal point and therefore may not be taken as a starting point between Cyprus and any other country, particularly given the fact that it is just one point like any of the others on this line."

28 See Leal-Arcas and Abu Gosh, in endnote 23 above, pages 14–16. As stated, clause 1(e) to the agreement between Israel and Cyprus adopts this practice. See endnote 16.

29 Article 1(e) of the agreement states that: "Taking into consideration article 74 of the United Nations Convention on the Law of the Sea...the geographical coordinates of points (1) and (6) could be reviewed and/or extended and duly revised as necessary in light of future delimitation of the Exclusive Economic Zone with other concerned neighboring States and in accordance with an agreement to be reached in this matter by the neighboring States concerned."

the median line technique. In light of the fact that Israel itself adopted, in the agreement with Cyprus, the median line technique for delimitating EEZ,³⁰ it seems that this system can help as a basis for negotiations between the sides in relation to three-way convergence point. Of course, the median line technique is not the only technique for delimiting EEZ, but as stated, it appears to be an acceptable technique in international practice, which has been adopted in prior agreements between states in the area. Although the Maritime Zones Bill that is currently being legislated does not deal with the desired technique for basing an agreement between the sides for delimiting EEZ, Israel has declared that it will act in this manner in line with international law.

Delimitation of the EEZ through a conflict-resolution mechanism

In light of the lack of diplomatic relations between Lebanon and Israel, it seems as if the solution of the dispute through an agreement, as required by the principles of UNCLOS, will be difficult to impossible. In the absence of an agreement between the states, UNCLOS directs the parties to solve the dispute through a conflict resolution mechanism, as stated in Part 15 of UNLOS.³¹

Article 287 of UNCLOS lists four different possibilities for resolving conflicts in the absence of an agreement between states (by the International Court of Justice, by the International Tribunal for the Law of the Sea, and two kinds of arbitration). In the absence of an agreement on a desired mechanism, the Convention states that the default option is arbitration (Article 287(5)).

In light of the fact that Israel is not a party to UNCLOS, an international procedure cannot be forced on it to solve disputes without its agreement. Therefore, an agreement is required between Lebanon and Israel, including an agreement over the preferred procedure. Without this agreement, no international procedure for resolving the dispute can be activated. As stated, in light of the relations between the states, it seems as if difficulties will exist in obtaining an agreement on this issue.

30 See Article 1 of the agreement. It is also worth noting that on 6.9.1961 Israel ratified the Geneva Convention on the Continental Shelf from 1958.. Article 6 of this convention set a different provision regarding the delimitation of continental shelf borders: The convention states that the rule is an agreement between states and in the absence of an agreement, the median line will be the border between the countries. In light of the fact that Israel has not signed UNCLOS, it can be claimed that the issue of delimiting the continental shelf is still subject to the Geneva Convention. See clause 311 of the UNCLOS that defines relations between the Geneva Convention and UNCLOS.

31 Articles 74 (2) and 83(2) to the Convention state that: "If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV".

Policy recommendations

In light of the dead-end reached at this time, and due to a desire to bring about a peaceful resolution to the conflict, an in-depth examination is recommended, which simultaneously examines four different options for action:

1. Israel should monitor developments in the region and respond through diplomatic channels to developments such as the allocation of gas and oil exploration licenses by Lebanon in the disputed area, as a lack of a response by Israel could be interpreted by international law as consent to this activity.
2. As a basis for negotiations between the parties, it is advisable to examine and base a desired technique for the delimitation of Israel's EEZ, in line with accepted international practice.
3. An examination is recommended of international precedents for the solution of similar conflicts. In line with the results of the examination, Israel should consider joining UNCLOS which include, as stated, an obligatory arbitration procedure in the absence of an agreement between the states. Alternatively, Israel should consider the possibility of agreeing to appear before an international tribunal on this issue, without joining UNCLOS.
4. Other alternatives should be considered for joint management of the disputed area without an agreement on the actual delimitation of EEZ. Thus, for example, joint development agreements on overlapping maritime areas that are in dispute have turned into accepted practice in recent years. In this context, and in the absence of direct negotiations between the sides, Israel should examine the possibility of conducting negotiations via a third party.