



EXTRACTIVES HUB POLICY BRIEF FOR LEBANON

“Lebanon’s disputed maritime boundaries: what can be done?”

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1. Summary

After several years of delay due to political deadlocks, Lebanon has materially kicked off its journey to becoming a petroleum-producing country by completing its first licensing round to award rights for offshore petroleum development in early 2018. The first licensing round culminated in the signature of the first two Exploration and Production Agreements (EPA) for two offshore blocks, block 4 and block 9, from a total of ten. Although no drilling has occurred yet, a second licensing round was launched in early 2019 for the award of rights in offshore blocks 1, 2, 5, 8 and 10.

The 10 offshore blocks extend over the Lebanese maritime waters, which include the Lebanese Exclusive Economic Zone (EEZ). The EEZ as delimited by Lebanon gave rise to a dispute over maritime boundaries delimitation with Israel. The offshore blocks to the south of Lebanon, blocks 8, 9 and 10, extend partially over the disputed maritime area with Israel. The disputed area of approximately 873,722 square kilometers, is the result of conflicting claims made by both countries over the delimitation of their respective maritime boundaries, particularly the delimitation of their EEZ.

Operating in such area is an added source of risk which could make petroleum investments more onerous and, in certain instances, non-commercially viable. The boundary dispute could also cause international petroleum companies operating in Lebanon to avoid carrying out petroleum activities in the disputed area, thus hindering the optimization of petroleum development.

The resolution of the current maritime boundary dispute is undermined by the longstanding state of war between Lebanon and Israel. This defeats any prospects for direct cooperation to address the ongoing dispute. Further, dispute resolution mechanisms provided for under international law, namely the UN Convention on the Law of the Sea (UNCLOS), are undermined, especially given that Israel is not a signatory of the UNCLOS. Indirect negotiations between Lebanon and Israel, which have been carried out up until the present day through third parties (mainly the US), have failed to reach any solution.

Although the disputed maritime area covers a relatively small part of offshore Lebanon (*circa* 22,700 square kilometers), there is a chance that such dispute becomes aggravated given that the offshore petroleum resources are substantial for Lebanon and Israel as such resources could substantially contribute to the development of their national economy.¹ The heightened political risk created by the boundary dispute negatively affect the ability of Lebanon to attract foreign investments in its offshore petroleum sector and to optimize the development of its petroleum resources. There is an imperative to resolve or at least mitigate the risks arising from the dispute.

This policy brief first outlines the background of the EEZ boundary dispute between Lebanon and Israel and explains the challenges facing its settlement, whether through negotiation or alternatively through dispute settlement procedures available under international law, particularly the UNCLOS. Since the resolution of the dispute appears to be remote, this policy brief suggests means to at least mitigate the risks arising from such dispute through comprehensive contractual terms. The policy conclusions that will be drawn are that there is an imperative to ultimately settle the existing maritime boundary dispute and that contractual mitigation of the risks arising from such dispute, even before its final settlement, is key to not deter the interest of international petroleum companies.

¹ Leal-Arcas, R., Filis, A., and Abu Gosh, E. S., International Energy Governance: Selected Legal Issues (Edward Elgar Publishing, 2014) p.223.

2. Background

Substantial oil and gas discoveries were made in the East Mediterranean Sea, and more discoveries are expected, predominantly in the Levant Basin stretching through different territories including, among others, Cyprus, Lebanon, and Israel (see fig.1).²

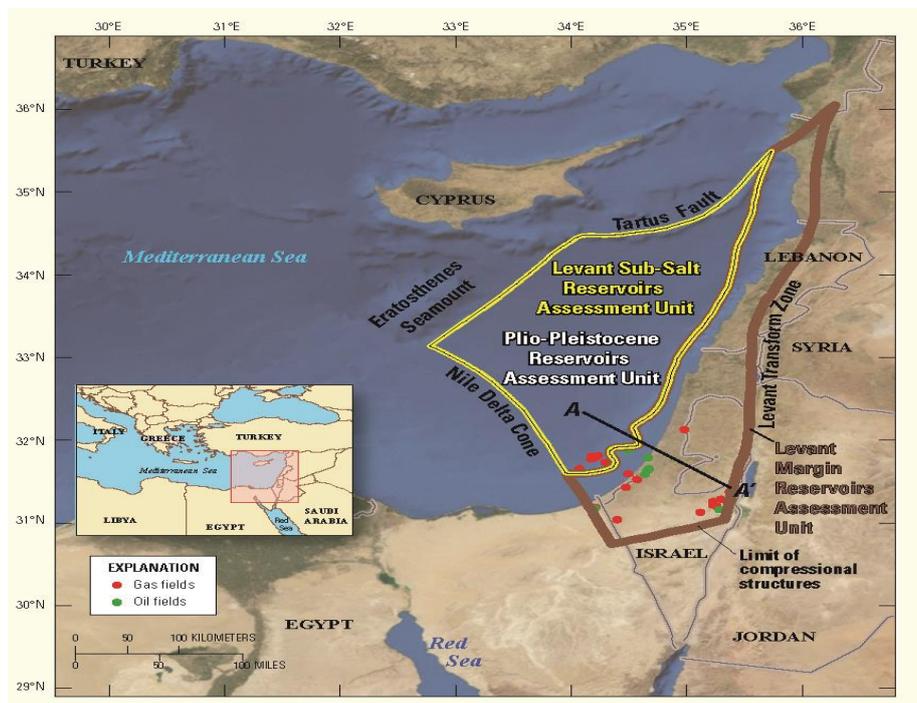


Figure 1: Map of the Levant Basin Province in the Eastern Mediterranean³

Motivated by the petroleum discoveries made in neighboring countries, Lebanon has been setting up the legal framework for petroleum development, particularly for offshore petroleum development. This started in 2010 by the enactment of the Offshore Petroleum Resources Law No. 132 dated 24 August 2010. Other laws and decrees have followed including Decree 42 of 2017, which divided the “Lebanese maritime waters” into ten blocks that are gradually offered for bidders throughout the licensing rounds launched by the government (see fig. 2). “Lebanese maritime waters” has been defined under Decree No. 6433 of 2011 as comprising regional waters and the EEZ.⁴ The delimitation of the EEZ gave rise to a maritime boundary dispute between Lebanon and Israel.⁵ The claims made by both parties as to the delimitation of their respective EEZs have led to a disputed area of approximately 873,722 square kilometers to the south of Lebanon.⁶ The offshore petroleum blocks that partially extend over the disputed area are blocks 8, 9 and 10 (see fig.2).

² Bar-Eli, A., *Netanyahu Offers Natural Gas to Greece* (Aug. 29, 2010), at <http://www.haaretz.com/print-edition/business/netanyahu-offers-natural-gas-to-greece-1.310761> (last visited 24 December 2019); Shemer, N., *Jordan to Buy Israeli Gas as Alternative to Egypt* (Oct. 6, 2010), at <http://www.jpost.com/Business/BusinessNews/Article.aspx?id=224414&R=R9> (last visited 24 December 2019).

³World Petroleum Resources Project, *Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean* (March 2010), at <https://pubs.usgs.gov/fs/2010/3014/pdf/FS10-3014.pdf> (last visited on 23 December 2019).

⁴ Lebanese Petroleum Administration, *Block Delineation*, at <https://www.lpa.gov.lb/blockdelineation.php> (last visited on 31 December 2019).

⁵ Abu-Gosh, E., and Leal-Arcas, R., *Gas and Oil Explorations in the Levant Basin: The Case of Lebanon and Israel*, in Vol 11.3 OGEI, 1-32 (2013) p.3.

⁶ Abdel-Kader, N., *Potential Conflict Between Lebanon and Israel Over Oil and Gas Resources: A Lebanese Perspective*, at <http://www.lebarmy.gov.lb/article.asp?ln=en&id=29445> (last visited on 31 December 2019).

In 2018, Lebanon awarded its first two EPAs in blocs 4 and 9 to a consortium of three international petroleum companies formed by Total (operator), ENI and Novatek. Block 9, to the south of Lebanon extends partially over the disputed area. Currently, Lebanon is accepting applications for the second offshore licensing round with blocks 1, 2, 5, 8 and 10 open for bidding. Block 8, which is adjacent to block 9, largely extends over the disputed area.

Prior to the launch of the first licensing round, attempts were made by Lebanon to delimit its EEZ. Such delimitation was carried out pursuant to the UNCLOS, which provides that States with opposite or adjacent coasts must delimit their EEZs by agreement based on international law to achieve an equitable solution.⁷ Furthermore, States must deposit charts and lists of geographical coordinates of the EEZ to the UN Secretary-General.⁸ Lebanon ratified the UNCLOS in January 1995. Although Israel is not a party to the UNCLOS, the rules for the EEZ delimitation can be found applicable to it as the provisions of the UNCLOS related to maritime boundary delimitation and resources in the undersea are accepted as being a part of the customary international law.⁹

In 2007, Lebanon and Cyprus had an agreement whereby they demarked their EEZs' limits.¹⁰ The "Point 1" (see fig. 3) was set as a provisional shared dividing point between Lebanon and Cyprus in 2007. This agreement was ratified by Cyprus but not Lebanon.¹¹

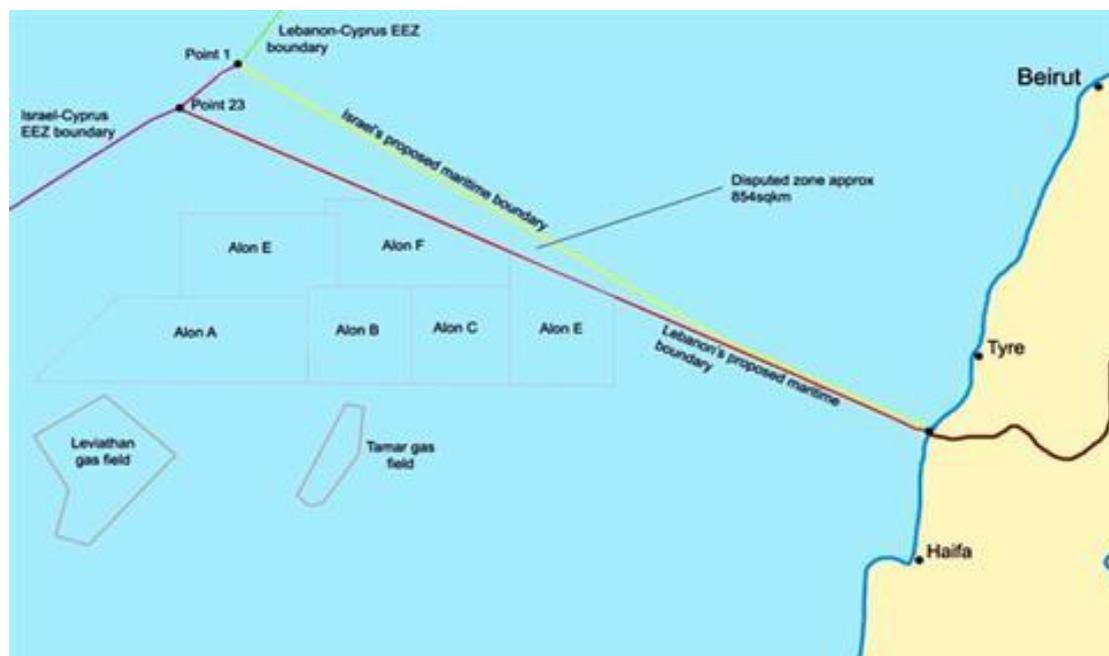


Figure 2: Map of the disputed maritime area between Israel and Lebanon¹² (area between the yellow and red line)¹³

⁷ see Art. 74, UNCLOS.

⁸ see Art. 75, UNCLOS.

⁹ Emerson, M., *Fishing for Gas in Cypriot Waters* (2012), at http://www.iai.it/pdf/GTE/GTE_PB_02.pdf (last visited 24 December 2019).

¹⁰ Grbec, M., *Extension Of Coastal State Jurisdiction In Enclosed And Semi-Enclosed Seas, A Mediterranean And Adriatic Perspective*, (Oxon, UK: Routledge, 2014) p.110.

¹¹ Matt Nash, Points of Contention, (July 13, 2011), at <http://www.nowlebanon.com/NewsArchiveDetails.aspx?ID=290840> (last visited 29 December 2019).

¹² Butt, G, 'Lebanon's Gas Hopes Threatened by Corruption' (Petroleum Economist, Oct. 28, 2019), at <https://www.petroleum-economist.com/articles/upstream/exploration-production/2019/lebanon-s-gas-hopes-threatened-by-corruption> (last visited on 22 December 2019).

¹³ Map published by The Daily Star – Lebanon (26 July 2011).

In July and October 2010, Lebanon deposited with the UN Secretary-General charts and lists of geographical coordinates correcting the end point ("Point 23") which is seventeen kilometers southwest of "Point 1" and overlapping the area claimed by Israel today (see fig. 3).¹⁴

However, in December 2010, an agreement was concluded between Cyprus and Israel on the delimitation of the EEZ relying on the coordinates stipulated in the 2007 Cyprus-Lebanon agreement, without considering the corrected version.¹⁵ Although Lebanon protested against the 2010 Israel-Cyprus Maritime Agreement to the United Nations, Israel still unilaterally claimed its northern limit of its maritime space with the United Nations on 12 July 2011 based on the Lebanon-Cyprus agreement (i.e. point 1). On the other hand, Lebanon formally proclaimed its EEZ in 2011 by virtue of Decree No. 6433.

Notwithstanding the foregoing, and as confirmed in article 74 of the UNCLOS, the delimitation of the EEZ is an area of international law and such delimitation could not solely rely on the individual will of the concerned States.¹⁶ Therefore, in the context of EEZ delimitation, any unilateral claim can in no way be binding to any other State without its consent. Therefore, defining a domestic framework will have no effect in resolving the existing dispute.

Resolving the boundary dispute proves to be challenging. The state of ongoing war between Lebanon and Israel and the latter not being a signatory of the UNCLOS render the dispute resolution procedures available under international law, particularly under the UNCLOS, ineffective.

3. Challenges Undermining International Dispute Resolution Mechanisms

Negotiation is the favored mechanism through which maritime disputes are resolved.¹⁷ However, Lebanon has no intention of engaging in any direct negotiation with Israel as the latter's existence is not recognized by Lebanon, which has no direct diplomatic channels with Israel. Negotiating a joint development agreement over the disputed maritime area is not a viable option given current circumstances.

Indirect negotiation led by third parties to resolve the maritime boundaries dispute has also failed to reach a solution. Further, the UNCLOS lists several binding dispute settlement procedures to resolve maritime disputes between States. It provides four mechanisms: (i) the International Tribunal for the Law of the Sea, (ii) the International Court of Justice, (iii) Arbitration by a special arbiter, or (iv) Arbitration by a panel of experts approved by the States that are parties to the UNCLOS. Despite the availability of these mechanisms, complications exist as to their ability to resolve the Lebanon-Israeli maritime boundary dispute.¹⁸

¹⁴ United Nations, Submission In Compliance With the Deposit Obligations Pursuant to the UNCLOS: Lebanon (24 November 2014), at <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/LBN.htm> (last visited 29 December 2019).

¹⁵ United Nations, *Agreement Between the Government of the State of Israel and the Government of the Republic of Cyprus on the Delimitation of the Exclusive Economic Zone* (17 December 2010), available at http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/cyp_isr_eez_2010.pdf (last visited 24 December 2019).

¹⁶ Green, L. C., *The Anglo-Norwegian Fisheries Case, 1951* (I. C. J. Reports 1951, P. 116), in Vol 15.3 The Modern Law Review, 373-377 (1952).

¹⁷ Abu-Gosh, E., and Leal-Arcas, R., *supra* at 27.

¹⁸ *see* Part XV, UNCLOS

As previously mentioned, the Lebanon-Israel relationship is shadowed by a state of war, with Lebanon not recognizing the existence of the State of Israel. Reaching a bilateral agreement on the EEZ boundary delimitation, or even directly negotiating potential solutions to the dispute, are considered impossible. The frustrated political position that each State has towards the other make recourse to available maritime dispute settlement procedures more complicated. A requirement for adjudicating disputes between States by a third-party adjudicator is obtaining the consent of all States that are parties to the dispute. This consent can be vested in several forms.

In the context of dispute settlement procedures under the UNCLOS, the consent could be materialized by acceding to or ratifying the UNCLOS, which entails the consent to the jurisdiction of the dispute settlement procedures offered under the UNCLOS (i.e. ITLOS and Arbitration). Also, States that did not accede or ratify the UNCLOS can express their consent to have their dispute resolved via the available dispute settlement procedures under UNCLOS.

Even though the provisions related to maritime boundary delimitation and resources in the undersea are accepted as being a part of the customary international law, the main complication confronting the resolution of the EEZ boundary delimitation dispute between Lebanon and Israel via the UNCLOS dispute settlement procedures is the absence of all disputed parties' consent.

It can be argued – by reference to the preamble of the Cyprus-Israel bilateral agreement – that Israel has accepted the application of the UNCLOS. This is based on the provisions in the preamble recalling the “*provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, relating to the Exclusive Economic Zone*”. In addition, both states provided as basis for the agreement the “*rules and principles of the international law of the sea applicable to the matter*”. However, this argument does not provide certain grounds to activate dispute settlement procedures under the UNCLOS to which Israel could object by arguing that it has consented to any third-party adjudication.

Although Lebanon is a party to the UNCLOS, Israel is not, and this frustrates the applicability of the UNCLOS dispute settlement procedures. Under the current political unrest and given the absence of consent of all disputed parties, the resolution of the boundary dispute between Lebanon and Israel proves to be a source of complications hindering the optimal development of the petroleum resources.

4. Mitigating the Risk of Investing in Disputed Maritime Waters

In the context of petroleum development, the boundary disputes are exclusively an inter-States issue. Private investors are not entitled to interfere in such disputes whether to affirm or contest to a claim presented by a certain State. However, such disputes might affect the contractual relationship that could exist between the investors and any of the disputed States.¹⁹

Maritime disputes increase the investment risk borne by petroleum companies and can possibly make the investment commercially nonviable. The risk generated by boundary disputes concerns the scope of the geographic area of the upstream petroleum agreement (e.g. EPA) signed between the State and the petroleum companies.²⁰ However, this risk can be mitigated or shifted to another party when operating in uncertain waters. This can be achieved through contractual clauses in the petroleum

¹⁹ Martin, T., *Energy and international boundaries*, Research Handbook on International Energy Law 181 (Talus, K.: Edward Elgar M.U.A, 2014) p.194.

²⁰ Pratt, M., and Smith, D., *How to Deal with Maritime Boundary Uncertainty in Oil and Gas Exploration and Production Areas* (December 2007), at www.aipn.org (last visited 24 December 2019) p.25.

agreement addressing the parties' rights and obligations in the light of circumstances arising from non-delimited or disputed boundaries.²¹

Standard petroleum contracts do not usually deal with the disputed maritime areas' effect on the rights and obligations of the parties. For example, it could be envisaged that a petroleum company starts operations in the contracted area, which constitutes all or part of the disputed area, and the neighboring State (i.e. the non-host State) decides not to tolerate any further operations. In this case, the petroleum company might fail to meet the minimum work requirements under the contract, which could lead to the latter's cancellation. This situation can be mitigated by inserting specific clause in the contract such as a clause stipulating that when the company deems that operations are at risk; its minimum work obligations will be suspended, and the contract shall not be cancelled and will remain in force until the settlement of the maritime boundary dispute.²²

Moreover, indemnity clauses are advised to be meticulously negotiated in order to provide for the appropriate indemnification should the petroleum company incur losses arising from the maritime boundary disputes. Along these lines, a force majeure clause should be negotiated and drafted to take into account the implications of the boundary dispute and to include potential claims that may be advanced by a non-host State.²³

The Lebanese model EPA, issued by Decree No. 43 of 2017 (as amended), does not address the risk of maritime boundary dispute on the parties' rights and obligations. Although the model EPA deems trans-boundary hostilities as an event of force majeure, the EPA may not account for all the situations that may affect the implementation of the EPA due to the existing maritime boundary dispute.

It is apparent that resolving the boundary dispute between Lebanon and Israel is remote. Therefore, negotiating comprehensive contractual terms mitigating the risks of the boundary dispute would help to preserve the commercial viability of the investment as well as avoid scenarios where petroleum resources remain undeveloped due to the dispute.

5. Conclusions

International law, specifically UNCLOS, has provided a framework for States with adjacent or opposite coasts to delimit their maritime zones' boundaries primarily through an agreement between them based on an equitable solution. However, the Lebanon-Israel nexus proves that reaching such agreement is very problematic and makes inoperable the dispute resolution procedures available under international law.

The maritime boundary dispute between Lebanon and Israel would negatively affect the prospects of petroleum development. Such disputes are likely to create political instability and uncertainty, which aggravate the investment risk and could deter the interest of international petroleum companies.

As such, resolving the maritime boundary dispute would be the ideal scenario for providing certainty to petroleum companies considering investing in Lebanon's offshore petroleum sector. If such objective is not achievable, at least in the short term, the risks arising from the boundary dispute could be mitigated, to the extent possible, through well negotiated contractual terms included in the EPA (i.e. the host government agreement).

²¹ *ibid* at 27.

²² *ibid*.

²³ Martin, T., *supra* at 194.

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