

Some Observations on the Agreement between Lebanon and Israel on the Delimitation of the Exclusive Economic Zone

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Introduction

On 11 October 2022, Lebanon and Israel reached a historic agreement to delimit the two countries' territorial seas and Exclusive Economic Zones (EEZ) in the Eastern Mediterranean Sea ('the Agreement'). The Agreement is ground-breaking for several reasons.

First, it is the first maritime boundary agreement reached between countries that have no diplomatic relations. Israel and Lebanon have technically been at war for almost 75 years. The demarcation of the land boundary remains disputed - a temporary line of withdrawal (the 'Blue Line') is monitored by the [United Nations](#).

Second, it is also the first maritime delimitation agreed between adjacent states in the Eastern Mediterranean. Previous delimitation agreements in the region only involved opposite states, for instance Cyprus-Egypt, Cyprus-Lebanon, Cyprus-Israel and Greece-Egypt (see our previous analysis [here](#)).

Third, it is the first maritime boundary dispute in the Eastern Mediterranean resolved through indirect negotiations as part of a mediation process facilitated by the United States. The maritime boundary deal will not be a direct agreement between Israel and Lebanon, but take the form of [two separate agreements with Washington](#): one between Israel and the United States and one between Lebanon and the United States. Yet, the Agreement refers solely to Lebanon and Israel as 'Parties'.

Despite the peculiar method used for its conclusion, the agreement constitutes a treaty under international law. A treaty is an agreement, 'embodied in a single instrument or in two or more related instruments', concluded between states, in written form, and governed by international law ([Art 2\(1\)a VCLT](#)). The Parties have 'given a promise or undertaking from which flow international legal rights and duties' (see 1962 [Sep. Op. Judge Jessup](#), p 402). What matters is the intention of the Parties to establish a 'permanent and equitable' maritime boundary (Lebanon-Israel Agreement Section 1(E)). The form or designation of the instrument is not decisive of its status as an international treaty ([2015 Philippines v China, Jurisdiction & Admissibility Award paras 213-214](#)). A consent-based, freely negotiated and adopted, maritime delimitation agreement, is by definition, in accordance with customary law as reflected in Articles 74(1) and 83(1) of United Nations Convention on the Law of the Sea (see [2014 Peru v Chile para 179](#)). This method of treaty-making, albeit unusual, could also apply to other situations where state parties to a maritime dispute have no diplomatic relations.

Lebanon's President, Michel Aoun, [said](#) the deal 'satisfies Lebanon, meets its demands, and preserves its rights to its natural resources'. Israel's Prime Minister, Yair Lapid, [called](#) the deal 'a historic achievement that will strengthen Israel's security, bring billions into Israel's economy and ensure stability on the northern border.' The UN Security Council [said](#) in a press statement that the deal 'will contribute to the stability, the security, and the prosperity of the region'.

The text of the Agreement is available [here](#). It is expected to be ratified by both countries later this year. The Middle East Strategic Perspectives also has a useful [report](#) on the Agreement.

This post provides some observations on the Agreement and implications for the Cyprus-Lebanon-Israel tripoint delimitations in overlapping maritime areas between the three coastal states.

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Substance of the Agreement

The Agreement comprises four sections:

- Section 1 stipulates the exact location of the 'permanent and equitable' maritime boundary line;
- Section 2 regulates the terms of exploration and exploitation of a specific transboundary hydrocarbon prospect (referred as 'Prospect' in the Agreement);
- Section 3 deals with all other transboundary deposits which may be discovered in the future; and
- Section 4 relates to the settlement of disputes, ratification, and entry into force.

The agreed boundary

The main text of the Agreement does not explicitly identify the maritime zones being delimited. However, the accompanying text refers to delimitation of the territorial sea and the EEZ. Like previous delimitation agreements in the region ([2003 Egypt-Cyprus / 2007 Lebanon-Cyprus / 2010 Israel-Cyprus](#)), there is no mention of the continental shelf. Of course, this omission does not entail that the parties disregard the concept of the continental shelf, or that they hold the (mistaken) view that the EEZ has absorbed the continental shelf. It is more likely that the regional states opted for this course of action to avert complications that would have occurred from possible invocation of the geological criterion when seeking to delimit entitlements to the continental shelf.

The agreed maritime boundary was seemingly drawn based on the equidistance method. The text of the Agreement refers to an 'equitable resolution' of the maritime dispute [Preamble, Section 1(E)]. It is worth reiterating that the median/equidistance line method may lead, in most cases, to an equitable result ([Jan Mayen case](#), paras 56, 64). This is consistent with regional state practice: the other regional agreements, referred to above, also followed the median line (see [here](#) for a complete account).

Moreover, the Agreement has a 'without prejudice' clause [Section 1(B)] concerning the land boundary dispute between the two states, which remains unresolved. The Agreement envisages that the waters immediately adjacent to the coast remain undelimited. Israel has reserved a maritime area close to the disputed land boundary, which is demarcated by buoys, to serve as a '[security zone](#)'.

The 'Qana Prospect'

Section 2 regulates the exploration and exploitation of a specific 'hydrocarbon prospect of currently unknown commercial viability' (shown on the map as 'Qana Prospect'). The Qana Prospect is believed to straddle the Lebanon-Israel maritime boundary. The two states and their respective operators are tasked with establishing a mutually acceptable regime for exploitation which preserves the rights of all parties and 'maximizes efficient recovery, operational safety, and environmental protection...in accordance with good petroleum industry practice' [Section 2(B)].

The Agreement provides that the Lebanese-appointed operator will explore and exploit the Qana Prospect 'exclusively for Lebanon', based on a financial agreement to be reached with Israel on 'the scope of Israel's economic rights in the Prospect' [Section 2 (C), (D) & (E)]. The Agreement allows Lebanon as the 'managing State' to authorise an international operator to develop the Prospect, subject to paying a share of the revenues to Israel. According to this arrangement, Lebanon is acting as though it were developing its 'exclusive' resources by applying its own licencing and regulatory procedures to the area, and Israel only maintains an entitlement to 'economic rights' [Section 2 (E)].

Through Section 2, both states renounce to unilateral action in the Qana Prospect and instead establish a system of prior notification and coordination. This is consistent with [regional state practice in the Eastern Mediterranean](#) and customary international law. No state may exploit a common deposit before negotiating the matter in good faith with neighbouring states with a view to concluding an agreement ([Crawford](#) at 514). However, the Agreement does not refer to a procedure to be followed if negotiations between the Parties and the private sector operators on the Qana Prospect's commercialisation and apportionment of economic benefits are deadlocked.

Arguably, determining the commercial viability of a field is not carried out according to political criteria; it is exclusively a commercial decision. A private sector operator is unlikely to agree to develop a field, especially where the deposit straddles an international boundary, if the deposit is commercially uncertain. If the Qana Prospect is declared commercially viable, the Lebanese-appointed operator will begin negotiations with Israel on the approximate proportion of the deposit on either side of the boundary line according to, first, the assumptions and interpretations of seismic data applied and, second, the proportions of gas on each side of the boundary line. Determining this sensitive issue is far from simple and can lead to protracted unitisation disputes, as [recent examples](#) in the Eastern Mediterranean have shown.

Other transboundary deposits

Section 3 of the Agreement provides the procedure in the event of a discovery of a single accumulation or deposit of natural resources, other than the Qana Prospect, which can be exploited from either side of the agreed boundary. The Parties undertake to notify the United States and request the latter to facilitate the necessary arrangements for the 'most effective' exploration and exploitation of the transboundary deposit [Section 3(A)].

This transboundary deposit clause has three basic elements. First, the clause applies not only to transboundary deposits of hydrocarbons (such as natural gas and oil), but to other mineral deposits which may straddle the boundary (such as sand and gravel). Second, the clause applies when a transboundary deposit can be exploited from either side of the boundary. The premise for the exploitability criterion is that, for example, Israel's operators drill a well on Israel's side of the maritime boundary and the well is suspected to exploit seabed resources flowing from Lebanon to Israel. If these two elements are fulfilled, the third element mandates that the two states share information with the United States and pursue 'discussions' to facilitate the coordinated development and exploitation of the transboundary resource.

There is no express prohibition on developing all transboundary seabed deposits absent a United States-facilitated arrangement in the Agreement. Yet, its overall context, object, and purpose indicate that it is founded on the principle that the Parties, 'including any operators with relevant domestic rights to explore and exploit resources', must coordinate their actions, with respect to the development of transboundary, or potentially transboundary, seabed deposits. For instance, for the Qana Prospect, the Agreement requires Parties and their operators to develop a system of notification, including for assessing and reaching consensus with respect to hydrocarbon activities that may straddle the delimitation line, 'in accordance with good petroleum industry practices' [Sections 2(F) & (G)].

Good industry practice on transboundary deposits requires that operators of one state enter into a unitisation agreement with the other state's operators and jointly develop and exploit the transboundary reservoir as a unit (see also [Becker-Weinberg & Van Logchem](#)). Yet, operators remain answerable to their authorising state for resource allocation, revenue sharing, and taxation purposes. Consequently, determinations and subsequent re-determinations of their share of production are likely to be of economic interest to the host states. Therefore, the host governments will likely seek to ensure that the determination and re-determination methods and procedures are accurate and fair when deciding to approve the unitisation agreement and any subsequent revision. Thus, although the implementation of the Agreement relies heavily on private sector participation, the two states could influence the contents of the unitisation agreement by withholding approval for the unitisation agreement.

In all, the Agreement includes a transboundary deposit clause, but leaves several gaps and makes no reference to the concept of unitisation. Importantly, it does not provide any compulsory third-party dispute resolution procedure to which the parties could resort if they cannot agree on 'the manner in which the accumulation or deposit may be most effectively explored and exploited' [Section 3(A)]. More importantly, it provides no framework of cooperation or a system of redress for operational events which could lead to environmental disasters, such as oil spills. The Agreement does require private sector operators to 'comply with the applicable laws and regulations in the area' [Section 2(B)]. However, it does not specify whether this should be taken to include the existing and/or future environmental laws of Lebanon or Israel, or both. If both, then to what extent are those laws compatible?

Dispute Settlement

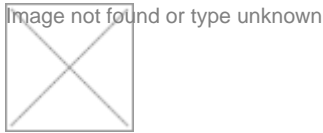
The only dispute resolution clause in the Agreement [Section 4(A)] stipulates that 'any differences concerning the interpretation and implementation of this Agreement' must be resolved 'through discussion facilitated by the United States'. A discussion facilitated by the United States is not a binding form of resolution. It can include anything from direct or indirect consultation, negotiation, mediation, and/or even expert determination. Thus, it would be preferable for the Parties to set specific dispute resolution procedures and time limits on each mode of resolution to ensure the timely resolution of a dispute. What if the parties refuse to work with the United States? What if the domestic politics change and Lebanon goes to Paris and Israel goes to Washington?

Moreover, the clause overlooks the details of what might be required should a 'disagreement' arise between the Parties, or their operators on either side of the boundary. For example, given the broad language of this dispute settlement clause, resort may be had to 'US-facilitated discussion' for any dispute on the interpretation and implementation of the Agreement. This clause fails to acknowledge that the nature of some issues in transboundary hydrocarbon unitisation can vary from relatively minor (e.g., a dispute over whether an additional well should be drilled) to very serious (e.g., an allegation of wilful withholding of critical technical data by one party possibly causing material damage to the interests of the other party). The clause may encourage parties to elevate every mere disagreement about the performance of their cooperation to the level of a formal US-facilitated negotiation/mediation procedure. This may very well impact the intended commercial purpose of the Agreement and any individual unitisation agreements concluded pursuant to it.

Future Delimitations

The Agreement has inevitably implications for pre-existing delimitations in the region. As noted, Lebanon signed an EEZ delimitation agreement with Cyprus in 2007, which has yet to enter into force. Israel also concluded an EEZ delimitation agreement with Cyprus in 2010, which is in force. Both delimitation lines were based on the median line.

Israel and Cyprus utilised the southernmost point (Point 1) of the Lebanon-Cyprus agreement as the starting point for the delimitation of their maritime boundary. This development triggered a reaction from Lebanon, which did not contest the Lebanon-Cyprus western sector of their maritime boundary but did contest the sector with Israel.



Cyprus-Israel-Lebanon Maritime Boundary

After the delimitation of the maritime zones between Israel and Lebanon, it is evident that revising the boundaries drawn by virtue of the Israel-Cyprus and Lebanon-Cyprus agreements is necessary. Although the agreement between Lebanon and Cyprus is not in force, neither Party has expressed any intention to terminate it. To the contrary, both states have been acting as if the agreement is valid. For instance, the coordinates submitted by Lebanon to the United Nations as regards the western limit of its EEZ coincide with the median line agreed with Cyprus in 2007. With the above in mind, the customary obligation, enshrined in Article 18 of the [1969 Vienna Convention on the Law of Treaties](#), 'to refrain from acts which would defeat the object and purpose of' the 2007 agreement, is arguably applicable and the provisions of the said agreement may be recalled in the current situation.

It is important to stress that the Israel-Cyprus and Lebanon-Cyprus delimitation agreements include clauses aiming at addressing any future developments with respect to the extreme ends of the agreed boundaries.

Article 3 of the 2010 Israel-Cyprus agreement says:

...if either of the two Parties is engaged in negotiations aimed at the delimitation of its Exclusive Economic Zone with another State, that Party, before reaching final agreement with the other State, shall notify and consult the other Party, if such delimitation is in connection with coordinates 1 or 12.

Article 1(e) of the same agreement stipulates:

...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.

Similar provisions were included in Article 3 and Article 1(e) of the 2007 Lebanon-Cyprus agreement.

These provisions give Cyprus the right to request the commencement of consultations with Israel and Lebanon to adjust their respective maritime boundaries. At any rate, Israel and Lebanon should have notified Cyprus during the negotiations that led to the conclusion of the Agreement. If they had not done so, such omission could be redressed through ex-post consultations given Cyprus' [good relations with both Israel and Lebanon](#).

Concluding remarks

The Lebanon-Israel maritime boundary agreement, whilst not perfect, may well be a win-win-win proposition if implemented in good faith, not just for Israel and Lebanon, but also Cyprus. It may bring security, stability, and mutual economic benefits. It also promotes the rule of international law, peaceful settlement of disputes, and regional cooperation. An international maritime boundary is a permanent unchanged reality - it is a symbol of peace and stability. This is exactly what Eastern Mediterranean states need most, now more than ever.

The Eastern Mediterranean Sea remains one of the most geographically and geopolitically complex seas in the world. It features multiple, longstanding, and competing territorial and maritime jurisdictional claims among several states. Yet, despite its notorious reputation as an arena for conflict, the majority of Eastern Mediterranean states have made [considerable progress in recent years](#) to resolve their outstanding disputes and forge regional cooperative arrangements, notably over seabed energy resources. The agreement between Lebanon and Israel is the latest example in this direction.

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