

Executive Insight - Who owns the sea?

In January 2007, Cyprus and Lebanon, both signatories to the United Nations Convention on the Law of the Sea (UNCLOS 1982), signed an agreement on the delimitation of their exclusive economic zones (EEZ) based on the internationally accepted method of equidistance, which consists of determining a median line between two opposite or adjacent coastlines.

Two years later, major offshore natural gas reserves were discovered off the Israeli coast with the potential to satisfy Israel's domestic energy needs and make the country a substantial exporter. In January 2009 the Tamar Field was discovered near the port city of Haifa containing 240 billion cubic metres (BCM) of natural gas, while the 14 BCM Dalit Field near the northern city of Hadera was tapped in April that year and in June 2010 the world's largest gas discovery of the decade was made at the Leviathan off the coast of Haifa, with approximately 460 BCM of natural gas. In 2010, the United States Geological Survey estimated that the entire Levant Basin, encompassing parts of Israel, Lebanon, Syria and Cyprus, could contain as much as 1.7 billion barrels of recoverable oil and 3.45 trillion cubic meters of recoverable natural gas. For comparison: Iraq, ranked as the 11th country worldwide in proven gas reserves, has 3.1 trillion cubic meters of gas.

In July 2010 and October 2010, Lebanon submitted to the United Nations the charts and lists of geographical coordinates of points marking the Southern Median Line and the Southern Part of the Western Median Line, to delimit its EEZ.

In December 2010, Israel and Cyprus concluded and ratified their own agreement on the delimitation of the EEZ. Israel deposited its own unilateral claim to the northern limit of its maritime space with the United Nations on July 12, 2011. Furthermore, in August 2011, Lebanon's Parliament enacted a maritime boundary law (Law number 163). The relevant coordinates were subsequently determined by governmental decree in September 2011 (Decree number 6433) and were made subject to possible amendments in the future based on negotiations with neighboring states.

Wherein the problem lies

The delimitation of maritime areas between two or more states is governed by international law as mainly reflected in UNCLOS, precedence of the International Court of Justice (ICJ) and customary practice of coastal states. International law provides that coastal states are invited to seek the delimitation of their maritime boundaries by agreement and must show evidence of having exhausted all routes through negotiations (although not necessarily direct negotiations) before resorting to any other settlement procedures. The existence of overlapping claims over maritime zones is not an unusual occurrence, and has in fact become more frequent in recent decades, with a tremendous increase in maritime space coming under the jurisdiction of coastal states.

The maritime area of overlap between Israel and Lebanon covers an estimated 873,722 square kilometers, running from the coast to the median line between Cyprus and Israel and Cyprus and Lebanon. Both states claim that this area falls within their jurisdiction based on differing calculations of the outermost limits of their respective EEZs. Lebanon considers Point 23 on the list of geographical coordinates, which is claimed by Lebanon to be tri-equidistant between the three countries, as the endpoint of its southern maritime border with Israel, and the southwestern limit of its EEZ. On the other hand, Israel considers Point 1, which falls around 17 kilometers north of Point 23, as the endpoint of its northern maritime border with Lebanon.

Does Lebanon have a stronger case?

Lebanon claims its coordinates are based on the internationally recognized equidistance method, which remains the most frequently adopted method for delimiting maritime boundaries between states. This meets the criteria of geographical factors and customary international law that govern the delimitation of maritime areas between states. It is also consistent with Lebanon's desire to uphold international law and its commitments as a signatory to UNCLOS, to which Israel is not a party.

Lebanon claims that Point 23 was determined using objective unambiguous mathematical principles and results in the equitable distribution of maritime space. Unless successfully contested, this should in principle correspond to the 'equitable/relevant circumstances principle' governing the delineation of EEZs.

It is not clear what reasonable factors, technical or otherwise, led Israel to determine Point 1 as the northwestern endpoint to its maritime border. Israel's position reflects a lack of consideration for both equitability and relevant circumstances, relying solely on the coordinates of a provisional end point in the agreement between Cyprus and Lebanon.

Moreover, the Cyprus-Lebanon agreement confirms the provisional nature of Point 1 in accordance with customary international maritime law. The agreement states that "the geographical coordinates of Points 1 and 6 could be reviewed and/or extended and duly revised as necessary in light of further delimitation of the EEZ with other concerned neighboring states and in accordance with an agreement to be reached in this matter by the neighboring states concerned". Thus, it can be argued that such a provisional point cannot be taken as a basis for the final (let alone unilateral) delimitation of the maritime boundaries by Israel and would not meet the requirements of the 'equitable solution' principle set by Article 74 of UNCLOS.

Lebanon may argue that although Israel is not party to UNCLOS, previous practice confirms that Israel accepts the equidistance principle. In the delimitation of the maritime boundaries between Israel and Jordan in the Gulf of Aqaba, Israel drew its maritime boundary between the coastal point and a tri-equidistance point, that is to say of equal distance from the three coasts at the head of the Gulf.

Lebanon may also argue that Israel's claim is undermined by its previous acceptance of the median line with Lebanon as a de facto boundary between the two countries, as demonstrated in its delineation of hydrocarbon licensing blocks along its northern maritime border — notably the Alon D and F Blocks. This analysis is supported by ICJ precedence in the case of Tunisia-Libya 1982 where a line drawn by the Italian colonial administration in 1919 was recognized by the ICJ as a de facto working boundary that had been observed over a considerable period of time and respected by both parties in issuing their oil exploration concessions.

Finally, it could be noted that there are strong indications that Israel's claims over the overlapping area are of a political nature and are not based on any declared solid legal or technical foundations beyond the adoption of Point 1 in the agreement between Lebanon and Cyprus.

In summary, the Lebanese legal position is relatively strong as it is based on the principle of equidistance, which is a commonly applied method in such disputes. However, a lasting settlement may also have to take into consideration any other relevant circumstances "in order to achieve an equitable solution" as per Article 74 of UNCLOS.