



The New Era of Maritime Boundary Disputes: The Case of Lebanon and Israel

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Maritime legal issues related to our oceans are often considered niche areas of the law. However, increased global energy consumption and reliance on fossil fuels have renewed State interest in long-forgotten maritime boundary disputes. What would appear to laypeople as a simple line-drawing exercise can contribute to, or exacerbate, geopolitical tensions around the world – making the task of delimiting maritime boundaries incredibly complex and at times, high risk.

The United Nations Convention on the Law of the Sea (UNCLOS) sets out a system of rules governing use of the ocean and its resources.¹ A goal of the Convention was to secure the rights of sovereign states' claims to ocean resources both in the water column and the seabed or subsoil below.² To accomplish this goal, UNCLOS set maritime boundaries for coastal states where they may exercise their sovereignty, particularly through access to natural resources.³

Each state is entitled to a “territorial sea up to a limit not exceeding 12 nautical miles...”⁴ within which the State is sovereign as it relates to the sea, airspace, seabed, and subsoil.⁵ The contiguous zone, an additional 12 nautical miles beyond the territorial sea,⁶ is where a State is permitted to “exercise the control necessary”⁷ to prevent violations of domestic “customs, fiscal, immigration, or sanitary laws and regulations”⁸ within its territorial sea, and may enforce those laws if violated within its territorial sea.⁹ Lastly, the Convention included the novel addition of the exclusive economic zone (EEZ), which extends no more than 200 nautical miles from the baselines used to measure the territorial sea.¹⁰ Within the EEZ the state has the rights to the natural resources in the ocean, seabed, and subsoil, and to conduct activities such as energy production (from wind or water, for example).¹¹

When UNCLOS was drafted, some member states were able to determine their boundaries quite easily through negotiated bilateral agreements, but many boundaries remain contested: as of 2020, out of 460 maritime boundaries, only 280 have been agreed upon.¹² The expansion from the customary territorial 12 nautical miles to 200 nautical miles gave states new rights that suddenly needed defense - leading to a slew of new conflicts to be resolved.¹³

The drafters of UNCLOS assumed States would be able to use diplomatic means to negotiate boundaries. Part XV of UNCLOS establishes the dispute settlement mechanism to be followed by member states.¹⁴ Member states must first attempt to settle the dispute by “any peaceful means of their own choice,”¹⁵ but if a settlement has not been reached by the parties, they are obligated to follow the compulsory dispute settlement procedure outlined in the Convention: a tribunal which culminates in a final, binding decision.¹⁶ As mentioned previously, 39% of maritime boundaries have yet to be delimited through negotiation, and rarely do disputes actually go to a tribunal for binding adjudication.¹⁷ In the five decades since the formation of

UNCLOS, only twenty-nine other cases have gone to the International Tribunal for the Law of the Sea.¹⁸ In some cases, decades go by after failed negotiations with no resolution in sight while economies grind to a halt or geopolitical tensions rise.

A classic and current example of this folly is the maritime boundary dispute between Lebanon and Israel. In 2009, natural gas fields were discovered in the Eastern Mediterranean Sea Levant Basin, which sits off the coast of Israel and Lebanon.¹⁹ A United States Geological Survey in 2010 estimated the Levant Basin had nearly 1.7 billion barrels of oil and 122 trillion cubic feet of undiscovered natural gas.²⁰ Naturally, this discovery had significant implications for the energy security of both Israel and Lebanon²¹ and both states quickly sought to establish their claim of ownership to the fields.²² This led to a series of contrasting unilateral declarations made more complicated by the existence of bilateral agreements with other states²³ and the fact that Israel and Lebanon were, and continue to be, technically at war with one another.²⁴ Though Israel is not a member of UNCLOS,²⁵ each state unilaterally submitted to the UN its charts and coordinates establishing the EEZ boundaries,²⁶ resulting in a triangular-shaped area that has been hotly contested for over a decade.²⁷

The first round of negotiations over the EEZ boundaries were from 2010 to 2012, with US diplomat Frederic Hof at the helm.²⁸ Neither state could agree on the line proposed by mediators (called the Hof Line) and negotiations deteriorated.²⁹ In 2020, indirect negotiations began again; this time Lebanon asserted its southern boundary even further into claimed Israeli territory at Line 29.³⁰ In 2022, American mediator Amos Hochstein recommended beginning the negotiations at Line 23 (the original line asserted by Lebanon), and thus far, negotiations between the countries seem promising (albeit tense).³¹ Senior officials on both the Israeli and Lebanese sides have mentioned a possible resource-sharing solution, where Israel would permit

Lebanon to have exploration rights south of Line 23 into the Qana Prospect.³² The specifics of this plan remain undetermined as the parties continue their indirect negotiations at the time of this writing. Notably, neither side has suggested one of the four tribunal options listed in UNCLOS even though these negotiations have proved fruitless over the last decade. Should Lebanon and Israel opt for a resource-sharing option, the million-dollar question is what this departure from traditional boundary dispute settlement means for the future of UNCLOS as a dispute settlement mechanism.

For hundreds of years before UNCLOS, the oceans were free from regulation and territorial claims, but over time states recognized the value in staking their claim to the ocean in the interest of national security and the protection of commercial activities. In the 1600s, Hugo Grotius, a Dutch lawyer, published *Mare Libertum (On Freedom of the Sea)*, in which he recognized a form of territorial control over the ocean which was akin to territorial land claims.³³ In his view, a nation could control the ocean around their coastline only as far as their cannons could shoot in defense from the shore; thus the three nautical mile “cannon shot rule” was born.³⁴ The cannon shot rule was internationally recognized, but larger coastal states, like the United States, increasingly grabbed at opportunities to expand boundaries further and further to sea: President Truman’s 1945 proclamation establishing a fishery conservation zone outside the territorial or contiguous sea paved the way for the 200 nm EEZ.³⁵

The challenges of the twenty-first century make traditional maritime boundaries, and their dispute resolution mechanisms, unreliable tools for the future. Human driven climate change has contributed to rising sea-levels making the process of delimitation more unpredictable than ever.³⁶ Geopolitical disputes may bleed into maritime boundary delimitation or dispute resolution, making an already tense process more complex, as seen in the case of Lebanon and

Israel. Further, the resolution of disputes through UNCLOS' procedure is costly in both time and resources. States like Lebanon, whose economic and energy security depend on the ability to exploit resources sooner rather than later, do not have the luxury of waiting for a tribunal to hand down a judgment that might not even be accepted by its opposition. As any first-year law student studying the law of capture knows, resources in the ocean, whether it be fish or natural gas, do not respect the lines man has drawn on the surface.

The Lebanon-Israel case represents a significant departure from maritime boundary negotiations that have historically sought to draw a line in the sea that both parties can live with. That Lebanon and Israel are considering a proposed resource sharing model where both states (or depending on the circumstance, multiple states) exploit the natural resources and profits are shared amongst them with a third-party moderator to guide the process is in stark contrast to the traditional line drawing model.³⁷ If Lebanon and Israel are successful in negotiating an agreement based outside the realm of sovereignty or ownership of the sea, what does this signal for other conflicts over maritime boundaries, like in the South China Sea, for example? There, UNCLOS arguably failed – the dispute over boundaries went all the way to a tribunal (as prescribed in UNCLOS) and yet China remains steadfast in its refusal to recognize the judgment entered against it.³⁸

Alternatives, like joint management of resources provide a modern mechanism for resolving these disputes. In 2012, Mauritius and the Seychelles signed an ambitious treaty to manage the resources of the seabed in their overlapping EEZ “for the mutual benefit of both countries.”³⁹ In 2001, Nigeria, Sao Tome, and Principe established a joint management zone that has permitted the states to develop their economies through the exploitation of natural gas and petroleum while also strengthening relationships between the countries politically.⁴⁰

It remains to be seen whether joint management of resources can be scaled globally to countries with larger coastlines such as the United States, Russia, China, or India, for example. The upshot of the UNCLOS dispute resolution procedure is that most disagreements over maritime boundaries since World War II have been resolved peacefully. When done correctly, maritime delimitation has the benefit reducing sources of conflict by clearly establishing the territory of each state.

However, peaceful resolution and shared management of resources are not mutually exclusive. States that are focused on developing their economies and national security ought to shift their focus from settlement of boundaries in the traditional sense to alternative systems. Adherence to UNCLOS may mean decades of stalemate and crippling economic systems for smaller countries that are blocked from exploiting resources under the current regime. The system of outright delimitation seems ill-prepared to handle the disputes of the 21st century; it's time for maritime and international law experts to consider creative alternative solutions to a modern problem.

Lebanon-Israel: maritime border dispute

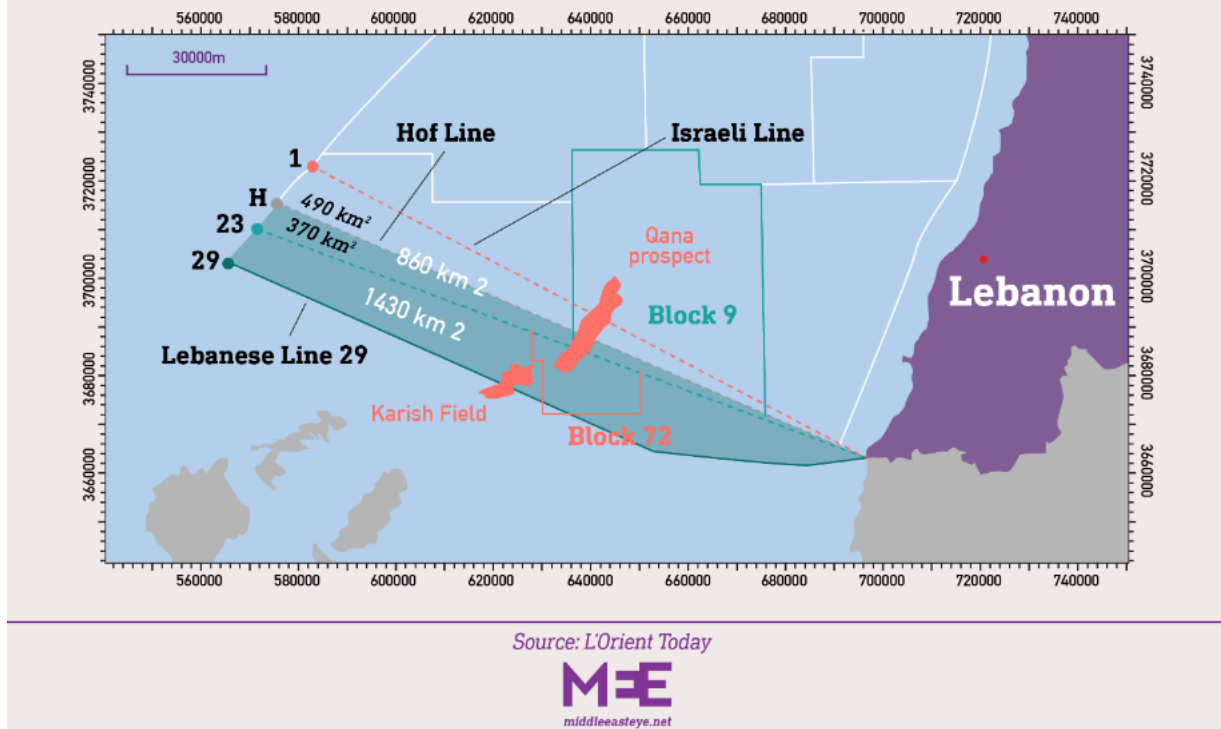


Figure 1. Source: <https://www.middleeasteye.net/news/explained-israel-lebanon-maritime-border-dispute-renewed>

¹ The Convention was adopted by the Third United Nations Conference on the Law of the Sea at Montego Bay, Jamaica, in December of 1982. See U.N. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

² Andreas Osthaugen, *Troubled Seas? The Changing Politics of Maritime Boundary Disputes*, 205 OCEAN AND COASTAL MANAGEMENT 1 (2021).

³ See U.N. Convention on the Law of the Sea art. 2-3, Dec. 10, 1982, 1833 U.N.T.S. 397 (legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil and limits of territorial sea).

⁴ *Id.* at art. 3.

⁵ *Id.* at art. 2.

⁶ *Id.* at art. 33.

⁷ *Id.* at art. 33(1).

⁸ *Id.* at art. 33(1)(a).

⁹ *Id.* at art. 33(1)(b).

¹⁰ *Id.* at art. 44; see *infra* note 33 (the EEZ was novel in the sense that 3-mile rule dominated international law before UNCLOS, even if States didn't necessarily abide by it.)

¹¹ See U.N. Convention on the Law of the Sea art. 57, Dec. 10, 1982, 1833 U.N.T.S. 397 ("In the exclusive economic zone, the coastal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the

economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds...”)

¹² Andreas Osthaen, *Troubled Seas? The Changing Politics of Maritime Boundary Disputes*, 205 OCEAN AND COASTAL MANAGEMENT 1, 4-5 (2021).

¹³ See Andreas Osthaen, *Troubled Seas? The Changing Politics of Maritime Boundary Disputes*, 205 OCEAN AND COASTAL MANAGEMENT 1, 6 (2021) (“The EEZ became the key contributing factor in maritime disputes, both as a rationale for several new disputes and as a domain where states suddenly had to defend newly acquired sovereign rights”).

¹⁴ U.N. Convention on the Law of the Sea Part XV, Dec. 10, 1982, 1833 U.N.T.S. 397.

¹⁵ *Id.* at art. 280.

¹⁶ *Id.* at art. 287, 296.

¹⁷ See Michael Byers & Andreas Osthaen, *Settling Maritime Boundaries: Why Some Countries Find It Easy, and Others Do Not*, in THE FUTURE OF OCEAN GOVERNANCE AND CAPACITY DEVELOPMENT, 162, 164 (International Ocean Institute - Canada, ed., 2019).

¹⁸ INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA, <https://www.itlos.org/index.php?id=10> [https://perma.cc/F5NW-MNAB], (last visited Sept. 17, 2022).

¹⁹ See Simon Henderson, *Seismic Shift: Israel’s Natural Gas Discoveries*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY (Jan 4, 2011), <https://www.washingtoninstitute.org/policy-analysis/seismic-shift-israels-natural-gas-discoveries> [https://perma.cc/6P2R-CX7X] (Tamar and Leviathan fields discovered in 2009 and 2010 respectively).

²⁰ C.J. Schenk et al., Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean, U.S. Geological Survey, March 12, 2010, p. 2, <https://pubs.usgs.gov/fs/2010/3014/pdf/FS10-3014.pdf>

²¹ See MICHAEL RATNER, CONG. RSCH. SERV., R44591, NATURAL GAS DISCOVERIES, 8, 11 (2016) (Lebanon is almost entirely oil-import dependent for energy use and Israel continues to increase consumption of natural gas for electricity domestically. The Leviathan field would permit Israel to meet all its domestic natural gas resources needs, while eventually enabling Israel to become an exporter of natural gas).

²² See Nicholas Blanford, *Lebanon-Israel Maritime Border Dispute Picks Up Again*, ATLANTIC COUNCIL (Jun. 16, 2022). <https://www.atlanticcouncil.org/blogs/menasource/lebanon-israel-maritime-border-dispute-picks-up-again/> [https://perma.cc/8W2G-RQ3D] (Following the discovery, Israel set up exploration blocks along a row of buoys the Israeli military had previously used to exclude Lebanese vessels on its northern coast); see also U.N. Div. for Ocean Aff’s. & the L. of the Sea, Off. of Legal Aff’s., *L. of the Sea Bull.* No. 77, 18 (2012) (in October of 2010, Lebanon submitted a claim to the UN for its southern EEZ boundary, which closely mirrored the boundary established by Israel).

²³ See generally Eduardo Wassim Aboultaif, *The Leviathan Field Triggering a Maritime Border Dispute: Cyprus, Israel, and Lebanon*, 32 J. of Borderlands Studies 1, 5, 8, 10-11 (2016) (including figures representing the conflicting EEZ agreements between Israel and Cyprus, and Lebanon and Cyprus).

²⁴ See H.E. General Michel Sleiman, President of the Republic of Lebanon, Address at the Sixty-Sixth Session of the General Assembly of the United Nations (September 21, 2011).

²⁵ UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=en [https://perma.cc/3KXB-43DZ] (last visited Oct. 9, 2022).

²⁶ See U.N. Div. for Ocean Aff’s. & the L. of the Sea, Off. of Legal Aff’s., *L. of the Sea Bull.* No. 77, 18 (2012); see also Permanent Mission of Israel to the UN, *List of Geographical Coordinates for the Delimitation of the Northern Limit of the Territorial Sea and Exclusive Economic Zone of the State of Israel*, transmitted by a communication dated 12 July 2011 from the Permanent Mission of Israel to the United Nations addressed to the Secretariat of the United Nations.

²⁷ See Figure 1. Line 23 represents the southern border Lebanon submitted to the UN; Line 29 represents Lebanon’s newly claimed southern EEZ boundary as of 2020 (see generally Blanford, *supra* note 22); Line H represents the Hof Line, suggested by US mediator Frederic Hof (see generally Chistou, *infra* note

37); Line 1 represents the northern EEZ boundary claimed by Israel. Note the location of the Qana and Karish oil fields on the map.

²⁸ Dario Sabaghi, *Explained: Renewed Israel-Lebanon Maritime Border Dispute*, MIDDLE EAST EYE (June 3, 2022, 8:03 AM) <https://www.middleeasteye.net/news/explained-israel-lebanon-maritime-border-dispute-renewed> [https://perma.cc/78QN-6KBZ].

²⁹ *Id.*

³⁰ *Id.*

³¹ Maya Gebeily & Timour Azhari, *U.S. Mediator: Progress, But More Work Needed in Lebanon-Israel Maritime Talks*, REUTERS (Sept. 9, 2022, 8:34 PM) <https://www.reuters.com/world/us-mediator-says-very-good-progress-lebanon-israel-maritime-talks-2022-09-09/> [https://perma.cc/7P9Y-9SXX].

³² *Id.*

³³ See generally HUGO GROTIUS, *MARE LIBERUM* (1609) (Robert Feenstra ed., 2009) (writing that ships should be able to freely navigate the world's oceans).

³⁴ Wyndham L. Walker, *Territorial Waters: The Cannon Shot Rule*, 22 BRIT. Y.B. INT'L L. 210 (1945).

³⁵ NOAA Office of Coast Survey, *History of the Maritime Zones Under International Law: From the Cannon Shot Rule to UNCLOS*. <https://nauticalcharts.noaa.gov/data/us-maritime-limits-and-boundaries.html> [https://perma.cc/LM9P-XFVF] (last visited Oct. 9, 2022).

³⁶ Rebecca Lindsey, *Climate Change: Global Sea Level*, UNDERSTANDING CLIMATE (Apr. 19, 2022) <https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level> [https://perma.cc/P7ZU-HMF3].

³⁷ William Christou, *Revealed: Lebanon, Israel Considering 'Gas Resource Swap' to Settle Sea Border Dispute*, The New Arab, Feb 11 2022 <https://english.alaraby.co.uk/analysis/revealed-lebanon-israel-considering-gas-resource-swap> [https://perma.cc/T2AS-Z9FP].

³⁸ Robert D. Williams, *Tribunal Issues Landmark Ruling in South China Sea Arbitration*, LAWFARE (July 12, 2016 11:28 AM) <https://www.lawfareblog.com/tribunal-issues-landmark-ruling-south-china-sea-arbitration> [https://perma.cc/TG4W-9MTX].

³⁹ THE COMMONWEALTH, *Mauritius and Seychelles sign 'groundbreaking' Treaty to create world's largest offshore joint management area* (Mar. 13, 2012) <https://thecommonwealth.org/news/mauritius-and-seychelles-sign-groundbreaking-treaty-create-worlds-largest-offshore-joint> [https://perma.cc/F39J-QGCC].

⁴⁰ See N.I. Kadagi et al., *Joint Management of Shared Resources as an Alternative Approach for Addressing Maritime Boundary Disputes: The Kenya-Somalia Maritime Boundary Dispute*. 16 J. OF THE INDIAN OCEAN REGION. 348, 356 (2020).