

Negotiation between Israel and Lebanon on delimitation of the maritime border

Negotiation Analysis Memorandum

Table of Contents

I.	Synopsis of Conflict	2
II.	Significant Parties to the Conflict	2
III.	Issues for Negotiation	3
IV.	Analysis of Parties' Perspectives	4
	Positions	4
	Interests	5
	Alternatives	7
V.	Communication and Relationship Building	8
VI.	Criteria of Legitimacy	8
VII.	Bibliography	10

I. Synopsis of Conflict

Lebanon and Israel have technically maintained a state of war since 1948.¹ The ongoing dispute mainly concerned land boundaries, but the discovery of underwater energy sources in 2009 extended the conflict into the Mediterranean Sea. Each country utilized a different demarcation method – Israel indicating the maritime border at a 90-degree angle to the land border, whereas Lebanon denotes it as a continuation of the land border – leading to a disagreement over territorial, and thus economic, rights of an 860 sq. km triangular area off the coast.² The emergence of this additional border contestation between Lebanon and Israel led to unfulfilled threats of the use of force by both sides to protect their believed territory and the natural gas fields contained within.³

In the intervening years since the offshore discovery, Israel invested in building infrastructure necessary to tap the natural resources and became more energy self-sufficient⁴ while political gridlock stalled Lebanon's progress in the energy arena⁵ against the backdrop of a devolving economic crisis. With differing incentives alongside contentious domestic politics and international pressure, these separate paths bring Lebanon and Israel to the same junction – in need of negotiation to produce an agreed upon boundary and the accompanying rights.

II. Significant Parties to the Conflict

Lebanon:

After a nine-month standstill, Lebanon formed a new government in January 2019 with Prime Minister Saad Hariri remaining in his position despite losing a significant portion of his lawmakers and acknowledging the country's grave economic position that continues to decline. Meanwhile, Hezbollah and its political allies gained more than 70 seats within the 128-seat Parliament setting itself up to have a more direct impact on government.⁶ With this shift, Hezbollah now officially has the power and obligation to shape the nation's decisions. As such, they cannot afford to be seen as impeding economic solutions via obstruction of energy deals, which Hariri has previously called "vital and very economically important."⁷ As the leader of the Amal Party, an ally of Hezbollah, it is believed the Speaker of Parliament, Nabih Berri will maintain the party's hard lines. As a result, he was chosen to represent Lebanon in the direct negotiations, with the Hezbollah leader, Hassan Nasrallah, closely monitoring the proceedings.⁸

¹ Associated Press. "History of the Lebanese-Israeli Conflict." *The Washington Post*, July 17, 2006. <http://www.washingtonpost.com/wp-dyn/content/article/2006/07/17/AR2006071700340.html> (Accessed October 6, 2019)

² Orna Mizrahi and Oded Eran. "The Negotiations Between Israel And Lebanon On the Maritime Border". *INSS Insights*, no. 1180 (June 24 2019) <https://www.inss.org.il/publication/negotiations-israel-lebanon-maritime-border/>. (Accessed September 24, 2019)

³ Swiss Association for Euro-Arab-Muslim Dialogue, *The Legal Framework of Lebanon's Maritime Boundaries: The Exclusive Economic Zone and Offshore Hydrocarbon Resources* (Switzerland: November 2012). <http://lebcsw.org/wp-content/uploads/2017/12/LegalFramework.pdf> (Accessed September 24, 2019)

⁴ Supra, see 2

⁵ Michael Ratner and Library of Congress. *Congressional Research Service, Issuing Body*. "Natural Gas Discoveries in the Eastern Mediterranean. (2018) <https://crsreports.congress.gov/product/pdf/R/R44591/8> (Accessed September 24, 2019)

⁶ Reuters. "Lebanon Forms New Government After 9 Months of Deadlock." *The New York Times*, January 31, 2019. <https://www.nytimes.com/2019/01/31/world/middleeast/lebanon-new-government-hezbollah.html> (Accessed October 21, 2019)

⁷ Joyce Karam. "Lebanon's Saad Hariri: We are open to UN ceasefire with Israel," *The National*, August 16, 2019.

<https://www.thenational.ae/world/lebanon-s-saad-hariri-we-are-open-to-un-ceasefire-with-israel-1.898879> (Accessed October 21, 2019)

⁸ Hanin Ghaddar. "Lebanon and Israel Are Set to Negotiate: What's at Stake?" *The Washington Institute for Near East Policy*. (June 12 2019)

<https://www.washingtoninstitute.org/policy-analysis/view/lebanon-and-israel-are-set-to-negotiate-whats-at-stake> (Accessed October 6 2019)

Israel:

Prime Minister Benjamin Netanyahu has directed Israel's government for ten years, but could possibly be removed from this role if he is unable to form a government. In 2015, Netanyahu appointed Dr. Yuval Steinitz, a member of his Likud party, as Minister of National Infrastructures, Energy, and Water – “responsible for all of Israel's energy sectors and its natural resources, including... natural gas... petroleum explorations and more.”⁹ Having previously served as Minister of Finance, Minister of Strategy & Intelligence, and chairman of the Foreign Affairs & Defense Committee, Steinitz is well-positioned to lead these negotiations – with the experience and multidimensional knowledge base to understand its complexities. The consequences of Netanyahu's support could be double-edged, providing Berri with confidence and flexibility while adding pressure for timely success to prolong Netanyahu and Likud's period in office.

Other parties

The United States (US) and United Nations (UN) will remain significant, albeit theoretically neutral, third parties. Despite their commitment to impartiality, the US is perceived by Lebanon as favoring Israel and thus Lebanon insists on the UN's participation – likely in an attempt to mitigate this influence. Conversely, Israel may attempt to solidify an alliance or tangential energy agreement with the US based on the same perception of favor.

Additional stakeholders with implicit influence, who may either benefit from a resolution or potentially suffer from an insufficient outcome, include civilians and militaries of both countries, as well as organizations contracted to explore the offshore resources and any countries interested in partnership for export.

III. Issues for Negotiation

Lebanon and Israel have continued to disagree on demarcated borders, an issue exacerbated by the detection of underwater natural resources to which they both lay claim. Each maintaining contradictory rights to the maritime area, the two countries have proceeded to trade protests, objections, and threats. Evidence of this is found in an expressly international public forum via letters submitted to the UN Secretary General as each moves towards offshore exploration and development in the contested water.¹⁰

To avoid further escalation, therefore, the central issues to be addressed through negotiation between Lebanon and Israel are:

1. The delimitation of the maritime boundary between Lebanon and Israel, including the method for such determination;
2. the Exclusive Economic Zone (EEZ) of each country and the corresponding natural resource entitlements, incorporating unitization strategy, if necessary;
3. a strategy for future processes, such as enforcement of terms and dispute resolution.

⁹ Government Services and Information, Ministry of Energy, accessed October 20, 2019, https://www.gov.il/en/departments/ministry_of_energy.

¹⁰ United Nations, Maritime Space: Maritime Zones and Maritime Delimitation Database, Israel, last updated February 1, 2018, accessed October 21, 2019, <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/ISR.htm>

The issue of territorial control between Lebanon and Israel encompasses numerous elements including land boundary demarcation, the role of military and peacekeeping troops as well as the potential to involve additional neighboring states. However, this analysis will concentrate solely on the direct negotiations regarding the maritime dimension.

IV. Analysis of Parties' Perspectives

Positions

The basis of the dispute stems from Lebanon and Israel's differing approaches to determining the geographical coordinates of a maritime border. Wanting to begin explorative drilling, Lebanon submitted geographical coordinates defining the southern limit of its EEZ to the UN in July 2010.¹¹ Determining an overlap and interpreting this as a threat to its sovereign territorial and economic rights, Israel proceeded to submit its list of geographical coordinates defining the northern limit of its territorial sea and EEZ to the UN in July 2011, thus reiterating the boundary established in a 2010 agreement with Cyprus.¹² Israel also contended that not only did the boundary points Lebanon deposited with the UN "contradict the line Israel has agreed upon with Cyprus, ... it contradicts the line that Lebanon itself concluded with Cyprus in 2007."¹³ Lebanon persistently objects to the Israel-Cyprus agreement despite the literal geographical point of contention having been previously negotiated in their own unilateral maritime boundary agreement with Cyprus. Lebanon maintains that theirs was only a temporary solution, never ratified by the Lebanese government.¹⁴ In effect, each country insists that their respective coordinates deposited at the UN are both accurately calculated and reflect their rightful territory, which the other is encroaching upon to steal.

Intrinsically linked to marine territory, EEZs and the associated natural resource jurisdiction require negotiation as well, with the potential need to incorporate a unitization agreement. Lebanon claims a 200 nautical mile EEZ extending from the coast, which is the upper limit set by the United Nations Convention on the Law of the Sea (UNCLOS).¹⁵ Israel, not party to UNCLOS, has not officially established a standard EEZ¹⁶ but classified their UN-deposited geographical coordinates as a delimited EEZ boundary indicating their claim in this occurrence.¹⁷ Lebanon and Israel, therefore, hold strong opposing positions asserting that they control the underwater natural resources.

¹¹ Supra, see 2; United Nations, Maritime Space: Maritime Zones and Maritime Delimitation Database, Lebanon, last updated February 1, 2018, accessed October 21, 2019, <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/LBN.htm>

¹² Supra, see 2.

¹³ Herb Keinon, "Cabinet Approves Northern Maritime Border", *Jerusalem Post* (July 10, 2011), quoted in Swiss Association for Euro-Arab-Muslim Dialogue, *The Legal Framework of Lebanon's Maritime Boundaries: The Exclusive Economic Zone and Offshore Hydrocarbon Resources* (Switzerland, November 2012), <http://lebcsl.org/wp-content/uploads/2017/12/LegalFramework.pdf> (Accessed September 24, 2019), 19.

¹⁴ Andrew Shibley, "Blessings and Curses: Israel and Lebanon's Maritime Boundary Dispute in the Eastern Mediterranean Sea," *Global Bus. L. Rev.*, no 5 (2016): 50. <https://engagedscholarship.csuohio.edu/gblr/vol5/iss1/4> (Accessed September 24, 2019)

¹⁵ Pierre-Emmanuel Dupont, *Lebanon's Southern Maritime Border Dispute: Legal Issues, Challenges, and the Way Forward* (Beirut: Issam Fares Institute for Public Policy and International Affairs, American University of Beirut, 2019).

¹⁶ Technion Israel Institute of Technology, Israel Marine Plan, accessed October 22, 2019, https://msp-israel.net.technion.ac.il/files/2015/12/MSP_plan.compressed.pdf

¹⁷ List of Geographical Coordinates For the Delimitation of the Northern Limit of the Territorial Sea and Exclusive Economic Zone of the State of Israel in WGS84, 12 July 2011, Permanent Mission of Israel, Available from https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/isr_eez_northernlimit2011.pdf. (Accessed October 20, 2019).

With limited basis for trust due, in part, to the belief by both parties that previous settlements (i.e., UN Resolutions) have been violated – a third aspect of negotiation is necessary, pertaining to enforcement and dispute resolution processes, to complete an agreement.

Interests

Lebanon's interests

Lebanon's intensified claim to the territorial waters is influenced by multifarious interests. Access to the natural resources based on a determined boundary is important for Lebanon's economic recovery. The potential for international investment, natural energy utilization and subsequent revenue from export could contribute to stabilizing the economy. Controlling the underwater resources would also assuage Lebanon's fear of Israel stealing more of their territory, as perceived from previous altercations. Lebanon hopes that an agreement on the maritime boundary would lay the groundwork for land border discussions as they want all Lebanese territory returned from Israel since sovereignty remains a potential flashpoint for confrontation.

Although use of force has been repeatedly threatened, Lebanon wants to avoid military confrontation, which would be a costly endeavor. Not only would war invite the further financial burdens of fighting, logistics and rebuilding, it would endanger the physical and psychological welfare of Lebanon's citizens. Furthermore, they know they are ill-prepared to face the Israel Defense Force and Lebanon fears that the international community may be hesitant to assist during or after a conflict now that Hezbollah has a controlling hand in government.¹⁸

By gaining governmental influence, Hezbollah has an increased interest in fixing Lebanon's economic problems, which many citizens blame them for, for having incurred US sanctions. In this position, Hezbollah also wants to avoid being seen by the international community as the only side holding up the process since Lebanon will need assistance and international partners to access and utilize the underwater energy.¹⁹

Speaker of Parliament, Nabih Berri wants to regain political ground and improve his status within the Shia community where he lost support following Hezbollah's acquisition of a significant portion of government jobs traditionally allotted to Amal. On the surface, Berri hopes to be seen as reviving Lebanon's economy and getting the Israelis to concede, which will help him gain more influence in the volatile political arena. The underlying incentive of gaining rights to natural resources and remaining in a position of power, though, is for Berri to eventually reap the financial benefits of natural resource exploration – as most of the required infrastructure development would be under his control. However, Berri's successful record of stalling, combined with Lebanon's previous demands for an open-ended timeframe suggests that Lebanon may only be interested in buying the time needed to prepare for future confrontation with Israel.²⁰

¹⁸ Supra, see 9.

¹⁹ Supra, see 9.

²⁰ Supra, see 9.

Israel's interests

Israel's renewed claim to the territorial waters is influenced by multitudinous parallel interests. Israel wants to determine its own border without input from the UN since Israel is not party to UNCLOS.²¹ In doing so, Israel would set a precedent for their other ongoing border-determination disputes. The acquisition of additional natural resources would serve to extend Israel's energy self-sufficiency and enhance its ability to become an exporter. The resulting financial gains would in turn contribute to economic growth and provide regional security. Israel also wants the opportunity to cooperate with other countries in the region and leveraging natural resources could be advantageous in establishing those relationships. In order to reap these benefits, Israel wants to reach an agreement in a timely manner.

While Israel is situated to be victorious in a military confrontation with Lebanon, they do not want to engage and allocate financial, personnel and logistical resources to an operation, nor do they want to subject their military and civilians to the implicit dangers. Additionally, Israel already possesses established offshore infrastructures providing the country's energy and may fear targeted attacks that could diminish their energy supply and/or cause an environmental disaster.²²

When appointed as Minister of National Infrastructures, Energy, and Water, Dr. Yuval Steinitz was tasked with "promoting the acceleration of the development of gas reserves, in order to strengthen Israel's political and energy security."²³ This negotiation presents an opportunity for Steinitz to fulfill his ministry's goal while achieving the historically unfeasible task of reaching agreement with Lebanon. This accomplishment would establish him as a prime candidate for Minister of Foreign Affairs during the next appointments – a position for which he was previously passed over.

Other parties

Positioned as a mediating party, the US is in fact a major stakeholder. Encountering recent criticism for actions perceived to destabilize the area, the US hopes to reposition themselves as a country able to maintain regional stability by guiding this longstanding dispute to resolution without escalation. The US also plainly wants credit for a positive outcome to regain political ground and legitimacy in the Middle East, which was lost when the current administration moved the US Embassy to Jerusalem and subsequently released a peace plan that provoked myriad objections – specifically from Lebanon where the US proposed resettling refugees. Consistently portrayed with close ties to Israel, the US is concerned with not being seen as neutral in this situation. However, their involvement may be guided by an interest in creating commercial conditions well disposed to cooperation between Israel, Lebanon and additional entities such as US energy companies, since continued development of natural energy is in the strategic interest of the US.²⁴

The United Nations Interim Force in Lebanon (UNIFIL) is mainly concerned with maintaining peace as mandated by the UN resolution that implemented the Blue Line. Participating at Lebanon's request, which is likely an effort to balance the role of the US, they fear not being perceived as impartial since

²¹ Supra, see 2.

²² Supra, see 3.

²³ Government Services and Information, Ministry of Energy, Dr. Yuval Steinitz, accessed October 20, 2019, https://www.gov.il/en/departments/people/minister_of_energy

²⁴ Supra, see 5.

the “UN does not pronounce itself on... the delimitation of boundaries, or on issues related to entitlement to natural resources, unless it is mandated to do so... or is otherwise requested by all parties concerned.”²⁵ As such, and in line with their mission, UNIFIL is interested in an outcome that will reduce the risk of armed conflict and produce both effective enforcement mechanisms and productive dispute resolution processes – all of which would ultimately decrease the strain on their operations and personnel.

Alternatives

Lebanon’s alternatives:

Without an agreement, Lebanon is limited in options that would satisfy its interests. Lebanon could resort to military intervention, but the associated financial, political and physical risks far outweigh the benefits. Lebanon already maintains the third highest debt in the world and Hezbollah has entered the governmental fray, requiring a new sense of responsibility to Lebanon and its citizens.²⁶ A war would fail to revive the economy or improve public opinion of the government and could potentially result in a loss of territory. Requesting assistance by the international community through intervention by the UN Security Council or seeking an advisory opinion from the International Court of Justice (ICJ) would also prove to be costly endeavors that Lebanon cannot afford economically or politically.

The alternative that would best serve Lebanon would be to focus on exploration, development and production of non-disputed natural resource zones. Even minimal revenue would be beneficial, and the created infrastructure would then be prepared should they gain rights to the contested area in the future.

Israel’s alternatives:

Israel’s alternatives to fulfilling its interests are also restricted. With a more powerful military, Israel could potentially seize the offshore territory by force but by initiating armed confrontation, Israel puts its soldiers, civilians and existing energy infrastructure at risk. Combat would require a financial investment and reallocation of military resources, especially to protect current production of offshore energy sources, which would likely be targeted in retaliation. War might open the door for attack by Lebanon’s (i.e., Hezbollah’s) regional allies, invite international criticism and would ultimately delay utilization of the desired resources and resultant revenue. This option would also upset the electorate during a fraught political period. All these outcomes would be detrimental to Israel’s ability to achieve their interests of regional security and partnership with neighboring states for energy exportation. Already equipped with a productive framework, Israel’s best alternative to a negotiated agreement would therefore be to continue producing and utilizing natural energy through established, non-disputed offshore reserves. Since they are currently dependent on companies abroad for exploration and production (E&P), they could also work to further develop their own E&P sector to reduce reliance on international companies and increase their capacity for exportation.²⁷

²⁵ Office of the United Nations Special Coordinator for Lebanon, “United Nations Special Coordinator Sigrid Kaag and Deputy Special Coordinator Philippe Lazzarini Meet the Press.” (July 5, 2017) <https://unscol.unmissions.org/united-nations-special-coordinator-sigrid-kaag-and-deputy-special-coordinator-philippe-lazzarini> (Accessed September 24, 2019)

²⁶ Supra, sec 2.

²⁷ Supra, sec 5.

V. Communication and Relationship Building

Lebanon does not recognize Israel.²⁸ Without any official diplomatic relationship, third parties have been involved in navigating all of Lebanon and Israel's previous disagreements. Since 2006, the UNIFIL has facilitated regular tripartite meetings, which have been self-described as a "proven" and "essential conflict management and confidence building mechanism"²⁹ but have yet to produce salient results. Mutual perceptions of stolen land, UN resolution violations, and biased mediation have perpetuated distrust between Lebanon and Israel. These perceptions could affect negotiations in requiring an increased number of assurances and built in checks on both sides. Communication between the two countries on this matter has been previously achieved through "shuttle diplomacy," with US officials intermittently traveling between Lebanon and Israel to mediate the "conversation." This method has not been historically productive and with the mediator venturing between the two parties, the opportunity to build a trustful relationship is lost. However, despite their adversarial relationship and public posturing, there has been progress to collaboration. Israel has suggested a willingness to discuss the land and sea border together and will let the UN participate as an "active witness"³⁰. Lebanon is willing to come to the table and let the US continue to mediate. This is improvement from the indirect negotiations in 2011, during which Israel offered a compromise of 55:45 split, an offer to which Lebanon never responded.³¹

VI. Criteria of Legitimacy

As a party to UNCLOS, it is expected that Lebanon would evaluate options and justify any offered or accepted agreement in comparison to the treaty's terms. Lebanon would similarly propose to use previous UN resolutions and ICJ rulings on comparable cases as objective standards for assessment. Israel is likely to reject these criteria, dismissing UNCLOS as irrelevant since Israel is not a party to the convention and therefore not bound by it. However, despite their abstention from the treaty, the preamble of their delimitation agreement with Cyprus, which established the geographic coordinates they vehemently defend, does recall provisions of UNCLOS relating to EEZs and invoke customary international law of the sea. Correspondingly, it is unlikely Israel would see UN resolutions or ICJ rulings as appropriate criteria of legitimacy since they oppose the UN's participation in determining borders – although they have respected the 1949 Armistice Line delineated by the UN as a de facto boundary.

[word count: 2943]

²⁸ Supra, see 3.

²⁹ United Nations Interim Force in Lebanon, "UNIFIL Head Chairs Regular Tripartite Meeting with LAF and IDF Officials." (February 13, 2019) <https://unifil.unmissions.org/unifil-head-chairs-regular-tripartite-meeting-laf-and-idf-officials-4> (Accessed October 4, 2019)

³⁰ Joseph Haboush, "Agreement on border talks 'incredibly close,'" *The Daily Star*, August 15, 2019. <https://www.dailystar.com.lb/News/Lebanon-News/2019/Aug-15/489697-agreement-on-border-talks-incredibly-close.ashx> (Accessed October 4, 2019)

³¹ Supra, see 2.

VII. Bibliography

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, Nicosia, 17 Dec 2010. United Nations, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs.

Associated Press. "History of the Lebanese-Israeli Conflict." *The Washington Post*, July 17, 2006.

Dupont, Pierre-Emmanuel. *Lebanon's Southern Maritime Border Dispute: Legal Issues, Challenges, and the Way Forward*. Beirut: Issam Fares Institute for Public Policy and International Affairs, American University of Beirut. 2019.

Ghaddar, Hanin. *Lebanon and Israel Are Set to Negotiate: What's at Stake?*. The Washington Institute for Near East Policy. June 12, 2019.

Government Services and Information (website). "Ministry of Energy." Accessed October 20, 2019. https://www.gov.il/en/departments/ministry_of_energy.

Government Services and Information (website). "Ministry of Energy, Dr. Yuval Steinitz." Accessed October 20, 2019. https://www.gov.il/en/departments/people/minister_of_energy.

Haboush, Joseph. "Agreement on border talks 'incredibly close'." *The Daily Star*. August 15, 2019.

Karam, Joyce. "Lebanon's Saad Hariri: We are open to UN ceasefire with Israel." *The National*. August 16, 2019.

Keinon, Herb. "Cabinet Approves Northern Maritime Border." *Jerusalem Post*. July 10, 2011.

Mizrahi, Orna and Eran, Oded. "The Negotiations Between Israel And Lebanon On the Maritime Border". *INSS Insights*, no. 1180 (June 24, 2019).

Permanent Mission of Israel. "List of Geographical Coordinates for the Delimitation of the Northern Limit of the Territorial Sea and Exclusive Economic Zone of the State of Israel in WGS84." July 12, 2011.

Ratner, Michael, and Library of Congress. Congressional Research Service, Issuing Body. *Natural Gas Discoveries in the Eastern Mediterranean*, 2018.

Reuters. "Lebanon Forms New Government After 9 Months of Deadlock." *The New York Times*. January 31, 2019.

Shibley, Andrew. "Blessing and Curses: Israel and Lebanon's Maritime Boundary Dispute in the Eastern Mediterranean Sea." *Global Bus. L. Rev.* 5 (2016): 50.

Swiss Association for Euro-Arab-Muslim Dialogue. *The Legal Framework of Lebanon's Maritime Boundaries: The Exclusive Economic Zone and Offshore Hydrocarbon Resources*. Switzerland: November 2012.

Technion Israel Institute of Technology (website). "Israel Marine Plan." Accessed October 22, 2019. https://msp-israel.net.technion.ac.il/files/2015/12/MSP_plan.compressed.pdf.

UNIFIL *Head Chairs Regular Tripartite Meeting with LAF and IDF Officials*. United Nations Interim Force in Lebanon. February 13, 2019.