
THE LEGAL FRAMEWORK OF LEBANON'S MARITIME BOUNDARIES : THE EXCLUSIVE ECONOMIC ZONE AND OFFSHORE HYDROCARBON RESOURCES

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LEBANON'S OFFSHORE GAS : WHAT IS AT STAKE

Introduction

The major discoveries of gas and oil in the Levant Basin of the Eastern Mediterranean have the potential both to produce immense benefits for the coastal States of Lebanon, Cyprus, Syria and Israel, and to pose major political and security threats in the east Mediterranean.

According to an estimate of the U.S. Geological Survey published in March 2010, unexplored potential reserves in the Levant Basin amount to 1.7 billion barrels of recoverable oil and 122 trillion cubic feet (tcf) of recoverable gas (3,450 billion cubic meters (bcm)). These represent the world's largest gas finds in decades.

Lebanon is strategically located in this gas and oil-rich region. 2-D and 3-D seismic surveys of Lebanon's offshore geology made by the Norwegian companies Spectrum ASA (UK based) and Petroleum Geo-Services, have revealed that there's greater potential offshore Lebanon than many countries in the region. Spectrum has estimated that the 3,000 km² of Lebanese waters already surveyed contained close to 25 trillion cubic feet of gas.¹ The Lebanese offshore area covers a total of 22,730 km² in the Eastern Mediterranean.

The discovery of oil and gas in this region offers great hope to Lebanon. Revenue from offshore gas finds and the shift to natural gas as an independent source of energy would bring numerous benefits to the people of Lebanon: it would make a major contribution to the financing of Lebanon's high-level public debt, address the dire electricity crisis confronting that country and make it less dependent

on foreign sources for its energy needs, and would have a positive impact on the environment, among many other considerations. Since 2004 the World Bank has urged the Lebanese government to shift to natural gas as a source of energy to cut the high cost of electricity production, on the grounds that it would generate huge annual savings as well as avoid damage to the environment and public health. If managed in a responsible manner, oil and gas resources should also create jobs, increase incomes and raise standards of living. **In short, the exploitation of its oil and gas wealth will change the political and economic landscape of the country.**

At the same time these major discoveries lie in the region of some of the world's most intractable disputes - the Arab/Israeli conflict, the occupation of Palestine, the Turkish/Cypriot dispute, and the current crisis in Syria - thus resulting in added tension in the area, arising from actual and potential disputes over delimitation of maritime boundaries and overlapping claims over gas and oil resources.

Contestation of the boundaries between Lebanon and Israel has led to official threats of the use of force to protect the newly discovered natural gas fields. "We will not hesitate to use our force and strength to protect not only the rule of law but the international maritime law," Israel's Minister of National Infrastructures, Uzi Landau, has declared.² The Israeli Navy is exercising a 24-hour surveillance through the deployment of drones over its sites. It is not unimaginable that, in the next regional war, offshore installations could be targeted whether accidentally or intentionally, which would have the potential to cause a regional ecological catastrophe.

Israel's attitude towards the concerns and interests of its northern neighbors is a source of rising tension, which may trigger further potential conflict in the region. It has been reported by the BBC³

¹ See *Daily Star*, 9 November 2012 (<http://www.dailystar.com.lb/Business/Lebanon/2012/Nov-09/194407-announcement-for-oil-bids-before-2013-bassil.ashx#ixzz2CaQBxTPB>)

² "Landau: Israel Would Defend Off-shore Gas Find with Force", *Jerusalem Post*, June 27, 2010. (<http://www.jpost.com/Israel/Article.aspx?id=179620>)

³ BBC news, 10 July 2012 (<http://www.bbc.co.uk/news/world-middle-east-18690346>)

that Israel is drilling for oil adjacent to the occupied West Bank; the proximity to the Green line is raising concerns that actions might result in siphoning Palestinian reserves. At the same time, Israel has blocked efforts to exploit Palestinian reserves off the coast of Gaza. It has also been reported that Israel has secretly decided to issue permits for oil and gas exploration in the occupied Golan Heights⁴, the annexation of which has been declared by the Security Council to be illegal and null and void.

In this scenario, it is evident that immense political and security repercussions have added a new dimension to this conflict prone area. Lebanon needs to be able to benefit from the increase in gas use internationally by uncovering the riches lying in the seabed and subsoil of its Exclusive Economic Zone. The protection of Lebanon's offshore resources should be a priority on its agenda. The stakes are high: in addition to added political instability, they could also signify loss of considerable revenues and benefits for the Lebanese people and future generations.

The objective of this document is thus to shed light on this sensitive multi-pronged issue by discussing the international legal framework of Lebanon's maritime boundaries for purposes of offshore exploration and exploitation as a vital dimension in the protection of Lebanon's rights to its future hydrocarbon riches and the contribution of the Association Suisse pour le dialogue Euro-Arabo-Musulman (ASDEAM) to this process. It is not intended to cover in detail the licensing aspects of oil and gas exploration.

The Need for a Holistic and Long-Term Strategy Based on International Law

Exploration and exploitation of off-shore resources requires a multi-disciplinary approach, raising political, financial, economic, technical and environmental problems, among others. An essential dimension is also that of international law, one that will play a major role in securing Lebanon's interests, even more particularly in the current highly volatile regional environment where disputes, tensions and rivalries run high between the different players.

Thus, there can be no enjoyment of the benefits of off-shore natural resources without having coastal States ensure:

- clarification and consolidation of maritime boundaries within the framework of the international law of the sea, in particular on the basis of the 1982 UN Convention on the Law of the Sea (UNCLOS) to which Lebanon is a party, for official claims regarding overlapping maritime areas must be based on credible legal grounds, and oil and gas companies licensed to explore and exploit these resources must be assured of the security of the claims made in the areas they have been assigned;
- proper understanding of negotiating techniques and legal implications in drawing up delimitation treaties with neighbouring States;
- adoption of domestic regulatory mechanisms for the protection and preservation of the marine environment, essential also for public health and safety;
- proper implementation of and accession to the relevant international treaties, including those offering international dispute settlement mechanisms;

⁴13 May 2012 (<http://www.timesofisrael.com/government-secretly-approves-golan-heights-drilling/>)

– accession to and proper utilization of peaceful dispute settlement mechanisms for the resolution of maritime disputes as a substitute for the threat of military force;

– at the licensing stage, states concerned should ensure that the contracts signed with the oil and gas giants do not have loopholes, are correctly interpreted and ensure proper assignation of liability, so as not to be used to the detriment of the State nor lead to large investment disputes entailing huge damages.

These are all questions of international law, both public and private, which Lebanon should address. They should not be dealt with in a piecemeal manner for a long-term proactive and holistic legal strategy with accompaniment at every stage by highly qualified legal expert advice and requiring coordinated decision-making (which means proper allocation of responsibility between the different ministries and an overseeing central body) is imperative. The longer Lebanon delays action, the more coastal States such as Israel and Cyprus are able to consolidate their legal positions. Cyprus started exploratory drilling in September 2011 in Block 12 and is on its second round of tenders for 12 offshore blocks; the Israeli Tamar field discovered in 2009 is scheduled to come online in the second quarter of 2013, and the large Leviathan field was discovered in 2010. Agreements between neighboring States which may affect Lebanon but over which Lebanon has no say, are being concluded.

It is therefore encouraging that Lebanon has begun to lay down the logistical framework to allow production bids by the beginning of 2013 and is actively pursuing consolidation of its maritime claims.

GAS FIELDS ESTIMATES: THE NUMBERS

| | Gas Fields | Proven reserves |
|---|---|-----------------|
| Lebanon | Optimistic estimates 50-75 tcf | none |
| Palestine/Gaza | Gaza Marine-1 and 2 (discovered in 2000) All facilities to drill destroyed by Israel during Gaza invasion in 2008 | 1 tcf |
| Israel estimates 50 tcf | | Total 28.0 tcf |
| | Leviathan | 17.0 tcf |
| | Tamar (production in 2013) | 9.0 tcf |
| | Dolphin | 0.1 tcf |
| | Dalit | 0.5 tcf |
| | Tanin | 1.2 tcf |
| | Mari-B (production since 2004- Near depletion) Claimed by Palestinian authorities | 1.1 tcf |
| | Noa (production in 2012) | 0.04 tcf |
| Cyprus | Aphrodite | 5.0 tcf |
| U.S. Geological Survey estimates | | 125 tcf |

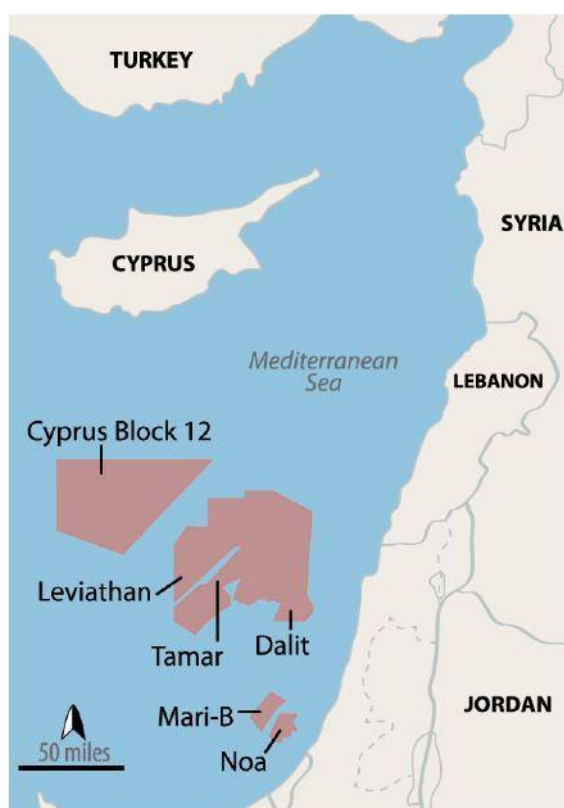
1 Trillion cubic feet (tcf) is equivalent to 28 Billion cubic meter (bcm)

ASDEAM'S LAW OF THE SEA PROJECT IN COLLABORATION WITH THE LEBANESE GOVERNMENT AND THE LEBANESE PARLIAMENT

At a workshop held in December 2010 under the auspices of ASDEAM, a study was presented which identified important foreign policy issues which could be approached from an international law perspective, the object being to define a legal strategy to protect Lebanon's rights under international treaties and customary international law. It was agreed at that meeting that the most urgent issue that should be given priority was that of exploration and exploitation of Lebanon's newly-discovered offshore resources. The Swiss Government endorsed the project which followed from this and assured its funding. This led to a series of exchanges between the Lebanese government and a team of international law experts beginning in May 2011. These exchanges are still on-going as there is much work left to be done.

Expert Meeting in Geneva (May 2011)

A timely and critical two-day meeting was held from 2-3 May, 2011 in Geneva, which brought together key officials from the ministries concerned and a 4-member team of high-level international law experts on the subject of delimitation of Lebanon's maritime boundaries as a preliminary to exploration and exploitation of its offshore resources.



Location of Cypriot and Israeli drilling blocks

The expert four-member team was composed of:

- Emeritus Professor Vera Gowlland-Debbas, Graduate Institute of International and Development Studies, Geneva (coordinator of the process);
- Judge Jean-Pierre Cot, Member of the International Tribunal for the Law of the Sea (ITLOS) and President of the Chamber for Marine Environment Disputes;
- Professor Pierre-Marie Dupuy, Graduate Institute of International and Development Studies, Geneva;
- Professor Tullio Scovazzi, Professor of International Law, University of Milano-Bicocca, Milan.

Attending the meeting were high-level representatives from the Presidency, the Prime Minister's Office, the Foreign Ministry, the Ministries of Energy and Public Works, of Transport and of Defense, the Inter-Ministerial Committee on the Maritime Borders Delimitation and the Lebanese Parliament. A United Nations representative also attended the meeting as observer, as did Judge Joseph Akl, Lebanese judge at ITLOS.

The aim of the meeting was to provide a legal framework for better appreciation of how Lebanon could best achieve its goals in this area, as well as to offer some general conclusions and recommendations. The meeting was organized around five topics: the technical legal issues relating to maritime delimitation; the various scenarios with neighbouring countries regarding overlapping claims and evaluation of agreements already concluded; options for dispute settlement processes; protection of the marine environment, including biodiversity and fisheries conservation; and the security issues that could arise from protection of offshore resources. **The official proclamation of an Exclusive Economic Zone in accordance with the requirements of international law and the adoption of the necessary supporting national legislation were underlined by the experts as an essential precondition for Lebanon to exercise its sovereign right over its offshore resources.**

This Geneva brain-storming session proved to be a highly constructive dialogue; it ended with conclusions on the way forward and a discussion of the immediate urgent action to be taken pending longer-term solutions.

The Presentation of a Report to the Lebanese Government

The outcome of the Geneva discussions was the drawing up of a 50-page report plus annexes presented to the Lebanese Government which offered a comprehensive survey of the legal issues arising from maritime delimitation and attached a series of recommendations. These recommendations emphasized the importance of the speedy establishment of an inter-ministerial commission in Lebanon accompanied by a team of international law experts, mandated to carry out a long-term strategy for the exploration and exploitation of offshore resources, including the consolidation of Lebanon's proclamation of an Exclusive Economic Zone, the drafting of the necessary domestic legislation and rules, and the negotiation (re-negotiation) of delimitation agreements. The recommendations also underlined the importance of dispute settlement mechanisms in order to avoid friction arising from overlapping claims.

Exchanges with the Lebanese Parliamentary Commission (June/July 2011)

Meetings between two members of the team of experts, Emeritus Professor Vera Gowlland-Debbas and Professor Tullio Scovazzi, the President of ASDEAM, Prof. Hassan Ghaziri, and the Parliamentary Commission for Energy and Transport headed by MP M. Kabbani were organized on two occasions on 13 -15 June and 18-19 July 2011. At these meetings, attended not only by parliamentarians but also representatives of the Lebanese Army, intensive discussions of the Report of the Geneva meeting took place, as well as a fruitful exchange relating to the unratified maritime delimitation treaty with Cyprus and the geographical coordinates of Lebanon's maritime boundaries. Professor Scovazzi on the basis of his expert opinion,

confirmed the accuracy of the southern tripoint between Lebanon, Cyprus and Israel. These were later further confirmed by a study led by the Firm Dewey & LeBoeuf working with the United Kingdom Hydrographic Office.

On this occasion, some of the Report's conclusions were also presented to the public through a series of press declarations by MP Kabbani and interviews given by the expert team to the national press.

Capacity Building Workshops (November 2011)

In its consultations with ASDEAM, the Parliamentary Commission had pointed to a shortage of local expertise in the country on the international legal issues and had underlined the need for capacity building on the ground. In response, ASDEAM organized a Capacity Building Workshop in Beirut on 17-19 November 2011 aimed at concerned members of government and parliament, as well as diplomats. Emeritus Professor Vera Gowlland-Debbas, Graduate Institute of International and Development Studies, Emeritus Professor Lucius Caflisch, Graduate Institute of International and Development Studies and Member of the United Nations International Law Commission (ILC), and Professor Alan Pellet, Université de Paris X (Nanterre) also Member of the ILC, delivered lectures on the international law of the sea framework, on the technical aspects of maritime delimitation and on dispute settlement, including the UN Charter. They followed this with advice on the way forward for delimitation of Lebanon's maritime boundaries with neighbouring States.

The Workshop was intended as the prelude to an eventual creation of a Lebanese Diplomatic Academy within the Foreign Ministry.

Immediate Outcome of the Process and the Way Forward

This series of exchanges between legal experts and government representatives provided an interesting model for collaboration and had immediate results. Following on this exchange, Lebanon has taken or is contemplating several major steps:

– **Adoption of comprehensive legislation on the law of the sea.** The Lebanese Parliament spurred on by this process, adopted in August 2011 Law No. 163 on the Delineation and Declaration of the Maritime Zones of the Republic of Lebanon, a comprehensive legislation on all its maritime zones which had not been revisited since the 1983 Legislative Decree No. 138 on the territorial sea.⁵

– **Proclamation of an Exclusive Economic Zone (EEZ).** The proclamation of an EEZ, included in Law No.163, was consolidated by a Governmental decree adopted in October 2011⁶. This was an essential prerequisite as the "Law of petroleum resources in the maritime waters" adopted by Parliament and promulgated by the President of the Republic on 24 August 2010 regulated the exploitation of petroleum resources without providing the legal basis for this, i.e. by proper identification of the area to be exploited.

– **Confirmation of the geographical coordinates of the EEZ.** The international legal team confirmed the geographical coordinates of points defining the southern limits of Lebanon's EEZ which had been adopted by the Council of Ministers in its Decision no. 51 of 21 May 2009, on the basis of a report of an inter-ministerial committee and deposited with the Secretary-General of the United Nations in accordance with UNCLOS (see below).

⁵ Official Gazette N° 39, 25 August 2011.

⁶ "Decree No. 6433 dated 1 October 2011 on the Delineation of the boundaries of the exclusive economic zone of Lebanon. Notified to the United Nations on 16 November 2011 (http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/lbn_2011decree6433.pdf)

– **Further legislative steps.** The Lebanese Parliament has been encouraged to adopt the requisite legislative, regulatory and practical measures which must follow the EEZ declaration and as a complement to the implementing Regulations for the 2010 Petroleum law and has expressed the wish to obtain on-going assistance from the international law team. It is important that this be done in collaboration with representatives from the concerned ministries.

– **Negotiations with a neighbouring State.** Talks are on-going with Cyprus to re-negotiate Lebanon's unratified Agreement with that country on the maritime boundary between them following on the advice of international law experts who pointed out its potential problems in relation to the Agreement Cyprus has drawn up with Israel. (see below)

– **Raising public awareness of the importance of the issues involved.** ASDEAM conducted a series of interviews with national newspapers and held public lectures which contributed to informing the public and stakeholders and succeeded in raising general awareness of the importance of these new discoveries of offshore resources.

LEBANON'S MARITIME ZONES IN ACCORDANCE WITH UNCLOS

The Zones that Compose a State's Maritime Space

The 1982 UN Convention on the Law of the Sea (UNCLOS) adopted in Montego Bay (Jamaica) on 10 December 1982 and which entered into force on 16 November 1994 was acceded to by Lebanon by virtue of Law No. 295 of 22 February 1994. UNCLOS therefore provides the relevant general framework. While neither Israel nor Syria have signed or ratified UNCLOS, its provisions on the Continental Shelf (CS) and Exclusive Economic Zone (EEZ) are by now accepted as customary international law. Starting from the territorial sea, different maritime zones each with their separate legal regime compose a state's maritime space. Beyond these maritime areas lie the high seas which are characterized by freedom of certain activities, such as navigation, the laying of pipelines and cables and fisheries (UNCLOS Part VII). Law no. 163 on the Delineation and Declaration of the Maritime Zones of the Lebanese Republic adopted on 17 August 2011 follow the zones delineated by UNCLOS.

– The Baselines

The baseline is the line from which the breadth of the territorial waters is measured. Lebanon has relied on the normal baseline for measuring the breadth of the territorial sea which is the low-water line along the coast as marked on official large-scale charts, as well as "straight lines that connect suitable baselines in accordance with the regulations of the International Law, starting from the center of the mouth of the Nahr Al-Kabir Al-Shamali, (or Northern Great River) to the beginning of the 1949 cease-fire line to the South." (Law no.163, Article 2).

While the International Court of Justice has stated that the method of straight baselines joining appropriate points on land may be employed only in exceptional circumstances, e.g. where the coast is highly indented or has fringes of islands, as in Norway, a large number of coastal states, including Cyprus have established straight baselines systems along coastlines which are far from corresponding to the Norwegian model.

“The waters on the landward side of the Lebanese Baseline form an integral part of the Internal Waters of the Lebanese Republic” (Law, Article 3). ”

– The Territorial Sea

Lebanon has established a 12 nautical mile (NM) territorial sea - an adjacent belt of water which extends beyond its land territory and internal waters the outer limit of which “is the line every point of which is at a distance from the nearest point of the Baseline equal to the breadth of the Territorial Sea” (Law, Article 4). Lebanese sovereignty extending over this belt of sea is identical to that which it exercises over its land territory, i.e. it extends also to the airspace above the territorial sea and to the seabed below it, with the exception of a right of “innocent passage” for foreign vessels (Law, Article 12) (see UNCLOS Part II).

– The Contiguous Zone

Lebanon also has the right to exercise control over a zone contiguous to its territorial sea extending not more than 24 NM from the baseline (Law, Article 5(1)), over which it can exercise its competence in order to (Article 5(2)):

“a- Prevent infringement of Lebanese rules and regulations relative to security, customs, sanitary, fiscal, immigration laws and pollution both within their land territory or Territorial Sea

b- Enforce punishment on the infringement of the

aforementioned rules and regulations whether this infringement occurs within their land territory or Territorial Sea.”

– The Continental Shelf (CS)

Since the Continental Shelf is a legal not just a geographical concept, Lebanon which has only a narrow continental shelf nevertheless possesses a continental shelf comprising the seabed and subsoil of the submarine areas that extend beyond its territorial sea to a distance which does not exceed 200 NM from its baselines (Law, Article 8).

Lebanon exercises sovereign rights over this area for the purpose of exploring and exploiting its natural resources (mineral and non-living resources together with sedentary living organisms) on the seabed and subsoil, including by drilling. In addition, Lebanon has the exclusive right to construct artificial islands, installations and structures for inter alia economic purposes (Article 11).

No other state may exercise the same rights without its express consent. All States are however entitled to lay submarine cables and pipelines on the CS, but the Lebanese Republic establishes the conditions and controls pollution (Law, Article 10).

The CS does not require any occupation or any express proclamation (UNCLOS Part VI, Law, Article 9).

– The Exclusive Economic Zone (EEZ)

The Exclusive Economic Zone, which Lebanon has declared, is according to UNCLOS, an area beyond and adjacent to the territorial sea which must not exceed 200 NM from the coastal baseline (UNCLOS Part V). Article 6 of Law no. 163 states:

“The Exclusive Economic Zone (EEZ) of the Lebanese Republic is determined from the Baseline and stretches to a distance of 200 NM maximum, in accordance with the provisions of the

United Nations Convention on the Law of the Sea and other relevant regulations of international law. It extends westward in the sea to reach at least:

- a- **(to the North-West)** the equidistant point to the nearest Lebanese, Syrian and Cypriot coastline
- b- **(to the South-West)** the equidistant point to the nearest Lebanese, Cypriot, and occupied Palestinian coastline.”

In its EEZ, the coastal State enjoys sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources both living and non-living not only on the seabed and subsoil but also in the superjacent waters 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. This is reflected in Article 7 of the Lebanese Law.

As with the CS, Lebanon has jurisdiction with regard to the construction of artificial islands and installations and structures and for the carrying out of marine scientific research. **At the same time, Lebanon has certain duties over the area, e.g. to protect and preserve the marine environment and to prevent pollution in the area.** However, the EEZ remains free to all States for purposes of navigation, overflight and laying cables and pipelines, provided that they do not threaten the security of the coastal State.

Article 7 (3) further provides that Lebanon has:

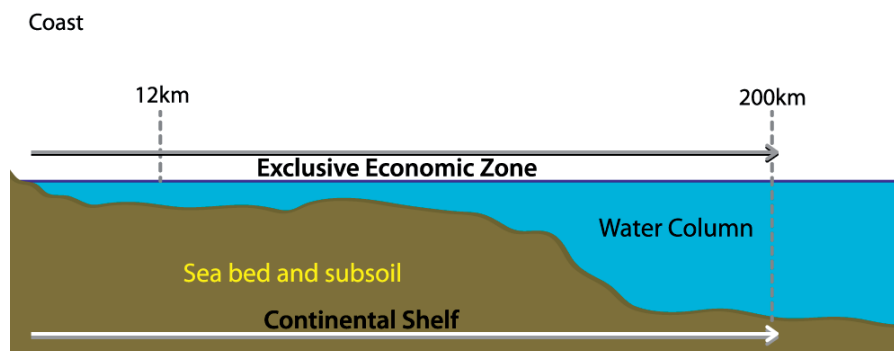
“other rights and duties provided for by the United Nations Convention on the Law of the Sea and other international treaties, conventions, and laws.

These rights, duties and jurisdictions are exercised in accordance with the provisions of this law and its executive texts.

In exercising its rights and performing its duties in the EEZ, the Lebanese Republic shall have due regard to the rights and duties of third party states.

The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with the article relative to the Continental Shelf.”

Other types of zones have been declared by some Mediterranean States such as “fishery zones” and “ecological protection zones”. Lebanon, which is party to the UNESCO Convention for the Protection of the Underwater Cultural Heritage, could for instance establish a contiguous zone for archaeological and cultural purposes (see Law, Article 14).



LEBANON'S EXCLUSIVE ECONOMIC ZONE AND ITS DELIMITATION

The Importance of an EEZ for Lebanon

As stated above, since the CS which, unlike the EEZ, belongs to Lebanon as of right and cannot be claimed by any State to the extent that it does not overlap with another State's continental shelf, Lebanon could have undertaken exploration and exploitation of gas and oil reserves immediately. The EEZ on the other hand requires an express proclamation and clearly expressed intention in its domestic laws.

However, in view of the fact that Lebanon's neighbours Cyprus and Israel have proclaimed their EEZ which has subsumed their continental shelf, Lebanon would have anyway had to face delimitation of its CS and EEZ. Moreover, the team of experts pointed out that an EEZ adds the possibility of exploitation of the natural resources of the overlying waters, such as fishery resources, and gives Lebanon the right to extend its laws to this area for purposes of conservation of marine resources and control of pollution of the waters in the zone. It was stressed that the EEZ is now part of customary law, therefore opposable even to States not parties to UNCLOS. Moreover, establishing – and regulating – an EEZ is fundamental to guarantee the security of the installations used to exploit gas and oil resources. In view of the political instability of the

area, it would have been risky for Lebanon to have begun its exploration activities without first declaring an EEZ.

Lebanon's proclamation of an EEZ incorporated in its Law No. 163 and consolidated by Government Decree No. 6433 dated 1 October 2011, was therefore timely. Of its immediate neighbours, Syria (in 2003⁷) and Cyprus (in 2004)⁸ had already proclaimed their EEZ as a zone beyond and adjacent to the territorial sea, the outer limit of which shall not extend beyond the 200 NM from the baselines from which the breadth of the territorial sea is measured (as UNCLOS provides). Though Israel like Syria is not a party to UNCLOS, it proclaimed its own EEZ in 2011⁹. Syria and Israel presumably base their right to an EEZ on customary international law.

It is important that Lebanon accompanies such a declaration of an EEZ by a network of legislative and regulatory measures.

The Geographical Coordinates Deposited by Lebanon with the UN Secretary-General

In accordance with the requirements of UNCLOS, Lebanon had, by notes of 14 July 2010 and 11 October 2010 deposited with the Secretary-General of the United Nations the charts and lists of geographical coordinates for the delimitation of the EEZ, respectively, the southern, south-western and northern maritime borders. These had been adopted by the Council of Ministers in its Decision no. 51 of 21 May 2009. Lebanon's note concludes with the following comment:

“There is a need to conduct a detailed survey, using a global positioning system, of the shore contiguous to the southern limit, including all islands and spurs, with

⁷ Law No. 38 of 8 November 2003. (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/SYR.htm>)

⁸ A Law to Provide for the Proclamation of the Exclusive Economic Zone by the Republic of Cyprus, 2 April, 2004 (http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/cyp_2004_eez_proclamation.pdf) (website of the Division for Ocean Affairs and the Law of the Sea, UN Office of Legal Affairs)

⁹ See List of Geographical Coordinates for the Delimitation of the Northern Limit of the Territorial Sea and Exclusive Economic Zone of the State of Israel (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/ISR.htm>)

a view to updating the nautical charts and the baseline accordingly in the future”.

Southern Median Line (Lebanon - Palestine)

| Points | Degrees | Minutes | Seconds | | Degrees | Minutes | Seconds | |
|--------|---------|---------|---------|---|---------|---------|---------|---|
| 18 | 35 | 6 | 11.84 | E | 33 | 5 | 38.94 | N |
| 19 | 35 | 4 | 46.14 | E | 33 | 5 | 45.79 | N |
| 20 | 35 | 2 | 58.12 | E | 33 | 6 | 34.15 | N |
| 21 | 35 | 2 | 13.86 | E | 33 | 6 | 52.73 | N |
| 22 | 34 | 52 | 57.24 | E | 33 | 10 | 19.33 | N |
| 23 | 33 | 46 | 8.78 | E | 33 | 31 | 51.17 | N |

Southern Part of the Western Median Line (Lebanon - Cyprus)

| Points | Degrees | Minutes | Seconds | | Degrees | Minutes | Seconds | |
|--------|---------|---------|---------|---|---------|---------|---------|---|
| 23 | 33 | 46 | 8.78 | E | 33 | 31 | 51.17 | N |
| 24 | 33 | 51 | 30.31 | E | 33 | 37 | 13.10 | N |
| 25 | 33 | 50 | 25.30 | E | 33 | 36 | 8.01 | N |
| 1 | 33 | 53 | 40.00 | E | 33 | 38 | 40.00 | N |

The southern and south-western median lines declared by Lebanon for its EEZ

Lebanon declared that the southern maritime border extends from point B1 on the shore at Ra's Naqurah, the first point on the 1949 Israeli-Lebanese General Armistice Agreement table of coordinates, to point 23, that is equidistant between the three countries concerned.¹⁰

¹⁰ <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/LBN.htm>

Delimitation of Maritime Boundaries with Neighboring States

Principles and Methods of Delimitation

UNCLOS provides that where there are overlapping claims in respect of the Continental Shelf or Exclusive Economic Zone between States with “adjacent or opposite coasts”, the delimitation is to be “effected by agreement on the basis of international law ... in order to achieve an equitable solution” (UNCLOS Articles 74 and 83). In the absence of an agreement, delimitation should take place on the basis of the median line or the equidistance line from the baselines.

Lebanon’s note to the UN further refers to article 59 of UNCLOS which relates to the resolution of conflicts between the interests of the coastal State and another State in cases where the Convention does not attribute rights or jurisdiction within the exclusive economic zone. Article 59 calls for the conflict to be resolved “on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.”

What would be an equitable solution depends on each maritime delimitation case, so these rules leave the door open to interpretation by negotiating States, mediators or judges. From the numerous cases brought before the International Court of Justice, arbitral tribunals and International Tribunal on the Law of the Sea, one can draw the main principles which have been applied to such delimitation.

In several decisions, international courts have chosen to draw first an equidistance line and then to consider whether there were factors calling for the adjustment or shifting of that line in order to achieve an equitable

result.¹¹ So the judge has to take into account certain relevant circumstances: the general configuration of the coast, its length, the presence of islands, the economic activities in the area, such as fishing, and legitimate security considerations, but the ICJ has considered that: “... oil concessions and oil wells are not in themselves to be considered as relevant circumstances”¹²

In its negotiations with Cyprus, Lebanon did not claim any special circumstances as a result of its string of tiny islands such as Palm Islands, but it did give effect to Ramkine Island, 10 km. off its coast, in drawing its boundary lines. It is still open to it to examine further whether there is a basis for making a claim of special circumstances to enhance the size of its maritime territory.

Maritime boundary delimitation in the Eastern Mediterranean

As a semi-enclosed sea, the Mediterranean is governed also by Part IX of UNCLOS which imposes upon coastal States a general obligation to cooperate “in the exercise of their rights and in the performance of their duties”. Regional cooperation being essential in the Mediterranean, it is important to resolve overlapping claims between Lebanon and its neighbours; failure to do so may hinder exploration work and licensing activities.

The particularities of the Mediterranean region and the legal instruments which regulate this area are therefore to be taken into account. Existing agreements delimiting the EEZ which are of relevance are Lebanon’s unratified treaty with Cyprus (2007), the agreement between Cyprus and Egypt (2003), and that between Cyprus and Israel (2010). In all these, the equidistance line has been the basic reference. Cyprus’ EEZ Law for example provides that in the event it overlaps with part of

¹¹ See e.g. *Continental Shelf case* (Tunisia and the Libyan Arab Jamahiriya), ICJ Report 1982, para.109; *Qatar v. Bahrain*, ICJ Reports 2001, para. 176

¹² See e.g. *Continental Shelf case* (Tunisia and the Libyan Arab Jamahiriya), ICJ Report 1982, para.109; *Qatar v. Bahrain*, ICJ Reports 2001, para. 176; *Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria* (Cameroon/Nigeria: Equatorial Guinea intervening), ICJ Reports 2002, para.304.

the EEZ of any other State, with opposite coasts, the delimitation between the EEZ of Cyprus and the EEZ of the other State shall be effected by agreement. In the absence of an agreement, the delimitation of this EEZ shall not extend beyond the median line or the equidistance line measured from the respective baselines from which the breadth of the territorial sea is measured. It seems that no special circumstances were taken into account in the region.

Though Turkey has not proclaimed an EEZ, it has been a persistent objector to all the agreements signed by Cyprus regarding its EEZ, in a series of diplomatic demarches, considering that they ignore the jurisdiction of the "TRNC", disregard its rights and interests, and "have an adverse effect on the ongoing settlement negotiations and not contribute to peace and stability in the Eastern Mediterranean." In January 2007 it submitted a strong protest to Lebanon on its signature of the delimitation agreement with Cyprus and in December 2010 it reiterated Turkey's position in regard to the signature of the Cyprus/Israel delimitation agreement. When the Republic of Cyprus started exploratory drilling in September 2011, Turkey protested and concluded an agreement with northern Cyprus authorizing Turkey to explore for gas in sea areas adjacent to Cyprus.¹³ It should be noted however that the "TRNC" has not been recognized by any State except Turkey, pursuant to Security Council Resolutions. Moreover, the maritime boundary between Cyprus and Lebanon does not relate to the maritime areas of the "TRNC" and, therefore, should not raise political issues.

Syria's Law No. 38 remains silent on the rights of States with opposite or adjacent coasts, except for the reference to being "subject to the provisions of international law." Accordingly, one day or another Syria will have to conclude agreements with Lebanon, Cyprus and Turkey on the delimitation of its exclusive economic zone on the basis of the median line.

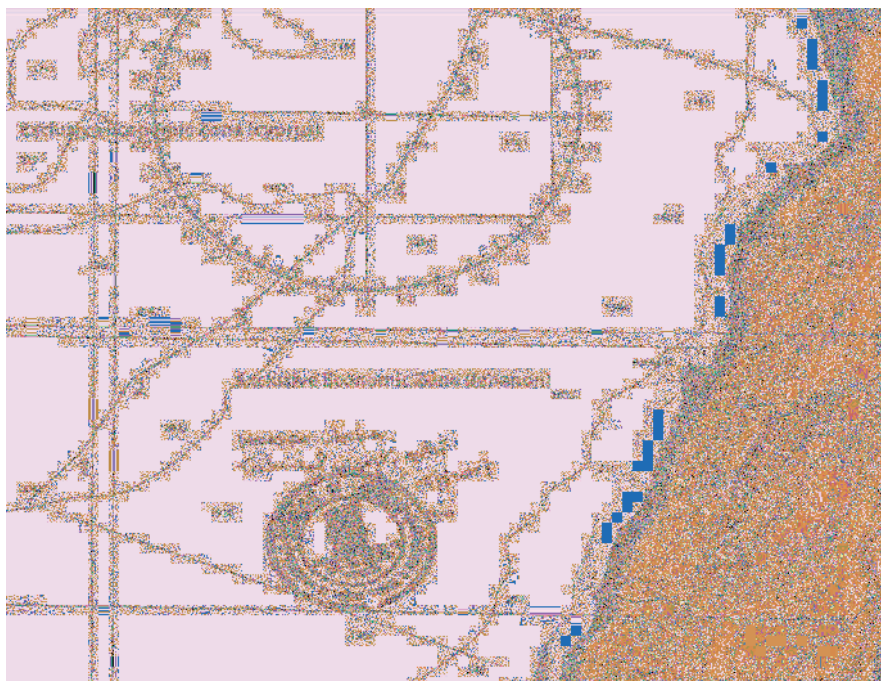
The Cyprus/Lebanon and Cyprus/Israel Agreements and Potential Conflicts Over Overlapping Claims

The Agreement between Cyprus and Lebanon

An agreement between Cyprus and Lebanon was signed on 17 January 2007 on delimitation of most of their EEZ; it is not yet in force for though Cyprus has ratified it, the Lebanese Parliament has not done so. Neither party can of course claim rights over a full EEZ as their coastlines are located at a distance varying from 90 NM to 130 NM from one another. The Agreement provides for a delimitation effected "on the basis of the median line of which every point along the length of it is equidistant from the nearest point on the baselines of the two Parties." (Art. 1, para. a).¹⁴ The median line and its limits are defined by the following geographical points from 1 to 6 extending from South to North.

¹³ See Michael Leigh and Charlotte Brandsma, "Energy Resources in the Eastern Mediterranean", Brussels Forum Paper Series, March 2012 (http://www.gmfus.org/wp-content/blogs.dir/1/files/mf/leigh_brandsma_easternmedenergy_bf12.pdf)

¹⁴ For the discussion below see in particular: Tullio Scovazzi, *Maritime Boundaries in the Eastern Mediterranean Sea*, German Marshall Fund, Eastern Mediterranean Energy Policy, Policy Brief June 2012; Martin Wählisch, "Israel-Lebanon Offshore Oil & Gas Dispute – Rules of International Maritime Law", *ASIL Insights*, December 5, 2011 (<http://www.asil.org/insights111205.cfm>).



| Number of point | Latitude (North) | Longitude (East) |
|-----------------|------------------|------------------|
| 1 | 33° 38' 40 '' | 33° 53' 40'' |
| 2 | 33° 51' 30'' | 34° 02' 50'' |
| 3 | 33° 59' 40'' | 34° 18' 00'' |
| 4 | 34° 23' 20'' | 34° 44' 00'' |
| 5 | 34° 39' 30'' | 34° 53' 50'' |
| 6 | 34° 45' 00'' | 34° 56' 00'' |

However, Lebanon's proclaimed EEZ goes north beyond point 6 and south beyond point 1. Terminal point 1 (having the coordinates 33° 38' 40" Lat and 33° 53' 40" Long) at the southern limit of the boundary does not coincide with terminal point 23 (33° 31' 51.17" Lat and 33° 46' 8.78" Long) figuring in the geographical coordinates deposited with the United Nations and which represent Lebanon's claim, point 1 falling short of the equidistant tripoints between Cyprus, Israel and Lebanon southwards.

The Lebanon/Cyprus Agreement therefore leaves a margin in the determination of the median line. It is a frequent practice in bilateral delimitation agreements to stop before reaching the triple point since this would require the participation of the third state concerned. The intention of Lebanon therefore was to leave the door open to review or adjustment of the geographical points "in the light of future delimitation of the exclusive economic zones with other neighboring states concerned in accordance with an agreement that may be reached regarding this matter with the neighbouring states concerned" as expressly stated in Art. 1(e) of the Cyprus/Lebanon Agreement.

The Agreement between Cyprus and Israel

On 17 December 2010, Cyprus and Israel signed in Nicosia an agreement on the Delimitation of the Exclusive Economic Zone which entered into force in February 2011¹⁵.

It is interesting to note that although Israel is not a party to UNCLOS, the preamble of its Agreement with Cyprus recalls the provisions of that treaty in relation to the EEZ, which implies that Israel considers these provisions to be binding on it by virtue of customary international law. The Parties also based "themselves on the rules and principles of international law of the seas applicable to the matter;" giving even further binding force to these rules pertaining to the EEZ.

Unfortunately, the Agreement provides for a delimitation effected along 12 points purportedly on the basis of a median line which ignores the margin left in the Cyprus/Lebanon Agreement. Based on article 1 of the agreement, the delimitation of the EEZ between Cyprus and Israel is effected by the median line and its limits by geographical points 1 to 12, in accordance with the following list of coordinates:

| POINT | LATITUDE | LONGITUDE |
|-------|---------------|---------------|
| 1 | 33° 38' 40" N | 33° 53' 40" E |
| 2 | 33° 37' 24" N | 33° 52' 06" E |
| 3 | 33° 32' 59" N | 33° 46' 42" E |
| 4 | 33° 32' 00" N | 33° 43' 05" E |
| 5 | 33° 30' 27" N | 33° 36' 15" E |
| 6 | 33° 16' 56" N | 33° 27' 02" E |
| 7 | 33° 09' 25" N | 33° 17' 50" E |
| 8 | 33° 03' 22" N | 33° 10' 28" E |
| 9 | 33° 59' 37" N | 33° 05' 56" E |
| 10 | 33° 56' 03" N | 33° 01' 36" E |
| 11 | 33° 54' 35" N | 33° 59' 50" E |
| 12 | 33° 53' 20" N | 33° 58' 20" E |

Terminal point 1 at the northern limit of the maritime boundary between Cyprus and Israel has exactly the same coordinates as point 1 that identifies the southern terminal point of the agreement between Cyprus and Lebanon (the coordinates 33° 38' 40" Lat and 33° 53' 40" Long), which as stated above falls short of the equidistant tripoints between Cyprus, Lebanon and Israel and overlaps with Lebanon's declared EEZ. The Cyprus/Israel Agreement therefore overlaps with Lebanon's rights over the maritime area it claims – it extends 17 kms North of Lebanon's claim, leaving an area of about 850 square kms at its lateral boundary with Israel in dispute.

Israel used the same coordinates of the terminal point when the Israeli cabinet approved a map of its proposed maritime boundaries in July 2011 based on the Cyprus-Israel agreement and submitted it to the United Nations.

The Agreement between Israel and Cyprus has been further consolidated by a visit to Cyprus by the Israeli Premier, Benjamin Netanyahu, and by a series of measures of cooperation relating to development of their joint resources and to their defence.

¹⁵ 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, Dec. 17, 2010, available at http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/cyp_isr_eez_2010.pdf.

Protest by Lebanon

Israel rejected the south-west points of the EEZ proclaimed and deposited by Lebanon with the United Nations. Lebanon's boundary declaration "contradicts the line Israel has agreed upon with Cyprus, and what is more significant to me is that it contradicts the line that Lebanon itself concluded with Cyprus in 2007," declared Prime Minister Binyamin Netanyahu. "We have no choice but to set the borders ourselves," he concluded.¹⁶

For its part, Lebanon sent an official protest against the Cyprus/Israel Agreement in two letters dated 20 June 2011 and 3 September 2011 addressed to the UN Secretary-General.¹⁷ It was stated that Point 1 in the Cyprus/Israel Agreement purporting to be the triple point is completely incompatible with the geographical points that Lebanon had deposited with the United Nations. Point 1 is not a terminal point and therefore cannot be taken as a starting point between Cyprus and any other country. Referring to the coordinates deposited by Israel, Lebanon moreover stated that "point 31 flagrantly violates the principles and rules of international law and constitutes an assault on Lebanese sovereignty", for that point "is north of the internationally recognized land borders of Lebanon that are set forth in the Paulet-Newcombe agreement and the 1949 armistice agreements, according to which the southern border of Lebanon is delimited from Ra's Naqurah at point 1 B". **The Israel-Cyprus Maritime Agreement therefore... could imperil international peace and security, particularly if one of those States should decide unilaterally to exercise sovereign authority over the region that Lebanon considers an inalienable part of its exclusive economic zone.**"

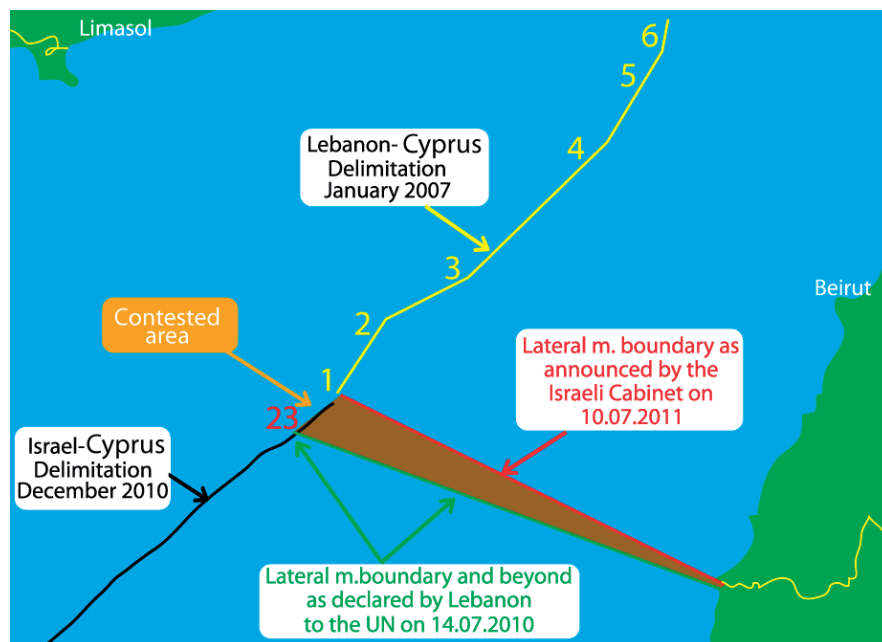
A number of unilateral measures undertaken by Israel claiming to demarcate the maritime border between the two countries – among which the installation of a line of buoys for "security" purposes – has also led Lebanon to file complaints with the United Nations. It is obvious that we are in the presence here of a potential major conflict.

Future revisions of the lines

The Cyprus/Israel Agreement also provides for future revision or adjustment of the boundary. Article 1 (e) states: "... taking into consideration the principles of customary international law relating to the delimitation of the Exclusive Economic Zone between States, **the geographical coordinates of points 1 to 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**". **The three States concerned are obviously Cyprus, Israel and Lebanon. This leaves the door open for a peaceful resolution of a potential conflict. However, in view of the fact that Lebanon does not recognize Israel, negotiations cannot be undertaken between the three States sitting together; Israel also insists that delimitation of maritime territory can only take place on the basis of agreement on land boundaries.** Both Agreements stipulate (Article 3) **that the parties are bound to notify and consult with each other before reaching a final agreement with another State on delimitation of their EEZ. However, Lebanon claims that it was not consulted when Cyprus negotiated and signed an agreement with Israel.**

¹⁶ Herb Keinson, "Cabinet Approves Northern Maritime Border", *Jerusalem Post* (July 10, 2011), <http://www.jpost.com/NationalNews/Article.aspx?id=228666>.

¹⁷ Letter dated 20 June 2011 from the Minister for Foreign Affairs and Emigrants of Lebanon addressed to the Secretary-General of the United Nations concerning the 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, signed in Nicosia on 17 December 2010; Letter dated 3 September 2011 from the Minister for Foreign Affairs and Emigrants of Lebanon addressed to the Secretary-General of the United Nations concerning the geographical coordinates of the northern limit of the territorial sea and the exclusive economic zone transmitted by Israel (available at <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/LBN.htm>)



Disputed border area between Israel and Lebanon (Source: PFC Energy, Memo Petroleum Risk Manager (May 2012), reproduced in GMF, Policy Brief, June 2012) (for illustration purposes only)

Provisional and other Arrangements

UNCLOS provides that pending agreements in relation to the EEZ or Continental Shelf, States are required to make “every effort to enter into provisional arrangements of a practical nature” which would be without prejudice to the final delimitation (Articles 74(3) and 83(3)). They are also obligated to “make every effort . . . not to jeopardize or hamper the reaching of the final agreement.”

Provisional utilization of the disputed areas can also take the form of joint exploration and exploitation of resources that straddle maritime boundaries. Such joint development zones were in fact pioneered in the Middle East by the Gulf States in their agreements with one another.

Such provisional arrangements have the benefit of avoiding suspension of economic development in disputed areas and

have been encouraged by tribunals. At any rate, it is not “permissible for a party to a dispute to undertake any unilateral activity that might affect the other party’s rights in a permanent manner,”¹⁸ unless these are transitory such as seismic exploration and do not cause a change in the physical environment.

According to Article 2 of the Cyprus/Lebanon Agreement, if natural resources straddle the boundary line, the parties are under an obligation to cooperate to reach an agreement on the means of utilizing these resources:

“In case there are natural resources, including hydrocarbons reservoirs, extending from the Exclusive Economic Zone of one Party to the Exclusive Economic Zone of the other, the two Parties shall cooperate in order to reach a framework **unitization** agreement on the modalities of the joint development and exploitation of such resources.”

¹⁸ See Dominic Roughton, “Rights (and Wrongs) of Capture: International Law and the Implications of the Guyana/Suriname Arbitration”, 26 *J. Energy Nat. Resources L.* 374 (2008), citing the *Guyana –v– Suriname, Arbitral Award* of 17 September 2007 (at <http://www.pca-cpa.org>).

The Cyprus/Israel Agreement therefore refers also to an obligation to cooperate in the joint development and exploitation of such resources, but specifically referring to a framework unitization agreement.

Lebanon is currently seeking means of reaching a provisional arrangement or joint development with Cyprus, in which the two States could share jointly in agreed proportions the resources from offshore oil and gas in a designated zone of the seabed and subsoil, while retaining sovereignty over each area. There are different models that could be followed. The advantage is that such joint arrangements allow States to combine human resources, expertise, technical and other assistance.

As between Israel and Lebanon, it should be noted that while the conclusion of a bilateral treaty which regulates comprehensively the relations between two states may equate to recognition, it may be argued that temporary technical arrangements for limited exploitation of straddling resources need not imply it, particularly if it is clearly stated that there is no intent to recognize and where such arrangements may go through third party mechanisms.

The Different Options of Dispute Settlement

Should Lebanon not be able to obtain satisfaction in recognition of its maritime claims then it should seriously envisage recourse to the dispute settlement procedures offered by international law.

UN Charter Article 33 outlines the various dispute settlement procedures to which States can have recourse: negotiation, conciliation, good offices, arbitration or judicial settlement, unless they are bound by binding procedures laid down in a treaty or other instrument.

Dispute settlement under UNCLOS

UNCLOS imposes an obligation on State parties – in this case Cyprus and Lebanon - to resort to the dispute settlement procedures of the Convention (Part XV) if no delimitation agreement can be reached within a reasonable period of time on the EEZ (Article 74 (2)). **If States do not express their choice between three sets of compulsory procedures - arbitration, the International Court of Justice (ICJ) or the International Tribunal for the Law of the Sea (ITLOS) - then arbitration is the compulsory method (Article 287).**

Arbitration

The unratified Agreement between Lebanon and Cyprus also envisages recourse to arbitration should settlement through diplomatic means within a reasonable timescale fail to resolve a conflict. Article 4 reads as follows:

1. Any dispute that arises from the application of this agreement must be resolved by diplomatic means in a spirit of mutual understanding and cooperation.
2. In the event that the two parties do not reach a resolution acceptable to them by diplomatic means within a reasonable timescale, the dispute will be referred to arbitration.

However, Article 4 does not specify the modalities of such arbitration. Needless to say that, for this provision to find application, Lebanon has to ratify the Agreement.

The International Court of Justice

The ICJ which sits in The Hague has settled numerous maritime delimitation disputes, including in respect of Africa and the Arab world, between Tunisia/Libya (1982), Libya/Malta (1985), Qatar/Bahrain, (2001), and Cameroon/Nigeria, with the intervention of Equatorial Guinea (2002). Lebanon has been twice a party before the ICJ in a very different case (France v. Lebanon) in 1953 and 1959.

As the Court only has jurisdiction on the basis of consent, Israel needs to agree to referral of the dispute to the Court. Obtaining such consent however would prove very difficult. Consent would also be necessary for an eventual Arbitration between Lebanon and Israel.

Bilateral negotiations

As stated above, in view of the fact that Lebanon does not recognize Israel, negotiations cannot be undertaken between the three States sitting together. But separate bilateral talks between Cyprus and Israel on the one hand and Cyprus and Lebanon on the other could be held to find some solution to the conflict.

Lebanon is having talks with Cyprus to revise the draft 2007 agreement before ratification.²⁰ This is imperative as Cyprus is starting to allocate the rights for exploration and exploitation in parts of its EEZ adjacent to the border with Lebanon. Lebanon also has used the tripartite meetings between the Force Commander of UNIFIL and senior officials from the Lebanese Armed Forces and the Israel Defence Forces to discuss the disputed maritime zone between Lebanon and Israel. Israel has so far de facto refrained from according exploitation rights for the blocs in the disputed area, thus seeming to wish to avoid conflict.²⁰

United Nations as mediator

United Nations concern with the boundaries of Lebanon has arisen solely from its need to confirm in 2000 Israeli withdrawal from the territory. The "Blue Line" which it has established is a purely technical exercise of identifying a line for the purpose of confirming compliance with its resolutions and while this may extend to Lebanon's **territorial waters** for the purpose of ensuring security, the UN has no competence to delimit the maritime boundaries between Lebanon and Israel which is a bilateral matter.

However, both Israel and Lebanon are members of the UN. In this framework, Chapter VI of the Charter, dedicated to the resolution of any dispute or any situation the continuance of which is likely to endanger the maintenance of international peace and security, may play an important role and Lebanon has had recourse to the UN on a number of occasions.

¹⁹ See e.g. Stelios Orphanides, "Cyprus, Lebanon in Talks on Oil and Gas Ties, Minister Says", Bloomberg, November, 25, 2011 (<http://www.bloomberg.com/news/2011-11-25/>)

²⁰ See *Daily Star*, 18 August 2011 (<http://www.dailystar.com.lb/News/Politics/2011/Aug-18/Lebanon-Israel-UNIFIL-discuss-disputed-maritime-borders.ashx#ixzz2APITXns>)

THE NEED FOR FURTHER REGULATION OF THE EEZ

Protection of the Marine Environment

It is important to stress that as soon as a State starts exploiting the natural resources of its Continental Shelf or EEZ, it has not only rights but also obligations. Part V of UNCLOS in particular imposes obligations to prevent pollution from such activities, to prevent accidents and to ensure the safety of operations at sea, and to regulate the installations required.

Lebanon's Law of the Sea reflects awareness of this obligation. Article 13 on Protection and Preservation of the Marine Environment states:

“The Lebanese Republic shall exploit its natural resources pursuant to its engagement to environmental policies and to its duty to protect and preserve the marine environment in accordance with the provisions of the United Nations Convention on the Law of the Sea and other relevant international conventions to which Lebanon is a party.”

The regional system is also well developed. Lebanon, Cyprus, Israel and Syria are all parties to the 1976 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution as amended and expanded, and to some of its protocols.

The Offshore Protocol relating to the protection of the Mediterranean from pollution resulting from offshore exploration activities, which entered into force in March 2011, is of particular importance. In particular, the coastal state has an obligation to ensure that private companies engaged in exploration or exploitation have insurance or other financial security. Lebanon has not signed it but should be encouraged to accede to it (both Syria and Cyprus are parties).

The protection of the environment also concerns the cultural heritage. Lebanon is a party to the International Convention for the Protection of Underwater Heritage. In this respect,

Lebanon could consider the option of establishing an archaeological zone. Article 14 of its Law of the Sea in regard to Archaeological and Historical Objects states:

“The Lebanese Republic shall have due regard to perform its duties in accordance with the United Nations Convention on the Law of the Sea and the UNESCO Convention on the protection of the Underwater Cultural Heritage ratified in 2001, and other relevant conventions and international law.”

Lebanon is a party to a number of other conventions on environmental protection and fisheries.

Article 15 of the Lebanese Law further provides for Marine Scientific Research:

“The Lebanese Republic shall promote all kinds of marine scientific research and marine technology exchange and cooperation with other States or with international organizations or programs through research programs for peaceful purposes for the good of the entire humankind.”

Lebanon therefore must exercise due diligence. Hence the importance of envisaging the enactment of further relevant domestic laws and regulations implementing its international obligations which it can enforce in its EEZ.

Enforcement Measures and Protection of Maritime Zones

While there is freedom of navigation in the EEZ, the coastal State is nevertheless entitled under UNCLOS Article 73:

“in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.”

The management of the EEZ is made more difficult again by the fact that Israel and Lebanon are technically in a state of war. In a case of armed conflict, a number of provisions apply under International Humanitarian Law (IHL) but also customary international law, for the protection of the environment, including prevention of the use of means of warfare likely to cause “widespread, long-term and severe damage to the international environment”. **The occurrence of a severe damage to the environment through means of warfare has been condemned in international fora and compensation for such damages has been required e.g. Security Council resolutions 688 and 687 on Iraq’s liability for its invasion and occupation of Kuwait, and General Assembly resolutions beginning with 61/194 condemning the bombing by Israel of the thermo-electric plant of Jiheh in Lebanon which caused severe pollution of the sea including off the coast of Syria and calling on Israel to compensate.**

In peacetime, while there is freedom of navigation in the EEZ and warships are immune, there is debate over whether military exercises by third states are allowable or can be regulated by the coastal State. The issue of naval exercise could make the object of a declaration, similar to that made by Brazil.

LICENSING OF OIL AND GAS CORPORATIONS

Lebanon's Readiness for Oil and Gas Investment

According to a recent report by a Canadian-based Institute, Lebanon ranks sixth out of 12 countries in the Middle East and 71st out of 147 countries world-wide, in terms of attractiveness for investment in oil and gas exploration and production.²¹ Attractiveness is ranked in terms of tax rates, the cost of regulatory schemes, environmental regulations, the interpretation and administration of regulations governing the petroleum industry, trade barriers and security threats.

Lebanon has a lot of catching up to do "when compared with the achievements of Lebanon's neighbors. Syria is an established oil producer; Cyprus has just completed its second bid round while Israel is on its way to commercial production next year. Before launching into the process the government has to face the complexity of managing it."²²

Progress in inviting companies to explore its offshore gas and oil has been slow due to a number of reasons, including heightened tension in the region and delays in the establishment of an energy infrastructure and governing body to issue exploration licenses and negotiate contracts with foreign oil companies.

Nevertheless, the legal infrastructure is being established.

– Lebanon's Offshore Petroleum Resources Law was adopted in 2010 (No.132/2010); it governs "all petroleum

activities that are associated with a sub-sea reservoir", that is petroleum reconnaissance, exploration, appraisal, production and exploitation, as well as the laying of pipelines, the transportation of petroleum and the development of facilities.

– A six-member Petroleum Administration was established on 7 November 2012 to oversee the bidding and licensing process. The Ministry of Energy and Water will accompany its work in the first stage until licenses and permits for companies have been issued, but subsequently it will work independently.

– The imminent adoption of executive decrees concerning oil and gas exploration has been announced by the Ministry of Energy and Water.

Seismic Surveys and the First Licensing Round

The Ministry of Energy and Water has been preparing the ground for the announcement of the 1st licensing round for hydrocarbon exploration in early 2013²³. Over the last decade, it has commissioned both 2D and 3D seismic surveys, with the aim of creating a comprehensive seismic data set covering all of offshore Lebanon for the opening of the first licensing round in early 2013 for the purpose of designating drilling blocks.²⁴

It has worked through a number of companies, principally Geco Prakla, Spectrum ASA and Petroleum Geo-Services (PGS) all of whom have conducted 2-D and 3-D seismic surveys of the hydrocarbon reserves between the years 2000

²¹ Fraser Institute, "2012 Global Petroleum Survey," (available at <http://www.fraserinstitute.org/uploadedFiles/fraser-ca/Content/researchnews/research/publications/global-petroleum-survey-2012.pdf>)

²² Samer Khalaf, "Lebanon oil tenders: slowly but surely", *The Daily Star*, 14 August 2012 (at <http://www.dailystar.com.lb/Business/Lebanon/2012/Aug-14/184576-lebanon-oil-tenders-slowly-but-surely.ashx#ixzz23W55pr8o>)

²³ Information and documentation concerning the licensing round are to be found on www.lebanon-exploration.com

²⁴ *Ibid.*

and 2012, with Geco-Prakla even starting in 1993 over a limited area of offshore northern Lebanon.

Both Spectrum and PGS have seen their contracts renewed in 2011 to conduct new 2D and 3D seismic surveys to enhance exploration in the region. For example, Spectrum's unique dataset covers the entire highly prospective Levantine Basin and includes a detailed grid over Lebanese acreage, enabling companies to efficiently review hydrocarbon prospectivity ahead of the first licensing round offshore Lebanon.

The Ministry of Energy and Water has released the first of three GeoPackages (Framework GeoPackage) which provides basic geographic and geological information, seismic navigation, well locations, etc. The three GeoPackages once completed will be included with the bidding documents for the first licensing round.

The Ministry has also commissioned a **Strategic Environmental Assessment (SEA)** study which has recently been completed. Finally it has supplemented its efforts in preparing for the licensing round by a number of activities such as the "Lebanon International Petroleum Exploration Forum and Exhibition" to ensure that the international oil and gas exploration community is kept informed. These fora include not only presentations on Lebanon's offshore prospects, legal and institutional framework petroleum regulations, Joint Operating Agreements (JOA), Exploration & Production Agreements (EPA), Licensing Process, and Block Delineation and Exploration Strategies but also presentations on Health, Safety & Environment, thus covering not only the evolution and prospects in the Levant Basin and the technological breakthroughs but also the environmental and societal impacts.

The Minister of Energy and Water, Gebran Bassil, would not speculate about the estimated size of gas and oil in Lebanon. But he has stated:

"All that I can say is that Lebanon will be the most important player in the region in terms of oil and gas. We have sufficient gas not only for local consumption, but for export as well."²⁵

It would seem that the size of gas off the Lebanese coast exceeds earlier estimates. The CEO of Spectrum has stated that "The next step is for the minister to announce which of the offshore [areas] Lebanon is going to be open for international bidding, what the terms of the bidding process are, and when can they submit their bids." He announced that already 26 international oil companies have purchased the data from the Energy Ministry.²⁶

In the meantime, Israel has been working intensely on conducting surveys for the exploitation of its maritime petroleum resources through Noble Energy Inc. which has stated however that it does not conduct any exploitation in disputed maritime zones.

A Proper Regulatory Framework

The importance of attracting investments through a transparent legal and fiscal framework for exploration and exploitation, one which balances the interests of the oil companies and that of the State and ensures that such activities will not harm other sectors of the economy or create environmental harm, must be underlined.

It is important to establish a regulatory framework, in particular not to endanger Lebanon's unique natural environment through the conduct of risky deep sea drilling without ensuring stringent health, safety and environmental controls on exploration activity – one will remember the Gulf of Mexico spill. Hence introducing new environmental legislation for the Exclusive Economic Zone, and review of health and safety regulations for petroleum operations is imperative to ensuring the safe and responsible development of oil and gas. **Importantly, Lebanon's Offshore**

²⁵ *Daily Star*, 9 November 2012 (<http://www.dailystar.com.lb/Business/Lebanon/2012/Nov-09/194407-announcement-for-oil-bids-before-2013-bassil.ashx#ixzz2CaQBxTPB>)

²⁶ *Ibid.*

Petroleum Resources Law (No.132/2010) contains provisions on health and safety whereby contractors must ensure that all necessary measures are taken to prevent and reduce harm to persons, property and the environment.²⁷

Evaluation of Bids

Lebanon will soon be receiving bids from oil and gas companies for the blocks designated for exploration. It will have to evaluate applications received on the basis of a number of criteria including the proposed work programme, corporate profile, technical and financial capability, risk management practices and operating experience.

Vigilance in Drafting Production Sharing Agreements with Oil and Gas Companies

²⁸

Lebanon must also exercise vigilance in dealing with oil and gas companies. It is therefore essential to work with a law-firm with extensive experience in the field of offshore oil and gas projects, from the tender process through contract negotiation, post signature advice, disputes and litigation, and finance.

– Negotiating contracts on the basis of a wide range of Model International Oil and Gas Contracts requires understanding the fundamentals of international oil and gas agreements; along with negotiation techniques and strategies, there must be knowledge of key contract terms and ways in which these have been interpreted, especially in the context of multiple contracts with a diverse range of contractors and subcontractors.

– There must be a proper understanding of the effective allocation of risks and liability

– There must be an understanding of the dispute settlement process for every type of case from simple ones to multi-party international litigation, as well as the use of alternative dispute resolution mechanisms.

Challenges ahead

Although the legal framework is indispensable to protect Lebanese interests in exploiting its gas and oil offshore resources, many issues, problems and challenges remain unresolved and need urgent examination. The most pressing ones are the following:

1. Dilemmas faced by Lebanese policy-makers.

- What usage of gas should be: electricity production, domestic, transportation? The Lebanese economy's transition to natural gas consumption needs to be examined in full details.
- What is the right mix of exported gas versus satisfying domestic demand
- Basically, there are two ways to export natural gas: by pipeline or by special LNG tanker. The destination options are critical and remain problematic. Geopolitics plays a crucial role. Lebanon will need a clear vision and sound strategy to avoid tensions and preserve its autonomy.
- What would be the environmental impacts of sea exploitation and how to protect it actively?

²⁷ See further: International Law Office, "Understanding the Offshore Petroleum Resources Law", August 13 2012 (available at <http://www.internationallawoffice.com/newsletters/Detail.aspx?g=4bf4e054-9207-413c-b511-66cf89ab31d3#scope>)

²⁸ See Toby Hewitt, "Asian Perspective on Model Oil and Gas Services Contracts", 28 *J. Energy & Nat. Resources L.* 331 (2010); A. Timothy Martin and J. Jay Park, "Global petroleum industry model contracts revisited: *Higher, faster, stronger*", *J World Energy Law Bus* 4 (2010); A. Timothy Martin, "Model Contracts: A Survey of the Global Petroleum Industry", 22 *J. Energy & Nat. Resources L.* 281 (2004).

2. Security Concerns

– Offshore gas facilities are difficult to protect. Israeli threats are very serious. A national defense strategy integrating deterrence, prevention and retaliation will be unavoidable.

3. Economic Risks

– In order to facilitate gas discoveries, Lebanon should drill exploratory wells offshore in the next few years. Risk capital of several hundred million dollars should be attracted. If oil & gas companies take all the risks, the total government takes from gas discoveries may be reduced drastically.

– Gas industry is capital and technology intensive. It is not labour intensive. Careful policies should be devised to avoid Dutch disease.

– Unlike oil, gas prices tend to vary in different parts of world. The general trend of gas prices is towards decreasing. This increases the uncertainty about the commercial viability of new gas projects and pushes the Lebanese authorities to act swiftly.

– How to face the emergence of powerful political forces with substantial investments in local oil and gas-related companies and considerable perceived influence on the national commission members.

– Gas production is very expensive. Reaching an agreement for a collaborative regional approach remains a priority that may bring substantial benefits to the region.

CONCLUSION AND RECOMMENDATIONS

A proactive holistic approach in dealing with the matter at stake, including technical, legal, legislative and diplomatic sets of preparedness plans to face the challenges ahead is essential, while consolidating all the steps that have already been taken to strengthen Lebanon's position and preserve its interests and rights.

The protection of Lebanon's sovereign rights over its offshore resources should be a priority on its agenda for the stakes are high both for its security and economic interests. Clear delimitation of Lebanon's boundaries with its neighbours and cooperation in the management of resources in accordance with international law is essential in such a semi-closed area of the Mediterranean Sea. The peaceful resolution of marine disputes as a substitute for the threat of military force is also highly important.

Some tentative recommendations can be made at this stage:

– Now that Lebanon's EEZ has been proclaimed, the necessary national legislation to regulate it should be adopted, so as to implement and be in conformity with obligations contracted under international instruments, starting with those of UNCLOS.

– A thorough review of the international instruments relevant to the EEZ should be carried out with a view to ratifying ones which are essential.

– To make its EEZ effective, Lebanon should continue its efforts with Cyprus to renegotiate its delimitation agreement with a view to ratifying it. When circumstances allow, it should enter into negotiations with Syria in the future to specify the north/north-west limits of its EEZ. Agreeing with Cyprus and Syria on the north and west limits of the EEZ would consolidate Lebanon's position, interests and rights at the regional and international planes.

– A provisional joint management with Cyprus in areas where natural resources straddle the boundary lines should continue to be explored.

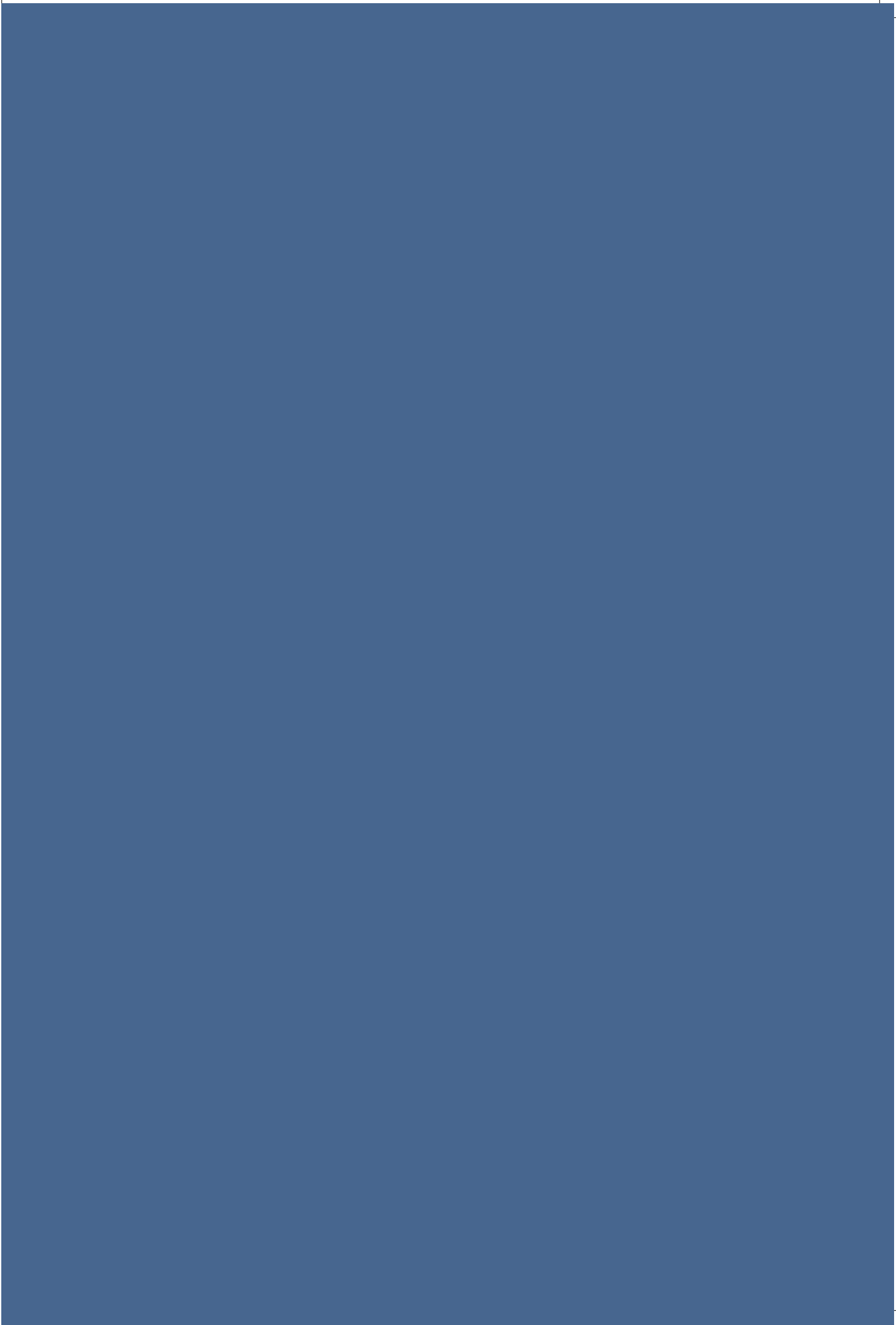
– Efforts should continue to try to resolve the issue of the disputed EEZ amounting to some 850 square kilometers of Lebanese territorial waters

– In the absence of agreement, the States of the region should respect the median line or resort to dispute settlement procedures; they also have an obligation pending agreement, not to hamper or jeopardize the final solution. Third parties, such as neutral international organizations can help in mediating efforts.

– To address the challenges ahead, an inter-ministerial national commission needs to be established, in parallel with the six-member Petroleum Administration, which could act in a holistic fashion on the basis of a comprehensive national strategy which would oversee both the licensing side for exploration and exploitation of resources and the law of the sea and maritime delimitation in general, including dispute resolution. It would have the objective of maximizing the benefits of Lebanon, preserving its rights and interests, consolidating its legal, political and economic position at the regional and international planes, as well as preventing any potential conflict with neighboring States.

– A team of local and international technical and legal experts or alternatively, coordination by a qualified international law firm, essential for the drafting of model laws, technical delimitation problems, and negotiation with neighbouring States, advice on dispute resolution mechanisms and oversight in the drawing up of contractual arrangements with oil companies should accompany the process and be at the disposal of the national commissions. Mistakes made in this area would come at a great cost to Lebanon in the longer-term.

Needless to say, the successful exploitation of Lebanon's rich offshore hydrocarbon resources requires political consensus over a national policy solely motivated by Lebanese common interests. It is the welfare of the people of Lebanon and of future generations that is at stake here.



About the Swiss Association for Euro-Arab-Muslim Dialogue (ASDEAM)

ASDEAM was founded in 2006; it includes Swiss, Arab, and Islamic figures active in political, diplomatic, and academic domains.

The Association seeks to achieve the following goals:

- Strengthening the links between the Arab and Western worlds
- Spreading the culture of cross-fertilization of civilizations

It aims at:

- Contributing to the revival and renovation of the human and open Arab intellectual heritage through the promotion of interaction among contemporary thinkers
- Providing an appropriate environment to promote freedom of expression and thinking

Its efforts are thus focused on the following:

- Proposing practical initiatives to resolve conflicts and potential crises
- Organizing conferences, seminars, forums, etc. that address related issues

ASDEAM has focused, since the summer of 2006, on studying the situation in Lebanon. It held, during the fall of 2006, a conference on the Israeli war on Lebanon, and discussed it from the perspective of International Law. This conference was held at the Geneva Graduate Institute of International Studies with the participation of prominent international lawyers. The conference had wide resonance among the international institutions of Geneva. After the conference, the Association decided to energize its efforts toward the Lebanese crisis, especially as internal conflict flared up in Lebanon in the autumn of 2006, when a number of ministers withdrew from the Cabinet and a group of Lebanese demanded the fall of the government, claiming it no longer abided by the Pact of Coexistence. Moreover, a large number of Lebanese sat in protest in Riad El Solh Square and communication among many Lebanese politicians was severed. Under these circumstances, the Association set out to invite representatives of both political parties and civil society, from various intellectual fields and political affiliations, to participate in a dialogue on core issues affecting the Lebanese entity as well as on key issues causing political instability and impeding Lebanon's growth and prosperity.

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