



Legal Aspects of the Lebanon-Israel Maritime Boundary Agreement

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***The present paper represents in no way the views or positions of the World Maritime University, or the International Maritime Organization. The paper is current as of 6 April 2023.**

Abstract

After years of heightened tensions and threats of armed escalation over a maritime boundary dispute, the Lebanese and Israeli Governments concluded on 27 October 2022 an Agreement related to the Establishment of a Permanent Maritime Boundary. The agreement was reached following mediation by the United States with facilitation by the United Nations.

This paper lays out the (international and national) legal framework of the agreement – including the Vienna Convention on the Law of Treaties, the international law of the sea, customary international law, Lebanese and Israeli law – and elaborates on its binding effects.

The paper also takes stock of developments that have occurred since the making of the deal, including the opening up of prospecting rights in blocks covered by the agreement.

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Introduction

This report analyses the Agreement related to the Establishment of a Permanent Maritime Boundary concluded through US mediation between Lebanon and Israel on 27 October 2022 at Naqoura, Lebanon, and assesses its legal force, some six months into its implementation.

The agreement has arguably heralded a new era in the two states' inimical relations by putting to rest an inflamed boundary dispute. It has also ushered a revival of oil and gas prospecting activities in Lebanon's offshore fields. In Israeli waters, production activities were given stronger impetus amidst a more stable environment and the appeasement of feisty postures on either side of the boundary as a result of the deal.

The paper begins with a synopsis of the timeline of offshore oil and gas discoveries in the Levantine Sea, and the measures taken by Lebanon and Israel to take advantage thereof, including resort to US mediation to settle their maritime boundary dispute over conflicting claims. An outline is given of the international law of the sea and the law of maritime delimitation. The report describes the agreement's main provisions, and examines the core question as to whether it constitutes a treaty under international law. The reception of the agreement under Israeli and Lebanese law, together with the reactions of other states, are also considered.

The approach taken in the paper is legal. The political, geopolitical, economic or technical ramifications of the deal are left out.

It is noteworthy that the analysis in this paper is based on the text of the *draft* agreement and appurtenant documents in their final version dated 10 October 2022, as leaked widely in non-official media. It has not been possible to locate the official version of the agreement.¹

¹ The agreement was deposited with the UN, but the full text remains inaccessible: United Nations Treaty Collection, 'Exchange of Letters constituting a Maritime Agreement between the State of Israel and the Lebanese Republic' <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002806029d5&clang=en> accessed 6 April 2023.

The timeline and process leading to the agreement

The discovery of significant natural oil and gas fields in the Levantine Sea made headlines around 2010.² An intense dynamic ensued in the region as states strived to explore and exploit the newly found reserves. This included the licensing of several operators across the area. Legislation was passed to regulate the sector, and states scrambled to delimit their maritime zones either unilaterally or via mutual agreement.³

The beginnings of a maritime boundary dispute between Israel and Lebanon may be traced to an overlap between the Lebanese claim filed with the United Nations and the Israeli-Cypriot joint delimitation.⁴ According to an early statement by Lebanon:

the geographical coordinates that were deposited with [the Secretary-General of the United Nations] by Israel violate the sovereign and economic rights of Lebanon over its territorial waters and exclusive economic zone ... and cut from those waters and that zone some 860 square kilometres. International peace and security could thus be imperilled, particularly if Israel, the occupying Power, should decide to pursue any economic activity in the aforementioned maritime area, which Lebanon considers to be an integral part of its territorial waters and exclusive economic zone.⁵

² See Massoud A Derhally, 'How the Discovery of Offshore Gasfields is Changing Levantine Economies' *Arabian Business* (London, 9 September 2012) <https://www.arabianbusiness.com/middle-east/how-discovery-of-offshore-gasfields-is-changing-levantine-economies-472231> accessed 19 February 2023; Adrien Sémon, 'The Lebanese Gas; Exploration and Exploitation' (Lebanese Citizen Foundation 2022) https://www.kas.de/documents/284382/284431/The+Lebanese+Gas_Exploration+and+Exploitation_En.pdf/2ef2034d-5393-37ff-9a20-6b93276c4c30?version=1.1&t=1666346476787 accessed 18 February 2023.

³ For a repertory of notifications of maritime claims to the UN, including national legislation and delimitation agreements, see: UN Division for Ocean Affairs and the Law of the Sea, 'Lebanon' (*Maritime Space: Maritime Zones and Maritime Delimitation*) <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/LBN.htm> accessed 1 April 2023; UN Division for Ocean Affairs and the Law of the Sea, 'Israel' (*Maritime Space: Maritime Zones and Maritime Delimitation*) <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/ISR.htm> accessed 1 April 2023.

⁴ See UN Division for Ocean Affairs and the Law of the Sea, 'Letter dated 20 June 2011 from the Minister for Foreign Affairs and Emigrants of Lebanon 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' (*Maritime Space: Maritime Zones and Maritime Delimitation*) https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/lbn_re_cyp_isr_agreement2010.pdf accessed 20 February 2023. It has been argued that the dispute resulted from alignment by Israel and Cyprus in their delimitation agreement on the 2007 Lebanon/Cyprus maritime delimitation agreement: see Mohamed O Abd El-Aziz, 'Will Lebanon and Israel Finally End their Maritime Border Dispute?' (The Cairo Review, 28 September 2022) <https://www.thecaireview.com/essays/will-lebanon-and-israel-finally-end-their-maritime-borders-dispute/> accessed 30 March 2023. It should be stated, nevertheless, that the 2007 Lebanon/Cyprus maritime delimitation agreement was never ratified by Lebanon and thus did not enter into force.

⁵ UN Division for Ocean Affairs and the Law of the Sea, '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' (*Maritime Space: Maritime Zones and Maritime Delimitation*) https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/lbn_re_isr_listofcoordinates_e.pdf accessed 31 March 2023.

Given that Israel was not recognised by Lebanon as a state,⁶ direct negotiations were out of the question as a dispute settlement mechanism. The US was to provide third-party mediation, and proposed in 2012 to the two states a compromise consisting of the so-called 'Hof' maritime demarcation line, named after the first US mediator assigned to resolve the dispute.⁷ The proposal was, however, rejected.⁸

The dispute was left to 'simmer' for several years—with sporadic threats of warfare from either side.⁹ In October 2020, indirect negotiations were reinitiated between the two states with the US acting as a mediator through Special Presidential Coordinator, Amos Hochstein. The United Nations facilitated the process.¹⁰

By then, Lebanon had upped its claim—at least at the negotiation table,¹¹ but it failed to deposit new coordinates with the UN. In 2013, Israel had discovered the so-called Karish gas field towards its northern waters.¹² Along with another field, so-called 'Qana', located further north—and discovered in the same year,¹³ Karish would form part of the contested maritime areas between Lebanon and Israel. At the height of the tension over the dispute, the Lebanese Hezbollah militia claimed responsibility for launching unarmed drones over the Karish field in an attempt to bolster Lebanese claims in the area.¹⁴

⁶ UNGA, Official Records of the 3rd Session of the General Assembly, Pt II, Plenary Meetings, Summary Records of Meetings, 5 April - 18 May 1949 - UNA(01)/R3 306-336.

⁷ The Hof line 'would have granted Israel slightly more than 40 percent of the disputed area ... while allocating around 57 percent to Lebanon': Mohamed O Abd El-Aziz, 'Will Lebanon and Israel Finally End their Maritime Border Dispute?' (The Cairo Review, 28 September 2022) <https://www.thecairoreview.com/essays/will-lebanon-and-israel-finally-end-their-maritime-borders-dispute/> accessed 30 March 2023.

⁸ Carole Nakhle, 'Lebanon and Israel's Historic Maritime Border Deal' (*Geopolitical Intelligence Services*, 9 February 2023) <https://www.gisreportsonline.com/r/israel-lebanon-maritime/> accessed 4 April 2023.

⁹ See in particular UN Division for Ocean Affairs and the Law of the Sea, 'Communication dated 2 February 2017 from the Permanent Mission of Israel to the United Nations addressed to the Office of the Secretary-General of the United Nations' (*Maritime Space: Maritime Zones and Maritime Delimitation*) https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/isr_nv_02022017.pdf accessed 1 April 2023, and the subsequent exchange of letters with Lebanon.

¹⁰ UN, 'UN/Israel-Lebanon Agreement' (27 October 2022) <https://www.unmultimedia.org/avlibrary/asset/2969/2969137/https://www.unmultimedia.org/avlibrary/asset/2969/2969137/> accessed 27 February 2023.

¹¹ The new Lebanese claim extended over an additional 1,430 square kilometres at sea: Mohamed O Abd El-Aziz, 'Will Lebanon and Israel Finally End their Maritime Border Dispute?' (*The Cairo Review*, 28 September 2022) <https://www.thecairoreview.com/essays/will-lebanon-and-israel-finally-end-their-maritime-borders-dispute/> accessed 1 April 2023.

¹² 'Israel: Israel's Newly Discovered Gas Field Contains Significant Crude Oil' *Asia News Monitor* (Bangkok, 17 July 2013) <https://www.proquest.com/newspapers/israel-israels-newly-discovered-gas-field/docview/1400265189/se-2> accessed 4 April 2023.

¹³ Tarek Saliba Rodríguez and Dany Moudallal, 'The Gas Extraction Agreement between Lebanon and Israel', in Eyrin Kyriakidi (ed), *Working Papers Collection: September - December 2022* (International Association for Political Science Students, February 2023) 8, 9 <https://iapss.org/core/storage/2023/02/Working-Papers-Collection-September-December-2022.pdf#page=14> accessed 5 April 2023.

¹⁴ 'Hezbollah Sends Drones toward Israeli Gas Rig in Disputed Waters' (*Reuters*, 2 July 2022) <https://www.reuters.com/world/middle-east/israel-shoots-down-unarmed-hezbollah-drones-heading-gas-rig-security-source-2022-07-02/> accessed 1 April 2023.

On 24 February 2022, the Russian Federation launched a wide-scale invasion of Ukraine. Given much of Europe's reliance on Russian gas and antagonised relations as a result of the conflict, an acute energy crisis came to light. Alternative sources for oil and gas were actively sought. Agreements were concluded to supply Europe with Middle Eastern gas.¹⁵ It is arguable that the overarching Russia/Ukraine crisis ultimately contributed to a fruitful denouement in the negotiations between Lebanon and Israel.¹⁶

On 11 October 2022, the negotiating states reached an agreement on the terms of the deal. The agreement was formalised on 27 October 2022.¹⁷

It is noteworthy that, while Israel has been producing gas from its wells, the picture in the Lebanese offshore remains nebulous as of yet with no commercial finds having been discovered.

A concise note on maritime delimitation

To understand the maritime delimitation agreement concluded between Israel and Lebanon, it should be placed within the wider context of the international law of the sea, which is itself part of international law.¹⁸

International law binds states forming part of the world community to a system of rights and obligations governing relations among them as well as their relations with other actors. The international law of the sea sets forth rights and obligations concerning the delimitation and use of maritime spaces and resources. It is largely codified within the United Nations Convention on Law of the Sea (hereinafter 'UNCLOS').¹⁹ The Convention is widely ratified save for some exceptions, including, in the region under consideration, Israel, the Syrian Arab Republic, Türkiye and Libya. The Convention was ratified by Lebanon on 5 January 1995.²⁰

¹⁵ Shira Rubin, 'Israel and Egypt Sign Gas Export Deal as Europe Seeks Russia Alternative' *The Washington Post* (Washington DC, 16 June 2022) <https://www.washingtonpost.com/world/2022/06/15/israel-gas-europe-export-turkey/> accessed 1 April 2023.

¹⁶ See Mohamed O Abd El-Aziz, 'Will Lebanon and Israel Finally End their Maritime Border Dispute?' (*The Cairo Review*, 28 September 2022) <https://www.thecairoreview.com/essays/will-lebanon-and-israel-finally-end-their-maritime-borders-dispute/> accessed 30 March 2023.

¹⁷ United Nations Treaty Collection, 'Exchange of Letters constituting a Maritime Agreement between the State of Israel and the Lebanese Republic' <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002806029d5&clang=en> accessed 6 April 2023.

¹⁸ See: Donald R Rothwell and Tim Stephens, *The International Law of the Sea* (2nd edn, Hart 2016) 22ff and 412ff; United Nations Convention on Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, art 301.

¹⁹ (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.

²⁰ It was also ratified by Cyprus, Egypt and Greece. Palestine, and the United Kingdom of Great Britain and Northern Ireland acceded to the Convention. The European Union formally confirmed the Convention. For all intents and purposes, accession and formal confirmation bring about the same effects as ratification: see UNCLOS, arts 306 and 307; Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 11, 14 and 15.

Despite non-ratification by a number of states, the Convention is considered to be reflective of customary international law, which binds non-ratifying states.²¹

Maritime delimitation is the process by which states draw out lines across the sea with a view to defining maritime zones subject to their jurisdiction. The extent of the coastal states' sovereignty and jurisdiction varies over such maritime zones, based on a delicate balancing of the interests of all states in accessing and benefiting from ocean space and resources.

The following maritime zones are relevant in the Lebanese/Israeli delimitation case:

- internal waters, defined as the waters on the landward side of the baselines;²²
- the territorial sea, which is a band of sea adjacent to the coast, measured from baselines²³ and stretching to a limit usually set at 12 nautical miles;²⁴
- the exclusive economic zone (also known as the 'EEZ'), stretching up to 200 nautical miles from the baselines;²⁵
- the continental shelf, which, unlike the above-listed areas, concerns only the seabed and its subsoil, and is measured from the baselines up to 200 nautical miles, or, where the natural configuration of the seabed permits, to a farther distance from the baselines.²⁶

Maritime delimitation may proceed unilaterally by the coastal state, but where the coast faces or is adjacent to the coast of a neighbouring state, international law spells out certain requirements for the validity and recognition of any delimitation.

For instance, agreement between neighbouring states is one way to procure recognition. Another form for settling maritime delimitation differences between states is to resort to international adjudication or arbitration.²⁷

²¹ Donald R Rothwell and Tim Stephens, *The International Law of the Sea* (2nd edn, Hart 2016) 22. Note that Israel—but neither Lebanon nor Palestine—is a party to the older so-called Geneva conventions on the law of the sea, namely: Convention on the Territorial Sea and the Contiguous Zone (adopted 29 April 1958, entered into force 10 September 1964) 516 UNTS 205; Convention on the Continental Shelf (adopted 29 April 1958, entered into force 10 June 1964) 499 UNTS 311; Convention on the High Seas (adopted 29 April 1958, entered into force 30 September 1962) 450 UNTS 11; Convention on Fishing and Conservation of the Living Resources of the High Seas (adopted 29 April 1958, entered into force 20 March 1966) 559 UNTS 285.

²² UNCLOS, art 8(1). For an explanation of 'baselines', see n 23.

²³ Baselines are lines drawn along the coast by the coastal state for the purpose of measuring the breadth of the territorial sea. The drawing of baselines is governed by UNCLOS, arts 3–16.

²⁴ UNCLOS, arts 2(1) and 3.

²⁵ UNCLOS, arts 55 and 57.

²⁶ UNCLOS, art 76.

²⁷ See UNCLOS, arts 15, 74 and 83.

The eastern Mediterranean region has been home to a number of mutual agreements, including UK-Greece-Türkiye-Cyprus,²⁸ Cyprus-Egypt,²⁹ Lebanon-Cyprus,³⁰ Israel-Cyprus,³¹ Türkiye-Libya,³² and Greece-Egypt.³³ In a number of instances, these agreements have drawn objections from third party states, with the result that their validity could be contentious.³⁴

In other respects, maritime delimitation remains unsettled across the eastern Mediterranean region. The Lebanese/Israeli deal is the latest agreement of note. There has been no case of adjudication or arbitration in the region.³⁵

It should be added that the law of the sea, being part of international law,³⁶ is subject to the general rules and principles relating to statehood and the mutual recognition of states.³⁷ Aside from the effects of the maritime delimitation agreement on Lebanon's recognition of the state of Israel, the principle of self-determination³⁸ should also be borne in mind.

²⁸ Treaty between the United Kingdom of Great Britain and Northern Ireland, the Hellenic Republic, the Republic of Turkey and the Republic of Cyprus concerning the Establishment of the Republic of Cyprus (adopted 16 August 1960, entered into force 16 August 1960) 382 UNTS 8.

²⁹ Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone (adopted 17 February 2003, entered into force 7 March 2004) 2488 UNTS 3.

³⁰ Agreement between the Government of the Republic of Lebanon and the Government of the Republic of Cyprus on the Delimitation of the Exclusive Economic Zone (adopted 17 January 2007, not in force) 6 International Maritime Boundaries 445. Since only Cyprus ratified the Agreement, it has so far failed to enter into force.

³¹ 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 (adopted 17 December 2010, entered into force 25 February 2011) 2740 UNTS 55.

³² Memorandum of Understanding between the Government of the Republic of Turkey and the Government of National Accord-State of Libya on Delimitation of the Maritime Jurisdiction Areas in the Mediterranean (adopted 27 November 2019, entered into force 8 December 2019) UNTS No I-56119.

³³ Agreement between the Government of the Hellenic Republic and the Government of the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone between the Two Countries (adopted 6 August 2020, entered into force 2 September 2020) UNTS No I-56237.

³⁴ On the position of third states in the context of maritime delimitation effected by courts or tribunals, see Yoshifumi Tanaka, *The International Law of the Sea* (3rd edn, CUP 2019) 261–263.

³⁵ Note, however, that in the Central Mediterranean, Libya resorted to the International Court of Justice for the delimitation of the continental shelf in two separate cases with Tunisia and Malta: see *Continental Shelf (Tunisia v Libyan Arab Jamahiriya)* (Judgment) [1982] ICJ Rep 18; *Continental Shelf (Libyan Arab Jamahiriya v Malta)* (Judgment) [1985] ICJ Rep 13. Greece and Albania are also set to refer their maritime dispute to the International Court of Justice: see Ahmet Gencturk, 'Greece Optimistic Albania Will Take Maritime Dispute to International Court: Premier Mitsotakis' *Anadolu Agency* (Ankara, 7 December 2022) <https://www.aa.com.tr/en/europe/greece-optimistic-albania-will-take-maritime-dispute-to-international-court-premier-mitsotakis/2757872> accessed 27 February 2023.

³⁶ See n 18 above.

³⁷ See James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 117ff.

³⁸ See Volker Roeben and Sava Jankovic, 'Unpacking Sovereignty and Self-determination in ITLOS and the ICC: A Bundle of Rights?' (*EJIL:Talk!*, 4 March 2021) <https://www.ejiltalk.org/unpacking-sovereignty-and-self-determination-in-itlos-and-the-icc-a-bundle-of-rights/> accessed 14 February 2023.

The agreement as a treaty under international law

This section analyses the agreement on its outward face, and assesses its validity as a treaty between sovereign states under international law. The backdrop to the analysis is the Vienna Convention on the Law of Treaties (hereinafter 'VCLT'),³⁹ a compendium of international rules which determine what a treaty is, how it is made and brought into force, and how it generally operates.⁴⁰ Although neither Lebanon nor Israel are parties to the Convention, it is widely recognised as being representative of customary international law, and thus binding on the two states.⁴¹

1. The original US letter: the maritime delimitation agreement

The agreement analysed in this report is derived from a US-initiated letter addressed to Lebanon and Israel setting out the terms of agreement between the latter two states following US mediation.⁴²

The letter begins with a reference to Attachment 1, a letter dated 29 September 2020 from the US to both Israel and Lebanon, which describes the terms of reference for the US-mediated and facilitated negotiations between the parties.⁴³

The letter further reads:

The United States ... understands [Lebanon/Israel] is prepared to establish its permanent maritime boundary, and conclude a permanent and equitable resolution regarding its maritime dispute with [Israel/Lebanon], and accordingly agrees to the following terms provided that the following is also accepted by [Israel/Lebanon] ...

The excerpt quoted above is followed by the 'Agreement', consisting of a set of four sections, numbered 1–4 and subdivided into lettered paragraphs.⁴⁴

The specific provisions of those sections together with the remainder of the US letter are commented on later in this report.

³⁹ (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

⁴⁰ See Anthony Aust, 'Vienna Convention on the Law of Treaties (1969)', *Max Planck Encyclopedia of Public International Law* (2006).

⁴¹ Anthony Aust, *Modern Treaty Law and Practice* (2nd ed, CUP 2007) 12–13. The US is a party to the VCLT. The role of the US is pertinent as it served as a mediator in the negotiations which led to the Israeli/Lebanese maritime agreement.

⁴² See text to n 1.

⁴³ Attachment 1 is not part of the leaked documents, and has not been seen by the author of this report.

⁴⁴ As per s 1(D).

2. Exchange of letters with the mediator

There is no official indication of when the US-initiated letter described in the previous part of this report was transmitted to Israel and Lebanon. It has, however, been reported that the terms of the agreement were settled between the negotiating states on or around 13 October 2022.⁴⁵

From the foregoing, it may be concluded that the maritime delimitation agreement contained in the US-initiated letter and the responses to it in furtherance of Annex C constitute a treaty under international law between Israel and Lebanon.⁴⁶

3. An agreement in written form

The key question is whether the Lebanon/Israel maritime delimitation agreement qualifies as a treaty under international law. The term 'treaty' is defined in the VCLT as follows:

'treaty' means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation ...⁴⁷

It is useful to consider each of the elements in the above definition.

First, the US-initiated letter sets out the terms of an international 'Agreement' reached between the states of Israel and Lebanon. Those terms are acknowledged and subscribed to in the letters that were presented by the two states to the US mediator in furtherance of Annex C, as described above.⁴⁸

Second, it is implicit that the agreement is governed by international law.⁴⁹

Third, the agreement is contained in a written form consisting of the US-initiated letter and the responses to it as per Annex C.

⁴⁵ 'President Aoun in His Address to the Nation on Southern Maritime Border Deal: This Indirect Agreement Responds to the Lebanese Demands and Fully Preserves Our Rights' (*National News Agency*, 13 October 2022) <https://www.nna-leb.gov.lb/en/politics/569418/president-aoun-in-his-address-to-the-nation-on-sou> accessed 27 February 2023; 'Lebanon's President Announces Official Approval of Maritime Border Deal with Israel' (Jerusalem, 13 October 2022) <https://www.timesofisrael.com/lebanons-president-announces-official-approval-of-maritime-border-deal-with-israel/> accessed 27 February 2023.

⁴⁶ The view that the deal could qualify alternatively as a set of two unilateral declarations, rather than an outright treaty, given that the instruments were not exchanged, but were instead passed on to the US mediator, seems feeble. See 'Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, with Commentaries Thereto' *Yearbook of the International Law Commission, 2006*, vol II, pt 2 [173] ff.

⁴⁷ VCLT, art 2(1)(a).

⁴⁸ See part IV, section 2 above.

⁴⁹ Anthony Aust, *Modern Treaty Law and Practice* (2nd ed, CUP 2007) 20:

According to the International Law Commission's Commentary, the phrase 'governed by international law' embraces the element of an *intention to create obligations under international law*. If there is no such intention, the instrument will not be a treaty. (Emphasis in the original text.)

From the foregoing, it may be concluded that the maritime delimitation agreement contained in the US-initiated letter and the responses to it in furtherance of Annex C constitute a treaty under international law between Israel and Lebanon.⁵⁰

4. Expression of consent to be bound

Article 11 of the VCLT states:

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

Article 13 of the VCLT further states:

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

- (a) the instruments provide that their exchange shall have that effect; or
- (b) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

The Lebanon/Israel agreement reads at section 4(B):

This Agreement shall enter into force on the date on which the Government of the United States of America sends a notice, based on the text in Annex D to this letter, in which it confirms that each Party has agreed to the terms herein stipulated. If the foregoing is acceptable to the Government of [Lebanon/Israel] as the final agreed terms between the Parties, the Government of the United States invites the Government of [Lebanon/Israel] to communicate its agreement to these terms by way of a formal written response as provided for in the attached Annex C to this letter.

The response of the Governments of Israel and Lebanon to the US-initiated letter as per Annex C reads for its part as follows:

I am in receipt of the United States' letter dated [X] concerning the terms related to the establishment of a permanent maritime boundary. The terms outlined in your letter are acceptable to the Government of [insert]. As a result, the Government of [insert] is pleased to notify the Government of the United States of America of its agreement to the terms outlined in its letter dated [x].

As for the proposed final US Government notification to be sent simultaneously to both Parties in accordance with Annex C, it is worded as follows:

[Excellency],

⁵⁰ The view that the deal could qualify alternatively as a set of two unilateral declarations, rather than an outright treaty, given that the instruments were not exchanged, but were instead passed on to the US mediator, seems feeble. See 'Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, with Commentaries Thereto' *Yearbook of the International Law Commission, 2006*, vol II, pt 2 [173]ff.

I refer to my letter dated [X] regarding terms related to the establishment of a permanent maritime boundary between the Republic of Lebanon and the State of Israel (the “Parties”). The United States confirms its receipt of a letter from your government on [date] noting its agreement to the terms set forth below. The United States further confirms that it received a letter from the Government of [insert] on [date] noting its agreement to the terms set forth below. Accordingly, the United States confirms that the Agreement related to the establishment of a permanent maritime boundary consisting of the following terms enters into force on the date of this letter.

It is submitted that the above documents would reflect the situation envisaged at article 13(b) of the VCLT, insofar as the exchange of Annex C letters by Lebanon and Israel leads to the issuance of an entry into force communication from the US Government, meaning that the consent to be bound is implicit.⁵¹

The upshot from the foregoing is that the consent of the parties to the maritime delimitation agreement was carried out by exchange of letters via the US mediator. There was no need as such for the parties to sign a single instrument, as signature was not the chosen method for expressing consent to the agreement.

5. Parties

It is clear from what has been said that the ‘parties’ to the maritime delimitation agreement are Israel and Lebanon as per the definition of that term provided in the Vienna Convention on the Law of Treaties:

‘party’ means a State which has consented to be bound by the treaty and for which the treaty is in force;⁵²

The United States-initiated letter makes this clear in any case:

... the Republic of Lebanon and the State of Israel (hereinafter: collectively the ‘Parties’ and individually a ‘Party’)

As far as the US is concerned, it presumably qualifies as a ‘negotiating State’, defined as ‘a State which took part in the drawing up and adoption of the text of the treaty’.⁵³

⁵¹ See Anthony Aust, *Modern Treaty Law and Practice* (2nd ed, CUP 2007) 102–103.

⁵² VCLT, art 2(1)(g). The two states also qualify as ‘contracting states’, defined at art 2(1)(f) as follows:

‘contracting State’ means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force

⁵³ VCLT, art 2(1)(e).

6. Language

From what has been laid out, it is apparent that the maritime delimitation agreement, as contained in the US-initiated letter, is written in the English language. The agreement does not provide for any other linguistic version.

Accordingly, only the English version will be authoritative. Any translation of the agreement will be purely informational. Any issue or dispute regarding interpretation will have to be resolved by reference to the authentic English version.⁵⁴

7. Entry into force

The entry into force of a treaty is governed by the following broad rule contained at article 24(1) of the VCLT:

A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.

Section 4(B) of the maritime delimitation agreement reads:

This Agreement shall enter into force on the date on which the Government of the United States of America sends a notice, based on the text in Annex D to this letter, in which it confirms that each Party has agreed to the terms herein stipulated.

Turning to the US notice as per Annex D of the US-initiated letter, it is worded as follows, as seen above (p.15);

[...] The United States further confirms that it received a letter from the Government of [insert] on [date] noting its agreement to the terms set forth below. Accordingly, the United States confirms that the Agreement related to the establishment of a permanent maritime boundary consisting of the following terms enters into force on the date of this letter.

[insert terms from initial US Government letter].

Section 4(B) of the agreement together with the United States Government's notice squarely align with the rule contained at article 24(1) VCLT.

According to the United Nations Treaty Collection, the 'Exchange of letters constituting a maritime agreement between the State of Israel and the Lebanese Republic' entered into force on 27 October 2022, in accordance with the provisions of the said letters'.⁵⁵

⁵⁴ See VCLT, art 33.

⁵⁵ United Nations Treaty Collection, 'Exchange of Letters constituting a Maritime Agreement between the State of Israel and the Lebanese Republic' https://treaties.un.org/Pages/showDetails.aspx?objid=08000002806029d5&clang=_en accessed 5 April 2023.

8. Binding effect

A cardinal principle of treaties is that they are binding on state parties. This is reflected in the rule enshrined in article 26 VCLT:

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Given that the maritime delimitation agreement entered into force on 27 October 2022,⁵⁶ it became binding on both Lebanon and Israel starting from that date.

National approval processes

In order to be implemented in the national legal systems of the states parties, international treaties may need to be approved or ratified according to the applicable national constitutional law rules. These vary from one state to another. A brief examination is carried out below as to whether the maritime agreement between Israel and Lebanon was effectively approved or ratified pursuant to each country's legal requirements.

1. Lebanon

According to the Lebanese Constitution:

The President of the Republic shall negotiate and ratify international treaties in agreement with the Prime Minister. These treaties are not considered ratified except after approve by the Council of Ministers. They shall be made known to the Chamber and Deputies whenever the national interest and security of the state permit. However, treaties involving the finances of the state, commercial treaties, and in general treaties that cannot be renounced every year shall not be considered ratified until they have been approved by the Chamber of Deputies.⁵⁷

It was reported that then Lebanese President Michel Aoun negotiated and agreed to the deal following a meeting with Prime Minister Designate Najib Mikati and Parliament Speaker Nabih Berri.⁵⁸ This could lead to the inference that both Mikati and Berri approved the conclusion of the treaty.

⁵⁶ See 'Exchange of letters with the mediator' above.

⁵⁷ Promulgated on 23 May 1926, as amended, art 52 (English translation at the Lebanese Presidency's website <https://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf> accessed 28 February 2023).

⁵⁸ 'Lebanon's President Approves Historic Israel Maritime Border Deal', *Mena Affairs* (14 October 2023) <https://menaaffairs.com/lebanons-president-approves-historic-israel-maritime-border-deal/>, accessed 01 April 2023. Mikati also met US mediator Amos Hochstein alongside with Deputy Parliament Speaker Elias Bou Saab: 'Lebanon and Israel Delegations Deliver Maritime Border Deal to Hochstein in Naqoura', *L'Orient Today* (Beirut, 27. October 2023), <https://today.lorientlejour.com/article/1315959/aoun-signs-the-border-agreement-in-baabda.html>, accessed 01 April 2023.

Yet, it is not clear whether the treaty in question comes under the terminal part of the article, requiring prior approval by the Chamber of Deputies.

The above may well have to be tested in a court of law. So far, Lebanese officials seem to have coasted on the assumption that the requirements of ratification per Art. 53 – if it means the Chamber, and not merely its speaker - of the Constitution do not apply to the agreement in question.

2. Israel

On the Israeli side, the Supreme Court did review the Israeli government's failure to seek approval from the Knesset before concluding the agreement. The Court dismissed the challenge brought against the government, and greenlighted the agreement without the need for parliamentary approval. The draft agreement was, however, deposited following a standard two-week track, 'which involved, inter alia, a subcommittee discussion'.⁵⁹

What does the agreement provide for?

Having considered the reception of the Lebanese/Israeli agreement in the national law of the state parties, this section turns to outlining its essential provisions.

It is noteworthy that the agreement pursues two different albeit related goals, namely:

- delimitation of the maritime boundary between the two states;
- establishment of a framework for resource exploration and exploitation in joint Israeli/Lebanese fields criss-crossing the maritime boundary.

1. Maritime delimitation

The Lebanon/Israel agreement is primarily a maritime delimitation agreement between the two states. This is reflected in its section 1(E) as follows:

The Parties agree that this Agreement, including as described in Section 1(B), establishes a permanent and equitable resolution of their maritime dispute.

It is submitted that the term 'equitable resolution' is an implicit reference to article 74(1) of UNCLOS, which reads:

The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as

⁵⁹ Yuval Shany, 'International Law of the Sea Meets Israeli Constitutional Law: The New Israeli-Lebanese Maritime Border Agreement' (*Lawfare*, 9 January 2023) <https://www.lawfareblog.com/international-law-sea-meets-israeli-constitutional-law-new-israeli-lebanese-maritime-border> accessed 28 February 2023.

referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

Pursuant to its section 1(A), the agreement establishes a 'maritime boundary line' using four points described by geodesic coordinates. In accordance with section 1(D) of the agreement, those coordinates supersede any charts or coordinates previously submitted by parties to the UN.

The maritime boundary line thus established falls short of the nearshore waters. This is explained by section 1(B) of the agreement. The intention is not to prejudice the determination of the land boundary, which remains unsettled between the parties to the agreement. The 'buoy line' is part of the nearshore area which remains undelimited, as per section 1(B) of the agreement. It is submitted that, as such, the agreement does not effect a full maritime delimitation between Israel and Lebanon.

Finally, the agreement does not specify the maritime zones being delimited save in Annexes A and B, which consist of the proposed UN submissions of lists of geodesic coordinates. Reference is made in those Annexes to the territorial sea and exclusive economic zone of Lebanon and Israel respectively. It is noteworthy to recall article 74(4) of UNCLOS, which states:

Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

UNCLOS has a similar provision for the continental shelf,⁶⁰ which is not referred to at all in the agreement or its appurtenant documents.⁶¹ Accordingly, it may be said that the agreement delimits the territorial sea, the exclusive economic zone as well as the continental shelf between the two neighbouring states, save for the nearshore area referred to above.

2. Framework for resource exploration and exploitation in straddling fields

Aside from establishing maritime delimitation between Israel and Lebanon, the agreement provides for the exploration and exploitation of oil and gas fields in fringe areas located under the jurisdiction of both parties.

This part of the agreement is concerned primarily with a hydrocarbon prospect known to be straddling the maritime boundary between the two states⁶²—the so-called Qana field. The

⁶⁰ UNCLOS art 83(4).

⁶¹ It is noteworthy that the regime of the exclusive economic zone is broader than and subsumes that of the continental shelf: see UNCLOS art 56(3). Nonetheless, the two maritime zones have distinct existence. See Constantinos Yiallourides, Nicholas A Ioannides and Roy Andrew Partain, 'Some Observations on the Agreement between Lebanon and Israel on the Delimitation of the Exclusive Economic Zone' (*EJIL:Talk!*, 26 October 2022) <https://www.ejiltalk.org/some-observations-on-the-agreement-between-lebanon-and-israel-on-the-delimitation-of-the-exclusive-economic-zone/> accessed 6 April 2023.

⁶² Agreement related to the Establishment of a Permanent Maritime Boundary (Israel/Lebanon), s 2(A), which refers to but does not define Lebanon's Block 9 and Israel's Block 72. This could be an unfortunate slip.

agreement provides for various arrangements regarding the choice of Lebanon's Block 9 operator,⁶³ entry by the operator into Israeli waters,⁶⁴ negotiation of Israel's economic rights with the operator,⁶⁵ and consequent refrainment on the part of Israel to develop the field, '[S]ubject to the agreement with the Block 9 Operator.'⁶⁶ The agreement provides that 'Israel will [also] *not unreasonably* withhold [its] consent for drilling' that is necessary south of the maritime boundary line.⁶⁷ The Block 9 operator is not defined in the agreement, although an existing consortium is already fulfilling this part. On the whole, the Israeli/Lebanese agreement seems to be more exacting towards Lebanon in comparison with the Israeli side.

Aside from the so-called Qana field, it is provided that for:

any other single accumulation or deposit of natural resources, including liquid hydrocarbon, natural gas, or other mineral extending across the [maritime boundary line] ... the Parties intend to request the United States to facilitate between the Parties ... with a view to reaching an understanding on the allocation of rights and the manner in which the accumulation or deposit may be most effectively explored and exploited.⁶⁸

The non-binding language in the above provision is noteworthy. This contrasts with the further obligatory undertaking that:

Each Party shall share data on all currently known, and any later identified, cross-[maritime boundary line] resources with the United States, including expecting the relevant operators that operate on either side of the MBL to share such data with the United States. The Parties *understand* that the United States intends to share this data with the Parties in a timely manner after receipt.⁶⁹

It may be relevant in passing to point out that the Lebanon/Israel agreement seems to be applicable in this respect not just to hydrocarbon resources.⁷⁰

⁶³ *ibid* s 2(C). The relevant obligation is undertaken only by the Lebanese side.

⁶⁴ *ibid* s 2(D).

⁶⁵ *ibid* s 2(E).

⁶⁶ *ibid* s 2(F).

⁶⁷ *ibid* s 2(G) (emphasis added).

⁶⁸ *ibid* s 3(A).

⁶⁹ *ibid* s 3(B) (emphasis added).

⁷⁰ For a criticism of the focus on hydrocarbons in maritime delimitation agreements, see Andreas Stergiou, 'Eastern Mediterranean Energy Geopolitics Revisited: Green Economy Instead of Conflict' (2023) *Journal of Balkan and Near Eastern Studies* <https://doi.org/10.1080/19448953.2023.2167163> accessed 25 February 2023, who argues that '[p]olluting fossil fuel-based systems are no longer environmentally or socially desirable'. Elsewhere, the author opines:

[D]ecision-makers of the involved states are not aware of the fact that the main security threat for the common fate of the people living in the region is sustainability and do not act to address the 'survival dilemma' for the well-being of the whole region. For this, it is required that decision-makers move beyond narrow security perspectives and immediately work on joint, renewable energy projects for the construction of a sustainable East Mediterranean region.

Legal dimensions of the agreement

This section addresses some legal considerations relating to the agreement's aftermath. For instance, has the agreement been implemented? Has it been registered with the UN? Can a party walk away from it, as has been sometimes intimated? Furthermore, how has the agreement been received by other states? Such are the questions answered in this section.

1. Deposit of lists of geographical coordinates with the United Nations

A key implementing measure of the Lebanese/Israeli agreement lies in its section 1(C), which requires parties to deposit the list of coordinates forming the maritime delimitation line with the UN Secretary-General, and to notify the US Government once this has been done.

Annexes A and B to the initiated letter respectively set out the proposed Lebanese and Israeli submissions to the Secretary-General of a list of geographic coordinates of points forming their mutual maritime boundary in execution of the agreement.

As far as Annex A is concerned, it is reported on the UN website that the Secretary-General was sent a letter dated 27 October 2022 from the Minister of Foreign Affairs and Emigrants of Lebanon together with a List of Geographic Coordinates for the Delimitation of a Maritime Boundary Line of the Territorial Sea and Exclusive Economic Zone of Lebanon, which is posted on the website. The letter would represent, in essence, Annex A.

Turning to Annex B of the US letter, the UN website similarly refers to a letter dated 27 October 2022 wherein the Director General of the Ministry of Foreign Affairs of the State of Israel transmitted to the Secretary-General a List of Geographic Coordinates for the Delimitation of a Maritime Boundary Line of the Territorial Sea and Exclusive Economic Zone of Israel—which is posted on the UN website.

The coordinates were thus deposited on the same day as the parties' communications to the US mediator in furtherance of Annex C of the US-initiated letter.⁷¹

2. Agreement's registration and publication

One of the principal questions that arose following the conclusion of the agreement was its public release. To this date, the official text of the agreement remains inaccessible to the general public. Only an unofficial version of the final draft has been leaked in the media.

On the international legal plane, the Charter of the United Nations⁷² provides:

⁷¹ See 'Exchange of letters with the mediator' above.

⁷² (adopted 26 June 1945, entered into force 24 October 1945) UKTS 67 (1946).

Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes⁷³ into force shall as soon as possible be registered with the Secretariat and published by it.⁷⁴

The agreement was deposited with the Secretary-General of the UN by Israel on 22 December 2022 under number 57582.⁷⁵ Although full publication format is indicated on the UN Treaty Collection website, the text of the agreement is inaccessible.

It should be stated that the treaty's registration and publication are different from the notification to and deposit with the Secretary-General of the United Nations of lists of geographical coordinates in the context of maritime delimitation. Indeed, such lists were deposited with the Secretariat in furtherance of the Israeli/Lebanese agreement, as is described in the previous section.⁷⁶

3. Reaction of third states

Third states are all states that are not party to a treaty.⁷⁷ The general rule is that:

A treaty does not create either obligations or rights for a third State without its consent.⁷⁸

It is noteworthy that the reaction of neighbouring states has been rather positive with Greece, Egypt, Cyprus and Türkiye welcoming and praising the deal.⁷⁹

⁷³ Original treaty language.

⁷⁴ art 102(1).

⁷⁵ United Nations Treaty Collection, 'Exchange of Letters constituting a Maritime Agreement between the State of Israel and the Lebanese Republic' <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002806029d5&clang=en> accessed 5 April 2023.

⁷⁶ See 'Deposit of lists of geographical coordinates with the United Nations' above.

⁷⁷ VCLT, art 2(1)(h).

⁷⁸ *ibid*, art 34. See Qi Xu, 'Reflections on the Presence of Third States in International Maritime Boundary Delimitation' (2019) 18 Chinese Journal of International Law 91, 116ff.

⁷⁹ Ministry of Foreign Affairs (Hellenic Republic), 'Statement by the Ministry of Foreign Affairs regarding the Agreement Reached between Israel and Lebanon on the Delimitation of their Maritime Zones' (11 October 2022) <https://www.mfa.gr/en/current-affairs/statements-speeches/statement-by-the-ministry-of-foreign-affairs-regarding-the-agreement-reached-between-israel-and-lebanon-on-the-delimitation-of-their-maritime-zones.html> accessed 27 February 2023; Ministry of Foreign Affairs (Republic of Cyprus), 'Statement by the Foreign Ministry regarding the announcement of an agreement to settle the maritime dispute between Israel and Lebanon' (12 October 2022) <https://mfa.gov.cy/press-releases/2022/10/12/agreement-israel-lebanon-oct-2022/> accessed 27 February 2023; 'Egypt Welcomes Maritime Border Deal between Lebanon, Israel' *Egypt Today* (Giza, 12 October 2022) <https://www.egypttoday.com/Article/1/119804/Egypt-welcomes-maritime-border-deal-between-Lebanon-Israel> accessed 27 February 2023; Ministry of Foreign Affairs (Republic of Türkiye), 'Press Release regarding the Signing of the Maritime Boundary Delimitation Agreement between Lebanon and Israel' (27 October 2022) https://www.mfa.gov.tr/no_-323_-lubnan-ile-israil-arasinda-deniz-yetki-alanlari-sinirlendirma-anlasmasinin-imzalanmasi-hk.en.mfa accessed 27 February 2023.

4. Withdrawal

There were some suggestions that one of the parties would quash the agreement soon after its conclusion.

In law, a party can walk away from a treaty through denunciation or withdrawal. The rule is laid out in the Vienna Convention on the Law of Treaties:⁸⁰

A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

The agreement in question says nothing about the matter, and it is arguable that neither scenario contemplated in the above-quoted provision applies considering that '[t]he Parties agree that this Agreement, including as described in Section 1(B), establishes a permanent and equitable resolution of their maritime dispute', as per its section 1(E).

In summary, there would appear to be no way for either party to unilaterally denounce or withdraw from the agreement.

5. Disputes

In its section 4(A), the Lebanon/Israel agreement provides:

The Parties intend to resolve any differences concerning the interpretation and implementation of this Agreement through discussion facilitated by the United States. The Parties understand that the United States intends to exert its best efforts working with the Parties to help establish and maintain a positive and constructive atmosphere for conducting discussions and successfully resolving any differences as rapidly as possible.

The above provision describes the mechanism for resolving differences and disputes relating to the agreement. Pursuant to a consecrated principle of international law, there is no automatic jurisdiction for courts or tribunals in the event of a conflict. Adjudication or arbitration must be specifically agreed to between the disputing parties.

Section 4(A) of the Israeli/Lebanese agreement provides for facilitation by the United States of discussions between the parties as and when differences arise. As such, the agreement does not grant jurisdiction to any court or tribunal to hear of a dispute between the parties concerning its interpretation or implementation. Any judicial or arbitral submission will require express consent by both parties.

⁸⁰ VCLT, art 56(1).

6. Gas exploration and exploitation

It is apparent that, overall, and despite the insinuations that either party might have considered renegeing on the agreement, the latter has effectively resolved the dispute. Exploration and exploitation have gone on in accordance with the deal.

It is true that the Israeli side has been much more successful as the Karish field lays under its jurisdiction, enabling production to go ahead. As for Qana, exploration on the Lebanese side is ongoing, albeit with seeming delays. Before going to press, Hezbollah's leader Sheikh Hassan Nasrallah criticised the lag, but it is arguable that his admonishment was a stark call for abiding with the deal. He had in the past described the agreement as a 'great victory' for Lebanon.⁸¹ Statements from officials in Lebanon and Israel have aligned with the agreement.

The maritime security scene in the formerly disputed area appears to be appeased despite an understandable state of alertness.

⁸¹ 'Nasrallah: Agreement is a "Victory," but Lebanon Did Not Get "100 Percent of Its Demands"' *L'Orient Today* (Beirut, 29 October 2022) <https://today.lorientlejour.com/article/1316255/nasrallah-agreement-is-a-victory-but-lebanon-did-not-get-100-percent-of-its-demands.html> accessed 5 April 2023.

Conclusion

The maritime delimitation agreement between Lebanon and Israel is a significant stride between two states that have been at war with each other since the founding of Israel in 1948, and that entertain no direct diplomatic relationship, added to the fact that one state does not recognise the other as a state.

Although technically unsigned, the agreement, contained in a set of related documents, is a binding treaty as per international law. The agreement cannot be denounced unilaterally by any of the states involved.

There are question-marks relating to the validation of the agreement per Lebanese internal constitutional rules. In Israel, a judicial pronouncement has cleared the way for the treaty under national law.

It may be said that the maritime boundary area has been secured thanks to the agreement, bearing in mind that the dispute had simmered for over a decade with a real risk of warfare between interested parties.

The agreement establishes a permanent maritime delimitation as well as a framework for exploring and exploiting straddling oil and gas fields.

It is expected that the agreement will withstand the test of time and pave the way for other maritime delimitations in the region.

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