Maritime mediation between Lebanon and Israel: Looking beyond the Hof Line

Autumn 2020. While Lebanese were expecting to hear the news of the formation of a new government that will save the country from its worst economic, financial, social and political crises, they were surprised to learn that the Lebanese authorities have agreed upon US mediation to start negotiations with Israel to resolve...
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leakage of oil and gas from Israeli exploration/production platforms, and the
consequent risk of loss of income for Lebanon. In addition, the importance of Lebanon's
economy is significant, given the country's historical role as a transit point for
trade between the Middle East and Europe. Lebanon's economy is heavily dependent
on hydrocarbons, making it essential to secure the rights to the Karish field.

Lebanon did not recognize the already known 860-square-kilometer disputed zone but claimed 1,430 additional square kilometers that include a substantial part of the Karish field -- supposedly in Israeli waters -- in what was called the maximalist claim of Lebanon. Israel for its part was expecting an easy ride; it was expecting to negotiate over the 860 square kilometers; divide the area “fairly” and move on. After all, that was the proposal made by Ambassador Frederic C. Hof in 2012, when he was leading the mediation between both countries.

A BLAST FROM THE PAST: THE “HOF LINE”

You cannot mention the maritime border dispute between Lebanon and Israel without mentioning Frederic Hof. Lebanese know him as the designer of the so-called “Hof line” that gave Lebanon 55% of the disputed zone; a solution that did not succeed as Lebanon did not finalize the deal. This is why many of us read with great interest Hof’s narrative of what happened back in 2012 in an op-ed of The Financial Times and in a long essay published in Newlines Magazine after the launch of the negotiations. In this respect, we believe that it is only fair to the process that was undertaken a decade ago and to the process going forward. Delegation surprised everyone with its legally grounded proposal. Everyone agrees with Hof that the settlement proposed by the US

TWO EQUALLY PLAUSIBLE CLAIMS?

In his Newlines article, Hof recalled that there was no “one-size-fits-all formula for projecting lines out to sea to assert maritime separation boundaries”, although he recognized the existence of principles, processes and best practices viewed as appropriate in terms of cartography and international law. This allowed him to confidently assert that both, the Israeli and Lebanese sides, had sound cases consistent with customary international law.

What was true about the flexibility of maritime delimitation rules in the ‘70s and the ‘80s is less accurate today. Through almost 30 judiciary and arbitral decisions, the international jurisprudence has to a large extent clarified and developed the law of maritime delimitation. In this respect, international law does not only set an overarching objective, that of reaching an “equitable solution” (See Articles 74 and 83 of the United Nations Convention on the Law of the Sea – the UNCLOS). It also provides for a corresponding modus operandi known as the “equidistance/relevant circumstances rule” according to which a maritime boundary line should correspond to

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The starting point of the maritime boundary should correspond to the point of intersection between the land boundary and the shoreline. In other terms, the starting points of the land and maritime boundaries are supposed to be the same. This rule suffers however one exception: that of coastal instability and shifting land boundary terminus (e.g., mouth of an international river). In this case, the maritime border can start offshore to circumvent this difficulty (See the Nicaragua v. Honduras case, International Court of Justice – the ICJ, 2007). It is against this background that one should assess the legal and technical value of both the then Israeli and Lebanese claims.

The Israeli line (in red) is located at a distance of 12 nautical miles, the said line seems to follow an equidistance line, it then veers northward to connect with the so-called Point 1 which constitutes the common starting point of the two maritime boundary lines separately agreed upon by Lebanon and Israel with Cyprus, respectively in 2007 and 2010. By doing so, according to Hof, Israel felt “short of violating anything appropriate”. This assertion is misconceived and misleading.

Actually, besides the fact that “Point 1” is not a tri-equidistant point between the coasts of Israel, Lebanon and Cyprus, Israel’s reliance on the said point violates the two most basic principles of
third state (see Article 34 of the VCLT). The 2007 Treaty concluded between Lebanon and Cyprus failed to get the approval of the Lebanese government and Parliament and was consequently never ratified by the president.

This treaty is not in force, and therefore Lebanon is not bound by its provisions notably its so-called “Point 1.” Similarly, Israel cannot oppose “Point 1” to Lebanon on the basis of the treaty it concluded with Cyprus in 2010. Lebanon is a third state to this treaty and Israel and Cyprus cannot by agreement deprive Lebanon of its rights or impose a claim on it without its consent. This is a basic corollary of the principle of sovereign equality. The ICJ has systematically rejected arguments based on unratified treaties involving a third state (see Costa Rica v. Nicaragua, ICJ, 2018).

As for the line advocated by Lebanon at the time of Hof’s mediation (in yellow in the map above), it also starts 28 meters offshore which, as already explained, is incompatible with the international legal rules governing the definition of maritime starting points. Then, the Lebanese line seems to follow an equidistance technique over a distance of 12 miles before veering toward the south until reaching the so-called point 23. This last section of the Lebanese line was drawn randomly by the Lebanese side. It does not follow any of the legally and technically accepted delimitation techniques. It is not an equidistance line, nor a
Did this mean however that Lebanon was not entitled to bend the line south? On the contrary! Following the zero-effect to islands technique that will be exposed in the following section, Lebanon was legally authorized to shift its boundary line southward over not only the 860 square kilometers disputed triangle, but also over some extra 1,430 square kilometers encompassing a large part of the so-called Karish field. In short, and contrary to what Hof claimed, both parties did not make sound claims compatible with international law. Israel’s line lacked legal basis because it went beyond what is authorized while Lebanon’s was legally valid because it did not follow any recognized delimitation technique and extended far below what would have been appropriate under international law.

THE HOF LINE: A WIN-WIN SOLUTION?

Hof envisaged the positions of Lebanon and Israel, Hof explained that the solution he proposed to both sides was the brainchild of his technical expert Raymond Milefsky. It is based on equidistance and starts at a point located 3 nautical miles from the coast.

To justify the use of strict equidistance, Milefsky invoked first the uncomplicated character of the two parties’ coastlines. But is it really the case? Actually, the Israeli coastline presents the complication par excellence that can affect the equidistance line and call into question its appropriateness as an equitable solution. The Hof Line is entirely controlled on the Israeli side, not by a point located on the “uncomplicated coastline,” but by a small rock called Tekhelet whose width does not exceed 24 meters and lies 1 kilometer far from the Israeli shore. This tiny feature which appears in the photo shifts the equidistance line northward over an area of 1800 square kilometer that is consequently cut off from Lebanon’s territorial sea and exclusive economic zone.
International law, through its jurisprudence, has established clear criteria for the selection of the base points relevant to the establishment of an equidistance line. However, these criteria were completely ignored by Milefsky and Hof.

As early as 1985, on the occasion of the Continental Shelf (Libya/Malta) case, the ICJ made the following statement: “the equitableness of an equidistance line depends on whether the precaution is taken of eliminating the disproportionate effect of certain islets, rocks and minor coastal projections.” As explained above, the Tekhelet rock has an undeniable disproportionate effect and should have been legally ignored. A proper equidistance line, drawn on the basis of proper coastal points, would have been located substantially south of the Hof line, thereby giving Lebanon an additional area of 1,430 square kilometers on top of the 860 then-disputed square kilometers.

This is confirmed by the technical report prepared upon the request of the Lebanese government by the United Kingdom Hydrographic Office (UKHO) in 2011. In this report, one of the leading British maritime boundary experts, John Brown, underlined the existence of “a growing body of jurisprudence which discounts the effect caused by small islands” and advised Lebanon to claim as its southern maritime boundary an equidistance line disregarding the tiny rock of Tekhelet. According to my sources, this report was handed to the head of the Lebanese delegation in August 2011, several months before the disclosure of Hof’s proposal on April 2012. Did the Lebanese share the findings of John Brown with Hof and Milefsky? Did the US mediator receive them and decide to ignore them? If the Brown study was not shared, why is that? I believe the Lebanese deserve to know the truth.
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(commonly known as ITLOS). His recommendation mattered and it definitely aimed at reaching an equitable solution based on international law. His recommendation was technical and legal and did not have any political motivation.

In addition to the alleged “uncomplicated coastlines,” Hof and Milefsky referred to the American maritime boundary practice to substantiate their “compromise solution” based on equidistance. The American delimitations in the Caribbean mentioned by Milefsky are irrelevant for delimitations between adjacent states like Israel and Lebanon because they concern insular territories that are in a coastal relationship of oppositeness and not adjacency, i.e. a geographic configuration that renders equidistance appropriate most of the time. The delimitations between the US and its two adjacent neighbors Canada and Mexico are more relevant in this respect. But a closer look at them tells a story different from the one told by Hof in this regard.

The maritime boundary between the US and Canada was established by the ICJ in 1984 (Gulf of Maine case). It is not an equidistance line at all and is composed of three different sections: a bisector, an adjusted equidistance line and a perpendicular. In the second section where equidistance was used, some 500 extra square kilometers were left to Canada. Then, why would the US want Lebanon to accept with Israel what it itself refused with Canada in 1984?

The delimitation between the US and Mexico, for its part, follows the equidistance method, with base points placed on islands. This was so because the disproportionate effect of the islands of one party was substantially counterbalanced by the impact of those of the other party on the other side of the line. Moreover, the US-Mexico Treaty of 1976 was a “dual delimitation” one. The equidistance line in the Gulf of Mexico was to the advantage of Mexico whereas equidistance in the Pacific was clearly to the advantage of the US. The 1975 Treaty giving full effect to islands was therefore an equitable package deal. If the maritime boundaries between the US and Mexico were drawn separately in the Gulf of Mexico and the Pacific, one can be sure that equidistance would have been replaced by another delimitation method.

The situation between Lebanon and Israel is completely different. The disproportionate effect of Tekhelet on the equidistance line is not substantially counterbalanced by any island or feature located on the Lebanese side. Moreover, the loss of hundreds of square...
benchmark for the purpose of delimiting the maritime areas between Lebanon and Israel is neither appropriate nor convincing.

Moreover, in order to try to strengthen the equitable and balanced character of his proposed line, Hof insisted that the American approach consisted of accepting and giving full weight to the land reference points submitted by each party with respect to its coastline. According to him, the base points suggested by Israel were upheld on the Israeli side, and those identified by Lebanon were adopted on the Lebanese side for the purpose of drawing the equidistance line. But what Hof does not say is that the base points on the Lebanese side were not suggested by Lebanon but by the US itself.

Most probably, Hof and Milefsky were aware of the legal and technical problems stemming from the use of the rock of Tekhelet as a base point. To circumvent this difficulty, the US experts found, out of nowhere, two small maritime rocks located few meters from the Lebanese coastline, and endeavored to use them as base points. These features were named L14 and L15. The problem, they thought, was solved: a rock on the Israeli side and two rocks on the Lebanese side.

However, as stated above, the effect of the feature of Tekhelet pushes the overall L14 and L15 maritime zone up to 1800 square kilometers, whereas the impact of L14 and L15 does not exceed 2000 square kilometers. This, according to Hof, is not the case since the running of L14 and L15 maritime zone was inequitable and incompatible with customary international law.

But despite all the above, the most provocative and inadmissible characteristic of the Hof Line remains the location of its starting point 3 nautical miles from the shoreline. According to Hof, the line started offshore in order to “avoid provoking a controversy over who owned what rock at the base of Ras-el-Nakurah /Rosh Ha Nikra cliff – an area never surveyed for boundary, armistice demarcation line, or Blue Line purposes.” This explanation is to be read in conjunction with Hof’s assertion elsewhere in his Newlines essay that “Lebanon had no national boundaries with its neighbor to the south.”

One could somewhat be indulgent with Hof with regard to maritime boundaries since, as he admitted himself, his “knowledge of maritime disputes was nonexistent.” However, the same does not hold true with respect to land disputes. Hof has published extensively on the land border between Lebanon and Israel and is considered as one of the leading experts on this subject. Therefore, his assertions with regard to the inexistence of national boundaries between the two neighbors and to the absence of survey in the area of Ras-el-Nakurah are simply unacceptable.
is a national border between Lebanon and Israel. This border is the boundary established by the two mandatory powers, France and the United Kingdom, in 1923, in what is known as the Paulet-Newcombe Agreement. Claiming otherwise would mean that there are no boundaries in Africa, Asia and all the other parts of the world that endured colonization.

The Paulet-Newcombe Agreement stipulates that “the frontier leaves the Mediterranean Sea at the point called Ras-el-Nakurah and follows the crest of the spur to cairn 1, situated 50 meters north of the Palestinian police post of Ras-el-Nakurah.” As an Arabic speaker and former military, Hof knows perfectly that the term “Ras” designates in geographic terms the tip of a promontory or peninsula. This meaning was admitted by Israel itself in 1988 on the occasion of the Taba arbitration with Egypt. The starting point of the land boundary between Israel and Lebanon, and consequently that of the maritime boundary between the two states, is therefore well-known and corresponds to the tip of the spur of Ras-el-Nakurah that can be easily identified (see photo).

In 1949, when demarcating the armistice line, Israel and Lebanon recognized this state of affairs and decided to jointly erect an intermediate boundary stone at the geographical coordinates of the point of Ras-el-Nakurah at a distance of 3 miles offshore. By doing so, the US was indeed the one that recognized this state of affairs and decided to jointly erect an intermediate boundary stone between the United Nations and the Lebanese coast in the Blue Line starting point between the parties, at a distance of 3 miles offshore because sovereignty over the Machias Seal Island was unclear.

Since the starting point of the maritime boundary on the shore is well-known, there was no need to start the delimitation line 3 miles offshore. The situation between Lebanon and Israel is quite different from that of the US and Canada in the Gulf of Maine case where the ICJ started the delimitation, at the request of the parties, at a distance of 3 miles offshore because sovereignty over the Machias Seal Island was unclear.

As if it was not enough to deprive Lebanon from an area of 1,800 square kilometer by giving full weight to the rock of Tekhelet contrary to international legal standards, Hof and Mifelsky also insisted to cut off a substantial part of Lebanon’s strategic territorial waters by starting the line offshore. By doing so, the US mediator wanted to maintain the territorial sea status quo, by which Israel occupies and controls the territorial waters up to the line of buoys that it illegally installed upon withdrawal from Lebanon in 2000 and lies well to the north of the equidistance line drawn from the point of Ras-el-Nakurah.

For all the reasons mentioned above, far from being a win-win solution to the dispute, the Hof Line was a blatant win-lose scenario. Israel got more than the maximum it could have legally aimed for and Lebanon ended up with less than the minimum that it
understanding by both sides. Talking specifically about the Israeli delegation, Hof underlined that it was not thrilled by the American proposal and recalled the Israeli head of delegation’s statement that Israel is “not used to settling for 45 percent of anything.” However, what followed demonstrated that the Israeli disappointment was feigned and simulated. Few weeks later, the US received an official letter of approval of the line by Israel and this did not come as a surprise. Israel was being offered more than the maximum of what it could have aimed to on the basis of international law, something very rare in international mediations where the outcome is generally a compromise requiring mutual concessions.

The Lebanese delegation seems to have accepted the line proposed by Hof, albeit reluctantly. This is not surprising either since, as explained above, the members of this delegation had very limited knowledge with respect to maritime boundaries and the role of islands and rocks in the maritime delimitation process. They, therefore, did not have the tools to challenge the US approach. According to Hof, the solution was also welcomed by almost all the political stakeholders of the country and would have been adopted had it been put to a Cabinet vote. But this did not happen because the Mikati government rejected it.

What Hof fails to mention is that the Council of Ministers’ session of Sep. 27, 2012, thoroughly discussed the studies prepared by Hof for Lebanon. Hof submitted Lebanon was entitled to an additional area of 1,800 square kilometers on top of Hof’s proposal, on the basis of the zero-effect to insignificant features’ rule recognized by international jurisprudence, were disclosed. The flagrant inequitable character of the Hof line was thus unveiled, and his solution was not approved by the Lebanese government.

The Hof Line cannot constitute a solution to the maritime dispute between Lebanon and Israel. It cannot even be a starting point or basis for future negotiations between the two parties. The only workable settlement will have to deal with what constitutes the crux of the dispute at stake and which is not mentioned even once in Hof’s articles: the effect of the Israeli rock of Tekhelet on the delimitation line. Here is where compromises can be found and accepted. Otherwise, the conflict is likely to last forever to the detriment of the economy of both states and stability in the region.

Laury Haytayan is an oil & gas governance and geopolitics expert. The author would like to thank all those who contributed in gathering the information for this article. The author is solely responsible for the views and information in this article.

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