LEBANON'S SOUTHERN MARITIME BORDER DISPUTE: LEGAL ISSUES, CHALLENGES, AND THE WAY FORWARD

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1. HISTORICAL OVERVIEW OF THE MARITIME DELIMITATION DISPUTE

1.1. Adoption of domestic legislation on maritime zones
In recent years, Lebanon has taken some important steps aiming at the assertion of its sovereign rights on its maritime domain and in particular the natural resources found in the subsoil. It has done so through the adoption of comprehensive domestic legislation to the Law of the Sea, such as Law No. 163 on the Delineation and Declaration of the Maritime Zones of the Republic of Lebanon, adopted in August 2011. This law determines all maritime zones of Lebanon in accordance with the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) to which Lebanon acceded by virtue of Law No. 295 of 22 February 1994.

Law No. 163 proclaimed inter alia a 200-nautical mile Exclusive Economic Zone (EEZ). Such proclamation was consolidated by a Governmental decree No. 6433 dated, 1 October 2011.

1.2. Notification of geographical coordinates of the EEZ of Lebanon pursuant to UNCLOS
The geographical coordinates of the EEZ of Lebanon have 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 the obligations of States parties to UNCLOS.

These limits have been drawn on a nautical map (of the UK Hydrographic Office), also deposited with the United Nations:

The overall correctness of the geographical coordinates of the EEZ of Lebanon has been ascertained and confirmed by an international legal team advising the government of Lebanon, as well as by technical experts.1

1.3. The southern maritime border: Lebanon-Israel
The determination by Lebanon of the southern part of its maritime boundary was effected by drawing a line connecting six points (points 18 to 23). They form a line described by Lebanon as ‘the median line every point of which is equidistant from the nearest point on the baselines of Lebanon and the neighboring State’.2

The starting point (point 18) is the point where the maritime boundary reaches the shore of Lebanon, at the location of the land boundary terminus between Lebanon and Palestine. This point has been used in accordance with the provisions of the Agreement between France and the United Kingdom of 3 February 1922 (the so-called ‘Paulet-Newcombe agreement’), which entered into force on 10 March 1923, delimiting the southern border of Lebanon from Ra’s Naqurah at point 18, the coordinates of which were officially confirmed on the 1949 map detailing the borders of Lebanon, Syria and Palestine further to the armistice agreements between the concerned parties.

The ending point of the delimitation line (point 23) is a point equidistant between the three countries concerned: Lebanon, Palestine (Israel) and Cyprus. The corresponding geographical coordinates are summarized in Figure 1 and shown in Figure 2.

1.4. Offshore blocks tender and award
The adoption of domestic legislation on maritime zones was a prerequisite to further steps by Lebanon towards the exploration and development of its offshore oil and gas fields. As a matter of fact, the ‘Law of petroleum resources in the maritime waters’ adopted by the Lebanese 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. Such identification of relevant areas was effected by subsequent domestic legislation as summarized above.

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1 See the report of V. Gowlland-Debbas, The Legal Framework of Lebanon’s Maritime Boundaries: The Exclusive Economic Zone and Offshore Hydrocarbon Resources (published by the Swiss Association for Euro-Arab-Muslim Dialogue, 2012).

2 See Report concerning the delimitation of the southern limit of Lebanon’s exclusive economic zone, 2010, in Law of the Sea Bulletin No. 73 (UN Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs), 2010, at p. 40. The same report states that the baseline of the southern Lebanese coast was delimited using the following available maps: Admiralty nautical chart No. 2634 (Beirut to Gaza, 1:300,000) produced by the United Kingdom Hydrographic Office; Admiralty nautical chart No. 183 (Ra's at Tin to Iskenderun, 1:1100,000) produced by the United Kingdom Hydrographic Office; Chart B-1 (Area of Naqurah, 1:20,000) produced by the Office of Geographic Affairs, Lebanese Armed Forces Command, updated in June 2004 on the basis of aerial photographs taken in 2001-2002. The southern limit of Lebanon’s exclusive economic zone was plotted on Admiralty nautical chart No. 183, and a list of its coordinates was compiled. The same report submitted to the United Nations also mentions that ‘[t]here 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 a view to updating the nautical charts and the baseline accordingly in the future’.
The map in Figure 3 below, issued by the Lebanon Petroleum Authority, identifies the various blocks composing the EEZ of Lebanon.

In January 2017, the Lebanese government launched its 1st offshore licensing round. The outcome was the signing in February 2018 by an international consortium composed of Total (operator, 40%), ENI (40%) and Novatek (20%) and the government of Lebanon of two Exploration and Production Agreements (EPAs) covering Blocks 4 and 9 located offshore Lebanon. These agreements provide for the drilling of at least one well per block in the first three years. Total has explained that the consortium’s priority will be to drill a first exploration well on Block 4 in 2019. As for Block 9, Total and its partners stated they ‘are fully aware of the Israeli-Lebanese border dispute in the southern part of the block that covers only very limited area (less than 8% of the block’s surface). Given that, the main prospects are located more than 25km from the disputed area, the consortium confirms that the exploration well on Block 9 will have no interference at all with any fields or prospects located south of the border area’.

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The determination of the maritime zones of Lebanon involves the application of a number of complex rules of international law (including, but not limited to, the international law of the sea), some of which are briefly set out below – then evaluated against the background of the current dispute between Israel and Lebanon.

2.1. Sovereignty over coastal territory and maritime entitlements

In the case of Lebanon, in addition to the dispute over maritime zones proper, there appears to be a dispute regarding the precise location of the land boundary terminus, i.e. the point where the land boundary reaches the sea. The land boundary terminus is normally the starting point of the line dividing the maritime areas of adjacent States. There appears to be a territorial dispute (even if minor) which has (or may have) an incidence on maritime rights – and thus on maritime delimitation, under the principle that ‘the land dominates the sea’.

This principle is well established in international law, and has been formulated inter alia by the International Court of Justice (ICJ) as follows:

‘[t]he title of a State to the continental shelf and to the exclusive economic zone is based on the principle that the land dominates the sea’, and ‘the land is the legal source of the power which a State may exercise over territorial extensions to seaward’.

In June 2011, Lebanon made an official objection to the agreement signed by the Republic of Cyprus and Israel, in which these two countries delimited their respective Exclusive Economic Zones (EEZs). Referring to disagreements regarding the course of the land boundary (supposed to follow the so-called ‘Blue Line’ established under the auspices of the UN), Lebanon asserted that ‘having reviewed the coordinates deposited by Israel, [...] point 31 flagrantly violates the principles and rules of international law and constitutes an assault on Lebanese sovereignty. That point is north of the internationally recognized land borders of Lebanon that are set forth in the Paulet-Newcombe agreement and the Armistice Agreement signed on 23 March 1949, according to which the southern border of Lebanon is delimited from Ra’s Naqurah at point B1, the coordinates of which were specified.’

The settlement of the issue of the location of the endpoint of the land boundary at Ra’s Naqurah would therefore normally be a precondition to the maritime delimitation process with Israel. The issue here is that the precise location of the land boundary is partly unclear and thus subject to interpretation, as the Paulet-Newcombe agreement did not embody geographical coordinates but a physical (geographical) description of the boundary, in addition to a series of maps. Thus, the initial (westernmost) sector of the boundary line is described in the agreement as follows:

‘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.

Hence the frontier follows the same crest to cairn 2 at Khirbet Danian, etc...’.

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7 See 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.

The point is that the line of the maritime boundary necessarily depends from the location of its starting point, i.e. the point where the land boundary reaches the sea.

Another point that should be noted: the precise demarcation of the southern land boundary of Lebanon may also be relevant to the maritime delimitation for another reason, that is the fact that an argument can be made that the maritime boundary should be drawn by extending the general direction of the common territorial boundary in a seaward direction. The ICJ in its Judgment in the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) case had an occasion to observe that:

‘the concept of prolongation of the general direction of the land boundary are, in the view of the Court, relevant criteria to be taken into account in selecting a line of delimitation calculated to ensure an equitable solution’.

Applied to the boundary between Lebanon and Israel, this would (or could) have the effect of shifting the course of the boundary southwards, as shown for illustrative purposes on the map in Figure 5. It is of course impossible to predict whether such argument would be accepted by an international court or arbitral tribunal entrusted with the task of effecting the delimitation (and there are not many precedents in international jurisprudence), but this is an argument that could be further explored and worked on by Lebanon.

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9 Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982, p. 18, para. 120.
International courts and tribunals have developed a three-step ‘standard’ methodology to achieve maritime delimitation when they are called by the parties to effect this exercise. The three steps are:

1. Establishment of provisional delimitation line for:
   - adjacent coasts, an equidistant line
   - opposite coasts, a median line
2. Consideration of factors requiring adjustment of provisional line to achieve equitable result.
3. After making any adjustments as a result of stage 2, verification that the line does not lead to an inequitable result.

This is now established practice of international courts and tribunals, see e.g. the judgment of the ICJ in 2009 in the case of Maritime Delimitation in the Black Sea (Romania v Ukraine).10

The delimitation thus starts with the construction of the provisional equidistance line between adjacent States, which requires the selection of base points from the baseline of the States concerned.

‘Baseline’ may be defined as ‘the line from which the seaward limits of a State’s territorial sea and certain other maritime zones of jurisdiction are measured’.11

‘Base points’ may be defined as ‘any point on the baseline’.

As explained by the ICJ, “[t]he equidistance line is the line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured”.11

Logically, only portions of a State’s baseline will affect an equidistance line. By definition, the equidistance line will be constructed by using only the salient (seaward-most) basepoints.

Figure 6 shows an example of the construction of a provisional equidistance line, using a number of basepoints along the coast of the two adjacent States, as well as basepoints on islands (or islets) of one of the parties.

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10 Maritime Delimitation in the Black Sea (Romania v Ukraine), Judgement (2009), para 122.

According to international jurisprudence, the recourse to the method of straight baselines is an exception to the normal rules for determination of baselines: therefore it may be applied only if the conditions are met, and must be applied restrictively. In reality, however, as seen (as an example only) on the map above which shows part of the straight baselines claimed by Cyprus, a number of States purport to use straight baselines, even where the strict conditions set out by UNCLOS are not (arguably) met.

According to publicly available information, in drawing the limits of maritime zones of Lebanon the Lebanese army adhered to the normal baseline method, but also used ‘straight baseline’ method in some areas of its coastline. Lebanon has claimed in Law No. 163 ‘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-Al-Shamali, (or Northern Great River) to the beginning of the 1949 ceasefire line to the South’.

2.2. Conflicting claims: emergence of the dispute

As mentioned before, it appears that Lebanon has acted correctly and consistently with relevant principles and rules of international law when adopting domestic legislation establishing the limits of its maritime zones, and providing the United Nations with data on the coordinates of its maritime zones pursuant to the obligations set out in UNCLOS.

However, from the perspective of international law, these were unilateral steps and as such unilateral claims cannot have legal effects binding on third parties. The rule is that maritime delimitation is to be effected by agreement, as set forth in Articles 15; paragraph 1 (for the territorial sea), articles 74 and 83 of UNCLOS (for the EEZ and the continental shelf respectively).

It is therefore not surprising, and by no means an isolated incident, that the maritime zones claimed by Lebanon overlap with the maritime zones of its neighbours, as is the case with Israel.

There are indeed dozens of instances around the world where States with adjacent or opposite coasts have conflicting and overlapping claims to maritime zones.

A similar situation of dispute over maritime zones has arisen with Israel. Israel has entered into a bilateral maritime delimitation with Cyprus, resulting in a boundary line set out on the map in Figure 8.

Figure 8: Maritime delimitation between Cyprus and Israel

The overlapping claims of Lebanon and Israel with respect to their common maritime boundary are shown on the map in Figure 9.

Figure 9: The overlapping maritime border claims of Lebanon and Israel

13 “See V. Gowlland-Debbas, The Legal Framework of Lebanon’s Maritime Boundaries: The Exclusive Economic Zone and Offshore Hydrocarbon Resources (Swiss Association for Euro-Arab-Muslim Dialogue, 2012).”
14 “Law no.163 (18 August 2011) on the Delineation and Declaration of the Maritime Zones of the Republic of Lebanon, Article 2.”
"A closer view of the outer limit of the ‘triangle’ where Lebanon and Israel have overlapping claims is shown in Figure 10 below:"

2.3. International legal rules applicable to offshore (disputed or transboundary) natural resources

The parties to the dispute should also consider the consequence of the possibility that identified (or potential) offshore oil and gas deposits ‘straddle’ (extend across) established (or claimed/disputed) maritime boundaries. If (and to the extent that) this was the case, the exploitation by one State concerned of such resources would necessarily affect the interests of the other(s).

International law does not prohibit the unilateral exploitation of straddling (transboundary) resources, but it recognizes the principle that concerned States have a ‘common interest’ in the use of these resources.

In order to deal with such situations, a number of bilateral maritime delimitation agreements concluded internationally incorporate provisions regarding the possibility of finding a natural resource that straddles across a maritime boundary, as well as a procedure to be followed in the event of such a discovery.

The obligations generally focus first on advising the other State that a transboundary field has been discovered, and second, on the necessity for States to seek to reach an agreement on some form of joint exploitation. It is discussed among international lawyers whether the ‘obligation to cooperate’ for States with respect to common (transboundary) natural resources has reached the status of customary international law, as such binding on all States irrespective of their treaty obligations.

3. EVALUATION OF MECHANISMS

3.1. Legal obligations of peaceful dispute settlement arising from the UN Charter and other relevant instruments

From the viewpoint of international law, before States have reached agreement on the delimitation of their EEZ and continental shelf, States are under an obligation to:

- exercise self-restraint, and
- cooperate.

This obligation stems inter alia from the relevant provisions of UNCLOS according to which “Pending agreement [...], the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.”

3.2. Non-binding mechanisms (bilateral, intervention of third parties, mediation, good offices, etc.)

Lebanon has a history of engagement with the UN, as well as with third parties in a position to act as mediators (mainly the U.S.) to try to find a mutually acceptable solution to the dispute. A reassessment of the various proposals put forward by the U.S. over time (known as the ‘Hof’ then ‘Hochstein’ proposals) would exceed the limits of this paper, but a reevaluation of these proposals from the viewpoint of international law would certainly be an asset for Lebanon. What can also be stressed is that a country like France may have an interest in mediating the dispute (given Total’s majority stake in the current awarded blocks). Also, the EU as a bloc may have a similar interest, in light of the objectives of EU energy policy.

3.3. A note on the issue of (non-)recognition

It is important to note first that the acceptance of a specific forum for third-party settlement of the maritime border issue (judicial or arbitral) does not entail recognition of Israel by Lebanon. This means that in the event that Lebanon and Israel would agree to submit their maritime dispute for settlement to a given court or tribunal, such submission would not amount to a recognition by Lebanon of Israel as a State. To avoid any doubt, an explicit statement (of non-recognition) to that effect could be added to the agreement to subject the dispute to litigation or arbitration.

Options for the settlement of the dispute

This being clarified, it is important to note that, as Israel is not a party to the UNCLOS, the mechanisms contemplated
by UNCLOS for the settlement of disputes (i.e. the ITLOS and UNCLOS Annex VII arbitration) would normally have no role to play. This would leave options for binding third-party dispute settlement fora (i) the ICJ and (ii) ad hoc arbitration.

**The International Court of Justice (ICJ)**
In order to submit a dispute to the ICJ, States first must consent to its jurisdiction. In the case considered, this consent can be given on an *ad hoc* basis by Lebanon and Israel.

There are a number of reasons that make the ICJ an attractive dispute resolution forum for a maritime delimitation dispute. These include:

a. It is a permanent body composed of fifteen judges.15

This means that it does not require time and effort to set up, unlike an arbitration tribunal;

b. It has dealt with many cases involving maritime boundary delimitations. As a result, it has an established and consistent jurisprudence on law of the sea disputes. Many of the principles of the law of maritime boundary delimitation, including those set out in UNCLOS, originate from its jurisprudence;

c. It is the world’s senior international law court;

d. It is the court of the UN. According to Article 94 of the UN Charter, each member of the United Nations undertakes to comply with the decisions of the ICJ in any case to which it is a party. In addition, if any party to a case fails to comply with a decision in any case to which it is a party, the other party may have recourse to the Security Council, which may make recommendations or decide upon measures to be taken to give effect to the judgement.

On the other hand, there are drawbacks to the ICJ. These include:

a. Due to its broad composition (up to seventeen judges, including the ad hoc judges), pleadings before the ICJ may prove to be complicated and not easily manageable;

b. It does not always deal well with difficult facts and evidence;

c. At present, the ICJ has many cases on its docket and may not be able to act expeditiously if Lebanon and Israel refer the dispute to it.

**Ad hoc international arbitration**
Israel and Lebanon could also agree to refer the dispute to an *ad hoc* arbitral tribunal. There are a number of reasons that make such option attractive for a maritime delimitation dispute. These include:

a. The fact that international arbitration usually gives the parties its nationality on the Court (Judge Nawaf Salam), while Israel has not a significant degree of control over the process;

b. The arbitral tribunal would likely comprise a limited number of members (most usually five). This means that pleadings can be focused and case management is generally efficient and easy;

c. Because the parties can appoint one arbitrator each (and often agree on the remainder), this gives the parties control to ensure that the composition of the tribunal is at least partly to their liking;

d. The parties can choose the place of the arbitration;

e. The procedure to be followed is decided by the parties or the arbitrators appointed by them;

f. Since the arbitral tribunal is constituted specifically for the dispute at hand, the procedure can be as expeditious (or as slow) as the parties wish;

g. The proceedings or parts of them can remain confidential.

On the other hand, there are drawbacks to international arbitration. These include:

a. Since an arbitral tribunal is not a permanent body, it does not have an institutional history. Parties, therefore, need to decide on procedural and administrative issues;

b. The expenses of the tribunal, including the remuneration of its members, are borne directly by the parties to the dispute; interpretation or the manner of implementation of the award, it is difficult and eventually impossible for the parties to have recourse to the tribunal;

c. If any controversy arises between the parties to the dispute regarding the interpretation of the manner of implementation of the award, it is difficult and eventually impossible for the parties to have recourse to the tribunal;

d. Where, it is presumed that the ICJ (and ITLOS) will try to produce a consistent jurisprudence, there is a possibility that an arbitral tribunal may depart from established jurisprudence;

e. While it is generally admitted that arbitral awards shall be final and be complied with by the parties to a dispute, limited (if any) enforcement mechanisms may be available in the case considered.

Ultimately, there will be a number of political, diplomatic, strategic and other factors that would need to be evaluated and incorporated into a decision by Lebanon as to which available international court or tribunal would best suit its interests in resolving the dispute.

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15 If either party to a case before it does not have a judge of its nationality on the Court, it may appoint an *ad hoc* judge to sit for that case. Currently Lebanon has a judge of its nationality on the Court (Judge Nawaf Salam), while Israel has not.
4. CLAIMS OF ISRAEL AND A POSSIBLE STRATEGY FOR LEBANON

4.1. Evaluation of the legal claims, arguments and practice of Israel regarding its maritime boundaries

It is clear that for Lebanon to define a successful strategy aiming at the final and acceptable determination of its maritime boundary, an important preliminary step is the evaluation of the legal claims and practical behaviour of Israel vis-à-vis Lebanon and other neighbouring States (including Cyprus).

Such an exercise would exceed the limits of the present work. Evaluation of Israel’s position and policy should be done through in-depth examination of official statements, offshore tenders, naval policy, etc. including the recent legislative steps taken by Israel (2017).

That being said, it is clear that threats of force regularly made by Israel regarding unsettled maritime zones can be said to be certainly unlawful under international law, as they are covered by the general prohibition of use of force that lies at the heart of the legal regime of the United Nations Charter.

4.2. Tentative definition of a rule-based strategy for Lebanon to achieve maritime delimitation

A few tentative conclusions regarding the key points of a possible rule-based winning strategy for Lebanon can be summarized as follows:

- **Interim arrangements** may be a viable and reasonable temporary solution allowing for the pursuit of exploration and development of oil and gas in the EEZ of Lebanon.

- **The strategic importance of monitoring and protests**: it is of fundamental importance that Lebanon continues to closely monitor developments on the Israeli side in relation to the maritime boundary, including — but not limited to — the behaviour of its armed (in particular naval) forces, and to systematically issue protests to relevant international bodies and in particular the United Nations. This is important in particular for two overarching reasons:

  1. Protests prevent claims of acquiescence to the acts and claims of the neighbouring State(s);

  2. In the event that Lebanon would consider or seek to have recourse to legitimate, non-forcible countermeasures (as regulated by international law in particular under the Articles on international responsibility of States of 2001, endorsed by the United Nations), Lebanon has to be aware that one of the (procedural) preconditions for recourse to countermeasures is for the State enacting countermeasures to ‘call upon’ in advance the wrongdoing State to cease its unlawful behaviour.

- **The importance of assembling technical expertise and international legal expertise for the successful determination of the maritime boundary cannot be overstated.** This calls for the setting up of a permanent dedicated body at the inter-ministerial level of the Government of Lebanon, also involving relevant departments of the the armed forces of Lebanon and all interested shareholders, including political factions and the civil society.

- **The importance of the role of the UN Security Council** is also to be highlighted.

- **The role of UNIFIL** could indeed be enhanced in relation to the issue of the maritime border, through an extension of its mandate to cover the delimitation of the maritime boundary in accordance with international law, binding on all parties concerned. The Office of the United Nations Special Coordinator for Lebanon (UNSCOL) could also play a role in a process of facilitation of the bilateral dialogue aiming at reaching agreement on the delimitation. Alternatively, such facilitation could be entrusted to a dedicated UN Special Envoy (or a UN Special Representative), to be appointed by the UN Secretary-General for that specific purpose.

- **Good offices**: the role of oil and gas majors and their States of nationality is fundamental: it is obvious that the oil and gas companies, as well as the States in which they have their main seat of business, may have a significant interest in assisting/encouraging the peaceful settlement of the issue. As previously mentioned, this includes (but is not limited to) France, as the country of origin of Total, the main stakeholder of the offshore blocks awarded by Lebanon.
Lebanon’s Southern Maritime Border Dispute: Legal Issues, Challenges, and The Way Forward

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ABOUT THE PROGRAM
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The Issam Fares Institute for Public Policy and International Affairs (AUB Policy Institute) is an independent, research-based, policy-oriented institute. Inaugurated in 2006, the Institute aims to harness, develop, and initiate policy-relevant research in the Arab region.

The institute is committed to expanding and deepening policy-relevant knowledge production in and about the Arab region; and to creating a space for the interdisciplinary exchange of ideas among researchers, civil society and policy-makers.

Main goals
▸ Enhancing and broadening public policy-related debate and knowledge production in the Arab world and beyond
▸ Better understanding the Arab world within shifting international and global contexts
▸ Providing a space to enrich the quality of interaction among scholars, officials and civil society actors in and about the Arab world
▸ Disseminating knowledge that is accessible to policy-makers, media, research communities and the general public