OIL & GAS ARBITRATION IN THE MENA: AN INTRODUCTORY OVERVIEW

Gordon Blanke*

I. INTRODUCTION

Hydrocarbons, in particular oil and gas, are a key commodity in the countries of the Middle East and Africa ["**MENA**"].[1] They generate a lion share of the MENA's gross domestic product ["**GDP**"] and as such contribute significantly to the development of the MENA economies. Many of these, in particular Qatar, Saudi Arabia, Kuwait, Iran and the UAE, have sufficiently large reserves to be net exporters of oil and gas[2] and have attracted foreign direct investment in their home-grown oil and gas industries on a large scale. Such investments and oil and gas transactions more generally evidently give rise to a variety of disputes that require resolution through efficient and effective means of dispute resolution.[3] Depending on the precise subject of the individual dispute in question, disputing parties might prefer one means over another. Often, given its unique characteristics and, above all, its inbuilt procedural flexibility combined with the finality of a globally enforceable outcome, arbitration wins the day.

Arbitration has a long history in the Middle East. It is a form of dispute resolution that is known to have been practiced by Prophet Mohammed[4] and that has as such been endorsed by the Islamic Shari'ah. Despite its supreme qualities and its Shari'ah endorsement, arbitration fell out of favour with the ruling elites of the Arab Trucial States as a result of a number of oil and gas arbitrations in the early 1950ies that failed to pay deference to the Islamic Shari'ah as a collection of legal principles that could serve the interpretation of a dispute arising from hydrocarbon concessions granted by the Trucial rulers to international oil companies ["**IOC**s"].[5] These earlier experiences brought arbitration into disrepute in the wider Middle

* Dr. Gordon Blanke is the Founding Principal of Blanke Arbitration, Dubai/London/Paris.

[1] For present purposes, the MENA includes Algeria, Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia UAE, and Yemen.

[2] The MENA being home to 18 of the world's largest oil and gas fields, most of which in the GCC.

[3] These will usually include both contentious (e.g., litigation and arbitration) and non-contentious (e.g., amicable settlement, negotiation, mediation and expert determination) forms of dispute resolution.

[4] See, e.g., F. Kutty, "*The Shari'a Factor in International Commercial Arbitration*", 4 IJAA (2009), pp. 63–112.

[5] See, in particular, Petroleum Development (Qatar) Ltd. v. Ruler of Qatar, (1951) 18 I.L.R. 161; Petroleum Development Ltd. v. Sheikh of Abu Dhabi, (1951) 18 ILR 144; and Saudi Arabia v. Aramco, (1963) 27 I.L.R. 117. On the latter, see the fascinating account by T. Martin, "*Aramco: The Story of the World's Most Valuable Oil Concession and Its Landmark Arbitration*", 7(1) BCDR (2020), pp. 3-51.

East, but the resulting animosity to arbitration as a form of dispute resolution has, over time, diminished and ultimately been laid to rest.[6]

The MENA, more specifically, saw a resurgence of arbitration as a form of dispute resolution in the oil and gas industry in the latter half of the twentieth century as a result of anti-colonial nationalisations, which led to a number of investment arbitration claims being brought by IOCs against MENA governments. This period also bore testimony to the establishment of the Iran-US Claims Tribunal, which has made a significant contribution to the development of investor-State arbitration over its lifetime to date.[7] A further wave of arbitrations, including in the oil and gas sector, could be witnessed in the aftermath of the Arab Spring in 2011/2012, which prompted a number of investor-State claims against revolutionary MENA governments.[8]

Against this background, this article seeks to provide a general, introductory overview of oil and gas arbitration in the MENA. In doing so, it will guide the reader through what to look out for in oil and gas arbitration in the Middle East and provide some main pointers on

i. the principal stakeholders involved;
ii. the type of disputes typically subject to oil and gas arbitration in the MENA;
iii. the procedural, institutional and legal framework of MENA oil and gas arbitration; and
iv. the recognition and enforcement of MENA oil and gas arbitral awards.

Throughout, reference will be made to the *acquis* of MENA oil and gas arbitrations to date.[9] For further guidance and a quick reference guide, the interested reader is referred to the table in annex, which lists a total of 49 oil and gas arbitral references from the 1950ies to date.[10] For the avoidance of doubt, this article does not intend to be exhaustive but only

[6] See, in particular, R. Mohtashami, "*Banishing the Ghost of Lord Asquith's Award: A Resurgence of Arbitration in the Middle East*", 1(1) BCDR IAR (2014), pp. 121 *et seq*.
[7] See, e.g., Phillips v. Iran & NIOC 21 IRAN-U.S. C.T.R., at 79 et seq., Amoco v. Iran & NIOC et al. IUSCT Case No. 56, SEDCO v. NIOC & Iran 10 Iran-U.S. Cl. Rep. 180 (1987), Amoco v. Iran (NPC) 15 IRAN-U.S. C.T.R., at 189 et seq., and Mobil v. Iran 16 IRAN-U.S. C.T.R., at 3 et seq. (1987).
[8] See, e.g., ICSID Case No. ARB/12/11.
[9] The acquis of oil and gas arbitrations in the MENA to date has helpfully been summarised by Tim Martin in his various writings on the subject: See, in particular, A. T. Martin, "*ICC Oil and Gas Cases in the MENA Region*", 25(2) ICC BULLETIN (2014), pp. 21-31; and T. Martin, "*Oil & Gas Disputes in the MENA Region*", in G. Blanke (ed.), *Arbitration in the MENA*, Juris 2016, Release 3-2020 (2020). See also "*Extracts from ICC Arbitral Awards in Oil and Gas Cases*", 25(2) ICC BULLETIN (2014), pp. 33-84.
[10] For the avoidance of doubt, this list of references meets the usual limitations: Above all, given that arbitration is usually confidential, the overall visibility of actual instances of arbitration is restricted. As such, this table relies upon the reporting by third parties and cannot be exhaustive. Notwithstanding, it provides some initial guidance on the overall breadth and technicality of the subject.

provide some initial guidance for further investigation on a complex and presently neglected area of study.[11]

II. THE MAIN STAKEHOLDERS IN OIL & GAS ARBITRATION IN THE MENA

Like in any other arbitration, the main stakeholders in oil and gas arbitration in the MENA are evidently the parties (and their representatives) on the one hand and the arbitral tribunal on the other. Under this head, one could, of course, add the arbitral institution to the extent that the arbitration process is an institutional one and the local courts in their curial and supervisory capacity under the applicable procedural law but these will be dealt with under separate (yet not necessarily their own) headings elsewhere in this study.

A. THE PARTIES AND THEIR REPRESENTATIVES

The parties in oil and gas arbitrations are predominantly the relevant industry players that are involved at some level in the oil and gas trade. Depending on the agreement from which the dispute that is submitted to arbitration arises, these are often IOCs that have signed a concession agreement[12] or a production sharing agreement ["**PSA**"][13] with a MENA host government,[14] the latter appearing as a respondent party.[15] Further down in the contractual hierarchy, disputes tend to arise between various types of specialist contractors and service providers that assist in the implementation of energy projects, including, e.g., the construction of the physical project facilities, the processing of the hydrocarbons into a range of energy products (such as refined oil, fuel, lubricants etc.), the transportation and the sale of those energy products to the end consumer. In an investment arbitration context more specifically, a foreign direct investor, often an IOC or a specialist service provider, such as an

[11] For some relevant research on the subject, see T. Martin, "*Oil & Gas Disputes in the MENA Region*"; in G. Blanke (ed.), Arbitration in the MENA, Juris 2016, Release 3-2020 (2020); F. Lavaud, C. Gugler and M. Ubbens, "*Oil and Gas Arbitration in the MENA Region*", 15(3) TDM (2017); and T. Martin, "*Oil and gas arbitration in the Middle East and North Africa*"; in R. King, *Arbitration in the International Energy Industry*, Globe Law and Business, 2019, pp. 93-111. More generally, also see T. Snider, K. Shahdadpuri and A. Suresh, "*Energy Arbitration in the Middle East*", The Middle Eastern & African Arb Rev 2021, GAR, (2021).

[12] See, e.g., Petroleum Development (Qatar) Ltd. v. Ruler of Qatar, (1951) 18 I.L.R; Petroleum Development Ltd. v. Sheikh of Abu Dhabi (1951) 18 ILR 144; Qatar v. International Marine Oil Company (1953) 20 ILR 534; Sapphire v. NIOC (1963); BP v. Libya 53 I.L.R. 297 (1973); TOPCO & Calasiatic v. Libya (1975) YCA 1979, at 177 et seq.; LIAMCO v. Libya (1977) 17 I.L.M. 3; Phillips v. Iran & NIOC 21 IRAN-U.S. C.T.R., at 79 et seq.; and Amoco v. Iran & NIOC et al. IUSCT Case No. 56. For a study on Egypt, see M. S. Abdel Wahab, "*Petroleum Concessions in Egypt: A Recipe for Disputes?*", 7(1) BCDR IAR (2020), pp. 73-108, which confirms that despite constituting a *lex specialis*, Egyptian concession agreements remains subject to the principles of contract under the Egyptian Civil Code.

[13] See, e.g., Wintershall v. Qatar,28 ILM 795 (1988), ICC Case No. 4462, ICSID Case No. ARB/0725, ICSID Case No. ARB/09/14, ICC Case No. 14108, ICC Case No. 19299, and ICSID Case No. ARB/19/7.

[14] In support, see A. Powell, "*Understanding Petroleum regimes in the MENA region*", Al Tamimi Law Update (2018).

[15] Albeit that in at least two instances, the host State acted as a claimant: See Qatar v. International Marine Oil Company,(1953) 20 ILR 534 and Saudi Arabia v. Aramco,(1963) 27 I.L.R. 117.

international drilling company, will usually advance claims against a MENA host government.

Importantly, the involvement of a government entity as a respondent party might raise questions of *attribution* and whether violations of an underlying contractual or investment treaty framework are properly imputable to the respondent government. A host State can only be held responsible for a breach of contract and/or international law, whether direct or indirect, if the underlying conduct and/or breach is attributable to an organ of that State.[16] Attribution might pose additional challenges in claims for violation of prevailing full protection and security ["**FPS**"] standards in situations where civil unrest gives rise to governmental instability and violent interference with the covered investments. Such situations have given rise to a number of investment claims under regional investment instruments as a result of the Arab Spring.[17] The application of the ILC's Articles on State Responsibility might be sufficiently clear where the interests of the incumbent government are compatible with those of the wrongdoers but might be challenging where the wrongdoers are non-governmental actors, such as revolutionaries and freedom fighters. Such situations raise questions relating to the continuity of the State and the concept of *de facto* governments.[18] Under international law, a nation bears responsibility for acts of its *de jure* government. That said, a general *de facto* government is considered to be acting with the nation's consent, its acts are therefore binding on that nation (irrespective of whether it is internationally recognised). In other words, successful revolutionaries that manage to form a general *de facto* government create State responsibility for their acts on part of the nation. This includes the acts taken by the revolutionaries over the course of the revolution.

By way of example, in the recent *Ampal* case,[19] a foreign investor complained about a total of thirteen attacks on the pipeline between Egypt and Israel that served the transport of natural gas from Egypt to Israel, and more specifically that, following the tensions of the Arab

[16] For guidance on this question, see Arts 4(1) and 4(2) of the International Law Commission (ILC)'s Articles on State Responsibility (2001).
[17] One such case, arising within the oil and gas sector, is Ampal-American Israel Corporation and others v. Arab Republic of Egypt, ICSID Case No. ARB/12/11.
[18] The principle of the continuity of the State is deeply rooted in international law. Pursuant to this principle, the existence of a sovereign State together with all its rights and obligations remains continuous irrespective of any internal political or governmental changes and the nation retains international responsibility for acts of both present and past governments. As regards the qualification of governments, a *de facto* government is a government that is in the possession of the supreme power of the territory. It will be local if it controls only parts of the State's territory and general if it controls (almost) all of it. Once recognised by the community of nations, it will be a *de jure* government.
[19] *Supra* note 18.

Spring, Egypt *"failed to take reasonable precautionary, preventive, and remedial measures"* to protect the physical security of the pipeline from attacks of saboteurs in breach of Egypt's FPS obligations under the Egypt-US BIT. The *Ampal* tribunal confirmed that Egypt was under no absolute obligation or strict liability but had to comply with a standard of due diligence, which had to be assessed against the *"particular circumstances in which the damage occurs"*. The tribunal thus concluded that taking account of the *"political instability, security deterioration and general lawlessness [in the region]"*, the first attack did not violate the FPS standard. Relying on *Pantechniki*[20], the *Ampal* tribunal found that a government should not be made internationally responsible *"for failure to plan for unprecedented trouble of unprecedented magnitude in unprecedented places."* That said, according to the *Ampal* tribunal, the subsequent attacks on the pipeline created a pattern of delayed measures or a failure to implement measures to ensure the safety and security of the pipeline and hence the investor's investment in violation of Egypt's obligation of due diligence.

Under most MENA arbitration laws, only signatories to the underlying arbitration agreement may be privy and as such parties to the arbitration.[21] Party representatives, in turn, may only serve in that capacity upon production of a valid special power of attorney, which confers upon the party representative the specific power to represent the instructing party in arbitration.[22] Failure to produce a special power of attorney constitutes a procedural irregularity that might result in a successful challenge of a prospective award. Care must also be taken that arbitration obligations might bind the Sovereign within limits only[23] and that

[20] Pantechniki S.A. Contractors & Engineers (Greece) v. The Republic of Albania, ICSID Case No. ARB/07/21, Award, 30 July 2009, in which Jan Paulsson, sitting as Sole Arbitrator, favoured a "modified objective standard" to FPS, which gives credit to the host State's particular circumstances, such as the host State's level of development and internal stability. In that case, Paulsson drew a distinction between a host State's refusal and a host State's inability to provide protection. Applied to the facts at hand, Paulsson found that the Albanian authorities were "powerless in the face of social unrest of [the given] magnitude" and dismissed the claim. Also, a foreign investor's pre-investment awareness of circumstances in the host State that pose a risk to security militates against a breach of the FPS standard (see LESI & Astaldi v. Algeria, ICSID Case No. ARB/05/3, Award, 12 November 2008).

[21] E.g., Art. 7(1) of the UAE Federal Arbitration Law ("FAL") and the accompanying commentary in G. Blanke, Blanke, *"UAE Arbitration Legislation and Rules"*, Thomson Reuters/ Sweet & Maxwell, 2021, at III-099.

[22] E.g., Art. 4(1) FAL, read together with Art. 58(2) of the UAE Civil Procedures Code, and accompanying commentary in G. Blanke, *UAE Arbitration Legislation and Rules*, Thomson Reuters/ Sweet & Maxwell, 2021, at III-067 *et seq*.

[23] E.g., Dubai Law No 3 of 1996 (as amended by Dubai Law No 10 of 2005), Art. 3D ("Suits against the government shall be initiated against the Attorney General as plaintiff as the representative of the government, subject to observing the following conditions: (1) Whoever wants to initiate a suit must deposit a written copy of the full details of his litigation with the Office of the Government of Dubai's Legal Advisor. (2) Within one week after receiving the litigation, the Legal Advisor shall, by letter, refer the litigation to the relevant authority for examination and response within fifteen days from the receipt of the referral letter. If no amicable settlement is reached for the dispute within two months from the submission of the litigation to the Legal Advisor the dispute, the Claimant may resort to the competent court."); Abu Dhabi Decree No 12 of 2013 in respect of

ancillary measures in support of an arbitration, such as attachment orders, might not be enforceable against the Sovereign.[24] That said, parties are free to choose their representatives – whether lawyers or non-lawyers[25] - taking into account the specific requirements of each arbitral reference: There are plenty of high-profile oil & gas specialists available in the MENA region to assist in representing parties in technical arbitrations across the oil and gas disputes spectrum; a combination of relevant legal and technical knowledge and experience is evidently an advantage.

B. THE ARBITRAL TRIBUNAL

The arbitral tribunal may be single- or multi-member. Given the complexity and the high stakes that are often involved in oil and gas arbitration in the MENA, three-member tribunals are the norm albeit that some of the earlier references were conducted by sole arbitrators.[26]

For the same reasons of complexity as well as the frequent technicality of oil and gas disputes, arbitrators will usually come from a highly specialised background with relevant industry experience. To assist in the nomination and subsequent appointment of suitable candidates, some special energy arbitrator lists are made available by a select few arbitral institutions, such as the Energy Arbitrator List ["**EAL**"],[27] which is dispensed by the International Centre for Dispute Resolution ["**ICDR**"] and facilitates a sector-focused search of arbitrator candidates. Even local arbitral institutions, such as the DIAC or the ADGMAC,[28] or the MENA chapter of the AIPN,[29] might assist in the effective selection of a suitable oil and gas tribunal.

---

follow-up on cases against governmental departments and agencies, dated 30 June 2013 (taking effect from 1 November 2013); and Art. 2(2) of the Qatar Arbitration Law, which requires the approval of the Qatari Prime Minister to any submission to arbitration of contracts between IOCs and the Qatari government as these qualify as administrative contracts: See T. Williams and A. Durrani, "*Oil and Gas Arbitration: A Perspective from Qatar*", 7(1) BCDR IAR (2020), pp. 143-147, at p. 146.

[24] E.g., Dubai Law No 10 of 2005 Amending Certain Provisions of Government Lawsuit Law No 3 of 1996, Art. 3(1) (no attachments over assets owned by the Government, including public institutions and corporations, or the Ruler of Dubai).

[25] Albeit that some MENA countries used to limit party representation in arbitration to local advocates: See, e.g., Art. 3 of Qatari Law No. 23 of 2006 on the Issuance of Advocacy Law. Recent MENA arbitration laws follow a more modern trend: See, e.g., Art. 33(5) FAL, which permits the appointment of non-legal party representatives.

[26] See, e.g., Petroleum Development Ltd. v. Sheikh of Abu Dhabi (1951) 18 ILR 144, Sapphire v. NIOC 1963, at 136 et seq, BP v. Libya,53 ILR 297 (1979)., TOPCO & Calasiatic v. Libya, (1975) YCA 1979, at 177 et seq., LIAMCO v. Libya, (1977) 17 I.L.M. 3 (1978), and Elf v. NIOC ILM, 976 (1982).

[27] International centre for Dispute Resolution, Energy Arbitrators List, https://www.energyarbitratorslist.com.

[28] Which, albeit only qualifying as an international hearing facility, also assists in the selection industry-specific arbitrators.

[29] The Association of International Petroleum Negotiators, now the Association of International Energy Negotiators (AIEN): https://www.aien.org/about-aien/regional-chapters/middle-east/.

That said, three-member tribunals allow for a combination of arbitrators from different professional backgrounds to be chosen onto a panel of an oil and gas arbitration. This will usually ensure that both candidates with technical industry knowledge but also at least one lawyer with relevant experience in the oil and gas sector form a tribunal.[30] Given the multi-faceted legal questions, including of contract interpretation, that frequently arise in oil and gas arbitration, there is a general preference for lawyers to preside oil and gas tribunals in the MENA.[31]

Importantly, none of the arbitrators – whether co-arbitrator or presiding – must have a national bias, nor serve as a party advocate. The strict requirement for impartiality and independence applies in MENA oil and gas arbitration in the same way as it does in other types of arbitrations, whether in the MENA or elsewhere, albeit that, taking account of their specific historical context, in the earlier oil and gas arbitrations of the first half of the twentieth century, party advocacy was a commonly accepted feature on leading MENA oil and gas panels.[32]

Default-appointments will be facilitated by the chosen administering institution, by the competent curial courts (in arbitration *ad hoc*) or by reference to the relevant treaty framework from which the arbitration arises. In the latter context more specifically, on one occasion to date,[33] the president of the Paris *Tribunal de Grande Instance* was seized in his capacity as a *juge d'appui* pursuant to Art. 1505.4 of the French Code of Civil Procedure[34] with a request to facilitate the appointment of a co-arbitrator for Libya under the OIC Agreement[35] where Libya itself and the OIC Secretary General had failed to make an appointment.[36] For further context, default-appointments under the OIC Agreement usually fall within the competence of the OIC Secretary-General.[37] On a number of occasions to date,

[30] In favour of technical expertise (only), see F. Dias Simoes, "*Powered by expertise: selecting arbitrators in energy disputes*", 8(6) JWELB (2015), pp. 501-520.
[31] As is evident from the table provided at the Annex, to date, there has been a mix of sole arbitrators and multi-member tribunals. Earlier cases have seen a number of sole arbitrators, mostly lawyers as opposed to industry specialists.
[32] See, e.g., Petroleum Development (Qatar) Ltd. v. Ruler of Qatar, (1951) 18 I.L.R, which involved so called "arbitrator-advocates" as party-appointed or co-arbitrators.
[33] See *Trasta Energy Limited v. Libya*, arbitration under the UNCITRAL Rules, albeit that in this case, once notified of the French court proceedings before the *juge d'appui*, Libya decided to co-operate in the constitution of the tribunal of its own motion.
[34] Which empowers a French *juge d'appui* to intervene in any arbitration, whether domestic or international (even if the arbitral proceedings in question do not exhibit any nexus to France) in circumstances in which "one of the parties is exposed to a risk of denial of justice".
[35] As defined at note 56 below.
[36] See H. Gharavi, "*Cocorico! French approach to the OIC treaty gives cause to crow*", GAR (2020).
[37] *Ibid.*

the OIC Secretary General has refused to exercise his default-appointment functions within the meaning of Art. 17(2) of the OIC Agreement. In such circumstances, in order to avoid procedural stalemate, the Secretary-General of the Permanent Court of Arbitration (PCA) has been asked to step in to default-appoint the missing members of the tribunal in reliance the MFN clause contained at Art. 8 of the OIC Agreement. To illustrate the point, in *beIn v Saudi Arabia,*[38] a foreign investor relied upon the reference to arbitration under the UNCITRAL Rules in the Saudi-Austria BIT[39] in order to refer for the designation of a default-appointing authority to the PCA in the terms of the UNCITRAL Rules. This follows the example set by UAE-registered D.S. Construction FZCO in its proceedings against Libya.[40] Libya has a long history in seeking to cause stalemate to the proceedings by systematically failing to appoint arbitrators in accordance with the prevailing procedural rules.[41]

III. THE TYPE OF DISPUTES DETERMINED IN OIL & GAS ARBITRATION IN THE MENA

The main types of disputes that fall for determination in oil and gas arbitrations in the MENA are of a commercial nature or investor-State. There are residual categories of other disputes, which are briefly outlined below.

A. COMMERCIAL

These are disputes between two corporates specialising in the oil and gas sector. They will usually arise from one of two types of commercial agreements:[42]

i. Agreements between joint venture partners, such as, e.g., joint operating agreements, farm-out agreements and sale and purchase agreements; and

[38] See beIn Corporation v. Kingdom of Saudi Arabia, arbitration under UNCITRAL Rules, Notice of Arbitration, 1 October 2018.
[39] Agreement between the Kingdom of Saudi Arabia and the Republic of Austria concerning the Encouragement and Reciprocal Protection of Investments, in force since 25 July 2003.
[40] See D.S. Construction FZCO v. Libya PCA, Case No. 2017-21, arbitration under UNCITRAL Rules. Albeit that it has to be cautioned that the award in this case has recently been set aside by the Paris Court of Appeal on the basis that Art. 17 of the OIC Agreement does not make any express reference to an alternative appointment regime in circumstances in which the OIC Secretary General fails in his default-appointment functions, the curial courts having natural competence: See D v. K, Case No. RG 18/05756, ruling of the Paris Court of Appeal, 23 March 2021.
[41] See, e.g., BP v. Libya, 53 ILR 297 (1979), TOPCO & Calasiatic v. Libya YCA,1979, at 177 et seq. and LIAMCO v. Libya, (1977) 17 I.L.M. 3, each causing the default-appointment of a sole arbitrator by the International Court of Justice (ICJ).
[42] For this division, see A. T. Martin, "*Dispute resolution in the international energy sector*", 4(4) JWELB (2011), pp. 332-368, at p. 335.

ii. Agreements between operators and service providers, such as, e.g., drilling[43] and well service contracts,[44] construction contracts, and transportation and processing contracts.

A more specific example would be a dispute arising from a long-term gas supply agreement ["**GSA**"] also known as a gas sale and purchase agreement ["**GSPA**"] between a producer and a wholesaler of gas or between a wholesaler[45] and a reseller of gas.[46] Such an agreement will typically include an arbitration clause for the resolution of any disputes arising between the parties from its implementation. Such an agreement will also likely include a price review clause, which allows a party to request the adjustment of the contract price upon the occurrence of certain trigger events[47]. Given its technicality, such a price review will often be conducted by expert determination rather than arbitration albeit that price review arbitrations are a well-established means to resolve pricing disputes in the MENA[48].

Other examples include disputes arising from construction projects that typically form part, e.g., of the gas supply process, such as the construction of gas transport infrastructure (e.g., a pipeline for the transportation of gas), processing plants, liquefied natural gas ["**LNG**"] terminals, storage and LNG regasification facilities. Such disputes will ultimately amount to conventional construction arbitrations, often under the FIDIC Red Book[49]. Other typical disputes will include a seller's failure to supply the contractual quantity of gas under a GSA and breaches of prevailing take-or-pay obligations as well as a failure to deliver gas to the delivery point on time. Similar disputes will arise within corresponding contexts of the oil industry.[50]

B. INVESTOR-STATE

These are disputes between a foreign investor and a host State in relation to the State's breach of international investment obligations owed to the investor under international law which renders the investment partially or wholly unprofitable and causes the investor loss, which the

[43] See, e.g., ICC Case No. 10302, and ICC Case No. 11579.
[44] See, e.g., ICC Case No. 13686 (supply of drilling equipment), and ICC Case No. 13777 (supply of gas injection plant equipment).
[45] See, e.g., ICC Case No. 18215/MHM, and CRCICA Case No. 829/2012.
[46] See, e.g., Mobil v. Iran, 16 IRAN-U.S. C.T.R., at 3 et seq., and ICC Case No. 8198.
[47] Such as, e.g., a substantial change in the circumstances on which the GSA is based.
[48] See, e.g., ICC Case No. 10351, ICC Case No. 13898, and ICC Case No. 15051. See also the experience of Qatar, in which gas price review arbitrations are prevalent according to some commentators: See T. Williams and A. Durrani, "*Oil and Gas Arbitration: A Perspective from Qatar*", 7(1) BCDR IAR (2020), pp. 143-147, at p. 147.
[49] I.e., FIDIC 4th edition, 1987, as the version of FIDIC most in use in the MENA countries.
[50] See, e.g., ICC Case No. 13790 (development of an oil refinery), and ICC Case No. 16198 (construction of oil production facilities).

investor then seeks to recover in an action for damages through arbitration. The investor's right to initiate arbitration against the respondent host State will usually derive from express provisions contained in

i. a bilateral investment treaty ["**BIT**"] concluded between two States for the promotion and protection of investments of foreign nationals;[51]
ii. a multi-lateral investment treaty ["**MIT**"], i.e., a regional investment treaty concluded between a number of States to promote mutual foreign direct investment by nationals of the respectively other State, typically – in the energy context - the Energy Charter Treaty ["**ECT**"][52] or the ICSID Convention[53],[54] and in a MENA context more specifically, the OIC Agreement[55] and the Arab Investment Agreement[56];[57]

- a foreign investment law that seeks to establish favourable conditions for foreign direct investment;[58] or

[51] The vast majority of MENA countries have in place a web of BITs with third countries, both intra- and extra-MENA. For examples in the MENA oil and gas sector, see, e.g., ICSID Case No. ARB/07/25 (Jordan-US BIT); ICSID Case No. ARB/09/14 (Danish-Algerian BIT); ICSID Case No. ARB/11/7 (Egypt-UAE BIT); ICSID Case No. ARB/14/4 (Egypt-Spain BIT); ICSID Case No. ARB/12/11 (Egypt-US BIT); ICSID Case No. ARB/15/30 (Oman-South Korea BIT); ICSID Case No. ARB/16/7 (Oman-Turkey BIT); ICSID Case No. ARB/18/7 (Morocco-Sweden BIT); ICSID Case No. ARB/19/7 (Egypt-UK BIT); and ICSID Case No. ARB/19/27 (UAE-Egypt BIT).

[52] To which Jordan and Yemen are a party. Note, however, the fossil fuel exclusion in the latest revision of the ECT.

[53] To which the majority of MENA countries are a party: Algeria, Bahrain, Djibouti, Egypt, Iran, Jordan, Kuwait, Lebanon, Libya, Malta, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates, West Bank and Gaza, and Yemen.

[54] Albeit that only few ICSID references have, to date, been reported in the MENA oil and gas sector: See A. R. Parra, "*ICSID and Investor-State Petroleum Disputes in the MENA Region",* 7(1) BCDR IAR (2020), pp. 225-229. See also ICSID, "*Spotlight on the ICSID Caseload: Middle East and North Africa*", 2022, at p. 3, available at https://icsid.worldbank.org/sites/default/files/ICSID_Cases_Involving_ MENA_States_and_Investors.pdf (last accessed on 5 July 2022), which confirms that only 16% of a total of 97 MENA ICSID references to date relate to the oil, gas and mining industry.

[55] Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference 1981, in force since 23 September 1986. For further introductory reading, see M. N. Alrashid and L. Carpentieri, "*The Revival of Islamic and Middle East Regional Investment Treaties: A New Way Forward?*", 12(2) TDM (2015). The OIC Agreement has been signed by a total of 36 OIC Member States, but ratified by only by the following 29: Burkina Faso, Cameroon, Egypt, Republic of Gabon, Gambia, Guinea, Republic of Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Mali, Morocco, Oman, Pakistan, Palestine, Qatar, Saudi Arabia, Senegal, Somalia, Sudan, Syria, Tajikistan, Tunisia, Turkey, Republic of Uganda and the United Arab Emirates. For an example in the MENA oil and gas sector, see, e.g., *Trastra v. Libya*, (2019).

[56] Unified Agreement for the Investment of Arab Capital in the Arab States, signed in Amman, Jordan, on 26 November 1980. The following are its members: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Mauritania, Oman, Palestine, Qatar, Saudi Arabia, Syrian Arab Republic, Somalia, Sudan, Tunisia, United Arab Emirates and Yemen. The Arab Investment Agreement has been ratified by most of these, except for Algeria and Comoros.

[57] For further guidance on the operation of the OIC Agreement and the Arab Investment Agreement, see G. Blanke, "*Investment Arbitration in the GCC: An Introduction*", in G. Blanke and S. Corm-Bakhos (eds), *MENA Leading Arbitrators' Guide*, Juris, forthcoming 2022.

- an international investment agreement or a Free Trade Agreement ["**FTA**"][59] that deals (among other things) with the promotion, protection and liberalisation of cross-border investments between two countries.

Under most of these arrangements, the host State will be bound by a standing obligation to arbitrate that can be triggered by recourse to arbitration by the individual investor or company of the other State, a phenomenon known as "arbitration without privity". The arbitration obligation will typically specify the applicable institutional or *ad hoc* rules and the seat of the arbitration or leave an express choice to the investor to opt into the ICC or SCC Rules, the UNCITRAL Rules or the ICSID (Additional Facility) Rules. That said, some MENA countries have specifically contracted out of the application of their investment laws or of the provisions of a particular international investment instrument to disputes in the oil industry. By way of example, some GCC investment laws do not extend to all oil disputes[60] and Saudi Arabia has expressly reserved its position on the application of the ICSID Convention to *"*questions pertaining to oil*".*[61]

Disputes will typically arise with respect to a host State's violation of one of the standards of substantive protection guaranteed under the above-mentioned instruments, such as unlawful expropriation,[62] a breach of fair and equitable treatment ["**FET**"][63] and the full protection and

[58] See, e.g., the various Gulf Cooperation Council (GCC) investment laws: Kuwait Law No. 116/2013 on the promotion of direct investment in the State of Kuwait, in force since 16 December 2013, read together with Executive Regulations of Law No. 116/2013 regarding the Promotion of Direct Investment in the State of Kuwait, 14 December 2014; Foreign Capital Investment Law, promulgated by Oman Sultani Decree No. 50/2019 of 1 July 2019, in force since 1 January 2020, read together with Executive Regulations, issued by the Ministry of Commerce and Industry of Oman, 14 June 2020; Qatar Law No. 1/2019 on Regulating Non-Qatari Capital Investment in the Economic Activity, adopted on 7 January 2019, in force since 25 February 2019, read together with Resolution No. 44 of 2020 of the Minister of Commerce and Industry, issued on 8 June 2020; Saudi Arabia Royal Decree No. M1/1421 on the Approval of the Foreign Investment Law, in force since 16 September 2002, read together with Executive Rules of the Foreign Investment Law, issued in 2004; and UAE Federal Law No. 19/2018 on Foreign Direct Investment issued on 23 September 2018 and in force since 1 October 2018, read together with Cabinet Resolution No. 16 of 2020 Concerning the Determination of the Positive List of Economic Sectors and Activities for Foreign Direct Investment and Percentage of their Ownership, 17 March 2020.

[59] E.g., Agreement between the Government of the United States of America and the Government of the Sultanate of Oman on the Establishment of a Free Trade Area, in force since 1 January 2009 ("*US-Oman FTA"*), which is based on the US Model FTA. See also the United States - Morocco Free Trade Agreement ("US-Morocco FTA"). For an example in the MENA oil and gas sector, see, e.g., ICSID Case No. ARB/18/29 (US-Morocco FTA).

[60] See, e.g., Art. 18, Saudi Arabia Royal Decree No. M1/1421 (which excludes the production of petroleum products and pipeline transport services); and Art. 7(2), UAE Federal Law No. 19/2018 (which excludes the exploration of oil and the production of petroleum products).

[61] See Art. 25(4), ICSID Convention and Saudi Royal Decree No. M/8, 22/3/1394 H: *"[T]he Kingdom reserves the right of not submitting all questions pertaining to oil and pertaining to acts of sovereignty to the International Centre for the Settlement of Investment Disputes whether by way of conciliation or arbitration."*

[62] See, e.g., ICSID Case No. ARB/18/29.

security ["**FPS**"] standard,[64] a breach of the guarantee of national treatment and non-discrimination and most-favoured nation treatment ["**MFN**"],[65] Historically speaking, MENA oil and gas references are amongst the first to give rise to the concept of unlawful[66] and creeping[67] expropriation in international law, awarding full compensation (comprised of the actual loss suffered and loss of profit).[68] Finally and importantly, investment claims might also arise from oil and gas related construction projects.[69]

C. OTHER

Residual categories of disputes, of lower frequency yet no less importance, are State-to-State disputes, which are mostly boundary disputes with respect to the delimitation of cross-border oil and gas fields and individual-to-company disputes, commenced by individuals against oil and gas services providers for personal injury or tort.[70] Given their existence in the margin,[71] these two residual categories of disputes will not be further discussed here.

IV. THE PROCEDURAL FRAMEWORK OF OIL & GAS ARBITRATION IN THE MENA

This section examines the procedural framework of oil and gas arbitration in the MENA by reference to the operation of conditions precedent prior to the recourse to arbitration, the seat of the arbitration, the applicable procedural rules and the language of the arbitration.

A. MULTI-TIER DISPUTE RESOLUTION

Oil and gas contracts invariably provide for multi-tiered dispute resolution (so-called escalation clauses) that escalates to arbitration only if the parties have been unable to settle their dispute by recourse to non-contentious forms of dispute resolution prior to recourse to arbitration. Such pre-arbitral steps qualify as conditions precedent that are usually strictly enforceable in MENA jurisdictions: A failure to comply with *precise* and *unambiguous*

[63] See, e.g., ICSID Case No. ARB/07/25, ICSID Case No. ARB/13/15, ICSID Case No. ARB/18/7, ICSID Case No. ARB/19/7, and *Yosef Maiman & Others v. Arab Republic of Egypt,* (2017) PCA Case No. 2012/26.
[64] See, e.g., ICSID Case No. ARB/12/11, and ICSID Case No. ARB/14/4.
[65] See, e.g., ICSID Case No. ARB/14/4.
[66] See, e.g., Sapphire v. NIOC ILR, 1963, at 136 et seq., BP v. Libya, 53 ILR 297 (1979), TOPCO & Calasiatic v. Libya, (1975) YCA 1979, at 177 et seq., SEDCO v. NIOC & Iran, (1987), and Amoco v. Iran (NPC), 15 IRAN-U.S. C.T.R., at 189 et seq.
[67] See, e.g., Phillips v. Iran & NIOC, 21 IRAN-U.S. C.T.R., at 79 et seq., and Amoco v. Iran & NIOC IUSCT, Case No. 56.
[68] See also LIAMCO v. Libya, 17 I.L.M. 3 (1978) that lawful acts of nationalisation (and by extension expropriation) require full compensation. See also Kuwait v. Aminoil, 21 ILM 976 (1982), in which the tribunal awarded *"prompt, adequate and effective"* or *"fair compensation"* for a lawful act of nationalisation.
[69] See, e.g., ICSID Case No. ARB/16/7 (construction of oil production facilities), and ICSID Case No. ARB/19/27 (construction of a gas pipeline).
[70] For further guidance, see T. Martin, "*Dispute resolution in the international energy sector*", 4(4) JWELB (2011), pp. 332-368, at pp. 334 and 336.
[71] And the limited use of arbitration in the latter.

conditions precedent tends to afford an opportunity for a successful challenge under most MENA arbitration laws.[72] Typical pre-arbitral steps of this nature are attempts at amicable settlement, negotiation at the level of senior management and mediation.[73] In an investment arbitration context, so-called cooling-off periods are intended to operate to similar effect. The OIC Agreement and the Arab Investment Agreement provide for a mandatory pre-arbitral recourse to conciliation.[74]

Conditions precedent also play a major role in construction arbitrations in the MENA oil and gas sector. Cl. 67 of the FIDIC 4th edition 1987 prescribes a sequence of carefully-timed conditions precedent, starting with a claiming party's referral for an Engineer's decision, followed by a notice of intention to proceed to arbitration and an attempt to settle amicably before escalation to arbitration in a final instance in the event that amicable settlement fails.[75] These will equally find strict application in a construction project in the oil and gas sector in the MENA, prior to a referral to arbitration.

Bearing testimony to the parties' desire to conciliate disputes, either before escalation to arbitration or before the issuance of a final award, many references reported in the annex did indeed settle[76] or were discontinued.[77] This is evidently commendable in circumstances in which the contracting parties, more likely than not, are committed to a long-term contractual relationship and therefore reliant on each other's trade for extended periods of time.

B. SEAT OF ARBITRATION

The seat of the arbitration determines the governing procedural law of the arbitration. In order to minimise potential challenges of prospective arbitral awards, parties are well advised to choose seats of arbitration that are arbitration-friendly. This has often been achieved by designating a leading international seat, such as London[78],[79] Geneva,[80] Lausanne,[81] Zurich,[82]

[72] See, e.g., the position under UAE law: G. Blanke, *Blanke on UAE Arbitration Legislation and Rules*, Thomson Reuters/ Sweet & Maxwell, 2021, at II-012.
[73] For further guidance, see T. Martin, "Dispute resolution in the international energy sector", 4(4) JWELB (2011), pp. 332-368, at pp. 336 *et seq*.
[74] See Art. 17, OIC Agreement; and Art. 3(1), Annex, Arab Investment Agreement.
[75] For a strict application of these provisions under UAE law, see again G. Blanke, *Blanke on UAE Arbitration Legislation and Rules*, Thomson Reuters/ Sweet & Maxwell, 2021, at III-202.
[76] See, e.g., TOPCO & Calasiatic v. Libya, (1975) YCA 1979, at 177 et seq., Amoco v. Iran (NIOC) et al. , (1982/1990), and Amoco v. Iran (NPC), 15 IRAN-U.S. C.T.R., at 189 et seq.
[77] See, e.g., ICSID Case No. ARB/07/25, ICSID Case No. ARB/09/04, ICSID Case No. ARB/15/30, and ICSID Case No. ARB/19/07.
[78] Triggering the application of the 1996 Arbitration Act and the curial competence of the English courts.
[79] See, e.g., ICC Case No. 11579.

Copenhagen,[83] Paris,[84] The Hague,[85] and Athens[86] for MENA oil and gas arbitrations. Cairo has been the only choice of a seat in the Middle East in reported references to date.[87]

In order to compete on the regional and international stage, a number of MENA countries have nowadays modernised their arbitration offering with the adoption of stand-alone arbitration laws, modelled on the UNCITRAL Model Law.[88] Ready examples that come to mind are Saudi Arabia,[89] Bahrain,[90] Qatar[91] and the UAE,[92] which, over time, have grown and/or continue to grow into mature arbitration jurisdictions.

Some of these countries have also established so-called *judicial* free zones,[93] which are equipped with their own, autonomous legal systems based on the common law. The UAE's Dubai International Financial Centre ["**DIFC**"] and the Abu Dhabi Global Market ["**ADGM**"] serve as prime examples of such judicial free zones. They dispense their own arbitration laws, the DIFC Arbitration Law[94] and the ADGM Arbitration Regulations[95] and as such may serve as seats of arbitration in their own right. Choice of the DIFC/ADGM as the seat of the arbitration will engage the corresponding free zone arbitration law as the procedural law of the arbitration and the DIFC/ADGM Courts as the curial courts. Given the common law pedigree of the free zones and their courts,[96] the DIFC and the ADGM serve as an ideal substitute for a London seat in a MENA oil and gas arbitration.

Importantly and for the avoidance of doubt, ICSID arbitrations are delocalised and as such do not have a seat.

---

[80] See, e.g., Saudi Arabia v. Aramco, 27 ILR 117 (1958), LIAMCO v. Libya, 17 I.L.M. 3 (1978), ICC Case No. 13777, ICC Case No. 13898, ICC Case No. 15051, and ICC Case No. 18215/MHM.
[81] See *Sapphire v. NIOC* ILR, 1963, at 136 et seq.
[82] See ICC Case No. 13790.
[83] See, e.g., BP v. Libya, 53 I.L.R. 297 (1973), and Elf v. NIOC YCA, 1986, at 97, 102 et seq.
[84] See, e.g., ICC Case No. 13686, ICC Case No. 14108, and ICC Case No. 19299.
[85] See Wintershall v. Qatar ILM, 795 (1988).
[86] See ICC Case No. 10302.
[87] See National Gas v. Egypt/EGPC, (2009), CRCICA.
[88] UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006.
[89] Royal Decree No M/34, dated 24/5/1433 AH (corresponding to 16/4/2012 AD) concerning the approval of the Law of Arbitration.
[90] Bahrain Law No. 9/2015 promulgating the Arbitration Law.
[91] The Qatari Arbitration Act No. 2 of 2017 Applying the Civil and Commercial Arbitration Law.
[92] UAE Federal Law No. 6 of 2018 Concerning Arbitration, also known as the UAE Federal Arbitration Law or simply the FAL.
[93] On the UAE's judicial free zones and their arbitration offering, see G. Blanke, "*Free zone arbitration in the DIFC and the ADGM*", 35(1) Arbitration International (2019), pp. 95-116.
[94] DIFC Law No. 1 of 2008.
[95] ADGM Arbitration Regulations 2015 as amended.
[96] The DIFC and ADGM judiciaries being drawn in their majority from Commonwealth countries.

C. APPLICABLE PROCEDURAL RULES

The applicable procedural rules in a MENA oil and gas arbitration are two-fold: Those of the arbitral institution (in the event of an institutional arbitration)[97] and the procedural or curial law, which is determined by reference to the seat of the arbitration. These topics are sufficiently discussed elsewhere in this study[98] and will therefore not be repeated here.

D. LANGUAGE OF ARBITRATION

Given the often-international background of at least one of the arbitrating parties, the language of MENA oil and gas arbitrations is usually English, which also tends to be the language of any underlying contractual arrangements or the underlying investment instrument. The parties may, of course, choose any other language that suits them better, for example, Arabic, provided that the dispute is one between two domestic parties to the exclusion of any international stakeholders.[99] That said, challenges have been seen to arise from the use of Arabic in earlier oil and gas arbitrations.[100]

Importantly, the tribunal members will have to be proficient in the language of the arbitration, which will inevitably also be the language of any prospective award. Care should be taken that some MENA arbitration laws used to require the tribunal to produce a final award in Arabic albeit that this does not appear to be the case any longer.

V. THE INSTITUTIONAL FRAMEWORK OF OIL & GAS ARBITRATION IN THE MENA

Arbitral proceedings in relation to oil and gas may be conducted with the assistance of an arbitral institution or *ad hoc*, i.e., outside any institutional framework. The question of the choice of the mode of the arbitration being one of party autonomy, it is entirely up to the parties to decide whether or not to contract into a pre-established set of procedural rules dispensed by a designated arbitral institution for the administration of their dispute.

A. INSTITUTIONAL V. AD HOC

More recent MENA oil and gas arbitrations have been conducted under the auspices of well-known, internationally or regionally leading arbitral institutions. These typically include the

[97] Or evidently the UNCITRAL Rules to the extent that parties have contracted into these in an ad hoc set-up.
[98] See section IV.B., V. and VI.A.
[99] More likely than not, a number of domestic CIRCICA proceedings in the oil and gas sector will have been conducted in Arabic.
[100] See, e.g., Petroleum Development Ltd. v. Sheikh of Abu Dhabi (1951): "*The Arabic of the Gulf, in which the contract is framed, is an archaic variety of the language, bearing, I was told, some such relation to modern current Arabic as Chaucer's English does to modern English. Such discrepancies, however, as exist between the two translations are fortunately trivial, and the Claimants were willing for purposes of argument to accept the translation put forward on behalf of the Respondent*." (see 18 ILR (1951), at p. 149)

London Court of International Arbitration ["**LCIA**"],[101] the International Chamber of Commerce ["**ICC**"] International Court of Arbitration,[102] the Arbitration Institute of the Stockholm Chamber of Commerce ["**SCC**"][103] and the Cairo Regional Centre for International Commercial Arbitration ["**CIRCICA**"].[104] Earlier proceedings were often conducted *ad hoc*,[105] most probably because of the lesser use of the institutional mode of arbitration in the days and given the frequent involvement of MENA State (entities) that might have been less familiar with institutional arbitration at the time and that would not have wished to entrust foreign arbitral institutions (identified with another nation State) with the administration of their dispute.[106] One further reason for the pronounced earlier use of *ad hoc* arbitration might have been the significant degree of procedural flexibility built into that process, giving the parties almost unlimited freedom (subject to considerations of due process and public policy) to design an arbitration process to suit them.

To provide some procedural assistance and certainty to an *ad hoc* arbitration process, the parties are, of course, at liberty to contract into the UNCITRAL Rules of Arbitration[107] and have indeed done so on occasion in the past.[108] One of the main benefits of doing so is the default-appointment regime provided for under the UNCITRAL Rules, which requires the PCA Secretary-General to select a default-appointing authority upon request of a party.[109] In addition, parties may designate an arbitral institution to default-appoint or even to administer their arbitration under the UNCITRAL Rules. This option is evidently limited to arbitral institutions that offer that type of service, such as the LCIA, which is available for default-

[101] Albeit that for reasons of confidentiality, no cases have been reported.
[102] See, e.g., ICC Case No. 4462, ICC Case No. 8198, ICC Case No. 10302, ICC Case No. 10351, ICC Case No. 11579, ICC Case No. 13686, ICC Case No. 13777, ICC Case No. 13790, ICC Case No. 13898, ICC Case No. 14108, ICC Case No. 15051, ICC Case No. 16198, ICC Case No. 18215/MHM, ICC Case No. 19299, ICC Case No. 24408/AYZ, and ICC Case No. 24722/AYZ.
[103] Albeit that for reasons of confidentiality, no cases have been reported.
[104] See, e.g., *National Gas v. Egypt/EGPC*, (2009), and CRCICA Case No. 829/2012.
[105] See, e.g., Petroleum Development (Qatar) Ltd. v. Ruler of Qatar, (1951) 18 I.L.R, Petroleum Development Ltd. v. Sheikh of Abu Dhabi, (1951) 18 ILR 144, Saudi Arabia v. Aramco, (1958), Sapphire v. NIOC ILR, 1963, at 136 et seq., BP v. Libya, 53 I.L.R. 297 (1973), TOPCO & Calasiatic v. Libya, (1975) YCA 1979, at 177 et seq., LIAMCO v. Libya, (1977) 17 I.L.M. 3, Elf v. NIOC YCA, 1986, at 97, 102 et seq., and Kuwait v. Aminoil ILM, 976 (1982).
[106] The question of confidentiality might also have played in favour of *ad hoc* arbitration, avoiding the "unnecessary" involvement of third parties, i.e., the administrative staff of a chosen institution (including the institutional decision-making body), and hence limiting the risk of undesirable leaks (despite the institutional confidentiality undertakings that are typically in place).
[107] UNCITRAL Arbitration Rules 1976 as amended.
[108] See, e.g., Wintershall v. Qatar, 28 ILM 795 (1988), and Yosef Maiman & Others v. Arab Republic of Egypt, (2017), PCA Arbitration.
[109] See Art. 6(2), UNCITRAL Rules.

appointment in *ad hoc* arbitration, and the DIAC, which serves both as a default-appointment authority and as an administering institution under the UNCITRAL Rules.

B. INSTITUTIONAL CHOICES

The MENA is home to a wide range of arbitral institutions that may serve as reliable service providers in the administration of oil and gas arbitrations in the region. The CIRCICA leads by example, certainly in oil and gas arbitrations that involve Egypt as a respondent State.[110] There is no reason why other regionally leading centres should not do equally well. The Dubai International Arbitration Centre ["**DIAC**"], for example, has only just published its 2022 Rules,[111] which introduces a number of innovations that will serve the seamless administration of oil and gas arbitral proceedings.[112] In addition, the DIAC has been restructured to incorporate a DIAC Court and as such reconstituted, following the model of the ICC and the LCIA,[113] and has created a presence through a branch office in the Dubai International Financial Centre ["**DIFC**"].[114] Taken together with the designation of the DIFC as the "initial" default-seat under the 2022 DIAC Rules,[115] this will, no doubt, increase the attractiveness of the DIAC as an institutional service provider in regional oil and gas arbitrations involving international stakeholders.

The ICC has also embellished its regional offering by setting up its 5th regional overseas case management office[116] in the ADGM with effect from 1 April 2021. The ADGM-ICC is located on the premises of the ADGMAC and administers MENA arbitrations that have been submitted to the ICC Rules of Arbitration with the assistance of a specialist case management team. Needless to say, that given its physical closeness to the ADGMAC, the ADGM-ICC evidently benefits from the ADGMAC both as an in-person and as a virtual hearing venue. The parties' choice of the ICC Rules will import the usual benefits of ICC arbitration into the proceedings, in particular the requirement to sign terms of reference[117] and the scrutiny of

[110] See, e.g., National Gas v. Egypt/EGPC, (2009), CRCICA, and CRCICA Case No. 829/2012.
[111] DIAC Rules of Arbitration 2022, available online at http://www.diac.ae/idias/resource/Rules2022.pdf (last accessed on 3 July 2022).
[112] Such as joinder and consolidation, multi-party arbitration, and the scrutiny of awards.
[113] See Dubai Government Decree No. 34/2021 concerning the Dubai International Arbitration Centre (DIAC).
[114] And hence might aim to fill a gap left by the discontinuation of the DIFC-LCIA as a side effect of the adoption and entry into force of Decree No. 34/2021.
[115] See Art. 20.1, 2022 DIAC Rules.
[116] See ICC, "*ICC Court to Open 5th Overseas Case Management Office in Abu Dhabi Global Market", News*, Abu Dhabi (21 December 2020), available online at https://iccwbo.org/media-wall/news-speeches/icc-court-to-open-5th-overseas-case-management-office-in-abu-dhabi-global-market/.
[117] See Art. 23(2), ICC Rules.

ICC awards prior to their issuance.[118] In the MENA context more specifically, this tends to limit a latent risk of unenforceability of a resultant award on grounds of lack of a party's capacity to submit to arbitration or by reason of other procedural irregularities, including violations of public policy, such as the deficient execution of arbitral awards.[119]

Albeit not a stand-alone arbitral institution, the ADGM Arbitration Centre ["**ADGMAC**"], established in 2018, operates as a state-of-the-art hearing facility for domestic and international arbitration, both free zone and onshore. As such, it may serve as a fully-digitalised hearing venue for both institutional and *ad hoc* arbitrations, irrespective of their seat, whether onshore or offshore. In addition, it presently houses the ADGM-ICC, suggesting its operation as a multi-institutional dispute resolution complex modelled on Maxwell Chambers in Singapore.[120] Apart from serving as an arbitration venue, the ADGMAC is an ardent promoter of alternative dispute resolution in the wider Middle East and has, to date, published some helpful guidance for arbitrators, arbitration counsel and arbitration users on the conduct and best practices of arbitration in the ADGM, the Middle East and internationally. Such guidance includes the ADGMAC Arbitration Guidelines[121] and the ADGMAC Protocol for Remote Hearings.[122] To enhance its regional reach, the ADGMAC has also entered into a number of co-operation agreements with MENA arbitral institutions, such as the Saudi Centre for Commercial Arbitration ["**SCCA**"], the Cairo Regional Centre for International Commercial Arbitration ["**CRCICA**"] and the Lebanese Arbitration and Mediation Centre ["**LAMC**"].[123] These focus on the mutual co-operation and promotion of and grant access to each other's facilities for regional and international arbitration or alternative dispute resolution in the region more generally.

Other regional institutions with a viable pedigree that are likely to compete for future oil and gas arbitrations in the region are the Bahrain Centre for Dispute Resolution ["**BCDR**"], which has now completed its recent emancipation from the American Arbitration Association ["**AAA**"],[124] the Qatar International Centre for Conciliation and Arbitration ["**QICCA**"],

[118] See Art. 34, ICC Rules.
[119] E.g., a failure to sign each page of the award, which qualifies as a matter of procedural public policy under UAE law: See G. Blanke, *Blanke on UAE Arbitration Legislation and Rules*, Thomson Reuters/ Sweet & Maxwell, 2021, at III-388-III-389.
[120] See https://www.maxwellchambers.com (last accessed on 4 June 2022).
[121] *ADGM Arbitration Centre Arbitration Guidelines*, ABU DHABI GLOBAL MARKET, (3 July 2022) https://www.adgm.com/arbitrationcentre/resources/publications/arbitration-guidelines
[122] *ADGM Courts Protocol for Remote Hearings*, ABU DHABI GLOBAL MARKET (3 July 2022) https://www.adgm.com/arbitrationcentre/resources/publications/remote-hearings
[123] See https://www.adgmac.com/cooperation-agreements/.
[124] Having recently adopted a new set of (draft) 2022 BCDR Arbitration Rules.

which has emerged as one of the leading arbitration centres in the Middle East over the past twenty years, and the Saudi Centre for Commercial Arbitration ["**SCCA**"], which, albeit a relative newcomer on the stage of MENA arbitration, has so far enjoyed great acclaim.[125]

VI. THE LEGAL FRAMEWORK OF OIL & GAS ARBITRATION IN THE MENA

The legal framework of MENA oil and gas arbitrations is informed by the *lex arbitri*, i.e., the governing procedural law, the *lex contractus* or more generally the *lex causae*, i.e., the governing law on the merits and the role of the Islamic Shari'ah. Each of these will be briefly addressed below.

A. THE GOVERNING PROCEDURAL LAW (*LEX ARBITRI*)

The governing procedural law is the arbitration law that applies at the seat of the arbitration. As discussed above,[126] many MENA arbitration laws have been modernised to bring them into line with best international arbitration practice and procedure, taking guidance from the UNCITRAL Model Law. Further, the UAE's free zone laws, the DIFC Arbitration Law and the ADGM Arbitration Regulations, facilitate a common law style arbitral process with a seat in the midst of the Middle East.

Taking a look at the *acquis* of MENA oil and gas arbitrations to date, it is interesting to note that some earlier tribunals decided to take recourse to international law as the governing procedural law of the arbitration in circumstances where the parties were unable to agree.[127] The choice of international law was primarily motivated by considerations of sovereignty.[128] Other tribunals have deferred to the procedural law at the seat[129] out of, *inter alia*,

[125] See also J. Sutcliffe and J. Blaney, "*Arbitration of LNG Price Review Disputes*", 7(1) BCDR IAR (2020), pp. 133-142, at. P. 141, who expressly endorse regional venues, such as *"the credible arbitration centres in Abu Dhabi, Bahrain, Dubai and Riyadh"* as venues for gas price review arbitration in the Middle East.

[126] See section IV.B. above.

[127] See, e.g., Saudi Arabia v. Aramco, 27 ILR 117 (1958), deciding in favour of the application of the Law of Nations, TOPCO & Calasiatic v. Libya, (1975) YCA 1979, at 177 et seq. (international law, following the Aramco reasoning), and LIAMCO v. Libya, (1977) 17 I.L.M. 3 (1978), in which the tribunal took guidance from the *"general principles contained in the Draft Convention on Arbitral Procedure [of] the International Law Commission of the United Nations."*

[128] In that a sovereign State would not readily submit to the municipal procedural legislation of another Sovereign.

[129] See, e.g., Judge Lagergren in BP v. Libya 53 I.L.R. 297 (1973) (Danish law). Other examples include Sapphire v. NIOC, 1963, at 136 et seq. (Code of Civil Procedure of the Canton de Vaude, Switzerland), Elf v. NIOC YCA 1986, at 97, 102 et seq. (Danish law), Kuwait v. Aminoil, 21 ILM 976 (1982) (French law), Wintershall v. Qatar, 28 ILM 795 (1988) (Dutch law), ICC Case No. 11579 (1996 English Arbitration Act), ICC Case No. 13686 (French law), ICC Case No. 13777 (Swiss law), ICC Case No. 18215/MHM (Swiss law), and ICC Case No. 19299 (French law).

considerations of the ready enforceability of a prospective award under, e.g., the New York Convention.[130]

B. THE GOVERNING LAW ON THE MERITS (*LEX CONTRACTUS OR THE LEX CAUSAE*)

The governing law on the merits is usually determined by the contracting parties by reference to the governing law/ choice of law clause in their underlying contractual framework.[131] Where no agreement can be reached between the parties and where no guidance on the governing law can be gained from the parties' contract, the tribunal once appointed will be tasked with the determination of the applicable law on the merits. It will do so by reference to the conflicts of laws rules to the extent that any apply[132] or by reference to the general powers conferred upon it by the applicable procedural rules and laws, including the arbitration law governing arbitral process. Absent party agreement, a tribunal will usually be empowered to determine the governing law at its discretion (that it considers most appropriate). Some institutional rules expressly empower the Tribunal to take account of *"any relevant trade usages"* in doing so.[133] It should be cautioned that some laws in the country of operations might be of mandatory application, such as environmental, labour and safety laws[134] and that some countries' laws have extraterritorial reach, such as a number of antitrust laws or economic sanctions (supranational law).

---

[130] To this effect, see Prof. Wetter's explanations of Judge Lagergren's findings in BP v. Libya, 53 I.L.R. 297 (1973): *"[…] application of the Aramco or the Topco/Calasiatic doctrines may be exposed to the risk of not resulting in awards recognised under the New York Convention. And indeed the wish to secure an award that could be so recognised and enforced was the main element that influenced Judge Lagergren in pronouncing that the BP Award was a Danish one; the Claimant also expressly regarded it as such. It is felt that Professor Dupuy, in holding that consideration of the enforceability of the award was riot within his jurisdiction, underestimated the practical and theoretical importance of the enforceability aspect and, in any event, erred in his quoted conclusion on the jurisdictional issue. […] The desirability to localise an award for the purpose of making it enforceable is the main reason for, and consequence of, preferring the BP doctrine. Another consideration is that, unless an award is so attached to a specific jurisdiction, claims of nullity or challenge procedures cannot be instituted, nor is it clear by which law the liability of the arbitrators is governed. And, lastly, as emphasised by Judge Lagergren, the attachment to a national jurisdiction provides the arbitrator with a supplementary reference system, a developed procedural law, that greatly aids the arbitrator in his task. However, in cases where none of these considerations are deemed to be of practical significance, the Aramco and Topco/Calasiatic doctrines are sustainable and may command attention. This does not imply acceptance of the widely exaggerated notions of a supranational arbitral jurisdiction and lex mercatoria hovering far above the reach of national jurisdictions."* (see J. G. WETTER, THE INTERNATIONAL ARBITRAL PROCESS: PUBLIC AND PRIVATE, (Oceana Publications 1979), at pp. 409-410.

[131] Which will typically refer to the national law of a particular country, e.g., (i) the law of the country with the closest connection to the contract/ dispute; (ii) the law of the country of operations; (iii) the law of the country where the contract was negotiated; or (iv) the law of the country where the contract was executed.

[132] It should be noted that the parties' choice of law (if any) tends to exclude the application of the conflict of laws rules of that country (to avoid the *renvoi* to a different law once a dispute arises).

[133] See, e.g., Art. 21(2), ICC Rules; and Art. 30.3, 2022 DIAC Rules.

[134] See, e.g., the consideration given to regulatory requirements for oil exploration and drilling in the host State (over and above the application of English law as the governing law on the merits) in ICC Case No. 11579.

Given its sophistication and long-standing use in oil and gas disputes, English law has been suggested for application in such disputes irrespective of the geographic location of the underlying energy project from which a dispute arises.[135] English law has indeed been applied in a number of MENA oil and gas arbitrations in the past,[136] at times at the cost of the Islamic Shari'ah,[137] which, for some time, brought arbitration in the Middle East into disrepute.[138] For reasons similar to those that have led to the promotion of English law as a desirable law on the merits in oil and gas arbitrations, consideration has also been given to the potential application of a *lex petrolea*,[139] for the first time in *Kuwait v. Aminoil* (1982),[140] but was, in that reference, discarded because of the insufficient identifiability of such a body of law at the time.

Host States or host State-owned entities will often insist on the application of the host-States domestic law, which will often be compromised by expressly limiting its application *"only to the extent that it is consistent with the principles of international law"*.[141] By way of further guidance, it is worth noting in this context that in accordance with Art. 38 of the Statute of the International Court of Justice ["**ICJ**"], the following are the sources of international law:

i. international conventions;
ii. international custom, as evidence of a general practice accepted as law (customary international law);[142]

---

[135] See Ashurst, "Governing law and dispute resolution clauses in energy contracts", ETI litigation briefing (February 2011).
[136] For more recent examples, see, e.g., ICC Case No. 11579, and ICC Case No. 13777.
[137] See, e.g., Petroleum Development Ltd. v. Sheikh of Abu Dhabi (1951) 18 ILR 144, in which Lord Asquith of Bishopstone discarded the application of the law of Abu Dhabi in favour of English law as the "modern law of nature".
[138] In an attempt of reconciliation, more recent tribunals have made the point that the Islamic Shari'ah is compatible with the governing law on the merits, e.g., Libyan law, providing for the award of damages for wrongful expropriation (*ghash*), the limitation of compensation for lost profits that are not a *"certain and direct"* result of the underlying breach (*gharar*) and that it is *"just and equitable to consider interest claimed not as usuary (riba), but as compensatory equivalent of a discount rate."* See Prof. Mahmassani in LIAMCO v. Libya, 17 I.L.M. 3 (1978).
[139] For a further discussion in context, see A. T. Martin, "*Lex Petrolea* in International Arbitration", in R. King (ed.), *Dispute Resolution in the Energy Sector: A Practitioner's Handbook*, Globe Law and Business, 2012.
[140] In the sense of *"a customary rule valid for the oil industry - a* lex petrolea *that was in some sort a particular branch of a general universal* lex mercatoria*"*.
[141] To this effect, see BP v. Libya, 53 ILR 297 (1979) ("*the principles of law of Libya common to the principles of international law and in the absence of such common principles then by and in accordance with the general principles of law, including such of those principles as may have been applied by international tribunals"*), LIAMCO v. Libya 17 I.L.M. 3 (1978) (*idem*), and ICC Case No. 14108 (*"principles of law common to Yemen and the United States and in the absence of such common principle, then in conformity with the principles of law normally recognized by civilized nations in general, including those which have been applied by International Tribunals"*).
[142] Customary international law is composed of customary rules, which are created by a combination of two factors: (i) a consistent practice repeated by relevant State/ governmental actors over a sufficiently long period

iii. the general principles of law recognised by civilized nations; and

iv. judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Applied to the facts at hand, earlier oil and gas tribunals have laid the foundations for the application of international law to MENA oil and gas disputes albeit that in a number of cases, the tribunal has been seen to resolve the parties' dispute by reference to the law of the host State,[143] at times in combination with international law (ensuring conformity in the application of the chosen municipal with international law).[144] One earlier tribunal also expressly relied upon Art. 38 of the Statute of the ICJ to define the meaning and scope of "principles of international law" applicable to the reference at hand.[145] On occasion, tribunals have relied upon the UNIDROIT Principles of International Commercial Contracts[146] and the principle of *pacta sunt servanda* in its own right[147]. On other occasions, tribunals have been guided by the "principles familiar to civilized nations"[148], the "principles of justice, equity and good conscience"[149], the "principles of good faith and good will"[150] and "considerations of equity and generally recognized principles of law and in particular International Law".[151]

More recent circumstances, including the COVID pandemic, have given rise to considerations to what extent the pandemic would qualify as *force majeure* or the doctrine of unforeseen circumstances or hardship under MENA municipal laws.[152] *Force majeure* and hardship have also received consideration in earlier MENA oil and gas arbitrations.[153]

---

of time; and (ii) a shared conviction/ intention that the practice concerned originates in a legal obligation (*opinio juris*). Some areas of customary international law have been codified (underlying customary rules apply even absent ratification by a State), e.g.: (i) The International Law Commission (ILC) Articles on State Responsibility (albeit not binding as such, arbitral tribunals tend to rely on these as rules of customary international law); (ii) UN Convention on the Rules of State Immunity, currently pending ratification (UNGA Res 59/38 of 2 Dec. 2004, A/59/49); and Vienna Convention on the Law of Treaties, which assists in the interpretation of treaty provisions.

[143] Apart from the English law examples listed at note 137 above, see, e.g., *Saudi Arabia v. Aramco* (1958) (Saudi law), ICC Case No. 4462 (Libyan law), *Amoco v. Iran, (NPC)* (1987/1990) (Iranian law), ICC Case No. 13686 (French law), and ICC Case No. 19299 (Yemeni law).

[144] See, e.g., TOPCO & Calasiatic v. Libya YCA, 1979, at 177 et seq. (Libyan and international law), Kuwait v. Aminoil, 21 ILM 976 (1982) (Kuwaiti law, public international law and general principles of law), and Mobil v. Iran, 16 IRAN-U.S. C.T.R., at 3 et seq.

[145] See LIAMCO v. Libya 17 I.L.M. 3 (1978), as per Prof. Mahmassani.

[146] See ICC Case No. 14108.

[147] See, e.g., Sapphire v. NIOC, (1963), ILR 1963, at 136 et seq.

[148] See Petroleum Development (Qatar) Ltd. v. Ruler of Qatar, (1951) 18 I.L.R.

[149] See Qatar v. International Marine Oil Company, (1953) 20 ILR 534.

[150] See Sapphire v. NIOC, ILR 1963, at 136 et seq.

[151] See Elf v. NIOC., 1986, at 97, 102 et seq.

[152] See, e.g., G. Coop and R. Lupini, "*Caught between a Rock and COVID-19: Sharing the Pain of Onerous Oil and Gas Contracts in the Middle East*", 7(1) BCDR IAR (2020), pp. 171-192; M. Polkinghorne and Y. El Achkar, "*COVID-19 and the Exception to Contractual Liability in Arab Contract Law*", 7(1) BCDR IAR

C. THE ROLE OF THE SHARI'AH

Albeit that it is attributed a certain level of importance by practitioners in the industry,[154] the Islamic Shari'ah is of limited importance to the daily practice of oil and gas arbitrations in the MENA. Even though some MENA countries are more Shari'ah-devout than others,[155] most MENA countries have built the Islamic Shari'ah into their body of substantive laws so that compliance with mandatory Shari'ah requirements is subsumed into the applicable substantive laws on the merits.[156] For the avoidance of doubt, the application of any "Islamic public policy" concept has expressly been denied with respect to arbitrations seated in the DIFC.[157] *Gharar* (uncertainty or speculation) is worth bearing in mind by way of general guidance.[158]

In addition, both simple and (contractually agreed) compound interest provided they do not violate the prevailing prohibition of usuary (*riba*) are recoverable in arbitrations in the MENA[159] albeit that caution must be exercised in some MENA jurisdictions on the precise articulation of an interest claim.[160] That said, it is less clear whether in those jurisdiction that do not contain the relevant stipulations in their arbitration laws, the oath-taking requirement for fact and expert witnesses survives.[161]

(2020), pp. 149-170; and E. Al Tamimi, "*Oil and Gas Disputes in the Middle East: A COVID-19 Era Perspective*", 7(1) BCDR IAR (2020), pp. 53-72.

153 See, e.g., Amoco v. Iran & NIOC et al. IUSCT Case No. 56, ICC Case No. 4462, Mobil v. Iran (1987), ICC Case No. 8198, and ICC Case No. 18215/MHM. See also R. Ziade and A. Plump, "*Changed Circumstances and Oil and Gas Contracts*", 7(1) BCDR IAR (2020), pp. 193-224.

154 See, e.g., T. Martin, "*Oil and gas arbitration in the Middle East and North Africa*", in R. King, *Arbitration in the International Energy Industry*, Globe Law and Business, 2019, pp. 93-111, pp. 93-111, at pp. 108 *et seq*. See also generally for a MENA-wide view, N. Najjar, "*The Role of Islamic Sharia in MENA Arbitration*", in G. Blanke (ed.), *Arbitration in the MENA*, Juris, 2016, Release 2-2018/2019 (2019).

155 The prime, outstanding example being the Kingdom of Saudi Arabia.

156 See, e.g., the UAE's various codes of law.

157 See the developments in E. Al Tamimi and R. Karrar-Lewsley, "Dubai", in M. OSTROVE, C. T. SALOMON AND BETTE SHIFMAN (eds), CHOICE OF VENUE IN INTERNATIONAL ARBITRATION, (Oxford University Press, 2014), pp. 118-146, at paras 5.40 and 5.96 *et seq*.

158 See the helpful discussions in T. Martin, "*Oil and gas arbitration in the Middle East and North Africa",* in R. King, *Arbitration in the International Energy Industry*, Globe Law and Business, 2019, pp. 93-111, pp. 93-111, at p. 109.

159 Some MENA jurisdictions ordaining the award of interest by law: See, e.g., Arts 77-78 and 88 of the UAE Commercial Transactions Code. See also recent developments in Qatar: See N. Tannous, "The Qatari Courts' Approach to Awarding Interest", available online at https://www.tamimi.com/law-update-articles/the-qatari-courts-approach-to-awarding-interest/ (last accessed on 4 July 2022). For an example in the oil and gas context, see LIAMCO v. Libya, (1977) 17 I.L.M. 3 (1978).

160 See, e.g., Saudi Arabia, where, out of an abundance of caution, an interest claim is still best articulated as a claim for costs of finance.

161 See, e.g., the UAE: Whereas Art. 211 of the former UAE Arbitration Chapter specifically stipulated the taking of witness evidence on oath, there is no longer an express requirement to that effect in the 2018 UAE Federal Arbitration Law. Query, however, whether the oath-taking requirement could survive as a form of

VII. RECOGNITION AND ENFORCEMENT OF OIL & GAS ARBITRAL AWARDS IN THE MENA AND BEYOND

MENA oil and gas arbitral awards[162] benefit from the existing enforcement regimes in place for international commercial and investment arbitration awards. Such enforcement regimes are typically codified in regional and international enforcement instruments, including the Riyadh[163] and the GCC Convention[164].[165] In the absence of any such instruments, enforcement follows the process laid down in the municipal laws, i.e., the arbitration law in the enforcement jurisdiction.

It should be cautioned in this context that in the past, some local MENA courts in their capacity as supervisory or enforcement courts have opposed the enforcement of both domestic and international awards on the basis of a number of peculiar procedural irregularities, at times camouflaged as a violation of public policy.[166] Over time, MENA enforcement court practice has matured considerably and most MENA countries will now adopt a narrow interpretation of public policy, in particular for the enforcement of foreign awards. That said, some local idiosyncrasies endure, such as the signature requirement of arbitral awards in the UAE.[167]

The best-known and most widely-used and applicable international enforcement instrument is the New York Convention ["**NYC**"]. [168] The NYC counts over 168 countries worldwide[169]

---

procedural public policy. For further discussion, see G. Blanke, *Blanke on UAE Arbitration Legislation and Rules*, Thomson Reuters/ Sweet & Maxwell, 2021, at III-350.

[162] Importantly, this includes ratified awards rendered in the free zones, such as the DIFC and the ADGM: For confirmation and further guidance, see G. Blanke, "Free zone arbitration in the DIFC and the ADGM", 35(1) Arbitration International (2019), pp. 95-116.

[163] Riyadh Arab Agreement for Judicial Cooperation (1983), comprising: UAE, Jordan, Bahrain, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Syria, Somalia, Iraq, Oman, Palestine, Qatar, Kuwait, Lebanon, Libya, Morocco, Mauritania and Yemen.

[164] 1996 Gulf Co-operation Council (GCC) Convention for the Execution of Judgments, Delegations and Judicial Notifications, comprising:
UAE, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait.

[165] These also bind the free zones, i.e., the DIFC and ADGM Courts: For confirmation and further guidance, see G. Blanke, "*Free zone arbitration in the DIFC and the ADGM",* 35(1) Arbitration International (2019), pp. 95-116.

[166] See G. Blanke, "*Recognition and enforcement of domestic and foreign arbitral awards in the Middle East*" in R. Nazzini (ed.), *Transnational Construction Arbitration: Key Themes in the Resolution of Construction Disputes*, informa law, 2018, pp. 139-174. For the breadth of the public policy concept across the MENA region, see M. Lau, "*The Public Policy Exception and International Commercial Arbitration in the MENA Region: A Contextual Analysis*", in G. Blanke (ed.), Arbitration in the MENA, Juris, 2016, Release 4-2021 (2021).

[167] On which see G. Blanke, *Blanke on UAE Arbitration Legislation and Rules*, Thomson Reuters/ Sweet & Maxwell, 2021, at III-401.

[168] On the recognition and enforcement of foreign arbitral awards, done at New York, 10 June 1958.

[169] This includes the following MENA countries: Algeria, Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Syria, Tunisia and United Arab Emirates.

and membership continues to grow year upon year; as such, it provides for the global enforceability of a NYC award. Member States that have not entered into the reciprocity reservation under the NYC are bound by a wide enforcement obligation, applying to both Convention and non-Convention awards. This includes some of the MENA countries, such as the UAE.[170] The NYC applies to both commercial and investment arbitration awards provided these latter are not subject to a specific enforcement regime under the relevant investment framework.

For the avoidance of doubt, the UAE's free zone courts are bound by the international enforcement instruments to which the UAE are a party, including the NYC and the Riyadh and GCC Conventions, and follow the public policy pronounced by the UAE courts, subject to adaptation on a case-by-case basis to reflect free zone requirements.[171]

The ICSID Convention[172] and some regional conventions[173] provide for their own specialist enforcement regimes and do therefore not qualify for enforcement under the NYC. For the avoidance of doubt, ECT awards are enforceable under the NYC.

VIII. CONCLUSION

Oil and gas arbitration in the MENA has seen some significant development since the 1950ies. Not only have tribunals become more sensitive to the Islamic Shari'ah as a potential element in the interpretation of contracts governed by Middle Eastern laws, MENA oil and gas references have also significantly contributed to the development of oil and gas law, often referred to as a *lex petrolea*, and of core investment protection principles, such as unlawful expropriation and the right to full compensation. Overall, this cannot but send encouraging signals to foreign investors and other key stakeholders in the regional oil and gas industry. As has been seen, the MENA arbitration landscape offers a reliable framework for oil and gas

[170] Which has demonstrated a – by and large - consistent enforcement practice of foreign arbitral awards under the NYC, see G. Blanke, *Blanke on UAE Arbitration Legislation and Rules*, Thomson Reuters/ Sweet & Maxwell, 2021, at I-192 *et seq*.

[171] See G. Blanke, "*Free zone arbitration in the DIFC and the ADGM*", 35(1) Arb. Intl. (2019), pp. 95-116, read together with G. Blanke, "*UAE public policy at the crossroads between onshore and offshore: a variable geometry of sorts*", PRACTICAL LAW ARBITRATION BLOG, Thomson Reuters, (18 June 2020), http://arbitrationblog.practicallaw.com/uae-public-policy-at-the-crossroads-between-onshore-and-offshore-a-variable-geometry-of-sorts/ (last accessed on 4 July 2022), which confirms the DIFC Courts' disposition to allow contingency fees, which are in violation of UAE public policy, within limits of reason.

[172] See Arts 53(1) and 54, ICSID Convention.

[173] See, e.g., Art. 2(11), Annex to the Arab Investment Agreement, which empowers the Arab Investment Court to adopt appropriate execution measures where the award debtor fails to comply with the terms of the subject award voluntarily within three months from issuance of the award; and Art. 17(2)(d), OIC Agreement, pursuant to which a member State is under an obligation to enforce a resultant award *"as if it were a final and enforceable decision of its national courts."*

arbitration references. With this in mind, unlike they may have done in the past, disputing parties do not need to look further afield for suitable oil and gas dispute resolution facilities and may instead entrust their disputes to the existing regional dispute resolution capabilities, which have matured significantly over time and will, no doubt, continue to do so in years to come.

ANNEX – Table on Oil & Gas Arbitrations from 1950 to Date

S/N	**Reference[174]/ Tribunal[175]/ Rules[176]**	**Parties** (Claimant/ Respondent)	**Seat/*Lex arbitri*[177]**	**Type of Dispute/ *Lex causae*[178]**	**Tribunal's Findings**
1	***Petroleum Development (Qatar) Ltd. v. Ruler of Qatar*** Award, April 1950[179] Three-member tribunal (two London-based *"arbitrator-advocates"* and Lord Radcliffe) *Ad hoc*	Petroleum Development (Qatar) Ltd./ Ruler of Qatar	n/a	Dispute about the areal extent of the Concession Agreement between the parties *"principles familiar to civilised nations"*	Tribunal delineates the areal extent of the Concession Agreement in its award
2	***Petroleum Development Ltd. v. Sheikh of Abu Dhabi*** Award, September 1951[180] Sole arbitrator (Lord Asquith of Bishopstone)	Petroleum Development/ Sheikh of Abu Dhabi	n/a	Dispute about the areal extent of the Concession Agreement for the exploration and development of oil and gas granted by the Sheikh of Abu Dhabi to the Claimant for the entire territory of Abu Dhabi *"The Ruler and the Company both*	Tribunal finds in favour of the Sheikh on the areal extent of the Concession Agreement

[174] For the avoidance doubt, unless stated otherwise, the language of arbitration in each of the references listed here is English.
[175] Sole arbitrator or three-member tribunal.
[176] Institutional or *ad hoc*.
[177] Procedural or curial law of the arbitration.
[178] Governing law on the merits.
[179] Petroleum Development (Qatar) Ltd. v. Ruler of Qatar 18 ILR (1951), at pp. 161 *et seq*.
[180] Petroleum Development Ltd. v. Sheikh of Abu Dhabi 18 ILR (1951), at pp. 144 *et seq*.

	Ad hoc			*declare that they base their work in this Agreement on goodwill and sincerity of belief and on the interpretation of this Agreement in a fashion consistent with reason."*[181]	
3	***Qatar v. International Marine Oil Company***[182]	Ruler of Qatar/ International Marine Oil Company	n/a	Dispute about rent payable under a Concession Agreement between the parties, and whether, *inter alia*, that rent is payable in advance *"principles of justice, equity and good conscience"*[183]	Tribunal finds that rent is payable in advance on the basis of the application of *"the principles of justice, equity and good conscience"*

[181] "*This is a contract made in Abu Dhabi and wholly to be performed in that country. If any municipal system of law were applicable, it would prima facie be that of Abu Dhabi. But no such law can be reasonably said to exist. The Sheikh administers a purely discretionary justice with the assistance of the Koran; and it would be fanciful to suggest that in this very primitive region there is any settled body of legal principles applicable to the construction of modern commercial instruments."* (*ibid*., at p. 148); and *"[...] albeit English Municipal Law is inapplicable as such, some of its rules are in my view so firmly grounded in reason, as to form part of this broad body of jurisprudence - this 'modern law of nature' [...] yet on the other hand the English rule which attributes paramount importance to the actual language of the written instrument in which the negotiations result seems to me no mere idiosyncrasy of our system, but a principle of ecumenical validity."* (*ibid*., at p. 148)

[182] Reported in 20 ILR (1953), at pp. 534 *et seq.*

[183] *"[...] after hearing the evidence of the two experts in Islamic law, Mr. Anderson and Professor Milliot, 'there is no settled body of legal principles in Qatar applicable to the construction of modern commercial instruments' to quote and adapt the words of Lord Asquith of Bishopstone, in his Award as Referee in an Arbitration in 1951 in which the Shaikh of Abu Dhabi, a territory immediately adjacent to Qatar and in fact much larger than Qatar, was a party, and the Arbitration concerned the interpretation of words in an oil concession contract. I need not set out the evidence before me about the origin, history and development of Islamic law as applied in Qatar or as to the legal procedure in that country. I have no reason to suppose that Islamic law is not administered there strictly, but I am satisfied that the law does not contain any principles which would be sufficient to interpret this particular contract. […] Arising out of that reason is the second reason, which is that both experts agreed that certain parts of the contract, if Islamic law was applicable, would be open to the grave criticism of being invalid. According to Professor Milliot, the Principal Agreement was full of irregularities from end to end according to Islamic law, as applied in Qatar. This is a cogent reason for saying that such law does not contain a body of legal principles applicable to a modern commercial contract of this kind. I cannot think that the Ruler intended Islamic law to apply to a contract upon which he intended to enter, under which he was to receive considerable sums of money, although Islamic law would declare that the transaction was wholly or partially void. Still less would the Ruler so intend, and at the same time stipulate that these sums when paid were not to be repaid under any circumstances whatever. I am sure that Sir Hugh Weightman and Mr. Allan did not intend Islamic law to apply. In my opinion neither party intended Islamic law*

4	***Saudi Arabia v. Aramco*** Award, 23 August 1958[184] *Ad hoc*	Kingdom of Saudi Arabia/ Arabian American Oil Company (Aramco)	Geneva, Switzerland The Law of Nations[185]	Dispute about the transportation rights of Aramco's crude oil production in the light of a thirty-year exclusive crude oil shipping contract awarded by Saudi Arabia to Onassis ("Onassis Agreement") and Aramco's all-encompassing concession rights under a concession agreement between the parties Saudi law	Tribunal finds that Aramco has the conclusive right to transport and export the crude oil under the concession agreement and that the Onassis Agreement is not effective against Aramco
5	***Sapphire v. NIOC*** Award, 15 March	Sapphire Petroleums Ltd. (Canadian)/ National Iranian	Lausanne, Canton de Vaud, Switzerland	Disputed notice of termination by Respondent of Joint-Structure	Tribunal finds in favour of Claimant's claim for expropriation and orders

to apply, and intended that the agreement was to be governed by 'the principles of justice, equity and good conscience' as indeed each party pleads in Claim and Answer, alternatively to Islamic law, in the case of the Claimant."

[184] Saudi Arabia v. Aramco 27 ILR (1963), at pp. 175 *et seq.*

[185] As opposed to the procedural law of the seat (due to the involvement of a Sovereign): "*Although the present arbitration was instituted, not between States, but between a State and a private American corporation, the Arbitration Tribunal is not of the opinion that the law of the country of its seat should be applied to the arbitration […]. Considering the jurisdictional immunity of foreign States, recognized by international law in a spirit of respect for the essential dignity of sovereign power, the Tribunal is unable to hold that arbitral proceedings to which a sovereign State is a Party could be subject to the law of another State. Any interference by the latter State would constitute an infringement of the prerogatives of the State which is a Party to the arbitration. This would render illusory the award given in such circumstances. For these reasons, the Tribunal finds that the law of Geneva cannot be applied to the present arbitration. It follows that the arbitration, as such, can only be governed by international law, since the Parties have clearly expressed their common intention that it should not be governed by the law of Saudi Arabia, and since there is no ground for the application of the American law of the other Party. This is not only because the seat of the Tribunal is not in the United States, but also because of the principle of complete equality of the Parties in the proceedings before the arbitrators. It is true that the practice of the Swiss Courts has limited the jurisdictional immunity of States and does not protect that immunity, in disputes of a private nature, when the legal relations between the Parties have been created, or when their obligations have to be performed in Switzerland. The Arbitration Tribunal must, however, take that immunity into account when determining the law to be applied to an arbitration which will lead to a purely declaratory award. By agreeing to fix the seat of the Tribunal in Switzerland, the foreign State which is a Party to the arbitration is not presumed to have surrendered its jurisdictional immunity in case of disputes relating to the implementation of the 'compromis' itself. In such a case, the rules set forth in the Draft Convention on Arbitral Procedure, adopted by the International Law Commission of the United Nations at its fifth session (New York 1955), should be applied by analogy.In considering that the arbitration, as such, is governed by the Law of Nations, the Arbitration Tribunal does not intend to apply this Law to the merits of the dispute, since the law governing the merits is independent of the law governing the arbitration itself*." (*Saudi Arabia v. Aramco*)

	1963[186] Sole arbitrator, Swiss Federal Judge Pierre Cavin (default-appointed by the Swiss Federal Court) *Ad hoc*	Oil Company (NIOC)	Code of Civil Procedure of Vaud[187]	Agreement (JSA) to expand the production and export of oil (Concession Agreement) for Claimant's purported failure to perform *"[T]he parties undertake to carry out the provisions of the contract in accordance with the principles of good faith and good will and to respect the spirit as well as the letter of the agreement."* (Art. 38(1), Concession Agreement)[188]	compensation for actual loss suffered (*damnum emergens*) and loss of profit (*lucrum cessans*) on the basis of the *pacta sunt servanda* principle
6	***BP v. Libya*** Award, 10 October 1973 1 August 1974[189] Sole arbitrator, Judge Lagergren, President of the CA for Western	BP Exploration Company (Libya) Limited/ Government of the Libyan Arab Republic	Copenhagen, Denmark Danish law	Dispute about nationalisation of Concession granted by Libya to the Claimant, which the Claimant argues amounts to a repudiation of the Concession Agreement between the parties "*the principles of*	Tribunal finds that Libya's nationalisation of BP's assets, rights and interest under the Concession Agreement amounts to a repudiation of that Agreement; that BP's actions were confiscatory and in violation of international law, no compensation having been offered by Libya

[186] *Sapphire v. NIOC* 35 ILR (1963), at pp. 136 *et seq*.
[187] *"The judicial authority thus conferred upon the arbitrator necessarily implies that the arbitration should be governed by a law of procedure, and that it should be subject to the supervision of a state authority, such as the judicial sovereignty of a state." Ibid., at 169.*
[188] *"[The] substantive law applicable to the interpretation and performance of the concession agreement was the principles of law generally recognized by civilized nations*." (as per Judge Cavin) *Ibid*., at pp. 164-165. Relying on the principle of good faith, *"the interest of both parties to such agreements that any disputes between them should be settled according to the general principles universally recognized and should not be subject to the particular rules of national laws [such as the laws of Iran]."* (as per Judge Cavin) *Ibid*., at pp. 175-176.
[189] *BP v. Libya* 53 ILR (1979), at pp. 297 *et seq*. and V YCA (1980), at pp. 143 *et seq*.

	Sweden (default-appointed by the President of the ICJ) *Ad hoc*			*law of Libya common to the principles of international law and in the absence of such common principles then by and in accordance with the general principles of law, including such of those principles as may have been applied by international tribunals"* (Art. 28(7), Concession Agreement)[190]	to BP; and awards damages to BP[191]
7	***TOPCO & Calasiatic v. Libya*** Preliminary Award, 27 November 1975 Award, 19 January 1977[192] Sole arbitrator, Prof. R. J.	Texaco Overseas Petroleum Co. (TOPCO) and California Asiatic Oil Company (Calasiatic)/ Government of the Libyan Arab Republic	n/a international law (following the *Aramco* reasoning)	Dispute about nationalisation of Concession granted by Libya to the Claimants Libyan and international law[193]	Tribunal finds that Libya's nationalisation of TOPCO's assets, rights and interest under the Concession Agreement amounts to a breach of that Agreement and orders *restitutio in integrum* Finally, the parties terminated the arbitration and settled

[190] "*The Tribunal cannot accept the submission that public international law applies, for paragraph 7 of Clause 28 does not so stipulate. Nor does the BP Concession itself constitute the sole source of law controlling the relationship between the Parties. The governing system of law is what that clause expressly provides, viz. in the absence of principles common to the law of Libya and international law, the general principles of law, including such of those principles as may have been applied by international tribunals."* (as per Judge Lagergren, 53 ILR (1979), at p. 329)

[191] "*when by the exercise of sovereign power a State has committed a fundamental breach of a concession agreement by repudiating it through a nationalization of the enterprises and its assets in a manner which implies finality, the concessionaire is not entitled to call for specific performance by the Government of the agreement and reinstatement of his contractual rights, but his sole remedy is an action for damages"* (as per Judge Lagergren, 53 ILR (1979), at pp. 354).

[192] *TOPCO & Calasiatic v. Libya* 53 ILR (1977), at pp. 389 *et seq*. and IV YCA (1979), at pp. 177 *et seq.*

[193] "*The meaning of the words 'principles of international law', as ordinarily used, can only mean international law as it is applied between all nations belonging to the community of States. Now, these principles of international law must, in the present case, be the standard for the application of Libyan law since it is only if Libyan law is in conformity with international law that it should be applied. Therefore, the reference which is made mainly to the principles of international law and, secondarily, to the general principles of law must have as a consequence the application of international law to the legal relations between the parties."* (as per Prof. Dupuy, 53 ILR (1977), at p. 453)

	Dupuy (default-appointed by ICJ President) *Ad hoc*				
8	***LIAMCO v. Libya*** Award, 12 April 1977[194] Sole arbitrator, Prof. S. Mahmassani (default-appointed by ICJ President) *Ad hoc*	Libyan American Oil Company (LIAMCO)/ Government of the Libyan Arab Republic	Geneva, Switzerland Guided by *"general principles contained in the Draft Convention on Arbitral Procedure [of] the International Law Commission of the United Nations"*	Dispute about nationalisation of Concession granted by Libya to the Claimant "*the principles of law of Libya common to the principles of international law and in the absence of such common principles then by and in accordance with the general principles of law, including such of those principles as may have been applied by international tribunals"* (Art. 28(7), Concession Agreement)[195]	Tribunal finds that Libya's nationalisation was lawful and subject to payment of compensation to LIAMCO and awards recovery of *damnum emergens* and *lucrum cessans*
9	***Elf v. NIOC*** Preliminary Award, 14 January 1982[196] Sole arbitrator, Prof. Bernard Gomard	Elf Aquitaine Iran (Elf)/ National Iranian Oil Company (NIOC)	Copenhagen, Denmark Danish law	Claimant claims for breach of payment obligations by Respondent under risk service agreement for exploration and production of oil	Tribunal affirms its own jurisdiction (*kompetenz-kompetenz*) and finds that it is a recognised principle of international law, including under Art. 25, ICSID Convention, that *"a State is bound by an arbitration*

[194] *LIAMCO v. Libya* 62 ILR (1977), at pp. 140 *et seq*. and VI YCA (1981), at pp. 89 *et seq.*
[195] Interpreted by Mahmassani as Libyan domestic law being the proper law of the Concession Agreement to the exclusion of any Libyan law in conflict with international law. For the meaning of *"principles of international law"*, Mahmassani relies on Art. 38, Statute of the ICJ.
[196] *Elf v. NIOC* 96 ILR 251, 11 Y.B. Com. Arb. 97 (1986).

	(default-appointed by the Supreme Court of Denmark) *Ad hoc*			Tribunal "*shall in no way be restricted by any specific rule or law, but shall have the power to base his award on considerations of equity and generally recognized principles of law and in particular International Law.*"[197] (Art. 41(5), risk service agreement)	*clause contained in an agreement entered into by the State itself or by a company owned by the State and cannot thereafter unilaterally set aside the access of the other party to the system envisaged by the parties in their agreement for the settlement of disputes."*
10	***Kuwait v. Aminoil*** Award, 24 May 1982[198] Three-member tribunal (Sir Gerald Fitzmaurice, Prof. Hamad Sultan, Prof. Paul Reuter) *Ad hoc*	Government of Kuwait/ American Independent Oil Company (Aminoil)	France French law[199]	Respondent claims for expropriation of the concession agreement between Kuwait and Aminoil and its assets (inclusive of violation of stabilisation clause[200]) by the Claimant and for compensation, including loss of profit Kuwaiti law, public international law and general principles of law[201]	Tribunal finds that the stabilisation clause does not make express reference to a prohibition of nationalisation, so could not be interpreted as such for the lifetime of a long concession agreement; tribunal rejects the argument of the application of a *lex petrolea*, *"a customary rule valid for the oil industry - a* lex petrolea *that was in some sort a particular branch of a general universal* lex

[197] To the exclusion of the laws of Iran.
[198] *Kuwait v. Aminoil* 66 ILR (1982), at pp. 518 *et seq*.
[199] Tribunal was contractually empowered to establish the rules of procedure "*on the basis of natural justice and of such principles of transnational arbitration procedure as it may find applicable*."
[200] "*The Shaikh shall not by general or special legislation or by administrative measures or by any other act whatever annul this Agreement […]. No alteration shall be made in the terms of this Agreement by either the Shaikh or the Company except in the event of the Shaikh and the Company jointly agreeing that it is desirable in the interest of both parties to make certain alterations, deletions or additions to this Agreement."* (Art. 17, Concession Agreement)
[201] "*The parties base their relations with regard to the agreements between them on the principle of goodwill and good faith. Taking account of the different nationalities of the parties, the agreements between them shall be given effect, and must be interpreted and applied, in conformity with principles common to the laws of Kuwait and of the State of New York, United States of America, and in the absence of such common principles,*

					mercatoria*"*; tribunal awards *"appropriate compensation"* that is *"prompt, adequate and effective"* or *"fair"* for a legitimate act of nationalisation
11	***Phillips v. Iran & NIOC*** Award on Jurisdiction, 30 December 1982[202] Award, 29 June 1989[203] Iran-US Claims Tribunal	Phillips Petroleum Company Iran/ Islamic Republic of Iran	n/a	Claimant claims damages for repudiation by National Iranian Oil Company (NIOC) of Joint-Structure Agreement (JSA) (concession agreement) for the exploration, development and production of Iranian offshore petroleum fields n/a	Tribunal affirms its jurisdiction despite Respondent's nullity argument of the JSA and finds in favour of creeping expropriation by the Respondent[204]; tribunal rejects arguments of *force majeure* as defence to the Respondent's failure to perform
12	***Wintershall v. Qatar*** Partial Award, 5 February 1988[205] Final Award, 31 May 1988[206]	Wintershall, A.G., et al./ Government of Qatar	The Hague, The Netherlands Dutch law	Exploration and Production Sharing Agreement (EPSA) No governing law clause[207]	Tribunal affirms jurisdiction on all the claims; determines that the Respondent has not breached the EPSA; rejects allegation of expropriation of Claimant's rights and economic interests

then in conformity with the principles of law normally recognized by civilized States in general, including those which have been applied by international tribunals." (choice of law clause); and "*The law governing the substantive issues between the Parties shall be determined by the Tribunal having regard to the quality of the Parties, the transnational character of their relations and the principles of law and practice prevailing in the modern world."* (Art. III(2), Concession Agreement)

[202] *Phillips v. Iran & NIOC* 70 ILR, at pp. 483 *et seq*.

[203] *Phillips v. Iran & NIOC* 21 Iran-US CTR, at pp. 79 *et seq*.

[204] *"The conclusion that the claimant was deprived of its property by conduct attributable to the Government of Iran, including NIOC, rests on a series of concrete actions rather than any particular formal decree, as the formal acts merely ratified and legitimized the existing state of affairs."*

[205] *Wintershall v. Qatar* 28 ILM (1989), at pp. 795 *et seq*.

[206] *Wintershall v. Qatar* 28 ILM (1989), at pp. 795 *et seq*.

[207] "*By paragraph 2 of its Order of March 18, 1987, the Tribunal provided that 'In the absence of a controlling choice of substantive governing law clause and in consideration of the close links of...the EPSA...to Qatar, the governing substantive law shall be the law of Qatar and, in case the Tribunal should determine that it is relevant to an issue, public international law.' The Tribunal, after reviewing the deposited authorities on public international law, has determined that public international law is not independently relevant to the issues before*

	Ad hoc, UNCITRAL Rules				under the EPSA
13	***Amoco v. Iran & NIOC et al.*** Award on Jurisdiction, 30 December 1982[208] Award, 15 June 1990[209] Iran-US Claims Tribunal	Amoco Iran Oil Company/ Government of the Islamic Republic of Iran *et al*.	n/a	Claim for nullification by Respondent of Joint-Structure Agreement (JSA) for the exploration, development and production of Iranian offshore petroleum fields n/a	Tribunal affirms its jurisdiction over the dispute finds in favour of creeping expropriation by the Respondent; tribunal rejects arguments of *force majeure* as defence to the Respondent's failure to perform; ultimately, the parties settle and tribunal adopts a consent award
14	***SEDCO v. NIOC & Iran*** Interlocutory Awards, 24 October 1985[210] and 27 March 1986[211] Final Award, 2 July 1987[212] Iran-US Claims Tribunal	Sedco Inc. (US)/ National Iranian Oil Company (NIOC)	n/a	Claim for expropriation of oil rigs and other assets as a result of being forced to leave Iran due to the Iranian Revolution n/a	Tribunal finds in favour of expropriation; expropriation does not require a formal decree of nationalisation; international law requires full compensation regardless of the lawful/unlawful nature of the compensation
15	**ICC Case No. 4462** First Award, 31 May 1985[213]	National Oil Corporation (Libya) (NOC)/ Libyan Sun Oil Company	n/a	Claim by NOC for Respondent's withdrawal from Exploration and Production Sharing	Tribunal rejects the Respondent's argument of *force majeure* on the basis that competing

the Tribunal in this Partial Award on Liability, and that the governing substantive law on those issues is the law of Qatar." (*Ibid*., at p. 802)

[208] *Amoco v. Iran & NIOC et al.* 1 Iran-US CTR 493.

[209] *Amoco v. Iran & NIOC et al* 25 Iran-US CTR 301.

[210] *SEDCO v. NIOC & Iran* 15 Iran-US CTR 189.

[211] *SEDCO v. NIOC & Iran* 15 Iran-US CTR 189.

[212] *SEDCO v. NIOC & Iran*15 Iran-US CTR 189.

[213] *SEDCO v. NIOC & Iran* 29 ILM (1990), at pp. 565 *et seq.*

	Final Award, 23 February 1987[214] ICC Rules	(Delaware, US)		Agreement (EPSA) granted by Libya to the Respondent, in defence to which Respondent pleads repudiation and *force majeure* on the basis of US sanctions limiting the export of US equipment and workforce to Libya Laws of Libya	companies in identical circumstances, i.e., Occidental and Coastal, managed to continue exploration works under their respective EPSAs with NOC, hence the continuation of the Respondent's works under the EPSA could not be shown to be impossible Tribunal finds that on the basis of the evidence before it, the Respondent did not withdraw from the EPSA; no repudiation of EPSA by Claimant Tribunal finds Respondent in breach of the EPSA and awards damages in favour of Claimant as a result of the breach
16	***Amoco v. Iran (NPC)*** Award, 14 July 1987[215] 15 June 1990[216] Iran-US Claims Tribunal	Amoco International Finance Corporation (US)/ Government of the Islamic Republic of Iran (National Petroleum Corporation (NPC)	n/a	Claim for nullification by Respondent of the so-called Khemco Agreement for the exploration, development and production of Iranian offshore petroleum fields; expropriation of exploration licenses Laws of Iran	Tribunal finds that the expropriation claim is subject to customary international law and not domestic law; lawful expropriation as nationalisation not expressly prohibited in the Khemco Agreement; Claimant's assets constitute property under US-Iran BIT, unlawful expropriation of which creates entitlement to compensation (*restitutio in integrum*) for *damnum emergens*

[214] *SEDCO v. NIOC & Iran* 29 ILM (1990), at pp. 601 *et seq*.
[215] *Amoco v. Iran (NPC)* 15 Iran-US CTR 189.
[216] *Amoco v. Iran (NPC)* 25 Iran-US CTR 490-500.

					(not *lucrum cessans*) Parties ultimately settled, tribunal adopts consent award
17	***Mobil v. Iran*** Award, 14 July 1987[217] Iran-US Claims Tribunal	Mobil Oil Iran Inc. & Others/ Government of the Islamic Republic of Iran and National Iranian Oil Company (NIOC)	n/a	Claim for repudiation of the Sale and Purchase Agreement (SPA) for oil from Iran and expropriation by Respondent's Declaration of 10 March 1979 of the inoperability of the SPA Laws of Iran[218] and international law	Tribunal finds against the Declaration being an act of expropriation but to be read as an agreement to terminate the SPA in return for compensation; Islamic Resolution does not ground the frustration of the SPA by *force majeure* or changed circumstances
18	**ICC Case No. 8198** Final Award, March 1997[219] ICC Rules	Middle Eastern State/West European company	Capital, Middle Eastern State n/a	Sale of crude oil by Claimant (Seller) to Respondent (Buyer); late delivery; claim for storage charge by Claimant Claimant's law	Respondent found liable for storage charges and price differentials resulting from delay in taking delivery; tribunal rejects defence of *force majeure*
19	**ICC Case No. 10302** Final Award[220] ICC Rules	Contractor/ Subcontractor	Athens, Greece Greek arbitration law	Claim for delay in performance of seismic work under service contract for drilling between Contractor and Subcontractor n/a	Tribunal awards liquidated damages and loss incurred to step in for Subcontractor for Respondent's delay in arranging timely shipment of drilling equipment for timely mobilisation
20	**ICC Case No. 10351**	Western European company/ MENA	n/a	Price review arbitration:	Tribunal orders the parties to negotiate the

[217] *Mobil v. Iran*16 Iran-US CTR 3.
[218] In the terms of the SPA, the provisions of the SPA *"shall be interpreted in accordance with laws of Iran."* The Tribunal interpreted this wording as being limited to the *"interpretation of the [SPA]."*
[219] Reported in 25(2) ICC Bulletin (2014), pp. 33-36.
[220] Reported in 25(2) ICC Bulletin (2014), p. 24.

	Partial Award[221] ICC Rules	gas company		Dispute about an indexation price formula for the sale of LNG under a long-term LNG sales contract between the Claimant (Buyer) and the Respondent (Seller) n/a	revision of the correction factor of the price formula over a period of three months; following parties' failure to do so, tribunal determines necessary adjustment of formula and amounts to be awarded to the parties
21	**ICC Case No. 11579** Final Award, December 2005[222] ICC Rules	Rig-operator from Eastern Europe (Contractor)/North African company (Employer)	London 1996 English Arbitration Act	Termination of one of two onshore and offshore drilling contracts for non-payment by Respondent; Respondent's prevention of demobilisation of rig by Claimant English law (in addition to other regulatory requirements for oil exploration/drilling in North African State)	Respondent found liable for preventing Claimant from demobilisation of rig; tribunal rejects claim for compensation as Claimant failed to prove profitable use of rig elsewhere in the event of successful mobilisation; Claimant was entitled to suspend drilling operation pending payment by Respondent; Respondent found liable for repudiation of the contract by continuing in its failure to pay
22	**ICC Case No. 13686** Final Award, April 2007[223] ICC Rules	Company incorporated in Middle Eastern State/ 2 Caribbean companies (with offices in the same Middle Eastern State)	Paris, France French arbitration law	Respondent's attempt to terminate contract for the supply of drilling equipment and services to a third party (not party to the arbitration), caused by roadblock by local tribesmen seeking to prevent	Tribunal rejects request for termination and grants Claimant's claims for standby fees, but rejects claims for loss of revenue and compensation for Claimant's purported loss of reputation for lack of evidence With respect to the

[221] Reported in 25(2) ICC Bulletin (2014), p. 27; and 20(2) ICC Bulletin (2009), p. 76.
[222] Reported in 25(2) ICC Bulletin (2014), pp. 36-43.
[223] Reported in 25(2) ICC Bulletin (2014), pp. 44-48.

				delivery of equipment to place of drilling French law	reputation claim, the tribunal confirms that conditions precedent and more specifically a 45-day negotiation period have been complied with, that the Claimant's reputation claim is therefore not premature and that it does not qualify as a new claim under Art. 19, ICC Rules
23	**ICC Case No. 13777** Partial Award on Jurisdiction, April 2006[224] ICC Rules	Company incorporated in Middle Eastern State/ (1) Company incorporated in Western European State and (2) US company (parent of Respondent 1)	Geneva, Switzerland Swiss arbitration law	Contract for the supply by Respondent 1 (Seller) of gas injection plant equipment to Claimant (Buyer); whether Respondent 2, Respondent 1's parent, may be joined to the proceedings English law	Tribunal finds no grounds for including Respondent 2 (which is subject to US trade sanctions legislation) into the proceedings given that Respondent 2 is not a signatory to the underlying arbitration agreement, nor has it agreed to participate in the arbitration; no power of joinder on part of the tribunal under English law
24	**ICC Case No. 13777** Partial Award on Damages, September 2006[225] ICC Rules	Company incorporated in Middle Eastern State/ (1) Company incorporated in Western European State and (2) US company (parent of Respondent 1)	Geneva, Switzerland Swiss arbitration law	Claimant's claim for repudiation of contract for the supply of gas injection plant equipment by Respondent 1 (stating that it could not perform contract because Respondent 2 was subject to US trade sanctions legislation and losses incurred by Claimant by engagement of a replacement	Tribunal finds that contract was repudiated by Respondent 1 and awards Claimant damages for repudiation on the basis of *Hadley v. Baxendale*

[224] Reported in 25(2) ICC Bulletin (2014), pp. 48-49.
[225] Reported in 25(2) ICC Bulletin (2014), pp. 50-54.

				supplier) English law	
25	**ICSID Case No. ARB/07/25** Jordan-US BIT	Trans-Global Petroleum Jordan, Inc. (TGPJ)/ Hashemite Kingdom of Jordan	n/a	Dispute involving a Production Sharing Agreement (PSA) between Trans-Global Petroleum Jordan, Ltd., TGPJ and the Natural Resources Authority of Jordan, claiming violation of the FET standard under the Jordan-US BIT n/a	Parties settle their dispute and tribunal records settlement in the terms of a consent award
26	**ICSID Case No. ARB/09/14** Danish-Algerian BIT	Maersk Olie Algeriet A/S/ People's Democratic Republic of Algeria	n/a	Dispute involving Production Sharing Agreement (PSA) between the parties	Tribunal orders discontinuance under Art. 43(1), ICSID Convention following parties' settlement
27	**ICC Case No. 13790** Partial Award, April 2009[226] ICC Rules	Middle Eastern subcontractor/ Western European construction contractor	Zurich, Switzerland	Claimant claims for extension of time, disruption, prolongation costs for delays caused by Respondent under contract for the development of an oil refinery in a Middle Eastern country; Respondent claims liquidated damages in turn and contends for inadmissibility of Claimant's claims for breach of notice	Tribunal finds in favour of admissibility of Claimant's claims (albeit global) due to impossibility to establish link between individual instances of non-compliance and the quantification of damages; both parties found liable for some of the delay and disruption and tribunal apportions liability on that basis

[226] Reported in 25(2) ICC Bulletin (2014), pp. 55-66.

				requirements n/a	
28	**ICC Case No. 13898** Final Award[227] ICC Rules	East European State-owned company/ Middle Eastern State-owned company	Geneva, Switzerland	Price review arbitration: Dispute about price revision and reduction under long-term gas sales contract between Claimant (Buyer) and Respondent (Seller) *"relevant trade usages and general principles of law"* in combination with *pacta sunt servanda*	Tribunal decides against price reduction on the bases of deficiency in quality of gas but finds that conditions for price revision have been met by giving the wording of the contract its plain and ordinary meaning
29	**ICC Case No. 14108** Final Award, August 2008[228] ICC Rules	North American company/ Yemen	Paris, France	Claimant claims for breach of long-term PSA for oil exploration and extraction because of replacement of Claimant with NOC despite the purported renewal and extension of the PSA and resultant damages *"principles of law common to Yemen and the United States and in the absence of such common principle, then in conformity with the principles of law normally recognized by civilized nations in general, including*	Tribunal finds that the PSA has not been extended due to failure to exhaust relevant constitutional procedures; rejects Claimant's claim for breach of contract and damages but awards Claimant exploration costs incurred in reliance on Respondent's conduct on the basis of the principle of estoppel and the UNIDROIT Principles of International Commercial Contracts

[227] Reported in 25(2) ICC Bulletin (2014), p. 27.
[228] Reported in 25(2) ICC Bulletin (2014), pp. 67-71.

				those which have been applied by International Tribunals"	
30	***National Gas v. Egypt/ EGPC*** Award, 12 September 2009 CRCICA Rules	National Gas Company/ Arab Republic of Egypt and the Egyptian General Petroleum Corporation (EGPC)	Cairo, Egypt Egyptian law	Claim for compensation under gas supply contract between National Gas and EGPC	Tribunal finds in favour of National Gas
31	**ICC Case No. 15051** Final Award, August 2010[229] ICC Rules	North African State-owned oil producer/ Western European company	Geneva, Switzerland	Price review arbitration: Claimant claims grounds for extraordinary price review of long-term oil supply contract based on hardship, which is contested by Respondent n/a	Tribunal finds that extraordinary price review based on hardship could only succeed if the change in price of Brent could be shown not to have been in the parties' contemplation when signing the contract and on that basis rejects the Claimant's claim for lack of evidence
32	**ICC Case No. 16198** Final Award, January 2011[230] ICC Rules	Middle Eastern construction company/ South-East Asian oil producer	City, Middle East	Claimant claims for delays, variations and wrongful deductions of liquidated damages under an EPC agreement to construct oil production facilities for offshore oil production in a Middle Eastern State; Respondent's	Tribunal rejects Claimant's claims and the Respondent's claim for liquidated damages; finds that Respondent called performance bond in bad faith in circumstances where the value of the bond by far exceeded the Respondent's potential losses

[229] Reported in 25(2) ICC Bulletin (2014), pp. 72-77.
[230] Reported in 25(2) ICC Bulletin (2014), pp. 78-83.

				calling of performance bond n/a	
33	**ICSID Case No. ARB/11/7** Award, April 2014 Egypt-UAE BIT	National Gas SAE/ Arab Republic of Egypt	n/a	Claim for expropriation of Claimant's right to arbitrate and denial by Respondent to enforce its award in Egypt n/a	Tribunal declines jurisdiction on the basis that the Claimant, an Egyptian-incorporated company, fails the foreign control test under Art. 25(2)(b), ICSID Convention
34	**ICSID Case No. ARB/13/15**	Lundin Tunisia BV (Dutch)/ Republic of Tunisia	n/a	Dispute over taxation measures taken by Tunisia against the Claimant within the context of an existing concession agreement for offshore oil production	Tribunal finds in favour of the Claimant and awards compensation to the Claimant
35	**ICSID Case No. ARB/14/4** Egypt-Spain BIT	Union Fenosa Gas SA (UFG) (Spain)/ Arab Republic of Egypt	n/a	Claim by UFG that the Respondent through EGPC and EGAS breached its obligations of FET, FPS, MFN treatment with respect to the Natural Gas Sale and Purchase Agreement between the Claimant and Egyptian General Petroleum Corporation (EGPC)/ Egyptian Natural Gas Holding Company (EGAS) under the Egypt-Spain BIT n/a	Tribunal finds that Egypt is in breach of the FET standard and awards UFG compensation

36	**ICC Case No. 18215/MHM** Final Award, 4 December 2015 ICC Rules	East Mediterranean Gas Company (EMG)/ Egyptian General Petroleum Corporation (EGPC), Egyptian Natural Gas Holding Company (EGAS), Israel Electric Corporation (IEC)	Geneva, Switzerland Swiss law	Dispute about the termination of the Gas Sale and Purchase Agreement (GSPA) between EMG, EGPC and EGAS, the latter two raising a defence of *force majeure* n/a	Tribunal finds that the Respondent's termination of the GSPA was unlawful and rejects *force majeure* defence
37	**ICSID Case No. ARB/12/11** Award on Jurisdiction, 1 February 2016 Award on Liability, 21 February 2017 Egypt-US BIT	Ampal-American Israel Corporation & Others/ Arab Republic of Egypt	n/a	Dispute about the termination of the Gas Sale and Purchase Agreement (GSPA) between EMG, EGPC and EGAS and in particular Egypt's revocation of EMG's tax-free status, which it says is tantamount to an expropriation, as well as a violation of the FET and FPS standards n/a	Tribunal finds that Egypt wrongfully terminated the GSPA and that Egypt's actions amounted to expropriation as well as a violation of the FPS standard within limits
38	**ICSID Case No. ARB/15/30** Final Award, 17 January 2018 Oman-South Korea BIT	Samsung Engineering Co. (South Korea), Ltd./ Sultanate of Oman	n/a	Dispute about Oman's forfeiture of a deposit paid by the Claimant as part of a tender process for an upgrade of an Omani oil refinery	Parties settle and the tribunal adopts a consent award
39	**ICSID Case No. ARB/16/7** Award, 1 February	Attila Dogan Construction Inc./ Sultanate of Oman	n/a	Dispute about exproprietary measures taken by Oman as against Attila with respect	n/a

	2021 Oman-Turkey BIT			to a contract for construction of a project in Oman	
40	**PCA Arbitration** Partial Award, 28 December 2017 *Ad hoc*, UNCITRAL Rules Poland-Egypt BIT	Yosef Maiman & Others/ Arab Republic of Egypt	n/a	Dispute about the termination of the Gas Sale and Purchase Agreement (GSPA) between EMG, EGPC and EGAS n/a	Tribunal affirms its jurisdiction and finds that Egypt has violated the FET standard under the Poland-Egypt BIT by revoking the free zone status of EMG and by repudiating the GPSA
41	**CRCICA Case No. 829/2012** Award on Jurisdiction, 11 November 2013 Award, 7 April 2017 31 October 2018 CRCICA Rules	Egyptian General Petroleum Corporation (EGPC) and Egyptian Natural Gas Holding Company (EGAS)/ East Mediterranean Gas S.A.E.	n/a	Dispute about the termination of the Gas Sale and Purchase Agreement (GSPA) between EMG, EGPC and EGAS	Tribunal affirms its jurisdiction; on the merits, the tribunal finds wrongful termination/repudiation of GSPA by EGPC and EGAS and awards damages to EMG
42	**ICC Case No. 19299** Final Award, 10 July 2015 ICC Rules	Gujarat State Petroleum Corporation Limited, Alkoor Petroo Limited and Western Drilling Contractors Private Limited/ Republic of Yemen and the Yemeni Ministry of Oil and Minerals	Paris, France French law	Dispute about the termination of Production Sharing Agreements (PSAs) concluded between the parties Yemeni law	Tribunal finds that the PSAs were validly terminated on the basis of force majeure, the deterioration of the Yemeni security situation and the increase of security risk was such that it could not have been foreseen by the parties at the time of contracting
43	**ICSID Case No. ARB/18/7**	Corral Petroleum Holding AB (Corral)/ Kingdom	n/a	Claim for expropriation and violation of FET	pending

	Morocco-Sweden BIT	of Morocco		standard under the Morocco-Sweden BIT within the context of a privatisation agreement, whereby Corral Morocco Holdings AB, a wholly-owned subsidiary of Corral, acquired a majority stake in the SAMIR Group, the only refinery operator in Morocco, originally established as a joint venture between the Moroccan State and the Italian energy company ENI n/a	
44	**ICSID Case No. ARB/18/29** US-Morocco FTA	The Carlyle Group LP & Others/ Kingdom of Morocco	n/a	Claim for expropriation of Claimant's shareholding in SAMIR Group	pending
45	**ICC Case No. 24408/ AYZ** Award, 4 January 2018 ICC Rules	Libyan Emirates Oil Refining Company (LERCO)/ Libya National Oil Corporation	n/a	Dispute over shutdown of oil refinery n/a	n/a
46	**ICC Case No. 24722/ AYZ** Award ICC Rules	Trastra Energy/ Libya National Oil Corporation	n/a	Dispute over shutdown of oil refinery n/a	n/a
47	***Trastra v.***	Trastra Energy/	n/a	Claims arising out	pending

	Libya (2019) *Ad hoc*, UNCITRAL Rules OIC Agreement	State of Libya		of the Respondent's alleged failure to protect the Claimant's investment in an oil refinery from the 2011 civil war in Libya	
48	**ICSID Case No. ARB/19/7** Egypt-UK BIT	Petroceltic Holdings and Petroceltic Resources Limited/ Arab Republic of Egypt	n/a	Claim for violation of FET standard and umbrella clause under the Egypt-UK BIT within the context of a Production Sharing Agreement (PSA) between the parties n/a	Tribunal orders discontinuance under Art. 43(1), ICSID Convention following parties' settlement
49	**ICSID Case No. ARB/19/27** UAE-Egypt BIT	CTIP Oil & Gas International Limited/ Arab Republic of Egypt	n/a	Dispute about an agreement for the construction and operation of a gas pipeline n/a	pending