Stocktaking of Investment Dispute Management and Prevention in the Southern Mediterranean Region

26-27 June 2018

This paper has been prepared as a background document for the regional workshop on "Investment dispute management and prevention" to be held in Cairo, Egypt on 26-27 June 2018, organised in the framework of the EU-OECD Programme on Promoting Investment in the Mediterranean.

After a presentation on the global context of Investor-State Dispute Settlement (ISDS) and related reforms, it provides an overview of the region's recent ISDS trends, an analysis of each country's regulations and international agreements, as well as the current mechanisms set up for the management of investment disputes. It also presents selected case studies and good practices in investor-State dispute prevention.

This paper serves as a reference document for discussions in the seminar. It will be revised, taking account of the seminar's discussion and additional comments provided by countries. It should not be cited while under review. It does not necessarily reflect the views and positions of the OECD or its member countries.

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Glossary of Terms

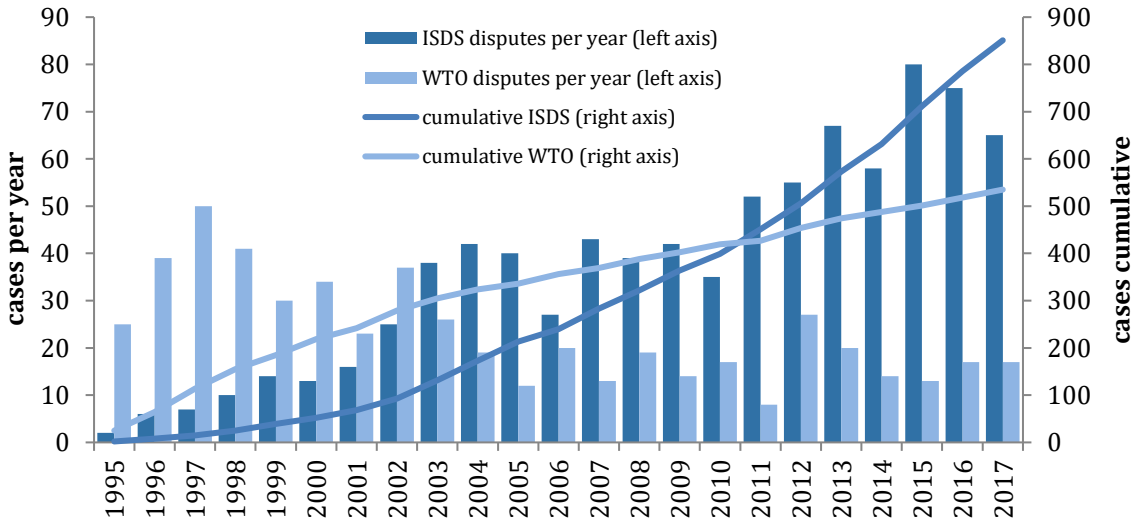
ADR	Alternative Dispute Resolution
AMDIE	*Agence marocaine de développement des investissements et des exportations* - Moroccan Investment and Export Development Agency
ANDI	*Agence nationale de développement des investissements* - Algerian National Agency for the Development of Investments
BITs	Bilateral Investment Treaties
CRCICA	Cairo Regional Centre for International Commercial Arbitration
DPP	Dispute Prevention Policies
ESLA	Egyptian State Lawsuits Authority
EU	European Union
FDI	Foreign Direct Investment
FIICA	Israeli Foreign Investments and Industrial Cooperation Authority
FIPA	Tunisian Foreign Investment Promotion Agency
FTAs	Free Trade Agreements
GAFI	Egypt's General Authority for Investment and Free Zones
ICC	International Chamber of Commerce
ICSID	International Center for the Settlement of Investment Disputes
IDAL	Investment Development Authority of Lebanon
IIAs	International Investment Agreements
ISDS	Investor-State Dispute Settlement
KOTRA	Korea Trade-Investment Promotion Agency
LFIB	Libyan Foreign Investment Board
MENA	Middle East and Northern Africa Region
MIDA	Moroccan Investment Development Agency
OECD	Organisation for Economic Co-operation and Development
OIC	Organisation of Islamic Conference
PIPA	Palestinian Investment Promotion Agency
SOEs	State-Owned Enterprises
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development

I - The global context of investor-state dispute settlement

When an investor or investment of one State is prejudiced by the actions or omissions of another State (host of the investment), it can seek redress through international arbitration through what is called Investor-State Dispute Settlement (ISDS). The rationale behind establishing this system and institutions such as the International Centre for the Settlement of Investment Disputes (ICSID) was to seek an efficient dispute settlement system by which investors would not have to rely on the judicial system of the host State, without unduly prejudicing that host State.

The number of ISDS cases steadily climbs, as can be evidenced by the following graph, which compares investor-State disputes to State-State disputes under the WTO. The number of known treaty-based investor-State arbitrations reached 855 at the end of 2017.[1] As a result of this proliferation, different countries and organisations have begun to question the efficacy, efficiency, necessity, and proper functioning of the current ISDS system.

Graphic 1: Number of known ISDS cases compared to WTO disputes



Source: OECD calculations based on WTO and UNCTAD data.

Investment arbitration is far from being the **cost** effective ISDS mechanism it was intended to be: the average cost for a Party to the dispute to defend an investment arbitration case is approximately between USD 8 million and USD10 million.[2]

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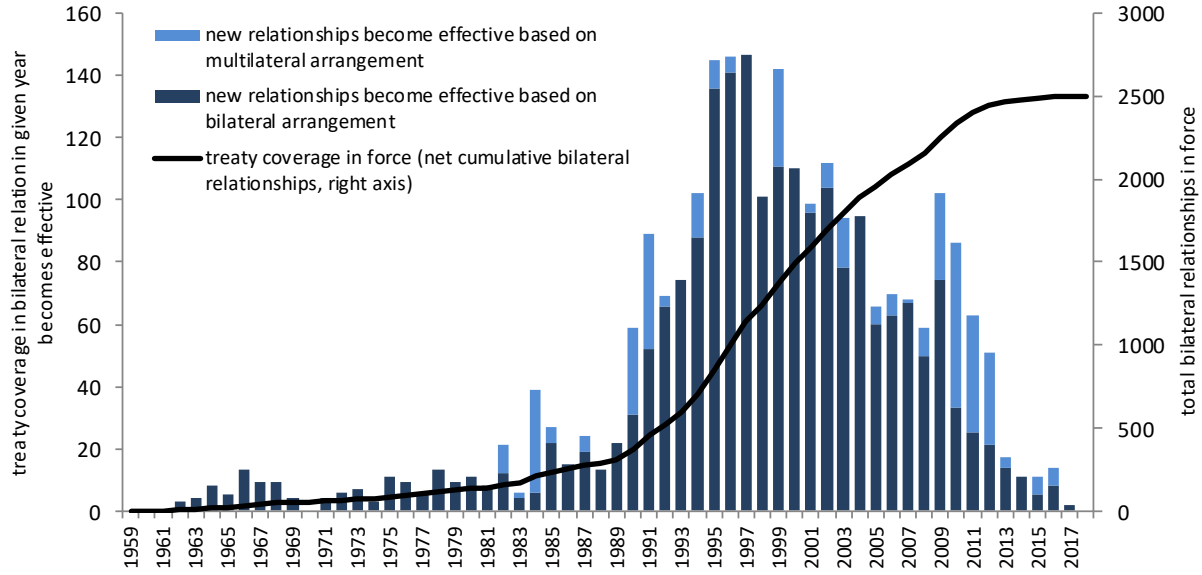
[1] UNCTAD Investment Policy Hub: http://investmentpolicyhub.unctad.org/ISDS.

[2] "As to the absolute costs of defence against claims, a number of studies have calculated average overall costs of arbitration cases; on an average per-case basis, these were evaluated at over USD 8 million in 2011 and almost USD 10 million in 2014. Individual cases have generated significantly higher costs, including a recent case which cost over USD 120 million. Party costs of claimants and respondent states have been found to be quite similar at around USD 4.5 million each per case on average." Pohl, J. (2018), "Societal benefits and costs of International Investment Agreements: A critical review of aspects and available empirical evidence", *OECD Working Papers on International Investment*, 2018/01, OECD Publishing, Paris: see http://dx.doi.org/10.1787/e5f85c3d-en p. 46 For example, Venezuela spent USD 14,322,826 in *Crystallex International*

These proceedings are frequently governed by **International Investment Agreements** (IIAs).[3] At first sight, these agreements, which seek to promote investment amongst their signatories, may appear to have a similar content. However, as they are the products of international negotiation, their content is asymmetric. This creates a complex web of rules that apply differently in each case depending on the wording of the applicable agreement and has lead to a high level of uncertainty. Moreover, due to the very nature of investment arbitration, the arbitrators are selected on a case-by-case basis, further increasing the likelihood of a wide array of interpretations, even under the same treaty provisions. The following graph illustrates how the number of IIAs signed climbed exponentially since the 1990s reaching more than 3.300. Though less new agreements are being signed, the number of agreements in force remains constant.[4]

Graphic 2: Evolution of treaty-covered bilateral relationships (1959-2017)[5]



Source: OECD IIA database. Counts treaty relationships brought into force by the 58 countries invited to the OECD-hosted dialogue on international investment policy. Excludes Energy Charter Treaty. Data for recent years may require updating.

Recently, ISDS clauses contained in the overwhelming majority of these IIAs have received an unprecedented amount of **public attention**. This has led to an increased awareness and understanding of these treaties among policy makers, and the public, but it has also generated

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Corporation v. Bolivarian Republic of Venezuela, ICSID Case No. ARB(AF)/11/2, Award of 4 April 2016, para. 950, while Turkmenistan spent USD 9,262,603 in *İçkale İnşaat Limited Şirketi v. Turkmenistan*, ICSID Case No. ARB/10/24, Award of 8 March 2016, para. 405

[3] According the UNCTAD database, there are currently 3,324 IIAs, 2,957 of which are Bilateral Investment Treaties (BITs) and 367 other treaties including investment provisions such as Free Trade Agreements (FTAs) and Economic Partnership Agreements.

[4] It has been reported that a global turning point has been reached in the negotiation of II. As only 17 new agreements were concluded in 2017, the lowest number since 1983. The number of effective treaty terminations outnumbered new IIAs for the first time. Also, over 150 countries have taken steps to reformulate their agreements to be more oriented towards sustainable development. UNCTAD (2018), "IIA Issues Note: Recent Developments in the International Investment Regime", 30 May 2018:
see http://investmentpolicyhub.unctad.org/Upload/IIA%20Issues%20Note%20May%202018.pdf

[5] Pohl, J. (2018), supra footnote 2.

progressively criticism and downright rejection. Some countries (Bolivia, Ecuador, Indonesia and South Africa, etc.) have begun to terminate treaties based on their perceptions of costs associated to ISDS,[6] while other countries (Argentina, Canada, India, etc.) are proposing significant changes to their investment policy, or design new types of investment treaties in response of these concerns. This debate has revealed some degree of **uncertainty over the benefits and costs of IIAs**. The issue is further complicated by the fact that quantification of the costs and benefits is difficult to obtain.[7]

Regardless, **the number of ISDS proceedings continues an upward trend**. As way of example, Most Favoured Nation (MFN) clauses were originally intended to allow investors the best protection awarded by a host State in its agreements with third countries. However, after a controversial decision in the *Maffezini v. Spain* case, investors have increasingly used the clause for the application of procedural elements of other agreements leading to unexpected interpretations and applications of agreements in cases that would not have been anticipated.[8]

The main criticisms to investment treaties refer to a lack of clarity and overbroad scope, as well as a perception that they encroach on the State's right to regulate and take measures for public purpose. Additionally, protection to foreign investors has gone beyond the investment framework *per se* and investors have been able to launch claims based on changes in the general legal framework alleging a legitimate expectation that the conditions for doing business would not be changed to their detriment. In this sense, investors have raised claims based on changes to laws in a wide array of subject matters including environmental protection, health, labour, regulation of a country's energy sector, etc.[9]

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[6] "*Studies on determinants of foreign direct investment (FDI) confirm that other factors – such as market size and growth, the availability of natural resources, and the quality of hard and soft infrastructure – tend to be far more important to investors than investment treaties when making the decision to invest. This helps explain why, for example, investment flows between the United States and China are high despite the absence of an investment treaty, and why Brazil has continued to be a major destination for foreign investment despite having ratified no investment treaties with ISDS. Similarly, it helps explain why countries that have stepped away from investment treaties do not appear to have suffered losses of FDI*" (2018), Johnson, L., Sachs, L., Güven, B., and Coleman, J. (2018), "Costs and Benefits of Investment Treaties Practical Considerations For States", Policy Paper March 2018, Columbia Center on Sustainable Investment, p. 7: see http://ccsi.columbia.edu/files/2018/04/Cost-and-Benefits-of-Investment-Treaties-Practical-Considerations-for-States-ENG-mr.pdf

[7] Pohl, J. (2018), *supra* footnote 2.

[8] *Emilio Agustín Maffezini v. Spain*, ICSID Case No. ARB/97/7, Decision on jurisdiction of 25 January 2000, paras. 62-64). Some tribunals have followed this trend: see *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Chile*, ICSID Case No. ARB/01/7, Award of 25 May 2004, para. 104; *RosInvestCo UK Ltd. v. Russia*, SCC Case No. V079/2005, Award on Jurisdiction of 5 October 2007, para. 133; *Garanti Koza LLP v. Turkmenistan*, ICSID Case No. ARB/11/20, Decision of 3 July 2013, para. 96. Conversely, other tribunals have not endorsed such an expansive interpretation of the MFN clause: see *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/02/13, Decision on jurisdiction of 29 November 2004, paras. 115-119; *Plama Consortium Limited v. Bulgaria*, ICSID Case ARB/03/24, Decision on jurisdiction of 8 February 2005, paras. 209 and 222-224; *ABCI Investments N.V. v. Republic of Tunisia*, ICSID Case No. ARB/04/12, Decision on jurisdiction of 18 February 2011, para. 174.

[9] This is the case of the investment arbitrations initiated by foreign investors against several European States (such as Spain, the Czech Republic or Italy) as a result of the regulatory changes affecting the renewable energy sector. It has been further alleged that, in giving foreign investors recourse to ISDS, local investors are placed in a less favourable position as they have nowhere to turn to but the often slow and flawed judicial and legal system of the host State. This, in turn, could potentially lower incentives for both host countries and foreign investors to remedy the flaws in the host country's legal and judicial system. Gaukrodger, D. and Gordon, K. (2012), "Investor-State Dispute Settlement: A Scoping Paper for the Investment Policy Community", *OECD Working Papers on International Investment*, 2012/03, OECD Publishing, Paris: see http://dx.doi.org/10.1787/5k46b1r85j6f-en

1.1 Reforming the IIA and ISDS systems

As a result, a number of organisations have taken on the task of discussing reforms of the IIA and ISDS systems.

For example, the United Nations Conference on Trade and Development (UNCTAD) has published sequels to their series of publications on IIAs reanalysing the system and issuing new recommendations. Their World Investment Report of 2015 was also dedicated reforming the system.[10] The 2015 Investment Policy Framework for Sustainable Development provides guidance for policymakers in the evolution towards a new generation of investment policies.[11]

In July 2017 the United Nations Commission on International Trade Law (UNCITRAL) agreed to discuss possible multilateral approaches to address ISDS reform. The UNCITRAL Working Group III was designated this task and has identified a number of relevant issues.[12]

The Organisation for Economic Co-operation and Development (OECD) launched the Policy Framework for Investment in 2006, a comprehensive and systematic approach for improving investment conditions. The PFI has been updated in 2015 to reflect new global economic fundamentals and to incorporate feedback from the international community on investment policy.[13] In addition, the government-led OECD Freedom of Investment (FOI) Roundtable has been focusing on the ISDS debate and has raised issues alimenting the discussion.[14]

Meanwhile, the European Union (EU) and its member States have also launched reflections on IIAs and ISDS since the exclusive exercise of the competence over foreign direct investments was attributed to the EU in 2009. The EU seeks to bring consistency to their agreements and proposes solutions to some of the issues identified through its new agreements. In the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, for example, there are a number of relevant provisions: excluding investments done "*through fraudulent misrepresentation, concealment, corruption, or conduct amounting to an abuse of process*" from ISDS; including clauses on transparency of the proceedings; creating lists of

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[10] The report sets out five action areas: safeguard the right to regulate, while providing protection; ISDS reforming; promoting and facilitating investment; ensuring responsible investment; and enhancing systemic consistency. UNCTAD (2015), "*World Investment Report 2015 Reforming International Investment Governance*", UN Publications, Geneva: see http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf

[11] UNCTAD (2015), "*Investment Policy Framework for Sustainable Development",* UN Publications, Geneva: see http://unctad.org/en/PublicationsLibrary/diaepcb2015d5_en.pdf

[12] The report states the following issues: Lacking coherence and consistency in awards; A need for additional guarantees to the impartiality and independence of arbitrators; and third-party funding. As to the lack of diversity in arbitrator appointments it identifies an absence of transparency in the appointment process; the fact that some individuals act as counsel, arbitrators, and experts in different ISDS proceedings, with the possibility of ensuing conflicts of interest and/or so-called issue conflicts; and a perception that arbitrators are less cognizant of public interest concerns than judges holding a public office. UNCITRAL (2018), "*Advanced Copy of the Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-fifth session (New York, 23-27 April 2018)*", Doc. A/CN.9/935, of 14 May 2018: see http://www.uncitral.org/pdf/english/commissionsessions/51st-session/a-cn9-935_-_clean_submitted_ADVANCE_COPY.PDF The Group is scheduled to meet again in November 2018 in Vienna.

[13] OECD (2015), Policy Framework for Investment 2015 Edition, OECD Publishing, Paris: see http://dx.doi.org/10.1787/9789264208667-en

[14] Pohl, J. (2018), *supra* footnote 2; Gaukrodger, D. and Gordon, K. (2012), *supra* footnote 9; and Pohl, J., K. Mashigo and A. Nohen (2012), "Dispute Settlement Provisions in International Investment Agreements: A Large Sample Survey", *OECD Working Papers on International Investment*, 2012/02, OECD Publishing. http://dx.doi.org/10.1787/5k8xb71nf628-en

arbitrators appointed by the Parties to the agreement rather than the Parties to the dispute; and finally but probably most importantly, proposing the creation of a multilateral investment court.[15] The EU has argued indicating that a permanent investment court would address many of the issues identified including consistency of awards, independence of arbitrators, etc.[16]

As previously mentioned, a number of countries have therefore embarked on the revision of their model investment treaties and on the negotiation or re-negotiation of **a new generation of agreements**. The idea is to **clarify basic concepts, streamline ISDS procedures, restrict access to ISDS and delineate the scope of application of the treaties** with the objective of limiting their exposure to the costs associated to ISDS. For instance, umbrella clauses have been generally abandoned in order to allow contract disputes to be settled in the forum chosen under the contract, but not under the bilateral or international investment agreement.

1.2 ISDS reforms: issues under discussion

a) Legitimacy and consistency concerns

As mentioned previously, the ISDS system based on over 3300 asymmetric agreements and arbitral tribunals selected on a case-by-case basis has raised a number of concerns as to the legitimacy of the system and perceived inconsistencies in the awards:

i. Impartiality of arbitrators

One of the issues identified by the international community in ISDS is a perceived lack of impartiality of arbitrators.[17] As a general trend, firstly, concerns over impartiality are raised pertaining to the fact that the vast majority of arbitrators would seem to have a similar profile: originating in a similar geographic region, gender, etc.

Secondly, arbitrators are perceived to have less knowledge of public interest than judges, and may be influenced by the fact that they often serve both as counsel, arbitrators and/or experts

[15] The Comprehensive Economic and Trade Agreement entered into force provisionally on 21 September 2017, pending the approval of the EU member States. http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/ See articles 8.18.3, 8.26, and 8.38. Further, Article 8.29 provides that "*The Parties shall pursue with other trading partners the establishment of a multilateral investment tribunal and appellate mechanism for the resolution of investment disputes. Upon establishment of such a multilateral mechanism, the CETA Joint Committee shall adopt a decision providing that investment disputes under this Section will be decided pursuant to the multilateral mechanism and make appropriate transitional arrangements*."

[16] "*Permanent bodies, by their very permanency, deliver predictability and consistency and manage the fact that multiple disputes arise, since they can elaborate and refine the understanding of a particular set of norms over time and ensure their effective and consistent application. This is particular relevant when the norms are relatively indeterminate. When appointing adjudicators in a permanent setting, thought is given to a long-term approach. States have an interest that public actions can be taken and at the same time individual interests protected and they know that the balance between these interests is to be maintained in the long term. Permanent bodies with full-time adjudicators also free the adjudicators from the need to be remunerated from other sources and typically provide some form of tenure. This prevents the adjudicators from coming under pressure to take short-term considerations into account and ensures that there are no concerns as to their impartiality*." UNCITRAL (2018), "*Possible reform of investor-State dispute settlement (ISDS) Submission from the European Union*", Doc. A/CN.9/WG.III/WP.145, of 12 December 2017: see https://documents-dds-ny.un.org/doc/UNDOC/LTD/V17/088/32/PDF/V1708832.pdf?OpenElement

[17] UNCITRAL (2018), *supra* footnote 12.

in different cases.[18] This stems from and feeds off the fact that arbitrators are appointed on a case by case basis, therefore have no set salary and there is hence a perception that they could be subject to incentives to issue decisions that are more likely to get them appointed in additional cases, to continue issues beyond the jurisdictional phase based on perceived income, etc.[19]

Thirdly, the appointment process has also been questioned, indicating that it lacks transparency. Although arbitral institutions such as ICSID, ICC, etc. each have rules pertaining to impartiality,[20] some continue to question whether these measures are sufficient.

The difficulty lies in counterbalancing two concerns of the international community: the need for additional diversity in appointed arbitrators and the need for consistency in awards rendered. While increasing representation of developing countries amongst arbitrators would hopefully lead to more sensitivity to the challenges these countries face, evidently, more diverse arbitrators may be conducive to more diverse opinions and decisions, and less consistency in awards dealing with similar facts and situations.

ii. Multilateral Investment Court and appeals mechanism

In answer to the concerns previously mentioned, some States and international organisations have indicated that the solution might lie in the establishment of co-ordination mechanisms such as a multilateral investment court and/or a facility for appeals. Proponents of such a court indicate that previously designated arbitrators would work for a salary, hence removing some of the incentives to impartiality, a permanent investment court could be better able to address issues that concern the public such as health, environment and safety etc. Detractors of such a court question the possibility of reaching a consensus amongst States for its creation and perceived limitations to sovereignty.

There is currently no mechanism to appeal an arbitral award. The ICSID Arbitration Rules include a section on interpretation, revision and annulment of the award, but these mechanisms do not constitute the possibility of appeal, and are limited to very specific

[18] CETA requires in Article 8.30.1 that arbitrators to "*refrain from acting as counsel or as party-appointed expert or witness in any pending or new investment dispute under this or any other international agreement*".

[19] Gaukrodger, D. and Gordon, K. (2012), *supra* footnote 9 pp. 43-51.

[20] Under Article 11 of the UNCITRAL Arbitration Rules (http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules-2013/UNCITRAL-Arbitration-Rules-2013-e.pdf), and Rule 6 of the ICSID Arbitration Rules, all arbitrators are required to disclose any circumstance that might cause their reliability for independent judgment to be questioned by a party: see http://icsidfiles.worldbank.org/icsid/icsid/StaticFiles/basicdoc/partF-chap01.htm#r03 "*Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them*." Article 11 (2) Rules of Arbitration of the International Chamber of Commerce In force as from 1 March 2017: see https://cdn.iccwbo.org/content/uploads/sites/3/2017/01/ICC-2017-Arbitration-and-2014-Mediation-Rules-english-version.pdf.pdf

situations.[21] The ICSID case law has repeatedly indicated that annulment of proceedings under the ICSID Convention cannot pursue the same objectives of an appeal.[22]

The creation of an appeals mechanism would imply the establishment of a standing body with a competence to undertake a substantive review of awards rendered by arbitral tribunals. The idea would be to improve the consistency of case law, correct decisions of first-level tribunals and increase the predictability of the law.

Previous efforts for the establishment of a multilateral investment court have failed amidst public criticism and fears as to limitations on sovereignty. Furthermore there are significant practical challenges as to the time and cost of appellate proceedings, the likelihood of support by a significant number of countries, scope of review, constitution and budget.[23]

iii. Third-party funding

Sometimes investors do not have sufficient funds to cover the cost of starting a claim or do not want to risk the funds they have, in which case a third party may choose to finance the claim.[24] This raises concerns as to legitimacy as it can interfere with eventual negotiation of non-pecuniary remedies sought by the claimant but contrary to the interests of the funding third party; and as to transparency as the funding third party may have a vested interest in the outcome of the proceedings.[25] The EU has addressed transparency issues in its recent investment agreements requiring parties to disclose any third-party funding but not issues of legitimacy.[26]

b) Increased transparency

Originally, one of the things that was considered a benefit to arbitration was the secrecy involved. Both States (to safeguard their reputation as an investment destination) and investors (to safeguard trade secrets and other such confidential information) considered it an advantage to keep arbitral proceedings out of the public eye. However, as the number of cases increased, perspectives have shifted toward a need for transparency in the system. Most

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[21] The award shall only be revised in accordance with rule 51 in light of new information (unknown to the parties) that would have altered the outcome of the arbitration. Rule 52(1) states that "*Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds: (a) that the Tribunal was not properly constituted; (b) that the Tribunal has manifestly exceeded its powers; (c) that there was corruption on the part of a member of the Tribunal; (d) that there has been a serious departure from a fundamental rule of procedure; or (e) that the award has failed to state the reasons on which it is based*."

[22] *Daimler Financial Services A.G. v. Argentina*, ICSID Case No. ARB/05/1, Decision on Annulment of 7 January 2015, paras. 76, 186, 188, 189 and 277; and *Total S.A. v. Argentina*, ICSID Case No. ARB/04/01, Decision on Annulment of 1 February 2016, paras. 164-165.

[23] Proponents of such a system claim that a facility constituted of permanent members appointed by States from a pool of the most reputable jurists could have the potential to become an authoritative body capable of delivering consistent opinions, and therefore might rectify some of the legitimacy concerns about the current ISDS regime. However, detractors of such a system point out that absolute consistency and certainty would not be achievable in an asymmetric legal system consisting of over 3,000 legal texts. UNCTAD (2017), "Improving Investment Dispute Settlement: UNCTAD Policy Tools", *IIA Issues Note – Issue 4*, p. 7: see http://investmentpolicyhub.unctad.org/Publications/Details/182

[24] In many cases, an investment firm will fund the case as an investment opportunity, while in others, a third party may choose to finance the claim due to a vested interest, as was the case of *Menatep* in *Quasar de valores et al v. Russia*, Award 20 July 2012, see https://www.italaw.com/sites/default/files/case-documents/ita1075.pdf para. 224.

[25] Gaukrodger, D. and Gordon, K. (2012), *supra* footnote 10. Pp.39-40

[26] Article 8.26,, CETA.

countries now recognise that public interest matters (health and environment, for instance) are being decided in these proceedings and should therefore be dealt with openly. Additionally, with many awards in the millions, the pressure on the budget of developing States is significant and has to be justified.

In an effort to address these topics, UNCITRAL issued the Rules on Transparency in Treaty-based Investor-State Arbitration that shall apply to cases based on an agreement concluded after 1 April 2014, unless the Parties to the agreement state otherwise. That potentially leaves over 3,236 agreements signed before 2014 not covered under these rules. In an effort to remedy this, and address the situation of these agreements, the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration was signed in Mauritius on 10 December 2014 and entered into force on 18 October 2017. [27]

iv. Access to documents

Different institutions have adopted different levels of transparency on this issue. UNCITRAL's Transparency Rules have the most open system, according to which the following documents shall be made public: the notice of arbitration, the response to the notice of arbitration, the statement of claim, the statement of defence and any further written submissions; if available, a table listing all exhibits to the aforesaid documents and to expert reports and witness statements, but not the exhibits themselves; any written submissions by the non-disputing Party (or Parties) to the treaty and by third persons, transcripts of hearings, where available; and orders, decisions and awards of the arbitral tribunal.

Straddling the middle line, the ICSID Convention precludes the Centre from publishing an award without the consent of the parties. However, the Centre may publish excerpts from the legal holdings of the award. Changes to the Convention in 2006 allow for more expediency.[28]

The ICC is more conservative, unless otherwise agreed by the parties, the Court will simply publish the following information on their website for arbitrations registered as from 1 January 2016: "*(i) the names of the arbitrators, (ii) their nationality, (iii) their role within a tribunal, (iv) the method of their appointment, and (v) whether the arbitration is pending or closed. The arbitration reference number and the names of the parties and of their counsel will not be published. …The parties may request the Court to publish additional information about a particular arbitration*."[29]

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[27] UNCTAD (2014), "*World Investment Report 2014 Investing in the SDGs: an Action Plan*", UN Publications, Geneva, p. 14: see http://unctad.org/en/PublicationsLibrary/wir2014_en.pdf Only 3 States have currently ratified it: Canada, Mauritius, and Switzerland, however, the EU references the rules in its new agreements see http://www.uncitral.org/pdf/english/texts/arbitration/transparency-convention/Transparency-Convention-e.pdf

[28] Rule 48(4) *"The Centre shall not publish the award without the consent of the parties. The Centre shall, however, promptly include in its publications excerpts of the legal reasoning of the Tribunal."*

[29] ICC (2017), "Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration Under the ICC Rules of Arbitration": see https://cdn.iccwbo.org/content/uploads/sites/3/2017/03/icc-note-to-parties-and-arbitral-tribunals-on-the-conduct-of-arbitration.pdf

v. Third-party intervention

Certain sectors consider that, in some cases, it can be advantageous to allow third parties to the proceedings to participate both by submitting written observations and in oral hearings.[30]

Article 33(2) of the Unified Agreement for the Investment of Arab Capital in the Arab States, signed in 1980 (Arab Investment Agreement), envisages a reference to third-party intervention by declaring that "*where a person who is not party to an action and yet who is subject to the jurisdiction of the Court believes that his interests will be affected by the judgement in the action, he may submit a request to intervene as a third party. The Court shall decide on the request*".

In two cases encompassing *amicus curiae* interventions, based on the North America Free Trade Agreement (NAFTA), non-profit organisations made public interest submissions upon petitioning the court to intervene, underlining the need for transparency in the proceedings.[31] As a result of the case law in these early cases and the rules later developed, *amicus curiae* are not given party status in the proceedings, nor do they acquire any of the rights that this status entails.

Since then, a number of organisations have requested to intervene as *amicus curiae* in different arbitrations. For example, the European Union intervened in a series of arbitrations where the measures taken by EU member States to adjust its legal system to EU law were discussed. More recently, the World Health Organisation has made *amicus curiae* interventions in a case

[30] It is regulated as follows "1. After consultation with the disputing parties, the arbitral tribunal may allow a person that is not a disputing party, and not a non-disputing Party to the treaty ("third person(s)"), to file a written submission with the arbitral tribunal regarding a matter within the scope of the dispute." Article 4.1 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall apply to investor-State arbitration initiated under the UNCITRAL Arbitration Rules pursuant to a treaty concluded on or after 1 April 2014 unless the Parties have agreed otherwise: see http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules-2013/UNCITRAL-Arbitration-Rules-2013-e.pdf, "*The arbitral tribunal may decide to hear witnesses, experts appointed by the parties or any other person, in the presence of the parties, or in their absence provided they have been duly summoned*". Article 25(3) ICC Rules of Arbitration: see https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/#top, and in rule 37 of the ICSID Rules "*After consulting both parties, the Tribunal may allow a person or entity that is not a party to the dispute (in this Rule called the "non- disputing party") to file a written submission with the Tribunal regarding a matter within the scope of the dispute.*" The article continues detailing considerations that the Tribunal shall have in these cases. Rule 32(2) "*Unless either party objects, the Tribunal, after consultation with the Secretary-General, may allow other persons, besides the par- ties, their agents, counsel and advocates, witnesses and experts during their testimony, and officers of the Tribunal, to attend or observe all or part of the hearings, subject to appropriate logistical arrangements. The Tribunal shall for such cases establish procedures for the protection of proprietary or privileged information*..."

[31] The issue was first addressed in *Methanex v. United States of America*, a dispute initiated in 1999 by a Canadian corporation dedicated to the production and commercialization of methanol within the NAFTA framework. This resulted from the obligation imposed by the State of California on the company to eliminate a substance derived from methanol from gasoline commercialized mainly by that corporation in the United States. The applicant considered that this measure was equivalent to an expropriation, and therefore, contrary to NAFTA Chapter 11. *Methanex v. United States of America*, NAFTA Case, Decision on Authority to Accept Amicus Submissions of 15 January 2001, para. 24 *et seq.*: see https://www.italaw.com/cases/683. In *United Parcel Service v. Canada* first a trade union and later the chamber of commerce made submissions to the tribunal. *United Parcel Service v. Canada*, NAFTA Case, Decision on Petitions for Intervention and Participation as Amici Curiae of 17 October 2001, para. 67. In this case, the Canadian Union of Postal Workers additionally alleged that they had a direct interest in the outcome of the proceedings this circumstance does not seem to be at odds with the authorization to intervene as *amicus curiae* in international law, as long as the direct interest is not confused with that of the parties: see Pascual-Vives F. (2018) "*Amicus Curiae* Intervention in Investment Arbitration", in Jiménez Piernas C (ed.), *New Trends in International Economic Law. From Relativism to Cooperation*, Schulthess, Geneva, pp. 203-256.

discussing the measures by a State based on public health concerns to regulate the labels of cigarettes.[32]

vi. Public hearings

Both UNCITRAL and CRCICA (Cairo Regional Center for International Commercial Arbitration) regulate that hearings shall be held in camera.[33] In its Transparency Rules, UNCITRAL indicates that all hearings, with the exception of those dealing with confidential information, shall be public, and transcripts of hearings shall also be made available to the public.[34] The ICSID Arbitration Rules indicate that the tribunal may allow third parties to attend the hearings, unless one of the parties objects, and subject to appropriate logistical arrangements.[35]

Opening of hearings to the public is partly the result of allowing third-party interventions. In the earliest cases involving *amicus curiae*, tribunals did not allow the non-disputing parties to attend the hearings citing the consensual character of investment arbitration.[36]

c) Counterclaims

Counterclaims are claims by a respondent/host State opposing the claim of the claimant/investor and seeking some relief from the claimant for the respondent. The possibility of presenting a counterclaim is regulated by the ICSID Arbitration Rules in rule 46,[37] UNCITRAL Arbitration Rules in Article 21(3),[38] Article 4(2)(d) of the CRCICA and in Article 5 paragraphs 5 and 6 of the ICC Arbitration Rules.[39] However, as these regulations are the product of amendments and reforms, in those cases where the arbitration is governed by rules prior to these amendments, the possibility of presenting a counterclaim will be determined by the drafting of the BIT on which the dispute is based.[40] The case law would suggest that, in order for a counterclaim to prosper, the party/ies respondent in the counter claim must stringently

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[32] *Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Uruguay*, ICSID case No. ARB/10/7, Procedural Order No. 3 of 17 February 2015.

[33] "*Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.*"

[34] Articles 6 and 3 of the UNCITRAL Transparency Rules, respectively.

[35] ICSID Arbitration Rule 32(2).

[36] "*…it is manifestly clear to the Tribunal that it does not, absent the agreement of the Parties, have the power to join a non-party to the proceedings; to provide access to hearings to non-parties and, a fortiori, to the public generally; or to make the documents of the proceedings public.*" *Aguas del Tunari v. Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent's Objections to Jurisdiction 21 October 2005, para. 17: see http://www.iisd.org/pdf/2005/AdT_Decision-en.pdf

[37] "*Except as the parties otherwise agree, the Tribunal shall, if requested by a party, determine any incidental or additional claims or counterclaims arising directly out of the subject-matter of the dispute provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre*."

[38] "*In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it*."

[39] In this case, the ICC is more open stating simply that "*Any counterclaims made by the respondent shall be submitted with the Answer*". There is no required consideration or approval of the Tribunal necessary to present a counterclaim.

[40] In *Spyridon Roussalis v. Romania*, ICSID Case No. ARB/06/1, Award of 1 December 2011, paras. 867-872, the Greece-Romania BIT indicated that "*the investor concerned may submit*" a dispute before arbitration. The Tribunal therefore concluded a counter-claim by the State was not allowed in accordance with the agreement. The outcome may have been different if the BIT was drafted along the lines of indicating that "*the Party to the dispute may submit…*".

coincide with the claimant/s in the original claim, meaning the investor mush have "*specific control over the very actions which are constitutive of (the) wrongdoings*" alleged by the State in the counter claim and the State must prove the responsibility incurred in the commission of those acts.[41]

d) Dispute prevention policies

Some may argue that the best way of fixing a dispute is to avoid it entirely by circumventing the grievance of an investor before it escalates to a dispute. Proponents of Dispute Prevention Policies (DPPs) indicate that they are consistent with what would be necessary anyways to establish a sound regulatory system. Critics indicate that DPPs are nowhere near sufficient to fix what they deem to be an overly complex and problematic system. DPPs will be further discussed in Section IV bellow.

II - ISDS in the Southern Mediterranean region

The countries in the Southern Mediterranean (MED)[42] follow the trends in IIAs and ISDS. With 339 BITs currently in force and 60 cases as respondents combined in the region, these countries need to keep abreast of latest developments and reflect on possible reforms. Annex I. - ISDS cases by country and Annex II. – Table on existing BITs in the Region are provided to illustrate the situation in the Region. Additionally Annex III. Maps the BITs of each regional country with Germany.[43]

Table 1: Number of BITs and cases involving countries in the region

	Agreements		ISDS	
Country	BITs in force	BITs Total	Respondent	Applicant Host State
Algeria	29	49	8	0
Egypt	72	115	31	3
Israel	36	41	0	3
Jordan	48	58	2	7
Lebanon	43	51	5	3
Libya	23	38	11	0
Morocco	51	79	2	0
Tunisia	37	60	1	1
Total	**339**	**491**	**60**	**17**

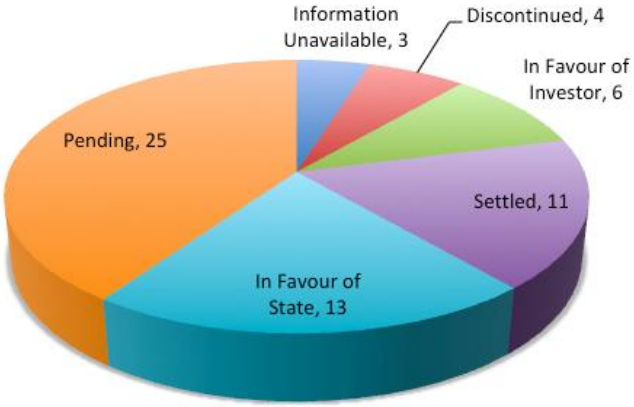
Source: Own table using information from UNCTAD Investment Policy Hub

[41] Contrast *Saluka Investments B.V. v. Czech Republic*, UNCITRAL case, Decision on jurisdiction of 7 May 2004, para. 81 (see https://www.italaw.com/cases/961); with *Oxus Gold plc v. Republic of Uzbekistan*, UNCITRAL case, Final Award of 17 December 2015, paras. 955-956 (see https://www.italaw.com/cases/781). This can be particularly challenging in ISDS as investments are often done through a complex system of corporations, making the identification of the investor and ultimate person responsible quite difficult to prove.

[42] The countries covered by the EU-OECD Programme on Promoting Investment in the Mediterranean are Algeria, Egypt, Jordan, Lebanon, Libya, Morocco, the Palestinian Authority, and Tunisia.

[43] Of all the common partners that the MED countries have, the agreements with Germany are collectively the most recent.

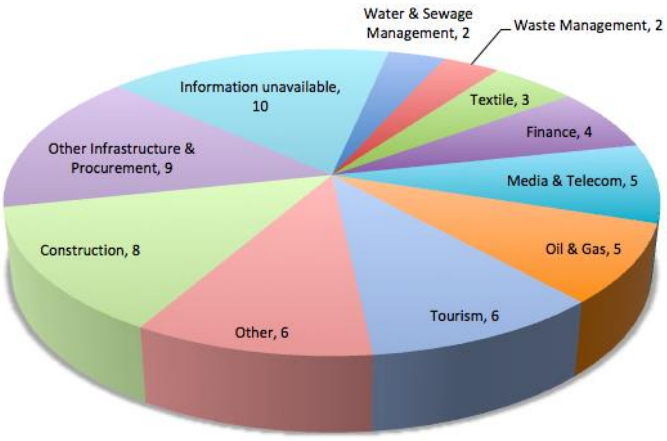
Graphic 3: ISDS cases in the region according to status and /or resolution[44]



The chart shows the status of the cases involving MED countries and their settlement. Interestingly, over twice as many cases have been decided in favour of the State than in favour of the investor. Almost as many cases have been settled, meaning, the parties reached an agreement regarding the issues of the dispute prior to obtaining an award from a tribunal. However, unfortunately there is scarce information regarding the terms of these settlements. It is worrying that a large number of cases is still pending as this would suggest that a large percentage of cases is fairly recent.

Graphic 4: ISDS cases in the region by economic sector:[45]

This chart illustrates the distribution of the cases by economic sector. Tourism, construction and infrastructure and procurement projects hold the bulk of ISDS cases. Media and Telecom as well as oil and gas are also sectors of the economy that seem to attract disputes, however, in order to see if a particular sector is attracting a disproportionate amount of disputes, it is important to note if it constitutes a large or small percentage of overall investment in the economy.



[44] Own chart using information from UNCTAD Investment Dispute Settlement Navigator: see http://investmentpolicyhub.unctad.org/ISDS/FilterByCountry

[45] Own chart using information from UNCTAD Investment Dispute Settlement Navigator: see http://investmentpolicyhub.unctad.org/ISDS/FilterByCountry

2.1 Comparative analysis: drafting ISDS clauses in MED IIAs

The following section analyses provisions generally found in ISDS clauses of IIAs involving countries in the region. The way in which a particular provision is drafted will determine the risk that a host State will assume in an eventual ISDS proceeding.

a) Consent to arbitration

Article 8(2) Macedonia-Morocco BIT gives us an example of express consent to arbitration: "*For this purpose, each Contracting Party shall give its* ***irrevocable consent*** *to the submission of disputes to international arbitration…*".[46] The Jordan-Morocco, on the other hand is an example of implied consent. In stating "*Each party to the difference* ***shall*** *appoint an arbitrator…*" it is indicating that proceeding with the arbitration is not subject to choice, we would be under a different situation if the text read "*Each party to the difference* ***may*** *appoint an arbitrator…*".

b) Scope of ISDS

Depending on the language used, the drafting of the ISDS clause will delineate the scope of ISDS or leave it open to any dispute that may arise. Article 7(1) Jordan-Morocco BIT is an example of open scope to ISDS: "***All disputes*** *related to investments between any of the two contracting parties and an investor from the other contracting party…*".[47] Article 22 of the Canada-Jordan BIT, on the other hand, enumerates those IIA obligations for which an investor can claim a breach: "*1. An investor of a Party may submit to arbitration under this Section a claim that the other Party has breached an obligation under Articles 2 to 5, paragraph 6(1), paragraph 6(2), Articles 7 to 10 and Articles 12 to 18, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.*" This list excludes temporary entry of the other Party's nationals in certain categories of employment, health, safety and environmental measures, and transparency.[48] Article 11 of the Austria-Jordan BIT[49] circumscribes the section on Arbitration to a breach of the agreement: "*This Part applies to disputes between a Contracting Party and an investor of the other Contracting Party* ***concerning an alleged breach of an obligation*** *of the former under this Agreement which causes loss or damage to the investor or its investment.*"[50]

c) Cooling-off periods

These periods are usually stipulated in the bilateral investment treaties and range from the time an investor manifests their intention to seek dispute resolution to the time they can

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[46] Macedonia-Morocco BIT (Signed 11 May 2010) http://investmentpolicyhub.unctad.org/Download/TreatyFile/1934

[47] Jordan-Morocco BIT (Signed 16 June 1998) http://investmentpolicyhub.unctad.org/Download/TreatyFile/1746

[48] Canada-Jordan BIT (Signed 28 June 2009) http://investmentpolicyhub.unctad.org/Download/TreatyFile/617

[49] Austria-Jordan BIT (Signed 23 January 2001) http://investmentpolicyhub.unctad.org/Download/TreatyFile/194

[50] It is not by coincidence that all three agreements analysed include Jordan as one of the Parties to the agreement. The idea is to demonstrate how negotiations at different moments, and with diverse parties involved, can yield varying results. Though ideally a State would strive to obtain consistency through out a its treaty practice, the reality is that these agreements are the product of negotiation between parties with a wide array of interests and objectives and therefore no two agreements are likely to contain identical clauses.

legitimately present the claim. The idea being that the parties use this period to find an amicable solution. Most agreements, like the Algeria-Jordan BIT, establish a time frame of three, six, or nine months "*In case the difference cannot be settled by mutual agreement of the two Parties* ***within six months from the date of its presentation*** *by one of the Parties to the difference, then it may be referred by the investor* …". Article 7(2) Algeria-Jordan BIT[51] Some agreements indicate no time frame at all.

d) Alternative forms of dispute settlement

Most agreements (as is the case of the Algeria-Jordan BIT cited above) encourage the Parties to amicably or mutually settle the dispute before resorting to litigation or arbitration. Some go even further, concretely suggesting Mediation or Conciliation:

i. Mediation: An example can be found in Article 8(1) Macedonia-Morocco BIT: "*They may, upon the initiative of either of them and as a part of their consultation and negotiation,* ***agree to rely upon non-binding, third-party procedures such as mediation***."

ii. Conciliation: reference to conciliation can vary. These two agreements are examples of an indirect reference to the option to conciliate: "*In case of difference on the fact that the appropriate procedures are the* ***reconciliation*** *or arbitration procedures, the opinion of the relevant investor shall be the decisive opinion…*" (Article 6 Jordan- Tunisia BIT)[52] and "*A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of any award, raise the objection that…*" (Article 9(5) Croatia-Libya BIT).[53]

e) Selection of the arbitral tribunal

Some agreements concisely indicate rules for the selection of the tribunal as follows, "*Each party to the difference shall appoint an arbitrator, and both arbitrators shall appoint together a third arbitrator from the citizens of a third state to chair such court. The two arbitrators, however, shall be appointed within a period of two months, and the chairman shall be appointed within a period of three months starting from the date on which the investor has notified the relevant Contracting Party of his intention to resort [sic to resort] to arbitration*." (Article 7(2) Algeria-Jordan BIT). The Macedonia-Morocco BIT is an example where the selection of the tribunal is not detailed. It mentions that the dispute can be settled under the auspices of ICSID or UNCITRAL, reverting to their selection rules.

f) Umbrella clause

Some agreements contain clauses that extend the protection of the agreement over other commitments by the host State with the investor (e.g. investment contracts). By way of example, Article 9(2) of the Finland-Morocco BIT [54] includes the following text "*Each Contracting Party shall ensure they will* ***at every moment meet their engagements in respect of the investors*** *of the other Contracting Party*."

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[51] Algeria-Jordan BIT (Signed 1 August 1996) http://investmentpolicyhub.unctad.org/Download/TreatyFile/51
[52] Jordan-Tunisia BIT (Signed 27 April 1995) http://investmentpolicyhub.unctad.org/Download/TreatyFile/1767
[53] Croatia-Libya BIT (Signed 20 December 2002) http://investmentpolicyhub.unctad.org/Download/TreatyFile/871
[54] Finland-Morocco BIT (Signed 1 January 2001) http://investmentpolicyhub.unctad.org/Download/TreatyFile/1201

g) Fork-in-the-road provisions

Many agreements allow investors a choice between the local courts and arbitration. Some go a step further installing what is called a *fork in the road* clause, the implication being that the choice is final, the investor cannot alternate or reverse their strategy between different venues and jurisdictions, nor can they seek reparation at two venues simultaneously. "*Once the investor has chosen to submit the dispute to the competent court of the Contracting Party in whose territory the investment has been made or arbitration as provided under the subparagraphs (b) and (c) of this Article,* ***such choice shall be irrevocable for the Investor***." (Article 8(3) Macedonia-Morocco BIT). The idea behind this clause is to prevent duplicate proceedings on the same issues. We find another way to draft this clause in Article 9(4) of the Lebanon-Netherlands BIT:[55] "*The choice made as per subparagraphs 2 b, c and d herein above is final.*"

h) Consolidation

Also with the idea of avoiding multiple proceedings based on the same facts, some agreements include a clause allowing for the consolidation of such proceedings. An example of a consolidation clause can be found in the Canada-Jordan BIT:

> "*Where an investor makes a claim under this Article and the investor or a non controlling investor in the enterprise makes a claim under Article 22 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 27,* ***the claims should be heard together*** *by a Tribunal established under Article 32, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.*"

i) Counter claims

Depending on how the ISDS clause is drafted, it may be interpreted so as to allow counter-claims or not. Some tribunals have considered that clauses indicating, "***the investor*** *may submit the claim…*" do not give the State such an option. However, if the clause refers to "*the disputing parties*", as in the case of Article 6 of the Jordan-Tunisia BIT, then there is a higher likelihood that the tribunal will allow a counter-claim. It reads as follows: "*…then* ***either of the dispute parties*** *may go a head with the procedures by submitting an application to this effect to the secretary general of the Center as stated in Articles 28 and 36 of the [ICSID] Convention.*"

[55] Lebanon-Netherlands BIT (Signed 2 May 2002)
http://investmentpolicyhub.unctad.org/Download/TreatyFile/1890

j) Transparency

Clauses on transparency are increasingly included in modern agreements seeking that information regarding the proceedings be made available. Of the agreements analysed, only the Morocco-USA FTA[56] contains a quite extensive clause on transparency (Article 10(20)):

> "*1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and* ***make them available to the public:*** *(a) the notice of intent; (b) the notice of arbitration; (c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 10.19.2 and 10.19.3 and Article 10.24; (d) minutes or transcripts of hearings of the tribunal, where available; and (e) orders, awards, and decisions of the tribunal.*
>
> *2. The tribunal shall conduct* ***hearings open to the public*** *and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure. (…)*
>
> *5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.*"

2.2 ISDS in regional and other investment agreements

MED countries signed a number of other agreements with investment provisions. The following table summarises these agreements.

Table 2: MENA regional trade- and/or investment-related agreements

	PARTIES	DATE	AGREEMENT	ISDS
LEAGUE OF ARAB STATES / COUNCIL OF ARAB ECONOMIC UNITY	All 18 MENA economies	1970	Agreement on Investment and Free Movement of Arab Capital Among Arab Countries	NO
		1971	Convention establishing the Inter-Arab Investment Guarantee Corporation	NO
		1980(s) 1981 Amended in 2013	Unified Agreement for the Investment of Arab Capital in the Arab States (and instituting the Arab Investment Court)	YES
		1997(s) 2005	Greater Arab Free Trade Area	NO

[56] The United States-Morocco FTA was signed on 15 June 2004 and entered into force on 1 January 2006. For the purposes of this paper, only Chapter Ten – Investment, is analysed. https://ustr.gov/sites/default/files/uploads/agreements/fta/morocco/asset_upload_file651_3838.pdf. (see also section 3.2).

	Parties	Date	Agreement	ISDS
Agadir Agreement	Egypt, Jordan, Morocco, Tunisia	2004(s) 2007	Arab-Mediterranean FTA	NO
Gulf Cooperation Council	GCC Members (Bahrain, Oman, Qatar, UAE, Kuwait, KSA)	1984	Unified Economic Agreement between the Countries of the Gulf Cooperation Council	NO
	EU	1988	Economic Cooperation Agreement	NO
	GCC Members	2002	Economic Agreement among Cooperation Council Countries	NO
	Syria	2005	FTA	TEXT UNAVAILABLE
	Singapore	2008	FTA	NO
	EFTA	2009(s)	FTA	NO
	New Zealand	2009	FTA	NO
Organisation of the Islamic Conference	53 Parties, incl. all 18 MENA economies	1992	Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference	YES
		1993	Agreement of the Islamic Corporation for the Insurance of Investment and Export Credit	NO
Union du Maghreb Arabe	Algeria, Libya, Morocco, Tunisia	1993	*Convention relative à l'encouragement et la protection des investissements*	NO
		1991(s) 2002	*Convention relative à la création de la Banque maghrebine pour l'investissement et le commerce extérieur*	NO
Comesa	COMESA members, incl. Djibouti, Libya, Egypt	2007	Common Investment Area	YES

Source: Own research.

Due to their content, the following agreements will be analysed.

- The Agreement on Promotion, Protection and Guarantee of Investments amongst the Member States of the Organization of the Islamic Conference (OIC Investment);[57]
- Unified Agreement for the Investment of Arab Capital in the Arab States; [58]
- COMESA – Common Investment Area
- United States-Morocco Free Trade Agreement (Chapter 10 – Investment)[59]

The Arab Investment Agreement and the OIC Investment Agreement were signed in 1980 and 1981 respectively, and yet, the definitions included on investor and investment are remarkably similar to that which is found in many modern BITs. They also include detailed obligations as to the entry and residence of investors, free transfer of capital, and the establishment of investment incentives and have exceptions as to privileges granted in international agreements or laws, customs unions and specific projects of the Host State. It is interesting to note that the Arab Investment agreement requires investors to act within the scope of the laws and regulations of the host State and includes a public interest exception to the obligations of the Agreement.[60] It is to date "*the most comprehensive effort put forth by MENA countries to set up a regional and enforceable investment regime*".[61]

Interestingly, the Arab Investment Agreement established an Arab Investment Court, detailing a number of procedural. However, though fully established since 1985, it only gave its first decision in October 2004.[62] and has seen few cases since then.

[57] Approved and opened for signature by resolution 7/12-E of the Twelfth Islamic Conference of Foreign Ministers held in Baghdad, Iraq, on 1-5 June 1981. It entered into force on 23 September 1986.
[58] The Unified Agreement for the Investment of Arab Capital in the Arab States was signed on 26 November 1980 in Amman, Jordan, during the Eleventh Arab Summit Conference. It entered into force on 7 September 1981. The draft statutes of the Arab Investment Court came into force on 22 February 1988. All Member States of the League except Algeria and the Comoros have ratified the agreement. The agreement has since been amended in 2013.
[59] The United States-Morocco FTA was signed on 15 June 2004 and entered into force on 1 January 2006. For the purposes of this paper, only Chapter Ten – Investment, is analysed. https://ustr.gov/sites/default/files/uploads/agreements/fta/morocco/asset_upload_file651_3838.pdf
[60] Such clauses are helpful in ensuring that, in an eventual dispute, the tribunal shall take in mind the Public Interests of the State upon rendering their decision.
[61] OECD (2010), Evolution of International Investment Agreements (IIAs) in the MENA Region Paper prepared in the context of the MENA-OECD Working Group on Investment Policies and Promotion: see http://www.oecd.org/mena/competitiveness/46581917.pdf
[62] *Tanmiah for Consultancy Management & Marketing (a Saudi Company) v. Tunisia*.

In January 2013, the Riyadh Economic Summit adopted the Amended Arab Investment Agreement[63]. The amendment has included some relevant changes:

- While the original agreement contained no Fair and Equitable Treatment (FET) clause, the amended text indicates the protection of Arab capital at all times (Article 2);
- Adjustment to National Treatment clause to indicate treatment shall be "*no less favourable*" and inclusion of an MFN clause in the same lines (Article 5(2));
- Inclusion of mediation as a dispute resolution alternative (Annex Article 1);
- Reference to UNCITRAL Arbitration Rules;
- Enforcement of arbitral awards in accordance with Article 37 of the Riyadh Agreement on Judicial Cooperation;

The OIC investment arbitration clauses are simple, establishing procedural matters and determining that decisions are final and binding upon both Parties. Some experts have cautioned that the agreement leaves countries excessively vulnerable as they deem it a unilateral offer to arbitrate, leaving countries little recourse once an investor has notified their intent of arbitration.[64] The OIC Investment Agreement does not contain a FET clause, however, that is no guarantee that investors will not be able to claim FET violations: in *Hesham al-Warraq v. Republic of Indonesia*, the tribunal has invoked the MFN clause of the OIC Investment Agreement to apply Article 3 of the UK-Indonesia BIT that does contain FET protection.[65]

As the more recent regional agreement on investment, it is not surprising that the COMESA Investment Agreement should contain clauses as to public access to documentation and hearings, counterclaims, and *amicus curiae* interventions.[66]

The United States-Morocco FTA includes a Chapter on Investment with extensive and detailed regulations on ISDS. So as to ensure that the Parties agreed protections to safeguard issues on labour, environment, transparency, etc. regulated in other chapters of the agreement they have established that "*In the event of any inconsistency between this Chapter and another*

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[63] Draft Unified Agreement for the Investment of Arab Capital in the Arab States (Amended) http://investmentpolicyhub.unctad.org/Download/TreatyFile/5616 Iraq, Jordan, Kuwait, Oman, and Palestine have ratified the Amended Agreement, which entered into force in these five states on April 24, 2016. More recently, Qatar also ratified the Amendment. The Arab Investment Agreement (as unamended) still governs investment guarantees and protections in the territories of its other signatories.

[64] Article 17.2.b. provides that "*The other party must, within sixty days from the date on which such notification was given, inform the party requesting arbitration of the name of the arbitrator appointed by him*." Walid Ben Hamida (2013), "A Fabulous Discovery: The Arbitration Offer under the Organization of Islamic Cooperation Agreement Related to Investment", *Journal of International Arbitration*, vol. 30, No. 6, pp. 637-663.

[65] *Hesham Talaat M. al-Warraq v. the Republic of Indonesia*, OIC case, Final Award of 15 December 2014, paras. 180-190. The text of the award is available at https://www.italaw.com/sites/default/files/case-documents/italaw4164.pdf. Interestingly, it has been reported that, following both Libya and the OIC's failure to designate arbitrators, when an investor claimed the MFN clause for the more favourable application of the UNCITRAL rules, on 27 March 2017, the secretary-general of the Permanent Court of Arbitration has designated arbitrators in the case between DS Construction FZCO (a UAE based investor) and Libya. https://www.law360.com/articles/922366/welcome-certainty-for-investors-from-27-oic-member-states

[66] Article 28 Investment Agreement for the COMESA Common Investment Area, See http://investmentpolicyhub.unctad.org/Download/TreatyFile/3092

Chapter, the other Chapter shall prevail to the extent of the inconsistency." Article 10(19) of the United States-Morocco FTA allows for third party intervention.[67]

Countries must keep in mind that compliance or violation of these agreements is not limited to the provisions they contain but extend to other commitments by the State (such as permits and licenses to operate, procurement contracts, acts, regulations, actions or omissions). This is so because many investment or procurement contracts contain ISDS clauses, and due to the fact that early IIAs were drafted in broad terms, often containing umbrella clauses that elevate breaches of contractual obligations to a violation of the treaty itself. Under international law, all acts, measures and omissions by any subnational entity are attributable to the State. These commitments apply to all levels of government: centralised or decentralised, national and sub-national level. Any actions or omissions by a municipal government, a State-owned enterprise, a line ministry, a regional or provincial government, or by the central government can place the State in a position of liability. The following section seeks to determine the state of each country's legislation in this sense.

2.3 Analysis and comparison of ISDS provisions in investment laws of the MED countries

Each of the countries in the region has investment laws and other investment-related legislation. However, the provisions and content of each law varies significantly from the other.

Table 3: Investment legislation in the MENA region

COUNTRY	INVESTMENT LEGISLATION
ALGERIA	• New Investment Law No. 16-09 on the promotion of investment of 3 August 2016 (Loi n°2016-09 du 3 juillet 2016 *relative à la promotion de l'Investissement*) • Implementing Decrees of 5 March 2017 • See also the 2016 Finance Law to which some of the provisions of the former Ordinance n° 01-03 relating to the development of Investment have been moved.
EGYPT	• 2015 Amendment to the Investment Law No 8 /1997 (Presidential Decree No 17/2015 of 12 March 2015) • Executive Regulations of 6 July 2015 • Presidential Decree Regarding the Establishment of the Supreme Council for Investment No 478/2016 of 16 October 2016 • 2017 Investment Law : was approved by the House of Representatives on 7 May 2017
JORDAN	• New Investment Law No. 30 of October 2014 • Regulation for Organising Non-Jordanian Investments No 77 of 2016
LEBANON	• Investment Development Law No.360 of 16 August 2001
LIBYA	• Law No. 9/2010 on the Encouragement of both National and Foreign Investment • Executive decrees of 2012 and 2013 on foreign direct investments (Decree 22 of 2013, Decree 207 of 2012, Decree 103 of 2012, Decree 186 of 2012)

[67] "*2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement. 3. The tribunal shall have the authority to accept and consider* amicus curiae *submissions from a person or entity that is not a disputing party.*"

COUNTRY	INVESTMENT LEGISLATION
MOROCCO	• 1995 Investment Charter (*Charte de l'Investissement – Loi-cadre* No.18-95 de 1995) • On-going reform of the 1995 Investment Charter
PALESTINE	• 2014 amendments to the Law on the Encouragement of Investment of 1998 (Law No.1 of 1998, amended by Presidential Decree n°2 of 2011 and Presidential Decree n°7 of 2014)
TUNISIA	• New Investment Law of 30 September 2016 (*Loi* No.2016-71 *portant loi de l'Investissement*), published on 7 October 2016 and entered into force on 1 April 2017 • Executive decrees of 30 March 2017 • *Décret gouvernemental* No.2017-388 *relatif à (i) La fixation de la composition du Conseil Supérieur d'Investissement et les modalités de son organisation ; et (ii) L'organisation administrative et financière de l'Instance Tunisienne de l'Investissement et du Fonds Tunisien de l'Investissement.* • *Décret gouvernemental* No.2017-389 *relatif aux Incitations financières au profit des investissements réalisés dans le cadre de la loi de l'investissement.* • *Décret gouvernemental* No.2017-390 *relatif à la création d'une unité de gestion par objectif.*

Source: MENA-OECD Competitiveness Programme.

a) Dispute settlement

The following countries in the region have dispute settlement provisions in their investment laws. Libya and Algeria[68] (both in their respective Article 24) settle all matters related to disputes through the appropriate courts of the State with the exception of those regulated under international agreements (or contractual obligation by the State in the case of Algeria).

In Lebanon's investment law, arbitration is limited to investments made under "*incentive package deal contract*".[69] In the case of Morocco, dispute settlement is only referenced in the context of contracts for particularly large or important investment projects.[70] Palestine[71] offers arbitration in all cases conditional upon prior good faith negotiation. Tunisia's investment law recommends the settlement of disputes through conciliation offering arbitration to foreign

[68] Law No.2016-09 (Algeria) of 3 August 2016 *relative à la promotion de l'investissement.*

[69] "*Disputes between the Authority and the investor resulting from the incentive package deal contract shall be solved amicably. In the absence of amicable solution, arbitration shall be sought in Lebanon or in any other international arbitration center, provided that this is determined in advance when applying to subject the project to the provisions of this Law and provided that the request meets the approval of the Board of Directors and is endorsed by the tutorship authority. The rules and regulations governing arbitration shall be determined by a decree issued by the Council of Ministers based on proposal of the President of the Council of Ministers.*" Article 18 of the Investment Law No. 360-2001, Lebanon: see http://investinlebanon.gov.lb/Content/uploads/SideBlock/180321040008839~IDAL%20-%20Law%20360.pdf

[70] "*The above mentioned contracts may involve clauses stipulating that the settlement of any disagreement relating to investment which may rise between the government of Morocco and the foreign investors, will be proceeded with in accordance with international conventions ratified by Morocco in international arbitration matters.*" Article 17 Law No. 18-1995 Establishing Investment Charter Morocco See http://investmentpolicyhub.unctad.org/InvestmentLaws

[71] Article 40, Law No. 1-1998, Law on the Encouragement of Investment in Palestine and its amendments (merged law) http://legal.pipa.ps/files/server/Law%20on%20the%20Encouragement_Merged.pdf

investors on the basis of investment agreements.[72] The 2014 Jordan Investment Law gives national and foreign investors' access to arbitration in accordance with its arbitration law, and opens the possibility for foreign investors to bring investment disputes before international arbitration by mutual agreement with the State. Egypt has the most comprehensive system with the creation of grievance committees and an arbitral tribunal in section V of its investment law.[73]

b) Investment contracts

It is important to bear in mind that investors often find recourse to investor-State arbitration through investment contracts rather than through a particular law or agreement.[74] Though investment contracts are not generally regulated in the investment laws of the MED in an obvious or specific manner, there are some indirect references to them (Jordan[75] and Algeria[76]); whereas Lebanon[77] and Morocco[78] have specific articles on investment contracts. These contracts can be particularly problematic as they are not generally available to the public; their content is unknown; and they can be inconsistent with bilateral investment treaties. Furthermore, they are often negotiated under pressure in the midst of obtaining a particularly large scale investment project, and/or those investments done in sectors of the economy that are of certain interest to the host State.

The following table summarises the existence of investment protection clauses relevant for ISDS in the laws of each of the MED countries[79] as it is on the basis of perceived infringement of these provisions that most ISDS cases are initiated.

[72] Articles 23 and 24 Law No. 2016-71 on Investment, Tunisia http://investmentpolicyhub.unctad.org/InvestmentLaws
[73] Law 72-2017 Egypt investment law http://investmentpolicyhub.unctad.org/InvestmentLaws
[74] By way of example: see *Ghaith R. Pharaon v. Republic of Tunisia*, ICSID Case No. ARB/86/1; and *Malicorp Ltd v. the Government of the Arab Republic of Egypt, Egyptian Holding Company for Aviation, Egyptian Airports Company*, CRCICA Arbitration Case 382/2004 (see https://www.italaw.com/sites/default/files/case-documents/italaw7670.pdf).
[75] The Investment Law of 2014 indicates that the Commission specifically through it's chairman, is empowered to "*Conclude contracts, agreements and memorandums of understanding with third parties*." Article 24. Article 29 and 33 make further reference to the contracts concluded between the Commission and the Master developer of Free Zone. Investment Law No. 30-2014, Jordan: see http://investmentpolicyhub.unctad.org/InvestmentLaws
[76] Article 24, Law No.2016-09 (Algeria).
[77] Article 15, Investment Law No. 360-2001 (Lebanon).
[78] Article 17, Law No. 18-1995.
[79] At the time this report was made, no text for Israel's Law for the encouragement of capital investments of 1959 was obtained; upon contacting the Israeli Investment Promotion Agency they informed that no formal updated text is available.

Table 4: Selected substantive provisions contained in MED country investment laws

COUNTRY	NATIONAL TREATMENT	FAIR & EQUITABLE TREATMENT	TRANSFER OF CAPITALS	EXPROPRIATION / NATIONALISATION
ALGERIA	NO	YES[80]	According to legislation	According to legislation and fair and equitable compensation
EGYPT	"same treatment given to the national investor"	"fair and just treatment"	Regulations of this Law shall specify the controls	direct / indirect fair compensation Court order
JORDAN	foreign investor shall be treated as national[81]	NO	According to legislation	Public Interest Equitable compensation
LEBANON	NO	NO	NO	NO
LIBYA	NO	NO	Re-export the invested foreign capital[82]	Direct / indirect Non-discriminatory fair market value
MOROCCO	NO	NO	YES[83]	NO
PALESTINE	equal treatment conditioned upon reciprocity[84]	NO	explicitly lists conditions	public purpose, due process fair market value
TUNISIA	comparable situations[85]	NO	According to legislation	NO

Source: MENA Country investment laws.

2.4 Existing ISDS mechanisms and institutionalisation

- **Algeria**: Algeria's ICSID case law reveals that different government agencies have represented the country in different cases suggesting that no specific entity has been officially designated to coordinate this task.[86]

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[80] Law No.2016-09 (Algeria).

[81] Articles 10 and 20. Additionally it states, "*The provisions of this law shall prevail when its conflict with any provision in the legislations in force*." Article 44 Investment Law No. 30-2014.

[82] Law No. 9-2010 on Investment Promotion, Libya. See http://investmentpolicyhub.unctad.org/InvestmentLaws Note: at the date of issuance of this report, Libya continues under transition government. Any and all references are based on available information and are highly subject to change.

[83] Law No. 18-1995.

[84] Law No. 1-1998.

[85] Law No. 2016-71.

[86] While in *Ortiz Construcciones y Proyectos S.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/17/1, the Ministry of Justice and Keeper of the Seals represent Algeria; the Ministry of Water did this function in *LESI, S.p.A. and Astaldi,*

- **Egypt:** The Egyptian State Lawsuit Authority ("ESLA"), an entity of the Egyptian Ministry of Justice,[87] is in charge of the defence of the State in all investment disputes brought under contracts or treaties against the State. However, ESLA's mandate does not extend to contractual disputes brought against State-owned enterprises. Egypt is in the process of amending the laws regulating ESLA. It was recently reported that ESLA was able save the Egypt's treasury over USD 5.6bn (EGP 2.4bn) of investors' claims over the past four years.[88]

- **Jordan:** Jordan's investment law indicates that their Investment Commission, an entity primarily focused on investment promotion, shall have the right to litigate and may be represented in legal proceedings by the Civil Attorney General or any Attorney-At-Law it appoints for this purpose.[89] However, looking into Jordan's ICSID cases, only one case lists the Foreign Ministry and the Ministry of Justice as representatives to the respondent,[90] private firms are listed in all other instances, suggesting that there is not a strong institutionalised system within the government to address these situations.

- **Lebanon**: Two out of five Lebanon's cases list a (different) government agency as respondents to the case, also suggesting that there is no one agency tasked with coordinating these efforts.[91] The fact that the Ministry of Justice participates in both of these cases might suggest that they could potentially be this "lead agency".

- **Libya**: In the *Mohamed Abdulmohsen Al-Kharafi & Sons Co. v. Libya* the award lists the Government of the State of Libya, the Ministry of Economy, the General Authority for Investment Promotion and Privatization, the Ministry of Finance, and the Libyan Investment Authority as part of Libya's defence team.[92] Recent news reports list the Audit Bureau and the State Department as the entities that have handled a case before ICC.[93] As with previous countries, it suggests that no single institution holds the duty to coordinate the country's defence.

- **Morocco:** The two cases in which Morocco is a respondent list a government agency as representation, this being in both cases the *Ministère de l'Equipement*.[94] However, it would seem that this Ministry coincides in both cases due to the subject matter of the cases, rather than its own expertise in litigious affairs of the State, suggesting, as with

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S.p.A. v. People's Democratic Republic of Algeria, ICSID Case No. ARB/05/3 and in *L.E.S.I. v. Algeria Consortium Groupement L.E.S.I. - DIPENTA v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/03/8.

[87] http://sla.gov.eg/index.aspx

[88] Interview with ESLA Chairperson Mr. Hussein Abdo: see https://www.dailynewsegypt.com/2018/05/22/state-lawsuits-authority-saved-egypt-5-6bn-egp-2-4bn-over-4-years-chairperson/

[89] Article 20(a) Law No. 30-2014.

[90] *Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25.

[91] While in *J&P-AVAX S.A. v. Lebanese Republic*, ICSID Case No. ARB/16/29 the Ministry of Justice and the Ministry of Energy represent Lebanon, in *Toto Costruzioni Generali S.p.A. v. Lebanese Republic*, ICSID Case No. ARB/07/12 in the annulment phase only the Primer Minister and Ministry of Justice are listed.

[92] Award: https://www.italaw.com/sites/default/files/case-documents/italaw1554.pdf

[93] Libyan Observer (2018), "Libya wins legal case against Brazilian companies seeking compensation" https://www.libyaobserver.ly/economy/libya-wins-legal-case-against-brazilian-companies-seeking-compensation

[94] *Consortium R.F.C.C. v. Kingdom of Morocco*, ICSID Case No. ARB/00/6 and *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4.

other countries in the region, that Morocco has not designated a lead agency for these purposes.

- **Palestine:** Though Palestine's Investment Law does regulate ISDS, it remains unclear which national entity would be in charge of representing the government in a potential case.

- **Tunisia:** The only known Tunisia's case[95] lists government agencies, the *Ministère des Domaines de l'Etat et des Affaires foncières* and the *Direction générale du Contentieux de l'Etat*, this later agency would seem like the more obvious choice of where to locate a lead agency on ISDS.

2.5 Selected ISDS case studies involving MED countries

The case law in the region is extensive, rich and provides interesting examples. However, for the sake of expediency, the paper centred attention on the following cases to help illustrate salient features of this paper:

a) Consolidation and consistency: *Orascom* and *OTH* cases against Algeria

In these particular cases, the investor, a corporate conglomerate, had many avenues for recourse to international arbitration as different levels within its corporate structure were covered by an array of BITs, in addition to the ISDS clause in their investment contract. They in fact issued three notices of arbitration based on the same facts each based on a different Agreement (Algeria-BLEU (Belgium) BIT, Algeria-Italy BIT, and Algeria-Egypt BIT). Two proceedings were registered:

- *Orascom v. Algeria*, (2012) ICSID Case No. ARB/12/35, based on the Algeria-BLEU BIT; and
- *OTH v. Algeria*, (2012) Permanent Court of Arbitration (PCA) Case – UNCITRAL Rules, based on the Algeria-Egypt BIT.

The Orascom case tribunal found that "…*while the parties to the dispute and the legal bases for the claims (the BITs) are different, the dispute being notified in the three notices is effectively one and the same*."[96] The Tribunal has further indicated, "…*the existence of several*

[95] *ABCI Investments Limited v. Republic of Tunisia*, ICSID Case No. ARB/04/12.

[96] The following excerpts from the award illustrate the case well: "*488. As is evident from the content of the three notices excerpted above, the three companies complain of the same measures taken by Algeria. … In the Tribunal's view, while the parties to the dispute and the legal bases for the claims (the BITs) are different, the dispute being notified in the three notices is effectively one and the same.*" "*495. In the vertically integrated chain that constituted the Weather Group, several entities could in theory at least bring arbitration proceedings against the Respondent. …In the Tribunal's view, the existence of several legal foundations for arbitration does not necessarily mean that the various entities in the shareholder chain could make use of the existing arbitration clauses to assail the same measures and to recover the same economic loss under any circumstances. Indeed, the purpose of investment treaty arbitration is to grant full reparation for the injuries that a qualifying investor may have suffered as a result of a host state's wrongful measures. If the harm incurred by one entity in the chain is fully repaired in one arbitration, the claims brought by other members of the vertical chain in other arbitral proceedings may become inadmissible depending on the circumstances.*" "*518. …despite the Claimant's attempts to depict the damages claimed as compensation for harm caused to itself, as opposed to OTH, the claims before the Tribunal in reality seek reparation for losses covered by the requests for relief raised in the OTH Arbitration or for losses that the Claimant (owned and managed by an experienced businessman like Mr. Sawiris) must or should have factored into the sale of its investment*

legal foundations for arbitration does not necessarily mean that the various entities in the shareholder chain could make use of the existing arbitration clauses to assail the same measures and to recover the same economic loss under any circumstances." The case was settled in favour of Algeria.

Lessons learnt from these cases:

- None of the BITs included clauses for consolidation of proceedings. However, if the parties had reached an agreement on this issue, a single tribunal could have analysed all three claims and determined to which extent each of the claimants was due compensation.[97] This would have entailed substantial savings, both in time and money, in the costs of the proceedings. A clause similar to the one used to illustrate consolidation in Section 3.1.J (above) would have greatly simplified matters in these cases.
- The fact that the PCA rendered an award detailing the settlement between the parties in the OTH case was key in helping Algeria to win the Orascom case. This case reveals that it is advisable that any settlement reached with a claimant be formalised through institutional channels.

b) Concerns over investment contracts with involvement of multiple government agencies: *Al-Kharafi v. Libya* Case

Investment contracts can be an excellent means to regulating the conditions under which an investment is set up in a host State. However, as was indicated in Section 3.3.c. above, they can be problematic as they often lack transparency and consistency with other policies and international obligations of the State, and are often negotiated under high pressure. It is therefore not surprising that a large number of ISDS cases are based on investment contracts rather than IIAs. *Al-Kharafi v. Libya* (2011) is one such case.

The claims arise when the Libyan Minister of Industry, Economy and Trade issued a decision by virtue of which a licence previously granted to the claimant for the establishment of a touristic investment project in Tripoli, Libya, was annulled. The Kuwaiti company signed a 90-year land-leasing contract with the Tourism Development Authority, comprised of 24 hectares of state-owned land, which ensured that the land would be free of occupants. After a series of issues dealing with the land's occupants and having failed to initiate construction, the Ministry of Economy annulled the project approval in 2010; as a result, the land-leasing contract was also invalidated. The claimant resorted to arbitration under the Arab Investment Agreement (see Section 3.2 above) on the basis of the arbitration clause included in the investment contract.

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to VimpelCom. Under the circumstances, the Tribunal cannot but conclude that the claims are inadmissible". *Orascom v. Algeria*, ICSID Case No. ARB/12/35, Award of 31 May 2017, paras. 488, 495, and 518: see: https://www.italaw.com/sites/default/files/case-documents/italaw8973.pdf.

[97] *Border Timbers v. Zimbabwe*, ICSID Case No. ARB/10/25, and *Von Pelzold v. Zimbabwe*, ICSID Case No. ARB/10/15 were two cases by investors of different nationality based on the same facts. The cases were consolidated under the ICSID Rules and single tribunal headed both cases issuing two separate awards, one for each BIT. The claims arise from the alleged expropriation of property under Zimbabwe's Land Reform Programme.

The facts of the case would suggest that the investment contract was drafted by the Ministry of Tourism rather than by an agency in the government with knowledge of investment policy.[98] Additionally, as is often the case, numerous government agencies were involved in the issuing and revoking permits or licenses or failing to do so, oblivious to the potential ISDS effects of their actions and/or omissions, therefore triggering for investor grievance.[99]

The tribunal ordered Libya to pay USD 5 million for the value of losses and expenses suffered by the investor, USD 30 million for moral damages[100] and USD 900 million for "*lost profits resulting from real and certain lost opportunities*." This is one of the highest amounts in ISDS history. The tribunal issued the amount based on the expert reports presented by the claimant and on the fact that the Respondent failed to provide refuting expert reports of the same weight.[101]

Lessons learnt from the case:

- States should carefully draft a model investment contract to be steadily used in all new investment projects under contract. A model contract should be flexible enough to adjust to any given investment but stringent enough to ensure consistency with investment policy and international obligations of the State.
- Any agency involved or related to an investment project should be made aware of international obligations and potential repercussions of their actions and/or omissions.
- Upon addressing ISDS, special attention should be paid to the quantification of amounts and the challenge thereof through factual expert evidence.

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[98] "*Article ten* [of Law No. 7 of 2004 on Tourism] *entrusted the Ministry of Tourism and the Minister of Tourism with the decision-making authorities of the General Authority for Investment in all that relates to touristic projects, and, pursuant to Article six of the decision issued by the Council of Ministers No. 73 of 2006 dated 11/4/2006, all rights, obligations and concluded contracts were transferred to the Ministry of Tourism whether performed or under performance, and vested in this Ministry the power to take all necessary measures for the performance of what have been transferred in coordination with the Ministry of Planning and the Ministry of Finance*." *Al Kharafi v. Libya*, CRCICA case, Final Arbitral Award dated 22 March 2013, para. 7.C.4. The tribunal excluded the Investment Agency from the case as it was not involved in the facts: see https://www.italaw.com/sites/default/files/case-documents/italaw1554.pdf

[99] "*7-C-6-2. The Defendants' bad faith is demonstrated in the letter sent on 26/4/2010 by the Secretary of the Department of Real Estate Registration and Documentation to the Secretary of the General Authority for Investment and Ownership whereby he expressed his wish that the latter takes all necessary measures to terminate the lease contract concluded with the Plaintiff for the Department of Real Estate Registration and Documentation to allow the Libyan Local Investment and Development Fund to use this real estate property that was allocated to it.*"

[100] This is not the first case to contemplate moral damages, however, previous tribunals have been more reticent to award them. In *Rompetrol v. Romania*, ICSID Case No. ARB/06/3, the tribunal considered that moral damages were "*subject to the usual rules of proof*" eventually rejecting the claimant's demand of US$ 46 million "*for loss of reputation and creditworthiness*." In *Arif v. Moldova*, ICSID Case No. ARB/11/23, the tribunal dismissed a moral damages claim of €5 million, holding that the "*different actions did not reach a level of gravity and intensity sufficient to justify it*."

[101] The Tribunal has indicated that "*Whereas the Defendants did not submit any response expert report to refute the content of the reports submitted by the Plaintiff* [on the estimation of the lost profit], *Whereas the Arbitral Tribunal, having perused and examined these financial reports submitted by the Plaintiff* [on the estimation of the lost profit]*, and having heard the experts who explained the content of their reports during the examination of witnesses and the pleading, finds that the reports are sound and convincing*…": see Final Arbitral Award, p. 378.

c) The issue of definitions of investment: *National Gas v. Egypt Case* (2011)[102]

The dispute concerned the alleged expropriation through denial of justice and abuse of process of the claimant's right to arbitrate and an award rendered under the CRCICA rules in relation to a contractual dispute between the claimant and the Egyptian Petroleum Corporation ("EGPC") arising from a Concession Agreement concluded between the claimant and EGPC in 1999.

This case holds some similarities with the Orascom and OTH cases, in the sense that drafting of the agreement is at the core of how the tribunal reached its decision. The respondent contested the jurisdiction on the case based on *ratione personae* criteria, indicating that the claimant, a United Arab Emirates (UAE) corporation, cannot be considered a foreign investor with protection under the BIT as it is controlled by an Egyptian-Canadian dual national. Article 10(4) of the Egypt-UAE BIT provides:

> "*In case of the existence of a juridical person that has been registered or established in accordance with the law in force in a region [territory] ["iqlim" in Arabic, meaning a province or like territory] following a Contracting State ["tabai" in Arabic, meaning linked to or subject to a Contracting State], and an investor from the other Contracting State owns the majority of the shares of that juridical person before the dispute arises, then such a juridical person shall, for the purposes of the Convention, be treated as an investor of the other Contracting State, in accordance with Article 25(2)(B) of the Convention*".[103]

The Tribunal therefore also made careful analysis of the definition of "National of another Contracting State" within the ICSID Convention,[104] ultimately deciding in favour of the respondent.

Lessons learnt from the case:

- If the Egypt-UAE BIT had not specified ownership of majority shares as a factor to determine the nationality of an investor, this claim against Egypt might have prevailed. States should seek the highest amount of precision in the drafting of their provisions on the definition of investment and investor.
- States should further seek consistency throughout their agreements. Failure to do so leaves them exposed to MFN incorporation of broader clauses in other agreements. In this sense, as has been discussed in section 2.2 above, even if an agreement for example does not contain FET protection, an investor can claim violations in light of such a

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[102] *National Gas v. Egypt*, ICSID Case No. ARB/11/7: see https://www.italaw.com/sites/default/files/case-documents/italaw4043.pdf and http://arbitrationblog.kluwerarbitration.com/2014/12/01/icsid-tribunal-declines-personal-jurisdiction-over-dual-national-under-egypt-uae-bit/

[103] Egypt-UAE BIT, cited under paragraph 67 of the Award on Jurisdiction.

[104] Article 25(2) of the ICSID Convention reads as follows: "*2) 'National of another Contracting State' means:*
(a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request [for conciliation or arbitration] was registered[…], but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and
(b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention."

protection being offered in another agreement, dragging the protection through the application of the MFN clause.

III - Investment dispute prevention policies

Dispute prevention policies (DPPs) are a set of policies, measures and concrete procedures aimed at avoiding disputes between foreign investors and the authorities of the host State, addressing and solving problems encountered by foreign investors at an early stage to the extent possible, ensure compliance by foreign investors with clear, transparent and predictable procedures with a view to ensuring long lasting investment relationship and retaining foreign investment within the host economy.

Retention of foreign investment is typically ensured by active investment aftercare services that go beyond the promotional activities *per se* and concentrate on facilitating the entry and the operation of investment projects. Once grievances appear in relation to administrative or regulatory barriers, constraints or difficulties, it is essential to go beyond mere investment aftercare and embark on a full-fledged grievances mechanism.

3.1 Existing mechanisms in the region

This section intends to identify the eventual DPP mechanisms existing in the covered MED countries. Research is based on publicly available information (websites, regulations, press, etc.).

- Algeria's *Agence Nationale de Développement des Investissements* (ANDI): ANDI is in charge of strategies and priorities for development, the clarification of roles of different entities intervening in the investment process, and the simplification of procedures; all of which are elements necessary for the establishment of a dispute prevention system. One of ANDI's responsibilities is to establish an interdepartmental or ministerial committee of appeal in charge of receiving and giving ruling on the complaints of investors.[105] It is however unclear if this committee is operational and how it functions.

- Egypt's General Authority for Investment and Free Zones (GAFI): Egypt's new Investment Law has adopted an approach that relies on technical committees to settle all disputes concerned with investment, without prejudice to the investor's fundamental right to recourse to the Judiciary or, when applicable, to international arbitration. The 2017 Law foresees the establishment of the following bodies:
  - The Grievance Committee operates against the administrative resolutions issued by GAFI or administrative bodies, having competence to grant the necessary approvals, permits and licenses.
  - The Ministerial committee on investment dispute resolution has competence to look into any claims, complaints or disputes, submitted or referred thereto, which might arise between investors and the State, or to which any entity, authority or company affiliated to the State is a party.

[105] http://www.andi.dz/index.php/en/a-propos

- The Ministerial committee on investment contracts dispute settlement shall have competence to settle any disputes arising out of the investment contracts to which the State or any entity, authority or company affiliated thereto is a party.
- The Egyptian Arbitration and Mediation Centre has the competence to decide on the investment disputes, which might arise among investors, or among investors and the State or any public or private entity affiliated thereto.

- Israeli Foreign Investments and Industrial Cooperation Authority (FIICA):[106] It offers after-care services for foreign investors offering assistance in the variety of issues and challenges they may confront. The support centre gives companies and investors with existing local activities assistance in re-investments and expansions. However, there is no evidence that these services concretely include dispute prevention.

- Investment Council of Jordan: While the Jordan Investment Commission (JIC) holds the role of the investment promotion agency, the functions of the Council[107] are the following: submit recommendations to the Cabinet (legislation drafts, national strategies and policies); oversee and supervise the Commission's work and follow up on the implementation of annual plans; study the obstacles facing the economic activities; outline the remedial courses thereof and direct the Commission towards the appropriate mechanisms thereto. These are all key elements to dispute prevention but the Council, with the support of JIC, needs to be clearly empowered and its attributions recognised to ensure an effective institutional co-ordination, needed for DPPs.

- Investment Development Authority of Lebanon (IDAL): Lebanon's Investment promotion agency, IDAL,[108] is tasked with proposing necessary statutes for the application of the Investment law; preparing studies, research, documents, statistics and suggestions in relation to the investment climate and opportunities. Dispute prevention is not regulated in their investment law.

- Libya's Administrative Authority: Libya's Investment Law[109] provides that "*An appropriate administrative authority shall be set up to execute the provisions of this Law*" and tasks this Authority with the "*Periodic study of investment legislation and review thereof and submission of proposals related to development in this respect to the Secretary*". There is no evidence that this Authority includes dispute prevention mechanisms.

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[106] FIICA (2018), "*Doing Business in Israel 2018*", Ministry of Economy and Industry: see http://www.investinisrael.gov.il/HowWeHelp/Documents/Doing_Business.pdf

[107] Investment Law No. 30-2014.

[108] Also amongst its powers or responsibilities is to participate in the capital of joint-stock companies involved in certain economic fields such as information technology, agriculture etc.; the management and organisation of exhibitions and seminars, in Lebanon and abroad; and the establishment and management of incubators to support innovators in the fields of technology, information technology, communication and other sectors. (Article 6 Law No. 360-2001 Investment Law, Lebanon). For this reason, it might be advisable that any dispute prevention lead agency be located outside the scope of IDAL as any situation to the contrary might place it in the position of being both judge and party to the dispute: see http://investinlebanon.gov.lb/en/about_us/our_organization_structure

[109] Law No. 9-2010 on Investment Promotion, Libya, Article 5.

- *Agence Marocaine de Développement des Investissements et des Exportations* (AMDIE): The Agency has a National Contact Point (NCP) for grievances tasked with: promotion of the OECD Guidelines for Multinational Enterprises; response to enquiries from companies, labour organisations, civil society and other stakeholders; contribution to the resolution of issues that arise relating to breaches of the Guidelines; and provision of a forum for discussion with stakeholders, including multinational enterprises, businesses, non-governmental organisations, and other government departments and agencies, on matters relating to the Guidelines. Many of these tasks coincide with dispute prevention mechanisms, but do not constitute a body specifically tasked to prevent investment protection related disputes. Both mechanisms (NCP and DPP) serve different purpose (investors obligations vs. protection). Morocco has taken an additional step in including content on dispute prevention in its agreements.[110]

- Palestinian Investment Promotion Agency (PIPA): Amongst its obligations, PIPA must oversee the assessment and preparation of investment policies in accordance with national strategic plans; supervise the implementation of the Investment Law and submit proposals for future amendments to the Council of Ministers; adopt plans and programmes that contribute to creating an appropriate investment environment; and submit recommendations to the Council of Ministers to amend laws and regulations in order to facilitate the registration and licensing of investments leading to the reduction of bureaucratic procedures and red-tape procedures. PIPA also has an after-care department; however, there is no evidence of actual dispute prevention functions within this unit.[111]

- Tunisia's Foreign Investment Promotion Agency (FIPA): Of the missions stated in FIPA's web site, two are most relevant: assistance to investors on exploratory visits to Tunisia and in the various phases of project implementation; and support to improve the sustainability of the company through personalised monitoring and on-going assistance with the various ministerial departments as well as with regional authorities. However, these tasks do not constitute a real dispute prevention mechanism.

3.2 Case studies and good practices

Domestic DPPs are policies that are unilaterally designed by a government to be implemented at a national level. These measures include early detection systems, training for public servants and the creation of dedicated institutions in charge of preventing, managing and monitoring disputes.

The implementation of DPPs varies from country to country as it is a system that rises out of what each country already has in play, the existing institutional framework, experience, relevant legislation and international agreements will all influence how each country will devise a way to prevent investment disputes. Latin American countries have been particularly active and innovative in developing DPPs. They set up proactive responses to the proliferation of

[110] The agreement includes risk mitigation and dispute prevention amongst its objectives detailing the issue in article 26. It requires parties to a dispute to present the issue before a joint committee that shall have a period of 90 days to submit all relevant information. Morocco-Nigeria BIT: see http://investmentpolicyhub.unctad.org/Download/TreatyFile/5409

[111] Article 15, Law No. 1-1998, see http://pipa.ps/page.php?id=1dfadey1964766Y1dfade

investment arbitration in the region. Some countries, such as Colombia, have instituted a comprehensive legislative and regulatory framework to prevent disputes. Others, such as Chile, have opted for an informal prevention system where sectorial agencies directly manage disputes with investors.

Table 5: Best practice elements of the World Bank Group's Systemic Investor Response Mechanism (SIRM) Protocol

Lead Agency
• Administrative body responsible for coordinating information and leading responses to investor grievances.
Information Sharing
• Information sharing should enable the Lead Agency to coordinate the diffusion of relevant information to those agencies more likely to generate or become involved in political risk related conflicts (i.e. grievance). This may be substantive information on the contents and breadth of the obligations included in the different International Investment Agreements (IIAs), or informing the highest possible number of governmental departments about the existence and purpose of the Lead Agency so the latter know who to call in case they have a doubt regarding the consistency of their measures/actions with IIAs or if a conflict with a foreign investor arises.
Early Alert Mechanism
• Early alert mechanisms enable the Lead Agency to learn about the existence of a grievance as early as possible (e.g. through the private sector).
Problem Solving Methods
• Problem-solving methods should allow the parties to seek an interest-based solution to the conflict (e.g. fact finding, obtaining third party expert opinion).
Political Decision Making
• A solution should receive approval from the adequate political authority of host State and the investor. E.g. through establishment of political bodies such as Ministerial Councils to monitor the effective implementation of solutions agreed by the Lead Agency. High-level political endorsement would guarantee that the measure providing a solution to the problem would be effectively implemented.
Enforcement of a decision
• Closely related to political decision making is the need to ensure that the consensual solution to the conflict agreed by representatives of governments and investors is not ignored or disrespected by one of the many other agencies (e.g. Ministerial Councils enforce).

a) Check-list of actions to develop dispute prevention policies

The OECD Policy Framework for Investment states that "*Governments can enhance the quality of the regulatory framework for investment by: consulting with interested stakeholders; simplifying and codifying legislation, including sector-specific legislation; drafting in clear language; developing registers of existing and proposed regulations; expanding the use of electronic dissemination of regulatory material; and by publishing and reviewing administrative decisions. Effective implementation of the regulatory framework for investment can also be improved by ensuring that officials responsible for applying regulations have*

adequate credentials, are well-trained, provided with fair salaries, and have sufficient resources for carrying out their tasks. Officials should be fully accountable for their actions, particularly those involving discretionary decision-making."

The following checklist offers examples of actions that countries can take to establish DPPs. Not all should be considered and many are complementary. As has been previously mentioned, DPPs should be established building upon each country's existing legal and institutional framework. Therefore countries should select from this rather exhaustive list of actions which would work in their national context and respond to their needs.

- Information gathering:
  - Map and monitor sensitive sectors and levels of State entities, paying special attention to government officials in charge of relations with foreign investors.
  - Identify cases and patterns of non-compliance of foreign investors with investment licenses and permits.
  - Establish and maintain a database of investment treaties, investment contracts and special undertakings with foreign investors. Map the related obligations.
  - Centralise information and collect data consistently (e.g. role of a lead agency).
- Options for institutionalisation:
  - Lead agency:
    - Create a lead agency in charge of dispute prevention policies. Allocate proper staff and funds.
    - Empower the lead agency to co-ordinate with other government agencies and institutions to further develop DPPs.
    - Establish institutional communication and information channels.
  - Investment Ombudsman (alternative option):
    - Establish the Ombudsman as a single window interlocutor for aggrieved investors.
  - Effective governmental dispute management body (parallel option):
    - Establish this body to settle existing disputes in parallel with a body to prevent disputes.
    - Allocate proper staff and funds.
    - Build capacity of government officials in charge of defending the State.
    - Establish channels of communication with other government agencies involved in dispute.
- Regulation:
  - Harmonise dispute settlement provisions in laws, contracts, and treaties.
    - Options for harmonising international commitments include revision and/or renegotiation of existing obligations, Parties to the agreement issuing joint interpretations to the agreement, and the establishment of model treaties for future agreements.
    - The content of contracts and Public-Private Partnership schemes should be regulated establishing margins wide enough to allow adaptability to the investment project, while maintaining consistency with other contracts and regulations. The establishment of a model contract would aid in consistency.

    - Investment related provisions in all laws and regulations should be analysed by the agency in charge to ensure coherence and compatibility with international commitments.
  - Design and implement a dispute prevention system to be reflected in the legal investment regime (under the investment law or regulations, as well as treaties and contracts).
  - Monitor the efficiency of the dispute prevention system and upgrade any necessary dispute settlement provisions and commitments under laws, contracts, and treaties.

- Communication, capacity building and support:
  - Build capacity of various ministries and agencies directly involved in relationship with investment projects, whether as regulators, approving and controlling authority, enforcing authority, local, decentralised or centralised bodies.
  - Provide training and information material to government agencies and authorities involved with foreign investors.
  - Advise government agencies on the negotiation of commitments with foreign investors.
  - Support and provide resources to government officials and agencies confronted with potential disputes with foreign investors.

- Problem solving procedure and tracking system:
  - Assess problems and determine facts.
  - Assess risks: determine if the grievance may escalate into a dispute.
  - Identify of the aggrieving agency, department, office, officials.
  - Identify possible outcomes: solved by the lead agency; discussion and coordination with the aggrieving agency; solved by outside experts; submission to alternative dispute resolution.
  - Take the actions necessary to mitigate or resolve the problem.

b) Case Studies

i. <u>The Colombian dispute prevention and management mechanisms</u>

After identifying weaknesses in their prevention and management of ISDS, Colombia developed a legal and institutional framework to prevent potential litigation and to manage disputes. This policy has four objectives: strengthen the state's capacity in terms of dispute prevention and management; centralise decisions on ISDS and ensure effective inter-institutional coordination; ensure the availability of resources to defend the state; and establish administrative procedures and training programmes. A high-level commission in charge of establishing a strategy for investment dispute prevention and management, and the Ministry of Trade acts as the Lead Agency responsible for coordinating the actions of government agencies. In parallel, training programmes are provided to sensitise officials at national and subnational levels to Colombia's international commitments. As for the institutional framework, a High-Level Government Body composed of ministers' representatives was established with the following six functions: i) Direct the national strategy in terms of dispute prevention and management; ii) Promote the use of alternative disputes resolution; iii) Recommend measures to prevent and settle disputes; iv) Recommend measures to ensure a timely and constant defence; v) Hire an external counsel; vi) Focus on specific sectors and

entities. For earlier detection of arising disputes, Colombia established SIFAI (the Investment Attraction Facilitation System), a public-private mechanism that identifies and centralises investors' issues in order to formulate solutions to improve the investment climate. SIFAI is managed by a technical committee in charge of coordinating and monitoring investment climate reforms, comprising the High Presidential Advisor for Public and Private Management, the Minister of Trade, the President of ProColombia -the investment promotion agency- and the president of the Private Council for Competitiveness.[112]

ii. South Korea's Office of the Foreign Investment Ombudsman ("OFIO")

It was created within Korea Trade-Investment Promotion Agency ("KOTRA") to help improve the investment environment and promote the success of foreign-invested companies in Korea by providing assistance in resolving difficulties the companies face both in business activities and day-to-day management. From 1999 to 2015, OFIO has resolved 4,976 grievance cases (annual average of 311 cases) and a total of 360 cases were handled due to OFIO's contribution to system improvements.[113] OFIO includes specialists in a number of different fields including labour, law, taxation, finance, etc. who investigate and resolve grievances for the foreign investor. They additionally have an open channel of communication through their web site in which foreign investors can make comments or suggestions regarding any specific law or procedure that they consider inadequate.[114]

iii. Peru's Law for State coordination and response

This legislative and regulatory framework aims to improve the state's response to international investment disputes and to centralise all information regarding international commitments and investor-state contracts containing arbitration clauses.[115] The framework also centralises information on arising investor-state disputes. Its goal is also to optimise the coordination of state agencies and to improve their accountability towards investment commitments. Lastly, it aims to standardise dispute settlement clauses included in IIAs and investor-state contracts.

A Special Commission, composed of the Ministry of Economy and Finance, the Ministry of Foreign Affairs, the Ministry of Justice and ProInversion (the investment promotion agency), is in charge of representing the state in international investment arbitration or alternative dispute resolution.

[112] OECD (2018), *OECD Investment Policy Reviews: Southeast Asia*. http://www.oecd.org/daf/inv/investment-policy/Southeast-Asia-Investment-Policy-Review-2018.pdf
[113] Source: OFIO/KOTRA http://english.kotra.or.kr/foreign/biz/KHENKO140M.html?TOP_MENU_CD=INVEST
[114] http://ombudsman.kotra.or.kr
[115] Law No. 28933 *Ley que establece el sistema de coordinación y respuesta del Estado en controversias internacionales de inversión*: see https://www.mef.gob.pe/NORLEGAL/leyes/Ley_28933.pdf

Conclusions

As discussed above, the cost of ISDS is high. It takes its toll on the host State's economy, time and human resources, and significantly, in the international perception/reputation of that State as a host to foreign investment; regardless of the outcome of the proceedings. It is therefore desirable to reform the mechanisms of ISDS internally and externally. Each State needs to examine and determine the best way to adapt their international obligations to their needs, as well as modify their internal regulation mechanisms.

At the international level, the coherence and compatibility of bilateral and regional investment agreements needs to be ensured to promote effective investment policies and encourage investment flows to and within the region. However, States must recognise that reform of investment dispute settlement cannot be viewed in isolation; it needs to be synchronised with reform of the substantive investment protection rules embodied in IIAs. Without a comprehensive package that addresses both the substantive content of IIAs and ISDS, any reform attempt risks achieving only fragmented change and potentially creating new forms of complexity, asymmetry and uncertainty.

As stated in the OECD Policy Framework for Investment, "*whatever approach a government adopts towards international investment agreements, complementary measures can help to ensure that treaties are consistent with domestic priorities and reduce the risk of disputes leading to international arbitration. All relevant ministries should be involved in the negotiation process to ensure that all parts of government are aware of any commitments and to help point out any potential inconsistencies between those commitments and domestic legislation. As in all policy areas, governments should consult widely with all stakeholders, including foreign investors, and consider institutional dispute avoidance mechanisms, such as by offering ombudsman services to investors to try to resolve problems before they lead to disputes*."

Internally, States should have a system to carefully monitor grievances by foreign investors and carry out preventive impact assessment of policies, laws, regulations and administrative practices on foreign investors. States should aim to have a clear picture of the types of grievances voiced by foreign investors. It is highly advisable that a mechanism is set in place to identify sectors, measures, agencies, administrations, and/or procedures that may lead to bottlenecks or grievances for foreign investors. This would allow the State to put in place a plan of action to address potential ISDS cases before they actually start, before a problem escalates into a dispute, and before the dispute leads to international arbitration. The creation of a lead agency in charge of dispute prevention policies is a step in ensuring coordination efforts. Transparency and open channels of communication between government agencies regulating different aspects of an investment project are also key elements to avoid grievance. Finally and most importantly, a fair, transparent, clear, and predictable regulatory framework for investment is a critical determinant of investment.

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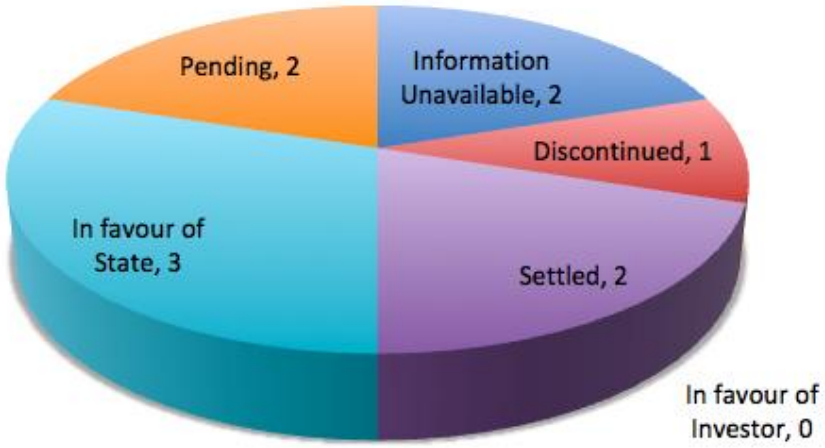
Annex 1:

Known Investor-state arbitrations in MED countries

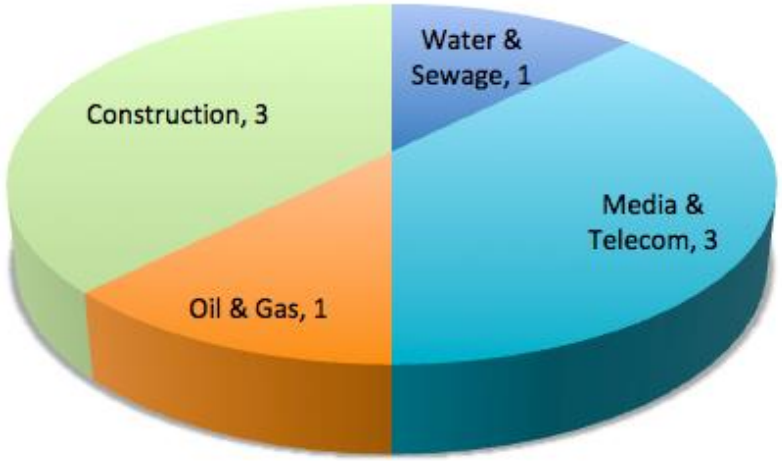
ALGERIA

ISDS Case Statistics

Status of Algeria's ISDS Cases



Distribution of Algeria's ISDS Cases by Sector of the Economy



Algeria's ISDS Cases as Respondent State

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
1	2017	Consutel v. Algeria		Pending	Algeria	Italy
2	2017	Ortiz v. Algeria	Investment: Investment in a housing construction project.	Pending	Algeria	Spain
3	2012	Gelsenwasser v. Algeria	Investment: Rights under a water management contract entered into with the Algerian Government. Summary: Claims arising out of the early termination of claimant's water management contract by the Government due to an alleged lack of progress in the firm's investment programme.	Discontinued	Algeria	Germany
4	2012	Orascom v. Algeria	Investment: Indirect interest in the Algerian telecommunications company Djezzy, through a minority shareholding in Djeezy's controlling entity. Summary: Claims arising out of an alleged campaign of interference and harassment by the Government against the local telecommunications company in which the claimant had invested, including tax reassessments and an attempted forced sale of part of the company to Algeria.	Decided in favour of State	Algeria	Luxembourg

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
5	2012	OTH v. Algeria	Investment: Shareholding in the telecommunications company Orascom Telecom Algeria. Summary: Claims arising out of a series of alleged Government measures against Orascom, including a court judgment against it imposing a fine of approximately USD 1.3 billion and a criminal sentence against a member of OTA's senior executive team.	Settled	Algeria	Egypt
6	2009	Mærsk v. Algeria	Investment: Wholly-owned subsidiary of the oil production A.P. Moller - Maersk Group holding rights in several Algerian blocks under certain production sharing contract concluded with Algeria's national oil company for the exploration and production of liquid hydrocarbons. Summary: Claims arising out of the Government's imposition of a windfall tax collected by the Algerian national oil company, Sonatrach S.P.A., which allegedly contravened the terms of a production sharing contract previously concluded between the investor and Sonatrach.	Settled	Algeria	Denmark
7	2005	LESI v. Algeria	Investment: Rights under a contract for the construction of a dam. Summary: Claims arising out of Algeria's civil unrest and violence during the mid-1990s, which affected a public tender awarded to the claimant for the construction of a	Decided in favour of State	Algeria	Italy

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
			dam which would provide drinking water to the city of Algiers.			
8	2003	L.E.S.I. v. Algeria	Investment: Rights under a contract entered into with certain State entity for the construction of a dam. Summary: Claims arising out of the termination of a contract entered into between the claimants and the Agence Nationale des Barrages (ANB), a State entity, for the construction of a dam in the region of Wilaya of Bouira, Algeria.	Decided in favour of State	Algeria	Italy

Algeria's ISDS Cases home State of applicant

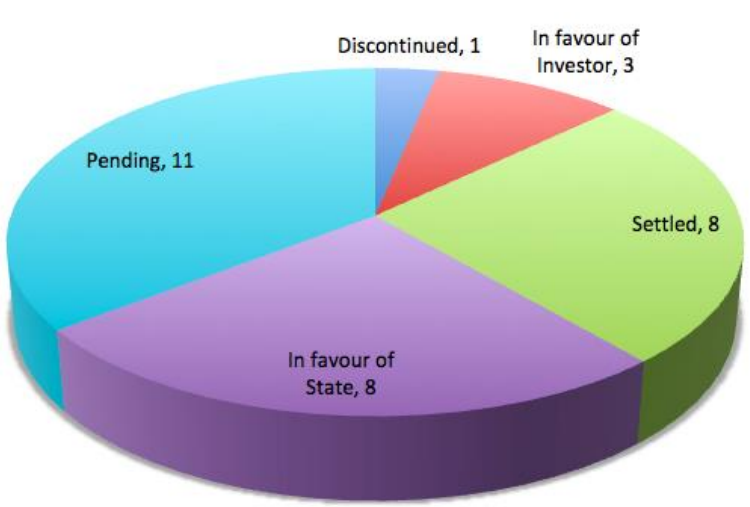
There are currently no cases listed with Algeria as the home State of the applicant.

Source: Own Charts. All information obtained at http://investmentpolicyhub.unctad.org/

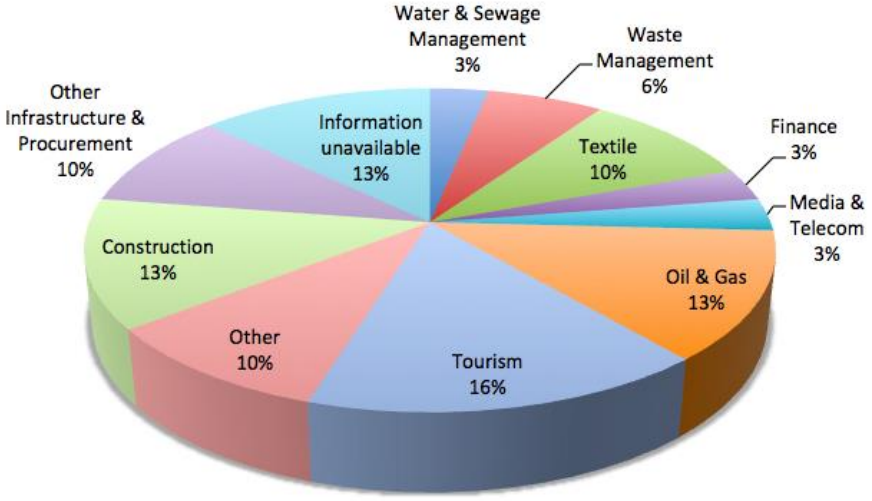
EGYPT

ISDS Case Statistics

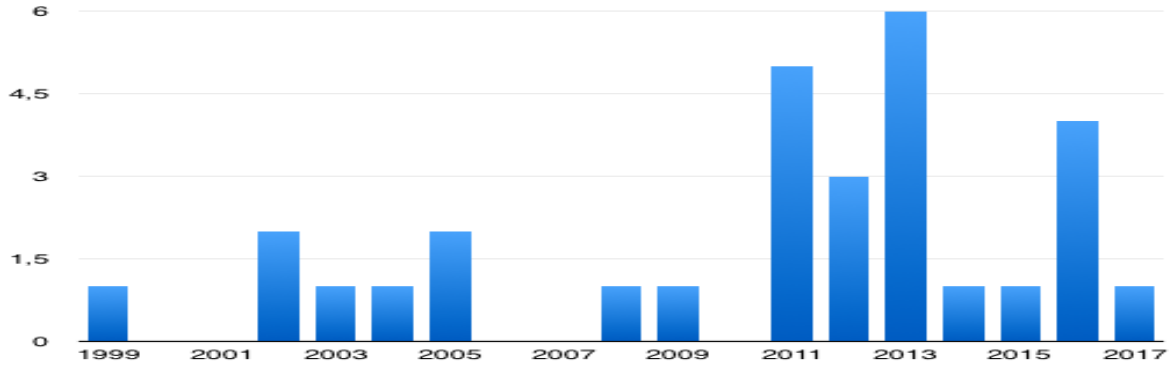
Status of Egypt's ISDS Cases



Distribution of Egypt's ISDS Cases by Sector of the Economy



Number of ISDS Cases per Calendar Year



Egypt's ISDS Cases As Respondent State

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
1	2017	Future Pipe v. Egypt	Investment: Investments in building a water and sewage distribution network in "New Cairo", Egypt's new administrative capital, pursuant to a contract with the State.	Pending	Egypt	Netherlands
2	2016	Al Jazeera v. Egypt	Investment: Investments in multimedia broadcasting operations. Summary: Claims arising out of alleged destruction of the claimant's media business in Egypt, by means of arrest and detention of employees, attacks on facilities, interference with transmissions and broadcasts, closure of offices, cancellation of claimant's broadcasting licence and compulsory liquidation of its local branch.	Pending	Egypt	Qatar
3	2016	Champion Holding Company and others v. Egypt		Pending	Egypt	United States of America
4	2016	Fund III and others v. Egypt		Pending	Egypt	United States of America
5	2016	Nile Douma v. Egypt		Pending	Egypt	Bahrain

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
6	2015	ArcelorMittal v. Egypt	Investment: Investments in the construction of a steel plant. Summary: Claims arising out of the Government's alleged refusal to extend the development period for the claimant's steel plant construction project, followed by a process to revoke the claimant's licenses. According to the claimant, the construction was delayed due to the occupation of the property and problems with gas and electricity supply.	Settled	Egypt	Luxembourg
7	2014	Unión Fenosa Gas v. Egypt	Investment: Majority shareholding (80 per cent) in SEGAS, an Egyptian company that operated the Damietta liquefied natural gas plant in the port of Damietta. Summary: Claims arising out of the alleged suspension of gas supplies by the Government to a liquefied natural gas plant operated by the claimant, which caused the plant to be inoperative for over a year.	Pending	Egypt	Spain
8	2013	Al Sharif v. Egypt (I)	Investment: Shareholding in the Sokhna Port Development Company that operates the Port of North El Sokhna. Summary: Claims arising out of the alleged interference by the Government with claimant's investments in a port development project.	Settled	Egypt	Jordan

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
9	2013	Al Sharif v. Egypt (II)	Summary: Claims arising out of the alleged interference by the Government with claimant's investments in a customs system project.	Settled	Egypt	Jordan
10	2013	Al Sharif v. Egypt (III)	Investment: Shareholding in the company Amiral Holdings, which formed part of the winning consortium for a 25-year concession to develop a bulk liquids terminal in East Port Said. Summary: Claims arising out of the alleged interference by the Government with claimant's investments in a bulk liquids terminal project.	Settled	Egypt	Jordan
11	2013	ASA v. Egypt	Investment: Majority shareholding (85 per cent) in Ama Arab Environment Company that held two solid waste management contracts in Cairo. Summary: Claims arising out of alleged Government measures that affected claimant's investment in a company that had concluded contracts for waste management services in Cairo.	Settled	Egypt	Italy
12	2013	Cementos La Union v. Egypt	Investment: Majority shareholding (60 per cent) in the cement manufacturing company Arabian Cement Company that had concluded the construction of a cement production facility in Suez. Summary: Claims arising out of the alleged overpricing by the Government of an operating license for a cement manufacturing	Pending	Egypt	Spain

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
			plant, and the application of an allegedly uncommon system of granting the licenses through tenders.			
13	2013	Utsch and others v. Egypt	Investment: Rights under a contract concluded with Egypt's Ministry of Finance for the manufacture and delivery of 9 million vehicle license plates. Summary: Claims arising out of the Government's termination of a license plate supply and manufacturing contract concluded with the claimants, on the alleged basis that the transaction was closed for an uncompetitive price, leading to the conviction of Utsch's chief executive officer.	Discontinued	Egypt	Germany
14	2012	Ampal-American and others v. Egypt	Investment: Shareholding in a consortium that held a long term gas supply contract with the Egyptian General Petroleum Corporation and the Egyptian Natural Gas Holdings. Summary: Claims arising out of alleged breaches of a long term contract for the supply of natural gas between the parties, including the prolonged interruption of gas supply and failure to deliver the agreed volume of gas.	Pending	Egypt	United States of America Germany
15	2012	Maiman and others v. Egypt	Investment: Shareholding in EMG, a company that had concluded a 15 year contract with the Egyptian General Petroleum Corporation and the Egyptian Natural Gas Holdings to resell Egyptian natural gas.	Pending	Egypt	Poland

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
			Summary: Claims arising out of the alleged Government's failure to protect a gas pipeline in which the claimants had invested from attacks that took place during the Arab Spring.			
16	2012	Veolia v. Egypt	Investment: Rights under a 15-year contract concluded with the governorate of Alexandria to provide waste management services in that city. Summary: Claims arising out of disagreements over the performance of a contract entered into between Veolia's subsidiary, Onyx Alexandria, and the governorate of Alexandria to provide waste management services, including Egypt's alleged refusal to modify the contract in response to inflation and the enactment of new labour legislation.	Pending	Egypt	France
17	2011	Bahgat v. Egypt	Investment: Investments in an iron ore venture and a steel plant. Summary: Claims arising out of criminal charges allegedly brought against the claimant by the Government and a related seizure of the claimant’s assets. According to the claimant, the assets were not returned after the domestic courts’ dismissal of the criminal charges.	Pending	Egypt	Finland
18	2011	Bawabet v. Egypt	Investment: Interests in an Alexandria-based fertilizer supply company. Summary: Claims arising out of the Government's cancellation of	Settled	Egypt	Kuwait

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
			the free zone status in which the claimant's fertilizer company operated, along with the increase in the price of gas supplied under certain contract.			
19	2011	Indorama v. Egypt	Investment: Shareholding in an Egyptian textile production company. Summary: Claims arising out of the Government's renationalisation of Indorama's Shebin al-Kom textile factory, in the Menoufia province.	Settled	Egypt	United Kingdom
20	2011	National Gas v. Egypt	Investment: Right to arbitrate under a concession agreement concluded between claimant (allegedly owned by a UAE company) and Egypt's national oil company. Summary: Claims arising out of the decision by Cairo Court of Appeal to set aside a commercial arbitration award rendered in favour of National Gas against the state-owned Egyptian General Petroleum Company under a gas pipelines construction and operation agreement, on the alleged basis that the arbitration clause in the concession agreement had not been approved by the competent authorities as required by Egyptian law.	Decided in favour of State	Egypt	United Arab Emirates
21	2011	Sajwani v. Egypt	Investment: Ownership of 30 square kilometers of land near the Red Sea for a property development project. Summary: Claims arising out of the Government's conviction of	Settled	Egypt	United Arab Emirates

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
			Mr. Sajwani and of Egypt's tourism minister on grounds of corruption concerning the investor's acquisition of land in Gamsha Bay for the development of a residential complex.			
22	2009	H&H v. Egypt	Investment: Rights under a hotel management and operation contract concluded between the claimant and Grand Hotels of Egypt (GHE), a company owned by the Egyptian Government; option to buy in the form of a one-page letter addressed to the then chairman of GHE. Summary: Claims arising out of disagreements between the parties concerning a contract to manage and operate a resort in El Ain El Sokhna including the denial of claimant's alleged right to purchase the resort under an option to buy agreement leading to litigation before domestic courts and the Government's subsequent eviction of H&H from the resort.	Decided in favour of State	Egypt	United States of America
23	2008	Malicorp v. Egypt	Investment: Rights under a contract concluded with the Government for the construction and operation of an international airport. Summary: Claims arising out of the Government's rescission of a contract for the construction and operation of the Ras Sudr international airport in Sinai.	Decided in favour of State	Egypt	United Kingdom

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
24	2005	Helnan v. Egypt	Investment: Rights under a contract for the management and the operation of a hotel concluded with the Egyptian Organization for Tourism and Hotels (EGOTH). Summary: Claims arising out of the claimant's eviction from the management of the Shepheard Hotel in Cairo, following a decision of the Egyptian Ministry of Tourism to downgrade the hotel's classification from the five star status required under certain management contract, and an award by an arbitral tribunal appointed under the Cairo Regional Centre for International Commercial Arbitration to decide the underlying contractual dispute.	Decided in favour of State	Egypt	Denmark
25	2005	Siag v. Egypt	Investment: Majority shareholding in two local companies that acquired a parcel of oceanfront land for the development of a tourist resort on the Gulf of Aqaba on the Red Sea. Summary: Claims arising out of a series of acts and omissions by the respondent that allegedly expropriated claimants' property of oceanfront land, including the issuance of a ministerial resolution cancelling the project's contract and the physical seizure of the property on two occasions.	Decided in favour of investor	Egypt	Italy
26	2004	Jan de Nul and and Dredging International v. Egypt	Investment: Rights under a contract concluded with Egyptian authorities to undertake a dredging project; contributions of capital and other type of assets required to perform the dredging	Decided in favour of State	Egypt	Belgium

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
			activities. Summary: Claims arising out of disagreements over additional compensation allegedly due to the investor under a contract it had entered into with the Egyptian agency in charge of the operation of the Suez Canal for the deepening and widening of certain southern stretches of the Canal.			
27	2003	Joy Mining v. Egypt	Investment: Rights under a contract for supply of phosphate mining equipment concluded with an Egyptian State enterprise. Summary: Claims arising out of the investor's supply of two sets of phosphate mining equipment to an Egyptian State enterprise, IMC, for a project in Egypt under a contract requiring the claimant to put in place letters of guarantee, including allegations that the equipment was paid but the relevant guarantees were never released.	Decided in favour of State	Egypt	United Kingdom
28	2002	Ahmonseto v. Egypt	Investment: Majority shareholding in three textile Egyptian companies. Summary: Claims arising out of the modification by a bank allegedly controlled by Egypt of its credit policy towards the claimants, certain customs duties and taxes assessed against the claimants, and four separate criminal proceedings initiated against them.	Decided in favour of State	Egypt	United States of America

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
29	2002	Champion Trading and Ameritrade v. Egypt	Investment: Shareholding in a cotton trading and processing company. Summary: Claims arising out of the enactment of Egyptian laws in the mid-1990s privatizing and liberalizing cotton trade.	Decided in favour of State	Egypt	United States of America
30	1999	Middle East Cement v. Egypt	Investment: Ownership of branch enterprise licensed to import and store bulk cement in depot ship. Summary: Claims arising out of Egypt's alleged expropriation of Middle East Cement's interests in a business concession located in Egypt and Egypt's alleged failure to ensure the re-exportation of Middle East Cement's assets.	Decided in favour of investor	Egypt	Greece
31	1998	Wena Hotels v. Egypt	Investment: Rights under two long-term hotel lease and development agreements concluded with a company wholly owned by the Egyptian Government. Summary: Claims arising out of the alleged breach of agreements to develop and manage two hotels in Luxor and Cairo, Egypt, as well as an alleged campaign of continual harassment to the investor by the Government of Egypt.	Decided in favour of investor	Egypt	United Kingdom

Egypt's ISDS Cases as home State of applicant

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
1	2016	Global Telecom Holding v. Canada	Investment: Interests in a Canadian telecommunications enterprise, Globalive Wireless Management Corporation ("Wind Mobile"), from 2008 to 2014. Summary: Claims arising out of the Government's alleged failure to create a fair, competitive and favourable regulatory environment for new investors in the telecommunications sector.	Pending	Canada	Egypt
2	2012	OTH v. Algeria	Investment: Shareholding in the telecommunications company Orascom Telecom Algeria. Summary: Claims arising out of a series of alleged Government measures against Orascom, including a court judgment against it imposing a fine of approximately USD 1.3 billion and a criminal sentence against a member of OTA's senior executive team.	Settled	Algeria	Egypt
3	2000	Eastern Company v. Lebanon		Data not available	Lebanon	Egypt

Source: Own Charts. All information obtained at http://investmentpolicyhub.unctad.org/

ISRAEL

Israel's ISDS Cases as Respondent State

There are currently no cases listed with Israel as a Respondent.

Israel's ISDS Cases as home State of the Applicant

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
1	2010	Metal-Tech v. Uzbekistan	Investment: Rights as a member to a joint venture established by a government resolution to manufacture molybdenum products from ore deposits in the Tashkent region; capital contributions for the construction of two processing plants in the towns of Almalik and Chirchik in eastern Uzbekistan. Summary: Claims arising out of the Government's termination of a raw material supply contract, the cancellation of claimant's exclusive right to export refined molybdenum oxide, and criminal proceedings against management of the company in which the claimant had investment for alleged abuse of authority.	Decided in favour of State	Uzbekistan	Israel
2	2007	Fuchs v. Georgia	Investment: Co-ownership of a Panamanian company that had executed a joint venture agreement with a State-owned company and created a joint venture vehicle that held a Deed of Concession over certain oil and gas pipelines in Georgia. Summary: Claims arising out of a Government's decree cancelling the concession rights of an investment vehicle in which Mr. Ioannis Kardassopoulos and Mr. Ron Fuchs held interests, devoted to the	Decided in favour of investor	Georgia	Israel

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
			development of an oil pipeline to transport oil and gas from Azerbaijan to the Black Sea.			
3	2006	Phoenix Action v. Czech Republic	Investment: Ownership of two Czech companies, Benet Praha, spol. s.r.o. and Benet Group, a.s., involved in the trading of ferroalloys. Summary: Claims arising out of the alleged continuous freezing of funds in a number of bank accounts belonging to claimant's companies, the seizure of accounting and business documents, as well as Czech courts' delays in the different actions brought by the investor's companies.	Decided in favour of State	Czech Republic	Israel

Source: http://investmentpolicyhub.unctad.org/

JORDAN

Jordan's ISDS Cases as Respondent State

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
1	2015	Alyafei v. Jordan (I)	Investment: Shareholding in the Amman-based Housing Bank of Trade and Finance. Summary: Claims arising out of the alleged breach of a share purchase agreement the claimant signed with Jordan's Social Security and Investment Fund (SSIF) in 2012 to purchase the latter's shares in Housing Bank of Trade and Finance; in particular the alleged non-payment of a "break-up fee" stipulated in the agreement.	Discontinued	Jordan	Qatar
2	2015	Alyafei v. Jordan (II)	Investment: Shareholding in the Amman-based Housing Bank of Trade and Finance. Summry: Claims arising out of the alleged breach of a share purchase agreement the claimant had signed with Jordan's Social Security and Investment Fund (SSIF) in 2012 to purchase the latter's shares in the Housing Bank of Trade and Finance; in particular the alleged non-payment of a "break-up fee" stipulated in the agreement.	Discontinued	Jordan	Qatar

Jordan's ISDS Cases as home State of Applicant

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
1	2017	Al Ramahi v. Hungary	Investment: Investments in a hotel chain in Budapest.	Pending	Hungary	Jordan
2	2017	Itisaluna Iraq and others v. Iraq		Pending	Iraq	Jordan United Arab Emirates
3	2014	Dagher v. Sudan	Investment: Shareholding, through certain intermediary companies, in the Sudanese company Jet Net, which held license rights to build, operate and own a retail business of wireless communications granted by the Sudanese Ministry of Communications. Summary: Claims arising out of the Government's alleged failure to grant frequencies for a wireless internet network that was built by a company in which the claimant held shares.	Pending	Sudan	Jordan Lebanon
4	2013	Al Sharif v. Egypt (I)	Investment: Shareholding in the Sokhna Port Development Company that operates the Port of North El Sokhna. Summary: Claims arising out of the alleged interference by the Government with claimant's investments in a port development project.	Settled	Egypt	Jordan

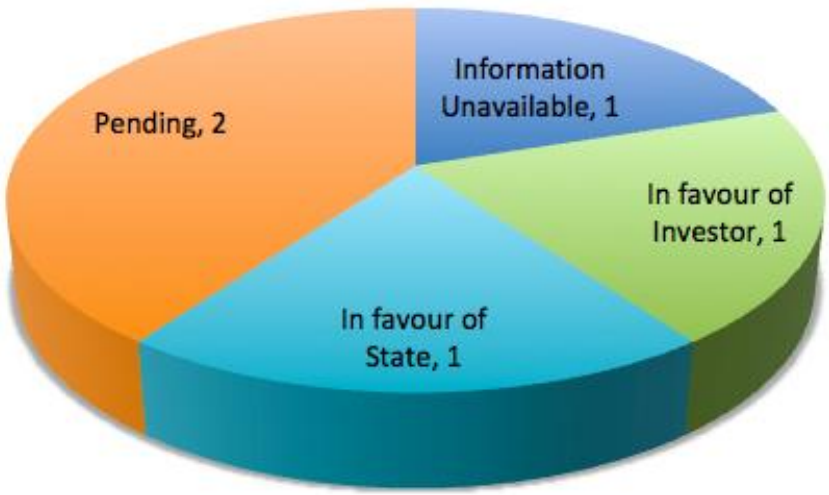
No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
5	2013	Al Sharif v. Egypt (II)	Summary: Claims arising out of the alleged interference by the Government with claimant's investments in a customs system project.	Settled	Egypt	Jordan
6	2013	Al Sharif v. Egypt (III)	Investment: Shareholding in the company Amiral Holdings, which formed part of the winning consortium for a 25-year concession to develop a bulk liquids terminal in East Port Said. Summary: Claims arising out of the alleged interference by the Government with claimant's investments in a bulk liquids terminal project.	Settled	Egypt	Jordan
7	2009	East Cement v. Poland	Investment: Interests in a cement production facility. Summary: Claims arising out of a decision by a Polish bankruptcy court concerning claimant's alleged investment in a cement manufacturing plant.	Discontinued	Poland	Jordan

Source: http://investmentpolicyhub.unctad.org/

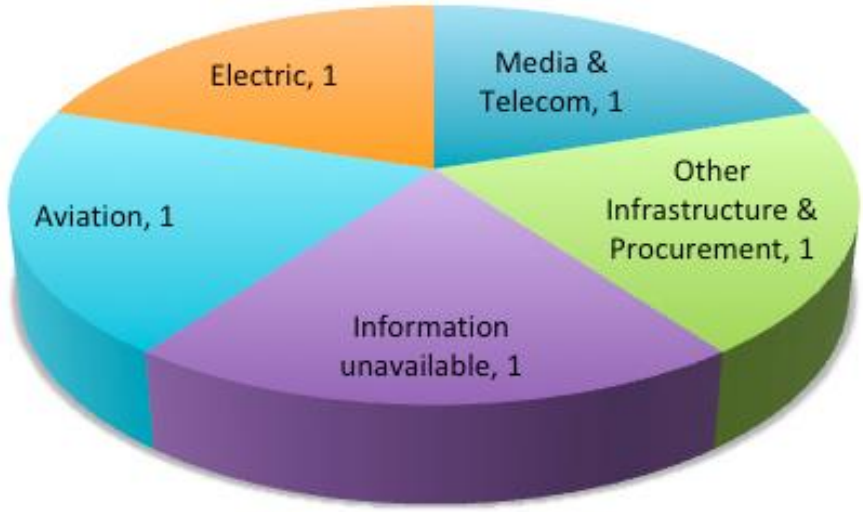
LEBANON

ISDS Case statistics

Status of Lebanon's ISDS Cases



Distribution of Lebanon's ISDS Cases by Sector of the Economy



ISDS Cases as Respondent State

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
1	2016	J&P-AVAX v. Lebanon	Investment: Investments in an electric power generation project.	Pending	Lebanon	Greece

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
2	2015	El Jaouni v. Lebanon	Investment: Ownership of company ImperialJet, which operates a fleet of private jets for charter and lease throughout Europe and the Middle East. Summary: Claims arising out of the alleged expropriation and unlawful revocation of aviation licenses by the Lebanese government from the claimant's subsidiary, ImperialJet.	Pending	Lebanon	Germany
3	2007	Toto v. Lebanon	Investment: Rights under a contract concluded between Lebanon's Conseil Exécutif des Grands Projets and claimant for constructing a section of a highway linking Beirut to Damascus. Summary: Claims arising out of alleged interferences by the Lebanese Government that caused material damage to the construction project of a highway in which the claimant had invested, followed by its refusal to adopt adequate corrective measures; for instance, changing the regulatory framework, failing to deliver sites, failing to protect Toto's legal possession, and giving erroneous design information and instructions.	Decided in favour of State	Lebanon	Italy
4	2002	France Telecom v. Lebanon	Investment: Rights under a contract to operate a GSM mobile telephone network. Summary: Claims arising out of the Government's	Decided in favour of investor	Lebanon	France

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
			termination of a contract entered into with the investor to implement cellular GSM services in Lebanon.			
5	2000	Eastern Company v. Lebanon		Data not available	Lebanon	Egypt

ISDS Cases as home State of Applicant

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
1	2016	Safa v. Greece	Investment: Co-ownership of the Privinvest Group, a naval shipbuilding group, which acquired a majority stake in Hellenic Shipyards SA in 2010. Summary: Claims arising out of the Government's allegedly unlawful actions related to Hellenic Shipyards, an operator of a large shipyard near Athens, including a claim for EUR 300 million from a State-owned entity, a prohibition for the shipyard to work for foreign navies and stopped payments under contracts.	Pending	Greece	Lebanon
2	2014	Dagher v. Sudan	Investment: Shareholding, through certain intermediary companies, in the Sudanese company Jet Net, which held license rights to build, operate and own a retail business	Pending	Sudan	Jordan Lebanon

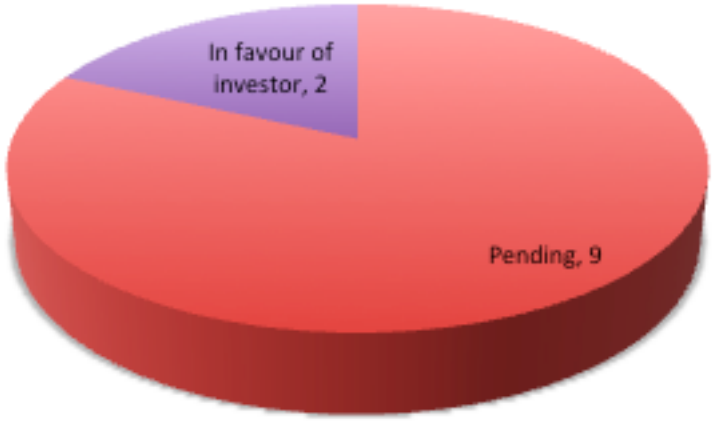
No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
			of wireless communications granted by the Sudanese Ministry of Communications. Summary: Claims arising out of the Government's alleged failure to grant frequencies for a wireless internet network that was built by a company in which the claimant held shares.			
3	2014	Saab v. Cyprus	Investment: Ownership of Tanzanian-based FBMME Bank, which conducted most of its operations in Cyprus. Summary: Claims arising out of the decision by Cyprus' Central Bank to place under administration and sell off two Cypriot branches of a bank owned by the claimants, following accusations that the bank was involved in money laundering operations.	Pending	Cyprus	Lebanon

Source: Own Charts. All information obtained at http://investmentpolicyhub.unctad.org/

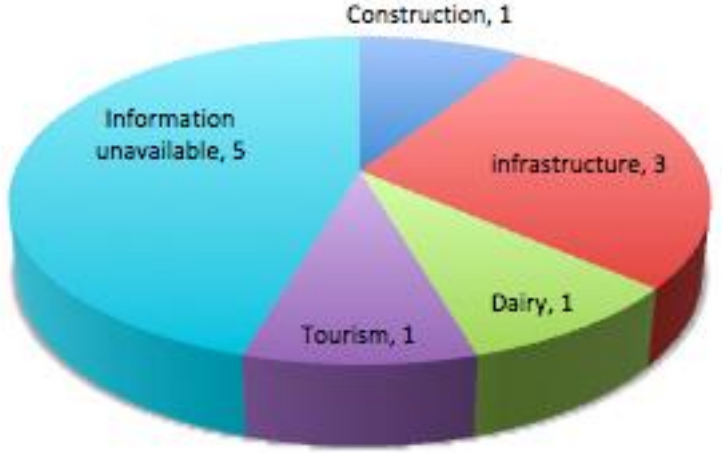
LIBYA

ISDS Case Statistics

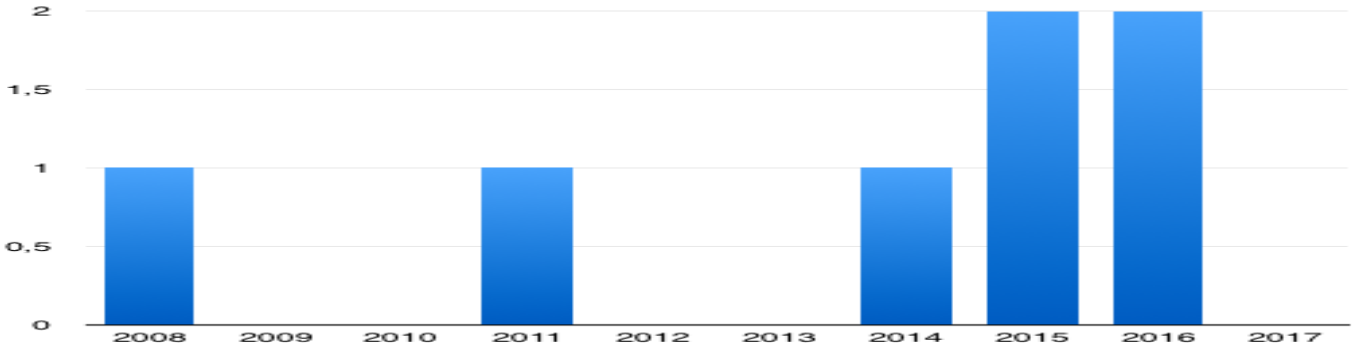
Status of Libya's ISDS Cases



Distribution of Libya's ISDS Cases by Sector of the Economy



Number of ISDS Cases per Calendar Year



Libya's ISDS cases as Respondent State

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
1	2017	Ustay v. Libya		Pending	Libya	Turkey
2	2016	Cengiz v. Libya		Pending	Libya	Turkey
3	2016	D.S. Construction v. Libya	Investment: Contracts for 19 construction projects in Libya. Summary: Claims arising out of the State's acts and omissions prior to, during and after the revolution in Libya, which allegedly caused damages to the claimant's investment.	Pending	Libya	United Arab Emirates
4	2016	Etrak v. Libya		Pending	Libya	Turkey
5	2016	Güriş v. Libya		Pending	Libya	Turkey
6	2016	Nurol v. Libya		Pending	Libya	Turkey
7	2015	Strabag v. Libya	Summary: Claims arising out of alleged non-payment for services under contracts entered into prior to the revolution in Libya and damages for the alleged theft of equipment post-revolution.	Pending	Libya	Austria
8	2015	Tekfen and TML v. Libya	Investment: Investments in the construction of a large water pipeline network undertaken by the joint venture Tekfen TML JV.	Pending	Libya	Turkey

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
			Summary: Claims arising out of the suspension of operations of the claimants' joint venture Tekfen TML JV related to the Great Man Made River project, in which Tekfen TML JV was involved since 2006 as a contractor of the Libyan Man-Made River Authority, and the evacuation of its work sites owing to civil unrest and to adverse developments in Libya since February 2011.			
9	2014	Olin v. Libya	Investment: Investments in a dairy factory. Summary: Claims arising out of the alleged expropriation of the claimant's dairy factory.	Pending	Libya	Cyprus
10	2011	Al-Kharafi v. Libya and others	Investment: Rights under a lease agreement for the establishment of a tourism project concluded with the Tourism Development Authority. Summary: Claims arising out of the issuance of a decision by the Libyan Minister of Industry, Economy and Trade by virtue of which a licence previously granted to the claimant for the establishment of a touristic investment project in Tripoli, Libya, was annulled.	Decided in favour of investor	Libya	Kuwait
11	2008	Intersema Bau v. Libya	Investment: Several construction contracts with a Libyan municipal authority. Summary: Claims arising out of the Government's	Decided in favour of investor	Libya	Switzerland

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
			alleged failure to uphold the terms of a 2005 settlement agreement between the claimant and the Government related to construction contracts for road, water, sewage and lighting infrastructure, including the non-payment of CHF 13 million of the 31 million settlement sum.			

Libya's ISDS cases as home State of the Applicant

There are currently no cases listed with Libya as home State of the applicant.

Source: Own Charts. All information obtained at http://investmentpolicyhub.unctad.org/

MOROCCO

Morocco's ISDS cases as Respondent State

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
1	2000	RFCC v. Morocco	Investment: Concession contract for the construction of a specific section of a highway in Morocco. Summary: Claims arising out of several events occurred before, during and after the performance of a concession contract granted to the claimant by public bid and signed by a State-owned company.	Decided in favour of State	Morocco	Italy
2	2000	Salini v. Morocco	Investment: Public procurement agreement for highway construction. Summary: Claims arising out of the non-payment of the contract price to the claimant in relation to a public procurement contract for the construction of a highway, which had been awarded to the investor through tender.	Settled	Morocco	Italy

Morocco's ISDS cases as home State of applicant

There are currently no cases listed with Morocco as the home State of the applicant.

Source http://investmentpolicyhub.unctad.org/

TUNISIA

Tunisia's ISDS cases as respondent State

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
1	2004	ABCI Investments v. Tunisia	Investment: Acquisition of shares in a banking institution. Summary: Claims arising out of the alleged takeover of claimant's controlling stake in a French-Tunisian bank by duress, including criminal proceedings against shareholders taken by the respondent following claimant's attempts to enforce an ICC award.	Pending	Tunisia	Netherlands

Tunisia's ISDS cases as home State of Applicant

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
1	2015	KCI v. Gabon	Investment: Contracts with the government for construction of 5,000 residential units as part of the government's programme to guarantee a decent home for all. Summary: Claims arising out of alleged discontinuation of government funding for the construction of 5,000 residential units in Gabon's capital, in alleged violation of the government's contractual obligations.	Decided in favour of investor	Gabon	Tunisia

Source: http://investmentpolicyhub.unctad.org/

Annex 2:

Dispute settlement provisions in investment laws of MED countries

ALGERIA

Law No. 2016-09 of 3 August 2016 ***relative a la promotion de l'investissement***

Article 24

Tout différend né entre l'investisseur étranger et l'Etat algérien, résultant du fait de l'investisseur ou d'une mesure prise par l'Etat algérien à l'encontre de celui-ci, sera soumis aux juridictions algériennes territorialement compétentes, sauf conventions bilatérales ou multilatérales conclues par l'Etat algérien, relatives à la conciliation et à l'arbitrage ou accord avec l'investisseur stipulant une clause compromissoire permettant aux parties de convenir d'un compromis par arbitrage ad-hoc.

EGYPT

Investment Law No. 72 of 2017

Section V. Settlement of investment disputes

Article 82

Without prejudice to the right to litigation, any dispute arising between the Investor and any one or more government bodies in relation to the Investor's capital or the interpretation or enforcement of the provisions of this Law may be settled amicably through negotiations among the disputing parties.

Chapter I. The Grievance committee

Article 83

One or more committees shall be established in the Authority to examine the complaints filed against the resolutions issued in accordance with the provisions of this Law by the Authority or the authorities concerned with the issuance of the approvals, permits, and licenses.

A committee shall be formed and chaired by a judge from a judicial body to be determined by the boards of such bodies and the Committee shall include a representative of the Authority and a person with experience as members.

The composition, system of work, and technical secretariat of the Committee shall be determined by a decision issued by the Competent Minister.

Article 84

The complaints shall be submitted to the Committee within 15 days from the date of notice or knowledge of the decision petitioned against. Filing of the complaint shall lead to the interruption of the periods of challenge. The Committee may contact the parties in question and the competent administrative authorities to request for clarifications, documents and answers to the inquiries it sees necessary, and it may draw on the diverse expertise and specializations available to the Authority and to other administrative authorities.

The Committee shall settle the matters brought thereto by a justified decision within 30 days from the date of closing of hearings and submissions. The Committee's decision shall be irrevocable and binding on all the competent authorities, without prejudice to the Investor's right to resort to the judiciary.

The Executive Regulations of this Law shall indicate the Committee's venue and method of notification of its decisions.

Chapter II. Ministerial committee on investment dispute resolution

Article 85

A ministerial committee entitled "Ministerial Committee on Investment Dispute Resolution" shall be established to look into the applications, complaints, or disputes submitted or referred thereto which would arise among the investors and the State or where one of the State's bodies, authorities, or companies are party to.

The Committee shall be formed by a decree issued by the Prime Minister. One of the deputies of the President of the Egyptian Council of State shall be a member of the Committee and he shall be selected by the Administrative Affairs Council at the Egyptian Council of State. The Committee's decisions shall be endorsed by the Cabinet of Ministers. The ministers who serve as members of the Committee may delegate representatives when necessary to attend the Committee's meetings and vote on its decisions.

The Committee shall have a technical secretariat, whose composition and system of work shall be determined by a decision issued by the Competent Minister.

Article 86

The Committee's meeting shall only be valid if it is attended by its Chairperson and at least 50% of its primary members. The Committee shall issue its decisions by the majority of the votes of the attendants. In case of parity, the Chairperson shall have a casting vote.

The competent administrative authority shall submit the explanatory memoranda and the required documents upon request. If such competent administrative authority is a member of the Committee, it shall have no vote in the deliberations conducted on the subject related thereto.

The Committee shall settle the matters brought thereto by a justified decision within 30 days from the date of closing of hearings and submissions.

Article 87

Without prejudice to the Investor's right to resort to the judiciary, the Committee's decisions, upon being approved by the Cabinet of Ministers, shall be enforceable and binding on the competent administrative authorities and they shall have the executive power. Failure to enforce the Committee's decisions shall cause the enforcement of the provisions of Article (123) of the Penal Code and the penalty prescribed therein. Lodging of complaints against the Committee's decision shall not suspend enforcement thereof.

Chapter III. Ministerial committee on investment contracts dispute resolution

Article 88

A ministerial committee entitled "Ministerial Committee on Investment Contracts Dispute Resolution" shall be established in the Cabinet of Ministers to settle the disputes arising from the investment contracts where the State, or one of its bodies, authorities, or companies is party to.

This Committee shall be formed by a decree issued by the Prime Minister. One of the deputies of the President of the Egyptian Council of State shall be a member of the Committee and he shall be selected by the Administrative Affairs Council at the Egyptian Council of State. The Committee's decisions shall be endorsed by the Cabinet of Ministers. Attending of the Committee's sessions may not be delegated.

The Committee's meeting shall only be valid if it is attended by its Chairperson and 50% of its members. The Committee shall issue its decisions by the majority of the votes. In case of parity, the Chairperson shall have a casting vote.

The Committee shall have a technical secretariat, whose composition and system of work shall be determined by a decree issued by the Prime Minister.

Article 89

The Committee shall examine and explore the differences arising between the parties to the investment

contracts. To such end, and with the consent of the contracting parties, it may perform the necessary settlement to handle the imbalance of such contracts, and extend the terms, periods, or grace periods provided for in such contracts.

Whenever it is required, the Committee shall further reschedule the financial dues or rectify the procedures which precede the conclusion of contracts, in a manner that achieves the contractual balance to the extent possible and ensures an optimal economic situation for the preservation of public funds and the investor's rights in view of the conditions of each case.

The Committee shall present a report of its findings on the settlement to the Cabinet of Ministers which shall indicate all the elements of the settlement. Upon being approved by the Cabinet of Ministers, such settlement shall be enforceable and binding on the competent administrative authorities and it shall have the executive power.

Chapter IV. The amicable dispute settlement means and the arbitration and mediation centre

Article 90

The investment disputes related to the enforcement of the provisions of this Law may be settled in the way agreed upon with the Investor or pursuant to the provisions of the Law on Arbitration in the Civil and Commercial Matters promulgated by Law No. 27 of 1994.

At any point throughout the dispute, both parties may agree to pursue all types of settlement pursuant to the applicable dispute settlement rules, including the ad hoc arbitration or the institutional arbitration.

Article 91

An independent arbitration and mediation centre entitled "The Egyptian Arbitration and Mediation Centre" shall be established and shall have the legal personality, and it is seat shall be in Cairo.

The Centre shall pursue the settlement of the investment disputes which may arise among the investors, or among the investors and the State or one of the State's public or private bodies, should they agree at any point to settle the dispute through arbitration of mediation before this Centre, subject to the provisions of Egypt's laws which regulate the arbitration and dispute settlement.

The management of the Centre shall be assumed by a Board of Directors that comprises of 5 members who have the experience, specialization, competence, and good reputation, and they shall be appointed by a decree issued by the Prime Minister.

The term of the Board of Directors shall be 5 years which shall be renewed for one term. No member of the Board may be removed during this term, except if he becomes medically ineligible to discharge his duties, discredited or disrepute, or committed material default on his duties in accordance with the Articles of Association of the Centre.

The Board members, including its Chairman, shall be elected. The Centre shall have a Chief Executive Officer whose appointment and financial remuneration shall be determined by a decision issued by the Board of Directors.

The Centre's Board of Directors shall issue a decision of the Articles of Association and system of work of the Centre, the professional rules and procedures regulating the Centre, the consideration of the services provided by the Centre, and the lists of arbitrators and mediators and their fees. The Articles of Association of the Centre shall be published in Al- Waqa'i`a al-Masriya (Gazette).

The Centre's financial resources shall consist of the consideration of the services delivered by the Centre as specified by its Articles of Association.

During the first three years from the date that this Law enters into force, sufficient financial resources shall be provided for the Centre from the State's Public Treasury. Other than that, the Centre may not obtain any fund from the State or any of its bodies.

ISRAEL

Law unavailable.

JORDAN

Investment Law No. 30-2014

Article 43

The investment disputes between the Governmental parties and the investor will be settled amicably within a maximum period of six months, otherwise the two parties to the dispute may resort to the Jordanian courts, settle disputes according to the Jordanian Arbitration Law or resort to alternative means for resolving disputes by mutual agreement of both parties.

LEBANON

Investment Law No. 360-2001

Article 18

Disputes between the Authority and the investor resulting from the incentive package deal contract shall be solved amicably. In the absence of amicable solution, arbitration shall be sought in Lebanon or in any other international arbitration center, provided that this is determined in advance when applying to subject the project to the provisions of this Law and provided that the request meets the approval of the Board of Directors and is endorsed by the tutorship authority. The rules and regulations governing arbitration shall be determined by a decree issued by the Council of Ministers based on proposal of the President of the Council of Ministers.

LIBYA

Law No. 9-2010 on Investment Promotion

Article 24. Settlement of disputes

Any dispute that may arise between the foreign investor and the state, which may be attributed to the investor or due to procedures taken against him by the state, shall be forwarded to the appropriate courts of the state, unless if there are mutual agreements between the state and the investor's state or multilateral agreements to which the investor's state is a party thereof, including texts relating to reconciliation or arbitration or special agreement between the investor and the state stipulating arbitration as a condition.

MOROCCO

Law No. 18-1995 Establishing the Investment Charter

Article 17

The enterprises whose investment programme is very important on account of its amount, the number of permanent employments to be created, the region where it should be carried out, the technology of which it will ensure the transfer or its contribution to environment protection, can drive contacts with the government granting them, in addition to the advantages provided in this present outline law as well as in the texts that will be issued for its explanation, a partial exemption from the following expenses:

- land acquisition expenses required for investment realisation;
- external infrastructure expenses;
- vocational training costs.

The above mentioned contracts may involve clauses stipulating that the settlement of any disagreement relating to investment which may rise between the government of Morocco and the foreign investors, will be proceeded with in accordance with international conventions ratified by Morocco in international arbitration matters.

PALESTINE

Law No. 1-1998, Law on the Encouragement of Investment

Article 40

a. When either an Investor or the Authority believes that a dispute between them has arisen, it may request that good faith negotiations begin according to procedures established in the Regulations. Either party to a dispute must request good faith negotiations before it may have access to the dispute settlement procedures provided for in paragraph (B) of this Article. .

b. If good faith negotiations fail to resolve the dispute in the period of time specified in the Regulations, either party shall have the right to take the dispute to:

1. Binding, independent arbitration as provided in the Regulations.

2. Palestinian courts.

TUNISIA

Investment Law No. 2016-71

Article 23

Tout diffe□rend entre l'Etat Tunisien et l'investisseur de□coulant de l'interpre□tation ou de l'application des dispositions de la pre□sente loi sera re□gle□ par voie de conciliation a□ moins que l'une des parties n'y renonce par e□crit.

Les parties sont libres de convenir des proce□dures et des re□gles re□gissant la conciliation.

A de□faut, le re□glement de la commission des Nations Unies pour le droit commercial international sur la conciliation s'applique.

Lorsque les parties concluent un accord de transaction, ledit accord tient lieu de loi a□ leur e□gard et s'engagent a□ l'exe□cuter de bonne foi et dans les meilleurs de□lais.

Article 24

Si la conciliation n'aboutie pas au re□glement du litige entre l'Etat Tunisien et l'investisseur e□tranger, le diffe□rend peut être soumis a□ l'arbitrage en vertu d'une convention spe□cifique entre les deux parties.

Si la conciliation n'aboutie pas au re□glement du litige entre l'Etat Tunisien et l'investisseur tunisien et s'il pre□sente un caracte□re objectivement international, le diffe□rend peut être soumis a□ l'arbitrage en vertu d'une convention d'arbitrage. Dans ce cas, les proce□dures d'arbitrage seront re□gies par les dispositions du code de l'arbitrage.

Dans les autres cas, le diffe□rend rele□ve de la compe□tence des juridictions tunisiennes.

Annex 3:

Bilateral Investment Treaties concluded by Mediterranean countries

Algeria

Partner	Status	Date of signature	Date of entry into force
Argentina	In force	04-10-2000	28-01-2002
Austria	In force	17-06-2003	01-01-2006
Bahrain	In force	11-06-2000	16-05-2008
BLEU (Belgium-Luxembourg Economic Union)	In force	24-04-1991	17-10-2002
Bulgaria	In force	25-10-1998	06-06-2002
China	In force	17-10-1996	28-01-2003
Cuba	In negotiation		
Czech Republic	Signed	22-09-2000	
Denmark	In force	25-01-1999	15-07-2005
Egypt	In force	29-03-1997	03-05-2000
Ethiopia	In force	04-06-2002	01-11-2005
Finland	In force	13-01-2005	25-02-2007
France	In force	13-02-1993	27-06-2000
Germany	In force	11-03-1996	30-05-2002
Greece	In force	20-02-2000	21-09-2007
Indonesia	Signed	21-03-2000	
islamic Republic of Iran	In force	19-10-2003	05-12-2005
Italy	In force	18-05-1991	26-11-1993
Jordan	In force	01-08-1996	05-06-1997
Republic of Korea	In force	12-10-1999	30-09-2001
Kuwait	In force	30-09-2001	22-03-2004
Libya	Signed	06-08-2001	
Malaysia	In force	27-01-2000	09-02-2002
Mail	In force	11-07-1996	16-02-1999
Mauritania	Signed	06-01-2008	
Mozambique	In force	12-12-1998	25-07-2000
Netherlands	In force	20-03-2007	01-08-2008
Niger	Signed	16-03-1998	
Nigeria	Signed	14-01-2002	
Oman	In force	09-04-2000	22-06-2002
Portugal	Terminated	15-09-1994	
Portugal	In force	15-09-2004	08-09-2005
Qatar	Signed	24-10-1996	
Romania	In force	28-06-1994	30-12-1995
Russian Federation	Signed	10-03-2006	
Serbia	In force	13-02-2012	25-11-2013
South Africa	Signed	24-09-2000	
Spain	In force	23-12-1994	17-01-1996
Sudan	Signed	24-10-2001	
Sweden	In force	15-02-2003	01-04-2005
Switzerland	In force	30-11-2004	15-08-2005
Syrian Arab Republic	Signed	14-09-1997	
Tajikistan	Signed	11-03-2008	

Partner	Status	Date of signature	Date of entry into force
Tunisia	Signed	17-02-2006	
Turkey	Signed	03-06-1998	
Ukraine	In negotiation		
United Arab Emirates	In force	24-04-2001	03-06-2002
Viet Nam	Signed	21-10-1996	
Yemen	Signed	25-11-1999	
TOTAL	**47**	**47**	**30**

Egypt

Partners	Status	Date of signature	Date of entry into force
Albania	In force	22-05-1993	06-04-1994
Algeria	In force	29-03-1997	03-05-2000
Argentina	In force	11-05-1992	03-12-1993
Armenia	In force	09-01-1996	01-03-2006
Australia	In force	03-05-2001	05-09-2002
Austria	In force	12-04-2001	29-04-2002
Azerbaijan	Signed (not in force)	24-10-2002	
Bahrain	In force	04-10-1997	11-01-1999
Belarus	In force	20-03-1997	18-01-1999
BLEU (Belgium-Luxembourg Economic Union)	Terminated	28-02-1977	20-09-1978
BLEU (Belgium-Luxembourg Economic Union)	In force	28-02-1999	24-05-2002
Bosnia and Herzegovina	In force	11-03-1998	29-10-2001
Botswana	Signed (not in force)	02-07-2003	
Bulgaria	In force	15-03-1998	08-06-2000
Burundi	Signed (not in force)	13-05-2012	
Cameroon	Signed (not in force)	24-10-2000	
Canada	In force	13-11-1996	03-11-1997
Central African Republic	Signed (not in force)	07-02-2000	
Chad	Signed (not in force)	14-03-1998	
Chile	Signed (not in force)	05-08-1999	
China	In force	21-04-1994	01-04-1996
Comoros	In force	13-11-1994	27-02-2000
Congo, Democratic Republic of the	Signed (not in force)	18-12-1998	
Croatia	In force	27-10-1997	02-05-1999
Cyprus	In force	21-10-1998	11-05-1999
Czech Republic	In force	29-05-1993	04-06-1994
Denmark	In force	24-06-1999	29-10-2000
Djibouti	Signed (not in force)	21-07-1998	
Ethiopia	In force	27-07-2006	27-05-2010

Partners	Status	Date of signature	Date of entry into force
Finland	In force	03-03-2004	05-02-2005
Finland	Terminated	05-05-1980	22-01-1982
France	In force	22-12-1974	01-10-1975
Gabon	Signed (not in force)	22-12-1997	
Georgia	Signed (not in force)	10-08-1999	
Germany	Terminated	05-07-1974	22-07-1978
Germany	In force	16-06-2005	22-11-2009
Ghana	Signed (not in force)	11-03-1998	
Greece	In force	16-07-1993	06-04-1995
Guinea	Signed (not in force)	06-03-1998	
Hungary	In force	23-05-1995	21-08-1997
Iceland	In force	08-01-2008	15-06-2009
India	Terminated	09-04-1997	22-11-2000
Indonesia	Terminated	19-01-1994	29-11-1994
Iran, Islamic Republic of	Signed (not in force)	25-05-1977	
Italy	In force	02-03-1989	01-05-1994
Jamaica	Signed (not in force)	10-02-1999	
Japan	In force	28-01-1977	14-01-1978
Jordan	In force	08-05-1996	11-04-1998
Kazakhstan	In force	14-02-1993	08-08-1996
Korea, Dem. People's Rep. of	In force	19-08-1997	12-01-2000
Korea, Republic of	In force	18-03-1996	25-05-1997
Kuwait	Terminated	02-05-1966	09-08-1966
Kuwait	In force	17-04-2001	26-04-2002
Latvia	In force	24-04-1997	03-06-1998
Lebanon	In force	16-03-1996	02-06-1997
Libya	In force	03-12-1990	04-07-1991
Macedonia, The former Yugoslav Republic of	Signed (not in force)	22-11-1999	
Malawi	In force	21-10-1997	07-09-1999
Malaysia	In force	14-04-1997	03-02-2000
Mali	In force	09-03-1998	07-07-2000
Malta	In force	20-02-1999	17-07-2000
Mauritius	In force	25-06-2014	17-10-2014
Mongolia	In force	27-04-2004	25-01-2005
Morocco	Terminated	03-06-1976	07-09-1978
Morocco	In force	14-05-1997	01-07-1998
Mozambique	Signed (not in force)	08-12-1998	
Netherlands	In force	17-01-1996	01-03-1998
Netherlands	Terminated	30-10-1976	01-01-1978
Niger	Signed (not in force)	04-03-1998	
Nigeria	Signed (not in force)	20-06-2000	
Occupied Palestinian territory	In force	28-04-1998	19-06-1999
Oman	In force	25-03-1998	03-03-2000
Oman	Terminated	28-04-1985	
Pakistan	Signed (not in force)	16-04-2000	

Partners	Status	Date of signature	Date of entry into force
Poland	In force	01-07-1995	17-01-1998
Portugal	In force	29-04-1999	23-12-2000
Qatar	In force	12-02-1999	14-07-2006
Romania	In force	24-11-1994	03-04-1997
Romania	Terminated	10-05-1976	02-01-1977
Russian Federation	In force	23-09-1997	12-06-2000
Senegal	Signed (not in force)	05-03-1998	
Serbia	Terminated	03-06-1977	20-03-1979
Serbia	In force	24-05-2005	20-03-2006
Seychelles	Signed (not in force)	22-01-2002	
Singapore	In force	15-04-1997	20-03-2002
Slovakia	In force	30-04-1997	01-01-2000
Slovenia	In force	28-10-1998	07-02-2000
Somalia	In force	29-05-1982	16-04-1983
South Africa	Signed (not in force)	28-10-1998	
Spain	In force	03-11-1992	26-04-1994
Sri Lanka	In force	11-03-1996	10-03-1998
Sudan	Terminated	28-05-1977	14-03-1978
Sudan	In force	08-07-2001	01-04-2003
Swaziland	Signed (not in force)	18-07-2000	
Sweden	In force	15-07-1978	29-01-1979
Switzerland	Terminated	25-07-1973	04-06-1974
Switzerland	In force	07-06-2010	15-05-2012
Syrian Arab Republic	In force	28-04-1997	05-10-1998
Tanzania, United Republic of	Signed (not in force)	30-04-1997	
Thailand	In force	18-02-2000	27-02-2002
Tunisia	In force	08-12-1989	02-01-1991
Turkey	In force	04-10-1996	31-07-2002
Turkmenistan	In force	23-05-1995	28-02-1996
Uganda	Signed (not in force)	04-11-1995	
Ukraine	In force	21-12-1992	10-10-1993
United Arab Emirates	Terminated	19-06-1988	02-03-1998
United Arab Emirates	In force	11-05-1997	11-01-1999
United Kingdom	In force	11-06-1975	24-02-1976
United States of America	In force	11-03-1986	27-06-1992
Uzbekistan	In force	16-12-1992	08-02-1994
Viet Nam	In force	06-09-1997	04-03-2002
Yemen	Terminated	19-10-1988	03-03-1990
Yemen	In force	06-06-1996	10-04-1998
Zambia	Signed (not in force)	28-04-2000	
Zimbabwe	Signed (not in force)	02-06-1999	
TOTAL	**115**	**115**	**86**

Israel

Partners	Status	Date of signature	Date of entry into force
Albania	In force	29-01-1996	18-02-1997
Argentina	In force	23-07-1995	10-04-1997
Armenia	In force	19-01-2000	25-06-2003
Azerbaijan	In force	20-02-2007	16-01-2009
Belarus	In force	11-04-2000	14-08-2003
Bulgaria	In force	06-12-1993	17-12-1996
China	In force	10-04-1995	13-01-2009
Croatia	In force	01-08-2000	18-07-2003
Cyprus	In force	13-10-1998	17-06-2003
Czech Republic	In force	23-09-1997	16-03-1999
El Salvador	In force	03-04-2000	07-07-2003
Estonia	In force	14-03-1994	23-05-1995
Ethiopia	In force	26-11-2003	15-02-2006
France	In force	09-06-1983	11-01-1985
Georgia	In force	19-06-1995	18-02-1997
Germany	Signed (not in force)	24-06-1976	
Guatemala	In force	07-11-2006	15-01-2009
Hungary	Terminated	14-05-1991	14-09-1992
India	In force	29-01-1996	18-02-1997
Japan	In force	01-02-2017	05-10-2017
Kazakhstan	In force	27-12-1995	19-02-1997
Korea, Republic of	In force	07-02-1999	19-06-2003
Latvia	In force	27-02-1994	09-05-1995
Lithuania	In force	02-10-1994	11-07-1996
Moldova, Republic of	In force	22-06-1997	16-03-1999
Mongolia	In force	25-11-2003	02-09-2004
Montenegro	In force	28-07-2004	07-02-2006
Myanmar	Signed (not in force)	05-10-2014	
Poland	In force	22-05-1991	06-05-1992
Romania	In force	03-08-1998	27-07-2003
Serbia	In force	28-07-2004	07-02-2006
Slovakia	In force	08-09-1999	24-06-2003
Slovenia	In force	13-05-1998	02-10-1999
South Africa	Signed (not in force)	20-10-2004	
Thailand	In force	18-02-2000	28-08-2003
Turkey	In force	14-03-1996	27-08-1998
Turkmenistan	In force	24-05-1995	18-02-1997
Ukraine	Terminated	16-06-1994	18-02-1997
Ukraine	In force	24-11-2010	20-11-2012
Uruguay	In force	30-03-1998	07-10-2004
Uzbekistan	In force	04-07-1994	18-02-1997
TOTAL	**41**	**41**	**38**

Jordan

Partners	Status	Date of signature	Date of entry into force
Algeria	In force	01-08-1996	05-06-1997
Armenia	Signed (not in force)	29-10-2014	
Austria	In force	23-01-2001	25-11-2001
Azerbaijan	In force	05-05-2008	25-12-2008
Bahrain	In force	08-02-2000	05-06-2000
Belarus	In force	20-12-2002	22-12-2005
Bosnia and Herzegovina	In force	02-07-2006	25-11-2011
Bulgaria	In force	07-08-2002	19-04-2003
Canada	In force	28-06-2009	14-12-2009
China	Signed (not in force)	15-11-2001	
Congo, Democratic Republic of the	Signed (not in force)	23-06-2004	
Croatia	In force	10-10-1999	27-04-2000
Cyprus	In force	20-12-2009	19-07-2010
Czech Republic	In force	20-09-1997	25-04-2001
Egypt	In force	08-05-1996	11-04-1998
Estonia	Signed (not in force)	10-05-2010	
Finland	In force	01-11-2006	18-12-2007
France	In force	23-02-1978	18-10-1979
Germany	In force	13-11-2007	28-08-2010
Germany	Terminated	15-07-1974	10-10-1977
Greece	In force	21-02-2005	08-02-2007
Hungary	In force	14-06-2007	09-03-2008
India	In force	30-11-2006	22-01-2009
Indonesia	In force	12-11-1996	09-02-1999
Iraq	Signed (not in force)	25-12-2013	
Italy	In force	21-07-1996	17-01-2000
Kazakhstan	In force	29-11-2006	01-07-2008
Korea, Republic of	In force	24-07-2004	25-12-2004
Kuwait	In force	21-05-2001	19-03-2004
Lebanon	In force	31-10-2002	30-08-2003
Lithuania	In force	13-10-2002	05-05-2003
Malaysia	In force	02-10-1994	03-03-1995
Morocco	In force	16-06-1998	07-02-2000
Netherlands	In force	17-11-1997	01-08-1998
Occupied Palestinian territory	Signed (not in force)	04-10-2012	
Oman	In force	09-04-2007	05-09-2008
Poland	In force	04-10-1997	14-08-1999
Portugal	In force	17-03-2009	06-01-2015
Qatar	In force	28-01-2009	28-05-2009
Romania	In force	02-07-1992	16-03-1999
Russian Federation	In force	13-02-2007	17-06-2009
Saudi Arabia	Signed (not in force)	27-03-2017	

Partners	Status	Date of signature	Date of entry into force
Singapore	In force	16-05-2004	22-08-2005
Slovakia	In force	21-02-2008	09-06-2010
Spain	In force	20-10-1999	13-12-2000
Sudan	In force	30-03-2000	03-02-2001
Switzerland	Terminated	11-11-1976	02-03-1977
Switzerland	In force	25-02-2001	11-12-2001
Syrian Arab Republic	In force	08-10-2001	11-05-2002
Tanzania, United Republic of	Signed (not in force)	08-10-2009	
Thailand	In force	15-12-2005	08-06-2012
Tunisia	In force	27-04-1995	23-11-1995
Turkey	In force	02-08-1993	23-01-2006
Turkey	Signed (not in force)	27-03-2016	
Ukraine	In force	30-11-2005	17-04-2007
United Arab Emirates	In force	15-04-2009	12-02-2010
United Kingdom	In force	10-10-1979	24-04-1980
United States of America	In force	02-07-1997	12-06-2003
Yemen	In force	08-05-1996	28-01-1998
TOTAL	**59**	**59**	**50**

Lebanon

Partners	Status	Date of signature	Date of entry into force
Armenia	In force	01-05-1995	01-10-1998
Austria	In force	26-05-2001	30-09-2002
Azerbaijan	Signed (not in force)	11-02-1998	
Bahrain	Terminated	26-08-1999	
Bahrain	In force	07-08-2003	13-09-2005
Belarus	In force	19-06-2001	29-12-2002
Benin	Signed (not in force)	15-06-2004	
BLEU (Belgium-Luxembourg Economic Union)	In force	06-09-1999	05-03-2004
Bulgaria	In force	01-06-1999	16-02-2000
Canada	In force	11-04-1997	19-06-1999
Chad	Signed (not in force)	15-06-2004	
Chile	Signed (not in force)	03-10-1999	
China	In force	13-06-1996	10-07-1997
Cuba	In force	14-12-1995	07-01-1999
Cyprus	In force	09-04-2001	19-03-2003
Czech Republic	In force	19-09-1997	24-01-2000
Egypt	In force	16-03-1996	02-06-1997
Finland	In force	25-08-1997	12-01-2000
France	In force	28-11-1996	29-10-1999
Gabon	Signed (not in force)	20-02-2001	

Partners	Status	Date of signature	Date of entry into force
Germany	In force	18-03-1997	25-03-1999
Greece	In force	24-07-1997	17-07-1999
Guinea	Signed (not in force)	15-06-2004	
Hungary	In force	22-06-2001	23-07-2002
Iceland	Signed (not in force)	24-06-2004	
Iran, Islamic Republic of	In force	28-10-1997	14-05-2000
Italy	In force	07-11-1997	09-02-2000
Jordan	In force	31-10-2002	30-08-2003
Korea, Republic of	In force	05-05-2006	21-12-2006
Kuwait	In force	21-01-2001	19-04-2002
Malaysia	In force	26-02-1998	20-01-2002
Mauritania	In force	15-06-2004	30-04-2006
Morocco	In force	03-07-1997	04-03-2000
Netherlands	In force	02-05-2002	01-03-2004
Oman	In force	11-04-2006	20-10-2008
Pakistan	In force	09-01-2001	28-03-2003
Qatar	Signed (not in force)	28-04-2010	
Romania	In force	19-10-1994	06-04-1997
Russian Federation	In force	08-04-1997	11-03-2003
Slovakia	In force	20-02-2009	22-05-2010
Spain	In force	22-02-1996	29-04-1997
Sudan	In force	09-03-2004	21-04-2007
Sweden	In force	15-06-2001	02-11-2001
Switzerland	In force	03-03-2000	20-04-2001
Syrian Arab Republic	Terminated	12-01-1997	15-09-1998
Syrian Arab Republic	In force	18-07-2010	16-12-2011
Tunisia	In force	24-06-1998	04-06-2000
Turkey	In force	12-05-2004	04-01-2006
Ukraine	In force	25-03-1996	26-05-2000
United Arab Emirates	In force	17-05-1998	14-07-1999
United Kingdom	In force	16-02-1999	16-09-2001
Yemen	In force	25-11-1999	13-05-2002
TOTAL	**52**	**52**	**43**

Libya

Partners	Status	Date of signature	Date of entry into force
Algeria	Signed (not in force)	06-08-2001	
Austria	In force	18-06-2002	01-01-2004
Belarus	In force	01-11-2000	23-02-2002
BLEU (Belgium-Luxembourg Economic Union)	In force	15-02-2004	08-12-2007
Bulgaria	In force	19-11-1999	19-01-2004
China	Signed (not in force)	04-08-2010	
Congo	Signed (not in force)	30-06-2010	
Croatia	In force	20-12-2002	21-06-2006
Cyprus	In force	30-06-2004	12-02-2005
Egypt	In force	03-12-1990	04-07-1991
Ethiopia	In force	27-01-2004	25-06-2004
France	In force	19-04-2004	29-01-2006
Gambia	Signed (not in force)	26-07-1995	
Germany	In force	15-10-2004	14-07-2010
India	In force	26-05-2007	23-03-2009
Indonesia	Signed (not in force)	04-04-2009	
Iran, Islamic Republic of	In force	27-12-2006	05-05-2010
Italy	In force	13-12-2000	20-10-2004
Kenya	Signed (not in force)	05-06-2007	
Korea, Republic of	In force	21-09-2006	28-03-2007
Malta	Signed (not in force)	24-10-2003	
Morocco	In force	02-11-2000	20-10-2001
Morocco	Terminated	25-01-1984	18-09-1993
Portugal	In force	14-06-2003	19-06-2005
Qatar	Signed (not in force)	28-04-2004	
Russian Federation	In force	17-04-2008	15-10-2010
San Marino	Signed (not in force)	10-12-2006	
Serbia	In force	18-02-2004	29-10-2005
Singapore	In force	08-04-2009	22-12-2011
Slovakia	Signed (not in force)	20-02-2009	
South Africa	Signed (not in force)	14-06-2002	
Spain	In force	17-12-2007	01-08-2009
Switzerland	In force	08-12-2003	28-04-2004
Syrian Arab Republic	In force	08-02-1993	07-10-1995
Tunisia	Signed (not in force)	06-06-1973	
Tunisia	Signed (not in force)	19-02-2005	
Turkey	In force	25-11-2009	22-04-2011
Ukraine	Signed (not in force)	23-01-2001	
United Kingdom	Signed (not in force)		
TOTAL	**39**	**38**	**24**

Morocco

Partners	Status	Date of signature	Date of entry into force
Argentina	In force	13-06-1996	19-02-2000
Austria	In force	02-11-1992	01-07-1995
Bahrain	In force	07-04-2000	09-04-2001
Benin	Signed (not in force)	15-06-2004	
BLEU (Belgium-Luxembourg Economic Union)	Terminated	28-04-1965	18-10-1967
BLEU (Belgium-Luxembourg Economic Union)	In force	13-04-1999	29-05-2002
Bulgaria	In force	22-05-1996	19-02-2000
Burkina Faso	In force	08-02-2007	05-03-2016
Cameroon	Signed (not in force)	24-01-2007	
Central African Republic	Signed (not in force)	26-09-2006	
Chad	Signed (not in force)	04-12-1997	
China	In force	27-03-1995	27-11-1999
Croatia	Signed (not in force)	29-09-2004	
Czech Republic	In force	11-06-2001	30-01-2003
Denmark	In force	22-05-2003	18-09-2013
Dominican Republic	In force	23-05-2002	04-01-2007
Egypt	Terminated	03-06-1976	07-09-1978
Egypt	In force	14-05-1997	01-07-1998
El Salvador	In force	21-04-1999	11-04-2002
Equatorial Guinea	Signed (not in force)	05-07-2005	
Estonia	In force	25-09-2009	04-11-2011
Ethiopia	Signed (not in force)	01-11-2016	
Finland	In force	01-10-2001	06-04-2003
France	Terminated	15-07-1975	13-12-1976
France	In force	13-01-1996	30-05-1999
Gabon	In force	21-06-2004	24-07-2009
Gabon	Terminated	13-01-1979	07-11-1979
Gambia	In force	20-02-2006	12-10-2011
Germany	Terminated	31-08-1961	21-01-1968
Germany	In force	06-08-2001	12-04-2008
Greece	In force	16-02-1994	28-06-2000
Guinea	Signed (not in force)	02-05-2002	
Guinea-Bissau	Signed (not in force)	28-05-2015	
Hungary	In force	12-12-1991	03-02-2000
India	In force	13-02-1999	22-02-2001
Indonesia	In force	14-03-1997	21-03-2002
Iran, Islamic Republic of	In force	21-01-2001	31-03-2003
Italy	In force	18-07-1990	26-04-2000
Jordan	In force	16-06-1998	07-02-2000
Korea, Republic of	In force	27-01-1999	08-05-2001
Kuwait	Terminated	03-04-1980	

Partners	Status	Date of signature	Date of entry into force
Kuwait	In force	16-02-1999	07-05-2001
Lebanon	In force	03-07-1997	04-03-2000
Libya	In force	02-11-2000	20-10-2001
Libya	Terminated	25-01-1984	18-09-1993
Macedonia, The former Yugoslav Republic of	In force	11-05-2010	15-10-2012
Malaysia	In force	16-04-2002	23-04-2009
Mali	In force	21-02-2014	02-03-2016
Mauritania	In force	13-06-2000	20-10-2003
Netherlands	In force	23-12-1971	27-07-1978
Nigeria	Signed (not in force)	03-12-2016	
Oman	In force	08-05-2001	30-03-2003
Pakistan	Signed (not in force)	16-04-2001	
Poland	In force	24-10-1994	09-07-1999
Portugal	In force	18-10-1988	22-03-1995
Portugal	Signed (not in force)	17-04-2007	
Qatar	In force	20-02-1999	21-05-2001
Romania	In force	28-01-1994	03-02-2000
Russian Federation	Signed (not in force)	15-03-2016	
Rwanda	Signed (not in force)	19-10-2016	
Senegal	Signed (not in force)	18-02-2001	
Senegal	Signed (not in force)	15-11-2006	
Serbia	Signed (not in force)	06-06-2013	
Slovakia	In force	14-06-2007	11-05-2014
Spain	Terminated	27-09-1989	15-01-1992
Spain	In force	11-12-1997	13-04-2005
Sudan	In force	23-02-1999	04-07-2002
Sweden	In force	26-09-1990	16-06-2008
Switzerland	In force	17-12-1985	12-04-1991
Syrian Arab Republic	In force	23-10-2001	29-03-2003
Tunisia	In force	28-01-1994	01-04-1999
Turkey	In force	08-04-1997	30-05-2004
Ukraine	In force	24-12-2001	25-04-2009
United Arab Emirates	In force	09-02-1999	01-04-2002
United Arab Emirates	Terminated	16-06-1982	
United Kingdom	In force	30-10-1990	14-02-2002
United States of America	In force	22-07-1985	29-05-1991
Viet Nam	Signed (not in force)	15-06-2012	
Yemen	Signed (not in force)	24-02-2001	
Yemen	Signed (not in force)	24-02-1997	
TOTAL	**80**	**80**	**58**

Occupied Palestinian Territory

Partners	Status	Date of signature	Date of entry into force
Egypt	In force	28-04-1998	19-06-1999
Germany	In force	10-07-2000	19-09-2008
Jordan	Signed (not in force)	04-10-2012	
Russian Federation	Signed (not in force)	11-11-2016	
TOTAL	**4**	**4**	**2**

Tunisia

Partners	Status	Date of signature	Date of entry into force
Albania	Signed (not in force)	30-10-1993	
Algeria	Signed (not in force)	17-02-2006	
Argentina	In force	17-06-1992	23-01-1995
Austria	In force	01-06-1995	01-01-1997
BLEU (Belgium-Luxembourg Economic Union)	In force	08-01-1997	18-10-2002
BLEU (Belgium-Luxembourg Economic Union)	Terminated	15-07-1964	09-03-1966
Bulgaria	In force	24-11-2000	15-10-2003
Burkina Faso	In force	07-01-1993	15-10-2003
Chile	Signed (not in force)	23-10-1998	
China	In force	21-06-2004	01-07-2006
Congo	Signed (not in force)	04-10-2005	
Côte d'Ivoire	Signed (not in force)	16-05-1995	
Czech Republic	In force	06-01-1997	08-07-1998
Denmark	In force	28-06-1996	11-04-1997
Egypt	In force	08-12-1989	02-01-1991
Ethiopia	In force	14-12-2000	02-10-2004
Finland	In force	04-10-2001	04-09-2003
France	Terminated	30-06-1972	30-06-1972
France	Terminated	09-08-1963	08-09-1963
France	In force	20-10-1997	10-09-1999
Germany	In force	20-12-1963	06-02-1966
Greece	In force	31-10-1992	21-04-1995
Guinea	Signed (not in force)	18-11-1990	
Hungary	Signed (not in force)	13-05-2003	
Indonesia	In force	13-05-1992	12-09-1992
Iran, Islamic Republic of	In force	23-04-2001	27-02-2003

Partners	Status	Date of signature	Date of entry into force
Italy	In force	17-10-1985	24-06-1989
Jordan	In force	27-04-1995	23-11-1995
Korea, Republic of	In force	23-05-1975	28-11-1975
Kuwait	In force	14-09-1973	28-05-2006
Lebanon	In force	24-06-1998	04-06-2000
Libya	Signed (not in force)	06-06-1973	
Libya	Signed (not in force)	19-02-2005	
Mali	Signed (not in force)	01-07-1986	
Malta	In force	26-10-2000	12-05-2002
Mauritania	Signed (not in force)	11-03-1986	
Morocco	In force	28-01-1994	01-04-1999
Netherlands	In force	11-05-1998	01-08-1999
Netherlands	Terminated	23-05-1963	19-12-1964
Niger	Signed (not in force)	05-06-1992	
Oman	In force	19-10-1991	01-03-1992
Pakistan	Signed (not in force)	18-04-1996	
Poland	In force	29-03-1993	22-09-1993
Portugal	Terminated	11-03-1992	06-12-1994
Portugal	In force	28-02-2002	10-11-2006
Qatar	Signed (not in force)	28-05-1996	
Romania	In force	16-10-1995	08-08-1997
Senegal	Signed (not in force)	17-05-1984	
South Africa	Signed (not in force)	28-02-2002	
Spain	In force	28-05-1991	20-06-1994
Sudan	Signed (not in force)	08-10-2003	
Sweden	In force	15-09-1984	13-05-1985
Switzerland	Terminated	02-12-1961	19-01-1964
Switzerland	In force	16-10-2012	08-07-2014
Syrian Arab Republic	In force	23-01-2001	12-03-2003
Togo	Signed (not in force)	13-09-1987	
Turkey	In force	29-05-1991	28-04-1994
Turkey	Signed (not in force)	27-12-2017	
United Arab Emirates	In force	10-04-1996	24-02-1997
United Kingdom	In force	14-03-1989	04-01-1990
United States of America	In force	15-05-1990	07-02-1993
Yemen	Signed (not in force)	08-03-1998	
TOTAL	**62**	**62**	**42**