Asian Journal of Law and Society (2023), **10,** 219–240
doi:10.1017/als.2021.35

RESEARCH ARTICLE

Arbitration in Syria: Navigating Postwar Disputes

Faris Elias Nasrallah

Senior Arbitration Counsel, Crescent Petroleum, Sharjah
Corresponding author. E-mail: nasrallah@eth.mpg.de

Abstract

The place of arbitration within the Syrian legal system has received scant academic and professional attention, and as such, remains largely unstudied. Shedding much-needed light on the nature of arbitration in Syria as a resilient form of ancient customary Arab alternative dispute resolution, this contribution appraises the salient features of the Syrian Arbitration Law 2008 and arbitration-related provisions within recent Syrian legislation. It aims to understand the position of arbitration in Syria between existing national and international law frameworks for dispute settlement and to assess the potential for establishing independent, transparent, and efficient tribunals to resolve disputes arising out of ongoing conflicts that have plagued the country since 2011. If arbitration proves to be a mechanism for ordering the peaceful settlement of postwar disputes within and concerning Syria, parties, practitioners, and stakeholders must employ perspectives that include and are capable of navigating Syria's existing arbitration landscape.

Keywords: Syria; arbitration; investment law; postwar; dispute settlement

1. Introduction

Understanding arbitration in any given national context can be challenging at the best of times. Undertaking such a task in respect of the Syrian Arab Republic (hereafter "Syria"), which finds itself gripped by almost a decade of violence, having its territorial integrity threatened on various fronts and a significant percentage of its population forced into refugee status, becomes an especially entangled process. Amidst these most pressing and pervasive safety and security concerns, this contribution addresses a jurisdiction that has been paid scant attention in respect of both its arbitration laws[1] and the development of its legal system generally.[2]

This contribution aims to chart the growth of arbitration law in Syria and the extent of Syria's contemporary arbitration frameworks, thereby reflecting on possibilities for developing its existing arbitral infrastructure, which at least in principle offers methods for resolving various commercial, trade, and investment disputes. In confronting the dearth

[1] Notable English-language exceptions include the work of El-Aḥdab & El-Ahdab (2011), pp. 699–730 (Chapter 15, "Arbitration in Syria") and, more recently, Najjar (2018). In the German language, see Krüger (2008). More recently, see Hatem Elliesie and Omaia Elwan's contribution on exequatur proceedings, dealing with the recognition of writs of execution issued on the basis of Syrian court rulings and international commercial arbitration in Germany, in Elliesie & Omaia (2018), pp. 243–65.

[2] Notable English-language exceptions include the 16 successive country survey contributions by Professor Jacques Hakim to the *Yearbook of Islamic and Middle Eastern Law* (Vols 1–16 between 1992 and 2011), which together constitute an invaluable compendium of legal developments in Syria around the turn of the twenty-first century. In the German language, see Hilmar Krüger's work on international law and the Syrian law of commercial agents, and a systematic overview of Syrian contract law, in Krüger (2009); Krüger (2013), pp. 102–14.

of available literature in this field, the focus of this article is necessarily both explanatory and exploratory. It intends to offer a window into Syria's arbitration landscape as a way of encouraging further engagement with the Syrian legal system generally. Extensive further work is required to provide more analytical findings, including but not limited to studies of Syrian court judgments relating to arbitration, statistical data concerning the number of cases filed and their outcomes, and the enforcement of Syria-related arbitral awards. There is also considerable scope for socio-legal studies relating to the day-to-day experiences of legal practitioners in Syria.

Section 2 illustrates a brief history of arbitration in Syria, the salient features of Syria's current national arbitration law, and the proliferation of recent arbitration-related legislation in Syria. Section 3 considers aspects of Syria's existing investment arbitration frameworks, exploring the capacity for local institutional advancements and areas for potential development across Syria's arbitral infrastructure more generally. While there is scope for considering the value of the term "arbitrating for peace,"[3] the international arbitration community has yet to reflect on possibilities for establishing domestic, regional, and international tribunals for the settlement of disputes arising out of or in connection with the conflicts in Syria.

At a crucial juncture in its modern history, the Syrian state has continued to promulgate legislation and develop its domestic legal infrastructure, including with respect to arbitration. Albeit under far from ideal circumstances, individuals, companies, and state parties have continued to engage in commercial activities and trade either within or involving Syria since 2011. As to concluded or prospective transactions of this nature, it remains incumbent on various stakeholders to understand the available methods for conducting independent, efficient, and effective arbitration, whether in relation to disputes prior to, during, or after the most testing period of Syria's modern history. Cautioning against approaches that efface or ignore national law landscapes, this contribution suggests that an awareness of Syria's existing arbitration landscape and infrastructure is a necessary precursor to exploring the possible role of arbitration and other dispute-resolution processes for resolving conflict-related disputes involving Syria.

2. Overview of the Syrian arbitration landscape

2.1 A brief history of arbitration in Syria

Arbitration, or *tahkeem* (تحكيم) in Arabic, has long been used as an Arab customary law technique of alternative dispute resolution (ADR). Interwoven throughout the dispute-resolution doctrines of Judaism and Christianity, deriving from the Arabic word for judgment or *hukum* (حكم), and rooted as a concept in pre-Islamic Arab societies, arbitration has survived various Arab empires and enlightenments, Ottoman and European imperialism in the Middle East. Retaining its etymological continuity throughout, arbitration resiliently takes its place within the dispute-resolution tapestries of modern Middle Eastern states.

Whereas, in the absence of any legislative authority, intertribal disputes would be settled by force, indigenous Arab legal culture dictated that disputes within tribes would be resolved by recourse to arbitration.[4] There is evidence to suggest that rather developed arbitration mechanisms were utilized to settle commercial disputes in ancient Palestine, Syria, and Egypt,[5] as later reflected in the Roman-law arbitral

[3] See Franke, Magnusson, & Dahlquist (2016).

[4] See Coulson (1984), p. 10; Baamir (2012), pp. 45–7. For a masterful and comprehensive background of the historical development of Middle Eastern law, see Mallat (2007).

[5] Mantica (1957), p. 155.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

tradition of *compromissum*.[6] Pre-Islamic Arab societies governed themselves through unwritten customary law principles in which "law enforcement was the responsibility of the wronged individual . . . through ad hoc arbitration before a suitable hakam."[7] This arbitral idiosyncrasy, whereby the onus to commence proceedings rests firmly with the claimant, remains a feature in contemporary arbitration practice.[8]

According to Islamic law scholar Wael B. Hallaq, the Prophet Muhammed "was very much part of his environment which was deeply rooted in the traditions of Arabia."[9] In a particular social and political context, the Prophet Muhammed could not have abandoned or ignored the legal rules and principles by which Arab customary law persisted, and which later rode alongside the *Shari'a*.[10] Indeed, the Prophet Muhammed was himself a "prominent arbitrating judge (*hakam*)" conscious of "maintaining continuity with past traditions and laws."[11] As an Arab-law concept, arbitration persisted through the passage of Islam, later becoming a part of the Islamic legal tradition.

The advent of Islam and subsequently the Koran further indicates the utility of arbitration as a form of ADR in traditional Arab societies. The Koran references the need for arbitration as a form of reconciliation in family matters,[12] the impartiality of arbitrators,[13] the relationship between arbitrators and judges,[14] and the finality of arbitral decisions.[15] There is also evidence from the *Sunna* and subsequent interpretations in the different jurisprudential schools of Islamic laws to suggest that juristic endeavours were key to the development of arbitration in accordance with Islamic law principles.[16]

During the period of the early Arab caliphates, arbitration was most notably used as an alternative to and cessation of war. In 657, the battle of Siffin ensued between 'Ali ibn-abi Taleb, leader of *al-'Iraq*, and Mu'awiyah ibn-abi-Sufyan, Governor of *al-Sham*, comprising Syria, Palestine, Lebanon, and Jordan, resulted in "Mu'awiyah's proposal to arbitrate according to the word of Allah."[17] A tribunal comprising two party-appointed arbitrators, "each accompanied by four hundred witnesses, held a public session in January 659 at

[6] Stein (1974), p. 203. See also Stein (1984), pp. 51–3, for a brief overview of contemporary adaptations of Roman-law arbitration under English and French law.

[7] Ballantyne (2000), p. 34.

[8] Writing in 1945, Vahan Kalenderian stated: "Before the Civil and Commercial Codes and Codes of Procedure were adopted by the Ottoman Empire (then consisting, among other countries, of the Republic of Turkey, Syria, Palestine and Egypt, Mesopotamia (Iraq) and Arabia), and before the adoption of Civil and Commercial Codes and Codes of Procedure by the Kingdom of Persia, only a decade or two ago, settlement of disputes of commercial and civil matters, and even those of purely personal status, were in most cases disposed of by arbitration, conciliation, or mediation, pursuant to the customary or common law. Arbitration existed prior to organized society, as did haggling and bargaining. The habit bad already been formed when ancient traders, in their primitive craft, sailed down the Nile or along the Euphrates, or through the Sea of Marmora and the Mediterranean, and made brief stops at the ports where they sold or delivered their products or goods. They had little time for disputations. It was thus natural to seek the advice of a co-trader, or one grown old in experience and wisdom, and reach an agreement on the spot": Kalenderian (1945), pp. 30–1.

[9] Hallaq (2005), p. 24.

[10] Hallaq notes that "[w]hile new problems encountered by the Prophet and the emerging Umma were to be judged in accordance with the new principles and worldview of Islam, the old institutions and established rules and customs remained largely unchallenged. Indeed . . . much of Arabian law continued to occupy a place in Sharī'a—the later, more mature system of Islamic law": *ibid.*, p. 24.

[11] *Ibid.*, p. 24.

[12] The Koran 4: 35.

[13] The Koran 5: 42.

[14] The Koran 4: 58.

[15] The Koran 4: 58.

[16] See Chapters 3 and 4 of Baamir, *supra* note 4, pp. 57–117; and Chapter 1 of El-Aḥdab & El-Ahdab, *supra* note 1, pp. 1–52.

[17] Hitti (1951), pp. 432–3; see also Hitti (1970), pp. 181–90.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

Adhruh, on the main caravan route between Damascus and Medina."[18] An arbitration agreement, or what might now be considered terms of reference, was signed prior to the commencement of proceedings, as later recorded by Abu Hanifa Al-Dinawari (d. 282/896) in the ninth century.[19]

Under Ottoman rule in the Middle East, arbitration remained a utilized ADR technique to resolve civil and commercial disputes as evidenced by the arbitration law under the *Majallat al-ahkam al-'adiliyya* (the "Majalla").[20] Articles 1841–1851 of the Majalla contain express provisions on the arbitrability of disputes concerning rights over property,[21] the appointment and recusal of arbitrators,[22] the binding nature of arbitral awards,[23] and the execution of arbitral awards.[24] At the turn of the twentieth century, arbitration was repeatedly used to resolve various territorial disputes concerning international boundaries within the Arabian peninsula, commonly referred to as the *Arabian Boundary Disputes*.[25] The transitional period of legal development in Syria between the late nineteenth and early mid-twentieth centuries was lucidly summarized by Jacques El-Hakim in 1994:

> Syria inherited from the Ottoman Empire, of which it was a part between 1516 and 1918, a set of Napoleonic-inspired Codes, following the "reorganization" (tanzimat) .... Those included, mainly, the Criminal, Commercial, Maritime, Procedure and Real Estate Codes. As to the Civil Code (Majalla), promulgated as from 1876, it was the first compilation in history of Islamic Hanafi law.
>
> After a short period of independence under King Faisal I in 1920, Syria was put under French rule. It gained complete independence in 1946, and promulgated several modern Codes, inspired by French law, relating mainly to: Evidence (1947), Civil, Commerce, Criminal Law (1950) and Civil Procedure (1953). They all reproduced the corresponding Lebanese Codes, except for the Evidence, Contracts and Civil Procedure Codes, which mainly adopted Egyptian Codes. The Codes are supplemented by decrees (marsum if issued by the President of the Republic and qarar if issued by a subordinate authority—President of the Council, Minister, director of a specific

[18] Hitti (1951), *supra* note 17.

[19] Al-Dinawari (1888), pp. 206–9 (Arabic-language source). See also Hinds (1972), pp. 93–129.

[20] The Majalla represents an attempt to codify parts of Hanafi *fiqh* concerning *muamalat* (transactions between people) and present the Islamic law of obligations in one volume for ease of reference. Drafted between 1869 and 1876, the Majalla as a codification monument formed part of the legislative purpose of the Tanzimat reforms, initiated with the approval of Sultans Abdülmecid I (1839–61) and Abdülaziz (1861–76). The Majalla followed a well-trodden historical path whereby the codification of law offered vital attractions for imperial authorities. By reference to the Theodosian and Justinian codifications of Roman law, Jill Harries explains how "emperors' reasons for authorising prestige projects like the codification of law were not wholly based on an altruistic yearning for clarity," but rather to set the codifier on a higher level than the legislators who had gone before him: Harries (1999), pp. 9–10. Chibli Mallat notes that following enactment of the French Commercial Code in the Ottoman Empire in 1850, French-style commercial codes were introduced in most Middle Eastern countries. Mallat also explains how the Majalla "works as the archetype for all codified Middle Eastern civil law and marks the necessary starting point for analysis of contemporary civil codes": Mallat, *supra* note 4, p. 245, and see more generally pp. 244–99 for a detailed and authoritative analysis of the structure, spread, and contemporary influence of the Majalla in a comparative context.

[21] Tyser, Demtriades, & Ismail (1967), pp. 325–7, Art. 1841.

[22] *Ibid*., Arts 1842–1847.

[23] *Ibid*., Arts 1848, 1850.

[24] *Ibid*., Arts 1848, 1851.

[25] See Schofield (1992).

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

service or autonomous organization) and circulars (balagh) organizing internal work within a specific Ministry or organization.[26]

As a consequence of this common heritage across Middle Eastern jurisdictions, the modern development of the Syrian legal system was broadly in line with those of other Arab states, particularly those of Lebanon and Egypt. Similar to other Middle Eastern jurisdictions at the time, Syria's modern arbitration law was included under Articles 506–534 of the Syrian Civil Procedure Code ("the Syrian CPC").[27] The arbitration-related provisions of the Syrian CPC were repealed and superseded by Syrian Law No. 4 of 2008, on Arbitration ("the Syrian Arbitration Law 2008").[28]

The Syrian CPC provisions on arbitration continue to apply to disputes subject to arbitration agreements concluded prior to the entry into force of the Syrian Arbitration Law 2008, whether or not arbitral proceedings have commenced in such disputes.[29] Notwithstanding that Syria is a signatory to the New York Convention,[30] the Syrian Arbitration Law 2008 does not refer to the enforcement of foreign arbitral awards, which remain subject to Articles 306–311 of the Syrian CPC. The interruption of arbitral proceedings continues to be governed by the relevant conditions under the Syrian CPC.[31] While the Syrian Arbitration Law 2008 provides that Articles 506–534 of the Syrian CPC as amended shall be repealed,[32] no all-encompassing reference was made to other arbitration-related domestic laws governing certain disputes. One specific reference under Article 2(1) of the Syrian Arbitration Law 2008 provides that disputes concerning procurement contracts remain subject to the provisions of Article 66 of Syrian Law No. 51 of 2004.[33] The are no other express references to certain other disputes, such as those arising out of contracts concluded with government agencies or organizations.[34]

2.2 *The Syrian Arbitration Law 2008*

The Syrian Arbitration Law 2008 contains nine chapters comprising 66 articles, which are largely inspired by the provisions within the UNCITRAL Model Law on International Commercial Arbitration 2006 ("the UNCITRAL Model Law") and Egyptian national arbitration law.[35] The articles of the Syrian Arbitration Law 2008 have been subjected to testing in

[26] El-Hakim (1994), p. 143. Jacques El-Hakim also alluded to a Commission constituted by the Syrian minister of justice in 1975, to amend and adapt the Code of Commerce to prevailing the economic and legal conditions. The Commission completed its mandate in 1994, developing various provisions of the Code including those governing the main commercial contracts and commercial arbitration (pp. 146–7).

[27] Syrian Decree No. 84 of 1953. For a comprehensive assessment of Arts 506–534 of the Syrian CPC, see El-Hakim (1982), pp. 35–54.

[28] Promulgated on 25 March 2008 and in force from 1 April 2008, pursuant to Art. 66 of the Syrian Arbitration Law 2008. As well as consulting the Arabic-language original, an English-language translation of the Syrian Arbitration Law 2008 produced by Sayed & Sayed Attorneys at Law has been considered. It is worth noting that unlike most Middle Eastern jurisdictions that have developed stand-alone national arbitration laws, Lebanon, Iraq, Algeria, and Kuwait continue to operate their national arbitration law through the provisions of their respective civil procedure codes.

[29] Syrian Arbitration Law 2004, Art. 65.

[30] Syria became a signatory to the New York Convention on 9 March 1959 and the ICSID Convention on 25 May 2005.

[31] Syrian Arbitration Law 2008, Art. 35.

[32] *Ibid.*, Art. 64.

[33] Syrian Law No. 51 of 2004, the Syrian Procurement Law, issued on 9 December 2004.

[34] See e.g. Arts 90–95 of Syrian Decree No. 630 of 1952, the General Conditions for Contracts Concluded by the Syrian Defence Ministry, issued on 15 May 1952. More recently, see Syrian Law No. 32 of 2019, Council of State Administrative Law.

[35] Egyptian Law No. 27 of 1994, Promulgating the Law Concerning Arbitration in Civil and Commercial Matters, issued on 21 April 1994.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

the Syrian courts,[36] although these court decisions and the Syrian Arbitration Law 2008 itself have received limited professional and academic attention.[37] Some of the salient and unique features of the Syrian Arbitration Law 2008, are summarized as follows:

- The general provisions place emphasis on party consent, in respect of both the definitions of "arbitration" and "arbitration agreement"[38]
- "International commercial arbitration" is defined broadly to include arbitrations in which "the subject matter of the dispute is related to international trade, even if the arbitration is conducted in Syria"[39]
- The Syrian Court of Appeal has jurisdiction over all matters within the scope of the Syrian Arbitration Law 2008.[40] This appears intended to avoid an additional level of judicial scrutiny in arbitration matters before the Syrian Court of First Instance, while laying down a marker for developing arbitration expertise within the appeal division
- A claim notice for disputes related to real property rights shall be inserted into the record of the real property by order of the competent Syrian court,[41] presumably insofar as the sale and purchase of land are matters of public order
- The parties are free to determine the applicable law to the subject matter of the dispute[42] and applicable procedures[43]
- Arbitration agreements must be in writing, which will include the reference to arbitration in official or ordinary documents, minutes drafted before the arbitral tribunal, and written communications establishing common intention between the parties to be bound by arbitration[44]
- Arbitration agreements are not permitted in matters contrary to public order related to nationality, personal status, or where compromise is precluded, except where the agreement concerns the financial effects resulting from such matters.[45] The term "financial effects" is undefined in the law
- There is no requirement for arbitrators to be of a specific sex or nationality, unless otherwise agreed by the parties[46]

[36] A number of Syrian court decisions concerning arbitration have been published in various volumes of the International Journal of Arab Arbitration since its launch in 2009; see https://intljaa.com/en/.

[37] For a comparative assessment between the arbitration-related provisions of the Syrian CPC and the Syrian Arbitration Law 2008, see El-Aḥdab & El-Ahdab, *supra* note 1. See also El-Hakim (2011); Comair-Obeid (2014), pp. 52–74.

[38] General Provisions under Chapter 1 of the Syrian Arbitration Law 2008.

[39] *Ibid.*

[40] Syrian Arbitration Law 2008, Art. 3(1).

[41] *Ibid.*, Art. 3(3).

[42] *Ibid.*, Art. 5(1).

[43] *Ibid.*, Arts 6 and 22(1).

[44] *Ibid.*, Art. 8.

[45] *Ibid.*, Art. 9(2). This provision is inherited from Art. 507 of the Syrian CPC.

[46] Art. 13(2) of the Syrian Arbitration Law 2008. To the extent that arbitrators are members of the legal profession and provide legal services in respect of front-end contractual matters, the provisions relating to the appointment of arbitrators should be considered alongside Syrian Law No. 30 of 2010, Regulating the Legal Profession ("Syrian Law No. 30 of 2010"). Art. 16 of Syrian Law No. 30 of 2010 provides that those serving as an expert or arbitrator in a case may not accept representation *in propria persona* by any partner or another lawyer working for their benefit, failing which they shall face the penalty of being struck off the role. Regarding the conduct of legal representatives during arbitral proceedings, lawyers have a duty to behave in a manner in which they see fit in attendance before all courts, departments, judicial and administrative committees, arbitral tribunals, and police departments (Art. 57 of Syrian Law No. 30 of 2010). A lawyer who concludes a contract upon a joint party request and who is not the agent of either party may not accept a power of attorney from either party to execute or interpret such a contract, but may be appointed as an arbitrator pursuant to an agreement between the contract parties (Art. 75 of Syrian Law No. 30 of 2010).

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

- A court order rejecting a request to appoint an arbitrator shall be subject to appeal before the Syrian Court of Cassation[47]
- Those perpetrating assaults against arbitrators in the lead-up to or during the exercise of their mandate shall face the same penalty applicable to assaults against judges[48]
- Arbitrators have a duty to disclose "any circumstances which are likely to raise doubts as to their impartiality or independence, whether existing upon accepting their mission or occurring during the arbitral proceedings"[49]
- The *competence–competence* doctrine applies to the mandate of an arbitral tribunal[50]
- The parties are free to agree on the geographic place of the arbitration, whether in Syria or abroad[51]
- Unless otherwise agreed by the parties or decided by an arbitral tribunal, arbitrations will be conducted in the Arabic language[52] and awards will be rendered in the language of the arbitration[53]
- Arbitral hearings will be held *in camera*, unless the parties agree otherwise[54]
- Arbitral tribunals are empowered to instruct experts, either on their own motion or at the request of the parties[55]
- Arbitral tribunals are empowered to hear witnesses, either on their own motion or at the request of the parties[56]
- In the absence of party agreement, and notwithstanding the right of the arbitral tribunal to order an extension of 90 days,[57] arbitral awards must be issued within 180 days of the arbitral tribunal holding its first hearing[58]
- The parties can expressly agree to authorize the arbitral tribunal to act as *amiable compositeur*, to rule on the dispute *ex aequo et bono*, without being bound by legal norms[59]
- Arbitral awards shall be issued in writing and signed by the arbitrators[60]
- Arbitral awards shall include the names of the tribunal members; the names and addresses of the parties; their capacities and nationalities; a copy of the

[47] Syrian Arbitration Law 2008, Art. 14(5). It is also worth noting that regarding the appointment of arbitrators by property judges in the Syrian courts, those judges shall apply the provisions concerning expenditures as stated in the law of judicial charges and insurance (Art. 17 of Syrian Law No. 16 of 2014, Concerning Property Judges, issued on 20 July 2014).

[48] Syrian Arbitration Law 2008, Art. 15. Under Art. 294 of Syrian Decree No. 148 of 1949, the Syrian Penal Code, issued on 22 June 1949, assaults intended to prevent existing authorities from exercising their functions derived from the Constitution are punishable by temporary imprisonment.

[49] Syrian Arbitration Law 2008, Art. 17(1). This wording is inspired by Art. 12 of the UNCITRAL Model Law, and is also reflected in Art. 10 the UAE Federal Law No. 6 of 2018, Concerning Arbitration.

[50] Syrian Arbitration Law 2008, Art. 21(1).

[51] *Ibid.*, Art. 23.

[52] *Ibid.*, Art. 24; *ibid.*, Art. 24(1) and (2) would, at least in principle, contain scope for mixed-language proceedings.

[53] *Ibid.*, Art. 42(4).

[54] *Ibid.*, Art. 29(3).

[55] *Ibid.*, Art. 32(1).

[56] *Ibid.*, Art. 33.

[57] *Ibid.*, Art. 37(2).

[58] *Ibid.*, Art. 37(1).

[59] *Ibid.*, Art. 38(4).

[60] *Ibid.*, Art. 41. In Syrian Court of Cassation Case No. 93 of 2014, a challenge against the issuance of an arbitral award on the basis of an arbitrator's refusal to sign the award was rejected on the basis that the arbitrator had been present during the issuance of the arbitral award.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

arbitration agreement; a summary of the parties' claims, statements, and evidence; the dispositive part of the award; and the date and place of issuance[61]
- Arbitral awards must specify the arbitration fees and expenses, and the way in which such fees and expenses will be allocated between the parties[62]
- Arbitral awards shall be final and not subject to appeal[63]
- Actions to nullify arbitral awards are possible only where no arbitration agreement exists or such an agreement is void or has expired; the parties lacked capacity to enter into an arbitration agreement; a party was not properly notified of the arbitration and was unable to present a defence during the proceedings; the arbitral tribunal disregarded the applicable law agreed between the parties; the composition of the arbitral tribunal was contrary to law; the arbitral award was decided on matters not included in or outside the scope of the arbitration agreement; if nullity occurs in the arbitral award; or if the arbitral proceedings are tainted by nullity affecting the award[64]
- The competent Syrian court can, on its own motion, rule on the annulment of arbitral awards if the content of such awards violates the public order of Syria[65]
- The ruling of a competent Syrian court to annul an arbitral award can be challenged before the Syrian Court of Cassation within a period of 30 days following the notification of the annulment ruling[66]
- Arbitral awards have the authority of *res judicata* and shall be binding on the parties[67]
- The commencement of any annulment proceedings shall not stay the execution of arbitral awards[68]

2.3 Arbitration-related legislation in Syria

In addition to its national arbitration law, Syria has over the past two decades promulgated legislation in a number of areas of law, providing for either the practice of arbitration or the future establishment of arbitral infrastructure. Recognizing this body of supporting legislation is necessary for parties navigating certain industry disputes within the Syrian arbitration landscape but, more broadly, for developing a holistic understanding of the place of arbitration within the Syrian legal system. The existence of these supplementary Syrian arbitration laws is perhaps indicative of a domestic aspiration towards decentralized and specialist dispute resolution that encompasses the ability to both alleviate and exasperate the limits of national state courts. More generally, and despite facing

[61] *Ibid*., Art. 42(1).
[62] *Ibid*., Art. 42(2).
[63] *Ibid*., Art. 49.
[64] *Ibid*., Art. 50(1)(a)–(g).
[65] *Ibid*., Art. 50(2). In Syrian Court of Cassation Case No. 741 of 2007, an application to set aside enforcement of an arbitral award concerning a dispute over a brokerage contract on the basis of an alleged violation of public order was rejected by the court. Leave for enforcement was confirmed by the Syrian Court of Appeal and again by the Syrian Cassation Court.
[66] Art. 52(1) of the Syrian Arbitration Law 2008.
[67] *Ibid*., Art. 53.
[68] *Ibid*., Art. 55. Notwithstanding this general principle, Art. 55 also provides that the competent Syrian court may order a stay of execution, for a period not exceeding 60 days, if a party requests in its stay application that it fears execution would cause irreparable and serious harm. In such cases, the court may also order the applicant to pay financial security as a guarantee against damages of the party opposing the stay of execution if the annulment application is rejected.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

comprehensive US sanctions,[69] Syria's broad uptake of arbitration reflects an acceptance of its global prevalence among other forms of ADR in international and interstate disputes concerning matters of investment, commerce, and industry.

Examples of this supporting legislation, which are set out below,[70] can be understood in two categories, namely (1) legislation containing substantive provisions governing the arbitration of certain disputes; and (2) legislation endorsing arbitration and/or the future establishment of an arbitral infrastructure.

2.3.1 Legislation containing substantive provisions governing the arbitration of certain disputes

Syrian Law No. 38 of 2006, Customs Law (the "Syrian Customs Law"). Under Article 43 of the Syrian Customs Law, where customs-related disputes arise, applicants that reject a written decision by the "Director General of Customs"[71] shall have such disputes referred to arbitration in accordance with Chapter Four (Articles 89–93) of the Syrian Customs Law, concerning arbitration.[72] These articles state as follows:

- An arbitral tribunal shall be entitled to hear disputes concerning a discrepancy in customs duties and other taxes of over 5,000 Syrian pounds or where a decision leads to the prohibition of goods worth over 25,000 Syrian pounds, failing which disputes arising between the Customs Department and concerned parties as to the specifications, origin, or value of goods shall be subject to a final decision of the "Customs Department Manager"[73]
- Disputes referred to arbitration shall be conducted by a tribunal composed of two experienced arbitrators: one named by the customs administration and the other by the owner of the goods or such other authorized representative. Where the owner of the goods fails to name an arbitrator within eight days from the date of the first appointment, the "Customs Department Manager" shall issue a final and binding decision[74]
- The two members of the arbitral tribunal shall issue their decision within ten days of having the file referred to them and their decision can be subject to appeal before an appellate arbitral committee within five days from the date of its notification[75]
- The three-member appellate arbitral committee shall be composed of a permanent Commissioner, to be appointed as chairman under a decision by the minister,[76] and two other members: one to be named by the "Director General of Customs" or an authorized representative and the other by the owner of goods

[69] For a list of US sanctions adopted against Syria since 2004, see the Office of Foreign Assets Control (2013).

[70] In addition to Arabic-language Syrian legislation, certain English-language translations of this supporting legislation, made available through Thomson Reuters "Westlaw Middle East" database, have been consulted herein.

[71] Issued in accordance with the escalation provisions under Art. 39 of the Syrian Customs Law.

[72] On arbitrability, Art. 92(b) of the Syrian Customs Law states that arbitration may only be applied to goods that remain under the control of the Customs Administration. Under Art. 92(c) of the Syrian Customs Law, where the existence of goods is not necessary to resolve the dispute, other than in cases where the goods are liable to prohibition, the Customs Department may allow the delivery of goods prior to the completion of arbitration proceedings in lieu of a cash guarantee to cover potential duties and fines.

[73] Art. 89(a) of the Syrian Customs Law.

[74] *Ibid.*, Art. 89(b).

[75] *Ibid.*, Art. 89(c).

[76] Defined under the Syrian Customs Law as the minister of finance to whom customs administration is assigned.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

or their legal representative.[77] The appellate arbitral committee shall render its decision unanimously,[78] which shall be final and binding on the parties, with the losing party bearing the costs of the arbitration[79]

Syrian Law No. 15 of 2008, Real Estate Investment Law. Article 32 of Syrian Law No. 15 of 2008 provides the following provisions on disputes involving real-estate developers:

- The civil division of the Syrian Court of First Instance shall have sole competence to hear disputes arising between real-estate developers and individuals, applying the principles applicable to summary proceedings, its decisions being subject to appeal. Decisions issued by the Syrian Court of Appeal in disputes involving real-estate developers and individuals shall be deemed final and not subject to appeal
- The "State Council" shall, through the administrative judicial Commission, have sole competence to hear disputes arising between an administrative entity and a real-estate developer. Arbitration may be sought in accordance with procedures adopted by the "State Council" if provided for under the contract

Syrian Decree No. 52 of 2009, Regulating the Creation of Chambers of Industry. Under the section "Terms of Reference of the Chamber," Article 6 of Syrian Decree No. 52 of 2009 provides that the scope of competences of the respective chambers of industry shall include:

- Supervising arbitration proceedings relating to industrial disputes in which one of the parties is a member of the chamber, at the request of parties, and documenting the issuance and signature of arbitral instruments[80]
- Nominating arbitrators and experts, at the request of the parties, to be submitted to the respective chambers[81]

Syrian Decree No. 17 of 2010, Syrian Labour Law (the "Syrian Labour Law").[82] The Syrian Labour Law applies to labour relations in the private sector, Arab and foreign union companies, the co-operative sector, and the mixed public–private sector not covered by the Syrian Law No. 50 of 2004, the Civil Service Law. Regarding labour disputes, the Syrian Labour Law states as follows:

- All prejudiced employees have the right to claim compensation before a primary civil tribunal for labour disputes,[83] to be established in each governorate of Syria by a decision of the Minister of Justice.[84] In cases of collective dispute between employers and trade unions, the law requires amicable settlement by way of collective bargaining

[77] Art. 90(a) of the Syrian Customs Law; *ibid.*, Art. 93 prescribe the wording of an oath to be taken by the two initial arbitrators, and two non-permanent members of any appellate arbitral committee, before the president of the competent customs court.

[78] *Ibid.*, Art. 90(b).

[79] *Ibid.*, Art. 90(d); *ibid.*, Art. 91 provides that the minister shall issue a decision determining the number of committees, their main offices, the scope of competence, remuneration payable to its members, and the expenses of arbitration.

[80] Art. 6(9) of Syrian Decree No. 52 of 2009.

[81] *Ibid.*, Art. 6(10).

[82] Issued on 12 of April 2010.

[83] Arts 203–209 of the Syrian Labour Law.

[84] *Ibid.*, Art. 205.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

- Failing settlement, the Syrian Labour Law permits mediation to be initiated by the "Directorate of Social Affairs and Labour," at the request of the parties or their legal representatives[85]
- Failing settlement of any dispute by mediation, the Syrian Labour Law provides for the possible referral to arbitration before an arbitral tribunal, the procedures to be established in each governorate by a ministerial decision.[86] Decisions rendered by an arbitral tribunal may be appealed before the Syrian Court of Cassation within 30 days of notification of the arbitral award[87]

Syrian Law No. 18 of 2010, on Telecommunications (the "Syrian Telecommunications Law"). Part 13 of the Syrian Telecommunications Law contains provisions on the "Settlement of Disputes and Complaints" (Articles 52–58), which mandate the Syrian Telecommunication Regulatory Authority (Syrian TRA) to formulate a permanent Settlement of Disputes Committee (SDC) with judicial competency specialized in examining civil and commercial disputes arising between licensees.[88] The Council of Ministers[89] is tasked with deciding the procedures and regulations to be approved by the SDC and the applicable procedures in such disputes shall be those stipulated in the Syrian CPC unless otherwise stated in the procedures and regulations of the SDC.[90] Under the heading "Arbitration," Article 53 of the Syrian Telecommunications Law provides that:

- The parties may expressly agree, before a dispute arises or thereafter, to resort to arbitration, in which case the SDC shall refer such disputes among licensees to arbitration
- Upon the decision of a council of the Board of Commissioners in the Syrian TRA (the "Council"), the arbitration rules shall be issued to the Syrian TRA subject to the provisions of the Syrian Arbitration Law 2008
- The Council shall issue a roster of arbitrators who are experienced, competent, and certified by the Syrian TRA to be used by the parties in forming an arbitral tribunal

Syrian Law No. 5 of 2016, Concerning Partnership between the Public and Private Sectors. In disputes over the financial balance of contracts between public–private partnerships, Article 75 of Syrian Law No. 5 of 2016 states that where parties to a "Participatory Contract"[91] fail to reach a common understanding, the private partner may demand the "Board"[92] to pay compensation or to increase the period of investment by extending the term of the contract. Where the private partner has not received fair compensation, it may resolve the dispute according to the dispute-resolution conditions in the contract, provided that the

[85] *Ibid.*, Art. 211.

[86] *Ibid.*, Art. 205.

[87] *Ibid.*, Art. 221.

[88] Art. 52 of the Syrian Telecommunications Law. Art. 52 also states that the permanent committee will be named the "Committee for the Settlement of Disputes with the Authority Regulating the Telecommunications Sector."

[89] Being "the highest executive and administrative authority of the state," pursuant to Art. 118(1) of the Constitution of Syria.

[90] Art. 52 of the Syrian Telecommunications Law. Art. 52 also provides that SDC decisions shall be issued within four months of a dispute being referred to the SDC, although the SDC may extend this period once, pursuant to a justifiable decision.

[91] Defined under Art. 1 of Syrian Law No. 5 of 2016 as "Such contracts made between the Contracting Public Entity and the Private Partner, which identifies the Participatory terms and conditions."

[92] Defined under Art. 7 of Syrian Law No. 5 of 2016 as the "Participatory Board" formed to control and coordinate all aspects of participatory projects between the public sector and the private sector.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

private partner continues to execute its contractual and legal obligations. In such circumstances, the contracting public entity may not terminate or rescind the contract until a final court order or arbitral award has been issued and duly executed. Under the heading "Dispute Resolution," Article 78(A) and (B) of Syrian Law No. 5 of 2016 provides as follows:

(A) Disputes between a contracting public entity and private partner

- Disputes in connection with the execution, interpretation, validity, termination, or rescission of a Participatory Contract or any ancillary subcontract that may arise between the contracting public entity and the private partner shall be settled amicably
- Where the parties fail to reach an amicable settlement within 30 days from the date of either contracting party giving a notice in writing for amicable settlement to the other contracting party, either party may resort to any of the following methods:
  - Syrian Administrative Court
  - Arbitration inside Syria
  - Arbitration outside Syria
- The Participatory Contract shall include one of the above methods for dispute resolution and where the Participatory Contract does not contain an arbitration clause, the parties may subsequently agree to submit to arbitration
- Where the partners have not agreed to resolve the dispute by arbitration, the interested party may resort to the Syrian Administrative Court to resolve the dispute
- Any dispute referred to arbitration shall be governed by the applicable laws in Syria unless otherwise agreed in the Participatory Contract or the subcontract

(B) Settlement of disputes with clients of a project

- The contracting public entity may demand the private partner or the project company to pay the costs of simplified and efficient mechanisms to deal with project client complaints if the private partner or the project company provides services to the public directly or operates infrastructure facilities used by the public[93]

Syrian Law No. 32 of 2019, on the Formation of the State Council and its Powers (the "Syrian State Council Law").[94] Article 1 of the Syrian State Council Law forms the "State Council" as an independent judicial and advisory body that handles the administrative judiciary based in the city of Damascus and issues its rulings in the name of the Arab people in Syria. The State Council also serves as an advisory body to public entities, comprising two divisions, namely the Judicial Division[95] and the Advisory Division.[96] In addition to a wide range of administrative judicial powers, the State Council can rule on all administrative disputes and disputes in relation to which other laws provide for the jurisdiction of the State

[93] It is worth noting that Art. 79 of Syrian Law No. 5 of 2016 states that in the event of any conflict between its articles and any other related laws, the former shall prevail.

[94] Issued on 16 December 2019.

[95] The Juridical Division consists of the Supreme Administrative Court, Administrative Courts, Conduct Court, the State Commissioners Authority, the Department for the Unification of Principles, and the Inspection Department under Art. 2 of the Syrian State Council Law.

[96] The Administrative Division for Fatwa and Legislation consists of the General Assembly, Competent Departments, and a Legislation Drafting Office, also under Art. 2 of the Syrian State Council Law.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

Council.[97] Regarding arbitration, the Syrian State Council Law contains the following specific provisions:

- The State Council has the authority of an administrative judiciary to adjudicate disputes related to commitment contracts, public works, and supply contracts or any other administrative contract, as well as contracts concluded by professional unions and grass-roots organizations that are concluded in accordance with the provisions of the public agency contracts regulations.[98] It is permissible to resort to arbitration disputes arising out of contracts over which the Council of State has the authority to rule as an administrative judiciary[99]
- Under Article 14 of the Syrian State Council Law, the State Council Administrative Courts have jurisdiction to rule on a wide range of disputes including those related to:
  - Taxes, fees, and general costs, whether the dispute relates to the legal basis for the assignment or the value of the assignment[100]
  - Disputes in which the law stipulates that the jurisdiction of the Administrative Courts must be examined according to prescribed principles[101]
  - Urgent requests related to arbitration matters involving the State Council, requests for the interpretation and correction of material errors in arbitral awards, and arbitral decisions concerning enforcement, as well as disputes concerning the naming, dismissal, retirement, or reinstatement of arbitrators[102] and
  - Actions to annul arbitral awards whereby a court decision to dismiss the annulment proceedings is deemed an enforcement of the arbitral award[103]
- Largely reflecting the nullity provisions contained at Article 50(1)(a)–(g) of the Syrian Arbitration Law 2008, Article 15(1)(a)–(g) of the Syrian State Council Law provides that an action to invalidate an arbitral award shall not be accepted before the State Council courts, except in the following cases:
  - Where no arbitration agreement exists or such an agreement is null or void having expired[104]
  - If a party to an arbitration agreement at the time of its conclusion lacked capacity to enter into an arbitration agreement according to the law governing their eligibility[105]
  - If one of the parties to the arbitration is unable to present a defence due to their failure to announce a correct declaration regarding the appointment of an arbitrator, the arbitration procedures, or any other reason beyond their control[106]
  - If the arbitration award disregarded the applicable law agreed between the parties on the subject matter of the dispute[107]

[97] Art. 8(1)(l) of the Syrian State Council Law.
[98] *Ibid.*, Art. 10(1).
[99] *Ibid.*, Art. 10(2).
[100] *Ibid.*, Art. 14(2).
[101] *Ibid.*, Art. 14(3).
[102] *Ibid.*, Art. 14(4).
[103] *Ibid.*, Art. 14(5).
[104] *Ibid.*, Art. 15(1)(a).
[105] *Ibid.*, Art. 15(1)(b).
[106] *Ibid.*, Art. 15(1)(c).
[107] *Ibid.*, Art. 15(1)(d).

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

  - If the arbitral tribunal was constituted or the arbitrators appointed in violation of the agreement of the parties[108]
  - If the arbitral award decided on matters not included in or exceeding the scope of the arbitration agreement. If it is possible to separate decisions on matters subject to arbitration from those not subject to arbitration, only the latter part of the award shall be capable of being nullified[109]
  - If nullity occurs in the arbitral award, or if the arbitral proceedings are tainted by nullity affecting the award[110]
- Pursuant to Article 15(2) of the Syrian State Council Law, the competent Syrian court can, on its own motion, rule on the annulment of arbitral awards if the content of such awards violates the public order of Syria
- Under Article 127 of the Syrian State Council Law, proceedings commenced before the ordinary courts of law that have become the prerogative of the State Council will be stayed until the issuance of a judicial ruling of a peremptory degree.[111] Awards issued by arbitral tribunals before the entry into force of the Syrian State Council Law and that have not been declared final shall remain subject to appeal before the Supreme Administrative Court[112]

2.3.2 Legislation endorsing arbitration and/or the future establishment of an arbitral infrastructure

For reference, these legislative instruments include:

- Syrian Law No. 65 of 2002, Creating a National Tourism Federation and Tourism Chambers[113]
- Syrian Decree No. 43 of 2005, Reorganising Insurance and Reinsurance Companies, previously governed by Syrian Legislative Decree No. 195 of 1959[114]
- Syrian Decree No. 43 of 2005, Regulating the Insurance Market[115]
- Syrian Law No. 20 of 2006, Maritime Law[116]

[108] *Ibid.*, Art. 15(1)(e).
[109] *Ibid.*, Art. 15(1)(f).
[110] *Ibid.*, Art. 15(1)(g).
[111] *Ibid.*, Art. 127(1).
[112] *Ibid.*, Art. 127(2).
[113] Issued on 20 November 2002. Art. 4(1) of Syrian Law No. 65 of 2002 refers to the aims of "Tourism Chambers" to resolve disputes between members of the tourism industry, between members and third parties, and to organize arbitration and relevant expertise.
[114] Issued on 6 May 2005. Arts 33–36 of Syrian Legislative Decree No. 43 of 2005 provide for optional arbitration and ADR organized by the "Authority" controlling insurance established under Syrian Decree No. 68 of 2004.
[115] Art. 37(c) of Syrian Decree No. 43 of 2005 provides that "the insured and beneficiaries may resort to the 'Commission' to present the dispute arising between them and the insuring companies without prejudice to their rights to submit to a judiciary or arbitration." Art. 38(a) of Syrian Decree No. 43 of 2005 provides that the relevant board established under the law shall provide "the necessary instructions to set out rules for alternative ways to resolve insurance disputes particularly mediation and arbitration and all procedures related thereto including wages and costs involved." Art. 38(b) endeavours to establish a special register of names of mediators and arbitrators authorized at the "Commission" for appointment in insurance disputes, and determine conditions and requirements of such authorizations under instructions issued by the "Board."
[116] Issued on 28 March 2006. Art. 3 of the Syrian Law No. 20 of 2006 provides that the newly established "Shipping Chamber" will be tasked with promoting shipping activities, assisting and advising its members, organizing arbitration in its field, and co-operating with state agencies, chambers of commerce, industry, and tourism.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

- Syrian Law No. 8 of 2007, on Trademarks, Geographic Indicators, Industrial Drawings and Designs, and Unfair Competition[117]
- Syrian Decree No. 8 of 2007, the Syrian Investment Law[118]
- Syrian Law No. 4 of 2009, Implementing the Electronic Signature and Network Services Law[119]
- Syrian Decree No. 29 of 2011, Regulating the Establishment of all Legal Forms of Companies[120]
- Syrian Decree No. 62 of 2013, Implementing the Provisions Governing Copyright and Related Rights Protection Law[121]
- Syrian Law No. 3 of 2016, Establishing the Agency for Supporting and Developing Local Products and Exports (ASDLPE)[122]

3. Navigating postwar disputes

While it is difficult to project when a cessation of ongoing conflicts in Syria might allow the peaceful resolution of connected disputes, various prospective issues can be borne in mind with respect to instituting, managing, and officiating postwar disputes. For states, investors, commercial entities, or other interested parties, the identity and classification of the parties, jurisdictional matters, as well as the applicable law in such disputes are each likely to raise contentions, particularly given what are often blurred lines between commercial and investment disputes. Despite disputes inevitably giving rise to a nexus of competing stakeholder interests, there remains scope for converging shared needs to establish effective and independent dispute-resolution fora. Such fora can be beneficial for a cross section of actors involved, as well as wider peacekeeping efforts. Insofar as such postwar disputes may envelope aspects of Syrian investment law, it is worth considering Syria's existing investment arbitration landscape, including the treaties and conventions to which Syria is a party, and their corresponding arbitration and dispute-settlement provisions.

Between 1975 and 2010, Syria signed over 40 bilateral investment treaties (BITs), each of which contains different dispute-settlement provisions. In line with Syria's broader

[117] Pursuant to Art. 119(e) of Syrian Law No. 8 of 2007, it shall remain the right of the parties to resort to local or international arbitration in special civil disputes stipulated in the law.

[118] Art. 7 of Syrian Decree No. 8 of 2007 provides that disputes between investors and any public state entity that cannot be settled amicably within three months can be submitted to arbitration or to the competent Syrian court having jurisdiction. The Syrian Investment Law, originally under Syrian Law No. 10 of 1991 and amended by Syrian Decree No. 7 of 2000, was supplemented by two further legislative decrees both issued on 27 January 2007 (Syrian Decree No. 8 of 2007, on Investment, and Syrian Decree No. 9 of 2007, establishing the Syrian Investment Organisation). For a broader assessment of the Syrian Investment Law, see El-Hakim (2006), pp. 269–80, 273–9.

[119] Art. 15(12) of Syrian Law No. 4 of 2009 provides that the newly established National Agency for Network Services Agency shall undertake to resolve disputes among licensees within the agency's business through arbitration, in accordance with in-force laws and regulations.

[120] Notwithstanding the allocation of the competent Syrian civil courts to consider all commercial disputes and lawsuits relating to companies or branches thereof (Art. 15(1)–(4) of Syrian Decree No. 29 of 2011), Art. 15(5) of Syrian Decree No. 29 of 2011 states that parties retain the right to resort to national or international arbitration in respect of commercial or civil disputes stipulated in Syrian Decree No. 29 of 2011.

[121] Under Art. 58(3) of Syrian Decree No. 62 of 2013, the collective-management associations established under the law shall have the power to take all measures of mediation, arbitration, and recourse to courts of law in order to protect the rights of authors and owners of related rights who assigned their rights thereto and collect the compensation arising therefrom. Under Art. 4 of Syrian Decree No. 62 of 2013, the general protections with respect to copyright may not extend to laws, regulations, judicial rulings, arbitral awards, international conventions, administrative decisions, as well as all formal documents and official translations arising thereof.

[122] Under Art. 5(G)(6) of Syrian Law No. 3 of 2016, the "Board" managing the ASDLPE undertakes to approve the conciliation, arbitration, and waiver of legal proceedings, in accordance with applicable laws and regulations.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

economic position, a significant proportion of these BITs were concluded with Arab countries,[123] non-aligned regional partners,[124] various Association of Southeast Asian Nations (ASEAN) countries,[125] as well as China, India, and Russia. In doing so, Syria adopted atypical BIT forms whereby the arbitration-related provisions differ vastly from treaty to treaty. By way of example, the Syria–Germany BIT is absent any provisions whatsoever on dispute settlement between investors and contracting parties; the Syria–Indonesia BIT limits dispute settlement between contracting parties to the possibility of settlement through diplomatic channels;[126] while the Syria–Egypt BIT, in addition to having separate articles regarding the settlement of investor–state and state–state disputes, also establishes a joint ministerial committee for implementing the BIT, which is authorized to conduct the reconciliation of disputes over investment activities.[127] It remains to be seen whether the dispute-settlement provisions within these treaties are sufficiently durable and comprehensive to sustain arbitration processes arising out of or in connection with postwar disputes.[128]

In addition to the above-mentioned BITs, Syria is a signatory to the following regional treaties and conventions that either include standing arbitration provisions or concern the recognition and enforcement of judgments and arbitral awards:

- Arab League Convention on the Enforcement of Judgments and Arbitral Awards 1952[129]
- Inter-Arab Investment Guarantee Corporation 1971[130]
- Unified Agreement for the Investment of Arab Capital in the Arab States 1980[131]
- OIC Investment Agreement 1981[132]
- Riyadh Convention 1983[133]
- The Amman Arab Convention on Commercial Arbitration 1987[134]
- Islamic Corporation for the Insurance of Investment Credit 1992[135]

It is worth noting that the Syrian state has appeared as a party to a number of international commercial arbitrations under the institutional auspices of the International Court

[123] Syria has signed 14 BITs with other League of Arab States members.

[124] Syria signed a BIT with the Islamic Republic of Iran on 5 February 1998, in force since 16 November 2005.

[125] Syria concluded BITs with the Philippines, Malaysia, and Indonesia between 1997 and 2010.

[126] Art. 9 of the Syria–Indonesia BIT 1997.

[127] Art. 7(6) of the Syria–Egypt BIT 1997. Similar implementation committees are also established under the Syria–UAE BIT of 1997 and the Syria–Jordan BIT 2001. It is notable that Art. 6 of the Syria–Egypt BIT, in respect of investor–state disputes, offers recourse to arbitration through the Cairo Regional Centre for International Commercial Arbitration.

[128] Under Art. 107 of the 2012 Syrian Constitution, promulgated pursuant to Syrian Decree No. 94 of 2012, in force since 27 February 2012, "the President of the Republic concludes international treaties and agreements and revokes them in accordance with provisions of the Constitution and rules of international law."

[129] The Arab League Convention on the Enforcement of Foreign Judgments and Awards was signed by members of the Arab League of States on 14 September 1952.

[130] The Convention Establishing the Inter-Arab Investment Guarantee Corporation 1971, as amended by Council Resolution No. 9 of 1987, has 21 contracting countries, seven of which acceded to the convention between 1976 and 1988.

[131] Issued on 26 November 1980.

[132] Agreement on Promotion, Protection and Guarantee of Investments amongst the Member States of the Organization of the Islamic Conference, signed on 6 June 1981.

[133] The Convention on Judicial Cooperation between the States of the Arab League, endorsed by the Council of Arab Ministers of Justice on 6 April 1983 (the "Riyadh Convention"). Syria became a signatory to the Riyadh Convention on 30 September 1985.

[134] Concluded in Amman between 11 and 14 April 1987.

[135] Articles of Agreement of the Islamic Corporation for the Insurance of Investment and Export Credit, concluded in Tripoli, Libya, on 19 February 1992.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

of Arbitration of the International Chamber of Commerce (ICC). In *Papillon Group Corporation (Panama) v. Syria and others*,[136] various disputes arose in relation to contracts for advertising services tendered by *Syria* to *Papillon* regarding the Mediterranean Olympic Games held in Latakia in 1987. Following a first ICC award rendered in respect of a restitution claim and various damages arising from alleged non-performance under these contracts,[137] Syria refused to sign terms of reference and otherwise refrained from participating in subsequent ICC proceedings arising under the same contracts. The tribunal in the second ICC proceedings declared itself incompetent to rule on the claims, absent any grounds to indicate Syria was a party to the arbitration or had expressed a clear and explicit will to participate in an international commercial arbitration. On substantive grounds, the tribunal also rejected *Papillon*'s claims for sums in excess of $30 million.

In another ICC arbitration between an *Italian company* as claimant and a *Syrian company* representing the government of Syria,[138] a dispute arose over supplemental pricing in connection with the performance of a contract for works, the delivery of supplies, and other transactions approved by the Syrian minister of petroleum, electricity, and mineral resources, and which was ratified by specific Syrian legislation. The existent of contradictory references to applicable law in the contract left the tribunal having to determine between "the general principles of law and justice" and the "laws of Syria." Taking a holistic approach, the tribunal adopted both references, stating that the agreement to "general principles *prima facie* include those which are derived from the Syrian legal system, as well as those which are developed in international arbitral case-law."[139]

In an interim award settling the interpretation of the applicable law, the tribunal acknowledged the parties' impassioned and "even philosophical" submissions, citing the claimant's perception that submitting to Syrian law was tantamount to an automatic disadvantage and finding that such a perception "is obviously totally unreal but exists in the mind of the merchant who often has only a vague concept of foreign legal systems."[140] This serves as a reminder that, irrespective of the wider institutional and procedural context, paying attention to the formation of arbitration agreements, seemingly basic contract-drafting skills, and employing disputes foresight in contract negotiations can avert unnecessary procedural delays and legal disputes during the course of arbitral proceedings.

The ICC case *Syrian State Trading Organization v. Ghanaian State Enterprise*[141] concerned a dispute over delays in the procurement into Syria of plywood and blockboard from Ghana, precipitating various claims over an irrevocable letter of credit, performance guarantee, alleged contractual breaches, *force majeure*, damages, and loss-of-profit claims arising out of the procurement contract. In view of a contractual reference to "French International Arbitration Law," the tribunal opted to apply English law as the law applicable to the substance of the dispute, taking into account "trade usages" referenced under the French Civil Code and ICC Rules, and the parties' respective claims to apply Syrian, Ghanaian, and English national laws. In a dispute over the general conditions applicable to the contract, the tribunal dismissed a version of general conditions submitted by the Syrian party the evening before the hearing and which were deemed inadmissible.

Making a general remark regarding Ghana's *force majeure* claim over the 1979 oil crisis following the Iranian revolution, the tribunal indicated that "if every governmental

[136] ICC Case No. 12923/E.C., Final Award rendered on 11 October 2007.

[137] ICC Case No. 10729/DB, Final Award rendered on 21 December 2001.

[138] ICC Case No.3380, Final Award rendered on 29 November 1980, by Pierre Lalive (chairman), Ettore Mattera (co-arbitrator), and Jacques El-Hakim (co-arbitrator).

[139] ICC Case No. 3380, Final Award rendered on 29 November 1980 (p. 118).

[140] *Ibid*.

[141] ICC Case No. 4237, Final Award rendered on 17 February 1984, by Loek J. Malmberg as sole arbitrator.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

reshuffle and accompanying public excitement constitutes force majeure, world trade would in modern times be bogged down by uncertainty."[142] It is equally notable that in respect of loss-of-profit claims made by the Ghanaian party, the tribunal stated under general principles that upon non-delivery, the buyer can mitigate its loss by procuring substitute goods on the open market, although "to the extent to which he [the buyer] suffers further loss by not going to the market, he cannot hold the seller responsible."[143]

In a more recent investment dispute between *Gamesa Eolica, S.L.U. v. Syria*,[144] a tribunal constituted under the auspices of the Permanent Court of Arbitration (PCA) found Syria liable for breaching the Syria–Spain BIT after the Syrian authorities had seized bank guarantees posted by *Gamesa* in relation to a project to build a wind farm in Syria that was derailed by conflicts and sanctions. At the subsequent enforcement stage, Syria did not appear in the proceedings or file any challenge against the award under the New York Convention. In 2014, the Spanish High Court of Justice in Madrid[145] delivered a decision recognizing the PCA award.

In terms of Syria's broader national policy towards arbitration, there remains scope for development, notwithstanding the above-mentioned domestic commercial arbitration provisions and Syria's existing investment arbitration frameworks. Long before the current conflicts in Syria, the widely held perception was that despite Syria's local arbitration provisions, "in actual practice, Syrian entities do regularly submit to all forms of arbitration outside Syria."[146] In more recent scholarship, Nathalie Najjar suggests that this position prevails, in part, owing to the absence of any recognizable arbitral institutions in Syria:

> In the absence of a permanent national Syrian arbitration centre, the most important chambers of commerce, those in Damascus and Allepo as well as the Syrian Federation of Chambers of Commerce based in Damascus, act as local arbitration institutions. The continuous hostility shown in this country towards international arbitration, which some interpret as a kind of reaction to cases involving a Syrian party, explains why these chambers have prerogatives in theory more than in practice. They are rarely solicited by international traders, who generally prefer ad hoc arbitration or, in the best case scenario, the reputed arbitration centres.[147]

In view of this position, national stakeholders in Syria may take future steps to encourage domestic and international parties to conduct arbitral proceedings and other forms of dispute settlement within Syria. The development of a local arbitral infrastructure, including a recognized internationally facing arbitral institution and a domestic judicial infrastructure capable of delivering independent, efficient, and dependable judicial assistance during arbitral proceedings as well as the enforcement of arbitral awards, will be key to revitalizing Syria's national economy and a likely precursor to attracting foreign direct investment. However, at least with respect to state–state disputes and potential mass claims arising out of the Syrian conflicts, such claims might mandate recourse to international tribunals and other forms of institutionalized dispute settlement, requiring the buy-in of international stakeholders and regional partners.

[142] ICC Case No. 4237, Final Award rendered on 17 February 1984 (p. 57).

[143] *Ibid.* (pp. 58–9).

[144] PCA Case No. 11 of 2012, rendered on 5 February 2014, by Yves L. Fortier (president), Carita Wallgren-Lindholm (investor-appointed), and Fathi Kemicha (state-appointed).

[145] Spanish High Court of Justice in Madrid in Case No. 24 of 2014, on 26 September 2014.

[146] Lew (1985), p. 176.

[147] Najjar, *supra* note 1, p. 204.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

To this end, the trajectory of established models, such as the Iran–US Claims Tribunal,[148] may be considered as a useful reference point. Following the end of World War I, the establishment of Mixed Arbitral Tribunals (MATs) represented a significant development of international adjudication systems. Despite being fairly limited in number, these MATs decided tens of thousands of cases in little over a decade during the interwar period. The jurisprudence of these MATs remains substantially untouched by academics and practitioners,[149] as does the scope for drawing lessons for creating novel institutional fora or other international tribunals. Unsurprisingly therefore, the prospects for establishing domestic, regional, and international tribunals to resolve and settle disputes relating to Syrian conflicts since 2011 have been and remain unexplored.

4. Conclusion

Following Syria's civil war of 1860, Butrus Al-Bustani delivered a series of fabled clarions that subsequently became known as *Nafir Surriya*. Aimed at those entangled in the war as well as outside interlocutors, and "with a style oscillating between Paulinian sermon and Socratic dialogue,"[150] Al-Bustani noted:

> As for the claim that the Syrian unrest is the start of a worldwide war causing total destruction, we believe it is baseless. Our limited insight tells us that the desired goal of bringing peace and prosperity back to Syria can be achieved through extensive means. Otherwise, we are left to conclude that the world has gone old and mad or to agree with some of the astrologers who, guided by their visions and observations, have ordained that the Day of Judgment has arrived at our gates. If this were really the case, we would not need to feel sorry that it is too late or too early; we would need to worry about neither past nor future losses and destructions.[151]

The principle of arbitration is a deeply rooted ancient ADR practice within the customary legal traditions of Syria. As such, the modern technique of arbitration resiliently takes its place within Syria's contemporary dispute-resolution systems, encompassing a vast cross section of personal, private, and international disputes. Section 2 summarized the salient features of the Syrian Arbitration Law 2008, identifying that a raft of arbitration-related legislation either institutes provisions for arbitration in certain industry disputes or aspires towards developing industry-specific arbitral infrastructure. As a reference point for readers, and given the limited nature of available sources, Section 2 purposely exhibited these legislative provisions in a descriptive rather than discursive fashion.

Section 3 reflected on the possibilities for navigating postwar disputes arising out of the current Syrian conflicts, appraising aspects of Syria's investment-law frameworks for arbitration and dispute settlement generally. By assessing certain international commercial and investment arbitration cases involving the Syrian state or state entities, it was shown that navigating postwar disputes effectively can rest equally on in-case management as it can on the institutional frameworks and systems governing them. In a reconnaissance of sorts, it was also recognized that potentially relevant regional and historical dispute-settlement systems have received diminutive academic attention. As such, and with those lurching towards the subject merely dusting the periphery, new opportunities for

[148] For a lucid analysis of the origins, establishment, and jurisprudence of the Iran–US Claims Tribunal, see Simma & Hoss (2021).

[149] For a high-level overview of the competencies, organization, and legal nature of the MATs, see Requejo & Hess (2018).

[150] Hanssen & Safieddine (2019), p. 2.

[151] Clarion 6 of 8 November 1860; see *ibid*., p. 90.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

constituting institutional and other fora for resolving postwar disputes remain all but unexplored.

There is scope for Syria to develop its local arbitral infrastructure, and particularly the need to establish a recognized arbitral institution. Such developments remain a matter of national policy that speak more to a pervasive need for independent and transparent institutions, and for the purposes of strengthening the rule of law generally. Whether Syria can develop domestic technologically advanced administrative facilitates and an institutional infrastructure capable of meeting the needs of tomorrow's disputes will be of secondary importance if the basic safety and security of parties and other professional participants cannot be guaranteed. This should neither detract from attempts to understand Syria's existing arbitration landscape nor should it derail legitimate efforts to explore opportunities for using arbitration and other ADR processes to settle and resolve postwar disputes, either within or concerning Syria.

Acknowledgements. This contribution corresponds to a lecture presented by the author as part of the Law after Lunch lecture series at the University of Halle & Wittenberg in Germany on 2 July 2020, under the title "Arbitration in Syria: Navigating Post-War Disputes." The author is grateful to Professor Dr Hatem Elliesie and Dr Matthias Vanhullebusch for their contributions during the preparation and editing of this article.

References

Al-Dinawari, Abu Hanifa (1888) in V. Guirgass, ed., *Kitab al-akbhar at-tiwal*, Leiden: Brill (Arabic-language source).

Baamir, Yahya Abdulrahman (2012) *Shari'a Law in Commercial and Banking Arbitration: Law and Practice in Saudi Arabia*, London/New York: Routledge.

Ballantyne, William M. (2000) *Essays and Addresses on Arab Laws*, London/New York: Routledge.

Comair-Obeid, Nayla (2014) "Salient Issues in Arbitration from an Arab Middle Eastern Perspective." 4 *The Arbitration Brief* 52–74.

Coulson, Noel J. (1984) *Commercial Law in the Gulf States: The Islamic Legal Tradition*, London: Graham & Trotman.

El-Aḥdab, Abd al-Ḥamid, & Jalal El-Ahdab (2011) *Arbitration with the Arab Countries*, 3rd revised and expanded edn, New York: Wolters Kluwer Law & Business.

El-Hakim, Jacques (1982) "Syria." 7 *Yearbook: Commercial Arbitration* 35–54.

El-Hakim, Jacques (1994) "Syria." 1 *Yearbook of Islamic & Middle Eastern Law* 142.

El-Hakim, Jacques (2006) "Syria." 12 *Yearbook of Islamic & Middle Eastern Law* 269–79.

El-Hakim, Lina (2011) "The Syrian Arbitration Law: Four Years after the Enactment of Law No. 4 of 25 March 2008." 3 *International Journal of Arab Arbitration* 3.

Elliesie, Hatem, & Elwan Omaia (2018) "Exequaturverfahren syrischer Urteile in Deutschland," in H. Elliesie, A. Beate, & T. Hanstein, eds., *Islamisches Recht in Wissenschaft und Praxis: Festschrift zu Ehren von Hans-Georg Ebert*, Berlin: Peter Lang, 243–68.

Franke, Ulf, Annette Magnusson, & Joel Dahlquist (2016) *Arbitrating for Peace: How Arbitration Made a Difference*, New York: Kluwer Law International.

Hallaq, Wael B. (2005) *The Origins and Evolution of Islamic Law*, Cambridge: Cambridge University Press.

Hanssen, Jens, & Hicham Safieddine (2019) *The Clarion of Syria: A Patriot's Call against the Civil War of 1860*, Berkeley: University of California Press.

Harries, Jill (1999) *Law & Empire in Late Antiquity*, Cambridge: Cambridge University Press.

Hinds, Martin (1972) "The Siffin Arbitration Agreement." 17 *Journal of Semitic Studies* 93–129.

Hitti, Philip (1951) *History of Syria Including Lebanon and Palestine*, London: Macmillan & Co. Ltd.

Hitti, Philip (1970) *History of the Arabs*, London: Macmillan.

Kalenderian, Vahan H. (1945) "Protection of Commercial Interests in Near and Middle East." 1 *International Arbitration Journal* 30–5.

Krüger, Hilmar (2008) "Syrien: Neues Schiedsrecht, Praxis des Internationalen Privat- und Verfahrensrechts." *IPRax* 564.

Krüger, Hilmar (2009) "Internationalrechtliches im neuen syrischen Handelsvertreterrecht." *Zeitschrift für Recht & Islam (ZR&I)* 12.

Krüger, Hilmar (2013) "Überblick über das Schuldvertragsrecht arabischer Staaten." 1 *Electronic Journal of Islamic and Middle Eastern Law* 102–14.

Lew, Julian D. M. (1985) "The Recognition and Enforcement of Arbitration Agreements and Awards in the Middle East." 1 *Arbitration International* 161–78.

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

Mallat, Chibli (2007) *Introduction to Middle Eastern Law*, Oxford: Oxford University Press.
Mantica, Margit (1957) "Arbitration in Ancient Egypt." 12 *Arbitration Journal* 155–63.
Najjar, Nathalie (2018) *Arbitration and International Trade in the Arab Countries*, Leiden: Brill Nijhoff.
Office of Foreign Assets Control (2013) "Syria Sanctions Program," 2 August, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/syria.pdf (accessed 17 June 2021).
Requejo, Marta, & Burkhard Hess (2018) "The Mixed Arbitral Tribunals in the Peace Treaties of 1919–1922." Max Planck Institute Luxembourg for Procedural Law Research Paper Series No. 2018 (5).
Schofield, Richard (1992) *Arabian Boundary Disputes*, Vol. 20, Cambridge: Cambridge University Press.
Simma, Bruno, & Cristina Hoss (2021) "The Contribution of the Iran-US Claims Tribunal," in H. R. Fabri & E. Stoppioni, eds., *International Investment Law: An Analysis of the Major Decisions*, Oxford: Hart Publishing (forthcoming).
Stein, Peter (1974) "Arbitration Under Roman Law." 41 *Journal of the Chartered Institute of Arbitrators* 203.
Stein, Peter (1984) *Legal Institutions: The Development of Dispute Settlement*, London: Butterworths.
Tyser, Sir Charles Robert, D. G. Demtriades, & Efendi Ismail (1967) *The Mejelle: Being an English Translation of Majallahel-ahkam-i-adliya and a Complete Code on Islamic Civil Law*, Lahore: All Pakistan Legal Decisions.

International conventions and bilateral treaties

Agreement on Promotion, Protection and Guarantee of Investments amongst the Member States of the Organization of the Islamic Conference, signed on 6 June 1981
Arab League Convention on the Enforcement of Foreign Judgments and Awards, signed by members of the Arab League of States on 14 September 1952
Articles of Agreement of the Islamic Corporation for the Insurance of Investment and Export Credit, concluded in Tripoli, Libya on 19 February 1992
Convention Establishing the Inter-Arab Investment Guarantee Corporation 1971
Convention on Judicial Cooperation between the States of the Arab League, endorsed by the Council of Arab Ministers of Justice on 6 April 1983
Syria–Egypt BIT 1997
Syria–Indonesia BIT 1997
Syria–Iran BIT 2005
Syria–Jordan BIT 2001
Syria–Spain BIT 2003
Syria–UAE BIT 1997

Legislation

Egyptian Law No. 27 of 1994, Promulgating the Law Concerning Arbitration in Civil and Commercial Matters
Syrian Decree No. 7 of 2000, Investment
Syrian Decree No. 8 of 2007, Trademarks, Geographic Indicators, Industrial Drawings and Designs, and Unfair Competition
Syrian Decree No. 9 of 2007, Establishing the Syrian Investment Organisation
Syrian Decree No. 17 of 2010, Syrian Labour Law
Syrian Decree No. 29 of 2011, Regulating the Establishment of all Legal Forms of Companies
Syrian Decree No. 52 of 2009, Regulating the Creation of Chambers of Industry
Syrian Decree No. 62 of 2013, Implementing the Provisions Governing Copyright and Related Rights Protection Law
Syrian Decree No. 84 of 1953, Syrian Civil Procedure Code
Syrian Decree No. 94 of 2012, Promulgating the 2012 Syrian Constitution
Syrian Decree No. 148 of 1949, Syrian Penal Code
Syrian Decree No. 630 of 1952, General Conditions for Contracts Concluded by the Syrian Defence Ministry
Syrian Law No. 3 of 2016, Establishing the Agency for Supporting and Developing Local Products and Exports
Syrian Law No. 4 of 2008, Arbitration
Syrian Law No. 4 of 2009, Implementing the Electronic Signature and Network Services Law
Syrian Law No. 5 of 2016, Syrian Law No. 5 of 2016, Concerning Partnership between the Public and Private Sectors
Syrian Law No. 8 of 2007, Syrian Investment Law
Syrian Law No. 10 of 1991, Syrian Investment Law
Syrian Law No. 15 of 2008, Real Estate Investment Law
Syrian Law No. 16 of 2014, Concerning Property Judges

https://doi.org/10.1017/als.2021.35 Published online by Cambridge University Press

Syrian Law No. 18 of 2010, Telecommunications
Syrian Law No. 20 of 2006, Maritime Law
Syrian Law No. 30 of 2010, Regulating the Legal Profession
Syrian Law No. 32 of 2019, Council of State Administrative Law.
Syrian Law No. 32 of 2019, Formation of the State Council and its Powers
Syrian Law No. 38 of 2006, Customs Law
Syrian Law No. 51 of 2004, Syrian Procurement Law
Syrian Law No. 65 of 2002, Creating a National Tourism Federation and Tourism Chambers
Syrian Legislative Decree No. 43 of 2005, Regulating the Insurance Market
UAE Federal Law No. 6 of 2018, Concerning Arbitration
UNCITRAL Model Law on International Commercial Arbitration 2006

Court judgments and arbitral awards

ICC Case No. 3380, Extract of the Final Award rendered on 29 November 1980, "Italian Enterprise v Syrian Enterprise," in P. Sanders, ed., *Yearbook Commercial Arbitration 1982 –Volume VII, Yearbook Commercial Arbitration, Volume 7*, London: Kluwer Law International; ICCA & Kluwer Law International, pp. 116–8.

ICC Case No. 4237, Final Award rendered on 17 February 1984, by Loek J. Malmberg as Sole Arbitrator, "Syrian State trading organization, buyer v Ghanaian State enterprise, seller" (1985) in P. Sanders, ed., *Yearbook Commercial Arbitration 1985—Volume X, Yearbook Commercial Arbitration, Volume 10*, London: Kluwer Law International; ICCA & Kluwer Law International, 52–60.

ICC Case No. 10729/DB, Final Award rendered on 21 December 2001, "Papillon Group Corporation v. République Arabe de Syrie et Arab Advertising Organization—(AAO-Golan) Syrie."

ICC Case No. 12923/E.C., Final Award rendered on 11 October 2007, "Papillon Group Corporation (Panama) v. (1) Arab Republic of Syria; (2) Arab Advertising Organization (AAO, GOLAN) (Arab Republic of Syria); (3) General Establishment of External Commerce (Arab Republic of Syria)." (2013) 5 *International Journal of Arab Arbitration* 99–137.

Permanent Court of Arbitration Case No. 11 of 2012, Final Award rendered on 5 February 2014.
Spanish High Court of Justice (Madrid) Case No. 24 of 2014
Syrian Court of Cassation Case No. 93 of 2014
Syrian Court of Cassation Case No. 741 of 2007

Cite this article: Nasrallah, Faris Elias (2023). Arbitration in Syria: Navigating Postwar Disputes. *Asian Journal of Law and Society* **10**, 219–240. https://doi.org/10.1017/als.2021.35