

The Year in Review

Volume 53 *International Legal Developments*
Year in Review: 2018

Article 39

January 2019

Middle East

Rebecca Lee Katz

Adam Al-Sarraf

Mustafa Ali

Hannah Jung

Farrah Qazi

See next page for additional authors

Recommended Citation

Rebecca Lee Katz et al., *Middle East*, 53 ABA/SIL YIR 549 (2019)

This Regional and Comparative Law is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in The Year in Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

Middle East

Authors

Rebecca Lee Katz, Adam Al-Sarraf, Mustafa Ali, Hannah Jung, Farrah Qazi, Myriam Khedair, Seyed Mohsen Rowhani, Benjamin Leventhal, Omar Nimri, Ibrahim Sattout, Dania Dib, Fouad Debs, Howard Stovall, Farooq Bsharat, and Salah Shawa

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

Middle East

REBECCA LEE KATZ, ADAM AL-SARRAF, MUSTAFA ALI,
HANNAH JUNG, FARRAH QAZI, MYRIAM KHEDAIR,
SEYED MOHSEN ROWHANI, BENJAMIN LEVENTHAL, OMAR NIMRI,
IBRAHIM SATTOUT, DANIA DIB, FOUAD DEBS, HOWARD STOVALL,
FAROOQ BSHARAT, AND SALAH SHAWA*

* Rebecca Lee Katz is an Associate at Locke Lord LLP in Los Angeles, California, where she specializes in real estate finance and private equity venture capital. She received her B.S. in Regional & Comparative Studies from Georgetown University and her JD from the George Washington University Law School. Adam al-Sarraf is an Attorney Advisor-International with the Commercial Law Development Program (CLDP) of the US Department of Commerce Office of the General Counsel where he manages technical assistance programming in Bahrain, Kuwait, Morocco, Tunisia, Saudi Arabia and the Dominican Republic. He is a graduate of George Washington University Law School. Mustafa Ali is a recently-appointed judge of the Court of First Instance in Qena, Egypt. He worked over eight years as a prosecutor and received an LLM from Boston University School of Law in 2019. Hannah Jung is a first year student at Cornell Law School. She has an undergraduate degree in International Relations from the Ewha Women's University in Seoul, South Korea and a master's degree in Near and Middle Eastern Studies from the School of Oriental and African Studies, University of London. Farrah Qazi is an attorney practicing in the areas of immigration and human rights law, with a specialization in cases dealing with gender-based violence and persecution of minorities. She has a law degree from DePaul University Law School. Myriam Khedair is an LLM candidate at Columbia Law School. She also has a master's degree in Economic Law and Global Governance Studies from Sciences Po, University of Paris. Seyed Mohsen Rowhani is currently a JSD candidate at Cardozo Law School and serves in the Economic and Social Council of the United Nations as an NGO representative with special consultant status. He has an LLB in Islamic Law and a master's degree in private law from the Imam Sadiq University. He has an LLM in Transnational Legal Practice from St. Johns University and an LLM from Fordham Law School in International Law. Benjamin Leventhal is an attorney with Siegel, Goldschmidt & Leventhal in Herzliya, Israel, where he practices in the area of domestic and international arbitration. He is an LLM graduate in commercial law from Tel Aviv University. His contribution was assisted by Michael Traison. Omar Nimri is a second-year law student at Albany Law School concentrating in international law. Ibrahim Sattout is a partner at ASAR Al Ruwayeh & Partners in Kuwait City and has been with the firm since 2005. He has a BA in Lebanese Law from St. Joseph University and the Lebanese University, Beirut. He has an LLB in French law and a DEA in Private International Law from University of Paris II. He is a member of the Lebanese Bar. Dania Dib is an associate at ASAR Al Ruwayeh & Partners and is a member of the Lebanese Bar and the Bar of Quebec. She has a BA in Lebanese Law from St. Joseph University and a DEA in International Business Law from the Lebanese University/University Pierre-Mendes in Grenoble, France. Fouad Debs is currently an LLM candidate at Cornell Law School. He previously worked as an attorney with the firm Adolphe Debs & Associates in Beirut, Lebanon. He has a BA in political science from the American University of Beirut and a LLB from the Université la Sagesse in Beirut. Howard Stovall is a Chicago-based attorney and a graduate of the University of Texas School of Law. He devotes his practice exclusively to commercial matters in the Arab Middle East. Farooq Bsharat is currently a second year law student at Touro Law Center. He has a bachelor's degree in political science from Rutgers University. Salah Shawa is an attorney licensed to practice in Syria. He has a JD

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

This article discusses significant international legal and political developments in the Middle East and North Africa (MENA) region.

I. Algeria

In July 2018, President Abdelaziz Bouteflika demonstrated that he would likely seek a fifth five-year presidential term in the upcoming 2019 election.¹ Bouteflika has made few public appearances since suffering a stroke in 2013 that inhibits his capacity to speak.² The endorsement of Bouteflika, despite his failing health, may indicate that Algeria's political and military elite have been unable to appoint a new leader.³

Opponents caution that Bouteflika's campaign will result in the government postponing urgently needed economic reforms to prevent national protests.⁴ Algeria's stagnant, state-dominated economy faces multiple challenges.⁵ Youth unemployment hovers at one third, and economic growth was 1.6 percent in 2017.⁶ The government has depleted its foreign exchange reserves since 2014, when oil prices plummeted.⁷ Reserves dropped from \$178 billion in 2014 to \$88.6 billion in June 2018.⁸ In fact, the draft budget for next year features a seven percent increase in subsidies, including for housing and food products, accounting for twenty-one percent of the budget.⁹ Although the government had approved new taxes on certain goods and increased subsidized fuel prices, these reforms will no longer take effect next year.¹⁰

from Brooklyn Law School and an LLM from University of Paris V in International Business Law.

1. *Algeria's Bouteflika to Seek Re-election Next Year: Party Chief*, ALJAZEERA (Oct. 28, 2018), <https://www.aljazeera.com/news/2018/10/algeria-bouteflika-seek-election-year-party-chief-181028181718161.html>.

2. Lamine Chikhi, *Rare appearance fuels speculation Algeria's Bouteflika will run again*, REUTERS (Apr. 10, 2018), <https://www.reuters.com/article/us-algeria-politics/rare-appearance-fuels-speculation-algerias-bouteflika-will-run-again-idUSKBN1HH2FZ>.

3. Heba Saleh, *Bouteflika heads for fifth term as Algeria economy worsens*, FINANCIAL TIMES (Nov. 18, 2018), <https://www.ft.com/content/58f31a68-e340-11e8-8e70-5e22a430c1ad>.

4. Hamid Ould Ahmed, *Algeria shelves subsidy reforms before presidential elections*, REUTERS (Nov. 16, 2018), <https://uk.reuters.com/article/uk-algeria-economy/algeria-shelves-subsidy-reforms-before-presidential-elections-idUKKCN1NL1IC>.

5. *See id.*

6. *See Algeria Youth Unemployment Rate*, TRADING ECONOMICS, <https://tradingeconomics.com/algeria/youth-unemployment-rate> (last visited Feb. 27, 2019); *Algeria GDP Growth Rate*, TRADING ECONOMICS, <https://tradingeconomics.com/algeria/gdp-growth> (last visited Feb. 27, 2019).

7. *See Ahmed, supra* note 4.

8. *See Saleh, supra* note 3.

9. *See Ahmed, supra* note 4.

10. *See id.*

II. Bahrain, Morocco, Saudi Arabia—Bankruptcy Legislation

For years, countries in the MENA region have been trying to increase entrepreneurship rates; but this year has witnessed one of the most potentially transformative reforms to actually achieve that goal for three countries in the region: the introduction of reorganization statutes.¹¹ This year, Bahrain,¹² Saudi Arabia¹³ and Morocco¹⁴ passed new bankruptcy statutes that provide alternatives, such as, reorganization and preventative settlement for failing businesses.

Prior to the enactment of these statutes, these legal frameworks were characterized by punitive insolvency procedures, and most companies avoided legal proceedings when faced with financial distress.¹⁵ According to an eighteen-month survey conducted by the World Bank, INSOL, and other partners, insolvency systems in the Middle East and North Africa did not include the necessary incentives for companies to enter into an insolvency process, such as restructuring procedures.¹⁶ On the contrary, the survey found that the systems deterred debtors from attempting to reorganize their debts or start new businesses.¹⁷

Seeing the importance of reform, these three countries adopted statutes that include multiple alternatives to failing companies to avoid liquidation, including, but not limited to, a court supervised reorganization process.¹⁸

11. Adam Al-Sarraf, *The Wave of Insolvency Reform Across the MENA Region: Analysing Saudi Arabia's New Bankruptcy Law*, 2 THE MENA BUS. L. REV. 34, 34 (2018), <https://ssrn.com/abstract=3251350>.

12. *See* حماية المنافسة قوانين اصدار يتضمنن بالاسـتثمار المتعلقة التـشـريعات تطوـير الإفلاس وقانون البيئات [Development of Investment Legislation Includes The Issurance of Competition Law, Data Protection, and Bankruptcy Law], BAHRAIN NEWS AGENCY (Oct. 3, 2018), <https://www.bna.bh/ArchiveDetails.aspx?archiveId=496630>.

13. *See* Tom Arnold, et al., *In Boost to Reform, Saudi Arabia's Cabinet Approves Bankruptcy Law*, REUTERS (Feb. 18, 2018), www.reuters.com/article/us-saudi-bankruptcy/in-boost-to-reform-saudi-arabias-cabinet-approves-bankruptcy-law-idUSKCN1G20PJ.

14. *See* Youssef Lakhdar, *البرلمان يقر قانونا لمساعدة المقاومات المغربية في وضعية صعبة*, HESPRESS (Apr. 10, 2018), <https://www.hespress.com/economie/387545.html>.

15. Mahesh Uttamchandani, "No Way Out": *The Lack of Efficient Insolvency Regimes in the MENA Region*, WORLD BANK GROUP [WBG] 1,1 (2011), <https://openknowledge.worldbank.org/handle/10986/3375>.

16. *Hawkamah/World Bank/OECD/INSOL International: Survey on Insolvency Systems in the Middle East and North Africa*, WORLD BANK 1, 16 (2009), available at <http://documents.worldbank.org/curated/en/800201468052730159/Hawkamah-World-Bank-OECD-INSOL-international-survey-on-insolvency-systems-in-the-Middle-East-and-North-Africa> (At the time of the report, they found that creditors recover under thirty cents on the dollar on defaulted debts in MENA countries compared with nearly seventy cents in OECD countries).

17. *Id.* at 16 ("Systems impose severe legal sanctions (e.g., depriving debtors of their civil and political rights) that harm the image of honest entrepreneurs.")

18. *See* *Resolving Insolvency*, WORLD BANK – DOING BUS. <http://www.doingbusiness.org/en/data/exploretopics/resolving-insolvency/reforms> (last visited Apr. 12, 2019); *see* Saifuddin Mahmood, *Bahrain's new bankruptcy code: A move towards global conformity*, IFLR1000 (Nov. 12, 2018), <https://www.iflr1000.com/NewsAndAnalysis/Bahrain-new-bankruptcy-code-A-move->

The statutes allow for companies that are not balance sheet insolvent to take advantage of the legal remedies.¹⁹ By including such broad eligibility, these countries can help companies address financial difficulties before it is too late. Under both the Saudi and Moroccan statutes, companies can seek relief through a more streamlined and creditor-negotiated procedure with more limited court involvement than a judicial reorganization. Under the Moroccan law, this is referred to as a rescue procedure,²⁰ and the Saudi law uses the term “preventive composition proceeding.”²¹

Both procedures are designed to rescue viable businesses by promoting settlements between debtors and creditors prior to default. Additional key features of the new statutes include the ability of the debtor to manage the operations of the business²² and to obtain unsecured financing²³ during the rescue and reorganization procedures. These two features, which were not available previously, can significantly increase the viability of the failing business in contrast to a system that transfers operation of the business to a trustee or prohibits debtors from seeking new financing. While these new statutes represent a major paradigm shift in the region, the success of these new statutes will depend largely on how efficiently, transparently, and predictably courts resolve disputes during the bankruptcy process.

III. Egypt

A. CYBER CRIMES LAW

A new law has been enacted in Egypt to fight cybercrimes.²⁴ It criminalizes new actions and describes investigative procedures.²⁵ One new crime introduced by the law is unauthorized access or access in excess of authorization to a computer system.²⁶ Other new crimes include intercepting and destroying data, hacking or destroying an email account or

towards-global-conformity/Index/8792; Law on Insolvency 264 (Cabinet Decision No. 264/1439) (Saudi Arabia) (2018).

19. See Law No. 73-17, art. 561, Part 4 (“Rescue procedures may be started upon the request of the corporation without being in default”); Law No. 22, art. 6(a) (If the company “failed to cover debt within 30 days of its due date or will fail to cover date on its due date”); Law on Insolvency 264 (bankruptcy eligibility includes companies that are “likely to suffer financial distress.”).

20. See Law No. 73-17, Part 3 (Rescue Procedures).

21. See Law on Insolvency 264, ch. 3.

22. See Law No. 73-17, art. 566 (the debtor is responsible for everyday operations but under supervision of trustee); Law No. 22, art. 11; Law on Insolvency 264 (trustee is appointed for reorganization but not for preventive composition).

23. See Law on Insolvency 264, ch. 10; Law No. 22, ch. 5; Law No. 73-17, art. 562.

24. Law No. 175 of 2018 (Cybercrimes Law) *al-Jarida al-Rasmiyya*, vol. 32 bis (c), 14 Aug. 2018 (Egypt).

25. See *id.* art. 5–11 (procedural rules), art. 12–42 (Crimes and punishments).

26. See 18 U.S.C. §1030 (Equivalent to the crime first introduced in The Computer Fraud and Abuse Act enacted by the US Congress in 1984).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2019]

MIDDLE EAST 553

a website, disrupting Internet services, and identity theft.²⁷ Furthermore, the new law criminalizes the unauthorized possession of programs or tools for the purpose of committing any of the introduced crimes.²⁸

Article 6 of the new law allows investigative authorities, which are judges or prosecutors, to issue warrants that allow the government to search and seize, pull, or trace data and information *anywhere* or in any computer it is found.²⁹ These warrants allow the government to enter and access a computer system for the purpose of collecting data.³⁰

A similar approach adopted in the United States, granting access to targets outside its territorial border, has been criticized for undermining the sovereignty of states.³¹ Investigations conducted in another country without its prior consent, indeed, collides with international law principles of non-intervention, state sovereignty, and jurisdiction.³² But cyberspace is developing faster than the law in general, and international law, in particular, cannot keep up.

B. NON-GOVERNMENTAL ORGANIZATIONS

President Abdel Fattah El-Sisi took an unexpected step during the World Youth Forum 2018 in Sharm El-Sheikh, Egypt, when he announced his approval for a committee that would oversee amendments to Law 70 of 2017 for Regulating the Work of Associations and Other Institutions Working in the Field of Civil Work.³³ The law, which was ratified in May 2017, imposes

27. See Law No. 175 of 2018.

28. See *id.*

29. Compare *id.* art. 6(1) with Fed. R. Crim. P. 41(b)(6)(a) (2016) (In comparison, Federal Rules of Criminal Procedures in The United States allows a magistrate judge to issue a warrant to remotely access computers outside the district if the location of that district has been concealed through technological means); see Law No. 150 of 1950 (Criminal Procedures Law) *al-Jarida al-Rasmiyya*, vol. 90, 15 Oct. 1951, art. 64–199 (Egypt) (Criminal Investigations in Egypt are conducted by judges or prosecutors); see also CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 58, 189 (Warrants, despite being mostly issued by prosecutors, are judicial warrants, as Egyptian prosecution is part of the judiciary).

30. See Cybercrimes Law, art. 6 (2) (Egypt). The terms used by the law, دخول and نفوذ, are translated as “entering” and “penetration”. See G. Lecomte, *Arabic-English Dictionary, The Hans Wehr Dictionary of Modern Arabic*, edited by J. M. COWAN, Pocket Book Edition, Ithaca, New York 1976, 24 ARABICA 103–103 (1977).

31. See Ahmed Ghappour, *Searching Places Unknown: Law Enforcement Jurisdiction on the Dark Web*, 69 Stanford L. Rev. 1075, 1082 (2017), <https://ssrn.com/abstract=2742706> (citing Letter from Richard Salgado, Dir. of Law Enft & Info. Sec., Google Inc., to the Advisory Comm. on Rules of Criminal Procedure 2–3 (Feb. 13, 2015), <https://www.regulations.gov/contentStream?documentId=USC-RULES-CR-2014-0004-0029&attachmentNumber=1&contentType=pdf>).

32. See *id.* at 1117, n.130.

33. *ElSissi agrees to modify current NGO law*, WORLD YOUTH FORUM (May 11, 2018), <https://wyfegypt.com/news/elsissi-agrees-to-modify-current-ngo-law/>.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

554 THE YEAR IN REVIEW

[VOL. 53]

various restrictions on non-governmental organizations (NGOs) and their activities in Egypt.³⁴

Law 70 provides the Ministry of Social Solidarity with the power to withdraw an organization's permit on grounds of national security and to carry out inspections at will.³⁵ In particular, the law forbids any activity of a political nature.³⁶ Regulations contained in Law 70 also include a requirement of pre-approval for donations,³⁷ notification process including submission of founders' personal information,³⁸ authorization to deny establishment and limit activities of NGOs to those prioritized by the government,³⁹ and punishment through imprisonment for up to five years and a fine of no less than 50,000–1 million EGP.⁴⁰

The President's statement was followed by the Prime Minister's decree on November 7, 2018, which formed the committee headed by the Minister of Social Solidarity and composed of representatives of relevant ministries and bodies.⁴¹ The process is expected to include input from NGOs within Egypt and youth involved in civil work. While it remains unclear what the results of such restructuring will be, the President's statements reflect an intention to balance Egypt's national security interests with the concerns of civil society organizations and a possible alleviation of current restrictions.

IV. Iraq

A. GENOCIDE OF THE YAZIDI PEOPLE

In March 2017, famed human rights attorney Amal Clooney walked into the United Nations headquarters and delivered a damning report on ISIS's genocide against Yazidis in Syria and Iraq, calling for the prosecution of ISIS for crimes against humanity and genocide.⁴² The Yazidis are a religious minority living in Iraq. Their religion mixes elements of Islam, Christianity, and Zoroastrianism. Historically, the Yazidis have been branded as heretics and devil-worshippers by others.

34. See Law No. 70 of 2017 (Law of Associations and Other Foundations Working in the Field of Civil Work) *al-Jarida al-Rasmiyya*, vol. 20, 24 May 2017 (Egypt), available at <http://www.refworld.org/docid/5a4cbae14.html>.

35. See *id.* art. 26–27.

36. See *id.* art. 13.

37. See *id.* art. 23.

38. See *id.* art. 8.

39. See *id.* art. 14.

40. See *id.* art. 87.

41. *The Issue of Civil Associations and Foreign Institutions in Egypt*, THE ARAB REPUBLIC OF EGYPT: CABINET NEWS (Nov. 7, 2018), <http://www.cabinet.gov.eg/English/MediaCenter/CabinetNews/Pages/The-issue-of-civil-associations-and-foreign-institutions-in-Egypt.aspx>.

42. Peter Walker, *Amal Clooney; Full Transcript of Human Rights Lawyer's UN Speech on Isis*, INDEP. (Mar. 10, 2017), <https://www.independent.co.uk/news/world/americas/amal-clooney-speech-in-full-transcript-human-rights-lawyer-isis-iraq-speech-un-united-nations-a7622176.html> (Read the full transcript of Clooney's speech).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2019]

MIDDLE EAST 555

Clooney's call for the prosecution of ISIS, if granted, is significant because it marks the first time ISIS would be prosecuted in the International Criminal Court (ICC) for "crimes against humanity." Under the Preamble of the Rome Statute, the treaty that established the ICC, the main purpose of the ICC is to prevent the "most serious crimes of concern to the international community" because these crimes "*must not go unpunished.*"⁴³ These crimes include genocide, crimes against humanity, war crimes, and the crime of aggression.⁴⁴ The ICC strives to prevent atrocities from happening by holding perpetrators accountable to an international community.

Thus far, the ICC has prosecuted military and political leaders from various countries.⁴⁵ But many atrocities today are committed by rebellious, extremist factions. Most telling are the heinous crimes committed by such groups as ISIS or Boko Haram.

In order for a crime to be considered a "crime against humanity," several elements must be satisfied. First, the crime must be one of the enumerated ones detailed in the Rome Statute's Article 7.⁴⁶ Among these elements is a "widespread or systematic attack directed against any civilian population."⁴⁷

The Independent International Commission of Inquiry on the Syrian Arab Republic's report to the United Nations details a concerted and systemic ISIS campaign to destroy and eradicate the Yazidi people.⁴⁸ ISIS's crimes against the Yazidis include torture, sexual enslavement of girls and women, forced conversion of adults, inhumane conditions, degrading treatment, and mental trauma—actions clearly outlined as acts of genocide in the Genocide Convention.⁴⁹

But it is the "State or organizational policy" requirement that has created debate over whether the ICC has jurisdiction over ISIS. Of the six elements outlined within the Rome Statute, ISIS seems to satisfy most, if not all, of them. These factors include an established hierarchy,⁵⁰ control over

43. Rome Statute for the International Criminal Court, preamble, July 17, 1998, 2187 U.N.T.S. 3, 4 (emphasis added) [hereinafter Rome Statute].

44. *Id.* art. 5.

45. See *Cases*, COUR PÉNALE INTERNATIONALE [INTERNATIONAL CRIMINAL COURT], <https://www.icc-cpi.int/Pages/cases.aspx> (last visited Mar. 1, 2019).

46. See Rome Statute, art. 7.

47. *Id.*

48. See Human Rights Council, *They Came to Destroy: ISIS Crimes Against the Yazidis*, para. U.N. Doc. A/HRC/32/CRP.2 (2016), <https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session32/pages/listreports.aspx>; UN *Commission of Inquiry on Syria: ISIS is committing genocide against the Yazidis*, UNITED NATIONS HUMAN RIGHTS, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20113> (last visited March 5, 2019).

49. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 1951 U.N.T.S. 278, 280, <https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>.

50. See Nick Thompson and Atika Shubert, *Anatomy of ISIS: How the 'Islamic State' is Run, From Oil to Beheadings*, CNN (Jan. 14, 2015), <https://www.cnn.com/2014/09/18/world/meast/isis-syria-iraq-hierarchy/index.html>.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

556 THE YEAR IN REVIEW

[VOL. 53]

multiple territories,⁵¹ an expressed intent to attack civilians, a primary purpose of committing criminal acts, and the means of carrying out widespread attacks.⁵²

While a case against ISIS, if brought forward, would be unprecedented and complicated, its consequences are far-reaching. Whether Nadia Murad, the Yazidi survivor⁵³ who will be represented by Clooney in the case, prevails remains to be seen. But the impact of turning international attention to this modern-day genocide and the willingness to hold ISIS accountable in international court cannot be overstated.

B. INVESTMENT LAW

Iraq has taken impressive steps towards encouraging and attracting foreign investment in the past year. The reasons for those steps are linked to the economic instability and the need to attract foreign funds—because the government by itself is unable to fund the infrastructure of the areas liberated from ISIS. Earlier this year, the Iraqi Prime Minister, Haider Al Abadi, issued a statement calling on foreign investors to come to Iraq to invest in the infrastructure reconstruction— particularly in the liberated north of Iraq.⁵⁴

To further attract foreign investment and businesses and following the signature of the International Centre for Settlement of Investment Disputes (ICSID) Convention in 2015, Iraq has finally taken the first official step towards the signature of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.⁵⁵ The accession to the New York Convention was under parliamentary deliberation and discussion for several years—especially on whether it was beneficial for the Iraqi economy to accede to the New York Convention given that there were arbitration awards issued against Iraq before 2003 and a general fear of bias against Iraq.⁵⁶ The Cabinet finally voted for the accession to the New York Convention on

51. See *Islamic State and The Crisis in Iraq and Syria in Maps*, BBC NEWS (Mar. 28, 2018), <https://www.bbc.com/news/world-middle-east-27838034>.

52. See Kabir Taneja, *Understanding ISIS: From Conception to Operations*, OBSERVER RESEARCH FOUNDATION (Aug. 31, 2017), <https://www.orfonline.org/research/understanding-isis-from-conception-to-operations/>.

53. Meghan Werft, *Amal Clooney Agrees to Represent Nadia, ISIS Sex Slave, in International Court*, GLOBAL CITIZEN (June 9, 2016), <https://www.globalcitizen.org/en/content/amal-clooney-nadia-sex-slavery-isis-icc/>.

54. See Yara Bayoumy & Dmitry Zhdannikov, *Iraq Calls on Investors to Help \$100 Billion Reconstruction Drive*, REUTERS (Jan. 25, 2018), <https://www.reuters.com/article/us-davos-meeting-iraq/iraq-calls-on-investors-to-help-100-billion-reconstruction-drive-idUSKBN1FE20F>.

55. See Sami Tannous & Amr Omran, *Middle East*, GLOBAL ARBITRATION REVIEW (GAR) (May 11, 2018) [https://globalarbitrationreview.com/benchmarking/the-middle-eastern-and-african-arbitration-review-2018/1169358/middle-east%20\(last%20visited%20nov%2018,%202018\)](https://globalarbitrationreview.com/benchmarking/the-middle-eastern-and-african-arbitration-review-2018/1169358/middle-east%20(last%20visited%20nov%2018,%202018)).

56. See Alain Hannouche & Amanda Mezher, *Enforcement of International Arbitral Awards and Foreign Judgments in Iraq*, LEXOLOGY, (Nov. 9, 2017), <https://www.lexology.com/library/detail.aspx?g=5a5d2d6c-2ffe-4def-8d4c-c1c6fc1dca2c>.

February 6, 2018. The next step would be the vote of the Iraqi parliament to officially ratify the accession, which is expected to happen soon.⁵⁷

In the meantime, discussions involving the Office of Financial Supervision and the Central Bank and the Department of Government Contracts in the Ministry of Planning, headed by the President of the Supreme Judicial Council, were held. The aim of the discussions is to create familiarity with the particularities of the New York Convention within the different branches and agencies of the government that might be involved in contract negotiations, in order to be able to effectively provide legal support if needed. These discussions include training commercial court judges and experts.⁵⁸

V. Iran

A. DISABILITY RIGHTS LAW

In March 2018, the Iranian Parliament enacted a new Law of Protection of the Rights of Disabled People, which succeeded the former Comprehensive Law of Protection of the Rights of Disabled People⁵⁹ and entered into force on September 11, 2018.⁶⁰ The new law attempts to conform the Law of Protection of the Rights of Disabled People to the norms laid down in the Convention on the Rights of Persons with Disabilities (CRPD).⁶¹ Most distinctly, the new Law of Protection of the Rights of Disabled People urged the government to meet the transportation necessities of the affected people.⁶² The government must devote 3 percent of its appropriate positions to disabled individuals.⁶³ Furthermore, families of the individuals affected are discharged of liability for some taxes, and they receive a monthly salary.⁶⁴

57. See Tannous & Omran, *supra* note 55.

58. See التجارة المحاكم قضاة مع نيويورك لاتفاقية الانضمام إلى ائاقش الأعلى القضاء مجلس نوس [The President of the Supreme Judicial Council Discusses Joining the New York Convention with Judges of Commerical Courts], IRAQI MEDIA NETWORK (Oct 24, 2018), <http://imn.iq/archives/2535>.

59. Law of May 2004 (The Comprehensive Law of Protection of the Rights of Disabled People) (Iran), <http://rc.majlis.ir/fa/law/show/94044>.

60. See *Iran Events of 2018*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2019/country-chapters/iran> (last visited Mar. 1, 2019).

61. See U.N. High Commissioner for Human Rights, *Thematic Study on the Right of Persons with Disabilities to Live Independently and be Included in the Community*, U.N. Doc A/HRC/28/37 (Dec. 12, 2014), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/241/66/pdf/G1424166.pdf?OpenElement>.

62. See Law of May 2004, art. 2.

63. See *id.* art. 11.

64. See *id.* art. 27.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

558 THE YEAR IN REVIEW

[VOL. 53]

B. LAW RELATING TO U.S. ECONOMIC SANCTIONS

On May 8, 2018,⁶⁵ the Trump Administration withdrew from the Joint Comprehensive Plan of Action (JCPOA).⁶⁶ The Iranian administration then passed legislation to mitigate the effects of the crippling primary and secondary economic sanctions.

The Board of Ministers enacted new resolutions that authorized currency exchange offices to commence importing foreign bills in cash. The goal of this measure was to stop the inflation of Iranian currency—the Rial. Some of these embargoes were imposed earlier as anti-money laundering measures. This resolution may form new systems to corrupt and expedite money laundering. In other words, the economic sanctions are practically acting against their missions. This provision proclaims:

All approved exchanges can take foreign exchange currencies in the structure of trading transactions following foreign exchange regulations, especially anti-money laundering regulations. Authorized exchange offices permitted the sale of foreign currency following the current laws assigned by the Central Bank of the Islamic Republic of Iran. The entry of foreign currency into banknotes and gold inside the country is permitted without any restriction by the regulations of the Central Bank of the Islamic Republic of Iran and the rules for combating money laundering by persons. Gold imported are immune to any taxes, legal fees and value-added tax following the provisions of the Central Bank of the Islamic Republic of Iran.⁶⁷

VI. Israel

A. CIVIL LITIGATION AND PROCEDURE

Civil and commercial litigation in Israel is about to change dramatically during 2019, in light of new Civil Procedure Regulations⁶⁸ just recently legislated by Minister of Justice Ayelet Shaked. The new regulations will enter into force in October 2019 and include considerable changes such as a focus on oral testimony rather than written affidavit submissions, limitations on written pleadings, limitations on postponing hearings, and strict timetables for adjudicating cases and rendering judgments. New regulations are expected to considerably reduce the lifetime of cases—so that average cases that used to take roughly two to three years might be cut in half.

65. Amanda Holpuch, *Donald Trump Says US Will No Longer Abide By Iran Deal-As It Happened*, GUARDIAN (May 8, 2018), <https://www.theguardian.com/world/live/2018/may/08/iran-nuclear-deal-donald-trump-latest-live-updates>

66. Exec. Order No. 13846, 83 FR 38939, 38939 (2018), AD Executive Order 13846, Federal Register, (Aug. 6, 2018), <https://www.federalregister.gov/documents/2018/08/07/2018-17068/reimposing-certain-sanctions-with-respect-to-iran>.

67. *New Government Decisions: Allowed Exchange Plans Can Sell Traveler's Currency*, BBC PERSIAN (Aug. 5, 2018), <http://www.bbc.com/persian/iran-45077833> (translated by author).

68. See Knesset Election (Civil Procedure Regulations), 5778-2018, cl.8 (Isr.).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2019]

MIDDLE EAST 559

An additional notable change will be in determination of actual reimbursement of costs and legal fees to the prevailing litigating party—as opposed to the current regime where courts had no real guidelines regarding reimbursement resulting often in disproportionate awards of costs usually covering a mere fraction of the cost of litigation. This change is expected to reflect also upon the submission of baseless lawsuits.

B. TRADEMARKS

Within the sphere of international trademark protection, Israeli courts have recently proved once more that Israel is committed to upholding trademark rights and how far courts are willing to go to protect such rulings.

Protection of trademark rights has been implemented even in instances where a trademark is not actually being used in Israel by its owner. For instance, a court held that imitations or branding in a manner resembling a trademark (especially if in a similar field of business) are forbidden, and thus awarded injunctive relief, in the recent case of the Japanese-based MINISO design brand against MINNIMAX—an Israeli brand.⁶⁹ Similar reference was made in the matter of the Barilla brand, as held by the Supreme Court,⁷⁰ where the local manufacturer was ordered to refrain from manufacturing a local brand of pasta resembling the Barilla brand. Such rulings correspond with consistent legal policy over the years, such as the case banning use of the word “champagne” that was used by an Israeli mineral water company to describe the bottled water it sells.

VII. Jordan

As of February 2018, the UNHCR ranks Jordan as having the second highest number of refugees per capita, with approximately eighty-nine refugees per 1000 inhabitants.⁷¹ The precipitously increased burden of providing these refugees assistance aggravates previous difficulties faced within the kingdom, such as increased competition for jobs, housing, and healthcare, as well as a lowered quality of education and a greater unemployment rate.⁷² These deteriorating living standards, coupled with what many residents see as government inaction, presents an increased risk of further instability in the already tempestuous region.⁷³

69. CA 58062/04/18 Guangdong Saiman Lnvestment Co. Ltd v. Max Management Israel Ltd. ##(##) PD ##,## (2018) (Isr.).

70. HCJ 1521/18 Barilla G. e R. Fratlli v. RamiLevy Shivuk Hashikma 2006 Ltd. ##(##) PD ##,## (2018) (Isr.).

71. See *Fact Sheet Jordan February 2018*, UNHCR, https://reliefweb.int/sites/reliefweb.int/files/resources/FactSheetJordanFebruary2018-FINAL_0.pdf (last visited Mar. 2, 2019).

72. See *Syrian Crisis: Impact on Jordan*, EUROPEAN PARLIAMENT: THINK TANK, Feb. 7, 2017, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599258/EPRS_BRI\(2017\)599258_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599258/EPRS_BRI(2017)599258_EN.pdf).

73. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

560 THE YEAR IN REVIEW

[VOL. 53]

By the end of 2016, Jordanian public debt had reached approximately \$37 billion, 95 percent of the kingdom's GDP.⁷⁴ Tasked with reducing the country's rising debt, Prime Minister Hani Mulki introduced an ambitious IMF-backed austerity program seeking to lower these figures to 77 percent of GDP by 2021. Under the terms of the program, Jordan was granted a \$723 million line of credit, with the ultimate goal of fostering the advancement of fiscal consolidation in the kingdom.⁷⁵ But austerity measures accompanying the program included a 2018 replacement of a 1996 bread subsidy program—nearly doubling the prices of the culinary staple⁷⁶—as well as a unification of the general sales tax (GST) to 16 percent, which resulted in tax hikes on popular items such as cigarettes, gasoline, and soft drinks.⁷⁷

In May, the Jordanian cabinet proposed to Parliament an amendment to the Income Tax Law (ITL), with the goal of producing an estimated \$1.2 billion in additional annual tax revenue.⁷⁸ The proposal included tax increases on banks and other companies; a reduction of the threshold for exemption from personal income taxation from 12,000 to 8,000 Dinars; and the removal of a 4,000 Dinar exemption towards medical treatment, education, rent, and other services, as well as the establishment of new tax brackets, which would result in tax increases of up to 8 percent on citizens earning over 5,000 Dinars annually.⁷⁹ The draft law was met with widespread furor and public protests—resulting in the resignation of Mulki as prime minister and the removal of the controversial amended ITL by his successor, Omar al-Razzaz.⁸⁰ As of November 2018, members of parliament have begun deliberations over a newly drafted amendment to the ITL—

74. See *Jordan National Debt*, COUNTRYECONOMY.COM, <https://countryeconomy.com/national-debt/jordan> (last visited Mar. 3, 2019).

75. See David Lipton, *IMF Executive Board Approves US\$723 Million Extended Arrangement Under the Extended Fund Facility for Jordan*, INT'L MONETARY FUND (Aug. 25, 2016), <https://www.imf.org/en/News/Articles/2016/08/25/PR16381-Jordan-IMF-Executive-Board-Approves-US-723-million-Extended-Arrangement>.

76. Mohamed Khraishy and Mariano J. Beillard, *Jordan Ends Bread Subsidies, Implements USDA-Style SNAP EBT Program*, USDA FOREIGN AGRIC. SERV. (Jan. 15, 2018), [https://gain.fas.usda.gov/Recent GAIN Publications/Jordan Ends Bread Subsidies and Implements USDA-Style SNAP EBT Progr_Amman_Jordan_1-22-2018.pdf](https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Jordan%20Ends%20Bread%20Subsidies%20and%20Implements%20USDA-Style%20SNAP%20EBT%20Progr_Amman_Jordan_1-22-2018.pdf).

77. *Jordan Amends GST Law for 2018*, ERNST & YOUNG (Jan. 24, 2018), [https://www.ey.com/Publication/vwLUAssets/Jordan_amends_GST_Law_for_2018/\\$FILE/2018G_00449-181Gbl_Indirect_Jordan_amends_GST_law_for_2018.pdf](https://www.ey.com/Publication/vwLUAssets/Jordan_amends_GST_Law_for_2018/$FILE/2018G_00449-181Gbl_Indirect_Jordan_amends_GST_law_for_2018.pdf).

78. Suleiman Al-Khalidi, *Jordanian cabinet approves new IMF-guided tax law to boost finances*, REUTERS (May 21, 2018), <http://news.trust.org/item/20180521192918-r5z8f/>.

79. *Jordan: Proposed amendments to the Income Tax Law*, PwC, 2018, <https://www.pwc.com/m1/en/services/tax/me-tax-legal-news/2018/jordan-proposed-amendments-to-the-income-tax-law.html> (last visited Mar. 3, 2019).

80. Ellen Francis and Suleiman Al-Khalidi, *Jordan's Next PM Says to Drop Tax Bill that Angered Protesters*, REUTERS (June 7, 2018), <https://www.reuters.com/article/us-jordan-protests/jordans-next-pm-says-to-drop-tax-bill-that-angered-protesters-idUSKCN1J311L>.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2019]

MIDDLE EAST 561

having to balance preventing insolvency of the state with protecting the economic and social well-being of its citizens.⁸¹

VIII. Kuwait

A. FOREIGN INVESTMENT LAW

In 2013, to promote direct investment in Kuwait, the parliament promulgated Law No. 116 of 2013.⁸² Among the incentives granted pursuant to the law,⁸³ investors are entitled to receive tax credits for up to ten years. But the criteria for granting the incentives, including the tax credit, were not determined in the law. In 2016⁸⁴ and 2018,⁸⁵ KDIPA's Director General issued decisions clarifying the mechanism and criteria for granting such tax credits.

B. CONFLICT OF INTEREST LAW

Kuwait's conflict of interest law⁸⁶ was recently enacted to address the possible conflicting interests of public employees and government institutions. Employees of the government, public authorities, and institutions are subject to this new law.

Conflict of interest amounting to a corruption crime would occur in the following events: (a) procuring a material or moral interest for oneself or any related person by doing or abstaining from doing any action concerning his or her job either solely or jointly; or (b) if the concerned person owns any share or portion of business that has financial dealings with his or her employer.⁸⁷

In any of the applicable conflicts of interest, the individual subject to the law is required to disclose the conflict subject to controls set by the law and to submit a financial disclosure to the relevant bodies. The person is also entitled to remove this conflict either by assigning its conflicting interest or resigning from the position or public job that creates the conflict. In all such cases, the concerned person should take all necessary measures to prevent

81. *Joint Cabinet-Lower House Meeting Identifies Government Priorities for Coming Period*, JORDAN TIMES, Nov. 13, 2018, <http://www.jordantimes.com/news/local/joint-cabinet-lower-house-meeting-identifies-government-priorities-coming-period>.

82. See Law no. 116 of 2013 (Regarding the Promotion of Direct Investment in the State of Kuwait), Al Kuwait Al Yom, No.1136 of June 16, 2013, p.113(A) (Kuwait), *available at* <https://e.kdipa.gov.kw/main/law1162013.pdf>.

83. See Sarah A. Oliai et al., *Middle East Committee*, 8 ABA/SIL (2015), *available at* <https://www.slideshare.net/AbdulazizAlHussan/2015-middle-east-legal-developments-in-review>.

84. See Director General Decisions no. 16 of 2016 on the Mechanism for Granting Tax Exemption (Dec. 1, 2016), *available at* <http://kdipa.gov.kw/wp-content/uploads/dgd162016.pdf>.

85. See Director General Decisions no. 76 of 2018 Regarding the Amendment of the Mechanism for Granting Tax Exemption (Feb. 25, 2018), *available at* <https://kdipa.gov.kw/E.kdipa.gov.kw/main/dgd762018-.pdf>.

86. See Law no. 13 of 2018, Al Kuwait Al Yom, No. 1388 of April 13, 2018, p. 2(A) (Kuwait).

87. *Id.* art. 4.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

562 THE YEAR IN REVIEW

[VOL. 53

harm to public interest and may not act as mediator, agent, guarantor, or a consultant for any company or corporation that has a business connecting to his employer.⁸⁸

In case of violations to the law, the concerned person may be subject to fines and imprisonment. In all cases, the concerned person shall be terminated, and the relevant transaction may be rescinded. In addition, the law states that penalties may be applied to “persons who are not included under this law,” such as employees and managers of private companies—if such parties knowingly receive a benefit from the conflict.⁸⁹ Such penalty shall be half of the punishments set out in the law⁹⁰ (i.e., violators may be punished with a fine of up to KD 5,000 and imprisonment for up to two and a half years).

IX. Lebanon

2018 brought more of the same—political corruption, crackdown on freedoms, and economic free fall—to a country fighting a war on each of its borders: to the North and East, with the influx of more than a million refugee arrivals from war-torn Syria, to the South, in the ever-tense blue line separating it from its official enemy Israel, and even to the West, on its highly polluted shore of the Mediterranean Sea over which the ongoing national garbage crisis has literally spilled.

Still, at the onset of the year, there was reason to be optimistic. After being unconstitutionally postponed three consecutive times over a period of nine years, parliamentary elections were finally held in May 2018 on the basis of a new law drafted by the same politicians who have been ruling the country for decades, first as warlords and militia men during the Lebanese Civil War (1975-1990) and subsequently as government officials. The new election law was designed to maintain their firm grip on power.

Shortly before, following a twelve-year hiatus, a new budget was passed.⁹¹ Another international conference in support of Lebanon’s economy (CEDRE) was held in Paris, giving conditioned loans and grants amounting to 11 billion USD to the country for infrastructure projects⁹²—plunging Lebanon into more potential debt.

Again, there is reason to be skeptical if not entirely pessimistic—the infrastructure is crumbling. In 2018, electricity cuts are still daily—ranging

88. *Id.*

89. *Id.* art. 12.

90. *Id.* art. 11.

91. *Law 79 of Apr. 18, 2018 (Leb.)*, available at <http://www.finance.gov.lb/en-us/Finance/BI/ABDP/Documents/Budget%20Law%202018.pdf>; Lisa Barrington, *UPDATE 2-Lebanon’s Cabinet Agrees 2018 Budget with Lower Deficit*, REUTERS (Mar. 12, 2018), <https://www.reuters.com/article/lebanon-economy-budget/update-2-lebanons-cabinet-agrees-2018-budget-with-lower-deficit-idUSL8N1QU5KH>.

92. *CEDRE: Economic Conference for Development through Reforms with the Private sector*, FRANCE DIPLOMATIE (Apr. 6, 2018), https://www.diplomatie.gouv.fr/IMG/pdf/cedre_state_ment-en-_final_ang_cle8179fb.pdf.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2019]

MIDDLE EAST 563

from three hours in Beirut to over sixteen hours outside the capital. The unreliable electricity issues force people to rely on a mafia-like bunch of electricity generator owners—paying them hefty monthly subscription fees. Summer season means substantial chronic water shortages—leaving people at the mercy of those who illegally and in an environmentally hazardous way extract and sell waters from aquifers. Despite the installation of fiber optic cable, Internet speed and quality are still among the worst and most expensive in the world.

Public space is being encroached upon at an alarmingly fast rate. The biggest green public space in Beirut, Horsh Beirut, is losing another battle—this time to build a private hospital on its ever-diminishing land. Most of the Lebanese coast is no longer accessible to the public. In 2018, Eden Bay, a private resort built on publicly-owned land on the last remaining sandy stretch in Beirut, opened its doors despite irrefutable evidence of fraud and legal violations and despite Lebanon's signature of the Madrid protocol on Integrated Coastal Zone Management in the Mediterranean.⁹³ Aside from law, electoral promises of projects to be executed in 2018 are also being broken, and Lebanon's much-needed public transportation network will have to wait for another year or more.

Three years after the breakout of the Garbage Crisis that saw trash piling up on the streets, valleys, and rivers of the country, a sustainable environmental solution is yet to be found. Even worse, the cabinet is considering adoption of a plan that relies on incineration, which has been criticized as being detrimental to the environment and the health of the population—especially if left unregulated.

Public debt has reached record levels, surpassing 80 billion USD, creating a debt to GDP ratio higher than 150 percent⁹⁴—the third highest in the world after Japan, a country renowned for its manufacturing industry, and Greece, a country that crashed with a very strong tourist sector. The World Bank has revised downwards the GDP growth for 2018 to 1 percent,⁹⁵ which in itself is a disaster considering that the population has increased by at least a quarter with the influx of refugees from Syria. The debt has multiplied by more than seven in the past thirty years, with 80 percent of it held by the local banking sector that has become a pillar of the economy.⁹⁶ This directly points at the interdependence of the success of local banks and the

93. Cynthia Bou Aoun, *Legal framework for the Lebanese coast: Promoting investment or achieving public interest*, AL-AKHBAR (July 2, 2018), <https://www.al-akhbar.com/Capital/253310?fbclid=IwAR3E86oKV9WCIQTonNkvAX5EcTzDF0Dect2QOf2LAy0JSO0Q3ZQVdD-63kY>.

94. Phillippe Hage Boutros, *Charbel Nahas challenges the "leaders" on the deterioration of the economy*, L'ORIENT LE JOUR (Oct. 12, 2018), https://www.lorientlejour.com/article/1138458/charbel-nahas-interpelle-les-responsables-sur-la-degradation-de-leconomie.html?fbclid=IwAR0rRFj-iHAf0LtmV_EHbDKUUIHvB1usVK9kxF1WH9U-z3dRKIIL104rybQ.

95. Wissam Harake et al., *Lebanon Economic Monitor- De-Risking Lebanon*, WORLD BANK (Oct. 30, 2018), <http://documents.worldbank.org/curated/en/147191540833250547/pdf/131463-ARABIC-WP-PUBLIC-OCT-30-8AM-DC-TIME-ADD-SERIES-Final-Arabic.pdf>.

96. See generally Adib Y. Tohmé et al., *COLLECTION OF ECONOMY AND FINANCE PUBLIC DEBT AND TVA* (3V Lebanon Third Voice 2018).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

564 THE YEAR IN REVIEW

[VOL. 53]

indebtedness of the State, with the former garnering most of their profits from the State's debt. In fact, "[t]he current-account deficit is more than 20% of GDP."⁹⁷ In March of this year, the Central Bank stopped subsidizing mortgages for low- and middle-income families. In a dire need to attract capital, banks are giving interest rates as high as 12 percent on deposits. Unemployment is around 25 percent, with youth unemployment reaching more than 40 percent.⁹⁸

X. Libya

Libya was plagued by another year of internal political divisions, armed conflict, and violence. The Government of National Accord (GNA), based in Tripoli, struggled to maintain some semblance of control inside that city. Moreover, the GNA faced challenges from numerous rival forces, including the competing government based in Benghazi and supported by the Libyan National Army. Clashes between militias and armed forces loyal to these two governments largely destroyed the national economy and public services (including the health system and the judiciary).⁹⁹ The GNA declared a state of emergency in early September after days of fighting in Tripoli between rival groups left at least thirty-nine people dead and dozens more injured. During the fighting, approximately 400 prisoners escaped from the Ain Zara prison by forcing the facility's doors open.¹⁰⁰

The United Nations (and various interested Western powers) failed to reconcile the feuding parties. In May 2018, France persuaded the major Libyan parties to verbally agree to elections in December as a way of ending the repeated rounds of bloodshed. But the continued fighting between rival militias and the deadlock between the competing Libyan governments made that goal unreachable this year.¹⁰¹

XI. Palestine

The Palestinian Authority (PA) faced an unprecedented stream of effects this year due to significant foreign policy decisions made by the U.S.,

97. *Lebanon's economy has long been sluggish. Now a crisis looms*, *ECONOMIST* (Aug. 30, 2018), <https://www.economist.com/middle-east-and-africa/2018/08/30/lebanons-economy-has-long-been-sluggish-now-a-crisis-looms>.

98. Nada Andraos Aziz, *REPORT: Alarming figures on unemployment in Lebanon*, *LBC AMERICA* (May 6, 2017), <https://www.lbcgroup.tv/news/d/news-bulletin-reports/314820/report-alarming-figures-on-unemployment-in-lebanon/en>.

99. *See generally, Libya Events of 2017*, *HUMAN RIGHTS WATCH*, <https://www.hrw.org/world-report/2018/country-chapters/libya> (last visited Mar. 7, 2018).

100. *See* Martina Bet, *'STATE of EMERGENCY': 400 Prisoners and Gaddafi ESCAPE Prison in Tripoli, Libya*, *DAILY EXPRESS* (Sept. 3, 2018), <https://www.express.co.uk/news/world/1012143/Lybia-civil-war-prisoners-gaddafi-prison-tripoli-libya>.

101. *See* Ulf Laessing and Aidan Lewis, *Exclusive: U.N., Western Powers Quietly Bury December Plan for Libya Election*, *REUTERS*, Nov. 7, 2018, <https://www.reuters.com/article/us-libya-security-exclusive/exclusive-u-n-western-powers-quietly-bury-december-plan-for-libya-election-idUSKCN1NC25U>.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2019]

MIDDLE EAST 565

including a capital move and budgetary cuts on humanitarian aid. The “U.S. has always played the role of fireman in the Israeli-Palestinian conflict. But now it is inexplicably playing the role of arsonist throwing more fuel on the flames instead of calming things down.”¹⁰² Ilan Goldenberg, a former state official, anticipated a Palestinian “explosive reaction” but is now among the many witnesses to an unforeseen set of socio-political circumstances. The demands for a new “intifada” by Hamas, the militant group, “fell flat.” It appears that the short-lived reactions resulted from the Palestinians’ exhaustion, fear of Israel’s overwhelming force, and dissatisfaction of leadership.¹⁰³ In regard to the potentially destabilizing budget cuts, PA officials “accus[ed] Washington of ‘weaponizing’ humanitarian assistance by using it as a tool to coerce political concessions.”¹⁰⁴ Thus, the fact that the PA did not react chaotically was astounding.

Despite President Abbas warning President Trump that the decision to recognize Jerusalem as Israel’s capital would bring dangerous consequences and may destabilize the region, Palestinians reacted surprisingly civilly.¹⁰⁵ In September, “Palestinians . . . filed a lawsuit in the International Court of Justice [against the U.S.] for violating international law”¹⁰⁶ The court’s original jurisdiction is contingent on a determination of Palestine’s “statehood.”¹⁰⁷

In October, the PA announced that it would implement a new Social Security law for the purpose of stabilizing a frail economy.¹⁰⁸

Finally, nearing an end to 2018, President Abbas has promised to hold elections for the first time since 2006—a noteworthy result reached amicably with the inclusion of all political factions of the PA.¹⁰⁹ Regardless of prospective effects, these decisions shed new hope for possible international

102. Nahal Toosi, *Trump’s Jerusalem bet defies direst predictions*, POLITICO, May 13, 2018, <https://www.politico.com/story/2018/05/13/trump-israel-jerusalem-embassy-584416>.

103. *Id.*

104. Isabel Kershner, *Palestinians Blast Trump’s Aid Cut as Political ‘Blackmail’*, N.Y. TIMES (Aug. 25, 2018), <https://www.nytimes.com/2018/08/25/world/middleeast/israel-palestian-aid-cut.html>.

105. Colin Dwyer and Scott Neuman, *How The World Is Reacting To Trump Recognizing Jerusalem As Israel’s Capital*, NPR (Dec. 6, 2017), <https://www.npr.org/sections/thetwo-way/2017/12/06/568748383/how-is-the-world-reacting-to-u-s-plan-to-recognize-jerusalem-as-israeli-capital>.

106. AFP and TOI Staff, *Palestinians File Claim Against US at UN Court over Jerusalem Embassy Move*, TIMES ISRAEL (Sept. 29, 2018), <https://www.timesofisrael.com/palestinians-file-claim-against-us-at-un-court-over-jerusalem-embassy-move/>.

107. Victor Kattan, *It’s Time to Take Palestine v. United States of America Seriously*, OPINIOJURIST (Oct. 16, 2018), <http://opiniojuris.org/2018/10/16/its-time-to-take-palestine-v-united-states-of-america-seriously/#comments>.

108. *PA’s Social Security Law to Come into Force Despite Public Outcry*, MIDDLE E. MONITOR (Oct. 31, 2018), <https://www.middleeastmonitor.com/20181031-pas-social-security-law-to-come-into-force-despite-public-outcry/>.

109. *Rival Palestinian Parties Fatah and Hamas Agree to Hold Elections by End of 2018*, DW.COM (Nov. 22, 2017), <https://www.dw.com/en/rival-palestinian-parties-fatah-and-hamas-agree-to-hold-elections-by-end-of-2018/a-41492435>.

relief through a judicial institution, a possible independent economy, and as a potential move towards unified leadership.

XII. Qatar

Qatar has survived a historic blockade imposed by its regional players. On May 23, 2017, the United Arab Emirates (UAE) orchestrated the hacking of Qatari state news and social media sites to post incendiary statements falsely attributed to Qatar's Emir, Sheikh Tamim Bin Hamad al-Thani.¹¹⁰ The remarks included praise for Hamas and reference to Iran as an Islamic power, which aired on several UAE and Saudi-owned networks.¹¹¹ On May 24, 2018, Saudi Arabia and the UAE blocked the website of news agency Al Jazeera, which is owned by Qatar.¹¹²

On June 5, 2018, the quartet of Saudi Arabia, Bahrain, Egypt, and the UAE severed diplomatic, political, and economic ties with Qatar and imposed a land, maritime, and air blockade.¹¹³ The quartet indicted Qatar with endorsing terrorism, a charge it denies, and demanded that Qatar satisfy thirteen conditions within ten days, including paying monetary damages to the quartet, closing down Al Jazeera, and cutting military ties with NATO-member Turkey.¹¹⁴ Analysts contend that the quartet designed the demands to be impossible to meet in order to justify the blockade itself.¹¹⁵

Only weeks before the blockade, U.S. Senior Advisor to the President Jared Kushner asked Qatari Finance Minister Ali Sharif Al Emadi to bail out his family from their failed real estate investment in 666 Fifth Avenue.¹¹⁶ The Kushner family owes on a \$1.2 billion mortgage due in early 2019, as well as an \$80 million high-interest loan—although the building is valued at significantly less than the debt incurred.¹¹⁷ Currently, Kushner's requests

110. Karen DeYoung and Ellen Nakashima, *UAE Orchestrated Hacking of Qatari Government Sites, Sparking Regional Upheaval, According to U.S. Intelligence Officials*, WASH. POST (July 16, 2017), https://www.washingtonpost.com/world/national-security/uae-hacked-qatari-government-sites-sparking-regional-upheaval-according-to-us-intelligence-officials/2017/07/16/00c46e54-698f-11e7-8eb5-cbccc2e7bfbf_story.html?utm_term=.d24c277314e1.

111. *Id.*

112. Alia Chughtai, *Understanding the Blockade Against Qatar*, AL JAZEERA (June 5, 2018), <https://www.aljazeera.com/indepth/interactive/2018/05/understanding-blockade-qatar-180530122209237.html>.

113. *US Pushing Saudi Arabia to End GCC Crisis, Yemen War: Bloomberg*, AL JAZEERA (Oct. 30, 2018), <https://www.aljazeera.com/news/2018/10/pushing-saudi-arabia-gcc-crisis-yemen-war-bloomberg-181030052111400.html>.

114. *Id.*

115. *Id.*

116. Bess Levin, *Did Jared Kushner Punish Qatar Because It Wouldn't Lend His Family Money?*, VANITY FAIR (Mar. 2, 2018), <https://www.vanityfair.com/news/2018/03/did-jared-kushner-punish-qatar-because-it-wouldnt-lend-his-family-money>.

117. Clayton Swisher and Ryan Grim, *Jared Kushner's Real-Estate Firm Sought Money Directly From Qatar Government Weeks Before Blockade*, INTERCEPT (Mar. 2, 2018), <https://theintercept.com/2018/03/02/jared-kushner-real-estate-qatar-blockade/>.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2019]

MIDDLE EAST 567

for investment from Qatar are under investigation by U.S. Special Counsel Robert Mueller.¹¹⁸ Two days before the UAE hacking, President Trump met Arab and Muslim leaders in Saudi Arabia.¹¹⁹ But Qatar remains a critical U.S. ally and hosts the largest U.S. airbase in the Middle East.¹²⁰

Qatar has overcome the blockade by reforming and growing its economy.¹²¹ In November 2018, the IMF forecasted that Qatar's annual GDP growth would be above 3 percent in 2019 and stabilize at 2.7 percent through 2023—fueled by gas exports, major infrastructure development, and the hosting of the World Cup 2022.¹²² As the country is the world's largest exporter of liquefied natural gas, the blockade remains unable to quell its primary source of income.¹²³

Integral to Qatar's resilience is the support of military and trade partners beyond the quartet. Following the blockade, Turkey immediately sent 200 cargo planes, sixteen trucks, and one ship of supplies within the first month and signed over a dozen trade agreements.¹²⁴ Turkey also accelerated its planned deployment of troops to Qatar to deter a Saudi invasion.¹²⁵ In addition, Oman allowed Qatar to relocate its regional trans-shipment hub from the UAE to Oman's Sohar port.¹²⁶

Omani investors also ratcheted up their activity in Qatar, where trade is estimated to have skyrocketed over 1,000 percent from January to September 2017.¹²⁷ Qatar's utilization of the Hamad Port has reduced shipping costs by one third and made possible enhanced trade with India and Pakistan as well as a fifteen-year liquid gas contract with Bangladesh.¹²⁸ With new trade deals inked with the U.S., U.K., E.U., and Iran, Qatar has more deeply engaged other countries.¹²⁹

Announcing its second five-year National Development Strategy for 2018 to 2022, Qatar will reduce its dependence on foreign expertise and imports

118. *Id.*

119. *Id.*

120. *Qatar's Emir: Gulf Crisis Will Pass, Economy Is Stronger*, AL JAZEERA (Nov. 6, 2018), <https://www.aljazeera.com/news/2018/11/qatar-emir-gulf-crises-pass-economy-stronger-181106070435930.html>.

121. Hassan, *Qatar Won the Saudi Blockade*, FOREIGN POL'Y (June 4, 2018), <https://foreignpolicy.com/2018/06/04/qatar-won-the-saudi-blockade/>.

122. *Qatar Economy Growing Despite Crisis: IMF*, BUS. TIMES (Nov. 15, 2018), <https://www.businesstimes.com.sg/government-economy/qatar-economy-growing-despite-crisis-imf>.

123. Hanaa Hasan, *The Qatar Guide to Surviving an Economic Boycott*, MIDDLE E. MONITOR (Mar. 23, 2018), <https://www.middleeastmonitor.com/20180323-the-qatar-guide-to-surviving-an-economic-boycott/>.

124. *Id.*

125. Ali Bakeer and Giorgio Cafiero, *Deepening the Ankara–Doha Alliance*, CARNEGIE ENDOWMENT INT'L PEACE (Sept. 19, 2018), <http://carnegieendowment.org/sada/77289>.

126. Hasan, *supra* note 123.

127. *Id.*

128. *Id.*

129. *Id.*

and promote greater self-reliance.¹³⁰ Specifically, Qatar aims to satisfy 30 percent of its demand for livestock and 65 percent of its demand for fish domestically, invest in local entrepreneurship, and promote the use of renewable energy.¹³¹ Qatar plans to award \$8 billion in contracts in the private sector to pivot away from gas dependency.¹³² The strategy is enconced in National Vision 2030, which aims to foster a nation premised on justice, equality, and stability through the utilization of local resources.¹³³

Following its policy innovations, Qatar is increasingly viewed as both a potential target and a source for foreign investment with an estimated \$40 billion in spare cash following shrewd plays in the banking sector.¹³⁴ Although deposits from the blockading countries were withdrawn and depositors from other countries demanded higher interest rates, Qatar poured in public sector deposits and pushed for greater domestic production of goods over dependency on imports.¹³⁵ Also in Qatar's favor was the immediate recovery of oil prices following the blockade.¹³⁶

XIII. Syria

As of March 2018, the UN reported that the conflict in Syria has produced more than 5.6 million Syrian refugees and 6.1 million internally displaced people.¹³⁷ At the end of 2017, more than a third of the country's homes had been destroyed, making Syria the largest refugee and internal displacement crisis globally.¹³⁸ The war tore Syria apart—turning a beautiful country with great history and culture to a field of proxies' war.

On April 2, 2018, the Syrian government enacted the Law No. 10 of 2018 (Law No. 10), establishing redevelopment zones across Syria that will be designated for reconstruction.¹³⁹ Law No. 10 is the anchor of a chain of laws and regulations relating to property rights that have been enacted by the Syrian government since the start of the Syrian war in 2011.¹⁴⁰ The enactment of the law was met with general fear among the public and a

130. *Qatar launches self-sufficiency plan amid Gulf rift*, MIDDLE E. MONITOR (Mar. 15, 2018), <https://www.middleeastmonitor.com/20180315-qatar-launches-self-sufficiency-plan-amid-gulf-rift/>.

131. *Id.*

132. *Id.*

133. *Id.*

134. George Hay, *Breakingviews - One Alternative to Tainted Saudi Cash: Qatar*, REUTERS (Oct. 22, 2018), <https://www.reuters.com/article/us-saudi-khashoggi-total-breakingviews/breakingviews-one-alternative-to-tainted-saudi-cash-qatar-idUSKCN1MX03Q>.

135. *Qatar launches self-sufficiency plan amid Gulf rift*, *supra* note 130.

136. Jonathan Wheatley, *Banks Shrug Off Impact of Qatar Blockade*, FIN. TIMES (Oct. 10, 2018), <https://www.ft.com/content/c5c389b2-9bf5-11e8-88de-49c908b1f264>.

137. *Id.*

138. *Syria*, UN NEWS, <https://news.un.org/en/focus/syria> (last visited Mar. 4, 2019).

139. Law no. 10 of 2018 (Syrian Arab News Agency) (Syria); Sune Haugballe, *Law No. 10: Property, Lawfare, and New Social Order in Syria*, SYRIA UNTOLD (July 26, 2018), <https://syriauntold.com/2018/07/26/law-no-10-property-lawfare-and-new-social-order-in-syria/>.

140. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2019]

MIDDLE EAST 569

charge that Law No. 10 will likely be used to deprive residents (or inhabitants or citizens) of their property rights without due process. As such, this law will be a significant obstacle to those residents' return.¹⁴¹

Law No. 10 amends Decree No. 66 of 2012, which pertains to the redevelopment of two areas of Damascus and extends the Decree's application across the country.¹⁴² Upon the formation of the administrative unit in any designated area, Article 6 of the Law states that the owners or the "in-rem" right holders of real property (or any of their authorized agents or close relatives) must provide proof of their rights within thirty days.¹⁴³ If they fail to do so, they will not be compensated, and ownership reverts to the province, town, or city where the property is located. Those who succeed in proving property ownership will get shares in the zone.¹⁴⁴

Following widespread international criticisms, Syrian Minister of Foreign Affairs Waleed Al Mualem announced that the thirty-day period is to be extended to one year, further emphasizing that this law will facilitate the return of the refugees. Accordingly, on November 11, 2018, the Syrian government enacted Law No. 42 of 2018, amending Law No. 10 in relation to the period of extension to one year and to establish a judicial committee for challenges of the administrative units' decisions.¹⁴⁵

Notwithstanding these amendments to the law, many barriers may prevent owners or right holders from presenting their proof of rights according to the Law No. 10. These barriers include, but are not limited to, four general areas. First, a great majority of the 11 million displaced residents do not have basic identification documentation to demonstrate their rights, several of the Syrian local land registries have been destroyed during the conflict, and only 50 percent of Syrian land was officially registered even before the war.¹⁴⁶ Second, a significant number of the displaced residents are considered anti-government and, therefore, they and any of their close relatives will likely refrain from making any claim in a fear of retaliation or abusive treatment from the security forces. Third, the Syrian authorities require a security clearance for any power of attorney to be effective. Fourth, thousands of people are forcibly disappeared during the conflict, and it is impossible for them to claim their property.¹⁴⁷

In light of the above barriers, many human rights organizations and countries affected by the refugee crises called Law No. 10 "unlawful"

141. *Q&A: Syria's New Property Law*, HUMAN RIGHTS WATCH (May 29, 2018), https://www.hrw.org/news/2018/05/29/qa-syrias-new-property-law#_What_is_Law.

142. Law no. 10 of 2018; *A legal framework for the creation of high quality regulatory areas while preserving the rights of the parties*, SANA (Apr. 16, 2018), <https://www.sana.sy/?p=739408>.

143. President al-Assad issues a law amending certain articles of Law No. 10 of 2018, SANA (Nov. 11, 2018), <https://sana.sy/?p=842393>.

144. *Id.*

145. *Id.*

146. *Housing Land and Property (HLP) in the Syrian Arab Republic*, NORWEGIAN REFUGEE COUNCIL, 1, 5, available at <https://www.nrc.no/globalassets/pdf/reports/housing-land-and-property-hlp-in-the-syrian-arab-republic.pdf>.

147. *Q&A: Syria's New Property Law*, *supra* note 141.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

570 THE YEAR IN REVIEW

[VOL. 53]

because it entails seizure of property rights without due process or compensation, invoking many international conventions such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Universal Declaration of Human Rights, and the Arab Charter on Human Rights.¹⁴⁸

Law No. 10 should not be read in isolation of the Syrian officials' policies and behavior during and before the war. The problematic issue in Syria is not the wording of the laws. The real problem is the legitimacy of these rules and the way they operate and are implanted in the absence of any effective institutes that represent the legislative and judicial powers, which are both a mere tool in the hands of the brutality of the security forces.

The need of a legal framework for the urban planning of the reconstruction in Syria is recognizable; such framework, however, cannot be enacted by one party of the conflict who is widely accused to be the cause of all the destruction—the framework must be part of the final solution to the conflict, which should guarantee fair and non-discriminatory treatment for the displaced residents and to construct a legal state of law and order.

XIV. Yemen

The ongoing war in Yemen has led to “the worst humanitarian crises in the world.”¹⁴⁹ 14 million Yemenis are facing starvation, and disease is widespread—including the worst outbreak of cholera in modern times. Tens of thousands of civilians have been killed in the war—many from inaccurate air strikes by a Saudi Arabian-led military coalition fighting the Houthis, a Yemeni religious, political, and armed movement loosely allied with Iran.

The internationally recognized government of Abdu Rabbu Mansour Hadi is nominally in control of some territory in the southern part of Yemen. Meanwhile, the Houthis remain in control over much of the remainder of the country—including the government apparatus in Sana'a, the capital city. The Houthis dissolved the Yemeni parliament in early 2015 and replaced it with a Supreme Political Council.¹⁵⁰

Beginning in mid-2018, some local militias backed by the United Arab Emirates (the other main foreign force in the Saudi-led coalition) attempted to wrest control of the port city of Hodeidah from the Houthis. Yemen was already suffering from inadequate imports of food and medicines as the coalition maintained a naval blockade of the country. United Nations

148. Haugbolle, *supra* note 139.

149. Ben Watson, *The War in Yemen and the Making of a Chaos State*, ATLANTIC (Feb. 3, 2018), <https://www.theatlantic.com/international/archive/2018/02/the-war-in-yemen-and-the-making-of-a-chaos-state/551987/>.

150. *See generally War in Yemen*, COUNSEL FOREIGN REL. (Feb. 27, 2019), <https://www.cfr.org/interactive/global-conflict-tracker/conflict/war-yemen> (last visited Mar. 4, 2019).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2019]

MIDDLE EAST 571

officials continued to seek a negotiated respite from the conflict—as misery within the country only deepened.¹⁵¹

151. Robert F. Worth, *How the War in Yemen Became a Bloody Stalemate*, N.Y. TIMES (Nov. 4, 2018), <https://www.nytimes.com/interactive/2018/10/31/magazine/yemen-war-saudi-arabia.html?mtrref=www.google.com>.

**PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW**

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW