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ARBITRATION AMENDMENTS IN EGYPT: HOW EGYPTIAN ARBITRATION LAW WILL IMPACT
INTERNATIONAL ARBITRATION AND FOREIGN BUSINESS IN EGYPT

By
Rebecca Brady*

I. INTRODUCTION

A. *International Arbitration*

After World War II, it was evident in the international community that a secure foundation was needed for the international economy due to the devastating effects of the war.¹ Recently, Julian Lew, professor of international arbitration law and head of the school of international arbitration at Queen Mary University of London, identified three major geo-political factors that helped create the conditions for “a new era of international arbitration” to act as this foundation.² “First . . . was the emergence of many new and independent states, particularly in Africa and Asia,” that helped set the stage for international trade.³ Second, was the transition to globalization.⁴ Both independent governments and international bodies began to fixate on the opportunities international trade could provide.⁵ States were in search of a model for “international economic relations[,]” because the theory was that “[a] stable framework for prosperous trade and investment would . . . frame the basis for future, peaceful relations among states.”⁶ As a result, nations invested in international markets and business.⁷ The third factor was, “the emergence and acceptance of an international and neutral infrastructure for international arbitration.”⁸

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1. See FRANCO FERRARI ET. AL., *INTERNATIONAL INVESTMENT ARBITRATION IN A NUTSHELL* 20 (2019).

2. Julian Lew, *The Development of International Arbitration as a Mechanism for Determining International Business Disputes*, KLUWER ARBITRATION BLOG (Feb. 6, 2021), <http://arbitrationblog.kluwerarbitration.com/2021/02/06/the-development-of-international-arbitration-as-a-mechanism-for-determining-international-business-disputes/>.

3. *Id.*

4. *See id.*

5. *See id.*

6. FERRARI, *supra* note 1, at 20-21.

7. *See Lew, supra* note 2.

8. *Id.*

International arbitration streamlines disputes between businesses in different states.⁹ It provides the essential component of a legal system between international business partners.¹⁰ The availability of international commercial arbitration dispels worries over applicable law, concurrent lawsuits or legal actions, and enforcement issues.¹¹

B. Egyptian Arbitration

Egypt recognizes the importance of arbitration and maintains its own arbitration law, Law 27.¹² The country is also a signatory to numerous international conventions, bodies, and treaties regarding international arbitration.¹³ Additionally, in an attempt to encourage international investment, it has passed other statutes to maintain modern economic standards.¹⁴ However, despite these advancements, Egypt recently passed two amendments that threaten to harm its economy and disrupt the role of arbitration in international law.¹⁵

On August 16, 2021, the Egyptian Parliament passed a controversial law that empowers Egypt's Supreme Constitutional Court (SCC) to review decisions of international organizations and foreign judicial judgments rendered against the state.¹⁶ The amendments put the autonomy of arbitration and its important role of in international business and investment at stake. These amendments are likely to harm Egypt, the goals of international arbitration and international agreements, and will test the willingness of other nations and investors to do business with the state.¹⁷

This article discusses Egypt's recent grant of power over international arbitral tribunals to the SCC. Part II explores the history of arbitration in Egypt and introduces

9. See THOMAS E. CARBONNEAU, *ARBITRATION LAW IN A NUTSHELL* 273 (5th ed. 2020).

10. See *id.*

11. See *id.*

12. See Mai El-Sadany & Yasmin Omar, *Egypt's Constitutional Court Amendments: The International System on its Own Terms*, CARNEGIE ENDOWMENT FOR INT'L PEACE (July 12, 2021), <https://carnegieendowment.org/sada/84941>.

13. See *id.*

14. See Mohamed S. E. Abdel Wahab, *Update: An Overview of the Egyptian Legal System and Legal Research*, HAUSER GLOB. LAW SCH. PROGRAM (Nov./Dec. 2019), https://www.nyulawglobal.org/globalex/Egypt1.html#_Enforcement_of_Arbitral_Awards (laws encouraging investment include an Investment Law, Anti-Money Laundering Law, Intellectual Property Rights Law, and Consumer Protection Law).

15. See El-Sadany, *supra* note 12.

16. See Cosmo Sanderson, *New Law Casts Doubt on Enforcement Against Egypt*, GLOB. ARBITRATION REVIEW (Sept. 16, 2021), <https://globalarbitrationreview.com/new-law-casts-doubt-enforcement-against-egypt>.

17. See El-Sadany, *supra* note 12.

Articles 27 and 33. Part III addresses the arguments that these amendments do not give the SCC the power to invalidate arbitral holdings, and that the amendments will benefit Egypt's economy. Part IV discusses the effects these amendments will have on the international arbitration community, and Egypt itself. Additionally, this section argues that Egypt's interests are adequately protected by various conventions and arbitration institutions, and that Egypt should work to ensure these protections are provided for in all conventions and by all institutions.

II. BACKGROUND OF EGYPTIAN LAW

A. *Egyptian Government Overview*

Egypt is a civil law country,¹⁸ with a legal system comprised of “Islamic (*Shariah*) law and [the] Napoleonic Code” and a governing written constitution.¹⁹ The President is granted their power under the Constitution, and among other responsibilities, has the ability to oppose some of the laws under Article 123 of the constitution.²⁰ The government also has a Cabinet, comprised of “the Prime Minister, his/her deputies, the Cabinet Ministers, and their deputies[,]” which proposes laws and amendments to parliament.²¹ Parliament enacts laws and policies, approves the national budget, oversees the government, and holds the power to impeach the president and replace the government and prime minister.²² The House of Representatives and the Senate are the two chambers of Parliament.²³

The judicial system in Egypt consists of multiple courts, including, but not limited to, the Supreme Constitutional Court (SCC) and the Court of Cassation.²⁴ The SCC, Egypt's highest court, is autonomous.²⁵ It “has exclusive jurisdiction to decide questions regarding the constitutionality of laws and regulations, as well as negative and positive conflict of jurisdiction.”²⁶ Additionally, “the Court of Cassation was established to provide

18. *See What is the Civil Law?*, LSU LAW, <https://www.law.lsu.edu/clo/civil-law-online/what-is-the-civil-law/> (last visited Nov. 28, 2021) (A civil law system is a legal system with core values codified in written statutes).

19. Wahab, *supra* note 14.

20. *See id.*

21. *See id.*

22. *See id.*

23. *See* Wahab, *supra* note 14.

24. *See* Wahab, *supra* note 14.

25. *See id.*

26. *Id.*

exclusive and uniform interpretation and application of the law.”²⁷ While Egyptian courts are typically accepting of arbitral proceedings, Egyptian law does provide for a number of nullity proceedings for arbitral awards.²⁸

B. Egyptian Arbitration Law

The current Egyptian arbitration law, Law 27, was passed in 1994.²⁹ The law applies to both international and domestic arbitration, but prohibits family law matters and criminal offenses from being resolved through arbitration.³⁰ In addition, Law 27 provides that if a dispute cannot be legally resolved by settlement, arbitration is not an option.³¹ Law 27 is the main arbitration law in Egypt.³² However, different facets of arbitration are regulated by various other laws.³³

The Egyptian law governing arbitration maintains a focus on international arbitration. The law defines arbitration as international in the following instances: when the parties have different principal places of business, or if the parties have the same principal place of business but an important aspect of the arbitration occurs outside of that state; “[i]f the parties to the arbitration have agreed to resort to a permanent arbitral organization or to an arbitration centre having its headquarters in the Arab Republic of Egypt or abroad[;]” or if the dispute is connected to multiple countries.³⁴

Further, the above Arbitration Law calls for enforcement of an arbitral award if three conditions are met: “(1) The award is not contrary to a prior Egyptian court decision

27. *Id.*

28. *See id.*

29. *See* Khaled El Shalakany, *Arbitration Procedures and Practice in Egypt: Overview*, THOMAS REUTERS PRACTICAL LAW (July 1, 2015), [https://content.next.westlaw.com/3-501-7485?_lrTS=20201206023837328&transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://content.next.westlaw.com/3-501-7485?_lrTS=20201206023837328&transitionType=Default&contextData=(sc.Default)&firstPage=true).

30. *See Egypt: A New Law on Arbitration*, 10 ARAB L. Q. 31, 31 (1995) [hereinafter *A New Law*]; *see also* Shalakany, *supra* note 31.

31. *See* Shalakany, *supra* note 31.

32. *See* Amr Abbas & John Matouk, *Egypt*, GLOB. ARBITRATION REVIEW (May 26, 2021), <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2021/article/egypt>.

33. *See id.* This includes “technology transfer contracts, sport arbitrations, investments under the investment law and contracts of public entities[;]” which are all governed under various laws.

34. Law No. 27 of 1994 (Law Concerning Arbitration in Civil and Commercial Matters), *al-Jarīdah al-Rasmiyah*, vol. 16 bis, 21 Apr. 1994 (Egypt) (Important aspects of arbitration include “a) the place of arbitration as determined in the arbitration agreement or pursuant to the methods provided therein for determining it; b) the place where a substantial part of the obligations emerging from the commercial relationship between the parties shall be performed; or c) the place with which the subject matter of the dispute is most closely connected”).

on the same question; (2) It does not violate Egyptian public policy (*'ordre public'*); and (3) It has been served on the party against whom it was rendered.”³⁵

Although arbitration is now a valid form of dispute resolution in Egypt, multiple provisions of the law demonstrate that Egyptian arbitration lacks independence from the traditional judicial system.³⁶ There are multiple provisions throughout Law 27 that grant power to the Egyptian courts over arbitral tribunals.³⁷ Article 9 of Law 27 provides that the arbitral matters may be reviewed by the court with original jurisdiction.³⁸ For international commercial arbitration, this is the Cairo Court of Appeal.³⁹ Additionally, there are two articles that allow for annulment of an arbitral award.⁴⁰ Those wishing to annul an award must bring an action within ninety days of award notification.⁴¹ Subsection 1 of Article 53 provides seven situations in which the arbitral award may be annulled.⁴² Some of these are commonplace in arbitration laws of other countries, such as annulment if there agreement has lapsed, or if the arbitrator did not apply the law that the parties agreed on.⁴³ However, this Article also provides that the court “shall *ipso jure* annul” an arbitral award that does not conform with Egypt’s public policy.⁴⁴ Article 54 provides that the court with original jurisdiction over the dispute has the power to invalidate international commercial arbitration awards.⁴⁵

C. Amendments and the Egyptian Supreme Constitutional Court

As noted above, the Egyptian Parliament passed two amendments on August 16, 2021 that will impact arbitration enforcement in Egypt.⁴⁶ These amendments concern the

35. *A New Law*, *supra* note 32, at 32.

36. *See id.*

37. *See* Law No. 27 of 1994 (Law Concerning Arbitration in Civil and Commercial Matters), *al-Jarīdah al-Rasmīyah*, vol. 16 bis, 21 Apr. 1994 (Egypt).

38. *See id.*

39. *See id.*

40. *See* Law No. 27 of 1994 (Law Concerning Arbitration in Civil and Commercial Matters), *al-Jarīdah al-Rasmīyah*, vol. 16 bis, 21 Apr. 1994 (Egypt).

41. *See id.*

42. *See id.*

43. *See id.*

44. *Id.*

45. *See id.*

46. *See* Sanderson, *supra* note 16.

powers of the SCC and the Prime Minister.⁴⁷ The powers of the SCC are contained in Article 192 of the Egyptian Constitution.⁴⁸ The Court is vested with the power to “review[] the constitutionality of domestic laws and regulations in line with the constitution.”⁴⁹ However, while the Court may review laws which affect international relations, the Court does not have the power to review individual judgments from foreign and international bodies⁵⁰

The first amendment that was passed in August is Article 27, which vests the SCC with the power to check the constitutionality of decisions from foreign courts and bodies, which, if enforced, would have some effect on Egypt.⁵¹ The second amendment is Article 33, which grants the Prime Minister the power to ask the SCC to rule that the requirements of an arbitral ruling are not considered.⁵² These amendments grant the SCC vast power over arbitration in Egypt.

III. INCLUSION OF ARBITRATION IN THE RECENT AMENDMENTS

While the amendments will provide the SCC with power over arbitration, because there is no explicit mention of arbitration, there have been arguments that the amendments do not permit the SCC to invalidate international arbitration agreements.⁵³ The original draft of Article 27 explicitly granted the SCC the power to review “the decisions of ‘foreign arbitral tribunals.’”⁵⁴ Arbitral tribunals were removed after concerns that an explicit inclusion of arbitral awards “would isolate Egypt from global markets.”⁵⁵ Supporters of the law have argued that the removal of this phrase proves that the law does not grant the SCC the power to review foreign arbitral awards.⁵⁶

Although Parliament did not explicitly include arbitral tribunals in these amendments, the inconclusive meaning of “decisions of international institutions” leaves open the possibility that enforcement of arbitral awards in Egypt will still be included in the law.⁵⁷ While Parliament removed the explicit inclusion of arbitral proceedings, it did

47. *See id.*

48. *See* CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014.

49. El-Sadany, *supra* note 12.

50. *See id.*

51. *See* Sanderson, *supra* note 16.

52. *See* Sanderson, *supra* note 16.

53. *See id.*

54. *Id.*

55. *Id.*

56. *See id.*

57. *Id.*

not explicitly note that international arbitral proceedings would not be subject to review by the SCC under this law.⁵⁸ It is entirely possible that Egypt will use these amendments to justify judicial review of foreign arbitral awards rendered against the state.⁵⁹ The argument that the new law will be interpreted to include arbitral tribunals, despite its removal from the text, is further supported by comments from members of parliament and other government leaders.⁶⁰ Those who cautioned parliament about the amendments are concerned that the law will actually harm Egypt's economy by discouraging foreign investors from investing in Egypt.⁶¹

However, members of Parliament and other officials have been outspoken in their support of the law as well.⁶² A former deputy to the SCC head described the amendments as necessary to “protect the country from unjust rulings issued abroad that do not take the Egyptian point of view into account.”⁶³ Those that have claimed the amendments protect Egypt's economy include Ibrahim El-Heneidi, chair of the House's Legislative and Constitutional Affairs Committee.⁶⁴ He claimed the SCC would have the power to review and investigate the rulings to ensure they are constitutional, but noted that it was important Egypt's financial interests are not harmed in the implementation of the amendments.⁶⁵

Egyptian government officials have claimed that these amendments are important to assure Egypt's national security and the security of the economy.⁶⁶ In the explanatory note of the Draft Law, the Egyptian Government justified the amendments on the basis of national security.⁶⁷ Parliament members who supported the law argued that they were essential to protect Egypt's economy.⁶⁸

58. *See id.*

59. *See Sanderson, supra* note 16.

60. *See* Hussam Mujally, *Can the Egyptian Government Vest a Municipal Court With The Power To Review ICSID Awards?*, KLUWER ARBITRATION BLOG (Sept. 17, 2021), <http://arbitrationblog.kluwerarbitration.com/2021/09/17/can-the-egyptian-government-vest-a-municipal-court-with-the-power-to-review-icsid-awards/>.

61. *See* El-Sadany, *supra* note 12.

62. *See* El-Sadany, *supra* note 12.

63. *Id.*

64. *See* Gamal Essam El-Din, *Egypt's parliament approves controversial amendments to law regulating the Supreme Constitutional Court*, AHARAMONLINE (June 28, 2021), <https://english.ahram.org.eg/News/416137.aspx>; *see also* El-Sadany, *supra* note 12.

65. *See* El-Din, *supra* note 67.

66. *See id.*

67. *See* Mujally, *supra* note 63.

68. *See id.*

Despite this support, suspicion of the law is buttressed by the number of recent arbitral proceedings against Egypt.⁶⁹ Between 2008 and 2017 Egypt lost over 74 billion Egyptian pounds (4.7 million USD) in international arbitration awards to other countries.⁷⁰ Thirty-seven International Centre for Settlement of Investment Disputes (ICSID) cases have been brought against Egypt.⁷¹ The House’s Constitutional and Legislative Affairs Committee wrote a report that these amendments “come in light of the fact that a number of disputes are up for settlement before international arbitration courts.”⁷² If the original draft of this law was meant in part to avoid similar arbitral rulings, it is unlikely the Egyptian government would give up that ability by removing the explicit mention of arbitral tribunals from the law. It is more likely that this edit was done for appearances and to appease criticisms, especially since it was made last minute.⁷³ However, supporters of the law have countered that these recent arbitral decisions against Egypt were “politicized,” and that the law is necessary to protect Egypt’s economy.⁷⁴

Additionally, adversaries of the law have pointed out that this may be a guise not only to protect the Egyptian state itself, but to protect government figures as well.⁷⁵ Egypt has recently been brought before both judicial and non-judicial bodies in the international community.⁷⁶ For example, multiple security agents from Egypt are on trial for murder in Italy, the United States accused the former Egyptian Prime Minister of torture, and the state itself has been the subject of the United Nation’s special procedure regarding human rights.⁷⁷ These amendments give the impression that the state will continue to protect “regime allies who have benefitted from a culture of impunity and legislative efforts to claim immunity”.⁷⁸

IV. CONSEQUENCES OF THE AMENDMENTS

A. *Conventions, Tribunals, and Treaties*

69. See El-Sadany, *supra* note 12.

70. See *id.*

71. See Abbas, *supra* note 34.

72. El-Din, *supra* note 67.

73. See Mujally, *supra* note 63.

74. See Mujally, *supra* note 63.

75. See El-Sadany, *supra* note 12.

76. See *id.*

77. See *id.*

78. *Id.*

There are multiple arbitration conventions that streamline the process of arbitration for parties and states.⁷⁹ Among these is the New York Convention, which Egypt joined in 1959.⁸⁰ The Convention overrules state rules that conflict with it.⁸¹ Further, the New York Convention provides that a foreign arbitration award should not face more stringent standards than enforcement of domestic awards.⁸² Although the amendments do not discriminate against all foreign holdings, just those rendered against the state itself, this requirement is still likely violated by the amendments.⁸³ This is because the amendments only apply to international organizations and courts, but not domestic bodies or domestic court decisions.⁸⁴

While the New York Convention grants domestic courts the ability to review awards “on the basis of public order before granting a writ of execution[,]” this power is granted to civil courts.⁸⁵ In Egypt, the power would be granted to the Cairo Court of Appeal and the Court of Cassation, not the SCC.⁸⁶ Additionally, the New York Convention does not interfere with award enforcement under multilateral or bilateral agreements between contracting states.⁸⁷ Therefore, while the Convention provides some domestic judicial protection for states, it does ensure that this protection will not interfere with treaties.⁸⁸

Another important convention that Egypt ratified is the Vienna Convention on the Law of Treaties.⁸⁹ Article 27 of the Vienna Convention prevents states from refusing to carry out treaty obligations by holding that their own law prevents them from doing so.⁹⁰ This leads to the conclusion that an Egyptian law violates the requirements of Article 53 (1) when it disrupts an award.⁹¹ Because the powers granted in Amendments 27 and 33

79. See Mujally, *supra* note 63.

80. See *Contracting States*, N.Y. ARBITRATION CONVENTION, <https://www.newyorkconvention.org/countries> (last visited Oct. 28, 2021).

81. See *A New Law*, *supra* note 33 (quoting DR AHMED S. EL-KOSHERI, INTERNATIONAL HANDBOOK ON COMMERCIAL ARBITRATION 47-48 (1990)).

82. See New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. III, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3 [hereinafter *New York Convention*]; see also Mujally, *supra* note 63.

83. See Mujally, *supra* note 63.

84. See Mujally, *supra* note 63.

85. *Id.*

86. See *id.*

87. See New York Convention, *supra* note 85, at 10.

88. See *id.*

89. See Vienna Convention on the Law of Treaties, ch. XXIII, adopted May 22, 1969, 1155 U.N.T.S. 331.

90. See Mujally, *supra* note 63; see also El-Sadany, *supra* note 12.

91. See Mujally, *supra* note 63.

threaten the possibility that awards against Egypt will be overturned, they violate the Vienna Convention.⁹²

Further, Egypt is a signatory of eighty-seven bilateral investment treaties⁹³ (BITs).⁹⁴ As previously stated, the New York Convention is not meant to disrupt the enforcement of bilateral or multilateral agreements.⁹⁵ Egypt is a contracting state to the ICSID.⁹⁶ The ICSID requires awards to be binding and that parties abide by rendered awards.⁹⁷ Egypt's new law risks violating this aspect of the ICSID.⁹⁸ The Egyptian government has now empowered the SCC to review these awards, violating the provision of the ICSID when cases are brought using the institution.⁹⁹

The SCC held that the constitution is dominant over ratified treaties, which have the force of law.¹⁰⁰ However, they have also held that a law is not unconstitutional simply because it disagrees with a treaty.¹⁰¹ Moreover, the SCC believes Article 151(3) of the Constitution grants it the power to “scrutinize ratified treaties *a posteriori*.”¹⁰² However, this ruling does not appear to affect the new amendments, because they do not refer to treaties themselves, just the holdings based on those treaties.¹⁰³ Therefore, “the constitutionality of the Draft Law and the Constitution itself is irrelevant.”¹⁰⁴ Treaties bind authorities of the states that adopt them.¹⁰⁵

92. *See id.*

93. *See Bilateral Investment Treaty*, CORNELL LAW SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/bilateral_investment_treaty (last visited Nov. 28, 2020) (Bilateral investment treaties: bilateral investment treaties “are international agreements establishing the terms and conditions for private investment by nationals and companies of one state in another state.”).

94. *See Abbas, supra* note 34.

95. *See New York Convention, supra* note 85, at 10.

96. *See Member States*, INT’L CTR. FOR SETTLEMENT OF INV. DISPUTES, <https://icsid.worldbank.org/about/member-states> (last visited Oct. 28, 2021).

97. *See Mujally, supra* note 63.

98. *See id.*

99. *See id.*

100. *See id.*

101. *See id.*

102. *Id.*

103. *See Mujally, supra* note 63.

104. *Id.*

105. *See id.*

Further, these amendments will likely have detrimental effects on arbitral institutions, which are vital to dispute resolution.¹⁰⁶ They provide the parties with the physical space for arbitration, facilitate communication between the parties and the tribunal, ensure enforcement of awards, and ensure integrity of arbitration as a valid litigation alternative.¹⁰⁷ To ensure that these requirements are met, some institutions, such as the ICC, investigate awards.¹⁰⁸ However, domestic laws like the recent Egyptian amendments threaten to disrupt the efficacy and important role arbitral institutions play in the international system.

One such institution is the International Chamber of Commerce (ICC). The International Court of Arbitration of the ICC manages dispute resolution but does not resolve the disputes itself.¹⁰⁹ This court is the only body that may review, examine, and confirm the awards.¹¹⁰ Because of this rule, the new amendments violate the ICC Arbitration Rules by granting the SCC the power to invalidate arbitral holdings.¹¹¹ Further, Article 35 of the ICC Rules provides that awards are binding, that parties waive rights to appeals, and that the parties agree “to carry out any award without delay.”¹¹²

This blatant disregard of international law sets a dangerous precedent. Egypt is effectively stating that these international systems and laws are irrelevant to them in certain situations.¹¹³ This may lead other countries to adopt similar laws. Ayman Abul-Ela, deputy chairman of the House’s Human Rights Committee, supported the law, and noted that Switzerland did not enforce multiple international rulings when they conflicted with their constitution.¹¹⁴ These new Egyptian amendments are only likely to increase the chances of similar laws in other countries, as they will now have another state to use as a defense, as Egypt did here with Switzerland.

Another area of concern is human rights. Although Ayman Abdul-Ela argued that international rulings and treaties will not be neglected, others are still worried that the neglect will occur, putting Egypt in danger of violating human rights.¹¹⁵ This comes at a

106. See Silke Noa Elrifai, Amr Arafa Hasaan, & Laura Lozano, *Arbitral Institutions Through the Magnifier: On the Nature of Their Decisions and Exposure to Suit*, 19 CARDOZO J. CONFLICT RESOL. 309, 311 (2018).

107. See *id.*

108. See *id.* at 325 (citing INT’L CHAMBER OF COMMERCE, 2021 ARBITRATION RULES (2021), <https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/#article> [hereinafter Int’l Chamber of Commerce]).

109. See Int’l Chamber of Commerce, *supra* note 111.

110. See *id.*

111. See *Id.*

112. *Id.*

113. See El-Sadany, *supra* note 12.

114. See El-Din, *supra* note 67.

115. See Mujally, *supra* note 63; see also El-Din, *supra* note 67.

time when Egypt has come under fire for human rights violations.¹¹⁶ “Egypt is the subject of a stream of UN special procedures communications and was recently the subject of a joint state declaration before the Human Rights Council.”¹¹⁷ These violations may be a forewarning of what’s to come with these amendments.¹¹⁸ The amendments may be part of a plan to protect Egyptian officials from these charges.¹¹⁹

B. Consequences for Investment in Egypt

Not only is Egypt bringing on self-isolation as it ignores international law, but it is also creating the conditions for a decrease in foreign investment.¹²⁰ Egypt has worked to increase their foreign investments in recent years.¹²¹ As discussed, Egypt has passed multiple laws in the last few decades in an effort to encourage foreign investment.¹²² However, the nation has recently faced difficulties in attracting foreign investment.¹²³ In the last ten years, multiple court decisions in Egypt essentially nullified foreign investments on public interest grounds.¹²⁴ This trend of nullifications led investors to file international treaty arbitration claims against Egypt.¹²⁵ Egypt, in an effort to avoid paying damages and a decrease in investment, worked to stop the flow of those lawsuits.¹²⁶ Egypt proposed law 32/2014 in 2014 that was meant to place a ban on third-party litigation.¹²⁷ This law

116. *See* El-Sadany, *supra* note 12.

117. *Id.* United Nations, Human Rights Council, *Joint Statement on Egypt*, 12 March 2021, https://finlandabroad.fi/web/geneve/current-affairs/-/asset_publisher/h5w4iTUJhNne/content/finland-together-with-a-group-of-countries-express-their-concern-over-the-trajectory-of-human-rights-in-egypt-during-the-item-4-general-debate-at-the-/384951 (The Human Rights Council called on Egypt to end the use of “terrorism legislation” against certain groups, including human rights activists, LGBTI persons, and politicians. The Council also called for an end to the abuses of due process.)

118. *See id.*

119. *See id.*

120. *See id.*

121. *See* El-Sadany, *supra* note 12.

122. *See* Wahab, *supra* note 14.

123. *See* Mujally, *supra* note 63.

124. *See* Dr. Heba Hazzaa & Silke Noa Kumpf, *Egypt’s Ban on Public Interest Litigation in Government Contracts: A Case Study of “Judicial Chill”*, 51 STAN. J INTL’L L. 147, 148 (2015).

125. *See id.*

126. *See id.*

127. *See id.*

protected investors by stopping “third-party challenges to government contracts.”¹²⁸ Despite these recent efforts to protect investors, this new turn in the Egyptian legal system with Amendments 27 and 33 is likely to harm the advances made in the work towards foreign investment.¹²⁹ Accordingly, foreign investors will likely be wary of Egypt.

While parliament members who supported the amendments argued that the new law would not affect Egypt’s interests in international investment and would safeguard the economy, there were persuasive arguments from the opposition.¹³⁰ Parliament Member Abu Shoka, who opposed the law, stated that “Egypt’s assets in foreign countries could be expropriated if the government refused to implement international rulings.”¹³¹ Additionally, Egypt’s ability to obtain new investments is at stake as well.¹³² If the SCC refuses to enforce foreign judgments, it can signal Egypt is not abiding by international rules and law, leading investors to be skeptical.¹³³

Another important aspect of international investment is the role of the International Chamber of Commerce procedures. The ICC serves 45 million companies in over 100 countries.¹³⁴ Because the ICC serves such a large base of customers, Egypt is likely to decrease their chances of working with many companies, and it is unlikely that companies will want to invest in Egypt.¹³⁵ Those companies who choose to abide by ICC rules will not want to enter into business with Egypt once they discover Egypt puts their own laws above those of the ICC.

Economic harm will be felt not only by the Egyptian state and business entities, but Egyptian arbitrators as well. Because these amendments may lead to the exclusion of Egypt from foreign agreements and a decrease in foreign investment, they are likely to harm African arbitrators.¹³⁶ Cases including African nations as a party that are conducted through the International Centre for Settlement of Dispute Resolution, typically do not have any African arbitrators selected to the tribunal.¹³⁷ In a study of 191 African arbitration practitioners, Eighty-two percent of respondents did not act as an international arbitrator

128. *Id.* at 156.

129. *See* Mujally, *supra* note 63.

130. *See* El-Din, *supra* note 67.

131. *Id.*

132. *See* El-Sadany, *supra* note 12.

133. *See id.*

134. *See About Us*, INT’L CHAMBER OF COMMERCE, <https://iccwbo.org/about-us/> (last visited Nov. 7, 2021).

135. *See About Us*, *supra* note 137; *see also* Mujally, *supra* note 63.

136. *See* Tsotang Tsietsi, *International Commercial Arbitration: Case Study of the Experiences of African States in the International Centre for Settlement of Investment Disputes*, 47 THE INT’L LAW. 249, 261 (2013).

137. *See* Tsietsi, *supra* note 136, at 261.

between 2012 and 2017, and fifty-nine percent were not counsel in international arbitration.¹³⁸ Because Egypt is welcoming a decrease in investment, there will be even less work for African arbitrators in the country.

C. Alternative for Egypt

Not only are the amendments dangerous to Egypt and the international community, they are also unnecessary because countries are already adequately protected by conventions and arbitration institutions' rules.¹³⁹ While not all institutions and conventions provide the same protections, Egypt should lobby for them to be adopted.

One important protection provided by arbitration institutions is the allowance of parties to select the arbitrators.¹⁴⁰ These institutions only appoint the arbitrators when a party fails to do so.¹⁴¹ This procedural mechanism provides a layer of protection for states, including Egypt, against unfair tribunals and decisions. This is due to parties being able to choose at least one person on the tribunal who is making the decision, and will advocate for their interests.

Additionally, ICC ruled that rationale would be provided for prima facie rulings, replacement of arbitrators, and consolidation proceedings.¹⁴² Therefore, states will know if there were valid reasons when tribunals find against them in a proceeding. Further, the ICC publishes on their website, names of arbitrators in cases, whether they are a chairperson or party appointed arbitrator, their nationality, and who appointed them.¹⁴³ These requirements will protect Egypt because other stakeholders will be able to see this information. If there is a clear unfair issue, as some Egyptian government figures are worried about, other individuals and states will have access to the information.

Further, as stated above, the ICC, and other institutions, allow the institution to investigate awards.¹⁴⁴ The awards are reviewed by the administrative court of the ICC.¹⁴⁵ This power protects the parties involved and ensures that the awards meet formal

138. *See id.*

139. *See* Elrifai, *supra* note 109, at 311, 316.

140. *See id.* at 317.

141. *See* Elrifai, *supra* note 109, at 317.

142. *See id.* at 312 (citing *ICC Court to Communicate Reasons as a New Service to Users*, ICCWBO (Oct. 8, 2015), <https://iccwbo.org/media-wall/news-speeches/icc-court-to-communicate-reasons-as-a-new-service-to-users/>).

143. *See* Elrifai, *supra* note 109, at 316, (citing *1 ICC Court Announces New Policies to Foster Transparency and Ensure Greater Efficiency*, INT'L CHAMBER OF COMMERCE (Jan. 5, 2016), <https://iccwbo.org/media-wall/news-speeches/icc-court-announces-new-policies-to-foster-transparency-and-ensure-greater-efficiency/>).

144. *See id.* at 325 (citing INT'L CHAMBER OF COMMERCE, *supra* note 111, at 39).

145. *See id.*

requirements.¹⁴⁶ SIAC and TRAC rules have similar protections.¹⁴⁷ Because some institutions have this layer of protection, it is unnecessary for states, such as Egypt, to empower their domestic courts to review these decisions. Instead, Egypt should press the tribunals lacking protection to provide parties with these safeguards.

The New York Convention already provides that the recognition and enforcement of the award may be refused if the recognition or enforcement of the award would be contrary to the public policy of the enforcing country.¹⁴⁸ While these do not interfere with bilateral and multilateral treaties, they still provide some insurance to states that their interests will be considered. However, most arbitration institutions do not retain this power of review.¹⁴⁹ Additionally, there has been claims that “greater transparency would enhance the predictability and consistency of decisions and would reduce the number of opportunistic challenges.”¹⁵⁰ Egypt should push for arbitral tribunals to be required to provide reasoning. It would be beneficial for Egypt to lobby for and encourage those institutions to amend their rules to include these powers.¹⁵¹ Egypt would be able to ensure the rulings are fair, while maintaining their foreign investors.

IV. CONCLUSION

In attempting to balance its position in the international system, the need for foreign investment, and protection of their own interests, Egypt has undermined international law.¹⁵² While Egypt is rightfully protective of its economy, its fears of unfair decisions by arbitral tribunals, must be addressed by working with international bodies, not against them. International arbitration is a vital aspect of the international commercial system that now dominates, and the agreed-upon regulations and rules cannot be disregarded by states.¹⁵³ The replacement of international law with domestic law is dangerous not only for the state neglecting international law, but also for the system as a whole. As more nations attempt to protect themselves through domestic law, instead of improving the international arbitration system, the system will suffer from distrust and lack of participants. Egypt’s Amendments 27 and 33 are likely to be a detriment to its economy and place in the international system and will act as a catalyst for toxicity in international arbitration.

146. *See id.*

147. *See id.*

148. *See* Mujally, *supra* note 63.

149. *See* Elrifai, *supra* note 109, at 325.

150. Elrifai, *supra* note 109, at 317 (quoting Gary Born, *Arbitration Institutions Need to Publish Arbitrator Challenge Decisions*, KLUWER ARBITRATION BLOG (May 10, 2010), <http://arbitrationblog.kluwerarbitration.com/2010/05/10/institutions-need-to-publish-arbitrator-challenge-decisions/>).

151. *See id.* at 325.

152. *See* El-Sadany, *supra* note 12.

153. *See id.*