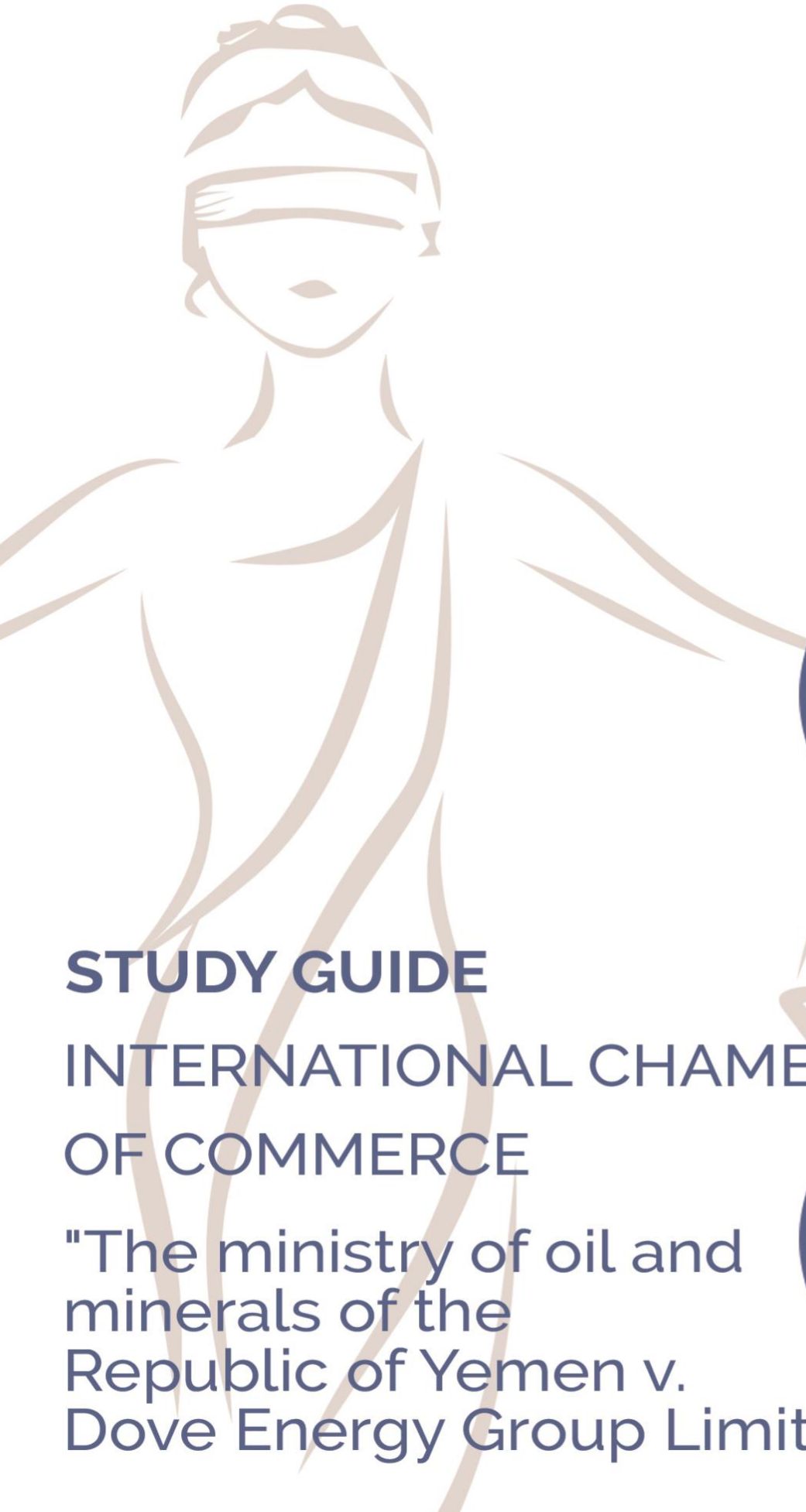


STUDY GUIDE

INTERNATIONAL CHAMBER OF COMMERCE

"The ministry of oil and minerals of the Republic of Yemen v. Dove Energy Group Limited"

Letter of the Secretary General

Honourable participants;

It is an immense honour for me, as the Secretary-General of the conference, to introduce to you Themis Court Simulations 2022 edition.

As a leading example for the moot court conferences in Turkey, whether at academic expertise, organizational excellence, dedication for the utmost pleasure for the participants or in our persistency to outdo the previous editions, Themis Court Simulations has always advanced itself each passing year.

In this year, we are more than excited to continue this tradition and announce our courts. Ranging from human rights discussions to various types of international arbitrations, from English to Turkish, we have prepared five unique and interesting courts which are, in no specific order; The European Court of Human Rights (ECtHR), International Chamber of Commerce (ICC), Court of Arbitration for Sports (CAS), Istanbul Tahkim Merkezi (ISTAC) and T.C. Anayasa Mahkemesi.

As you could suspect besides the courts and magnificent academy, Themis Court Simulation's magnificent organization team will welcome with their kind hospitality to make your experience as convenient as possible. Through these regards I would like to thank our Director-General Edige Doğan and his team of colleagues for their exquisite efforts for the conference and its organizational excellence.

On behalf of the Themis Court Simulations, I would like to express my excitement to host all of you once more and say that we cannot wait to define justice together once again.

Kind Regards,

Tolga Yeşil

Secretary General, TCS'22

Letter of the Under Secretary Generals

Most distinguished participants,

As the academic team members of the International Chamber of Commerce Arbitration court, it is our utmost pleasure to welcome you all to this year's edition of the Themis Court Simulations. We, İpek Bozbura and Selin Özgören, will be there for you and serve you during these three special days, full of academic growth and new experiences, as the Under Secretary Generals.

In this year's simulation, esteemed participants will perform as counsel and arbitrators to conclude a unique case concerning an international commercial arbitration case including severe human rights infringement. This study guide will provide you with necessary knowledge about contract law, arbitration and the factual background of the case as well as the relevant articles from several international conventions.

Before concluding our remarks, we would like to thank our dear academic assistant, Ms Bahar Temizyürek for her devotion and enthusiasm towards the research and the case. She was not only a huge help but also a dear friend along the way. Further, we send our deepest gratitude to the most distinguished Secretary-General Mr Tolga Yeşil for giving us this opportunity and his endless support and help in every step of this journey. We would also like to deliver our sincere thanks to honourable Director-General Mr Edige Doğan and Deputy Director-General Ms Oğuz Koç on behalf of the Organisation Team for all of their efforts to make this conference the best of all.

In case of any questions you might have, do not hesitate to contact us via,

ipek.bozbura@bahcesehir.edu.tr

slnzgrn@hotmail.com

We are looking forward to meeting you in person at our one of a kind event!

Best regards,

İpek&Selin

I. Introduction to the International Commercial Arbitration

A) History

In the proper meaning of the word, arbitration is the final resolution of disputes between parties through persons called arbitrators instead of state courts. Although the origin of arbitration is lost in obscurity, it can also be said that it predates the administration of justice by the state. Before state court, it was common procedure to refer a disagreement to a third party with the understanding that sanctions would be imposed. In today's World, despite the fact that the modern state has not supplanted arbitration, it has remained in full force and action in the current legal system - such as in the field of international trade actors in the field of globalization -.

Besides, it is necessary to outset to select the situations and practices that form the background of our present commercial arbitration and exclude the rest when we examine the thousand of occasions and instances in which arbitration has been used. At this point, we can also talk about the situations involving not only every conceivable human relation but the affairs of states and of nations as well.

In addition, fundamental purposes should be acknowledged well in order to understand the history of commercial arbitration: Arbitration is a private adjudication method. Arbitrators are parties who have chosen to resolve their disagreements outside of the legal system. In most cases, arbitration results in a final and binding decision, which is then translated into an award that can be enforced in a national court. The arbiters (decision-makers), who are usually one or three, are chosen by the parties. The parties also select whether the arbitration will be managed by an international arbitral institution or ad hoc, meaning there would be no institution engaged. So we can say that the main difference between an ad hoc and institutional arbitration is that in the latter parties choose to submit the arbitration to the administration of any particular institutions while in the ad hoc arbitration, parties do not[1].

However, arbitration is not a uniform process. These general principles may vary depending on the content of the arbitration, the nationality of the parties, the place of arbitration, the arbitration procedure law and the character of the dispute. So, the rules that apply are either the arbitral

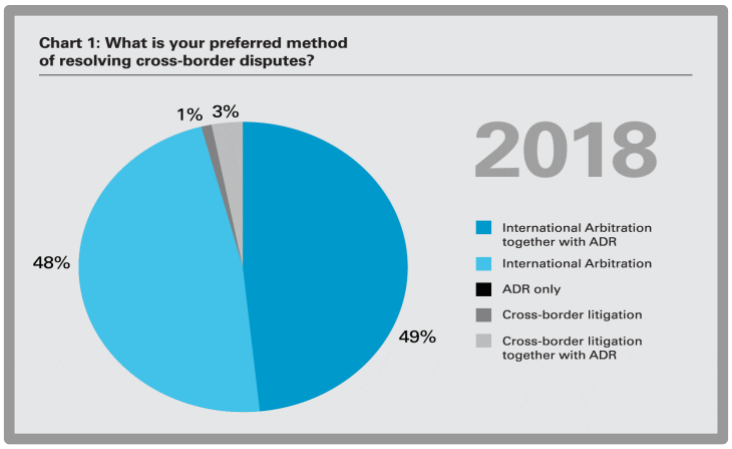
[1] (Akkaş, 2022)

institution's rules or the parties' own rules and may vary depending on the types and the place of the arbitration. These rules are put in place to ensure the order reliability of the arbitration process.

In other words, arbitration offers the parties a great deal of autonomy and control over the process of resolving their disagreements. This is especially significant in international business arbitration since parties do not want to be subject to the other party's judicial system's jurisdiction. Each side is wary of the other's "home-court advantage". Which prepares the ground for “forum shopping” in arbitration. Forum shopping is a topic that's come up often in international commercial arbitration and its forerunner, international mixed claims commissions. Its significance is arguably less obvious than the civil lawsuit term of 'forum shopping.' At the same time, arbitral forum shopping is based on the same principles as civil litigation. Specifically, looking for a proper jurisdiction and venue, or seat, in a contractual or non-contractual scenario where there may be several lawful options, or where more than one has previously been invoked or exhausted.[2]

Eventually, arbitration provides a more neutral setting in which each party believes they will receive a fair hearing. Furthermore, the ability to personalize the conflict resolution process to the parties' demands, as well as the ability to select arbitrators who are competent in the issue's subject matter, make arbitration particularly appealing. In most international business transactions, international commercial arbitration has become the norm for resolving disputes. According to a 2021 survey prepared by the joint contribution of Queen Mary University School of International Arbitration and White&Case LLP, with more than 1,200 participants, international arbitration is now the respondents’ preferred method of resolving cross-border disputes for 90% of respondents, either on a stand-alone basis (31%) or in conjunction with ADR (59%).[3] Demand for the combination of international arbitration and ADR has increased by 10% since 2018.

[2] (Cremades & Lew, 2005)
[3] (2021 IntInternational Arbitration Survey: Adapting arbitration to a changing world, 2021)



ADR (Alternative Dispute Resolution), which is mentioned above, refers to the methods used to settle disputes in commercial litigation other than courts and arbitration. ADR is a mechanism that can be used before or during the arbitration proceeding. Organizations such as ICC, ICSID, UNCITRAL have published rules for conflict resolution with the ADR mechanism. ICC for example have services that include mediation, expert appraisal and dispute boards. They also oversee work involving DOCDEX (Documentary Instruments Dispute Resolution Expertise).[4]

B) Advantages

Because of a variety of perceived potential advantages over judicial processes, parties frequently attempt to resolve their issues through arbitration: The two most important reasons for parties choosing international arbitration to resolve disputes, according to various studies, were the neutrality of the forum (the ability to stay out of the other party's court) and the likelihood of obtaining enforcement. As a follow-up to this background, the following advantages shall be addressed under the same title:

- ***Expenses***

Arbitration processes, on average, resolve disputes faster than judicial proceedings. As a consequence, total costs will be reduced. Furthermore, arbitration allows relatively limited discovery, which dramatically reduces the expenses of obtaining a settlement, and also attorney

[4] ("ICC International Centre for ADR - ICC - International Chamber of Commerce", 2022)

fees are typically decreased since arbitration is generally concluded much more swiftly than court processes.

- ***Confidentiality***

Arbitration hearings are often held in secret. By this we mean, arbitration, unlike a trial, results in a private settlement, allowing the material raised in the dispute and its resolution to remain secret. And the parties might agree to keep the final decision private So that all data, remarks, and arguments will remain fully anonymous. This is particularly enticing if the issue concerns sensitive or private information, or if the parties to the arbitration proceedings are well-known public personalities or clients in commercial disputes.

- ***Time***

Trial dates can be difficult to come by, especially when a case involves many court days. Nonetheless, an arbitration date can normally be secured in a matter of months while a court trial date might take years to get. During the arbitration procedure, the parties might agree on dates that are most convenient for them and their witnesses.

- ***Flexibility***

Litigation laws are more complicated than arbitration laws; litigation must follow civil court law and must follow the Civil Procedural Rules book, but arbitration rules are far more basic and few in number. There is no code of procedure in arbitration; it is decided by the parties, and they can agree and settle on whatever they wish.

- ***Expertise of Arbitrators***

This is a significant benefit over litigation, which often relies on juries to determine the truth. Through arbitration, parties can keep greater control over the dispute settlement process. The parties decide on the arbitrator. Unlike a trial, when the judge or jury may have little knowledge of the dispute's subject matter, the parties to arbitration have the option of selecting an arbitrator with experience in a particular field, which may result in a more equitable and informed judgment.

Furthermore, the parties can choose and agree on the legal and procedural norms that will govern the procedure in general.

C) Tribunals

Arbitral tribunals are panels comprising one or more arbitrators tasked with resolving disagreements between parties. These arbitrators, unlike judges in national courts, whose powers are normally explicitly specified by the applicable national laws and processes, judges in international courts have no such strict limitations.

In the international arbitration area, new institutions arose over time with the rapid change in the amount of commercial transactions. As a result, there were several places where each school differed from the others. For example, the cost and quality of administration differ amongst institutions.

Although there is no sharp and clear classification in this sense, when we look at the rates, it is possible that the services of old and well-established organizations are more expensive. Nevertheless, many businesses prefer to collaborate with older, more established organizations, even if the cost is slightly higher. Parties are apprehensive that if they choose a brand new arbitral institution, the institution may not be in operation when a dispute arises a few years down the line.

It is also feasible to discuss specialized tribunals that have been formed to deal with certain concerns. In other words: specialized arbitration bodies were established to resolve disputes involving specialized concerns; they work in a relatively narrow sector yet are extremely specialized in their activity. They have created unique rules, processes, and regulations for this reason, which they follow throughout arbitration sessions. These institutions are particularly valuable when a high level of specialized expertise is required in a settlement, since they are both cost-effective and time-saving. The specialized bodies can be about maritime law, intellectual property law, commercial law and much more. Some of these specialized tribunals can be listed as:

- Maritime Arbitration Association of the United States
- Centre for Effective Dispute Resolution (CEDR)

- The International Chamber of Commerce (ICC)
- Arbitration and Mediation Centre, (WIPO)
- German Maritime Arbitration Association
- Maritime Arbitration Association of the United States
- London Court of International Arbitration
- Tokyo Maritime Arbitration Association

D) Introduction to the International Chamber of Commerce Arbitration

a) Structure

i. ICC

To understand the structure of ICC arbitration, it is essential to understand the operation of 'chamber of commerce' and ' The International Chamber of Commerce (ICC)'. A chamber of commerce is a group of businesses who work together to promote and protect their members' interests. A chamber of commerce is often made up of a collection of company owners that share the same location or set of interests, although it can also have a global reach. They will elect a new president, select representatives, and discuss which policies to support.

Chambers of commerce may be found all around the globe. They do not have a direct role in the creation of laws or regulations, but their coordinated lobbying activities may be successful in influencing regulators and politicians.

The International Chamber of Commerce (ICC) is one of the largest, most diverse business organizations in the world.[5] ICC was established in 1919, just after World War I to promote international commerce and investment, open markets for products and services, and free capital movement. The International Chamber of Commerce Organization differs from other

5 (KENTON, 2022)

organizations in that it was founded with private sector leadership rather than an intergovernmental agreement.

The ICC is divided into four main governing organizations. The World Council, which is made up of representatives from national committees, is the main governing body. Every two years, the World Council elects the ICC's highest officers, the chair and vice-chair. ICC

ii. ICC Arbitration

That being said, The International Court of Arbitration (ICC) can be understood better. ICC Arbitration is a body that handles international economic disputes. It functions under the auspices of the International Chamber of Commerce. The ICC's International Court of Arbitration was formed in 1923, and the organization's international secretariat was established in Paris. Although the ICC International Court of Arbitration has its headquarters in Paris, it conducts arbitrations all over the world.

One of the most well-known and distinguished arbitral institutions is the ICC International Court of Arbitration. The International Court of Arbitration is not a court in the traditional sense, and it is not affiliated with any legal system. The Court of Arbitration, on the other hand, is the administrative entity in charge of overseeing the arbitration procedure. Its members come from all around the world and work in the legal field.

(1) Definition

The International Chamber of Commerce (ICC) was created exclusively for international commercial disputes. Arbitrations conducted under the ICC Rules of Arbitration are overseen by the International Court of Arbitration.

Due to the Rules:

(i) "arbitral tribunal" includes one or more arbitrators;

(ii) "claimant" includes one or more claimants, "respondent" includes one or more respondents, and "additional party" includes one or more additional parties;

(iii) "party" or "parties" include claimants, respondents or additional parties;

(iv) “claim” or “claims” include any claim by any party against any other party;

(v) “award” includes, *inter alia*, an interim, partial, final, or additional award.[6]

The process must operate according to the rules set by the institution.

(2) The Effect of its’ Judgement and Enforcement

In most instances, arbitration involves a final and binding decision, producing an award that is enforceable in a national court. An award is made by a majority decision when the arbitral tribunal is composed of more than one arbitrator. However, the award must be made by the president of the arbitral tribunal alone if there is no majority. Also, the award should state the reasons upon which it is based. Lastly, the award must be deemed to be made at the place of the arbitration and on the date stated therein.[7]

[6] ("2021 Arbitration Rules - ICC - International Chamber of Commerce", 2022)

[7] ("2021 Arbitration Rules and 2014 Mediation Rules (English version) - ICC - International Chamber of Commerce", 2022)

II. Key Concepts

A) Choice of Law for the Contract

Choice of law clause exists to allow parties to choose either a particular state's national law or international principles. Selecting a national law is still the most expected and traditional outcome, yet, parties can also choose the latter, for instance UNIDROIT principles or CISG to govern their contractual relations. If the parties prefer to adopt a national law, they either adopt the law of the one which has the position to impose it, or they may choose a neutral law which is foreign to them. Whether the choice is in favor of a national law or international principles, the usage will be made in case of a dispute arising from the main contract and may also become useful to interpret certain terms if there is a doubt.

The fundamental principle behind choice of law principle is the party autonomy which is also referred to as the "freedom of contract". This freedom allows the parties of a contract to derogate from all the waivable rules in contrast to the non-waivable or mandatory rules of law. Even though there are some limitations in several areas of law, such as consumer or employment contracts, still the party autonomy has a unique status. It has been characterized as a "fundamental right" and an "irresistible" principle that belongs to "the common core of the legal systems."[8]

B) Force Majeure

A force majeure clause is inserted in contracts as a common practice in international trade and has a wide range of use. The main reason for invoking this clause is that with the recent events, the performance of the contract would be impractical or impossible. For a long time, a standard force majeure clause would include events regarded as an "act of god". However today, the events which may cause impracticality or impossibility have increased and the force majeure clauses are tailor made considering the requirements of the specific sector that the parties are engaging in.

National legal systems are proving different rules related to this, for instance, frustration in English law, impossibility in civil law and impracticability in American law. Yet, there are slight

8 Symeonides, S. (2016). Choice of law. Oxford University Press. p. 363

differences in these different systems and none of them provides an adequately unified approach[9]. Therefore, business parties are addressing the model clauses introduced by entities such as ICC, or applying the model clauses introduced by model contracts.

By referring to model clauses, the parties are aiming at excluding the national laws and adopting the standards introduced by the clause itself. By doing so, they would ensure a standardized approach independent of the national requirements of the chosen national laws.

Force majeure clauses are mentioned in different unified contract law documents, such as the Principles on International Commercial Contracts (PICC 2004), the Principles of European Contract Law (PECL 1999) and Draft Common Frame of References (DCFR 2008). However, the widely adopted Convention on International Sale of Goods (CISG) does not expressly deal with this but the court and doctrine recognized implicit reference in Art. 79. Art. 79 itself recognizes and relieves a party from paying damages if the non-performance resulting in a breach of contract was due to an impediment beyond its control[10]. All these legislations aimed in a unified regime, set 3 requirements for force majeure: the event must not happen because of the obligor, it must be unforeseeable, and the consequences must have been unavoidable.

If the reason of non-performance is based on force majeure, then, the obligor is relieved from any obligation to pay damages.

C) Avoidance of a Contract

Under several international commercial law instruments, termination of a contract can only be based on severe and serious "fundamental" breach. Courts and doctrine recognized this remedy as last resort, or an ultima ratio remedy and determined that it should not be granted easily[11].

[9] Brunner, C. (2018). Rules on force majeure as illustrated in recent case law. *Hardship and Force Majeure in International Commercial Contracts*, (796E), 82-112.

[10] Schwenzer, I. (2008). Force majeure and hardship in international sales contracts. *Victoria U. Wellington L. Rev.*, *39*, 709.

[11] Magnus, U. (2005). The Remedy of Avoidance of Contract Under CISG-General Remarks and Special Cases. *JL & Com.*, *25*, 423.

Main requirements of an avoidance are more or less same in different legislations: first, a fundamental breach of a contract, second, a given notice, third, a time limit and fourth, the return of the substantially unchanged goods.

Fundamental breach occurs when a contractor is substantially deprived of what it was expecting from a concluded contract. A party's expectation from a contract can be determined from the point of view of a reasonable third person in light of the mutually agreed upon contract. A continuous of non-performance, late delivery (for instance when the goods are seasonal), or violation of essential extra duties may result in fundamental breach.

A party can ask for performance of the contractual obligations in case of non-performance if it is beneficial for both parties[12]. Alternatively, non-performance may occur because of force-majeure.

In such case, this situation should be evaluated on a case by case basis to decide if the force majeure clause is valid, therefore, amounts to a reason for the termination of the contract[13].

Valid avoidance of a contract results mainly in four different consequences: release from obligations, restitution of what has already been performed, the right to calculate damages in an abstract way, and the duty to preserve the goods.

Still, in international contractual relations, the termination of a contract does not amount to the termination of an arbitration clause because of the doctrine of separability. As a result of this doctrine, contracting parties can still solve their dispute in the chosen arbitral institution without taking in the consideration of the legal existence of the main contract.

III. The Conflict

A) Overview

a) Arab Spring

The Arab Spring erupted in the early 2010s and had a profound impact on the Arab world. Protests and uprisings were common, as were armed rebellions. The main stimulant of this series of events

[12]Kötz, H. (2017). *European contract law*. Oxford University Press. p 215
[13] CIETAC, 30 Oct 1991, CISG-online 842.

was the economic stagnation which started in Tunisia[14]. This inescapable conflict moved to Libya, Egypt, Yemen, Syria, and Bahrain, but it also had important consequences in every Arab country, with moderate to major uprisings.

The spread of these movements were inescapable due to two reasons. First, the people were deeply concerned with the economic situation they were surrounded by. Second, the people were using all the social media platforms, mostly Facebook and Twitter, effectively to share their success stories. The usage of social media platforms during the protests doubled in every single country except Libya[15]. With this change, it was easier to raise awareness, share intel and schedule protests. Even though the governments of the conflicts were shutting down the social media platforms and relevant websites, still movements were unstoppable since Arab people declared their wish by saying that they want to bring down the regime[16]. The instigators of this wish were mainly based on the wish of a reform, severe human rights violations, political corruption, economic decline, unemployment, and extreme poverty[17].

However, these desires were not fulfilled. The protestors in many cases, received a similar response: military actions. In some occasions, the protestors stopped their protests once and for all but in others, the people continued with their cause. As a result, these plans to change the regime cause more damages than ever imaginable, such as, the Syrian Civil War, the rise of ISIL, Egyptian Crisis and the Yemeni Crisis[18].

Some of these actions in the aforementioned countries were deemed as revolutionary and brought hope to the civilians who were wishing for a more democratic country. However, these early hopes in favor of a new regime with a democratic political system and a brighter economic future

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[14]*Uprisings in the Region and Ignored Indicators*. (n.d.). Retrieved March 23, 2022, from http://www.payvand.com/news/11/feb/1080.html

[15]*Facebook and Twitter key to Arab Spring uprisings: report*. (2011, June 6). The National. https://www.thenationalnews.com/uae/facebook-and-twitter-key-to-arab-spring-uprisings-report-1.428773

[16]Skinner, Julia, " Social Media and Revolution: The Arab Spring and the Occupy Movement as Seen through Three Information Studies Paradigms" (2011). All Sprouts Content. 483.

[17]Kazamias, A. (2011). The 'Anger Revolutions' in the Middle East: an answer to decades of failed reform. *Journal of Balkan and Near Eastern Studies*, *13*(2), 143–156. https://www.academia.edu/919845/The_Anger_Revolutions_in_the_Middle_East_an_answer_to_decades_of_failed_reform_Journal_of_Balkan_and_Near_Eastern_Studies_13_2_June_2011_pp_143_156

[18] Finn, T., 2022. *Middle East Eye*. [online] Yemen's Arab Winter. Available at: <http://www.middleeasteye.net/news/yemen-s-arab-winter-1470341500> [Accessed 23 March 2022].

collapsed. The reasons behind were the counter-revolutionary terrorist groups actions in Yemen, outside interventions in Bahrain and Yemen and the civil wars in Syria, Iraq, Libya and Yemen[19].

b) Effects of the Arab Spring in Yemen

Starting from January 2011, the security situation in Yemen appeared to deteriorate. A number of tribal clashes, attacks and kidnappings took place, and a number of governments advised their citizens to leave Yemen.

The conflict has its roots in the failure of a political process supposed to bring stability to Yemen

following an uprising in 2011 that forced its long-time authoritarian president, Ali Abdullah Saleh, who had led Yemen for more than three decades, exactly 33 years[20].

President Ali Abdullah Saleh had been in power for 30 years until ousted in 2011. Ali Abdullah Saleh was a Zaidi Shiite, but had the support of key Sunni leaders, and his Vice President was a Sunni Muslim. Saleh retained influence among Zaidi tribes - from which the Houthis belong - in the north and top military commanders. By 2015 Houthis appeared to have major backing from Saleh, their long-time adversary. Together they formed the so-called "Popular Committees", militias that controlled much of northern Yemen. The bulk of the January 2015 fighting against the Hadi government was led by the Republican Guard, the elite military unit led until 2013 by Ahmed Ali Saleh, the eldest son of the ousted president. Just exactly how and when these former opponents became allies is obscure.

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[19] Hassan, I., & Studies (CIRS), C. for I. and R. (2017). The State of Middle Eastern Youth. *CIRS Special Issue of The Muslim World*. https://www.academia.edu/31029084/The_State_of_Middle_Eastern_Youth

[20] Hendawi, Hamza (12 October 2014). "Yemen's crisis reflects arc of Arab Spring revolts". Yahoo!
News. Archived from the original on 9 February 2015. Retrieved 8 February 2015

 [21]

As president, Mr Hadi struggled to deal with a variety of problems, including attacks by jihadists, a separatist movement in the south, the continuing loyalty of security personnel to Saleh, as well as corruption, unemployment and food insecurity.[22]

By early 2015, Yemen was already a failed state, beset by a circular firing squad of factions. Besides a local struggle for power, the Yemen conflict is widely viewed as a proxy war between Sunni Saudi Arabia and Shia Iran. At least 10,000 people had died by mid-2016. Yemen was wracked by internal divisions as the Houthi movement spread beyond its traditional rebellion in the north, separatists continue to press their cause in the south, and al-Qaida in the Arabian Peninsula claims attacks both at home and abroad, including on the satirical magazine Charlie Hebdo in Paris earlier in January 2015.[23]

On 18 March 2011, the Yemen government declared a 'State of Emergency". In a series of investigations undertaken between 2015 and 2017, a U.N. Panel of Experts concluded that the Saudi coalition had breached its international obligations during the course of hostilities. After an investigation in 2015, it concluded that the Saudi-led coalition had bombed residential neighbourhoods and treated "the entire city of Sa'dah and region of Maran as military targets."

[21]Bakri, N., & Goodman, J. D. (2011, January 27). Thousands in Yemen Protest Against the Government. *The New York Times*. https://www.nytimes.com/2011/01/28/world/middleeast/28yemen.html

[22]Yemen: Why is the war there getting more violent?. BBC News. (2022). Retrieved 19 April 2022, from https://www.bbc.com/news/world-middle-east-29319423.

[23] Pike, J. (2022). Yemen Civil War (2011). Globalsecurity.org. Retrieved 19 April 2022, from https://www.globalsecurity.org/military/world/war/yemen4.htm.

The Panel assessed the information to which it had access and concluded the coalition had committed “a grave violation of the principles of distinction, proportionality and precaution” and in some specific instances “found such violations to have been conducted in a widespread and systematic manner.[24]

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They add that European economic sanctions are an integral part of international public order so that when there are serious, precise and concordant indications that the recognition and execution of an arbitral award could entail a violation of European sanctions, this award must therefore be set aside. Similarly, they argue that the objectives of protecting human rights and fundamental freedoms, as well as international humanitarian law, are also an integral part of French international public order and that it is up to the judge of the annulment to ensure that the recognition and enforcement of an arbitral award would not undermine the objectives of protecting human rights and fundamental freedoms, as well as international humanitarian law.

B) Parties

a) Companies

Both of the contracting Parties are industrial corporations dealing with the production of oil in Yemen oil blocks. While The Ministry of Oil and Minerals of the Republic of Yemen (hereinafter “Yemeni Company”) is the national oil company of Yemen, the Dove Energy Group Limited (hereinafter “Dove”) is a company that seeks to generate revenue by oil and gas production.

[24] ibid.
[25] ibid.

CLAIMANT, Yemeni Company, is Yemen's national oil company. It is responsible for managing industry contracts and relations with international operators and partners. As an oil provider for a while, cooperation with the foreign companies on the production of oil and natural gas has always been important in Yemen. This is reflected in several PSA and JOA made with different foreign companies on oil blocks of Yemen. The oil production by the foreign companies in Yemen has increased significantly from 90s until 2004 and reached its lowest point in 2016 due to the Arab Spring and its effects in the region[26].

RESPONDENT, Dove, is an independent British company active in the oil production and has expertise specifically in Yemen and Syria. A significant amount of its exploration and production of oil and natural gas has been based on the former since 1994. Due to the close relation between Dove and Yemeni Company and the production of oil in the region, Dove is a contracting party to Production Sharing Agreement (hereinafter the "PSA") with the Yemeni Company. However, as of 2017, Dove declared liquidation and as of 2022, it is dissolved and currently regarded as an "inactive company".

Since 1994, Dove has been active in oil discovery and production specifically in Yemen. It has been involved in different oil blocks in the region. After successful corporations within the territory, Dove, as an independent company solely focused on oil production, wanted to increase their revenues by getting involved in newly founded blocks.

The reason of this choice of Dove to conduct business with the Yemen Company was based on:

1) Their successful business relationship.

2) The safe political and economic environment in Yemen.

3) Reduced rates provided by the Yemen Company.

Dove's wish to enter into a PSA with the Yemen Company for Block 53 was fulfilled on January 12, 1997 by Dove sharing the %25.45 of the stocks.

[26]*Yemen Crude Oil Production - March 2022 Data - 1993-2021 Historical - April Forecast*. (n.d.). Retrieved April 3, 2022, from https://tradingeconomics.com/yemen/crude-oil-production

b) The PSAs

The Parties entered into three production sharing agreements with materially identical terms (the "PSAs"), under which the Contractor was to carry out petroleum exploration and production activities in Yemen. The PSAs were governed by *Yemeni law*, and included the following provisions:

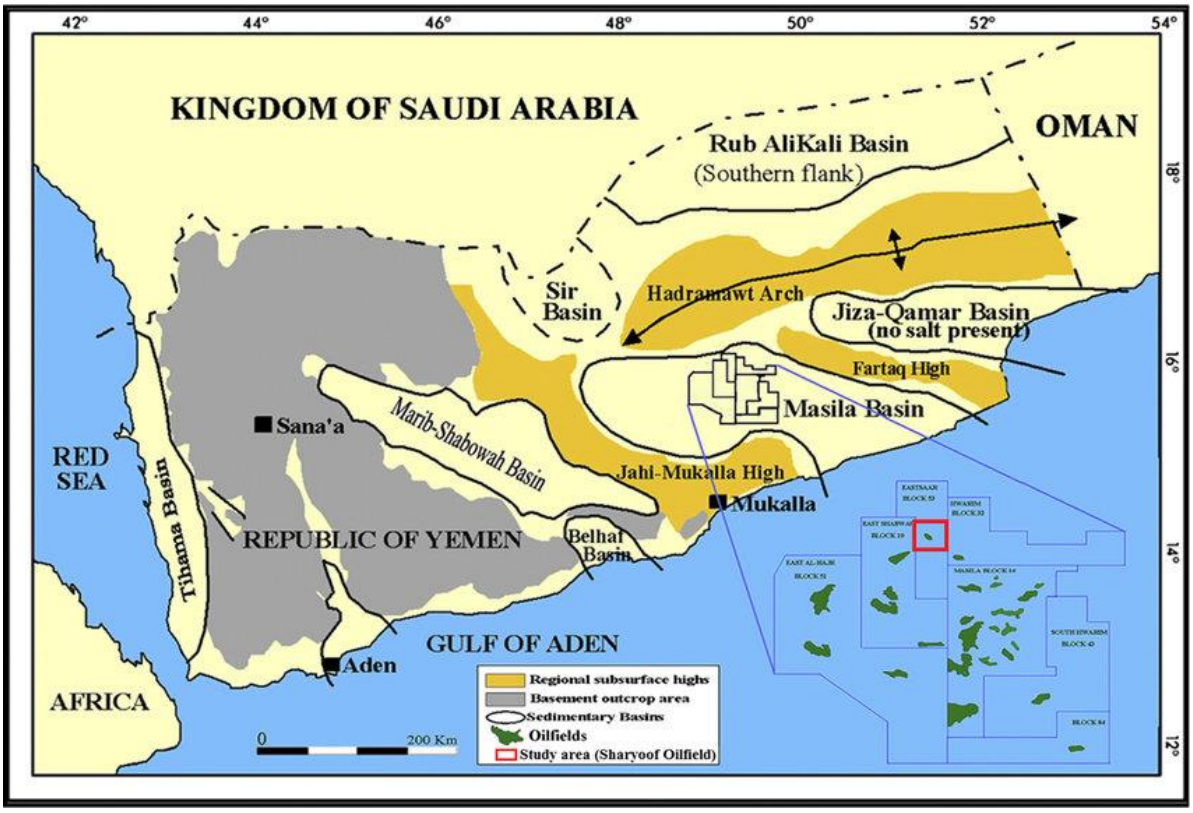
1. ***Article 22.2*** *of the PSAs defined "Force Majeure" as "any order, regulation or direction of the Government… or any act(s) of God, insurrection, riot, war, strike (or any other labor disturbances), fires, floods, or any cause not due to the fault or negligence of the Party invoking Force Majeure, whether or not similar to the foregoing, provided that any such case is beyond the reasonable control of the party invoking Force Majeure."*

2. ***Article 22.1*** *excused the Contractor for any non-performance or delay in performance by the Contractor of any obligation under the PSAs "if, and to the extent that, such non-performance or delay is caused by Force Majeure."*

3. ***Article 22.4*** *gave the Contractor the option to terminate its obligations under the PSAs upon prior written notice if the Force Majeure event "continues in effect" for a period of six months*

4. ***Article 24 of the PSAs*** stated that "[the PSAs] will be governed and interpreted according to Yemeni laws, except the laws which are inconsistent with [the PSAs]". Relying on this article, the arbitral tribunal considered that the terms of the PSAs should prevail over general principles of law, insofar as they make specific provisions for particular matters.

C) Events During the Contractual Relationship



Location map of Masila Basin's blocks including Sharyoof oilfield (block 53), Hadramawt region of the Republic of Yemen[27]

On January 12, 1997, CLAIMANT and its long-lasting business partner, company Dove entered into a PSA for a fixed term of 25 years on a newly found oil block called “Block 53” [alternatively called as the Sharyoof oilfield]. Until the beginning of 2010, the operations went fairly smoothly without any interruptions even though the Middle East had severe conflicts for a while at that time. Still, the amount of production itself increased significantly indeed.

[27]Petrophysical analysis of Early Cretaceous Saar Carbonates from Sharyoof Oilfield in the Masila Basin, eastern Yemen, and their impact on reservoir properties and quality - Scientific Figure on ResearchGate. Available from: https://www.researchgate.net/figure/Location-map-of-Masila-Basins-blocks-including-Sharyoof-oilfield-block-53-Hadramawt_fig1_276924419 [accessed 23 Mar, 2022]

However, from January 2011, the security situation in Yemen appeared to deteriorate. A number of tribal clashes, attacks and kidnappings took place, and a number of governments advised their citizens to leave Yemen. In March 2011, the Yemen government declared a 'State of Emergency'.

Consequently, starting from mid-2011, the Arab Spring has affected both the daily life of the inhabitants and also the economic conduct, including the environment of the oil production in the region, Yemen. Following these events, the Contractor issued a notice to the Ministry in April 2011 declaring 'Force Majeure' under the PSAs. After 3 years since the Arab Spring emerged, in February 2014 the company Dove terminated the PSAs pursuant to Article 22.4, which was for a fixed 25 years. The reason behind the withdrawal was the low production volumes, poor fiscal terms and failing oil prices caused by the rebellious group and their acts in Yemen.

Under these circumstances, Company Dove was not able to work in the territory anymore and ultimately declared liquidation. The withdrawal of the Dove seriously affected Company Yemen's fixed income and prevented it from helping its citizens who found themselves in a civil law. Therefore, the Company Yemen referred the matter to arbitration under the Rules of Arbitration of the International Chamber of Commerce.

D) Timetable

The day of January 12, 1997 was the beginning of the contractual relationship on Block 53. The Dove Company is duly organized and existing under the laws of England and are engaged in petroleum exploration and production.

In 2006, the Dove Company decided to engage in hydrocarbon activities in Yemen. Pursuant to this, the Dove Company bid for and were awarded exploration and development rights over 3 Blocks (the "Blocks") across various governorates in Yemen.

On March 17, 2009, the Respondent entered into Production Sharing Agreements ("PSAs") with the Yemeni Ministry of Oil and Minerals and the Yemen General Corporation for Oil and Gas.

The Arab Spring began in December 2010 with a series of protests, uprisings, and revolutions in the Arab world beginning. From January 2011, the security situation in Yemen seems to have

begun to deteriorate. The Yemeni crisis intensified as the 2011-2012 Yemeni Revolution, part of the Arab Spring, removed Ali Abdullah Salih's dictatorial regime from power.

On February 2011, The Dove Company reported that for technical reasons on the working field, it would have been necessary for them to have their personnel on the ground to supervise the acquisition of new seismic data by the subcontractor, however, the Travel Advisories prevented them from sending personnel to Yemen. Besides, the other Force Majeure events "created an environment too dangerous even to try to initiate ground operations. Therefore, the operations has to be suspended.

Yemen’s declaration in March 2011 of a state of emergency, due to riots in some cities, which lasted for 41 days.

The Dove Company submitted that in view of the security situation, it would be appropriate to conclude that ground operations could not be conducted. The Dove Company issued the notice of Force Majeure in April 2011.

By May 2011 two resolutions by the United Nations Security Council which described the “worsening situation” in Yemen, specifically calling for cessation of attacks on oil and gas infrastructure have been published.

In February 2014, Termination of the contractual relationship between the parties by Dove took place. The oil company sought to excuse their liability for non-performance under production sharing agreements (PSAs). They eventually terminated the PSAs, claiming that force majeure events in parts of Yemen such as riots and insurrection made the situation unstable for their staff to carry out the data seismic studies and other services required under the PSAs.

The Dove Company has gone into liquidation since it became impossible for them to compensate for the financial damages which occurred after the withdrawal of the hydrocarbon activities in Yemen. As of April 2020 The Dove Company is dissolved and currently regarded as an inactive company.

On 2021 February, the Yemeni government brought this dispute before the International Chamber of Commerce, International Court of Arbitration and demanded the damages which emerged from the termination of the Contract and withdrawal.

E) Claims of the Parties

RESPONDENT, Company Dove, argued that "the extreme risk of crime and kidnapping and the extreme risk for any kind of transport and logistics activities" and the unavailability of contractors between March 2011 and February 2014 fell within category (d) above and that, therefore, these events qualify as Force Majeure.

CLAIMANT, Yemen Company, argues that Dove is acting in bad faith as the company issued the Notice in 2011 and terminated the contract in 2014. Within these 3 years, the conflicted situation has already been a daily part of life, thus, not being adequate to be accountable for force majeure. For this, CLAIMANT pointed out that in Yemeni law, the concept of force majeure requires proof that a specified event was unforeseen, and that performance of contractual obligations has become impossible. It argued that the PSAs were governed by Yemeni law, and that, therefore, the Yemeni law principles of foreseeability and impossibility must be implied into the PSAs.

CLAIMANT furthermore argues that the series of events that took place in Yemen before April 2011 do not fall in the scope of Force Majeure under PSA as well. On that basis, CLAIMANT contends that from the reference to a "riot" in Article 22.2, should be understood as the protests which are illegal, however, the protest that time only falls within the legitimate right to protest or demonstrate enshrined in the Yemeni constitution.

RESPONDENT, The company Dove, argued in contrast *Article 212 of the Yemen Civil Code* provides that "if the contract provisions are clear, no interpretation may be allowed on the basis of wishing to know the parties intentions'. The arbitral tribunal considered this to mean that if the wording of a provision of the PSAs is clear, those words must be given effect and base their actions on *Article 24 of the PSAs*. According to the contractor; the PSAs made specific provisions for Force Majeure and those provisions are clear and sufficient to apply solidly.

RESPONDENT, Company Dove, further clarifies their wish to not to get involved with the Yemeni government anymore. Even if the Arbitral Tribunal decides that the withdrawal was not

successful, RESPONDENT underlines that the award must be held at minimum. Because, according to the media and written articles, the evidence around indicates that CLAIMANT has been engaging with a crowd that is known for committing violations of human rights. Therefore, affecting the wellbeing of Yemen's citizens and violating the international public order. As a result, following the actions of the CLAIMANT, there is a significant risk that any amount of damages which is received by the CLAIMANT might be used for any direct or indirect support for the rebellious groups. Further, this reasoning will give the RESPONDENT to refuse any award that has been made under Art. 5(2)(b) of the New York Convention.

In response, CLAIMANT underlines that even if there is a hostile environment, and rebellious groups supported by foreign governments in the territory, still, the CLAIMANT, as the Government of Yemen is recognized by the UN as a legitimate authority. and it has no connection with the rebellious groups and these groups are only funded by the foreign governments. Therefore, contrary to RESPONDENT's allegations, any award which will be made to the CLAIMANT can in no way, be used to support the rebellious groups but will be only limited to ensure the well-beings of the citizens.

IV. Applicable Law

A) ICC Arbitration Rules

Article 21: Applicable Rules of Law

The parties shall be free to agree upon the rules of law to be applied by the arbitral tribunal to the merits of the dispute. In the absence of any such agreement, the arbitral tribunal shall apply the rules of law which it determines to be appropriate.

Article 35: Notification, Deposit and Enforceability of the Award

…. 6) Every award shall be binding on the parties. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.

B) Product Sharing Agreement

Article 3: Grant of Rights and Term

3.1 The STATE hereby grants to the CONTRACTOR and the MINISTRY the exclusive rights to conduct Petroleum Operations in the Agreement Area subject to the terms, covenants and conditions set out in this Agreement.

3.3 The MINISTRY's Participating Carried Interest: The MINISTRY's operating arm, the Yemen Company, shall acquire as of the Effective Date of this Agreement a carried Ten percent (%10) of the CONTRACTOR's rights and working interests under this Agreement. The CONTRACTOR shall acquire the remaining Ninety percent (%90) of the CONTRACTOR's rights and working interests under this Agreement and shall fund, bear and pay all costs, expenses and expenditure of Petroleum Operations conducted according to the provisions of this Agreement on behalf of the CONTRACTOR.

Article 22: Force Majeure

22.1 The non-performance or delay in performance by the Ministry or the Contractor of any obligation under this Agreement other than the obligation to pay any amounts due or giving notices

shall be excused if, and to the extent that, such non-performance or delay is caused by Force Majeure. The period of any such non-performance or delay, together with such period as may be necessary for the restoration of any damage done during such delay shall be added to the time given in this Agreement for the performance of such obligation and for the performance of any obligation dependent thereon and consequently, to the term of this Agreement, but only if the extension of the term of this Agreement is relevant to the performance of such obligation.

22.2 "Force Majeure", within the meaning of this Agreement, shall be any order, regulation or direction of the Government, or (with respect to the Contractor) of the government of the country in which any of the entities comprising the Contractor is incorporated, whether promulgated in the form of law or otherwise, or any act(s) of God, insurrection, riot, war, strike (or other labor disturbances), fires, floods or any cause not due to the fault or negligence of the Party invoking Force Majeure, whether or not similar to the foregoing, provided that any such cause is beyond the reasonable control of the party invoking Force Majeure.

22.3 Without prejudice to the foregoing provisions and except as may be otherwise provided herein, neither the Government nor the Ministry shall incur any responsibility whatsoever to the Contractor for any damages, restrictions or loss arising in consequence of such cause of Force Majeure.

22.4 If the Force Majeure event occurs… and continues in effect for a period of six (6) mıonths, thereafter the Contractor shall have the option upon ninety (90) days' prior written notice to the Ministry to terminate its obligations hereunder without further liability of any kind except for those payments accrued under this Agreement.

Article 23: Disputes and Arbitration

23.2 Unless otherwise agreed by the Parties to the dispute, the arbitration shall be held in Paris, France and conducted in the English language in accordance with the ICC Rules.

23.8 Judgment on the award rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

23.10 The Parties hereto base their relationship under this Agreement on the principles of goodwill and good faith. The interpretation and application of the provisions of this Agreement with respect to the arbitration shall be in accordance with the Yemeni laws that are outlined in Article 24 of this Agreement.

Article 24: Governing Law

This Agreement, its Annexes and any modification, will be governed and interpreted according to Yemeni laws, except the laws which are inconsistent with this Agreement.

C) Yemen Civil Code

Article 212: Interpretation of a Contract

…... (4) ..... If the contract provisions are clear, no interpretation may be allowed on the basis of wishing to know the parties' intentions……..

Article 251: Termination Due to Force Majeure

If the provisions of a contract performance of contractual obligations has become impossible as the result of force majeure not foreseeable when the contract was entered into, then both the contractor and the contractee may terminate the contract merely under this provision.

D) New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Article III:

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles.

Article V:

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

…

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

V. Request for Relief

A) Request for Relief of the Claimant

In light of the above, CLAIMANT asks the Arbitral Tribunal for the following order:

1. To declare that the RESPONDENT party has not validly terminated the PSAs based on "force majeure"

2. To declare that the parties are still in a contractual relationship

3. Order RESPONDENT to pay monetary damages incurred by contractual breach

4. To order RESPONDENT to bear the costs of these arbitration proceedings, including the cost incurred by CLAIMANT for legal representation.

B) Request for Relief of the Respondent

In light of the above, RESPONDENT asks the Arbitral Tribunal for the following order:

1) To declare that the RESPONDENT has validly terminated the contract based on force majeure clause

2) To declare that the CLAIMANT is breaching fundamental human rights while having interactions with the terrorist groups by way of funding them and supporting them.

3) To order CLAIMANT to bear the costs of these arbitration proceedings, including the cost incurred by RESPONDENT for legal representation.

VI. Conclusion

The Arab Spring brought a horrific bloodshed to the Arab territory. Even though the primary reason was to reach a democratic state which values human rights and justice, the arriving point was the same as it is every time: no winners but always casualties.

The Arab Spring also affected the economic situation of the countries, especially Yemen since there were serious efforts to ensure a stable economic condition in the country. Still, the actions of both the rebels and the governmental officials shook the foundations of the entire oil industry and also brought severe complications to the political system of Yemen.

In this case, the claim of the Yemeni Company is to ask the Dove to continue collaborating on the territory. Yet, Dove does not wish to fulfil the obligations arising from the PSA, because of the force majeure conditions, leaving both of the parties no choice but to partake in these arbitral proceedings.

Therefore, the case is at the hands of the tribunal to decide whether there is a valid reason to terminate the PSA or not. The arbitral tribunal is expected to issue an award while examining the historical background and foundational principles of commercial law.

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