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Supply Chain Disruption and Litigation Trends in North Africa's Oil and Gas Industry

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In this hoganlovells.com interview, Hogan Lovells partner Laurent Gouiffès discusses oil and gas supply chain disruption and litigation trends in North Africa, including Algeria, Libya, Tunisia, Morocco, and Egypt.

Which countries does North Africa supply the majority of its oil and gas to?

Gouiffès: North African countries have important oil and gas resources, which are key for the European continent in general. Notably, almost 60% of Algeria's oil exports were to Europe in 2016. As well as being the main supplier of natural gas to Spain last year, Algeria is one of the four or five largest providers of oil and gas to countries like France, Italy, Portugal, and even Germany. Similarly, in 2016 86% of Libya's oil exports were to Europe.

Do supply chain disruption issues frequently end up in commercial or investment treaty arbitration?

Gouiffès: Yes, supply chain disruption issues frequently end up in commercial or investment treaty arbitration.

To understand this, you have to bear in mind that the energy sector in North Africa — and in particular the oil and gas sector — is an important factor in the economic development of these countries. For example, the oil and gas sector represents around 35% of the GDP of Algeria and 16% of that of Egypt.

A wide variety of complex projects and related contracts exist in this context, such as production sharing agreements, joint operating agreements, transportation agreements, and long-term supply contracts, with private companies often contracting directly with the state or with state-owned oil companies. Given the complexity and variety of projects in this area, and the fact that these contracts are often long term, a number of disputes affecting these contracts can arise. For instance, if you look at long-term oil and gas supply contracts, they typically provide for the sale of oil or gas at a fixed price. But during the life of the contract a number of issues can occur that might lead to one party looking to find a way out of the long-term contract or to stop performing its contractual obligations. Where a foreign company is involved, these contracts generally include an arbitration clause. Disputes therefore tend to be resolved through commercial arbitration, but they may also give rise to investment-treaty arbitration, depending on the circumstances.

Our arbitration team in Paris has worked on numerous supply chain disruption arbitrations related to Algeria as well as some disputes in Libya, Tunisia, Morocco, and Egypt. We are indeed particularly well positioned for these types of disputes as their legal systems are based on the French Civil Code, due to the historic links between France and this region.

What trends are you seeing with Africa-related arbitrations?

Gouiffès: The number of Africa-related arbitrations has increased dramatically in the past decade, particularly in the oil and gas industry. If you look at the International Chamber of Commerce (ICC) statistics, for example, you had around 70 arbitration cases per year in Africa ten or 15 years ago — whereas in 2014 you had 50 cases in the North Africa region alone and upwards of 160 cases on the continent as a whole. This increase has continued apace since then. The number of cases has increased for many reasons, including the dramatic drop in oil prices and the consequences resulting from the discovery in the U.S. of vast reserves of shale gas.

As an example, I was involved in a very large arbitration concerning an international energy company that had a long-term transportation and supply contract with a state-owned North African company. The contract was for the delivery of billions of cubic meters of liquefied natural gas (LNG) to a terminal located on the U.S. East Coast. But shale gas had been discovered off the coast of the United States — slowly changing the country from a net importer of oil and gas to a net exporter of oil and gas. All the long-term contracts to import gas into the U.S. market over a period of 15 years became irrelevant for one of the parties involved, which tried to get out of the contract.

This turned into a very substantial arbitration, with hundreds of millions of dollars at stake and which ultimately led to an award in favor of our client. It involved Algerian law, which is derived from French law, and New York law because the gas was to be delivered to the U.S.

Another factor impacting supply chains in the region and with the potential to generate further arbitrations in this area is political instability. For example, during the Arab Spring in 2011, the Arab Gas Pipeline in Egypt, through which gas is delivered to Israel, was repeatedly attacked, prolonging gas shortages. As a result, some private companies sued the Egyptian state under investment treaty arbitration, claiming that the state had not complied with its international obligation of providing full protection and security, and that there had been an unlawful expropriation. Even recently, the region has been confronted by problems of political instability and violence which have impacted supply chains. In particular, among the many issues in Libya, clashes between armed groups brought oil and gas production at the western Libyan oilfields of

Sharara and Wafa to a massive halt in early 2017.

What are some of the knock-on effects of supply chain disruption in North Africa?

Gouiffès: The consequences of supply chain disruption can be very diverse, such as employee layoffs, a reduction in the budget for capital expenditure, more competition between commercial parties in discounting prices along the supply chain, and cancellation or termination of contracts. All these effects create tension at any point in the oil and gas supply chain and may require dispute resolution in the form of arbitration.

Do you expect the expansion of oil and gas production in North Africa to trigger an increase in disputes?

Gouiffès: There is a lot of dynamism in the region, with some significant discoveries and plans for infrastructure projects. This means there are a lot of contracts being agreed and therefore a lot of potential for disputes in the future. For example, in 2010, the Leviathan natural gas field was discovered in the Mediterranean Sea off the coast of Israel — it's one of the biggest offshore gas discoveries in the past ten years. And more recently, in August 2015, the offshore Zohr gas field was discovered near the Egyptian coast and it is said to be the largest ever find of natural gas in the Mediterranean Sea. There are also plans in Morocco to build an LNG terminal in Jorf Lasfar and a gas pipeline that would transport Nigerian gas to Morocco and other countries in Europe.

About Laurent Gouiffès

With a key focus on energy-related technological and investment disputes, Hogan Lovells partner Laurent Gouiffès regularly acts on behalf of clients in the oil and gas, mining, electricity, nuclear, aerospace, and telecommunications industries. He has more than 20 years of experience representing major industrial groups and states in high-profile, complex international arbitrations and mediations. This includes arbitrating cases before the ICC, the LCIA, and the Chamber of Arbitration of Milan. He leads the firm's International Arbitration Practice Group in Paris.

About Our Online Supply Chain Disruption Tool

Hogan Lovells has developed an online Supply Chain Disruption Tool that generates a tailored report containing advice on how best to manage the risk of supply chain disruption in your industry sector. It covers a range of different contract types, geographical locations, and legal systems. Visit the Supply Chain Disruption Tool to learn more.

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