INVENTORY OF INTERNATIONAL INVESTMENT AGREEMENTS CONCLUDED BY MENA COUNTRIES

- Working Group 1 -

This document has been initially discussed at the second meeting of OECD-MENA Investment Programme, Working Group on September 12 in Bahrain. An earlier draft of this inventory has been presented to the Expert Meeting 'Investment Treaties', 27 June 2005 in Rabat (ANNEX 1 for the Draft Conclusions). The present draft builds on the discussions at that meeting and has been discussed by the second meeting of Working Group 1 on 12 September in Bahrain.

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MENA – OECD INVESTMENT PROGRAMME

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I. INTRODUCTION

1. There appears to be an emerging consensus among governments and the private sector in MENA countries that an **investment-friendly policy and administrative framework** alongside with the development of local markets and institutions are crucial determinants for enhancing investment, in particular the attraction of Foreign Direct Investment (FDI).[1] A pro-business enabling environment is a vital prerequisite for attraction of FDI as well as for the encouragement of the local private sector. Although macro economic policies, market size and risk environment are important determinants of private sector investment decisions, the quality of business regulation and the institutions that enforce it are equally important. The success of many emerging market economies has been decisively stimulated by an improved regulatory investment environment and targeted investment promotion measures.

2. Nonetheless, in international scoreboards many MENA countries are still perceived as carrying a high investment risk.[2] Given this perception of investment environment in the MENA countries, there is a particularly strong argument for establishing a regulatory framework favourable to attraction of foreign investment not only through national laws and regulations, but also by entering into binding **International Investment Agreements (IIAs)**.[3] Such agreements further enhance international investors' perception that the regulatory structure of an investment regime is stable and predictable.

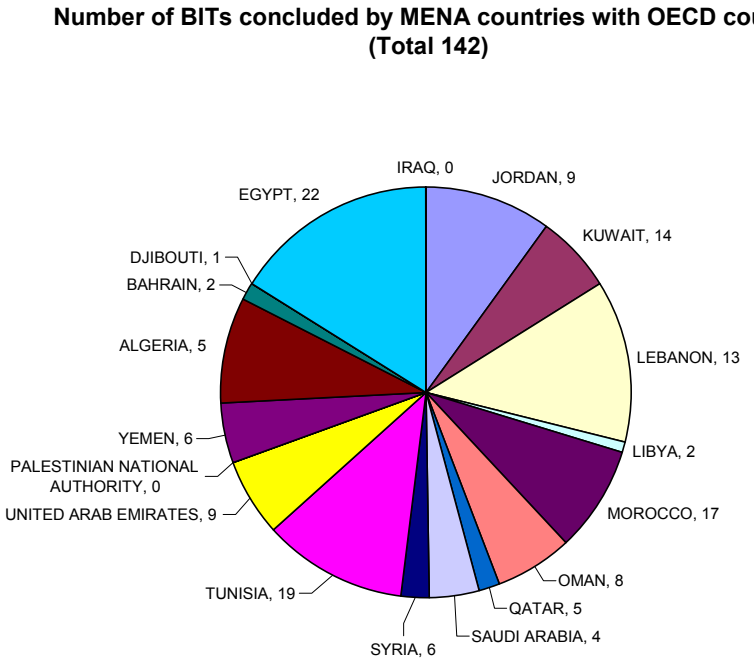
3. Examples of such credibility-enhancing instruments abound, not least including the OECD Code of Liberalisation of Capital Movements, the OECD National Treatment Instrument, Bilateral Investment Treaties (BITs), Free Trade Agreements (FTAs), Regional Integration Agreements, and certain specific WTO agreements. The number of BITs, for instance, has increased considerably, not only between OECD and non-OECD countries but also amongst countries outside the OECD. At the same time that FTAs and RIAs containing investment provisions have developed, MENA countries have embarked into a number of regional initiatives. Figure 1 below depicts the number of BITs concluded by MENA with OECD countries.

[1] Refer to *Nabli, Mustapha K.*, Restarting Arab Economic Reform, in: *Augusto Lopez-Claros/Klaus Schwab*, the Arab World Competitiveness Report 2005, 16.

[2] Refer to Figure 3 below.

[3] The term 'IIAs' is used in a broad sense describing legally binding bilateral, regional and multilateral instruments containing exclusively or partially investment protection and promotion provisions.

Figure 1 - MENA-OECD BITs



Source: OECD 2005/UNCTAD 2004

4. An effective **investment promotion strategy** for MENA countries stands to benefit from the ability of local government and regulatory agencies to lock in reforms achieved, while guaranteeing basic rights for investors through domestic regulations or international binding agreements. While BITs, along with other instruments are used to lock in transparency, openness and protection requirements in national investment regimes, it is important to remember that these objectives need to be balanced with the host countries' right to regulate in the public interest.

5. The following inventory of International Investment Agreements concluded by MENA countries is intended to inform the discussion of Working Group 1 of the MENA-OECD Investment Programme on the main issues relevant for MENA negotiators of IIAs and MENA Investment Promotion Agencies by describing:

- the benefits which MENA countries can derive from the conclusion of IIAs;
- information about the existing agreements and arbitrations involving MENA countries; and
- information on the content of core provisions of IIAs concluded by MENA countries.

Preliminary results have been discussed during an Expert Meeting on 27 June, hosted by the Moroccan government in Rabat, which also agreed on draft conclusions (refer to Annex 1). A revised version of the inventory as well as the draft conclusions have been presented to the meeting of the Working Group 1 of the MENA-OECD Investment Programme in September and the Steering Group meeting in October 2005.

II. BENEFITS OF IIAs FOR THE INVESTMENT PROMOTION STRATEGY OF MENA COUNTRIES

6. For MENA countries, the question of the impact of IIAs on the attraction of investment is both timely and relevant since negotiation of IIAs requires time and resources and implies a certain limitation with respect to governmental policies and regulation. More recent research on the benefits of IIAs, particularly BITs, and their impact on investment flows has resulted in some interesting findings.

As highlighted in Box 1, the number of IIAs in the form of Bilateral Investment Treaties (BITs) concluded by MENA countries with OECD countries varies largely in the region. Egypt, Lebanon, Morocco, Jordan and Tunisia are at the forefront of BITs concluded with OECD countries. Iraq, Libya, Syria and Qatar are examples of countries which have chosen to conclude only a few BITs with their counterparts in OECD countries. Of course, there are various historical and political reasons for these differing strategies. Nonetheless, the main question for MENA governments today who are looking for ways to attract more investment, and particularly FDI concerns the benefits which can be reasonably expected from IIAs in terms of attracting investment to the region. After all, as one commentator put it "such treaties represent a non-trivial interference with the host countries' sovereignty as they provide protections to foreign investors that are enforceable via binding investor-to-state dispute settlement".[4]

7. As a matter of fact, the conclusion of IIAs in the forms of BITs, FTAs and RIAs has increased tremendously over the last decade. Governments seem to expect a positive contribution from IIAs in terms of enhancing their investment climate and attracting more investment. In the academic world, the debate on a measurable impact of IIAs on FDI flows has recently also gained momentum with the publication of new research. Amongst the issues discussed in this context, the following four main considerations need to be distinguished:

a) Do IIAs with standard investment protection provisions achieve their aim of enhancing investor protection?

b) Do IIAs have an impact on FDI flows to the host country?

c) How do these treaties interact with the level of political risk in the host country?

d) Do IIAs have a reform enhancing impact on the regulatory investment environment of the host country?

8. Both recent research and the substantial rise of international investment disputes have shown that the answer to the first question can be affirmative. For instance, Salacuse and Sullivan conclude in a recent study on the effects of BITs that "after reviewing the nature and scope of BIT provisions, the strength of related enforcement mechanisms, and the actual cases brought against host countries by aggrieved investors, one may conclude that BITs *have achieved their first goal of fostering investment protection* [emphasis added]. While that protection is not absolute …., investors and investments that are covered by a BIT certainly enjoy a higher degree of protection from the political risks of governmental intervention than

[4] *Eric Neumayer* and *Laura Spess*, Do bilateral investment treaties increase foreign direct investment to developing countries? Revised Version, May 2005, p.3.

those that are not"[5]. IIAs, which posses clear and enforceable rules to protect and facilitate foreign investment, reduce risks that the investor otherwise would have to assume personally, thus and encourage investment. From this point of view, the rationale for IIAs themselves being the promise of protection of capital received by the host state, is a valid one.

9. As to the second question as to whether IIAs have a positive impact on FDI flows, the evidence taken from more recent studies shows a positive correlation. Past studies (Tobin/Rose-Ackermann, Hallward-Driemeier) found only a very weak relationship between BITs and FDI. According to these results, BITs only have a positive effect on FDI flows in countries with an already stable business environment. In low and middle income countries that do not possess such an environment, BITs seem to have little or no statistically significant effect on foreign investment and on outside investors' perception of the investment environment.[6] However, other studies conclude that a significant relationship exists between the level of standards protecting the investors enshrined in IIAs and their potential for enhancing FDI flows towards the host countries. With regard to BITs concluded by the United States, Salacuse and Sullivan found that the higher the protection standards, the greater the impact on FDI flows. Most countries that have an established BIT program continue to pursue opportunities to enter into new treaties.

10. Support for this result derived from a very recent publication from Neumayer and Spess who for the first time found clear evidence that the more BITs a country signs, the greater the FDI flows to that country will be. This study, which employed a much larger panel than its predecessors and covered up to 119 countries (over the period 1970-2001) found "a positive effect of BITs on FDI inflows that is consistent and robust across various model specifications. The effect is sometimes conditional on institutional quality, but is always positive and statistically significantly different from zero at all levels of institutional quality."[7] The results furthermore show that there is also some limited evidence that BITs might function as substitutes for good domestic institutional quality.

11. Be it as it may, a practitioner in the area of investment promotion would have difficulties in singling out IIAs as a separate instrument from the whole of a country's investment promotion strategy. Indeed, it would be difficult to test the causal link between the conclusion of IIAs and enhanced inflow of FDI into a host country. An IIA can be only one element of a more comprehensive national investment promotion strategy, which involves a country's general liberalisation commitments, its administrative environmentand governance, investment and export finance and the institutional setting of investment promotion.

12. If an IIA can only have a complementary function to these other elements of an investment promotion strategy, the question whether the conclusion of an IIA by itself increases investment flows might already be conceptually problematic since it does not take into account the intrinsic link between various instruments of investment promotion. The more relevant question for FDI attraction might rather

[5] *Jeswald W. Salacuse, Nicholas P. Sullivan*; "Do BITs Really Work?, 46 Harv. Int'l L.J. 67 (2005), p.90.

[6] *Jennifer Tobin, Susan Rose-Ackerman*; "Foreign Direct Investment and the Business Environment in Developing Countries: the Impact of BITs", Yale University, 2005 or *Hallward-Driemeier* "not any statistically significant effect", *Hallward-Driemeier, M.* (2003), Do Bilateral Investment Treaties Attract FDI? Only a bit…and they could bite, in: World Bank Policy Research Paper WPS 3121, World Bank, Washington DC.

[7] *Eric Neumayer* and *Laura Spess*, Do bilateral investment treaties increase foreign direct investment to developing countries? Revised Version, May 2005, p.4. Accessible at: http://www.lse.ac.uk/collections/geographyAndEnvironment/whosWho/profiles/neumayer/pdf/BITandFDIarticle.pdf.

ask whether *the interplay of regulatory, administrative and institutional investment promotion result in higher inflows of FDI?*

13. Even so, IIAs deliver a powerful message on a country's commitment to high standards of treatment of FDI. The inter-relationship between IIAs and other instrument of investment promotion can be demonstrated by the example of international finance and guarantee instruments.

14. One of the core investment financing institutions in the home countries of investors are investment/export finance and guarantee agencies. In OECD countries, the decision of an Investment Guarantee Agency as to whether to grant an investment guarantee will not only depend on the character of the investment and its economic viability and eligibility, but above all on the sufficient legal protection afforded to the investment in the host country. For this reason, Investment Promotion Agencies and Finance Ministries of OECD countries have an interest in continually improving the legal protection requirements – and consequently the protection and coverage for their investors abroad.[8] One way of showing this commitment is to conclude IIAs which can have the status of a condition for financing or guarantee instruments promoting investment in a particular host country.

15. Equally, Export Credit and Guarantee Agencies monitor the risk environment in countries of destination for their exports. All OECD Agencies and some non-OECD agencies have signed on to the Arrangement on Officially Supported Export Credits (as of 25 January 2005). Article 22 of the Arrangement, aims at ensuring that Participants to the Arrangement charge premium rates in addition to interest charges that cover the risk of non-repayment of export credits (i.e. credit risk) and are not inadequate to cover long-term operating costs and losses associated with the provision of export credits. One of the key elements is a system for assessing country credit risk and classifying countries into eight country risk categories (0 - 7).

16. The Country Risk Classification Method measures the country credit risk - the likelihood that a country will service its external debt. The classification of countries is achieved through the application of a methodology comprised of two basic components: (1) the Country Risk Assessment Model (CRAM), which produces a quantitative assessment of country credit risk, based on three groups of risk indicators (the payment experience of the Participants, the financial situation and the economic situation) and (2) the qualitative assessment of the Model results, meant to integrate political risk and/or other risk factors not taken fully into account by the Model. The reduction of risk achieved through the conclusions of IIAs can play an important role for this qualitative assessment. The final classification, based only on valid country risk elements, is a consensus decision of the sub-Group of Country Risk Experts that involves the country risk experts of the participating Export Credit Agencies. The sub-Group of Country Risk Experts meets several times a year. These meetings are organised so as to guarantee that every country is reviewed whenever a fundamental change is observed and at least once a year.[9]

17. The Country Risk Classification Table in Figure 3 shows for April 2005 the performance of MENA countries. The Figure demonstrates that MENA countries risk rating leaves room for improvement, with 4 countries still being classified in the highest risk category (7). The forgoing discussion served to highlight that with regard to all these instruments which determine an investor's decision to invest, the risk classification of potential host countries can be intrinsically linked with the existence of IIAs and with the level of protection they provide.

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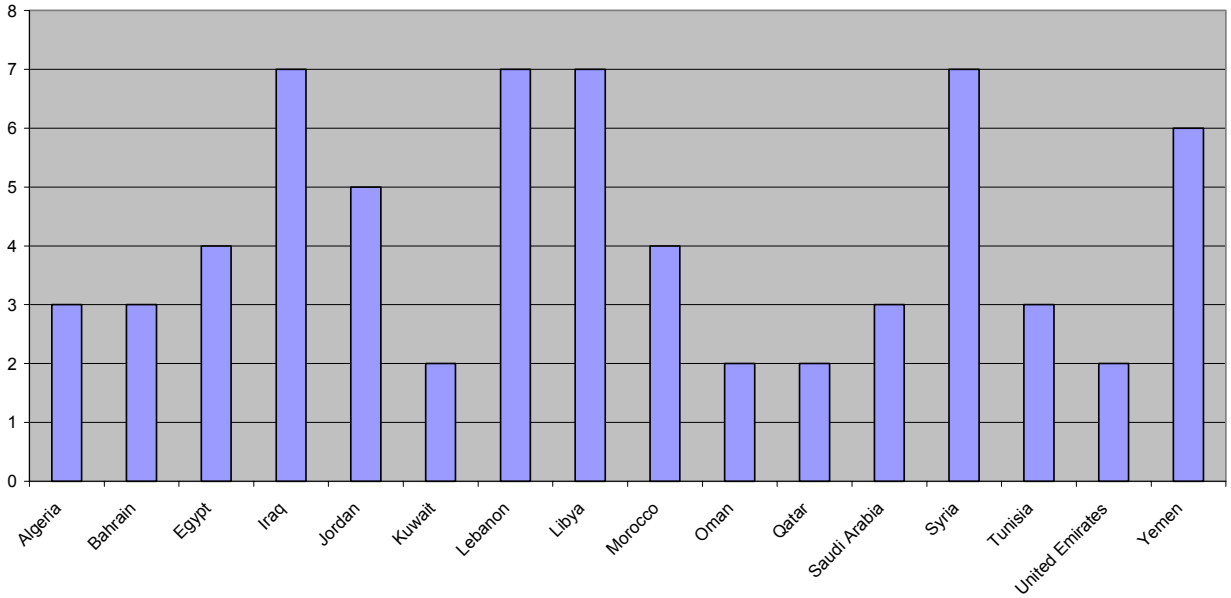
[8] This can have the form of a *sine qua no*, see for the German Investment Guarantee Agency: http://www.agaportal.de/en/dia/deckungspraxis.html, for MIGA: Operational Regulations, para.3.16, 27 ILM 1227 (1988).

[9] http://www.oecd.org/document/49/0,2340,en_2649_34169_1901105_1_1_1_1,00.html.

Figure 3 - Arrangement on Officially Supported Export Credits

The Country Risk Classification Method measures the country credit risk, i.e. the likelyhood that a country will service its external debt. This method classifies countries into eight country risk categories (0-7).



Source: OECD, 29 April 2005.

18. With regard to the question as to whether IIAs have a possible reform-enhancing impact on the regulatory investment environment of the host country, there is again increasing evidence to support an affirmative answer. This correlation, as emphasised in the foregoing, also depends on the interplay of IIAs with other elements of an investment promotion strategy as well as other determinants. The study from Neumayer and Spess finds some limited evidence that BITs might function even as substitutes to poor institutional quality which suggests that BITs are most effective where such quality is low.[10] Given such evidence, our conclusions might be instrumental to inform MENA negotiators on the relevance of IIAs. To conclude, recent studies show that IIAs can have a variety of positive effects, although their positive effect on enhanced investment flows should not be artificially separated from other elements of the investment environment.

[10] *Eric Neumayer and Laura Spess*, Do bilateral investment treaties increase foreign direct investment to developing countries? Revised Version, May 2005, p.5.

III. EXISTING IIAS CONCLUDED BY MENA COUNTRIES

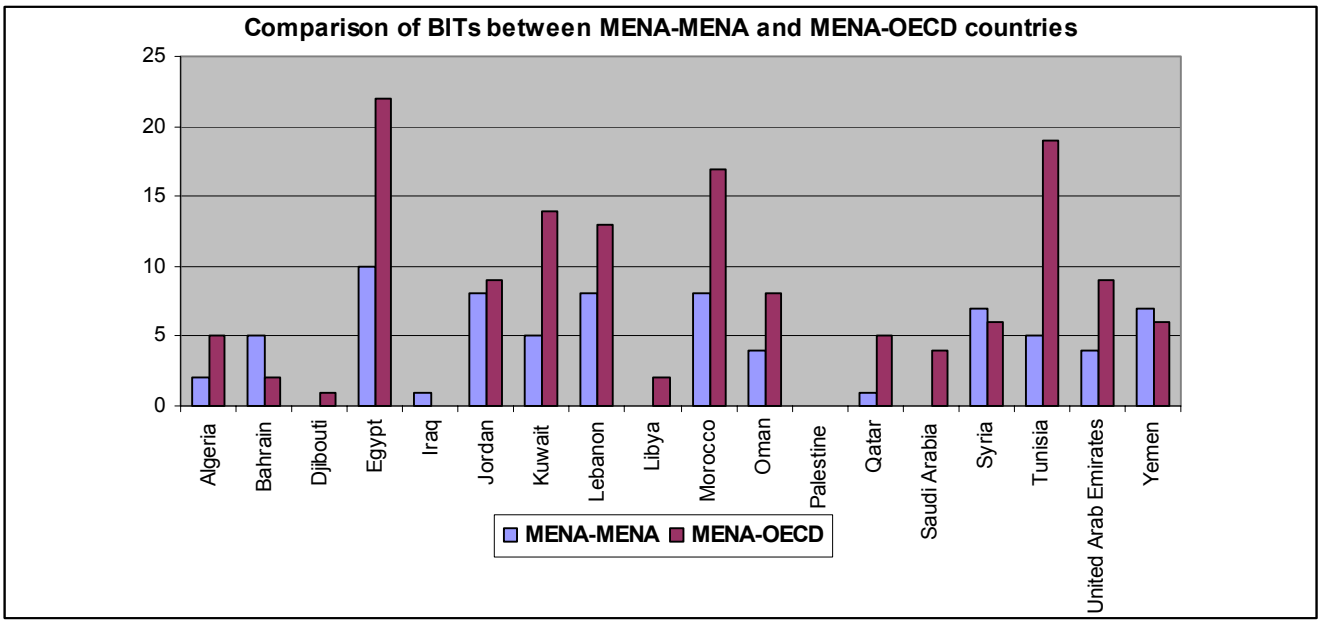
19. IIAs can take various forms and the MENA region displays different such variations, be they investment provisions in free trade agreements (FTAs) and regional integration agreements (RIAs), multilateral agreements, or BITs. For all these different types of IIAs the key concern is to enhance the freedom of the firm in contesting markets irrespective of the modality used to contest them (sales, licensing, branches, subsidiaries) given that FDI and trade have become intrinsically linked in international production. This aim was traditionally pursued by states through the conclusion of BITs, however recently more and more FTAs or RIAs are also containing standard investment promotion and protection provisions.

1. BITs

20. In addition to addressing trade tariff and non-tariff barrier issue, more and more international economic law agreements are containing investment provisions. Amongst them **Bilateral Investment Treaties** constitute an important pillar of investment protection at the international level. A majority of BITs are still signed between OECD and non-OECD countries. The first BITs appeared at the end of the 1950s and took over the function of the old Friendship, Commerce, and Navigation Treaties. By the end of 2003, more than 2332 such treaties had been concluded, a majority of them after 1990. Not only are they increasing transparency and predictability for foreign investors, but the presence of such a framework for foreign investment can potentially encourage countries to adopt similar standards for domestic investors. Since 1990s when the number of BITs concluded increased substantially, the latest trend in such negotiations is the occurrence of south-south countries BITs (see figure 4 and Annex 5 for MENA-MENA BITs).

21. Figure 4 shows that with the exception of Bahrain, Syria and Yemen (not counting treaties of MENA countries with other non-OECD countries), MENA countries have been following the global trend, with an increasing number of BITs concluded. This trend underscores the increasingly important position of foreign direct investment in MENA countries. The numbers of MENA BITs increased from the mid-1990s, peaking at 45 new treaties in 2001. With few exceptions, MENA countries finalise more BITs with OECD countries than among themselves (refer to Figure 4). MENA countries participating in the *Investment Programme* have concluded around 142 bilateral investment treaties with OECD countries. As Figure 4 also shows, Gulf Corporation Council (GCC) countries rely to a lesser extent on BITs with OECD or other MENA countries than Maghreb and Mashrek countries. This possibly reflects the fact that GCC countries are resource rich, giving them a stronger negotiation position vis-à-vis foreign investors and hence less of an incentive to enter into binding agreements, although their interest in securing their own investments in OECD countries should counter this assumption.

Figure 4



Source: OECD/UNCTAD 2004.

2. Free Trade and Regional Integration Agreements

22. In parallel with the increase in BITs negotiations, there is also an upward trend in the conclusion of **Free Trade Agreements** and **Regional Integration Agreements** containing market access for investors, investment protection and promotion provisions. MENA countries participating in the MENA-OECD Investment Programme have concluded around 142 bilateral investment treaties with OECD countries (mid 2005). At the same time these countries have concluded or were negotiating during 2003 and 2004 with OECD countries 20 bilateral, regional and inter-regional agreements containing FDI provisions.[11] This development towards the conclusion of FTAs containing investment protection and promotion provisions traditionally to be found in BITs follows a general trend of consolidation of existing agreements supplemented by a drive towards expansion.[12]

23. **MENA countries'** own initiatives include the **Arab Free Trade Area** which aims to establish a free trade zone among 18 members of the Arab League by 2008. In the past, as well, there have been serious efforts led by the Arab League for establishing regional investment agreements. For instance, the Agreement on Arab Economic Unity was signed in 1957,[13] stipulating a guarantee of freedom of

[11] Annex 4 and UNCTAD, International Investment Agreements: Key Issues, Vol.I, 2004, p.48 et seq.

[12] Jo-Ann Crawford and Roberto V. Fiorentino, The Changing Landscape of Regional Trade Agreements, WTO Discussion paper No 8.

[13] Members to this agreement were Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahirija, Morocco, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Republic, and the Arab Republic of Yemen. Mauritania, the Palestinian Authority and Somalia subsequently also became signatories to the Agreement. (UNCTAD, 1996, vol. III).

movement of capital. Subsequently, in 1970 the **Agreement on Investment and Free Movement of Arab Capital Among Arab Countries** was signed by the States members of the Agreement of Arab Economic Unity. Signatories of the Agreement were Egypt, Iraq, Jordan, Kuwait, Sudan, Syrian Arab Republic and the Arab Republic of Yemen. While this Agreement reiterated the principle of each state's sovereignty over its own resources, it already contained standard non-discrimination, expropriation and free transfer of funds provisions.[14]

24. The signing in 1980 of the **Unified Agreement for the Investment of Arab Capital in the Arab States**, represents, to date, the latest effort of MENA countries to set up a regional and enforceable investment regime. The Agreement has been ratified by all member States of the League except Algeria and the Comoros. It aimed at setting up an Arab Investment Court to hear cases brought under the Agreement. On the substantive side, the Agreement commences with a provision permitting "to transfer Arab capital freely between ….(the State Parties to this Agreement)….and to promote and facilitate its investment according to the economic development plans and programmes within the States Parties and in a manner beneficial to the host State and the investor" in Article 2. For the rest, the Agreement contains provisions on national treatment, free transfer and expropriation, though subject to exceptions. Article 14 deals with responsibilities of investors.[15]

25. In addition to these older agreements, the countries of the GCC are currently negotiating or considering FTA negotiations with the EU, India and China. **Japan** started to promote Economic Partnership Agreements which include elements of FTAs based on the premise that they "contribute to the development of Japan's foreign economic relations as well as the attainment of its economic interests as a mechanism to complement the multilateral free trade system centering on the WTO."[16] More regional agreements are foreseen with the **United States** where the U.S. Trade Representative (USTR) has engaged in intensive negotiations with a number of Arab countries to develop bilateral trade agreements which it hopes will result in the Middle East Free Trade Area (MEFTA) by 2013.[17] In pursuing this goal the US administration announced a six-step process for MENA countries to become part of MEFTA: (1) Joining the WTO; (2) possibly participating in the Generalised System of Preferences; (3) trade investment framework agreements (TIFAs); (4) BITs; (5) FTAs; (6) participating in trade capacity building. Morocco, Jordan and Bahrain have concluded FTAs with the United States, and similar agreements with Oman and the United Arab Emirates are being explored.

26. MENA countries are also strengthening their ties with **the European Union** by negotiating and implementing the Euro-Mediterranean Partnership Agreements. Tunisia, Morocco, Egypt and Jordan only recently signed the Agadir Agreement committing them to negotiate an FTA by 2006. Currently the EU is engaged in FTA negotiations with the countries of the GCC. Table 1 summarises the existing FTAs with MENA countries.

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[14] Articles 3-7 of the Agreement, UNCTAD, 1996, vol.II.

[15] UNCTAD, 1996, vol.II.

[16] Para. 1 of Basic Policy towards further promotion of Economic Partnership Agreements (EPAs), approved by the Council of Ministers on the Promotion of Economic Partnership on December 21, 2004, http://www.mofa.go.jp/policy/economy/fta/policy0412.html .

[17] For details, *Mary Jane Bolle*, Middle East Free Trade Area: Progress Report, CRS Report for Congress, 2005.

Table 1

FTAs and other agreements signed or ratified by MENA countries *			
Algeria	EU	2002	Association Agreement
Jordan	EU	2002	Association Agreement
	Singapore	2004	FTA
	USA	2000	FTA
Kuwait	USA	2004	Concerning the Development of Trade and Investment Relations
Lebanon	EU	2000	Association Agreement
Morocco	EU	2000	Association Agreement
	USA	2004	FTA
Qatar	USA	2004	Concerning the Development of trade and Investment Relations
Saudi Arabia	USA	2003	Concerning the Development of trade and Investment Relations
Tunisia	EU	1998	Association Agreement
Yemen	USA	2004	Concerning the Development of trade and Investment Relations
Council of Arab Economic Unity		1970	Agreement on Investment and Free Movement of Arab Capital Among Arab Countries
League of Arab States		1980	Unified Agreement for the Investment of Arab Capital in the Arab States

Note: For further FTAs under negotiations refer to Annex 4.

3. Multilateral rules (WTO obligations)

27. Furthermore, almost all MENA countries have joined **major multilateral agreements** covering investment related aspects. As of 31 December 2005, 11 of the 18 MENA countries and territories participating in the MENA-OECD Investment Programme were members of the World Trade Organisation. As such they are obliged to implement the obligations of GATS, TRIPs and TRIMs. The General Agreement on Trade in Services (GATS) provides for certain investors a right of establishment if the member of the GATS makes specific commitments on market access. TRIPs accords national treatment and MFN to foreign firms' intellectual property rights, while TRIMs provide that certain categories of trade related investment measures offend the principles of the GATT. Table 2 below shows that another four countries currently have observer status in the WTO, bringing the number of MENA countries without WTO membership or observer status to four.

28. All MENA countries have signed the convention establishing the **Multilateral Investment Guarantee Agency (MIGA)** and can profit from its risk mitigation facilities. In order to be eligible for a guarantee granted by MIGA to an investor in its territory, a country' investment policy must be in accordance with the 1992 World Bank Guidelines on the Treatment of Foreign Direct Investment. The operational regulations of MIGA further state that "an investment will be regarded as having adequate legal protection if it is protected under the terms of a bilateral investment treaty between the host country and the home country of the investor."[18]

[18] MIGA Operational Regulations, para.3.16, 27 ILM 1227 (1988).

Table 2

WTO Membership

	WTO Member (year of accession)	Observer (year of accession)	Not Observer
Algeria		1987	
Bahrain	1995		
Djibouti	1995		
Egypt	1995		
Iraq		2004[1]	
Jordan	2000		
Kuwait	1995		
Lebanon		1999[2]	
Libya		√ [3]	
Morocco	1995		
Oman	2000		
Palestine National Authority			√
Qatar	1996		
Saudi Arabia	2005		
Syria			√
Tunisia	1995		
United Arab Emirates	1995		
Yemen		√[4]	

Notes:

1. On 30 September 2004 a request for accession under Article XII was received by the Director-General of the WTO.

2. Currently in the process of applying for full accession.

3 .As of June 2004 ,Libya is in the process of applying for full WTO accession. The checkmark indicates that no date associated with observer status was available on the WTO website.

4. Yemen's request for accession was circulated on 14 April 2000.

Main source of information: World Trade Organization website (www.wto.org)

IV. RECENT TRENDS IN IIAS AFFECTING MENA COUNTRIES

29. Recent trends in negotiating IIAs and the increase in international investment arbitration cases over the last years have resulted in new features of IIAs. These recent trends, including the core provisions of IIAs concluded by MENA countries as well as international arbitrations MENA countries have been involved merit discussion. First, there are new features concerning the core provisions of IIAs. Issues like indirect expropriation, fair and equitable treatment standards, transparency provisions, labour and environmental standards, as well as investors' responsibilities are emerging as new issues in the negotiation practice, which MENA negotiators have already confronted or will soon be confronting. Secondly, and caused by the recent surge in investor-to-state dispute settlement arbitration, MENA negotiators of IIAs should be informed about the relevance of certain core provisions in IIAs for international arbitration cases. Annex 1 provides a list of concluded and ongoing cases MENA countries are involved in.

1. Core provisions of International Investment Agreements

30. Like in IIAs concluded outside the region, numerous IIAs concluded in MENA countries contain certain core provisions. These provisions cover definitions regarding the scope of the agreement as well as provisions on the standards of treatment, repatriation of profits, fair and equitable treatment, direct and indirect expropriation and market access. The following inventory will show what provisions are contained in IIAs involving a MENA country Party with an emphasis on those core provisions which have the potential of giving raise to international dispute settlement procedures.

a) Right of Establishment

31. Under international law every state is sovereign in controlling entry and establishment of foreign entities within its territory. The Agreement on Investment and Free Movement of Arab Capital among Arab Countries of 1970 reiterates this principle in Article 3, highlighting each signatory's sovereignty over its own resources and its right to determine the procedures, terms and limits that govern Arab investment.[19] Similarly, the Unified Agreement for the Investment of Arab Capital in the Arab States of 1980 controls rights of entry and establishment[20], as does Article 2 of the Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference of 1981[21].

32. International investment instruments of the OECD and its members tend to follow a different approach. The two OECD Liberalisation Codes contain an obligation to 'standstill' and 'rollback' regarding any national restrictions upon the transfers and transactions to which the codes apply. There is even a positive duty foreseen to grant any authorisation required for the conclusion or execution of the transactions or transfers covered, as well as a duty of non-discrimination in the application of liberalisation

[19] UNCTAD, International Investment Instruments: A Compendium, vol.II, 1996, p. 122.

[20] UNCTAD, ibd., Articles 2 and 5, p. 213, 214.

[21] UNCTAD, ibd., p.241.

measures to investors from other member states.[22] The OECD Code of Liberalisation of Capital Movements was extended in 1984 to include rights of establishment.

33. Removal of all discrimination in matters of admission is required by the US model of BITs, which makes entry into the host state subject to the national treatment and most-favoured-nation treatment principles, qualified by the right of each party to adopt or maintain exceptions falling within one of the activities or matters listed in an annex. Other than in BITs concluded with the US or Canada and BITs and FTAs concluded by Japan, this "negative list" approach can be only found in NAFTA, the Energy Charter Treaty, and the OECD Codes of Liberalisation. Other multilateral instruments covering investment such as the GATS follow a positive list approach where parties open particular sectors to FDI.

Figure 5 - Pre-establishment Obligations

The Unified Agreement for the Investment of Arab Capital in the Arab States, 1980, Article 5: *"The Arab investor shall be free to invest within the territory of any State Party in fields which are neither prohibited nor restricted to the citizens of that State and within the percentage limits for shared ownership as prescribed in the law of the State."*

OECD Code of Liberalisation of Capital Movements, 1984, Annex A, related to inward direct investment: "*The authorities of Members shall not maintain or introduce: Regulations or practices applying to the granting of licences, concessions, or similar authorisations, including conditions or requirements attaching to such authorisations and affecting the operations of enterprises, that raise special barriers or limitations with respect to non-resident – as compared to resident – investors, and that have the intent or the effect of preventing or significantly impeding inward direct investment by non-residents."*

BIT US Model Agreement, 2004, Article 3, para.1 and 2:
"Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory."
"Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments."

BIT French Model Agreement, 2005, Article 4, para. 1 (translation from French)
"Each Contracting Party shall apply on its territory and in its maritime area to the nationals and companies of the other Party, with respect to their investments and activities related to the investments, a treatment not less favorable than that granted to its nationals or companies, or the treatment granted to the nationals or companies of the most favored nation, if the latter is more favorable. In this respect, nationals authorized to work on the territory and in the maritime area of one Contracting Party shall enjoy the material facilities relevant to the exercise of their professional activities….This treatment shall not include the privileges granted by one Contracting Party to nationals or companies of a third party State by virtue of its participation or association in a free trade zone, customs union, common market or any other form of regional economic organization….The provisions of this article do not apply to tax matters."

34. In international dispute settlements, pre-establishment rights have not yet played a role to a large extent. However, the ability to challenge regulatory measures geared at the pre-establishment stage presents a potentially significant challenge to the host country.

[22] OECD Codes of Liberalisation of Capital Movements; http://www.oecd.org/dataoecd/10/62/4844455.pdf.

b) Provisions defining the scope of application of the Treaty

35. All IIAs contain provisions that define the scope of application of the agreement. They do so *ratione materiae, ratione personae, ratione territoriae and ratione temporis.* Already at this stage, the contracting parties make an important decision as to the influence the agreement may have on their economies. In sharp contrast to this, Article 25 of the ICSID Convention does not define the term 'investment', but leaves it to the parties to agree on whether a business transaction qualifies for an investment.[23]

Asset based vs. direct investment only

36. IIAs mainly directed at the protection of FDI tend to define investment in a comprehensive manner, covering not only the capital that have crossed borders with a view to the acquisition of control over an enterprise, but also most other kinds of assets of the enterprise or of the investor.[24] This approach, seeking to protect investment - including portfolio investment - is also referred to as an 'asset based approach'. In the case of BITs, traditionally the capital-exporting states tend to favour broad definitions that include not only physical assets and equity but also non-equity investments. The United States Model Agreement includes not only tangible and intangible property but also 'a claim to money or a claim to performance having economic value'.[25] For example, the Mexican Model Treaty reduces the scope of non-equity investment by stating that investment includes "claims to money or to any performance having an economic value except for claims to money that arise solely from commercial contracts for the sale of goods or services….".[26] The French Model Treaty gives an inclusive, non-limitative definition of investment as "every kind of assets, such as goods, rights and interests of whatever nature, and in particular though not exclusively…", with an ensuing list of subcategories exemplifying investment.

37. MENA countries' IIAs tend to be based on the broader, asset-based definition of investment. For example, Article 1, 1.1 of the Model Agreement for the Promotion and Protection of investments of *Bahrain* follows a broad investment definition including 'claims to money having a financial value' and 'intellectual property rights'.[27] Equally the Model Agreement on the Reciprocal Promotion and Protection of Investments of *Morocco* include 'claims to money or any other claim under contract having an economic value'.[28] Chapter 10 of the recent FTA between *Morocco* and the *United States* provides in its Section C no 'catch all clause, but lists specifically a number of areas other than direct investment like turnkey and concession contracts or intellectual property rights. It also highlights that "some forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics."[29]

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[23] Commentators have indicated that in order to qualify as investment under the ICSID Convention, the project in question should have a certain duration, a regularity of profit and return, an element of risk, a substantial commitment and that it should constitute a significant contribution to the host State's development. See Christoph Schreuer, The ICSID Convention: A Commentary, 2001, Art.25, 119-124.

[24] UNCTAD, International Investment Agreements: Key Issues, Vol. I, 2004.

[25] US Model BIT Agreement, 2004; Article 1, Section A.

[26] See Art. 1 (a) of the Mexican Model Agreement on the Promotion and Reciprocal Protection of Investment.

[27] Model Agreement of Bahrain, http://www.ustr.gov/Document_Library/Fact_Sheets/2004/Bahrain_Free_Trade_Agreement_Fact_Sheet.html

[28] Model Agreement of Morocco, Article 1, para.1, (iii).

[29] FTA Morocco-US, Section C, FN 9, http://www.ustr.gov./index.html

Figure 7 - Definition of 'Investment'

Unified Agreement for the Investment of Arab Capital in the Arab States, 1980, Article 1, para. 5: *"Arab capital: assets owned by an Arab citizen comprising any material and immaterial rights which have a cash valuation, including bank deposits and financial investments. Revenues accruing from Arab assets shall be regarded as Arab assets, as shall any joint share to which this definition applies."*

BIT USA/Egypt, 1992, Article 1, para. 1c: "*Investment means every kind of asset owed or controlled and includes but is note limited to:*
-tangible and intangible property, including rights, such as mortgages, liens and pledges;
-a company or shares, stock, or other interests in a company or interests in assets thereof;
-a claim to money or a claim to performance having economic value, and associated with an investment;
-valid intellectual and industrial rights property, including but not limited to rights with respect copyrights and related patents, trade marks and trade names, industrial designs, trade secrets and know-how, and goodwill".

BIT Jordan/ Lebanon, 2002, Article 1, para. 1: *"The term investment means every kind of investment of assets invested in accordance with the laws and regulations of the other contracting party hosting the investment including but not limited to:*
-movable and immovable assets and any property rights connected herewith such as mortgages, pledges and guarantees;
-bonds, shares and securities in companies ownership;
-titles and claims to money or right in any obligation to work having financial value;
-intellectual property including rights relating to publication, patents, trademarks, trade names industrial designs, commercial secrets, technical manufacturing processes, know-how and goodwill;
-business privileges granted by law or contract prospecting and discoveries and extraction or exploitation of natural resources, any change in invested funds form shall not have effect in their classification as investment provided that such change shall not contradict the laws and regulations of the contracting party hosting the investment."

FTA USA/Morocco, Article 10, para. 27, Section C, 1985: "*Investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk."*

38. Several International Center for Settlement of Investment Disputes (ICSID) cases have dealt with the question of the definition of investment. The following is a list of prominent cases dealing with this question:

- *Alcoa Minerals v. Jamaica* held that contribution of capital was one type of investment;[30]

- *Amco Asia* first annulment proceeding established that an international tort and an investment dispute were not mutually exclusive categories;[31]

[30] Alcoa Minerals of Jamaica, Inc. v. Jamaica (ICSID Case No. ARB/74/2), Decision on Jurisdiction and Competence of July 6, 1975, 4 Yearbook Commercial Arbitration 206 (1979) (excerpts).

- *Fedax* recognized that promissory notes issued in certain circumstances qualified as an investment;

- *CSOB* admitted that a loan was in the circumstances of the case an investment;[32]

- *Atlantic Triton* accepted as an investment the conversion of equipment of fishing vessels;[33] *Salini v. Morocco* did so in connection with the construction of a highway; and

- *SGS v. Pakistan* included within the concept of investment pre-shipment inspection activities and other services.[34]

39. Recent ICSID arbitrations in which MENA countries have been involved equally dealt with the definition of 'investment'. For instance, oin *Joy Mining Machinery Limited v. Arab Republic of Egypt* (Case No. ARB/03/11)[35] disagreement persisted between the parties as to the technical aspects related to the commissioning and performance tests of the equipment. Joy Mining Machinery Limited ("Joy Mining" or the "Claimant"), a company incorporated under the laws of England and Wales, requested for arbitration against the Arab Republic of Egypt. The request, invoked the ICSID arbitration provisions in the United Kingdom-Arab Republic of Egypt Agreement for the Promotion and Protection of Investments which entered into force on February 24, 1976.

40. The question that the Tribunal was asked to answer was whether or not bank guarantees are to be considered an investment. The ICSID Convention itself does not define the term 'investment', but leaves it to the consent of the parties, expressed by means of contracts, national legislation or bilateral investment treaties, among other features. Nonetheless, the Tribunal ruled that "the fact that the Convention has not defined the term investment does not mean, however, that anything consented to by the parties might qualify as an investment under the Convention. The Convention itself, in resorting to the concept of investment in connection with jurisdiction, establishes a framework to this effect: jurisdiction cannot be based on something different or entirely unrelated. In other words, it means that there is a limit to the freedom with which the parties may define an investment if they wish to engage the jurisdiction of ICSID tribunals." In the case on hand, the Tribunal concluded that it lacks jurisdiction to consider the dispute because the claim falls outside both the BIT in question and the Convention.

41. In contrast to this, the Tribunal in *Salini Construttori S.P.A. and Italstrade S.p.A. v. Kingdom of Morocco* (Case No. ARB/00/4) assumed the existence of an investment. The dispute concerned the construction of a sector of a highway and the Tribunal analyzed the objections to its jurisdiction, one of which referred to the argument that construction contracts did not qualify as investments under the ICSID Convention. The Tribunal considered the criteria generally identified by the Convention's commentators, indicating that those were: existence of contribution, certain duration and risk participation. It also added that the operation should contribute to the development of the host State as stated by the Convention's preamble. In this specific case the Tribunal found that the construction contract fulfilled the criteria. With respect to the risk criteria, the Tribunal indicated that a construction project that lasts several years and for which total costs cannot be established with certainty in advance, created a risk for the contractor. Thus,

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[31] Amco Asia Corporation and others v. Republic of Indonesia (ICSID Case No. ARB/81/1)

[32] Fedax NV v. Venezuela (ICSID Case No. ARB96/3).

[33] Atlantic Triton Company Limited v. Guinea (ICSID Case No. ARB 97/7)

[34] SGS Société Générale de Surveillance S.A. v. Republic of the Philippines (ICSID Case No. ARB/02/6), available at http://www.worldbank.org/icsid/cases/SGSvPhil-final.pdf.

[35] Summaries of cases are taken from the ICSID publication.

the construction operation was qualified as an investment and the disputes that arose directly out of it were within the ICSID's jurisdiction. Given the precedents set by this and other cases, there is generally some indication that Tribunals may give a relative broad reading to IIA provisions defining 'investment'. This could, for instance, imply that host countries can be subject to arbitration on the same grounds.

Investor – natural and corporate persons

42. The protection offered by BITs is limited to investors who invest in the territory of the host contracting state and who possess a qualifying link with the home contracting state. The issue which can arise here concerns the qualifying links of the person with the State party to the agreements. For instance, the nationality of the person can be doubtful. Figure 8 below, although not exhaustive, illustrates the legal nuances and differences among MENA countries qualifying the status of an 'investor'.

Figure 8 - Definition of an 'Investor'

BIT Lebanon/Switzerland, 2000, Article 1, para. 1a, b: *"The term investor refers with regard to either Contracting Party to be:*

-natural persons who, according to the law of that Contracting Party, are considered to be its citizens;

-legal entities, including companies, co-operations, business associations and other organizations, which are established under the law of that Contracting Party, as well as legal entities not established under such law but effectively controlled by nationals or legal entities of that Contracting Party; these criteria also apply to holding and offshore companies."

BIT Jordan/Yemen, 1996, Article 1, para. 3: "*The term Investor means:*

-any physical person holding nationality or permanent residency of Contracting Party according to the laws and regulations of that Party;

-any legal person established or incorporated under the applicable laws and regulations of a Contracting Party."

FTA Morocco/USA, 2004, Article 10, para. 27: *"Investor of a non-Party means, with respect to a Party, an Investor that concretely attempts to make, its making, or has made an investment in the territory of that Party, that is not an investor of either Party;*

Investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that concretely attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality."

43. In *Champion Trading Company and Ameritrade International, Inc. v. Arab Republic of Egypt* (Case No. ARB/02/9) concerning a cotton processing and trading enterprise, the decision on the jurisdiction of the Tribunal was issued in a case brought to ICSID by five Claimants, two companies and three individuals, under the 1982 Treaty between the United States of America and the Arab Republic of Egypt concerning the Reciprocal Encouragement and Protection of Investments, which entered into force in 1992. The 5 Claimants, all shareholders of a cotton trading and processing company incorporated in Egypt - National Cotton Company (NCC) - alleged that Egypt had violated the Treaty by taking a series of measures in the cotton industry affecting their investment. Three of the claimants in fact also held Egyptian nationality in addition to their US nationality.

44. The Tribunal declared that it does not have jurisdiction over the individual Claimants since Article 25 (2)(a) concerning natural persons contains a clear and specific rule regarding dual nationals. On the other hand, the 2 corporate Claimants were seen as constituting jurisdiction of the Tribunal since

Article 25 (2)(b) of the Convention concerning juridical persons provides certain scope for Contracting Parties and investors to agree on how to determine the nationality of a company.

c) National Treatment/ Most-Favoured-Nation Treatment

45. The cornerstone of IIAs and many multilateral agreements under the umbrella of the WTO is the principle of non-discrimination. IIAs grant investors national treatment and most-favoured-nation treatment. The principle of national treatment requires parties to treat foreign investors no less favourably than they treat their own investors. While this does not imply that parties have an obligation to grant foreign investors more favourable treatment than domestic ones, the obligation concerns not only laws or regulations directed at the operations of a foreign investor, but also laws and regulations which govern any aspect of economic activity as, *inter alia*, competition law, intellectual property rights, consumer protection, incentives, labour laws, environmental regulations, social policy regulations and potentially the deliverance of public services. According to the principle of most-favoured-nation-treatment (MFN), once a country has accorded a given treatment to a foreign investor or a foreign investment of a particular state, it cannot grant less favourable treatment to any other investor or investment coming from a different state. Figure 9 below illustrates how this general principle manifests itself in the laws of a sample of MENA countries.

Figure 9 - National Treatment and Most-Favoured-Nation-Treatment

BIT Bahrain Model Agreement, 2000, Article 3, para. 1, 2: *"Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors or any third State.*

Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management , maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to investors of any third State."

BIT Jordan/Syria, 2001, Article 2, para. 5:*"Each Contracting Party shall ensure the provision of fair and just treatment for investors' investments of the other Contracting Party, which established according to his laws and regulations of investment encouragement, and this treatment shall not be less favourable than those conferred and applied on his citizens or the citizens of any third country"*

BIT Lebanon/Spain, 1996, Article VI: *"Each Contracting Party shall in its territory accord to investments or returns of investors of the other Contracting Party treatment no less favourable than that which it accords to investments or returns of investors of any third State. Each Contracting Party shall apply, under its own law, no less favourable treatment to the investments of investors of the other Contracting party than granted to its own investors."*

FTA Morocco/USA, 2004, Article 10, para. 4:*"Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in is territory.*

Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments."

OECD National Treatment Instrument, as revised 1991: *"Article 1 Notification: Members shall notify the Organisation, of all measures constituting exceptions to National Treatment within 60 days of their adoption and of any other measures which have a bearing on National Treatment."*[36]

46. The basic non-discrimination obligations of NT and MFN are intended to cover both *de jure* and *de facto* discrimination. With regard to the obligation of national treatment, recent dispute settlement Tribunals have not insisted on the higher standard of legal or administrative discrimination, but favoured a more flexible standard of *de facto* discrimination on a case-by-case basis.[37] This may create uncertainty for the host countries as formally non-discriminatory measures may come under scrutiny.

d) Absolute Standards of Treatment

47. While relative principles of NT and MFN treatment establish a 'ceiling' in that they represent the highest standards of treatment that can be accorded to foreign investors, the classical absolute investment protection standards provide a 'floor' in that they grant investors a minimum level of protection. On this 'floor' stand absolute standards like the principles of fair and equitable treatment, compensation for expropriation and free transfer of payments, elaborated further in the following.

Fair and equitable standard

48. Traditionally, those principles were regarded as too vague to create real rights for investors but were seen as guiding principles for the interpretation and application of the whole treaty. However, recent ICSID arbitration changed this perception.[38] For example, in the dispute of *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt* (Case No. ARB/99/6) the obligation to provide fair and equitable treatment was seen to be infringed by the failure to give full notice directly to a ship owner regarding the impending seizure of a ship.

49. The relative low threshold for invoking the standard in recent arbitration led to clarifications as it did, for example, in the US model BIT of 2004. Certainly, in those MENA countries with a regulatory and administrative environment which is less developed than in OECD countries, there is a potential risk to lose dispute settlement cases against investors on these grounds. Figure 10 sites a sample of fair and equitable treatment standard as enshrined in the BITs between Jordan and Syria, as well as a more extensive elaboration provided within the US BIT Model Agreement.

Figure 10 - Fair and Equitable Standard

BIT Jordan/Syria, 2001, Article 2, para. 3: *"Each of the Contracting Parties shall confer fair and just treatment for investors' investment or the other Contracting Party. In addition management, maintenance, utilize, using, or assigning of the investment, as well companies, and projects in which these investment were completed shall not be subject to any, legally, unjustified special procedures."*

BIT USA Model Agreement, 2004, Article 5, Annex A: *"Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.*

[36] www.oecd.org/daf/investment/legal-instruments/nti.htm

[37] For example *S.D. Myers Inc. v. Canada, 13 November 2000; Marvin Feldman v. Mexico, 16 December 2002.*

[38] For details see, Yannaca-Small, Fair and Equitable Treatment Standards in International Investment Law, OECD 2004.

For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:
"fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
"full protection and security" requires each Party to provide the level of police protection required under customary international law.
A determination that there has been a breach of another provision of this Treaty, or of a separate international agreement, does not establish that there has been a breach of this Article.

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 5 [Minimum Standard of Treatment] and Annex B [Expropriation] results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 5 [Minimum Standard of Treatment], the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens."

Repatriation of profits

50. The free transfer of returns is a critical element of the protection of investors and must be regarded as a core provision of any IIA. The provision on the free transfer of payments is certainly among the most important ones in BITs concluded by OECD countries.[39] Multilateral agreements tend to allow countries to impose restrictions on transfers in circumstances where a member is confronted with a balance-of-payment crisis.[40] However, it is important to note that such a temporary 'balance-of-payment derogation' is absent in most bilateral and regional agreements, with the exception of NAFTA.[41]

Figure 11 - Free Transfer

The Unified Agreement for the Investment of Arab Capital in the Arab States, 1980, Article 7, para.1*: "The Arab investor shall have the freedom to make periodic transfers, both of Arab capital for investment in the territory of any State Party and of the revenues there from, and subsequently to make retransfers to any State Party following settlement of his outstanding obligations without this being subject to any discriminatory banking, administrative or legal restrictions and without the transfer process incurring any taxes or duties. This shall not apply in respect of banking services."*

BIT UK/Egypt, 1975, Article 6: *"Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the free transfer of the returns from their investments, subject to the right of each Contracting Party at exceptional financial or economic circumstances to exercise equitably of good faith powers conferred by its laws. In the case of transfer of capital this shall be effected in accordance with the relevant laws of the two Contracting Parties."*

[39] US Model Agreement, Art. VII; German Model Agreement, Art. 5, Mexican Model Agreement, Art.5. French Model Agreement, Art. 7.

[40] Agreement of the International Monetary Fund, Article 7 c) of the OECD Codes, Articles XI, XI GATS; The Multilateral Agreement on Investment (MAI), Negotiation Text, Article IV, 4.1.

[41] NAFTA, Chapter 11.

BIT Bahrain Model Agreement, 2000, Article 6: *"Each Contracting Party shall in respect of investments guarantee to investors of the other Contracting Party the unrestricted transfer to their investments and returns including proceeds of sale and liquidation of any investment as well as any amounts or payments stated in any provision of this Agreement. Transfer shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investors and the Contracting Party concerned. Unless otherwise agreed by the investors transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force."*

Expropriation

51. Although the legality of expropriation has been one of the most contentious problems in international law in the past, there is now consensus that an international minimum standard for the treatment of property belonging to aliens has evolved. It is enshrined in many IIAs, even though many capital-importing countries traditionally have been more critical to this concept. Under the concept of the international minimum standard, expropriation is only lawful where it is carried out for a clear public purpose, without discrimination and upon payment of 'prompt adequate and effective compensation'.[42] Regarding the issue of 'prompt and adequate' compensation for expropriation, a recent OECD policy document on the evolving **OECD Policy Framework for Investment** makes a number of recommendations and encourages governments to ask the following questions:

- *Does the government maintain a policy of timely and adequate compensation for expropriation?*

- *Have explicit and well-defined limits on the ability to expropriate been established, such as guidelines on what constitutes public interest?*

- *What channels exist for reviewing the exercise of this power or for contesting it?*

52. Wherever expropriation takes a direct form, no issue of identification really arises. It is only where the diminution of property rights is accomplished without dispossession taking place as in some recent cases, difficulties arise. 'Indirect', 'disguised', or 'creeping' expropriation can have the quality of bringing about "the slow and insidious strangulation of the interests of the foreign investor"[43]. Currently, this is one of the most contentious issues with regard to provisions in IIAs.[44] For instance, while it can be easily established that to prohibit an investor from importing raw materials which he needs for his production is a "measure having equivalent effect" to expropriation (if the investor is not able to substitute the raw materials in question), there is certainly a public interest issue involved if the imported raw material contains substances which are regarded as detrimental to the host country's environment or public health. Figure 13 provided below summarises some of the provisions protecting the rights of investors from expropriation stipulated in some MENA countries and OECD countries' Agreements

[42] The so-called Hull formula, which appears in a Note from the US secretary of State, Cordell Hull, see *Ian Brownlie*, Principles of Public International Law, 4th ed., 1990, 532.

[43] *Sornarajah*, the International Law on Foreign Investment, 2nd Ed., 2004, 350.

[44] For a comprehensive review, see *Yannaca-Small*, Indirect Expropriation and the Right to Regulate in International Investment Law, OECD 2004, http://www.oecd.org/dataoecd/22/54/33776546.pdf.

Figure 13 - Expropriation

Unified Agreement for the Investment of Arab Capital in the Arab States, 1980, Article 9, para.1:*"According to the provisions of this Agreement, the capital of the Arab investor shall not be subject to any specific or general measures, whether permanent or temporary and irrespective of their legal form , which wholly or partially affect any of the assets, reserves or revenues of the investor and which lead to confiscation, compulsory seizure, dispossession, nationalisation, liquidation, dissolution, the extortion or elimination of ....."*

BIT USA Model Agreement, 2004, Article 6, Annex B:*"Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except: -for a public purpose; -in a non-discriminatory manner; -on payment of prompt, adequate, and effective compensation. -in accordance with due process of law and Article…*
-indirect expropriation:
The second situation addressed by Article 6 [Expropriation and Compensation](1) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:
-the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
-the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and
-the character of the government action.
Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect."

BIT French Model Agreement, 2005, Article 5. (translation from French)
"*1.The investments made by nationals or companies of one Contracting Party shall enjoy full and complete protection and safety on the territory and in the maritime area of the other Contracting Party.*
"2. Neither Contracting Party shall take any measures of expropriation or nationalization or any other measures having the effect of dispossession, direct or indirect, of nationals or companies of the other Contracting Party of their investments on its territory and in its maritime area, except in the public interest and provided that these measures are neither discriminatory nor contrary to a specific commitment.
Any measures of dispossession which might be taken shall give rise to prompt and adequate compensation, the amount of which shall be equal to the real value of the investments concerned and shall be set in accordance with the normal economic situation prevailing prior to any threat of dispossession.
The said compensation, the amounts and conditions of payment, shall be set not later than the date of dispossession. This compensation shall be effectively realizable, shall be paid without delay and shall be freely transferable. Until the date of payment, it shall produce interest calculated at the appropriate market rate of interest.
"3. Nationals or companies of one Contracting Party whose investments have sustained losses due to war or any other armed conflict, revolution, national state of emergency or revolt occurring on the territory or in the maritime areas of the other Contracting Party, shall enjoy treatment from the latter Contracting Party that is not less favorable than that granted to its own nationals or companies or to those of the most favored nation.

BIT Jordan/Egypt on the mutual Promotion and Protection of Investment, 1996, Article 4*:"Any Contracting Country is not allowed to take expropriation or nationalization measures against the investments of any investor from the other Contracting party, unless the following conditions are fulfilled:*
1. The measures are adopted for legal purpose and in accordance with due process of law.
2. The measures are not discriminatory.
3. These measures shall be accompanied with allocations for prompt and effective payment of compensation shall be equal to the value of the investment prevailing in the market at the time of expropriation decision announcement and the compensation shall be transferable in freely convertible currency with the Contracting Party, and in the event that

payment of compensation is delayed the investor shall receive interest at a reasonable commercial rate or according to an agreement between the Parties or according to that provisions of the law."

BIT Syria/Jordan 2001, Article 3:"*It may not permissible, directly or indirectly, to nationalize, expropriate, freeze of investments of either of the Contracting Parties in the territories of the other contracting Party or the investments of any of its natural or legal persons, as well these investments shall not be subject to procedures have the same effects of nationalization, expropriation, or to limit the disposition of these investment properties and their revenues, except for public interest of this country against an immediate and fair compensation on indiscriminately bases and according to applicable laws and shall permit transference according to Article 4 of this agreement."*
FTA Morocco/USA, 2004, Annex 10 b: *"The Parties confirm their shared understanding that: Article 10.6.1. is intended to reflect customary international law concerning the obligation of States with respect to expropriation. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment. Article 10.6.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure. The second situation addressed by Article 10.6.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure. The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by- case, fact-based inquiry that considers, among other factors: -the economic impact of the government action, although the fact that an action or series of action by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;-the extend to which the government action interferes with distinct, reasonable investment-backed expectations; and -the character of the government action."*

53. The dispute of *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt* (Case No. ARB/99/6) concerned an alleged expropriation by Egypt of Middle East Cement's interests in a cement distribution enterprise located in Egypt as well as Egypt's alleged failure to ensure the re-exportation of Middle East Cement's assets. Middle East Cement invoked an ICSID arbitration clause contained in an Agreement between Greece and Egypt for the Promotion and Reciprocal Protection of Investments, which entered into force on April 6, 1995. Egypt issued a decree prohibiting import of all types of Portland Cement, which resulted in a halt of the activities of the Middle East Cement branch in Egypt. Middle East Cement claimed damages due to the liquidation of its Egyptian branch (including lost profits) as well as difficulties in re-exporting the branch's assets such as a floating silo.

54. The Tribunal stressed that "when measures are taken by a State the effect of which is to deprive the investor of the use and benefit of his investment even though he may retain nominal ownership of the respective rights being the investment, the measures are often referred to as 'creeping' or 'indirect' expropriation or, as in the BIT, as measures "the effect of which is tantamount to expropriation". As a matter of fact, the investor is deprived by such measures of parts of the value of his investment. The Tribunal concluded that the Respondent breached its obligations under the Bilateral Investment Treaty with Greece particularly by taking measures tantamount to expropriation against the claimant without prompt, adequate and effective compensation (Art. 4 of the BIT).

55. This case demonstrates that there remains some insecurity about how to approach regulatory expropriation claims. This uncertainty over the scope and reach of the expropriation obligations in IIAs in relation to regulatory measures of the host state is an issue of concern for host countries and must be taken seriously by MENA negotiators.

Transparency

56. Transparency issues are part of a broader subject dealing with the relationship between national administrations and their citizens, be they domestic or foreign investors. The extent of transparency of rule-making and administrative procedures, as well as the corresponding existence of procedural rights for the investor to claim transparent treatment from the authorities of the host country, are important elements for testing the seriousness of investor friendly policies in any host country. It comes therefore as no surprise that more recent IIAs contain transparency obligations dealing not only with the host country but also with home country investment promotion policies and with transparency obligations of the investing entity itself.

57. Modalities of information disclosure covered by transparency obligation in IIAs include consultation and information exchange, making information publicly available, answering requests for information and notification requirements of specific measures that need to be notified to the other party or to a body set up for the purpose under the agreement.[45] The model BIT of Egypt, for example, provides in Article 2.3 that the Contracting Parties may periodically consult on investment opportunities to determine where investments may be most beneficial.[46]

Figure 14 - OECD Framework for Investment Policy Transparency

The OECD Framework for Investment Policy Transparency aims at assisting both OECD and non-OECD governments to enhance transparency of their investment policy frameworks. The Framework poses fifteen questions:

Question 1: Are the economic benefits of transparency for international investment adequately recognised by public authorities? How is this being achieved?

Question 2: What information pertaining to investment measures is made "readily available", or "available" upon request to foreign investors?

Question 3: What are the legal requirements for making this information "public"? Do these requirements apply to primary and secondary legislation? Do they apply to both the national and sub-national levels? Is this information also made available to foreign investors in their countries of origin?

Question 4: Are exceptions/qualifications to making information available clearly defined and delimited?

Question 5: What are the main vehicles of information on investment measures of interest to foreign investors? What may determine the choice of publication avenues? What efforts are made to simplify the dissemination of this information?

Question 6: Is this information centralised? Is it couched in layman's terms? In English or another language? What is the role of Internet in disseminating essential/relevant information to foreign investors?

Question 7: Have special enquiry points been created? Can investment promotion agencies fulfill this role?

Question 8: How much transparency is achieved via international agreements or by international organisations?

Question 9: Are foreign investors normally notified and consulted in advance of the purpose and nature of regulatory changes of interest to them? What are the main avenues? Are these avenues available to all stakeholders?

Question 10: Are the notice and comment procedures codified? Do they provide for timely opportunities for comment by foreign investors and accountability on how their comments are to be handled?

Question 11: Are exceptions to openness and accessibility to procedures clearly defined and delimited?

[45] Public Sector Transparency and the International Investor, OECD 2003.

[46] UNCTAD, vol.I,II 1996.

Question 12: What are the available means for informing and assisting foreign investors in obtaining the necessary licensing, permits, registration or other formalities? What recourse is made to "silent and consent" clauses or "a posteriori" verification procedures?

Question 13: What are foreign investors' legal rights in regard to administrative decisions?

Question 14: To what extent "one-stop" shops may assist foreign investors fulfill administrative requirements?

Question 15: What efforts are being made to address capacity building bottle-necks?[47]

US Model BIT, 2004, Article 10, para. 1: *"Each Party shall ensure that its laws, regulations, administrative practices and procedures of general application, and adjudicatory decisions that pertain to or affect covered investments are promptly published or otherwise made publicly available."*

58. Transparency requirements for corporate entities have been formulated by the 1980 Unified Agreement for the Investment of Arab Capital in the Arab States., which states that *"In the various aspects of his activity, the Arab investor must, as far as possible, liaise with the State in which the investment is made and with its various institutions and authorities. He must respect its laws and regulations in a manner consistent with this Agreement……"*[48]

e) Dispute Settlement

59. Much of the prominence of IIAs from the point of view of the international investment community stems from the possibility that the provisions of the IIAs may eventually be enforced in case of a dispute, not only through classical ways of diplomatic protection by the home state, but also by **investor-to-state dispute settlement** procedures. The existence of these procedures constitutes a crucial factor underlying a favourable investment climate in the host country. These procedural dimensions of IIAs are likely to become more relevant in the future for MENA countries. Many IIAs involving MENA countries contain provisions on investor-to-state dispute settlement and there is already a considerable number of investment disputes pending or concluded which involve MENA countries – if only taken the publicised cases with the World Bank's ICSID (refer to Annex 1).

60. As shown in Annex 2, 12 MENA countries are signatories of the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID), the arbitration body which deals with the great majority of publicly reported investor-to-state disputes. Although these provisions had not been used frequently the first 30 years of ICSID's existence (35 claims from 1966 to 1995) in the subsequent 9 years, a total of 127 claims were filed, representing more than a tenfold increase in ICSID activity on an average yearly basis.[49] As of August 2004, there were 79 pending cases before ICSID,[50] of which the large majority was filed pursuant to alleged violations of BITs. As shown in Annex 1, out of this total, there have been 9 concluded ICSID cases involving MENA countries and 10 cases were pending as May 2005 (this statistic only includes cases made public). Around 60 per cent of the cases filed with ICSID are filed under BITs, the rest under NAFTA and state contracts. The proliferation of BITs since 1966 and the overall increase in flows of foreign direct investment can be cited as reasons for this increase. Certainly, the higher prominence international investment law is receiving in the legal community is

[47] OECD Public Sector Transparency and the International Investor; 2003.

[48] Unified Agreement for the Investment of Arab Capital in the Arab States, 1980, Article 14, para.1.

[49] *See* http://www.worldbank.com/icsid/cases/conclude.htm and http://www.worldbank.com/icsid/cases/pending.htm

[50] *See* http://www.worldbank.com/icsid/cases/pending.htm

another factor responsible for the increase. Independently of these reasons, however, the sheer number of claims indicates the importance of investor-state arbitration to investors.

61. Once ICSID arbitration is used, each state party to the ICSID Convention is required to enforce the resulting arbitral award in its territory.[51] An obligation to enforce awards derives also from the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards which provides a method for the enforcement of arbitral awards to be recognised in accordance with the rules and procedures of the state in which enforcement is sought and under specified terms and conditions. In total, 14 MENA countries participating in the MENA-OECD Investment Programme are members of the New York Convention (refer to Annex 3).

[51] Article 54 (1) ICSID: "Each Contracting State shall recognise an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award with its territories as if it were a final judgment of a court in that State."

V. ISSUES FOR DISCUSSION

62. An earlier draft of this inventory has been presented to the Expert Meeting 'Investment Treaties', 27 June 2005 in Rabat (ANNEX 1 for the Draft Conclusions). Issues discussed during the Expert Meeting which also informed discussions of the Working Group 1 meeting in September are listed below. This inventory of IIAs concluded by MENA countries has highlighted some emerging trends defining the relevance of IIAs as a key part of MENA countries' investment promotion strategy. It furthermore provided an overview of IIAs in force or under negotiation involving MENA countries. Finally, some key substantive issues constituting basic standards of MENA IIAs and the implications stemming from dispute settlement procedures are briefly outlined herein. As a result of this exercise, was possible to show that measurable benefits may derive from the conclusion of IIAs. The overview of recent state practice and research showed that IIAs can have a variety of positive effects, although their positive effect on enhanced investment flows should not be artificially separated from other elements of the investment environment. A relevant question to be addressed would be:

What is the view of MENA delegates on the above assessment? What is their experience?

63. The second aim of this inventory was to put together the information about existing IIAs involving MENA countries. It has been shown that the network of IIAs concluded by MENA countries is already impressive. Yet, further clarification would be required as the following questions.

To what extent have been steps undertaken for the timely ratification of IIAs?

Are existing IIAs periodically reviewed with a view to determining whether their provisions match the general level of ambition of the government with respect to transparency, investment protection, non-discrimination and progressive liberalisation towards creating a more attractive environment for investment?

64. The third aim has been to highlight existing core provisions of IIAs concluded by MENA countries, the review of which has raised some issues which would merit further exploration. Working Group 1 of the MENA-OECD Investment Programme can take this review as a starting point in the process to enhance the understanding of core provisions of IIAs and discuss solutions developed in other countries – be they MENA or OECD countries.

65. Given the background of the recent surge in investor-to-state dispute settlements under IIAs provisions, MENA negotiators may want to discuss the relevance of certain provisions in IIAs for international dispute settlement procedures. Discussions could address how the potential dispute settlement aspect of IIAs could be integrated into the negotiation strategies of MENA countries. There are undoubtedly new features evolving in the negotiation of IIAs themselves such as issues pertaining to the scope of the investment definition, the interpretation of fair and equitable treatment, indirect expropriation, administrative transparency provisions, labour and environmental standards. Investors' responsibilities are emerging asa key issue in the negotiation practice, which MENA negotiators will also be confronted with.

66. With regard to pre-establishment rights of investors deriving from IIAs, international dispute settlements have not yet played a prominent role. However, the ability to challenge regulatory measures introduced at the pre-establishment stage presents a potentially significant challenge to the host country:

Would MENA negotiators envisage granting pre-establishment rights to investors in IIAs and what would be reasons for doing so?

67. In this report, it was shown that there is some indication that Tribunals may give also in the future a relative broad interpretation to IIAs provisions defining 'investment'. This could, for instance, imply that host countries can be subject to several arbitrations on the same grounds. To summarize, when it comes to the national treatment obligation, recent dispute settlement Tribunals have favoured a flexible interpretation standard of *de facto* discrimination on a case-by-case basis. This may create uncertainty for the host countries as formally non-discriminatory measures may come under scrutiny.

What are MENA counties' views on this wide interpretation?

68. The point was also made that in those MENA countries with a regulatory and administrative environment which is less developed than in OECD countries, there is a potential risk involved to lose dispute settlement cases against investors on the grounds of infringement of the obligation of *fair and equitable* treatment standard.

What is the understanding of MENA negotiators with regard to the obligation of fair and equitable treatment?

69. It was highlighted that there remains some insecurity about how to approach regulatory expropriation claims. This uncertainty over the scope and reach of the expropriation obligations in IIAs in relation to regulatory measures of the host state can be potentially an issue of concern for MENA host countries.

How do MENA negotiators want to react to the challenge posed by recent dispute settlements in balancing indirect expropriation claims with host countries' right to regulate?

70. Finally, it was shown that much of the prominence of IIAs from the point of view of the international investment community stems from the possibility that the provisions of the IIAs may eventually be enforced by dispute settlement procedures. This procedural dimension of IIAs must be taken into account by MENA countries. The final question, then is:

What is the reaction of MENA negotiators to the increase in dispute settlement cases?

ANNEX 1

FIRST MEETING OF THE MENA-OECD EXPERT GROUP ON "WORKING WITH INVESTMENT TREATIES"

Output 2, Working Group 1 of the MENA-OECD Investment Programme, 27 June in Rabat, Morocco

- Draft Conclusions -

The first meeting of the Expert Group on Investment Treaties hosted by the Government of Morocco was conducted as part of the activities of Working Group 1, Output 2 of the MENA-OECD Investment Programme. The meeting aimed at establishing the Expert Group, preparing the "Inventory of International Investment Agreements Concluded by MENA Countries" and developing conclusions regarding next steps to be presented to the upcoming Working Group 1 meeting in September in Bahrain and the Ministerial meeting in November. Another purpose of the Expert Group and Output 2 of Working Group 1 in general is to get investment treaty experts of MENA countries acquainted with the OECD Investment Instruments and the work of the OECD on International Investment Agreements (IIAs) and finally to exchange and discuss good practice with their OECD counterparts.

During the meeting participants agreed on the following points:

1. IIAs can have a beneficial impact on attracting foreign direct investment to a host country.

2. IIAs can help to improve the perception of the risk environment in a host country by the international investment community and foster economic development.

3. IIAs can take many forms, like BITs, FTAs, Regional Integration Agreements or multilateral rules. All these forms are equally valuable ways of protecting and promoting investment. But other factors, such as quality of governance, transparent and clear rules and regulations, and a competitive environment, are likely to be more important determinants of an investor's decision to invest than investment treaties.

4. IIAs between MENA countries can help to provide confidence to increase investment flows within the region.

5. The signing of an IIA has to be followed by its ratification in order to make it directly applicable as binding national law. Ratification requirements may differ from country to country, but a speedy ratification procedure is in the best interest of all parties to an IIA.

6. IIAs are most effective when they are part of broader investment attraction strategies comprising phasing out of discriminatory restrictions on investment and barriers to competition more generally; open domestic and regional trade policies the transparent administrative environment and good public governance more generally, investment and export finance; and the institutional setting of investment promotion.

7. The scope and relevance of core provisions of IIAs must be approached in the light of 1) the growing body of jurisprudence arising from tribunals' decisions on investment dispute notably arbitral awards under the ICSID, 2) established treaty interpretation rules; and 3) state practice.

8. Efforts seeking to improve common understanding amongst MENA countries of the scope and meaning of core provisions in IIAs could enhance consistency and transparency for investors.

9. Further work on clarifying basic concepts and provisions in IIAs would be helpful for MENA countries, OECD countries, foreign investors, and dispute settlement Tribunals alike.

10. Detailed analysis of specific provisions of IIAs (e.g. on the right to establishment, indirect expropriation, fair and equitable treatment) could be shared in the context of the MENA-OECD Investment Programme. A practical useful handbook for negotiators could be developed.

11. The MENA-OECD Investment Programme should be further used to provide a platform for exchange of good practice and know-how between MENA and OECD experts. Such a forum for exchange would create great value-added.

12. Training needs to be intensified also in the area of dispute settlement procedures, notably investor-state disputes. The joint OECD/UNCTAD/ICSID Symposium on IIAs "Making the Most out of International Investment Agreements: A Common Agenda" on 12 DECEMBER 2005 will explore steps to set up such a training facility.

13. Investors' responsibilities are an issue of concern for MENA countries. But investment treaties are unlikely to be the best way to address these. It is for host governments to enforce the law in their own territories. There are various international initiatives aimed at promoting responsible business conduct, including the OECD Guidelines for Multinational Enterprises and the UN Global Compact. The OECD Guidelines for Multinational Enterprises provide a government-backed voluntary code of responsible business conduct and a recognized reference in international discussion on investment policies and rules.

ANNEX 2
ICSID CASES INVOLVING MENA COUNTRIES

I. List of Concluded Cases

1. Holiday Inns S.A. and others v. Morocco (Case No. ARB/72/1)
Subject Matter: Joint venture to build and operate hotels

2. Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt (Case No. ARB/84/3)
Subject Matter: Tourism development project

3. Manufacturers Hanover Trust Company v. Arab Republic of Egypt and General Authority for Investment and Free Zones (Case No. ARB/89/1)
Subject Matter: Bank branch operation

4. Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt (Case No. ARB/99/6)
Subject Matter: Cement distribution enterprise

5. Salini Construttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco (Case No. ARB/00/4)
Subject Matter: Construction of the sector of a highway

6. Impregilo, S.p.A and Rizzani De Eccher S.p.A. v. United Arab Emirates (Case No. ARB/01/1)
Subject Matter: Construction of a mosque

7. JacobsGibb Limited v. Hashemite Kingdom of Jordan (Case No. ARB/02/12)
Subject Matter: Waterway construction project

8. Ed. Zueblin AG v. Kingdom of Saudi Arabia (Case No. ARB/03/1)
Subject Matter: Construction of university facilities

9. Consortium Groupement L.E.S.I.- DIPENTA v. Algeria (Case No. ARB/03/8)
Subject Matter: Construction of a dam

II. List of Pending Cases

1. Wena Hotels Limited v. Arab Republic of Egypt (Case No. ARB/98/4)
Subject Matter: Hotel lease and development agreements

2. Consortium R.F.C.C. v. Kingdom of Morocco (Case No. ARB/00/6)
Subject Matter: Construction of the section of a highway

3. Hussein Nuaman Soufraki v. United Arab Emirates (Case No. ARB/02/7)
Subject Matter: Concession agreement regarding a port

4. Champion Trading Company and Ameritrade International, Inc. v. Arab Republic of Egypt (Case No. ARB/02/9)
Subject Matter: Cotton processing and trading enterprise

5. Ahmonseto, Inc. and others v. Arab Republic of Egypt (Case No. ARB/02/15)
Subject Matter: Textile enterprise

6. Joy Mining Machinery Limited v. Arab Republic of Egypt (Case No. ARB/03/11)
Subject Matter: Phosphate mining project

7. ABCI Investments N.V. v. Republic of Tunesia (Case No. ARB/04/12)
Subject Matter: Acquisition of shares

8. LESI, S.p.A. and Astaldi, S.p.A. v. Algeria (Case No. ARB/05/3)
Subject Matter: Construction of a dam

9. Salini Construttori S.p.A. and Italstrade S.p.A. v. the Hashemite Kingdom of Jordan (Case No. ARB/0213)

10. France Telecom v. Lebanon (France/Lebanon BIT)
-Award, 22 February 2005. This award is currently not public.

ANNEX 3
ICSID MEMBERSHIP OF MENA COUNTRIES

Country	ICSID member since
Algeria	1996
Bahrain	1996
Djibouti	No
Egypt	1972
Iraq	no
Jordan	1972
Kuwait	1979
Lebanon	2003
Libya	no
Morocco	1967
Oman	1995
Palestine National Authority	no
Qatar	no
Saudi Arabia	1980
Syria	no*
Tunisia	1966
United Arab Emirates	1982
Yemen	2004

Note:

* Signed on May 25, 2005, but the convention has not entered into force.

ANNEX 4
MENA MEMBERSHIP TO THE 1958 NEW YORK CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

MENA countries	Membership
Algeria	Yes
Bahrain	Yes
Djibouti	Yes
Egypt	Yes
Iraq	No
Jordan	Yes
Kuwait	Yes
Lebanon	Yes
Libya	Yes
Morocco	Yes
Oman	Yes
Qatar	Yes
Saudi Arabia	Yes
Syria	Yes
Tunisia	Yes
United Emirates	No
Palestine National Authority	No
Yemen	No

ANNEX 5
PRELIMINARY LIST OF CURRENTLY NEGOTIATED AGREEMENTS WITH MENA COUNTRIES INVOLVING INVESTMENT PROVISION

(currently covering only data from US, Germany, Spain, Turkey)

List of currently negotiated Agreements with MENA countries involving investment provisions		
Egypt	USA	FTA announced for 2005
	Germany	current revision of old BIT
GCC	Turkey	FTA negotiations
	EU	FTA negotiations announced
Jordan	Turkey	FTA negotiations
	Germany	BIT being renegotiated
Kuwait	USA	TIFA signed
	Spain	BIT pending of signature
Libya	Spain	BIT
Oman	USA	FTA close to signing
		TIFA signed
	Germany	BIT being renegotiated
Palestine	Germany	BIT
	Japan	initially signed 2000 and under negotiation
Qatar	Spain	BIT
SA	USA	TIFA signed
UAE	USA	FTA under negotiation
		TIFA signed
	Spain	BIT
Yemen	USA	TIFA signed
	Germany	BIT being renegotiated

ANNEX 6
BITS CONCLUDED BY MENA COUNTRIES WITH OTHER MENA COUNTRIES

	Algeria	Bahrain	Djibouti	Egypt	Iraq	Jordan	Kuwait	Lebanon	Libya	Morocco	Oman	Palestine	Qatar	Saudi Arabia	Syria	Tunisia	United Arab Emirates	Yemen	Total
Algeria						1996												1999	**2**
Bahrain				1997		2000		1999							2001			2002	**5**
Djibouti																			**0**
Egypt	1997	1997	1998			1996		1996		1997	1998				1997	1990		1999	**10**
Iraq							1964												**1**
Jordan	1996	2000		1996			2001	2002		1998					2001	1995			**8**
Kuwait					1964	2001		2001		1999								2001	**5**
Lebanon		1999		1996		2002	2001			1997					1997	1998		1999	**8**
Libya																			**0**
Morocco				1997		1998	1999	1997			2001		1999		2001		1999		**8**
Oman				1998						2001						1991		1998	**4**
Palestine																			**0**
Qatar										1999									**1**
Saudi Arabia																			**0**
Syria		2001		1997		2001		1997		2001							1997	1996	**7**
Tunisia				1990		1995		1998			1991						1996		**5**
United Arab Emirates										1999					1997	1996		2001	**4**
Yemen	1999					1995	2001	1999			1998				1996		2001		**7**
																			75

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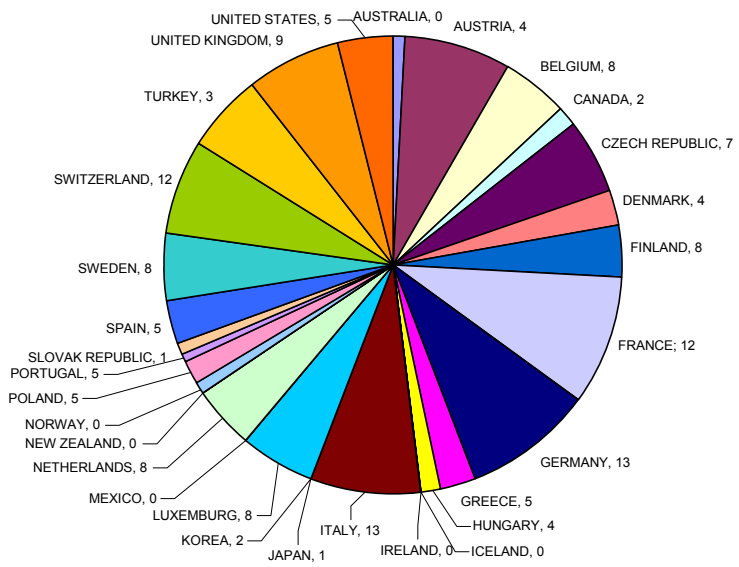
ANNEX 7
NUMBER OF BITS CONCLUDED BY OECD COUNTRIES WITH MENA COUNTRIES

Number of BITs concluded by OECD countries with MENA countries participating in the Programme (Total 142)



Source: OECD/UNCTAD 2004.

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ANNEX 8

INVESTMENT TREATIES AND TREATIES FOR THE AVOIDANCE OF DOUBLE TAXATION SIGNED BY MENA COUNTRIES WITH REST OF THE WORLD[52]

A. BILATERAL INVESTMENT TREATIES MENA/REST OF THE WORLD

Algeria's Bilateral Investment Treaties	**Signature**			**Entry into Force**		
Belgium–Luxembourg	Apr.	24,	1991			
Bulgaria	Oct.	25,	1998			
China	Oct.	17,	1996			
Cuba			1999			
Czech Republic Denmark Egypt France	Sept. Jan. Mar. Feb.	22, 25, 29, 13	2000 1999 1997 1993			
Germany	Mar.	11,	1996			
Greece Korea	Feb. Sept.	20, 30	2000 2001			
Italy	May	18,	1991	Nov.	26,	1993
Jordan	Oct.	1,	1996	Jun.	5,	1997
Malaysia	Jan.	27,	2000			
Mali	Jul.	11,	1996	Feb.	16,	1999
Mozambique	Dec.	12,	1998			
Niger	Mar.	16,	1998			
Romania	June	28,	1994	Dec.	30,	1995
Spain	Dec.	23,	1994	Jan.	17,	1996
Turkey	Jun.	3,	1998			

52. *Sources*: OECD Member Countries Survey 2005, International Centre for Settlement of Investment Disputes (http://www.worldbank.org/icsid/treaties/treaties.htm); UNCTAD, World Investment Report 2003.

Vietnam			1996			
Yemen	Nov.	25,	1999			

Bahrain's Bilateral Investment Treaties	**Signature**			**Entry into Force**
China	Jun.	17,	1999	
Egypt	Oct.	4,	1997	
Iran			2002	
Jordan	Feb.	8,	2000	Jun. 05, 2000
Lebanon	Aug.	26,	1999	
Malaysia	Jun.	15,	1999	
Sudan	Jan.	17,	2000	
Syria			2001	
Thailand	May	21,	2002	Jul. 17, 2002
United Kingdom	Oct.	30,	1991	
United States			1999	May 31, 2001
Yemen	Dec.	1,	2002	

Djibouti's Bilateral Investment Treaty	**Signature**			**Entry into Force**
Egypt			1998	
Malaysia			1998	
Switzerland			2001	

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Egypt's Bilateral Investment Treaties	Signature			Entry into Force		
Albania	May	22,	1993 1994	Aug.	06,	
Algeria	Mar.	29,	1997			
Argentina	May	11,	1992	Dec.	3,	1993
Armenia	Jan.	09,	1995			
Australia	May	03,	2001			
Austria	Apr.	12,	2001	Apr.	23,	2002
Bahrain	Oct.	04,	1997			
Belarus	Mar.	20,	1997			
Belgium–Luxembourg	Feb.	28,	1977	Sep.	20,	1978
Belgium and Luxemburg			1999			
Bosnia and Herzegovina	Mar.	11,	1998			
Bulgaria	Mar.	15,	1998			
Canada			1996			
Chad	Mar.	14,	1998			
China	Apr.	21,	1994 1996	Apr.	1,	
China			1996			
Congo, Democratic Republic of	Dec.	18,	1998			
Croatia	Oct.	27,	1997			
Cuba			1999			
Cyprus	Oct.	21,	1998			
Czech Republic	May	29,	1993	Jan.	4,	1994
Czech Republic			2000			
Denmark	Jun.	24,	1999			
Djibouti			1998			
Egypt			1997			
Finland	May	5,	1980	Feb.	1,	1982
France	Dec.	22,	1974	Oct.	1,	1975

Gabon	Dec.	22,	1997			
Georgia	Aug.	10,	1999			
Germany	Jul.	5,	1974	July	22,	1978
Germany			1996			
Ghana	Mar.	21,	1998			
Greece	Jul.	16,	1993	Apr.	6,	1995
Greece			2000			
Guinea	Mar.	3,	1998			
Hungary	May	23,	1995 1997	Aug.	21,	
India			1997			
Indonesia	Jan.	19,	1994			
Italy	Mar.	2,	1989	May	1,	1994
Jamaica	Feb.	10,	1999			
Japan	Jan.	28,	1977	Jan.	14,	1978
Jordan	May	8,	1996			
Kazakhstan	Feb.	14,	1993			
Korea, Republic of	Mar.	18,	1996			
Latvia	Apr.	24,	1997			
Lebanon	Mar.	16,	1996			
Malaysia			1997			
Malaysia			2000			
Mali			1996			
Mali	Mar.	9,	1998			
Malta	Feb.	20,	1999			
Morocco	Jun.	3,	1976			
Morocco			1997			
Mozambique	Dec.	8,	1998			
(Netherlands*	Oct.	30,	1976	Jan.	1,	1978)
Netherlands	Jan.	17,	1996			
Niger	Mar.	4,	1998			
Oman			1998			

Palestine Authority			1998			
Poland	Jul.	1,	1995			
Portugal	Apr.	29,	1999			
(Romania**	May	10,	1976	Jan.	22,	1977)
Romania	Nov.	24,	1994			
Russian Federation	Sept.	23,	1997			
Senegal	Mar.	5,	1998			
Singapore	Apr.	15,	1997			
Slovakia	Apr.	30,	1997			
Slovenia	Oct.	28,	1998			
South Africa			1998			
Spain	Nov.	3,	1992	Apr.	26,	1994
Sri Lanka	Mar.	11,	1996			
Sudan	May	28,	1977			
Sweden	Jul.	15,	1978	Jan.	29,	1979
Switzerland	Jul.	25,	1973	June	4,	1974
Syria			1997			
Tanzania	Apr.	30,	1997			
Thailand	Feb.	18,	2000			
Tunisia	Dec.	8,	1990			
Turkey	Oct.	4,	1996			
Turkey			1998			
Turkmenistan	May	23,	1995	Feb.	28,	1996
Uganda	Nov.	4,	1995			
Ukraine	Dec.	22,	1992 1993	Oct.	20,	
United Kingdom	Jun.	11,	1975	Feb.	24,	1976
United States	Sep.	29,	1982	June	27,	1992
Uzbekistan	Dec.	16,	1992	Feb.	8,	1994
Vietnam			1996			
Vietnam			1997			
Yemen			1999			

Yugoslavia, Federal Republic of	Jun.	3,	1977
Zimbabwe	Jun.		1999

* This treaty will terminate on the entry into force of the new treaty between Egypt and the Netherlands, signed on January 17, 1996.
** This treaty will terminate on the entry into force of the new treaty between Egypt and Romania, signed on November 24, 1994.

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Jordan's Bilateral Investment Treaties	Signature			Entry into Force		
Algeria	Aug.	1,	1996			
Austria	Jan.	23,	2001			
Bahrain	Feb.	8,	2000			
Belarus	Dec.	20,	2002			
Bulgaria	Aug.	7,	2002			
China	Nov.	5,	2001			
Croatia	Oct.	10,	1999			
Czech Republic	Sep.	20,	1997			
Egypt	May	8,	1996			
France	Feb.	23,	1978	Oct.	18,	1979
Germany	Jul.	15,	1974	Oct.	10,	1977
Indonesia	Nov.	12,	1996			
Italy	Jul.	21,	1996			
Kuwait	May	21,	2001			
Lebanon	Oct.	31,	2002			
Lithuania	Oct.	20,	2002			
Malaysia	Oct.	2,	1994 1995	Mar.	3,	
Morocco	Jun.	16,	1998			
Netherlands	Nov.	17,	1997 1998	Aug.	1,	
Poland			1997			
Romania	Jul.	2,	1992			
Spain	Oct.	20,	1999			
Sudan	Mar.	9,	2000	Jul.	23,	2000
Switzerland	Nov.	11,	1976	Mar.	2,	1977
Switzerland			2001			
Syria			2001			
Tunisia			1995			

Turkey	Aug.	2,	1993			
United Kingdom	Oct.	10,	1979	Apr.	24,	1980
United States	Jul.	2,	1997	Jun.	12,	2003
Yemen	Jun.	18,	1997	Jan.	28,	1998
Singapore						
Congo						

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Kuwait's Bilateral Investment Treaties	**Signature**			**Entry into Force**		
Austria	Nov.	16,	1996	Sep.	22,	1998
Belgium	Sep.	28,	2000			
Bosnia and Herzegovina	Jun.	13,	2001			
Bulgaria	Jun.	17,	1997	Sep.	16,	1998
China	Nov.	23,	1985	Dec.	24,	1986
Croatia	Mar.	8,	1997	Jul.	2,	1998
Czech Republic	Jan.	8,	1996	Jan.	21,	1997
Denmark	Jun.	1,	2001			
Ethiopia	Sep.	14,	1996			
Finland	Mar.	10,	1996	May	21,	1997
France	Sep.	27,	1989	May	16,	1991
Germany	Mar.	30,	1994 1997	Nov.	15,	
Hungary	Nov.	8,	1989	Mar.	1,	1994
India			2001			
Italy	Dec.	17,	1987	May	21,	1990
Jordan	May	21,	2001			
Kazakhstan	Aug.	31,	1997			
Latvia	Oct.	5,	2001			
Lebanon	Jan.	1,	2001			
Lithuania	Jun.	5,	2001			
Malaysia	Nov.	21,	1987			
Malta	Apr.	19,	1995 1996	Jun.	25,	
Moldova	Feb.	4,	1993			
Mongolia	Mar.	27,	1998			
Morocco	Feb.	16,	1999			
Netherlands	May	29,	2001 2002	May	31,	

Pakistan	Mar.	17,	1983 1986	Mar.	15,	
Poland	Mar.	5,	1990	Dec.	18,	1993
Romania	May	21,	1991	July	26,	1992
Russian Federation	Nov.	21,	1994 1996	May	30,	
Switzerland	Okt.	31,	1998			
Tajikistan	Apr.	18,	1995			
Turkey United Arab Emirates	Oct. Feb.	27, 12,	1988 1966	Apr.	25,	1992
Yemen	Feb.	20,	2001			

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Lebanon's Bilateral Investment Treaties	Signature			Entry into Force
Armenia	May	1,	1995	Oct. 1, 1998
Austria	May	1,	2001	Sep. 30, 2002
Azerbaijan	Feb.	11,	1998	
Bahrain	Aug.	26,	1999	
Belarus	Jun.	19,	2001	
Belgium and Luxemburg	Sep.	6,	1999	
Bulgaria	Jun.	1,	1999	
Canada			1997	
Chile	Oct.	13	1999	
China	Jun.	13,	1996	Jul. 10, 1997
Cuba			1995	
Cyprus			2001	
Czech Republic	Sep.	19,	1997	
Egypt	May	16,	1996	Feb. 6, 1997
Finland	Aug.	25,	1997	Jan. 12, 2000
France	Nov.	28,	1996	
Gabon	Feb.	20,	2001	
Germany	Mar.	18,	1997	Mar. 25, 1999
Greece	Jul.	24,	1997	
Hungary	Jun.	27,	2001	
Iran			1997	
Italy	Nov.	7,	1997	
Jordan	Nov.	31,	2002	
Kuwait	Jan.	1,	2001	
Malaysia	Feb.	26,	1998	
Morocco	Jul.	3,	1997	
Netherlands	May	2,	2002	

Pakistan	Jan.	9,	2001			
Romania	Oct.	18,	1994	Mar.	6,	1997
Russian Federation	Apr.	8,	1997			
Spain	Feb.	22,	1996			
Sweden	Jun.	15,	2001			
Switzerland	Mar.	3,	2000			
Syria			1997			
Tunisia	Jun.	24,	1998			
Ukraine	Mar.	25,	1995			
United Kingdom	Feb.	15,	1999			
Yemen	Nov.	25,	1999			

Morocco's Bilateral Investment Treaties	**Signature**			**Entry into Force**		
Argentina	Jun.	13,	1996			
Austria	Nov.	2,	1992	July	1,	1995
Belgium and Luxemburg	Apr.	28,	1965	Oct.	18,	1967
Belgium and Luxemburg			1999			
Bulgaria	May	22,	1996			
China	Mar.	27,	1995			
Czech Republic	Jun.	11,	2001			
Dominican Republic	May	23,	2002			
Egypt			1997			
Egypt, Arab Republic of	June	3,	1976			
El Salvador	Apr.	21,	1999			
Finland	Oct.	1,	2001			
(France*	July	15,	1975	Dec.	13,	1976)
France	Jan.	13,	1996			
Gabon	Jan.	13,	1979			
Germany			2001			
Germany	Aug.	31,	1961	Jan.	21,	1968

Greece	Feb.	16,	1994			
Guinea	May	2,	2002			
Hungary	Dec.	12,	1991			
India			1999			
Indonesia	Mar.	14,	1997			
Iran			2001			
Italy	Jul.	18,	1990			
Jordan	Jun.	16,	1998			
Korea	Jan.	27,	1999			
Kuwait	Feb.	16,	1999			
Lebanon	Jul.	3,	1997			
Malaysia	Apr.	16,	2002			
Netherlands	Dec.	23,	1971	July	27,	1978
Oman	May	8,	2001			
Pakistan	Apr.	16,	2001			
Poland	Oct.	24,	1994	May	29,	1995
Portugal	Oct.	18,	1988	Mar.	22,	1995
Qatar			1999			
Romania	Jan.	28,	1994	Aug.	1,	1994
Senegal	Feb.	18,	2001			
Spain	Sep.	27,	1989	Jan.	15,	1992
Spain			1997			
Sudan	Feb.	23,	1999			
Sweden	Sep.	26,	1990	Prov. in force		
Switzerland	Dec.	17,	1985	Apr.	12,	1991
Syria			2001			
Tunisia	Jan.	28,	1994			
Turkey	Apr.	8,	1997			
United Arab Emirates	Feb.	9,	1999			
United Kingdom	Oct.	30,	1990	Prov. in force		
United States	July	22,	1985	May	29,	1991

* This treaty will terminate on the entry into force of the new treaty between France and Morocco, signed on January 13, 1996.

Oman's Bilateral Investment Treaties	**Signature**			**Entry into Force**		
Austria	Apr.	1,	2001 2001	Dec.	1,	
Brunei Darussalam	Jun.	8,	1998			
China	Mar.	18,	1995 1995	Aug.	1,	
Egypt			1998			
Finland	Sep.	27,	1997	Feb.	20,	1999
France	Oct.	17,	1994	Jul.	4,	1996
Germany	Jun.	25,	1979	Feb.	4,	1986
India			1997			
Italy	Jun.	23,	1993 1997	Jan.	23,	
Morocco	May	8,	2001			
Netherlands	Sep.	19,	1987	Feb.	1,	1989
Pakistan	Nov.	9,	1997			
Sudan	Oct.	25,	1999			
Sweden	July	13,	1995	June	8,	1996
Tunisia	Oct.	19,	1991			
United Kingdom	Nov.	25,	1995 1996	May	21,	
Yemen	Sep.	20,	1998			

Qatar's Bilateral Investment Treaties	**Signature**			**Entry into Force**
Bosnia and Herzegovina			1998	
China			1998 and 1999	
Croatia			2001	

Cuba			2001
Finland			2001
France			1996
Germany	June	14,	1996
India			1999
Iran			1999
Korea			1999
Morocco			1999
Romania			1996
Senegal			1998
Sudan			1998
Switzerland			2001
Turkey			2001

Saudi Arabia's Bilateral Investment Treaties	**Signature**		**Entry into Force**
Austria			2003 and 2002
Belgium and Luxemburg			2002
China	Feb.	29,	1996 May 1, 1997
Egypt	Mar.	13,	1990 1992 Sep. 15,
France			2002
Germany	Oct.	29,	1996 Jan. 9, 1999
Italy			1996 May 22, 1998
Korea	Apr.	4,	2002
Malaysia	Oct.	25,	2000
Philippines	Oct.	17,	1994 Nov. 11, 1996
Chinese Taipei			2000

Syria's Bilateral Investment Treaties	Signature			Entry into Force		
Bahrain			2001			
China			1996			
Egypt			1997			
France	Nov.	28,	1977	Mar.	1,	1980
Germany	Aug.	2,	1977	Apr.	20,	1980
Indonesia			1997			
Iran			1998			
Jordan			2001			
Lebanon			1997			
Morocco			2001			
Pakistan			1996			
Sudan			2000			
Switzerland	June	22,	1977	Aug.	10,	1978
United Arab Emirates			1997			
Yemen			1996			

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Tunisia's Bilateral Investment Treaties	Signature			Entry into Force		
Albania	Oct.	30	1993			
Argentina	Jun.	17,	1992	Jan.	23,	1995
Austria	Jun.	1,	1995	Jan.	1,	1997
Belgium and Luxemburg	Jul.	15,	1964	Mar.	9,	1966
Belgium and Luxemburg	Jan.	8,	1997			
Chile	Oct.	23,	1998			
Côte d'Ivoire	May	16,	1995			
Czech Republic	Jan.	6,	1997	Jul.	8,	1998
Denmark	Jan.	28,	1996 1997	Apr.	11,	
Egypt, Arab Republic of	Dec.	8,	1990	Jan.	2,	1991
Finland	Oct.	4,	2001			
France	June	30,	1972	June	30,	1972
France			1997			
Germany	Dec.	20,	1963	Feb.	6,	1966
Greece	Oct.	31,	1992	Apr.	21,	1995
Guinea	Nov.	28,	1990			
Indonesia	May	13,	1992	Sep.	12	1992
Italy	Oct.	17,	1985	Jun.	24,	1989
Jordan	Apr.	25,	1995	Nov.	23,	1995
Korea, Republic of	May	23,	1975	Nov.	28,	1975
Kuwait	Sep.	14,	1973			
Lebanon	Jun.	24,	1998			
Mali	Jul.	1,	1986			
Malta	Oct.	26,	2000			
Mauritania	Mar.	1,	1986			
Morocco	Jan.	28,	1994			
Netherlands	May	23,	1963	Dec.	19,	1964
Netherlands			1998			

Niger	June	5,	1992			
Oman	Oct.	19,	1991			
Pakistan	Apr.	18,	1996			
Poland	Mar.	29,	1993	Sep.	22,	1993
Portugal	May	11,	1992	Dec.	6,	1994
Portugal			2002			
Romania	Sep.	23,	1987	Feb.	4,	1989
Romania			1995			
Senegal	May	15,	1984			
Spain	May	28,	1991	June	20,	1994
Sweden	Sep.	15,	1984	May	13,	1985
Switzerland	Dec.	2,	1961	Jan.	19,	1964
Togo	Sep.	13,	1987			
Turkey	May	29,	1991	Feb.	7,	1993
United Arab Emirates	Apr.	10,	1996			
United Kingdom	Mar.	14,	1989	Jan.	4,	1990
United States	May	15,	1990	Feb.	7,	1993

United Arab Emirates' Bilateral Investment Treaties	**Signature**			**Entry into Force**		
Austria	Jun.	17,	2001	Dec.	1,	2003
China	Jul.	1,	1993	Sep.	28,	1994
Czech Republic	Nov.	23,	1994	Dec.	25,	1995
Egypt	Jun.	19,	1988			
Finland	Jul.	1,	1993			
France	Sep.	9,	1991	Jan.	10,	1995
Germany	Jan.	21,	1997			
Italy	Jan.	22,	1995	Apr.	29,	1997
Kuwait	Feb.	12,	1966			
Malaysia	Oct.	11,	1991	May	22,	1992

Mongolia	Feb.	21,	2001			
Morocco	Feb.	9,	1999			
Pakistan	Nov.	5,	1995			
Poland	Jan.	31,	1993	Apr.	9,	1994
Sudan	Feb.	13,	2000			
Switzerland	Nov.	3,	1998			
Syria			1997			
Tajikistan	Dec.	17,	1995			
Tunisia	Apr.	10,	1996			
United Kingdom	Dec.	8,	1992	Dec.	13,	1993
Yemen	Feb.	13,	2001			

Yemen's Bilateral Investment Treaties	**Signature**			**Entry into Force**		
Algeria	Nov.	25,	1999			
Austria	Jul.	1,	2002			
Bahrain Belgium	Dec. Feb.	1, 3,	2002 2000			
China Egypt	Feb. Oct.	16, 19,	1998 1988			
Ethiopia	Apr.	15,	1999			
France	Apr.	27,	1984	July	19,	1991
Germany Hungary	June Oct.	21, 12,	1974 1999	Dec.	19,	1978
India			2002			
Indonesia	Feb.	20,	1998			
Iran			1996			
Jordan	Jun.	18,	1995			

Kuwait	Feb.	20,	2001			
Lebanon	Nov.	25,	1999			
Malaysia	Feb.	11,	1998			
Netherlands	Mar.	18,	1985	Sep.	1,	1986
Oman	Sep.	20,	1998			
Pakistan	May	11,	1999			
Romania	Oct.	4,	1999			
Russian Federation	Dec.	1,	2002			
South Africa			2002			
Sudan	Aug.	10,	1999			
Sweden	Oct.	29,	1983	Feb.	23,	1984
Syria			1996			
Turkey	Sep.	7,	2000			
Ukraine	Feb.	1,	2001			
United Arab Emirates	Feb.	13,	2001			
United Kingdom	Feb.	25,	1982	Nov.	11,	1983

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B. DOUBLE TAXATION TREATIES MENA COUNTRIES/REST OF THE WORLD

Algeria's Double Taxation Treaties	**Signature**
Bahrain	2000
Bulgaria	1998
Canada	1999
Ethiopia	2002
Lebanon	2002
Mali	1999
Oman	2000
Poland	2000
Spain	2002
Syria	1997
Vietnam	1999
Yemen	2002

Bahrain's Double Taxation Treaties	**Signature**
Algeria	2000
China	2002
Morocco	2000
Thailand	2001

Egypt's Double Taxation Treaties	**Signature**
Armenia	1998
China	1997
Czech Republic	1995

Indonesia	1998
North Korea	2000
Lebanon	1996
Macedonia	1999
Malaysia	1997
Malta	1999
Netherlands	1999
Poland	1996
Senegal	2001
Uzbekistan	1999

Jordan's Double Taxation Treaties	**Signature**
Canada	1999
India	1999
Syria	2001

Kuwait's Double Taxation Treaties	**Signature**
Lebanon	2001
Malaysia	1997
Malta	2002
Mauritius	1997
Netherlands	2001
Russian Federation	2002
Switzerland	1999
Syria	1997
United Kingdom	1999
Yugoslavia (former)	2002

Lebanon's Double Taxation Treaties	Signature
Algeria	2002
Armenia	1998
Cuba	2001
Czech Republic	1997
Egypt	1996
Iran	1998
Italy	2001
Kuwait	2001
Malta	1999
Morocco	2002
Oman	2001
Pakistan	1999
Romania	1995
Russian Federation	1997
Syria	1997
Tunisia	1998
United Arab Emirates	1998

Morocco's Double Taxation Treaties	Signature
Bahrain	2000
Bulgaria	1996
Finland	2001
India	1998
Korea	1999
Lebanon	2002

Portugal	1997
Russian Federation	1997
Senegal	2001 and 2002
United Arab Emirates	

Oman's Double Taxation Treaties	**Signature**
Algeria	2000
China	2002
India	1997
Italy	1998
Lebanon	2001
Mauritius	1998
Pakistan	1999
Tunisia	1997
United Kingdom	1998

Qatar's Double Taxation Treaties	**Signature**
India	1999
Pakistan	1999
Romania	1999

Saudi Arabia's Double Taxation Treaties	**Signature**
Austria	2003 and 2002
Belgium and Luxemburg	2002
China	1996
France	2002
Germany	1996

Italy	1996
Malaysia	2000
Chinese Taipei	2000

Syria's Double Taxation Treaties	**Signature**
Algeria	1997
Armenia	1995
Belarus	1998
Bulgaria	2001
France	1998
Indonesia	1997
Iran	1996
Jordan	2001
North Korea	2000
Kuwait	1997
Lebanon	1997
Malta	1999
Pakistan	2001
Poland	2001
Sudan	2001
Tunisia	1998
Yemen	2001

Tunisia's Double Taxation Treaties	**Signature**
Cameroon	1999
Côte d'Ivoire	1999
Lebanon	1998
Luxemburg	1996
Netherlands	1995
Oman	1997

Pakistan	1996
Portugal	1999
South Africa	1999
Syria	1998
Yemen	1998

United Arab Emirates' Double Taxation Treaties	**Signature**
Czech Republic	1996
Finland	1996
Germany	1995
Lebanon	1998
Mongolia	2001
Morocco	1999
Singapore	1995
Thailand	2000

Yemen's Double Taxation Treaties	**Signature**
Algeria	2002
Syria	2001
Tunisia	1998

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