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THE ROLE OF ARBITRATION IN SECURING AN ISRAELI-EGYPTIAN ENERGY HUB

By
Hannah D. Goodwin*

I. INTRODUCTION

In 2015, Egypt and Israel submitted to arbitration under the International Chamber of Commerce (ICC).¹ Egypt had been forced to shut down the Arish-Ashkelon Pipeline, thus breaching their 2008 supply agreement.² In 2008, the Egyptian General Petroleum Corporation and Egyptian Natural Gas companies had originally agreed to supply the Israel Electric Corporation with almost forty percent of Israel's natural gas needs.³ However, continued terrorist attacks on the pipeline forced Egypt to shut down the pipeline in April of 2015.⁴ As a result of the shutdown, Egypt and Israel submitted to arbitration and as of June 2019, it was announced that Egypt had signed a settlement agreement to pay Israel a \$500 million fine in exchange for Israel dropping all remaining claims.⁵ Despite the 2015 dispute, the two nations have remained close energy partners, and as of 2008 have signed a \$15 billion deal for Israel to export gas to Egypt.⁶ Talks are currently underway for a new, underground pipeline to be built that would replace the old Arish-Ashkelon Pipeline and allow for higher volumes of natural gas to be shared at a time.⁷ However, the two nations and the pipeline's investors are facing concerns about continued terrorists threats from the Islamic State.⁸

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¹ Marcy Oster, *Egypt to pay \$500 million fine to Israel over failed natural gas deal*, JEWISH TELEGRAPHIC AGENCY (June 18, 2019), <https://www.jta.org/quick-reads/egypt-to-pay-500-million-fine-to-israel-over-failed-natural-gas-deal>.

² *Id.*

³ Jodi Sanger-Weaver, *Egypt, Israel, And The Arish-Ashkelon Pipeline Controversy*, PROSPECT JOURNAL (Jan. 24, 2012), <https://prospectjournal.org/2012/01/24/egypt-israel-and-the-arish-ashkelon-pipeline-controversy/>.

⁴ *Id.*

⁵ *Egypt in \$500m settlement with Israel Electric Corp*, ALJAZEERA (June 17, 2019), <https://www.aljazeera.com/ajimpact/egypt-500m-settlement-israel-electric-corp-190617073543578.html> [hereinafter "Settlement with Israel Electric Corp.].

⁶ Mirette Magdy, *Talks Underway to Build New Gas Pipeline to Egypt, Israel Says*, BLOOMBERG (Jan. 15, 2019), <https://www.bloomberg.com/news/articles/2019-01-15/talks-underway-to-build-new-gas-pipeline-to-egypt-israel-says>.

⁷ *Id.*

⁸ Jared Malsin, *Landmark Israel-Egypt Energy Alliance Hits Snags*, THE WALL STREET JOURNAL (Sept. 7, 2019), <https://www.wsj.com/articles/landmark-israel-egypt-energy-alliance-hits-snags-11567854001>.

This article will focus on Israel and Egypt's evolving relationship, as well as Egypt and Israel's plans for a new, underwater pipeline.⁹ Issues surrounding the construction and implementation of this energy deal will be detailed, as well as solutions for future energy deal dispute resolution methods. Specifically, this article will analyze the importance and benefits of arbitration in maintaining strong economic ties between Israel and Egypt. Because Israel and Egypt have previously submitted to arbitration and previously reached a settlement, it is vital that the two nations continue to submit to arbitration.¹⁰ In order for the two nations to become true energy hubs, lawsuits and other entanglements must be settled efficiently. Further, this article will highlight how Israel and Egypt's peace has been achieved through not only diplomatic peace agreements, but also their trade agreements.¹¹ The exportation and importation of oil and natural gas has pushed the two nations to remain in diplomatic contact and continued peace.¹² This article argues that this continued peace and economic relationship was made possible by arbitration. Additionally, this article expounds upon the idea of using third-party guarantees to promote effective peacemaking and trade agreements.¹³ Thus, this article notes the benefits of third-party guarantees, while also discussing their weaknesses. Ultimately, this article concludes that through the use of arbitration and the existence of third-party arbitral tribunals, energy deals will no longer be dependent upon third-party state guarantors. Specifically, because Israel and Egypt have an extensive history of both using third party guarantees and arbitrating disputes, this article will argue that Israel and Egypt's continued energy alliance is an indicator that arbitration will be vital to the future of peace agreement negotiations when energy sharing and energy trade issues are involved.¹⁴ Arbitration agreements are a viable alternative to third party guarantors and can provide nations with alternatives when negotiating for energy peace deals.

II. HISTORY

Following the 1967 Arab-Israeli War, tensions between Israel and Egypt were high.¹⁵ Israeli forces had assumed control of Egypt's oil fields in the Sinai Peninsula, at Abu-Rudeis, and with the help of third-party oil companies, Israel began producing oil from the Abu-Rudeis, Alma fields and using it to supply their own needs.¹⁶ The Arab-

⁹ *Id.*

¹⁰ Sanger-Weaver, *supra* note 3.

¹¹ *Id.*

¹² *Id.*

¹³ Ziv Rubinovitz & Elai Rettig, *Crude Peace: The Role of Oil Trade in the Israeli-Egyptian Peace Negotiations*, *International Studies Quarterly* 371 (2018) (discussing third party guarantors in energy peace deals).

¹⁴ Sanger-Weaver, *supra* note 3.

¹⁵ Rubinovitz & Rettig, *supra* note 13, at 375.

¹⁶ *Id.*

Israeli War ended in 1973 with a ceasefire that left the Abu-Rudeis fields under Israeli control.¹⁷ Israel was unwilling to relinquish the fields because of the energy security that they provided.¹⁸ However, the United States with the help of Secretary of State Henry Kissinger, was able to broker Disengagement Agreements between the two nations.¹⁹ Sinai II, the second agreement, provided Israel and Egypt with an official end to the war, and Israel returned control of the Abu-Rudeis fields to Egypt in March of 1975.²⁰ Simultaneously, Israel was importing oil according to a deal with Iran, as well as developing domestic oil fields.²¹ Additionally, the U.S. provided Israel with a guarantee to supply them with oil if they were to need it.²²

Later, in 1979 following the Islamic Revolution, Iran quickly cut off the oil supply to Israel.²³ Egypt's export economy had recovered extensively post-war due to its regained control of the Abu-Rudeis fields.²⁴ As the internal situation in Iran began to crumble, Israel realized that they would soon need a new oil supplier.²⁵ At the same time, Egypt realized that with the return of the seized oil fields they would have economic advantages and political power to use in negotiations with Israel.²⁶ Thus, Egypt's outlook towards Israel's demands for an oil trade became more positive.²⁷ As negotiations about the role of oil continued in the Israeli-Egyptian peace agreement, the U.S. entered the negotiation discussions.²⁸ Under President Carter, the U.S. provided Israel with the promise to maintain an oil supply for Israel.²⁹ Ultimately, Egypt agreed to sell oil to Israel, but the terms of the oil agreement were not to be fixed for any specific amount of years; the agreement would be an ongoing arrangement.³⁰ In return, the U.S.'s guarantee

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Sinai I agreement is not discussed because it concerned the transfer of Egyptian oil fields and was a general treaty to end the war.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 376.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 377.

²⁸ *Id.* at 378.

²⁹ *Id.*

³⁰ *Id.* at 379.

to Israel provided that in the event that Israel was unable to obtain oil on the international market, the U.S. would provide oil for sale to the nation.³¹ Secured with the U.S.'s guarantee, Israel and Egypt eventually signed a peace agreement, and Egypt began selling oil to Israel at the end of the 1970s.³² Through the 1980s until the early 2000s, Egypt continued to sell oil to Israel.³³ In 2003, the sale of oil stopped due to decreasing amounts of oil in Egypt's reserves.³⁴ Trade between the two nations did not stop entirely, however. The nations began to construct a shared pipeline in 2008 to share natural gas.³⁵

III. BACKGROUND

The East Mediterranean Gas Company, which owns the Arish-Ashkelon Pipeline, is jointly operated by Israeli and Egyptian gas companies.³⁶ In 2008, the Arish-Ashkelon Pipeline commenced operations and, under its original agreement, Egypt began to supply Israel with 1.7 billion cubic meters of natural gas per year.³⁷ When negotiations began between Israel and Egypt regarding the energy alliance, many Egyptian citizens were unhappy with then president Mubarak's decision to do business with Israel.³⁸ Many citizens believed that Mubarak was setting prices below the global market rate at the time, and in turn hurting the Egyptian economy.³⁹ Despite the controversy, Mubarak continued to export energy to the east Mediterranean region.⁴⁰ In fact, from 2008 until 2011, Egypt continually increased the amount of natural gas being exported to Israel.⁴¹ In 2010, Egypt provided almost forty percent of Israel's natural gas needs for electricity.⁴² However, the pipeline and Sinai Peninsula faced continuous attacks and bombings at the suspected hands of the Bedouin Islamists and other jihadists.⁴³ These terrorists attacks

³¹ *Id.*

³² *Id.*

³³ *Id.* at 380.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Sanger-Weaver, *supra* note 3.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Oster, *supra* note 1.

⁴³ Sanger-Weaver, *supra* note 3.

caused numerous shut downs of the pipeline.⁴⁴ Because of the continued attacks and the destabilization caused by the overthrow of president Mubarak, Egypt canceled the energy alliance with Israel in April of 2015.⁴⁵ Due to Egypt's failure to keep the pipeline operating without numerous interruptions, and its breach of the energy agreement, Israel brought a dispute to the International Chamber of Commerce ("ICC").⁴⁶ Originally, the ICC ordered Egypt to pay Israel Electric Corp almost \$1.8 billion in damages.⁴⁷ Egypt appealed this decision, and ultimately settled for a \$500 million fine to be paid over eight and half years to the Israeli electric company.⁴⁸ In exchange for Egypt's settlement, Israel dropped all remaining claims from the 2015 arbitration decision, as well as other claims from the 2012 shut down.⁴⁹

Despite arbitrating this dispute, Egypt and Israel continued to discuss and negotiate an expansion of their existing energy alliance.⁵⁰ Both Israel and Egypt maintained that they wanted to continue to create and foster an environment conducive to investment.⁵¹ Israel's Energy Minister Yuval Steinitz indicated that there were talks of building a potential new underwater gas pipeline, which would allow for more natural gas to flow between the two countries at the East Mediterranean Gas Forum in January 2019.⁵² Steinitz announced these plans for a new pipeline almost a year after Israel and Egypt had signed a \$15 billion deal for Israel to export natural gas to Egypt.⁵³ Natural gas had recently been found in the Tamar and Leviathan areas of Israel, giving Israel an abundance of natural gas for their own consumption and exports.⁵⁴ Ultimately, the new deal encompassed a ten-year agreement for Israeli companies Noble Energy Inc. and Delek Drilling-LP to export approximately 64 billion cubic meters of natural gas to Egypt

⁴⁴ *Id.*

⁴⁵ Blakely Whilden, *Navigating the Conflict Over Natural Gas Reserves in the Levant Basin of the Mediterranean Sea*, 39 N.C.J. INT'L L. & COM. REG. 927 (2013).

⁴⁶ Ron Bousso & Ari Rabinovitch, *Egypt, Israel inch closer to resolving gas arbitration: minister*, THOMSON REUTERS (Apr. 14, 2019), <https://www.reuters.com/article/us-israel-energy-egypt/egypt-israel-inch-closer-to-resolving-gas-arbitration-minister-idUSKCN1RQ08R>.

⁴⁷ *Id.*

⁴⁸ Oster, *supra* note 1.

⁴⁹ Settlement with Israel Electric Corp., *supra* note 5.

⁵⁰ Bousso & Rabinovitch, *supra* note 44.

⁵¹ Settlement with Israel Electric Corp., *supra* note 5.

⁵² Magdy, *supra* note 6.

⁵³ *Id.*

⁵⁴ David Wainer & Yaacov Benmeleh, *Israel-Egypt \$15 Billion Deal Boosts Energy Hub Prospects*, BLOOMBERG (Febr. 20, 2018), <https://www.bloomberg.com/news/articles/2018-02-20/israel-egypt-15-billion-deal-boosts-energy-hub-prospects>.

through the use of the underwater pipeline.⁵⁵ As of March 2019, Egypt was supposed to begin importing the Israeli natural gas; however, issues arose regarding the new pipeline and no gas was actually distributed.⁵⁶ Both Noble Energy Inc. and Delek Drilling-LP have noted concerns about the safety of the pipeline itself due to its location directly over the original pipeline in the Sinai Peninsula, which is surrounded by the Egyptian branch of the Islamic State.⁵⁷ The pipeline intends to be operational by January of 2020, but Egypt is still facing lawsuits stemming from the original 2012 shutdown.⁵⁸ A Thai company, an investor in the overall Eastern Mediterranean Gas Co., is suing Egypt claiming that it lost revenue during the 2012 shutdown.⁵⁹ The Eastern Mediterranean Gas Co. has described this lawsuit as a “headache” for Israel and Egypt’s own gas deal.⁶⁰ As Egypt faces the Thai lawsuit, Eastern Mediterranean Gas Co. investors and owners continue to question how the new pipeline will be safer than the last.⁶¹ As January 2020 looms closer, many wonder if the Israel-Egypt energy alliance will continue to be successful and prosperous.⁶²

IV. ANALYSIS

A. Arbitrators as Neutral, Third Parties

As previously discussed, Israel and Egypt submitted to arbitration after the 2015 pipeline shutdown.⁶³ While the dispute was being decided and settled, the nations’ investors continued discussions, showing the willingness of the two nations to bolster their economic ties.⁶⁴ Egypt’s acceptance of the fine imposed upon it, as well as its continued business deals with Israel show a determination to bolster the existing energy alliance. Because the two nations have previously submitted to arbitration, and have been successful at bringing a resolution to their dispute, they should continue to submit to arbitration in the future as disputes arise.

⁵⁵ *Id.*

⁵⁶ Jared Maslin, *Landmark Israel-Egypt Energy Alliance Hits Snags*, THE WALL STREET JOURNAL (Sept. 7, 2019), <https://www.wsj.com/articles/landmark-israel-egypt-energy-alliance-hits-snags-11567854001>.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Oster, *supra* note 1.

⁶⁴ *Id.*

In the context of foreign investors and state owned energy companies, arbitration becomes even more important. Under the current Israel-Egypt energy alliance, the main players are a private Egyptian firm, Dolphinus Holdings, Israeli state-owned Delek Drilling-LP, and Noble Energy Inc., a U.S. partner.⁶⁵ Without arbitration, these foreign investors would be substantially disadvantaged in seeking relief if they were required to litigate in the host investment state.⁶⁶ Even with two nations that have maintained relative peace, forced litigation in a host investment state is not ideal for investors.⁶⁷ In contrast, arbitration provides an impartial, third party avenue for resolving disputes that are multi-faceted and involve multiple parties of different nationalities.⁶⁸

Arbitration has many widely accepted benefits such as speed, flexibility, affordability, neutrality, and confidentiality.⁶⁹ During their previous 2015 ICC arbitration, Israel and Egypt were able to negotiate a new deal, even though they were in the midst of arbitration.⁷⁰ After an arbitral decision was rendered, Egypt appealed.⁷¹ However, instead of continuing to arbitrate or litigate, Egypt reached a settlement with Israel.⁷² This final result illustrates the flexibility of arbitration and how party consent is the ultimate goal.⁷³ In the future, it is important that Israel and Egypt continue to arbitrate so that their disputes can be resolved in a timely manner, without disrupting too much of the every day operations of the pipeline.

B. Stability Within An Un-Stable Environment

As evidenced by the numerous terrorist attacks on the East Mediterranean Gas Co. pipeline, Israel and Egypt's diplomatic relationship has not always been received warmly.⁷⁴ Even though the two nations made peace in the late 1970s, the Middle East as a whole has not been readily accepting of Israel in the ways that Egypt has.⁷⁵ The original

⁶⁵ *Israel/Egypt Economy: Pipeline Deal Consolidates Egypt's Role as Energy Hub*, EIU VIEWSWIRE (Oct. 4, 2018), <http://country.eiu.com/article.aspx?articleid=107204194> [hereinafter "Role as Energy Hub"].

⁶⁶ *Id.*

⁶⁷ David N. Cinotti & Gary S. Stein, *The Benefits of Arbitration for Business-to-Business Disputes*, PashmanStein (Aug. 28, 2018), <https://www.pashmanstein.com/the-benefits-of-arbitration-for-business-to-business-disputes>.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Bousso & Rabinovitch, *supra* note 18.

⁷¹ *Id.*

⁷² Settlement with Israel Electric Corp., *supra* note 5.

⁷³ Cinotti & Stein, *supra* note 65.

⁷⁴ Oster, *supra* note 1.

⁷⁵ Sanger-Weaver, *supra* note 3.

Israel-Egypt energy alliance was a huge step for both countries, allowing both to expand economic ties.⁷⁶ Additionally, large natural gas reserves were found off the coast of Israel recently and many experts believe that this abundance of resources will further promote peace in the region.⁷⁷ Egypt has also relied on Israeli forces in airstrikes to help support the fight against The Islamic State.⁷⁸

The current \$15 billion energy deal is even more important in the face of this cooperation. While some Egyptian citizens and groups like The Islamic State do not approve of the partnership, Egypt and Israel's ability to work together shows the potential for the Middle East's Mediterranean region to become a global energy producer, and Egypt and Israel are a central part of maintaining stability in this region. Their continued commitment to trade together sets a regional example for other nations to follow. The new pipeline also allows for more energy to be exchanged than the previous pipeline, with the potential to facilitate the transfer of seven billion cubic meters a year of natural gas.⁷⁹ Thus, foreign investors as well as Israel and Egypt should continue to abide by the ICC's previous arbitral award and pledge to continue to submit to arbitration.

The currently pending lawsuits from the Thai company are expected to take years to settle, and Israel has already had issues with the bureaucratic system slowing down the implementation of the new pipeline.⁸⁰ Arbitration would be a more efficient way to handle the disputes, while helping avoid energy interruptions. Litigation with multiple parties could take years, but the same parties could seek arbitration and potentially have a result within a year. Although no parties have attempted to litigate, it is important that with Egypt and Israel's new pipeline energy deal that investors continue to submit to arbitration.⁸¹ Within the context of arbitration and settlement discussions, foreign investors could voice their concerns over the susceptibility of the pipeline to terrorist attacks. Therefore, having a set plan to handle disputes and concerns is vital. Alternative dispute resolution methods, arbitration in particular, are especially helpful in dealing with continuing concerns and issues. By having a plan to submit to arbitration in the case of issue, foreign investors can be sure that they have an outlet in which to express their concerns and thus, protect their investments.

C. Parallels With the Chinese-Saudi Arabian Energy Alliance

⁷⁶ *Id.*

⁷⁷ Whilden, *supra* note 45.

⁷⁸ Maged Mandour, *Egypt's Evolving Alliance with Israel*, Carnegie Endowment for International Peace (Mar. 20, 2018), <https://carnegieendowment.org/sada/75840>.

⁷⁹ Role as Energy Hub, *supra* note 65.

⁸⁰ Maslin, *supra* note 53.

⁸¹ *Id.*

Similar to the Israel-Egypt energy alliance, China and Saudi Arabia have diplomatic economic ties when it comes to energy.⁸² China relies heavily on Saudi Arabia for its crude oil.⁸³ In 2018, China imported almost 70% of its total crude oil from varying nations.⁸⁴ While China does not actively release information on their own crude oil reserves, it is estimated that the remaining reserves within the nation itself would only supply the nation's needs for three weeks.⁸⁵ China has found itself dependent on other countries and has become one of the world's biggest importers of crude oil.⁸⁶ While the nation does recognize that its energy sources should be diversified, economist studies state that China's transition from crude oil to other renewable energy sources is hard because their transportation system consumes about 70% of China's total crude oil consumption.⁸⁷ As China's economy continues to grow, its need for crude oil and other energy sources will grow as well.⁸⁸

Recently, the Saudi Arabian oil fields were targeted in an air strike.⁸⁹ The attack on the Saudi Arabian company, Saudi Aramco, has been declared the most destructive strike in recent years.⁹⁰ The strike caused extensive damage, leaving Saudi Aramco no choice but to shut down production.⁹¹ These shutdowns cut Saudi oil production in half.⁹² Directly after these shutdowns, crude oil prices skyrocketed and China became very worried.⁹³ Hua Chunying, who works for the Chinese Ministry of Foreign Affairs, noted China's concern about the impact of the oil field attacks on how crude oil prices would struggle to stabilize.⁹⁴ The Saudi Aramco attacks highlighted Chinese dependency on importation of crude oil. However, the drone strikes also highlighted the more specific

⁸² Laura He, *China Depends on Foreign Oil. The Saudi Attack is a Wake-up Call*, CNN Business (Sep. 20, 2019), <https://www.cnn.com/2019/09/20/business/china-saudi-oil-attack-trade-war/index.html>.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Eric Schmitt, Julian E. Barnes, & David D. Kirkpatrick, *To Find Clues in Saudi Oil Attacks, U.S. Examines Missile and Drone Parts*, The New York Times (Sep. 17, 2019), <https://www.nytimes.com/2019/09/17/world/middleeast/iran-attacks-saudi-oil.html>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ He, *supra* note 76.

issue of protecting energy sharing pipelines and production zones from outside terrorist interference or unsupportive third parties. The Saudi Arabian oilfields were targeted much like the Sinai Peninsula pipeline was in 2015. China, Israel, and Egypt, through energy importation and exportation, have all opened themselves up to vulnerability in regards to their own economies. While the diplomatic relations fostered from energy sharing are important, it is also important that these pipelines and oil fields are protected from outside interference.

In the case of the Israeli-Egyptian agreement, there are private, foreign parties that have funded these operations, and foreign investors remain perplexed as to how to ensure that their investments are safe.⁹⁵ While there is no clear-cut way to ensure safety of investments, agreements to arbitrate can effectively ensure that foreign investors will be able to bring claims against foreign governments for their inability to prevent internal disturbances.⁹⁶ Arbitration also allows for state funded projects to successfully remain operational, and protect themselves from high damage judgments resulting from disruptions caused by third party, non-state actors. Overall, countries dependent on other states for their energy sources face vulnerability in supply due to instability within the Middle East. China and Saudi Arabia, much like Egypt and Israel, should establish an arbitral agreement.⁹⁷ With a commitment to arbitrate, foreign investors as well as state-owned oil companies could be assured of the predictability and stability of bringing all claims to arbitration. While the Saudi Aramco attacks have remained unclaimed by any group or state, the oil field attacks mirror the terrorist attack on the Egyptian-Israeli shared pipeline. Thus, by requiring China and Saudi Arabia to submit to arbitration, both states and their investors will be able to advocate for their interests. The Chinese-Saudi Arabian energy agreement could benefit from an arbitral agreement and the protection an agreement to arbitrate provides.

D. U.S. Involvement as a Third-Party Guarantor

Ziv Rubinovitz and Elai Rettig, in a study of the 1979 Israeli-Egyptian peace agreement, concluded that third-party guarantees to compensate for breaches in energy trade deals are essential for these deals to succeed.⁹⁸ As previously discussed above, the 1979 Israeli-Egyptian peace agreement involved an energy trade deal in which Egypt sold oil to Israel, with the U.S. guaranteeing Israel oil in the event of Egypt's breach.⁹⁹ Rubinovitz and Rettig argue that this guarantee is essential as a precursor to any peace negotiation of an energy deal to quell state fears over being too dependent on outside

⁹⁵ Sanger-Weaver, *supra* note 3.

⁹⁶ An example of foreign governments being unable to prevent internal disturbances is Egypt's prior inability to prevent the Islamic state from bombing the Arish-Ashkelon Pipeline.

⁹⁷ Whilden, *supra* note 45.

⁹⁸ Rubinovitz, *supra* note 9, at 371.

⁹⁹ Rubinovitz, *supra* note 9, at 378-79.

sources for vital commodities such as oil.¹⁰⁰ Their article points out that trade can be used as a weapon of war as well as a weapon of peace.¹⁰¹ Thus, they argue that the guarantee of third parties helps to alleviate the threat of the oil trade being used as a weapon of war.¹⁰² Instead of parties negotiating for their own peace agreements independently, the authors argue that third-party guarantors are needed to ensure that parties retain energy independence.¹⁰³ By allowing parties to trade independently with each other, they can build trust between each other, without fearing of abrupt energy shutdowns.¹⁰⁴

The authors continue on to a discussion of both liberal and realist views on commercial trade.¹⁰⁵ The liberal view is that trade between countries is a strong deterrent of war and aggression.¹⁰⁶ Nations that rely on others for their own economies are less likely to wage aggressive acts against other nations that contribute to their economy.¹⁰⁷ Alternatively, the realist view is that nations interdependence upon one another can lead to strained relations and even war.¹⁰⁸ Rubinovitz and Rettig agree with the realist view, and point out the obvious disadvantages of trade between nations.¹⁰⁹ They believe that “peace pipelines” and two countries sharing resources only amounts to dependence upon another state, something that most countries are very cautious of and unwilling to do.¹¹⁰ The authors point to several examples of failed pipelines and note that shared pipelines have not previously worked.¹¹¹ Instead, relations between two countries tend to remain the same after beginning to trade with each other.¹¹² Finally, they point out that countries are more likely to take the realist view when there is a possibility of their economy becoming too dependent on unstable, untrustworthy business partner nations.¹¹³ Thus, because the authors believe that nations are too skeptical to willingly make energy

¹⁰⁰ Rubinovitz, *supra* note 9, at 380.

¹⁰¹ Rubinovitz, *supra* note 9, at 381.

¹⁰² *Id.*

¹⁰³ Rubinovitz, *supra* note 9, at 371.

¹⁰⁴ *Id.*

¹⁰⁵ Rubinovitz, *supra* note 9, at 372.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Rubinovitz, *supra* note 9, at 373.

¹¹² *Id.*

¹¹³ *Id.*

agreements an instrument of peace, they contend that there must be a third party in these agreements in order to make energy agreements successful.¹¹⁴ Third parties allow nations to fully commit to energy agreements by offering nations guarantees in the form of financial and political support.¹¹⁵ Third party guarantees also aid in allowing nations to freely negotiate with each other.¹¹⁶ Countries can freely negotiate for their own energy needs without fear of being left without vital resources or becoming dependent on another country.¹¹⁷

For third party guarantees to be the most successful, the third party must be carefully chosen.¹¹⁸ Most importantly, the third party guarantor must be a neutral party.¹¹⁹ For obvious reasons, the guarantor must not be a political adversary of any party in order for the two negotiating parties to be able to contract freely and without coercion from a supporting state.¹²⁰ Further, guarantors must be geographically available to guarantee an energy agreement, or at least have the capabilities to facilitate the guarantees.¹²¹ The authors detail the often difficult and expensive methods that must be taken in order to transport natural gas and other energy sources; it is imperative that guarantor nations are able to cover these transportation costs, so that contracting parties are assured that energy needs will be met by one party or another.¹²² Additionally, the guarantor should have large enough energy resources to be able to make and deliver on its guarantee to provide a contracting state with resources.¹²³

E. Arbitration as Neutral, Third-Party Guarantor

As discussed above, energy deals between two nations have the potential to foster peace and cooperation between two states, as well as provide a breeding ground for distrust and economic dependency.¹²⁴ In the example of Israel and Egypt, energy trade

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Rubinovitz, *supra* note 9, at 374.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ “Geographically available” refers to a state’s ability to facilitate energy transfers due to its infrastructure and location in reference to the state in need.

¹²² Rubinovitz, *supra* note 9, at 374.

¹²³ *Id.*

¹²⁴ *Id.*

was a focal point of their 1979 peace agreement negotiations.¹²⁵ As the two nations struggled to agree on this peace agreement, Israel was confident in negotiating with Egypt and accepting their role as energy provider, because they had the backing of the United States as a guarantor.¹²⁶ In the event that Egypt defaulted on the peace trade agreement, the U.S. had guaranteed Israel that their energy needs would be met, thus eliminating the possibility that Israel would become solely dependent upon Egypt for their oil and natural gas needs.¹²⁷ The U.S. acted as Israel's original guarantor for a period of roughly five years.¹²⁸ However, recently, Israel has contracted with Egypt in order to trade natural resources on their own without guarantors.¹²⁹ The construction of the new underwater pipeline is evidence of the two nations' continued economic and diplomatic relationship. During this time, Israel and Egypt have had disputes and issues, but these disputes have been settled through arbitration.¹³⁰

As previously stated, Israel and Egypt submitted to arbitration in 2015 as a result of a dispute arising from Egypt's breach of the 2008 energy agreement.¹³¹ As recently as June of 2019, this dispute ended through a settlement agreement.¹³² Arguably, this arbitral award/settlement was very successful because the two countries continue to have a positive diplomatic relationship.¹³³ The countries continue to cooperate by upholding their 2018 energy deal to allow Israel to export natural gas to Egypt.¹³⁴ The two nations continuing forward with an existing deal, even in the face of continued claims in ICC arbitration, is evidence of a successful arbitral award/settlement. Although Israel was historically guaranteed by the United States, there is no evidence that the United States has formally offered to back Israel in their current natural gas deal with Egypt.¹³⁵ Without the U.S. acting as a guarantor, Israel and Egypt have successfully been able to maintain their peace, while remaining economic partners in the oil and natural gas realm. While past energy peace deals between Egypt and Israel may have required third party guarantors, the current need for third party interference in trade deals is dwindling.¹³⁶ In

¹²⁵ Rubinovitz, *supra* note 9, at 371.

¹²⁶ *Id.*

¹²⁷ Rubinovitz, *supra* note 9, at 375.

¹²⁸ *Id.*

¹²⁹ Oster, *supra* note 1.

¹³⁰ Oster, *supra* note 1.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Rubinovitz, *supra* note 9, at 373.

¹³⁶ *Id.*

the future, it is likely that third party guarantors will not even be needed. Instead, arbitration agreements can and should take the place of these third party guarantors.

Arbitration agreements are capable of facilitating the same guarantees that third parties facilitate. Because of contract freedom, nations could draft their own arbitration agreements in order to protect their own individual interests. This would be beneficial for states, as they could jointly decide to arbitrate all disputes in an agreed upon tribunal such as the ICC. By submitting to an arbitral tribunal, both parties would be assured that they are presenting their disputes to a neutral, third party. Further, arbitration agreements allow nations to legitimize their energy peace deals.¹³⁷ With a commitment to arbitrate all disputes, nations can have more assurance that their energy deal does not become a tool of war. When there is a set procedure for handling disputes, nations are less likely to take matters into their own hands and react in retaliatory ways, like shutting off oil and gas supplies. Most scholars suggest that nations becoming interdependent upon each other for supplies and income are more likely to fail in sustaining peace through energy deals.¹³⁸ However, it is highly unlikely that any nation would willingly become dependent upon a recent ally.¹³⁹ Even if a slight interdependence were to occur, an effective arbitration agreement would choose to safeguard each party from unexpected consequences, like a shut-off of supplies. Obviously, nothing can definitively prevent nations from breaching their energy trade deals, but an agreement to arbitrate would provide the harmed nation a way to receive compensation for their harm. Even though Egypt did breach its agreement with Israel, Israel was able to recover \$500 million through arbitration for its lost profits and other damages that occurred from the shut down of the shared pipeline.¹⁴⁰

Secondly, arbitration agreements provide an opportunity for both sides to negotiate. One precondition of choosing a successful third-party guarantor is allowing each side to agree on the identity of the third party.¹⁴¹ The ability to negotiate and reach agreements is essential to reaching a successful arbitration agreement. Thus, an arbitration agreement can effectively provide the same opportunity as a third-party guarantor can. Additionally, within an arbitration agreement, there would exist a mechanism for which each party would have an option to elect an arbitrator. Of course, each party could pick their own arbitrator, but it is likely that the two parties could reach an agreement when searching for neutral arbitrators within a certain tribunal.¹⁴² Ultimately, arbitration agreements provide a lot of flexibility, as well as security, to nations negotiating energy deals. This security comes in the form of neutrality and negotiation, allowing for each nation to provide for and protect its own interests.

¹³⁷ *Id.*

¹³⁸ Rubinovitz, *supra* note 9, at 374.

¹³⁹ *Id.*

¹⁴⁰ Oster, *supra* note 1.

¹⁴¹ Rubinovitz, *supra* note 9, at 371.

¹⁴² *Id.*

Finally, even though there are liberal and realist views on economic trade deals bringing peace, the Israeli-Egyptian peace agreement exemplifies both realist and liberal outcomes. The best-case scenario for these two nations would of course be the liberal outlook: peace through trade making.¹⁴³ This outcome has, so far, been the outcome of the peace agreement. On the one hand, the two nations' relationship has experienced some strain, such as from terrorist interference, but the two nations have ultimately been able to continue their pursuit of energy trade.¹⁴⁴ On the other hand, the realist outcome has the potential to overshadow the two nation's progress. As Israel and Egypt both expand their own markets, as well as their own natural reserves of gas and oil, there is potential for each nation to become solely dependent upon the other. Before the initial 2015 shutdown, Egypt was supplying Israel with close to forty percent of their total natural gas and oil consumption.¹⁴⁵ After the shutdown, Israel was obviously faced with the realization and reminder that dependence is an important factor to consider when participating in energy deals.¹⁴⁶ While the idea of interdependence on other nations to supply energy resources and needs is a legitimate fear for nations, becoming too untrusting is not beneficial either. Realists rely on the idea that nations are afraid of becoming vulnerable through trade with other nations, and contend that this vulnerability can lead to dismantling relations and ultimately lead to conflict.¹⁴⁷ While these are real possibilities, the majority of the untrustworthiness issues and fear of the unknown can be handled and addressed through the use of arbitration agreements.

F. Israel and Egypt As An Example to Other Nations

The Israeli-Egyptian energy trade is an excellent example to study when it comes to trade deals bringing peace. Ultimately, the two nations successfully maintained relative peace and preserved their diplomatic and economic relationship. When faced with disputes and issues over the breaching of the energy agreement, the two countries successfully navigated this issue and reached finality in the disagreement, through the use of arbitration.¹⁴⁸ Even though the nations have an extensive history of both disagreement, and peace talk negotiations, the nations continued economic ties point to a hopeful future of preserving diplomatic relations and healthy economic ties. With the help of a third party guarantor, the United States, Israel and Egypt were able to successfully negotiate a peace agreement that included an energy trade program.¹⁴⁹ The United States' guarantee

¹⁴³ Rubinovitz, *supra* note 9, at 372.

¹⁴⁴ Oster, *supra* note 1.

¹⁴⁵ Sanger-Weaver, *supra* note 3.

¹⁴⁶ *Id.*

¹⁴⁷ Rubinovitz, *supra* note 9, at 372.

¹⁴⁸ Sanger-Weaver, *supra* note 3.

¹⁴⁹ Rubinovitz, *supra* note 9, at 373.

provided the building block for the two nations to facilitate and foster trust building.¹⁵⁰ While the U.S. did play a pivotal role in the creation of the Israeli-Egyptian peace agreement, it is likely that arbitration or other dispute resolution methods will be able to provide the same type of assurances to nations attempting to reach peace through economic trade agreements. In addition to providing the same benefits as a third-party guarantor, arbitration is preferable as it allows nations to contract with one another and devise agreements and treaties that work in their interests and to their benefit. By bypassing third-party guarantors, nations can contract with one another without the interference of larger foreign powers that may use guarantees to serve their own needs. Arbitration agreements will provide nations with the ultimate third-party, neutral, guarantee by eliminating guarantor's possible biases and their one-sided guarantees.

V. CONCLUSION

While Israel and Egypt continue to deepen their economic ties and diplomatic relations, it is important for both nations to continue to work together to participate in the arbitral system, which will foster this diplomatic spirit. The Middle East has faced and will continue to face much instability, politically and economically. However, the Middle East, through the help of Israel and Egypt's relationship, has the potential to be a major energy hub. In order to create this energy hub, Israel and Egypt should continue to submit to arbitration and use it as their primary dispute resolution method. Through arbitration, Israel's privately and state-owned companies can negotiate with Egypt's private energy company and not worry about a biased result. Foreign investors within each of these companies can also bring claims within arbitration, allowing them more security in their investment, instead of relying on state owned and larger companies to represent their interests in litigation.

Additionally, arbitration agreements will continue to become more popular than litigation among nations that are negotiating for energy peace deals. With arbitral agreements, states can be sure that they are submitting to an impartial tribunal that will facilitate their dispute resolution. Further, by negotiating an arbitration agreement, states as well as foreign investors can bring disputes to a tribunal in order for all parties to seek relief. Overall, states and investors have the flexibility within arbitration to protect and advocate for their own interests. By choosing to draft an arbitration agreement, states can be assured that they will have a procedure for handling disputes that will provide them with an impartial, inclusive, and flexible system that will provide them with the security they need.

¹⁵⁰ *Id.*