Israel Law Review (2025), **58**, 86–123
doi:10.1017/S0021223724000177

CAMBRIDGE UNIVERSITY PRESS

ARTICLE

The East Mediterranean Gas Forum as a Platform for a Regional Energy Treaty

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(First published online 27 February 2025)

Abstract

This article discusses the East Mediterranean Gas Forum (EMGF), a regional energy organisation formed in 2020. It highlights the organisation's significance in promoting cooperation in the East Mediterranean energy sector but notes the absence of a robust legal framework, governance structure and binding rules. The lack of mechanisms for enforcing decisions among members is also a concern. To address these shortcomings, the article proposes the adoption of a regional energy treaty.

The suggested treaty holds the potential of transforming the EMGF into a potent and legally binding energy organisation. By establishing a comprehensive legal foundation, the treaty could foster energy cooperation, promote sustainable energy initiatives, and create a secure investment environment, thereby stimulating economic growth across the Mediterranean region. Moreover, implementation of the treaty could play a crucial role in ensuring energy security within the East Mediterranean. It has the capacity to help in mediating and resolving disputes concerning maritime boundaries, transit and political issues that pose threats to the stability and effectiveness of the EMGF.

For a regional energy treaty to be effective, it should encompass provisions concerning transit, trade, investment and environmental protection. The inclusion of decision-making bodies and robust dispute settlement mechanisms is essential to encourage investment, facilitate unhindered transit and consolidate the stature of the EMGF as a pre-eminent energy organisation.

Keywords: international law; regional organisation; energy law; East Mediterranean Regional Energy Treaty

1. Introduction

Over the last decade, the Eastern Mediterranean has become an important power in the global natural gas industry as a result of major discoveries of natural gas in

the region.[1] Only between 2009 and 2013, Israel made major discoveries of significant gas fields such as Tamar, Leviathan, Tanin, Karish and a number of smaller fields. The most recent discovery of the Athena field located offshore from Israel was confirmed in May 2022.[2] In 2010, the value of the potential of the newly discovered natural gas reserves was estimated at USD 717 billion.[3]

Apart from stimulating global interest in exploration of the region, the discovery of such vast natural gas resources has had considerable geostrategic significance. These discoveries soon led to maritime territorial disputes, most of which are still unresolved. In order to provide a forum for discussion and cooperation with regard to newly faced energy issues in the region, the East Mediterranean Gas Forum (EMGF, or the Forum) was launched in January 2019.[4] In 2020, the Forum was granted official status as an energy organisation,[5] thus establishing common grounds in gas production, consumption and transit in the region. In 2022, two EMGF members – Israel and Egypt – agreed to cooperate in the export of natural gas to Europe, thus contributing to establishing an efficient and competitive regional East Mediterranean gas market.[6] Furthermore, in October 2023, Israel's Ministry of Energy and Infrastructure announced the winning bidders for two zones in its fourth Offshore Bid Round; among them are British multinational gas and oil firm BP, Italian energy giant Eni, and SOCAR from Azerbaijan, all new players in the Israeli gas market.[7] These developments reflect the growing interest in the energy potential of the region and highlight the need for regional cooperation and a common legal tool to regulate these activities.

However, having performed a crucial role in developing a regional gas market and opening it to investors, the EMGF has not resolved all the problems, which include

[1] Shin Sang Yoon and Kim Taehwan, 'Eastern Mediterranean Gas Discoveries: Local and Global Impact' (2021) 28 *Middle East Policy* 135.

[2] US Energy Information Administration, 'Independent Statistics and Analysis, Eastern Mediterranean Energy', 16 November 2022, 4–8, https://www.eia.gov/international/content/analysis/regions_of_interest/Eastern_Mediterranean/pdf/eastern-mediterranean.pdf.

[3] Roby Nathanson and Ro'ee Levy (eds), 'Natural Gas in the Eastern Mediterranean: Casus Belli or Chance for Regional Cooperation?', Institute for National Security Studies, November 2012, 12, https://library.fes.de/pdf-files/bueros/israel/09591.pdf.

[4] Cairo Declaration Establishing the East Mediterranean Gas Forum (entered into force 14 January 2019), https://www.pio.gov.cy/assets/pdf/EMGF%20Declaration%20final%2014Jan.pdf.

[5] Statute of the East Mediterranean Gas Forum (entered into force 22 September 2020), https://www.parliament.cy/images/media/redirectfile/EMGF%20signed%20Statute_%CE%9C%CE%AD%CF%81%CE%BF%CF%82%20%CE%99%20%CE%9D%CE%BF%CE%BC%CE%BF%CF%83%CF%87%CE%B5%CE%B4%CE%AF%CE%BF%CF%85.pdf; EMGF, 'EMGF Statute Signing – September 22nd, 2020', 22 September 2020, https://emgf.org/pages/viewcontent/articalid.aspx?ArtID=2053.

[6] Memorandum of Understanding on Cooperation related to Trade, Transport, and Export of Natural Gas to the European Union between the European Union, the Arab Republic of Egypt, and the State of Israel (entered into force 17 June 2022), https://energy.ec.europa.eu/publications/eu-egypt-israel-memorandum-understanding_en.

[7] Ministry of Energy and Infrastructure (Israel), '4th Offshore Bid Round', https://www.energy-sea.gov.il/home/obr4. It should be noted that these bids were submitted before the outbreak of the war in Gaza. If such tenders were to occur now, they would be likely to face significant challenges owing to heightened geopolitical tensions. This could potentially result in reduced investor interest and postponed tender results. Nevertheless, the implementation of a robust legal framework for investor protection could help to mitigate risk perception and facilitate sustained investment interest.

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

disputes over maritime borders and drilling rights, as well as political conflicts in the Eastern Mediterranean. Therefore, the objective of this study is to propose the establishment of a legal framework outlining the parties' rights and obligations with a view to creating a sustainable gas market that could attract foreign investors and eliminate commercial risks, in particular, in view of the war in Gaza and ensuing regional instability. This legal framework could be designed as a regional energy treaty and include provisions found in other energy and trade agreements. Being used in parallel with the EMGF principles, it can contribute to the stability, economic growth and sustainable development of the Eastern Mediterranean region.

The authors are well aware of the political obstacles that are likely to stand in the way of reaching the consensus required to establish a comprehensive energy treaty in a region plagued by instability and military conflicts. Nevertheless, we see it as our duty as legal academics to 'throw deep' (to use an American football idiom),[8] proposing what we think is required and beneficial for the region, while making our case with rational arguments, including those that address the practical difficulties and how they can be overcome. Hopefully, the ball thrown deep will be caught by decision makers, if not in all instances, at least in some.

2. The East Mediterranean Gas Forum: Regional conflicts and prospects

2.1. Overview of and prospects for the East Mediterranean Gas Forum

Discovery of natural gas in the exclusive economic zones (EEZ) of countries such as Egypt, Israel and Cyprus over the last decades played a pivotal role in the establishment of the EMGF. Apart from opportunities, these discoveries also posed significant challenges for the region, including energy security issues, risks of geopolitical tensions, and conflicts over gas reserves and maritime boundaries in the Eastern Mediterranean.[9] In order to mitigate these risks and challenges, the Forum was established as a platform to foster dialogue between gas producers, gas consumers and gas transit countries.[10]

The first effort to establish the EMGF was made by Egypt in 2018.[11] On 14 January 2019, following the Egyptian initiative, there was a meeting of energy ministers in

[8] Apparently, the term was first used by former NFL quarterback, Kenny 'Snake' Stabler, and 'imported' into the legal academic field by my mentor, Professor Michael J Trebilcock, in his article 'Throwing Deep: Trade Remedy Laws in a First-Best World' in Michael J Trebilcock and Robert C York (eds), *Fair Exchange: Reforming Trade Remedy Laws* (CD Howe Institute 1990).

[9] Sang Yoon and Taehwan (n 1) 142–44; Shin Sang Yoon and Kim Taehwan, 'Competition or Cooperation? The Geopolitics of Gas Discovery in the Eastern Mediterranean Sea' (2021) 74 *Energy Research & Social Science*, article 101983; Stefy Joseph and Aneetta Thomas Peedikayil, 'The East Mediterranean Gas Forum: Convergence of Regional and Energy Security Concerns' (2023) 11 *Austral: Brazilian Journal of Strategy & International Relations* 53.

[10] See Gabriel Mitchell, 'The Eastern Mediterranean Gas Forum: Cooperation in the Shadow of Competition', The Israeli Institute for Regional Foreign Policies (MITVIM), September 2020, https://mitvim.org.il/wp-content/uploads/Gabriel-Mitchell-The-Eastern-Mediterranean-Gas-Forum-September-2020.pdf.

[11] Ofir Winter and Gallia Lindenstrauss, 'Beyond Energy: The Significance of the Eastern Mediterranean Gas Forum', Institute for National Security Studies (INSS), Insight No 1133, 3 February 2019, https://www.inss.org.il/wp-content/uploads/2019/02/No.-1133.pdf.

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

Cairo – those from Cyprus, Greece, Israel, Italy, Jordan, and a representative from the Palestinian Authority. The participants discussed the idea of creating the EMGF as an energy organisation[12] and reached agreement to that effect. They signed the Cairo Declaration establishing the East Mediterranean Gas Forum.[13] This declaration set up the objectives and principles of operation for the EMGF, and directed its senior officials to commence talks on the EMGF structure with a view to agreeing the details.

The objective was to establish an energy organisation that adhered to international law and upheld the natural resource rights of its members. The EMGF was designed to support members' efforts to monetise their reserves, utilise their existing infrastructure, promote the benefit and welfare of their people, develop a regional gas market, ensure security of supply and demand, foster cooperation, support producing countries, help consumer countries in securing their needs, and ensure the environmental sustainability of gas exploration, production and transportation.[14]

The result of a series of meetings and negotiations with third parties interested in joining the Forum or participating as observers was the Statute of the Forum. It was signed on 22 September 2020 – thus officially establishing the EMGF as a regional intergovernmental organisation.[15] The Forum's founding members included Egypt, Cyprus, Greece, Israel, Italy, Jordan, and Palestine, with Cairo established as its headquarters. However, full membership of the EMGF is available to any state in the Eastern Mediterranean region. Furthermore, although strictly speaking France is not located in the Eastern Mediterranean, its application for membership was accepted and it is now a fully fledged member of the EMGF. The United States (US), the European Union (EU) and the World Bank Group also applied for observer status.[16] Today the EMGF has eight full members – Cyprus, Egypt, France, Greece, Israel, Italy, Jordan, Palestine – and three observers – the US, the EU and the World Bank

[12] Mona Sukkarieh, 'The East Mediterranean Gas Forum: Regional Cooperation Amid Conflicting Interests', National Resource Governance Institute, February 2021, 2–4, https://resourcegovernance.org/sites/default/files/documents/the_east_mediterranean_gas_forum_regional_cooperation_amid_conflicting_interests_0.pdf.

[13] Cairo Declaration (n 4).

[14] ibid.

[15] Statute of the EMGF (n 5) art 1. The Statute provides a detailed institutional framework among its members. This framework establishes the EMGF as a formal intergovernmental organisation with defined objectives, governance structures and decision-making procedures. Additionally, it includes provisions on membership, financing, legal status and other operational modalities that were absent in the Cairo Declaration (n 4).

[16] At the Fourth Ministerial Meeting of the EMGF, the US applied to join the Forum with 'observer' status; at the Fifth Ministerial Meeting of the EMGF, the EU and the World Bank also applied to join as 'observers'. These requests were approved at the respective meetings. See Athens News Agency, 'US Submits Application to Join Eastern Mediterranean Gas Forum', *The National Herald*, 26 January 2021, https://www.thenationalherald.com/us-submits-application-to-join-eastern-mediterranean-gas-forum; EMGF, '4th EMGF Ministerial Meeting – March 9th, 2021', https://emgf.org/pages/viewcontent/articalid.aspx?ArtID=2054; EMGF, '5th EMGF Ministerial Meeting – July 6th, 2021', https://emgf.org/pages/viewcontent/articalid.aspx?ArtID=2055; Council of the EU, Decision 8382/21, 'Participation of the European Union as Permanent Observer in the East Mediterranean Gas Forum (EMGF) – Approval', 7 May 2021, https://data.consilium.europa.eu/doc/document/ST-8382-2021-INIT/en/pdf.

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

Group.[17] Conspicuously absent from the Forum are the remaining states surrounding the East Mediterranean: Lebanon, Libya, Syria and Turkey. Lebanon and Libya do not have diplomatic relations with Israel since its establishment in 1948, and Syria and Israel are in an almost perpetual state of war.[18] As for Turkey, it has ongoing border disputes with both Greece and Cyprus, and has opposed the establishment of the EMGF, arguing that it ignores Turkish interests and violates its maritime rights in the region.[19] Additionally, relations between Egypt, which was chosen to host the Forum's headquarters, and Turkey have been strained since the 2013 overthrow of the Muslim Brotherhood government in Egypt, when its ambassador was expelled from Egypt.[20] Turkey's ruling party supported this government and has generally taken opposing stances regarding issues of democracy, political Islam and regional influence with the current Egyptian government.[21]

Apart from the EMGF founding members, the organisation also facilitates participation from the private sector through its Gas Industry Advisory Committee (the Advisory Committee), which engages in various committees to discuss technical

[17] For a full list of the EMGF members see EMGF, 'Member Countries', https://emgf.org/pages/emgf/all_members.aspx; EMGF, 'Observers', https://emgf.org/pages/emgf/all_observers.aspx. See also Agreement between International Bank for Reconstruction and Development, and East Mediterranean Gas Forum (EMGF) for Observer Membership Contribution Fee in relation to the EMGF (entered into force 3 March 2022), 6, https://documents1.worldbank.org/curated/en/607431646645935242/pdf/Official-Documents-Agreement-between-International-Bank-for-Reconstruction-and-Development-and-East-Mediterranean-Gas-Forum-EMGF-for-Observer-Membership-Contribution-Fee-in-Relation-to-the-EMGF.pdf.

[18] See Ministry of Foreign Affairs (Israel), 'List of Countries and Status of Diplomatic Relations with Israel', Foreign Policy, 15 February 2023, https://www.gov.il/en/pages/israeli_relations; see also Eyal Zisser, 'Israel in the Middle East 75 Years On' (2023) 29(3) *Israel Affairs* 459, 460–67.

[19] Serhat Süha Çubukçuoğlu, 'Energy Alliance in a Turbulent Region: What Are Implications of the East Med Gas Forum for Turkey?' (2021) 1 *Türkiye Politik Çalışmalar Dergisi* 13.

[20] 'Egypt Expels Turkish Ambassador', *BBC News*, 23 November 2013, https://www.bbc.com/news/world-middle-east-25066115.

[21] The recent 2024 summit between Turkish President Recep Tayyip Erdogan and Egyptian President Abdel Fattah el-Sisi in Cairo signals a potential shift in the long-standing rift between the two nations. In 2013, Egypt designated the Muslim Brotherhood as a terrorist organisation, while Turkey has supported the group in its pursuit of political Islam. This ideological gap has fuelled a rivalry for regional dominance. However, the diplomatic overtures at the summit indicate a willingness to mend ties between the two nations. On the one hand, the potential normalisation of relationships between these states could offer benefits for the EMGF, prompting Turkey's interest in participating in the Forum. On the other hand, Turkey's opposition to Israel on the international stage during the Gaza war may be one reason why it seeks to improve relations with Egypt. This could involve leveraging influence in the Gaza war, possibly through collaboration on the Egypt-Gaza borders. At the same time, enhanced relations between Turkey and Egypt could pose a threat to the Israeli energy sector. Turkey might wield influence to disrupt energy projects, raising security concerns for energy infrastructure. On a separate note, the absence of a legal framework to safeguard energy security among EMGF members potentially raises significant challenges for stability and cooperation in the region. Hence, it is crucial for the EMGF to prioritise the development and implementation of a comprehensive legal framework to mitigate these potential challenges. See Borzou Daragahi, 'Turkey and Egypt Bury the Hatchet, Marking an End to Emerging Third Axis in the Middle East', Atlantic Council, 15 March 2024, https://www.atlanticcouncil.org/blogs/menasource/turkey-egypt-diplomatic-relations-partnership; see also Mohamed ELDoh, 'Erdogan in Egypt: Strategic Implications for Turkey and Egypt', *Geopolitical Monitor*, 16 February 2024, https://www.geopoliticalmonitor.com/erdogan-in-egypt-strategic-implications-for-turkey-and-egypt.

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

matters.[22] In this context, multinational energy giants – such as Total, BP, Chevron, ExxonMobil and ENI – have already obtained licences to extract gas in the countries of the region and are among the members of the Advisory Committee established as part of the EMGF.[23] These companies are actively involved in the exploration and development of the gas fields in the EEZs of Egypt, Israel, Cyprus and other countries in the area.[24]

Extraction and transportation of natural gas from the Mediterranean Sea are the subjects of lively discussions today, both because of the discovery of large reserves of natural gas in the region, and because of the war between Ukraine and Russia, which resulted in a major energy crisis in Europe. As one of the ways to resolve the energy crisis, Europe has chosen to import natural gas from the Mediterranean, as evidenced by the Memorandum of Understanding signed during a meeting of the EMGF in Cairo in 2022 between the European Union, Egypt and Israel on cooperation related to trade, transport and export of natural gas to the EU.[25] This memorandum illustrates the importance of the Forum as a platform for promoting energy cooperation and highlights the potential for the organisation to play a key role in facilitating the export of natural gas from the Mediterranean to the EU. Given the increasing demand for natural gas in Europe and the significant reserves of this resource in the region, EMGF activities are expected to become even more critical in the coming years.

Despite being an important initiative aimed at developing regional energy, the EMGF has also faced some challenges. One of the key challenges is that the Forum has almost no legally binding obligations and it does not set the rules for how its members are to act in this field of energy exploration, trade and transit in the Eastern Mediterranean. Furthermore, the absence of a dispute settlement mechanism could raise questions about the Forum's effectiveness in resolving potential conflicts or disputes among its members regarding energy activities.[26] All this may limit its

[22] This committee serves as a permanent platform under the oversight of the EMGF for engagement and dialogue among the private sector, governments, state-owned entities, international financial institutions, gas business enterprises and other entities that conduct natural gas-related activities in the East Mediterranean region. For a full list of its members see EMGF, 'Overview', https://emgf.org/pages/about/GIAC_group.aspx.

[23] See US Energy Information Administration (n 2) 6–8 (describing the natural gas discoveries and the involvement of multinational energy companies in regional natural gas exploration); Ministry of Energy and Infrastructure (Israel), 'The Structure of the Energy Sector in Israel', March 2021, 7–9 (describing natural gas exploration and production companies operating in Israel), https://www.gov.il/BlobFolder/reports/israel_energy_sector/en/israel_energy_sector_en.pdf; see also Middle East Political and Economic Institute, 'East Mediterranean Gas Forum Becomes an Organisation', https://mepei.com/east-mediterranean-gas-forum-becomes-an-organisation.

[24] ibid. See also Glen Segell, 'Israel's Natural Gas Sector's First Year with the Chevron Corporation' (2022) 28 *Israel Affairs* 661, 671–73.

[25] See Memorandum of Understanding on Cooperation (n 6).

[26] Statute of the EMGF (n 5) art 27 (which is the closest to a dispute settlement provision and provides: 'Any differences that may arise regarding the interpretation and application of the provisions of this Statute shall be settled by negotiations and consultations among the Member Countries with the bodies of the Forum'). The EMGF, even in its current form, could benefit from a more developed mechanism, such as mediation or 'good offices' procedures by, for instance, the Secretary-General, in relation to disagreements between its parties on regional energy issues. On a separate note, although Israel initially opposed establishing a binding institutional legal framework for the EMGF, its eventual agreement and

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ability to regulate energy issues. There are, of course, the general norms of customary international law, but these are insufficient to resolve all the energy issues arising in the Mediterranean and to ensure the achievement of all EMGF goals.[27] As for the World Trade Organization (WTO) and its agreements, while they do address some of the issues arising in relation to energy trade, they are not specific to energy and often fail to address the unique needs and issues arising within the energy sector.[28] There is also a lack of comprehensive protection of foreign investment in the energy sector because many members of the EMGF do not have bilateral investment treaties (BITs) in force between themselves.[29]

As a result, the EMGF is now more of a forum to discuss energy issues than a strong organisation that can influence the regulation of the energy sector in the region.[30] Decisions of the EMGF can be taken only by consensus,[31] meaning that the Forum cannot regulate its members' activities towards creating a sustainable energy market. For the EMGF to become more effective, it needs to be transformed into a strong organisation that sets rules and can influence decision making in the energy

establishment of such framework by signing the Statute of the EMGF bolstered the organisation's international credibility. Thus, adopting binding rules addressing critical issues in sustainable energy trade and development, while reducing reliance on geopolitical tensions, will enhance energy security for all EMGF members, and could attract new members from the Eastern Mediterranean. See Nimrod Goren, 'Gas Forum a Diplomatic Opportunity for Israel', *The Jerusalem Post*, 8 February 2020, https://www.jpost.com/Opinion/Gas-forum-a-diplomatic-opportunity-for-Israel-616948.

[27] Norms of customary international law are quite rudimentary in this context and consist mainly of customary norms of the law of the sea, as well as some basic norms in relation to foreign investment. There is very little in relation to international trade in energy resources, where most of the norms originate from treaties. In the absence of an express agreement between the EMGF members, there is also no legal forum where disputes can be resolved, and customary international law norms enforced. To achieve a strong legal basis for the regional cooperation envisaged by the EMGF, more specific binding provisions are needed. For analysis of customary international law see Panos Merkouris, Jörg Kammerhofer and Noora Arajärvi (eds), *The Theory, Practice, and Interpretation of Customary International Law* (Cambridge University Press 2022).

[28] Historically, neither the General Agreement on Tariffs and Trade (GATT) (n 112) nor the WTO Agreement were considered as having a direct bearing on international energy trade. Trade in hydrocarbons, fissionable materials and cross-border transmission of electricity took place largely outside the multilateral trading system. See Timothy J Richards and Lawrence Herman, 'Relationship between International Trade and Energy', World Trade Organization, https://www.wto.org/english/res_e/publications_e/wtr10_richards_herman_e.htm; Yulia Selivanova, 'Trade in Energy: Challenges for International Trade Regulation', World Trade Organization, https://www.wto.org/english/res_e/publications_e/wtr10_forum_e/wtr10_11june10_e.htm; see also Anna-Alexandra Marhold, 'The Current WTO Legal Framework Relevant to Energy', *Energy in International Trade Law: Concepts, Regulation and Changing Markets* (Cambridge University Press 2021) 66; Wen-Chen Shih, 'Energy Security, GATT/WTO, and Regional Agreements' (2009) 49 *Natural Resources Journal* 433. Furthermore, some members of the EMGF (such as Palestine) are not parties to the WTO. The relevance of the WTO is also discussed further; see text at nn 118–24.

[29] For instance, the only EMGF member that has a BIT with Israel is Cyprus, with no mutually ratified BITs between Israel and other EMGF members: UNCTAD, 'Bilateral Investment Treaties (BITs) with Israel', Investment Policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements/countries/102/israel; see also text at nn 139–45.

[30] Charles Ellinas, 'Energy and Geopolitics in the Eastern Mediterranean', Atlantic Council, 4 February 2022, 3, https://21stcenturywire.com/wp-content/uploads/2022/10/AC_EastMediterranean.pdf.

[31] See Statute of the EMGF (n 5) art 7(4) (regarding decisions of the Ministerial Meeting), and art 12(4) (regarding decisions of the Executive Board).

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

field. To achieve this, its members need to make certain efforts and agree a common strategy for developing the organisation.

However, despite these challenges, the EMGF still represents a significant initiative that could become a platform for creating a regional energy treaty with a dispute settlement mechanism. Such a treaty could help to ensure stability and security in the Eastern Mediterranean energy sector, which would help to attract much needed investment in this region and improve cooperation among members. By providing the EMGF with the necessary legal framework, the treaty would give more weight to its decisions. Additionally, the inclusion of a dispute settlement mechanism could enhance the effectiveness of the EMGF coordinating efforts in the energy sector. Moreover, a regional legally binding energy treaty could strengthen the EMGF as an organisation, making it more capable of addressing energy issues in the region, and less susceptible to political risks. Members would have legal rights and obligations that would be difficult to violate in the event of any conflict. The evolution from a non-binding platform for dialogue and cooperation to a binding regional energy treaty would be reminiscent of the Energy Charter Treaty (ECT), a treaty with extensive binding obligations, which grew out of the European Energy Charter, a political declaration that created a forum for discussion and negotiation.[32]

2.2. *The EMGF and maritime boundary disputes*

One of the most pressing issues in the Eastern Mediterranean region is disputes over maritime borders. The area's richness in natural gas reserves has led to conflicts between neighbouring countries regarding their EEZs and maritime boundaries.

There are two types of territorial dispute: (i) those relating to sovereignty over disputed land, and (ii) those focused on maritime borders. In many cases, disputes involve claims of both types. Land disputes in the maritime context often concern offshore islands and are governed by international conventions, customary international law and general legal principles.[33] Maritime border disputes, on the other hand, are subject to the law of the sea.[34]

Much of the international law of the sea is codified in the 1982 United Nations Convention on the Law of the Sea (UNCLOS)[35] and the 1994 Agreement relating to the

[32] The European Energy Charter is a political declaration signed in 1991, of principles for international energy cooperation in trade, transit and investment. It served as the basis for the Energy Charter Treaty (ECT), which was signed in 1994 and came into effect in 1998. The ECT is a legally binding multilateral agreement covering investment promotion and protection, trade, transit, energy efficiency and dispute resolution. The marked difference, however, between the EMGF and the European Energy Charter is that the latter included in its text the intention to negotiate a legally binding treaty, which then became the ECT, something not found in the Statute of the EMGF. See International Energy Charter, 'The European Energy Charter', https://www.energycharter.org/process/european-energy-charter-1991; see also the Energy Charter Treaty (entered into force in April 1998), https://www.energycharter.org/fileadmin/DocumentsMedia/Legal/1994_ECT.pdf; cf Statute of the EMGF (n 5).

[33] Statute of the International Court of Justice (entered into force 24 October 1945) 1 UNTS XVI (ICJ Statute), art 38(1).

[34] Roudi Baroudi, 'Unlocking Peace and Prosperity: How to Resolve Maritime Border Disputes in the Eastern Mediterranean Sea?', Issam Fares Institute for Public Policy, March 2020, 8–9, https://www.aub.edu.lb/ifi/Documents/publications/research_reports/2019-2020/20200330_unlocking_peace_and_prosperity.pdf.

[35] United Nations Convention on the Law of the Sea (entered into force 16 November 1994) (UNCLOS) 1833 UNTS 3.

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Implementation of Part XI (Agreement)[36] of the Convention. The UNCLOS also established the International Tribunal for the Law of the Sea (ITLOS) as one of the means to resolve disputes between its parties by binding adjudication.[37] However, not all the disputes arising in the Eastern Mediterranean can be resolved by the ITLOS, as some countries in the region – including Turkey, Syria and Israel – have not signed or ratified the UNCLOS. This makes it difficult to resolve disagreements on maritime boundaries or other issues in the region using the rules established by the law of the sea. The absence of clearly defined maritime borders may lead to uncertainty and tension between these countries and neighbouring states regarding their territorial seas, EEZs and continental shelves. As a result, Eastern Mediterranean countries are often forced to seek alternative methods for resolving maritime disputes, such as negotiation or mediation. While these methods are essential steps in resolving disputes, the process may be complex and time-consuming and does not always lead to resolution of the dispute.[38] The absence of a formal adjudication mechanism, if the parties were unable to resolve their dispute peacefully, could prolong the resolution process.

Another problem facing the Eastern Mediterranean region is rooted in the fact that, to date, only a few countries in the region have found it necessary to conclude agreements on their EEZs and continental shelves. Cyprus and Egypt were the first Mediterranean countries to sign an agreement on the delimitation of their EEZs and thereby establish the boundaries of their respective EEZs (in 2003).[39] The next such agreement was signed by Cyprus and Lebanon in 2007, although the agreement has not been ratified by Lebanon and therefore has not entered into force. The agreement has also been strongly criticised by the Turkish authorities on the grounds that the Greek Cypriot Administration of Southern Cyprus did not represent the entire population, and that the Turkish Republic of Northern Cyprus also had claims to the surrounding maritime areas.[40]

Israel signed its first Agreement on the Delimitation of the Exclusive Economic Zone with Cyprus in December 2010, after the discovery of significant gas reserves

[36] Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (entered into force 28 July 1996) 1836 UNTS 41.

[37] For analysis of the ITLOS, its evolution and limitations, see Kriangsak Kittichaisaree, *The International Tribunal for the Law of the Sea* (Oxford University Press 2021).

[38] See United Nations, Guidance for Effective Mediation (September 2012), https://www.mfa.gov.tr/site_media/html/BM_Etkin_Arabuluculuk_Rehberi_EN.pdf; Organization for Security and Co-operation in Europe (OSCE), 'Guide on Non-military Confidence-Building Measures (CBMs)', 30 April 2013, https://www.osce.org/files/f/documents/6/0/91082.pdf. For analysis of mediation strategies, mediator types, dispute and crisis types, and the conflict management environment, see Jacob Bercovitch and Scott Sigmund Gartner (eds), *International Conflict Mediation: New Approaches and Findings* (Routledge 2008).

[39] Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone (entered into force 17 February 2003), https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EGY-CYP2003EZ.pdf.

[40] Ministry of Foreign Affairs (Turkey), 'Press Release regarding the Efforts of the Greek Cypriot Administration of Southern Cyprus to Sign Bilateral Agreements concerning Maritime Jurisdiction Areas with the Countries in the Eastern Mediterranean', 30 January 2007, https://www.mfa.gov.tr/_p_30-january-2007_-press-release-regarding-the-efforts-of-the-greek-cypriot-administration-of-southern-cyprus-to-sign-bilateral-agreements-concerning-maritime-jurisdiction-areas-with-the-countries-in-the-eastern-mediterranean_br__p_.en.mfa.

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in the Tamar and Leviathan gas fields.[41] More recently, in October 2022, following the discovery of major natural gas reserves in the Levant Basin, Israel and Lebanon reached a historic decision to settle their maritime border dispute via a mediator, the United States[42] (through 'good offices').[43] Despite having no diplomatic relations and defined as enemies,[44] the two countries managed to resolve a decade-long maritime border dispute and finally reach agreement.[45] This historic decision highlights the importance of cooperation in the energy sector.

At the same time, many maritime boundaries in the region still need to be defined or resolved. This lack of clarity in maritime boundaries could have a negative impact on future economic development and cooperation, especially considering that the Mediterranean Sea is dominated by EEZs.[46] In particular, officially delineated maritime boundaries could contribute to the exploration, development and exploitation of natural gas, as well as the construction and operation of submarine pipelines. Therefore, it is important to resolve these disputes in order to facilitate the growth of the energy sector and increase overall revenues for the region.[47]

Certain EMGF members, such as Greece and Cyprus, are in dispute with Turkey over maritime boundaries and their EEZs in the region. As noted above,[48] Turkey opposed the establishment of the EMGF, seeing it as a platform to coordinate support of Greek Cypriots against Turkey's territorial claims and interests.[49] Additionally, unresolved maritime boundary disputes pose the risk of escalating into more significant conflicts, which could have severe consequences for the region's stability and security. For instance, disputes between Turkey and Greece over maritime boundaries in the Eastern Mediterranean have led these countries to the brink of

[41] Agreement between the Government of the State of Israel and the Government of the Republic of Cyprus on the Delimitation of the Exclusive Economic Zone (entered into force 17 December 2010), https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/cyp_isr_eez_2010.pdf.

[42] Agreement Establishing a Permanent Maritime Boundary between the State of Israel and the Republic of Lebanon (entered into force 18 October 2022), https://www.gov.il/BlobFolder/reports/seder-gov271022/he/Seder_Gov_english_hebrew271022.pdf.

[43] See Yoshifumi Tanaka, *The Peaceful Settlement of International Disputes* (Cambridge University Press 2018) 43–51.

[44] Michael Harari and Ahmet Sözen, 'Lebanon and Israel: Natural Resources and Security Interests as Catalysts for Conflict Resolution' in Ahmet Sözen, Nimrod Goren and Camille Limon (eds), *Conflict Resolution in the Mediterranean: Energy as a Potential Game-Changer* (Council for Mediterranean Diplomacy 2023) 23. Under Israeli law, Lebanon is defined as an 'enemy state'; see Trade with the Enemy Ordinance, 1939 (Israel) (in Hebrew), https://www.gov.il/BlobFolder/legalinfo/enemy_trade_order/he/LegalInfo_enemy_trade_order-file1.pdf.

[45] Constantinos Yiallourides, Nicholas A Ioannides and Roy Andrew Partain, 'Some Observations on the Agreement between Lebanon and Israel on the Delimitation of the Exclusive Economic Zone', *Blog of the European Journal of International Law*, 26 October 2022, https://www.ejiltalk.org/some-observations-on-the-agreement-between-lebanon-and-israel-on-the-delimitation-of-the-exclusive-economic-zone.

[46] Claudiane Chevalier, *Governance of the Mediterranean Sea: Outlook for the Legal Regime* (IUCN Centre for Mediterranean Cooperation 2005) 43–50, https://iucn.org/content/governance-mediterranean-sea-outlook-legal-regime.

[47] Baroudi (n 34) 20–64; Constantinos Yiallourides, 'Maritime Boundary Delimitation in the Eastern Mediterranean Sea: Progress and Outstanding Legal Issues' (2021) 2 *Eastern Mediterranean Affairs* 29.

[48] See text at n 19.

[49] See Çubukçuoğlu (n 19) 17–20.

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military confrontation and have torpedoed some important energy projects in the region.[50]

The absence of Turkey, Syria and Lebanon from the EMGF reflects the complex geopolitical landscape of the Eastern Mediterranean region, where energy resources have become a source of competition and tension.[51] While the EMGF aims to promote cooperation and investment in the gas sector as a means to foster peace and stability, its effectiveness will depend on the ability of its members to resolve their disputes and address their concerns. The absence of legal tools to help in resolving these disputes, combined with the risks and tensions in the region, underscores the need for establishing a comprehensive legal framework to mitigate these issues. This framework could lead to a more structured approach to conflict resolution, providing binding means to resolve disputes. As a result, this could also attract new members from the Mediterranean to join in creating a shared sustainable energy market in the region.

2.3. The EMGF and political conflicts

The EMGF operates in a politically sensitive region where historical rivalries and ongoing conflicts pose significant risks. One of the greatest risks facing the organisation is the potential for internal conflicts among its members and neighbouring countries. Such conflicts can have a profound impact on the ability of the EMGF to succeed in its missions. Apart from maritime disputes, several conflicts could potentially affect EMGF operations, including the ongoing conflict in Syria, and the conflict between Israel and the Palestinians, magnified by the Hamas attack on Israel and the ensuing war in Gaza.[52]

This latter conflict is a prime example of a potential threat to the stability and success of the EMGF. It is one of the most significant and long-standing political disputes in the Eastern Mediterranean and has gradually turned into a religious war. From Gaza, the Sunni Islamist Hamas waged a surprise attack and invasion of southern Israel on 7 October 2023, massacred over one thousand civilians in one day, and took some 240 hostages back to the Gaza strip, while continuing to shell Israeli towns.[53] In response, Israel launched a ground invasion of the Gaza strip, which remains

[50] See Heinz-Jügen Axt, 'Troubled Water in the Eastern Mediterranean: Turkey Challenges Greece and Cyprus regarding Energy Resources' (2021) 69 *Comparative Southeast European Studies* 133; Idlir Lika, *Greek Security Policy in the East Mediterranean*, SETA-Analysis No 60 (SETA 2020), https://www.setav.org/en/assets/uploads/2020/02/A60-En.pdf. According to Lika, the conflict between Turkey and Greece is what torpedoed the possibility of constructing an Israel–Turkey gas pipeline, as well as the Cyprus peace talks to reunify the island.

[51] Pınar İpek and V Tibet Gür, 'Turkey's Isolation from the Eastern Mediterranean Gas Forum: Ideational Mechanisms and Material Interests in Energy Politics' (2022) 23 *Turkish Studies* 1, 9–21.

[52] See Daniel Byman and others, 'Hamas's October 7 Attack: Visualizing the Data', Center for Strategic & International Studies, 19 December 2023, https://www.csis.org/analysis/hamass-october-7-attack-visualizing-data.

[53] 'Over 1,400 Killed in Hamas Attacks on Israel: PM Office', *Barron's*, 15 October 2023, https://www.barrons.com/news/over-1-400-killed-in-hamas-attacks-on-israel-pm-office-787d2b0f?refsec=topics_afp-news; Matt Gutman, 'The Horror as Israeli Authorities Show Footage of Hamas Atrocities: Reporter's Notebook', *ABC News*, 17 October 2023, https://abcnews.go.com/International/horror-israeli-authorities-show-footage-hamas-atrocities-reporters-notebook/story?id=104015431.

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ongoing at the time of writing this article. From Lebanon, the Shi'ite Islamist and Iran-backed Hezbollah joined the hostilities by waging artillery and rocket attacks on northern Israel in support of Hamas, leading to immediate retaliation by Israel.[54] At the time of writing, there is a serious risk that these border clashes will develop into a full-blown war in Lebanon too, possibly even escalating into a wider regional war. These armed conflicts have already had negative implications for the regional energy market. Chevron was ordered by Israeli authorities to shut down production for five weeks at the Tamar platform for safety reasons, as it is located just north of the Gaza strip.[55] This, in turn, has led to a shortage of gas in Egypt, which has had to cut its export of liquefied natural gas (LNG) to Europe, which does not bode well for Egypt's worsening economic situation.[56] Israel was also forced to close its oil terminal in Ashkelon to vessels amid rocket attacks.[57] If the skirmishes on the Lebanese border escalate into a war, it will exacerbate Lebanon's already acute energy crisis.

For the EMGF, any political conflicts pose a considerable threat. Such conflicts can violate international law and erode respect for the rights of members, which are the principles upon which the EMGF is based.[58] The heightened tensions and growing popular animosity in Arab countries towards Israel are likely to create a climate where cooperation within the EMGF may become difficult.[59] This and other prolonged political conflicts can have a detrimental effect on the natural gas industry in the region, and disrupt the production of natural gas, thus causing loss of revenue for its members. As a result, there can be a significant decline in investor confidence, which may make it difficult to secure financing for new energy projects in the region.

[54] Tia Goldenberg and Wafaa Shurafa, 'Israel Declares War, Bombards Gaza and Battles to Dislodge Hamas Fighters after Surprise Attack', *Associated Press*, 9 October 2023, https://apnews.com/article/israel-palestinians-gaza-hamas-rockets-airstrikes-tel-aviv-ca7903976387cfc1e1011ce9ea805a71.

[55] ToI Staff and AFP, 'After 5-Week Suspension due to War, Drilling Resumes at Tamar Offshore Gas Platform', *The Times of Israel*, 14 November 2023, https://www.timesofisrael.com/after-5-week-suspension-due-to-war-drilling-resumes-at-tamar-offshore-gas-platform/#:~:text=Chevron%20was%20also%20instructed%20to,the%20environment%20and%20our%20facilities.%E2%80%9D.

[56] Michael Harari, 'The War in Gaza and its Implications for Energy in the East Mediterranean', Begin-Sadat Center for Strategic Studies (BESA) Center Perspectives Paper No 2,231, 15 November 2023, https://besacenter.org/the-war-in-gaza-and-the-implications-for-energy-in-the-eastern-mediterranean; see also Noam Raydan, 'The Gaza War's Impact on Energy Security in the East Mediterranean', The Washington Institute for Near East Policy, 1 November 2023, https://www.washingtoninstitute.org/policy-analysis/gaza-wars-impact-energy-security-east-mediterranean.

[57] ibid.

[58] See Cairo Declaration (n 4).

[59] An example that illustrates the impact of diplomatic tensions on regional cooperation can be seen in the Gulf crisis of 2017 between the United Arab Emirates (UAE) and Qatar. This crisis resulted in the UAE and Bahrain breaking diplomatic ties with Qatar and imposing a blockade on land, sea and air, leading to adverse effects on trade, travel restrictions, and also collaborative initiatives. Similar tensions among the EMGF members could impede cooperation within the Forum, potentially resulting in the establishment of similar blockades. This underscores the crucial need for a legal framework within the EMGF to overcome the risks posed by diplomatic tensions and ensure the continuity of cooperative efforts in the energy sector. See Refk Selmi and Jamal Bouoiyour, 'Arab Geopolitics in Turmoil: Implications of Qatar-Gulf Crisis for Business' (2020) 161 *International Economics* 100; Beverley Milton-Edwards, 'The Blockade on Qatar: Conflict Management Failings' (2020) 55(2) *The International Spectator* 34.

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A proposed regional energy treaty, while not aimed at resolving political conflicts, could mitigate their consequences for the energy sector. While difficult to imagine at this moment, the consensus necessary for such a treaty could be reached through the help of US and EU mediation. Participating in the EMGF as observers,[60] the US and the EU have the interest and the potential to facilitate the proposed regional energy treaty despite the political conflicts existing in the region, thus furthering peace and economic cooperation in the Middle East.

In particular, the United States has long been playing a crucial role in promoting peace and contributing to stable economic relations in the Middle East. Its hegemonic power has been instrumental in resolving a maritime dispute between Israel and Lebanon,[61] brokering the Abraham Accords[62] between Israel and several Arab countries by making its own commitments and concessions to the parties, and even raising the chances for an unprecedented peace agreement between Israel and Saudi Arabia.[63] Further to signing the Abraham Accords Peace Agreement with the State of Israel, the United Arab Emirates entered into the Comprehensive Economic Partnership Agreement with Israel (CEPA),[64] which strengthened the economic ties between the two countries through the creation of a free trade area. This allowed businesses in Israel and the UAE to sign over 35 business agreements in diverse areas in 2022 alone.[65]

Like the US, the EU has long been undertaking efforts to mitigate political tensions in the Mediterranean, and promote regional political, economic and social cooperation. One of the first attempts to do this was the Barcelona Declaration of 1995,[66] which established the Euro-Mediterranean Partnership, also known as

[60] Agreement for Observer Membership Contribution Fee (n 17).

[61] Agreement Establishing a Permanent Maritime Boundary (n 42); Harari and Sözen (n 44).

[62] The Abraham Accords comprise a series of historic agreements that normalise diplomatic relations between Israel and several Arab states, including the UAE, Bahrain, Sudan and Morocco: Abraham Accords Declaration (entered into force 15 September 2020), https://www.state.gov/wp-content/uploads/2020/10/Abraham-Accords-signed-FINAL-15-Sept-2020-508-1.pdf; Abraham Accords: Declaration of Peace, Cooperation, and Constructive Diplomatic and Friendly Relations between the State of Israel and the Kingdom of Bahrain (entered into force 15 September 2020), https://www.state.gov/wp-content/uploads/2020/09/Bahrain_Israel-Agreement-signed-FINAL-15-Sept-2020-508.pdf; Joint Declaration between the Kingdom of Morocco, the United States of America and the State of Israel (entered into force 22 December 2020), https://www.state.gov/wp-content/uploads/2021/01/Joint-Declaration-US-Morrocco-Israel.pdf; Abraham Accords Peace Agreement: Treaty of Peace, Diplomatic Relations and Full Normalization between the United Arab Emirates and the State of Israel (entered into force 15 September 2020), https://www.state.gov/wp-content/uploads/2020/09/UAE_Israel-treaty-signed-FINAL-15-Sept-2020-508.pdf. These agreements foster economic growth, advance tourism and underscore the importance of multilateral cooperation. See also Abraham Accords Peace Institute, '2022 Annual Report', https://cdn.nucleusfiles.com/aapi/Annual-Report-2022.pdf.

[63] See Matt Spetalnick and Eric Beech, 'Mohammed bin Salman says Saudi Arabia Is Getting "Closer" to Israel Normalization', *Reuters*, 21 September 2023, https://www.reuters.com/world/middle-east/saudi-crown-prince-says-getting-closer-israel-normalization-fox-interview-2023-09-20.

[64] Comprehensive Economic Partnership Agreement between the Government of the United Arab Emirates and the Government of the State of Israel (entered into force 1 April 2023), https://www.gov.il/BlobFolder/policy/isr-uae-fta/he/sahar-hutz_agreements_uae-israel-agreement-en.pdf.

[65] Abraham Accords Peace Institute, 2022 Annual Report (n 62) 37–38.

[66] Barcelona Declaration (entered into force 28 November 1995), https://eeas.europa.eu/archives/docs/euromed/docs/bd_en.pdf. This declaration establishes a comprehensive partnership between the EU and 12 Mediterranean parties: Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, the

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the Barcelona Process, aimed at fostering cultural and economic unity in the Mediterranean region. Among the signatories to the Declaration were the Council of the European Union, the European Commission and several Middle Eastern countries, including Israel, Egypt, Jordan and the Palestinian Authority. Building upon the Barcelona Declaration, Euro-Mediterranean heads of state and governments in 2008 adopted the decision to create a reinforced partnership: the Union for the Mediterranean (UfM).[67] The UfM members expressed their commitment to strengthen regional economic integration through free-trade agreements in the Euro-Mediterranean space and establish an efficient and business-friendly mechanism of trade facilitation.[68] As of today, the UfM has provided support to over 60 regional cooperation projects with a budget of over 5 billion euros, and organised 12 regional policy platforms and over 300 expert fora.[69]

Thus, there are grounds to believe that political conflicts can be overcome on the way to conclude and implement a proposed regional treaty – provided that the EU and the US will take an active role in facilitating it. In its turn, this regional treaty could reduce the impact of political conflicts on the Mediterranean energy sector.

3. A regional binding energy treaty as a solution for the East Mediterranean Gas Forum

3.1. Potential benefits of the regional energy treaty for the EMGF

As shown in Section 2, despite its potential, the EMGF faces a number of challenges that may limit its effectiveness as an energy organisation. To overcome the problems and disagreements in the region, it would be helpful to create a regional binding energy treaty. The treaty could include an agreed dispute settlement mechanism, which would ensure that conflicts are resolved fairly and efficiently, thereby strengthening the EMGF as an organisation. It could also establish a legal framework for free transit of energy resources throughout the Mediterranean and protect future submarine pipelines and other transit infrastructure. It, furthermore, could include much needed provisions on the protection of the marine environment in the course of exploring and producing energy from the seabed. In addition, a stable and legally binding framework for energy cooperation would bolster investor confidence and increase investment in the development of the region's energy sector. This, in turn, would help to boost economic growth in the region, further strengthening the EMGF as a regional energy organisation.

A suggested regional energy treaty can be based on existing similar treaties. There are examples of countries showing a willingness to cooperate on energy

Palestinian Authority, Syria, Tunisia and Turkey. The aim of this partnership is to promote peace, stability, prosperity and cooperation in the Euro-Mediterranean region. The Declaration addresses various aspects, including economic, social, human and cultural dimensions, as well as issues related to common security. This initiative represents a significant step in enhancing relations between the EU and Mediterranean countries, fostering dialogue and working towards shared goals.

[67] Joint Declaration of the Paris Summit for the Mediterranean (entered into force 13 July 2008), https://ufmsecretariat.org/wp-content/uploads/2012/09/ufm_paris_declaration1.pdf.

[68] ibid para 11.

[69] Union for the Mediterranean, 'What We Do: The Work of the Union for the Mediterranean', https://ufmsecretariat.org/what-we-do.

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issues through existing treaties and organisations. One such intergovernmental organisation that successfully maintains peace and stability in Southeast Asia is the Association of Southeast Asian Nations (ASEAN).[70] It was founded in Thailand in 1967 through the ASEAN Declaration (Bangkok Declaration).[71] Further, in 2007, to mark its 40th anniversary, the organisation adopted the ASEAN Charter to serve as its legal and constitutional framework.[72]

To foster cooperation as well as efficient development and use of energy, the governments of the ASEAN countries signed the Agreement on ASEAN Energy Cooperation (AAEC) in 1986.[73] This agreement aims to enhance energy security, promote sustainable energy development and facilitate integrated energy markets within the ASEAN region.[74] Additionally, the ASEAN has implemented a long-standing energy cooperation plan, including objectives such as developing renewable energy sources and promoting energy efficiency. Another document seeking to establish an inclusive and dynamic economic integration in the region is the ASEAN Plan of Action for Energy Cooperation (APAEC) 2016-2025 Phase II: 2021–2025.[75] Its focus is on energy connectivity, market integration and the transition to cleaner energy sources.

Indeed, the ASEAN and the EMGF share several key similarities. Firstly, both organisations comprise neighbouring countries with shared interests in promoting economic development and energy security.[76] Additionally, both organisations encompass a diverse range of energy producers and consumers among their members. For instance, the ASEAN includes major exporters such as Malaysia and Indonesia, as well as importers like Singapore and Thailand.[77] Similarly, the

[70] For analysis of the formation and development of ASEAN, including its role in maintaining regional peace and stability in Southeast Asia, see Helen ES Nesadurai, 'The Association of Southeast Asian Nations (ASEAN)' (2008) 13 *New Political Economy* 225; see also Koichi Ishikawa, 'The ASEAN Economic Community and ASEAN Economic Integration' (2021) 10 *Journal of Contemporary East Asia Studies* 24.

[71] ASEAN Declaration (Bangkok Declaration) (entered into force 8 August 1967), https://agreement.asean.org/media/download/20140117154159.pdf.

[72] ASEAN Charter (entered into force 15 December 2008), https://asean.org/book/the-asean-charter.

[73] Agreement on ASEAN Energy Cooperation (entered into force 24 June 1986), https://agreement.asean.org/media/download/20170606100932.pdf. On energy cooperation within ASEAN, as compared with other international frameworks, see Rafael Leal-Arcas and Andrew Filis, 'Inter-State Cooperation in Energy Transit', United Nations University, Institute on Comparative Regional Integration Studies, 2015, Working Paper W-2015-217-18, 17–18, https://cris.unu.edu/sites/cris.unu.edu/files/W-2015-2.pdf. For analysis of the ASEAN energy sector, its challenges and opportunities for sustainable development, see Shankar K Karki, Michael D Mann and Hossein Salehfar, 'Energy and Environment in the ASEAN: Challenges and Opportunities' (2005) 33 *Energy Policy* 499; Ditya Agung Nurdianto and Budy Prasetyo Resosudarmo, 'Prospects and Challenges for an ASEAN Energy Integration Policy' (2011) 13 *Environmental Economics and Policy Studies* 103.

[74] Agreement on ASEAN Energy Cooperation (n 73) art 1.

[75] ASEAN Center of Energy, 'ASEAN Plan of Action for Energy Cooperation (APAEC) 2016-2025 Phase II: 2021–2025', https://asean.org/book/asean-plan-of-action-for-energy-cooperation-apaec-2016-2025-phase-ii-2021-2025; see also Ivan Diaz-Rainey and others, 'An Energy Policy for ASEAN? Lessons from the EU Experience on Energy Integration, Security and Decarbonization', Asian Development Bank, ADB Institute Working Paper Series No 1217, February 2021, https://www.adb.org/sites/default/files/publication/680046/adbi-wp1217.pdf.

[76] Agreement on ASEAN Energy Cooperation (n 73); Statute of the EMGF (n 5).

[77] Ambiyah Abdullah and others, 'Outlook on ASEAN Energy 2023 Key Insights about ASEAN Energy Landscape and Trends in 2023', ASEAN Centre for Energy, February 2023, 8–12, https://asean.org/wp-content/uploads/2023/04/Outlook-on-ASEAN-Energy-2023.pdf.

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

EMGF consists of natural gas producers such as Egypt, Israel and Cyprus, alongside potential transit and consumer members like Jordan, Palestine, Greece and Italy.[78] Secondly, both regions face similar challenges, which include rising energy demands, the need to diversify supplies and the pursuit of sustainable development goals.[79] These similarities underscore the common needs and opportunities for energy trading in both regions, highlighting the importance of establishing clear rules and obligations for a sustainable energy market.

Another similarity between the ASEAN[80] and the EMGF lies in their encounters with geopolitical tension and conflict among their members. Despite these issues, the ASEAN has demonstrated the effectiveness of employing legal frameworks to manage disputes and foster cooperation.[81] A prime example of this is the significance of the ASEAN Charter.[82] This Charter, ratified by all ASEAN member states,[83] provides a comprehensive legal framework and establishes various organs to enhance cooperation among member states.[84]

One notable success of the ASEAN legal approach is its contribution to the resolution of the long-standing territorial dispute between Cambodia and Thailand over the Preah Vihear Temple.[85] In 2011, amid escalating tension and armed clashes between the two countries, the ASEAN invoked the Charter's provisions for dispute settlement and offered to mediate the conflict.[86] Through this facilitation, Cambodia and Thailand agreed to establish a provisional demilitarised zone and withdraw

[78] US Energy Information Administration (n 2) 1–6.

[79] ASEAN Center of Energy (n 75); Ellinas (n 30).

[80] For analysis of ASEAN conflicts see Isyana Adriani, 'ASEAN and Ongoing Cultural Conflicts' (2015) 3 *Jurnal Hubungan Internasional* 159; Saidatul Nadia Abd Aziz and Salawati Mat Basir, 'South China Sea: ASEAN Mechanism on Maritime Disputes and the Rise of Indo Pacific Region' (2022) 9(2) *Journal of Territorial and Maritime Studies* 65.

[81] See Mikio Oishi, 'Introduction: The ASEAN Way of Conflict Management Under Challenge' in Mikio Oishi (ed), *Contemporary Conflicts in Southeast Asia* (Springer 2016) 1; Hao D Phan, 'Towards a Rules-Based ASEAN: The Protocol to the ASEAN Charter on Dispute Settlement Mechanisms' (2013) 5 *Penn State Yearbook on Arbitration & Mediation* 254; Robert Beckman and others, *Promoting Compliance: The Role of Dispute Settlement and Monitoring Mechanisms in ASEAN Instruments* (Cambridge University Press 2016) 58; Ramses Amer, 'The Association of Southeast Asian Nations' (ASEAN): Conflict Management Approach Revisited; Will the Charter Reinforce ASEAN's Role?' (2009) 2(2) *ASEAS Austrian Journal of South-East Asian Studies* 6.

[82] ASEAN Charter (n 72).

[83] The members of the ASEAN include Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam: ASEAN, 'ASEAN Member States', https://asean.org/member-states.

[84] The ASEAN Charter (n 72) emphasises principles such as democracy, the rule of law and respect for human rights, which serve as the foundation for resolving conflicts and promoting cooperation within the ASEAN. Additionally, the Charter underscores the importance of mutual interests and collective responsibility among ASEAN members in enhancing regional peace, security and prosperity.

[85] See ICJ, *Case concerning the Temple of Preah Vihear (Cambodia v Thailand)*, Judgment [1962] ICJ Rep 45.

[86] Krishnasamy Kesavapany, 'ASEAN and the Cambodia-Thailand Conflict', *East Asia Forum*, 1 March 2011, https://eastasiaforum.org/2011/03/01/asean-and-the-cambodia-thailand-conflict; Martin Wagener, 'Lessons from Preah Vihear: Thailand, Cambodia, and the Nature of Low-Intensity Border Conflicts' (2011) 30(3) *Journal of Current Southeast Asian Affairs* 27; Brian Padden, 'Thailand-Cambodia Dispute a Test for ASEAN', *Voice of America*, 6 February 2011, https://www.voanews.com/a/thailand-cambodia-dispute-a-test-for-asean-115471614/167009.html.

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

troops from the disputed area, effectively de-escalating the situation.[87] At the same time, both parties committed to adhering to the ruling of the International Court of Justice on the temple's ownership, demonstrating the ability of the ASEAN Charter to promote adherence to international legal frameworks.[88] Hence, by learning from the ASEAN experience and adapting its legal frameworks to the unique context of the Eastern Mediterranean region, the EMGF could enhance regional stability and unlock the full potential of energy cooperation.

Another energy treaty that could serve as an example for the suggested regional energy treaty is the Treaty establishing the Energy Community, signed in 2005.[89] The primary goals of the established European Energy Community[90] include promoting energy market integration, bolstering energy security and fostering sustainable development among its member countries in south-east Europe.[91] In order to effectively resolve potential conflicts or disagreements concerning the interpretation or implementation of its provisions, the Energy Community Treaty includes a dispute settlement mechanism.[92] The Energy Community serves not only as a prime example of regional energy cooperation, but also as a tool for the EU to export its energy *acquis communautaire* to its neighbours in south-eastern and eastern Europe. With its emphasis on energy market integration, security, renewable energy and sustainable development, as proclaimed in the Treaty and ensured through the dispute settlement mechanism, the Energy Community plays a role in promoting a more integrated pan-European energy market.

However, the most relevant source that can be used as the basis for a regional energy treaty is the Energy Charter Treaty,[93] which was signed in 1994 and has since been ratified by over 50 countries.[94] The ECT is a legally binding multilateral treaty focused on the energy sector. It aims to foster long-term cooperation among its member states, promoting mutual benefits and complementarities in line with its objectives and principles.[95] As a binding multilateral instrument in the energy sector, the ECT provides a legal framework for energy cooperation, including provisions

[87] 'ASEAN Mediates in Cambodia, Thailand Conflict', *Voice of America*, 21 February 2011, https://www.voanews.com/a/asean-mediates-in-cambodia-and-thailand-conflict-116644324/135398.html.

[88] ICJ, *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v Thailand)*, Application Instituting Proceedings, 28 April 2011 [2011] ICJ Rep 151.

[89] Treaty establishing Energy Community (entered into force July 2006), https://www.energy-community.org/legal/treaty.html. For a critical discussion of the background to and objectives of the European Energy Community see Kim Talus, *EU Energy Law and Policy: A Critical Account* (Oxford University Press 2013).

[90] For analysis of the evolution of European energy policy and its impact on EU integration see Oana Poiană, 'An Overview of the European Energy Policy Evolution: From the European Energy Community to the European Energy Union' (2017) 22 *Online Journal Modelling the New Europe* 175.

[91] Treaty establishing Energy Community (n 89) art 2. At the time of writing, the Energy Community has nine members, in addition to the European Union: Albania, Bosnia and Herzegovina, Georgia, Kosovo, Moldova, Montenegro, North Macedonia, Serbia, and Ukraine. Croatia was an original member state until it became a full member of the EU.

[92] ibid arts 89–93.

[93] ECT (n 32).

[94] According to the official website of the ECT, it currently has 53 signatories, two of which have not ratified it: International Energy Charter, 'The Energy Charter Treaty', https://www.energycharter.org/process/energy-charter-treaty-1994/energy-charter-treaty.

[95] ECT (n 32) art 2.

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

on investment protection, dispute settlement mechanism and transit rights.[96] Lately, however, after the ECT members failed to approve the European Commission's proposal to reform the treaty, the EU expressed its intention to withdraw from the ECT.[97] The reforms proposed by the EU seek to eliminate disproportionate protection for fossil fuels, which will facilitate addressing the issues of climate change, thus aligning the ECT with the EU law on investment, climate and renewable energy. Despite this failed effort to reform the Energy Charter Treaty, it can still be considered a useful model for a regional energy treaty. The latter can incorporate the ECT provisions modernised to balance green objectives with protection of international investment.

The ECT has contributed to the establishment of a stable legal environment for investment in the energy sectors of its members, potentially easing the influx of foreign capital and expertise into major projects, such as the development of energy infrastructure.[98] One such example could be Azerbaijan – where, upon ratifying the ECT (in 1997), the government committed to improving the country's legal framework and making its market more attractive for foreign investors. With its rich oil and gas reserves and a robust legal framework for investment protection under the ECT, the country has been successful in attracting foreign investment in energy infrastructure.[99] In particular, one infrastructure project that needed foreign investment and expertise was the cross-border Baku-Tbilisi-Ceyhan (BTC) pipeline, which transports oil from the Caspian Sea (Azerbaijan) to the Mediterranean (Turkey) and was constructed between 2002 and 2005. Being one of the world's major energy projects, the BTC involved enormous costs – from USD 2 billion to USD 3.5 billion.[100] Of these costs, 30% is reported to have been financed by investors,[101]

[96] For a comprehensive and detailed analysis of all provisions of the ECT see Kaj Hobér, 'The Energy Charter Treaty: An Overview' (2007) 8 *The Journal of World Investment & Trade* 323; Detlev F Vagts, 'Book Review: *The Energy Charter Treaty: An East-West Gateway for Investment and Trade*. Edited by Thomas W. Walde. London, The Hague, Boston: Kluwer Law International, 1996. pp. xxvii, 678' (1997) 91(2) *American Journal of International Law* 403; Kaj Hobér, *The Energy Charter Treaty* (Oxford University Press 2020).

[97] European Commission, 'European Commission Proposes a Coordinated EU Withdrawal from the Energy Charter Treaty', 7 July 2023, https://energy.ec.europa.eu/news/european-commission-proposes-coordinated-eu-withdrawal-energy-charter-treaty-2023-07-07_en. After the joint exit, the ECT will be left with 28 signatories.

[98] See Edna Sussman, 'The Energy Charter Treaty's Investor Protection Provisions: Potential to Foster Solutions to Global Warming and Promote Sustainable Development' (2008) 14 *ILSA Journal of International & Comparative Law* 391; Andrei Konoplyanik and Thomas Walde, 'Energy Charter Treaty and Its Role in International Energy' (2006) 24 *Journal of Energy & Natural Resources Law* 523; Tomasz Bąk, *Potential Impact of the Energy Charter Treaty on FDI Promotion and Protection in View of Global Trends, Energy Governance and Possible Actions towards ECT Non-Members* (Energy Charter Secretariat Knowledge Center 2013), https://www.energycharter.org/fileadmin/DocumentsMedia/Occasional/ECT_and_FDI.pdf.

[99] 'Azerbaijan Follow-Up In-Depth Review of the Investment Climate and Market Structure in the Energy Sector', Energy Charter Secretariat, 2011, https://www.energycharter.org/fileadmin/DocumentsMedia/ICMS/ICMS-Azerbaijan_2011_en.pdf; see, in particular, Figure 8, which shows the increase in foreign direct investment in Azerbaijan between 2004 and 2010.

[100] Mustafa Balat and Gulyeter Ersoy, 'Baku-Tbilisi Ceyhan Oil Pipeline (BTC) Project and Turkey: Investments, Future Developments and Environmental Impacts' (2005) 23 *Energy Exploration & Exploitation* 31.

[101] See Balat and Ersoy (n 100) 33, Figure 1 'Oil Companies in the BTC Project'. The pipeline is owned and operated by BTC Co, a consortium of 11 energy companies managed by BP. Shareholders include BP (United Kingdom) with 30.1%, State Oil Company of Azerbaijan (SOCAR) (Azerbaijan) with 25%, MOL Group (Hungary) with 8.9%, Equinor (Norway) with 8.71%, Türkiye Petrolleri Anonim Ortaklığı (TPAO)

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

with the remaining 70% received from the US Exim Bank, Japan's Exim Bank, the International Finance Corporation, and the European Bank for Reconstruction and Development.[102] Therefore, foreign investment played a meaningful role in the construction and operation of the BTC, contributing to Azerbaijan's energy sector development, while a robust legal framework ensures regional energy security.[103]

On a separate note, some ECT members – such as Cyprus, Greece and Jordan – are also members of the EMGF. Therefore, any provisions in a regional energy treaty should take into account potential overlaps with ECT provisions. This could include ensuring compatibility between the two treaties, as well as avoiding any conflicts or inconsistencies between their provisions.

While the proposed regional energy treaty would undoubtedly bring numerous benefits for the EMGF members, it is important to admit that states are often hesitant about accepting limitations on their energy sovereignty. However, a regional energy treaty would not mean that states would be required to give up their sovereignty in the energy sector. Rather, it aims to establish a framework that balances national energy sovereignty with regional cooperation and stability. The proposed treaty takes a significant step forward by setting clear rules and establishing a dispute settlement mechanism. While this indeed can impose certain limitations on the members' sovereignty, they can expect their rights under the treaty to be respected by other signatories, which may create a more stable and predictable business environment in the energy sector. Additionally, the treaty can be designed to respect the sovereignty of each member over its energy resources while still creating a set of common rules and principles that guide the functioning of the organisation.

3.2. *Main provisions of a regional energy treaty: Transit, trade and investment, environmental protection and dispute settlement*

3.2.1. Transit

The transit of energy resources in the Mediterranean is a major challenge as a result of unresolved maritime borders and ongoing political conflicts in the region. A regional energy treaty, being the first regional treaty to focus specifically on energy, could serve as a possible resolution of these problems. Such a treaty could potentially become an important contributor to international law concerning transit issues in the Mediterranean.

From a commercial perspective, efficient transit rules are essential for attracting new companies to invest in the energy market. Thus, a regional energy treaty

(Turkey) with 6.53%, Eni (Italy) with 5%, TotalEnergies (France) with 5%, Itochu (Japan) with 3.4%, Inpex (Japan) with 2.5%, ExxonMobil (US) with 2.5%, and ONGC Videsh (India) with 2.36%. Notably, most of the shareholders are from countries that are members of the ECT. Hence, the legal framework for the protection of foreign investment under the ECT has likely to have provided reassurance to foreign investors from other ECT countries that their investments would be protected under the treaty's provisions and investor-state dispute settlement mechanism. This assurance is likely to have played a significant role in attracting foreign investment in the project.

[102] ibid 36.

[103] Svante E Cornell and Fariz Ismailzade, 'The Baku-Tbilisi-Ceyhan Pipeline: Implications for Azerbaijan' in Svante E Cornell and Fariz Ismailzade (eds), *The Baku-Tbilisi-Ceyhan Pipeline: Oil Window to the West* (Central Asia-Caucasus Institute & Silk Road Studies Program 2005) 61–84, https://www.silkroadstudies.org/resources/pdf/Monographs/2005_01_MONO_Starr-Cornell_BTC-Pipeline.pdf.

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

could confirm basic transit principles, such as the right to free and safe transit, while also introducing clarifications and amendments relevant to energy trade. The main objectives of transit under a regional energy treaty would be to provide members of the EMGF with freedom of transit through the territory of each member, using the most convenient routes for international transit. This would include sea routes, submarine pipelines, submarine electricity cables, as well as other types of infrastructure. It is also crucial for a potential regional energy treaty to ensure that in the event of a dispute related to energy transit, the existing flow of energy should not be interrupted or reduced pending settlement of the dispute.

In the absence of clear rules to regulate energy transit, there is always the risk of disruptions to the movement of energy resources, as occurred in *Iraq v Turkey*.[104] In this case, disagreements arose between Iraq and Turkey as a result of the latter's use of the Iraq–Turkey pipeline (ITP) for pumping and storing crude oil from Kurdistan under instructions from the Kurdistan regional government, without the authorisation of the Iraqi central government, and an arbitral award in favour of Iraq.[105] Turkey stopped the transit of Iraqi crude oil through the ITP; this occurred on 25 March 2023, and as at July 2024, the transit is still halted.[106] The parties are still negotiating the conditions for resuming the transportation of oil – around 450,000 barrels per day worth no less than USD 30,000,000.[107]

To avoid the above disruptions, a regional energy treaty should include provisions on transit to promote stable and safe energy transit in the Mediterranean

[104] International Criminal Court (ICC), *Republic of Iraq v Republic of Turkey*, ICC Case No 20273/AGF/ZF/AYZ/ELU, Final Award, 13 February 2023, https://jusmundi.com/en/document/decision/en-the-republic-of-iraq-v-1-the-republic-of-turkey-and-2-botas-petroleum-pipeline-corporation-reconstitution-of-the-tribunal-pending-friday-1st-january-2021#decision_18104. Iraq subsequently petitioned the US Federal Court in Washington DC to enforce the arbitral award against Turkey under the New York Convention: ICC, *Republic of Iraq v Republic of Turkey*, Petition for Confirmation, Recognition, and Enforcement of Foreign Arbitration Award, ICC Case No 20273/AGF/ZF/AYZ/ELU, 10 April 2023, https://jusmundi.com/en/document/other/en-the-republic-of-iraq-v-the-republic-of-turkey-petition-for-confirmation-recognition-and-enforcement-of-foreign-arbitration-award-monday-10th-april-2023#other_document_31304.

[105] ibid. See also Joseph Bentley and Alexander Botashev, 'Iraq and Turkey Both Claim Victory in the Iraq-Turkey Pipeline Arbitration but the Future of Kurdistan's Oil and Gas Sector Remains Unclear', *Norton Rose Fulbright*, June 2023, https://www.nortonrosefulbright.com/en/knowledge/publications/a1486538/iraq-and-turkey-both-claim-victory.

[106] Wladimir van Wilgenburg, 'Iraqi Federal Court Ruling Deals Another Blow to Kurdistan Regional Government Oil Autonomy' in Giselle Rodriguez (ed), *S&P Global*, 22 February 2024, https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/oil/022224-iraqi-federal-court-ruling-deals-another-blow-to-kurdistan-regional-governments-oil-autonomy#:~:text=The%20Federal%20Supreme%20Court%20of,international%20oil%20companies%20operate%20there; Natalie Grover, 'A Year after Iraq-Turkey Pipeline Halt, No Progress to Resume Flows', *Reuters*, 24 March 2024, https://www.reuters.com/business/energy/year-after-iraq-turkey-pipeline-halt-no-progress-resume-flows-2024-03-24.

[107] Rowena Edwards and Ahmed Rasheed, 'Iraq's Kurdish Oil Output Falls as Pipeline Outage Continues', *Reuters*, 22 May 2023, https://www.reuters.com/business/energy/oil-output-falls-iraqi-kurdistan-pipeline-outage-nears-2-months-2023-05-22; Khalid Al Ansary, 'Iraq to Discuss Turkey Oil Link Restart during Erdogan's Visit', *Bloomberg*, 25 July 2023, https://www.bloomberg.com/news/articles/2023-07-25/iraq-to-discuss-turkey-oil-link-restart-during-erdogan-s-visit; Eva Levesque, 'Deal for Iraq Oil via Turkish Pipeline Coming "Soon"', *Arabian Gulf Business Insight*, 10 June 2024, https://www.agbi.com/oil-and-gas/2024/06/deal-for-iraq-oil-via-turkish-pipeline-coming-soon.

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region. Only a regional treaty can bind all the states in the East Mediterranean towards each other, and thus provide a reliable legal and political basis to guarantee safe energy transit. A useful model for these transit provisions can be found in Article 7 of the Energy Charter Treaty.[108] The provisions of this article ensure free and uninterrupted transit of energy materials and products through transit states, thus guaranteeing energy security. At the same time, it is imperative for the proposed energy treaty to remedy the shortcomings present in ECT Article 7, primarily its unclear terms. The need to clarify the existing text of transit provisions contained in the ECT led to the establishment of a transit working group in 1998, which seeks to further work on transit issues and begin negotiations on an Energy Charter Protocol on Transit. The draft of this proposed protocol,[109] released in 2003, was never adopted.[110] By incorporating and refining the provisions of Article 7, a regional energy treaty could establish clear and fair rules for energy transit, thus protecting all parties involved from transit-related risks or at least considerably reducing these risks.

A specific example of a project that could benefit significantly from a regional energy treaty is the Eastern Mediterranean pipeline (EastMed). This project involves the construction of a natural gas pipeline that will link the Eastern Mediterranean with Europe, passing through Cyprus, Greece and Italy.[111] Since Cyprus, Greece, Israel and Italy are members of the EMGF, they are committed to enhancing cooperation and integration in the regional energy sector, but currently are not bound by any international obligations in relation to transit of energy resources.[112] A regional energy treaty could lay down a legal framework for shipping natural gas through the EastMed, allowing for free, uninterrupted and non-discriminatory transit. This could result in a more stable and secure energy supply, benefiting both producers and consumers in the region.

3.2.2. Trade and investment

The Eastern Mediterranean has recently enjoyed considerable attention as a gas producing region and is becoming increasingly important in the global energy market. The region is also becoming more attractive for foreign investors, especially in view

[108] ECT (n 32) art 7.

[109] Final Act of the Energy Charter Conference with respect to the Energy Charter Protocol on Transit, 31 October 2003, https://www.energycharter.org/fileadmin/DocumentsMedia/CC_251_ENG.pdf.

[110] Because of the weaknesses of its provisions, contradictions about the essence of transit governance, the parties' inability to reach a compromise over the text of the draft, and Russia's political unwillingness to use the ECT: Andrei Belyi, 'The Energy Charter Process in the Face of Uncertainties' (2021) 14 *The Journal of World Energy Law and Business* 363, 367–68.

[111] Intergovernmental Agreement between the State of Israel and the Republic of Cyprus and the Hellenic Republic and the Italian Republic concerning a Pipeline System to Transport Eastern Mediterranean Natural Gas to the European Markets (entered into force 2 January 2020), https://www.gov.il/BlobFolder/generalpage/east_med_topic/he/EastMed_Pipeline_Agreement.pdf. For a discussion of the EastMed pipeline project see Aylin G Gürzel Aka and others, 'The "New Great Game" in the Eastern Mediterranean' (2022) 28 *Israel Affairs* 16.

[112] Except perhaps for the General Agreement on Tariffs and Trade (GATT) art V (freedom of transit), but as we have noted above (nn 28 and 119), GATT has generally been considered as not applying to trade in energy: General Agreement on Tariffs and Trade (entered into force 1 January 1948), https://www.wto.org/english/docs_e/legal_e/gatt47.pdf.

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of the energy crisis in Europe and the need to replace Russian gas.[113] At the same time, regional conflicts in the area (maritime boundary disputes, political and military conflicts) are creating more risks for foreign investors. Although being formally committed to protecting the interests of its members and contributing to economic cooperation based on gas production and trade, the EMGF has no binding rules to ensure that these objectives will be achieved.

Insufficient legal tools for the EMGF can lead to trade barriers among its members, hindering the free flow of natural gas resources and impeding regional energy cooperation. A case in point is Israel, which in 2013 introduced an export quota on natural gas. Based on the recommendations of the Zemach Committee, the government limited natural gas exports to about 40% of the country's newly discovered offshore reserves, with the objective of guaranteeing that the gas would serve all of Israel's future energy needs.[114] This decision was met with criticism by exploration companies that were concerned about the consequences for investment in developing Israel's gas fields, on the one hand, and by various environmental groups demanding the lower of the quota, on the other.[115] In a broader context, such export quotas on natural gas can hinder the free flow of natural gas resources and impede energy cooperation in the region.

Another country that has resorted to limiting its gas exports is Egypt. Since the mid-1980s, its government has been actively promoting the substitution of gas for oil in the industrial, residential, commercial and transport sectors. This was caused initially by the ongoing depletion of oil reserves in the country, after the peak in crude oil production reached in 1993. In 2008, when gas demand exceeded domestic gas production, the Egyptian government froze new gas export projects until 2010 to 2012.[116] A related factor that is important for regional energy stability is energy subsidies. In Egypt, to allow citizens to benefit from the national energy resources, the government introduced a subsidy system.[117] These subsidies are a heavy burden on the economy of the country and can affect energy prices in the region.

[113] Ben McWilliams and others, 'How Would the European Union Fare without Russian Energy' (2023) 174 *Energy Policy*, article 113413.

[114] Sujata Ashwarya, 'Israel's Mediterranean Gas Governance: Evolution of Domestic Regulations and Emerging Regional Issues' (2017) 11 *Asian Journal of Middle Eastern and Islamic Studies* 76, 83–88. Lately, an interministerial committee in charge of setting out natural gas policies has recommended that the quota be increased to 52%: Shoshanna Solomon, 'Israel Reportedly Set to Ease Export Quotas of Natural Gas', *The Times of Israel*, 31 May 2021, https://www.timesofisrael.com/israel-reportedly-set-to-ease-export-quotas-of-natural-gas/#:~:text=The%20owners%20of%20Israel's%20natural,annual%20production%2C%20the%20committee%20said.

[115] 'Israeli Government Approves 40 pct Limit on Natural Gas Exports', *Reuters*, 23 June 2013, https://www.reuters.com/article/israel-natgas-idUSL5N0EZ0BQ20130623. For a discussion of the Zemach Committee and the whole saga of the recurring changes in Israel's natural gas regulations see Arie Reich, 'Israel's Foreign Investment Protection Regime in View of Developments in Its Energy Sector' (2018) 19 *The Journal of World Investment & Trade* 41, 55–59.

[116] Observatoire Méditerranéen de l'Energie, 'Mediterranean Energy Perspectives, Egypt: Executive Summary', https://inis.iaea.org/collection/NCLCollectionStore/_Public/44/011/44011507.pdf?r=1.

[117] Starting under Nasser (1952–70), the subsidy system was expanded by his successors and has survived up to modern times; see, eg, Iliya Harik, 'Subsidization Policies in Egypt: Neither Economic Growth Nor Distribution' (1992) 24 *International Journal of Middle East Studies* 481, 482–83, 487–91.

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A solution for the problems discussed above could be to include in the suggested regional energy treaty specific trade and investment provisions aimed at regulating the export, import and production of energy. Such provisions should clarify that the fundamental principles of the General Agreement on Tariffs and Trade (GATT)[118] apply to all energy resources of the parties to the treaty.[119] This would ensure that energy products are subject to the same rules as other traded goods, including non-discrimination, national treatment, most-favoured-nation treatment, subsidies rules and transparency.[120] These provisions could also extend their coverage to the Palestinian Authority, which is not a member of the World Trade Organization,[121] and ensure a level playing field for energy trade and investment among all members.

While covering trade in general, GATT focuses on goods and services, and lacks any specific provisions for energy trade.[122] A regional energy treaty with provisions similar to the ECT would fill this gap by establishing specific rules and regulations governing energy trade, investment and cooperation among participating members.[123] This comprehensive framework would complement the principles and objectives of GATT,[124] providing clarity and legal certainty for energy trade. The key issues to address here are market access, transit, transparency and non-discrimination. Additionally, a regional energy treaty could also include provisions on harmful subsidies, as addressed above.

One way to incorporate these provisions into a regional energy treaty is through provisions similar to Articles 4 and 16 of the Energy Charter Treaty, which state that the provisions of the ECT do not prejudice the rights and obligations of the parties under other international agreements. Therefore, the parties to the ECT must still comply with their commitments under other agreements, including those related to trade and investment.[125] Incorporating similar provisions into a regional energy

[118] GATT (n 112).

[119] While the GATT principles were intended to apply to trade in all goods, their applicability to the energy sector has long been a contentious issue among WTO members. Major exporters maintain policies such as export quotas on oil and gas, dual pricing favouring domestic energy, and other measures that contradict the GATT disciplines on quantitative restrictions, export duties and subsidies – citing sovereignty over resources as justification. Attempts to negotiate specific energy trade rules faced resistance from exporters in past rounds, such as the Uruguay Rounds. This reflects divergence on whether the GATT core principles fully apply to strategic energy and extractive industries compared with other traded goods: Yulia Selivanova, 'The WTO and Energy: WTO Rules and Agreements of Relevance to the Energy Sector', International Centre for Trade and Sustainable Development (ICTSD) Issue Paper No 1, August 2007, 11–34, https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=94cebc6f0065066f6f71f36446b9648d1b453a86. See also n 28.

[120] GATT (n 112) art I provides for most-favoured-nation treatment; art III provides for national treatment; art V guarantees freedom of transit; art X provides for transparency in the administration of trade policies; and art XI prohibits border restrictions on both imports and exports. There are also other important provisions both in GATT itself and in many of the other agreements that are part of the WTO package.

[121] Osayd Awawda, 'Palestine's Accession to the WTO: Any Legal Barriers?' (2018) 22(2) *Vindobona Journal* 145, 151–53.

[122] Selivanova (n 28).

[123] For analysis of the provisions of the ECT see Hobér (2020) (n 96).

[124] GATT (n 112) art XXXVI.

[125] ECT (n 32) art 4 (in relation to GATT and related instruments) and art 16 (in relation to other agreements).

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treaty would guarantee that the treaty will not infringe other agreements while simultaneously protecting the parties' rights and obligations related to energy trade and investment.

Furthermore, existing trade agreements such as the North American Free Trade Agreement (NAFTA)[126] have provisions related to energy trade that could also be incorporated into a regional energy treaty. Though being replaced by the Canada-United States-Mexico Agreement (CUSMA) in 2020,[127] it can still be viewed as a model for successful regulation of commercial relationships in the energy sector. For instance, Chapter Six of NAFTA addresses energy and basic petrochemicals, and includes provisions that could be relevant for a regional energy treaty. Article 606 lists the principles of non-discrimination and national treatment in the energy sector.[128] If added to the provisions of a regional energy treaty, similar principles would ensure that its members treat energy resources of other countries as fairly and responsibly as they treat their own resources. Besides, to promote a stable commercial environment in the region, the treaty could provide a mechanism for tariff negotiations between the parties, whereby they could reach agreement on mutual reductions of tariffs, subsidies and other restrictions.[129] Alternatively, it could establish a regime of free trade in energy products between members. These provisions

[126] North American Free Trade Agreement (entered into force 1 January 1994) (NAFTA), https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/fta-ale/index.aspx?lang=eng. For analysis of the role of NAFTA in increasing diversity of energy supplies and reducing reliance on non-dependable suppliers see, eg, John Fohr, 'How NAFTA Can Increase Global Energy Security' (2004) 22 *Wisconsin International Law Journal* 741, 755–66.

[127] Agreement between the United States of America, the United Mexican States, and Canada (entered into force 1 July 2020) (CUSMA), https://can-mex-usa-sec.org/secretariat/assets/pdfs/usmca-aceum-tmec/agreement-eng.pdf. This agreement brought some changes to energy regulations compared with the previous NAFTA agreement. One notable difference is the absence of a dedicated energy chapter in CUSMA and integration of energy-related provisions into other chapters (see, eg, Ch 14 'Investment' and Ch 32 'Exceptions and General Provisions'). For a summary of the changes in the legal treatment of energy relations in CUSMA see, eg, David A Gantz, *An Introduction to the United States-Mexico-Canada Agreement: Understanding the New NAFTA* (Edward Elgar 2020) 101–21; M Angeles Villarreal and Ian F Fergusson, 'NAFTA and the United States-Mexico-Canada Agreement (USMCA)', Congressional Research Service R44981, 2 March 2020, https://www.everycrsreport.com/files/20200302_R44981_cb2c8918ab5d623c4954e666604915302585b487.pdf.

[128] See NAFTA (n 126) art 606 (recognising the complexity of energy regulatory measures and their potential impact on energy trade. It seeks to ensure that the implementation of regulatory measures should be undertaken in an orderly way that promotes a stable commercial environment). For an analysis of the main elements of the legal framework for the operation of the energy market in the NAFTA region see Paul M Lalonde and others, 'Continental Energy Trade: What to Expect from NAFTA 2.0' (2018) 56(2) *Alberta Law Review* 275; Gary Horlick and others, 'NAFTA Provisions and the Electricity Sector', Commission for Environmental Cooperation of North America, June 2002, http://www.cec.org/files/documents/publications/1821-nafta-provisions-and-electricity-sector-en.pdf.

[129] Such a mechanism could raise concerns of violation of the GATT most-favoured-nation principle, considering that a regional energy treaty would probably not qualify under the GATT art XXIV exemption. On the other hand, if whatever concessions that were reached within this regional treaty were to be extended to all other WTO members, this would resolve the problem. Alternatively, the EMGF members who are also WTO members could apply for a waiver under art IX of the WTO Agreement: Agreement Establishing the World Trade Organization (entered into force 1 January 1995), https://www.wto.org/english/res_e/booksp_e/agrmntseries1_wto_e.pdf; GATT (n 112).

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could significantly reduce the cost of energy products for consumers and promote the development of the energy sector in the region.

At the same time, Article 607 of NAFTA (addressing national security measures in relation to energy and basic petrochemical goods) provides for certain restrictions. More specifically, it allows parties to impose import restrictions on energy or basic petrochemical goods from another party, or to restrict exports of such goods in cases where it is necessary to supply a military establishment, respond to armed conflict, implement non-proliferation policies or agreements regarding nuclear weapons, or address direct threats to the supply of nuclear materials for defence purposes. It is worth mentioning that the grounds for invoking the national security exception outlined in Article 607 are narrower than those set out in GATT Article XXI or in the NAFTA general national security provision.[130] Similar security provisions could also be incorporated in a regional energy treaty in order to ensure that the parties retain their right to protect their national security even by measures that otherwise would conflict with the treaty's provisions, but do so sparingly and only in justified circumstances.

Another critical component of any international treaty aimed at promoting trade and investment between members include provisions on investment promotion and protection. For this purpose, the Energy Charter Treaty includes several provisions that can serve as a useful model for a regional energy treaty. For instance, Article 10 of the ECT guarantees the fair and equitable treatment of investments made by investors of one contracting party in the territory of another contracting party.[131] This provision ensures that investors are treated fairly and without discrimination, and are protected from arbitrary or discriminatory measures.

However, despite its significance, Article 10 of the ECT has faced criticism because of the broad and ambiguous wording of the provision, which has led to challenges in its interpretation and application. This has resulted in an increasing number of claims filed under the fair and equitable treatment (FET) standard, with both claimants and contracting parties struggling to articulate clearly how the FET standard has been violated or upheld. Being shaped by the political and economic realities of the early 1990s, the ECT and, in particular, its Article 10 were aimed primarily at investment protection, providing protection for the EU investments in the fossil fuel sector of the former USSR republics.[132] In the modern context, however, these investment protection provisions have been used increasingly by fossil fuel investors to oppose governmental efforts to enact climate change policies, and to block the legislation that reduces their profits.[133] For this reason, the provisions of ECT Article 10, in their original wording, are criticised for failing to address the current political and economic challenges, and to protect legitimate policy objectives

[130] See NAFTA (n 126) art 607. For analysis of national security exceptions to GATT, NAFTA and other international agreements see Saverio Di Benedetto, 'The National Security Clauses in International Economic Agreements: A Loophole for States to Escape Their Obligations?' in Maria Rosaria Mauro and Federico Pernazza (eds), *State and Enterprise* (Springer Cham 2023) 53.

[131] ECT (n 32) art 10(1).

[132] Bagdat G Kuzhatov, 'The Energy Charter Treaty Reform: Why and How to Reach a Consensus on Fair and Equitable Treatment?' (2022) 163 *Energy Policy*, article 112769.

[133] See Bart-Jaap Verbeek, 'The Modernization of the Energy Charter Treaty: Fulfilled or Broken Promises?' (2023) 8(1) *Business and Human Rights Journal* 97.

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such as the environment, safety and public health. There is, therefore, a recognised need to revise the FET standard, in order to reflect a shift in modern global energy policy from traditional fossil fuel to low carbon sources, and to different financing schemes aimed at incentivising renewable energy.[134] To implement this objective, the EU tried unsuccessfully to convince ECT contracting parties to modernise the treaty and, in particular, to strengthen their right to regulate.[135]

Another article of the Energy Charter Treaty that was to undergo considerable revision in the EU text proposal for the modernisation of that treaty is Article 13. It requires that investments should be protected from expropriation unless it is for a public purpose, is non-discriminatory, and provides prompt, adequate and effective compensation.[136] The need to modernise Article 13 was rooted in its imprecise definitions, the lack of an accurate definition of what constitutes 'a measure or measures having effect equivalent to nationalisation or expropriation', and lack of valuation criteria to be used for compensation.[137] A modern expropriation provision for our proposed regional energy treaty will need a more precise definition of 'expropriation', clearly excluding regulatory restrictions aimed at achieving public policy objectives, such as the protection of public security, public order and public morals, and protection of the environment. It would also need to establish a clear framework for assessing compensation, taking into account factors such as market value, economic impact and the legitimate public purpose behind the expropriation. Hence, this would provide investors with greater clarity and assurance regarding their rights in the event of expropriation, thereby fostering a more conducive environment for cross-border investment in the energy sector.

We would also propose the inclusion of a provision similar to ECT Article 12 (compensation for losses). This provides for compensation to investors in the event of war, armed conflict, a state of national emergency or any other similar event that prevents the normal operation of investments.[138] Including this provision in a regional energy treaty could help to mitigate risks associated with investing in a region that is prone to conflict. In the event of war, armed conflict or other similar event that prevents the normal operation of energy projects, this provision would ensure that investors in the energy sector are not left without recourse and are provided with adequate compensation for any losses incurred. This could help to provide a sense of security and stability for investors in the region, which can further incentivise investment and contribute to the economic development of the region. Provisions similar to ECT Articles 10, 12 and 13 can be found in many bilateral investment treaties (BITs).

[134] Kuzhatov (n 132).

[135] 'EU Text Proposal for the Modernisation of the Energy Charter Treaty (ECT)', 24 June 2022, https://ccsi.columbia.edu/sites/default/files/content/docs/tradoc_158754%20(1)_0.pdf.

[136] ECT (n 32) art 13(1).

[137] ibid art 13. A useful model of expropriation provisions for a proposed regional energy treaty can be found in art 13 of the EU Text Proposal for Modernising the Energy Charter Treaty (n 135). This article offers a clearer definition of expropriation, distinguishes between direct and indirect expropriation, limits the scope of the latter and establishes a more precise framework for assessing compensation; see also ibid (n 135) Annex X.

[138] ECT (n 32) art 12(2).

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At the same time, there is no unanimous consensus on whether BITs help in attracting foreign investment; based on some studies, they are of little effect.[139] Other researchers claim that BITs can increase foreign direct investment (FDI) in developing countries,[140] play a positive role in promoting investment[141] and increase FDI inflows into countries that have mutually ratified BITs.[142] In the Israeli context, this suggests that Israel could gain considerable benefit from concluding BITs with capital-exporting countries with politically stable regimes (developed countries).[143] Being members of the EMGF, such developed countries as France, Italy and Greece have no BITs with Israel. Similarly, Jordan does not have a BIT in force with Italy,[144] and the BITs of Jordan and Egypt, respectively, with France are aged and do not include an investor-state dispute settlement (ISDS) mechanism.[145] For this reason, a regional energy treaty with a strong investment chapter could be beneficial for attracting foreign investment from these countries into Israel, Egypt and Jordan. There are also no existing BITs between Israel, on the one hand, and Egypt or Jordan, on the other, despite several joint energy projects concluded or currently planned.

We are not ignoring the fact that not all foreign investments are inherently positive for the host state. Certain foreign investments can jeopardise national security by posing risks to strategic assets and critical infrastructure.[146] For instance, the attempted acquisition of the US oil company Unocal by the China National Offshore

[139] Mary Hallward-Driemeier, 'Do Bilateral Investment Treaties Attract Foreign Direct Investment? Only a Bit and They Could Bite' in Karl P Sauvant and Lisa E Sachs, *The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties, and Investment Flows* (Oxford University Press 2009) 349, 363–75.

[140] Eric Neumayer and Laura Spess, 'Do Bilateral Investment Treaties Increase Foreign Direct Investment to Developing Countries?' (2005) 33 *World Development* 1567, 1568–73.

[141] Jeswald W Salacuse and Nicholas P Sullivan, 'Do BITs Really Work? An Evaluation of Bilateral Investment Treaties and Their Grand Bargain' (2005) 46 *Harvard International Law Journal* 67, 97–130.

[142] Yoram Z Haftel, 'Ratification Counts: US Investment Treaties and FDI Flows into Developing Countries' (2010) 17 *Review of International Political Economy* 348.

[143] Reich (n 115) 77–85. The case of the BIT concluded between Israel and Japan in 2017 seems to prove the positive effect of BITs between Israel and developed countries. Following signature of the BIT in February 2017, direct investment from Japan increased dramatically in comparison with previous years (by over 300%) and Japanese investment stock in Israel grew to an all-time high of USD 1.5 bn annually (figures are based on Central Bureau of Statistics (Israel), https://www.cbs.gov.il/he/mediarelease/doclib/2019/110/09_19_110t2.pdf).

[144] According to the UN Conference on Trade and Development (UNCTAD) Investment Policy Hub, the Jordan–Italy BIT was terminated in 2015: UNCTAD, 'International Investment Agreements Navigator', Investment Policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/2082/italy—jordan-bit-1996.

[145] La Convention entre le Gouvernement de la République Française and le Gouvernement du Royaume Hachemite de Jordanie sur l'encouragement et la protection réciproques des investissements (entered into force 18 October 1979) (in French); La Convention entre le Gouvernement de la République Française et le Gouvernement de la République Arabe d'Egypte sur I'encouragement et la protection réciproques des investissements (entered into force 1 October 1975) (in French).

[146] For analysis of FDI, national security considerations and related regulatory frameworks see Carlos Esplugues, *Foreign Investment, Strategic Assets and National Security* (Intersentia 2018) 165–220; Keyan Lai, 'National Security and FDI Policy Ambiguity: A Commentary' (2021) 4 *Journal of International Business Policy* 496; Cheng Bian, 'Foreign Direct Investment Screening and National Security: Reducing Regulatory Hurdles to Investors through Induced Reciprocity' (2021) 22 *The Journal of World Investment & Trade* 561, 571–85.

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

Oil Corporation (CNOOC) in 2005 raised significant concerns within the US government. The USD 18.5 billion deal raised concerns about granting China access to sensitive information regarding energy operations and critical infrastructure in the US, thereby jeopardising national security.[147] As a result, the CNOOC withdrew its bid amidst political opposition and regulatory scrutiny.[148]

To address similar risks, many countries have adopted domestic legal frameworks to screen and control foreign investments, with the aim of evaluating and mitigating potential national security threats.[149] Among the members of the EMGF, France[150] and Italy[151] have implemented such mechanisms to screen foreign investments with national security considerations. Greece is currently in

[147] Dick K Nanto and others, 'China and the CNOOC Bid for Unocal: Issues for Congress', Congressional Research Service Order Code RL33093, 27 February 2006, https://www.everycrsreport.com/files/20060227_RL33093_e678f18bddd5a3f1638b94448dbfd165c9616d3d.pdf.

[148] David Barboza and Andrew Ross Sorkin, 'Chinese Company Drops Bid to Buy U.S. Oil Concern', *The New York Times*, 3 August 2005, https://www.nytimes.com/2005/08/03/business/worldbusiness/chinese-company-drops-bid-to-buy-us-oil-concern.html.

[149] For analysis of the evolution of international investment law, including the rise of investment screening mechanisms and a focus on national security considerations, see Georgios Dimitropoulos, 'National Security: The Role of Investment Screening Mechanisms' in Julien Chaisse, Leïla Choukroune and Sufian Jusoh (eds), *Handbook of International Investment Law and Policy* (Springer Singapore 2021) 507; Tania Voon and Dean Merriman, 'Incoming: How International Investment Law Constrains Foreign Investment Screening' (2022) 24(1) *The Journal of World Investment & Trade* 75; Jonas Hallberg, 'Foreign Investment Screening in Finland, Norway, Sweden and Denmark' in Steffen Hindelang and Andreas Moberg (eds), *YSEC Yearbook of Socio-Economic Constitutions 2020: A Common European Law on Investment Screening (CELIS)* (Springer Cham 2021) 209; Christopher M Weimer, 'Foreign Direct Investment and National Security Post-FINSA 2007' (2009) 87 *Texas Law Review* 663.

[150] The French mechanism for screening FDI is governed primarily by arts L.151-2 to L.151-7 and R.151-1 to R.151-17 of the Monetary and Financial Code, amended by Decree No 2019-1590 of 31 December 2019. This amendment significantly expanded the sectors subject to screening, including private security services, IT systems for public authorities, dual-use goods and technologies, critical technologies like artificial intelligence, semiconductors, cybersecurity, robotics, additive manufacturing. Additionally, it encompasses certain energy sectors, covering electricity, gas, hydrocarbons and their related activities: Monetary and Financial Code (Code monétaire et financier) 1999 (France) (in French), https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006072026/LEGISCTA000006140476/#LEGISCTA000006140476; Decree No 2019-1590 (Décret n° 2019-1590 du 31 décembre 2019 relatif aux investissements étrangers en France) 2019 (France) (in French), https://www.legifrance.gouv.fr/loda/id/JORFTEXT000039727443; see also Ministry of the Economy and Finance (France), 'FAQ Foreign Direct Investment Screening in France', October 2023, https://www.tresor.economie.gouv.fr/Institutionnel/Niveau2/Pages/f149e66d-6df2-4726-a594-3d95409d7a46/files/f1b85812-7023-45cb-b1ff-dc5a4236e3aa.

[151] The Italian FDI screening mechanism, governed primarily by Law Decree No 21 of 15 March 2012, converted into Law No 56 of 11 May 2012 (the 'Golden Power Law'), has undergone several amendments and supplements over time. Additionally, this mechanism encompasses procedural rules in the energy, transportation and communication sectors aimed at safeguarding national security. Decree No 179/2020 further extends the scope of application; it includes infrastructure for the storage of fuel, nuclear materials or radioactive waste. Strategic assets now cover coastal deposits of crude oil and petroleum products, LNG storage infrastructure, pipelines for supplies to intercontinental airports, technologies for managing wholesale markets for natural gas and electricity, and companies in the energy sector with significant turnover and employee numbers: Law Decree No 21 ('Decreto-Legge 15 marzo 2012, n. 21') 2012 (Italy) (in Italian), https://www.normattiva.it/eli/id/2012/03/15/012G0040/CONSOLIDATED; Prime Minister Decree No 179/2020 ('Decreto del Presidente del Consiglio dei Ministri 18 dicembre 2020, n. 179'), 2020 (Italy) (in Italian), https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.del.consiglio.dei.ministri:2020-12-18;179; Prime Minister Decree No 180/2020 (Decreto del Presidente del

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the process of establishing a screening mechanism.[152] However, Egypt, Cyprus and Jordan lack such mechanisms, leaving these countries potentially vulnerable to national security risks posed by certain foreign investments.[153] Israel, recognising the importance of safeguarding its national security interests, established in 2019 the Advisory Committee for Evaluating National Security Aspects in Foreign Investments.[154] However, this committee convenes at the request of its members and lacks a mandatory screening mechanism for all foreign investments.[155] In addition, Israel lacks a comprehensive domestic legal framework for regulating foreign investment,[156] unlike many other countries with similar screening mechanisms in place.[157] Thus, considering the potential attraction of foreign investors by a regional energy treaty, some of these EMGF members would be well advised to establish or revise their foreign investment screening mechanisms.

To sum up, a regional energy treaty could offer a reliable and consistent regulatory environment for investors operating in the Eastern Mediterranean region. It could include provisions for trade and investment, and the Energy Charter Treaty and other trade agreements (such as NAFTA) could be utilised as useful models for its provisions. At the same time, it is crucial to avoid the potential shortcomings and controversies analysed above, in particular those contained in Articles 10 and 13 of the ECT. This can be achieved by prioritising renewable energy and the need to tackle climate change, as well as building upon the revised text proposal for the modernisation of the ECT.

3.2.3. Environmental protection

The pursuit of sustainable development and environmental conservation is of paramount importance in today's global energy landscape.[158] In this light, Article 19

Consiglio Dei Ministri, 23 dicembre 2020, n. 180), 2020 (Italy) (in Italian), https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.del.consiglio.dei.ministri:2020-12-23;180.

[152] UNCTAD, 'The Evolution of FDI Screening Mechanisms Key Trends and Features', *Investment Policy Monitor*, February 2023, 4, https://investmentpolicy.unctad.org/publications/1279/the-evolution-of-fdi-screening-mechanisms—key-trends-and-features.

[153] ibid; UNCTAD, 'Investment Laws Navigator', Investment Policy Hub, https://investmentpolicy.unctad.org/investment-laws.

[154] Resolution B\41 of the Ministerial Committee on National Security Affairs (State Security Cabinet), 12 October 2022 (Israel), https://www.gov.il/en/pages/resolution-b-41.

[155] According to Resolution B\41, ss 2 and 3 outline that the Advisory Committee's screening procedures for foreign investments lack a mandatory approach. In particular, s 2 emphasises that initiation of the review process relies solely on the discretion of its members, rather than being a standard requirement for all foreign investments: ibid; see also Doron Ella, 'A Regulatory Mechanism to Oversee Foreign Investment in Israel: Security Ramifications', Institute for National Security Studies (INSS) Insight No 1229, 19 November 2019, https://www.inss.org.il/publication/a-regulatory-mechanism-to-oversee-foreign-investment-in-israel-security-ramifications.

[156] See Efraim Chalamish, 'Foreign Investment in Israel's Strategic Industries', Begin-Sadat Center for Strategic Studies, Mideast Security and Policy Studies No 136, July 2017, https://besacenter.org/wp-content/uploads/2017/09/MSPS136.pdf; see also ibid Ella.

[157] UNCTAD (n 152).

[158] Till Weidner and others, 'Energy Systems Modeling and Optimization for Absolute Environmental Sustainability: Current Landscape and Opportunities' (2022) 164 *Computers & Chemical Engineering*, article 107883.

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

of the ECT offers valuable insights that could serve as model provisions for a regional energy treaty on environmental protection and energy efficiency.[159] With these provisions, each contracting party would be bound to make efforts to minimise harmful environmental impacts arising from energy operations within its territory and in the surrounding maritime areas; this would prevent or mitigate environmental degradation in the maritime domain. Similar to the ECT principles, a regional energy treaty could stipulate provisions that require contracting parties to legislate to put the cost of pollution onto the polluters (polluter pays principle), to include transboundary pollution. Such provisions should be formulated in a manner that respects the public interest and does not hinder international trade.[160]

In addition, to complement the efforts on environmental protection and energy efficiency, the proposed regional energy treaty could incorporate provisions from the non-binding Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA).[161] The objectives of PEEREA, as highlighted in its Article 1,[162] include promoting energy efficiency policies consistent with sustainable development, encouraging efficient energy markets, and fostering cooperation in the field of energy efficiency.[163] Adapting these provisions to the needs of the suggested regional energy treaty would ensure that producers and consumers utilise energy resources in an economically, environmentally and socially sound manner within the maritime context.

While the existing Statute of the EMGF already includes a declared commitment to 'environmentally conscious development',[164] this needs to be strengthened in a future regional treaty. Incorporating provisions of ECT Article 19 and PEEREA would help to promote responsible energy use, strengthen protection of the marine environment, and support international cooperation in pursuit of a greener and more secure future for the region.[165]

[159] ECT (n 32) art 19. This provision requires each contracting party to strive for sustainable development by minimising harmful environmental impacts from all operations within 'the Energy Cycle', both within and outside their territory, in an economically efficient manner. It emphasises the promotion of environmentally sound technologies, cooperation on international environmental standards, and transparent assessment of environmental impacts in energy investment projects.

[160] Hobér (2020) (n 96) 'Article 19: Environmental Aspects'.

[161] Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (entered into force 16 April 1998) (PEEREA), https://www.energycharter.org/fileadmin/DocumentsMedia/Legal/1994_PEEREA.pdf. This protocol aims to enhance energy efficiency and address environmental concerns within 'the Energy Cycle'. It also seeks to promote cooperation, information exchange and a transparent assessment of environmental impacts in order to establish cost-effective and sustainable energy-related practices.

[162] ibid art 1.

[163] PEEREA provides a well-developed framework for peer reviews, information exchange and dissemination of good practices, all of which promote energy efficiency: Energy Charter Secretariat, 'Decision of the Energy Charter Conference: Report by the Chairman of the Working Group on Energy Efficiency and Related Environmental Aspects', CCDEC 2013, 6 December 2013, https://www.energycharter.org/fileadmin/DocumentsMedia/CCDECS/CCDEC201318.pdf.

[164] Statute of the EMGF (n 5) art 2(a).

[165] The European Union's recent decision to withdraw from the ECT (n 32) underscores the need for incorporating provisions for the protection of renewable energy and the marine environment in a regional energy treaty. These provisions need to align with the principles of the Paris Agreement

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3.2.4. Dispute settlement mechanism

As discussed above, the Eastern Mediterranean region is facing numerous challenges, which include disputes over maritime borders, geopolitical tension and fragmented legal frameworks. The absence of a common dispute settlement mechanism has hindered efforts to create a stable investment environment in the energy sector and resolve these issues. There is therefore a need for a comprehensive and customised dispute settlement system. This system could be created within the framework of a regional energy treaty, drawing on best practices established in international law.[166] The proposed mechanism would set up a robust legal framework for resolving complex disputes, fostering investment and turning the East Mediterranean Gas Forum into an influential stabilising factor in the region.

One type of dispute to be covered by the suggested dispute settlement mechanism is the state-to-state dispute. It should be noted that disputes of this type – which have gone to third party settlement – are relatively few compared with investor-state disputes.[167] One notable example of a state-to-state dispute, with implications in the energy field, is the case between Qatar and Bahrain regarding the delimitation of their maritime boundary and the distribution of hydrocarbon resources in the disputed area. Qatar and Bahrain had conflicting territorial claims over the Hawar Islands, and over sovereign rights to maritime resources and certain offshore gas fields. Unable to resolve the dispute through bilateral negotiations, they turned to the International Court of Justice (ICJ) for a binding resolution. The ICJ judgment, issued in 2001, determined the maritime boundary between Qatar and Bahrain and allocated the rights to explore and exploit the hydrocarbon resources in the disputed area.[168] This case demonstrates how a binding dispute resolution mechanism can help to resolve energy disputes even in the Middle East, thereby providing a clear legal framework for the two countries to effectively manage their energy resources, thus promoting stability and cooperation in the region.

Another helpful example of provisions that establish a dispute settlement mechanism can be found in the Energy Charter Treaty. In particular, its Article 27 provides effective procedures for the resolution of state-to-state disputes related to transit and investment. Establishing a framework for the resolution of such disputes,

and other environmental international agreements, demonstrating a strong commitment to sustainable development, climate action and responsible energy practices. Considering the EU exit from the ECT following its failure to secure modernisation of the ECT with stronger provisions on climate change, renewable energy and modern standards of investment protection, it seems vital to include in a regional energy treaty the environmental provisions aimed at advancing global environmental goals; see Ajit Niranjan, 'MEPs Vote to Leave Treaty Used by Investors to Sue over Climate Policies', *The Guardian*, 24 April 2024, https://www.theguardian.com/world/2024/apr/24/meps-vote-to-leave-energy-charter-treaty-climate. See also Paris Agreement (entered into force 4 November 2016) OJ L 282/4.

[166] For analysis of managing disputes in the international energy sector, covering types of dispute, dispute settlement mechanisms and considerations for international arbitration, see A Timothy Martin, 'Dispute Resolution in the International Energy Sector: An Overview' (2011) 4(4) *Journal of World Energy Law & Business* 332.

[167] UNCTAD, 'Dispute Settlement: State-State', UNCTAD Series on Issues in International Investment Agreements, 2003, UN Publication UNCTAD/ITE/IIT/2003/1, https://unctad.org/system/files/official-document/iteiit20031_en.pdf.

[168] ICJ, *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain)*, Judgment [2001] ICJ Rep 87.

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it sets up dialogue and negotiation through diplomatic channels as the first stage of dispute resolution. In cases where settlement cannot be achieved, either party involved in the dispute may initiate arbitration proceedings.[169] The arbitration process is designed to be flexible and adaptable, following the UNCITRAL Arbitration Rules, unless the parties involved have specifically agreed a different approach. This ensures that established and recognised rules govern the conduct of the arbitration, thus promoting fairness and consistency. To initiate the arbitration process, the party seeking recourse must provide written notice to the other party and submit the matter to an ad hoc tribunal.[170] The tribunal's decision making is guided by the provisions of the ECT and applicable rules and principles of international law.[171] This ensures that the resolution aligns with the treaty's objectives and relevant international legal standards. Once the tribunal reaches a decision, the arbitral award is considered final and binding upon the contracting parties.[172]

In addition to state-to-state disputes, the dispute settlement mechanism of the suggested regional energy treaty should also include provisions for investor-state disputes, which are by far more common. Being included in over 3,000 international investment treaties,[173] investor-state dispute settlement mechanisms seek to resolve disputes between foreign investors and host states. Through these mechanisms, investors may seek redress if they believe their investments have been treated unfairly or subjected to expropriation or other actions by the host state. Like state-to-state disputes, investor-state disputes are settled typically via mediation (through a neutral third party) or arbitration (where neutral arbitrators hear and decide the case).[174]

A potential model for a provision setting up a dispute settlement mechanism between investors and host governments is Article 26 of the ECT. The article affords investors the right to initiate arbitration against a contracting party in the event of a dispute related to investments. This provision serves to protect foreign investors from discriminatory and unfair treatment by host states. The rules and forum for the arbitration are selected by the investor from among the International Centre for Settlement of Investment Disputes (ICSID), the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules, the Arbitration Institute of the Stockholm Chamber of Commerce, or any other arbitration rules agreed by

[169] ECT (n 32) art 27(2). This right to invoke arbitration procedures does not apply to ECT art 5 (GATT-inconsistent trade-related investment measures), art 6 (competition rules), art 19 (environmental obligations) and art 29 (trade in energy materials and products with parties that are not WTO members). It will also not apply to the last sentence of art 10(1) (contractual obligations of the state: a so-called 'Umbrella Clause') for members who have made a reservation in this regard (Australia, Canada, Hungary and Norway).

[170] ibid art 27(3)(f).

[171] ibid art 27(3)(g).

[172] ibid art 27(3)(h).

[173] Marta Latek and Laura Puccio, 'Investor-State Dispute Settlement (ISDS) State of Play and Prospects for Reform', European Parliamentary Research Service, January 2015, 1, https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/545736/EPRS_BRI%282015%29545736_EN.pdf.

[174] See Ana Ubilava, *Mediation as a Mandatory Pre-condition to Arbitration* (Brill 2022); Gabrielle Kaufmann-Kohler and Michele Potestà, *Investor-State Dispute Settlement and National Courts. European Yearbook of International Economic Law* (Springer Cham 2020) 31–86.

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the parties.[175] The investor may also choose to resolve the dispute in local courts of the host state.[176] This flexibility in selecting the forum and rules for arbitration allows investors to choose the venue where they believe their claims will be resolved most fairly and impartially.

The effectiveness of applying Article 26 of the ECT was illustrated in the case of *Eiser Infrastructure Ltd and Energía Solar Luxembourg Sàrl v Kingdom of Spain*. The claimants initiated arbitration against Spain under Article 26 in relation to the measures implemented by Spain that deprived them of their investments in the renewable energy sector. The arbitration was conducted according to ICSID rules. On 4 May 2017, the tribunal issued a decision finding that Spain had breached its obligations under the ECT by depriving the investors of their investments in an unfair and non-equitable manner, and ordered Spain to pay the claimants €128 million in damages.[177] The case highlights the significance of a dispute resolution mechanism provided in Article 26 of the ECT, which allows investors to protect their investments and seek redress for breaches of treaty obligations by host states.

On the other hand, Article 26 of the ECT has been criticised for providing foreign investors with a powerful tool to challenge government policies.[178] Provisions of Article 26 have been used by investors to oppose government policies related to renewable energy and climate change, which can hinder the transition to clean energy. Critics argue that these provisions lack transparency in the investment arbitration proceedings and prioritise the rights of investors over protection of the environment and human rights.[179] In view of that, some countries are considering withdrawing from the ECT or renegotiating the terms of Article 26 to ensure that it does not undermine their ability to implement renewable energy policies.[180]

To address these issues, a regional energy treaty could prioritise environmental, social and human rights of the contracting party over investor rights. This could be achieved through explicit recognition of the importance of protecting the contracting parties' rights, and by limiting disputes between investors and contracting parties to cases with a clear violation of a specific provision of the treaty. Such provisions can be based on similar 'environmentally friendly' dispute settlement provisions found in some of the new model BITs. For instance, Article 8(9) of the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) guarantees fair treatment for foreign investors, while confirming the parties' right

[175] ECT (n 32) art 26(4).

[176] ibid art 26(2)(a).

[177] ICSID, *Eiser Infrastructure Ltd and Energía Solar Luxembourg Sàrl v Kingdom of Spain*, ICSID Case No ARB/13/36, Award, 4 May 2017, 148, https://www.energychartertreaty.org/fileadmin/DocumentsMedia/Cases/53_Eiser_Infrastructure/Final_Award__ENG_.pdf.

[178] Verbeek (n 133) 97–98; Kyla Tienhaara and Downie Christian, 'Risky Business? The Energy Charter Treaty, Renewable Energy, and Investor-State Disputes' (2018) 24 *Global Governance: A Review of Multilateralism and International Organizations* 451, 456–63; Pyoungkeun Kang, 'The Relationship between the Investor-State Dispute Settlement and the Denial of Benefits with Specific Reference to the Energy Charter Treaty' (2017) 19 *Asian Business Lawyer* 15, 15–38.

[179] Felix Ekardt and others, 'Energy Charter Treaty: Towards a New Interpretation in the Light of Paris Agreement and Human Rights' (2023) 15 *Sustainability*, article 5006; Vivian Kube and Ernst-Ulrich Petersmann, 'Human Rights Law in International Investment Arbitration' in Andrea Gattini, Attila Tanzi and Filippo Fontanelli (eds), *General Principles of Law and International Investment Arbitration* (Brill 2018) 221.

[180] Tienhaara and Christian (n 178) 454–56. See also Niranjan (n 165).

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to regulate at all levels of government to protect public health, safety and the environment, or to promote cultural diversity.[181] It clarifies that regulatory measures or modifications to laws that negatively affect an investment or investor's expectations do not as such amount to a breach of obligations under the agreement.[182] These provisions in Article 8(9) of CETA demonstrate a balanced approach that considers the right to regulate in the public interest while providing guarantees for investors. They serve as an example of how a specific provision in an international economic agreement can prioritise the contracting parties' rights and interests, including environmental and social concerns, without unduly constraining their ability to implement necessary policy measures. This would prevent investors from using the dispute settlement mechanism against legitimate public interests in protecting the environment or human rights.[183]

In addition to the above, it seems crucial for energy treaties to include provisions on how to settle transit disputes. First, these provisions should guarantee uninterrupted transit of energy resources in the event of a potential dispute, as stipulated in Article 7(6) of the ECT. This provision does not allow any interruption or reduction in the existing flow of energy resources initiated by the transit party before the end of the dispute resolution procedures.[184] Second, the proposed regional energy treaty should outline a dispute settlement mechanism for transit disputes; such a mechanism could be based on the approach developed in Article 7(7) of the ECT.[185] According to this provision, a contracting party may refer the dispute to the Secretary-General of the Energy Charter Secretariat. In its turn, the Secretariat may elect to appoint a conciliator with a view to seeking a compromise between the disputing parties. It can be viewed as an advantage that these provisions apply not just to the contracting parties involved in the dispute, but also to other entities that are part of the dispute. Therefore, the framework outlined in the ECT (with necessary amendments) could serve as a model for the procedure of resolving transit disputes in a regional energy treaty. By incorporating a similar approach, such a treaty could establish a conflict resolution centre (CRC) that would offer resolution through 'good offices', mediation and conciliation[186] to the parties involved in the dispute.

We would suggest several amendments to the model provided by ECT Article 7(7) to make it more effective. First, after one of the parties to a dispute refers the dispute

[181] Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States (entered into force 21 September 2017) OJ L 11/23.

[182] ibid art 8(9).

[183] Ekardt and others (n 179).

[184] ECT (n 32) art 7(6) allows exceptions to uninterrupted transit in specific circumstances, including provisions in commercial contracts, alternative transit agreements and conciliator discretion. A proposed regional energy treaty could similarly incorporate necessary exceptions; see also Hobér (2020) (n 96) 167; Danae Azaria, *Treaties on Transit of Energy via Pipelines and Countermeasures* (Oxford University Press 2015) 178–79.

[185] ECT (n 32) art 7(7) has faced criticism for providing a non-binding conciliation mechanism that potentially leads to delays and offers non-binding recommendations. Lacking binding authority, conciliators are not in the position to impose binding resolutions of the dispute: Azaria (n 184) 178–85.

[186] For analysis of negotiation, 'good offices' and mediation see Tanaka (n 43) 28–51; Stephen B Goldberg and others, *Dispute Resolution: Negotiation, Mediation, Arbitration, and Other Processes* (Aspen 2020).

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to the CRC, the proposed regional treaty should mandate the immediate appointment of a conciliator. If, despite the conciliator's efforts, a compromise has not been achieved, the conciliator should be invested with the power to impose a temporary settlement that will be binding on the parties. The conciliator then should decide whether the dispute requires an urgent or delayed response. For instance, a dispute will require an urgent response if it blocks or significantly impedes the transit of energy resources. If an urgent response is required, the proposed treaty should impose short time frames for handling the dispute.[187] In the suggested treaty, the CRC would have no more than seven days in which to appoint a conciliator, and the conciliator should aim to reach a compromise within 30 days for urgent cases and within 90 days for cases allowing delayed responses. Once this time period has expired, we suggest applying the Med-Arb dispute resolution approach[188] and vesting the conciliator with the power of an arbitrator. Upon hearing the parties' oral arguments, this arbitrator would make a binding decision on a temporary settlement, with the decision remaining in force until the final decision is made by the arbitral tribunal. This tribunal would be made up of a panel of three arbitrators who can rule on the final resolution of the dispute after hearing the parties.

Thus, the approach based on revised provisions of ECT Article 7(7) would establish a binding and effective mechanism for resolving transit disputes in the energy sector.

3.3. *Expanding the EMGF scope to include renewable energy: The role of a regional energy treaty*

The global energy crisis facing the world today is caused by factors such as the depletion of fossil fuel reserves, increasing energy demand and adverse effects of climate change. This has forced many countries to rethink their energy policies and invest in renewable energy sources such as bioenergy, geothermal energy, hydrogen, hydropower, marine energy, solar energy and wind energy.[189] For the Mediterranean region, with its limited natural resources and growing population, the shift towards renewable energy is particularly crucial. Several countries in the region, such as Israel and Jordan, have already made significant investment in renewable energy, and others are exploring its potential.[190] Moreover, all of the EMGF members, except the Palestinian Authority, are also active members of the International Renewable Energy Agency (IRENA).[191] This underscores their commitment to

[187] According to the ECT, the Secretary-General has up to 30 days in which to appoint a conciliator. Upon appointment, the conciliator should try to establish a compromise between the parties within 90 days: ECT (n 32) art 7(7). We believe these time frames are not short enough for transit disputes that require an urgent resolution.

[188] See Brian A Pappas, 'Med-Arb and the Legalization of Alternative Dispute Resolution' (2015) 20 *Harvard Negotiation Law Review* 157.

[189] Michael J Albert, 'The Climate Crisis, Renewable Energy, and the Changing Landscape of Global Energy Politics' (2021) 46(3) *Alternatives: Global, Local, Political* 89.

[190] Tareq Abu Hameda and Lindsey Bressler, 'Energy Security in Israel and Jordan: The Role of Renewable Energy Sources' (2019) 135 *Renewable Energy* 378.

[191] IRENA, 'IRENA Membership', https://www.irena.org/About/Membership. IRENA is an intergovernmental organisation that fosters global cooperation for transitioning to sustainable energy futures. It facilitates the widespread adoption of renewable energy sources and acts as a hub for policy, technology,

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

renewable energy and the necessity for international collaboration in this emerging field.[192]

The region's transition to renewable energy can be facilitated through the EMGF, which was established to promote regional cooperation in developing natural gas resources. While natural gas is currently a significant contributor to the region's energy mix, the East Mediterranean region also has significant supplies of renewable energy, particularly solar and wind energy. A regional energy treaty could help to facilitate cooperation among its members in relation to renewable energy where there is still much to strive for.

Regional cooperation in this field may range from overcoming seasonal fluctuations in the production and consumption of electricity, to utilising differences in natural endowments of the parties, as well as building common expertise. First, renewable energy is notably affected by weather conditions, such as sunlight and wind.[193] Interconnecting the grids of multiple countries in the region will smooth out the production of renewable energy by capitalising on diverse weather patterns, time differentials and consumption trends. It will not only guarantee a reliable energy supply but also optimise resource utilisation, creating a more robust and sustainable energy landscape. Additionally, interconnecting national electric grids will also reduce aggregate annual energy costs compared to operating through isolated grids in each country, or in each 'energy island'.[194] A first step in this direction is the underwater electric cable that will connect Israel and Cyprus.[195]

The proposed regional energy treaty could facilitate the amalgamation of common expertise and knowledge about renewable resources, and foster innovation in energy production and distribution among the EMGF members. An example of such mutually beneficial cooperation is the 2022 Memorandum of Understanding

resource and financial knowledge and expertise. Through cultivating partnerships and sharing best practices, IRENA supports efforts towards sustainable development, energy access and low-carbon economic growth objectives. See also Statute of the International Renewable Energy Agency (entered into force 8 July 2010), https://www.irena.org/-/media/Irena/Files/Official-documents/IRENA-Statute/IRENAstatuteenIRENAFCStatutesignedinBonn26012009incldeclarationonfurtherauthenticversions.pdf?rev=d619033053354d20884bde3aef72224f.

[192] Today, the EMGF is already making efforts to advance energy transition and climate action initiatives in the region. However, to fully unlock the region's energy potential and support a sustainable future, the EMGF should expand its scope beyond natural gas to include renewable energy sources. Thus, the EMGF could play a more comprehensive role in promoting sustainable energy activity, thereby contributing to both energy security and climate action goals in the region; see EMGF, 'EMGF SG Osama Mobarez Met with Jake Levine – Chief Climate Officer at the U.S. International Development Finance Corporation (DFC) in Washington DC', *LinkedIn*, 1 May 2024, https://www.linkedin.com/posts/emgforg_energytransition-climateaction-collaboration-activity-7191471282595516416-0gr4/?utm_source=li_share&utm_content=feedcontent&utm_medium=g_dt_web&utm_campaign=copy.

[193] Bruce N Stram, 'Key Challenges to Expanding Renewable Energy' (2016) 96 *Energy Policy* 728.

[194] In this context, 'energy island' refers to national electric grid systems that operate in isolation, without interconnection or integration with the grids of neighbouring countries: Mark Z Jacobson, 'The Cost of Grid Stability with 100% Clean, Renewable Energy for All Purposes when Countries Are Isolated versus Interconnected' (2021) 179 *Renewable Energy* 1065; Elai Rettig and others, 'The Meaning of Energy Islands: Towards a Theoretical Framework' (2023) 187 *Renewable and Sustainable Energy Reviews*, article 113732.

[195] Ministry of Energy and Infrastructure (Israel), 'Reinforcing the Regional Alliance with Cyprus: The Submarine Power Cable Project that Will Connect Israel to Cyprus and From There to Europe Will Be Launched This Year', 14 February 2024, https://www.gov.il/en/pages/cyprus-290124.

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

between Israel and Jordan. Here the parties have agreed to trade desalinated water supplies from Israel for solar energy produced in Jordan.[196] Similarly, by leveraging the resources and expertise of its members, the EMGF can play a key role in promoting the development and integration of renewable energy into the region's energy mix.

To reflect the expanded scope of its activities, the EMGF may need to consider changing its name to something that is more inclusive and representative. First, the focus could shift from gas to all types of energy, including renewable energy. Second, being no longer just a platform for dialogue (as is reflected in the term 'forum'), it could instead be renamed the 'East Mediterranean Energy Organisation'.

Finally, it seems important to establish a legal framework to regulate the organisation's expanded range of operation and create decision-making organs that can reach binding decisions, either by majority voting or by consensus, as will be agreed by the parties. A regional energy treaty proposal, as previously discussed, could address potential legal issues and provide a comprehensive framework for coordinating energy production, distribution and consumption in the region. Such a treaty could also include provisions for attracting investment in renewable energy, developing infrastructure, connecting the members' electricity systems and resolving disputes. Expanding the EMGF activities and creating a regional energy treaty that recognises the importance of renewable energy can strengthen energy security in the East Mediterranean region and contribute to global efforts to mitigate climate change. It requires a collaborative and forward-thinking approach that recognises the potential of renewable energy as a key contributor to the region's future energy needs. Unlike the ECT, which faced harsh criticism for failing to align with environmental principles,[197] a regional energy treaty would demonstrate a commitment to sustainable development and climate action. As a result, it could attract new members to join the EMGF, fostering greater regional cooperation and stability.

4. Summary and conclusions

In its ongoing energy crisis, Europe is looking for ways to import natural gas from the Mediterranean. The platform for promoting regional energy cooperation and facilitating the export of natural gas from the Mediterranean to the European Union is the East Mediterranean Gas Forum. While the EMGF has become an important organisation promoting regional cooperation in the energy sector, it lacks an effective legal framework, with a proper governance structure, binding rules to ensure freer energy trade, safe transit and investments, promotion of renewable energy and protection of the environment. It also lacks a mechanism that could make its decisions binding

[196] Sue Surkes, 'Israel, Jordan, UAE Sign New MOU on Deal to Swap Solar Energy for Desalinated Water', *The Times of Israel*, 8 November 2022, https://www.timesofisrael.com/israel-jordan-uae-sign-new-mou-on-deal-to-swap-solar-energy-for-desalinated-water; 'Israel and Jordan Move Forward with Water-for-Energy Deal', *Reuters*, 8 November 2022, https://www.reuters.com/business/cop/israel-jordan-move-forward-with-water-for-energy-deal-2022-11-08. The rationale of the agreement is that Jordan has vast empty areas that can be used to build large solar plants, while Israel, lacking in territory, has advanced salination technology and plants.

[197] European Commission (n 97); see also Niranjan (n 165).

https://doi.org/10.1017/S0021223724000177 Published online by Cambridge University Press

on its members. To create this framework, this article suggests a new legal tool: a regional energy treaty.

With such a treaty, the EMGF could become a powerful and legally binding energy organisation. The treaty has the potential to offer significant benefits to the EMGF and its members. It could provide a solid legal foundation for energy cooperation, promote sustainable energy development and create a stable investment environment that could unlock economic growth in the East Mediterranean region. Additionally, a regional energy treaty has the potential to ensure security in the East Mediterranean energy sector. It can play a vital role in preventing and resolving disputes in the region – such as disputes over maritime borders, transit disputes, and political disputes over issues that are a potential threat to the stability and success of the EMGF. Lack of security, on the other hand, can have a negative impact on the production of natural gas, its profitability and investor confidence in the region.

To be an effective legal tool, a regional energy treaty should include provisions related to transit, trade and investment. It also requires decision-making organs and comprehensive dispute settlement mechanisms that could foster investment, ensure free transit and strengthen the EMGF position as a leading energy organisation in the region. In addition, it is worth considering the expansion of the organisation into renewable energy in order to facilitate regional cooperation in this important area. Respective provisions could promote energy security and sustainability, and help the region to meet its future energy needs while contributing towards a greener and more sustainable future.

Acknowledgements. This article is based on PhD research performed by the author under the supervision and guidance of Professor Arie Reich.

Funding statement. The authors have not received any funding for this specific research.

Competing interests. The authors declare none.

Cite this article: Igor Klotsman and Arie Reich, 'The East Mediterranean Gas Forum as a Platform for a Regional Energy Treaty' (2025) 58 *Israel Law Review* 86–123, https://doi.org/10.1017/S0021223724000177