

INSIDE ARBITRATION: SPOTLIGHT ON AMAL BOUCHENAKI

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Legal Briefings

One of the global arbitration practice's newest partners discusses her route into arbitration, via the complexities of derivatives and project finance, the synergies between her LatAm and MENA practices, and her experience of single-handedly releasing a ship seized off the coast of Mauritania.

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YOU HAVE AN INCREDIBLY INTERESTING BACKGROUND, HAVING STUDIED OR WORKED IN PARIS, EDINBURGH, THE HAGUE, CALIFORNIA AND NEW YORK. HOW DID THIS COME ABOUT?

I started with a very math-oriented academic background but was interested in languages. I have a diverse background – none of my grandparents share the same cultural background, and nor do their parents! As a result, it was only natural for me to see the world as a web of connections and to be drawn to different languages and cultures. So I looked for a subject that could accommodate my taste for maths and my humanities interests – it seemed like law would suit. I looked for a course which would allow me to develop an academic study of law in more than one jurisdiction but also to work on my languages. My strongest language was French and my English, Spanish and Arabic were already well-developed, so I went to Université Paris XI Sceaux which offered a tough course with ISIT (a translation school) that would push me to further develop my English and Spanish skills as well as studying different legal systems.

"As it turned out, the programme offered me an opportunity to study both English and Scottish law in Edinburgh"

I was really enthused. The Scottish law element offered a good bridge between the common law system and the civil law system I had already studied in Paris. And I loved living in Scotland – the welcoming people and the beautiful Highlands which I explored at every opportunity. I will say that I found the accent challenging at first and I started thinking that perhaps my English was not as good as I thought it was and of course I got used to the accent in the end and I enjoy understanding so well now. It reminds me of how enriching an experience Scotland was for me.

AND THEN YOU HEADED TO THE HAGUE?

Yes, that's right, to the Hague Academy of International Law. In the course of my studies, I became particularly curious about private international law. Then, as I considered cases in the context of my studies, I was particularly drawn to those which involved states and state entities and increasingly exposed to and interested in public international law cases. Learning about both private and public international law (this was something I would end up returning to) was enlightening, and the Program at the Hague was a lot of fun!

WHEN YOU WENT INTO PRACTICE, YOU JOINED A FRENCH LITIGATION BOUTIQUE. WHAT WAS YOUR MOTIVATION?

I had it in my head that I should really develop my practical abilities in one jurisdiction first - France. As it turned out, the private international law work was steered towards me due to my languages (particularly the Spanish and Arabic) and my academic background. For example, matters involving recognition and enforcement and foreign proceedings.

International work – whether it was private or public international law – fell to me. I remember when I was really junior, everyone departed for their annual summer vacations, leaving me alone with assurances that "nothing ever happens in August". The very next day, as I sat in the deserted office, I got a call about the seizure of a client's vessel full of perishable goods off the coast of Mauritania. I guess I was the right person to deal with it – it was a Spanish contract and the court order was in Arabic – unfortunately I had zero months' practical experience! It was a true baptism by fire. To this day, it is one of my most terrifying professional experiences, but it is also a reminder for me of the value of keeping my calm and working through issues no matter how desperate a situation appears to be!

YOU ALSO SPENT TIME DOING COMPLEX TRANSACTIONAL WORK, INCLUDING AT DEUTSCHE BANK. HOW DID THAT COME ABOUT?

I am and have always been annoyingly curious about everything. So when I came out of university, I made very conscious professional choices to give me exposure to the areas that seemed the most mysterious to me. Finance was one of them. After a while at the boutique, I took on a traineeship at Deutsche Bank as a support lawyer for the derivatives trading desk. The work was largely focussed on the legal aspects of non-vanilla transactions. It was complex and enjoyable and I took the transactional knowledge I had gained into the arbitration practice at Coudert Brothers, working under arbitrator Laurie Craig. I enjoyed the work and quickly realised that it was the job for me for the long run. I felt too young to specialise at that time. Working with Laurie Craig is so humbling. He brought so much depth and background, he made me realise that before I dived into the resolution of cross-jurisdictional business disputes, I should know first hand what I was dealing with. My former boss at Deutsche Bank suggested that I follow him to Linklaters in Paris to work in the structured and project finance teams. This really paid off – negotiating these complex transactions added the layer of understanding I wanted in order to be involved in disputes about them.

WHAT PROMPTED THE MOVE BACK TO CONTENTIOUS WORK?

I moved to California for personal reasons and had to adapt to my circumstances. I qualified in California and also spent some time helping friends in Silicon Valley who were setting up start-ups. This was a very enriching time too. I was forced to contemplate the interaction of new technologies with existing legal frameworks.

However, fortuitously Laurie Craig, who had joined a Californian firm in Paris, suggested that I work with him again. I went back into private practice with him. I stayed in California doing arbitration work until the cases became really too big. The work in Paris was great but having spent time in California, I remained extremely interested in the Americas and disputes in the region, particularly given my Spanish language skills. So in 2010 I moved to New York to do more LatAm work. Of course, the first case I got was an Arabic-language arbitration in Egypt! Over the years, I have continued to do work centred on the Americas but have also deepened my knowledge of the MENA region.

HOW DO YOU MARRY YOUR LATAM AND MENA SPECIALISMS?

In a sophisticated market such as the Americas, experience of these two regions is really complementary and I don't regard them as separate areas of practice. Both regions include emerging markets and disputes in both regularly include the interaction between civil law procedure and common law governed undertakings I find.

The fundamental skills involved in managing these aspects to be related, so I can draw on experiences in Latin America in work related to MENA and vice versa.

Asian clients are investing all over too. It is seldom the case that all aspects of a matter are related to one jurisdiction. As a lawyer, I need to see disputes from the perspective of clients – it helps clients that the person who represents them can think in a transversal way. I have also found it useful to clients to be able to draw from experiences and conduct by counterparts and states in various developing economies.

It bolsters the strategic thinking for cross-jurisdictional disputes arising out of emerging or underdeveloped economies.

HOW DID YOU BUILD YOUR TREATY ARBITRATION PRACTICE?

The treaty arbitration piece came along even though I started my career in private law disputes. Many of the transactions and disputes involved states and state entities, so gaining expertise in public international law, including treaty arbitration, was inevitable. Some issues of course are very particular to investment treaty arbitration and call for a specialism. So over the years, I learned, and I continue to learn to recognize the specificities and the common themes between commercial and investment treaty arbitrations. The investors are investing in both a governmental system and a particular venture. You always need to understand the commercial and business implications of the investment - from both the point of view of the state and the investor. The best way to understand those mechanics is to understand commercial transactions and commercial disputes more generally, but without losing sight of the specific universe of public international law concepts that govern the conduct of a host state and its relation to a private entity. So I feel I'm fortunate to do commercial arbitration work as well as investor-state arbitration. I think it adds value and makes my professional life exciting too!

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KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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