

The Possibility of GPA Accession by Qatar, Saudi Arabia, and the UAE: Legal Challenges and Reform Incentives

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ABSTRACT

This paper explores the legal rationale for the Gulf Cooperation Council (GCC) member states' accession to the Government Procurement Agreement (GPA) of the World Trade Organization (WTO) as a strategic legal instrument for promoting anti-corruption reforms and strengthening the rule of law in the region. Despite ongoing efforts aiming to modernize procurement legislative frameworks, GCC countries continue to face challenges related to transparency and accountability. The article analyzes how the GPA's legal obligations such as transparency, non-discrimination, fairness and review procedures, can serve as a normative framework for substantive legal and institutional reforms in procurement systems of the GCC. Grounded in liberal institutionalist theory and rule of law scholarship, the study adopts a comparative doctrinal legal methodology, combining treaty analysis, legislative review, and reference to governance indicators. Through the analysis of the legal architecture of the GPA and an evaluation of its compatibility with existing procurement laws in Qatar, the UAE, and Saudi Arabia, this article demonstrates how GPA accession can serve broader governance objectives in the region. The study also identifies key legal and political hurdles for GCC members implying that accession to the GPA comes with legal costs and structural challenges which cannot be understated. In this regard, the article proposes a roadmap for leveraging GPA obligations not as an immediate goal, but as a strategic legal transitional pathway to foster a more transparent, rules-based procurement environment.

Keywords: GPA; WTO; procurement; transparency; anti-corruption; GCC

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1. INTRODUCTION

Public procurement plays a central role in shaping the relationship between governments and markets. In many countries, including those of the Gulf Cooperation Council (GCC), it is increasingly viewed as a critical tool for promoting integrity and transparency. Yet, despite its centrality, procurement remains an area that is usually recognized as a high-risk area for corruption globally.¹ As argued by Luciana Dutra de Oliveira Silveira, “public procurement frequently involves markets and sectors that are over-regulated, which make them especially attractive to corruption.”² This is especially due to the fact that “regulating agencies hold an excessive power of discretion”³ and “key public procuring positions and decisions are often politically controlled or influenced.”⁴ In recent years, member countries of the GCC have undertaken comprehensive legal reforms in line with their national development strategies, such as Qatar National Vision 2030 and Saudi Vision 2030. In this regard, the area of public procurement appears to be one of the most prominent areas of reform considering that such area has been recognized by the Organisation for Economic Cooperation and Development as a critical domain for fostering an environment of trust and accountability.⁵ In this context, several GCC countries have introduced new procurement legislation with the goal of aligning existing domestic frameworks with international standards. Saudi Arabia, for example, enacted the Government Tenders and Procurement Law in 2019, replacing the 2006 law and introducing new measures destined to enhance the transparency of the government procurement process and to deal appropriately with conflict-of-interest situations as well as establishing an e-portal for bidding.⁶ Moreover, the United Arab Emirates (UAE) issued Federal Law No. 11 of 2023 on Procurement in the Federal Government which incorporates principles of fairness and digitalization.⁷ As of January 2025, Qatar is also in the process of drafting a new public-private partnership law intended to attract foreign investment as confirmed by the new minister of commerce and economy Sheikh Faisal bin Thani Al Thani.⁸ These developments reflect that the GCC region aims at modernizing procurement regimes in line with the best global practices, such as those

set out in the Model Law on Public Procurement of the United Nations Commission on International Trade Law (UNCITRAL) and the Government Procurement Agreement (GPA) of the World Trade Organization (WTO).

However, despite commendable legislative reforms, no GCC state has formally acceded to the GPA. This article addresses the following central question: Could GPA accession serve as a viable legal strategy for advancing anti-corruption reforms and rule of law in Qatar, Saudi Arabia, and the UAE?

This article aims to assess the possibility of GPA accession by these three countries by analyzing the compatibility of their procurement legal frameworks with GPA standards, identifying legal gaps, and exploring whether accession could function as a catalyst for institutional reforms.

2. LITERATURE REVIEW

The role of public procurement reform in advancing transparency, accountability, and the rule of law has been widely explored in international legal scholarship. The GPA, in particular, has been analyzed as a legal instrument that promotes good governance and reduces corruption risks in procurement systems. According to Sue Arrowsmith,⁹ the GPA has become a model of procedural fairness and transparency, often serving as a reference point for countries undergoing procurement reforms. In a similar vein, Robert D. Anderson argues that the GPA represents a global benchmark for procurement reform,¹⁰ with its legally binding standards offering structure and predictability for both governments and suppliers.

Empirical studies have further supported these claims. Bedri Kamil Onur Taş et al. conducted a large-scale analysis of over three million tenders in Europe, showing that GPA membership was correlated with increased competition and a decline in single-bidder contracts, commonly associated with corruption.¹¹ These findings reinforce the argument that GPA accession can contribute to institutional integrity and competitive procurement markets.

Beyond the literature that is specifically focused on

1 Steven L. Schooner, *Desiderata: Objectives for a System of Government Contract Law*, 11 PUB. CONT. L.J. 103 (2002).

2 Luciana Dutra de Oliveira Silveira, *Can the WTO Bring More Teeth to the Global Anticorruption Agenda?*, 53 J. WORLD TRADE 129 (Feb. 2019).

3 *Id.*

4 *Id.*

5 ORG. FOR ECON. CO-OPERATION & DEV., *Preventing Corruption in Public Procurement* (2016), https://baselgovernance.org/sites/default/files/2020-03/oecd_preventing_corruption_in_public_procurement_2016.pdf

6 Al-Tamimi & Co., *Saudi Arabia's New Government Tenders and Procurement Law* (2019), <https://www.tamimi.com/law-update-articles/saudis-new-procurement-law>

7 UAE MINISTRY OF FIN., *Federal Law No. 11 of 2023 on Procurement in the Federal Government* (2024), <https://mof.gov.ae/wp-content/uploads/2024/01/Federal-Law-No.-11-of-2023-on-Procurements-in-the-Federal-Government.pdf>

8 Reuters, *Qatar Drafting New Laws Aimed at Boosting Foreign Investment*, REUTERS (Jan. 23, 2025), <https://www.reuters.com/world/middle-east/qatar-drafting-new-laws-aimed-boosting-foreign-investment-2025-01-23/>

9 Sue Arrowsmith, *Government Procurement in the WTO* 15–21 (Kluwer L. Int'l 2003).

10 Robert D. Anderson, *The WTO Agreement on Government Procurement (GPA): A Global Tool for Trade Enhancement, Policy Reform and Good Governance*, INTAL/IDB Online Training Workshop on Government Procurement and Trade for Brazilian Sub-National Governments, May 18–21, 2021, https://cursos.iadb.org/sites/default/files/Session_1.2_Intro_to_the_GPA_Anderson-1621449382.pdf

11 Bedri Kamil Onur Taş et al., *Does the WTO Government Procurement Agreement Deliver What It Promises?*, 18 WORLD TRADE REV. 609 (Oct. 2019).

the GPA, scholars such as Arie Reich¹² and Anderson and Müller¹³ have highlighted the broader convergence between international trade instruments and anti-corruption efforts, particularly when anti-corruption national measures are aligned with standards under the United Nations Convention Against Corruption (UNCAC).

In the Arab region, the literature on public procurement law remains limited. However, Ahmed Farouk Ghoneim¹⁴ has pointed out that despite recent reforms in many Arab states, including in the Gulf, institutional fragmentation and discretionary practices continue to undermine transparency. He emphasizes the gap between codified laws and actual implementation, noting that many national systems in the Arab world operate under informal procurement norms. His findings suggest that legal reforms undertaken under the auspices of an external international actor such as those encouraged by GPA membership under the WTO could help close that gap.

While the existing literature evaluates the GPA's impact from economic, empirical, or comparative policy angles, there is a notable lack of legal scholarship that assesses the structural and legal feasibility of GPA accession specifically for GCC countries. Furthermore, few studies explore how special and differential treatment mechanisms embedded in the GPA could be used as a strategic legal tool to reconcile accession with national development visions, administrative capacities, and local legal traditions.

This article seeks to fill that gap by offering an analysis of GPA accession from the perspective of Qatar, Saudi Arabia, and the UAE. It argues that accession can serve as a catalyst for rule of law reforms subject to some conditions, while special and differential treatment provisions can provide flexibility to protect sensitive sectors and national space during the transition.

3. THEORETICAL AND METHODOLOGICAL FRAMEWORK

This study is grounded in the liberal institutionalist theory of international law, which views legal regimes and international agreements as tools to promote cooperation, transparency, and the rule of law among countries.¹⁵ Liberal institutionalism argues that international relations can be explained through global governance and international organizations which

have the ability “to get states to cooperate.”¹⁶ From this perspective, international legal instruments such as the GPA appear as instruments that can help achieve governance reforms.¹⁷ The assumption underpinning this framework is that legal commitments at the international level can incentivize domestic reforms by limiting discretion, reducing opportunities for corruption, and embedding principles of transparency within national systems.

The article also builds on rule of law scholarship¹⁸ that considers legal certainty and access to justice as foundational to fostering good governance. In this regard, accession to the GPA is analyzed not only for its trade implications but as a legal benchmark that could help shape national procurement regimes in line with international anti-corruption standards.

Methodologically, the study adopts a comparative doctrinal legal approach, combining treaty analysis with national legislation review and reference to empirical anti-corruption metrics. It analyzes the GPA as a treaty and evaluates the legal obligations it imposes on state parties. It then assesses the extent to which the procurement laws of three selected GCC countries, Qatar, Saudi Arabia, and the UAE, align with or diverge from these standards. Sources include national legislation of the selected countries, GPA provisions, official government statements, reports by Transparency International, and relevant scholarly literature. The study does not rely on fieldwork or interviews but is based on secondary legal analysis and policy review. The selection of Qatar, Saudi Arabia, and the UAE is justified by their advanced legal reforms in procurement. Saudi Arabia also in particular has obtained observer status to the GPA.¹⁹

The original contribution of this article lies in framing GPA accession not only as a trade policy decision or as a decision taken to ensure compliance of selected GCC countries as WTO members, but as a legal reform instrument that could actually help reinforce the rule of law in the relevant GCC countries, provided that accession is negotiated in a context-sensitive and phased manner.

The article is structured as follows. Section I introduces the legal architecture of the GPA. Section II compares the domestic procurement laws of Qatar, Saudi Arabia, and the UAE with GPA obligations. Section III discusses the legal implications and challenges of accession for these countries. Section IV addresses the way of overcoming

12 Arie Reich, *The New Text of the Agreement on Government Procurement: An Analysis and Assessment*, 12 J. INT'L ECON. L. 989, 998 (2010).

13 Robert D. Anderson & Anna Caroline Müller, *The Revised WTO Agreement on Government Procurement: Key Issues and Future Prospects*, WTO ECON. RES. & STAT. DIV. (Jan. 26, 2017), https://www.wto.org/english/res_e/reser_e/ersd201704_e.pdf

14 Ahmed Farouk Ghoneim, *Should Arab Countries Join the WTO's Agreement on Government Procurement?*, ECON. RES. F. (Aug. 6, 2024), <https://theforum.eref.org/2024/07/30/should-arab-countries-join-the-wtos-agreement-on-government-procurement/>

15 Please see: Anne-Marie Slaughter, *International Law and International Relations Theory: A Dual Agenda*, 87 AM. J. INT'L L. 205 (1993).

16 Rebecca Devitt, *Liberal Institutionalism: An Alternative IR Theory or Just Maintaining the Status Quo?*, E-INTERNATIONAL RELATIONS (Sept. 1, 2011), <https://www.e-ir.info/2011/09/01/liberal-institutionalism-an-alternative-ir-theory-or-just-maintaining-the-status-quo/>

17 Kenneth W. Abbott & Duncan Snidal, *Why States Act Through Formal International Organizations*, 42 J. CONFLICT RESOL. 3 (1998).

18 Thomas Carothers, *The Rule of Law Revival*, 77 FOREIGN AFF. 95 (1998). See also: SUSAN ROSE-ACKERMAN, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM* (Cambridge Univ. Press, 1999; updated ed. 2016).

19 WORLD TRADE ORG., *Parties and Observers of the GPA*, https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm

the structural and legal hurdles to accession through the flexibility provided by the GPA. The article concludes with reflections on the feasibility of GPA accession as a long-term reform strategy.

4. OVERVIEW OF THE LEGAL ARCHITECTURE OF THE GPA

This section explores the legal architecture of the GPA including the legally binding commitments it imposes on countries that are parties to the agreement such as obligations of openness, transparency, and accountability in public procurement. The purpose of the analysis is to highlight the GPA's potential to be a catalyst for legislative reforms especially in developing and emerging economies such as GCC countries.

Public procurement represents a significant portion of national economies, but as highlighted above it remains an area that can be susceptible to corruption and inefficiency. The GPA, which regulates the procurement of goods and services by public authorities, is a plurilateral agreement that was established under the framework of the WTO. The foregoing implies that only WTO members who have chosen to ratify the agreement are bound by it. The agreement, which has entered into force in its revised form in April 2014, establishes binding principles aimed at ensuring that public contracts are awarded on the basis of fair competition. As Sue Arrowsmith has noted, the GPA provides a legal model of transparency and procedural fairness that many countries aspire to implement,²⁰ suggesting therefore that the GPA could serve as a normative model for emerging economies.

4.1. The legal foundations and core principles of the GPA

The GPA's preamble sets the tone by "recognizing the importance of transparent measures regarding government procurement (...) in accordance with applicable international instruments, such as the United Nations Convention Against Corruption."²¹

The agreement then sets out the obligations that state parties should abide by such as obligations of openness and non-discrimination (article IV) requiring parties to treat suppliers from other GPA parties no less favorably than domestic suppliers and to develop electronic procurement further enhancing access and participation in procurement markets. Articles VI to IX set forth transparency obligations such as the obligation to make all information on the procurement system accessible (article VI), the obligation

to publish notice of intended procurements (article VII), the obligation to limit any conditions for participation in a procurement to those that are strictly essentials (article VIII), and the obligation to have a fair system for the qualification of suppliers (article IX). Article XVIII provides a legal innovation by requiring that countries parties establish "timely, effective, transparent and non-discriminatory" domestic review procedures therefore offering legal recourse for aggrieved bidders. Such mechanisms reflect the commitment to the rule of law embedded in the spirit of the GPA. As Sappington emphasizes, enforceable remedies and review bodies are the legal backbone of accountability in procurement systems.²²

Finally, article XXII (4) requires that "each Party (...) ensure[s] (...) the conformity of its laws" with the provisions of the GPA. In this regard, Sue Arrowsmith notes that the GPA's transparency obligations are "substantive legal tools" that go beyond soft law to enforce clear standards.²³ State parties are required to comply with the obligations set forth in the GPA and any violation could give another State party the right to seize the WTO dispute settlement to adjudicate the matter and prevent protectionist procurement practices.

In light of the above, Arie Reich writes that "the combat against corruption (...) have been brought to the international plane and are not just matters for domestic law to deal with anymore."²⁴

Furthermore, it appears that the provisions of the GPA align closely with international anti-corruption standards such as those set out in the UNCAC. The UNCAC also emphasizes transparency as a key preventive measure against procurement-related corruption. Article 9 of UNCAC specifically requires that state parties "take the necessary steps to establish appropriate systems of procurement (...) that are effective, inter alia, in preventing corruption." It is worth noting in this regard that all six GCC countries are signatories and parties to the UNCAC.

4.2. The GPA as a catalyst for anti-corruption and rule of law reform

Several scholars have emphasized the GPA's role in supporting legal and institutional reforms aimed at fighting corruption. For instance, Anderson and Müller highlight the GPA's contribution to institutional integrity and transparency in procurement as part of a broader good governance agenda.²⁵ Arrowsmith further argues that GPA accession can serve as a "disciplinary mechanism" for domestic reform,

20 Sue Arrowsmith, *The Revised Agreement on Government Procurement: Changes to the Procedural Rules and Other Transparency Requirements*, in *The WTO Regime on Government Procurement* (Sue Arrowsmith & Robert D. Anderson eds., Cambridge Univ. Press 2011).

21 WORLD TRADE ORG., *Revised GPA Text*, https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.pdf

22 Isabelle Adam, *Transparency, Accountability, and Integrity of Public Procurement Systems*, TRANSPARENCY INT'L ANTI-CORRUPTION HELPDESK ANSWER (Feb. 15, 2024).

23 Arrowsmith, *Government Procurement in the WTO*, *supra* note 9.

24 Reich, *supra* note 12.

25 Anderson & Müller, *supra* note 13.

compelling governments to codify fair and transparent rules within binding legal frameworks.²⁶

In light of the above, it appears that the GPA imposes legal commitments that can complement domestic anti-corruption efforts. For countries seeking to reform their procurement laws such as the GCC member countries, the GPA can serve as both a legal model and as an opportunity to engage in legal reforms strategy grounded in international law.

5. A COMPARATIVE ANALYSIS OF THE PROCUREMENT LEGAL FRAMEWORK IN SELECTED GCC MEMBER COUNTRIES

Public procurement frameworks in GCC countries have been undergoing rapid transformations in line with broader economic reforms. Yet, despite the considerable improvements, challenges related to transparency and corruption persist.

5.1. Overview of existing procurement laws and gaps in transparency and accountability

As Ahmed Farouk Ghoneim explains, the frameworks regulating public procurement in Arab states are often complex due to the growing disconnection between the legislations in place and actual practice. In countries like Egypt and those in the Gulf, government entities have informally developed their own procurement customs, which bidders gradually come to understand in practice. As a result, even though there is official legislation in place promoting fair competition and non-discrimination, in practice we notice the absence of implementing rules in addition to the wide discretion given to authorities which has “created room for corruption.”²⁷

This section provides a comparative legal analysis between the GPA and the existing procurement and anti-corruption laws in selected GCC countries, namely Qatar, the UAE, and Saudi Arabia. It evaluates the extent to which domestic laws of such countries align with the GPA’s principles of transparency and accountability and diverge from them. On the basis of such legal comparison, this section highlights potential areas of reforms in the legislative framework of the aforementioned countries that may be necessary for GPA accession, positioning the agreement as both a benchmark and a catalyst for enhancing legal good governance and promoting the rule of law in the region. As Sue Arrowsmith argues, such comparisons between domestic procurement frameworks and the GPA are essential for understanding how international trade law interacts with domestic legal systems and governance reforms.²⁸

5.2. Country-by-country legal evaluation: Qatar, UAE, and Saudi Arabia

Qatar’s Law No. 24 of 2015 on Regulation of Tenders and Auctions establishes a centralized procurement framework. Regarding obligations pertaining to accountability and transparency, article 4 mandates competitive bidding, while article 6 allows for limited tendering in certain cases. Article 24 of the Council of Ministers Resolution No. (22) of 2016 Issuing the Executive Regulations of Law No. (24) of 2015 requires that tender announcements be published on relevant websites as well as in journals. In addition, Qatar has established the Administrative Control and Transparency Authority (ACTA), which is tasked with overseeing corruption prevention. Despite the foregoing, the law does not contain a clear provision guaranteeing national treatment or non-discrimination for foreign suppliers, which is a central obligation under GPA Article IV. In addition, the GPA’s rules about notice periods and content of award notice set out in Articles VII and IX of the GPA, specifically, how much advance notice must be given before a tender closes and what information must be included in public announcements after a contract is awarded go beyond Qatar’s current legal obligations and are stricter than what Qatar’s current procurement law require. In addition, despite the establishment of the ACTA, Qatar still lacks a detailed legal framework for independent supplier review comparable to GPA Article XVIII. In other words, Qatar does not yet meet the full level of transparency and disclosure that the GPA demands in these areas.

With regard to UAE’s Federal Law No. (11) of 2023 on Procurement in the Federal Government, it first appears that the spirit of the UAE Law meets the requirements of transparency and anti-corruption set forth by the GPA as article 10 of the law prohibits conflicts of interest and enforces integrity rules. In addition, articles 15–20 of the law require publication of tenders, bidding procedures, and awards. The UAE law seems to establish transparency requirements that are generally aligned with GPA standards. In terms of non-discrimination and equal treatment, Article 9 of Federal Law No. (11) of 2023 establishes principles of transparency, equality, and freedom of competition. However, it also includes provisions prioritizing local suppliers. For example, article 11 of the law countries that “the procurement processes shall take into account the fair and equitable treatment of the participating suppliers, unless the Federal Entity decides to limit the participation to certain categories as specified by the Law and its Executive Regulations.” By allowing the possibility of limiting participation to certain categories, such as local suppliers, the UAE law includes provisions that are designed to support and promote the growth of local businesses and Emirati entrepreneurs within the UAE’s

²⁶ Arrowsmith, *supra* note 20.

²⁷ Ghoneim, *supra* note 14.

²⁸ Arrowsmith, *supra* note 9, at 15.

procurement framework. Therefore, it appears that the UAE law partially meets GPA threshold as its local preference policies would not fully comply with GPA non-discrimination rules, unless justified under specific exceptions. Regarding grievance and review mechanisms, article 38 of the Federal Law No. (11) of 2023 establishes a formal grievance and complaints mechanism but it is unclear whether the review body is fully independent as required by the GPA.

Saudi Arabia's Government Tenders and Procurement Law of 2019 represents a significant reform and aligns more closely with GPA principles. Article 2 emphasizes equal treatment by stating that the law aims at "promoting integrity and competitiveness, maintaining equality and ensuring fair treatment of bidders, in fulfilment of the principle of equal opportunity." Article 4 also states that "all qualified persons seeking to contract with a government agency shall be accorded equal opportunities and treatment." However, Article 3 allows preference for local content and national companies as "government agencies shall, before contracting foreign persons to carry out procurements or works inside the Kingdom, ensure the unavailability of more than one local person qualified to carry out said works." Therefore, despite equal treatment being stated clearly, local content preference policies could conflict with GPA non-discrimination rules, unless justified under GPA exceptions. In addition, Saudi Arabia's procurement law does not explicitly include national treatment for foreign suppliers, nor does it commit to international competition unless specifically allowed. As Arrowsmith and Kunzlik observe, the lack of clear non-discrimination rules in a law may undermine the liberalizing impact of procurement reform.²⁹ With regard, to complaint and review mechanisms, articles 86-88 establish complaint procedures through which suppliers can file grievances. However, it remains unclear if the full institutional independence of the review committee matches GPA standards.

In conclusion, we note that GCC procurement laws are increasingly aligned with international best practices and share many features with the GPA framework, especially when it comes to transparency and integrity. However, such laws appear to fall short on certain requirements specifically in the area of non-discrimination in light of local preference policies, and the area independence of review procedures with potential limitations on review independence. For example, GPA Article IV's requirement for equal treatment of foreign and domestic suppliers is not fully reflected in any of the GCC procurement laws. In addition, while Saudi Arabia's procurement law provides an appeal process, none of the three countries appear to have fully independent and impartial review systems as required under Article XVIII.

Finally, the procurement laws of Qatar, the UAE, and Saudi Arabia do not fully integrate existing anti-corruption laws within them. For example, article 23 of Qatar's Law no 24 of 2015 on the Regulation of Tenders and Auctions includes provisions aimed at preventing corrupt practices in government contracts such as article 23 which states that a government-awarded contract is considered rescinded if it is proven that the contracting party committed fraud or other improper activities in the execution or acquisition of the contract or if it is proven that the contracting party bribed any state official or colluded with a state official to inflict damage on the state entity involved in the contract. Yet despite these provisions, there is no linkage in the law with articles 140-146 of Qatari Law No. (11) of 2004 (Penal Code) which are anti-corruption provisions that criminalize bribery, embezzlement, abuse of public office, and influence peddling, despite such institutional and legislative linkage having the potential to provide a unified and enforceable anti-corruption framework.

The above evaluation reveals a partial alignment between GPA obligations and existing procurement laws in Qatar, the UAE, and Saudi Arabia therefore highlighting the need for legal reforms should the relevant countries consider acceding to the GPA.

Transparency International annually publishes the Corruption Perceptions Index which measures the perceived levels of public sector corruption on a scale from 0 to 100, 0 being highly corrupt and 100 being very clean. As of 2024, the scores for GCC countries are as follows:

- UAE: 68
- Oman: 55
- Kuwait: 46
- Qatar: 59
- Saudi Arabia: 59
- Bahrain: 53

These scores indicate that the UAE is perceived as having the cleanest public sector among GCC countries, followed by Qatar and Saudi Arabia. The regional average for the Middle East and North Africa is 39,³⁰ suggesting that GCC countries perform above the regional average. However, the above numbers also indicate that there remains a perceived level of public-sector corruption in GCC countries which we argue that a GPA accession can help decrease.

6. LEGAL IMPLICATIONS AND CHALLENGES OF GPA ACCESSION FOR GCC MEMBER COUNTRIES

This section examines the legal implications and challenges of accession to the GPA for GCC countries. In terms of benefits, we focus on the potential to advance anti-corruption

²⁹ SUE ARROWSMITH & PETER KUNZLIK, *SOCIAL AND ENVIRONMENTAL POLICIES IN EC PROCUREMENT LAW: NEW DIRECTIVES AND NEW DIRECTIONS* 89 (Cambridge Univ. Press 2009).

³⁰ TRANSPARENCY INT'L, Corruption Perceptions Index, <https://www.transparency.org/en/cpi/2024/index/aze>

reforms and reinforce the rule of law. While GPA accession offers potential benefits in promoting transparency and legal certainty, it also entails some challenges with regard to national policy autonomy and administrative capacity.

6.1. Advancing anti-corruption and the rule of law through GPA obligations

In terms of reinforcement of the rule of law, accession to the GPA will ensure the harmonization of domestic laws of GCC countries with the GPA for example through mandatory publication of tenders and review mechanisms therefore strengthening domestic legal frameworks for preventing and detecting corruption. Such legal reforms would also serve to harmonize domestic laws of GCC countries with international anti-corruption instruments such as the Organization for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the UNCAC which GCC have ratified. As set out by Anderson and Sporysheva:

Increasingly, new GPA accession candidates explain their interest in joining the Agreement by reference not only to ‘mercantilist’ considerations (i.e. export market opportunities) but to the utility of the GPA as an instrument for motivating, guiding and ‘locking in’ policy reforms and initiatives, including anti-corruption campaigns. Such interests are salient particularly in the case of the ‘transition’ economies of Central and Eastern Europe and Central Asia.³¹

Robert D. Anderson considers that the GPA accession of Montenegro in 2015, Moldova in 2016 and Ukraine in 2016 provided an example of this phenomenon.³² As stated by Ukraine’s Deputy Minister of the Economy and Trade at the time regarding Ukraine’s GPA accession negotiation: “participation in the GPA would help Ukraine strengthen good governance in the area of public procurement, assist in its fight against corruption, and increase the transparency of government procurement practices.”³³

Sue Arrowsmith also highlights the trade and investment benefits provided by the GPA accession considering that the GPA provides a global standard for procurement regulation that embodies principles of good governance and integrity.³⁴ This would attract foreign investors to the region as “GPA membership can act as ‘stamp of approval’ for the investment and procurement

policy of the country concerned, which would help to encourage more FDI.”³⁵

6.2. Structural and legal hurdles in GCC accession to the GPA

6.2.1. Tensions between GPA obligations and GCC legal-policy contexts

One of the principal legal concerns is the potential restriction of national policy space. GPA Article IV requires non-discriminatory treatment of foreign suppliers, which may limit the ability of GCC governments to prioritize local content and support national industries. As highlighted previously, domestic procurement laws of GCC countries often explicitly favor national suppliers and national products. Accession to the GPA would likely require such policy objectives to be eliminated or at least modified. The GPA’s restrictions on offsets and preferences can directly affect domestic socio-economic policies.³⁶ In addition, the GPA’s requirement that independent review mechanisms be established (article XVIII) may appear incompatible with legal traditions and institutional structures in the region where administrative appeals are traditionally handled by centralized bodies. In Saudi Arabia, as per article 86 of the procurement law, a grievance committee shall be formed pursuant to a decision of the Ministry of Finance and the grievance committee shall consider appeals filed by bidders against the awarding decision and procurement complaints in general. Such an institutional appeal procedure raises concerns about independence. Article XVIII of the GPA requires an “independent and impartial” review system, something as previously mentioned, not yet fully realized in most GCC countries. According to Yukins, “creating independent remedies bodies often requires a major legal and institutional overhaul, which may be politically and legally sensitive.”³⁷ Therefore, the specific context of GCC countries, their national policy space, the context in which current procurement systems have been designed including local economic visions such as Saudi Vision 2030 and Qatar National Vision 2030 all while being based on Sharia principles and GCC administrative traditions, are all factors that could be challenged by a premature accession and harmonization with GPA standard. Any accession to the GPA should not dilute the context-specific legal system of the GCC. As Arrowsmith has argued, legal transplantation must be sensitive to local legal culture and institutional capacity.³⁸

31 Robert D. Anderson & Nadezhda Sporysheva, *The Revised WTO Agreement on Government Procurement: Evolving Global Footprint, Economic Impact and Policy Significance*, 2019 PUB. PROCUREMENT L. REV. 71.

32 Robert D. Anderson, *Government Procurement in the WTO* (Jan. 4, 2025), <https://ssrn.com/abstract=5082981>

33 WTO, *Ukraine and the Republic of Moldova Welcomed to WTO Procurement Pact*, WTO NEWS (June 22, 2016), www.wto.org/english/news_e/news16_e/gpro_22jun16_e.htm

34 Arrowsmith, *supra* note 9, at 21.

35 Ghoneim, *supra* note 14.

36 Bernard M. Hoekman & Petros C. Mavroidis, *WTO ‘à la Carte’ or WTO ‘Menu du Jour’? Assessing the Case for More Plurilateral Agreements*, 26 EUR. J. INT’L L. 319 (2015).

37 Christopher R. Yukins, *A Versatile Prism: Assessing Procurement Law Through the Principal-Agent Model*, 40 PUB. CONT. L.J. 72 (2010).

38 Arrowsmith, *supra* note 20.

6.2.2. Administrative capacity constraints and risk of legal fragmentation

Implementing GPA requirements demands considerable institutional capacity to comply with transparency, notification and reporting obligations (articles VI–IX) including publishing procurement laws, issuing timely and detailed tender notices, and providing debriefing and appeal processes. Despite progress made, GCC countries may still lack the institutional and legal infrastructure needed to meet these obligations. As Isabelle Adam notes, “the implementation of de jure public procurement principles into de facto functioning systems is challenging.”³⁹

However, GPA accession coupled with existing Bilateral Investment Treaties (BITs) might subject GCC countries to increased litigation risks under investor-state dispute settlement (ISDS). For example, foreign companies can allege unfair procurement treatment and discriminatory contract award decisions leading to arbitration claims. Even though the GPA includes a mechanism for dispute resolution, there are still many legal complexities that could be triggered from its interaction with ISDS including under BITs. As explained by Tania Voon while exploring the interplay between trade agreements like the GPA and investment treaties, coherence between various international legal instruments to ensure consistent obligations and avoid legal conflicts is of primordial importance.⁴⁰ It is therefore crucial to ensure that accession to GPA is coordinated with investment law obligations to avoid overlapping liabilities.

It appears from the above analysis that even if this article argues for GCC countries’ accession to the GPA as a catalyst for legal reforms and enforcement of the rule of law, the decision to accede to the GPA should be approached with caution. Accession to the GPA imposes substantial obligations that may create challenges to institutional capacity, national policy space, and existing legal traditions. Therefore, GCC countries should consider phased or partial accession strategies which can be founded on special and differential treatment provisions of the GPA, in order to ensure that the existing procurement systems and legal developments achieved are not compromised by GPA accession.

7. SPECIAL AND DIFFERENTIAL TREATMENT: A LEGAL TOOL TO FACILITATE ACCESSION

In this final section, the study aims at providing a tool for overcoming the challenges highlighted in the previous

section. In this regard, the flexibility provisions of the GPA namely the special and differential treatment, offer an important legal tool that can help manage the practical challenges of accession. For GCC countries who designate themselves as developing countries and economies, and who are undergoing complex legal modernization efforts, the imposition of GPA obligations may clash with a number of factors such as national legal traditions and administrative structures. As Arrowsmith notes, the GPA, although flexible, imposes extensive legal commitments that may not be suitable for all legal systems at all stages of development.⁴¹ Based on the analysis, we argue that if GPA accession is not carefully crafted and planned, such accession may undermine strategic legal development goals related to procurement systems in the region.

7.1. Self-designation as developing countries under WTO rules

Accession to the GPA may be facilitated for GCC countries through the agreement’s flexibility provisions, which allow developing countries to implement their obligations in a phased and strategic manner. GCC countries have in general self-designated as developing countries within the WTO framework, as “members announce for themselves whether they are “developed” or “developing” countries.”⁴² The decision to designate as developing countries has advantages and brings certain rights, namely by being given longer transition periods to implement WTO agreements and being offered technical assistance.⁴³ However, other members have the option to challenge the decision of a member to make use of provisions available to developing countries.⁴⁴ When it comes to GCC countries, in July 2019, the United Countries issued a memorandum titled “Reforming Developing-Country Status in the World Trade Organization.” This memorandum highlighted concerns about certain countries, including Kuwait, Qatar, and the UAE, self-designating as developing country status within the WTO despite their significant economic advancement. The memorandum argued that against such designation considering that “when the wealthiest economies claim developing-country status, they harm not only other developed economies but also economies that truly require special and differential treatment.”⁴⁵ However, considering the current rules still in place, the GCC countries by choosing to self-designate as developing countries can continue to benefit from the special and differential treatment provisions set out in WTO agreements including the GPA.

39 Adam, *supra* note 22.

40 Tania Voon, Consolidating International Investment Law: The Mega-Regionals as a Pathway Towards Multilateral Rules, 17 WORLD TRADE REV. 33 (2018).

41 Arrowsmith, *supra* note 9, at 33.

42 WORLD TRADE ORG., Who Are the Developing Countries in the WTO?, https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm

43 *Id.*

44 *Id.*

45 White House Presidential Memoranda, Memorandum on Reforming Developing-Country Status in the World Trade Organization (July 26, 2019), <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-reforming-developing-country-status-world-trade-organization/>

7.2. Legal flexibility under Article V of the GPA

Article V of the GPA states that the parties to the GPA should “give special consideration to the development, financial and trade needs and circumstances of developing countries and least developed countries” and shall therefore accord special and differential treatment to such countries. Developing countries have the option to adopt or maintain one or more of the following transitional measures and legal flexibility offered by the GPA:

- (a) “a price preference programme” therefore allowing GCC countries to give advantages to domestic suppliers when evaluating bids if their price is lower than it actually is when comparing bids;
- (b) “an offset” meaning that GCC countries can impose certain conditions on foreign suppliers to benefit the local economy such as using local materials or investing in local industries;
- (c) “the phased-in addition of specific entities or sectors” therefore allowing GCC countries to not open all sectors of their government procurement market immediately; and
- (d) “a threshold that is higher than its permanent threshold” meaning that GCC countries could choose to apply the GPA only to contracts above certain monetary thresholds.

Using the above mechanisms including phased-in additions of specific sectors and entities will enable GCC governments to take account of sensitive sectors and exclude them at least temporarily from GPA’s obligations. Ahmed Farouk Ghoneim points out that

as a matter of relief for Arab countries, estimates of government procurement that falls outside the GPA’s purview for a developed member have been 80% of total public EU procurement (...) a share that is expected to be higher for developing countries.⁴⁶

These tools would allow GCC countries to tailor their GPA commitments in a way that accommodates national development goals and legal adaptation.

8. CONCLUSION

Fighting corruption and liberalizing trade including within public procurement are together “part of the global focus on improving human well-being and government functioning.”⁴⁷

This study has explored the legal and institutional implications of potential accession to the GPA by GCC countries, focusing on Qatar, Saudi Arabia, and the UAE. Through a liberal institutionalist lens, this article argued

that GPA accession offers an opportunity for strengthening national anti-corruption frameworks.

The comparative analysis revealed that while GCC countries have made significant efforts in modernizing their procurement laws, some gaps remain particularly in relation to non-discrimination provisions and independent review mechanisms. The GPA, if approached strategically, can serve as a framework for policy reform and alignment with global standards.

Nonetheless, the study has emphasized that accession to the GPA also involves legal and institutional challenges specifically in relation to national policy space, administrative capacity, and legal traditions of GCC countries.

As Sue Arrowsmith has argued, legal transplants such as GPA obligations must be carefully tailored to the local legal and institutional culture of each country. This article built on this idea by demonstrating how the flexibility provisions in Article V can help reconcile reform objectives with national development visions. A pragmatic approach to GPA accession with sensitivity to regional legal contexts could provide long-term governance benefits for GCC countries.

While authors like Ahmed Farouk Ghoneim emphasize the risks of a disconnection between written laws and procurement practices in Arab countries, this article contended that a pragmatic GPA accession can serve as a legal anchor to close that gap. However, the question remains to see if external legal instruments such as the GPA can in practice overcome rigid institutional structures such as those in place in GCC countries without robust political commitment. GPA accession for these countries should be supported by meaningful enforcement which should include cultural change within their public administrations. This tension between legal form and institutional systems remains a central challenge for the rule-of-law-oriented trade liberalization in the GCC and beyond.

Disclosure of interest

The author has no competing interests to declare.

⁴⁶ Ghoneim, *supra* note 14.

⁴⁷ Susan Rose-Ackerman, *Anti-Corruption Policy: Can International Actors Play a Constructive Role?*, Yale Law & Econ. Research Paper No. 440 (2011).