

## NOTE

### IN PURSUIT OF THE RIGHT PATH: THE PROMISE OF ISLAMIC LEADERSHIP IN THE POST- SINGAPORE CONVENTION WORLD OF INTERNATIONAL COMMERCIAL MEDIATION

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## IN PURSUIT OF THE RIGHT PATH: THE PROMISE OF ISLAMIC LEADERSHIP IN THE POST- SINGAPORE CONVENTION WORLD OF INTERNATIONAL COMMERCIAL MEDIATION

Andrés D. Sellitto Ferrari\*

### INTRODUCTION

The adoption of the United Nations Convention on International Settlement Agreements Resulting from Mediation (“Singapore Convention”) has opened the door to an entirely new world of viable dispute settlement in the international commercial sphere. At the Singapore Convention Signing Ceremony, the Prime Minister of Singapore Lee Hsien Loong noted in his speech that the Singapore Convention “is the missing third piece in the international dispute resolution enforcement framework.”<sup>1</sup> As parties may now be able to obtain recognition and enforcement of mediated settlements in countries that sign and ratify the Singapore Convention—in the way that the New York Convention permits arbitration and the Hague Convention on Foreign Judgments in Civil and Commercial Matters permits litigation—international commercial mediation is now primed for an upcoming boom.

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<sup>1</sup> Lee Hsien Loong, Prime Minister, Singapore, Speech at the Singapore Convention Signing Ceremony and Conference (Aug. 7, 2019), <https://www.pmo.gov.sg/Newsroom/PM-Lee-Hsien-Loong-at-Singapore-Convention-Signing-Ceremony-and-Conference> [https://perma.cc/V3CE-8MXU].

Jurisdictions in the Islamic world may already be ahead of the curve. Mediation and amicable dispute settlement are deeply embedded in Islamic culture and doctrine. These methods not only continue to be widely used in rural communities in several Islamic law states, but they often are the preferred methods of dispute resolution in commercial, family, labor, and other civil and criminal disputes throughout the Islamic world. The longstanding practice of mediation in Islamic culture may very well permit Islamic law countries to take a leading role in the nascent world of viable international commercial dispute prevention and settlement. Islamic mediators and growing legal hubs in Islamic jurisdictions may provide the foundation for such movement, which has generated significant enthusiasm across the Islamic world since the adoption of the Singapore Convention.

This Note will first provide an overview of the historical and legal background of mediation in Islamic culture; it will then recount the origins and developments of the Singapore Convention; and finally, it will address why the intersection of Islamic law and amicable dispute settlement enhances the possibility of countries in the Islamic world becoming global hubs for dispute prevention and settlement.

## I. HISTORICAL AND LEGAL BACKGROUND OF MEDIATION IN ISLAMIC CULTURE

### A. *Doctrinal Origins*

The history of Islamic dispute resolution principles is rooted in *hadiths*, moral knowledge transmitted directly by the Prophet. Malaysian law practitioner Aida Othman notes that “[t]he hadith of the Prophet and other sources teach that Muslims are brothers and constitute a brotherhood. So Muslim countries should not be hostile to each other. They should instead try to conciliate.”<sup>2</sup>

The moral and religious aspect of mediation is the major driving force in its administration, as it also is in Islamic justice and court systems overall. As stated by scholar Sohail Hashmi, “[t]rue peace (*salam*) is therefore not merely an absence of war; it is the elimination of the grounds for strife or conflict and the resulting waste and corruption (*fasad*) they create. Peace, not war or violence, is God’s true purpose for humanity (2:208).”<sup>3</sup> The emphasis placed on the moral aspect of mediation

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<sup>2</sup> EMILIA JUSTYNA POWELL, ISLAMIC LAW AND INTERNATIONAL LAW: PEACEFUL RESOLUTION OF DISPUTES 125 (2020) (quoting interview with Dr. Aida Othman, Partner, Zaid Ibrahim & Co. in Malay (Aug. 28, 2015)).

<sup>3</sup> SOHAIL H. HASHMI, *Interpreting the Islamic Ethics of War and Peace*, in ISLAMIC POLITICAL ETHICS: CIVIL SOCIETY, PLURALISM, AND CONFLICT 197 (Sohail H. Hashmi ed., 2002).

heavily influences the legal framework applied to dispute resolution, intertwining legal and moral considerations, and relying on these at an equal level for the achievement of a workable solution. In *The Justice of Islam*, scholar Lawrence Rosen notes that in the Islamic justice system, “the law forms an organizing framework, not a governing force,” and that “the constancy of the mode of analysis” is seen as prevailing over the uniform application of the law.<sup>4</sup> The heavy reliance on trustworthy witnesses by *qadis*, or Islamic judges, may be taken as an example of the value placed upon trustworthiness and moral character as determining factors of Islamic dispute resolution.<sup>5</sup>

Islamic doctrine has fostered the specific pursuit of dispute resolution, based on its highlighting of the Prophet’s role as an effective arbitrator and mediator. Indeed, at thirty-five years of age, the Prophet was tasked with mediating a disagreement as to the position of the Black Stone during the Quraysh’s reconstruction of the Ka’aba.<sup>6</sup> Based on his supreme position of trustworthiness, the Prophet was able to settle the disagreement by placing the Black Stone on a sheet of cloth, then ordering the member of each of the tribes wanting to build a part of the Ka’aba to lift an edge of the cloth together and place it near the Ka’aba, after which the Prophet placed the Black Stone in its position.<sup>7</sup>

### 1. Al-Wasata/Qasd

The concept of peaceful dispute resolution is furthermore inscribed in scripture and hadith as *wasata*, *wasat*, or *al-wasata*. *Al-wasata* has been described as the “practice of one or more persons intervening in a dispute, either at the request of one or both parties or on their own initiative.”<sup>8</sup> The word *wasat*, or *wasatiyyah*, is mostly connected with the concept of moderation.<sup>9</sup> According to scholar Mohammad Hashim Kamali, *wasatiyyah* is “a recommended posture that occurs to the people of

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<sup>4</sup> LAWRENCE ROSEN, *THE JUSTICE OF ISLAM* 33, 36 (2000).

<sup>5</sup> See POWELL, *supra* note 2, at 140–41.

<sup>6</sup> *The Rebuilding of the Kaaba and Prophet Muhammad’s Role as an Arbitrator*, WITH PROPHET, <https://www.withprophet.com/en/building-the-kaaba-and-settling-the-dispute-between-the-different-tribes> [<https://perma.cc/7VY4-4WR4>].

<sup>7</sup> *Id.*

<sup>8</sup> Negin Fatahi, *The History of Mediation in the Middle East and Its Prospects for the Future*, KLUWER MEDIATION BLOG (Jan. 23, 2018), <http://mediationblog.kluwerarbitration.com/2018/01/23/history-mediation-middle-east-prospects-future/> [<https://perma.cc/PS7F-XV85>].

<sup>9</sup> See MOHAMMAD HASHIM KAMALI, *THE MIDDLE PATH OF MODERATION IN ISLAM: THE QUR’ANIC PRINCIPLE OF WASATIYYAH* 9 (2015).

sound nature and intellect, distinguished by its aversion to both extremism and manifest neglect.”<sup>10</sup> Kamali also describes it as “a rational concept with little or no dogmatic connotations, but also religiously virtuous since the Qur’an has recommended it.”<sup>11</sup> As it relates to Islamic principles of justice and jurisprudence (*usul al-fiqh*), Abu Sa’id al-Khudri reported that the Prophet interpreted the word *wasatan* to mean *al-‘adl*, or justice.<sup>12</sup> Therefore, according to Yusuf al-Qaradawi, and as stated by Kamali, “[j]ustice thus becomes synonymous with *wasatiyyah* in the sense that they both refer to a middle position between two or more opposing extremes.”<sup>13</sup>

*Qasd* is also referred to as a synonym of moderation in the Qu’ran.<sup>14</sup> According to Abul-Hussain, a *hadith* reported by Jabir bin Samurah regarding prayer with the Prophet stated: “I used to pray with the Prophet, [pbuh]; his prayer was moderate (or light) and so was his sermon.”<sup>15</sup> *Qasd* is the path of moderation that leads to the correct destination and is defined in the Qu’ran as “moderation and equilibrium—*al-tawassuṭ wa’l-i’tidāl*—in all affairs.”<sup>16</sup> *Qasd* is mentioned quite often in the Qu’ran and in *hadiths*, which highlights how *qasd* is at the core of Islamic doctrine, and therefore should play a large role in understanding mediation in the Islamic context.<sup>17</sup>

## 2. Sulh

Along with *tahkim*, *sulh* is one of the main terms used to refer to settlement.<sup>18</sup> In the 128th *ayah* of the fourth *surah*, An-Nisa states, “if a woman fears from her

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<sup>10</sup> *Id.* at 10.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 83.

<sup>13</sup> *Id.* (citing YUSUF AL-QARADAWI, AL-KHASA’IS AL-’AMMAH LI’L-ISLAM 124 (1989)).

<sup>14</sup> *Id.* at 10.

<sup>15</sup> *Id.* (citing ABUL-HUSSAIN ‘ASAKIRUDDIN MUSLIM BIN HAJAJ AL-QUSHAIRI AL-NAISABURI, *Kitab al-Salat*, in MUKHTASAR SAHIH MUSLIM (1987)).

<sup>16</sup> *Id.* (citing ABU IBRAHIM ‘ABD AL-WAHID BIN YUSUF AL-SHARBINI, AL-QASD WA’L- WASATIYYAH FI DAW’ AL-SUNNAH AL-NABAWIYYAH 54 (6th ed. 2010)).

<sup>17</sup> See *Surah an-Nahl* 16:9; *Surah Luqman* 31:19; *Surah Fatir* 35:32; MUHAMMAD IBN ISMA’IL AL-BUKHARI, *Kitab al-Riqaq: Hadith 52*, in SAHIH AL-BUKHARI, <https://sunnah.com/bukhari/81> [<https://perma.cc/CT7X-JQTL>]; ABU DAWUD AL-SUJISTANI, *Kitab al-Adab: Hadith 4*, in SUNAN ABI DAWUD, <https://sunnah.com/abudawud/43> [<https://perma.cc/Z9GB-7LFF>].

<sup>18</sup> Saidilyos Khakimov, *Arbitration (Tahkim) and Reconciliation (Sulh) in Islam as Alternative Dispute Resolution Mechanisms*, 2020 LIGHT ISLAM 31, 33 (2020); Fatahi, *supra* note 8.

husband contempt or evasion, there is no sin upon them if they make terms of settlement [*sulhan*] between them—and settlement is best.”<sup>19</sup> This is but one of several references to *sulh* in the Qur’an, which is a salient principle in Islamic *fiqh*, or jurisprudence.<sup>20</sup> Indeed, Islamic jurisprudential maxims state that “conciliation is the most honorable decision, *al-sulh sayyid al-ahkam*.”<sup>21</sup> Likewise, the Qur’an makes direct reference to conciliation, in passages stating that “if two factions among the believers should fight, then make settlement between the two.”<sup>22</sup> In addition, several *hadiths* note the Prophet’s predilection for conciliation, to the point of directly engaging in conciliation for the purpose of peaceful dispute resolution.<sup>23</sup>

From a more strictly legalistic point of view, according to Wael Hallaq, *sulh* is a “contractual requirement obliging one or each conflicting side to concede a certain part of their rights.”<sup>24</sup> This is in line with the Hanafi-aligned Ottoman Civil Code, *Al-Majalla Al Ahkam Al Adaliyyah*, which stated in Article 1531 that “[a] settlement is a contract concluded by offer and acceptance, and consists of settling a dispute by mutual consent.”<sup>25</sup> Aida Othman further describes *sulh* as one of the “formal classifications of the various ways one can settle a dispute,” involving “an informal compromise between the parties, usually with the help of an intermediary.”<sup>26</sup> According to Doron Pely, “*sulh* is a type of a contract, *aqd*, containing an offer, *ijab*,

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<sup>19</sup> *Surah an-Nisa* 4:128.

<sup>20</sup> Aseel Al-Ramahi, *Suhl: A Crucial Part of Islamic Arbitration* 10–11, 16 (N.Y. L. Sch. Research Paper No. 08-45, 2008), [http://eprints.lse.ac.uk/24598/1/WPS2008-12\\_Al-Ramahi.pdf](http://eprints.lse.ac.uk/24598/1/WPS2008-12_Al-Ramahi.pdf) [<https://perma.cc/HCG6-FASN>].

<sup>21</sup> Khakimov, *supra* note 18, at 34.

<sup>22</sup> *Surah al-Hujurat* 49:9.

<sup>23</sup> See generally *Book of Peacemaking—Sahih al-Bukhari—Sayings and Teachings of Prophet Muhammad* (صلى الله عليه و سلم), SUNNAH.COM, <https://sunnah.com/bukhari/53> [<https://perma.cc/YYD3-JDAW>].

<sup>24</sup> Khakimov, *supra* note 18, at 34 (citing Wael Hallaq, *SHARIA: THEORY, PRACTICE, TRANSFORMATIONS* (2009)).

<sup>25</sup> AL-MAJALLA AL AHKAM AL ADALIYYAH art. 1531, [http://legal.pipa.ps/files/server/ENG%20Ottoman%20Majalle%20\(Civil%20Law\).pdf](http://legal.pipa.ps/files/server/ENG%20Ottoman%20Majalle%20(Civil%20Law).pdf) [<https://perma.cc/XA9M-ZHVP>]; see Aida Othman, “*And Amicable Settlement Is Best*”: *Sulh and Dispute Resolution in Islamic Law*, 21 ARAB L.Q. 64, 72 (2007); Shahdat Hossein, *Arbitration in Islamic Law for the Treatment of Civil and Criminal Cases: An Analytical Overview*, 1 J. PHIL. CULTURE & RELIGION 1, 6 (2013).

<sup>26</sup> See POWELL, *supra* note 2, at 143 (citing Othman, *supra* note 25, at 90).

and acceptance, *qabul*,” that can involve material and non-material objects, and cannot involve issues concerning *riba* or *gharar*.<sup>27</sup>

*Sulh* is often applied in practice and is sometimes required as a dispute resolution mechanism in Islamic jurisdictions. For example, the Malaysian Shariah Civil Procedure Act of 2001 contains a provision that “parties to civil disputes must first attempt amicable settlement with trained court personnel or ‘*sulh* officials.’ These mediators assist the parties in negotiating and recording a mutual agreement, and their *sulh* constitutes a definitive resolution to the case.”<sup>28</sup> Likewise, according to Emilia Powell, *sulh* is often applied in Malaysia, Lebanon, Tunisia, and Morocco as a means for binding dispute resolution in banking and labor disputes, civil and family matters, and other more informal conciliation initiatives.<sup>29</sup>

Finally, there are two types of *sulh*: total and partial/conditional.<sup>30</sup> According to Abu-Hassan, *sulh* may be total when it ends all conflicts between the parties who decide “to not hold any grudges against each other.”<sup>31</sup> It also may be partial or conditional when it only ends the conflict between the parties “according to conditions agreed upon during the settlement process.”<sup>32</sup>

Emilia Powell writes that “[a]n old Islamic maxim teaches *al-Sulh seyed al-ahkam*, mediation/reconciliation is the superior rule.”<sup>33</sup> The importance of *sulh* in both religious and legal contexts highlights the perception of mediation as the ideal dispute resolution mechanism in the Islamic world.

### 3. Musalaha

Successful pursuance of *sulh* may lead to several forms of formal or informal reconciliation rituals. It may conclude in either *musafaha* (a handshake) or

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<sup>27</sup> Khakimov, *supra* note 18, at 34 (citing DORON PELY, MUSLIM/ARAB MEDIATION AND CONFLICT RESOLUTION: UNDERSTANDING SULHA (2016)).

<sup>28</sup> Othman, *supra* note 25, at 72.

<sup>29</sup> See POWELL, *supra* note 2, at 145.

<sup>30</sup> Fatahi, *supra* note 8.

<sup>31</sup> TAKING WRONGS SERIOUSLY: APOLOGIES AND RECONCILIATION 139 (Elazar Barkan & Alexander Kam eds., 2006) (citing MOHAMMAD ABU-HASSAN, TURATH AL BADU’ AL-QAD [BEDOUIN JUDICIAL TRADITION: THEORY AND PRACTICE] (1987)).

<sup>32</sup> *Id.*

<sup>33</sup> POWELL, *supra* note 2, at 143.

*mumalaha* (breaking bread together).<sup>34</sup> However, the ultimate sign of reconciliation is reconciliation itself, *musalaha*. Indeed, *sulh* as a ritual “usually ends in a public ceremony of *musalaha*,” or reconciliation.<sup>35</sup> As highlighted by Irani and Funk, *musalaha* is a ritual of conflict control, reduction, and resolution “[that] takes place within a communal, not a one-on-one, framework.”<sup>36</sup> Because the combination of *sulh* and *musalaha* offer an opportunity to incorporate elements of equity and reconciliation into dispute resolution, it can serve as a useful framework for dispute resolution practitioners around the world.<sup>37</sup>

Negin Fatahi notes that *musalaha* is currently implemented in the rural areas of Lebanon and within communities of Palestinian citizens living in Israel, and it is recognized by the Kingdom of Jordan as a “legally acceptable tradition of the Bedouin tribes.”<sup>38</sup>

### B. *Mediation in the Islamic World Today*

Mediation has existed in the Middle East for centuries, and it continues to be the preferred method of dispute resolution to this day.<sup>39</sup> However, the establishment of formal mediation authorities and rules in jurisdictions of the Islamic world that have been adapted to the international context is fairly recent. An initial push to adopt rules for the conciliation of commercial disputes in the international context took place in Saudi Arabia during the 1980s—stemming from an intention to appease Western investors by providing a framework for claims settlement that was “somewhat familiar” to them but also did not stray too far from the historical practices of arbitration and conciliation of the Islamic world.<sup>40</sup> Such efforts culminated in Royal Decree No. M/46 of April 25, 1983, which only made a minor reference to conciliation in its Article 2 in an otherwise arbitration-oriented statute.<sup>41</sup>

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<sup>34</sup> DANIEL PHILPOTT, *JUST AND UNJUST PEACE: AN ETHIC OF POLITICAL RECONCILIATION* 161 (2012).

<sup>35</sup> George E. Irani & Nathan C. Funk, *Rituals of Reconciliation: Arab-Islamic Perspectives*, 20 *ARAB STUD. Q.* 53, 66 (1998).

<sup>36</sup> *Id.* at 67.

<sup>37</sup> *Id.*

<sup>38</sup> Fatahi, *supra* note 8.

<sup>39</sup> *Id.*

<sup>40</sup> George Sayen, *Arbitration, Conciliation, and the Islamic Legal Tradition in Saudi Arabia*, 9 *U. PA. J. INT’L BUS. L.* 211, 211 (1997).

<sup>41</sup> Al-Marsum Al-Malaki Raqm M/46 Bitarikh 25 Abril 1983, al-madati 2. [Royal Decree No. M/46 of 25 April 1983, Art. 2] (Arbitration Law, Saudi Arabia).



It was only in 2016 that Saudi Arabia established the Saudi Center for Commercial Arbitration, providing both arbitration and mediation services and containing a full set of mediation rules.<sup>42</sup>

Later on, other Islamic jurisdictions and Singapore followed Saudi Arabia's lead in a much more substantial fashion, with distinct approaches in each jurisdiction. Singapore progressively introduced mediation mechanisms throughout the 1990s, including formalizing pre-trial conferences in 1996 and establishing the autonomous Singapore Mediation Centre ("SMC") in 1997.<sup>43</sup> The United Arab Emirates ("UAE") passed Federal Law No. 26 in 1999, establishing Conciliation and Arbitration Committees, allowing for the enforceability of agreements resulting from mediation through UAE Federal Courts.<sup>44</sup> Dubai later established the Centre for Amicable Settlement of Disputes in 2009 to permit fully enforceable settlements prior to the disputes arriving at the court level.<sup>45</sup> In Jordan, the Mediation in Resolving Civil Disputes Act of 2006 established a court-based mediation system, placing Mediation Centers comprised of judges within all courts.<sup>46</sup> In Qatar, a dual system consisting of the Qatar International Center for Conciliation and Arbitration, which adopted mediation rules based on the United Nations Commission on International Trade Law ("UNCITRAL") Conciliation Rules, and the Qatar International Court and Dispute Resolution Centre deal with dispute settlement and mediation in that jurisdiction.<sup>47</sup>

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<sup>42</sup> See generally Arbitration Rules, Saudi Center for Commercial Arbitration (Oct. 2018), [https://sadr.org/assets/uploads/download\\_file/Arbitration\\_Rules\\_2018\\_-\\_English.pdf](https://sadr.org/assets/uploads/download_file/Arbitration_Rules_2018_-_English.pdf) [<https://perma.cc/N23G-675N>].

<sup>43</sup> See *Ch. 03 Mediation*, SING. L. WATCH, <https://www.singaporelawwatch.sg/About-Singapore-Law/Overview/ch-03-mediation> [<https://perma.cc/MYW7-MGRX>].

<sup>44</sup> See Law No. 26 of 1999 (Concerning the Establishment of Conciliation and Arbitration Committees at Federal Courts), 11 Jan. 1999 (U.A.E.).

<sup>45</sup> See Sara Koleilat-Aranjo & Aishwarya Nair, *Mediation in the Middle East: Before and After the Singapore Convention*, AL-TAMIMI & CO.: L. UPDATE (Oct. 2019), <https://www.tamimi.com/law-update-articles/mediation-in-the-middle-east-before-and-after-the-singapore-convention/> [<https://perma.cc/FGX4-ABJB>].

<sup>46</sup> Orouba Qarain, *Mediation Developments in Jordan*, WEINSTEIN INT'L FOUND., <https://weinsteininternational.org/jordan/jordan-bio/> [<https://perma.cc/2PJQ-N849>].

<sup>47</sup> See Koleilat-Aranjo & Nair, *supra* note 45.

## II. INTERNATIONAL COMMERCIAL MEDIATION AND THE SINGAPORE CONVENTION

Litigation and arbitration have long dominated the world of dispute resolution—and are the two most viable ways of ensuring the recognition and enforcement of foreign judgments and arbitral awards.<sup>48</sup> Indeed, litigation benefits from the coercive power of a State and its machinery to enforce judgments in national jurisdictions, and the developing Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters of 1971 attempts to provide a framework to expand the recognition and enforcement of such judgments in civil and commercial matters to other jurisdictions.<sup>49</sup> However, the Hague Convention’s impact remains to be seen, as only a small number of nations have signed onto it.<sup>50</sup>

This is an issue that has mostly been resolved in the arbitration sphere.<sup>51</sup> The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (“New York Convention”) provides a similar framework for the recognition and enforcement of arbitral awards in the national courts of contracting states.<sup>52</sup> Currently, 168 parties have adopted the New York Convention,<sup>53</sup> rendering it a tremendously effective framework and furthering private parties’ trust in international commercial arbitration as a concrete international dispute resolution method.

However, these two forms of dispute resolution are inefficient. Litigation has historically been a long and costly process to pursue, especially as conducted in U.S. courts. Arbitration has also progressively become just as drawn out and costly, partly in thanks to the “Americanization” of international arbitration, including a widening of the scope of discovery and additions of further procedural steps not found in civil

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<sup>48</sup> See S.I. Strong, *Beyond International Commercial Arbitration? The Promise of International Commercial Mediation*, 45 WASH. U. J.L. & POL’Y 11, 11 (2014).

<sup>49</sup> See Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, Feb. 1, 1971, 1144 U.N.T.S. 249.

<sup>50</sup> *Status Table*, HCCH, <https://www.hcch.net/en/instruments/conventions/status-table/?cid=78> [<https://perma.cc/6DEA-VNPT>].

<sup>51</sup> See Strong, *supra* note 48, at 27–28.

<sup>52</sup> See Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3.

<sup>53</sup> *Contracting States*, N.Y. ARB. CONVENTION, <https://www.newyorkconvention.org/countries> [<https://perma.cc/3RCN-2NW2>].

law systems.<sup>54</sup> Parties have therefore been seeking cost- and time-effective alternatives in dispute resolution.<sup>55</sup> The alternatives for parties to obtain internationally recognizable and enforceable awards through mediation were perceived to be harder to pursue until August of 2019 when the UNCITRAL opened the Singapore Convention for signature.<sup>56</sup>

The Singapore Convention “establishes a harmonized legal framework for the right to invoke settlement agreements as well as for their enforcement,”<sup>57</sup> and it will allow for the promotion of mediation as a clear alternative to litigation and arbitration on the international stage.<sup>58</sup> The Singapore Convention emerged from an international concern that “mediated settlements are seen as harder to enforce internationally than domestically, which was said to disincentivize the use of mediation in cross-border disputes.”<sup>59</sup> Indeed, the abovementioned-New York Convention gave arbitration an “international legitimacy” that mediation lacked.<sup>60</sup>

Scholars have summarized the scope of the application of the Singapore Convention as limited to “(i) international, (ii) commercial, (iii) settlement agreements, (iv) resulting from mediation.”<sup>61</sup> The Singapore Convention defines mediation as “a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons (“the mediator”) lacking the authority to impose a solution upon the parties to the dispute.”<sup>62</sup> This definition was adopted with an underlying assumption that a mediator’s lack of

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<sup>54</sup> George M. von Mehren & Alana C. Jochum, *Is International Arbitration Becoming Too American?*, 2 GLOB. BUS. L. REV. 47, 47 (2011).

<sup>55</sup> See Strong, *supra* note 48, at 11.

<sup>56</sup> G.A. Res. 73/198, Convention on International Settlement Agreements Resulting from Mediation (Dec. 20, 2018) [hereinafter Singapore Convention]; Timothy Schnabel, *The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements*, 19 PEPP. DISP. RESOL. L.J. 1, 2–3 (2019).

<sup>57</sup> Singapore Convention, *supra* note 56.

<sup>58</sup> Schnabel, *supra* note 56.

<sup>59</sup> *Id.* at 3.

<sup>60</sup> *Id.*

<sup>61</sup> Natalie Y. Morris-Sharma, *The Singapore Convention is Live, and Multilateralism, Alive!*, 20 CARDOZO J. CONFLICT RESOL. 1009, 1010 (2019); see Schnabel, *supra* note 56, at 14–27 (discussing the Convention’s scope).

<sup>62</sup> Singapore Convention, *supra* note 56, art. 2 § 3.

authority is only confined to the time of mediation, allowing for combinations of arbitration and mediation to be employed as well.<sup>63</sup> Unlike the New York Convention, the Singapore Convention does not impose a blanket obligation of recognition of mediated settlements upon its parties, but instead includes “the aspects of recognition” needed to ensure its functionality.<sup>64</sup> However, it imposes similar form requirements, namely that the settlement agreement be in writing, that it be signed by the disputing parties, and that evidence can be provided that the settlement resulted from mediation.<sup>65</sup> It also imposes grounds for refusal of recognition and enforcement that, although largely mirroring Article V of the New York Convention, avoid including provisions from it that “do not translate directly or transfer easily from the arbitration context to the mediation context,” such as excess authority or procedural irregularities.<sup>66</sup>

UNCITRAL had already attempted to tackle the issue of a unitary mechanism to address issues of international commercial mediation with the adoption of the UNCITRAL Model Law on International Commercial Conciliation.<sup>67</sup> However, no agreement had been reached regarding a possible mechanism for cross-border enforcement of mediation settlements until the conclusion of the Singapore Convention in June 2018.<sup>68</sup> The push to reach a consensus on the matter was clearly supported by the need for the establishment of such mechanism, as overwhelmingly expressed by stakeholders surveyed in October and November of 2014.<sup>69</sup>

Practitioners have noted that “the Singapore Convention is a significant step for international commercial dispute resolution,” and that “things are looking very

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<sup>63</sup> Morris-Sharma, *supra* note 61, at 1017.

<sup>64</sup> Schnabel, *supra* note 56, at 37.

<sup>65</sup> Singapore Convention, *supra* note 56, art. 4(1).

<sup>66</sup> *Id.* art. 5; Morris-Sharma, *supra* note 61, at 1019; *see* Comm. On Int’l Trade L., Rep. of Working Grp. II on the Work of Its Sixty-Fourth Session, ¶¶ 170–179, U.N. Doc. A/CN.9/867 (Feb. 1–5, 2016).

<sup>67</sup> Morris-Sharma, *supra* note 61, at 1012–13.

<sup>68</sup> *See id.* at 1009–10.

<sup>69</sup> IMI Support, *IMI Survey Results Overview: How Users View the Proposal for a UN Convention on the Enforcement of Mediated Settlements*, INT’L MEDIATION INST. (Jan. 16, 2017), <https://imimmediation.org/2017/01/16/users-view-proposal-un-convention-enforcement-mediated-settlements/> [https://perma.cc/MDR4-Y47S].

positive for the future of mediation and the Singapore Convention.”<sup>70</sup> Scholars also agree with this sentiment. For instance, Weixia Gu has noted that mediation may become more prominent in the context of Chinese Belt and Road Initiative (“BRI”) dispute resolution following the adoption of the Singapore Convention.<sup>71</sup> In connection to this, the Singapore Convention has contributed to the development of new institutions attempting to make mediation a central part of their services. The Second Belt and Road Forum for International Cooperation, for example, established the International Commercial Dispute Prevention and Settlement Organization (“ICDPASO”) in 2019, aiming to be an “Asian-centric” but multilateral dispute resolution forum for commercial and investment disputes.<sup>72</sup> Wang and Sharma note that the ICDPASO Proposed Rules will serve as a means to promote mediation in the context of the Singapore Convention by encouraging mediation at every step of the way during the dispute resolution process as well as by allowing parties to switch back from arbitration to mediation and vice versa during the process.<sup>73</sup> Wang and Sharma also note that the Rules, the Convention, and the experience of Asian jurisdictions with mediation will further help allaying investors’ concerns as to the viability of international mediation with respect to states and state entities, one of the main reasons why mediation has not been more widely adopted.<sup>74</sup>

### III. THE ISLAMIC WORLD AS A FUTURE HUB OF MEDIATION AND DISPUTE SETTLEMENT

The basis of this Note’s argument is centered around the intersection between the Islamic world’s historic and doctrinal tendency to favor mediation as a dispute resolution mechanism and international commercial mediation’s recent rise as a viable alternative for international dispute resolution through the adoption of the Singapore Convention. I argue that this intersection clearly enhances the possibility that the Islamic world take a central role in the development of mediation as a leading

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<sup>70</sup> Memorandum from Gibson, Dunn & Crutcher LLP to Clients & Friends (Aug. 22, 2019), <https://www.gibsondunn.com/wp-content/uploads/2019/08/singapore-convention-on-mediation-and-the-path-ahead.pdf> [https://perma.cc/LFS6-BCQ5].

<sup>71</sup> See Weixia Gu, *The Dynamics of International Dispute Resolution Business in the Belt and Road*, 113 AM. SOC’Y INT’L L. PROC. 370, 372–73 (2019).

<sup>72</sup> Guiguo Wang & Rajesh Sharma, *The International Commercial Dispute Prevention and Settlement Organization: A Global Laboratory of Dispute Resolution with an Asian Flavor*, 115 AM. J. INT’L L. UNBOUND 22, 22 (2021).

<sup>73</sup> *Id.* at 24.

<sup>74</sup> *Id.* at 24–25.

international dispute resolution mechanism. Already-existing mediation hubs in the Islamic world, such as Singapore or Dubai, can take the inherent know-how stemming from Islamic doctrine and apply those embedded skills in the practice of international commercial mediation.

A. *Intersection of Islamic Mediation Tradition and International Commercial Mediation*

Professor Negin Fatahi notes that “[t]he major distinguishing factor of mediation in the Middle East is the role of the mediator. . . . [T]he status and reputation of the mediator in addition to the parties’ respect for the mediator are crucial to reaching amicable compromise settlements.”<sup>75</sup> This statement sets the tone for an analysis of the essential similarities and differences in the perception of a mediator’s role in the Western legal system and in the Islamic context. The main difference lies in the perception of a mediator’s role as a deciding authority.

As abovementioned, the perception of mediation as the ideal dispute resolution mechanism, and the supreme role of the mediator along with it, is clear in Islamic tradition.<sup>76</sup> In comparison, Western dispute resolution mechanisms are usually secular and specialized in nature<sup>77</sup> and are therefore not influenced by religious doctrine. The scope of mediation in the Islamic context—and thus the goal of mediators—is mostly based on repairing and preserving social relationships.<sup>78</sup> Mediators are sometimes referred to as *jaha*, or a group that has “gained the esteem of the community.”<sup>79</sup> Because of this, mediators have usually been much closer to the disputing parties in the Islamic context than in Western systems, and they have tended to care less for pragmatism in the pursuit of their objectives.<sup>80</sup> Because mediators in the Islamic context have usually been elders or community leaders, it is hard to reconcile the lack of authority intrinsic in a Western mediator, which “generally leaves responsibility for the settlement to the actual participants,” with

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<sup>75</sup> Fatahi, *supra* note 8.

<sup>76</sup> POWELL, *supra* note 2, at 143.

<sup>77</sup> PHILPOTT, *supra* note 34.

<sup>78</sup> Irani & Funk, *supra* note 35, at 62–63; Fatahi, *supra* note 8.

<sup>79</sup> Irani & Funk, *supra* note 35, at 65.

<sup>80</sup> PHILPOTT, *supra* note 34; Irani & Funk, *supra* note 35, at 63.

the implicit authority granted to a mediator in the Islamic context in order to render a decision.<sup>81</sup>

There is some overlap between the concept of a mediator and that of a judge in the Islamic context.<sup>82</sup> Indeed, Fatahi notes that in Islamic culture, “the mediator plays an active role (i.e., as a fact finder) and takes an evaluative stance as opposed to the Western mediator who is neutral and plays a facilitating role by allowing the disputants to reach a resolution by themselves.”<sup>83</sup> Furthermore, *qadis*, or Sharia court magistrates, can exercise “extra-judicial functions, such as mediation.”<sup>84</sup> *Qadis* work to find common ground, basing their decision on oral evidence and face-to-face interaction, and see the parties to the dispute as their partners in the fact and law-finding process.<sup>85</sup> In line with this, John Bowen has noted that in the context of divorce cases in Indonesia, “judges do at least as much social and religious counseling as they do fact-finding and statute-applying.”<sup>86</sup>

Can these traditions not only be reconciled with the framework of modern international commercial mediation, but also influence it in a positive and productive fashion? It may appear challenging at first. Indeed, a foundation of international commercial mediation in its current state is that the mediator’s role is merely to assist parties in reaching amicable settlements, and it is clear under this framework that “the mediator does not have the authority to impose upon the parties a solution to the dispute.”<sup>87</sup> To be clear, the traditional role of a mediator in Islamic culture is not to judge, but to preserve good relationships within the community.<sup>88</sup> However, the traditional Islamic mediation process is, to some extent, “legitimated and guaranteed by communal leaders.”<sup>89</sup> The more binding approach to mediation is also pursued in the modern and presumably more urban Islamic context, as seen above in the context

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<sup>81</sup> Irani & Funk, *supra* note 35, at 63.

<sup>82</sup> See POWELL, *supra* note 2, at 141–43, 149.

<sup>83</sup> Fatahi, *supra* note 8.

<sup>84</sup> WAEL B. HALLAQ, AN INTRODUCTION TO ISLAMIC LAW 175 (2009); see also *infra* ANNEX 1.

<sup>85</sup> See POWELL, *supra* note 2, at 141.

<sup>86</sup> JOHN R. BOWEN, ISLAM, LAW AND EQUALITY IN INDONESIA 210 (2003).

<sup>87</sup> Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation § 1, art. 1 (U.N. Comm’n on Int’l Trade L. 2018) (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002).

<sup>88</sup> Irani & Funk, *supra* note 35, at 63.

<sup>89</sup> *Id.*

of the Malaysian 2001 Shariah Civil Procedure.<sup>90</sup> Although *sulh* officials assist parties in Malaysia through the dispute process, mostly in labor and banking disputes, “their *sulh* constitutes a definitive resolution to the case.”<sup>91</sup>

It is also important to note that urban professional groups in Islamic societies learn and adopt Western techniques of dispute resolution.<sup>92</sup> However, many of these same professionals “recognize a need to adapt these methods to indigenous cultural realities.”<sup>93</sup> Whereas this is the case within Islamic societies, this traditional Islamic know-how can also be exported to the international context. Many of the Quranic tenets and the traditional Islamic mediation structure can indeed positively influence international commercial mediation. For instance, there is a deep-seated helper/help-seeker formulation in Islamic mediation, where the *qadi* is to some extent a “creature of the culture in which he adjudicate[s] disputes.”<sup>94</sup> This cultural aspect may easily lead to more efficient dispute settlement in the commercial context. As noted by David Stapleton, when it comes to the Middle Eastern context, “there is no ‘loss of face’ if in the early stages of a dispute, parties come together to settle issues to maintain good relations and keep a project on schedule.”<sup>95</sup>

The proper selection of a mediator may then play a big role in such a process. International dispute settlement is characterized by requiring the presence of a third-party mediator, chosen by the disputing parties, whose allure of authority and prestige provides weight to the process.<sup>96</sup> Usually, parties involve reputable international institutions to provide mediators for them in order for parties to “obtain comfort as to the neutrality and qualifications of the mediator.”<sup>97</sup> However, very notably, the lack of development of international commercial mediation has led institutions to often appoint mediators from lists of arbitrators, leading to situations

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<sup>90</sup> See Othman, *supra* note 25, at 72.

<sup>91</sup> *Id.*

<sup>92</sup> Irani & Funk, *supra* note 35, at 60.

<sup>93</sup> *Id.*

<sup>94</sup> HALLAQ, *supra* note 84, at 61; see also Amira Sonbol, *Women in Shari’ah Courts: A Historical and Methodological Discussion*, 27 *FORDHAM INT’L L.J.* 225, 241 (2003).

<sup>95</sup> David Stapleton, *Mediation—A Middle East Perspective*, HKA (Jan. 7, 2019), <https://www.hka.com/mediation-middle-east-perspective/> [https://perma.cc/K5S6-G56J].

<sup>96</sup> See POWELL, *supra* note 2, at 149–50.

<sup>97</sup> David J.A. Cairns, *Mediating International Commercial Disputes: Differences in U.S. and European Approaches*, *DISP. RESOL. J.*, Aug.–Oct. 2005, at 68.



where mediators in charge actually have “little understanding . . . of the techniques of mediation.”<sup>98</sup> Not only is this a significant issue, but experienced mediators have also noted that a mediator’s culture and legal training are likely to influence that person’s approach toward the mediation process and conference.<sup>99</sup> Cultural theorist Edward Hall notes that mediators may come from “low-context cultures,” involving more straightforward verbal communication, or “high-context cultures,” involving tradition, context, and less verbal communication.<sup>100</sup> All of these considerations go to show that mediation, even in the commercial context, is a phenomenon that relies on the moderating third party’s social and anthropological cues more so than in international arbitration or in litigation.

Many of these considerations can be addressed through proper training of international commercial mediators. It is at that stage that Islamic traditions in mediation can have the biggest influence. There is a clear benefit to adapting some of the traditional Islamic knowledge and methods to global mediation and conciliation rules and procedures, as well as to a mediator’s approach to the process in general. Professionals from Islamic cultures that already prioritize mediation over other forms of dispute resolution, be it based on Quranic principles or not, may inherently bring a different approach to the table as mediators from the start. Irani and Funk have identified issues in Western-based conflict resolution approaches that may also exist in the commercial context that can be addressed from the distinct perspective of Islamic mediation tradition.<sup>101</sup>

For example, a major point in Western-style mediation is the necessity for a “win-win” or “win-lose” outcome.<sup>102</sup> Instead of focusing on such preoccupation, mediators can learn from Islamic mediation tradition and orient the mediations

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<sup>98</sup> *Id.* at 66.

<sup>99</sup> See Ricardo J. Cata, *International Commercial Mediation: A Supplement to International Arbitration*, UPCHURCH, WATSON, WHITE & MAX (Feb. 2015), <https://www.uww-adr.com/zupload/wp-content/uploads/2015/03/International-Mediation.pdf> [https://perma.cc/X3VY-TXK4]; Claire Mulder, *Commercial Mediation: The United States and Europe*, DISP. RESOL. MAG., Fall 2017, at 12, [https://www.americanbar.org/content/dam/aba/publications/dispute\\_resolution\\_magazine/fall2017/3\\_commercial\\_mediation\\_the\\_united\\_states\\_and\\_europe.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/dispute_resolution_magazine/fall2017/3_commercial_mediation_the_united_states_and_europe.authcheckdam.pdf) [https://perma.cc/Q48E-B429].

<sup>100</sup> See Greg Bond, *Mediation and Culture: The Example of the ICC International Commercial Mediation Competition*, 29 NEGOT. J. 315, 321 (2013).

<sup>101</sup> Irani & Funk, *supra* note 35, at 68.

<sup>102</sup> See *id.*; Fatahi, *supra* note 8.

towards preserving the disputing parties' working relationship.<sup>103</sup> Likewise, Western mediation primes neutral and unaffiliated outsiders as ideal mediators as opposed to the preference for an "unbiased insider" as a third party in the Islamic tradition.<sup>104</sup> But how much of an "outsider" can a mediator in the international commercial context really be? As abovementioned, parties usually rely on institutions to appoint mediators.<sup>105</sup> Institutions usually keep lists of experienced mediators or "neutrals"<sup>106</sup> that, like in arbitration, will likely have mediated tens or hundreds of disputes over the span of their careers. Because of this, the mediator will be an "outsider" in the sense that he or she will most likely not be connected to the disputing parties. However, the mediator will certainly be an insider of the *milieu* of mediation in general, or of the professional area in which the parties have chosen their mediator to be an expert, likely being familiar with the parties' counsel or law firms and working in the same professional circles.<sup>107</sup> Therefore, to some extent, the Islamic concept of an "unbiased insider" is already in action in both international commercial arbitration and mediation.

It is not only the applicable experiences and methods of mediators from Islamic cultures in the international commercial context that are at the core of this argument, but also the longstanding practice of mediation in the Islamic world that should push these jurisdictions to now embrace mediation in the international context following the adoption of the Singapore Convention. The longstanding legitimacy and preference granted to mediation within Islamic societies can not only influence the parties to commercial disputes from Islamic jurisdictions to pragmatically choose mediation as their preferred dispute resolution method; it can also lead to Islamic jurisdictions becoming leaders in the provision of international commercial

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<sup>103</sup> An Islamic mediator may be more focused on the preservation of harmony between the parties from a social, rather than commercial, standpoint. Irani & Funk, *supra* note 35, at 69; Fatahi, *supra* note 8.

<sup>104</sup> Irani & Funk, *supra* note 35, at 68–69.

<sup>105</sup> See Cairns, *supra* note 97.

<sup>106</sup> See *List of Mediators*, CT. OF ARBITRATION FOR SPORT, <https://www.tas-cas.org/en/mediation/list-of-mediators.html> [<https://perma.cc/9YKR-7QRU>]; *WIPO List of Neutrals—Christophe Imhoos*, WORLD INTELL. PROP. ORG., <https://www.wipo.int/export/sites/www/amc/en/domains/panel/profiles/imhoos-christophe.pdf> [<https://perma.cc/4Z8K-D5TL>] For an example of institutional guidelines for the selection of a mediator, see *Selecting the Mediator, Mediation: Frequently Asked Questions*, WORLD INTELL. PROP. ORG., <https://www.wipo.int/amc/en/mediation/guide/index.html#selecting> [<https://perma.cc/5BRN-VSQY>].

<sup>107</sup> See *L'indépendance de l'arbitre*, SQUIRE PATTON BOGGS (Nov. 11, 2011), [https://larevue.squirepattonboggs.com/l-independance-de-l-arbitre\\_a1551.html](https://larevue.squirepattonboggs.com/l-independance-de-l-arbitre_a1551.html) [<https://perma.cc/PG87-NCA2>] (discussing the same phenomenon in the arbitration sphere).

mediation services by leveraging such traditions and experience into their potential applicability in the international commercial dispute settlement arena.

### B. Early Trending Signs

There are early trending signs to support the thesis that the Islamic world is on a path to becoming a juggernaut of international commercial mediation. There are currently fifty-three signatories to the Singapore Convention, of which six are full parties.<sup>108</sup> From those fifty-three countries, up to fifteen may be considered part of the Islamic world, and two out of the six full parties are strong Islamic jurisdictions (Qatar and Saudi Arabia).<sup>109</sup> Practitioners expect this number to continue growing in the coming years, as other countries may soon follow the path of their predecessors in signing the Convention.<sup>110</sup>

The numbers also support the rising demand for mediation services in the Islamic world. For instance, the Dubai International Arbitration Centre (DIAC) “reported 127 mediation cases valued at Dh18 million (approximately US\$ 4.9 million) in the first quarter of 2018.”<sup>111</sup>

Islamic jurisdictions have already spearheaded the development of international commercial mediation. And Singapore, the Convention’s namesake, has also been the pioneering jurisdiction in “Arb-Med-Arb,” or AMA.<sup>112</sup> AMA was used prior to the Singapore Convention as a way to render mediated settlements enforceable by having both an arbitrator and a mediator involved in a process which started as an arbitration and turned into a mediation to allow for the amicable settlement of the dispute, but it also allowed for the possibility of reverting back to arbitration if such settlement is not achieved.<sup>113</sup> This process took place within the

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<sup>108</sup> *Status of Treaties: Singapore Convention*, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXII-4&chapter=22&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-4&chapter=22&clang=_en) [https://perma.cc/3EDQ-JHFS] (last accessed May 1, 2021).

<sup>109</sup> *Id.*

<sup>110</sup> Koleilat-Aranjo & Nair, *supra* note 45.

<sup>111</sup> *Id.*

<sup>112</sup> Matthew Erie, *The New Legal Hubs: The Emergent Landscape of International Commercial Dispute Resolution*, 60 VA. J. INT’L L. 225, 265 (2020); Markus Altenkirch & Anindya Basarkod, *Arb-Med-Arb: What Is It and How Can It Help the Parties to Solve Their Disputes Efficiently?*, GLOB. ARB. NEWS (Nov. 20, 2017), <https://globalarbitrationnews.com/arb-med-arb-what-is-it-and-how-can-it-help-the-parties-to-solve-their-disputes-efficiently/> [https://perma.cc/X7DK-MTGK].

<sup>113</sup> Altenkirch & Basarkod, *supra* note 112.

umbrella of Singapore's main arbitration and mediation institutions, and it placed Singapore at the vanguard of the international dispute resolution world by joining "the advantages of mediation, specifically, convenience, flexibility, and low cost, with the main benefit of arbitration, enforcement."<sup>114</sup>

### C. Possible Limitations

One major limitation to Islamic-influenced mediation may be that the subject matter of a mediated settlement must also be Shari'a-compliant, at least in some jurisdictions. Fatahi notes that having the subject matter and the mediated agreement be Shari'a-compliant

can often be problematic since Shari'a prohibits *riba* (usury), which generally occurs in any commercial transaction in which one or both parties receive interest, and *gharar* (gambling), which has been extended by analogy to ban any commercial transaction in which a party's consideration is uncertain since one party could unexpectedly receive something of greater value than what they gave in exchange.<sup>115</sup>

Scholars and practitioners have noted several possible consequences stemming from non-compliance of a mediated settlement with Shari'a. For instance, several Islamic jurisdictions might either totally or partially refuse to enforce a mediated settlement that is not Shari'a-compliant.<sup>116</sup> This in turn might cause parties to seek enforcement in non-Islamic jurisdictions, therefore reducing the appeal of integrating the framework of international commercial mediation into Islamic countries.<sup>117</sup> It could also lead to the potential bifurcation of awards, in which one settlement would only contain the Shari'a non-compliant aspects of the disputes, and the rest would be included in a separate agreement.<sup>118</sup> Other consequences may include a need to train

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<sup>114</sup> *Id.*; Erie, *supra* note 112, at 265–66.

<sup>115</sup> Fatahi, *supra* note 8.

<sup>116</sup> David Lutran & Josephine Hage Chahine, *Singapore Convention Series: The "Sharia-Compliance" Requirement to Safeguard Enforcement of Mediated Settlements in the MENA Region*, KLUWER MEDIATION BLOG (Sept. 30, 2020), <http://mediationblog.kluwerarbitration.com/2020/09/30/singapore-convention-series-the-sharia-compliance-requirement-to-safeguard-enforcement-of-mediated-settlements-in-the-mena-region/> [<https://perma.cc/2HSR-8VQE>].

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

mediators in Shari'a compliance, as well as further scrutiny of Shari'a non-compliant awards by mediation centers.<sup>119</sup>

On the topic of mediator training, another issue preventing wide development of the international commercial mediation in Islamic countries is the possible lack of training of mediators from Islamic jurisdictions within the framework of international commercial mediation. Practitioners have noted the likelihood that “there are very few active and trained mediators in the region,” as well as the “lack of confidence in the mediator’s ability to render impartial decisions,” which is undergirded by the lack of ethics and standards for the selection and training of mediators in the region.<sup>120</sup>

Finally, practitioners have also noted the need for Islamic jurisdictions to adapt national laws to comply with Singapore Convention obligations, as have other jurisdictions, which will likely require “amend[ing] or, as in most cases, introduc[ing] dedicated standalone national laws on mediation.”<sup>121</sup>

#### IV. CONCLUSION

The Singapore Convention presents major opportunities for the Islamic world. Islamic jurisdictions can bring their traditional mediation know-how into the limelight and become leading legal hubs in the brave new world of international commercial mediation created by the Convention. Although some challenges and limitations are foreseeable, and a certain degree of adaptation will be required given the mostly Western-focused international mediation sphere, Islamic legal professionals and mediators have the opportunity to take from both Western and Islamic schools of thought in order to enable more efficient, trustworthy, and legitimate frameworks for the development of international mediation. Likewise, mediation and arbitration institutions based in the Islamic world have already demonstrated the ability to adapt and lead in new modes of dispute resolution, and now have they the opportunity to be ahead of the curve in what appears to be the very promising future of international commercial mediation in the Islamic world.

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<sup>119</sup> *Id.*

<sup>120</sup> Fatahi, *supra* note 8.

<sup>121</sup> Koleilat-Aranjo & Nair, *supra* note 45; see Steven Friel & Christian Toms, *The European Mediation Directive—Legal and Political Support for Alternative Dispute Resolution in Europe*, BROWN RUDNICK (2011), [https://www.brownrudnick.com/wp-content/uploads/2017/02/Brown\\_Rudnick\\_Litigation\\_European\\_Mediation\\_Directive\\_Friel\\_Toms\\_1-20110.pdf](https://www.brownrudnick.com/wp-content/uploads/2017/02/Brown_Rudnick_Litigation_European_Mediation_Directive_Friel_Toms_1-20110.pdf) [<https://perma.cc/9ECC-NASQ>] (discussing other jurisdictions’ approach to standardized mediation regulations).

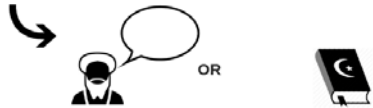
ANNEX I<sup>122</sup>  
Tombouctou



**Phase 1:** After receiving a complaint, the qadi invites the parties before him and an assembly that he establishes.



**Phase 2:** The parties make their arguments before the qadi, the assembly, and witnesses.



**Phase 3a:** If the qadi finds an immediate remedy to the dispute, he issues a decision the same day.

**Phase 3b:** If the issue is particularly complex the qadi consults the Qur'an and other authoritative texts in the following days.



**Phase 4:** A few days after the first session, the qadi invites the parties to either restate their arguments or to listen to his decision. If a decision is not issued, phase 3b is repeated.



**Phase 5:** The qadi issues his decision and asks the parties to conform. If the decision is not respected by the parties:



**Phase 6a:** The qadi asks the parties to swear on the Qur'an



**Phase 6b:** The parties resort to formal justice.

This infographic is based on the aggregation of 14 interviews describing the customary justice systems in Tombouctou. No respondent described the entire process from beginning to end.

<sup>122</sup> DIANA GOFF, MADINA DIALLO & ANCA-ELENA URSU, CLINGENDAEL, UNDER THE MICROSCOPE: CUSTOMARY JUSTICE SYSTEMS IN NORTHERN MALI CH. 3 fig.6 (July 2017), [https://www.clingendael.org/pub/2017/under\\_the\\_microscope\\_customary\\_justice\\_systems\\_in\\_northern\\_mali/3\\_role\\_of\\_the\\_qadi/](https://www.clingendael.org/pub/2017/under_the_microscope_customary_justice_systems_in_northern_mali/3_role_of_the_qadi/) [<https://perma.cc/MDH6-2Q76>].

