The principle of “Without Prejudice to Sharia Law” Perspectives from International Jurisdictions in Arbitration

Hajed A. Alotaibi
Associate Professor, Department of Sharia, College of Sharia and Law, Majmaah University, Al Majmaah, 11952, Saudi Arabia.
Corresponding author h.alotaibi@mu.edu.sa

Abstract: The application of arbitration in international jurisdiction while respecting Sharia law remains a dynamic issue. This study examines how the phrase “without prejudice to Sharia law” is interpreted and applied in international arbitration centers. The research explores how international jurisdictions incorporate this principle in arbitration cases. A comparative analysis was conducted to highlight similarities and differences between international arbitration and Sharia law. Findings indicate that the principle has been applied in various cases, allowing arbitration within international frameworks. However, its application is sometimes selective or inconsistent. For international and Islamic legal systems to coexist effectively, amendments in both frameworks are necessary. Harmonizing these laws will promote broader acceptance and integration. The study recommends that the international community and Islamic nations work toward a consensus on arbitration principles. Additionally, Muslim communities should engage in global education efforts to clarify misconceptions about Sharia law. A balanced, mutual compromise is essential to ensure arbitration remains fair and widely accepted.

Keywords— Islamic principles, Sharia Law, International Jurisdictions, Arbitration.

INTRODUCTION

Origin and meaning of the phrase "without prejudice to Sharia law."

This study is an exploration of the “without prejudice” principle and how the same is applied in Sharia law. The doctrine of “without prejudice” infers that the application of justice should be prejudicial in disregard of the sharia law.

This means that the application of the law or awards in the conflict will be done in consideration of the sharia law principles and doctrines.

The entomology or the phrase is composed of several key terms, with “prejudice” referring to harm or jeopardy to the possibility of someone obtaining justice or being heard fairly. Further, “without prejudice to sharia law” refers to the principle that the actions being applied should not be seen to undermine the doctrines of the sharia law. In the event of any conflict, sharia law must prevail and be applied. In this case, the expression reflects a situation where legal proceedings are undertaken in consideration of the applications of sharia law doctrines. It underscores that any punishment, action or sentence will not be rendered in total disregard of sharia law. It means that even in their pronouncements the arbitrators who are expected to deliver justice, awards or give a ruling in a matter or conflict between two parties will give their judgement in relation to the interpretation of the sharia law and with the principles of the Sharia law in mind (Ashfaq, 2021).

There are many points of application of the sharia law and its relevance when it comes to arbitration agreements and contracts regardless of the location or jurisdiction at which the agreements and the contracts are being completed. In international space, though some of the countries may not be willing to apply the sharia law in its entirety, the sharia law have within itself a legal framework that guides the parties entering into the contracts or arbitration agreements and disputing parties in an arbitration process. Some aspects of the legal framework includes the issues of profits sharing, ethical considerations and, finally, the issues of rates of interests which the parties can bring into an agreement in compliance with sharia law. Further, in other jurisdictions that do not formally adhere to sharia law, parties in arbitration might even reconcile the sharia law principles with the provisions of domestic law, thereby benefiting from both.

There are other factors concerning sharia law that the parties to a contract should be well aware of. This first includes applicability of the sharia law. The law is available and applicable for all players but it is important for those who are in dispute to first give their consent for Sharia law to be applied in their case. Second, sharia law contains certain rules for transactions which might not be appreciated in most international jurisdictions or transactions. The issue of interest rates “riba” is a thorny issue and not welcomed in Sharia law and might not sit well with the Muslim community. In case a contract or business arrangement involves loans and profiteering from a financial facility then it must be considered as form of “profit sharing” also referred to as “murabaha” and not a situation where there is interest rates charged on loans and financial facilities. It indicates adherence to the sharia law which also allows for mechanisms of Islamic financing to be put in place (Blanch, 2023).

The main target and purpose of the Islamic laws on contracts is to safeguard life, lineage, property and Islam religion (Muhamed Sanusi, 2008). Therefore, in the day to day nosiness or transactions for enforceability and validity, the parties

to the business arrangement should be well aware and give consent that any dispute that may arise or disagreement will be dealt with by use of arbitrators and the sharia law. This allows for better management of the situation as opposed to a situation where the sharia or Muslim law is enforced on an individuals who have not agreed to be guided by the sharia law. Secondly, sharia law puts emphasis to justice and fairness which would guide the parties to a contract to allow to prevent exploitation and promote transparency and good faith in their dealings. The aim of the study is to explore how the without prejudice to Sharia Law and how it is applied international arbitration. The study explore what is meant by "without prejudice" in international context and how the international jurisdiction address and interpret the "without prejudice" in the arbitration cases

ORIGINS AND USAGE OF WITHOUT PREJUDICE TO SHARIA LAW INTERNATIONAL COMMERCIAL ARBITRATION

"Without prejudice" in international Arbitration

"Without prejudice" refers to the situation where the parties in a dispute agree to adapt out of court arrangement that is mostly arbitration where they will be subject themselves to the rules and regulations of the sharia law in international arbitration.

The term "without prejudice" is a legal principle that originated in the common law but is also embedded in the public policy because the same is aimed at encouraging and enforcing different players and parties to be able to work out the necessary arrangements when in dispute but out of court. Therefore, it is generally aimed at encouraging alternative justice system which includes the arbitration and agreements between two grieving parties. Therefore, the rule of thumb is that the parties can be able to negotiate honestly and freely and make their voices heard by the other party to a dispute but in a common platform.

The international criminal court Award No.6653 of the year 1993 held that the principle of "without prejudice" is well established considering the general rule of international arbitration and which provides that the settlement negotiations are confidential, this is because the parties to a dispute requires no publication of their resolutions, awards or the judgements to the dispute. Like any other dispute the settlements and awards between the parties are better kept from the public for the interests or the parties in dispute.

"The confidential character of the exchange of proposals between parties who attempts to achieve an amicable settlement stems from a general principle of international commerce". This principle is corollary of the general principle of good faith. This fundamental principle is covered in several rules, *inter alia,* the articles 9 (4) and 9 (2) within the IBA rules on the acquiring of the International Arbitration, Article 9 (2) of the International Criminal Court

Mediation Rules (and in nearly all the institutional rules of mediation), the UNCITRAL Model Law on International Commercial Conciliation, the UNCITRAL Conciliation Rules, the EU Directive on the different aspects of the mediation in commercial and civil matter and the Uniform Mediation Act in the United States. The UNCITRAL rules are known to be less comprehensive compared to the arbitration rules of the ICC. For example, when involved in *ad hoc* arbitration the parties are expected to be more careful due to the inadequate support from the institutions (Manea, 2023).

As a well-established transnational principle of arbitration within the international space, “without prejudice” is also independent of the laws that are applicable to the arbitral proceedings. Therefore, the principle is also applicable even in a situation where the choice of law is directed towards a specific legal system that does not acknowledge this principle like the German law (Picennelli, 2022). However, the principle of “without prejudice” also has its limitation to the parties adducing documents that are potentially supplied into the case as evidence. When these documents are presented considering the circumstance of individual cases; an arbitral tribunal must move in to determine statement that are admissible as evidence and those that are within the protection of privilege (Picennelli, 2022).

Principles of Sharia law relevant to arbitration

There are several key principles and aspects of sharia law relevant to arbitration. First, “riba” (interest) prohibitions prevent charging interests which could directly influence the cost of capital and procedures used to arrive at the charges. Coming up with the estimated overheads as a result of a dispute between two people or groups. Second, the principle of “Adl” (Justice) guides arbitral decisions and awards to ensure impartiality and fairness for the parties in dispute. This means that arbitrators must be seen to apply natural justice. They must hear the arguments of all the parties and show no signs of favoritisms or inclination towards any of the parties. The principle gives provision for the two parties to agree and accommodate the judgment so that they go back and heal which will also allow them to move on with their lives. It also allows for the enforcement of the judgement that has been arrived at since the two parties to the dispute acknowledges the process and have agree to be subjected to the process and the outcomes before the beginning of the hearing. The term enforcement has been used in this study to indicate the implementation of the law and application of awards or punishment after resolution of the disputes.

In third place is the principle of “Maslaha” that refers to the public interest, which underlines the importance of balance the needs and interest of the general public and the society at large with individual rights considered in arbitration. While rendering arbitral awards, arbitrators must be able to take into consideration the economic and social effects of the awards. As such the individual needs and benefits must be compared with the needs and community interests (Abdul, 2022). In fourth place is “Amanah” (good faith) which refers to

the motivation and encouragement for those involved in disputes to present truthful information with integrity and all honesty during the process of arbitration so as to allow proper guidance of the arbitrators during the decisions making process. Finally, the principle of "Faqih" (qualified arbitrators) allows the evaluation and application of the sharia law. Therefore, selection of individuals who are qualified and relevant for the role of arbitration must be conducted. The sharia principle of "Faqih" goes out to insist on the issues of qualification of the arbitrators so that they are able to fully apply sharia law and individuals with proper knowledge in Islamic laws (Kyriazi, 2021).

ROLE OF ARBITRATION IN ISLAMIC AND INTERNATIONAL JURISDICTIONS

ISLAMIC ARBITRATION INSTITUTION

Arbitration in Islamic Contexts: How Arbitration Aligns with Sharia Principles

The arbitration process has a significant role to play in the establishment and implementation of the sharia law. Therefore, the arbitration is legitimized within the sharia law due to the role it plays therein which makes it very important; it is termed as both lawful and legitimate within the Sharia law and the international law. There is no contention between different schools of thoughts and the Muslim thinkers in relation to the legitimacy and relevance of arbitration within the Islamic law. Therefore, it is widely accepted as a dispute resolution mechanism or method within the Islamic Law. The same is applied and derived from the Holy Qur'an in concepts such as the Ijma, Sunnah (consensus) and Qiyas (analogy). Even though most of the verses within the Qu'ran have not directly addressed the legitimacy of the arbitration it is accepted by the Holy Qu'ran but directed towards all the people as opposed to those in command, judges and leaders in their dispute resolution processes.

Directly from the Qu'ran itself, Sunnah, messenger from Allah, Muhammad (peace be upon him) was able to accept the appalment of Sa'ad bin Mua'ad where matters arose in Quraidhah children specifically among the Jews, the appointment came from the Jews themselves. Further, the name of Abu Shuraih Hanee bin Yazeed was changed to Abu al-hakam by Prophet Muhammad when he came to him together with his tribesmen. The name or title Abu al-hakam refers to a referee or one in charge of the decision among the disputing lot. A question from Prophet Muhammad came to Him "Allah is Al-Hakam and to Him is judgement why you are now referred to Abu Al-hakam?" He said in response: "It is because my tribe comes to me when disputes arise and when I have made a decision the two parties are always settled, contented and happy" The Prophet said: This is very good, what is better than this! Who is oldest among your sons? He said: Shuraih. Then the Prophet said to him: you are Abu Shuraih (Klatt, 2020).

This is informative especially in the arbitration and its alignment to the Sharia principles because it informs the basics of the arbitration, this is because the

title Abu al-hakam is considered to the referee who now sits and helps in the resolution of a dispute among two people or groups amicably.

The role for Islamic arbitration centers, example, Tehran Regional Arbitration Centre (TRAC), the Organization of Islamic Cooperation Arbitration Centre (OIC-AC) and the International Islamic Centre for Reconciliation and Arbitration (IICRA), is mainly the resolution of disputes among businesses, groups and individuals. However, in arbitration and resolution of the disputes, those in charge are fully guided by Sharia Law and should conduct all their affaires in strict adherence to and compliance with Sharia Law.

One of the main institutions that are utilized for arbitration purposes as an Islamic arbitration Centre is IICRA. The institution was specifically developed with an intention of dispute resolution among the Islamic community. The reason why it is important is its set-up in such a way that there is independence from any authority and the institution or Centre is a non-profit organization which means that the same cannot be influenced in order to be skewed in their judgement and in serving justice. IICRA has a mandate to deliberate on disputes in consideration of Sharia Law in different areas which includes the financial matters, real estates, banking and commercial investments. The second Centre is the Tehran Regional Arbitration Centre (TRAC), it was established in 1997 within Iran that is the Islamic Republic of Iran (Gabardo, 2020).

The Organization of Islamic Cooperation Arbitration Centre is a professional platform where disputes are resolved in a neutral and independent matter. The Centre adopts arbitration and other forms of alternative dispute resolution methods. Notably, there is an affiliation between the Islamic Chamber of Commerce and Development and the OIC-AC Centre of arbitration. The affiliation is notable because it allows for a better support and implementation of the Sharia law.

Arbitration in International Jurisdictions: Overview of Major Arbitration Institutions

International arbitration is known as a process of dispute resolution arising out of contracts or other instruments that is heard by a third party (arbitrators) selected or accepted by disputing parties and results in a final and binding decision. This alternative justice system is preferred by these parties to the dispute so that they avoid going through the court system of the country and as such it allows for a flexible, time saving process that is cost effective and globally recognized process of dispute resolution. The arbitration in international jurisdiction is governed and guided by the rules of international conventions which includes the United Nations Commission on International Trade Law Arbitration Rules (“UNCITRAL Arbitration Rules”) in 1976 also contributed significantly to the spread of international commercial arbitration (UNCITRAL) model Law of international Commercial Arbitration. In essence, it gives provision for a forum that is neutral for the parties in dispute (cross-border) and with possibility of enforceable awards across multiple jurisdictions.

The UNCITRAL Model Law was made with an intention of assisting different nations in modernization and reforming their laws on the arbitral procedures which would allow for the specific characteristics of the law from respective countries. It also takes into account the global consensus in relation to international arbitration having been preferred and admitted by different regions and economic or legal systems of the world. The correlation between the international arbitration and the Sharia law comes from the fact that the twi serves almost the same purpose. This is because the main objective is to get justice for the parties in dispute and as such the international law has provision for arbitration which is also the case for the Sharia law (Rebaza, 2022).

The arbitration is also considered to be a form of international justice. The term arbitration has been accorded different definitions and meaning by different scholars. However, the earlier scholars and institutions developed and formulated the international arbitration with the sole intention of being a form of seeking or acquiring justice. Arbitration has also been assigned a meaning by the early English lexicophers and the American lexicophers were also not left behind because they postulated their interpretation and meaning of the term arbitration. The well-known dictionary by Edward Phillips that is the fourth edition which was published in the year 1978 in London by Edward as referred to as “The New World of Words” presents the term “Arbitrator” (lat.) as an umpire and or a commissioner that has been selected by party and party who are locked in controversies and have agreed in mutual consent that the individual can be able to decide and rule over the controversy between them (Rebaza et al. 2022).

In the year 1996 the fifth edition suggested that an “arbitrator” (Lat.) a commissioner or an umpire that have been identified by the parties in mutual consent and is allowed to made decision or decisions in controversies between these parties. It also stated that the “arbitrament” is a judgment, award or determination of a controversy by the arbitrator on behalf of two or more parties due to some controversies, debt or trespass. On the other hand, to “arbitrate” is the act of giving a ruling, sentence or adjudge or more simple act as an arbitrator. The arbitration is the process of the act of arbitrating or putting an End to the difference by means of arbitrators. In all the arbitration and the decision and sentences made it is important to note that the controversies cannot be assumed to end amicably if one of the party feels unsettled of disgruntled. This is because regardless of whether the same has used the sharia law of the international law. If one of the party is disadvantaged then they will end up feeling like justice was not served and as such it may end up presenting future disagreements and controversies.

Some of the key elements and characteristics of the arbitration in international jurisdictions includes: First, the process provides for flexibility which means that the parties are allowed to choose the procedures, applicable laws and procedures that would be able to suit their needs. Secondly the arbitration in international jurisdiction has an element of enforcement, this

means that the same or the results, judgment or settlements and awards given to the parties in dispute is accepted across boards and is enforceable as provides for in the New York Convention on the recognition and enforcements. Thirdly is the issue of arbitration agreement which is a situation that allows or acts as the foundation of international arbitration because it’s a contractual clause. This means that the parties in dispute are allowed in the underlying contracts to be open to possibilities of solving their future dispute amicably by use of the arbitration process. Finally, in fourth place is an element of neutrality or a neutral location or ground gives the parties a chance of defending their position without regards to possible biasness that would be seen in the court system.

The establishment and the existence of the international court of arbitration is relevant to the current study because the same is a support system and a body or an authority where all the policy and legal matter in relation to the arbitration are deliberated and stored. Therefore, it acts as a buffer and a source of information and support system for the arbitration cases and the community that is involved in cases which are informed or decided by use of arbitration.

How Islamic law-based clauses are treated in these jurisdictions

There are many areas and locations or countries across the world that do not subscribe to the Islamic law or the sharia law and as such are guided by international law or other laws. Also countries that are considered non-Muslim are many and as such might feel the appreciation or consideration of Islamic law since they feel like it is not part of their faith or belief and due to little understanding or exposure to the same do not allow its application within that jurisdiction. Further, there are also other areas where the cultural, norms and beliefs consider Islamic Law as backwards and that it does not have current dynamics which have taken place over the years.

Most Islamic law-clauses are embedded in the financial and constitutional contracts which includes the Sharia guarantee clauses, repugnancy clauses and the penalty clauses. The Sharia guarantee clauses guides the Muslim Countries constitutions and they are used to make sure that there is connection between the conventional laws and sharia law. Secondly, the penalty clause, they are aimed at ensuring that the courts are allowed to make adjustments on the amount allocated in compensation for a certain dispute or a case. Third, is the repugnancy clauses; these clauses states that the laws should not be conflicted with the injunctions of Islam as stated by the Holy Quran and Sunnah. This for example can be found where the constitution can state that or include a repugnancy clause that there will be no law that is repugnant to Islam. In this case the application of such repugnant within the international laws can be a problem because not all communities across the world subscribe to Islam as a religion. However, in areas where the community is largely composed of Muslims and or is a Muslim state then it is much easier to apply such repugnant.

Finally, the Sharia compliant contracts clauses, is a situation where the contracts are made in compliance with Sharia law and in consideration of the

Islamic beliefs. This means that there is no violation whatsoever of Sharia principles within the contracts hence considered to be sharia compliant. Therefore, it important to note that even though the teachings and the provisions within the sharia compliant contracts might be super good. There may be a conflict with international laws where party's inclined feel like they are more inclined towards the Christianity or other protestant faiths. There also maybe a problem where the parties involved or one of the parties therein does not subscribe to any faith Muslim or otherwise because they would feel like they are being subjected to a law that would be beneficial and bias towards the other contestants or party to the dispute and as such it will be difficult to apply the same in international laws.

Harmonization Efforts

As previously examined in the literature in the context of commodity trading systems such as the London Metal Exchange, the convergence of legal and Shariah principles presents opportunities for alignment despite regulatory complexity (Alotaibi, 2024).Some of the key points of conflicts between the international and the Sharia law includes the issues of beliefs and the Muslim traditions which are predominantly applied in the Sharia law which may not be welcomed entirely among other faiths and people from other beliefs and denominations. There is also the issue of conflicts between the two especially when it comes to human rights. The interpretations of the sharia law especially when it comes to women rights and freedoms of expression have in most cases conflicted with the international law. Thirdly, the international laws considers the capital punishment as violation of international human rights standards while capital punishment is applied in sharia laws which also brings a conflicts and which needs some harmonization. The international laws has emphasis on the issue of religious freedoms which the same is debatable within the sharia laws. This is a situation where there are scholars who suggests that there should be greater religious freedom while on the other hand others are emphasizing on the need for making Islamic law the basis for governance. The procedural harmony in this study refers to the reconciliation, integration and agreements between these laws that is the sharia law and the international laws.

Attempts to align Sharia principles with international arbitration rules harmonization.

The connection and alignment of the sharia principles to the international arbitration rules is a complicated affair yet still a changing phenomenon. The optimal point if interconnection of the Sharia norms within the secular countries is because of the failed jurists in the western Countries to acknowledge the Sharia as a legal system that is complex by way of a unified system with set of rules that are responsive and adapt to changing rimes and are also not subject to stereotypes. In the development of the sharia law there is provision for

cultural and historical events and their influence on the formulation of the sharia law.

This allows for appreciation of the diversity and understanding of the sharia law and the application of the law in the current society that is actually multicultural as it stands. This enables the society acknowledge that Islamic law is not stuck in the past and it not rigid since it is able to evolve with the contemporary changes in the society. The achieving of the link between the two laws can be explained by the following: There is an existence of the sharia economy and the capitalist economy. This involves the necessity or relevance of sharing risks, in-depth analysis of the Islamic economic principles with the ban or restriction of the “riba” that is the interest rates, and banning or restriction of the speculative transactions.

In order to achieve a sync or connection between the two systems it’s crucial for a better understanding of these differences for a harmonization of the two laws that is the international law or legal system to the Shariah arbitration. Second thing is the operation of the customer satisfaction, it should be recognized that in Europe the Islamic Banking has consequences on the extent to which the Sharia Law can be practiced and the safety of the public interests.

Third, in commercial arbitration the sharia law agents are required to be strictly from the Muslim faith or Islamic religion and the transaction must be taken through the Sharia committee. This also includes the creation or rules and guidelines that would facilitate the adoption of the Sharia law in arbitration with little compromise to the compliance standards. The above are important steps towards the interconnection and the link between the international law and the sharia legal principles. In addition it is also important because the relevance of the Islamic law within European legal system there may be challenges but the same would come with opportunities. However, most of the challenges are mainly within the application of the private international law and the resolution of the cross-border disputes. It also provides much needed opportunities for improvement of coordination and understanding between international laws and the sharia arbitration. It is also important to note that the evolution of the connection of the legal systems coupled with the growth in the importance of the Islamic law, gives a landscape with significant implication for the evolution of the international legal landscape or the European legal landscape (Gabardo, 2020).

Some of the countries that are currently practicing a hybrid legal system includes countries in the Middle East and North Africa with their legal system incorporating both the Sharia law and elements of the international law. Some of the countries includes; Sudan, Nigeria, Egypt, Pakistan, Lebanon, Iran and Malaysia. In these regions the international law is responsible for the civil and criminal wrongs while the more personal matters are handled by the Sharia law which includes the divorce maters, marriages, family law and the inheritances matters.

The issue of harmonization has also been affected by the negative perception in other jurisprudence that are outside the Islamic regions especially the western jurisprudence which us brought about by little exposure or understanding about the sharia or the Islamic law. The Islamic or Sharia law is diverse and as such the diversity within Sharia law together with the various or dynamic interpretations there is another contention which baffles many people in the Western jurisprudence. The issue of Sharia economic and capitalist economies and the integration of the two economies is also a big challenge for the two regions. Even though challenges may arise in the international scenes in relation to the disputes that are cross-border and the resolutions of the same these challenges may be able to bring harmony in the two worlds that is the Islamic and the international law and might actually be able to provide opportunity for harmonization and coordination and understanding between international law and the Sharia arbitration or the Islamic laws.

Points of Conflict

There are also many points or several points of conflicts between the international laws and the Islamic law with the first example being the issue of "Riba" or interest rates restrictions. The sharia law does not all or does not have provisions for the taking on interest rates on financial facilities or loans. This is against the international law which provides for the interest rates on loans or financial facilities given to the creditor by the lender. The Islamic laws provide for the division of revenues or payoffs between the parties that is the creditor and the lender who have entered into such an agreement.

Public policy exceptions in international jurisdictions

A public policy exception is a situation referred in international law as the "ordre public" in civil law jurisdiction where the courts may decline the application of a foreign law in the event that the same would be detrimental or would violate or breach the values and the principles of the domestic state and the people therein. In essence, it serves to safeguard the domestic population against foreign laws that are harmful to the interest of the public since the application of the same can easily create a precedence that can be detrimental to the domestic laws (Farah, 2020).

Comparative Analysis

The comparison between the Islamic laws and the international approaches can be informed by nature of the laws. In terms of the differences most of the distinction arises from the Islamic perspectives of the law and resolution of disputes where there is more emphasizes on the moral and ethical principles. That are mostly informed by the holy books that is specifically the Quran and the sharia law (Islamic law). The Islamic was and policy are mostly aimed at supporting and prioritization of the equity, justice, collective responsibilities on the international or global scale. On the other hand, the international laws are most aimed at defense applied or forward, further the international laws are

made more secular and state-centric which are known to incline towards power dynamics and national interests at the expense of integrity and moral considerations. Some of the examples of Islamic international relations ideas and concepts includes the “Maslaha”, the “Jihad” and the “Caliphate” (Sukriya, 2022).

Differences and similarities between Islamic vs. International Approaches

The emphasis by the Islamic approach is on justice and ethical conduct by the parties in the conflict or in the arbitration process and international relations as opposed to the western countries wat of addressing the same which adopts individualism and state-centrism. The Islamic approaches are known to adopt dimensions that are normative which are informed by Islamic Hadith, Fiqh, Sunnah and Quran and which are targeted towards the just and moral international behaviors.

One of the difference between the international approaches and the Islamic laws or approaches is the concept of sovereignty. This is more embedded in the issue of principles and morals which differentiate between the international laws and the Islamic laws. Where the Islamic laws and principles are informed by the moral an ethics which are derived from the religious teachings and texts such as the Hadith and the Quran; the international laws on arbitrations are informed by personal needs, customs, international treaties and agreements that are arrived at by the different states and countries that are represented by individuals who can also be biased. There is also another difference that is the issue of sovereignty whereas the international laws the emphasis is mostly on the state sovereignty to be absolute but when it comes to the perspectives of the Islamic laws sovereignty is seen as a concept that goes beyond the state and that it is a shared responsibility by the international and the global community.

Further, when it comes to the resolution of conflicts the laws used by the international community may mostly look at the resolution of conflict from the point of view or from military facilities and resources and power politics while on the other hand the Islamic laws are considerate of the fact that the religious teachings provides for reconciliation, dialogues and the mediation where the arbitrations processes comes in.

Finally, the role of justice is differentiated between the two platforms where in the international laws the priority is given to the national interests and the power plays and dynamics while on the other hand the approaches by the Islamic laws considers the community well-being and emphasizes on the establishment of justice in global and international relations. In terms of the similarities there is the issue of values that are universal; there is the elements of upholding the peace, human dignity and the cooperation between different states that are held by both the Islamic laws and approaches and the

international laws. Secondly, the international and the Islamic laws are similar or have a convergence in terms of the fact that the two laws or approaches subscribe and adhere to rules governing the state interactions and norms of the community (Abdul, 2022).

Jurisdictional Variations

Perception and enforcement of Sharia clauses in common law and civil law systems. It is perceived by most people and communities that it is difficulty to integrate and apply or enforce Sharia law in international jurisdiction. This is because not only the judges but also those that are relied on to ensure enforcement might not have complete or deep understating of the Islamic laws.

There is a perception that the Islamic law is open to interpretation by the parties who are using it according to their own understanding. That there is no central location or individual who is responsible for interpretation of the Islamic law entirely as a point of reference as the constitution for different nations and countries. The fact that Sharia Law is mostly open or can be applied or interpreted according to the one reading it then it means that some of the groups and individuals both in power and those in subordinate might end up abusing the clauses therein for their advantage or in order to get or gain advantage against unsuspecting individuals who are in dispute with them.

Among all other perceptions is the negative and destructive perception over the applications of sharia law which makes it difficult for most groups to appreciate and even listen or learn from the same. The worst perceptions on the Islamic law itself is that the Islamic law is a law by terrorists which means that the same can only be applied by militant groups and terrorist organizations. This has been widespread over the years in many countries especially in Americas, The West and European countries where Islam is seen as a totally different form of religion. Understanding jurisdictional challenges also requires considering how Islamic jurisprudence defines territorial authority and legal scope (Alotaibi, 2022).

Secondly there is the perception that all the legal systems within Muslim countries are governed entirely by the Islamic law also referred to as the Sharia law. This might be the case in very few countries but majority or most Muslim countries are guided by mixed systems of law which means that it’s a hybrid of the two that is the common or international law and the Islamic law frameworks (Heravi, 2022).

COMPATIBILITY

Role of Choice of Law

In relation to the selection of laws to be applied in dispute by different parties who are in dispute, this is arrived at by way of agreement between the

parties. This is because the law of choice can only be used and is enforceable if the two parties are in agreement that they would like to apply the same in the dispute at hand. The choice of law is also influenced by the beliefs and country of origin or region where the parties come from. If they are both from Islamic or Muslim Countries then they can easily subject themselves to the Islamic law because most of them subscribe to the same religion. Resistance to Sharia law’s full enforcement in transnational disputes echoes broader challenges observed in implementing Islamic legal systems, particularly where public policy objections arise (Alotaibi, 2021). However, if they are from non-Muslim states then they would rather use the international law as opposed to the Islamic law since they would have little information about the same. The only contention would be when one of the parties is from the Muslim Country and the other one from the Christian country then there has to be compromise between the two groups or parties on which law to use in the arbitration but there can also be a situation where the members of the tribunal comes from the international law and the Islamic law but then one of the laws has to be applied subject to consensus.

CONCLUSION

Summary of key findings

The international arbitration might be a voluntary procedure where the parties to the dispute allow themselves to be guided by the arbitration process and the arbitral tribunals. The decisions made therein by the decision tribunals are not only binding but they are also enforceable. The enforcement is assisted by the member’s states and the interplay of t6he nations guided by national and internationals laws and values which have been covered in thus study. The international community and the member states therein form a network of countries which act as the legal framework within which the arbitral awards are supervised and seen to be achieved and the arbitration process is enforced. This is also similar to all the Muslim states which are guided by the Sharia laws and which have mostly been seen to appreciate and apply the sharia law and arbitration processes. The year 1923 saw the arrival and implementation of the first ever international arbitration treaties, Geneva Protocol on Arbitration Clauses and the 1927 Geneva Convention on implementation of the Foreign Arbitral Awards. The two precursors to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards were not able to live to their expectations in relation to the provision of enforcement of the foreign arbitral awards.

It is important to acknowledge that there is always a law or an event that sets precedence, therefore since the historical contexts of the Sharia Law in economics have previously shown that the Sharia law have evolved in the legal framework which brings an alignment between the international law principles and the Islamic Law. It means that historical context gives provision for insight on sustainability, ethical principles and justice within the Islamic law and how they can be integrated in international law systems with consideration and maintenance of the equilibrium and justice.

Final thoughts on improving the compatibility of Sharia law with international arbitration.

The study considers compatibility to be the comparative features or characteristics between the two laws that is the Sharia law and the international arbitration. There are many differences as well as similarities between the sharia law and the international arbitration. However, there it is also important to appreciate that the differences and mostly similarities serve to strengthen the provision of justice for the parties in dispute. In addition since the sharia law is mostly embedded in the holy books and religious books most of the contents and laws within the sharia law has been misinterpreted and applied in context in which they do not apply. This means that most individuals and groups would mostly adopted and interpret the clauses therein in such a way that the same would favor and approve their activities or events. Therefore, there are many ways in which these laws should be improved and enhanced in order to foster the provision of justice in all events and for the benefits of the players or parties in disputes therein.

In addition since there are many things and dynamics which have changed over the years since the inception of the sharia law; then the administrators and those in charge should come up with a framework on how to improve on the sharia law and the Islamic law in consideration of the teachings of the Quran and Sunnah. However, it should also take into consideration other payers and other communities across the world, this is because the Islamic community cannot continue to be applicable only for Muslim brothers and sisters alone. This is because as the Islamic states and their communities continue engaging other non-Muslim countries and communities there will arise cases, disputes and events which will require resolution and arbitrations. Therefore, the Islamic law must be evolved and improved to accommodate such scenarios where Islamic communities are in conflict with non-Islamic communities and it must be done in such a way that it will be applicable and agreeable to all the parties to the dispute.

The study also recommends that in both the international and Islamic law the tribunal that would be involved in any dispute should be able to appreciate the ratio of those involved in the judgement so that there are people from all communities and beliefs which would make an informed decision. This would also allow for learning over time such that the members of the decision making of the tribunal will continue learning not only from sharia law and the international laws but also from other emerging issues in the community which were not there in the past and which are now affecting the community.

Acknowledgement

The author extends the appreciation to the Deanship of Postgraduate Studies and Scientific Research at Majmaah University for supporting this research work through the project number R-2025-1850

REFERENCES

1.
2. 5(No. 1):169–193
3. 6(3):31–36
4. Abdul Aziz M, Sasongkojati FBA (2022) the effectiveness of Sharia economic dispute
5. Abdul-Rahman Y (2010) the Art of Islamic Banking and Finance. John Wiley & Sons,
6. Al Arriani, ASAR (2006) the code of maliki jurisprudence and its evidence— Volume III,
7. Al Khwaldi, AS (2008) ‘Arbitration in Shariah Standard No. 31 issued by the Accounting and
8. Alotaibi, H. A. (2021). *The challenges of execution of Islamic criminal law in developing Muslim countries: An analysis based on Islamic principles and existing legal system. Cogent Social Sciences*, 7(1), 1925413. https://doi.org/10.1080/23311886.2021.1925413
9. Alotaibi, H. A. (2022). *Modern approaches to address the concept of territorial division in Islamic jurisprudence. F1000Research*, 11, 794. https://doi.org/10.12688/f1000research.121123.1
10. Alotaibi, H. A. (2024). *Examining the integration of legal and Shariah principles in the London Metal Exchange. Journal of Ecohumanism*, 3(3), 1346–1360.
11. Alqudah MA (2017) ‘The Impact of Shari’ah on the acceptance of international commercial
12. Alrayan Institution, Beirut.
13. Arbitration in the countries of the gulf cooperation council’. J Leg Ethical Regul Issues 20:No. 1.
14. Arbitration Rules Between Islamic Jurisprudence and International Arbitration Rules’, in Proceedings of the Sixteenth Annual Conference on International Commercial Arbitration ‘Fundamental Alternatives for Resolving Commercial Disputes’, United Arab Emirates University, Dubai, vol. III, p 1201.
15. Ashfaq, M.: Islamic Banking and Finance in Europe: The Case of Germany and United
16. Auditing Organization for Islamic Financial Institutions (AAOIFI)’, In: Proceedings of the Sixteenth Annual Conference on International Commercial Arbitration ‘Fundamental Alternatives for Resolving Commercial Disputes’, United Arab Emirates University, Dubai, vol. III, pp 1153.
17. available at https://www.iicra.com/arbitration/ (accessed 21 July 2020)
18. Bassiouni C, Badr G (2002) ‘The Shari’ah: sources, interpretation, and rule-making’. UCLA J
19. Bin Hadi, W (2014) the Principles of Control of Contemporary Transactions, n.p., Al-Wakra
20. Blanch, S.D.: Thinking about Islamic legal traditions in multicultural contexts. Griffith Law
21. Commercial arbitration’. Utrecht Law Rev 16(No. 1):117–139.

22. Correspondence, and UAE Takāful insurance regulation'. Canadian J Law Soc 35(no. 3):477–497.
23. Dadash, SES (2008) 'Arbitration in the Mecelle: A Comparative Study of the Most Important
24. Derecho(43), 219-252 (2020). https://doi.org/10.14198/DOXA2020.43.09 1.
25. Farah AQ, Hattab RM (2020) 'The application of Shari'ah finance rules in international
26. Finance. Routledge Handbook of Islam in the West: Second Edition, 514-530 (2022). https://doi.org/10.4324/9780429265860-44.
27. Fiqh, Adopted by the International Islamic Fiqh Academy Council in its 9th Session in Abu Dhabi, United Arab Emirates on A.H. 1-6 Dhul Qa'dah 1415 (A.D. 1-6 April 1995)'. Academy Journal 4 No. 9:5–6. 1417/pp
28. Gabardo, E.: Theory of legal argumentation in confront with the judicial populism. Journal of Constitutional Studies, Hermeneutics and Theory of Law, 12(3), 516-537 (2020). https://doi.org/10.4013/rechtd.2020.123.12.
29. Gemmell AJ (2016) 'Commercial arbitration in the Islamic Middle East'. Santa Clara J Int Law
30. Heravi FA (2022) Evaluation of Islamic banking stability in Afghanistan from the maqasid
31. Hoboken, NJ.
32. In Morocco Al-Motaqi Printing House, Mohammedia.
33. Inquiry, Religious Practice and Muslim Family Law in Britain, 27-59 (2023). https://doi.org/10.4324/9781003090410-3.
34. Institutions (Indonesia evidence). J Asian Afr Soc Sci Humanit 8(1):1–20.
35. Int Law 6(No. 2):791–802
36. International Islamic Centre for Reconciliation and Arbitration (2016) 'Arbitration Rules',
37. International Seminar of the Centre for Legal, Economic and Social Studies of the Faculty of Legal, Economic, and Social Sciences in Souissi, on 'Islamic Financial Services: Shari'ah, Legal and Economic Aspects', El Maarif Al Jadida Printing House, Rabat, Morocco, p 367
38. Islam and Muslim Lives, 1, 19-38 (2021). https://doi.org/10.1007/978-3-030-32626 5_5.
39. Islam MZ (2012) Provision of alternative dispute resolution process in Islam. J Bus Manag
40. Islam MZ (2013) Legal enforceability of ADR agreement. Int J Bus Manag Invent 2(1):40–43
41. Islam near EL 1:135–181.
42. islamic arbitral institution'. J Dispute Resolut 1:11–16 Kutty F (2006) 'The Shari'a factor in international commercial arbitration'. Loyola Los Angeles International and Comparative Law Review 28:565–624.
43. Islamic Fiqh Academy (1996) 'Resolution No. 91 (9/8) on the Principle of Arbitration in Islamic
44. Islamic Fiqh Academy (2011) 'Resolution No. 1/20 on the Conditions of Arbitration or the

45. Jadalhaq IM, Russi L (2020) ‘Finding direction at the edge of law and life: Islamic Fiqh,
46. Khan A (2006) ‘The interaction between Shari’ah and international law in arbitration’. Chicago J
47. Khoukaz G (2017) ‘Sharia law and international commercial arbitration: the need for an intra-
48. Kingdom: A Theoretical and an Empirical Analysis. Islamic Banking and Finance in Europe: The Case of Germany and United Kingdom: A Theoretical and an Empirical Analysis, 1-220 (2021). https://doi.org/10.3726/b11137 15.
49. Klatt, M. (2020). Robert Alexy's philosophy of law as system. Doxa. Cuadernos de Filosofia del
50. Kyriazi, T.: Legal pluralism, Sharia law and the right to fair trial: a case for incompatibility within
51. Manea, E. Women and Shari‘a Law: The Impact of Soft Legal Pluralism in the UK. The Sharia
52. Mohamed, A (2013) ‘The Role of Shariah Bodies in Islamic Banks’, in: Proceedings of the First
53. Murid, J (2012) Islamic Banks in the Light of Regulatory Developments in Financing Products
54. Peruvian Constitutional Court. Revista de Filosofia (Venezuela), 39, 472-489, ISSN 0798-1171 (2022). https://doi.org/10.5281/zenodo.6459481.
55. Piccinelli, G.M. Development and perspectives of Islamic economics in the West: Banking and
56. Rahman MM (2018) Islamic perspective of alternative dispute resolution (ADR). J Asian Afr
57. Rebaza, O.F.J.V.: Theoretical Foundations Regarding the Nature of the Right to Housing in the
58. Recourse to Arbitration Based on Positive Laws Contrary to Islamic Shari’ah Law, Adopted by the International Islamic Fiqh Academy in its 20th Session in Makkah al-Mukarramah on A.H. 19-23 Muharram 1432 (A.D. 25-29 December 2010)’. Islam Fiqh Council J 26:393–394. 1432/pp
59. Resolution between religious court and national Sharia arbitration board. J Islamic Econ Laws 5(2):216–245.
60. Review, 32(2), 215–235 (2023). https://doi.org/10.1080/10383441.2023.2243776.
61. shari’ah perspective. J Asian Afr Soc Sci Humanit 8(2):38–57
62. Soc Sci Humanit 4(2):28–44.
63. Sukriya A, Yasir JR, Kamal F (2022) Risk mapping on lending method of sharia micro financing
64. The Council of Europe. The International Journal of Human Rights, Taylor &Francis (2021). https://doi.org/10.1080/13642987.2020.1822333.
65. Yilmaz, I.: Muslims, Sacred Texts, and Laws in the Modern World. Handbook of Contemporary