

# A Perspective On Mediation In The Middle East

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I am a young Lebanese graduate in mediation and currently training to practice in Paris. I frequently get asked the following questions: What is the mediation situation in the Middle East? Is it because your country is a non-mediation country that you are training in Europe? What is the mediation situation in the Middle East? What are the Middle Eastern jurisdictions' approaches to mediation? Are all Middle Eastern countries non-mediation countries? What are the advantages of mediation in these countries?

When I reflect on these questions, I ask myself: what is a "non-mediation country"? What makes a country a "mediation country"?

While browsing this blog, I came across an article entitled: *What's Your Country's Mediation-Friendly Ranking?* by Nadja Alexanders, that addresses the question of how to select a jurisdiction for the mediation of client matters. Nadja concludes her post by identifying a set of ten variables presented in a series of ten questions to help determine the "mediation-friendly ranking" of a given country.

I used these variables as a reference point and answered the questions for several countries in the Middle East - namely: Lebanon, Jordan, UAE, Qatar, Egypt, and Saudi-Arabia - in an attempt to shed more light on mediation in the Middle East.

Most of the above mentioned countries are commercially prosperous and have commercial litigations for over a billion dollar per year. However, the judicial system in most of these countries will not be able to support the big number of disputes as underlined by a [publication of the Investment Climate Department of the World Bank Group about the Alternative dispute resolution program in the Middle East](#): Numerous studies and analysis by the World Bank and other donors consistently point to complex litigation procedures and inefficient judicial systems as a main impediment to private sector development in the region. Specifically, the costly and lengthy process of contract enforcement has been identified as a critical barrier for the private sector, especially due to lack of confidence in the court system, excessively high court fees and lengthy litigation processes.

One would expect them to have sophisticated legal and judicial infrastructure that ensures effective and fast dispute resolution techniques. However my answers to Nadja's questions revealed low though different "mediation-friendly" ranking for these jurisdictions. It is important to note that Dubai and Qatar have two separate legal jurisdictions each: the State of Dubai and the Dubai International Financial Centre Courts (DIFC courts), the State of Qatar and the Qatar Financial Centre (QFC). The DIFC courts include mediation in certain procedures and their applicable Rules promote the advantages of the recourse to mediation and conciliation as alternative means of resolving disputes or particular issues. The QFC Civil and Commercial Courts Regulations and Procedural Rules encourage, and in some cases require the parties to resolve their dispute by resorting to mediation or other forms of alternative dispute resolution when appropriate.

DIFC and QFC courts have adopted mediation laws but the recourse to mediation in these jurisdictions is still gaining traction.

Despite the differences in the development of commercial mediation within the aforementioned countries, we can identify common actions that could be taken to render these jurisdictions more mediation-friendly. The first action would be to raise public awareness on the subject of mediation, through promotional campaigns targeted at both potential mediators and potential disputants and through trainings and support provided to lawyers, judges and practitioners.

The second action would need to be conducted on the legislative front, such as lobbying for the enactment of laws regulating domestic and cross-border mediation. It would be interesting, for example, to create a legal system where mediation would be a mandatory first step which does not prejudice the right of the parties to recourse to courts (bearing in mind that in any case mediation can never be mandatory *stricto sensu* as the Parties remain free not to cooperate or to disregard this first step without violating a party's right to access to justice). The legislative front also includes public law action, involving the signature of treaties regulating mediation. On this front, it is also important to emphasize in the legislation the advantage of confidentiality guaranteed by this alternative mean of dispute resolution by adopting stringent laws on confidentiality. It is equally important to set up effective options for the enforceability of mediated settlement agreement, in addition to the means afforded by the law under the theory of contract.

The third action would need to be undertaken on the ground by putting in practice mediation through the inclusion of binding multi-tiered dispute resolution clauses, whose enforceability cannot be disputed.

The situation of mediation and the actions taken to improve this situation differ from one country to another. Hence, Jordan has the 2006 Mediation Act while other mentioned countries do not have dedicated legislation yet. The UAE Law does not include provisions related to mediation with the exception of the law no 16 of 2009 in Dubai legislation that establishes a Centre for Amicable Resolution of Disputes for limited types of disputes. In Qatar, Egypt, and Lebanon mediation is governed by contractual provision as there are no provisions regulating domestic or foreign mediation. In Saudi Courts, Shari'ah encourages mediation and Judges have an obligation to encourage the parties to settle but there is not any explicit law on mediation. These examples illustrate why we cannot describe the situation of Mediation in the Middle East as one.

I would like to choose one of the above mentioned countries, and give specific examples of the daily challenges young mediators and young mediation centres are facing, and share with you some of the actions we are taking to overcome these obstacles.

Being Lebanese, I would certainly pick Lebanon, but this is not the main reason why I would choose to describe the situation of mediation in Lebanon. I selected this country for the following reasons. First, the Lebanese banking sector is preeminent in the region. The sophistication of this sector and the associated large number of potential disputes make Banks prone to using mediation, should this alternative dispute resolution mechanism be introduced properly to them. It is clear that banks are interested in saving time and money and mediation can help them save both. Second, Lebanon is a political conflict zone, where mediation is used as a main peace-building tool. As a matter of fact several NGOs use this dispute resolution technique. For example, Mediators Beyond Borders International, whom I am a member of, and whose training institute I attended, focus on using mediation as a peace-building tool and on empowering women in mediation. It would be interesting if we can extend the use to commercial conflict. Third, Lebanon already has three established mediation centres, and another few centres being developed. These centres also give high-level trainings such as the Professional Mediation Centre (CPM) in Beirut and Tripoli. Fourth, family mediation is widely practiced in Lebanon. This might be surprising but it is worth noting that in Lebanon divorce is regulated by complex religious laws. Parties try to avoid divorce or at least go to mediation before going to divorce. Some religious laws require prior mediation before going to court. For instance, the Canonical Code article 1362 states: "Before accepting a case, and should there be a reasonable hope of reconciliation, the judge shall put in place all the means available to him in order for him to try to bring the couple to rejoin in marriage and restore their marital bonds." People often prefer going to mediation because it helps them preserve their personal relationships.

At this point I think you are wondering why commercial mediation is not a common mechanism in commercial disputes in a country described by the International Finance Corporation of the World Bank as having long judicial procedures? And, why mediation is used in cross-cultural, political, family disputes and not commercial disputes?

Lebanon does not have a mediation law, only a project of law. The Lebanese civil code contains provisions in article 1035 and following on conciliation: "Settlement is a contract by which the parties make mutual concessions, in order to end a conflict or to prevent a conflict." Lebanon did not adopt the Commercial Model Law on International Commercial Conciliation (UNCITRAL), and is not a signatory to any treaty relating to mediation. It has only ratified in 2003 the ICSID Convention, which makes provision for conciliation proceedings.

Furthermore, it seems like the public lacks awareness of the advantages of mediation in commercial litigations and that lawyers sometimes feel threatened by mediation.

In order to overcome these problems, different stakeholders are taking actions. The Beirut Bar Association, in collaboration with different private Lebanese mediation centres and the Lebanese Chamber of Commerce mediation centre, are promoting public understanding of the benefits of commercial mediation through conferences and related events. They have also recently added mediation training in the lawyers' bar-school. Additionally, mediation is being widely promoted among judges. Finally and most importantly, many actions are being taken in order to enact the law on mediation in the parliament.

In summary, Lebanon is facing several challenges on its way to becoming a "mediation-friendly country", but young motivated mediators and established centres are taking concrete actions to overcome these hurdles.

I hope this post gives you an idea about the general situation in the Middle East, and Lebanon in particular. As you can see, multiple opportunities exist to exchange experience and knowledge between Middle-eastern countries and more "mediation-friendly countries", or countries where the practice of mediation is more developed.