

The History Of Mediation In The Middle East And Its Prospects For The Future

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Mediation existed in the Middle East hundreds of years ago. In fact, the notion of deferring to a neutral and objective third-party for a decision towards the resolution of a dispute is well steeped in Arabic/Islamic traditions. For example, one of the most famous stories of Prophet Muhammad's early life is that of him being chosen by feuding tribes to resolve a dispute around the reconstruction of the Ka'ba. By suggesting an original solution that benefited both parties, the Prophet bridged the gap between the quarreling parties. Islamic Law (Shari'a) encourages this concept of an independent mediator through the practice of *Al Wasata*, which is very similar to modern mediation practices. *Al Wasata* is 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. The independent mediator attempts to resolve the dispute by proposing solutions to the parties, who are then free to determine if they want to accept the proposed solutions or not.

Additionally, the Middle Eastern rituals of *sulh* (settlement) and *musalaha* (reconciliation) are forms of conflict reduction that are indigenous to the region. The *sulh* ritual, which has its origins in tribal and village contexts, is an institutionalized form of conflict management. *Sulh* is a form of contract that is legally binding on both the individual and community levels. *Sulh* results in two types of outcomes: total *sulh* and partial or conditional *sulh*. The former ends all kinds of conflict between the two parties, while the latter ends the conflict between the two parties according to conditions agreed upon during the settlement process.

The ritual process of *sulh* usually ends in a public ceremony of *musalaha* (reconciliation). Today, the rituals of *sulh* and *musalaha* are used in rural areas of Lebanon such as the Bekaa Valley, the Hermel area in eastern Lebanon and the Akkar region of north Lebanon. In the Kingdom of Jordan, the government officially recognizes *sulh* and *musalaha* as a legally acceptable tradition of the Bedouin tribes. *Sulh* and *musalaha* are also still in use among the Palestinian citizens of Israel living in the villages of Galilee. Through *sulh* and *musalaha*, conflict control takes place within a communal, as opposed to a one-on-one, framework. The effects of this history and approach are still felt in mediation practices in the Middle East.

Mediation has not only historically been the mechanism of settling disputes between tribes and neighboring countries in the Middle East, it continues to be the preferred method today. Modern Islamic law encourages mediation of disputes through direct settlement or conciliation via third-party interventions. Examples of this are abundant in the Muslim world. In Jordan, the Law on Mediation for the Resolution of Civil Disputes was adopted in 2006. Article 3 of this law states that the presiding judge may, upon the agreement of the parties or further to their request, refer the dispute to a mediating judge or a private mediator for the purposes of amicable resolution of the dispute. In the United Arab Emirates, the Emirate of Dubai established a Mediation Centre by virtue of Dubai's Law No. 16 of 2009. The Dubai International Financial Centre Courts (DIFC courts) include mediation in certain procedures, and their applicable Rules promote the advantages of the recourse to mediation as alternative means of resolving particular issues. Additionally, the DIFC-LCIA Arbitration Centre, established in February 2008, offers mediation services to users of the Centre under the rules contained in the LCIA mediation procedure. In Qatar, the Qatar International Center for Conciliation and Arbitration (QICCA) was established in 2006 and adopted a set of Conciliation Rules in May 2012 (the QICCA Conciliation Rules), which were modeled on the UNCITRAL Conciliation Rules. The adoption of these rules and the creation of these centers, as well as the existence of numerous mediation mechanisms through international organizations such as the International Mediation and Arbitration Center (IMAC), are meant to encourage the use of mediation as a dispute resolution method in the Middle East today. However, unlike Middle Eastern developments in the field of arbitration, which are for the most part uniform with international practices, mediation in the Middle East remains unique in a number of ways that could possibly serve as the justification

for the use of mediation remaining stagnant in the region.

The major distinguishing factor of mediation in the Middle East is the role of the mediator. In the Arab/Islamic approach to mediation, the status and reputation of the mediator in addition to the parties' respect for the mediator are crucial to reaching amicable compromise settlements. In Arab/Islamic culture, the mediator is perceived as someone having all the answers and solutions. Consequently, 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. Additionally, while the Western mediator is more concerned with having knowledge about the legal procedures and structures, the mediator in the Middle East is required to know more about the history and facts of the conflict. Apart from the role and approach of the mediator, the goal of the mediator is different in the two contexts. Because it is important to continue the relationship between the parties and preserve social harmony in the group, unlike the Western mediator who is focused on the maximization of personal and group interests, the goal of the Middle Eastern mediator is to restore the broken relationship between the parties and within the community. The Western mediator views mediation as having a win/lose or win/win outcome, while the Middle Eastern mediator recognizes the preservation of social harmony as a superordinate goal.

Another major difference between the two approaches is that while in the West mediation takes place instead of formal legal proceedings, in the Middle East mediation often takes place alongside a related formal legal proceeding. Therefore, although both approaches consider discretion essential to mediation, in the Middle East mediators may be summoned to a formal state court to testify about an agreement they have obtained. It is important to also note that in some countries in the Middle East the subject matter of the mediation as well as the mediated agreement must conform to Shari'a. This 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. These restrictions can be hard to navigate and serve as a hindrance on the use of mediation as a method for dispute resolution.

Despite the positive historical and cultural background, the Middle East has not experienced a surge in the use of mediation institutions and processes. This is most likely because there are very few active and trained mediators in the region and there is a lack of confidence in the mediator's ability to render impartial decisions. That issue is exasperated by the lack of a legislative framework that sets ethics rules for mediators and standards for their selection and supervision. Since the history as well as the modern trend in the region supports the use of mediation, addressing these issues will likely result in a surge in the use of mediation in the Middle East.

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