

- industrial cities
- mail service.

Economic Cities

The General Investment Authority supervises a number of economic cities that aim at achieving balanced economic development throughout the regions of the kingdom and at creating job opportunities for citizens. The development of these cities will take place throughout a period of more than two decades, which should guarantee better results than building everything at once and struggling to attract investors and maintain growth. These cities are discussed below.

King Abdullah Economic City King Abdullah Economic City is located 150 kilometres to the north of the city of Jeddah, near a small town call Rabigh on the western coast of the kingdom, and it has an area of 168 square kilometres. This economic city, to be established by the Emirate Emaar Company, is one of the private sector's biggest projects in the GCC region. The city is expected to create one million job opportunities and provide two million housing units. The city consists of several major facilities including the industrial port, the business centre, the industrial zone and the resorts area, as well as the supporting areas, such as education facilities, hospitals and residences for workers in the city.

Prince Abdul-Aziz Ben Mosaed Economic City Prince Abdul-Aziz Ben Mosaed Economic City is located in Ha'il and has an area of 156 square kilometres. The city is expected to be one of the most important economic cities in the Middle East in terms of logistic supplies and services, owing to its distinguished geographical location. The city has a dry port with a capacity of 1.5 million tons a year for shipping goods. The city also has an industrial zone and an area for supporting services.

Economic Knowledge City Economic Knowledge City is located in the Medina region and has an area of 48 square kilometres. The city is expected to attract investments of SR 25 billion and to create about 20,000 job opportunities. The city consists of several facilities, including the Taibah Complex for Sciences and Knowledge, the College of Administration and Technology, an Islamic centre and a business centre.

Jazan Economic City Jazan Economic City is located on the western coast of the kingdom and has an area of 100 square kilometres. It is expected to draw investments of SR 100 billion and to create 50,000 job opportunities. The city consists of several facilities, including the sea port, the energy and desalination plant, the industrial zone, the business centre, logistic services and facilities to support services and training.

The openness of Saudi Arabia to the rest of the world through new foreign investment laws and facilities is starting to produce promising results. Many giant corporations have been attracted to the irresistible incentives and have started to invest in the kingdom, as permanent owners and operators of business and industrial facilities.¹¹⁸ It should be noted, however, that the same law is harming small and medium-sized local businesses and banks, by allowing small foreign 'investors' to enter the market, create jobs for their unemployed relatives, get loans and then disappear, leaving the bank with a bad debt.

A few missing links can be seen in the different enforcement mechanisms of many commercial regulations, which require better coordination among the different governmental bodies.¹¹⁹ The attraction of foreign direct investments, especially small and medium-sized businesses, without prompt legal reform and strict application of the law, especially relating to tax regulations, is likely to turn Saudi Arabia into a centre for money laundering and commercial fraud. It will also increase the spread of socio-economic problems associated with unemployment and fraud, as most of the small foreign investors bring their own employees with them, do not pay any taxes and, above all, lack business ethics.

The economic importance of Saudi Arabia is far more than being just an investment host country, a member of the G20, or a capital-exporting power. If the Saudis succeed in implementing their ambitious development plans, coming generations of Saudis might be able to enjoy sustainable growth, provided that legislators and decision-makers address existing problems and social needs. The economy of Saudi Arabia has been going through a reform phase. More regulatory change is needed to cope with the transition period, which started with the privatization of the Saudi Telecom Company in 1998 and will last right up until the new development plans and economic cities pay back their cost. Slow reaction to changing circumstances appears to be a feature of the Saudi legal and economic systems, as was shown clearly by the collapse of the Saudi Stock Market in 2006. If, for instance, proper stock market regulations and corporate governance rules had existed and had been enforced before that time, the price bubble might not have been created and, consequently, the collapse might not have taken place. A few months after the collapse, at the end of 2006, the Capital Market Authority issued the Corporate Governance Regulations. Yet, despite their similarity to other regulations, do the Capital Market Regulations apply to everyone?

118 Saudi Arabian General Investment Authority. Available online at <www.sagia.gov.sa> [accessed 2 May 2009].

119 A. Baamir, 'Issues of Disclosure and Transparency in the Saudi Stock Market', *Arab Law Quarterly*, 22 (2008), pp. 63–87.

Chapter 2

The Law and Practice of Arbitration in Arabia from the Pre-Islamic Era to the Emergence of the Four Schools of Jurisprudence

Traditionally, there has been a cultural preference in the Arabic mentality for resolving disputes privately through negotiation, mediation and conciliation rather than through public litigation. As well as being linked to the structure of the society and the tribal or family traditions, this trend has historical roots that go back to the pre-Islamic era, or the period known in Arabic as al-jaheliyah. During that era, different tribal ruling systems controlled Arabia, amid the total absence of regulations and regulatory bodies. Even tribal chiefs did not have absolute power to regulate and settle disputes between individuals. As a result, revenge and war were common means of settling disputes. It has been reported that individuals and tribes referred to arbitration and other dispute resolution mechanisms, but this was mostly after their resources had been exhausted by war. According to Al-Ya'qubi, a well-known Arab historian who lived in the tenth century:

As a result of not having religions or laws to govern their lives, pagan Arabs used to have arbitrators to settle their disputes. So when they have a conflict regarding blood, water, grazing or inheritance they used to appoint an arbitrator who carries the characters of honour, honesty, older age and wisdom.

Furthermore, many people were known for being arbitrators at that time such as Aktham ben Saifi, Hajjeb ben Zurarah, Al-akra'a ben Habis and Abdulmuttalib ben Hashim, the grandfather of Prophet Muhammad; even Prophet Muhammad himself acted as an arbitrator in many incidents. Despite the great deal of discrimination practised against women, the appointment of female arbitrators was a notable feature of arbitration in that era. Historians have pointed to the important roles played by women arbitrators at that time and have quoted the names of many, such as Hind bint Alkhas, Jam'a bint Habis and Sahar bint Loukman.¹

Prior to Islam, recourse to arbitration was voluntary, as was the enforcement of the final judgment. The attendance of the parties in the dispute at hearings was

¹ J. Ali, *History of Arab before Islam* (3rd edn., Dar Al Elm Lelmalayeen, 1970), Vol. 5, p. 65.

an important condition for the validity of the arbitral award. With regard to the procedure, arbitrators were not bound by any certain rules apart from a number of customs, such as the obligation to hear the disputing parties on an equal basis and to bear in mind the customary rules of the tribe when examining proofs presented by the parties.² The procedural rules of arbitration under Islamic law were inspired by some of the pre-Islamic procedural practices that went on to form the basis of the laws of procedure in all Muslim countries today. One example is the rule providing that the plaintiff bear the burden of proof – if the defendant denies, the only thing that can be taken from him is the oath.³ At that time, the oath was taken in front of one of the sacred idols of the tribe or village, or, in some cases, in front of one of the main Arab idols. If the defendant did not admit or defend himself and refused to take the oath, the arbitrator issued his decision in favour of the plaintiff.⁴ Such rules were the result of the accumulated experience and practice of the ancient Arabs, based on the common sense of elders that continued to be followed by later generations and was partly adopted by Islam. The question arising now relates to the reasons Islam has upheld such pre-Islamic practices. It will be seen below that Islamic law adopts the concept of local custom (*urf*) as a source of regulation as long as it does not contradict the main principles of Shari'a. It is not necessary for these customs to be specific to Muslim society, provided they are not concerned with rituals and belief. This issue will be dealt with in detail when discussing the sources of Islamic law.

Lack of enforceability was one of the features of arbitration before Islam; however, in many cases, the losing parties voluntarily execute the arbitral award, either for moral reasons or because of social influence, especially when refusing the enforcement of the judgment is considered to be a violation or a disrespect of the tribal rules, which might lead the society to abandon them. In the worst case scenario, the voluntary execution of the judgment could prevent the sparking of wars and revenge, as such conflicts at that time started for the most minor reasons and lasted for years or even decades.⁵

Most of the pre-Islam disputes were related to issues of honour, leadership, blood and aversion. One of the most well-known disputes of that era was that between Amir ibn Altufail and his brother Alqam'a ben Altufail after the death of their father, who was chief of the Bani Amir tribe. The two brothers argued over the leadership of the tribe, so they agreed to refer the dispute to the chief of another

2 See, in general, Z. Alqurashi, 'Arbitration under the Islamic Shari'a', *Oil, Gas and Energy Intelligence*, Vol. 1, No. 2 (March 2003), pp. 30–44.

3 This principle was among the pre-Islamic principles developed and adopted by Shari'a.

4 A. Alahdab, *Altaḥkeem Ahkamouh wa Masaderouh* (1st edn., Naoufal Publications, 1990), Vol. 1, p. 37.

5 P. Hitti, *History of the Arabs* (10th edn., Macmillan, 2002), pp. 87–90. It was reported that a war between two tribes lasted for more than 40 years because of a dispute over the result of a camel race.

tribe to arbitrate between them. The other chief proposed that they should fight a duel with swords in front of him and others, suggesting that the winner would be declared leader of the tribe. However, an entire year passed without an end to the fight. As a final award, the chief of the other tribe decided that both should share the leadership of the tribe, which they did.⁶

The story of the reconstruction of the *Ka'bah* in Makkah, around the year AD 605, is another example of a typical arbitration procedure of that time. The story has been narrated by many historians and Hadeeth narrators:

Once the walls of the *Ka'bah* were rebuilt, it was time to place the Black Stone (*Alhajar al Aswad*) on its south-eastern corner. Arguments went off about who would have the honour of putting the Black Stone in its place. A fight was about to break out over this issue, then Abu Umayyah, Mecca's oldest man, proposed that the first man to enter the gate of the mosque the following morning would decide the matter. That man was Muhammad. The people were delighted "This is Muhammad". "We accepted him as arbitrator", Muhammad came to them and they asked him to decide on the matter. He agreed. Prophet Muhammad proposed a solution that all agreed to place the Black Stone on a cloak; the elders of each of the parties to the dispute held on to one edge of the cloak and carried the stone to its place. The Prophet then picked up the stone and placed it on the wall of the *Ka'bah*.⁷

The above incident shows the main features of arbitration in that era, which are: that arbitration agreements were simple and spontaneous; that the agreement was not in writing; and that arbitration was similar to conciliation because the purpose behind the whole process was to reach an agreement and settle the dispute by any amiable solution, not to give a binding judgment.

In principle, the arbitration agreements of the old Arabs include all the essential elements of modern arbitration agreements. As seen above, the parties to the dispute stipulate to submit the dispute to arbitration; also the parties to the dispute identify the issue at the time of the dispute, agree on the time and the seat of the arbitration and nominate the arbitrators.⁸ In its early stages Islam adopted the concept of arbitration and emphasized its validity on the basis of local customs and practices, which were considered to be a source of law under Shari'a.

6 E. Aljuhani, 'The New Saudi Arbitration Act', *Riyadh Chamber of Commerce and Industry Magazine*, 1 (1985), p. 22.

7 I. Hisham, *Seerat Ibn Hisham* (Ministry of Islamic Affairs, Saudi Arabia). Available online at <<http://www.al-islam.com>> [accessed 21 May 2009].

8 N. Albejad, *Arbitration in Saudi Arabia* (1st edn., Institute of Public Administration, 1999), p. 23.

Arbitration in the Early Stages of the Development of Islamic Law

Arbitration in the Quran

The Quran is the sacred book of Islam, believed by Muslims to be the infallible words of God dictated to Prophet Muhammad. It should be noted that the essential nature of the Quran is that it is not a code of law; nonetheless, it gives general guidance and sets up broad concepts.⁹ The following Quranic verse supports this view and indicates that Muslims should follow the guidance of the Quran to regulate their lives, even if there is no Quranic ruling on specific issues: 'Now there has come to you a clear sign from your Lord, guidance and mercy.'¹⁰ There are fewer than 500 verses referring to legal issues in the Quran.¹¹ Even in these verses there are gaps, as well as doubts as to whether the legal injunctions included in these verses are mandatory or permissive and as to whether it is subject to public or private sanctions.¹² The existence of these gaps can be regarded as an advantage that makes the Quranic injunctions flexible and suitable for every time and every situation, as demonstrated in the conflicts between scholars that occurred as a result of the differences in the understanding of Shari'a texts.

Many of the usual pre-Islamic practices such as revenge, female infanticide, robbery, etc. were abolished by Islam. However, the pre-Islamic methods of dispute settlement were recognized, confirmed and regulated. The validity of arbitration has been confirmed by the main sources of Shari'a at that time, as the other sources developed some decades or even centuries later.¹³ The Quranic view regarding arbitration has two main lines. One says that, according to some verses of the Quran, arbitration is a form of conciliation, similar to 'amiable composition', which is not binding on the parties. According to these texts, the arbitrator's decision is neither binding nor final, unless it is accepted by the parties. Thus, arbitration does not have any judicial nature;¹⁴ it is no more than conciliation.¹⁵ The second group of texts recognizes arbitration as a binding dispute settlement mechanism that is similar to the modern arbitration.¹⁶ The Quranic verses regarding arbitration use the word *hokm*, which means 'judgment' or 'arbitral award', and the word *hakam*, which means 'arbitrator'. 'Surely, we have revealed to you the Book with the truth, so that you may judge between people according to what Allah has shown

9 D. Pearl, *A Text Book on Muslim Law* (1st edn., Croom Helm, 1979), p. 1.

10 The Quran 6: 175.

11 The exact number is disputed; however, the number ranges between 80 and 500. For a partial list of the verses and the related topics, see, in general, I. Abd-Alhaqq, 'Legal Injunctions of the Quran', *Journal of Islamic Law*, 2 (Spring/Summer 1997).

12 *Supra* n. 5, Hitti, p. 95.

13 The recognized sources of Shari'a law at that time were the Quran, the Sunna and *ijtihad* only, as the other sources were developed at a later period.

14 *Supra* n. 2, Alqurashi.

15 The Quran 4: 35.

16 The Quran 4: 58.

you.¹⁷ The applicable law under the Quranic provisions is the Quran itself and the Sunna of Prophet Muhammad; and then the other sources of Shari'a as they have developed over time from the understanding of these two sources.¹⁸

If you fear a breach between them (the man and his wife), appoint (two) arbitrators, one from his family and the other from her family; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is ever all-knower, well acquainted with all things.¹⁹

With reference to the latter Quranic verse, commentators emphasized the appointment of arbitrators in family disputes as one of the judge's duties and as part of the usual procedure that should be resorted to after exhausting the primary remedies.²⁰ In this verse, the Quran used the word 'eb a'tho', which is an order to send rather than appoint, adding more strength to the arbitral award issued by the arbitrators. Ibn Qodamah, in his comprehensive work *Almoghni*, which is the main textbook in comparative fiqh under the Hanbali school, cited two main arguments regarding the nature of the mission of arbitrators in the light of the previous Quranic verse:

Arbitrators are agents of the disputed parties According to this view, acceptance of the arbitration and appointment of the arbitrators are compulsory elements for the parties to the dispute, because the appointment is established by judicial order. However, acceptance of the award requires the parties' consent. The exception to the requirement for the parties' consent is where there are disqualified parties.²¹ In this case, acceptance of the decision will be subject to the consideration of their guardian or of the judge.²²

Arbitrators are judges According to this view, reference to arbitration is compulsory, as is acceptance of the award, which is considered final and binding in the same way as court judgments. Supporters of this view quote the following Quranic verse: 'Appoint (two) arbitrators, one from his family and the other from her family; if they both wish for peace.'²³ They add that the Quran calls them arbitrators, not conciliators, and that arbitrators are judges. Thus, arbitrators have freedom in their judgment with no need for the disputed parties' authority or

17 The Quran 4: 105.

18 These also form the basis of Saudi law.

19 The Quran 4: 35.

20 A. Al-Kenain, *Altaḥkeem fe AlShari'a Alislamiyah: Altaḥkeem Al'am, wa Altaḥkeem fe Alshiqaq Alzaouji* (1st edn., Dar Alasimah, 2000).

21 The general rules of disqualification of legal personality will be discussed later.

22 M. Ibn Qodamah, *Almoghni* (1st edn., Hajar Publications, 1992), Vol. 10, p. 263.

23 The Quran 4: 35.

consent. Ibn Qodamah added that the last sentence in the Quranic verse, 'if they both wish for peace', is directed to the arbitrators, not to the couple.²⁴

Surely, Allah commands you to deliver trusts to those entitled to them, and that, when you judge between people, judge with justice. Surely, excellent is the exhortation Allah gives you. Surely, Allah is All-Hearing, All-Seeing.²⁵

If they come to you, judge between them or turn away from them. If you turn away from them, they can do you no harm. But if you judge, judge between them with justice. Surely, Allah loves those who do justice.²⁶

Although the above-quoted verses use the verb 'to judge', they distinguish between arbitration and litigation by giving arbitration a voluntary nature, in the sense that arbitrators are given a choice between accepting the position and rejecting it, which is exactly the same concept applied by modern arbitration. Unlike judges, who do not have the choice of declining jurisdiction over a case, if an arbitrator declines there is no way to force him to accept the arbitration, just as a court judge cannot decline jurisdiction over a case without a valid reason.²⁷ If the arbitrator accepts office, he has the duty to arbitrate with due observance of the rules of fairness and justice; he also has the right to resign at any time.²⁸ 'And when you pronounce judgment, pronounce it with justice even if a near relation is concerned, and fulfil the covenant of Allah.'²⁹ The Quran establishes the principle of the impartiality of arbitrators in this verse, and the issue as a whole received a great deal of attention from Muslim scholars, as the following passage demonstrates.

O you who believe, do not kill game when you are in Ihram (state of consecration for Hajj or "Umrah"). If someone from among you kills it deliberately, then compensation (will be required) from cattle equal to what one has killed, according to the judgement of two just men from among you.³⁰

This verse of the Quran gives individuals the right to appoint someone to judge in estimating the amount of compensation without the supervision of a judge or the authority. In the light of this verse, the mistaken party should appoint two qualified arbitrators and execute their decision without resorting to the authority, which is

24 See, in general, supra n. 22, Ibn Qodamah, Vol. 14.

25 The Quran 4: 58.

26 The Quran 5: 42.

27 I. Alastal, *Altaheem fe AlShari'a Alislamiyah* (1st edn., Maktabat Alnahdah Al Arabiyah, 1986), p. 36. Such reasons vary from a fear of bias to being subject to actual duress.

28 S. Saleh, *Commercial Arbitration in the Arab Middle East: A Study in Shari'a and Statute Law* (1st edn., London, Graham & Trotman, 1984), p. 16.

29 The Quran 6: 152.

30 The Quran 5: 95.

evidence of the legality of ad hoc arbitration in the Quran.³¹ The guidance provided by this Quranic verse is similar to the principles established by the UNICTRAL model law on International Commercial Arbitration, in the sense that the parties to the arbitration administer the proceedings themselves without the supervision of a judicial body.³²

Arbitration in the Sunna

Definition of Sunna As mentioned above, the Quran contains general guidance and broader concepts regarding all legal aspects. These principles have been illustrated in the Sunna, which is the second source of Islamic law after the Quran. The Quran mentions: ‘And whatever the Messenger gives you, take it, and whatever he forbids you, leave it.’³³ The Sunna can be defined as a collection of the sayings of Prophet Muhammad, examples of his behaviour, things he approved and things he condemned during his lifetime.³⁴ The Sunna can be divided into three types: *Alsunna al qawliyah*, which is the sayings and statements of the Prophet; *Alsunna al fi’liyah*, which is the deeds of the Prophet; and *Alsunna al taqririah*, or the Prophet’s silence or tacit approval regarding deeds that occur with his knowledge. There is a dispute between scholars as to whether the Sunna is a direct revelation of Allah or just a reasoning of the Prophet. Some scholars argue that the Sunna is not a direct revelation of Allah, as is the Quran, but that it is just a reasoning of Prophet Muhammad. However, this opinion contradicts the following verse of the Quran: ‘He, Prophet Muhammad, does not speak out of his own desire. It is but revelation revealed to him.’³⁵ It is believed among the majority of Muslims that the Quran is literally the word of Allah, whereas the Sunna, though inspired by Allah, is the wording and actions of the Prophet.³⁶

The Sunna also contains the Hadeeth, which is a more specific term. Hadeeth refers to the direct report of the sayings and teachings of Prophet Muhammad. In the Sunna, reference is made to arbitration. The administration of justice is mainly subjective, descriptive of judges’ (arbitrators’) ideal behaviour, generally in the form of broad thoughts and prescriptions. Saleh (1984) summarized the most cited references to arbitration in the Sunna as follows:

- The Prophet disliked endless litigation, especially litigation of an oral nature.
- The Prophet’s continuous effort to conciliate between litigants and the swift procedure of conciliation is reported to have been established by

31 The Quran 5: 95.

32 See the UNICTRAL Model Law on International Commercial Arbitration, especially article 5.

33 The Quran 7: 59.

34 Supra n. 7, Ibn Hisham, ‘The Life of Prophet Muhammad in Medina’.

35 The Quran 53: 3–4.

36 A. Hourani, *A History of the Arab People* (1st edn., Warner Books, 1991), pp. 59–71.

him between creditors and debtors. It is reported that he discounted the claim of a creditor in order to reach a rapid payment. “Reduce your debt to one half”, gesturing with his hand. Kab said, “I have done so, O Allah’s Apostle!” On that the Prophet said to Ibn Abi Hadrad, “Get up and repay the debt, to him”.³⁷

- Stringent sanctions would befall a litigant who did not abide by the ruling of the Prophet acting as a conciliator.
- The determination of disputes is according to the rules of the Quran, with no room for innovation.
- The repeated requirement that resources should be given to the Prophet as a judge (arbitrator) is authorized as a sign of faith.
- The remuneration of the judge (arbitrator) is authorized as long as it is not excessive.
- The important aspect of the Prophet’s realistic and transcendental view on litigation (also valid for arbitration) is worth quoting:

Allah’s Prophet said, “I am only a human being, and you people (opponents) come to me with your cases; and it may be that one of you can present his case eloquently in a more convincing way than the other, and I give my verdict according to what I hear. So if ever I judge (by error) and give the right of a brother to his other (brother) then he (the latter) should not take it, for I am giving him only a piece of Fire.”³⁸

It is true that this statement stresses the weakness of judges (arbitrators), but it also throws light on the transcendental ethics of the Islamic sense of justice beyond the judicial mechanism.³⁹

The Practice of Arbitration at the Time of Prophet Muhammad and his Companions

Unlike the legal scholars of Rome and medieval Europe, Prophet Muhammad was not interested in developing a dispute settlement mechanism that was isolated from political control. On the other hand, Prophet Muhammad needed to control the legal system and, through that, control the development of the law itself.⁴⁰ Arbitration was not isolated from the general improvement of the law. Practised

37 A. Albukhari, *Aljame' Alsaheeh (Saheeh Albukhari)* (1st edn., Dar Aljeel, 2005), Vol. 3, Chapter 40, No. 600.

38 Ibid., Vol. 9, Chapter 89, No. 281.

39 Supra n. 28, Saleh, p. 16.

40 G. Sayen, ‘Arbitration, Conciliation and the Islamic Legal Tradition in Saudi Arabia’, *University of Pennsylvania Journal of International Business Law*, 9/2 (1987), pp. 211–27.

by Prophet Muhammad and his companions, arbitration was a successful and flexible dispute settlement mechanism. Arbitration at that time can be divided into two main sections: general arbitration and arbitration in political disputes.⁴¹ The general arbitration did not lose the voluntary character that it had during the pre-Islamic age; even Prophet Muhammad preferred to resolve disputes by proposing an amicable settlement (*sulh*) rather than by imposing a judgment on unwilling parties; however, a decision can be imposed if the parties do not accept the proposed settlement. This latter type of dispute settlement has been reported in the following Hadeeth:

An Ansari man quarrelled with Azzubair in the presence of the Prophet about the Harrah Canals which were used for irrigating the date-palms. The Ansari man said to Azzubair, "Let the water pass", but Azzubair refused to do so. So, the case was brought before the Prophet who said to Azzubair, "O' Zubair! Irrigate (your land) and then let the water pass to your neighbour." On that the Ansari got angry and said to the Prophet, "Is it because he [i.e., Zubair] is your cousin?" On that the colour of the face of Prophet changed (because of anger) and he said, "O' Zubair! Irrigate (your land) and then withhold the water till it reaches the walls between the pits round the trees." Zubair said, "By Allah, I think that the following verse was revealed on this incident: But no, by your Lord they can have No faith until they make you judge in all disputes between them."⁴²

Arbitration in war had a different character and applied in different circumstances from modern arbitration. It referred to the settlement of political and military disputes inside and outside the territory of the state, between the state and other states, or between the state and individuals who have military power. Shortly after the foundation of Islam, the treaty of Medina of AD 662, which was a security pact among the city's Muslims, non-Muslim Arabs and Jews, included an arbitration clause. The clause provided that in the case of a dispute between the inhabitants of the city with regard to a political matter, the dispute should be settled through arbitration by Prophet Muhammad personally or, subject to the approval of the parties, by an arbitrator appointed by Prophet Muhammad.⁴³ In accordance with the treaty of Medina, Prophet Muhammad resorted to arbitration in his dispute with the Jewish tribe Banu Qurayza.⁴⁴ With regard to that incident, the Jews agreed to name Muhammad as a sole arbitrator on the condition that he referred the decision of the case to another Muslim named Sa'ad ibn Moazz, who had once been an ally of the Jews. Even after Sa'ad rendered his decision, Muhammad formally ratified

41 Supra n. 28, Saleh, p. 17.

42 Supra n. 37, Albukhari, Chapter 40, No. 548.

43 Supra n. 7, Ibn Hisham, 'The Treaty of Medina'.

44 C. Brower and J. Sharpe, 'International Commercial Arbitration and the Islamic World: The Third Phase', *American Journal of International Law*, 97 (2003), pp. 643–56.