An Alternative to the Use of Force in International Law and Arab-Islamic *Sulh* for the Yemen Armed Conflict

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Abstract

This article explores Arab-Islamic sulh (reconciliation) which is known to be rooted in religious (sectarian) and cultural dynamics, as well as tribal practices of the Arab societies. For this purpose, this article highlights the limitations of the conflict resolution approaches now in use as contextually unsuitable. It further draws attention to the continuing vitality of Arab-Islamic rituals of reconciliation sulh and identifies ways that mediators (US, UK UAE, and others) might benefit from an appraisal of such rituals. To counteract tribal experiences of disempowerment and temper the power-political undertones of the conflicts, mediators would consciously integrate principles and symbolic practices inherent in indigenous Middle Eastern reconciliation methodologies of sulh, alongside musalaha (settlement). Sulh exemplifies key Arab-Islamic cultural values that should be looked at figuratively and literally for insight into how to approach conflict resolution in the Saudi/Yemen armed conflicts. Therefore, as an alternative to the use of force, the sulh would be provisioned to leverage its capability to accommodate political interests that underpin the conflicts as well, with a view to effective resolution.

Keywords: armed conflict, international law, use of force, Sulh, Yemen

1. Introduction

The Yemen armed conflicts are characterized by divergent regional power interests, aspirations for sectarian dominance, inopportune military involvement, and, to a certain extent, sheer disregard for reconciliation dynamics due to poor commitment toward peace initiatives.[1] As experts and commentators foresaw and argued, the war in Yemen was doomed to fail from its onset for not being the suitable approach to resolving sectarian-cum-political crisis in Yemen.[2] Consequently, the quest for the military option to the conflicts has suffered setbacks from the Houthis resilience and is evident in the continuing devastations resulting from hostilities that for years appear to defy the chosen option[3] The conflicts have since escalated into a humanitarian crisis. With hundreds of thousands of civilians killed including children and women and more injured, the human cost and sufferings of the conflicts inform of the need for an alternative to the use of force in order to address the problems.[4] These, coupled with the intensifying dimensions taken by the conflicts, have justified the imperatives for an alternative to using force to

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[1] Clausen, M. L. (2015) Understanding the Crisis in Yemen: Evaluating Competing Narratives, *The International Spectator*, Vol. 50, No. 3, pp. 16-29; Brehony, N., (2015). Yemen and the Huthis: Genesis of the 2015 Crisis. *Asian Affairs* Vol. 46. Issue 2, pp. 232–250.

[2] See, for instance, Beal, J. (2020). Managing Multi-Sided Conflicts: Failed Military Intervention and Mediation in Yemen. *LSE Undergraduate Political Review,* Vol. 3, No. 1, pp. 1-30; Middle East Institute, (2020). *Addressing the Crisis in Yemen: Strategies and Solutions*. Available at https://www.mei.edu/resources/transcript/addressing-crisis-yemen-strategies-and-solutions, accessed 12 November 2021; Bonde, K. (2018). How to justify an intervention: The Saudi Arabian arguments for military intervention in the Yemen Civil War. Available at https://lup.lub.lu.se/student-papers/search/publication/8942628, accessed 12 November 2021; Asseburg, M., Lacher, W., and Transfeld, M. (2018). *Mission impossible? UN mediation in Libya, Syria and Yemen*. Available at https://www.ssoar.info/ssoar/bitstream/handle/document/60446/ssoar-2018-asseburg_et_al-Mission_impossible_UN_mediation_in.pdf?sequence=1&isAllowed=y&lnkname=ssoar-2018-asseburg_et_al-Mission_impossible_UN_mediation_in.pdf, 12 November 2021; Brehony, N., (2015). Yemen and the Huthis: Genesis of the 2015 Crisis, *Asian Affairs*, Vol. 46, No. 2, pp. 232-250.

[3] Darwich, M. (2020). Escalation in Failed Military Interventions: Saudi and Emirati Quagmires in Yemen, *Global Policy*, Vol. 11, Issue 1, pp. 103-112.

[4] Human Right Watch (2021). *World Report 2021*. Available at https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf, accessed 22 November 2021.

counteract such an extremist sectarian cum political crisis more than ever.[5] More so, the quest for these alternatives a warranted by the fact that the militarized option used by the Saudi-led coalition in Yemen has compounded the economic, social, tribal, and sectarian crisis rather than solved them. Accordingly, non-military approaches and dialogue in the armed conflicts are considered to be long overdue for the resolution of the Yemen armed conflicts.

The article further discusses the need for an alternative to using of force in general to resolve the Yemen armed conflict. This is specifically based on ADR principles in the context of international law tailored towards resolving the Yemen armed conflict, which can be relevant to other Middle East armed conflicts such as Syrian and Iraqi as well. Accordingly, it examines an ADR process based on Islamic practice and procedure of *sulh* (reconciliation); practical relevance, and mechanism of implementation of the Islamic Arab-Islamic *sulh* to resolve an international armed conflict, based on the historical use case in Muslim state practice and procedure. It underscores the need for a regional body befitting the modern Middle East society under whose auspices such an ADR initiative would be led, to revive and entrench the Islamic culture of reconciliation in the communal life of middle eastern societies.

2. The Imperative for an Alternative to the Use of Force to Resolve the Conflict

A peaceful cessation of the conflicts will undoubtedly be beneficial to all actors in the conflicts and address the Houthis agitation, Yemeni economy and situation of its individual regions, interest involvement of Saudi, UAE, Iran and their sectarian undertone, western powers, and the question of terrorists in Yemen. More so, the devastating humanitarian crisis and health and economic emergencies in Yemen underline the imperatives for an urgent alternative.[6] War weariness, the impact of economic costs comprising enormous sums spent on fighting the war, in addition to the internal dynamics due to the fall in oil revenues and the need to focus more on internal issues, are pointers that peaceful alternative to the war is justified on part Saudi Arabia. With economic woes more conspicuous on the part of Yemen, it is already difficult for the government to pay workers' salaries and unable to import food and other needs, which results in the worst hunger cases in the country.[7] Equally, learning from campaigns led by the US in Iraq and Afghanistan where, despite objective combat superiority, the struggles and engagements "recorded no articulable military victory,"[8] the coalition is expected to have realized thus far the limits on the application of conventional combat power via national or international security setup to address a political cum sectarian crises involving non-state actors.[9] It is therefore submitted that this has demonstrated the need to expand, rather than narrow, possible options to consider when confronting the crises.

Cognizant of the sectarian interest and its fragmented non-state actors, the Houthis, who are here to stay, are aware of the fact that Saudi Arabia and members of the coalition constitute the most viable donors that will be needed to reconstruct develop post-war Yemen in the long term.[10] The conflicts have made the Saudi, Houthis, and, the Western superpowers realize that the resulting war is only turning the state of Yemen into an attractive breeding ground for terrorism and terrorists seemingly thwart their collective aim of eliminating the threat posed to the region by terrorist groups Daesh and Al-Qaida in the Arabian Peninsula (AQAP).[11]

As a starting point to the quest for an alternative to the use of force, there is already the UN Security Council Resolution 2216, the Gulf Cooperation Council (GCC) Transition Deal 2011, and resolutions of the Yemen National Dialogue Conference that could potentially lead to resolution of the conflicts save that modalities/procedure provided are no longer feasible.[12] Accordingly, the requirement such as the Houthis leaving

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[5] Elayah, M. (2021). Humanitarian aid and war economies: The case of Yemen. *Economics of Peace and Security Journal*, Vol. 16 No 1, pp. 52-65.

[6] Elayah, M. (2021). Humanitarian aid and war economies: The case of Yemen. *Economics of Peace and Security Journal*, Vol. 16 No. 1, pp. 52-65; Christensen, J. (2021). The morality of substitution Intervention: The case of Yemen. *Politics* (in Press), p. 6. DOI: https://doi.org/10.1177/02633957211014694.

[7] Biswall, A. (2020). The War for Monetary Control Enters a Dangerous New Phase, *Yemen Economic Bulletin:* Sanaa Center for Strategic Studies, January 21, available at https://sanaacenter.org/publications/analysis/8674, accessed 12 October 2021; MEE Staff, (2020). Iran's Ahmadinejad sends letter to Saudi crown prince offering to mediate in Yemen armed conflict, *Middle East Eye*, July 27, available at https://www.middleeasteye.net/news/iran-ahmadinejad-saudi-mbs-yemen-war-offer-mediation, accessed 15 October 2021.

[8] Demmer, C. J. (2016). Proper Application of ADR Techniques Regarding Violent non-state Actors, *Ohio state Journal on Dispute Resolution*, Vol. 31 No. 2, p. 215.

[9] Transfeld, M. (2018). Yemen: Conflict Escalation despite UN-Mediated Power-Sharing. In Asseburg, M., et al., (Ed). *Mission Impossible? UN Mediation in Libya, Syria and Yemen*, SWP Research Paper 8, pp. 44-45, available at https://www.swp-berlin.org/publications/products/research_papers/2018RP08_Ass_EtAl.pdf, accessed 13 August 2021.

[10] Abdullah, A. Y. (2020). The Geopolitical Importance of Yemen in Saudi Strategy. *Journal of Tikrit University for the Humanities*, Vol. 27 No. 11, pp. 242-275; Brehony, N., (2020) War in Yemen: No End in Sight as the state Disintegrates, *Asian Affairs*, Vol. 51, No. 3, pp. 510-527.

[11] Brehony, N., (2020) War in Yemen: No End in Sight as the state Disintegrates, *Asian Affairs*, Vol. 51, No. 3, pp. 520-521.

[12] Elayah M., and Fenttiman, M., (2021). Humanitarian aid and war economies: The case of Yemen, *Economics of Peace and Security Journal*,

main cities and giving up their weapons to the government of President Hadi under the UNSC 2216 could have been possible in 2015 (when the resolution was made) but not today when the Houthis are too powerful and doing so appears just an unconditional surrender to them. So, the UNSC 2216 is no more to be a basis for the agreement. For the GCC Deal, was largely about *Islah*, the Yemeni Islamist party, the Houthis, and the 'authorities' from southern Yemen were essentially excluded from it. With the Houthis having no stake therein, it cannot be a basis for negotiation. The National Dialogue Conference can be revived and considered for this purpose only by signing and committing to a peace deal that can never be attained with the use of force. On the whole, with no end to the war in sight, and with the cost of the war being too enormous and its consequences too detrimental – resulting in humanitarian and economic woes that mean more suffering, all the ramifications of the use of force. The imperative to rethink the conflict has been realized by all actors, in their own respective interests. Thus, the intransigence in prosecuting the war certainly no longer pays, particularly on the part of the state actors, hence, there is no justification for the continuing conflicts. No resort has been made to the *Sulh*, a practice rooted in the customs, usages, and traditions of the people of the Islamic nations of the Middle East, to end the Yemen armed conflict.

3. Alternative Dispute Resolution (ADR) to Resolve the Yemen Armed Conflict

Alternative dispute resolution (ADR) is a mechanism of dispute resolution that involves non-legislative and non-coercive methods to settle disputes or conflicts, be it concerning individuals, corporate entities, and whether at the national or international level.[13] The term ADR is a technique of dispute resolution that has attained global prominence and relevance in this regard. ADR tools, comprising negotiation, mediation, arbitration, and reconciliation or conciliation, have been used in amiable techniques to varying degrees. These ADR techniques involve processes that are less formal, simpler, and shorter; more affordable and accessible than formal litigation. ADR are encouraged and increasingly recommended by courts and governments in civil matters globally as they lessen courts' workload and have proven efficient alternatives to a burdened court system.[14] ADR frameworks and tools have improved and grown continuously, enabling them to be considered viable options not only in litigable matters but also to ascertain issues in and settle ongoing conflicts of national and international significance.[15] In terms of international armed conflicts, the United Nations is committed to the pacific settlement of disputes. Likewise, in armed conflicts, the same advocates for the use of ADR to bring the parties in conflict to a settlement table.[16] ADR in this regard can be regarded as "soft law," a quasi-legal mechanism with little or no legally binding framework which is often associated with transnational or international participants, comprising several of the UN resolutions and voluntary action plans.[17]

In this regard, the principal ADR tool is mediation, often employed with a view to reconciliation among other solutions for conflict resolution.[18] In mediation, an expert tries to bring together and facilitate disputing parties to resolve their dispute; the mediator does not propose solutions to the parties. Mediation, although a separate tool, is often viewed as an extension of negotiations, where parties select a party that is not directly involved in the dispute to resolve their dispute without invoking legal authorities.[19] While it appears to turn a bilateral relationship into a tri-lateral one, it provides assurances for all sides concerned. Unlike a court action, the ADR process takes place outside the courtroom and can be binding or non-binding.[20] In essence, the bottom line with regard to mediation in this regard is to attain reconciliation.

Vol. 16, Issue 1, pp. 52-65; Brehony, N., *op. cit.*

[13] Price, C. (2018). Alternative dispute resolution in Africa: Is ADR the bridge between traditional and modern dispute resolution. *Pepperdine Dispute Resolution Law Journal,* Vol. 18 Issue 3, pp. 393-418; Uwazie, E. E., (2011). Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability, *Africa Security Brief,* Vol. 16 No. 1, pp. 1-6.

[14] Bercovitch, J., and Jackson, R. (2001). Negotiation or Mediation?: An exploration of factors affecting the choice of conflict management in international conflict. *Negotiation Journal,* Vol. 17, No. 1, pp. 59–77; Price, C. (2018), *op cit.*

[15] Lundgren, M., and Svensson, I. (2020). The surprising decline of international mediation in armed conflicts. *Research and Politics*, Vol. 7 No. 2, pp. 1-7.

[16] Demmer, C. J. (2016). Proper Application of ADR Techniques Regarding Violent Non-state Actors, *Ohio state Journal on Dispute Resolution*, Vol. 31 No. 2, pp. 207-232.

[17] Peck, C., (2009). United Nations Mediation Experience: Practical Lessons for Conflict Resolution. In Bercovitch, J., Kremenyuk, V., and Zartman, I. W., (Eds) *The SAGE Handbook of Conflict Resolution*. London: SAGE Publications Ltd, pp. 413-434; Kirkman, H., and Mackelworth, P. (2016). Defining approaches to the management of large marine systems. In Mackelworth, P. (Ed) *Marine Transboundary Conservation and Protected Areas*, London: Routledge, pp. 47–62.

[18] Eidenmueller, H. and Großerichter, H., (2015). Alternative Dispute Resolution and Private International Law, *SSRN*, July 31, available at SSRN: http://dx.doi.org/10.2139/ssrn.2638471

[19] Bercovitch, J., and Jackson, R. *op cit.*, pp. 61-62.

[20] Pappas, B. A. (2015). Med-arb and the legalization of alternative dispute resolution. *Harvard Negotiation Law Review*, Vol. 20, p. 157; Hadwiger, F. *op cit.*, p. 416.

Reconciliation is as old as human society itself, though contemporary processes of practical reconciliation take on special significance and prominence at the end of the Cold War.[21] The term reconciliation, according to Kriesberg,[22] refers generally to "the process of developing a mutual conciliatory accommodation between antagonistic or formerly antagonistic persons or groups. It often refers to a relatively amicable relationship, typically established after a rupture in the relationship involving one-sided or mutual infliction of extreme injury." Literature reveals that reconciliation is both a means and an end. It is also a process as well as an outcome that is neutral politically and ideologically.[23] To a certain extent, and depending on the subject in its purview, reconciliation can be transformative as well as conservative in orientation.[24] In reconciliation as an ADR tool, unlike mediation, a reconciliatory has a direct role in arriving at a decision by the disputing parties; the reconciliatory leads the parties to a resolution of their dispute by suggesting solutions and alternatives to them.[25]

The ADR provides a flexible, expedient, customizable, and cost-effective approach to dispute resolution.[26] This flexibility enables the enlistment of all parties in the processes of determining issues and leading to the decision. With parties concurring on an agreed settlement, it renders ADR more suitable to address specific interests and abilities of the parties, which often go unrecognized in the war due to a seeming or assumed dominance or superiority of one party over the other. For cases with an international dimension, the flexibility of the ADR offsets disputing parties' different laws, legal systems, and norms. The ADR allows parties to choose a mutually agreed venue and facilitator(s), with tailor-made processes suitable to all sides in a manner that international fora do not offer.[27] Accordingly, in sectarian cum political conflicts where issues are often made ambiguous by inter-woven religious, political, and legal interests, the ADR's customizability is especially handy, providing custom-made equivalents that address varying underlying issues in their appropriate context and perspectives.[28]

As the preceding discussion points out, ADR has its advantages. ADR enables the identification of common interests and synergies to arrive at outcomes that suit all parties involved.[29] Further, experts and proponents alike maintained that the stated features afford ADR greater intrinsic worth in terms of fulfilling parties' needs and goals, coupled with higher satisfaction rates; a higher rate of compliance, and implementation of the settlement. In turn, these improve understanding between disputing parties, especially in conflicts that pertain to national interests where multiple parties, issues, and interests are often involved.[30] In international conflicts, personal conviction embedded in ADR is one of the key motivators towards the implementation of a collective decision with a sense of accountability besides allowing a degree of confidentiality.[31] Moreover, these mechanisms are considered particularly suitable for relations with neighboring states involved, where maintaining a good relationship is

[21] Lerche, C., (2000). Peace Building Through Reconciliation. *International Journal of Peace Studies*, Vol. 5 No. 2, pp. 61-76.

[22] Kriesberg, L., (1998). Coexistence and the Reconciliation of Communal Conflicts. In Weiner, E. (Ed.), *The Handbook of Interethnic Coexistence*. New York: The Continuum Publishing Company, p. 184. See also

[23] Lerche, C., and Jeong, H. W. (2002). Reconciliation: Contexts and consequences. In (2002). *Approaches to peacebuilding*. London: Palgrave Macmillan, pp. 103-122.

[24] See for instance Druckman, D., Wall, J. A., and Diehl, P. F. (2020). Conflict Resolution Roles in International Peacekeeping Missions. In Jeong, H. (Ed.), *The New Agenda for Peace Research*. London: Routledge, pp. 377; Jewell, E., and Mosby, I. (2019). *Calls to action accountability: A status update on Reconciliation*. Toronto: Yellowhead Institute, pp. 27; Amour, P. O. (2018). Hamas-PLO/Fatah Reconciliation and Rapprochement within the unfolding regional order in the Middle East since 2010: Neorealist and neoclassical realist perspectives. *Anemon Muş Alparslan Üniversitesi Sosyal Bilimler Dergisi*, Vol. 6 No. 5, pp. 621-631; Touquet, H., and Milosevic, A. (2018). When Reconciliation Becomes the R-Word. In Krondorfer, B. (Ed.), *Reconciliation in Global Context: Why It Is Needed and How It Works*, New York: state University of New York, pp. 179-198; Long, W. J., and Brecke, P. (2003). *War and reconciliation: Reason and emotion in conflict resolution*. Massachusetts: MIT Press, pp. 249; Lerche, C., (2000). Peace Building Through Reconciliation. *International Journal of Peace Studies*, Vol. 5 No. 2, pp. 61-76.

[25] Touquet, H., and Milosevic, A. (2018). When Reconciliation Becomes the R-Word. In Krondorfer, B. (Ed.), *Reconciliation in Global Context: Why It Is Needed and How It Works*, New York: state University of New York, pp. 179-198; Rettberg, A. and Juan Ugarriza, J. E. (2016). Reconciliation: A comprehensive framework for empirical analysis. *Security Dialogue*, Vol. 47 No. 6, pp. 517-540.

[26] Verwoerd, W. and Alistair, L. (2018). Beyond a Dilemma of Apology: Transforming (Veteran) Resistance to Reconciliation in Northern Ireland and South Africa. In Krondorfer, B. (Ed.), *Reconciliation in Global Context: Why It Is Needed and How It Works*, New York: state University of New York, pp. 47-82.

[27] Hadwiger, F. (2017). Looking to the future: mediation and arbitration procedures for global framework agreements. *Transfer: European Review of Labour and Research*, Vol. 23 No. 4, pp. 409-424.

[28] Mackelworth, P. C., et al., (2019). Geopolitics and marine conservation: synergies and conflicts. *Frontiers in Marine Science*, Vol. *6*, p. 759.

[29] Paffenholz, T. (2004). Designing transformation and intervention processes. In Austin, A., Fischer, M., and Ropers, N. (Eds.). *Transforming Ethnopolitical Conflict – The Berghof Handbook*, Cham: Springer, pp. 151–170.

[30] Pappas, B. A. (2015). Med-arb and the Legalization of Alternative Dispute Resolution. *Harvard Negotiation Law Review*, Vol. 20, p. 157; Hadwiger, F. *op cit.*, p. 416.

[31] Hadwiger, F. *op cit.*, pp. 412-413.

particularly paramount post-conflict.[32] The relative adaptability of the ADR tools also makes them accommodate the peculiarities of multiple stakeholders which is very important in cross-border conflicts. It enables state actors to determine "private" rules that would suit their needs and circumstances which potentially establishes compatibility when countries wish to create links to cooperate but face challenges from incompatible regulations and institutional norms or interests. Furthermore, ADR has the option to *opt out* of its processes at any time, which makes it a rather low-risk option.[33]

Notwithstanding the foregoing, ADR does have its drawbacks and limitations the fact that all its tools and process may not result in an agreement eventually. Besides, as a voluntary endeavor, cases in ADR may end up with no official "verdict." In extreme cases, parties may choose not to apply certain terms that are agreed upon without being sanctioned or stopped in any way.[34]

4. The Islamic *Sulh* – the Concept, Process, Relevance and Legal Effect

In the preceding discussions, a general perspective of *sulh* is presented which underscores its cultural, tribal, and sectarian underpinnings. In this section, the research examines some dimensions of the *sulh* including its process, scope and legal effect in Islamic law (*Shariah*). The sectarian nature, application and practice of *sulh* is based on these dimensions. Authorities for *sulh* are derived from the holy Quran, Hadith and/or Sunnah (the sayings and practices of the Prophet), the two principal sources of Islamic law. In the first place, the holy Quran commands that "*in case two sections of the believers fight each other, then make a sulh between them both… and make a sulh between them with justice*" [Quran 49:9]. In another verse, the Quran declares "*…whoever pardons and makes sulh, he is rewarded by God*" [Quran 42:40], a clear exhortation to Muslims to forgive and reconcile in the face of conflict. In another place, the Quran declares that "*…sulh is a good thing*" [Quran 4:128]. In the hadith, the prophet said that '*Sulh or compromise is a necessary matter among the Muslims, except sulh to make halal for matters that are haram, or to make haram matters that are halal.*' In Islam, *sulh* and/or 'reconciling people' is regarded as one of the noblest acts of worship [Quran 4: 114]. According to Shariah (Islamic law), "the purpose of *sulh* is to end conflict and hostility among people so that they may conduct their relationships in peace and amity. For this purpose, *sulh* is considered a form of contract that is legally binding at whatever level, be it individual, community or, country levels.[35]

The *Sulh* is based on principles of *salam* or *silm* (peace), one of the foundational tenets of Islam, in addition to *afuw* (forgiveness), *hubb* or *muwadda* (love) and *sabr* (patience), which collectively constitute its baseline. Irrespective of the school of jurisprudence, Muslims believe that Islam is a religion of peace, and the application of Islamic principles can bring order, harmony and justice which are the cornerstone of the *sulh*.[36] In Islam, it is believed that God sent all prophets to reconcile differences between people and make peace throughout the earth, a mission upon all Muslims.[37]

The concept of peace (*salam* or *silm* in Arabic in the context of holy Quran), is deeply rooted in Islam and begins from one of the exquisite names of God, *As-Salam*. Accordingly, all Quranic references to peace imply that peace, as a strong complement to justice, is the main premise in Islamic discourse.[38] The concept of peace is wider in Islam than the restrictive connotation of the absence of war and is viewed as "a process in which human beings strive to establish foundations for interacting with each other - and with nature - in harmony and to institute just social, economic, and political structures where they can flourish and fulfill their potential."[39] In other words, peace suggests a positive state of security or safety which includes peace with God, nature, fellow humans and oneself, so as to ensure that an individual is "endowed with the necessary qualities to make peace an enduring reality, not only in the public sphere but also in the private domain."[40] As God calls believers to the "abode of

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[32] Paffenholz, T. *op cit*.

[33] Rosoux, V. (2009). Reconciliation as a peace-building process: scope and limits. In Bercovitch, J., Kremenyuk, V., and Zartman, I. W., (Eds). *The SAGE Handbook of Conflict Resolution*. London: SAGE Publications Ltd, pp. 543-563.

[34] Ibid.; Hadwiger, F. *op cit*.

[35] Khadduri, M. (1997). Sulh. In Bosworth, C. E. et al, (Eds.). *The Encyclopaedia of Islam*, Vol. IX, Leiden: Brill, pp. 845-846; Othman, A., (2017). "And Amicable Settlement Is Best:" Sulh and Dispute Resolution in Islamic Law, *Arab Law Quarterly*, Vol. 21, No. 1, pp. 64-90.

[36] Kadayifci-Orellana, S. A. (2007). *Standing On an Isthmus: Islamic Narratives of War and Peace in the Palestinian Territories,* Lanham: Lexington Books, pp. 340 at 101.

[37] Mirbagheri, S. F. (2012). *War and peace in Islam: a critique of Islamic/ist political discourses*. Cham: Springer, pp. 91-92.

[38] Ibid.

[39] Ibid.

[40] Kalin, I. (2010). Islam and Peace. In Huda, Q. (Ed.), *Crescent and Dove: Peace and Conflict Resolution in Islam*, Washington, DC: US Institute of Peace Press, p. 8.

peace" [Quran 10:25],[41] peace is understood to actively ward off evils, destructions and disorder against a society, from inside or outside. The Quran thus exhorts Muslims "o ye who believe, enter ye into peace, one and all" [Quran 2:208].[42] Muslims are urged, in their efforts to establish circumstances for durable peace, to consider fundamental Islamic principles and values.[43]

Forgiveness (*afuw*) is an essential principle of Islamic reconciliation. *Afuw* is regarded as the basis for the *sulh*. *Afuw* in itself is an *ihsan*, an act of virtuousness by which Islam exhorts Muslims to pardon those that offended them in order to restore harmony in society. The holy Quran admonishes to forgiveness when it provides: "and let them forgive and overlook. Would you not like that Allah should forgive you?" [Qur'an, 24:22]. In another verse: "whosoever forgives and makes amends, his reward is upon Allah" [Qur'an, 42:40]. Also, a hadith of the prophet of Islam, prophet Muhammad (peace be upon him), states that: "Whoever suffers an injury and forgives (the person responsible), Allah will raise his status to a higher degree and remove his sins."[44] Forgiveness is directly connected with the Islamic tenets of compassion *(rahmah)* and mercy *(rahim)*, the twin principles that evoke in Muslims the sense of mercy and compassion towards all human beings, regardless of ethnicity, gender religion, and that they are to be sensitive of sufferings by other beings. In practice, these Islamic values had significantly influenced Muslims' live adherents of other faiths.[45] Accordingly, willful harm against fellow humans and torture are contradictory of Islamic teachings. So, forgiveness and its underlying values of compassion and mercy are often the inspiration for Muslims to be humane towards others in their relationships. These principles are brought to play in the *sulh* reconciliation to heal broken relationships.[46]

Love is likewise another key Islamic principle of peacemaking that plays an important role in settling conflicts. Understood as coming from the God almighty, love is connected to peace, forgiveness, and mercy as a sign to reflect upon by humankind [Qur'an 30:21]. The essence of love in *sulh* is premised upon the Islamic belief that enmity can be transformed into love as a sign of the mercy of God. This underscores the importance of transforming hostile relations into ones of love and friendship. The Islamic conception of love guides Muslims in reconciliation efforts to attain peace and justice among parties in conflicts.[47]

Patience (*sabr*), another central tenet of the Islamic *sulh*, is regarded as an antidote to violence and a virtue that underlies forgiveness. The Quran often exhorts Muslims to counsel towards patience; to be patient in their dealings with fellow human beings and when faced with violence or conflict [Quran 70:5, 74:7, 16:42]. Nonetheless, the Quran requires Muslims to act in the face of injustice, so the Islamic principles of patience is not to be equated with inaction. On the contrary, the Quran asks Muslims to strive and work for justice via nonviolent, active and creative means that would restore harmony among people and all of God's creation [Quran 4:135, 5:8]. Contemporary Islamic jurists advocate that *sabr* is the antithesis of violence from an Islamic view.[48] On the whole, in both theory and practice, the principles of justice, peace, love, compassion and forgiveness are central to the Islamic *sulh* for addressing all current or future conflicts. From a perspective, these principles are understood to be similar to 'just peace' in contemporary conflict management and resolution.[49]

For practical purposes, the principles of the Islamic *sulh* are designed to inherently consider background conditions to ensure feasibility and ease of peacemaking. The principles provide political support and institutional and cultural adaptability that ensure parity of capacity among disputing parties. Thus, the *sulh* has a participatory design for a

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[41] NB: All references to Quranic verses are of English translation of the holy Quran - Ghali, M. M. (2013). *Towards Understanding the Ever-Glorious Quran*, Cairo: Dar An-Nashr for Universities, pp. 608.

[42] Peace scholars including Nobel Peace Prize laureate have noted this as a universal call towards reconciliation and a foundational tenet for establishing peace. See Karman, K. (2011). *Tawakkol Karman - Nobel Lecture*, available at https://www.nobelprize.org/uploads/2018/06/karman-lecture_en-1.pdf, accessed 20 November 2021.

[43] Kadayifci-Orellana, S. A. (2015). Peacebuilding in the Muslim World. In Omer, A., et al., (Ed.), *The Oxford Handbook of Religion, Conflict and Peacebuilding*, Oxford: Oxford University Press, pp. 430-469 at 443.

[44] Sunan Al-Tirmidhi Collection, Hadith No. 998

[45] These values for instance played a significant role in the work of Soraya Jamjuree, a Thai peacemaker, that created harmonious and peaceful relations between Muslims and Buddhists in Thailand. See Goodman, A. (2007). Thailand: Women for Peace Offering Solace to Victims of Conflict, *Frontline*, August 9, available at http://www.pbs.org/frontlineworld/rough/2007/08/thailand_women.html, accessed 2 November 2021.

[46] Kadayifci-Orellana, S. A. (2015). Peacebuilding in the Muslim World. In Omer, A., *et al.*, (Ed.), *The Oxford Handbook of Religion, Conflict and Peacebuilding*, Oxford: Oxford University Press, p. 444.

[47] Ibid.

[48] Mirbagheri, *op cit.*, pp. 83-84; Kadayifci-Orellana, *op cit.*, p. 445.

[49] Gish, P. F. (2020). ISIS and Ezidis: Using A Just Peace Approaches. In McCarthy, E. S. (Ed.), *A Just Peace Ethic Primer: Building Sustainable Peace and Breaking Cycles of Violence*. Washington DC: Georgetown University Press, pp. 93-94.

peacemaking process that is based upon assessed local needs and identified goals found in cultural and sectarian appeal with effective modern relevance. In addition, implementation of the *sulh* is assured by its capable outreach and selection of necessary stakeholders as well as evaluation of outcomes.

5. The *Sulh* ADR – Its Religious & Cultural Relevance to Middle Eastern Nations in Conflict

Armed conflicts where actors formulate and pursue explicit Islamist political aspirations are dramatically on the rise but extremely under-mediated. With only about eight percent of global armed conflicts classified as Islamist in the late 1980s, the proportion increased to 56 percent by 2013.[50] The Monumental increase of Islamist armed conflicts has been noted,[51] but without the corresponding link to the *Sulh* as a means of reconciliation to resolve them, shows that the conflicts are met with lower and decreasing efforts at mediation and reconciliation. The solution to the conflicts can be sought via techniques that are conceived in sectarian narratives of all actors who are known to be familiar with it by their cultural and sectarian convictions.[52]

In considering an alternative, the nature of the interest leading to the conflict needs to be reckoned with. Despite being primarily political, the Yemen armed conflicts have rather tribal and sectarian issues at their core in addition to political or social dimensions. These necessitate that any selected alternative to provide the needed solution must be based on consideration of the historical, religious, cultural and social milieu of all the societies involved. It is submitted that both Saudi and Yemeni societies being Arab and Islamic, a cultural cum Islamic alternative that is rooted in the historical, religious, cultural and social settings of the societies is a worthy endeavor and needs to be accorded priority among other non-military alternatives to the use of force. In this regard, s*ulh* is selected as a mediation alternative. Before going into *sulh*, its suitability as an option to resolve the conflicts will be evaluated.

The Yemen armed conflicts have an intangible element that may be hard to demarcate or separate from the seeming sectarian (religious) and political undertone of the conflicts, but which underlies both. These are the culture and/or cultural identity of the parties blended in the sectarian adherences of the parties involved. Short of recognizing and addressing them, reconciliation has little or no chance of succeeding. In other words, for reconciliation or *Sulh* to succeed, the cultural identities and sectarian aspects of the parties must be first addressed. The sectarian elements transcend and define the *sunni* and *shia*' dichotomy among individual Yemenis and between the Saudi and Yemeni states.[53] As for cultural identity, all are Arabs whose cultural identity has been diffused with Islam making them synonymous to a very large extent.

The culture of Arab societies stresses the high value of collective responsibility and commitment to the tribal group and family unit,[54] which forms a firm basis for Arab identity and, to a certain extent, Arabism.[55] Accordingly, culture and its influence deserve consideration to formulate workable solutions for conflicts that involve Arabs. Culture, in the words of Faure and Rubin,[56] is "a totality of shared and enduring meanings, values, laws and beliefs that characterize national, ethnic and other tribal groups, and orient their behavior, manner and mannerism." This includes all forms of social behavior and norms including the arts and language of a given society.[57]

To a certain degree, the Yemen armed conflicts involve an identity struggle on the part of the Houthis among other Yemeni tribes. Identity is defined as "people's collective need for dignity, recognition, safety, control, purpose,

[50] Lundgren, M., and Svensson, I. (2020). The surprising decline of international mediation in armed conflicts. *Research and Politics*, Vol. 7 No. 2, p. 5.

[51] Svensson, I. and Nilsson, D. (2018). Disputes over the divine: Introducing the religion and armed conflict (RELAC) data, 1975–2015. *Journal of Conflict Resolution*, Vol. 62 No. 5, pp. 1127– 1148; Gleditsch, N. P. and Rudolfsen, I. (2016). Are Muslim countries more prone to violence? *Research & Politics* Vol. 3 No. 2, pp. 1–9.

[52] Nimer, M. A., (2001). Conflict Resolution Approaches: Western and Middle Eastern Lessons and Possibilities. In Said, A. A., et. al., (Ed.), *Peace and Conflict Resolution in Islam: Precept and Practice*. Lanham: University Press of America, pp. 306.

[53] Abdo, G. *et al*. (2016). *The Sunni-Shia Divide*, Council of Foreign Relations, available at https://www.cfr.org/sunni-shia-divide/#!/, accessed 20 November 2021.

[54] Webb, P., (2016). *Imagining the Arabs: Arab Identity and the Rise of Islam*, Edinburgh: Edinburgh University Press Ltd., pp. 177-281; Kister, M. J., (1990). Mecca and the Tribes of Arabia. In Kister, M. J., (Ed.), *Society and Religion from Jahiliyya to Islam*, Aldershot: Variorum, p. 112.

[55] Philips, C., (2013). *Everyday Arab Identity: The Daily Reproduction of the Arab World*, London: Routledge, pp. 8-10.

[56] Faure, G. O. and Sjostedt, G. (1993). Culture and Negotiation: An Introduction. In Faure, G. O., and Rubin, J. Z. (Eds). *Culture and negotiation: The resolution of water disputes*. London: Sage Publications, pp. 280; April, W. I., (2018). *Culture and Identity*, London: IntechOpen Ltd., pp. 3-4.

[57] Singleton, A. (2014). *Religion, Culture and Society: A Global Approach.* London: Sage Publications, pp. 257; Schottmann, S. and Camilleri, J. A. (2013). Culture, Religion and the Southeast Asian state. In Camilleri, J. A., and Schottmann, S. (Eds.), *Culture, Religion and Conflict in Muslim Southeast Asia: Negotiating Tense Pluralisms*, London: Routledge, pp. 1-4,

and efficacy."[58] Conflicts underpinned by identity interests bolstered by sectarian affiliations are very difficult to resolve. A third-party reconciliatory or mediator, acting as mediator/facilitator, is necessary to resolve it.[59] It is accordingly fundamental that such a third party understands the identity, sectarian and other cultural dynamics of the people involved. The relevance of cultural and identity considerations cannot be overemphasized for the successful settlement of the Yemen armed conflict. This can be appropriately considered by an ADR process of *sulh* which comes due to backing from the cultural and religious convictions of the leading parties of the conflicts.

The *Sulh* (reconciliation) has been the Arab traditional way of conflict resolution that is rooted in traditional Arab cultures.[60] *Sulh* is often made between families and tribes due to a dispute involving individual members which, by family and tribal ties, involves the whole family and/or tribespeople.[61] *Sulh* is a process of peace or peacemaking is a longstanding tradition and praxis in Arab-Islamic culture. It is however practiced in traditional Arab society centuries before Islam in matters of family, community and tribes. In this regard, the *sulh* was premised upon the collective responsibility and commitment of a family or tribe towards each member, individually and collectively. *Sulh* was traditionally a ritual ceremony of forgiveness that seeks to preserve the reputation and honor of the family, community or tribe; prevents all members (including those that did not personally participate in the ritual as well as future generations) from breaking the terms, traditions or law of the *Sulh*.[62]

Sulh was traditionally used in such disputes as ones that involve family honor, physical harm or killing. In arid areas and deserts, which is typical of many countries of the Arab/Middle east, the *sulh* is equally used in water disputes, for instance among the North African Berbers and the Arabian Peninsula Bedouins. "Both Berbers and Bedouin follow this Islamic practice of a ritual ceremony of forgiveness, which consists of private, often mediated negotiations of redress between the affected parties, followed by a public declaration of forgiveness and usually, a festive meal Once the ceremony is performed, the dispute may not be discussed – it is as if it never occurred."[63] It is submitted that it is very important to understand the culture of a people and take the same into consideration for reconciling or mediating a dispute. This is because culture influences the people's perception of the world and ascertains their relevant values in terms of religion, governance or politics, and social system, and thus helps the reconciliation process to reach suitable settlement or results. The process can fail if an intermediary is not conversant with the culture of the people on these sensitive factors and the identity dynamics of the parties to intermediate.

6. Need for *Sulh* Based Reconciliation in Settlement of the Yemen Armed Conflict

Keeping in mind Galtung's argument, it is submitted that The Islamic concept of *sulh* was rooted in Arab cultural and traditional practices governing family, societal and political life. As a process of dialogue and consensus building, reconciliation combines mediation and negotiation in order to avail parties a more suitable approach to resolving the multifaceted Yemen armed conflicts – sectarian concern, identity significance and political interests in such a checkered context. For this purpose, a reconciliatory would identify all relevant parties needed at a negotiation table and decides on participants in the reconciliation process in consultation with the supposed participants. A conflict assessment would be conducted which involves the identification of major issues and concerns of the parties, with emphasis on ascertainment and making known the basis and motivation for the engagement as resolving the conflict.[64] The process is voluntary. For this reason, it needs to be assured that the parties understand the need to participate, and confidence is built among the parties in the process by designing it

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[58] Rothman, J. (1997). *Resolving Identity-Based Conflict in Nations, Organizations and Communities*. 1st Ed. San Francisco: Jossey-Bass, p. 10.

[59] Many conflicts that carried within them identity issues lasted many decades and were very destructive domestically (for instance the Northern Ireland conflicts) or internationally (for instance the Yugoslavia conflicts). See Rothman, J. (2012). Identity-Based Conflict Engagement. In Rothman, J. (Ed.). *From Identity-Based Conflict to Identity-Based Cooperation: The ARIA Approach in Theory and Practice*. Cham: Springer, pp. 224 at 146.

[60] Mackintosh-Smith, T. (2019). *Arabs: A 3,000-Year History of Peoples, Tribes and Empires,* New Haven: Yale University Press, pp. 19-45; Webb, P., *op cit.*, pp. 240-241; Smith, G. R. (1997). Yemenite history: problems and misconceptions. In Smith, G. R. (Ed.). *Studies in the Medieval History of the Yemen and South Arabia*, London: Routledge, p. 124.

[61] Ibid.

[62] Irani, G. E., and Funk, N. C., (1998). Rituals of Reconciliation: Arab-Islamic Perspectives, *Arab Studies Quarterly*, Vol. 20, No. 4, pp. 53-73.

[63] Wolf, A. T. (2000). Indigenous Approaches to Water Conflict Negotiations and Implications for International Waters. *International Negotiation*, Vol. 5, pp. 357–373 at 369.

[64] Othman, A., (207). "And Amicable Settlement Is Best:" *Sulh* and Dispute Resolution in Islamic Law, *Arab Law Quarterly*, Vol. 21, No. 1, pp. 64-90 at 66.

as open and impartial. In this vein, equal and unhindered access would be ensured for the parties to relevant information so as to build and maintain parties' and participants' confidence in the process. This facilitates dialogue, helps generate practical options and comes to a consensus on the finest options as settlement terms that are acceptable to the parties. In practice, parties are more willing and capable of working towards mutual gain by ending hostilities on terms of settlement arrived at through this process.[65] In this regard, given the antecedents of *sulh* in Arab society and the affiliation of the society to Islam, there is no alternative that is better for the resolution of the Yemen armed conflicts than the *sulh* reconciliation. For this fact, international conflict management and resolution organizations, stakeholders and practitioners alike have a moral obligation to understand *sulh* and reconsider their approach to the Middle East armed conflicts in general with a view to global peacebuilding.

Ordinarily, reconciliation in its origin has a religious flavor for which it is often regarded as a blandishment or soft word by many foreign and international professionals.[66] This however has been contrasted to its notion by local scholars and experts where the term assumes legal and cultural significance.[67] Regardless, *sulh* reconciliation is often relegated in professionals, academics, journalists and diplomats' discourse in international relations when deliberating on deals for ending persistent crises such as the one between Palestinians and Israelis and restoring peace.[68] Currently, diplomats and international peace delegates and advocates, whether under a multilateral scheme like the UN, national program, or inter-governmental initiatives, often work to halt the violence. Thereafter, a political deal is patched together to get adversaries and mediators through the short term, with optimism that certain events come along to resolve other issues in the conflict once and for all. This approach is problematic. By and large, contemporary focus on political issues and neglect of traditional peacemaking approaches have led to the avoidance of local issues that sustain and drive popular yet obstinate sectarian and tribal conflicts.[69] It is argued here that any conflict resolution plan that fails to address the cultural, tribal, sectarian, and psychological needs of victims or oppressed and oppressor can only bring about a superficial result in the resolution of sectarian and political conflicts. Accordingly, a suitable and practical approach to such persistent conflict as Yemen is one that aims for actual reconciliation of the peoples involved (Yemenis) and their nation, wherein the sectarian, tribal and political interests in the conflict are material to its resolution and this is where *sulh* fits in. In this regard, *sulh* needs be incorporated into the Middle East peacemaking process under the UN auspices.

7. Practice of Islamic *Sulh* - Antecedents in Modern Middle East for the Yemen Armed Conflict

Sulh is however not only a mediation practice; it is regarded as a binding contract in Islam that constituted a fundamental principle in the founding of the first Islamic community in the 7th century AD.[70] This is where *sulh* led to and featured in the Constitution of Medina from 622 AD. Hitherto, various Arab tribes had fought and persecuted one another for dominance over territory, religion and economic gains. They were in massive turmoil. To restore peace, the prophet Muhammad formed a new peaceful city-state, the city of Medina, wherein the Constitution of Medina was instituted which provide equal protection, regardless of tribal differences, to all citizens. Precisely, the constitution affirmed the importance of respect and preservation of people's lives as well as the peoples' right to peaceful livelihood. Through *sulh*, Muhammad reconstituted the divided antagonistic tribes into a political community as unified citizens.[71] So, besides being a mediation process, *sulh* is also a political vision. More broadly, it is a way of governance and living in Islamic nations.

Sulh is not entirely unprecedented in modern international relations and global peace-building initiatives. The Islamic *sulh* reconciliation has been applied to resolve international armed conflict. *Sulh* had been used to restore

[65] Shamir, Y. and Kutner, R., (2003). *Alternative Dispute Resolution Approaches and their Application*, UNESCO-IHP, Paper SC-2003/WS/43, pp. 7-8, available at http://unesdoc.unesco.org/images/0013/001332/133287e.pdf, accessed 20 October 2021.

[66] Montville, J. (2007). Reconciliation as Realpolitik - Facing the Burdens of History in Political Conflict Resolution. In Rothbart, D. and Korostelina, K. V. (Ed.). *Identity, Morality and Threat, Studies in Violent Conflict,* New York: Lexington Books, pp. 367-392 at 367. NB: In other non-Islamic faith, Christianity for instance, reconciliation in one of its early definitions was the restoration of a penitent sinner to the church. See Montville, *op cit*.

[67] Kadayifci-Orellana, S. A. (2007). *Standing on an Isthmus: Islamic Narratives of War and Peace in the Palestinian Territories,* Lanham: Lexington Books, pp. 340 at 101.

[68] Hussein, T., et at. (2009). *Sulha* as a Cultural Peacemaking Method for Managing and Resolving Environmental Conflicts among Arab Palestinians in Israel, *Journal of Peacebuilding and Development,* Vol. 5, No. 1 pp. 50–64.

[69] Montville, *op cit*., pp. 368. See also Galtung, J. (2001). After Violence, Reconstruction, Reconciliation and Resolution: Coping with Visible and Invisible Effects of War and Violence. In Nimer, M. A. (Ed.), *Reconciliation, Justice, and Coexistence: Theory and Practice,* Lanham: Lexington Books, pp. 3-23.

[70] Kadayifci-Orellana, S. A. (2015). Peacebuilding in the Muslim World. In Omer, A., Appleby, R. S. and Little, D. (Ed.), *The Oxford Handbook of Religion, Conflict and Peacebuilding*, Oxford: Oxford University Press, pp. 440. Also, Rasha, D., (2016). *Shades of Sulh: The Rhetorics of Arab-Islamic Reconciliation*. Pittsburgh: University of Pittsburgh Press, p. 232.

[71] Ibid.

strained relations between Egypt and Israel in 1977 which led to ending a longstanding warfare that caused economic and emotional devastation to the two countries. Sadat An-war, then Egyptian president, committed governmental resources to the pursuit of *sulh* which extolled Islamic peacemaking and censured the war. Sadat ably depicted the pursuit of peace as a religious duty and the exploitation of war as unethical destruction. At the *sulh* reconciliation, Sadat declared in the first place his determination to "go to the end of the world" to end the war which invited trust and cooperation for peace.[72] As a declaration by a state, it created a voluntary self-binding commitment to *sulh* and shifted Egyptians' position from an enemy state to a friend and determined peacemaker. Secondly, Sadat's narration about the losses Egypt experienced from the war and its previous records of peace pursuits invoked goodwill and credibility among stakeholders and augmented the sincerity of Egypt's commitment which made it recognizable to the international peace vanguard, the Israeli political elites and the public.[73] Last but not the least, Egypt acknowledged the grievances of Israel and its complicity in the conflict which created accountability and a requisite truce from the *sulh*. Both expressed their contrition and extended forgiveness to each other. The process was then completed with a ritual that sealed the reconciliation via handshakes and a collective meal. This *sulh* and the moves it encompassed collectively counteracted the "us versus them" positionality between the warring nations and reconstituted them as collaborative peace seekers. This *sulh* was regarded as a modern reflection of the tradition and practice of *sulh* in the context of international relations and diplomacy.[74] It is however observed that this *sulh* had somewhat recorded success due only to the sole initiatives of the countries concerned. An implementation scheme or framework was inadequate, and an institutional neutral third-party enforcer, overseer, or monitor was desired but not established for such purpose.

8. Principles of Shariah for *Sulh* ADR Implantation under International Law

International law recognizes the use of ADR to resolve intranational and international conflicts, for instance under Articles 2(3) and 33(1) of the UN Charter. It is likewise in accordance with the Declaration on the Principles of Friendly Relations and Co-operation among states in accordance with the UN Charter and the Manila Declaration on the Peaceful Settlement of International Disputes.[75] *Sulh* reconciliation falls under these instruments and provisions as an adaptable ADR which has a religious conception but thus an international significance. *Sulh* reconciliation would involve an individual or group of individuals or an independent commission to act as a neutral third party who enjoys the trust and confidence of the disputants. The task of such reconciliatory is to investigate the conflict, and its underlying interest and propose a solution in consultation with the parties and for them. The reconciliatory shall enjoy in-depth independence aimed primarily at an amicable settlement through a final recommendation that is acceptable as well as binding (once accepted) by the parties. Under international law, reconciliation has been used in 1994 as part of efforts at intercommunal reconciliation in post-war Lebanon;[76] in South Africa's transition to democracy after the Apartheid era;[77] in Ireland;[78] Kosovo, and Bosnia[79] among several other nations. In all these instances, third parties affected the cessation of hostilities and led peaceful reconciliations under various international instruments and programs.

Accordingly, reconciliation in the ADR process under international law has been institutionalized for all conflict situations. A combination of dialogue, mediation and conciliation under international law as in the case of the stated countries evidently proved many benefits of reconciliation which include flexibility, expeditiousness and informality. For this reason, reconciliation is regarded under international law as the most effective pathway for cooperative parties to use for the resolution of their disputes, particularly disputes with interwoven political,

[72] Rasha, D., (2016). *Shades of Sulh: The Rhetorics of Arab-Islamic Reconciliation*. Pittsburgh: University of Pittsburgh Press, pp. 232.

[73] Ibid., p. 235.

[74] Auerbach, Y. (2005). Conflict resolution, forgiveness and reconciliation in material and identity conflicts. *Humboldt Journal of Social Relations*, 41-80; Bar-Siman-Tov, Y. (1994). *Israel and the peace process 1977-1982: in search of legitimacy for peace*. New York: State University of New York Press, pp. 356; Cohen, S. P., & Azar, E. E. (1981). From war to peace: The transition between Egypt and Israel. *Journal of Conflict Resolution*, *25*(1), 87-114.

[75] UN General Assembly Resolution 2625 (XXV) of 24 Oct. 1970 and UN General Assembly Resolution 37/10 of 1982 respectively.

[76] Irani, G. E., and Funk, N. C., (1998). Rituals of Reconciliation: Arab-Islamic Perspectives, *Arab Studies Quarterly*, Vol. 20, No. 4, pp. 57-60.

[77] Marks, S. C. (2000). *Watching the Wind: Conflict Resolution During South Africa's Transition to Democracy,* Washington, DC: United States Institute of Peace Press, pp. 22-23; Spector, B. I. (2002). Negotiation Readiness in the Development Context: Adding Capacity to Ripeness. In Jeong, H. W. (Ed.). *Approaches to Peace building*, New York: Palgrave Macmillan, pp. 80-92; Kosovo and Bosnia, among several other nations.

[78] Love, M. T. (1995). *Peacebuilding Through Reconciliation in Northern Ireland,* Aldershot: Avebury, p. 95.

[79] Jeong, H. W. (2002). Peacebuilding Design: A Synergetic Approach. In Jeong, H. W. (Ed). *Approaches to Peace building*, New York: Palgrave Macmillan, p. 163.

cultural and sectarian interests.[80] It is observed that several disputes involving such interests have been settled through reconciliation in the past few decades.[81] It should be noted that a number of international institutions including the UN have established rules and procedures for the use of ADR mechanisms, particularly reconciliation to resolve disputes and armed conflicts.

It is submitted that the *sulh* reconciliation, though an Islamic-based practice of peacemaking, is a feasible and practical option under international likewise. The principles of peace, forgiveness and patience as espoused by the Islamic value for reconciliation are in line principles of humanitarian law. Therefore, for the practical adoption of Islamic *sulh* in the Yemen armed conflict, a sincere commitment of the state actors is necessary for the reconstruction of the nations and the rehabilitation of non-state actors. This is also in line with conventional and Islamic international laws that govern relations of nation Islamic and non-Islamic nation-states. Moreover, relevant principles of reconciliation under international law and UN auspices can be applied to monitor the implementation of resolutions in support of ending the Yemen armed conflicts. Further, Galtung has argued that the concept of *sulh* Islamic international law is complementary to the principles of reconciliation under conventional international and both can work mutually and conterminously.[82]

As it is observed with reconciliation in conventional or secular settings, the Islamic faith-based *sulh* is also contextualized to work between nations, Muslims and non-Muslims, and provides disputing parties with feelings of security and assurance by the neutral third parties that conduct the processes. The application of the principles of forgiveness and forbearance enables reaching a peaceful resolution through sequential adjustment towards each nation involved in *sulh*. Islamic and conventional peace scholars support this approach which is often described as a "workshop approach" because "full, successful reconciliation between alienated groups cannot take place without an adequate degree of genuine dialogue and conflict analysis of a mutual, interactive nature."[83] In this regard, while reconciliation proceeds, attention is focused on the dynamics of relationships which promotes an all-inclusive and more holistic approach to peacemaking. According to Lederach, reconciliation in international relations is "proactive in seeking to create an encounter where nations can focus on their relationship and share their perceptions, feelings, and experiences with one another, with the goal of creating new perceptions and a new shared experience."[84] Such are the goals of the Arab-Islamic *sulh* and the solution it provides for the management of armed conflicts between and/or among nations. However, to initiate, undertake and oversee the *sulh* process in the context of the Yemen armed conflicts, a special regional body would be required.

9. Need for a *Sulh* Implementing Body: The Place of the UN and International Law

It is submitted that - In practice, *sulh* can be initiated by either of the warring sides or parties in dispute or a neutral third party on the invitation of either of the warring sides or the neutral third party's own interest in peace and harmony. Given the current state of the conflicts between Saudi and Yemen, a third party is needed to initiate, undertake and monitor the *sulh* process. This third-party is naturally the UN will establish a body for this specific purpose. The body can be designated as a commission on Reconciliation and peace or a regional Commission on middle east conflict resolution.[85] Inspiration can be drawn from related regional institutions across the world and international instruments including Articles 2(3) and 33(1) of the UN Charter for the settlement of international disputes by peaceful means.[86] In addition, this is also in accordance with the UN General Assembly Resolution

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[80] Chechi, A. (2020). Alternative Dispute Settlement Mechanisms. In Francioni, F. and Vrdoljak, A. F. (Eds.). *The Oxford Handbook of International Cultural Heritage Law.* Oxford: Oxford University Press, pp. 718-736 at 720.

[81] Hausler, K. (2020). The Participation of non-state Actors in the Implementation of Cultural Heritage Law. In Francioni, F. and Vrdoljak, A. F. (Eds.).

[82] Galtung, J. (2001). After Violence, Reconstruction, Reconciliation and Resolution: Coping with Visible and Invisible Effects of War and Violence. In Nimer, M. A. (Ed.), *Reconciliation, Justice, and Coexistence: Theory and Practice,* Lanham: Lexington Books, pp. 3-23.

[83] Fisher, R. J. (2018). Social-Psychological Processes in Interactive Conflict Analysis and Reconciliation. In Jeong, H., (Ed.), *Conflict Resolution: Dynamics, Process and Structure*. London: Routledge, pp. 236. NB: The workshop approach involves parties in a workshop-styled negotiation to reach terms of resolution. According to Fisher, "in the context of an increased complexity of thinking and the establishment of a working trust, participants in interactive conflict resolution workshops often become able to openly recognize and accept responsibility for the actions of their side that caused hurt - physical, psychological, moral - in the other." - Fisher, *op cit*. p. 82. See also Lerche, C., (2000). Peace Building Through Reconciliation. *International Journal of Peace Studies*, Vol. 5 No. 2, pp. 61-76.

[84] Lederach, J. P. (1998). *Building Peace: Sustainable Reconciliation in Divided Societies*. Washington, D.C.: United States Institute of Peace, p. 306. See also Galtung, J. (2004). *Conflict Transformation by Peaceful Means (Transcend Method): Practitioners Manual,* New York: United Nations, pp. 6-7, available at https://www.transcend.org/pctrcluj2004/TRANSCEND_manual.pdf, accessed 22 October 2021.

[85] Beck, M. (2015). The End of Regional Middle Eastern Exceptionalism? The Arab League and the Gulf Cooperation Council after the Arab Uprisings. *Democracy and Security,* Vol. 11 No. 2, pp 190–207, Lanham: Lexington Books, pp. 161–176.

[86] The UN had served, though unsuccessfully, as mediator in the Israel-Palestine dispute in 1948. There are other relevant international law instruments in this regard. For instance, the 2nd Hague Conference 1907 on the right of neutral states to acts as mediators in international

2625 (XXV) of 24 October 1970 and the UN General Assembly Resolution 37/10 of 1982 respectively.[87] This body can work as a partner to the UN but with a degree of executive power and independence, so the concerned Arab states can work within the framework of the UN to chart out and implement resolutions that suit them and by themselves. Pinfari's arguments (should be noted) that poor integration of the sectarian and cultural dynamics of the Arab states is a major handicap and challenge in the current UN framework that obstructs the Arab states from fitting in well. Must be borne in mind during this process of institutionalization and governance[88] Thus, besides poor political will that causes unconscientious implementation efforts, peace initiatives and programs for the Middle east region were often untailored to suit the sectarian and cultural dynamics of the society. These are salient factors that underlie political interest and so deserve to be considered rather than overlooked via trivial attention and they need to be considered for Arab states to work within the framework of the UN system.

As the literature suggests, most peace initiatives failed in the Middle East due to the absence of such provisions within the framework coupled with an absence of an effective implementing body with requisite executive powers.[89] However, it is also submitted that none of these authors considered the role of the Arabic *Sulh*.

It is submitted that A regional body is needed for the Middle East that would bolster peace initiatives and ensure a conflict-free region or ensure a resolution of war without escalation. This body should comprise all nation-states in the Middle East and not necessarily Arab states.[90] Moreover, unlike the current Gulf Cooperation Council (GCC) and Arab League whose scope of operations and mandates are somewhat limited, a purpose-specific new body with practical political, cultural and social mandates as well as powerful oversight and coordination over peacebuilding in the region, should be established. This is to foster peace and cooperation to counteract disputes; forestall conflict escalation and influence conflict-provoking nations in the region.[91]

Regional institution building for peace, integration, and security, irrespective of sectarian idiosyncrasies, is premised on purposeful regionalism built on unified ideology and identity, of which the middle east appears to be ripened. As scholars often noted,[92] the ME appears to provide grounds for engendering a regional institution for peace and unity with a view to regional integration. This is because of a variety of shared factors which include cultural values, religious belief systems as well as historical, social, and racial concord. Culturally, the region speaks Arabic, a single mutually intelligible language, which is the mother tongue of the majority of the population. In terms of religious or sectarian values, the people share an adherence to Sunni Islam. Indeed, The absence of an institution or body with the requisite power to wield controlling authority for reconciliation and supposed cohesion of the region has led to no regionalism."[93] The Arab League remains one of the weakest yet due to its proven inability to play a desired role in the face of major economic, military, sectarian, and political crises in the region.[94] It is submitted that in view of the foregoing, the body needed for *sulh* in Yemen armed conflicts would be poised to counterbalance two particularly significant challenges facing institution building in the Middle East.

The first one relates to the connection between state-building and integration through the regional body. By dictate of history and the reality of the day, the fragmentation of the former Ottoman Empire has made the modern Arab

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conflicts,. Currently, there is Article 33 (1) of the UN Charter.

[87] These are provided for by the Declaration on the Principles of Friendly Relations and Co-operation among states 1970 in accordance with the UN Charter and the Manila Declaration on the Peaceful Settlement of International Disputes 1982.

[88] Pinfari, M. (2016). Regional Organizations in the Middle East. *Oxford Handbooks Online*, available at https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199935307.001.0001/oxfordhb-9780199935307-e-86?print=pdf, accessed October 2021.

[89] See Ehteshami, A. (2007). *Globalization and geopolitics in the Middle East: Old games, new rules*. London: Routledge, pp. 52; Peters, J. (1999). Europe and the Middle East peace process: Emerging from the sidelines. In Stavridis, S., et al. (Eds.). *The Foreign Policies of the European Union's Mediterranean States and Applicant Countries in the 1990s* London: Palgrave Macmillan, pp. 295-316.

[90] Greene, M. (2008). A force for peace in the Middle East. *Science*, Vol. 321, p. 1192;

[91] Ross, D. (2005). *The missing peace: The inside story of the fight for Middle East peace*. New York: Farrar, Straus and Giroux, pp. 591-592; Schwedler, J. (2013). Religion and Politics in the Middle East. In Schwedler, J., and Gerner, D. J. (Eds.). *Understanding the Contemporary Middle East*. Boulder: Lynne Rienner Publishers, pp. 377.

[92] See for instance Barnett, M., and E. Solingen. (2007). Designed to Fail or Failure of Design? The Sources and Institutional Effects of the Arab League. In Johnson, A. I. and Acharya, A. (Eds.). *Crafting Cooperation: Regional Institutions in Comparative Perspective*, New York: Cambridge University Press, pp. 180–220; Schulz, L. H., and Schulz, M. (2005). The Middle East: Regional Instability and Fragmentation. In Farrell, M. B. et al. (Eds.). *Global Politics of Regionalism: Theory and Practice*, Ann Arbor: Pluto Press, pp. 187–201; Tripp, C. (1995). Regional Organizations in the Arab Middle East. In Fawcett L. and Hurrell, A. (Eds.). *Regionalism in World Politics: Regional Organization and International Order*, New York: Oxford University Press, pp. 283–308.

[93] Aarts, P. (1999). The Middle East: A Region without Regionalism or the End of Exceptionalism? *Third World Quarterly,* Vol. 20 No. 5, pp. 911–925 at 912.

[94] Pinfari, *op cit.,* pp. 2-3.

state's political elites. Thus, almost all of the new states would not rely on the Arab identity rather than a strong national one. For this reason, even the creation of the Arab League, a foremost Middle East regional body, has often been observed as an effort by these elites to flaunt a public commitment in any way they view to clash with the interest of their respective newly formed states.[95] This attitude could affect any multilateral body established even for an ad hoc purpose for the region. It is a manifestation of the intricate interplay of regional institution building and state building in the Middle East where the latter happens in parallel with the former rather than being a prerequisite thereto.[96]

The second challenge would relate to the absence of political will and economic for a regional institution. In this regard, some scholars have observed that there is a peculiar low degree of political hegemony and intraregional economic exchange owing to the low level of complementarity of economies among the Arab states.[97] There is decreasing commitment towards pan-Arabism and regional integration in favour of territorial supremacy and national political interest. This is turning the Middle East from a functionalist path towards nationalistic political integration but at the expense of regional peace.

10. Conclusion

It is practically observable that, as the principles of ADR indicate, for each community of people or nation, suitable mechanisms to resolve their conflicts depend on sectarian, cultural, and historical factors. Cultural and religious societies commonly have varieties of informal and formal practices of conflict resolution which include consultation, negotiation, and arbitration among others. It is in this regard that *sulh* mechanism developed in cultural Arab societies to resolve conflicts. The *sulh* is a mechanism for reconciliation. With the advent of Islam in Arabia, this mechanism incorporates values of co-existence and mutual respect to live peacefully in a society.[98] Besides its traditional and cultural antecedents, *sulh* is rooted in the Islamic notion of the concept which derives its principles and inspiration from the main Islamic law sources, namely the Qur'an, the hadith and the Sunna of the Prophet Muhammad. Its practice is also based thereon. Both the Quran and hadith embody all theological, governance, political, social and justice among other philosophies of Islamic law. Thus, *sulh* reflects and stands for the unique sectarian and political context as well as social traditions of Arabia in conflict management. As evident in scholarly works, given its Arab cultural and Islamic undertones, the nature of *sulh* naturally speaks volumes preferred mechanism to address Arab nations' conflicts.[99] However, scholarly and especially popular literature on the Middle East shows an apparent lack of extensive coverage of the topic while pursuing a modern conception of ADR or rather gives little regard to the scope and relevance of the original Arab-Islamic *sulh*.[100] Available works of literature in this regard somewhat accord inadequate treatment of the subject of Islamic *sulh* in relation to addressing the current Middle east crises.[101] *Sulh* has been practiced in the modern-day middle east at

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[95] According to Barnett and Solingen (2007), it is on the basis of this attitude that right from the onset experts described the Arab League as "designed to fail" despite its ambitious framework. See Barnett, M., and Solingen, E. (2007). Designed to Fail or Failure of Design? The Sources and Institutional Effects of the Arab League. In Johnson, A. I. and Acharya, A. (Eds.). *Crafting Cooperation: Regional Institutions in Comparative Perspective*, New York: Cambridge University Press, pp. 180–220.

[96] Pinfari, M. (2014). Transnational Civil Society and Regionalism in the Arab World: More of the Same? In Fioramonti, L. (Ed.). *Civil Society and World Regions*, Lanham: Lexington Books, pp. 161–176.

[97] Shui, L., and Walkenhorst, P. (2010). Regional Integration: Status, Developments, and Challenges. In Lopez-Calix, J. R. et al., (Eds.). *Trade Competitiveness of the Middle East and North Africa: Policies for Export Diversification*, Washington, DC: World Bank, pp. 267–297; Schulz, H. L. and Schulz, M. (2005). The Middle East: Regional Instability and Fragmentation. In Farrell, B. M, et al., (Eds.). *Global Politics of Regionalism: Theory and Practice*, Ann Arbor: Pluto Press, pp. 187–201 at 189.

[98] Nimer, M. A., (2001). Conflict Resolution Approaches: Western and Middle Eastern Lessons and Possibilities. In Said, A. A., et. al., (Ed.), *Peace and Conflict Resolution in Islam: Precept and Practice*. Lanham: University Press of America, pp. 306.

[99] Nimer, M. A. (2006). Conflict Resolution in an Islamic Context: Some Conceptual Questions, *Peace and Change,* Vol. 21, no. 1, pp. 22–40.

[100] See for instance Nimer, M. A. (2006). Conflict Resolution Approaches: Western and Middle Eastern Lessons and Possibilities," *American Journal of Economics and Sociology,* Vol. 55, No. 1 pp. 35–55; Nimer, M. A. (2006). Conflict Resolution in an Islamic Context: Some Conceptual Questions, *Peace and Change,* Vol. 21, no. 1, pp. 22–40; Irani, G. (1998). Reconciliation and Peace: Rituals for the Middle East, *Middle East Insight* (September–October), pp. 24–26; Irani, G. (1999). Islamic Mediation Techniques for Middle Eastern Conflicts, *MERIA (Middle East Review of International Affairs) Journal* Vol. 3, No. 2, available at http://www.gloria-center.org/1999/06/irani-1999-06-01/, accessed 24 November 2021; Irani, G. and Funk, N. C. (1999). Rituals of Reconciliation: Arab-Islamic Perspectives, *Arab Studies Quarterly* Vol. 20, No. 4, pp. 53–73.

[101] Such literatures include Rasha, D., (2016). *Shades of Sulh: The Rhetorics of Arab-Islamic Reconciliation*. Pittsburgh: University of Pittsburgh Press, pp. 264; Irani, G. E., and Funk, N. C., (1998). Rituals of Reconciliation: Arab-Islamic Perspectives, *Arab Studies Quarterly*, Vol. 20, No. 4, pp. 53-73; Othman, A., (2017). "And Amicable Settlement Is Best:" Sulh and Dispute Resolution in Islamic Law, *Arab Law Quarterly*, Vol. 21, No. 1, pp. 64-90; Haugbolle, S. and Anders Hastrup, A. (2009). *The Politics of Violence, Truth and Reconciliation in the Arab Middle East*. London: Routledge, pp. 130; Krondorfer, B. (2018), *Reconciliation in Global Context: Why It Is Needed and How It Works*, New York: State University of New York, pp. 47-82; Mackintosh-Smith, T. (2019).

national and international levels as a mechanism of restorative justice and peacemaking. It worked with a certain degree of success. Moreover, for effective practice and implementation of *sulh* to address Yemen's armed conflict, a special Middle east regional body under the auspices of the UN is needed. As a neutral third party, the body would see to the process and conduct of *sulh* and its due implementation via consensual terms in a practicable framework over the course of a timeframe.

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