

Maritime Arbitration Under Islamic Principles

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Introduction

Maritime commerce has been central to economic activity across the Islamic world for centuries. From the Red Sea and Arabian Gulf to the Indian Ocean, Muslim merchants developed extensive trading networks involving ships, cargoes, freight, chartering and commercial contracts. As these activities expanded, Islamic jurisprudence developed mechanisms for resolving disputes fairly and efficiently. Classical Islamic law recognized **tahkīm** (تحكيم – arbitration), **ṣulḥ** (صلح – amicable settlement), and **‘urf** (عرف – recognized commercial custom). These concepts remain highly relevant today. Modern maritime arbitration can incorporate Islamic principles to create a dispute-resolution process grounded in justice, integrity and commercial practicality.

This article outlines the core Islamic concepts applicable to maritime arbitration and explains how they enhance the resolution of contemporary maritime disputes.

Tahkīm – Arbitration

Tahkīm refers to the parties' agreement to appoint a neutral decision-maker to resolve their dispute. The concept aligns with the

Islamic emphasis on fairness, consent and the peaceful settlement of disagreements.

In maritime contracts charter parties, bills of lading, shipbuilding agreements taḥkīm allows parties to embed an arbitration mechanism directly into their contractual relationship. This ensures that disputes are resolved by a tribunal familiar with maritime practice and guided by principles of justice and ethical conduct.

Core Islamic Principles Relevant to Maritime Arbitration

‘Adl – Justice

‘Adl (عدل) is a foundational Islamic value requiring impartiality, fairness and the avoidance of oppression. In maritime disputes, this principle is essential when assessing issues such as:

- responsibility for delay,
- cargo damage,
- demurrage,
- freight claims, and
- contractual performance.

An arbitrator applying ‘adl must evaluate evidence objectively and ensure that neither party is treated unjustly.

Amanah – Integrity and Responsibility

Amanah (أمانة) refers to trustworthiness and the proper discharge of responsibility. An arbitrator is entrusted with determining rights and

obligations; therefore, independence, honesty and professional competence are essential.

This principle reinforces the ethical dimension of maritime arbitration, where decisions often carry significant commercial consequences.

Ṣulḥ – Reconciliation

Ṣulḥ (صلح) encourages amicable settlement wherever possible.

Maritime commerce frequently involves long-term relationships shipowners, charterers, cargo interests, insurers and port operators may work together repeatedly.

Promoting reconciliation can preserve commercial ties, reduce costs and avoid unnecessary escalation. Even within arbitration, ṣulḥ can operate alongside adjudication, allowing parties to settle at any stage.

‘Urf – Commercial Custom

‘Urf (عرف) recognizes established commercial practice where it does not conflict with Islamic principles. Shipping is an industry built on custom: notice procedures, laytime calculations, port practices, vessel performance standards and documentation norms.

In maritime arbitration, ‘urf helps interpret contractual terms and understand how parties intended their obligations to operate in practice.

Why Arbitration Suits Maritime Disputes

Maritime disputes are often:

- international,
- technically complex,
- time-sensitive, and
- dependent on industry practice.

They may involve charterparties, demurrage, cargo claims, shipbuilding, salvage, towage, marine insurance or port operations. Arbitration allows parties to select decision-makers with maritime expertise and adopt procedures tailored to the nature of the dispute.

Advantages of Applying Islamic Principles in Maritime Arbitration

1. Ethical Integrity

Islamic principles such as 'adl and Amanah add an ethical dimension to arbitration. The arbitrator is expected not only to determine legal rights but to do so with fairness, honesty and responsibility.

2. Party Autonomy

Islamic arbitration respects the parties' freedom to agree on:

- number of arbitrators,
- language,
- seat,
- procedure, and
- applicable law.

This flexibility is particularly valuable in international maritime contracts.

3. Recognition of Maritime Custom

Through 'urf, legitimate commercial practices play a central role in determining rights and obligations. This is vital in maritime disputes, where custom often guides interpretation.

4. Efficiency and Practicality

Maritime disputes can become costly if prolonged. Islamic arbitration principles encourage structured procedures, timely decision-making and avoidance of unnecessary delay.

5. Reconciliation and Relationship Preservation

Ṣulḥ supports settlement and reduces hostility. In a sector where parties may have ongoing dealings, preserving relationships can be commercially advantageous.

Practical Application: A Demurrage Dispute

Consider a dispute between a shipowner and charterer regarding demurrage due to port delays. A tribunal applying Islamic principles would examine:

- the charterparty,
- laytime provisions,

- notices,
- statements of facts,
- port records,
- vessel logs, and
- correspondence.

The tribunal would determine contractual rights while considering maritime custom (‘urf), fairness (‘adl) and the possibility of amicable settlement (şulh).

This approach applies equally to cargo claims, freight disputes, shipbuilding contracts and other maritime matters.

Islamic Principles and Modern Arbitration Frameworks

Islamic arbitration today often operates within internationally recognized procedural frameworks. While Islamic principles guide the ethical and substantive dimensions of the dispute, modern arbitration rules whether ad-hoc or institutional provide structure, neutrality and enforceability.

The enforceability of any award ultimately depends on:

- the arbitration law of the seat,
- the parties’ agreement, and
- the jurisdiction where enforcement is sought.

Careful drafting of arbitration clauses remains essential.

Conclusion

Islamic maritime arbitration brings together two traditions:

1. **the long history of Islamic commercial jurisprudence**, and
2. **the practical needs of modern maritime commerce**.

The concepts of taḥkīm, ‘adl, amānah, ṣulḥ and ‘urf offer more than terminology they provide a principled foundation for resolving maritime disputes with fairness, integrity and commercial realism.

For maritime parties operating in or with Islamic markets, these principles offer an opportunity to adopt an arbitration process that is not only effective, but also rooted in justice, ethical conduct and respect for established maritime practice.

References

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