Resolving Clan-Based Disputes Using the **SULHA**, the Traditional Dispute Resolution Process of the MIDDLE EAST

BY DORON PELY

Many of the customs practiced in the Middle East go back thousands of years. To people who do not live there, these customs are virtually unknown. One little-known custom that pre-dates Islam is the *Sulha* ritual. This is a method of resolving disputes used in many parts of the Middle East. The *Sulha* provides the path for reconciliation between the extended families of the disputants, whereas either *Sharia* law and/or formal legal systems are used to adjudicate disputes between individuals, or between disputants and the state. The need for a special “clan-level” process arises from the strong affiliation among family members that exists in much of the Arab world. The result of this affiliation is that disputes between individuals automatically become disputes between clans.

Unlike the *Sharia* courts, the *Sulha* process is an informal conflict resolution mechanism. Many different kinds of disputes can be resolved through *Sulha* dispute resolution, including business, financial and consumer conflicts, although many disputes arise out of acts of violence, including murder. Much of the information about the *Sulha* involves the more extreme murder cases. For this reason, this article examines the *Sulha* process and looks at its similarities and differences from modern ADR.

The traditional informal conflict resolution method in the Middle East is called *Sulha*, which means “peace” in Arabic. This process is specifically designed to resolve conflicts between the familial clans to which the disputants belong (called *Hamula* in Arabic). Although the process employs techniques that are similar to mediation and arbitration as used today throughout the world, it also differs in major respects. This article examines the *Sulha* process and looks at its similarities and differences from modern ADR.

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Information in this paper is based on interviews Mr. Pely conducted with Sheikh Farage Khneifes, a member of the Sulha Committee of the Arab community in the north of Israel, and Sheikh Hamis Mabmud Abu Saaluk, Sulha Maker in the Bedouin and West Bank communities in Israel. Mr. Pely also drew on information from the literature, especially Elias J. Jabbour’s *Sulha—Palestinian Traditional Peacemaking Process.*
dispute resolution, according to Sheikh Farage Khneifes, a member of the Sulha Committee of the Arab community in the north of Israel. The reason for this, he explained, is that it small, relatively less severe conflicts are not dealt with at their inception, they might grow to become major conflicts. The communal approach to conflict is based on taking several days or even a week of being without an individual means hurting the entire community. One author wrote that the Sulha “stresses the close link between the psychological and political dimensions of communal life through its recognition that injuries between individuals and groups will fester and expand if not acknowledged, repaired, forgiven and transcended.”

The Encyclopedia of Islam gives the word “peace” two distinct meanings in Arabic. Salaam and Sulha. Salaam refers to the abstract notion of peace, while Sulha refers to the literal act of settlement. As we will see, the Sulha process involves both parts of this definition.

The Sulha Committee

The Sulha ritual is conducted by a Sulha Committee called the Jaha. When the Jaha draws its power from the positions its members hold in the community, and from the fact that it never operates without the explicit authorization of the disputants, which generally are the families of the victim and the offender.

The Jaha is made up of respected men of standing in the community, men with a reputation for honesty, even-handedness and intelligence. Women are not permitted to serve on it. The Jaha is headed by its most experienced member (in most cases, also its eldest member). This person is charged with managing the Jaha’s activities and steering the disputing parties on the sometime rocky road to an agreement. Success can depend on the clout the Jaha leader has in the community. The literature indicates that a Jaha can have one member or more, even as many as 20. It is desirable to have members who can influence the disputants to increase the chances of resolution.

According to Sheikh Khneifes and Sheikh Hamis Mahmud Abu Saaluk, a Sulha maker in the Bedouin and West Bank communities in Israel, the disputants can veto the participation of a particular person on the Jaha. Ordinarily, the offender’s family has the greatest input in this matter.

Initiating the Jaha

If a conflict involves family matters, it may be adjudicated between the individual disputants in religious court. If a conflict involves a criminal offense, the matter must be brought in criminal court (a Sharia court if Sharia is the official law of the land). In both situations, the conflict is likely to provoke a dispute between the clans to which the victim and offender belong. The Sulha process will address the clan-level dispute.

The Sulha is not marshaled automatically following an impropriety or crime. Before the Jaha can act in an official capacity, two distinct steps must be performed. Step one is that representatives of the offender’s family must contact a member of the local Jaha to request an intervention and authorize the Jaha to meet with the offender’s family (not the offender) about the problem.

The ritual requires the offender’s family to state that, on its own behalf and that of the offended party, it takes responsibility for the offender’s deed, it feels regret for that deed, and it seeks a reconciliation with the victim’s family. The tradition calls for the Jaha to respond by saying, “You requested that we intervene. We, as a Jaha, want to hear your authorization and to receive it in writing.”

The next step is for the offender’s family to give the Jaha irrevocable written authorization, called a Taffwith in Arabic. This document has two parts. The first part authorizes the Jaha to act on behalf of the offender’s family in approaching the victim’s family and conducting the Sulha. The second part contains the offender family’s request that the Jaha be authorized to act, whatever verdict the Jaha reaches. The Taffwith states: “[I, the offender’s family representative] accept that my case will be in your hands, and that it is now on your conscience, and I will accept any ruling you issue in this case.” On occasion, the offender’s family has to deposit a bond as an additional assurance of its agreement to abide by the Jaha’s ruling.

If the offender’s family fails to promptly contact the Jaha, one of the Jaha’s members, or a village elder, could decide that the situation is sufficiently grave (such as when there is a risk that a member of the victim’s family might attempt to retaliate against the offender’s family) to contact the Jaha’s regulations to start its members, relatively small, temporary cessation of hostilities. At times the Jaha may decide to perform a ritual to help the offender’s family to abide by the Jaha’s verdict. Frequently, Taffwith is an irrevocable written authorization given by the offender’s family to secure its agreement to abide by the Jaha’s verdict. Taffwith: an irrevocable written authorization given by the offender’s family to an agreement to abide by the Jaha’s verdict.

The Ancient Practice of Tarhil

Before beginning negotiations with the two families, the Jaha may decide that the situation between the disputants is volatile enough to merit using a Tarhil, which is Arabic for “leaving the place,” meaning the relocation of the offender’s family. Another Arabic term for this is Jaha, which means “departing under duress.” According to Sheikh Khneifes, in nomadic times, the offender’s family might be asked to pack up its tent and move far away from the tent of the victim’s family to reduce the potential for anyone to get hurt.

Today, Tarhil is practiced less and less, for social and practical reasons. For one thing, it is difficult to uproot and move large families. But it is still practiced when the Jaha decides that it is necessary, usually when the disputing families reside across the street from each other. The Jaha members use their connections and clout to help find a proper refuge for the offender’s family when needed.

Negotiating a Ceasefire

The Jaha’s initial goal is to persuade the families of the victim and offender to agree to a temporary ceasefire, called a Hudna (or Hudna) in Arabic, during which the Jaha can conduct an investigation of the dispute leading to a verdict and obtain the agreement of the two families to abide by it. Negotiating the Hudna involves the use of shuttle diplomacy, akin to mediation of today.

To facilitate reaching a rapid Hudna, the Jaha sometimes uses evaluation methods, and when unsuccessful, it may resort to some unconventional methods. For example, it could invite influential persons who are not Jaha members to intercede on behalf of the disputants to urge them to agree to a Hudna. In rare instances the Jaha may ask the police in confidence to “extend” the detention of the offender (if he is detained at the time) in order to pressure the offender’s family to agree to a Hudna. (The implication is that agreeing to a Hudna could be considered by a judge who is deciding a change in detention status.)

The term of a Hudna depends on the judgement of the Jaha and the disputants. Usually, the initial Hudna remains in effect for a short period. According to Sheikh Abu Saaluk, if the disputants agree to a settlement agreement, the Jaha can negotiate one or more extensions, as necessary.

A Token Payment of Good Faith

However, the Hudna does not become immediately effective. The Sulha process generally requires the offender’s family to pay a symbolic cash advance, called an Arwa in Arabic, to the victim’s family, in an amount determined by the Jaha. The Arwa is in addition to any payment made by the offender’s family to secure its agree- Relevant Terms Translated from Arabic to English

Atwa: a token of good faith; also a symbolic cash advance the offender’s family gives to the victim’s family when the Hudna (ceasefire) is negotiated.

Dye: “blood money.”

Jaha: the Sulha Committee.

Jala: same meaning as Tarhil.

Hudna: a ceasefire agreement between the families of the victim and offender that enables the Jaha to investigate the dispute.

Mumalacha: a ceremonial meal that ends the Sulha process, attended by the families of the victim and offender.

Musafoha: in the context of the Sulha, a handshake between the families of the offender and the victim.

Musafoha: reconciliation, forgiveness.

Tawor: final compensation paid by the offender’s family to the victim’s family.

Taffwith: an irrevocable written authorization given by the offender’s family that allows the Jaha to intercede with the victim’s family and to conduct the Sulha; also a commitment by the offender’s family to abide by the Jaha’s verdict in the matter.

Tarhil: leaving a place; also a forced relocation of the offender’s family to a place away from the victim’s family.
The Sulha process is different from mediation in that once the parties agree to participate, they are bound to accept the Sulha Committee’s verdict.

The Sulha process begins with the appointment of the Sulha Committee, which consists of members of the families of the victim and the offender. The Sulha meets publicly and privately to discuss the dispute and to determine the compensation and reconciliation terms. The Sulha process is different in that the parties agree to participate, they are bound to accept the Sulha Committee’s verdict.

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The Sulha ritual is similar to both mediation and arbitration in that it cannot be used without the parties’ agreement. It also uses some mediation-like techniques.

Confidentiality

Without confidentiality, witnesses and others would be unlikely to trust and confide in the mediator. Thus, the Sulha process differs from modern arbitration and settlement procedures that use anonymity. Some confidentiality protection is desired by parties who are seeking alternative dispute resolution. In Western mediation, where the mediator often holds an open session, the parties can vent their feelings, teaching each other that they share similar feelings of anger and frustration. This can help to clear the way so that they can move to a possible solution.

Nevertheless, venting before the Sulha is still important and can lead to increased trust for reconciliation. To allow this to happen, the parties must be patient and tolerant of verbal and possibly physical abuse by the victim’s family.1

The Sulha ceremony and verdict stages are more like arbitration, with touch-ups of mediation. For example, although the Sulha determines the facts and decides the verdict (like arbitration), it will avoid coming up with a verdict that would not be acceptable to both disputants. Its goal is to generate a narrative that both sides can agree with (like mediation), as well as an acceptable verdict (like arbitration). Both families will abide by it. It will negotiate the verdict with a family that is dissatisfied with the verdict. The instrument of coercion in the Sulha process are the written and verbal commitments the disputing clans give the Sulha, obliging them to agree to the Jaha’s verdict. According to Sheikh Abu Saaluk, this obligation may be enforced by the honor and reputation of the other family at the beginning of the process.

But the strongest leverage available to the Jaha is its clout in the community and the threat of losing respect and social standing by refusing to abide by the Sulha verdict. These consequences may seem trivial to a Western observer, but in a tribal culture, honor and respect are central elements, so the threat of shame or lost honor can provide considerable leverage.2 They also provide motivation to carry out the terms of the Sulha Agreement.

Neutrality

Neutrality (i.e., the sense that the mediator and arbitrator are impartial) is also central to the effectiveness of western arbitration and mediation. There are neutral-selection and neutral-arbitration challenge procedures designed to protect the parties from mediators and arbitrators who could be biased. According to Sheikh Khnifes, neutrality is also important to the Sulha process. Since the Jaha is supposed to reach a binding decision about the dispute, both sides of the dispute should feel that the members of the Jaha will be neutral. A tool that can facilitate neutrality is the right of the parties to veto members of the Jaha. The Jaha is obligated to respect such a veto and replace a vetoed member with one that is acceptable to both sides. The Jaha could also seek location-neutrality by holding private caucuses at a location that is not associated with the dispute or either side.

What mediators and arbitrators can do is promote resolution. Jaha members are permitted to testify about such things if they are not incriminating. It cannot be used without the parties’ agreement. It also uses some mediation-like techniques.

1 There is evidence linking the Sulha to early Semitic writings and Christian Scriptures dating from the first century. Elias D. Jabbour, Sulha Palentian Traditional Procedure (2003); Another pre-Islamic conflict resolution tradition is known as Tahkim. The Tahkim arbitration procedure is similar to the Sulha, but with less mediation and more arbitration. Tahkim is similar to the Bedouin Qadhi system in which religious judges who are officials of the state apply the law of Islam within the Muslim community. The Qadhi institution took over as the state-authorized method of conflict resolution. See J. F. Barret & J. Barrett, A History of Mediation and Alternative Dispute Resolution, The Roots of ADR, The Deciding Stone to the European Law Merchant 13-14 (James Bass 2004); A. Lysaght & A. Shmueli, “Shar’i in the Bedouin Family According to Local Documents from the Bedouin settlements in the Judean Desert,” 62(2) Bib. Sch. Oriental & Afr. Stud. 29-45 (Univ. of London 1979).

2 Sulha is used in Lebanon and throughout the Arab community in Israel. In Jordan, it is the officially recognized conflict resolution tradition of the Baladn tribe. The Sulha process differs slightly between regions.

3 Jabbour, supra n. 3, at 26.


5 The Encyclopedia of Islam 841-46 (P.J. Bearman et al., eds. Brill, 1997).

6 Jabbour, supra n. 1 at 28.

7 Id. at 31.

8 According to Sheikh Khnifes.

9 Jabbour, supra n. 1 at 32.

ENDNOTES
Court Decisions
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After disputes arose and mediation failed, C&W filed a demand for arbitration with the AAA. The tribe agreed to arbitrate C&W’s claims under all four contracts. It even filed counterclaims under the fourth contract, the one that did not contain an arbitration clause. In addition, it did not assert sovereign immunity as a defense under the fourth contract.

But before the hearings commenced, the tribe moved to dismiss C&W’s claims under the fourth contract, asserting sovereign immunity. The arbitrator denied the tribe’s motion after concluding that the tribe waived its immunity. The arbitrator subsequently issued an award in favor of C&W. C&W moved to confirm the award in a South Dakota state court. The court confirmed the award as a default judgment since the tribe declined to participate in the confirmation proceedings.

After that, the tribe had the award vacated in its tribal court. Separately, it filed an action in federal court seeking a ruling that the state court lacked jurisdiction to consider C&W’s motion to confirm the award. The district court agreed with the tribe and issued a permanent injunction enforcing the award in South Dakota’s courts. The 8th Circuit reversed. First it noted that in C & L Enterprises v. Citizen Band Potawatomi

Indian Tribe (312 U.S. 411, 2001), the Supreme Court found that entering into an arbitration agreement is a clear waiver of tribal immunity to a state court enforcement action. The High Court reasoned that the arbitration agreement would be meaningless if a tribe could avoid complying with an award by asserting sovereign immunity.

The 8th Circuit also pointed out that the AAA arbitration rules provide that an award may be confirmed by a state or federal court with jurisdiction. It concluded that by agreeing to AAA rules in three contracts, the tribe subjected itself to the procedures contained in those rules. “If a tribe were allowed to operate under AAA rules, and after an adverse decision assert sovereign immunity and then walk away, it would convert sovereignty from a shield into a sword,” the court said, stressing that “[s]overeignty does not extend so far.”

With regard to the fourth contract, which had no arbitration clause, the 8th Circuit found that the tribe voluntarily agreed to arbitrate disputes when it asserted its own counterclaims under that contract.

Finally, the court held that under the AAA rules, South Dakota’s courts had jurisdiction to enforce the award. It reasoned that when the tribe agreed to AAA arbitration and then participated in the South Dakota arbitration, it acquiesced in the arbitrator’s decision, placing jurisdiction over the award in South Dakota’s courts.