



Middle East Review

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of the American Bar Association Section of International Law

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From the Co-Chairs

Dear Colleagues and Friends of the Middle East Committee:

This August marked the start of the American Bar Association 2016-2017 leadership year. With new and returning leaders, members, and friends, the Middle East Committee (the “Committee”) has been off to an active start. In August, the Committee co-sponsored a successful program on arbitration at the Rio Olympics, organized by the ABA Section of International Law’s International Arbitration Committee. In September, a Committee program on lawyer ethics and professional responsibility in the wake of the Panama Papers was accepted as a CLE program for the Section of International Law’s 2017 Spring Meeting. On November 16, a Committee-led program co-sponsored by the ABA Section of International Law, [“Iran After Sanctions and U.S. Elections: Legal, Risk, and Practical Issues for Business,”](#) will be held in Washington, D.C.

We look forward to keeping Committee colleagues and friends abreast of developments. For now, we are pleased to share this pilot issue of the Middle East Review. We are grateful to this publication’s Editor, Associate Editors, and authors for their contributions.

Finally, we extend our sincere thanks and continuing collegueship to our immediate past Committee Vice-Chairs, whose contributions to the Committee have been most valuable.



Hdeel Abdelhady

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Judge Delissa A. Ridgway

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From the Editors

Welcome to this pilot issue of Middle East Review (“MER”) a new publication of the Middle East Committee of the American Bar Association Section of International Law. We are pleased to share with Committee members and friends this first installment of the MER. The content of this issue reflects the diversity of our members and the countries, developments, and issues that are within the wide geographic and substantive scope of the Middle East Committee.

We invite Committee members and other readers to submit feedback on this issue of the MER, as well as articles and suggestions for future issues to us by email at ABA.MENAnews@gmail.com.

We hope you enjoy this issue of the MER. Please note that the views and opinions expressed in the articles herein are those of the authors and do not necessarily reflect the opinions, policies or positions of the American Bar Association or any of its constituent entities, including the Middle East Committee.



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Associate Editor

About the Middle East Committee

The Middle East Committee is part of the American Bar Association's Section of International Law. Members of the committee have a professional or personal interest in law and events concerning the Middle East. The geographic scope of this committee encompasses North Africa, the Gulf Cooperation Council (GCC), Afghanistan, Iran, Iraq, Israel, Jordan, Lebanon, Pakistan, Palestine, Sudan, Syria, Turkey, and Yemen. The Committee conducts regular substantive conference calls for members, maintains an active email list, and organizes panels for Section events. It has also helped organize and support various Rule of Law/judicial reform initiatives, including for Afghanistan, Iraq, Morocco, and Tunisia. Recent teleconferences have addressed the refugee crisis and responsibility to protect in Syria, political and security developments in Egypt and Libya, application of US employment law in the Middle East, and US and international sanctions, among other issues. To learn more, visit the [Committee's website](#).

2016-2017 MIDDLE EAST COMMITTEE LEADERSHIP

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BUSINESS LAW AND PRACTICE

Saudi Arabia – New Companies Law

Amgad Husein¹
Anas Akel²
Jonathan Burns³

Introduction

The companies law regime in Saudi Arabia has been governed completely by a single codified companies law that was originally issued in 1965 (the **1965 Companies Law**), with occasional minor amendments. However, by Royal Decree dated 10 November 2015, Saudi Arabia adopted a completely new codification of its companies law regime (the **New Companies Law**), totally replacing the existing 1965 Companies Law.

The New Companies Law came into effect as of 2 May 2016 and, pursuant to Article 224 thereof, existing companies have one year thereafter to come into compliance therewith.

Key Changes

Adoption of the New Companies Law has resulted in several important changes to Saudi Arabia's existing companies law regime. Among these are changes to company ownership structures, as well as criminalization and penalization of particular acts. Companies doing business in Saudi Arabia should understand and start coming into compliance with all provisions of the New Companies Law promptly.

Single Owner Companies

Under the 1965 Companies Law, the corporate forms that were available for incorporation could only be owned by a minimum of two partners, owners, or shareholders. Joint stock companies (**JSCs**) (which are most akin to the standard corporation used in the USA) required a minimum of five shareholders. Nonetheless, sole proprietors of Saudi or Gulf Cooperation Council (**GCC**) nationality can obtain registration as an "establishment," while foreign investors can set up a wholly owned "branch" office as a matter of policy. However, establishments and branches are not officially recognized corporate forms in Saudi Arabia.

Now, under the New Companies Law, a single shareholder may incorporate a wholly owned limited liability company (**LLC**), while a non-government (*i.e.*, non-government owned entity) single shareholder may incorporate a JSC with a minimum paid-up capital of SAR 5 million (about USD 1.3 million). However, there are restrictions on singly owned entities. Namely, a natural person may not be the sole shareholder in more than one single owner LLC, and an LLC owned by a single shareholder (whether natural or legal) may not be the sole shareholder in a subsidiary LLC.

Increased Liability for Criminal Acts

The 1965 Companies Law provided for criminal sanctions with penalties ranging from fines of SAR 1,000 – 5,000 (USD 267 – 1,333) for certain low-level offenses, to fines of SAR 5,000 – 20,000 (USD 1,333 – 5,333) and/or imprisonment for a period of 3 – 12 months for certain high-level offenses. Conviction of a high-level offense generally required some degree of malicious intent or purpose to defraud.

Under the New Companies Law, individuals now face the possibility of substantially more severe sanctions.

Acts designated as criminal may now carry penalties of imprisonment for up to 5 years and fines up to SAR 5,000,000 (about USD 1.3 million), thus dramatically increasing the historic criminal sanctions under the 1965 Companies Law.

Moreover, low-level offenses are now subject to a much higher fine of up to SAR 500,000 (USD 133,333), as compared to the previous ceiling of just SAR 5,000 (USD 1,333).

In addition, under the 1965 Companies Law, penalties involving imprisonment generally required some level of malicious intent, *mens rea*, and / or purpose to defraud. However, under a literal reading of the New Companies Law, mere negligence without any intent can be grounds for imprisonment.

A number of these sanctions are aimed specifically at officers, directors, auditors, and liquidators of Saudi Arabian companies, while some apply generally to any third party.

For example, a shareholder or director (or a proxy thereof) in a Saudi Arabian company who accepts or agrees to accept a bribe in return for abstaining from voting or voting in a particular way for a certain matter, as well as the individual who offered or gave the bribe, faces a fine of up to SAR 500,000 (USD 133,333).

As another example, an auditor who fails to notify a Saudi Arabian company of any civil or criminal violations discovered during the audit process faces a fine of up to SAR 1,000,000 (USD 266,666) and/or imprisonment for up to 1 year. In addition, the same sanctions would apply to anyone who uses a Saudi Arabian company to carry out any activities other than the activities for which it has been authorized. This could, for example, apply to a General Manager of a consulting services company who signs a contract binding the company to sell goods to a third party.

As a further example, any officer, director, auditor, or liquidator who provides false or misleading information, or fails to include material information in the company's financial statements, or reports for submission to the shareholders or general assembly faces a fine up to SAR 5 million (USD 1.3 million) and/or imprisonment up to 5 years.

Conclusion

In conclusion, the above-mentioned restrictions on ownership structures and criminal acts under the New Companies Law represent two of the most significant changes to Saudi Arabia's companies law regime. In addition, the New Companies Law brought in several additional substantive and technical requirements, which companies doing business in Saudi Arabia should understand and start coming into compliance with promptly pursuant to Article 224.

BUSINESS LAW AND PRACTICE

“Short Form” Agreements under Arab Commercial Agency Law: Some Legal and Practical Issues

Howard L. Stovall¹

I have generally found that Arab businesspersons tend to prefer shorter agreements, relative to their Western counterparts. This preference also seems to apply to local commercial agency agreements. The specific preference in the Arab Middle East for shorter commercial agency agreements might be attributed, at least in part, to local registration requirements under Arab commercial agency laws. (“Commercial agency” is defined somewhat differently in each Arab jurisdiction, but generally includes a local commercial representative who, by virtue of his or her typically independent status (not as an employee), undertakes promotion and/or negotiation to effect sale, purchase or lease transactions on behalf of a foreign business).

When Western businesspersons propose their longer form commercial agency agreements to Arab parties, the latter have often countered with their own standard short form agreements. Sometimes, Arab commercial agents have signed a Western principal’s long form agreement on the condition that the parties also execute a short form commercial agency agreement.

This article briefly discusses some of the implications of using such short form commercial agency agreements, including when short form agreements exist alongside long form agreements.

Registration Requirements

Most Arab countries have enacted special legislation governing commercial agencies, and describing certain qualification requirements, including a requirement to register the commercial agency within a special registry at the Ministry of Commerce in the relevant country.²

As part of the registration process, the commercial agent usually must submit a copy of the parties’ commercial agency agreement. The commercial agency agreement must be drafted in Arabic or accompanied by an Arabic translation. Preparing this Arabic translation could be relatively costly if the parties’ commercial agency agreement is lengthy, and a local commercial agent would usually prefer to avoid incurring this translation cost.

In some Arab countries, the local registrar will undertake a substantive review of the parties’ agreement submitted for registration, and might reject certain terms deemed to conflict with local law. As a result, many local commercial agents will prefer to keep their agreements simple, short and basic, to avoid the scrutiny (and possible rejection) by registration officials. More recently, however, most registration officials have significantly reduced their scrutiny of commercial agency agreements submitted for registration.

Strictly speaking, a commercial agent conducting business under an unregistered commercial agency agreement is often in breach of the relevant local commercial agency law. Arab commercial agency law usually states that a person performing commercial agency in violation of the law’s requirements (including the requirement to register the agreement) will be subject to a fine and, in some circumstances, the closing of its business.³ In practice, however, many agreements are not registered. Local government authorities in most Arab countries have not actively tracked down or punished unregistered commercial agents.

Alternative Approaches to Registration

Considering the above, a local commercial agent is often faced with certain alternatives, *e.g.*: operating under an unregistered long form commercial agency agreement, incurring the expense of translating that long form to register it under the commercial agency law, and/or convincing its foreign principal to sign a short form agreement that can be registered without incurring those translation costs.

A Western principal should usually insist that its Arab commercial agent sign an agreement that fully and thoroughly addresses the rights and obligations of the parties. Such an agreement is customarily reflected in the Western principal's standard long form agreement, with any amendments negotiated by the parties to reflect their relationship and jurisdiction.

If a Western principal should nonetheless contemplate the use of a short form commercial agency agreement for registration, at least such a short form should contain the most crucial and important provisions of the parties' agreement, including: territory, products, exclusivity, commission rate, no authority to bind the principal, effective term, just cause for termination, compliance with law, governing law and dispute resolution. The short form agreement should also be consistent with any unregistered long form commercial agency agreement executed by the parties.

In some instances, local customers in the Arab Middle East (particularly local government ministries and public sector departments) will only transact business with authorized commercial agents. However, some of these customers are willing to accept a short "To Whom It May Concern" letter on the Western principal's letterhead, confirming that the local commercial agent is duly authorized to assist the Western principal in its product promotion and sales. Of course, such a short form letter should accurately reflect the substance of the parties' underlying detailed commercial agency agreement, and also contain an explicit cross-reference, along the following lines:

Commercial Agent is authorized to act in accordance with the terms and conditions of our International Commercial Agency Agreement dated [specific date], which reflects the detailed contractual relationship between Commercial Agent and Principal, including Commercial Agent's rights and responsibilities in this regard.

Such a provision should serve as a safeguard to significantly reduce the risk that the short form letter, by itself, would be deemed the entire "agreement" between the parties.

"Dealer Protections"

Many Arab commercial agency laws are known for the "dealer protections" offered to local commercial agents, most notably the right to claim compensation in the event the foreign principal decides to terminate (or not renew) the commercial agency without fault by the commercial agent.

For a local commercial agent in some Arab jurisdictions (such as the UAE and Qatar), there is a potentially significant disadvantage of operating through an unregistered commercial agency—an unregistered commercial agent would not enjoy the statutory dealer protections available under the local commercial agency law. Otherwise, the unregistered commercial agency should be treated as an enforceable agreement under general principles of contract law.

This has led to an interesting dichotomy in those jurisdictions: the notion that two types of commercial agencies exist under local law—registered agencies and unregistered agencies. Anecdotal evidence suggests that it is becoming increasingly common for foreign principals to structure their commercial sales activities in these countries through unregistered commercial agencies, thereby placing the relationships outside the dealer protections of the local commercial agency law.⁴

In other Arab countries, the failure to register the commercial agency will not affect the parties' rights to raise "dealer protection" claims under the commercial agency law. For example, the Kuwaiti Court of Cassation has consistently ruled (going back at least to 1992) that registration is not a condition to a commercial agent's entitlements under Kuwaiti law, including a commercial agent's claim for compensation upon the foreign principal's unjustified termination or non-renewal of the arrangement. (However, under Article 6 of the very recent new Kuwaiti commercial agency law, Law No. 13 of 2016, a commercial agency relationship will not exist as a matter of law unless registered in a special register at the Ministry of Commerce.)

Some Short Form Practices to Avoid

A Western principal should be particularly concerned if provisions in a registered short form commercial agency agreement are contrary to, or substantially inconsistent with, the provisions of the parties' related but unregistered long form agreement. For example, a company might not be able to rely on a "non-exclusivity" clause in an unregistered commercial agency agreement if the registered agreement provides for exclusivity. (Under civil code principles in many Arab countries, when contracting parties hide an actual (*e.g.*, non-exclusive commercial agency) contract behind an apparent (*e.g.*, exclusive commercial agency) contract, the actual contract will bind the contracting parties. However, third parties acting in good faith may rely on the apparent contract.)⁵

Egypt is a jurisdiction giving rise to a number of short form commercial agency requests. For example, many Egyptian commercial agents present short one-page documents to their Western principals, requesting a signature and full legalization from the latter. Although these one-page letters barely address any of the commercial aspects of the relationship, they usually include a specific undertaking by the principal "to inform the proper Egyptian embassy or consulate located in the principal's country of residence of any amendments to the agreement." Such specific language, which is a unique requirement under the Egyptian Commercial Agency Law, indicates that the Egyptian commercial agent is seeking to register that short form agreement in the local commercial agency register.

In recent years, Egyptian registration officials have accepted registration applications from commercial agents but not from distributors. This has given rise to some short form agreements in which an Egyptian distributor attempts to re-characterize the parties' arrangement as a commercial agency. (The primary advantage of registration in the Egyptian Commercial Agency Register is that the registered agent may be entitled to certain "dealer protections" in the event of termination or non-renewal.)

We have also seen Egyptian commercial agents propose short form agreements intended for registration that state the commercial agent's commission as a low percentage (say, 1%) of product sale price, while the unregistered long form commercial agency agreement actually states that the commission would be a significantly higher percentage. Such a misstatement of commission in the registered agreement would pose risks not only vis-a-vis government officials within the Egyptian commercial agency register, but conceivably with other government departments as well—such as an Egyptian government customer of the Western principal, or Egyptian income tax authorities.

GLOBAL EXPERIENCES: RULE OF LAW

Revolution, Turmoil and Mixed Stability in Egypt: ABA Rule of Law Development Programming and Institutionalization 2012-2016

Gregg B. Brelsford¹

Revolution, Turmoil and Mixed Stability

Scrambling to pack for evacuation from the violence exploding in Cairo, Egypt on 14 August 2013, I agonized about the prospective future of the ABA Rule of Law Initiative-Egypt (ROLI-Egypt) programs I was managing.² My American colleague and I rushed before dawn to the airport, passing tear gas canisters, half-standing barricades, and burned cars that littered the streets from earlier clashes. Hours later the Egyptian government removed thousands of protesters from encampments in two public squares. Many soldiers, policemen, and protestors died that day.³

We evacuated to Amman, Jordan, not knowing if we would come back. After two weeks we returned to a 7:00PM to 6:00AM curfew, during which the streets of Cairo, an urban entity of 20 million, were completely deserted, and the nightly gunfire of earlier weeks reduced.

General Abdel Fattah el-Sisi headed the transition government created after President Mohamed Morsi's July 3 departure, and immediately started a campaign to stabilize Egypt. He cracked down on terrorist bombings, economic sabotage, and assassinations of government officials. The government declared the Muslim Brotherhood, which was composed of many Morsi supporters, a terrorist group and arrested, detained and prosecuted many of its members.

Sisi's success in stabilizing much of Egypt led to his election as President in 2015. However, stability was not certain. The northern Sinai Peninsula remains a restive zone and theatre of terrorist groups. Occasional assassinations and terrorist bombings continue.⁴ Nevertheless, daily life in Egypt has largely returned to normal. At the same time though, Egypt continues to be a target of terrorism and no one can predict whether further terrorist events will occur.

ABA Rule of Law Development Programming and Institutionalization 2012-2016

Over a roughly four-year period, beginning in 2012, I led the ROLI-Egypt Innovation in Legal Education (ILE) and the Interactive Teaching Training of Trainers (IAT TOT) programs. In the ILE we taught practical lawyering skills to young lawyers and law students.⁵ The skills training courses (CLE) included client interviewing, legal analysis, legal writing, contract drafting, negotiation, oral advocacy, and arbitration.⁶ We also created both the Arabic-language national moot arbitration and legal writing competitions for all of Egypt's 13 public law schools⁷ and supported the start-up of three first generation Egyptian law student clinics. Some participating law students said these interactive experiences were the highlight of their law school careers. Additionally, we pioneered the use of on-line CLE classes and the use of social media in Egypt-based legal skills training.⁸



Source: Gregg Brelsford. Professor Brelsford training Egyptian law professors and law students for the ABA 2015 National Egypt Law School Moot Arbitration Competition.

The objective of the IAT TOT program was to make ROLI-Egypt training programs sustainable by institutionalizing continued Arabic language teaching after the conclusion of ROLI-Egypt's participation, by training Egyptian instructors to use Interactive Teaching methods (IAT). In the ILE portion of the IAT TOT program, I trained approximately 60 Egyptian lawyers to use IAT methods in offering the majority of the practical skills courses in Arabic.⁹ I also trained approximately 100 Egyptian law school professors, including law clinic professors, to use IAT with their students.

Beginning in 2015, ROLI-Egypt also started delivering training programs to Egyptian judges and prosecutors. The judicial curriculum¹⁰ includes diverse topics such as judicial ethics, mediation, international treaties and intellectual property. The prosecutor curriculum¹¹ includes topics such as use of forensic investigation, human trafficking, interviewing witnesses, domestic violence cases, and oral advocacy.¹² These programs are currently expected to last for approximately three years and one year, respectively.

Through the IAT TOT program I trained approximately 50 Egyptian judges¹³ and, preliminarily, 17 prosecutors. Additional training is currently planned for fall 2016.

Conclusion

Despite revolution, violence, and then only mixed national stability, the ROLI Egypt office continued to design and deliver innovative legal education and training programs that impacted thousands of Egyptian legal professionals. Through institutionalization efforts such as the IAT TOT program, the seeds planted will bear fruit for generations of Egyptian judges, prosecutors, law professors, lawyers, and law students to come.

SPECIAL FEATURE

Remembrance: Muhammad Ali

Self-Made Man and Internationalist Who Was Beloved in the Middle East and Made His Mark on American Law¹

Hdeel Abdelhady²

To say that Muhammad Ali was an extraordinary human being is to state the obvious. In a world in which people are too often defined by others, Muhammad Ali defined himself—in name and in deed. Ali is the only person I can think of who named himself—*literally*—twice. In both instances the names were apt and enduring.

"I am America. I am the part you won't recognize. But get used to me. Black, confident, cocky; my name, not yours; my religion, not yours; my goals, my own; get used to me."

-Muhammad Ali

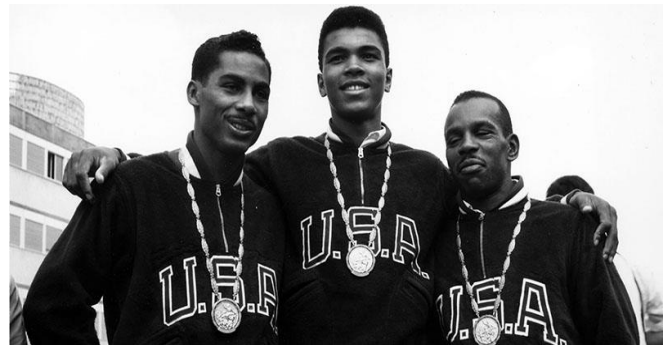
At his first heavyweight title fight against then-heavyweight champion Sonny Liston in 1964, a 22-year-old Ali (then Cassius Clay)—universally expected to suffer an embarrassing loss, severe physical injury, or worse³—proclaimed himself “The Greatest.” Inside and outside of the boxing ring, Ali proved time and again that he was worthy of the moniker. As President George W. Bush said in 2005 when [presenting Ali with the Presidential Medal of Freedom](#), America’s highest civilian award: “when you say the greatest of all time is in the room, everyone knows who you mean.” Indeed.

The Greatest Was Also Good

Muhammad Ali was a colossus. The first and still the only three-time heavyweight champion (1964, 1974, 1978) whose fast footwork was matched only by his quick wit, an Olympic gold medalist, a [master of marketing](#), and hands down the [prettiest boxer](#) ever, these and other hallmarks of Ali’s remarkable career were and continue to be outshone by his character, hard-fought moral and legal victories outside the ring, and acts of kindness performed publicly and in private—from taking time to greet surprised fans at airports to secretly visiting hospitals and nursing homes [“just to cheer people up.”](#)

The Internationalist

Muhammad Ali went global before “going global” was a thing. Before multinational corporations and global law firms became fixtures of sophisticated business, Muhammad Ali was an international brand.



Source: Team USA, [Celebrating Muhammad Ali's Life In Photos](#), “(L-R) Wilbur “Skeeter” McClure, Cassius Clay and Eddie Crook of the U.S. boxing team pose with their gold medals at the Rome 1960 Olympic Games on Sept. 9, 1960 in Rome.”

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CARLTON TOWER HOTEL,
DUBAI

Source: The National, [When Muhammad Ali Visited the UAE](#).

benefits and obligations of global citizenship. In a 1963 appearance on the Jack Parr show, Clay [made it clear](#) that he was not *just* a United States Olympic champion, but a “world Olympic champion.” He saw and welcomed the added international access that came with his Islamic faith. As he explained in a [1975 interview](#): “If another fighter’s goin’ to be . . . [as] big [as I am], he’s goin’ to have to be a Muslim, or else he won’t get to nations like Indonesia, Lebanon, Iran, Saudi Arabia, Pakistan, Syria, Egypt and Turkey—those are all countries that don’t usually follow boxing.”

From mega events in [Kinshasa](#) and [Manila](#) to exhibition matches in [Dubai](#) and [Bombay](#) (Mumbai) to humanitarian work in [Kabul and Havana](#), Ali was a welcome presence whose magnetism and wider meaning were utterly relatable across borders and cultural, religious, and class lines. As one of his eulogists, the Reverend Dr. Kevin Cosby, [put it](#): Muhammad Ali was “the property of all people . . . and the product of black people in their struggle to be free.”

“Remarkably, Ali managed throughout his life to take serious stances while maintaining not only his composure, but also his infectious good humor. He must have been, at times, the most likeable, dangerous man in America.”

Early Activism: Mayor of Olympic Village Denied Lunch Service in Louisville

When he returned from Rome to Louisville, Ali was not content with basking in the glory of, and capitalizing on, his Olympic victory. Ali (Cassius Clay) set out to challenge the legally and socially established system of racial segregation. By his own recounting, he “went into a luncheonette where black folks couldn’t eat,” thinking he’d “put them on the spot.” Wearing his “shiny gold medal,” Ali asked for a meal and was told: “[We don’t serve niggers here](#).” Unflustered, the *teenaged* Ali retorted: “That’s okay, I don’t eat ‘em.” The encounter would become one of many instances in which Ali put larger causes above his personal, material interests. Remarkably, Ali managed throughout his life to take serious stances while maintaining not only his composure, but also his infectious good humor. He must have been, at times, the most likeable, dangerous man in America.

"I don't have to be what you want me to be. I'm free to be who I want."

-Cassius Clay, February 26, 1964

Worthy of Praise, Most High

Ali's boxing and captivating personality catapulted him into the spotlight at a young age. But his willingness to sacrifice boxing, fortune, fame, *and his personal liberty* for his convictions endeared him lastingly to multitudes. The day after his shock heavyweight victory in 1964, and amidst *suspensions* that he was a member of the widely feared and reviled Nation of Islam (a "Black Muslim," in the parlance of the time), Cassius Clay appeared before the press, with the late (unpopular) Malcolm X present, and [confirmed](#) that he had, in fact, become a Muslim. "I don't have to be what you want me to be," [said Cassius Clay](#). "I'm free to be who I want."

Within two weeks, Clay announced that he had changed his name to Muhammad Ali, the meaning of which he [explained](#), proudly and inimitably: "Muhammad, worthy of all praises; Ali, most high." Just as his chosen professional appellation, The Greatest, fit his status as a sportsman, his chosen name, Muhammad Ali, befitted his character. Notably, many—[including respectable newspapers](#)—continued for years to call him Cassius Clay.

Conscientious Objector to Vietnam War, Stripped of Heavyweight Title and Boxing, Victorious at the Supreme Court

Conscientious Objector Claim Denied

Neither Ali's membership in the Nation of Islam nor his adoption of an exotic name was, to put it mildly, a good career move. But Ali was undaunted. In the early months of 1967, Ali, who in 1964 was deemed [not qualified](#) for the draft, was drafted to the Army and sought a conscientious objector exemption on the grounds that Islam prohibited him from participating in the Vietnam War.⁴ A local draft board in Kentucky [rejected](#) his conscientious objector claim. Ali appealed, and the matter was [referred](#) to the Department of Justice for an "advisory recommendation."



Source: Associated Press via [The New York Times](#). Muhammad Ali on April 28, 1967 leaving the Army examining station in Houston after refusing to step forward to accept induction into the Army.

The [FBI conducted an inquiry](#) into the sincerity of Ali's conscientious objector claim.⁵ A retired Kentucky state judge, who reviewed the case as a DOJ-appointed hearing officer at a DOJ-requested "special hearing,"⁶ concluded that Ali's conscientious objector claim was sincere and [recommended](#) that Ali be granted conscientious objector status after examining Ali, other witnesses, and the FBI's report.⁷ But the DOJ, according to some accounts, [neither provided](#) the Kentucky judge's recommendation to the Kentucky State Appeal Board nor informed Ali of the judge's finding.⁸ Unusually, the [DOJ advised](#) the Appeal Board to reject Ali's conscientious objector claim. "[Promptly](#)" and without explanation, the Appeal Board obliged.

“On June 20, 1967, at a federal court in Houston, an all-white jury found Ali guilty of ‘willfully refusing to be inducted into the Armed Forces of the United States’ after deliberating for 21 minutes.”

In the political backdrop, “[l]etters poured into the White House demanding that Ali be drafted. And once the prosecution of Ali began, the U.S. attorney handling the case, Morton Susman, was in contact with high-level White House officials. In one letter to Barefoot Sanders, a top aide to Lyndon Johnson, Susman reassured the White House that ‘this conviction will stick!’”⁹ The DOJ’s actions and the Appeal Board’s silence may have satisfied political objectives, but they did not pass muster at the Supreme Court, where Ali ultimately prevailed.

Conviction for Draft Evasion; Stripped of Boxing Title, Boxing Licenses and Passport

Knowing that his appeal had been rejected and that a criminal conviction—and imprisonment—were likely, Ali reported to a Houston Army induction center on April 28, 1967 and twice [refused to step forward](#) when his name was called to accept induction into the Army. Within hours of Ali’s refusal, the New York State Athletic Commission withdrew Ali’s license to box in the state and its recognition of his heavyweight title. “Within days, every important state boxing commission . . . had followed suit, [effectively preventing Ali from fighting in the United States.](#)”

On June 20, 1967, at a federal court in Houston, an [all-white jury](#) found Ali guilty of “wil[l]fully refusing to be inducted into the Armed Forces of the United States”¹⁰ after [deliberating for 21 minutes](#). The presiding judge imposed the [maximum penalty: five years’ imprisonment and a \\$10,000 fine](#). In addition, the judge ordered Ali to surrender his passport pending appeal—the [State Department and FBI deemed Ali a flight risk](#)—depriving Ali of the ability to box abroad.



Source: Vice Media LLC, Fightland Blog, [The Draft Dodger: Ali’s Fight Against an Unjust War and the Country that Waaged It](#). Front page of the Houston Chronicle, June 21, 1967.

Clay, a.k.a. Ali v. United States: Victory at the Supreme Court

Ali appealed to the U.S. Court of Appeals for the Fifth Circuit, which twice upheld his conviction.¹¹ The Supreme Court agreed to hear Ali’s case. As has been reported,¹² the Justices had initially planned to affirm Ali’s conviction on the grounds that he was not a conscientious objector to all wars, but a selective objector as evidenced by his stated willingness to fight in a certain kind of Islamic war (*jihad*).¹³ But the voting Justices [changed course](#) after some of them concluded that Ali met applicable statutory conscientious objector criteria. In the end, the Court decided the case on narrower grounds. On June 28, 1971, the Supreme Court reversed Ali’s conviction on the grounds that the DOJ’s actions and the Appeal Board’s silence afforded the Court no legitimate bases on which to judge whether Ali’s conviction—which derived from “an erroneous denial of . . . [his] claim to be classified as a conscientious objector”¹⁴—was lawful.¹⁵

A Draft Dodger? No. Going to Vietnam Would Have Been Easier for Ali

In his life and even after his death, [some have called](#) Muhammad Ali a draft dodger. The label is inapt, both technically and in its suggestion that Ali's refusal to go to Vietnam was motivated by cowardice or opportunism. Technically, a draft dodger is someone "[who illegally avoids joining the armed forces.](#)" Ali *legally* refused participation in the Vietnam War and was unjustly prosecuted for asserting a conscientious objector claim as provided for under the law.



Source: Ahrum Online, [When boxing legend Muhammad Ali came to Egypt](#). Muhammad Ali in Cairo with Egyptian President Gamal Abdel Nasser (1964).

Importantly, by refusing to participate in the Vietnam War, Ali was not avoiding combat—the high risk of bodily and psychological injury or death. Ali, according to a number of reports, would have been assigned to the morale-building Special Services unit of the Army. "[Ali was assured that he would not have to pick up a gun or enter combat. All he would have to do would be to fight exhibitions a few years and resume his boxing career.](#)" Had Ali taken the low risk, non-combat route to Vietnam that the U.S. Government had offered, he likely would have returned from Vietnam an American hero with a fast-track to "crossover" celebrity status and its associated material and intangible benefits.

By openly refusing induction and remaining in the United States—as opposed to seeking an education deferment or taking refuge from the draft in Canada, as many educated and affluent young men did—Ali became a convicted felon, a former heavyweight champion without losing a fight, a professional boxer cut off from a boxing livelihood in his prime years, the [target of "constant" death threats](#), and the subject of public scorn. "A bitter and dismissive editorial in Sports Illustrated in May 1967 was, unfortunately, [representative of the way that many white Americans viewed Ali and the Nation of Islam](#):"

'Without his gloves on, Ali is just another demagogue and an apologist for his so-called religion, and his views on Vietnam don't deserve rebuttal . . . It is, of course, purposeless to dwell on the good Ali could have done for black and white alike if he hadn't aligned himself with the Muslims. But if indeed he does go to jail, Ali can achieve the martyrdom he seeks only if it is shown that he is sacrificing himself for the sake of a principle worthy of the name.'"¹⁶



Source: Morocco World News, [When Muhammad Ali Was Decorated by King Hassan II](#). Muhammad Ali with King Hassan II Morocco in 1988.

Muhammad Ali Clay, Beloved in the Middle East

In the Middle East, Ali was known as "Muhammad Ali Clay," to distinguish him from Muhammad Ali Pasha, the Khedive of Egypt. His Islamic faith brought him into focus in the region, but he was beloved and admired for who, rather than what, he was. The affection and reverence for Ali was evident during his travels in the region, where, among other encounters, he was received by [eager crowds](#) and a president in Cairo in 1964; [honored by](#) the King of Morocco in 1988; and, while struggling with Parkinson's disease, [successfully negotiated](#) the release of American hostages from Iraq on the eve of the Gulf War in 1990. Even Saddam Hussein could not deny Ali's moral authority, [stating in a meeting](#) with The Champ that he "would not countenance 'Hajj Muhammad Ali' leaving Iraq unsuccessful, without securing a number of hostages."¹⁷

What Muhammad Ali Means to Me

I had not yet been born when Muhammad Ali was at his professional zenith. But I cannot remember a time when I did not know the name Muhammad Ali. To know Ali and be in his corner was an unspoken family value that I understood as a child. I have never been a follower of boxing. Ali's boxing victories are undoubtedly meritorious, but they factor little in my admiration for the man.



Source: Washington Post, [Muhammad Ali's final photo shoot captured a spark that still lingered](#). Muhammad Ali in a photograph reportedly taken two months before his death on June 3, 2016 in Phoenix, Arizona.

As he was and is for many around the world, Muhammad Ali is, for me, relatable on a number of levels. As a Muslim, Ali's *lived* values—courage, kindness, sincerity, justice, patience in adversity, and humility in matters of faith—are exemplary. Ali knew and consistently showed, as the Qur'an states clearly, that "it is not righteousness that ye [only] turn your faces to the east or West" in prayer.¹⁸

As a lawyer, Ali's Supreme Court and state-level legal battles, and his activism—to regain his wrongly-denied right to box, for freedom of the speech, for the free exercise of religion, and for equal treatment under the law and in society—reaffirm the law's role and reach, as well as the more noble aspects of law practice that too often are easy to forget in today's metrics-driven world. The same legal system that injured Ali ultimately delivered justice. The political machinations that fueled Ali's prosecution for his refusal to fight in Vietnam were put down, albeit belatedly, by the

Supreme Court. Ali's case illustrates the essentiality of an independent judiciary, and more broadly the separation of powers, to the rule of law.

"Muhammad Ali needs no special inscriptions or tributes. The name he chose for himself as a young man is the epitaph that describes him best. 'Worthy of all praises, most high.'"

As an American, Muhammad Ali epitomizes America—[the parts we recognize and the parts we won't](#). The real and the ideal. Ali came up in racially segregated Louisville.¹⁹ But throughout his life he defied the legal, political, and social structures that mandated the subordination of African-Americans and others in the United States, and millions around the world. On his merits—and he had many—Muhammad Ali reached the pinnacle of his chosen profession, and was capriciously denied the fruits of his talents and hard work. But Ali roared back. Muhammad Ali's life illustrates what makes America good, as well as great: diversity, forward-motion, and the people and institutions that continually strive for the rule of law and higher social and political ideals, even during—*especially during*—those times when the legal system fails to deliver justice and regressionism takes hold in the public sphere.

A Fitting Epitaph

It has been reported that Muhammad Ali's headstone bears only his name. "In keeping with [the] Muslim tradition" of simple funerary practices, ["there are no dates or loving tributes."](#) This is most appropriate, as Muhammad Ali needs no special inscriptions or tributes. The name he chose for himself as a young man is the epitaph that describes him best. "Worthy of all praises, most high."

FAMILY LAW

Amended Article 946, Civil Code – A Step Towards Equal Rights in Iran

Pouyan Bohloul, J.D., LL.M.¹

On January 25th 2009, the Iranian Parliament amended Article 946 of their Civil Code, which covers the topic of inheritance between husband and wife. It marked a significant change and advancement in women's rights for Iranian family law. The result was fruitful and now provides women with access to all of a deceased husband's property after his death, something not available to them before.

Prior to this change, women did not have access to all of a deceased husband's property, regardless of how many years they had lived together, the woman's financial situation, whether they had owned a house or property, their education, their age, or their earning capacity. They only had access to certain properties such as a husband's personal property and the value of realty and trees (*e.g.*, value of the crops)².

Articles 940 and 941 of the Iranian Civil Code lay out the foundation of inheritance between couples. They recognize the right to inherit only if the couple is in a so-called, "Permanent Matrimony."³ Accordingly, a husband can take twice as much as his wife, with the right to half of her properties upon her death, whereas a wife could take only one-quarter of the properties upon her husband's death. Moreover, if they have a child (or children) together, the wife's share drops to one-eighth of the properties.

Difficulties surfaced in the modern era as this legal regime's practice continued and it caused significant problems after the death of the male head of household. This specific problem became especially prominent in the countryside where land was significantly more valuable than the buildings upon it. Many women were left without sufficient resources at elderly ages, including a house to live in. This became more of a social problem after the earthquake in the city of Bam, in Kerman province in 2003, when many women were left without sufficient resources and access to the land they had lived on after the death of their husbands. Thus, they were left with nothing to rebuild their houses or finance their lives.

Finally, on January 25, 2009, the Iranian Parliament amended Article 946 of the Civil Code to provide women with access to all their deceased husband's properties, including land, and to abolish the previous Article 947 of the Civil Code.⁴ Today, the amended Article 946 reads, in part, as follows: "*The wife takes from all of the deceased husband's properties....*" (Unofficial English translation)

Many call the amended article a positive step towards equalization and fairness in relation to women's rights in Iran. The Qur'an and Shi'a religious sources are the bases of many of Iran's laws, especially in the realms of family and criminal law.⁵ These rules are not easily changed as they must meet certain thresholds and pass strict scrutiny, which in turn makes it impossible to change in some cases. However, as some clerics and religious leaders believe, some of these rules can be changed if necessary, as in the cases of previous Articles 946 and 947 of the Iran Civil Code.

According to the Iranian Constitution, the Parliament may not legislate outside of the realm of the principles of the country's religion.⁶ It is important to explain that although not all the Iranian laws and regulations are completely based on Shari'a, they must all be compliant with Shari'a as interpreted by religious authorities in Iran, which has accordingly dictated, influenced, and/or directed the lawmakers to comply with the religious principles for decades. To ensure compliance, a "checks and balances" mechanism is in place through the Guardian Council. The Guardian Council is comprised of six jurists and six clerics called *Faquih*. Members of the Council review laws passed by the Parliament and make sure laws are compliant with Shari'a principles before those laws take effect.⁷

An important question was raised after the aforementioned change in the law: When is the proper time for valuation of the effects of the deceased? In a country with significant economic fluctuations, this question was of utmost importance to heirs. The judiciary, through the Advisory Opinion No. 88-1/7-368, dated February 22, 2010, clarified that the value of the effects is based on its value “at the time of death” and not the date on which the court determines the heirs.

The current state of the Iranian Family Law after this change in January 2009 reflects a modern and realistic law-making effort. Women are now given more rights than before to their deceased husband’s assets, which is a significant advancement towards protection of women’s rights and maintaining an equal balance between the legal rights of the two genders.

COUNTRY FOCUS

Israel – A Country of Immigration¹

Dr. Alon Kaplan, TEP, Advocate & Notary²
Meytal Liberman, TEP, Advocate³

Israel is a small country, about the same size as Belgium in Europe or New Jersey in North America. It is located on the eastern shore of the Mediterranean Sea and has excellent access by air and sea to Europe, Africa, Asia and North America. If the Middle East peace process were to move forward, Israel's strategic position and human resources could, in our view, make it a central pillar of economic trade in the region.⁴

Recent statistics show that Israel's population is comprised of 75% Jewish people and 25% non-Jewish people.⁵ The Declaration of Independence of the State of Israel of May 14, 1948 is considered to be a "quasi-constitutional" document due to its constitutional nature and the fact that it is not legally binding as other constitutions in the world, such as that of the USA. The Declaration provides as follows:

The State of Israel . . . will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture.

"Leom" and Citizenship

The word "Leom" is mistakenly considered as synonymous to "nationality" or "citizenship." This mistake brings about, in turn, the erroneous conclusion that there are different classes of citizenship, and that therefore people of different leoms, *i.e.*, people of different ethnic or religious groups, do not enjoy equal rights. In fact, the word "Leom" refers to one's faith. This means that one can belong to the Jewish leom, *i.e.* the group of Jewish people worldwide, and not necessarily be an Israeli citizen as well.

For a Jewish person to become an Israeli citizen, he or she must complete an immigration procedure. Once the procedure is completed, the person is considered as an "Oleh Chadash" (New Immigrant), which means that he or she is eligible to become an Israeli citizen.

Any person of a Jewish family can initiate the immigration procedure and become an Oleh Chadash. While this process usually takes time and requires the immigrant to fulfil several conditions in order to receive this status, under the Law of Return of 1950, a Jewish person can acquire the status automatically. This special right was given to Jewish people shortly after the establishment of the State of Israel in order to assist the hundreds of thousands of Jewish refugees who survived the Holocaust, as well as Jewish people in many countries who wanted to leave their countries due to discrimination, such as the Jewish people of Iraq and Yemen in the 1950's, and the Jewish people of the former USSR in the 1990's.

Benefits for new immigrants and returning residents⁶

The Israeli Income Tax Ordinance includes exemptions and other significant relief in relation to new immigrants and returning residents. A reform that came into force in 2007 significantly expanded the exemptions granted to those individuals. The principal benefits are given to a new immigrant (one who became an Israeli resident for the first time) and a long-term returning resident (someone returning to Israel after having resided outside Israel for at least 10 years). Limited benefits are also given to regular returning residents (someone returning to Israel after having been a foreign resident for at least six years).

New immigrants and long-term returning residents are exempt from tax on all income generated outside Israel or whose source is from assets outside Israel for ten years from their date of immigration or return to Israel, including in relation to activities and assets acquired following the date of immigration or return. A regular returning resident is exempt from tax for five years from the date of return on current income (interest, dividends, royalties, rentals and pensions) generated outside Israel or whose source is from assets outside Israel, and for ten years on capital gains from the sale of such assets, all this being in relation to assets acquired by him or her while being a foreign resident.

New immigrants and long-term returning residents need not report their exempt income nor report on their assets located outside Israel for a period of 10 years from their date of immigration or return to Israel.

Conclusion

As evident above, the State of Israel encourages Jewish people from all over the world to immigrate and enjoy a full life. Israel, the country of immigrants, absorbed a mass number of people coming from 70 countries. Over the years, many of them established a culture of science and technology, which has made Israel known as a “Startup Nation.”

INTERNATIONAL LAW AND CURRENT AFFAIRS

Humanitarian Law and Saudi Arabia's Military Intervention in Yemen

Amanda M. Weir, M.A., J.D.¹

By 2015, the Houthi rebellion in Yemen had grown into a well-armed insurgency. The Houthi, alleged proxies of Iran, posed a fundamental threat to the fragile Yemeni government. By 2015, the conflict between the Houthi rebels and the Yemeni government had been ongoing since 2004, expanding outward from the Houthi base in Sa'dah in the north to Aden in the south and Ataq in the east. Yemen's President, Abd Rabbuh Mansur Hadi had been pushed out of Yemen's capital, Sana'a, and was facing an overthrow by the Houthi.² Hadi sought the help of his neighbors in the region. Citing Article 51 of the United Nations Charter, President Hadi requested outside intervention to squelch the Houthi rebellion and avert the imminent overthrow of Yemen's government.³ In March 2015, in response to President Hadi's request, a Saudi-led coalition that reportedly included Egypt, Jordan, Kuwait, Morocco, Sudan, and the United Arab Emirates, initiated military intervention in Yemen.⁴

A little over a year later, the fighting continues and the ruinous impact of the Saudi intervention on the civilian population of Yemen is clear.⁵ There have been numerous allegations of violations of international law by the Saudi coalition during its intervention in Yemen, with some reports indicating that there have been over a hundred possible violations of humanitarian law by the Saudi coalition, accusations that are strongly denied by Saudi Arabia.⁶

As of a March 2016 article, the death toll for civilians was estimated at 6,400, the number of injured was 30,000, and the number of displaced persons at over 2 million.⁷ Hundreds of those killed and thousands of those wounded were children. According to an April 2016 UN Report of the Secretary-General⁸, 785 children were killed and 1,168 wounded in 2015, with 60% of these deaths and injuries attributed by some accounts to the Saudi coalition. The Saudi coalition was called out in the April 2016 United Nations report⁹ for causing death and injury to children, for attacks on schools and hospitals, and to a lesser extent, for the use of child soldiers. These actions led to the UN's "blacklisting" the Saudi-led coalition, by including them in Annex I of the April 2016 Report, "List of parties that recruit or use children, kill or maim children...engage in attacks on schools and/or hospitals...in situations of armed conflict on the agenda of the Security Council."¹⁰ These actions are in contravention of the Geneva Conventions.

Despite these claims and the UN's own report, less than two months later, in June 2016, the UN agreed to "review"¹¹ the inclusion of the Saudi-led coalition in the April 2016 Report. This led to strong criticism of the UN for giving into pressure from Saudi Arabia and its supporters, who allegedly threatened to cut funding to UN programs.¹² The Saudis claimed vindication, indicating that the removal of the Saudi-led coalition from the list was permanent and a recognition of the inaccuracy of the accusations. This acquiescence comes on the heels of repeated calls for independent investigations into possible violations of humanitarian law, efforts that were reportedly actively resisted by members of the Saudi coalition.¹³

With the UN response to Saudi's indignity at being included on a list, one that by all accounts was accurate, hope for meaningful enforcement of humanitarian law in Yemen is slight indeed. Pandering to countries that violate humanitarian law and bowing to threats of economic and political reprisal only solidifies the growing sentiment that money and politics will always come before the enforcement of international humanitarian law.

INTERNATIONAL LAW AND CURRENT AFFAIRS

International Law Lacks Mechanisms for Addressing Conflicting Political State Interests

Issa Al-Aweel, JD, MS¹

As with many bodies of law, international law is a work-in-progress. Important aspects such as issues of human rights and inter-state relations continue to challenge the international community. These challenges in particular have been brought to the forefront by the conflict in Syria. On the one hand, the refugee crisis is a human rights issue facing the international community; on the other, inter-state relations have persistently played a role in the conflict.

International law lacks effective mechanisms for addressing and achieving resolutions on conflicting political inter-state interests. Consider, for example, that after the government of Saudi Arabia threatened to withdraw financing for humanitarian operations, the United Nations Secretary-General elected to delete the Saudi-led coalition from the list of armies that kill and maim children.² The result, predictably, has been human rights violations and instability. Syria is a prime example of these challenges. In short, Syria's problems today cannot be decoupled from regional and global interests.

In Syria's example, the involvement of Saudi Arabia, Qatar, Israel, Turkey, and the United States, each with its own political interests and motivation to effect a political change in Syria, has arguably led to today's status.³ Such interests have been growing over several decades, leading to indirect intervention because the international community and existing international law were not equipped to address such interests.

Unfortunately, too often, state interests come at too high a price, where lives are placed second behind those interests. In Syria's example, it appears that the countries initially involved, Turkey for example, either failed to recognize or chose to ignore opposing interests of other states, including those of Iran and Russia. Such actions led to a response, predictably, from the states with opposing interests, a response that eventually became a proxy war between regional and global powers, and is resulting in violations of human rights at multiple levels.

Two questions arise. First, whether it is the role of international law, and the international community, to more directly address politically conflicting interests. And, second, whether mechanisms of international law can in fact address such interests and avert such conflicts.

Because of the intersection of the multi-faceted interests of various states, any conflict, including that of Syria, cannot be resolved without compromises addressing those conflicting interests. For instance, on May 29, 2016, Al Jazeera⁴, citing a Lebanese daily newspaper, reported that a Russian-led approach towards achieving a compromise in Syria includes a plan to remove powers from the current regime. This is difficult to imagine without Russia maintaining a connection to any new regime, to meet its interests in the region; after all, Syria is Russia's last strong ally in the Middle East. On the other hand, a compromise is a must if the international community considers the cost of resulting conflicts.

While it is difficult to imagine a compromise between polarized interests – in Syria's case, those of the regime, Iran, and Russia on one end, and the Sunni population, Turkey, Saudi, Israel, and the U.S. on the other – the resulting cost of failure to compromise is simply too great given that instability creates opportunities for extremists and, in turn, directly and adversely affects the global community.

Perhaps the ultimate lesson from the Syrian conflict is that of exposing yet again how international law and international structures are not yet equipped to address and handle conflicting political interests, and that such structures are necessary if we are to avert collective violations against populations and human rights.

INTERNATIONAL LAW AND CURRENT AFFAIRS

The Iran Deal

Dr. Poopak Taati¹

A year has passed since July 2015 when the UN Security Council by resolution 2231 accepted an agreement between Iran and six world powers (China, France, Russia, United Kingdom, United States, and Germany), commonly known as "The Iran Deal." The agreement obligated Iran to eliminate its stockpile of medium enriched uranium and reduce 98% of its stockpile of low enriched uranium, keep enrichment at or below 3.67%, limit the enrichments to one facility, and continue with research and development only in Natanz.² Reports of the International Atomic Energy Agency (IAEA) speak to the fact that Iran has complied with its obligations. The world is said to be safer containing Iran's aspirations for a nuclear weapon. The Secretary of State, John Kerry, has called Iran "helpful" in fighting the Islamic State (ISIS) in Iraq.³

The agreement also promised that the six world powers would lift sanctions related to Iran's nuclear program as well as multilateral and national sanctions, and work toward Iran's access to trade, technology, finance, and energy. The agreement did not address lifting of sanctions related to ballistic missile technologies and sale of conventional weapons or those supposedly helpful to Iran's terrorist support and human rights abuses, sanctions that were imposed on Iran in 1995 by President Clinton's administration. Yet, the agreement stressed that Iran's own long held assets of \$100 billion would be released and sanctions on the sale of food, medicine, and civilian aircraft would be removed.⁴

In the beginning, many Iranian-Americans, Jewish-Americans, and people around the world supported the President's efforts, but there has been strong opposition as well. For example, United Against Nuclear Iran (UANI)⁵ campaigned to ensure that the deal would not come to pass. UANI also put similar pressures on Nokia⁶ and General Electric to refrain from conducting business in Iran.⁷ Furthermore, the House of Representatives has passed a measure to block Boeing's anticipated civilian aircraft sale to Iran, worth \$25 billion.⁸

Despite the opposition, President Obama has pushed forward the Iran deal as one of his most important initiatives.⁹ Among the improvements are relative normalization of Iran's banking connectivity to the SWIFT network, the lifting of bans on insurance activities with Western European companies, and lifting of obstacles in insuring Iranian ships carrying oil and exports.

Sanctions are only effective if fair and directed at criminals, not applied to a whole group of innocent and powerless bystanders. These prejudicial policies based on false assumptions need to be challenged and the UN Security Council resolution should be supported.

CRIMINAL LAW: SPECIAL ISSUE

Litigating Constitutionality of Honor Killings in Kuwait

Callan Martinez¹

Kuwait allows for state-sanctioned murder of a woman by her male family members if she is caught committing adultery – referred to often as an “honor killing.” Article 153 in Kuwait’s Penal Code codifies honor killings as:

Any man who finds his mother, sister, daughter or wife committing the act of zina (defined in Kuwait as adultery) with a man and kills her or him or both will be treated as committing a misdemeanor punishable by a maximum of 3 years’ jail time and/or a fine not exceeding 3000 rupees [(KD 14) (USD 46)].²

Other Middle Eastern and North African countries have similar laws.³ While Lebanon and Tunisia have abolished their honor killing laws, honor killings remain legal in most of the region.⁴

Fortunately, there has been an outcry from communities calling on courts and legislative bodies to abolish these laws. A women’s rights organization called “Abolish 153”⁵ is leading the fight to abolish the honor killing law in Kuwait, and hopes to expand its cause to other countries in the region. Abolish 153 was founded by five Kuwaiti women, based on the research of Abolish 153 Board Member Dr. Alanoud Alsharekh, one of the country’s foremost scholars on women’s rights and Arab Feminist Theory. Abolish 153 is using Dr. Alsharekh’s research to spearhead a public discussion of laws that institutionalize gender violence. Moreover, it is working to eliminate such laws.⁶ The organization benefits from the help of attorney Dr. Hesham al Saleh, a Constitutional expert and the law partner of Hon. Ali al Rashed, former judge and former Speaker of Kuwait’s Parliament. The attorneys are strategizing over how to file a case in Kuwait to challenge the constitutionality of the law but there are some obstacles.

The first major obstacle to challenging the constitutionality of Article 153 is finding a plaintiff who would have standing. Under Kuwaiti law, one must have been directly harmed by the law to have standing. Islamic law, as interpreted by Kuwait, would grant the right to constitutionally challenge Article 153 to the family of the deceased victim.⁷ However, killings in the name of honor, if the family acquiesces, are unlikely to be reported to authorities, much less litigated by the family. Those who commit these murders do not view them as a crime, rather as a duty.

Another obstacle to standing is that the highest court in Kuwait has read the law very narrowly in its opinions.⁸ The narrow reading of Article 153 is a victory for women’s rights within criminal law because it has led to murder convictions but simultaneously it is preventing the constitutional litigation that Abolish 153 wants to file to challenge the honor killing law. A constitutional challenge could only be brought before the court if a defendant makes a successful Article 153 claim. If the court denies his claim and convicts him of murder, no challenge can be filed. It’s a catch 22: the honor killing law cannot be challenged even though the defendant had the sociocultural intent of an honor killing.

The narrow reading of the law and unwillingness to report honor killings make it difficult to find a plaintiff who has standing to challenge Article 153. The cultural and traditional motive for this type of killing is honor but if the court denies the defendant’s Article 153 claim, then pursuant to legal standards, it appears the killing was not an honor killing. Unwittingly, the courts have stripped the victim and her family of constitutional recourse against the problematic law. The narrow rulings leave Article 153 untouchable, for now.

Abolish 153’s fight for legal equality is difficult and complex. But it is the first step to opening up the conversation about gender violence, a topic often ignored and considered taboo in the country and the region.

ENDNOTES

Saudi Arabia – New Companies Law

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³ Jonathan Burns is a U.S. trained and qualified Dentons associate based in Riyadh. His practice includes advising multinational clients in relation to the corporate legal issues they face when doing business in Saudi Arabia. He is the author of *Introduction to Islamic Law: Principles of Civil, Criminal, and International Law under the Shari'a* (JuraLaw | TellerBooks 2013). He can be reached at jonathan.burns@dentons.com.

"Short Form" Agreements under Arab Commercial Agency Law: Some Legal and Practical Issues

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² See, e.g., Article 2 of Egyptian Law No. 120 of 1982 and Article 3 of UAE Federal Law No. 18 of 1981.

³ See, e.g., Articles 17-18 of Jordanian Law No. 28 of 2001 and Article 20 of Saudi Arabian Ministry of Commerce Decision No. 1897 of 1981.

⁴ See, e.g., Dubai Court of Cassation Judgement No. 213 of 1998 (February 14, 1999) (ruling that a local commercial agent's legal action for termination compensation could not be heard because it was based on an unregistered agreement). See also Omani Authority for the Settlement of Disputes Case No. 180/91.

⁵ See, e.g., Articles 244-45 of the Egyptian civil code of 1948 and Articles 173-74 of the Qatari civil code of 2004.

Revolution, Turmoil and Mixed Stability in Egypt: ABA Rule of Law Development Programming and Institutionalization 2012-2016

¹ Gregg B. Brelsford served as the Legal Advisor to the ABA Rule of Law Initiative program in Egypt from November 2012 to June 2016. He led the Innovation in Legal Education and the Interactive Teaching Training of Trainers programs. Mr. Brelsford has more than 2,500 hours of Interactive Teaching classroom instruction, evaluation, coaching, course design and teaching materials preparation experience with judges, prosecutors, law professors and lawyers in Egypt and Bahrain. Mr. Brelsford is qualified as a British Solicitor and licensed in New York, Washington, DC, California and Utah. All of the statements in this article are Mr. Brelsford's alone. He can be reached at gbrelsford@brelsfordlaw.com.

² The ABA Rule of Law Initiative (ABA ROLI) is an international development program that promotes justice, economic opportunity and human dignity through the rule of law. http://www.americanbar.org/advocacy/rule_of_law/about/origin_principles.html (last visited on 8 June 2016). The ABA Rule of Law Initiative program operates in 50 countries worldwide. http://www.americanbar.org/advocacy/rule_of_law/where_we_work.html (last visited on 8 June 2016). ABA ROLI programs are funded primarily by duration-specific donor grants.

³ I also agonized over the safety of our local Egyptian staff, some of whom lived near the encampments. Thankfully, no one was harmed.

⁴ The Egypt Prosecutor General was assassinated with a car bomb in Cairo on 29 July 2015. On October 31, 2015, a Russian Airbus plane exploded while leaving Sharm El-Sheik, a beach resort in Egypt, due to a terrorist bomb, killing all 224 people on board.

⁵ http://www.americanbar.org/advocacy/rule_of_law/where_we_work/middle_east/egypt/news/news_egypt_lawyers_practical_training_0313.html (visited on 8 June 2016).

⁶ During my tenure, the CLE program delivered approximately 100 distinct courses to approximately 1,500 lawyers, comprising about 35,000 classroom hours of instruction.⁶ Approximately 35% of the students were women, a 20% increase over prior years.

⁷ This program reached more than 1,000 law students, including training for more than 60 law professor directors, oral advocacy training for 300 hundred students and blind-scored competition for about 60 students.

⁸ http://www.americanbar.org/advocacy/rule_of_law/where_we_work/middle_east/egypt/news/news_egypt_online_cle_courses_prove_popular_0413.html (visited on 8 June 2016).

⁹ The grant funding for these programs substantially expired in May 2016. In late 2015, ROLI Egypt began working with an Egyptian organization to institutionalize the continuation of the CLE classes.

¹⁰ The judge's curriculum is determined by an advisory group consisting of the Ministry of Justice, the Judicial Center for Judicial Studies, ROLI-Egypt and the grant agency.

¹¹ The prosecutors' curriculum is determined by the Egypt Public Prosecutor's office and ROLI-Egypt.

¹² http://www.americanbar.org/advocacy/rule_of_law/where_we_work/middle_east/egypt/news/news-egypt-program-strengthen-capacity-of-prosecutors-0216.html (visited on 8 June 2016).

¹³ http://www.americanbar.org/advocacy/rule_of_law/where_we_work/middle_east/egypt/news/news-egypt-trainings-prepare-judges-to-teach-colleagues0715.html (visited on 8 June 2016).

Remembrance: Muhammad Ali

¹ Citations are provided in endnotes and/or hyperlinks to materials that are readily or exclusively available online. Thus, these endnotes identify only some of the sources relied upon and/or quoted herein.

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³ In covering the Clay-Liston fight, "New York Times reporter Robert Lipsyte . . . had been instructed by his newspaper to map the shortest route to the hospital. 'I understood perfectly,' Lipsyte said, 'that I'd never see Cassius Clay again.'"

⁴ The contrast between Ali's interpretation, in the 1960s and consistently thereafter, of Islam's position on war and violence and the "interpretations" propounded today by Daesh (ISIS) and other self-proclaimed "Islamic" groups is inescapable, particularly to those Muslims and others who have endeavored—even modestly—to read and understand the words and meaning—rather than self-servingly selected words or verses—of the Qur'an, the highest source of Islamic law (Shari'ah). (The four core sources of Islamic Law (Sunni) are: Primary sources, Qur'an and Sunnah (essentially the authenticated examples, rulings, and sayings of the Prophet Mohammed (pbuh)); Secondary sources, *Qiyas* (analogical reasoning) and *Ijma* (consensus of qualified Islamic scholars)).

⁵ *Clay v. United States*, 403 U.S. 698, 699 (1971). An informative account of the Supreme Court and related proceedings is provided in a June 8, 2016 SCOTUSblog post, "[Muhammad Ali, conscientious objection, and the Supreme Court's struggle to understand 'jihad' and 'holy war': The story of Cassius Clay v. United States](#)," by Marty Lederman [hereinafter "Lederman"]. Portions of this article rely on Lederman's account of Ali's conscientious objector cases (indicated by hyperlink and endnote citations). Note that Lederman incorporates insights about the Supreme Court's internal deliberations, as provided by Tom Krattenmaker, a former clerk to Justice Harlan (who filed a concurring opinion in the *Clay* case).

⁶ *Clay*, 403 U.S. at 699; *Clay v. United States*, 397 F.2d 901, 918 (5th Cir. 1968).

⁷ "The hearing officer reported to the Department of Justice that the registrant [Ali] stated his views in a convincing manner, answered all questions forthrightly, that he was impressed by the statements, believed the registrant was of good character, morals and integrity and sincere in his objection on religious grounds to participation in war in any form. He recommended that his conscientious objector claim be sustained." *Clay*, 397 F.2d at 918.

⁸ Hampton Dellinger identifies some of the political reasons for the DOJ's breach of standard practice in a June 6, 2016 Slate article, [When Muhammad Ali Took on America](#) [hereinafter "Dellinger"]. "Why did the DOJ decide to disregard the judge's recommendation? Which Justice officials made the decision? What factors went into it? One possible influence was political pressure from congressmen like Mendel Rivers, chairman of the House Armed Services Committee, who promised a Veterans of Foreign Wars convention that 'we're going to do something if that [draft] board takes your boy and leaves Clay home to double-talk.'"

⁹ Dellinger, *supra* n. 8 (postulating "another possible source of political pressure on the department to prosecute Ali: the president" of the United States).

¹⁰ *United States v. Clay*, 430 F.2d 165, 166 (5th Cir. 1970).

¹¹ *Clay*, 397 F.2d at 901.

¹² See, e.g., Lederman.

¹³ The Arabic word "jihad" is often understood to mean only "holy war," but this is only one of the various meanings (in noun form) of the term, which derives from the root j-h-d, which means essentially "endeavor" or "strive." See, e.g., The Hans Wehr Dictionary of Modern Written Arabic, 168 (J. Milton Cowan ed., 4th ed., Spoken Language Services, Inc. 1994) (hereinafter Wehr Dictionary).

¹⁴ *Clay*, 403 U.S. at 699.

¹⁵ *Clay*, 403 U.S. at 704-05. The record showed, and the DOJ eventually conceded, that Ali's "beliefs are founded on tenets of the Muslim religion as he understands them." *Id.* at 703.

¹⁶ The 1967 Sports Illustrated editorial, *A Matter of Principle*, can be viewed [here](#). In September 2015, Sports Illustrated [announced](#) that its Sportsman Legacy Award would become the Sports Illustrated Muhammad Ali Legacy Award, in honor of "boxing legend, civil rights leader, humanitarian and icon Muhammad Ali."

¹⁷ The translation above is my own and differs slightly from the Arabic-to-English translation provided in the linked video.

¹⁸ Noble Qur'an, Chapter 2, Verse 177. The complete text of this Verse, as it appears in one English language translation of the Qur'an, is as follows. "It is not righteousness that ye turn your faces Towards east or West; but it is righteousness- to believe in Allah and the Last Day, and the Angels, and the Book, and the Messengers; to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves; to be steadfast in prayer, and practice regular charity; to fulfil the contracts which ye have made; and to be firm and patient, in pain (or suffering) and adversity, and throughout all periods of panic. Such are the people of truth, the Allah-fearing." Abdulla Yusuf Ali, *The Meaning of the Holy Qur'an*, 16 (Amana Publications, 11th ed. 1425AH/2004CE).

¹⁹ "Louisville, when Cassius was growing up in the nineteen-forties and fifties, was a Jim Crow city. American apartheid. Not quite as virulent as in Jackson [Mississippi] or Mobile [Alabama], but plenty bad. 'There were two Louisvilles and, in America, two Americas.' It was a childhood in which Cassius saw his mother turned away for a drink of water at a luncheonette after a hard day of cleaning the floors and toilets of white families. These were daily scenes, the racial arrangements of Louisville." David Remnick, [The Outsized Life of Muhammad Ali](#), *The New Yorker*, June 4, 2016 (quoting "Blyden Jackson, a black writer from Louisville, who was in his forties when Clay was growing up . . .").

Amended Article 946, Civil Code –A Step Towards Equal Rights in Iran

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² Qanune Madani [Civil Code] Tehran 1314 [2009], art. 946: "*Husband takes from all of wife's effects; but wife only takes from the following effects: (a) From the personal property of any kind. (b) Building and trees.*" Article 947, Civil Code (now abolished): "*Wife takes from the value of the buildings and trees and not they themselves, and the method of valuation is that the trees and buildings must be valued on the supposition of their being worthy to remain on the ground without taking into consideration the labor cost.*"

³ There are two types of marriage according to Iran and Shari'a; Permanent and Temporary. The distinction between the two is in time and mandatory dowry (*Mahr*). The Temporary Matrimony is a type of marriage in which the matrimonial relationship is

timed for a certain amount of time and includes a mandatory dowry (*Mahr*). However, in the Permanent Matrimony the matrimonial relationship is not based on time and the dowry is not a requirement to the contract. A child born in either marriage attaches to the couple and will inherit from them and woman's rights to dowry remains the same; a 'debt' on husband's shoulder. See Qanune Madani [Civil Code] Tehran 1314 [2009], arts. 1075-1077, 1095: "A woman in a "Temporary Matrimony" will not inherit from her husband, regardless of the many years engaged in the relationship."

⁴ Qanune Madani [Civil Code] Tehran 1314 [1935], art. 947: "Wife takes from the value of the buildings and trees and not they themselves, and the method of valuation is that the trees and buildings must be valued on the supposition of their being worthy to remain on the ground without taking into consideration the labor cost."

⁵ Qur'an, Surat Al-Nisa, Verse 11 (Sahih International translation), <https://quran.com/4:11>.

⁶ Ghanune Asasi [The Constitution] Tehran 1358 [1979], art. 72: "The Islamic Consultative Assembly cannot enact laws contrary to the usual and principles (Ahkam) of the official religion of the country or to the Constitution. It is the duty of the Guardian Council to determine whether a violation has occurred, in accordance with Article 96."

⁷ Ghanune Asasi [The Constitution] Tehran 1358 [1979], art. 91: "With a view to safeguard the Islamic ordinances and the Constitution, in order to examine the compatibility of the legislation passed by the Islamic Consultative Assembly with Islam, a council to be known as the Guardian Council is to be constituted with the following composition: 1. six '*adil fuqaha*' (Clerics) conscious of the present needs and the issues of the day, to be selected by the Leader, and 2. six jurists, specializing in different areas of law, to be elected by the Islamic Consultative Assembly from among the Muslim jurists nominated by the Head of the Judicial Power."

Israel – A Country of Immigration

¹ Certain parts of this article will be included in "*Trusts and Estate Planning in Israel*", which will be published by Juris Publishing, Inc. in the fall of 2016/2017.

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⁴ Alon Kaplan (General Editor), *Trusts in Prime Jurisdictions*, fourth edition (April 2016), chapter on Israel.

⁵ Based on publications of the Israeli Central Bureau of Statistics: Israel has had a continual influx of new immigrants from around the world. In 1882 there were only 24,000 Jews in Palestine, then part of the Ottoman Empire. In 1914, the number was 94,000, decreasing during WWI to 55,000. Continued immigration through the 1920s until 1948 brought the number of Jewish population to 630,000. By 1990, the population reached almost 4 million and a new wave of immigration from the countries of the former Soviet Union brought the 1996 population to 5.6 million. Israel's current population is over eight million. The Jewish population is 75.3 percent of the total; the Arab population is 20.7 percent with other religions and those without religious affiliation being four percent. These figures demonstrate, in our view, the enormous task faced by the Israeli government and society in providing the necessary financial, legal and social services to such a large community of immigrants, from over 70 countries, with great differences in culture and background.

⁶ John Riches (Editor), *The Private Wealth & Private Client Review*, Third Edition (2014), Israel Chapter, written by Alon Kaplan, Lyat Eyal, Ran Artzi, Eyal Sando and Hagi Elmekiessein, 223.

Humanitarian Law and Saudi Arabia's Military Intervention in Yemen

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² al-Shibeeb, D. (March 26, 2015). Your guide to 'Operation Decisive Storm'. Al Arabiya. <http://english.alarabiya.net/en/perspective/features/2015/03/26/Allies-back-Saudi-led-Decisive-Storm-op-in-Yemen-with-fighter-jets-.html>.

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¹⁰ *Id.*

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International Law Lacks Mechanisms for Addressing Conflicting Political State Interests

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² Somini Sengupta, *United Nations Chief Exposes Limits to His Authority by Citing Saudi Threat*, New York Times (June 9, 2016) available at <http://www.nytimes.com/2016/06/10/world/middleeast/saudi-arabia-yemen-children-ban-ki-moon.html>.

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The Iran Deal

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Litigating Constitutionality of Honor Killings in Kuwait

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² Report on Women's Rights in Kuwait (submitted to the Committee on the Elimination of Discrimination against Women (CEDAW), September 2015. See, e.g., Kuwait News Agency, *Kuwaiti Dinar... a symbol of Modern Kuwait*, March 28, 2011, <http://www.kuwaithr.org/activities/a/reports/item/549-woman2015en.html>.

[Ed. Note: Kuwait first issued the dinar in 1961. Before then, the rupee was Kuwait's currency. We believe that the reference in the above-cited code provision reflects the existence of this code provision before the Kuwaiti dinar was adopted.]

³ Encyclopedia of Forensic and Legal Medicine, second edition, Academic Press, Sept. 29, 2015, https://books.google.fr/books?id=gticBAAAQBAJ&pg=PT1536&dq=forensic+law+middle+east&hl=en&sa=X&redir_esc=y#v=onepage&q=article%20153&f=false.

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⁵ Abolish 153, <http://www.abolish153.org/>.

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⁸ The narrow reading has been centered on the immediacy of the killing (whether or not the killer had time to premeditate the killing or if he acted at the moment he "surprised" the people committing zina). Cases are in Arabic; feel free to contact the author of this article if you would like copies of the cases.