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## Foreigners Beware: Exploring the Tension between Saudi Arabian and Western International Commercial Arbitration Practices: In re Aramco Services Co.

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# Foreigners Beware?: Exploring the Tension Between Saudi Arabian and Western International Commercial Arbitration Practices

*In re Aramco Services Co.*<sup>1</sup>

## I. INTRODUCTION

Increasing globalization in the Middle East has resulted in greater commercial interaction between Saudi Arabia and the West.<sup>2</sup> This, in turn, has led to a resurgence of international arbitration agreements between Saudi Arabian businesses and their Western counterparts.<sup>3</sup> However, the strong religious undertones in Saudi Arabian law have given rise to tension with the West, and the United States, in particular.

*In re Aramco Services* is but a tiny piece in a very large puzzle. While the opinion is short, it serves as an indication, or perhaps a reminder, of the larger implications at work. This note will discuss these implications and what they mean for parties to international arbitration agreements controlled by Saudi Arabian law.

## II. FACTS AND HOLDING

*In re Aramco Services Co.* involved a contract between Aramco Services Company (Aramco) and DynCorp International, LLC (DynCorp).<sup>4</sup> Aramco is a subsidiary of Saudi Aramco,<sup>5</sup> an oil company that is now owned and operated by the Saudi Arabian government.<sup>6</sup> DynCorp contracted to produce an advanced computer system in the United States, and transported and installed it in Aramco's Saudi Arabian facilities.<sup>7</sup> The contract provided that Saudi Arabian law, which is based on Shari'a,<sup>8</sup> would control with regard to interpretation of the document and performance.<sup>9</sup> The contract explicitly stated that the choice of law provision

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1. No. 01-09-00624-CV, 2010 WL 1241525 (Tex. App. 2010).

2. Faisal Kutty, *The Shari'a Factor in International Commercial Arbitration*, 28 LOY. L.A. INT'L & COMP. L. REV. 565, 565 (2006).

3. *Id.*

4. *Aramco*, 2010 WL 1241525, at \*1.

5. *What We Do*, ARAMCO SERVICES COMPANY, <https://www.aramcoservices.com/what-we-do/> (last visited Sept. 14, 2011).

6. *Our History*, SAUDI ARAMCO, <http://www.saudiaramco.com/> (last visited Sept. 14, 2011) (follow "Our Company" hyperlink, then follow "Our History" hyperlink).

7. *Aramco*, 2010 WL 1241525, at \*1.

8. Shari'a is the religious-based Islamic law derived from several religious sources including the Qur'an and the Sunna. *See infra* part III (A) (discussing Shari'a and the Saudi Arabian legal system).

9. *Aramco*, 2010 WL 1241525, at \*1 ("The laws of Saudi Arabia shall control the interpretation and the performance of this Contract and any other agreements arising out of or relating to it . . .").

would dictate even though the contract was entered into and significantly performed in the United States.<sup>10</sup>

The issue presented to the trial court centered largely on an arbitration clause contained in the contract.<sup>11</sup> The agreement stated, in part, that any disagreements arising from the contract would be settled using the Arbitration Regulations<sup>12</sup> and the Rules for Implementation of the Arbitration Regulations,<sup>13</sup> both of which are promulgated by the Saudi Arabian government.<sup>14</sup> The agreement also provided for either a one or three arbitrator panel.<sup>15</sup> The agreement gave the parties thirty days, beginning on the day the notice of arbitration referral was received by the parties, to choose a single arbitrator.<sup>16</sup> If the parties were unable to agree upon a single arbitrator in thirty days, each party would be given an additional thirty days to choose their own arbitrators.<sup>17</sup> Those two arbitrators would then have another thirty days to select the third arbitrator.<sup>18</sup>

As a supplement to the arbitration agreement, the contract referred several times to the Arbitration Regulations (the Regulations).<sup>19</sup> The Regulations provide that if the parties are unable to choose an arbitrator within the allotted time, the “authority originally competent to hear the dispute” would choose the arbitrator, if so requested by the party that moved for arbitration.<sup>20</sup>

Finally, the agreement referred to the Rules of Implementation (the Rules), which contain several relevant provisions. The Rules state that arbitration must be performed by a Saudi Arabian arbitrator or by a Muslim foreigner.<sup>21</sup> If the issue is to be decided by more than one arbitrator, the Rules require the arbitration panel Chairman to be knowledgeable in both Shari’a law<sup>22</sup> and also the relevant Saudi Arabian customs and commercial laws.<sup>23</sup> The Rules further state that Arabic shall be the official language used throughout the arbitration and that documents or oral submissions must be in Arabic.<sup>24</sup> Finally, the Rules provide that the arbitrator’s

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10. *Id.* (stating that Saudi Arabian law would apply “regardless of where this Contract shall be entered into or performed.”)

11. *Id.* at \*3.

12. Arbitration Regulations, Royal Decree No. 46, 12 Rajab 1403, A.H. (Apr. 25, 1983). For an English translation, see *Saudi Arabia: Regulations Concerning Arbitration*, 22 INT’L LEG. MATERIALS 1052 (1983) [hereinafter Arbitration Regulations]. For the purposes of this note, I will cite to the English version.

13. Rules for the Implementation of the Saudi Arabian Arbitration Regulation, Council of Ministers Resolution 7/2021/M, 8 Ramadan 1405 A.H. (May 27, 1985) (also published in Umm al-Qura, 10 Shawwal 1405 A.H. (June 28, 1985)). For an English translation, see *Rules for the Implementation of the Saudi Arabian Arbitration Regulation* in INTERNATIONAL HANDBOOK ON COMMERCIAL ARBITRATION 17 (Jan Paulson ed., 1984) [hereinafter Arbitration Rules]. For the purposes of this note, I will cite to the English version.

14. *Aramco*, 2010 WL 1241525, at \*1.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Aramco*, 2010 WL 1241525, at \*1.

19. *Id.* at \*1-2.

20. *Id.* at \*2.

21. *Id.*

22. This requirement stems from the fact that Saudi Arabian law is based on the Shari’a; see *id.* at \*4 (affidavit of Mohammed Al-Sheikh stating that the “paramount body of law in the Kingdom of Saudi Arabia is the *Shari’ah*.”)

23. *Aramco*, 2010 WL 1241525, at \*2.

24. See the Arbitration Rules, *supra* note 13 at § 25.

award must be given in accordance with Shari'a law, as well as with the Rules and Regulations mentioned above.<sup>25</sup>

DynCorp eventually brought suit against Aramco in a Texas trial court, alleging that it was the true owner of funds that Aramco had obtained from a letter of credit which had been opened pursuant to their contract.<sup>26</sup> Aramco filed a motion to compel arbitration which was granted by the court on November 13, 2008.<sup>27</sup> Shortly after, DynCorp filed a motion seeking to arbitrate before either the Judicial Arbitration and Mediation Service (JAMS) or American Arbitration Association (AAA).<sup>28</sup> On April 16, 2009, the trial court partly granted and partly denied DynCorp's motion.<sup>29</sup>

The trial court's order recognized that both parties had failed to secure an arbitrator in the allotted time and that, in such a case, the Regulations require the "authority originally responsible for looking into the case" to appoint the necessary arbitrators.<sup>30</sup> The trial court then determined that the court itself was the authority originally responsible, resting this belief on the fact that both parties had submitted themselves to the jurisdiction of the court by making various motions for arbitration.<sup>31</sup> Accordingly, the court granted the motion to arbitrate, giving the parties until May 18, 2009 to choose their arbitrators.<sup>32</sup> However, because it determined that it did not have authority to do so, the court denied DynCorp's request that the court decide certain procedural issues with regard to the arbitration.<sup>33</sup>

Shortly after the trial court's order, Aramco moved for reconsideration of the order and attached the affidavit of Mohammed Al-Sheikh, a practicing Saudi Arabian attorney and expert in Saudi Arabian law.<sup>34</sup> Mr. Al-Sheikh determined that the "authority originally competent to hear the dispute" contemplated by the Regulations was a Saudi Arabian court.<sup>35</sup> Mr. Al-Sheikh's affidavit stated that Shari'a, Saudi Arabian law, is based largely on both the Sunnah and the Holy Qur'an.<sup>36</sup> These laws are stated very generally, so the deciding body is empowered with considerable discretion with regard to their application.<sup>37</sup> Furthermore, Saudi Arabian authorities are not bound by prior decisions, nor are these decisions

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25. See the Arbitration Rules, *supra* note 13 at § 39.

26. *Aramco*, 2010 WL 1241525, at \*3.

27. *Id.*

28. *Id.* Both JAMS and AAA are American organizations that offer alternative dispute resolution services. See American Arbitration Association (AAA), [www.adr.org](http://www.adr.org) (last visited Sept. 14, 2011) and JAMS, [www.jamsadr.com](http://www.jamsadr.com) (last visited Sept. 14, 2011).

29. *Aramco*, 2010 WL 1241525, at \*3.

30. *Id.*

31. *Id.*

32. *Id.* at \*4.

33. *Id.*

34. *Id.*

35. *Aramco*, 2010 WL 1241525, at \*4.

36. *Id.* The Qur'an is the Islamic Holy book, the Sunna are the recorded actions and behaviors of the Prophet Muhammed. See *infra* notes 62-64 and accompanying text.

37. *Aramco*, 2010 WL 1241525, at \*4.

indexed in any meaningful way.<sup>38</sup> Thus, Mr. Al-Sheikh concluded, the correct authority was the Saudi Board of Grievances,<sup>39</sup> and not a United States court.<sup>40</sup>

Despite Mr. Al-Sheikh's assertions, Aramco's motion for reconsideration was denied and Aramco complied with the trial court's order by choosing a Muslim arbitrator, Dr. Sherif Hassan.<sup>41</sup> DynCorp also complied with the order by proposing three arbitrators of its own, none of whom were Muslim or Saudi Arabian nationals.<sup>42</sup> Aramco objected to the arbitrators proposed by DynCorp, arguing that they were unqualified to serve because the Rules and Regulations required the arbitrators to be either Muslim foreigners or Saudi Arabian nationals.<sup>43</sup> On June 22, 2009, the trial court signed an order appointing Dr. Hassan, who had been chosen by Aramco, and two of DynCorp's proposed arbitrators as the panel of arbitrators.<sup>44</sup> This effectively overruled Aramco's objections<sup>45</sup> and thereafter, Aramco filed a petition for a writ of mandamus in the Texas Court of Appeals, challenging the trial court's arbitration orders.<sup>46</sup>

Aramco raised two main arguments on appeal.<sup>47</sup> First, Aramco argued that the "authority" contemplated by the Regulations could not have been referring to the trial court.<sup>48</sup> In support of this argument, Aramco asserted that it was necessary to look to other Saudi law to define "authority" for the purposes of the Regulations.<sup>49</sup> Furthermore, Aramco argued that more deference should have been given to Mr. Al-Sheikh's affidavit, and concluded that the Authority contemplated by the Regulations in this case was the Saudi Board of Grievances.<sup>50</sup>

Aramco's second argument was based on the fact that neither party had requested the trial court to designate the arbitrators, and thus the trial court was without authority to do so.<sup>51</sup> Conversely, DynCorp asserted that the trial court was correct in determining that it was the "authority" referred to by the regulations, and that DynCorp had requested the trial court to designate the arbitrators when it moved to compel arbitration.<sup>52</sup> Additionally, DynCorp maintained that the terms of the contract were too ambiguous and that it was improper to review the matter under a writ of mandamus.<sup>53</sup> The Court of Appeals found it necessary to address only Aramco's first argument. Siding with Aramco and Mr. Al-Sheikh, the appeals court conditionally granted Aramco's petition for a writ of mandamus, holding that the proper "Authority" had to be a Saudi Arabian court.<sup>54</sup>

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38. *Id.*

39. Nancy B. Turck, *Dispute Resolution in Saudi Arabia*, 22 INT'L LAW. 415, 416 (1988) (noting that while the Saudi courts are allowed to hear commercial disputes, these cases are typically heard by specialized committees, one of which is the Board of Grievances).

40. *Aramco*, 2010 WL 1241525, at \*4.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Aramco*, 2010 WL 1241525, at \*1.

47. *Id.* at \*5.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Aramco*, 2010 WL 1241525, at \*5.

52. *Id.*

53. *Id.*

54. *Id.* at \*6.

### III. LEGAL BACKGROUND

In order to understand the dispute at hand, it is important to understand the legal, historical, and religious contexts in which the dispute arose. Accordingly, the first part of this section will discuss Saudi Arabian law and its major tenets. The second section will address the development of Saudi Arabia's arbitration law over the past several decades. The third section will outline the differences between Saudi Arabian and Western arbitration practices. The final section will then briefly discuss recent trends in the United States with regard to Shari'a law and individual states' movements to ban the use of foreign law.

#### *A. Saudi Arabian Law – Shari'a and the Legal System*

The Kingdom of Saudi Arabia is governed by Islamic law, also known as Shari'a.<sup>55</sup> To devout Muslims, Shari'a controls not only their personal and religious lives, but also their commercial and political dealings.<sup>56</sup> One commentator suggested that the hardest thing for Westerners to understand is that the separation of church and state, considered so fundamental to the American governmental sphere,<sup>57</sup> simply does not exist in Saudi Arabia.<sup>58</sup> Shari'a permeates all aspects of life, both public and private.<sup>59</sup> As such, knowledge of the role of Shari'a in both the lives and government of the Saudi Arabian people is helpful in understanding the development of the country's arbitration law.

Literally interpreted, Shari'a means "path to the watering-place" and refers to the guidance and commands from God that govern man's conduct in the world.<sup>60</sup> It incorporates the five fundamental pillars of Islam which include (1) belief in Allah, (2) participation in daily prayers, (3) fasting, (4) giving of alms to the poor, and (5) pilgrimage to the holy city of Mecca, also known as the *Hajj*.<sup>61</sup> Shari'a is generally derived from four main sources: the Qur'an, the Sunna, the Ijma, and the Qiyas.<sup>62</sup> The dominant and most important source of Shari'a is the Qur'an which is thought to be the literal word of God as revealed to the prophet Muhammad.<sup>63</sup> It is seen by many Muslims as more than a legal code because it contains guiding

55. Sharon Breckenridge Thomas, *International Arbitration: A Historical Perspective and Practice Guide Connecting Four Emerging World Cultures: China, Mexico, Nigeria, and Saudi Arabia*, 17 AM. REV. INT'L ARB. 183, 202 (2006).

56. George Sayen, *Arbitration, Conciliation, and the Islamic Tradition in Saudi Arabia*, 24 U. PA. J. INT'L ECON. L. 905, 906 (2003).

57. Wendi L. Kellington, *God and the Land: Thoughts About Land Use Controls and Religious Freedom in the American Legal System*, 2 ALB. GOV'T. L. REV. 537, 541-42 (2009) ("It cannot be disputed that the separation of church and state was a fundamental rationale for the formation of the United States.").

58. Thomas, *supra* note 55, at 202.

59. *Id.*

60. MOHAMMAD HASHIM KAMALI, *SHARI'AH LAW* 14 (2008).

61. Jason Morgan-Foster, *A New Perspective on the Universality Debate: Reverse Moderate Relativism in the Islamic Context*, 10 ILSA J. INT'L & COMP. L. 35, 49-50 (2003).

62. RODOLPHE J.A. DE SEIFE, *THE SHAR'IA: AN INTRODUCTION TO THE LAW OF ISLAM* 25 (1994). The Qur'an is the Islamic Holy book, the Sunna are the recorded actions and behaviors of the Prophet Muhammed, the Ijma are the recorded opinions of Muslim scholars on the Qur'an and the Sunna, and Qiyas is more of an Islamic legal doctrine. See Thomas, *supra* note 55, at 205.

63. See Thomas, *supra* note 55, at 205.

principles for both legal and non-legal matters, and is considered superior to any man-made law.<sup>64</sup> The second most important authority is the Sunna, which consists of Muhammad's interpretation of the Qur'an through his words, action, and even his silence.<sup>65</sup> The Ijma are essentially matters or interpretations on which most Islamic scholars agree<sup>66</sup> which have been carefully documented by various scholars over time.<sup>67</sup> The Qiyas, on the other hand, is more of an analytical tool or legal doctrine which is used to apply the logic or interpretation of one case to another similar case.<sup>68</sup>

There are also four main schools of thought used in interpreting Islamic law.<sup>69</sup> They are the Hanifa, Maliki, Shafi'I, and Hanabali.<sup>70</sup> Saudi Arabia officially adopted the Hanabali School in 1928.<sup>71</sup> For the present, it is sufficient to note that Hanabali requires the strictest interpretation of Islamic law and has traditionally shunned Western influence.<sup>72</sup>

Saudi Arabia is considered the birthplace of Shari'a and is home to Mecca and Medina, both of which are considered holy ground by Shari'a followers.<sup>73</sup> The country itself is controlled by a monarch who, in turn, has a Council of Ministers (Council) to assist him in performing his duties.<sup>74</sup> Both the Council and the King are bound by Shari'a law.<sup>75</sup> The government also has a Board of Grievances (Board) which, among other things, maintains jurisdiction over all disputes involving the government and all commercial disputes.<sup>76</sup>

### B. The Development of Arbitration in Saudi Arabia

Arbitration existed in the Middle East before the emergence of Islam,<sup>77</sup> with one of the earliest recorded arbitration proceedings dating back to the Seventh Century.<sup>78</sup> Even the Qur'an and the Prophet Muhammad approved of the use of arbitration to settle disputes.<sup>79</sup> While the practice of arbitration has been widely accepted in Saudi Arabia for many years, it gained notoriety throughout the latter

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64. MAWIL IZZI DIEN, *ISLAMIC LAW: FROM HISTORICAL FOUNDATIONS TO CONTEMPORARY PRACTICE* 37 (2004).

65. *Id.* at 38.

66. *Id.* at 40.

67. *Id.* at 47.

68. *Id.* at 51.

69. Kristen Roy, *The New York Convention and Saudi Arabia: Can a Country Use the Public Policy Defense to Refuse Enforcement of Non-Domestic Arbitral Awards?* 18 *FORDHAM INT'L L.J.* 920, 945 (1995).

70. *Id.* The four schools are each named after their founding jurist and differ primarily in their emphasis on either the Qur'an or Sunna, as well as their analogical reasoning. However, these differences are often very slight so they are not seen as fundamental. See De Seife, *supra* note 62, at 35-38.

71. Turck, *supra* note 39, at 415.

72. Roy, *supra* note 69, at 946.

73. Thomas, *supra* note 55, at 202.

74. *Id.*

75. *Id.* at 203.

76. *Id.* at 204.

77. Andrew Smolik, Comment, *The Effect of Shari'a on the Dispute Resolution Process Set Forth in the Washington Convention*, 2010 *J. DISP. RESOL.* 151, 157 (2010).

78. Charles N. Brower & Jeremy K. Sharpe, Note and Comment, *International Arbitration and the Islamic World: The Third Phase*, 97 *AM. J. INT'L L.* 643, 643 (2003).

79. Smolik, *supra* note 77, at 158; See also THE HOLY QUR'AN 4:35.

half of the 20th Century. This led to profound changes in Saudi Arabia's arbitration laws. This time period in Saudi Arabia's arbitration history is typically discussed in three phases.<sup>80</sup>

The first phase in the development of Saudi Arabian arbitration law began in the mid-1940s, around the end of World War II, and lasted until the 1970s.<sup>81</sup> This phase was characterized by a devaluation of Islamic law by Western law through the arbitration of oil disputes.<sup>82</sup> Prior to the 1970s, Saudi Arabia granted several long-term oil concessions to foreign oil companies, giving them full access and control over the country's petroleum for several years.<sup>83</sup> The typical concession agreement contained an arbitration provision which mandated arbitration of all disputes arising from the agreement.<sup>84</sup> The arbitrations that followed led to the "elevation" of Western principles at the expense of Islamic law.<sup>85</sup>

The "last straw" with regard to these oil arbitrations is considered to be the 1963 arbitration of *Saudi Arabia v. Aramco*.<sup>86</sup> At the time, the Saudi Arabian oil industry was dominated by American oil companies, including the Arabian American Oil Company (Aramco).<sup>87</sup> After a dispute erupted between the Saudi Arabian government and Aramco, the case went to arbitration.<sup>88</sup> The panel decided in favor of Aramco, holding that because Aramco's rights could not be adequately secured by Saudi Arabian law, the Saudi laws "had to be interpreted or supplemented by the general principles of law, by the custom and practice in the oil business and by notions of pure jurisprudence."<sup>89</sup> Outraged by the decision, the Council of Ministers<sup>90</sup> passed Resolution No. 58, which forbade the use of arbitration by Saudi government agencies.<sup>91</sup> This, and similar decisions,<sup>92</sup> have framed the arbitration law in Saudi Arabia and have led to a distrust in international arbitration with the West.<sup>93</sup>

The second phase extended from the 1970s to the early 1980s, and was characterized by a rejection and repudiation of the long-term oil concessions that had been granted to foreign oil industries.<sup>94</sup> It also included rejection of the arbitration

80. See Kutty, *supra* note 2, at 590-93; Brower & Sharpe, *supra* note 78, at 643; Smolik, *supra* note 77, at 158-60.

81. Kutty, *supra* note 2, at 591.

82. *Id.*

83. Brower & Sharpe, *supra* note 78, at 643-44; see also Kutty, *supra* note 2, at 591.

84. Brower & Sharpe, *supra* note 78, at 644.

85. *Id.*

86. Smolik, *supra* note 77, at 159 & n.120.

87. Remember that the Saudi Arabian government did not regain control of the oil industry until 1980, later establishing the Saudi Arabian Oil Company (Saudi Aramco). See *Our History, SAUDI ARAMCO*, <http://www.saudiaramco.com/> (last visited July 16, 2011) (follow "Our Company" hyperlink; then follow "Find out more" hyperlink; then follow the "Our History" hyperlink).

88. Smolik, *supra* note 77, at 159.

89. *Id.* at 159-60. (citations and quotations omitted).

90. See Thomas, *supra* note 55 at 202-03. (The Council of Ministers "assists the King in the performance of his duties . . . and has final authority for the nation's financial, executive, and administrative affairs . . .").

91. Kutty, *supra* note 2, at 592.

92. See Smolik, *supra* note 77, at 158-59 (discussing other cases that have shaped Saudi Arabia's view towards Western arbitration).

93. Brower & Sharpe, *supra* note 78, at 644-45.

94. *Id.* at 645-46.



agreements contained in the Western contracts.<sup>95</sup> At this time, Saudi Arabia, along with several other Middle Eastern states, had no arbitration legislation and chose not to participate in international arbitration.<sup>96</sup>

Finally, the third phase emerged in the early to mid-1980s and involved a resurgence of international arbitration in many Middle Eastern states due to globalization and growth in international commerce.<sup>97</sup> In Saudi Arabia, this meant the promulgation of the Arbitration Regulations in 1983, followed by the Rules of Implementation in 1985.<sup>98</sup>

The Regulations were created for two main purposes.<sup>99</sup> First, they established a set of uniform rules for the benefit and guidance of foreign business partners who were dissatisfied with the uncertainty of the previous system.<sup>100</sup> Second, they provided for extensive governmental oversight over all aspects of the arbitration procedures and proceedings.<sup>101</sup> This supervisory power is delegated to the “Authority originally competent to hear the dispute,” which is the Board of Grievances in any suit involving a government agency or commercial contract.<sup>102</sup> The Rules and Regulations are strictly designed to assure compliance with Shari’a law by the arbitration panel.<sup>103</sup> For example, the Rules require arbitration by Muslim arbitrators, and also require the arbitrators to render an award that is enforceable under Shari’a.<sup>104</sup> As an additional guarantee, the Regulations require the Authority to review all arbitration awards to ensure that each award is given in accordance with the Shari’a.<sup>105</sup>

Another indication of Saudi Arabia’s reemergence into the world of international arbitration was its acceptance of the New York Convention (NYC).<sup>106</sup> The overriding goals of the NYC are to ensure the recognition of international arbitration agreements and the enforcement of awards from foreign tribunals.<sup>107</sup> Perhaps due to international influence<sup>108</sup> or Saudi Arabia’s own desire to modernize its arbitration practices,<sup>109</sup> Saudi Arabia finally acceded to the NYC in 1994.<sup>110</sup> The NYC allows its signatory countries the option of refusing to recognize any foreign arbitration award that goes against their public policy.<sup>111</sup> This has allowed Saudi

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95. *Id.* at 646.

96. Smolik, *supra* note 77, at 160.

97. Brower & Sharpe, *supra* note 78, at 646.

98. Turck, *supra* note 39, at 431.

99. Sayen, *supra* note 56, at 912.

100. *Id.*

101. *Id.*

102. *Id.* at 912-13.

103. *Id.* at 916.

104. *Id.*

105. Sayen, *supra* note 56 at 916; *see also* Arbitration Regulations, *supra* note 12 at art. 20 (stating that “the judgment of the arbiters shall be enforceable when it becomes final by the authority originally responsible for considering the dispute . . .”).

106. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 21 U.S.T. 2517 (1958) [hereinafter New York Convention].

107. Brower & Sharpe, *supra* note 78, at 647-48.

108. *Problems Confronting U.S. Businesspersons in Saudi Arabia: Hearing Before the Subcomm. on Europe and the Middle East*, 102d Cong. 2-4 (1992) (statement of Sen. John Glenn, Chairman, S. Comm. on Foreign Relations).

109. Roy, *supra* note 69, at 953.

110. *Id.* at 954.

111. *Id.* at 953.

Arabia the ability to align itself more closely to international dispute resolution standards without having to abandon its public policy or religious beliefs.<sup>112</sup>

### *C. Differences Between Western Practices, Saudi Arabian Arbitration Laws, and Shari'a in General*

There are several noteworthy differences between Western and Saudi Arabian arbitration practices. It is important to recognize these differences in order to fully understand the possible issues this case represents. However, this note will briefly discuss only the differences that appear most salient.

One frequently raised issue is the fact that Shari'a does not recognize the imposition of interest in any contract.<sup>113</sup> Interest, or "Riba" as it is known in Saudi Arabian culture, is considered to be a form of unjustified enrichment.<sup>114</sup> Accordingly, any contract that allows for excessive profits or interest rates will be deemed unconscionable and unenforceable.<sup>115</sup> Islamic principles also prohibit any contract clause that relies on speculation or the occurrence of an uncertain event.<sup>116</sup> The result is often smaller awards than common law courts generally grant.<sup>117</sup>

Another issue involves the binding nature of arbitration agreements in the West. In the United States, arbitral awards are considered final and binding, with limited grounds for review or vacatur.<sup>118</sup> Unfortunately, the issue is not as simple in Saudi Arabia. According to the Hanabali school of thought, which Saudi Arabia follows, arbitration awards have the same binding effect as a court judgment.<sup>119</sup> However, as stated above, an award does not become binding until the "authority originally competent to hear the dispute" has reviewed it to ensure that it complies with Shari'a.<sup>120</sup> Furthermore, the standards for this review are uncertain and unpredictable.<sup>121</sup> If the award fails to satisfy the competent authority, a party may be forced to start over from scratch, thereby wasting the time, money, and other resources spent on the first arbitration proceeding.<sup>122</sup>

There are several other issues to be aware of, including: the prohibition of government agency participation in arbitration without permission from the Counsel of Ministries,<sup>123</sup> gender and religious restrictions in arbitrator appointments,<sup>124</sup>

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112. *Id.* at 953-54.

113. Kutty, *supra* note 2, at 604.

114. *Id.*

115. Roy, *supra* note 69, at 947 ("The law of Islam forbids Riba based on the belief that obtaining something for nothing is inherently immoral and wrong.")

116. Until recently, the Saudi Arabian government even forbade the use of insurance contracts or clauses, reasoning that they were based on events that were uncertain to occur. *Id.* at 947-48.

117. *Id.* at 949.

118. Federal Arbitration Act (FAA), 9 U.S.C. §§ 2 & 10 (2006).

119. Kutty, *supra* note 2, at 597-98.

120. See Sayen, *supra*, notes 103-105 and supporting text; see also Sayen, *supra* note 56, at 938-39.

121. Sayen, *supra* note 56, at 942.

122. *Id.*

123. Thomas, *supra* note 55, at 233.

124. *Id.* at 208.

disparities between the weight that male and female testimony is given,<sup>125</sup> and the fact that all proceedings and documents are to be in Arabic.<sup>126</sup>

#### D. Individual States' Movements to Ban the Use of Foreign Law

The mere mention of the word "Shari'a" conjures fear in the hearts of many Westerners, who view it as oppressive and inhumane.<sup>127</sup> Indeed, the United States has recently been experiencing an increasing sense of hostility towards the use of foreign law, Shari'a in particular. This is evidenced by the multiple states<sup>128</sup> that have recently introduced anti-foreign law bills to their legislatures. While the language varies from state to state, these bills typically specify that no court, arbitrator, or other tribunal may apply foreign law if it would deprive the parties of their constitutional rights.<sup>129</sup> Even Texas, which has been somewhat friendly with respect to the use of foreign or religious-based law in the past,<sup>130</sup> has recently proposed a statute banning the use of foreign law<sup>131</sup> and a constitutional amendment that would forbid the use of religious or cultural law.<sup>132</sup>

While most of these proposed laws do not specify Shari'a in particular, it has been suggested that they have been designed specifically to target and stigmatize Shari'a law.<sup>133</sup> The reasons behind this suggestion are numerous and controversial. One justification advanced by the Tennessee legislature is the deterrence of

125. *Id.* at 210.

126. See Arbitration Rules, *supra* note 13, at § 25.

127. Noah Feldman, *Why Shariah?*, N.Y. TIMES, Mar. 16, 2008, available at nytimes.com ("No legal system has ever had worse press. To many, the word Shariah conjures horrors of hands cut off, adulterers stoned and women oppressed.").

128. H.B. 88, 27th Leg., Reg. Sess. (Alaska 2011)(specifying Shari'a); H.B. 2582, 50th Leg., 1st Reg. Sess. (Ariz. 2011); S.B. 97, 88th Gen. Assemb., Reg. Sess. (Ark. 2011); H.B. 45, 151st Gen. Assemb., Reg. Sess. (Ga. 2011); S.B. 520, 117th Gen. Assemb., 1st Reg. Sess. (Ind. 2011); L.B. 647, 102nd Leg., 1st Reg. Sess. (Neb. 2011); S.B. 444, 119th Gen. Assemb., 1st Reg. Sess. (S.C. 2011); S.B. 201, 86th Leg. Assemb., Reg. Sess. (S.B. 2011); H.R.J. Res. 8, 61st Leg., Gen. Sess. (Wyo. 2011) (specifying Sharia law); S.B. 1029, 107th Gen. Assemb., Reg. Sess. (Tenn. 2011) (proposed Tennessee law that would the use of Shari'a); H.B. 708, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011); H.R.J. Res. 31, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2001) (Missouri bill proposing a constitutional amendment to prohibits from applying Sharia or international law); H.B. 1552, 53rd Leg., 1st Reg. Sess. (Okla. 2011); S.B. 1294, 113th Reg. Sess. (Fla. 2011).

129. See, e.g., S.B. 97, 88th Gen. Assemb., Reg. Sess. (Ark. 2011) ("Any court, arbitration tribunal, or administrative agency ruling or decision shall violate the public policy of this state and be void and unenforceable if the court, arbitration, tribunal, or administrative agency bases its rulings or decisions in the matter at issue in whole or in part on any foreign law, legal code, or system that would not grant the parties affected by the ruling or decision the same fundamental liberties, rights, and privileges granted under the United States Constitution and the Arkansas Constitution.").

130. See *Woodlands Christian Academy v. Weibust*, No. 09-10-00010-CV, 2010 Tex. App. LEXIS 8107, at \*12-\*18 (Tex. App. Oct. 7, 2010) (holding that an arbitration provision requiring the application of "biblical" law was not unconscionable); *Jabri v. Qaddura*, 108 S.W.3d 404 (Tex. App. 2003) (upholding an arbitration clause which required application of Islamic law); Tex Civ. Prac. & Rem. §172.102(a) (2010) ("The arbitration tribunal shall decide the dispute according to the rules of law designated by the parties as applicable to the substance of the dispute.").

131. H.B. 3027, 82d Reg. Sess. (Tex. 2011).

132. H.R.J. Res. 57, 82d Reg. Sess. (Tex. 2011).

133. See, e.g., Stephen Largen, *Legislation Tries to Bar Foreign Influence: Critics Say Bills Target Muslims*, SPARTANBURG HERALD-JOURNAL, Feb. 4, 2011, available at <http://www.goupstate.com/article/20110204/articles/102041009?p=all&tc=pgall&tc=ar>.

“homegrown terrorism.”<sup>134</sup> In a twenty-page bill, the Tennessee legislature proposed criminalizing the use of Shari’a, urging that it is inherently contrary to American values and intimating that it was linked to the September 11 terrorist attacks.<sup>135</sup> Other noteworthy politicians have demonstrated a similar attitude.<sup>136</sup>

Yet others have suggested perhaps a more benign justification, arguing that the aim is to protect the rights of women in domestic disputes.<sup>137</sup> In the last few years, Canada and Great Britain have been struggling to find a place for Shari’a in their family law, both indicating concerns that women’s rights in family cases would be severely diminished.<sup>138</sup> Whatever reasons lie behind these state laws, one thing is certain. This movement is on the rise and is sure to have an effect on the application of Shari’a law in arbitration proceedings.

#### IV. INSTANT DECISION

In *In re Aramco Services Co.*, the court, which consisted of a panel of three judges, began its analysis by outlining the standard of review for a writ of mandamus.<sup>139</sup> It noted that a writ of mandamus may only be granted where a trial court “reaches a decision so arbitrary and unreasonable as to amount to clear and prejudicial error of law and there is no adequate remedy by appeal.”<sup>140</sup> However, the court stated, unless the decision of the trial court was arbitrary and unreasonable, it must give deference to the discretion of the lower court.<sup>141</sup> The court further stated that mandamus relief is an appropriate remedy when a lower court wrongly selects an arbitrator.<sup>142</sup>

After outlining the proper standard of review and giving a brief description of the parties’ arguments, the court then moved on to discuss the rules for contract interpretation.<sup>143</sup> With regard to this issue, the court first stated that arbitration agreements are interpreted like any other contract and that a reviewing court must examine the contract as a whole to determine the parties’ true intentions.<sup>144</sup> As

134. S.B. 1029, 107th Gen. Assemb., Reg. Sess. (Tenn. 2011) (Tennessee law criminalizing the use of Shari’a).

135. *Id.*; see also Elizabeth Tenety, *Sharia Law Ban Proposed in Tennessee*, WASH. POST, Feb. 24, 2011, available at [http://onfaith.washingtonpost.com/onfaith/undergod/2011/02/sharia\\_law\\_ban\\_proposed\\_in\\_tennessee.html](http://onfaith.washingtonpost.com/onfaith/undergod/2011/02/sharia_law_ban_proposed_in_tennessee.html).

136. See, e.g., Evan McMorris-Santoro, *Gingrich Calls for Federal Ban on Shariah Law in U.S.*, WASH. POST, Sep. 18, 2010, available at <http://tpmdc.talkingpointsmemo.com/2010/09/gingrich-calls-for-federal-law-banning-shariah-law-in-us.php> (quoting Newt Gingrich who advocated for a federal ban on Shariah law in the U.S.).

137. Sally Armstrong, *If There’s a Place for Sharia, It’s not in Ontario*, N.Y. TIMES, Feb. 11, 2005, available at [www.nytimes.com](http://www.nytimes.com).

138. *Id.*; see also Elaine Sciolino, *Britain Grapples with Role for Islamic Justice*, N.Y. TIMES, Nov. 18, 2008, available at [www.nytimes.com](http://www.nytimes.com).

139. See BALLENTINE’S LAW DICTIONARY (3d. ed. 1969) (defining “mandamus” as a “command by order or writ issuing from a court of law of competent jurisdiction, in the name of the state or sovereign, directed to some inferior court...requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law.”)

140. *Aramco*, 2010 WL 1241525 at \*5 (citations and quotations omitted).

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

always, the goal is to give effect to the true intentions of the parties as expressed in the agreement.<sup>145</sup> In order to do this, the court stated that it must look at the agreement as a whole, and not give any single provision more effect than another.<sup>146</sup> It was further noted that when the only evidence the court is given is the undisputed and reasonable opinion of an expert in foreign law, it will generally be accepted as true.<sup>147</sup>

The court then chose to discuss how issues of contract ambiguity should be resolved. After asserting that it is a question of law which should be decided by the court, the judges found that this determination must be made by looking at the circumstances that were present when the contract was created.<sup>148</sup> They stated that a contract is ambiguous if it can reasonably be interpreted in more than one way.<sup>149</sup> However, if a contract can be afforded a definite interpretation, the court should interpret it as a matter of law.<sup>150</sup> The opinion further asserted that not every difference or lack of clarity creates ambiguity and that the words of the contract should be given their plain and ordinary meaning.<sup>151</sup>

After delineating the general principles regarding contract interpretation, the court applied them to the instant case.<sup>152</sup> The court first noted that neither party had requested the lower court to select the arbitrators in accordance with Article 10<sup>153</sup> of the Regulations.<sup>154</sup> Furthermore, even if they had, the trial court erred in concluding that it was the authority with the power to select the arbitrators under Article 10.<sup>155</sup> In support of this holding, the court noted that Article 8 of the Regulations refers to the “Secretariat,” which is given authority over all notices and summons.<sup>156</sup> Furthermore, sections 12<sup>157</sup> and 25<sup>158</sup> of the Rules both provide that the notices and arbitration proceedings are to be conducted in Arabic.<sup>159</sup> Finally, the court referred to the uncontroverted testimony of Mr. Al-Sheikh, which also stated that the “Authority” referred to by the Regulations was the Saudi Arabian courts.<sup>160</sup> The court found it unnecessary to address the parties’ other concerns and arguments and directed the trial court to vacate its prior orders.<sup>161</sup>

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145. *Id.*

146. *Aramco*, 2010 WL 1241525, at \*5.

147. *Id.*

148. *Id.* at \*6.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Aramco*, 2010 WL 1241525, at \*6.

153. Arbitration Regulations, *supra* note 12 at art. 10 (“If the disputants fail to appoint the arbiters . . . the authority originally responsible for looking into the case shall appoint the necessary arbiters in response to a request by the party who is interested in expediting the procedure . . .”).

154. *Aramco*, 2010 WL 1241525, at \*6.

155. *Id.*

156. *Id.*

157. *See* Arbitration Rules, *supra* note 13 at §12 (“The summons or notice shall be written in the Arabic language . . .”).

158. *Id.* at § 25 (“The Arabic language shall be the official language to be used before the arbitration panel, whether in the discussions or in correspondence. The arbitration panel and the parties may not speak other than the Arabic language and any party who does not speak Arabic shall be accompanied by an accredited translator, who shall sign with him the minutes of the hearing, approving the statements made.”).

159. *Aramco*, 2010 WL 1241525, at \*6.

160. *Id.*

161. *Id.*

## V. COMMENT

Arbitration acts as a sort of personalized justice by allowing parties to determine, to a certain extent, how their disputes will be resolved.<sup>162</sup> There are many ways for parties to shape an arbitration agreement that is unique to their needs and wants. For example, they can choose who the decision-maker will be and how they are chosen, specify the rules of evidence and procedure to be used, and, perhaps most important, they may choose what law they wish the arbitrators to apply.<sup>163</sup> When an arbitration agreement is silent as to choice of law, the law governing the arbitration will usually be the law of the jurisdiction in which the arbitration is seated.<sup>164</sup> However, the parties may choose to apply another type of law to the arbitration by including a choice of law provision.<sup>165</sup> Indeed, because of the differences in Islamic and Western commercial practices, Muslim parties will often require the application of Islamic law.<sup>166</sup> This is precisely what DynCorp and Aramco intended to do with their arbitration agreement by requiring application of Saudi Arabian law.

Based on the presence of the choice of law provisions in Aramco's contract and arbitration agreement, the court was correct in applying Saudi Arabian law. By all accounts, it also seems that the Houston Court of Appeals was correct in concluding that the "Authority" contemplated by the Rules and the Regulations was a Saudi Arabian judicial body,<sup>167</sup> and that this authority has been delegated to the Board of Grievances by Saudi Arabian law.<sup>168</sup> This begs us to consider what this means for corporations, such as DynCorp, who are parties to arbitration agreements controlled by Saudi Arabian law.

Although not explicitly required by the Rules and Regulations, the fact that the Authority must be a Saudi Arabian judicial body may likely mean submitting to arbitration in Saudi Arabia.<sup>169</sup> Theoretically, the parties are free to designate any venue they wish, as long as the arbitration is conducted in a manner consistent with the Rules and Regulations.<sup>170</sup> However, the practical effect of the Authority's location in Saudi Arabia would make it very difficult to conduct the arbitration

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162. MICHAEL E. SWARTZ, *INTERNATIONAL ARBITRATION* 532 (2005).

163. *Id.*

164. PAUL D. FRIEDLAND, *ARBITRATION CLAUSES FOR INTERNATIONAL CONTRACTS* 89-90 (2d ed. 2007).

165. *Id.*

166. Almas Khan, *The Interaction between Shariah and International Law in Arbitration*, 6 CHI. J. INT'L L. 791, 798 (2006).

167. See L.L. Boshoff, *Saudi Arabia: Arbitration vs. Litigation*, 1 ARAB L. Q. 299, 306 (1986) (The Saudi court is "referred to in the Arbitration Regulations as the 'Authority originally competent'"); Abdul Hamid El Ahdab, *Arbitration in Saudi Arabia under the New Arbitration Act, 1983 and its Implementation Rules of 1985: Part One*, 3 J. INT'L ARB. 27, 28-29 (1986) (listing the five possible authorities contemplated by the Regulations, all of which are Saudi Arabian judicial bodies); *DOING BUSINESS WITH SAUDI ARABIA* 107 (Anthony Shoult ed., 3d ed. 2006).

168. Thomas, *supra* note 55, at 204 (the Board of Grievances has "jurisdiction over commercial disputes and disputes with the government"); Turck, *supra* note 39, at 433 (although the Rules and Regulations do not define the "competent authority," the correct authority for cases involving commercial disputes, nongovernmental entities, or a government entity with permission to arbitrate is the Board of Grievances).

169. Turck, *supra* note 55, at 432.

170. *Id.*

outside of that country.<sup>171</sup> Furthermore, the Saudi government will not allow certain entities to designate a forum outside the country, including companies incorporated in Saudi Arabia or companies that are jointly owned by foreign and Saudi investors.<sup>172</sup> It is true that this is not the situation faced in *Aramco* because both companies were incorporated in the United States.<sup>173</sup> Still, such companies may submit to arbitration in Saudi Arabia out of necessity or the convenience of being closer to the adjudicatory body overseeing their arbitration.<sup>174</sup>

If, however, the parties decide on a venue outside the confines of Saudi Arabia, they face yet another issue: enforcement of the award. Remember that the New York Convention, ratified by Saudi Arabia, was designed to ensure the enforcement of foreign awards.<sup>175</sup> The problem, however, is that the Convention allows judicial bodies to refuse recognition of a foreign award if it goes against their public policy.<sup>176</sup> Some nations have interpreted this provision narrowly, finding that an arbitration award can be refused only if it violates international policy.<sup>177</sup> However, Saudi Arabia seems to have adopted a much broader interpretation, allowing it to deny any arbitration award that does not comport with its own national policy.<sup>178</sup> This is particularly relevant here because Saudi Arabia's laws and public policies, which are so heavily based on a strict interpretation of the Shari'a, stand in stark contrast to those of many member states.<sup>179</sup> For DynCorp, this means that even if they do go to arbitration in the United States, the Board of Grievances may refuse to recognize the award if it violates Saudi Arabian arbitration laws.

Another issue that must be confronted when applying Shari'a law to an international dispute is the constitutional and statutory conflicts that may arise.<sup>180</sup> This is especially significant now, considering the number of states that have introduced anti-foreign law or anti-Shari'a statutes in their legislatures. These laws purport to bind any court or arbitrator within their state, as well as federal courts sitting in diversity. Whether these anti-foreign law bills specify Shari'a or not, they effectively ban its application because it is, after all, foreign law. This would mean that a choice of law provision, such as the one in *Aramco*, would be unenforceable.

The question, then, is whether or not such a result is desirable. It has been suggested that Shari'a law is nothing close to the harsh and unforgiving creature it

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171. *Id.*; see also Yahya Al-Samaan, *The Settlement of Foreign Investment Disputes by Means of Domestic Arbitration in Saudi Arabia*, 9 ARAB L.Q. 217, 232 (1994).

172. Al-Samaan, *supra* note 171, at 232.

173. *Aramco*, 2010 WL 1241525 \*1 n. 3.

174. Al-Samaan, *supra* note 171, at 232.

175. Brower & Sharpe, *supra* note 78, at 647.

176. See New York Convention, *supra* note 106 at art. V(2)(b).

177. Brower & Sharpe, *supra* note 78, at 649 (arguing that the better view of the New York Convention is that it is "international, and not domestic, public policy that is at issue" and listing nations that follow this view).

178. Kutty, *supra* note 2, at 603 (noting that several Islamic nations, including Saudi Arabia, have refused to recognize foreign arbitration awards that go against domestic public policy, despite the fact that the Convention is referring to international policy).

179. Roy, *supra* note 69 at 953. See also Kutty, *supra* note 2, at 603 ("Public order in Saudi Arabia is determined by reference to the Shari'a...not just the parties involved in the dispute").

180. Almas Kahn, *The Interaction Between Shariah and International Law in Arbitration*, 6 CHI. J. INT'L L. 791, 797-98 (2006).

is often portrayed as.<sup>181</sup> Rather, it is argued that Shari'a law has historically been quite humane, affording equality and protection in some areas that Western law did not.<sup>182</sup> Additionally, Saudi Arabian corporations who are wary of doing business with American corporations would surely feel more at ease if they were able to operate under a law that is familiar to them. On the other hand, and as discussed above in some detail, there are certainly some downsides of doing business under Shari'a law. Operating under Saudi Arabian law means that American parties, such as DynCorp, will potentially be giving up a number of procedural rights and will also be limited in the types of remedies available to them.

The question of whether Shari'a law is really beneficial can, and perhaps should, be considered separately from the question of whether we ought to ban its use altogether. In other words, even if one believes that the application of Shari'a law could be harmful to a party's procedural or substantive rights, it may still be more beneficial to allow it. Remember that we are not talking about individuals who are being forcibly subjected to foreign law, but about highly sophisticated business entities entering into uniquely tailored commercial contracts and arbitration agreements. Presumably, companies such as DynCorp and Aramco are of relatively equal bargaining power and have willingly entered into a business relationship. Without evidence to the contrary, what reason can there be for refusing to enforce a provision which such parties bargained for?

That question has yet to be answered, but there are justifications to support the conclusion that such choice of law provisions should be upheld. Saudi Arabia, along with its corporations, is a valuable business partner for the United States. Not only does Saudi Arabia possess more than twenty-five percent of the world's petroleum reserves, but it also has the largest economy in the Gulf region.<sup>183</sup> Furthermore, it is one of the world leaders in exports and imports, and maintains trade relations with nearly one-hundred countries.<sup>184</sup> As such, it would be highly beneficial for the United States to facilitate trade relations to whatever extent possible, as opposed to stifling them.

One of the benefits of commercial arbitration is its ability to improve business and trade relations by allowing disputes to be settled more amicably and for less expense in terms of time and money.<sup>185</sup> Unfortunately, there is a real possibility that these anti-foreign law bills will force corporations to forfeit these benefits by precluding courts and arbitrators from applying Shari'a law. For example, remember that under Saudi Arabian law, certain entities may not enter into arbitration agreements unless they are given special permission from the Council of Ministries and Saudi Arabian law controls the arbitration agreement. It is doubtful that the Council would give these entities permission to arbitrate if they knew the choice of law provision would be unenforceable. Furthermore, some Saudi Ara-

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181. Feldman, *supra* note 127.

182. *Id.* (Urging that Shari'a law has often protected women's property rights where Western law did not. Also, under Shari'a law, the harshest punishment may only be sentenced for a small handful of offenses and the evidentiary weight must be very great, whereas American law allows life sentences for even more minor offenses, such as drug crimes).

183. Thomas, *supra* note 55, at 187-88.

184. *Id.* at 188 (Saudi Arabia is currently the world's 20th largest importer and 19th largest exporter).

185. Gabriel Taran, *Towards a Sensible Rule Governing Stays Pending Appeals of Denials of Arbitration*, 73 U. CHI. L. REV. 399, 400 & n. 4 (2006).



bian corporations may wish to operate under their own law simply because it is more familiar to them.

These state laws have obvious implications for future arbitration agreements, but what is to become of agreements such as the one in *Aramco* that are already in existence? These state laws would paralyze courts' and arbitrators' ability to give effect to the choice of law provision. Given the recent proposals in the Texas legislature to ban the use of foreign, cultural, or religious law, one must wonder if *Aramco* would have been decided the same way had it arisen a year or so from now.

Of course, there are ways to circumvent these state provisions. For example, the parties may designate another forum that is more favorable to the terms of their agreement. How far American parties will have to travel to find such a forum may depend on how widespread this anti-foreign law movement becomes and how many states choose to adopt. At its worst, this movement could effectively cease arbitration between Saudi Arabia and American corporations unless they agree to do business our way. At minimum, these corporations' ability to arbitrate could be significantly hampered.

## VI. CONCLUSION

Interestingly, *Aramco* involves two countries that are extremely stubborn with respect to the adherence of their domestic laws: Saudi Arabia because of an apparent religious mandate, and America because of its strong belief in individual rights.<sup>186</sup> Tensions between Saudi Arabian and Western commercial arbitration practices have been both historic and persistent. The recently proposed bans on foreign law throughout the states have only added to that tension. Regardless of whether these laws are passed, they are certainly an indication of American hostility towards foreign law, Shari'a in particular. Given this negative attitude toward foreign law, perhaps it is the Saudi Arabians who should beware.

WHITNEY HAMPTON

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186. Kutty, *supra* note 2, at 603-04 (noting the philosophical differences between Shari'a and the West).