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SAUDI MARITIME LAW

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## Introduction

No introduction to Saudi maritime law is possible without first giving a brief outline of the basic situation within which this law has emerged, been developed, and is applied.

Although Saudi Arabia has more than 2000 kilometers of coastline adjacent to two important international shipping routes in the Red Sea and the Arabian Gulf (which are regarded as being two of the most endangered enclosed seas), several modern international ports, and more than 200 ships sailing under its flag, the country can hardly be regarded as a maritime nation. Domestic development has enjoyed priority over international activities. While this is particularly true with regard to international shipping business, the Saudi government has paid more attention to the protection of its coast and is especially sensitive to questions of marine pollution.

Consequently, Saudi maritime law still has a long development ahead and must be regarded as one facet of a broad development of a legal system in Saudi Arabia. The striking characteristic of this system is its all-embracing quality. In contrast to the categorization of law typical for the West, statutes applicable in the Kingdom are not divided into areas of civil, public, or criminal law, forcing every legal question to be regarded against the background of all applicable laws and regulations. Saudi Arabia's legal system is restricted to domestic law, consisting of the rules of the Koran and the sayings of the Prophet Mohammed (the Sunnahs) - known as the Shari 'ah law - royal decrees, and ministerial regulations. It must be kept in mind, however, that Shari 'ah preempts any man-made or modern regulations and binds the government and citizens in every aspect of life and in every activity.

Up until the foundation of the Kingdom in 1932, basically two systems of law were applied in the region. In the western part of the area (Jeddah and the Red Sea coast), the laws of the Ottoman Empire were applicable, while Central Arabia (Riyadh region) relied on Shari 'ah law only. In an obvious concession meant to calm the business community of the Western region after it had been conquered by a central Arabian power, King Abdul Aziz decreed the implementation of the Commercial Court Law of 1931[1], which is still the most important statute governing shipping matters. The part dealing with maritime questions is far from being consistent with modern shipping commerce. The Commercial Court Law is therefore one of the factors making it difficult to understand Saudi Arabian shipping law, and causes considerable unpredictability about the outcome of litigation. The adoption of Shari 'ah law and the relevant provisions of the Hanbali School of Islamic law, the most conservative of the four acknowledged Islamic law schools[2], might have resulted in more transparent and reliable principles on which the shipping community could act, as Shari 'ah law prohibits very few commercial actions, such as gambling and charging of interest, and the Hanbali School strictly applies to business matters the Koran principle that commitments (obligations, contracts)[3] shall be fulfilled. As statutes and regulations in Saudi Arabia are interpreted in line with Shari 'ah law and applied literally, any Saudi judge is faced with the formidable task of understanding the modern shipping industry and bringing it in line with the Commercial Court Law of 1931, a codification based on the Egyptian Marine Law as derived from the Turkish Sultan Order No. 9 - 1300 AH, which in turn was based on Part 2 of the French Code of Commerce of 1807. Although statutes have been implemented in the last three decades (as will be discussed below), the laws and regulations remain a patchwork of maritime legislation, incapable of providing an easily accessible framework for the maritime community, the courts, and lawyers.

A medieval judiciary has thus been compelled to apply inadequate statutes based on ancient sources to international business matters in a country which has had no experience of its own in this field. During the early decades of the Kingdom, the Shari 'ah Courts, accustomed as they were to dealing with simple contract, divorce, and criminal law, were often unable, and at times for religious reasons unwilling, to cope with the

new challenge, and the commercial courts as established in 1931 by the Commercial Court Law had no more competence than the Shari 'ah courts.

The first significant changes began to appear in 1960 when the Committee for the Settlement of Disputes was implemented by the Ministry of Commerce. This Committee, with branches in Jeddah, Dammam, and Riyadh, was a part-time evening court consisting of two Shari 'ah judges and one judge trained in statutes and regulations as well as Shari 'ah law. As these committees had difficulty with complex cases and sometimes tolerated seemingly endless delay[4], they were recently abolished and the jurisdiction for commercial disputes was transferred to the Grievance Board as of December 31, 1987. Commercial litigation will now be handled by full-time judges[5].

Whereas the previous non-administrative judiciary was under the supervision of the Ministry of Justice (Shari 'ah courts) and the Ministry of Commerce (Commercial Committees), the President of the Board of Grievance is responsible directly to the King. Furthermore, new laws of procedure are due to go into effect[6]; these recent changes are likely to improve conduct of litigation in Saudi Arabia significantly. But trust in the development of the legal system will possibly rely on the judges as well as the changes mentioned. These judges have always taken their responsibility to rule with justice and equity very seriously, and they have in any case managed to provide the required service. But their task in shipping matters would be eased considerably if Saudi Arabia would implement its own comprehensive Maritime Code, as its neighbors and fellow members of the GCC (the Co-operation Council for the Arab States of the Gulf), Kuwait, Bahrein, Qatar, VAE, and Omar, did ten years ago[7].

But lengthy consideration, conciliation, and time are part of the Arabian heritage, and deviate considerably from Western standards. As there are presently no indications that the Saudi government is prepared to review its maritime legislation, the following presentation of Saudi maritime law will struggle along as many judges and lawyers have done since Saudi Arabia opened its doors for development and industrialization only two decades ago.

## General Maritime Public Law

The Kingdom's interest in its adjacent seas has been considerable since the day of its founding in 1932. As early as the 1930s, a Coast Guard [8] had been established, and in the early 1960s the Navy was brought into being. By 1975, Saudi Arabia had concluded a basic framework of bilateral delimitation agreements with most of the states surrounding the Red Sea and the Gulf, after Saudi Arabia in 1949 became one of the first states to extend an off-shore claim beyond a three-nautical-mile zone in the Gulf[9] and in 1968 the first to lay claim on deep sea resources beyond the 200-meter depth mark in the Red Sea[10].

Of particular significance is the Kingdom's concern about marine pollution and its commitment to United Nations efforts to solve this problem in particular, and to the maritime issue in general. Saudi Arabia took an active part in the 1958, 1960, and 1973-1982 Conferences on the Law of the Sea and has supported Third World country activities in shipping and trade within the United Nations Conference on Trade and Development (UNCTAD) since 1965. It played an active role in the conclusion of the Kuwait and Red Sea Conventions on the protection of the marine environment from pollution[11], and is a party to most of the International Maritime Organisation's conventions. Only recently, Saudi Arabia implemented detailed "Regulations for Fishing, Exploitation and Protection of the Live Aquatic Resources in the Territorial Waters"[12].

Nevertheless, lack of trained manpower, restricted resources for investment in recent years, the Gulf war between Iran and Iraq spanning almost a decade, and lack of expertise have hampered progress towards achieving recognition as a maritime nation. In addition, authority has been spread among various government agencies:

International affairs:	Government, Foreign Office
Administration of Shipping:	Ministry of Communication, Port Authority
Shipping business:	Ministry of Communication, Ministry of Commerce, Port Authority

Marine pollution:	Port Authority, MEPA (Meteorological Environmental Protection Agency, a department of the Ministry of Defence)
Marine non-living resources:	Ministry of Petroleum
Marine living resources:	Ministry of Agriculture and Water
Security:	Ministry of Defence, Ministry of the Interior (Frontier Corps Department)

But there has been constant progress. Only a few years ago, the Port Authority implemented a one-year training scheme for tugmasters and a one-and-a-half-year scheme for pilots, and recently the short-term transshipment of cargo was permitted. And while this lecture is being held, the Saudi Ministry of Commerce is convening a seminar in Jeddah with the goal of boosting the Saudi fleet and shipping industry. After all has been said and done, there should be no doubt left that Saudi Arabia is on the threshold of becoming an important and influential maritime nation - even though the process may require time.

### Administration of Shipping

Administration and control of foreign vessels is first and foremost the responsibility of the Ministry of Communication. Vested with the necessary authority in 1974[13] it issued in 1975 the Seaports and Lighthouse Law[14], including various regulations on port related issues. But soon thereafter, port related matters were transferred to a new institution, the Saudi Port Authority, which subsequently issued the Rules and Regulations for Saudi Seaports in 1980, implemented in 1985 by all GCC countries as the GCC Rules and Regulations for Seaports (GCC R+R).

As a general rule, all matters concerning the running of a port and actions to be taken within the port boundaries as described in the GCC R+R for Seaports, including conduct of vessels to and in the port, ship's agents' licences, handling, storage and delivery of goods, and port safety matters, are dealt with by the Port Authority. All other shipping matters, i.e., (a) licencing of maritime companies and firms for carrying on maritime carriage, (b) registration of ships, (c) classification and licenc-

ing of (foreign) classification societies, (d) inspection of ships, (e) container safety, and (f) ship personnel[15] are under the supervision of the Ministry of Communication.

But the GCC R+R for Seaports did not repeal the former port related regulations of the Seaports and Lighthouse Law of 1975 and the Port Authority had only the power to "prepare the rules needed to administer the ports in accordance with international standards and methods"[16]; consequently, there was not always a clear-cut division of responsibility, and doubts arose as to which authority was in charge. Today, such questions seem to have been settled by and large, although the emergence of occasional conflicts is inevitable as long as maritime matters are not concentrated under one authority.

### Shipping Business

Although the aspects considered above are of general maritime interest, the core of this legal field remains the shipping business, and this business is unthinkable without maritime insurance. Precisely this point is the most visible obstacle to common marine operations contained in domestic law, as authoritative scholars of the Koran believe that insurance for a premium is not permissible. This viewpoint can be summed up as follows:

In Islam, no income may be gained unless it is generated through work and activity of the investor. Furthermore, the risk element must be contained within the investor's activity. A simple financial investment without work or an investor's activity without risk should not be permitted to give a return[17].

While mutual protection (insurance) as provided by the P&I Clubs is generally regarded as permissible, premium insurance policies are non-existent in the Saudi legal system. Any disputes which may arise cannot be heard by Saudi courts, nor can an insurer appear as subrogate party before the courts[18]. As the shipping business is heavily dependent on insurance and insurers' expertise in claim settlement, uncertainties and confusion can thus affect cases which would otherwise be 'easy.' How should a shipping company be advised when it is threatened with the

arrest of its ships for failing to remove a former company ship which has been abandoned and accepted as a total loss? When the company tries to explain that the insurer now has the rights to the wreck, the Saudi legal system regards the insurance contract as void, and the Shari 'ah courts and the commercial courts (Board of Grievance) concerned refuse to deal with or involve the insurer in any way.

But the possible conflicts as presented here are only half the story, as there are statutes and regulations in Saudi Arabia which are difficult to distinguish from premium insurance policies. Under Chapter 11 of the Commercial Court Law of 1931 (CCL), insurance policies, and in Article 400 CCL marine insurance policies are recognized, and since 1985 disputes between insurer and insured have been subject to arbitration under the supervision of the Ministry of Commerce[19]. As the whole insurance business issue is under considerable pressure from various directions and a comprehensive solution is not in sight, one should not be surprised that the Government is presently reluctant to consider the implementation of a maritime code. It would then have to direct and regulate marine insurance, a task which today could raise stiff opposition from conservative circles.

#### GCC Rules and Regulations for Seaports

Although by Western standards public law, these rules have considerable impact on commercial operations and have been the cause of extensive litigation both within and outside of Saudi Arabia. There are three basic reasons for this:

*First:* Any cargo handling within the port boundaries is under the strict control of the port management and carried out by stevedores which it subcontracts and who are given assignments on the basis of tenders from foreign countries. Thus there is no contractual link between carrier/shipper and the stevedores, but rather only to the port management. Furthermore, only an authorized ship agent is permitted to act on behalf of the carrier/shipper[20], and common links of responsibility are further severed by, among others, the Rule that "The cargo handed into the custody of the Port shall remain the risk and responsibility of the owner

of the goods while on the port premises,"[21 ], even though the cargo owner has no direct access to the Port. Other examples are possible.

In addition, the liability of the port management is limited to an extreme. In a number of cases, the Rules exclude any liability whatsoever[22 ] and in other cases it is held to a minimum[23 ].

*Second:* The position of the ship's agent.

It is widely known that any domestic business transaction must be provided by Saudi nationals. This naturally applies for ship's agents as well, who must hold commercial registration, a certificate of the Chamber of Commerce, and a licence by the Port Authority[24 ] and who can work only under the condition that they have deposited or given an irrevocable bank guarantee for 250,000 Saudi Riyal which can be used by the Port Authority to satisfy claims for port charges, fees, and other liabilities incurred by ships under their representation. But the deposit may also be drawn upon as a penalty for the ship agent if the Port Authority regards his performance as being contrary to the Rules and Regulations. As a number of regulations define the ship agent's relationship with the carrier/shipper and yet others restrict or extend his responsibility or his freedom to act, a single comprehensive statement is hardly possible; each case must be regarded individually.

*Third:* There are additional regulations which require specific actions and undertakings by the contractual business parties.

If, for example, cargo arrives in damaged condition, the port management may require the consignee's written obligation to accept the entire consignment[25]. Since this may involve lengthy negotiations between the parties (even in situations where everyone concerned knows exactly what his legal position is), a certain measure of frustration and confusion is virtually inevitable. But the port management can also refuse to permit the discharge of damaged cargo in any case and even destroy damaged goods at the expense of the owner or the ship's agent[26]. Matters are often further complicated by strict rules which the port management may apply with regard to time limits for storage of goods on the port premises[27].

These three broad areas of the rules have major ramifications for the delivery of goods, but problems are apparently due less to the impact of any single rule than to the total lack of any overall law-making technique. The rules and regulations are a poorly thought out compilation of orders and instructions issued by the Port Authority in the late 1970s when Saudi ports were heavily congested and hundreds of ships waited for many months for their cargoes to be discharged. This body of regulations is not a comprehensive legal framework, but, instead, a series of individual stipulations designed to cover various specific situations, having no link to each other and providing no basis for determining actions in new situations. It is an example of a case where the Saudis paid well for foreign expertise and received in return a simple compilation which was passed off as a code of professionally prepared statutes.

Nevertheless, the GCC R+R have served their purpose, namely to run the (Saudi) ports efficiently - no more and no less. Many carriers, cargo owners, and ship's agents have paid their tribute for this goal.

Commercial Court Law (CCL)

The primary Saudi statutes on the commercial aspects of shipping, however, remain the Commercial Court Law, Part II, on "Maritime Commerce." The chapters of this section are as follows:

Chapter I	Rights of Ships and Other Commercial Vessels
Chapter II	Confiscation and Sale of Vessels
Chapter III	Shipowners
Chapter IV	Masters
Chapter V	Crew
Chapter VI	Charter-parties
Chapter VII	Bills of Lading
Chapter VIII	Freight
Chapter IX	Passengers
Chapter X	Marine Borrowing Contracts
Chapter XI	Insurance

Chapter XII	Marine Losses
Chapter XIII	Limitations

It is difficult to discuss these regulations against the background of common international legal practice, and as they originated almost two hundred years ago, they have naturally not been influenced by modern developments such as the Hague-Visby-Rules. Moreover, Saudi Arabia is party neither to these rules nor to any other international convention on commercial shipping and transport, leaving little choice but to apply the CCL rules as the primary source of maritime law and discussing each case on its own merits.

The following presentation therefore restricts itself to highlighting a small number of cases as discussed more extensively in Haberbeck's 1968 work on Saudi Maritime Law[28] and in his forthcoming publication (cf. Note 2).

(a) With regard to the minimal statutory regulations of charter-parties under Saudi law, terms should be drafted in clear, detailed language, and incorporation by reference of standard clauses should be avoided.

(b) The cargo claimant is usually given the right to proceed against the ship or the party whom one could reasonably presume to be the ship owner.

(c) The content of a bill of lading is regarded as conclusive evidence, and an incorrectly issued "clean" bill of lading is regarded with utmost displeasure by Saudi courts, regardless of any corresponding indemnity given in return.

(d) Once there is evidence that cargo has been lost or damaged, the burden of proof is wholly with the carrier, and may include loss of goods while on the Saudi port premises.

(e) There are no relevant provisions with respect to flat-rate limitations.

All of the uncertainty to be found at present in the Kingdom's shipping law is at least in part due to the country's desire to develop a legal system in its own fashion, and shipping law was not be excluded. This is one of a number of reasons why Saudi Arabia is not party to any of the common international shipping conventions and has until now resisted following the lead of other Gulf countries in implementing a new maritime code. But understandable as this attitude may be, it should be kept in mind that certain international shipping practices cannot arbitrarily be changed by one country or even a group of countries without the consent of shipping merchants and related groups.

Wherever Saudi Arabia was obligated and willing to do its share to become and to remain a fully accepted trading company, shipping contracts and shipping practices are "imported sources" in Saudi shipping law.

### Shipping Contracts

Without a doubt, terms and conditions in any type of contract which have been carefully negotiated and agreed will be given serious attention and be governed by Hanbali School reference to the Koran verse:

"Oh Ye who believe, fulfill all your contracts"[29]

Any contract clearly written down and signed will be regarded with greatest respect as long as it does not contain prohibited transactions such as those mentioned above. Shipping contracts, however, are rarely concluded in this fashion, with the consequence that in the past they have in part or wholly been rejected by the courts when brought to litigation. In particular, the important "small print" on the reverse of a charter-party or bill of lading and the incorporation of internationally acknowledged standard clauses (e.g., "Himalaya" clause) or of international conventions (e.g., Hague-Visby-Rules) are of considerable concern to the judges, who have often refused to consider such contractual conditions. In this context, it should be pointed out that Shari 'ah law basically demands that each and any contract be limited to one transaction. For example, Shari 'ah law does not recognize a reservation of ownership in a sales contract as, above all, contractual obligations must be direct and clear. Once one has become familiar with this type of

legal approach, it is not difficult to imagine that clauses such as identity of carrier, tonnage limitation, and other exclusions can be quickly called into question, in particular when transferable documents are involved and one of the pillars of the shipping business, insurance, is not a part of the legal system.

Shipping Practice

Common understanding and practice in shipping are recognized to the extent that they fulfill gaps in the written rules and regulations and are in so far regarded as "law"[30]. While commercial usage is granted considerable legal status, the requirements of judicial procedure remain in effect, i.e., judges must decide each case on its own merits; all aspects of a case, including protection of the weaker party, must be considered; and, above all, justice must be done in the case.

Conclusion

The sources and instruments of Saudi maritime law are numerous and difficult to grasp; deciding on the relative importance of any given factor, developing a guiding line for a legal problem, and applying all of this to actual legal questions are by no means simple. Moreover, a truly revolutionary process is presently sweeping through the legal system and the judiciary for the first time since the Kingdom opened its gates for economic growth two decades ago.

This process of legal development has certainly given businessmen and their legal advisors any number of headaches. But taken from an academic viewpoint rather than a commercial one, the situation gives lawmakers and the legal profession a fascinating picture of a unique attempt by the Kingdom to find an independent path to meet local desires and requirements, while at the same time establishing efficient communications with foreign countries and taking its place as a maritime and shipping nation within the international community. At the end of this process, some aspects of Saudi maritime law and its judiciary may be a subject of more general interest and appreciation for the international shipping and maritime community.

Notes

- [1] Royal Decree No. 32 of 1351/1350 AH, which refers only to the Hejaz (Western) Region
- [2] Andreas Haberbeck/Mark Galloway, Saudi Maritime Law, a forthcoming publication by Fair-play Publication, UK, Chapter 1
- [3] Ibid
- [4] J. A. Jannunzzo, L. O. Mandani, Grievance Board to Take Over Business Litigation, in: Middle East Executive Reports, Aug. 1987, p.7
- [5] Ibid. The Grievance Board has been responsible for administrative litigation whenever governmental contracts are disputed since 1953.
- [6] Rules of Civil Procedures before Shari'ah Courts, Royal Decree No. M/1 of 1.3.1410 (30.9.1989), published in the Official Gazette on December 8, 1989, and entering into force one year from the date of publication
- [7] cf. Richard Price (ed), The Maritime Laws of the Arabian Gulf Co-operation Council States, Vol. I, London 1986, p. 37;  
Kuwait (Law No. 28 of 1980), Bahrain (Law No. 23 of 1982); Qatar (Law No. 15 of 1980); UAE (Law No. 26 of 1981); Oman (Law No. 35 of 1981).
- [8] Law of the Directorate of the Coast Guard, Royal Decree No. 318/218 of 1353 AH
- [9] Charles MacDonald, Iran, Saudi Arabia and the Law of the Sea, London 1980, p. 144
- [10] Royal Decree M-27, 7 September, 1968
- [11] The Kuwait Regional Convention for Co-operation for the Protection of the Marine Environment from Pollution; The Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment.
- [12] Council of Ministers Resolution No. 14 of 21.1.1408, published in Official Gazette on 25.11.1988.
- [13] Royal Decree No. M/27 of 1974/1394 AH
- [14] Ministry of Communication Resolution No. 181 of 1975/1395 AH
- [15] (a) MoCommunication Order No. 53 of 24.3.1403 AH  
(b) MoCommunication Order No. 11 of 12.2.1406 AH/1986  
(c) MoCommunication Resolution No. 147 of 15.10.1405 AH/1985  
(d) Articles 142-161 of the Seaports and Lighthouse Law  
(e) MoCommunication Resolution 414 of 1985  
(f) Articles 354-361 of the Seaports and Lighthouse Law
- [16] Art. 2, Para. (i), The Law of the Institution of Saudi Ports, Royal Decree No. 13 of 7.4.1397 AH
- [17] Baha Bin Hussein Azzee, Shipping and Development in Saudi Arabia, Jeddah 1980, p. 141
- [18] Haberbeck/Galloway, op.cit., Chapter 12
- [19] Ibid.
- [20] Part II, Rule 2.2.2.2.
- [21] Part II, Rule 6.2.4.4. (except for intention or gross negligence on the part of port employees, which is almost impossible to prove)
- [22] For example: for damage caused by mobile or floating cranes: Part II, Rule 6.6.2.4.; for cargo shortages: Part II, Rule 6.6.2.5.; for damage to perishable goods: Part II, Rule 6.6.2.8. (c); and transport by barges: Part II, Rule 6.6.2.9.
- [23] 1 Saudi Riyal per kilogram or 1000 Saudi Riyals per package, and for all claims arising from one event a maximum of one million Saudi Riyals (approximately DM 450.000.--); cf. Part II, 6.6.2.10.
- [24] GCC R+R, Part II, 2.2.1.1. and 2.2.1.5.
- [25] GCC R+R, Part I, Part II, 6.2.3.7.
- [26] Part I, Rule 8.16.3.
- [27] Part II, Rule 6.2.6.2.
- [28] Andreas Haberbeck, in: Richard Price, op. cit., p. 115 and following; p. 140 and following.
- [29] Sura V, Verse 1

[30] Haberbeck/Galloway, *op. cit.*, Chapter 3