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I would like to express my gratitude to Baudouin Dupret for many thoughtprovoking discussions and his constant support. I also wish to acknowledge 'Abd al-Nâsir al-Muwadda' for sharing his insider's view and companionship during my fieldwork for this article in Sanca'. To Paul Dresch I owe special thanks for his careful reading of this paper, from which I benefited a great deal. Mariëtte van Beek, at a crucial moment, helped me to refocus my argument. Financial support and hospitality during my fieldwork in April-May 2001 was provided by the Centre Français d'Archéologie et de Sciences Sociales de Sanca' (CEFAS), for which I especially thank its director at the time, François Burgat. And last but not least, I am indebted to Léon Buskens for his analytical comments and interest in my work over many years.

- 1 In the last forty years, three major events have been crucial in forming a modern state in Yemen: the Revolution of 1962 in North Yemen, the Revolution of 1967 in South Yemen, and the unification of the two Yemens in 1990. The first event marked the end of Imamic sovereignty over North Yemen and incited the founding of the country as a republic. South Yemen followed in 1967 by regaining its independence from Britain. On 22 May 1990 the two Yemens were merged into a single state.¹
- 2 In its unified form, the Yemeni state reshaped its institutions to fulfil an old ambition to complement territorial supremacy with effective legal and societal control.² Important control mechanisms are its codified laws (sg. *qânûn*) and an organised court system for the administration of justice. However, the Yemeni state is not a strong one. It has two major rivals in its battle for control, two sociopolitical and normative power bases that have remained distinctive throughout the transitory process, especially in the northern regions. These are the Islamic establishment (and recently also the Islamist movement), whose major contention with the state concerns the control over *shar'î'a*, and the tribes, whose internal structures and conduct continue to be dominated by tribal customs (sg. *'urf qabali*).
- 3 Although these two rival centres of power present continual challenges to state authority, there are both clear and less clear indications of accommodation and cooperation among the respective members of this power triangle. When the state

interacts with societal actors, it often adapts its strategies and even makes concessions to its own laws, in order to reconcile national ambitions with realities on the ground. Conversely, tribal and Islamic actors begin to discover that the newly developing “civil society” can be used to regain their authority under a modern format.³

- 4 This article examines Dâr al-Salâm li-l-Tahkîm in San‘â’ (The House of Peace for Arbitration, hereafter referred to by its local name, Dâr al-Salâm) as an illustration of an organisation that explores the boundaries between *‘urf*, *shar‘a* and *qânûn*, and between tribal and civil society.⁴
- 5 Before going into further detail, a brief comment should be made about the sources used for this study. Initially, I intended to collect decisions from arbitrations carried out by Dâr al-Salâm, in order to illustrate how the interrelationship between *shar‘a*, *‘urf* and *qânûn* works in practice. Although I was received with hospitality, two factors complicated this objective: the first is that the spokesmen of the organisation, as managers of an enterprise seeking funding, were unable to see my interest in them as merely academic, and provided information as if I were a potential donor. The printed materials supplied to me therefore consisted mostly of promotional materials (leaflets, letters, statements, poems, stickers), numerous newspaper reports, photos and arbitration decisions rendered in simplified language. The few decisions that I obtained details about were mostly incomplete, or else less relevant for my purpose. To my more probing questions about specific proceedings, persons and norms, I found the responses often idealistic rather than realistic. Second, tribal customs do not allow a woman to attend tribal arbitration or mediation proceedings, and even the organisation’s own presentation as a “civil” NGO has not (yet) changed this tradition.
- 6 These unsolicited materials, I realised, might not provide sufficient details for a study on the actual workings of Dâr al-Salâm in specific cases, but were appropriate to a study on Dâr al-Salâm as a phenomenon in its own right. Therefore, the present article focuses on the written and spoken narratives used by different actors and how they perceive the structure, objectives and functioning of Dâr al-Salâm. These personalised accounts will form the leading motif for a more contextual elaboration on their social, legal and discursive connotations.
- 7 The first section outlines the prelude to the creation of Dâr al-Salâm, and introduces its instigator and main actor, ‘Abd al-Rahmân al-Marwanî. The second section describes the circumstances under which Dâr al-Salâm was created, and presents its agenda. The third section shows how Dâr al-Salâm positions itself at the “crossroads of justice” by using a pluralist discourse in order to legitimise its status and activities. The fourth section discusses the particular composition of its members from Islamic, tribal and legal backgrounds. The fifth section extracts from some actual arbitration cases those aspects that illustrate how Dâr al-Salâm mediates between different norms and actors. The sixth and final section takes note of the Law of Arbitration as an instrument used both by the state and Dâr al-Salâm to regulate tribal arbitration under a new format.

The prelude to Dâr al-Salâm

- 8 Symbolically or not, a crossroad marked the location of Dâr al-Salâm in the eastern quarter of San‘â’.⁵ It was on the top floor of a shared concrete building, up a dark staircase that led the visitor into a small hallway. The walls were covered with colour photos of earlier guests: Yemeni notables, foreign diplomats, international

organisations, academic researchers and the like. Another wall was decorated with the calligraphed names of members and supporters of Dâr al-Salâm, and with Qur'anic verses invoking justice and arbitration. Only the smallest room was furnished as an office, with an old computer, a typewriter, some chairs for visitors and several boxes in a corner containing the archives. All the other rooms were arranged as smaller or bigger qât-chambers, rectangular rooms with a view, with carpets on the floor and cushions and armrests lined up against the walls and windows. Here is where, traditionally and presently, actual business is done in Yemen.

- 9 It took many qât-chews over several years to realise the idea of creating an institute for arbitration on the basis of *sharî'a*, *qânûn* and *urf*.⁶ The first initiative, started in 1993 by a group of seven men – tribesmen, Islamic judges and lawyers – led to the establishment in 1997, at least on paper, of Al-Dâr al-Yamaniyya li-l-Tahkîm (The Yemeni House for Arbitration). One of them, Qâdî Muhammad al-Sudumî, was a judge in a primary court in San'â' who also acted as an arbitrator in tribal disputes, being a recognised authority on tribal laws and customs. His position as a judge grew controversial when it became known that he practised tribal procedures inside the court building as well.⁷ The regular traffic of armed tribesmen and slaughter animals used for tribal reconciliation, deterred lawyers and citizens seeking justice from entering his court. Al-Sudumî was eventually dismissed as a judge and, for reasons unknown, vanished from sight altogether. With him disappeared the first House of Arbitration.
- 10 Although it could not be exactly determined whether the second initiative, Dâr al-Salâm, rose from the ruins of the first, its list of core members does include names of some of the earlier members. However, the person who would become the central figure of Dâr al-Salâm, the spirited 'Abd al-Rahmân Yahyâ al-Marwanî, had not been part of the first Dâr. Whereas Qâdî Al-Sudumî used to buttress his position as an arbitrator with a written ijâza, a traditional certificate listing his educational trajectory and achievements, and a long list of signatures from tribal shaykhs acknowledging him as an authority on tribal law, Al-Marwanî introduces himself with a modern curriculum vitae.⁸ In it, we read that Al-Marwanî is a Sûfî Muslim educated in “something equivalent to (mu'âdalât) *sharî'a* and *qânûn*”, a “*muhâmî* (lawyer), even before the issuance of the Law of Advocacy”¹⁰, and that he was previously a high-ranking army officer, until his voluntarily retirement. Inspired by his teacher, Ahmad Muhammad Zabâra, the late Grand Muftî of Yemen, he studied the holy texts of different religions, and publications calling for peace and tolerance between people from different creeds.
- 11 The CV goes on to say that Al-Marwanî, as a protagonist in respecting human beings and their rights, aims at reviving Yemeni customary norms, and spreading a culture of peace and democracy among the tribes by making arbitration an institutionalised practice. In the field of *qânûn* he acts as a *pro bono* legal counsellor for women and disadvantaged individuals, and has personally solved many civil cases by voluntary arbitration, an achievement that led the press to give him the honorific title *qâdî urfî* (customary judge) or *al-qâdî urfî*¹¹ (“custom-judge” or, in Al-Marwanî's own translation, “Mr. Arbitrator”), a title he carries with pride.
- 12 It is relevant to know that the title *qâdî* has a threefold meaning in Yemen: Islamic judge (a *sharî'a* term), court judge (a term protected by *qânûn*), and someone belonging to the social class of *qâdîs*, who are classified immediately after the sayyids (descendants of the Prophet). In this latter sense, the title is hereditary. To avoid

misunderstanding, the title *hâkim* is often used for a court judge. *Muhakkam* is the usual term for arbitrator, and *muhakkam^curfî* denotes a customary arbitrator. The invented term, *qâdî^curfî*, seems to be a linguistic device accommodating both code and custom.

- 13 Apart from arbitration and legal aid, Al-Marwanî uses various media as important vehicles for promoting his aims. He contributed to several legal awareness programmes on Yemeni TV and radio, such as the series “Your Legal Consultant”, “An Overview of Law” – on how to use the Law of Arbitration to solve conflicts – and “Face to Face”, about the phenomenon of blood revenge (*tha’r*) and how to suppress it. He often approaches Yemeni and Arab newspapers to promote the activities of Dâr al-Salâm, and organises awareness campaigns among the tribes¹².
- 14 By institutionalising his personal aspirations of “spreading peace and justice” through the creation of Dâr al-Salâm, Al-Marwanî contributes to the bridging of tribal and civil society in Yemen, and also of “traditional” normative systems (*shari’a* and *urf*) and state-issued law (*qânûn*). These processes of institutionalisation and bridging are a recurrent theme in the following sections.

The establishment of Dâr al-Salâm

- 15 The formal launch of Dâr al-Salâm was on 1 October 1998, although no contract, official registration, or regulatory statutes were provided¹³. Al-Marwanî had initiated the process by organising a *tafkîr qât*, a *qât*-brainstorming session, after which he went around many other *maqyals* (*qât*-gatherings) of notables from tribal, Islamic, and other backgrounds to gather support and signatures. He claims to have eventually attracted as many as 190 members, the vast majority of whom are tribal shaykhs, along with judges, Islamic scholars, lawyers (among them a few women) and prosecutors¹⁴.
- 16 The extent to which all these people actually participate on behalf of Dâr al-Salâm in arbitrations and other activities, or are only nominal supporters, has been difficult to establish. There is, however, a core group of members whose names recur in several arbitration and mediation efforts, and who are introduced below. One of the subscribers was said to be the son of President ‘Alî ‘Abd Allâh Sâlih, which led to the rumour that Dâr al-Salâm was set up by the government. Yet there is no evidence to confirm this¹⁵.
- 17 Apart from the personal motivation of Al-Marwanî, who sometimes seems to be engaged more in a humanitarian mission than an institutional project¹⁶, several other events are likely to have prompted or accelerated the foundation of Dâr al-Salâm. After the initial rejoicing about the unification of Yemen in 1990, it was not long before serious political crises arose, which eventually led to the civil war of 1994. The institutional power of the state – especially in the south – was severely weakened, resulting in enormous delays in resolving private and public affairs, and in increased corruption in the administrative and financial apparatus. In this “lawless” situation, groups of citizens began to fall back on their tribal affinities and customs to seek protection and resolve disputes, rather than venturing into long, costly and insecure procedures in official courts. After many years of gestation, old unsettled feuds flared up again and the practice of blood revenge was revived. Starting from the 1990s, tribal

kidnappings of foreign tourists further blemished the reputation of the tribes and their customs.

- 18 On the positive side, the parliamentary elections in 1997 gave rise to a wave of national energy, which led to new societal, legal and political initiatives¹⁷. The promulgation of a new Law of Arbitration in 1992 had already encouraged the creation of the first arbitration centres in Yemen. This new law was primarily concerned with modern forms of arbitration (commercial and international), and tried to confine tribal arbitration within formal boundaries. The law was amended in 1997 to restore some jurisdiction to tribal arbitration, but the pace of change was already set. Legally and politically, the time was right for Dâr al-Salâm.

Good customs, bad customs

- 19 In the era of the Hamîd al-Dîn Imamate in North Yemen (1904–62), the Imâm publicly pursued a madhhab policy, according to which he imposed teachings from the Zaydî madhhab (school of law) on the Shâf'î Yemenis, and also denounced the application of tribal laws that were contrary to *sharî'a* (Messick, 1993:41). Yemenis still recall that a person who was discovered even possessing a document containing tribal rules or decisions was severely punished, or sometimes put to death. Of course, the Imâm's greatest concern was that a widespread practice of tribal law would undermine the authority of *sharî'a*, the official "law" at the time, and consequently his own Islamic and political supremacy¹⁸. He based his public condemnation of tribal customs on Qur'ânic verses that forbid *tâghût* – customs that contradict *sharî'a* – an argument that is still used by contemporary Yemenis who reject tribal practices¹⁹. In particular, rituals such as slaughtering and exchanging animals, which are an essential part of the mediation and arbitration process, evoke to outsiders images from the pre-Islamic *jâhiliyya* period (Dostal, 1983:196-213).
- 20 Today, the overall perception of tribal customs has hardly changed among urban citizens and state officials alike. In many public statements, Al-Marwanî emphasises that not all tribal customs and practices are at odds with *sharî'a*, although he admits that some have become corrupted over recent decades. The two main objectives of Dâr al-Salâm, therefore, are to suppress the common phenomenon of blood revenge (*tha'r*) and to revive "good" tribal customs²⁰. For this purpose, Al-Marwanî organises awareness-raising campaigns, studies, conferences, and "best practices" (positive examples), in which he involves renowned tribal shaykhs, Islamic scholars, and poets. He also organises theatre plays performed by children. Dâr al-Salâm operates predominantly in northern and north-eastern Yemen, where most Yemeni tribes live, but also in the more southern areas around Tacizz.
- 21 In its ambition to upgrade tribal laws, Dâr al-Salâm aims to collect all existing tribal customs and practices (*acrâf wa-câdât*), in order to unify them into a single tribal code to be applied by all tribes. Shaykh Abd al-Jalîl Sinân, the son of Shaykh Abd al-Wahâb Sinân, who is known as the grand marâgha (resource person of tribal customs) of the Bakîl-tribe²¹, formulates it quite explicitly: "We [Dâr al-Salâm] aim at the codification of tribal custom (*taqnîn al-ʿurf*), just as the state did with *sharî'a*"²². Speaking on behalf of Dâr al-Salâm, he vows that they will see that "this *ʿurf* will be in compliance with *sharî'a* and *qânûn*", for which they can call on the expert advice of their diverse group of members. They also want to train more *qâdî-ʿurfî* to apply these "purified" tribal norms.

- 22 Dâr al-Salâm thus challenges the state's monopoly of legal power, and claims authority to codify tribal customs under its own supervision, and to retain control of this under a separate jurisdiction that is next (but not contrary) to *qânûn*. Tribal customs are not usually written down²³, and by their nature vary according to tribe, place and circumstances. Once unified and codified, they would stop being *ʿurf*²⁴. This would, of course, have significant implications for the present distribution of power within and among the tribes, which may explain why the project did not rally much support from the tribes at this stage, despite the number of tribal resource-persons affiliated to Dâr al-Salâm²⁵. But the plan to model *ʿurf* after *qânûn* is an interesting one.
- 23 In their formulations, members of Dâr al-Salâm also differentiate between *sharîʿa* and *qânûn*, while at the same time acknowledging the statutory codes as Islamic legislation. The one does not exclude the other: essential to *sharîʿa* is that different legal opinions from the various recognised law schools (*madhâhib*) have equal authority. With the codification of *sharîʿa* into *qânûn* this fundamental principle is taken away, because a code, by definition, excludes the co-existence of alternative rules. Hence, *qânûn* and *sharîʿa* are two different things. However, when (substantial parts of) the codes are derived from *sharîʿa*, as declared by the Constitution, this *qânûn* could indeed be designated as “Islamic legislation”²⁶.
- 24 But the Yemeni codifications apparently did not completely overrule *sharîʿa*. Dâr al-Salâm, together with most Yemenis, assign to *sharîʿa* an authority next – and usually superior – to *qânûn* and *ʿurf*. This invites us to look at the Yemeni situation as an “Islamic legal triangle”, an approach that stresses the plurality of legal norms (*sharîʿa*, *qânûn*, *urf*) and diverges from the conventional binary opposition of theory and practice²⁷. Although the present article has a different objective, the following sections are based on this premise, and moreover illustrate that this “legal triangle” is far from a static relationship.

Plural idioms

- 25 In accordance with their concern to maintain the “legal triangle”, Al-Marwanî and other members use idioms that correspond alternately with each of the three legal fields, so as to legitimise the position and aims of Dâr al-Salâm²⁸. They do this in public statements on behalf of Dâr al-Salâm, in their leaflets, letters and posters for awareness-raising, in arbitrational decisions and in the media. Al-Marwanî, for instance, often quotes Qurʾânic verses that support arbitration, most frequently Sûra 4:114: “In most of their secret talks there is no good, only if one exhorts to a deed of charity or goodness or conciliation between people”. This sûra is also printed on the letterhead used by Dâr al-Salâm. Al-Marwanî explains that this verse calls for reform among the people to prevent bloodshed, “without discrimination between religion, sex, colour, or nationality ...”, an allusion to a human rights idiom, but diverted by Al-Marwanî to a Qurʾânic verse: “... because God Almighty honoured all sons of Adam” (S. 17:70)²⁹. Other exhortations to promote peace are also derived from the Qurʾân: “God has commanded to make sulh (reconciliation) between the people” (based on S. 49:9-10)³⁰. And, “God has prescribed mediation between spouses to protect the privacy of the household from exposure to and interference from outsiders” (based on S. 4:128)³¹. He also refers to several Prophetic hadîths (traditions), such as “*islâh dhât al-*

bayn khayra min ‘âmmat al-salâh wa-l-sawm”, better [one good] reconciliation, than the general practice of prayer and fasting.

- 26 In addition to these *sharî‘a* sources, Al-Marwanî refers to customary sayings like “*man talaba al- sharî‘a, hurimaqitâluhu*” (whoever demands *sharî‘a*, it is forbidden to kill him), a guarantee of customary protection for someone asking for *sharî‘a* (also in the sense of “justice”). Very popular also is “*al-thâlithwâsita*” (the third is mediator), by which people are encouraged to intervene and mediate between disputing parties. Indeed, Dâr al-Salâm often takes the initiative in mediation, even without a request³².
- 27 The idiom that is perhaps most frequently used by Al-Marwanî is the reference to *qânûn*. While he acknowledges that the state is *wâlî al-amr* (literally, “the one in charge”, used here with an Islamic connotation: “the executive of God’s command”), and bears primary responsibility to resolve legal disputes, he points out that the courts are costly and extremely slow, and that family issues in particular are considered too private to bring to court. For these reasons, he argues, arbitration (*tahkîm*) is a much quicker and more private alternative, which, moreover, allows the parties to choose their own judges and norms. It is not without reason that Al-Marwanî here uses the term “*tahkîm*” rather than “*sulh*”, because it refers to the Law of Arbitration (*Qânûn al-Tahkîm*) that provides the legal basis for his organisation³³.
- 28 This official framework is very important for Dâr al-Salâm. Al-Marwanî even places its creation within a larger regional and international trend to establish commercial and international arbitration centres, and he specifically refers to arbitration centres of this kind in Rabât and Riyâd, in New York, Paris and Vienna. He reasons that arbitration not only prevailed during the time of the Prophet and the four rightly guided Caliphs, but does so today, even in countries that have a well-functioning court system³⁴.
- 29 By referring to role models as dissimilar as the Prophet Muhammad and Western arbitration centres, Al-Marwanî aims to present tribal arbitration as a legitimate, and often preferable, alternative to state adjudication. He advocates the possibility of “forum-shopping”, so that litigants can themselves choose to whom they submit their disputes. A novelty, and the *raison d’être* of Dâr al-Salâm, is that he also promotes the possibility of “norm-shopping”, the option to choose between different (legal) norms. The Law of Arbitration allows both shopping options, but restricts these to certain specified jurisdictions³⁵. In practice, as we will see below, these limitations prove rather fluid.

What’s in a name?

- 30 Another modality of a pluralist discourse is demonstrated by the texts used in the letterheads of Dâr al-Salâm. These texts are printed on all its outgoing mailings, and have been modified several times already in the last few years. The also changing logo in the middle of the letterhead depicts internationally known symbols of justice and peace: the scales of justice with two hands shaking each other underneath, or a scales surrounded by two olive branches, or a scales joined by a white dove carrying an olive branch, or only a dove hovering above an open book. All versions are accompanied by the *basmallâh* and by *Sûra 4:114*.
- 31 It is more informative to follow the textual trajectory of the full name of Dâr al-Salâm, and the additional phrases that elucidate its objectives. In the beginning, its full name

was *Dâr al-Salâm li-l-Tahkîm*, The House of Peace for Arbitration. “*Dâr*” (house, residence, abode) is a traditional designation for institutions, like *Dâr al-cUlûm*, the Institute for Higher Education under the Imamate; *Dâr al-Iftâ’*, the House of *Fatwâ*-giving in contemporary Yemen; and *Dâr al-Kutub*, the Public Library. The combination “*Dâr al-Salâm*” also refers to paradise and heaven. “*Tahkîm*”, as mentioned, deliberately alludes to the Law of Arbitration. The explanatory Arabic text underneath reads: “Voluntary adjudication house, uniting an association of leading Muslim scholars, judges, and tribal *shaykhs* to solve various disputes by way of peacemaking and arbitration, and the issuance of *fatwâs* and legal advice; customary-civil arbitration.”³⁶

- 32 Another letterhead renders the name in English: “Assalam Arbitration House”, and the accompanying text (in Arabic) reads: “Voluntary adjudication house for solving various *shar’i*, legal and customary disputes, the division of inheritances and attestation of contracts, *fatwâs*, legal advices, and advocate activities; commercial-civil-customary-national-international arbitration.”³⁷
- 33 In the third variant, the name of *Dâr al-Salâm* is changed into *Dâr al-Salâm al-Ijtimâ’î wa-l-Tahkîm*, The House for Social Peace and Arbitration³⁸. The term “social” is added to cover activities that are not strictly legal in nature, and to indicate more clearly its (civil) societal approach, as Al-Marwanî explained³⁹. Two exhortations are added as well: a section from the Qur’ânic verse, “*fa ittaqû allâha wa-aslihû dhata baynikum*” (S. 8:1), “So fear God and keep straight the relations between yourselves”, and the slogan, “So that Yemen [becomes] free from blood-revenge” (*min ajli Yaman khâlî min al-tha’r*), both of which are kept in all later versions. The explanatory text says: “The House unites the elite of senior Muslim scholars, judges, tribal *shaykhs*, and Members of Parliament and of the Consultative Council, to stop cases of blood revenge and solve conflicts; an independent, popular organisation.”⁴⁰
- 34 The name lengthens further: *Hay’at Dâr al-Salâm al-Ijtimâ’î wa-l-Tahkîm*, The House for Social Peace and Arbitration Organisation, or in Al-Marwanî’s own translation: “Social Peace and Arbitration House Committee”. The word *hay’a(t)* is known in Yemen to stand for different forms of cooperation (*ta’âwuniyyât*), but it is also used by modern organisations like the UN, and can mean committee, as in “arbitration committee” (*hay’at al-tahkîm*). The explanatory text is much the same.
- 35 There also circulates a letterhead only in English: “Alsalam Local & International Arbitration House”, most likely to alert a foreign clientele, even though the further content of this particular letter was in Arabic. The latest transformation I have seen reads: *Munazzamat Dâr al-Salâm al-Ijtimâ’î*, The House of Social Peace Institution, which alludes to a further institutionalisation (or to the intention thereof). The explanatory Arabic text is now reduced to: “Supreme council for combating blood feuds and violence (*‘unf*), and spreading a culture of tolerance.”⁴¹ I was told that the newly added word *‘unf* also hints at acts of terrorism: the events on and after 11 September 2001 have had immediate and far-reaching sociopolitical repercussions in Yemen, especially in tribal spheres.
- 36 Evidently, *Dâr al-Salâm* is sensitive to social and political changes on the national and international scene, and adapts its services accordingly. It does not limit itself to solve strictly legal matters (“legal” even in the widest sense of the word), but is concerned with establishing social peace and security in general, combatting any form of violence, from “traditional” (blood revenge) to “modern” (terrorism). By invoking different types of idiom (Islamic, customary, legal), *Dâr al-Salâm* tries to appeal to different

sectors of Yemeni society, as well as the state, and offers services in a form that is legitimate to all. But also, of course, to attract sponsors.

The language of money

- 37 We should not be blind to the role money plays. Dâr al-Salâm is actively seeking financial support from as many potential donors as possible, and by changing its name from Dâr to Hay'a to Munazzama it is trying to make itself more visible as an NGO. The lucrative foreign donors might otherwise not recognise an assembly of traditional shaykhs and scholars as a product of "civil society", and thus a possible "target group" or "counterpart" for funding. The use of English also points in this direction, given that hardly any member of Dâr al-Salâm speaks English, neither do the Yemenis who seek their help. The addition of "combatting violence" as one of its rephrased objectives has, as mentioned, undoubtedly to do with the growing interest of the West – the US in particular – in Yemen after the 11 September attack. Several cooperation programmes are presently being developed in tribal areas. In fact, in 2001 Dâr al-Salâm requested and received its first funding from the US Embassy in San'â' to carry out a project to spread legal awareness among Yemeni tribes⁴².
- 38 The question of Dâr al-Salâm's financial resources deserves to be explored a little further, as it gives an indication of the circles in which the organisation operates. From the outset, Al-Marwanî has solicited gifts from members or supporters of Dâr al-Salâm, external beneficiaries, charity funds and foreign donors. Often he uses the print media to launch an appeal. For instance, the newspaper Al-Balâgh published an article showing a picture of Al-Marwanî and Paramount Shaykh 'Abd Allâh al-Ahmar, the Speaker of Parliament, amicably chewing qât together. In the adjoining text, Al-Ahmar praises the objectives of Dâr al-Salâm and offers financial support⁴³. In Al-Wahda, Al-Marwanî appeals directly to President 'Alî 'Abd Allâh Sâlih to support Dâr al-Salâm⁴⁴. The Head of Dâr al-Iftâ, the Grand Muftî of Yemen, Ahmad Muhammad Zabâra, provided a handwritten exhortation to donate *zakât* (Islamic tax) and *sadaqât* (alms) to Dâr al-Salâm⁴⁵.
- 39 Of course, an important source of income flows in from arbitration. Although Dâr al-Salâm in certain cases also accepts payments in kind, such as meals, water or qât, when performing major tribal arbitrations it usually requests a percentage of the allotted *diya* (blood money). Since the *diya* as applied by tribal law can amount to a considerable sum, this provides a significant source of income⁴⁶. Nevertheless, most of the time Dâr al-Salâm seems to be short of cash⁴⁷.
- 40 To sum up, the deliberate "expansionism" in the textual presentation of Dâr al-Salâm should also be viewed in the mundane light of seeking funding from (foreign) donors. But this should not be exaggerated as being the main driving force.

The members of Dâr al-Salâm

- 41 For a deeper understanding of Dâr al-Salâm, which operates in the context of a developing country with weak institutions, it is almost imperative to have a closer look at the individuals behind it. Their personal merits, class, family, religious denomination, or the other power bases to which they belong, form the pillars of Dâr al-Salâm, from which it derives most of its real authority and legitimacy. On the other

hand, a closer encounter may tell us more about the members' own motivations for joining Dâr al-Salâm. The most significant members are now briefly introduced, some whose names and personal qualifications are brought to the fore by Dâr al-Salâm, and others with more of a view to their class or occupation, on which basis Al-Marwanî has modelled the organisational structure of Dâr al-Salâm.

The *shaykhs*

- 42 By far the most important active member is the esteemed Shaykh ʿAbd al-Wahâb Sinân. His reputation and authority are essential for the legitimization and implementation of the tribal settlements achieved by Dâr al-Salâm. While Al-Marwanî is the driving force and coordinator behind most activities, Dâr al-Salâm could not have gained such recognition and success among the tribes without Sinân.
- 43 Sinân is about 90 years of age, the Paramount Shaykh of Arhab (a Bakîltribe), the ultimate resource person of tribal custom (*marâgha*, *marjac*), and a high judicial authority among the tribes of Bakîl. These distinctions make him renowned outside tribal society as well. Sinân acts as the head of the Supreme Committee of Arbitration within Dâr al-Salâm; sometimes he is referred to as its president⁴⁸. His son, Abd al-Jalîl, is another core member. A third famous Bakîl-Shaykh, Ghâlib al-Ajdac, Paramount Shaykh of Murad and Madhaj (Maʿrib), also participated from the very beginning and acts as Secretary-General. Other members belong to the tribes of Khawlân, Nihm, Al-Baydâʾ and various smaller factions.
- 44 Whereas Bakîl provides the majority of members, Hâshid, the other main tribal confederation, is also represented in Dâr al-Salâm, for instance by several factions from Sanhân, the tribe to which President ʿAli ʿAbd Allâh Sâlih belongs. The highest tribal authority of Hâshid is the Paramount Shaykh ʿAbd Allâh al-Ahmar, who, as mentioned above, also holds the highest legislative position in the state as the Speaker of Parliament. Although Al-Ahmar is not directly involved in Dâr al-Salâm, he has supported it publicly.
- 45 Other tribal members are not only introduced by their tribal affiliation, but also by their governmental position. At least six of them are Members of Parliament, and there is also the Deputy Head of the Department of Tribal Affairs, Shaykh Yahyâ ʿAbd Allâh Kâmil, along with the son of the Head of this department, Shaykh ʿAlî Ahmad Duwayd. The department comes under the Ministry of the Interior, and provides salaries to shaykhs from all levels in return for official registration. This, of course, forms a means by which the state can exercise some control over the authority structures and affairs of the tribes. In return, the shaykhs gain (financial) support and status from the state. By participating in Dâr al-Salâm, these shaykhs have found a third platform from which to exercise authority.
- 46 Many northern tribes thus have a representative in Dâr al-Salâm. In this way, Al-Marwanî has not only secured broad tribal support – and protection – for Dâr al-Salâm, but has also created a pool of tribal authorities from which he can draw the most suitable arbitration committee to solve a tribal dispute. Depending on the type of conflict and the parties involved, factors such as neutrality or, on the contrary, a certain relationship with the tribes at odds, determine the selection process, as well as personal probity and authority. The shaykhs are grouped together under the Supreme Committee of Counsellors of Tribal Custom (*al-hayʾa al-ʿulyâ li-l-mustashârîn li-l-ʿurf al-*

qabali), elsewhere referred to as the Arbitration Committee of Tribal Elders (*al-lajna al-tahkîmiyya min al-mashâyikh*)⁴⁹.

The sayyids

- ⁴⁷ When asked further about the membership, ‘Abd al-Jalîl, Sinân’s son, reveals that whereas Dâr al-Salâm looks at first glance like a “tribal” institution, most of its members are in fact sayyids (or Hâshimîs, as Yemenis say, descendants of the Prophet)⁵⁰. He explains that Al-Marwanî himself is a Hâshimî, something that he had not mentioned in his CV, nor in his interviews. Yemen is one of the few Muslim countries where sayyids usually hide their descent, because of their association with the overthrown Imamic regime. For that reason also, relatively few sayyids have occupied high positions in the post-revolutionary governments, which may explain their reappearance in “alternative” power circles⁵¹.
- ⁴⁸ A sayyid whose public reputation and standing survived the Imâm’s downfall was the late Grand Muftî Ahmad Muhammad Zabâra, who was always mentioned as a prime member of Dâr al-Salâm. We know that Al-Marwanî was a former student of his, but one would not immediately expect that an Islamic notable of his standing would attach his name to an organisation that has a “tribal” reputation. Zabâra had been a broad-minded and highly respected traditional câlim (learned scholar) who during his life had sometimes clashed with culamâ’ adhering to stricter schools of thought. The government had created Dâr al-Iftâ’ as a tribute to his important role in the Revolution of 1962 (Haykel, 2003:197–200).
- ⁴⁹ Dâr al-Iftâ’ is further represented in Dâr al-Salâm by its Vice-President, Hammûd ‘Abbâs al-Mu’ayyid, and the second Deputy Head, ‘Abd al-Rahmân Hammûd al-Washîlî, who is moreover a high official of the Ministry of Endowments (*awqâf*). Another reputable member from the Islamic establishment is the General Religious Guide (*al-murshid al-‘âmm*), Muhammad Isma‘îl al-‘Amrânî. Like Zabâra, Al-‘Amrânî is a scholar of traditional standing who is respected in different circles. Apart from giving fatwâs and other scholarly and religious guidance, including many publications, he also teaches candidatejudges at the High Institute for the Judiciary. These renowned Islamic scholars form the Committee of Iftâ’ (*lajnat al-iftâ’*) of Dâr al-Salâm. Al-Washîlî is mentioned as the Director of Documentation (*mudîr al-tawthîq*).
- ⁵⁰ Other sayyid-culamâ’ are Yahyâ Yahyâ al-Shibâmî, a member of the government’s Consultative Council, and Yahyâ Nâsir al-Durra, who is the Responsible for Religious Information (*mas’ûl al-iclâm al-dînî*), and several others whose functions are not mentioned. None of them is referred to as a Hâshimî or sayyid in any of the issued statements of Dâr al-Salâm, but as “*al-‘allâma al-hujja*” (the very learned, the “proof” [of Islam]), an honorific Shî‘î title. These culamâ’ function under the Supreme Committee of cUlamâ’ (*alhay’a al-‘uliâ li-l-‘ulamâ’*) of Dâr al-Salâm.
- ⁵¹ Whether these Islamic scholars take an active part in tribal arbitrations, or give a sharcî legitimisation to an ‘urfî settlement, or are only engaged to solve *sharî‘a* questions, was difficult to establish. Some photos taken by Dâr al-Salâm at the scene of tribal settlements show the presence of a few scholars among the many tribesmen. In several of its written decisions, their names feature as members of mixed arbitration committees, but their input seems to consist mainly of advising the transfer of the case to the official court when they fear a deviation from *sharî‘a*. In this capacity, the

culamâ' serve an important purpose of Dâr al-Salâm, which is to remain within the framework of qânûn: the Law of Arbitration prescribes that the Court of Appeal can annul an arbitration ruling that contravenes the provisions of the Islamic *sharî'a* and the public order⁵².

The *qâdîs* and *qânûnîs*

- 52 Dâr al-Salâm claims the participation of about seventy judges, both court judges and “judges” from the *qâdî*-class. Twenty-two are mentioned by name in an issued leaflet and in Al-Balâgh newspaper, but the occupation of only a few is listed: *Qâdî* Husayn Muhammad al-Mahdî, at that time President of the Appeal Court of Sanâ' and Al-Jawf, and *Qâdî* Yahyâ Muhammad al-Shihârî from the same court⁵³. Then there is *Qâdî* Yahyâ Muhammad al-Jibrânî, Judge of the Supreme Court. Various members of the notable Al-Akwa^c-family also feature in the leaflet, among them *Qâdî* Ahmad Muhammad al-Akwa^c, who is listed as a member of the Yemeni Association of ‘Ulamâ’. The *qâdîs* take part in the Commercial and Civil Departments of Dâr al-Salâm as well as in the Arbitration Committee of Judges (*al-lajna al-tahkîmiyya min al-qudâh*).
- 53 Other legal specialists (whom I denote as *qânûnîs*) are mostly lawyers, legal scholars and professors of law. The lawyers represent women and deprived people pro bono in court on behalf of Dâr al-Salâm. The few women that Dâr al-Salâm includes belong mainly to this group: some are lawyers, one a university professor, and there is also the chief editor of the newspaper *Al-Mar'a* (The Woman), Sâmîya al-Ahmadî. The legal experts form the Supreme Committee of Legal Advisors (*al-lajna al-‘ulyâ li-l-mustashârîn al-qânûniyyîn*).

The NGO

- 54 By bringing together members from the “old classes” under an NGO agreement, while adding the “new class” of *qânûnîs*, Dâr al-Salâm created something genuinely new, which had not existed before in this form. This is not to say that the notion itself is entirely new: when we go back in the history of Yemen, we find an earlier form of cooperation between shaykhs, sayyids and *qâdîs* in tribal mediation, namely, the *hijra* (lit. “set aside”, protected status). In the tribal context, *hijra* could denote a protected place (a settlement of Zaydî sayyids, a neutral space for tribal gatherings), a protected person or family (sayyids, *qâdîs*, a mediator), or a protected occasion (a weekly market, a mediation). In brief, under this protection, sayyids and *qâdîs* could live in peace in tribal areas, and in return would assist the tribes by using their knowledge of *sharî'a* to resolve controversies about *sharî'a* issues, announce fatwâs, attest contracts, and so on. It is beyond the scope of this article to explore this typical Yemeni institution further; suffice to say that *sharî'î-urfî* cooperation in tribal mediation had existed before (Puin, 1984:483–494; al-Akwa^c, 1996).
- 55 Despite its new format, however, Dâr al-Salâm still depends heavily on the personal authority and power bases of its members. The exact organisational structure of Dâr al-Salâm remains obscure, because of the lack of formal statutes and the incoherence between the different sources that refer to the committees, but the individual qualifications and backgrounds of its members are always neatly specified.

- 56 Yet, Dâr al-Salâm is certainly more than the sum of its members. Several shaykhs from Bakîl told the newspaper *Al-Nahâr* that they felt indeed the need for a new organisational structure⁵⁴. Shaykhs Sinân and Al-Ajda`, for instance, stated that “an organisation like Dâr al-Salâm is needed to reunite *mashâyikh* and *wuqalâ'* (tribal authorities) from different tribes, to secure the application of tribal customs but also to take part as a civil organisation (*hay'a madaniyya*) in the building of civil society (*al-mujtama' al-madani*) in Yemen.” The elder Sinân refers to the fact that the tribes can no longer produce new generations of *marâghât*, as tribal members are more interested in obtaining positions as MPs or businessmen, and thus gradually step out of their traditional structures. Elsewhere, his son ʿAbd al-Jalîl relates that the shaykhs got tired of solving the same cases over and over again without any variation or promotion within the tribal hierarchy, and became bored with always sitting in the same *maqyals*. He says that the innovative approach of Dâr al-Salâm serves as both a professional and personal stimulant for them, and as a way to combine tribal (*qabali*) status with civil (*madani*) status⁵⁵.
- 57 The pay-off for the shaykhs – and the sayyids alike – is that by performing arbitration within the framework of a civil institution, they gain a new status and conquer new “territory”. In newspaper reports about Dâr al-Salâm, for instance, it is noteworthy that the shaykhs are always referred to by both their tribal affiliation and their position in Dâr al-Salâm: “Shaykh Muhsin Ahmad Jamîl, Member of the Supreme Committee of Dâr al-Salâm, Tribe of Âl Ghafir (Nihm) says [...]”. It seems a win-win combination.

Scenes of interaction

- 58 The following extracts from cases serve to illustrate modes of interaction between Dâr al-Salâm and other actors, and its role in accommodating ʿurf, *sharʿa* and *qânûn*. With this in mind, only those passages that refer to the role of Dâr al-Salâm are highlighted, while the exact details and procedures of the case are omitted.
- The telephone rings. “Maʿâk Dâr al-Salâm, mukhtassa bi-l-thaʿr”⁵⁶, Al-Marwanî responds. A tribal dispute is reported, mediation requested. Al-Marwanî jumps up and starts phoning around to assemble members and others to join the group of mediators. The nearest *qât*-chewing time is used to discuss more details of the case and plan a strategy. If necessary, even state officials are approached to facilitate the mediation. The feuding tribes are notified, and the mediators set out en groupe to the location of the fighting, sometimes days away.
- 59 This is how I once witnessed the reception of a mediation request by Dâr al-Salâm. Al-Marwanî relates that sometimes he is approached by one or both of the parties in dispute, at other times he intervenes on his own initiative. Ideally, the requesting party is asked to write a letter to the secretariat of Dâr al-Salâm to clarify the dispute. The other party is then approached, and if both agree that Dâr al-Salâm should perform the arbitration, they sign an arbitration agreement (*wathîqat al-tahkîm*). If no agreement can be reached, Al-Marwanî refers them to the court, “because the court derives its competence from the law, Dâr al-Salâm from the consent of the parties”⁵⁷. Al-Marwanî knows precisely what the Law of Arbitration prescribes⁵⁸.
- 60 In important or long-lasting tribal disputes, Dâr al-Salâm assembles a large number of shaykhs from different (neighbouring) tribes, together with Islamic authorities and state officials, members and non-members alike. Such a mixed delegation will impress

the feuding tribes both in its quality and size, and compel them to lay down their arms and accept mediation. The mediators rely on “the customs and the forefathers” (*al-aʿrâf wa-l-aslâf*) to avoid encountering any aggression on their mission. They refer to it as their *hijra* protection.

- 61 On arrival, the group splits in two and each half joins one of the parties involved in the conflict in order to stop the firing. Then they start collecting from both sides a symbolic number of firearms, the so-called *banâdiq al-tahkîm* (rifles of the arbitration), and begin to hear the pleas of each party, either on the same spot or on the nearest protected (*hijra*) location. One of the means of bringing the parties together is the use of *zâmil*-poems, tribal poems which are exchanged traditionally during a mediation, with all the men of both tribes lining up in two long chains that eventually form a circle so as to close symbolically the distance caused by the enmities (Caton, 1990). This is followed by a ritual exchange of bulls and weapons, supervised by different levels of guarantors (*dumanâʾ*) until a *sulh* (truce) or *hukm* (ruling) is reached. Usually, the final mediation or arbitration document is written down at a place inside, during a *qât*-session, or sometimes at the premises of Dâr al-Salâm. It is always read aloud in the presence of both parties⁵⁹.
- 62 An important innovation of Dâr al-Salâm’s in this still very traditional form of settlement is that it acts under its institutional “flag”. Al-Marwanî always displays in one way or another the name of Dâr al-Salâm: he drives a Mercedes jeep (previous cars did not survive tough interventions, he said), which has the name “*Hay’at Dâr al-Salâm al-Ijtimâʾî wa-l-Tahkîm*” and its phone number written all over it. As a variant of the traditional *zâmil*-poetry, he distributes written poems or letters carrying the house logo, which explain to the feuding tribes the harmfulness of *thaʾr* and other bad customs. Nevertheless, in his Mercedes he also brings along a white flag of peace (*ʿalam al-salâm*), and in a separate truck several bulls. Without these traditional instruments for tribal peace-making, he would not even be allowed on the scene. The *hijra*-protection still proves more effective to ward off violence in tribal areas than any official law or institutional framework.
- 63 The solution or containment of *thaʾr* is a primary objective of Dâr al-Salâm, as it never tires of emphasising. *Thaʾr* is extremely widespread in Yemen, and one of its most dreaded social consequences is that it can lead to *fitna* (chaos, disorder)⁶⁰. This latter term is often used by Yemenis to denote something “out of control”, the bombshell under any organised entity, including the state. Combatting *thaʾr* is therefore not only a major concern of Dâr al-Salâm, but also of the Yemeni state, which prefers to see “law and order” implemented through its own institutions and laws. Failing that, it is not unusual that it seeks cooperation with influential personalities and organisations like Dâr al-Salâm to solve major tribal wars that occur on its territory. In this respect, two case studies are worth mentioning.

The tribes of Al-Hanashât and Âl al-Sayyâd (from Nihm, Bakîl) had waged war for over twenty years, resulting in many casualties and much destruction of property. President ʿAlî ʿAbd Allâh Sâlih himself had at long last appealed to all shaykhs and other authorities, including Dâr al-Salâm, to solve this feud as soon as possible. Dâr al-Salâm responded by assembling a strong mediation delegation of prominent shaykhs, headed by Shaykh Abd al-Wahâb Sinân and Al-Marwanî himself, and Shaykh ʿAlî Ahmad Duwayd, son of the Head of the Department of Tribal Affairs (Ministry of the Interior).

- 64 Part of the conclusion of the mediation decision serves to illustrate that tribal *‘urf* was applied:

A pure and honest sulh has been reached between Al-Sayyâdî and Al-Hanashî and is incumbent on everyone, old and young, protector and protected (*âmin wa-mu'min*)⁶¹, in every corner of the world – roads, markets, protected places (*ahjar*), cities, valleys. Whomever violates this sulh, his blame can only be restored (*naqâ*, restoring the “good name”) by paying forty-four sums of blood money (marbûcal-muhadcash)⁶² and relinquishing all his rights, his house, and everything he owns [...]⁶³.

- 65 According to custom, the document concludes with the names and signatures, or thumbprints, of the shaykhs who accept the *sulh*, of the *ahlal-wajîh* (those who “give” their face, i.e. their honour – the guarantors), and of the shaykhs of all other tribes present.
- 66 Another case involved a spectacular tribal settlement, recollected in lively manner by the son of Shaykh Sinân, Abd al-Jalîl⁶⁴:

In 1998–1999, a major tribal war raged between Banî Matar (Bakîl) and Al-Hayma, west of San‘â’. The government had sent several high officials to intervene, from the General Director of the Governorate up to the Vice-President himself, but to no avail. Then it had turned to several important *mashâyikh*, among whom was the son of Shaykh Al-Ahmar (Paramount shaykh of Hâshid). Again, without success. Eventually, the President himself asked Shaykh Sinân senior and Dâr al-Salâm if they could settle the tribal war as *taraf sâfi* (a neutral party), against a payment of two million Yemeni riyals (about 15,000 Euro). Dâr al-Salâm accepted. This time it opted for the quantitative approach, and assembled around 2,000 shaykhs and tribal notables, mostly from the tribe of Arhab (Bakîl) in order to impress the fighting parties by sheer numbers⁶⁵.

After notifying the tribes, the whole group departed from San‘â’ towards Mahwît, where the scene of the battle was. The huge delegation, carrying the traditional white flags, had presidential permission to pass all official checkpoints, and their march was facilitated by security officials. Upon arrival, they split into two groups, and occupied the houses of the disputing parties, settling down for as long as it would take until the parties would stop fighting and accept their mediation. By imposing themselves in such numbers on the tribal households – although all in a peaceful manner, as it was related – the delegation deliberately put a major burden on the “hosts” to fulfil the tribal honour of hospitality (*duyûfa*). The impending financial and physical nightmare of having to feed so many guests, made the parties quickly agree to settle.

The parties were offered the choice between a settlement according to *sharî‘a* or *‘urf*. The *sharî‘a* settlement could take place either “inside or outside the court”, as Abduljalîl explained. “Outside” meant by a *qâdî mardî* or *qâdî tarâdî* (a judge chosen by the parties on consent). If they opted for an *‘urfî* settlement, the parties could select the arbitrators from the Arhabî shaykhs present, or from another tribe, whichever they preferred. Both parties agreed on Arhabî arbitrators, and ‘Abd al-Wahâb Sinân, “Paramount shaykh from Arhab and President of the Supreme Committee of Dâr al-Salâm”, acted as the leading arbitrator.

- 67 What happened next is unfortunately not reported, but this information already tells us more than we learn from the official language of the state (in statutory laws, decrees, formal statements), namely, that the state needs the tribes to help preserve order. This in itself is not unusual; the novelty is that the cooperation is taking place under new frameworks. First, the nature of the state has drastically changed with the introduction of codified laws and national institutions from 1962 onwards. Second, the nature of the relationship between the state and tribal society is also changing. In these

two case studies, the President called not only on individual *mashâyikh*, but simultaneously on Dâr al-Salâm. In other words, he seems to be encouraging tribal authorities to operate under an institutional and legal framework. Dâr al-Salâm thus positioned itself here not only as a mediator, but also as an intermediary between the state and the tribes.

A drawn-out dispute between Bakîl and Hâshid had already caused many casualties, the most recent being a homicide of a boy from Banî Dabyân (from Khawlân, Bakîl) in front of the Ministry of Local Administration in San‘â’. Khawlân could not be persuaded to accept settlement through arbitration, but wanted the accused to be handed over by Hâshid. Hâshid refused, and since the accused was someone from the renowned Al-Ahmar family, the highest authorities became involved. Even several ‘ulamâ’ had cooperated with the *mashâyikh* in the process towards the settlement, among whom was the notorious Shaykh al-Islâm ‘Abd al-Majîd al-Zindânî, leader of the Islamic wing of the Islâh-party and an internationally renowned Islamist preacher (Dresch and Haykel, 1995:405-431). He had urged Khawlân to submit the case to justice (*‘adâla*) by confining the accused in the state prison, and then “let *sharî‘a* run its course.” Khawlân had accepted his proposal, on the basis that “Islamic *sharî‘a* is superior to all *a‘râf*.”

The Hâshid tribe had then asked for time to apprehend the accused by itself, but had failed to do this, so the case dragged on again. Finally, after one-and a-half months of negotiations, Dâr al-Salâm succeeded to bring in President ‘Alî ‘Abd Allâh Sâlih to meet with the two antagonistic tribes and a group of mediators, among whom Shaykh Ghâlib b. Nâsir al-Ajdac, “Paramount shaykh from Ma’rib and Secretary-General of Dâr al-Salâm”. The President, who was praised by Al-Ajda‘ for his cooperative role as *marja‘ al-jamî‘* (“the resource of all”), guaranteed that Hâshid would accept the verdict by Khawlân. From the specific context, we gather that the President meant “guarantee” in its tribal connotation, which puts the honour of the guarantor at stake when the verdict is not executed. It is worth mentioning that the President is a member of the Sanhân-tribe, which belongs to Hâshid⁶⁶.

- 68 This report is intriguing for various reasons. The (presumably) final settlement was reached through *‘urf*, this time with the active involvement of the President, who seems to take advantage of his two identities – as the highest representative of the state and as a member of Hâshid. Moreover, the *‘urfi* settlement went against the advice from one of the most authoritative Islamist preachers, Shaykh al-Islâm Al-Zindânî, to apply *sharî‘a* and resort to state institutions. Al-Zindânî’s involvement in tribal affairs is in itself quite remarkable.
- 69 One would have expected the application of *qânûn*, because the case concerned a serious matter of public order, and a homicide had been committed in the capital San‘â’, even in front of a state institution. Tribal forces, however, proved stronger than state mechanisms: elsewhere in the report we read that before the settlement was arranged, the public prosecution had arrested dozens of Khawlânîs, but their fellow-tribesmen had raided the state prison and released them all. This is not at all unusual in the Yemeni context. Given such unruly conditions, *qânûn* and *sharî‘a* can often provide nothing more than an obligatory idiom.
- 70 These three case studies were just a few examples among a range of cases solved by Dâr al-Salâm since its creation⁶⁷. Even in the absence of fuller details, they give an indication of how the organisation moves between norms, procedures and actors from different legal domains to solve a dispute. The primary goal is to satisfy the parties involved, but Dâr al-Salâm is also observant of higher interests, such as restoring peace and security, in the full awareness that this is also a major interest of the government.

Code and custom

- 71 Since both the government and Dâr al-Salâm formally operate under the framework of *qânûn*, a brief sketch of the legal rules on tribal arbitration and tribal custom is in place. The first codified provisions about arbitration in the former Yemen Arab Republic formed part of the “Islamic legislations” (*altashrîât al-islamiyya*) drafted by the *Sharî’a* Codification Commission in the late 1970s⁶⁸. Law 90/1976 contained only four articles that dealt with arbitration proper, which identified it as an alternative procedural course within the framework of *qânûn*.
- 72 The second Law of Arbitration (33/1981) approached arbitration with much more of an eye to the tribal reality in Yemen, and allowed a separate jurisdiction for tribal law and procedure. The most quoted article of this Law is Article 21:
- The forefathers and customs have their own rule, which control the sparing of blood and the settling of conflict⁶⁹.
- 73 In other words, (tribal) customs could set aside statutory norms in cases of homicide and dispute settlement between tribes. Such generous consideration for tribal customs can no longer be found in the revised Law of Arbitration (22/1992), issued two years after the unification of Yemen. In Article 3, the new law subsumes all types of arbitration on Yemeni territory under its own jurisdiction. Cases in which no arbitration is allowed are the *hudûd* (Qur’ânic offenses); *li’ân* (sworn allegation of adultery by a spouse); annulment of the marriage contract; impeachment and prosecution of judges; disputes related to procedures of compulsory enforcement; other matters in which no *sulh* is allowed; and everything connected to the public order (Article 5, emphasis added). “Public order”, as in all modern legal systems, refers among other things to criminal offences and their punishment, which therefore should fall within the jurisdiction of the court.
- 74 The state’s official position with regard to the application of (tribal) customs is formulated in Article 45:
- The arbitration tribunal shall decide on the dispute on the basis of the statutory principles (*al-qawâ’id al-qânûniyya*) on which both parties agree [emphasis added]. [...] In all cases, the arbitration tribunal shall decide the dispute in accordance with Yemeni law (*qânûn*) or the provisions of the contract concluded by the parties, while taking into account the customs and social usages (*al-‘urf wa-l-‘âdât al-ijtimâ’iyya*), and likewise the commercial customs and usages followed in this type of transactions.
- 75 The integral text of this article mentions the word “*qânûn(-iyya)*” no fewer than nine times. Customs can no longer wholly govern an arbitration decision, but can only be taken into consideration as long as they remain within the framework of the code. This dramatic policy shift, in comparison to the previous law, has everything to do with international trends in arbitration, and with the state’s national ambition to exercise a monopoly of legal power. However, this firm position did not last for long. In 1997, the article was amended as follows:
- The arbitration tribunal shall decide on the dispute on the basis of the principles (*al-qawâ’id*) on which both parties agree [...] ⁷⁰.
- 76 The crucial adjective “*qânûniyya*” in the first sentence is left out, which allows a much broader interpretation of “*al-qawâ’id*” by admitting non-statutory rules as well.

However, another restriction has been added through the back door. The last sentence of the article now reads:

[...] while taking into account the customs and social usages, and likewise the commercial customs and usages followed in this type of transaction on the condition that in all cases there will be no contradiction with the rules of the Islamic *sharī'a*. [emphasis added]

- 77 In other words, tribal customs, just as commercial usages, ultimately have to comply with *sharī'a*. *Sharī'a* has thus been designated as the ultimate legal reference for all types of arbitrations. As a control mechanism, the law requires that arbitration decisions (*ahkām al-muhakkamîn*) are registered at the court (Article 20). However, since there is no sanction for not registering arbitrations, in practice only a very limited number are submitted. Some decisions by Dâr al-Salâm show registration stamps of the Court of Appeal in San^câ', others do not. In case a plaintiff or the court suspects a deviation from *sharī'a*, the court is also competent to review the decision in an appeal procedure⁷¹. Usually, however, tribal arbitrations are appealed along tribal procedures (*manhâ*).
- 78 Over a period of twenty years, the successive Laws of Arbitration have granted, withdrawn and restored varying powers of jurisdiction to tribal arbitration. This tells us that the state has much difficulty, even at the prescriptive level, of incorporating tribal arbitration into its framework. In practice, even less control is achieved. From the above examples of cases, we learned that homicides were settled by arbitration instead of prosecuted by the state, and that tribal norms were applied that contradicted official norms and *sharī'a*, such as the extremely high amounts paid in blood money. Officially, these are deviations from *qânûn*, but we have also seen that it is not always possible to enforce the law, if other powers have stronger means of imposing their own norms and procedures. In such "overruling" situations, the closest the state can come to adhering to its own rules is to cooperate with a societal organisation that conforms to the state's set framework, even if only nominally. This is why Dâr al-Salâm is potentially an attractive intermediary for the state in its dealings with the tribes in settling disputes.

Conclusion

- 79 Dâr al-Salâm is a product of the modern era. In pre-modern times, tribal structures and tribal arbitration could survive in their "traditional" forms, and there was no need or force that could induce their reorganisation. The formation of the modern state, the introduction of *qânûn* since the 1970s, and the recent calls (and international pressure) to develop a "civil society", have created a historical momentum for change. This process is, however, very slow and complex. Even up to the early 1990s, statutory law permitted the separate functioning of tribal norms and procedures. Another reason is that many individuals who found positions in the new state apparatus still remain loyal to the Islamic and tribal networks that helped them into these positions. This also explains why the state often does not seem to pursue a single course of action.
- 80 With such a reality, "the state", in its institutional sense, searches for ways to accommodate to the stronger societal forces without losing too much effective control. An organisation like Dâr al-Salâm bridges the gap between state and tribal society, because it brings formalisation of and better accessibility to the tribal structures. In

addition, the establishing of Dâr al-Salâm in accordance with legal prescriptions makes it a legitimate partner for the state, as well as more visible for potential foreign partners.

- 81 Complementary interests also govern the relationship between Dâr al-Salâm and its members. The organisation relies heavily on the authority and networks of its individual members, who in their turn have much to gain from their participation (civil status, personal gain, consolidation of “good” tribal customs). Dâr al-Salâm still cannot do without the weight of personalities like the elder Sinân, but it is likely that in the longer run, the younger Sinân will not be able to do without an organisation like Dâr al-Salâm, since the existing tribal structures seem to be in decline. And for those who had no advantageous position to begin with, like Al-Marwanî, the civil framework of Dâr al-Salâm could place him at the side of Yemen’s most senior leaders.
- 82 Pragmatic considerations, finally, seem to determine which norm of the “legal triangle” is applied in arbitrations. Where as *sharî’a* is denoted by all actors as the ultimate reference, it serves as an idiom rather than as the practice. *Qânûn* provides an institutional framework both for the state and Dâr al-Salâm, but when it comes to choosing an applicable norm and procedure, the general pattern seems to be mostly guided by the demands of the parties and the need to maintain peace and order. Order comes first; law is secondary.

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NOTES

1. For a thorough account of Yemen's recent history, see Paul Dresch, *A History of Modern Yemen*. Cambridge: Cambridge University Press, 2000.
2. Although I do not see "the state" as a monolithic bloc, I refer to it in this article as a distinct actor which strives to impose its constitutional order through official mechanisms.
3. I understand "civil society" here as the re-formation of individuals and social fields into societal organisations and interest groups under the framework of a modern nation-state. For a thorough analysis of civil society in Yemen, see Sheila Carapico, *Civil Society in Yemen. The Political Economy of Activism in Modern Arabia*. Cambridge: Cambridge University Press, 1998.
4. For the purposes of this article, I see the differences between the two predominantly in the conditions for participation: tribal society requires kinship affiliation or a protection agreement, civil society requires citizenship.
5. Since mid-2003, however, Dâr al-Salâm has moved to new premises in order to be more visible and easier to reach. It is now housed – symbolically as well? – in the former building of a primary court in San'â'.
6. Dresch refers to earlier attempts to organise tribal mediation, for instance at the tribal conferences of cAmrân (1963) and Khamîr (1965). See Paul Dresch, *Tribes, Government, and History in Yemen*. Oxford: Clarendon Press, 1989:251.
7. According to lawyer and MP Muhammad Najî 'Alâw, there are other judges who rule according to 'urf in court, despite the fact that the Law of Procedure prohibits this (*Al-Wasat* 12 February 2001).
8. My thanks to Iris Glosemeyer for providing me with his CV.
9. Others informed me that he had studied these subjects at the Police Academy (*ma'had al-shurta*).
10. Although here Al-Marwanî uses the term muhâmin (advocate, lawyer), in fact he is a *wakîl al-sharî'a*, a "representative of *sharî'a*" who also assists litigants in court, but is not accredited as a professional lawyer. The *muhâmin* did not exist under classical *sharî'a*, and was only recently legitimised by the Law of Advocacy 30/1992. The controversial position of the *wakîl al-sharî'a* was eventually forbidden by this Law (Art. 87).
11. Note the compound construction of "*al-qâdî'urf*".
12. On my return to Yemen in July 2003, I was told that these awareness campaigns had become the most important activity of Dâr al-Salâm.
13. One wonders why. In tribal circles especially, written agreements with the signatures of all parties are extremely important to set out the territorial and legal boundaries and modes of conduct between tribes, tribal members and third parties. On the other hand, Al-Marwanî had made several efforts to register Dâr al-Salâm as an NGO at the Ministry of Culture from 1998

onwards. During my last visit in July 2003, he showed me that this registration had finally been accomplished.

14. See the initial leaflet of Dâr al-Salâm (English and Arabic version), and the English weekly *Yemen Times*, 12–18 July 1999:4. The Arabic leaflet mentions the names of 34 shaykhs, 22 judges, nine Islamic scholars, eight lawyers, and 20 others of miscellaneous background. No reference is made to female members, but I have met with some women lawyers who confirmed their (ad hoc) participation. The figures were, however, not verifiable. The newspaper *Al-Mar'a*, for instance, mentions 170 tribal shaykhs, 70 judges, 40 lawyers, 12 prosecutors and a few others (*Al-Mar'a*, 39, July/August 1999:3).

15. Al-Marwanî declared in personal interviews and also in the press that he did not receive any money from the government, but that they have a common objective, namely, to put a halt to tribal blood disputes. *Al-Ra'y*, 16 November 1999:7, and *Al-Wahda*, 26 January 2000:14. It does occur, therefore, that the President calls upon Dâr al-Salâm for paid arbitration, as is discussed later.

16. He often uses phrases like “relieving the psychological impact of hate and fighting between people”, and “people need to recuperate their sense of tolerance, peace and love for each other” by abandoning “destructive practices such as blood revenge”, to which end “the good tribal customs need to be revived”. See for instance *Al-Balâgh*, 26 January 1999, *Al-Nahâr*, 20 May 2000:26, and Al-Marwanî's CV.

17. To name but a few initiatives in 1998: the initiation of a judicial reform programme by the Ministry of Justice (in cooperation with international donors), the nationalisation of private Islamic madrasas (schools) by the Ministry of Education, the launch of the popular legal journal *Al-Qistâs* by the San'ânî NGO Forum for Civil Society, and the Ministry of Justice's immediate response in relaunching its official legal journal, *Al-Majalla al-Qadâ'iyya*, after a break of twenty years.

18. Some Yemenis, however, believe that in order to maintain his authority, the Imâm occasionally reconciled himself to the reality of legal pluralism, and acquiesced in the application of tribal law in certain jurisdictions and regions, but only insofar as it would not “permit what was forbidden, or forbid what was permitted”. See, however, Dresch 1989:183–188. Certain instruments used by the Imâm to contain such practices were, for instance, his *ikhtiyârât* (choices), imamic legal opinions based on *ijtihâd* (independent legal reasoning), which he made binding on the courts. Messick 1993:211–212, and Bernard Haykel, *Revival and Reform in Islam: The Legacy of Muhammad al-Shawkânî*. Cambridge: Cambridge University Press, 2003:202–206. I hope to provide more substantiation to this argument in my Ph.D. thesis.

19. For instance, *Sûras* 2:256; 4:51; 4:60; 4:76; 5:60; 16:36; 39:17.

20. Other objectives, such as providing legal representation in court for women and deprived people, and releasing “overdue” prisoners (those who have fulfilled their term in jail, but cannot afford to pay their outstanding blood money) fall outside the scope of this article. *Al-Thawra*, 8 February, 2000; *Yemen Times*, 12–18 July 1999:4.

21. *Bakîl* is one of the three large tribal confederations in Upper Yemen, the others being *Hâshid*, and the less-known *Madhhij*.

22. Interview 2 May 2001. The first legal codes of North Yemen in the 1970s were derived from *shar'î'a* and were called “*al-qawânîn al-islamiyya*”, the Islamic codes.

23. A noted exception are the so-called *Qawâ'id al-Sab'în* (The Rules of the Seventy [Men], or The Seventy Rules), containing the agreed customary rules among the tribes of Jabal Barat, northern Yemen. Dresch is presently preparing an annotated translation of these written rules. See also his *Tribes*: 58, 128, 149–150, 352–53.

24. Compare Messick's discussion of “closing texts”, in which he describes the codification process of *shar'î'a* (Messick 1993:54ff.)

25. Shelagh Weir is currently finalising a book on the maintenance of tribal order in north-west Yemen.
26. Article 3 of the Yemeni Constitution of 1994 reads: "The Islamic *sharī'a* is the source of all legislation."
27. This term was introduced by Léon Buskens in "An Islamic Triangle. Changing Relationships between Sharī'a, State Law, and Local Customs", ISIM Newsletter 5, 2000:8 (see also on www.isim.nl).
28. Dupret calls this the use of "normative repertoires". Baudouin Dupret, "Legal Pluralism, Normative Plurality, and the Arab World", in Baudouin Dupret, Maurits Berger, Laila al-Zwaini (eds), *Legal Pluralism in the Arab World*. The Hague: Kluwer Law International, 1999:29–40 (34–36).
29. Here he blends a human rights idiom with an Islamic idiom.
30. *Al-Balâgh*, 26 January 1999:3.
31. *Al-Nahâr*, 20 May 2000:26.
32. *Al-Balâgh*, 23 May 2000; *Al-Sahwa* (the newspaper of the Islâh party), 7 September 2000.
33. *Yemen Times*, 12–18 July 1999:4; *Al-Mithâq*, 1 November 1999:12. The Law of Arbitration (1992, amended in 1997) does however specify some limitations on arbitration; see below for a brief discussion.
34. *Al-Balâgh*, 27 January 1999:3.
35. Article 3, discussed below.
36. In Arabic: "dâr qadâ'iyya ikhtiyâriyya tadummu niqâbat min kibâr al-*ulamâ'* wa-l-qudâh wa-l-mashâyikh li-hall mukhtalif al-munâza'ât bî-turuq al-tawfiq wa-l-tahkîm wa-taqdîm al-fatwâ wa-l-istishârât al-qânûniyya. tahkîm madanî-*urfi*."
37. In Arabic: "dâr qadâ'iyya ikhtiyâriyya li-hall mukhtalif al-munâza'ât al-shar'iyya, al-qânûniyya wa-l-*urfiyya* wa-qîsmat al-mawârith wa-tawthîq al-*uqûd* wa-l-fatwâ wa-l-istishârât al-qânûniyya wa-l-muhâmâh. tahkîm tijârî-madanî-*urfi*-watanî-duwalî."
38. Note the peculiar Arabic. Their own translation reads: Assalam House Social for Arbitration (note the peculiar English). Sometimes "Assalam" is presented as a name, sometimes with the meaning of "peace".
39. Interview, 24 April 2001.
40. In Arabic: "yadummu al-dâr nukhba min kibâr al-*ulamâ'* wa-l-qudâh wa-l-mashâyikh wa-a^cdhâ' majlis al-nuwwâb wa-l-istishârî li-l-hadd min qadâyâ al-tha'r wa-l-fasl fî munâza'ât. hay'a sha'biyya mustaqilla."
41. In Arabic: "al-majlis al-a^clâ li-mukâfahat al-tha'r wa-l-*unf* wa-nashr thaqâfat altasâmuh."
42. I have a copy of their proposal, but no detailed information on the actual implementation.
43. *Al-Balâgh*, 9 January 2001, and also *Al-Wahda*, 3 January 2001.
44. *Al-Wahda*, 26 January 2000:14. It remains unclear whether the President or the government actually gave money to Dâr al-Salâm, other than in return for a requested arbitration.
45. Copy in my possession. See also al-Thawra, 8 February 2000.
46. One case reported 40 million Yemeni riyâl (about 300,000) as compensation for its settlement. Such exceptional amounts result from the tribal practice of multiplying the "normal" Islamic diya by four, eleven, or even 44 times, depending on the gravity of the offence (see also section 5).
47. This was, of course, not verifiable. *Al-Ra'y*, 16 November 1999:7; *Al-Wahda*, 26 January 2000:14.
48. *Al-Mithâq*, 1 November 1999, 12; *Al-Nahâr*, 20 May 2000, p. 28; *Al-Shûra*, 18 February 2001:3.
49. Because of lack of official statutes, information on the organisational structure of Dâr al-Salâm was gathered from several interviews in April–May 2001, from the newspaper *Al-Balâgh*, 26 January 1999, and from a leaflet from Dâr al-Salâm.
50. This remarkable information could probably shed a new light on our understanding of Dâr al-Salâm, but at this point my interview was abruptly interrupted by gunfire outside the house.

Sinân's uncle, on his way home, had fallen into an ambush that was an act of blood revenge. Sinân excused himself in order to attempt mediation. As a woman, I could not attend. Upon leaving the house, there were several dead bodies lying in the street, of innocent passers-by (the uncle had survived). The interview was never completed. This incident shows that the implications of blood revenge are not confined to tribal areas or even tribal members, but can also affect city dwellers in a most intrusive manner.

51. Gabrielle von Bruck has written extensively about the Zaydî sayyids and their changing status. See for instance her "Disputing Descent-Based Authority in the Idiom of Religion: The Case of the Republic of Yemen", *Die Welt des Islams*, 38, 2, 1998:149–191 (153).

52. Law 22/1992, Article 53 sub g, and 55 sub b.

53. *Al-Balâgh*, 27 January 1999, 3.

54. *Al-Nahâr*, 20 May 2000.

55. Interview, 2 May 2001.

56. "Here is Dâr al-Salâm, specialised in blood revenge."

57. *Al-Nahâr*, 20 May 2000:26.

58. Law 22/1992, Articles 15–16.

59. On tribal settlements and their procedures, see various excellent studies of Robert B. Serjeant, for instance, "South Arabia", in *Commoners, Climbers, and Notables*, C.A.O. van Nieuwenhuijze (ed.). Leiden: E. J. Brill, 1977:226–247. Also Dresch 1989: passim, and a case study in his "Episodes in a dispute between Yemeni tribes: text and translation of a colloquial Arabic document", *Der Islam*, 64 (1987):68–86.

60. *The Encyclopedia of Yemen* (EY), 2nd edition, 2003, mentions a modernised version of "tha'r" which consists of taking fake claims to the courts or police with the intention of causing trouble and nuisance for the victim, because procedures normally take an inordinately long time and rights are often not protected.

61. A *mu'min* here means an individual associated with a tribe not by kinship affiliation, but by a protection agreement.

62. This is a tribal augmentation of the diya that is originally prescribed by *sharî'a*. Depending on the type and gravity of the offence, and the 'urf of the tribe, the Islamic diya is either quadrupled or "elevenished".

63. This decision was also published in *Al-Balâgh*, 23 March 1999. Photos shown to me by Al-Marwanî present the two tribes and their mediators during the recitation of a zâmil-verse, while another portrays two *shaykhs* flanked by two armed men, signing the *sulh* document at a table inside a house, while huge stacks of money are piled at their feet. In the full version of the complex, handwritten *sulh* document, we also come across an incident in which an Egyptian teacher was killed in the chain of *tha'r* revenges, because "his" tribe had killed the Egyptian teacher of the other tribe. My thanks to Baudouin Dupret for providing me with a better copy of this *sulh*.

64. Interview, 2 May 2001.

65. This number was related to me by Abduljalîl and several other informants. However, *Al-Balâgh* (7 September 1999) mentions "more than 200" tribesmen, even though it was also Abduljalîl who gave the interview. See also *Al-Shûra*, 5 September 1999.

66. Shaykh Al-Ajdac in a report to *Al-Shûra*, 27 June 1999, and *Al-Wahdawî*, 3 August 1999. We never come to know whether these settlements are final. I venture to say that they are usually not, despite all guarantees and influential interventions.

67. The reported successes in the first year of its existence were: 31 *tha'r*-cases (52, according to *Al-Ra'y*, 16 November 1999); 60 civil cases by arbitration, free legal aid in 50 cases, and 39 prisoners set free after completion of their legal detention (*AlMar'a*, 39 July–August 1999; *Al-Ra'y al-Âmm*, 29 June 1999).

68. This Commission was created in 1975 to draft laws by selecting those *sharî'a* principles from various schools of fiqh (Islamic jurisprudence) that were closest to the spirit of the century and the specific Yemeni context.

69. In Arabic: “*al-aslâf wa-l-a'râf lahâ hukmuhâ wa-yurâ'î fihâ haqn al-damâ' wa hasm al-khilâf.*” See also Articles 4 and 6.

70. Article 45, Law 32/1997.

71. Article 53 sub g and 55 sub b, Law 22/1992.

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Mots-clés : coutume, Yémen

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