

The Permanent Court of Arbitration/Peace Palace Papers

STRENGTHENING RELATIONS WITH  
ARAB AND ISLAMIC COUNTRIES  
THROUGH INTERNATIONAL LAW:

*E-COMMERCE, THE WTO DISPUTE SETTLEMENT  
MECHANISM AND FOREIGN INVESTMENT*



Edited by

The International Bureau of the  
Permanent Court of Arbitration

KLUWER LAW INTERNATIONAL



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*E-COMMERCE, THE WTO DISPUTE SETTLEMENT  
MECHANISM AND FOREIGN INVESTMENT*

Papers emanating from the Fourth PCA  
International Law Seminar  
October 12, 2001

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## LIST OF JOURNAL ABBREVIATIONS

AFR. J. INT'L & COMP. L.	African Journal of International & Comparative Law
A.J.I.L.	American Journal of International Law
AM. J. COMP. L.	American Journal of Comparative Law
ARAB L.Q.	Arab Law Quarterly
ARB. & ADR	Arbitration and Alternative Dispute Resolution
ARB. INT'L	Arbitration International
A.S.I.L. PROC.	American Society of International Law Proceedings
BERKELEY TECH. L.J.	Berkeley Technology Law Journal
BGBL. I	Bundesgesetzblatt, Teil I
BGHZ	Entscheidungen des Bundesgerichtshofes in Zivilsachen
BYU J. PUB. L.	Brigham Young University Journal of Public Law
COLUM. J. TRANSNAT'L L.	Columbia Journal of Transnational Law
COMMON MKT. L. REV.	Common Market Law Review
COMM. OF THE ACM	Communications of the Association for Computing Machinery
COMPUTER & HIGH TECH. L.J.	Computer & High Technology Law Journal
CR	Computer und Recht
CRI	Computer und Recht international
DALLOZ AFF.	Dalloz Affaires
DENV. J. INT'L L. & POL'Y	Denver Journal of International Law & Policy
E-COM. TIMES	E-Commerce Times
ECONOMICA	Economica
E.C.R.	European Court Reports
EUR. L. REV.	European Law Review
EUROP. T.S.	European Treaty Series
FIN. & DEV.	Finance & Development
FLETCHER F. WORLD AFF.	Fletcher Forum of World Affairs
F.3d	Federal Reporter
F. SUPP.	Federal Supplement
FORDHAM INT'L L.J.	Fordham International Law Journal
GA. J. INT'L & COMP. L.	Georgia Journal of International & Comparative Law
HASTINGS INT'L & COMP. L. REV.	Hastings International and Comparative Law Review
HAGUE RECUEIL	Recueil des cours de l'Academie de droit international
INT'L BUS. LAW	International Business Lawyer
ICC BULL.	ICC International Court of Arbitration Bulletin
I.C.J.	International Court of Justice, Report of Judgments, Advisory Opinions & Orders
ICSID REV.	International Center for Settlement of Investment Disputes Review: Foreign Investment Law Journal
I.L.M.	International Legal Materials
I.L.R.	International Law Reports
INT'L AFF.	International Affairs
INT'L & COMP. L.Q.	International & Comparative Law Quarterly
INT'L J. L. & INFO. TECH.	International Journal of Law & Information Technology
INT'L J. MIDDLE E. STUDIES	International Journal of Middle East Studies

# STRENGTHENING RELATIONS WITH ARAB AND ISLAMIC COUNTRIES

INT'L LAW.	International Lawyer
IPRAX	Praxis des Internationalen Privat- und Verfahrensrechts
J. C. INST. ARB.	Journal of the Chartered Institute of Arbitrators
JDI	Journal du Droit International
J. INFO. L. & TECHN.	Journal of Information, Law & Technology
J. INT'L ARB.	Journal of International Arbitration
J. INT'L BANKING L.	Journal of International Banking Law
J. INT'L BANKING & FIN. L.	Journal of International Banking and Financial Law
J. INT'L ECON. L.	Journal of International Economic Law
J.L. & RELIGION	Journal of Law & Religion
J.O.	Journal Officiel de la République
J. WORLD INTELL. PROP.	Journal of World Intellectual Property
J. WORLD INV.	Journal of World Investment
LA. L. REV.	Louisiana Law Review
LAW & POL'Y INT'L BUS	Law & Policy in International Business
LEGAL ISSUES OF ECON.	
INTEGRATION	Legal Issues of Economic Integration
LOY. L.A. L. REV.	Loyola of Los Angeles Law Review
MEALEY'S INT'L ARB. REP.	Mealey's International Arbitration Report
MIDDLE E. EXECUTIVE REP.	Middle East Executive Report
Minn.	Minnesota Reports
MMR	Multimedia und Recht
NAT'L L.J.	National Law Journal
N.E.	North Eastern Reporter
NJW	Neue Juristische Wochenschrift
N.Y.L. SCH. J. INT'L & COMP. L.	New York Law School Journal of International & Comparative Law
O.J.	Official Journal of the European Communities
PACE INT'L L. REV.	Pace International Law Review
PETROLEUM REV.	Petroleum Review
RABELSZ	Rabels Zeitschrift
R.C.D.I.P.	Revue Critique de Droit International Privé
RDIPP	Rivista di diritto internazionale privato e processuale
RDUE	Revue du droit de l'Union Européenne
RIW	Recht der Internationalen Wirtschaft
RUTGERS L. REV.	Rutgers Law Review
STAN. J. INT'L L.	Stanford Journal of International Law
TEX. INT'L L.J.	Texas International Law Journal
U. CHI. L. REV.	University of Chicago Law Review
UCLA L. REV.	University of California Law Review
U.N.T.S.	United Nations Treaty Series
W.L.R.	Weekly Law Reports
WORLD ARB. & MEDIATION REP.	World Arbitration & Mediation Report
Y.B. COM. ARB.	Yearbook of Commercial Arbitration
ZIP	Zeitschrift für Wirtschaftsrecht
ZVGLRWISS	Zeitschrift für Vergleichende Rechtswissenschaft

## Introduction

*Tjaco T. van den Hout \**

### I. STRENGTHENING RELATIONS BETWEEN EAST AND WEST

The Joint Conference of the Permanent Court of Arbitration (“PCA”) and the Arab Union of International Arbitration (“AUIA”) took place at the Peace Palace in The Hague on October 11, 2001 – just thirty days after the horrific events of September 11, 2001. The world at the time was still numb and very much in shock, disbelief and grief. In the course of the many months of planning preceding the Joint Conference, the organizers could in no way have anticipated the particular topicality and appropriateness of its theme: *Strengthening Relations with the Arab and Islamic World through International Law*. The true value of the endeavor – bringing East and West closer together – was only revealed in retrospect as signs were emerging that justified anger was, increasingly, turning into inappropriate stereotyping.

This Conference could be seen as one of those preliminary steps “towards the achievement of mutual understanding, reconciliation, and resolution of certain differences resulting from a backlog of various misconceptions, misapprehensions and lack of knowledge about each other . . .” that Dr. Abdelouahed Belkeziz called for recently.<sup>1</sup> In any event, it was an opportunity for lawyers from the Western and Arab and Islamic worlds to listen to what each other had to say on the issues of foreign investment, dispute settlements under the World Trade Organization (“WTO”) dispute settlement mechanism, and electronic commerce (“e-commerce”), and how the principles of *Shari’a* (Islamic) law apply to these issues. Such a dialogue could contribute to a better understanding between Arab and Islamic countries and the non-Islamic world. For, as Jeremy Carver, moderator of one of the panels, pointed out on the day of the Conference:

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- \* Secretary-General, Permanent Court of Arbitration; formerly Deputy Secretary-General, Netherlands Ministry of Foreign Affairs, The Hague; J.D., Leiden University (1973).
1. H. E. Dr. Abdelouahed Belkeziz, Secretary General of the Organization of the Islamic Conference (“OIC”), *Forum on Civilization and Harmony – The Political Dimension*, Address to the Joint Organization of the OIC-EU, Istanbul (Feb. 12–13, 2002).

“At so many conferences it seems that the West is talking and the rest of the world is listening. That is not adequate for today’s world. We all have to listen to each other and it is very important to hear perspectives from all parts of the globe as we address the focus of the process of what we call globalization.”<sup>2</sup>

It has rightly been observed that while some features of Islamic law contrast strongly with Western concepts in areas of investment and finance, Islamic investment and finance is nonetheless growing rapidly not only in Muslim but also in non-Muslim countries; it is therefore vital that business communities in non-Islamic countries comprehend the principles of Islamic finance and investment.<sup>3</sup>

## II. GLOBALIZATION, TRADE AND INVESTMENT

As trade relationships and investment have developed between states, the role of dispute resolution has come to the fore, and both institutional dispute resolution mechanisms as well as *ad hoc* mechanisms under the United Nations Commission on International Trade Law (“UNCITRAL”) have attracted attention and scrutiny.<sup>4</sup> Concerns have arisen in various corners that institutional mechanisms, particularly those of the WTO, lack representation by the public and sometimes by the countries affected by it. Developing countries (including Arab and Islamic states) seem concerned that the WTO system places certain restrictions on them and is less favorable to their interests. Others point out that the WTO indeed provides particular security to the weaker members who lack the political or economic power to enforce their

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2. Jeremy Carver, *Seminar on Strengthening Relations with Arab and Islamic Countries through International Law: E-Commerce, the WTO Dispute Settlement Mechanism and Foreign Investment*, Speech at the Joint Conference of the PCA/AUIA, Peace Palace, The Hague (Oct. 12, 2001).
  3. See Gilbert Guillaume, *General Observations*, in this volume at p. 7; accord Ritchenya A. Shepherd, *Islamic Finance Is a Growing Niche*, NAT’L L.J., July 3, 2000, at p. A2; Institute of Islamic Banking and Insurance, available at <http://www.islamic-banking.com> (visited Sept. 2002).
  4. The success of the WTO dispute resolution system, for example, is reflected in the number of disputes brought before it since its inception in 1995. A total of 261 disputes have been brought to the WTO system for resolution to date: see <http://www.wto.org>, *Update of WTO Dispute Settlement Cases*, WT/DS/OV/7 (visited July, 2002).

rights or protect their interests.<sup>5</sup> Given this scenario, and despite tensions, the volume of trade and investment has grown,<sup>6</sup> and with it e-commerce activities are expected to increase further.

Among the fifty-seven members of the Organization of Islamic Conference ("OIC"), thirty-nine are members of the WTO, but the reality remains that only four member states of the OIC have used the WTO dispute settlement system<sup>7</sup> and none of the twenty-two Members of the League of Arab States have ever initiated dispute settlement proceedings before it.<sup>8</sup> Why is this so? This question is examined in a thought-provoking article by Debra P. Steger in this volume.<sup>9</sup> Despite the success of the WTO, the more the Organization has grown, the more it has been criticized. These criticisms, and the wariness with which Arab and Islamic states have regarded the philosophy of the WTO's trading system, were particularly relevant to the PCA/AUIA Joint Conference.<sup>10</sup> Professor Don Wallace put this in perspective during the Conference when he stated that "it just may be that the WTO is the creature of

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5. See, e.g., Julio Lacarte-Muró & Pentia Gappah, *Developing Countries and the WTO Legal and Dispute Settlement System*, J. INT'L ECON. L. p. 400 (2000). See also Peter Van den Bossche, *The WTO Dispute Settlement System and Arab and Islamic Countries*, in this volume at p. 185.
  6. See <http://www.icsid.org>.
  7. The WTO dispute settlement system has resulted from the GATT Uruguay Round of Multilateral Trade Negotiations (1986–1994), concluded in April 1994 with the signing of the Marrakesh Agreement establishing the WTO, April 15, 1994, 1867 U.N.T.S. p. 3 [hereinafter WTO Agreement]. The rules and procedures of the WTO dispute settlement system are primarily set out in the Understanding on Rules and Procedures Governing the Settlement of Disputes, commonly referred to as the Dispute Settlement Understanding ("DSU"). See also Florentino Feliciano & Peter Van den Bossche, *The Dispute Settlement System of the World Trade Organization: Institutions, Process and Practice*, in NIELS BLOKKER & HENRY G. SCHERMERS, *PROLIFERATION OF INTERNATIONAL ORGANIZATIONS* pp. 297–350 (Kluwer Law International 2001).
  8. See Van den Bossche, in this volume at p. 185.
  9. See Debra P. Steger, *Peace and Prosperity through Trade*, in this volume at p. 175.
  10. Arab NGO Network for Development, at <http://www.annd.org/english/lebplatwto/lebplat.htm> (visited Aug. 2002). See also Bernard Hoekman, *The WTO, the EU and the Arab World: Trade Policy Priorities and Pitfalls*, Paper prepared for the workshop on Strategic Visions for the Middle East and North Africa, Tunis (June 1995). See also Submission to the WTO TRIPS Council by the African Group, Bangladesh, Barbados, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Haiti, Honduras, India, Indonesia, Jamaica, Pakistan, Paraguay, Philippines, Peru, Sri Lanka, Thailand, and Venezuela (Sept. 18, 2001), at <http://www.cptech.org/ip/wto/africagroup09182001.html> (visited Aug. 2002).

this western faith in free trade and economic activity.”<sup>11</sup> Given the scepticism of the Arab and Islamic world, the WTO dispute resolution system has not had as much participation from those states as could have been the case.

However, the reluctance to be involved in the WTO dispute resolution system does not stem from principles contrary to *Shari’a* law. The Ministerial Declaration concluding the Uruguay Round of trade negotiations in Marrakesh stressed that the overriding objective of the WTO is to assist trade flows as freely as possible, and at the same time to ensure transparency and predictability. It has been argued that the concept of free trade is in fact very much an integral part of *Shari’a* law, and that a significant number of verses of the Koran speak of mutual trade.<sup>12</sup>

Another criticism of the WTO Dispute Settlement Understanding (“DSU”) concerns the issue of representation of parties. Developing countries find it difficult to be properly represented during the dispute settlement process, despite the WTO providing legal advice to developing countries.<sup>13</sup> Thus questions of fair representation, the rights of third parties and the provision of interim measures of relief are perceived as serious impediments to the acceptance of the DSU in its full rigor by Arab and Islamic countries.<sup>14</sup>

For centuries, international trade and investment has been the vital link in developing relationships between countries, and even today, trade and investment dominate most of the globalization process, with significant sums of foreign investment flowing to the Middle East, Asia and some of the African countries. As His Highness Prince Dr. Bandar Bin Salman Bin Mohammad Al-Saud points out in his Opening Remarks, in Saudi Arabia alone the total

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11. See Don Wallace, *The World Trading System, the WTO and Dispute Settlement, and Arab and Islamic Countries*, in this volume at p. 251.

12. M.I.M. Aboul-Enien, *Islamic (Shari’a) Law and the Commitments to the World Trade Organization Agreements (A Brief Study)*, in this volume at p. 151. It must be noted, of course, that *Shari’a* law principles of trade and commerce do not apply to all the countries of the Arab and Islamic world.

13. See WTO Dispute Settlement Understanding, in Annex 2 of the WTO Agreement, *supra* note 7, art. 27.2.

14. See Fourth WTO Ministerial Conference, Doha, Qatar, Nov. 9–14, 2001, at [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/min01\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/min01_e.htm) (visited Aug. 2002).

## INTRODUCTION

foreign investment in the next ten years is expected to reach USD 500 billion.<sup>15</sup> Since Foreign Direct Investment (“FDI”) and international commercial arbitration have become inseparable in the West, Western investors in the Arab world encounter a legal system very different from the common and civil law systems to which they are accustomed. Some of the underlying principles of *Shari’a* law, such as the prohibition on interest (“*riba*”) in financial transactions, have had a great impact on foreign investments in countries where this law is strictly applied. However, several unique financial techniques have been developed in the Arab world that assure security to the foreign investor over his financial return,<sup>16</sup> and investors need to be made aware of these.

Nonetheless, as emerged during the Joint Conference, when it comes to dispute resolution arising out of investment contracts, the Arab world as a whole is highly wary of arbitration, due to a general feeling of cultural dichotomy and a perceived Western insensitivity to Arab legal culture. A central issue is the need for appointing arbitrators who display the requisite degree of sensitivity to the legal cultures of Arab, Islamic and developing countries.<sup>17</sup> These concerns can be addressed by educating both sides about international arbitration. On the one hand, the developing countries should be aware that it is up to the parties to appoint arbitrators whom they trust, and to challenge those they fear might be biased; on the other hand, Western practitioners need to show signs of cultural sensitivity and appreciation of local customs.

The PCA already has an important role to play in this arena. The 1976 UNCITRAL Arbitration Rules entrust to the Secretary-General of the PCA the role of designating, upon request of a party to arbitration proceedings, an “appointing authority” to decide on the appointment or rule on questions

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15. His Highness Prince Dr. Bandar Bin Salman Bin Mohammad Al-Saud, Advisor to H.R.H., *Opening Remarks*, in this volume at p. 3.

16. See James D. Fry & J. Michael Taylor, *Foreign Direct Investment in Arab Countries: A Guide to Better Understanding Islamic Financial Doctrine*, in this volume at p. 287; see also Gohar Bilal, *Islamic Finance: Alternatives to the Western Model*, 23 FLETCHER F. WORLD AFF. at p. 145 (1999).

17. See generally ALAN REDFERN & MARTIN HUNTER, LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION pp. 207–208 (Sweet & Maxwell, 3<sup>rd</sup> ed. 1999). See also Abdul Hamid El Ahdab, *Is there an Arbitration Crisis in the Arab World?*, in this volume at p. 309.

concerning the challenge of arbitrators.<sup>18</sup> Recent years have seen a dramatic increase in the number and complexity of such requests, emanating from *ad hoc* arbitrations all over the world. In addition, the Secretary-General has increasingly been requested to serve directly as appointing authority in UNCITRAL arbitrations. The PCA would certainly be ready and willing to play a further role in creating and improving such an environment of mutual trust and sensitivity.<sup>19</sup>

### III. E-COMMERCE AND DISPUTE RESOLUTION

Since the creation of the WTO in 1995, the single most significant economic development has been the growth of e-commerce,<sup>20</sup> the global impact of which has been as phenomenal as the industrial revolution. But the speed of this development has been much slower in the Arab and Islamic countries than in many of the countries with which they do business.<sup>21</sup>

The harmonizing provisions of international model rules and guidelines within Arab and Islamic countries pose a critical challenge to these countries – perhaps especially those that have a *Shari'a* law system.<sup>22</sup> In order to deal with various issues arising from the growth of Internet and use of e-commerce on the international plane, the WTO's initiative to bring states together by regulating, for example, customs duties on tangible goods ordered online, and intellectual property rights to e-products under the GATT's Trade-Related Aspects of Intellectual Property Rights ("TRIPS"),<sup>23</sup> are part of a concerted

18. UNCITRAL Arbitration Rules, *reprinted in* PERMANENT COURT OF ARBITRATION – BASIC DOCUMENTS p. 237 (The Secretary-General and the International Bureau of the Permanent Court of Arbitration, The Hague 1998); *also available at* <http://www.pca-cpa.org/BD/#Conventions>.

19. See Guillaume, *supra* note 3; Nabil N. Antaki, *Various Practices for Solving Foreign Investment Disputes*, in this volume at p. 319.

20. Guillaume, in this volume at p. 7.

21. Nagla Rizk, in *E-Commerce in the Arab World: Issues, Challenges and Opportunities*, has provided an analysis of the development of e-commerce in the Arab and Islamic world, in this volume at p. 43. *See also* <http://www.nau.com/survey/index> (visited Aug. 2002).

22. For a comparative analysis of *Shari'a* law and e-commerce, *see* M.I.M. Aboul-Enein, *E-Commerce Through the Lens Of Shari'a Law*, in this volume at p. 89.

23. Agreement on Trade-Related Aspects of Intellectual Rights, April 15, 1994, Annex 1C, 33 I.L.M. at p. 1197 (1994).

## INTRODUCTION

effort towards consistency. Further developments have created a model legal framework for dealing with issues such as digital signatures, electronic writing, and the whole matrix of data message interchange and “cyber-crime.”<sup>24</sup>

The development of e-commerce activities in and with Arab and Islamic countries will require a unified approach to all issues arising therefrom. It is encouraging to note, therefore, the view that “there is nothing in *Shari’a* to contradict with the requirements necessary for using e-commerce and participating in its development.”<sup>25</sup>

As e-commerce has had a significant impact on the development of international trade and trade-related law, questions on various aspects of dispute resolution resulting from e-commerce transactions have begun to gain prominence.<sup>26</sup> Further, the traditional method of paper-based arbitration may suffer a real setback as the digital revolution continues. Parties – and even arbitral tribunals – have already begun appreciating the speed and cost-effectiveness of Internet communications, and the principles of digital signatures and writing have encouraged parties to use this form of instantaneous communication to a greater degree. Traditional notions of “venue,” “seat of arbitration” and “place of an award” could be construed in different ways in years to come, and this would have a far-reaching impact on the procedural aspects of arbitration.<sup>27</sup> Moreover, in-person interaction and

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24. See UNCITRAL Model Law on Electronic Commerce, G.A. Res. 51/162 (1996), available at <http://www.uncitral.org/en-index.htm>; European Model Agreement Concerning Electronic Data Interchange (“EDI”) Messages, European Commission Recommendation 94/820/EC of Oct. 19, 1994, 1994 O.J. (L 338), at p. 98; United Nations Economic Commission for Europe (“UNECE”) Model Interchange Agreement for International Commercial Use of Electronic Data Interchange, Recommendation 26, adopted by the Working Party on Facilitation of International Trade Procedures, Geneva, March 1994, TRADE/WP.4/R1133/Rev.1, available at [http://www.unece.org/cefact/rec/rec26/rec26\\_1995\\_r1133rev1.pdf](http://www.unece.org/cefact/rec/rec26/rec26_1995_r1133rev1.pdf) (visited Aug. 2002).

25. Aboul-Enein, in this volume at p. 89.

26. On the effect of e-commerce on aspects of private international law, see Jens Haubold, *Doing E-Business in the EU, The Non-Member State Perspective: A Snapshot of Private International Law Issues in Electronic Commerce*, in this volume at p. 109.

27. See, e.g., UNCITRAL Arbitration Rules, *supra* note 18, art. 16; International Chamber of Commerce (ICC) Arbitration Rules (in force Jan. 1998), ICC Publication No. 581 (1997), art. 14; and International Centre for Settlement of Investment Disputes (ICSID) Rules of Procedure for Arbitration Proceedings, rule 13, available at <http://www.worldbank.org/icsid/basicdoc/63.htm> (visited Aug. 2002). On complexities arising out of the above provisions, see generally MAURO RUBINO-SAMMARTANO,

hearings will become major obstacles to more traditional dispute resolution approaches to deal with day-to-day e-commerce transactions, and e-arbitration could thus become *de rigueur* for consumers, investors and commercial entities.

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These issues have generated thoughtful comments from the experts who participated in the PCA/AUIA Joint Conference and from other distinguished contributors to this publication. I extend my deepest gratitude to His Highness Prince Dr. Bandar Bin Salman Bin Mohammad Al-Saud, Assistant Secretary-General of the Arab Union of International Arbitration, whose interest and active role in the organization of the Conference has opened a new frontier for cooperation for the years ahead. His Introductory Remarks provide a springboard to the issues discussed by the other authors. I am also deeply grateful to Judge Gilbert Guillaume, President of the International Court of Justice, for his General Observations and critical analysis of the agenda of this Conference.

In keeping with the distinct themes of the Conference, this publication is divided into three parts. Contributors to the e-commerce component include Nagla Rizk, whose paper focuses on the development of the e-commerce market in the Arab world; Abdul Hamid El Ahdab, who discusses some core concepts related to e-commerce, provides a country-wise analysis of the legal developments within the Arab world, and suggests changes to legal regulatory regimes on the basis of an understanding of the socio-economic structure. Jane Winn analyzes the importance of the participation of Arab and Islamic countries in the development of e-commerce technology and a global regulatory regime. M.I.M. Aboul-Enein has scrutinized the *Shari'a* position towards e-commerce and concludes that *Shari'a* law is not contrary to the growth of e-commerce in Arab and Islamic countries. Anthony Connerty addresses the dispute resolution system of the World Intellectual Property Organization ("WIPO"), with particular reference to the non-English speaking world. Richard Naimark's paper discusses an important issue concerning the impact of e-commerce on international law, and Jens Haubold examines the application of private international law to e-commerce transactions, which is invaluable from a dispute resolution standpoint.

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INTERNATIONAL ARBITRATION LAW, Chap. 22 (Kluwer Law International 1990); see also REDFERN & HUNTER, *supra* note 17, paras. 6–24 *et. seq.* at p. 290.

## INTRODUCTION

The challenges faced by the WTO dispute settlement system are discussed by Debra P. Steger in her paper, which provides readers with insights into the need for improvements to the mechanism. Don Wallace advocates a wider understanding of the Arab and Islamic world for better governance of the WTO dispute resolution system. Peter Van den Bossche provides an in-depth discussion on the WTO's Dispute Settlement Understanding. Of particular interest is a second paper by M.I.M. Aboul-Enein, taking the readers through the comparative analysis of the *Shari'a* and the underlying principles of the WTO. Abdul Hamid El Ahdab sums up the benefits that can be reaped by the Arab and Islamic countries through joining the WTO. On the strengthening of trade relations with Arab and Islamic countries, an important thesis is proposed by Yves Renouf, who explains that the strengthening of such relations in the context of international law could take place through the establishment of regional agreements, such as the current Gulf Cooperation Council and the Organization of Islamic Conference. He also notes that the recent Doha Declaration<sup>28</sup> recognizes the role of regional agreements towards wider trade cooperation and development.

On the issue of foreign investment, James Fry and Michael Taylor present an analysis of Foreign Direct Investment ("FDI") principles and examine their compatibility with *Shari'a* law financial techniques, with a further comparative note on Judeo-Christian law. Abdul Hamid El Ahdab has ventured to discover why there is general distrust towards arbitration in the Arab world with respect to FDI, and Nabil Antaki raises some crucial practical problems faced by these countries as to arbitration.

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As a point of interest, it is worth noting that the PCA, being actively involved in developing dispute resolution mechanisms tailored to natural resources,<sup>29</sup> has at the time this volume goes to print organized a Conference devoted to studying the resolution of international water disputes. Given the importance of preventing potential state-to-state disputes over the allocation of

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28. See *supra* note 14.

29. See, e.g., Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment, available at <http://www.pca-cpa.org/EDR/ENRules.htm>, and Permanent Court of Arbitration Optional Rules for Conciliation of Disputes Relating to Natural Resources and/or the Environment, available at <http://www.pca-cpa.org/PDF/envconciliation.pdf>.

fresh water resources in Arab and Islamic countries, readers of the present volume should also find the eventual volume of papers from that Conference (Peace Palace Papers, volume VI) of special interest.

Finally, considering the importance of all of the above-mentioned topics within the Francophone world, a summary of the papers in this volume has been prepared in French by Séverine Fontaine, Legal Assistant at the International Bureau of the PCA.<sup>30</sup>

#### IV. CONCLUSION

The Joint Conference was successful in drawing comments of policy makers, reformers, academics and lawyers from Arab and Islamic countries on the one hand and the Western world on the other. The authors of the papers in this publication are at common ground in that a high degree of mutual understanding is needed, and dialogue such as the Joint Conference could carry these objectives further and set into motion the process of realizing them. I am encouraged by the fact that, within the Arab and Islamic world, arbitration and dispute resolution are experiencing renewed interest and the whole spectrum of arbitration within these countries – whether institutional or *ad hoc* – is broadening, contributing to greater cooperation between East and West and, in the process, to international law.

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30. In this volume at p. 335.

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