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ARTICLE: Bridging Ethical Borders: International Legal Ethics with an Islamic Perspective

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SUMMARY:
... Yet the debate over the expansion of cross-border legal practice cannot be considered complete unless both cultural and legal concerns are addressed - specifically those concerning the Middle East. ... Though these individuals may be more culturally sensitive to Islamic ethical concerns than the average practitioner, professional codes of conduct demand that every lawyer take into consideration the cultural issues that could lead to ethical conflicts in substantive legal representation. ... In such a case, a cross-border practitioner in the EC will have to consider local ethical regimes when managing the cultural differences of legal representation. ... A failure to consider principles of the shari'a when dealing with cases concerning Islamic issues or parties could effectively deny "full and competent" representation to a lawyer's client. ... Competent lawyering thus requires cultural sensitivity and a lawyer shouldexplain the "practical implication" that a course of legal conduct may have by discussing with the client the potential for violating foreign ethical standards and/or principles of the shari'a. ... These similar prohibitions against usury or interest can result in an ethical conflict situation for an attorney dealing with a Jewish, Muslim, or European client. ... It is, therefore, appropriate for an international practitioner to take them into consideration when dealing with Islamic issues or representing a Muslim client. ...

TEXT:
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I. Introduction

The globalization of the legal community is rapidly gaining pace. n2 Already the European Community (EC) is implementing an agreement permitting cross-border legal practice between its Member States. n3 Closer to home, Mexico, Canada, and the United States, appear to be following suit under the North American Free Trade Agreement (NAFTA). n4 Even members of the World Trade Organization (WTO), through the earlier General Agreement on Tariffs and Trade (GATT), are stimulating discussions on cross-border legal practice with various proposals under the General Agreement for Trade in Services (GATS). n5 Yet the debate over the expansion of cross-border legal practice cannot be considered complete unless both cultural and legal concerns are addressed - specifically those concerning the Middle East. n6

Given the recent rise in concern over legal ethics, n7 it is surprising that the academic community has not honed in on the ethical dimensions of cross-border practice in the Middle East. Arguably, no area of the world maintains greater strategic, political, and economic importance. n8 Certainly, no region provides a better model for examining the impact cultural differences have on legal representation. n9 Between U.S. citizens and the government of Iran, such cultural differences have contributed to the arbitration of nearly 4,000 claims, resulting in some 550 awards totaling in excess of 3 billion U.S. dollars. n10 Variances between Western and Middle Eastern cultures continue to play a key role in contemporary legal relations much like they did during the era of state-sponsored expropriation of Western assets. n11 With contemporary contract negotiations in the Middle **[*291]** East routinely reaching upwards of $ 2 billion, n12 it is prudent to examine the underlying ethical regimes governing potential legal representation which involves Islamic issues.

This comment highlights the importance of examining cultural issues in legal representation. It does so by first presenting an overview of the ethical guidance under which an international practitioner operates and then by evaluating Western codes of responsibility and their applicability in cases involving Islamic issues. Since these codes help determine the character of legal conduct around the world, they can bridge cultural misunderstandings. n13 They must, however, be further tailored and interpreted to do so. n14 With cultural and ethical concerns destined to become more prevalent in future legal representations, n15 international practitioners and the legal community are under an obligation to address them. n16

II. The Setting

The paucity in legal writing concerning Western and Middle Eastern legal ethical conflicts is probably the result of societal misconceptions. n17 Although not expressly stated in literature, the perception abounds that Muslim societies are too different to be directly considered in the development of a global ethics regime. n18 Moreover, the cultural misconceptions that do exist are prone to exacerbation, especially with the ongoing threat **[*292]** of hostilities on the Desert Front. n19 Nonetheless, a lawyer's honorable title as a "high priest of reason" demands an objective look at the ethical concerns arising from cultural differences. n20

Certainly it is difficult for the American legal community to imagine an Arab national dressed in a full flowing abaia and gutra arguing before a federal district judge. But American Muslims are regularly admitted to the Bar, and American attorneys have been representing clients in front of Islamic courts for decades. n21 Though these individuals may be more culturally sensitive to Islamic ethical concerns than the average practitioner, professional codes of conduct demand that every lawyer take into consideration the cultural issues that could lead to ethical conflicts in substantive legal representation. n22 A failure to do so can result in American citizens looking for alternatives to the U.S. legal system to resolve disputes and business matters. n23

A basic problem rests, however, in the fact that professional standards cannot prevent personal misapplications, no matter how detailed they are. In fact, a lawyer's own narrow interpretation of what appears to be adequate ethical guidance can inhibit full consideration of many cultural issues vital to competent legal representation. In order to avoid the possibility of international malpractice, a lawyer dealing with a foreign client must be prepared to evaluate important cultural differences. n24 Ultimately, the legal community must address Islamic legal concerns if any viable international regulatory framework is to be developed.

For positivists, the consideration of cultural differences, including Islamic issues, is necessary to any development of an international code of legal ethics. Although various aspirational codes of conduct have existed for quite some time, the international legal community seems intent on establishing more detailed controls on the legal profession. n25 No international code of conduct can be applicable worldwide, however, if it fails to **[*293]** address Islamic concerns. As focus on international ethics and cross-border legal regulation increases, consideration of cultural differences is necessary to further international order and cooperation between States. n26

Presently, a lawyer or law student will have a difficult time locating adequate ethical guidance for transnational practice issues. n27 A proliferation of unilateral and bilateral agreements has created a complex web of ethical strictures that makes the search for unambiguous guidance difficult. Although national regulations and corporate business ethics codes do provide some additional direction, they cannot fill the gaps existing from legal inconsistencies and a lack of uniformity at the international level. n28 Thus, international practitioners are largely left to their own moral conscience in applying various codes of ethical conduct. n29 This makes it inherently easy for international practitioners to neglect important cultural considerations. n30

Prominent writers frequently recognize the pitfalls attributable to a lack of international guidance. n31 While they lament the need for an international code of legal ethics, they fail to adequately address the importance of cultural concerns. n32 Although uniform regulation and full-scale unrestricted cross-border legal practice does not appear to be a near term possibility in predominately Muslim nations, the various guidelines that do exist still require that Islamic issues be addressed. Thus, the clamor for an international code demands renewed focus in a cultural context. n33

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III. The Development of an International Code of Legal Ethics and Its Transnational Applicability and Guidance for Handling Islamic Issues

The roots of an international code of ethics rest in the International Bar Association's (IBA) conference held in the early 1950s. n34 The legal representatives from predominantly Muslim states who attended this conference did so in a secular capacity. Although the contemporary legal systems of a majority of these Muslim states still maintain an underlying fabric of Islamic law, most also remain proponents of the IBA. n35 It is, therefore, appropriate for a lawyer to turn first to the IBA code for guidance when dealing with cases involving Islamic issues.

A. The International Bar Association's Code of Legal Ethics

Few authors calling for an International Code of Ethics ever manage to address the International Bar Association's standing International Code of Ethics for the Legal Profession (CLE). n36 Not surprisingly, a copy of this code remains rather unused even in one of the nation's five largest law libraries. n37 Even though the IBA CLE rests on voluntary implementation, this code provides an initial starting point for an international lawyer who is in search of professional ethical guidance. Developed by an internationally renowned organization, its creation laid the foundation for future cross-border legal representation in the EC. n38 The IBA's intention to create an acceptable and beneficial worldwide ethics regime is evident from its provisions. n39

Over forty-two years ago, principal representatives of the Middle East - including those from Syria, Iraq, Iran, Egypt, Jordan, Israel, Lebanon, Pakistan, and Turkey - endorsed the IBA's Code of Legal Ethics. n40 It, therefore, seems befitting to continue the legal discourse the Middle East representatives started by discussing the implications international legal regulation has for Islamic ethical concerns. For governments with legal systems heavily grounded in religious principles and encompassing the lives of well over **[*295]** 400 million people in the Middle East alone, such discussion maintains unheralded significance. n41 In order to be successful, stricter international codes will have to make accommodations for a variety of cultural differences. Analysis of the IBA CLE in light of principles of Islamic law, the shari'a, indicates that such success can be promoted by utilizing broad ethical principles. n42

Some might contest the validity of the IBA's code by claiming that the signatures of Islamic state representatives are rooted in the historic influence of the post-colonial era and are, therefore, not noteworthy of discussion. Any colonial influence, however, does not detract from the spirit of the IBA code. Its importance as a medium for post-war reconstruction, stability, and international understanding must be duly noted. n43 Already mentioned is the fact that current members of the IBA include a majority of the predominantly Muslim nations. n44 Consequently, the IBA's foundation as a non-political organization transcends any such colonial influence. The IBA constitution seeks "to advance the science of jurisprudence in all its phases and particularly in regard to international and comparative law." n45 It can, therefore, be applied equitably to all legal systems.

From this vantage, it is a fallacy to believe that Muslim and Western countries are so politically and culturally disparate to preclude discussion of cross-border legal practices. n46 The IBA's constitutional purpose to "promote in their legal aspects the principles and aims of the United Nations" n47 is particularly noteworthy considering that all fifty Muslim majority states are signatories to the United Nations (U.N.) charter and its provisions. n48

[*296] Furthermore, the IBA's constitutional provision to "establish and maintain friendly relations among the members of the legal profession throughout the world" n49 is harmonious with the Qur'an's call for Muslims to live in peace with Christians and Jews. n50

Though present day misconceptions and naivete may exacerbate cultural differences, the foundation of legal ethics and morality in Western and Middle Eastern countries is firmly rooted in similar monotheistic ideologies. n51 Since one of the IBA's principle aims is "to provide an international meeting ground for the ordinary practising lawyer," an international practitioner should keep this code in mind when searching for ethical guidance amidst cultural differences. n52 A general sense of obligation should move lawyers to focus on the cultural similarities as opposed to the peculiarities

that result in barriers to international legal representation. At the very least, the IBA's Code of Legal Ethics should be viewed as an acceptable broad-based source of guidance for either American attorneys or their Muslim counterparts. n53

Although the hortatory nature of the IBA's Code of Legal Ethics is globally palatable, IBA CLE provisions do set up the possibility of ethical conflict by providing an international lawyer with potentially conflicting ethical guidance. The first rule of the IBA's Code of Legal Ethics makes clear that the code's provisions are not intended to supplant the conduct rules of a lawyer's home jurisdiction. n54 Paradoxically, Rule One also calls on an international lawyer to recognize both the ethical standards of his home jurisdiction as well as those of the host jurisdiction. n55 This mandate creates difficulties **[*297]** when a Western attorney must handle a case in an Islamic legal context. n56

In many situations where Islamic issues arise, an international lawyer can easily prevent ethical conflict and meet the IBA's broad aspirations n57 by furthering his or her personal understanding of principles of Islamic law outlined by the shari'a. This can only be done, however, if a lawyer works to harmoniously interpret separate ethical regimes. As such, American attorneys involved with cases concerning Islamic issues should consider the relevant cultural issues of legal significance implicated by foreign jurisdictional concerns. n58 The IBA Code of Legal Ethics ultimately demands respect for foreign legal practices and calls for international cooperation. n59 Subsequently, principles of the shari'a cannot be neglected.

The second and fourth rules of the IBA CLE should also be interpreted as requiring sufficient study and understanding of the shari'a in cases concerning Islamic issues. The second rule calls on a lawyer not to discredit his profession, but to "at all times maintain the honour and dignity" on which such profession is founded. n60 Though an American attorney may not agree with the principles of the shari'a, one must consider the issues it raises in order to maintain the dignity the IBA affords separate legal systems. Similarly, consideration of the shari'a is necessary to meet the guidance of IBA CLE Rule Four. Rule Four calls for lawyers to "treat their professional colleagues with the utmost courtesy and fairness." n61 Under this rule, the IBA recognizes a need for a higher standard of ethical conduct at the international level. n62 It requires that an international attorney divorce oneself from any misconceptions that may have developed between different cultures. n63 In short, the broad principles of the IBA ethics code require that an international practitioner look objectively at the concerns that may arise from principles of Islamic law.

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B. The European Community Code of Legal Ethics (CCBE Code)

While this comment does not deal specifically with the European Union's Code of Legal Conduct (created by the Council of the Bars and Law Societies of the European Community (CCBE)), n64 it is meaningful to consider its implications for incorporation of Islamic ethical considerations in cross-border legal practices. n65 In contrast to the broad principles tendered by the IBA CLE, the CCBE code is the international community's first attempt to directly address cross-border practice. n66 In fact, commentators have called the CCBE code a model for international regulation of cross-border legal practice under the GATT agreements. n67 This discussion does not address the specific requirements the CCBE provisions may raise when applied to Islamic ethical concerns, for its primary purpose is to discuss guidance under the ABA Model Rules of Professional Conduct (Model Rules). Yet, examination of the CCBE code's evolution is important because it marks the international legal community's steady move towards stricter cross-border legal regulation without fully addressing its impact or suitability for predominantly Muslim nations. n68

For a country like Turkey, heir to the Ottoman regime, a discussion of Islamic ethical concerns under CCBE rules is important before obtaining full legal integration into the European Community. n69 Although it maintains a secular government, Turkey is a predominantly Muslim country that has long desired full membership status in the European Union. n70 Given its partnership status as the only predominantly Muslim state in Western economic and defense organizations - e.g., The North Atlantic Treaty Organization (NATO) and The Organization for Economic Cooperation and Development (OECD) - along with its strategic geographic position to the former Soviet Union and the Middle East, it is unlikely that the European Union will be able to keep Turkey's desires at bay for long. n71 Therefore, any discussion regarding the wider application of the CCBE code must account for the ethical concerns which may be raised when applied in an Islamic context.

As with the IBA CLE, the CCBE code does not adequately address the most difficult legal concerns arising from differences in legal ethics. n72 By utilizing conflicts-of-law clauses, the CCBE code avoids the more controversial concerns. Attorneys practicing in the EC are required to discern local rules of conduct when addressing transnational ethical conflicts. n73 Although the EC has designed the CCBE code to be acceptable to **[*299]** representatives of

both common law and civil law countries, its reliance on conflicts-of-law clauses bypasses any extensive discussion of Islamic legal issues. Yet, until lawyers learn to address these issues, a predominantly Muslim country cannot be considered fully integrated into the European legal community.

Turkey's secular government will likely lend itself to future legal integration that circumvents the complexities of the shari'a. It can be expected, however, that even if the European Community does eventually address Islamic legal concerns evolving from Turkish integration, it will probably utilize comparable conflicts-of-law provisions. In such a case, a cross-border practitioner in the EC will have to consider local ethical regimes when managing the cultural differences of legal representation. n74 Although most American attorneys are not likely to be operating under CCBE guidelines, they face a similar situation under current ABA ethics rules. A closer look at the issues arising from the application of Western codes to an Islamic context underscores the difficulties the international legal community faces in tailoring the CCBE code for wider application. n75

C. American Bar Association's Model Rules of Professional Conduct

Until further international developments produce a binding code of international legal ethics, American practitioners will continue to rely on the Model Rules for guidance in handling Islamic issues and/or conducting cross-border practice. Originally drafted in 1983, the Model Rules are among the most elaborate in the world. n76 Unfortunately, as comprehensive as they are, the Model Rules cannot provide all the answers to the ethical questions burgeoning at the international level. n77 As American practitioners increase their exposure to globalized markets, they must stretch the Model Rules to meet more challenging issues and a greater variety of values, norms, and beliefs. n78 This presents a host of problems, given the fact that the ABA did not even intend that the Model Rules be applied in transnational situations, much less in an Islamic context. n79

[*300] An American lawyer practicing on an international level must look to the Model Rules solely by analogy for guidance. n80 Model Rule of Professional Conduct 8.5, or a similar applicable state provision, provides the initial determination that "a lawyer admitted to practice in [a particular] jurisdiction is subject to the disciplinary authority of [that] jurisdiction, regardless of where that lawyer's conduct occurs." n81 A simple reading of this rule for the purpose of international application indicates that American standards of professionalism govern American lawyers in overseas practice and representation. Yet, the American Bar Association made clear in Comment 6 that it did not intend for the choice-of-law provision in Model Rule 8.5(b) to be applied to a lawyer conducting a transnational practice. n82

Since the Model Rules do not specify what sources of law an attorney should rely on in evaluating transnational ethics questions, a lawyer must look elsewhere for determinant rules governing foreign practice. n83 This vacuum in guidance is the root of the ethical problems an American lawyer faces at the international level. It forces practitioners to wade through many complex international multi-lateral and bilateral agreements. Under this burden, a lawyer must navigate through ethical conflicts by relying primarily on his or her own integrity and morality for guidance. Further analysis of the Model Rules intimates, however, a moral obligation - if not a professional duty - to consider principles of Islamic law when legal representation raises Islamic concerns.

Under the language of Model Rule 8.5, any attempt at strictly applying the Model Rules to foreign practice or legal issues posits an argument that American lawyers need only to recognize those professional standards found in the United States when conducting transnational business. n84 This, however, is an inappropriate and wholly simplistic way of looking at the Model Rules. Such an inference would allow an American lawyer to neglect cultural differences when considering questions of ethical conduct in dealings with Muslim clients or when conducting business in the Middle East. This approach's main infirmity is that it disregards the necessity of accounting for the totality of circumstances when advising or representing clients in a dialectically changing international environment. n85 Moreover, other provisions in the Model Rules run contrary to this interpretation.

Referencing the provisions found in Model Rule 1.1 "Competence," Model Rule 1.2 "Scope of Representation," and Model Rule 1.16 "Declining or Terminating Representation," one notes that a lawyer has an obligation to consider both the "Rules of Professional Conduct," and provisions of "other law," when acting on behalf of a client. n86 These provisions raise a serious question as to how a lawyer should handle foreign ethical **[*301]** standards. Should foreign ethical concerns trump the Model Rules in the course of overseas legal representation? Leaving that issue for future debate, it is enough to note that the Model Rules engender a professional duty to at least consider foreign sources of law in both stateside and overseas representation. n87 Such an interpretation requires an American lawyer to balance the Model Rules against foreign ethical constraints when choosing an appropriate course of action. An American lawyer

practicing in the Middle East or dealing with issues of Islamic law should, therefore, consider principles of the shari'a and the practical implications they have for the lawyer and or the lawyer's client.

In applying the Model Rules to an Islamic context, tensions arise from the question of whether one should really consider principles of the shari'a as a source of "other law." n88 For Americans living in the Middle East and for Muslims throughout the world, the shari'a is a binding set of principles of ethical conduct that often take legal effect in the courts. n89 Quite frequently Middle Eastern governments incorporate shari'a principles into statutory provisions, binding administrative courts in the Middle East to consider principles of Islamic law, much like American courts are bound to consider additional principles of law and equity. n90

Most stateside practitioners would find it difficult, however, to imagine a set of legal precepts resting solely in religious doctrine as an underlying basis for a commercial transaction or court determination. n91 Through the separation of church and state, the American legal system has managed to dissociate itself from considering, in legal matters, the religious footings on which the country was founded. n92 Subsequently, American lawyers may be hesitant to consider the impact the shari'a may have on client representation or transactional dealings.

Model Rule 2.1, however, supports the interpretation that a lawyer has a duty to consider principles of the shari'a when dealing with Islamic issues or parties. n93 This provision allows a lawyer to refer "not only to law" but also to "other considerations" that might be relevant to the client's situation. n94 Model Rule 2.1's comments state that "purely technical legal advice, therefore, can sometimes be inadequate." n95 This language suggests that it is appropriate to consider the shari'a's impact on representation involving Islamic issues, even if one merely accepts its principles as a set of moral factors. n96 In fact, the Model Rules suggest that such consideration might be vital to representation. Certainly, in **[*302]** an international context, advice cast in narrowly defined American legal terms "may be of little value." n97 This is particularly the case where practical considerations of Islam are predominant. n98

Advocating consideration of foreign sources of law and other non-legal factors in determining questions of international ethics is not a newfound approach. n99 American courts have already recognized the need for high standards of professional responsibility when lawyers advise clients on foreign law. n100 The difficulty for an American practitioner is moving beyond the Model Rules of Professional Conduct in order to consider issues not typically confronted in Western legal education. n101 The dilemma rests in having to separate differences of law from various cultural interpretations of the law and then considering the impact each may have on legal representation.

It will be easier for an individual who has specialized in Islamic studies or who has experience in the Middle East to comprehend how revered the shari'a is in the Muslim community. By contrast, a stateside attorney who is less culturally sensitive may easily neglect the shari'a's importance. This tendency to neglect the shari'a as a binding legal and ethical source within Muslim legal systems impedes full awareness of ethical conflicts. An American practitioner is, therefore, wise to acknowledge this as a deficiency in order to improve the substantive value of individually tailored legal representation. n102 Taking such a step will undoubtedly feel awkward largely due to the misconceptions that have evolved from narrow media reporting and cultural mistrust.

As previously discussed, the comments to the Model Rules indicate that an American practitioner should consider the principles of the shari'a regardless of whether or not these principles are considered binding law. n103 In doing so, a lawyer must seek to avoid prejudice and misapprehension when dealing with Islamic issues. n104 A failure to consider principles of the shari'a when dealing with cases concerning Islamic issues or parties could effectively deny "full and competent" representation to a lawyer's client. n105

Although a sagacious lawyer or law firm will find it necessary to consult with a specialist on issues concerning Islamic law, full and competent representation demands that those initially handling a case be prepared to identify and consider the potential conflicts that may arise from cultural differences. n106 Without proper identification of the cultural **[*303]** aspects of a case, a lawyer may unintentionally neglect some client concerns that could be affected by the lawyer's advice. n107 A lawyer must, therefore, separate cultural conflicts from conflicts of law in order to adequately address the impact both have on transnational legal representation.

IV. Potential Islamic Ethical Conflicts Under the Model Rules

After reaching the conclusion that the Model Rules require consideration of foreign cultural concerns, an American lawyer must next consider the areas in which potential ethical conflicts may arise. Since choice-of-law provisions are not usually applicable in a public international law setting, it is unlikely that transactional parties can address ethical concerns with private contract clauses. n108 Instead, conflicts-of-law provisions will be the decisive factor in determining what

national regulatory regime will apply to any particular transaction. In the absence of applicable international conflicts provisions, U.S. courts are likely to favor the national interests embodied within the relationship between the parties. By analogy, it would be reasonable for courts to rely on the "predominant effect" language of Model Rule 8.5 to decide what ethical strictures to apply. n109 With this method, a court can reach the decision it deems most just by applying those standards governing the party who was most affected by unethical conduct. n110

Competing conflicts-of-law provisions will never fully guide an international practitioner through all the ethical tensions resulting from aberrant cultural attitudes. n111 Even if conflicts-of-law or choice-of-law provisions specified that foreign ethical standards are to govern a particular legal representation, lawyers would still carry with them notions of their own familiar business practices. n112 A rudimentary understanding of the ethical concerns arising in Islamic contexts can aid American practitioners in overcoming this tendency. Such understanding can help them tailor their conduct to situations where domestic business instincts might not necessarily be appropriate. n113

Before considering ethical implications of Islamic law, an American lawyer should realize how much more sophisticated Islamic legal principles are than what is normally perceived. n114 Divergent views and interpretations of the shari'a exist throughout the **[*304]** Middle East with some countries, such as Saudi Arabia, being far more conservative than others, such as Turkey. n115 Methods of interpretation can be highly technical with varying complex methodologies resulting in contrasting solutions to legal problems. n116 The diversity of these views has impacted the development of the Islamic law along four major schools of thought. n117 It has also led to the ideological split between Sunni and Shi'ite Muslims. n118 In some cases, a more conservative interpretation of the shari'a will cause greater conflicts with the American standards under the Model Rules.

When dealing with Islamic issues, obligations under the Model Rules call for an international practitioner to be thoroughly familiar with the legal characteristics of separate Islamic schools of legal tradition. n119 Although Islam provides the common foundation for the religious beliefs of all Muslims, including American Muslims, the different legal interpretations of the shari'a result in contrasting administrative provisions in each Muslim nation-state. n120

Discordant administrative provisions may cause greater ethical conflicts in separate jurisdictions. An international practitioner will, therefore, have to confront each individual situation with a uniquely different understanding of the legal operating environment. n121 Nevertheless, certain Muslim perspectives on American standards of legal conduct will be evident in all cases involving Islamic issues. Both the cross-border practitioner as well as the stateside attorney can benefit from a better understanding of the most acicular conflicts arising from the shari'a.

A. Ethical Conflicts Arising from Islamic Contract Principles

Arguably, the most important principle driving Islamic ethical issues is the influence of the shari'a on Islamic contract law. n122 The approach a Muslim takes to entering a **[*305]** contract may, in many cases, differ greatly from that taken by an American attorney or businessman. From a Muslim perspective, interpretations of shari'a contract principles could invariably be considered in conflict with the Model Rules of Professional Conduct. n123 Even if an American Muslim is accustomed to American corporate tradition, he or she may subconsciously realize that an ethical conflict exists. n124

Under principles of the shari'a, a contract between two individuals is divine in nature. n125 The sanctity of the contract is viewed as a sacred duty to be upheld by both parties under the eyes of God. n126 The legal implication arising from this view is that Islamic courts will be inclined to recognize the freedom both parties have to enter into an agreement. The court may even be inclined to uphold the terms of the agreement, regardless of siyasa shari'a administrative regulations or foreign directives that would otherwise prohibit or modify portions of the contract. n127 This relationship has often been described by the Muslim maxim, "a contract is the Shari'a of the Parties." n128 In Western terminology, this is comparable to the doctrine of pacta sunt servanda strengthened by religious precepts. n129

In theory, the contract relationship under principles of the shari'a is much more stringent than the "efficient breach" concept to which an American attorney might be accustomed. n130 Instead of promoting breach when a financial incentive to breach exists, Islamic contract law is viewed more strictly. n131 Chapter Five of the Qur'an deals specifically with Islamic contracts:

You who believe fulfill any contracts [that you make]... Fulfill God's agreement once you have pledged to do so, and do not break any oaths once they have been sworn to. You have set God up as a Surety for yourselves. n132

The binding nature of an Islamic contractual agreement should be foremost in the mind of an American attorney dealing with Islamic issues or parties. Whether oral or written, it is the spirit of the contract that Muslims view as controlling.

Breaching a contract with a Muslim party could thus be considered both an ethical and legal violation of shari'a principles. n133 Under Model Rule 1.16, a lawyer is instructed that he or she must decline or terminate representation if the representation will result in **[*306]** "violation of other law." n134 By this token, a lawyer operating under the Model Rules should consider the impact of shari'a principles when dealing with a potential contract breach that involves Islamic issues.

The appropriateness of breaching a contract involving Islamic principles should be evaluated under the totality of the circumstances. n135 Since the relationship, evolving from the representation of a Muslim client or from a developing business relationship in the Middle East, will be defined mainly by shari'a contract principles, conflicts-of-law provisions cannot provide complete guidance on these issues. n136 A contract breach may not only raise ethical consternation, but it could also be detrimental to the long-term business relations a lawyer may be seeking to achieve.

The bottom line in Islamic contract law is that there is a driving religious and moral force behind the principles of the shari'a that underscores the legally binding nature of a contract. n137 The character of a Muslim's decision will be molded by these principles. n138 As a result, the American attorney considering breaching a contract with a Muslim client or advising a client to breach a contract of Islamic nature should evaluate the appropriateness of such conduct under applicable interpretations of the shari'a. n139 The American lawyer must consider the potential impact such a course of conduct will have in light of the environment the lawyer is in or issues the lawyer is working on. n140

As various interpretations of the shari'a will result in differing contractual obligations for the parties, the lawyer should examine how conservative a particular jurisdiction in the Middle East is or discuss the client's personal interpretation of the shari'a when handling contract relations. The stronger the Islamic interpretation for breach of contract, the greater the potential violation of the shari'a. Thus, if the lawyer's actions or advice are interpreted as a violation of "other law," n141 there is greater potential risk of an ethical conflict under the Model Rules.

B. Zealous Representation and Adversarial Concerns

In addition to ethical dilemmas arising in contract relations, principles of the shari'a inherently conflict with the American adversarial system and Model Rule 1.3. n142 The **[*307]** shari'a calls for individuals entering into a contractual relationship to be fair and to look out for societal interest. n143 In contrast to the American system, the shari'a calls on individuals to promote what is just, good, and right for the community, not only for the client:

Give full measure and do not cause [people] any losses. Weigh with honest scales; do not undersell people to cheat them of their things nor storm around the earth in order to spoil matters. n144

By comparison, Model Rule 1.3 "Diligence" guides the American attorney toward zealous representation of a client. n145 Often this principle is taken to the extreme, without necessarily ensuring that the welfare of the community is considered either in litigation or in transactional work. Indeed, at least one prominent Muslim attorney has recognized this conflict of interest and its impact on her work ethic. n146 Thus, the question arises as to whether an American lawyer should consider an alternate interpretation of the Model Rules when dealing with Islamic issues or clients.

Although most American attorneys would equate zealous representation with a duty to press for a client's every advantage in all areas of representation, this may not be the most appropriate interpretation for cases dealing with Islamic issues or clients. n147 When applied to a case dealing with foreign issues or conduct abroad, Comment 1 to Model Rule 1.3 indicates that the international practitioner must consider what limits foreign legal and ethical requirements might place on the practitioner's conduct. n148 Since Model Rule 1.3, Comment 1 does not allow a lawyer to go beyond "lawful and ethical" limits in determining what is "required to vindicate a client's cause or endeavor," a lawyer dealing with Islamic issues or conducting practice in the Middle East is theoretically limited by both the ethical constructs of shari'a interpretations and American ethics. n149

Model Rule 1.3, Comment 1 further states that "a lawyer is not bound to press for every advantage that might be realized for a client." n150 Instead, a lawyer has "professional discretion in determining the means by which a matter should be pursued." n151 This discretion allows the lawyer to consider appropriate foreign ethical standards when determining a choice of action for a client. n152 Such an interpretation is consistent with the **[*308]** Model Rules Preamble, Comment 4, which calls on a lawyer's conduct to "conform with the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs." n153

When applying the Model Rules to a foreign context, the preamble further supports consideration of shari'a principles. Preamble, comment 4 demands that a lawyer "demonstrate respect for the legal system and for those who serve it." n154 Such respect can only be fully shown by considering foreign ethical standards in advising or negotiating with a client. n155 Even in litigation, usually interpreted as demanding the most zealous representation, an American lawyer should temper his or her conduct with consideration for foreign ethical standards. In situations that involve Islamic issues or parties, a lawyer has the responsibility to "provide[] a client with an informed understanding of the client's legal rights and obligations." n156 Competent lawyering thus requires cultural sensitivity and a lawyer shouldexplain the "practical implication" n157 that a course of legal conduct may have by discussing with the client the potential for violating foreign ethical standards and/or principles of the shari'a.

Under Model Rule 1.16, an American lawyer representing a Muslim client should fully disclose the course of conduct and follow up the disclosure with a discussion as to possible violations of the shari'a. n158 Such action avoids the potential violation of the "other law" clause of Model Rule 1.16(a)(1). n159 It also addresses the practical implications of the "not only to law but to other...factors" clause appropriately suggested by Model Rule 2.1 and the Preamble. n160 In situations where an attorney believes representation might be "materially limited...by the lawyer's own interests" (e.g., religious or other), Model Rule 1.7's provision requiring zealous representation should be further interpreted to require disclosure and consultation with a client. n161 By taking these steps, American attorneys can successfully tailor their work to the demands of Islamic law. They can account for principles of foreign law like the shari'a while still avoiding any potential ethical conflicts **[*309]** arising from zealous representation under the American adversarial system. n162 In the event a lawyer is materially limited by the lawyer's own interest, the lawyer has the option of withdrawing from representation. n163

In hindsight, a more relaxed interpretation of zealous representation and Western contract principles could have helped prevent the Middle East contract debacle that resulted in the state-sponsored expropriation of U.S. oil assets in the Middle East earlier this century. Although lawyers and businessmen dealing with Middle Eastern governments used cultural differences to initially press for every advantage in promoting their client's objectives, it ultimately led to a breakdown of contractual relations. n164 A failure to fully understand the consequences of cultural differences negatively impacted the business relationship. This has led to past and present skepticism over Western legal practices. n165 Consequently, Western standards of legal representation can be considered a major impetus in the foreign nationalization of Western assets.

The idea of justice and equitable consideration is central to contract formation between Muslim parties. It underlies the basis of the Middle Eastern doctrine of changed circumstances, nazariyyat al-hawadith al-tari'ah. n166 This doctrine is similar to the Western and European concept of changed circumstances, rebus sic stantibus. n167 By contrast, however, the Middle Eastern doctrine is more accurately treated as a cause giving rise to a legal effect rather than a legal principle. n168 Situations where contracts no longer meet the just and fair standards of the shari'a give rise to a change in legal circumstances.

Had both Middle Eastern and Western parties recognized the cultural impact of these principles prior to concluding their contractual arrangements, perhaps the extreme measures taken by many Middle Eastern states would have been avoided. A better understanding of principles of foreign law and the varying interpretations of law arising from cultural differences could have helped promote more amicable relations. This could only have occurred, however, if Western lawyers had tempered the propensity for zealous representation and contractual manipulation with an understanding of cultural issues.

[*310]

C. Validity of Contingency Fee and Fee Arrangements

A lawyer's contingency fee or payment arrangements with a client is another area where interpretations of the shari'a could come into conflict with the Model Rules. Specifically, ethical conflict may manifest itself in Islamic provisions against riba. n169 Riba is probably the most well known provision of Islamic law after the criminal punishments of the hadd. n170 Although its definition is highly disputed in almost every school of Islamic jurisprudence, Islamic jurists generally define riba as an interest, usury, uncertain payment, or unjust enrichment that is considered prohibited by shari'a provisions. n171 Thus, by its very nature, provisions of riba run contrary to the uncertainty of American contingency fee arrangements. n172

The prohibition against charging riba inheres to the Qur'an:

Those who live off the interest on loans will never stand up... Yet God has permitted trading and forbidden taking interest... You who believe, do not live off usury which is compounded over and over again. n173

This prohibition, however, is not exclusive to the Muslim community. n174 Restrictions against charging of interest are found not only in Islam but also in Rabbinic law. n175 Contingency fees are likewise prohibited in civil law/Roman law contexts among European Member States. n176 These similar prohibitions against usury or interest can result in an ethical conflict situation for an attorney dealing with a Jewish, Muslim, or European client. n177 Riba creates the most problematic legal questions within the Muslim states, **[*311]** however, where its different interpretations lead to varying legal standards. n178 Although Western-style banking has evolved in most Middle Eastern countries, including Saudi Arabia, licensed commercial banks are generally in step with Islamic principles, including the principle of avoidance of interest. n179 Many predominantly Muslim nations are seeking to place the shari'a in an elevated constitutional role as the principal source of law. n180 Accordingly, riba prohibitions may become more stringent and prevalent throughout the Muslim world. Given the importance of riba, lawyers operating under the Model Rules must be prepared to consider the impact of riba prohibitions and their potential for creating ethical conflicts in Islamic oriented representation.

For an American attorney representing a Muslim client, issues of riba stem from the contingency fee arrangements to which both parties agree. n181 In some circles of Islamic interpretation, the uncertainty and speculation resulting from the contingency fee arrangement would be prohibited. n182 The chance that a lawyer might put in hundreds of hours of work for no payment is considered an acceptable risk in the American legal community. However, the innate uncertainty of a contingency fee runs contrary to the prohibition against riba. n183 Although such contingency fee arrangements may be reasonable under American standards, they probably would not be acceptable under the shari'a. n184

Additionally, the riba prohibition may become problematic in any situation that requires a lawyer's safekeeping of a client's property. n185 Since the lawyer is directed by Model Rule 1.15 to maintain a client's funds in a separate account, the question becomes relevant as to whether or not those funds can gain interest and who is entitled to that interest. n186 Strict interpretations of riba prohibitions would indicate that a client's fund **[*312]** could not gain interest. Yet, many Middle Eastern countries interpret the shari'a to only require that an interest-bearing account not exceed a particular usury rate. n187 Thus, alternate interpretations of riba are the determinant factor in whether or not a client's interest-bearing account is permissible under Islamic law.

Currently, riba prohibitions are hotly contested throughout the modern Muslim world. It is, therefore, appropriate for an international practitioner to take them into consideration when dealing with Islamic issues or representing a Muslim client. n188 Choices of conduct, such as Western fee arrangements or Western banking transactions, that run contrary to the riba provisions could conceivably be considered a violation of "other law." n189 Consequently, the American attorney dealing with Islamic issues is best served by handling riba issues as a conflict of interest situation. n190

Although the Model Rule 1.7 "Conflict of Interest" provision is not intended to be applied to situations concerning foreign issues, analogous application of the Model Rules provides suitable guidance in an Islamic conflict situation. n191 In dealing with riba issues, an American lawyer can avoid a potential violation of the Model Rules through a thorough discussion with the client outlining the choices of conduct being considered. n192 It would be appropriate to include in this consultation the client's available alternatives, the capacity each choice has for violating foreign law, and the implications an Islamic ethical conflict may have for both the attorney and the client. n193 By taking such an approach, the lawyer ensures his or her representation is in harmony with Model Rules 1.1, 1.3, and 2.1. Moreover, the lawyer can still decline or terminate representation if necessary under Model Rules 1.7 and 1.16, while maintaining professional respect for a client's beliefs as well as principles of foreign law. n194

D. The Impact of Islamic Principles on the Duty of Confidentiality

Another area where Western and Middle Eastern ethics should be addressed is the duty of confidentiality. This principle has long been respected both at the international level and in the United States. n195 Western notions of confidentiality are in harmony with principles of Islamic law. Both the Qur'an and the Model Rules require strict adherence to confidences:

You who believe, do not betray God and the Messenger, nor knowingly betray your own trusts... And those who preserve their trusts and their pledge, and who attend their prayers, will be the heirs who shall inherit Paradise to live there **[*313]** for ever. n196

Given this similarity, an American lawyer dealing with Islamic issues should not run into major conflict with Model Rule 1.6 "Confidentiality of Information." n197 In fact, principles of Islamic law recognize that societal interest may override Islamic principles of confidentiality, much like Model Rule 1.6(b)'s exception to the confidentiality rule for issues concerning "imminent death or substantial bodily harm." n198

The more intriguing issues of confidentiality arise when a lawyer is operating under a less stringent state confidentiality rule or if the lawyer acts in self-interest on a client's confidences (e.g., uses confidential information for personal sales, purchases, or investments). n199 In these situations, a lawyer can avoid ethical conflicts by abiding by Model Rule 1.6's provision to consult with the client and receive approval before taking action. n200

As for situations that demand disclosure of confidential information, (e.g., when disclosure would prevent bodily harm), the Islamic principle of greater societal interest, maslaha mursalah, can provide sufficient justification for a breach in confidences. Even in situations that are not likely to result in imminent death or substantial bodily harm, this principle can provide support for a noisy withdrawal under Model Rule 1.16, as long as it is to benefit societal interest. n201 Although principles of the shari'a are largely consistent with U.S. standards of confidentiality, various interpretations of Islamic law will determine the acceptability of disclosure.

In contrast to the maslaha mursalah concept, other principles of the shari'a arguably demand that a lawyer abide by a higher standard of duty in maintaining a client's confidentiality. n202 In complex representation involving Islamic issues, lawyers operating under the Model Rules are charged with recognizing these higher standards. n203 It is, therefore, important for the lawyer dealing with Islamic issues to consult with the client on the duty of confidentiality. Although difficult to imagine, a Muslim party or client may expect a higher degree of confidentiality than a lawyer is accustomed to.

[*314] A Muslim client or party would naturally expect confidentiality to apply "not merely to matters communicated in confidence by the client but also to all information relating to representation, whatever its source." n204 Depending on the Islamic interpretation applied, this duty might be greater or lesser than the American standard in any given situation. Though the Model Rules provide acceptable standards of confidentiality when compared to principles of the shari'a, consultation on this issue is still wise. A discussion of American standards of confidentiality and their application to a Muslim client or to Islamic issues would allay chances for serious conflict with American standards of professional responsibility.

E. Additional Conflicts and the Question of Sovereignty

Aside from the more obvious situations where the American standards of professional conduct may conflict with principles of Islamic law, there are some other subtle conflicts that must be addressed. Additional friction between Western and Middle Eastern legal standards arises from a lawyer's compliance with U.S. federal regulations, (e.g., the Foreign Corrupt Trade Practices Act, Federal Drug Administration Regulations, or Environmental Protection Agency Standards). n205 In cases where the U.S. government has proscribed particular regulatory standards, the lawyer conducting business in the Middle East may be confronted by parties or governments who do not require the same standards. n206 Such a conflict still exists despite the establishment of institutional regimes such as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. n207

Several authors have discussed the issues arising from the extraterritorial application of national regulation. n208 Some have also addressed the clash of conflicting ethical standards. n209 In most cases, they put forth a common solution to these problems by claiming that an international practitioner has both an ethical and moral duty to abide by the highest standards mandated. n210 Yet, this approach is frequently taken without fully addressing issues important in the Muslim world. Specifically, it fails to account for rights of self-determination and national sovereignty. n211 Though Islamic States may themselves utilize siyasa shari'a administrative provisions to avoid disputes over foreign standards, the question arises as to whether international institutions should be forcing mandates in these countries without first addressing cultural issues.

An example of this dilemma is apparent in the issue of bribes or "greasing payments." Although greasing payments are considered to be acceptable in certain foreign locales, the international community has recently expressed a consensus that such payments constitute bribery. Through the Foreign Corrupt Practices Act of 1977, n212 and the recent OECD ratification of the Convention on International Bribery, n213 the legal community has effectively replaced local cultural traditions with international policy. While Western **[*315]** standards may ultimately prevent bribes, they also curtail innocuous traditions of foreign gift-giving that are common to local communities.

This debate raises additional moral and ethical considerations when one considers issues that have not yet been resolved. As a practical matter, a lawyer must decide whether international transactions must meet requirements of national environmental or food and drug regulations. n214 Certainly, there is a strong moral argument against a lawyer's participation in negotiating a deal that results in the international sale of goods that do not meet U.S. regulatory standards. When taking into account principles of the shari'a, however, there remains a controversial question as to whether such conduct actually leads to the exportation of American ideals and the encroachment of national sovereignty. n215

Under the shari'a and the principles of the Qur'an, Muslims have long debated the issue as to whether government regulations inhibit God's divine authority or actually lead to God's rule through man. n216 This debate is contentious within the Muslim community; it becomes even more complex when Western legal communities inject it with issues of foreign regulation. To a Muslim, it would seem inappropriate to import standards that are not provided for by Qur'anic provisions or, at the very least, discussed in the varying schools of Islamic jurisprudence. n217 As a result, the international practitioner becomes an unwitting catalyst to this debate. By advocating compliance with U.S. standards in a contract agreement, even when there is a Western consensus on the issue, legal scholars circumvent principles of Islamic law in international discussions. n218

Most American attorneys would probably agree that the most appropriate ethical choice would be for a lawyer to ensure that U.S. regulatory standards are met when negotiating an international transaction. n219 Yet few authors have addressed the fact that such action may actually undermine the legitimacy of foreign law and the right to self-determination that the United States advocates. Undoubtedly, it would be remarkable if the standards to be expected of a U.S. attorney were to change every time the lawyer left the country. n220 But, the more minor ethical issues cannot be fully understood without understanding the bigger picture. Since Islamic law is considered divine in nature, Muslims must justify Western standards with an appropriate interpretation of the shari'a or through siyasa shari'a provisions. n221

For a Muslim nation that might be plagued with health problems or suffering from economic depression, Western encroachment on the right to choose one's own contract standards may be viewed as a violation of the shari'a. n222 In these cases, an international practitioner is not in an appropriate position to set governmental policy for a foreign sovereign. But, as indicated by the Model Rules, a lawyer can and should, however, take **[*316]** into account the totality of the circumstances when dealing with a foreign client. n223 When dealing with Islamic issues or clients, no concern is too small to discuss with the client and obtain the client's consent. As previously mentioned, a lawyer who handles the Islamic issue as a conflict-of-interest situation under Model Rule 1.7 will ensure that all moral and ethical considerations are accounted for. An attorney's cultural sensitivity is likely to promote additional respect in their client relations.

V. Practical Application of Islamic Principles in International Practice

Given the strong misconceptions Western nations have developed regarding Islamic law, it is doubtful that international practitioners will ever adequately address the ethical conflicts arising from Islamic issues or clients. n224 Although the international community may not ever fully address these issues, a step toward cultural understanding must ultimately begin at the personal level. n225 By practically incorporating Islamic law considerations into decisions of ethical conduct, international practitioners will actively promote an ethical bridge to cultural misunderstandings. n226 The challenge for Western practitioners will be to accept an approach that is considerably more open to the religious foundation of Muslim nations than the strong customs of free market traditions. n227 For the American attorney, successful dealings with Islamic parties, clients, and issues will depend on the realization that the Model Rules place a duty on a lawyer to discern alternative moral, legal, and ethical factors in international representation. n228

A. Responsibility to Recognize and Consider Islamic Ethical Standards

Analysis of both the International Bar Association's Legal Code of Ethics and the American Bar Association's Model Rules of Professional Conduct support the conclusion that international practitioners have a professional duty to consider cultural issues, specifically those involving Islamic principles of law. Since this duty is not legally binding at the international level and no direct provisions ensure compliance at the local level, it would be difficult, but not impossible, to sanction an American lawyer for failing to address principles of the shari'a. n229 Despite this fact, a broader understanding of Islamic law and the ethical questions it raises can help promote better international relations. It can also further the marketability of legal services to those that remain skeptical of Western political systems. n230

For these reasons, lawyers dealing with Islamic issues or clients should consider it their responsibility to take into account cultural differences when conducting international representation. One prominent author has offered a reasonable approach to the transnational applicability of the Model Rules by suggesting that a lawyer abide by the **[*317]** highest ethical standards applicable ("the lowest common denominator") when conducting representation abroad. n231 This approach provides excellent guidance in most situations, but it is not all-inclusive. It does not take into account the conflicts that may arise from actions that violate various principles of the shari'a.

In most cases, a lawyer dealing with Islamic issues can avoid an ethical plight by merely extending the scope of Model Rule 1.7. With this approach, the lawyer heads off conflicts before they occur through client consultation and consent. Where Islamic issues arise, it is wise for a lawyer to discuss thoroughly the legal approach to be taken and to elicit the practical impact it may have with regard to the shari'a. n232 This strategy allows the international practitioner to meet the responsibilities set forth in Model Rules 1.1 and 1.3 by considering all relevant moral, cultural, and ethical issues. n233

In situations where cultural issues are more complex, a lawyer should most certainly consult with a specialist in the field. n234 In fact, many authors indicate that an international practitioner should not advise a client on any international issue without first consulting a foreign attorney. n235 These precautions should leave an international lawyer feeling confident that his or her choice of action complies with the duties required by the Model Rules while also respecting principles of foreign law and the IBA's CLE. The importance of these considerations is historically evident in various legal processes.

B. A Vital Element of Cross-Cultural Mediation and Negotiation

The cultural aspects of negotiation and mediation have existed for centuries. American scholars, however, have only recently begun to address the more subtle aspects of cross-cultural representation as a result of an increased focus on alternative dispute resolution (ADR) practices. As any experienced negotiator or mediator will attest, the cultural dimensions of a case will affect the tactics and approaches that both the parties and their legal representatives will use in negotiation and/or mediation. Understanding various cultural interests and interpretations of the law may, in many cases, be the determining factor in the success or failure of a negotiation or mediation.

Contemporary scholars refer to culture as "the hidden dimension" - an element that affects both the interpretation and understanding of parties to a negotiation. n236 Commentators further recognize the necessity of interpersonal sensitivity to successful negotiation practices. n237 While the Model Rules indicate that lawyers are legally obligated to account for cross-cultural concerns, n238 this does present a risk of being too conciliatory in cross-cultural representation. n239 Therefore, international lawyers must take a balanced approach in their negotiating styles.

[*318] The ability to maintain a balanced and culturally sensitive negotiation approach is necessary to determine party interests and to promote the creation of a long-term working relationship between the parties. n240 Combined with "purposeful forward looking thinking" the culturally sensitive attorney can help dissect the conflicting interests that tend to stonewall a negotiation or mediation process. n241 By understanding the cultural dimensions of a case, a lawyer can anticipate the reactions of a party opponent. This approach is essential to the resolution of international crises and the advancement of global cooperation. n242 It is also a vital element of any mediation.

Naturally, a culturally sensitive approach to legal representation demands that a lawyer look first to the most appropriate forum for the client. In applying this approach to a case dealing specifically with Islamic issues, a lawyer should recognize that ADR might be the better alternative to litigation. Just as mediation has been the foremost means of dispute resolution in Japan and China for thousands of years, n243 it has also historically been the primary means of conflict resolution in the Arab world. n244

For a culture that places a high value on honor and self-respect (muruah), mediation presents a more dignified approach to conflict resolution than the open courtroom. n245 Perhaps that is why more than a few American-Muslims are turning to their local imam to resolve disputes that might normally be resolved through the American justice system. n246 The resolution of conflict by mediation avoids the public display of blame and allows the parties to reconcile on their own accord, preserving the long-term relation of the parties.

Though mediators in the Arab world are recognized to be less neutral than their Western counterparts - often putting forward their own creative solutions rather than allowing the parties to formulate a solution - their role is one that is highly regarded by the disputants. n247 Traditionally, Arab mediators have maintained their impartiality through their status as members of higher social classes. n248 The prestige and respect a mediator commands among Muslim parties may

help increase the chances of reaching a mutually agreeable settlement. n249 Even in modern times traditional dispute practices in the Muslim world have been utilized with success - tailored to meet even the most hostile of political and military controversies. n250

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C. A Necessity to International Arbitration

Another area of international practice where cultural differences play a crucial role is in international arbitration. Each party to a typical international arbitration is allowed to choose one arbitrator. This choice is generally made on the basis of who is most familiar with both the legal and cultural implications of the party to the suit. An arbitrator who best understands the cultural background behind both parties can arguably provide the most adequate representation for the party's claims.

With the two arbitrators chosen by the parties selecting a neutral third arbitrator, cultural differences are a focal point in the resolution of the dispute. Though the rising frequency of international arbitration clauses has increased focus on general principles of commercial law, lex mercatoria, n251 international arbitrators still have to account for the cultural differences in evaluating legal positions. The cultural aspects of a case will play an integral role as arbitrators determine what principles and choice of law should apply.

Where arbitral clauses do not specify the commercial principles governing a dispute, (e.g., those found in U.N. Investment Dispute Resolution of International Transactions (UNIDROIT)), arbitrators are forced to evaluate foreign legal provisions and cultural differences in determining an equitable settlement. n252 In cases concerning Islamic issues or clients, Middle Eastern cultural differences will have to be considered in any interpretation of contract formation or negotiation. n253 And, although contemporary emphasis on commercial principles may pare down the total number of cultural concerns, arbitrators will still have to appraise cultural differences in determining intent, choice of wording, and linguistic anomalies in order to create a viable settlement. n254

D. The Possibility of Fatal Consequences

Failing to address cultural idiosyncrasies can affect the outcome of high-dollar arbitral settlements, as well as the substantive representation of a local client. A stateside attorney, far removed from the international setting of an international tribunal, may not realize the implications culture has on a case. Arguably, neglecting cultural issues may have fatal consequences.

Although Breard v. Greene n255 does not deal with the subject of Muslim representation, it does provide an example of a situation where the Court decision and the client representation inappropriately failed to examine all the cultural issues. n256 Although the outcome probably would not have been different, the Breard case underlines the importance of considering cultural differences in legal representation. Though the client was not of Middle Eastern descent, one can easily imagine that cultural differences and mistrust could have impacted the client.

Breard, a Paraguayan citizen, was convicted of rape and capital murder in the state of Virginia. n257 Contrary to the advice of his attorneys, Breard decided not to plead guilty and testified at his own trial. n258 Central to the international controversy surrounding Breard was **[*320]** the Vienna Convention on Consular Relations that provides foreign criminals with the right to discuss criminal charges with a consular representative. n259 Breard did not receive such an opportunity. n260 In response, the Breard court blandly held that Breard procedurally defaulted on this opportunity and that no harm resulted since Breard's attorneys were "likely far better able to explain the United States legal system to him than any consular official." n261

The court's reasoning is faulty. It neglects the potential impact cultural differences may have on a client's decision. Specifically, it fails to recognize that a foreigner may not fully understand the implications of the decision to testify and also that the foreigner may not fully trust the quality of advice given by legal counsel in a foreign country. Certainly, most Americans would be reluctant to take foreign legal advice without first receiving consular consultation. From this perspective, the court's opinion decries the importance of cultural issues, albeit with fatal consequence.

E. Potential Court Recognition of Islamic Principles

Despite all the analysis, one might still argue that Islamic principles are too different, too obscure, or too unsophisticated for the court to consider. After all, there exists a general perception that Western culture is completely different from that of the Middle East. n262 On the other hand, American courts have not accepted this view. n263 Islamic issues have

been taken into consideration on numerous occasions and were originally argued as questions of fact on principles of lex loci. n264 By redraft, the Federal Rules of Civil Procedure now allow foreign issues to be argued as questions of law. n265

American courts, therefore, have the discretionary power to consider foreign issues when deciding a case. n266 They can look to Model Rule 8.5 to examine the "predominant effect" of a lawyer's failure to examine all cultural issues of legal significance. n267 From this standpoint, it is plausible that a court may, at some time, have to determine the validity of a lawyer's ethical conduct in handling Islamic legal issues or Muslim clients. In such a situation, a strong legal argument can be made that a lawyer will have breached the duty of competence by failing to consider applicable provisions of the shari'a in dealing with Islamic legal representation.

In an era where malpractice lawsuits have become ubiquitous and the world has become smaller, it is only a matter of time before questions arise regarding the representation of Islamic issues or parties, both inside and outside of a courtroom. Lawyers **[*321]** must, therefore, examine their actions in light of two distinct ethical systems, both of which are recognized by separate governments as legally binding. n268 The challenge for the bench, as well as for the international community, will be to harmonize these systems. n269

Emphasis on commercial principles may help to overcome some cultural issues, but it can not be relied on to bypass them all. A failure to recognize the cultural aspects of Islamic cases will continue to perpetuate the existing notions that the international community must be divided. Circumspect analysis indicates that it is acceptable for both lawyers and courts under the Restatement (Second) Conflicts of Laws, the Federal Rules of Civil Procedure, and the Model Rules to take Islamic principles into consideration in determining whether a lawyer acted ethically. n270

VI. Impact of Religious Movement in Law and the Resurgence of Islam

The recognition, acceptance, and discussion of Islamic law is particularly important given the rising concern for religious considerations in the legal community and the resurgence of the shari'a in the Middle East. n271 Surely it will be difficult to establish provisions for international ethics that will help guide an international practitioner through all the varying interpretations that arise from the shari'a. n272 Due to the complex nature of Islamic jurisprudence, it is unlikely that even the Muslim community can reach an ijma (consensus) on what these standards should be. n273 Yet, analysis of the current rules - both at the international and local levels - shows that there is a duty to at least consider such principles. It is possible that standards of the legal community can even benefit from such an injection of concern for religious-based ethics. n274

[*322] This Comment should neither be taken as an attempt to define the exact standards by which an attorney should be judged for disciplinary conduct when handling a case concerning Islamic issues or clients, nor be taken as a source for all potential Islamic ethical conflicts. Rather, it should be viewed as an attempt to stimulate the discussion of what minimal considerations a practitioner should take when faced with questions of cultural differences. Scrutiny of the shari'a for the most prominent areas of Islamic ethical concern indicates that a lawyer's failure to consider questions of culture may substantively impact legal representation and is arguably a violation of the Model Rules. n275 Regardless of agreement on this point, an international practitioner most certainly has a moral obligation to consider ethical conflicts arising from foreign legal and cultural differences. n276

The current failure, at both the individual and international level, to address specific ethical issues resulting from religious-based doctrines neglects the diversity upon which peaceful relations must rest. n277 It postpones an inevitable discussion that will, at some later point, induce courtroom issues of ethical conduct, and possibly legal confusion. n278 It will be no easy task for the international community to define standards of ethical conduct acceptable to all nations. n279 One should not, however, discount the willingness of Muslims to discuss the issue. Muslim states have long sought to utilize the United Nations and organizations such as the International Bar Association as vehicles for voicing concern. n280 Future drafts of professional responsibility rules must, therefore, take note of the distinction between differing cultural standards and differing legal standards in foreign jurisdictions in order to provide better balance in legal guidance. n281

[*323] At a minimum, the ABA should address some of the ethical issues that may arise at the international level rather than leaving American lawyers with journal publications and speculation as the primary means for dealing with conflicting questions of foreign ethics. n282 Arguably, only those who are sophisticated, learned, and well practiced will continue to enter the field of international law. n283 Yet, technological advances, ease of communication, and a trend towards cross-border representation are putting many young associates in touch with varying ethical standards

around the globe without appropriate guidance. Currently, few law students graduate knowing where to turn for international legal guidance.

At the time of this publication, major casebooks, the Restatements, and other publications all fail to address questions of professional responsibility for an international law firm or practitioner involved in cross-border practice, international tribunal representation, or international transactional work. n284 Such neglect is indicative of the "island mentality" that has prevailed in the United States throughout history. n285 This mentality shields the lawyer from considering all potential sources of ethical conflict. Specifically, it neglects the rich nature of Islamic jurisprudence and principles of the shari'a. n286

VII. Conclusion

The rich legal nature of the shari'a embodies many of the same moral and ethical considerations found in the West, including justice, fairness, goodness, and kindness. n287 Although it may be idealistic to entail a set of international rules applicable to all Islamic interpretations, it is not acceptable to completely ignore these principles. Legal determinations and lawyer interaction have historically defined the success and failure of business, politics, diplomacy, trade, war, and peace. n288 Thus, amity in the growth and **[*324]** development of the world community cannot exist unless there is an awakening of cultural understanding within the legal community itself. n289 Upon the shoulders of the international practitioner rests the duty to recognize his or her role in bridging ethical borders. n290

FOOTNOTES:

n2. See generally Peter Goldsmith, QC, Globalisation of Laws - Tearing Down the Walls, in Global Law in Practice 139 (J. Ross Harper ed., 1997) (discussing the rapid globalization of the legal community).

n3. See generally Roger J. Goebel, Lawyers in the European Community: Progress Towards Community-Wide Rights of Practice, *15 Fordham Int'l L.J. 556* (1991/1992) (discussing cross-border legal practice in the European Community).

n4. Legal scholars routinely assert the propensity cross-border legal representation has for stimulating capital growth and investment under agreements such as the NAFTA. See, e.g., Julie Barker, The North American Free Trade Agreement and the Complete Integration of the Legal Profession: Dismantling the Barriers to Providing Cross-Border Legal Services, *19 Hous. J. Int'l L. 95, 98 (1996).*

n5. See generally Mara M. Burr, Will the General Agreement on Trade in Services Result in International Standards for Lawyers and Access to the World Market?, *20 Hamline L. Rev. 667 (1997);* Michael J. Chapman & Paul J. Tauber, Liberalizing International Trade in Legal Services: A Proposal for an Annex on Legal Services under the General Agreement on Trade in Services, *16 Mich. J. Int'l L. 941 (1995).* These articles fail to address the potential impact of European and North American trade agreements on Middle Eastern markets. Though the authors discuss the potential for legal access to "world markets," they might have more appropriately tailored their discussion to cross-border practices in "Western markets." See Burr, supra; Chapman & Tauber, supra; see also Dean N. Menegas, The GATT as a Framework for Multilateral Negotiations on Trade in Legal Services, in Issues of Transnational Legal Practice, 7 Mich. Y.B. Int'l Legal Stud. 277 (Linda Elliott et al. eds., 1985).

n6. See, e.g., Goebel, supra note 1, at 448 (adeptly addressing the inadequacy of Americans in embracing the open-mindedness necessary to successfully practice at the international level, but failing to specifically address Islamic issues). See also, Mary C. Daly, Thinking Globally: Will National Borders Matter to Lawyers a Century from Now?, 1 J. Inst. for Study Legal Ethics 297 (1996) (exemplifying the trend towards increased discussion of cross-border practice at the international level).

n7. See generally Goebel, supra note 1; Daly, supra note 6.

n8. Western markets and Middle Eastern economies have become increasingly interdependent since the 1930s. For a thoroughly readable history of the Middle East leading to today's interdependence, see Albert Hourani, A History of the Arab Peoples (1991); see also United States Central Command, Public Affairs Pamphlet (1997) (discussing strategic importance of maritime trade routes and Middle East oil reserves to the economies of Europe, Asia, and the Western Hemisphere) [hereinafter USCC Pamphlet].

n9. See generally Azizah al-Hibri, On Being a Muslim Corporate Lawyer, *27 Tex. Tech L. Rev. 947 (1996)* (eliciting Muslim skepticism over the American adversarial system).

n10. See Larry Newman & Grant Hanessian, General Principals of International Commercial Law, 7 World Arb. & Mediation Rep. 131, 135 (1996) (discussing arbitral payouts from the Iran-U.S. Claims Tribunal from 1981 to 1996).

n11. See, e.g., Christopher Tugendhat, Oil the Biggest Business 272 (1969) (discussing cultural differences in the United States and Saudi Arabia that resulted in differing interpretations of early oil concession agreements and ultimately the expropriation of U.S. oil investments in Saudi Arabia).

n12. See Ambassador Robert H. Pelletreau, The United States, Iran and the Total Deals, 20 Int'l Law. Newsl. 23, 24-25 (1998) (elaborating on $ 2 billion contract signed by Total and the National Iranian Oil Company in September 1997).

n13. Perhaps in no other professional field is there so great a potential to advance friendly relationships with Middle Eastern countries than in the area of international law. See Mark W. Janis, An Introduction to International Law 8 (2d ed. Little, Brown & Co. 1993) ("As trade, transport, culture, and communications link the peoples of the globe ever closer together, so are we increasingly likely to rely upon international law tomorrow."); see also Kofi A. Annan, Guest Foreword to Global Law in Practice v, v-vi (J. Ross Harper ed., 1997) ("The rule of law is essential to peace, development and the realisation of human rights. The practice of law is a privilege, but a privilege that carries with it a heavy responsibility to ensure respect for the law.").

n14. See Malini Majumdar, Ethics in the International Arena: The Need for Clarification, *8 Geo. J. Legal Ethics 439, 449-50 (1995)* (discussing the need for clarifying the ethical rules governing U.S. lawyers practicing at the international level). Further tailoring of professional conduct rules is necessary to promote rather than restrict cross-border trade of legal services. Even under well-developed agreements, such as the NAFTA, which are accepted by culturally similar States, Model Ethics codes are questioned. See Haynes & Boone, L.L.P., Memorandum to Officers and Council, International Law Section, State Bar of Texas (Feb. 11, 1999) (on file with the Texas International Law Journal) (criticizing the NAFTA rules of professional conduct for being too restrictive and ultimately detrimental to both Mexican and American law firms).

n15. Western dependence on the Middle East, which owns 70% of the world's oil reserves, creates the perception that most American lawyers involved with Islamic law deal with petroleum issues. See USCC Pamphlet, supra note 8. This belief, however, is specious. The dynamic geopolitical situation in the Middle East has resulted in a wide array of legal representations with the Muslim world. Today's international practitioners may be involved in any number of different practice areas. These might include humanitarian issues, private investment, defense contracting, arms control, corporate dealings, government transactions, and international trade.

n16. See Goebel, supra note 1, at 448 (quoting Henry deVries: "The seemless web of [international] legal problems requires that for the proper conduct of the matter the lawyer must be able to master the total legal situation, foreign as well as domestic or international. The law professional in international transactions is primarily an interpreter, a channel for communication between and among formally organized legal systems with differing national histories and experiences, traditions, institutions, and customs.").

n17. For a succinct discussion concerning the misconceptions existing between Muslim and Western civilizations and their effect on the development of international cooperation, see Sohail H. Hashmi, International Society and its Islamic Malcontents, *20 Fletcher F. World Aff. 13, 19-20 (1996).* See also, e.g., Lee Michael Katz, Financial Records Lifting Veil on bin Laden Network, USA Today, Oct. 1, 1998, at 1A. Though accurate and informative, Katz's article is stereotypical of the media sensationalism that often results in the exacerbation of cultural misconceptions between Americans and Muslims.

n18. See Markie Hunsiker, Worldly Woes, Forbes, Sept. 11, 1995, at 28 (providing Gallup poll results on American international awareness). A mapmaker for the National Geographic Society conducted this poll, finding that only one in seven adult American citizens could successfully locate their own country on an unmarked world map. See id. Such ignorance helps aggrandize the view that Islamic countries are too different to be engaged in Western ethical discourse.

n19. See, e.g., Barbara Crossette, Iraq Offers Steps to Avoid Attack; U.S. Rejects Plan, N.Y. Times, Nov. 15, 1998, at A1. Crossette's article demonstrates the nature of most news articles regarding the Middle East. The typical military and geo-political media could arguably pave the way for improved foreign relations if it were to proffer a better understanding of U.S. and Arab mindsets by focusing not only on cultural differences but also on the similarities of Muslim and Western societies.

n20. See Morris L. Ernst, How to Develop World Peace Through Law, 2 E. J. Int'l L. 102, 108-09 (1970) Lawyers have an individual responsibility to bring harmony to the world. This sense of duty often seems masked within today's modern legal community in the face of economic growth and self-interest.

n21. The notion that doors to practicing law in Islamic nations are closed should be dispelled. U.S. lawyers have been involved in various legal representations in the Middle East since California Standard Oil Company earned its first oil concession agreement with Saudi Arabia in 1933. See David B. Kultgen, The Effect of Islamic Law on an International Business, 37 Private Investments Abroad - Problems and Solutions in International Business in 1994 15-1 (1994) (providing a short history of the Arabian American Oil Company (Aramco) along with a concise discussion of the shari'a's influence in modern day business practices in the Middle East).

n22. See Goebel, supra note 1, at 448-49.

n23. A persuasive argument can be made that a cultural-legal split within America itself is developing as a result of the traditional practitioner's inability to tailor work to the Muslim client. Currently more American Muslims are turning to Islamic arbitration, such as that offered by the Austin Islamic Center, in order to resolve their legal disputes. Interview with Hazem Ghobarah, Ph.D. candidate in Government Studies, at the University of Texas at Austin, in Austin, Tex. (Aug. 1, 1999).

n24. See N. Lee Cooper & Stephen F. Humphreys, Beyond the Rules: Lawyer Image and the Scope of Professionalism, *26 Cumb. L. Rev. 923, 923-25* (1995-1996) (discussing the general public perception that the legal profession is "worse off than ever" and advocating that lawyers go beyond the rules of professional responsibility in order to respect the system they operate in).

n25. The Organization for Economic Cooperation and Development (OECD) established The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on December 17, 1997 [hereinafter Convention on International Bribery]. OECD, OECD Convention on Combating Bribery to Enter into Force on February 15, 1999 (visited Feb. 28, 2000) <http://www.oecd.org/new<uscore>and<uscore>events/release/nw98-124a.htm>. First in kind, this convention, which provides an institutional framework for combating unethical legal practices at the international level, entered into force on February 15, 1999. See id. Aside from Turkey, there are no predominantly Muslim states listed as Member Countries to the OECD. See OECD, Membership (visited Feb. 28, 2000) <http://www.oecd.org/about/general/member-countries.htm>.

n26. See Basil S. Markesinis, Foreign Law & Comparative Methodology 6-7 (1997) (noting that cooperation between countries demands "mutual understanding" and an "awareness that we have more things that unite us than we have that divide us").

n27. There is virtually nothing to directly prepare an American attorney or law student to comprehend Islamic ethical concerns. Since the 1940s, U.S. corporations have had to rely on recruiting and training their own small cadre of specialists, particularly in the field of Islamic law, in order to overcome the inadequacies of American legal education in preparing students for international practice. See, e.g., George M. Baroody, Shari'ah Law of Islam, Aramco World, Nov.-Dec. 1966, at 26 (discussing Aramco's initial difficulties in handling both the ethical concerns and conflicts of law issues arising from principles of Islamic law). For a comprehensive look at the inadequacies and necessities of a legal education preparing an American attorney for practice at the international level, see generally Goebel, supra note 1.

n28. See Steven R. Salbu, True Codes Versus Voluntary Codes of Ethics in International Markets: Towards the Preservation of Colloquy in Emerging Global Communities, *15 U. Pa. J. Int'l Bus. L. 327, 333-35 (1994)* (discussing the legalistic nature of corporate business codes and their enforceability in an international context).

n29. See Robert E. Lutz, Ethics and International Practice: A Guide to the Professional Responsibilities of Practitioners, *16 Fordham Int'l L.J. 53, 56* (1992-1993).

n30. Arguably, today's legal education is no better tailored to prepare its graduates for questions of international ethics than that of Aramco's era in the 1940s. Although law schools such as the University of Texas at Austin may occasionally offer comparative law courses, the emphasis on traditional courses provides no guarantee that a student will receive even the most rudimentary exposure to principles of foreign law. Since awareness of international ethical concerns demands increased exposure to international issues, a change in legal education is necessary in order to achieve broader ethical perspectives. Regarding the difficulty of changing deeply rooted educational traditions and the incivility inherent to American legal education, see Roger E. Schechter, Changing Law Schools to Make Less Nasty Lawyers, *10 Geo. J. Legal Ethics 367 (1997).*

n31. See Lutz, supra note 29, at 56-58, 61-68; Robert M. Jarvis, Cross-Border Legal Practice and Ethics Rule 4-8.5 Why Greater Guidance is Needed, Fla. B.J., Feb. 1998, at 59 (discussing the lack of guidance for American lawyers involved in transnational practice and the troubling aspects of having local bar associations attempt to fill the void in regulation); see also Detlev F. Vagts, The International Legal Profession: A Need for More

Governance?, *90 Am. J. Int'l L. 250 (1996)* (discussing the need for better ethical guidance at the international level).

n32. See Vagts, supra note 31, at 250-51; see also John Toulmin Q.C., A Worldwide Common Code of Professional Ethics?, *15 Fordham Int'l L.J. 673* (1991-1992); Jennifer Daehler, Professional Versus Moral Responsibility in the Developing World, *9 Geo. J. Legal Ethics 229, 230-31 (1995)* (lamenting the need for an international code of legal ethics but failing to address current standing codes or the potential impact of such codes on the Islamic community).

n33. See L. Hardenberg, Open Meeting of the Professional Ethics Committee, Int'l B.J., Nov. 1976, at 77 (recapping the development of the International Bar Association's (IBA) Code of Legal Ethics and discussing further developments of the IBA Ethics Committee).

n34. See Sixth Conference of the International Bar Association, Oslo, Norway, July 23-27, 1956, Int'l B. Ass'n, at v-viii (1957) [hereinafter IBA 6th Conference Reports].

n35. See, e.g., Essam Tamimi, Litigation in the United Arab Emirates, 20 Int'l Legal Prac. 134, 135 (1995) (citing the fact that administrative law governs commercial and civil transactions in the United Arab Emirates but that "in the absence of any specific provisions, usage of the Islamic Shari'a will apply").

n36. See, e.g., Toulmin, supra note 32.

n37. A search in the Tarlton Law Library at the University of Texas School of Law for the International Bar Association's Code of Legal Ethics yielded success only after this author uncovered the layer of dust on older copies of the IBA's 1956 and 1964 conference reports. For a more recent copy, see Law Without Frontiers, A Comparative Survey of the Rules of Professional Ethics Applicable to the Cross-Border Practice of Law, Appendix 11, 360-364 (Edwin Godfrey ed., 1995) (International Bar Association Series) [hereinafter Law Without Frontiers]. All references to the IBA CLE provisions in this article are taken from Law Without Frontiers, Appendix 11.

n38. See IBA 6th Conference Reports, supra note 34, at v (manifesting the International Bar Association's influence on the development of the European Community's Code of Ethics) (prologue entitled Origin and History of the International Bar Association). "During the war years, the conviction grew that the organized Bar of the world could make a substantial contribution to post-war reconstruction, stability and understanding." Id. at v; see also Laurel S. Terry, An Introduction to the European Community's Legal Ethics Code Part I: An Analysis of the CCBE Code of Conduct, *7 Geo. J. Legal Ethics 1, 7-9 (1993)* (discussing the European Community Ethics Council's reliance on previously developed codes such as the IBA CLE).

n39. See L. Hardenberg, Report on the Revision of the International Code of Ethics of the International Bar Association, Int'l B.J. 124, 124-27 (1974); see also Tenth Conference of the International Bar Association, Mexico, D.F., Mexico, July 27-31, 1964, Int'l B. Ass'n, at XIII (1964) (discussing minor changes to the IBA's Legal Code of Ethics ensuring its acceptability among member organizations) [hereinafter IBA 10th Conference Reports].

n40. See IBA 6th Conference Reports, supra note 34, at ix-xi (listing IBA member organizations); see also IBA 10th Conference Reports, supra note 39, at 18-22 (listing IBA conference delegates).

n41. See World Reference Atlas 26-27 (Dorling Kindersley Pub., Ian Castello-Cortes et al. eds., 1994) (West Asia) [hereinafter World]. The atlas estimates the Middle East populace to be at 390.5 million, not including predominantly Muslim countries of North Africa - e.g., Morocco, Egypt, Algeria, and Libya. See id. at 27. This number also excludes the Muslim populace within the predominantly Muslim states of the former Soviet Union and the Far East - e.g. Kazakhstan, Malaysia, among others - within which Western legal representation is becoming more common and upon which Western codes of legal ethics will undoubtedly have a societal impact. See id. at 26-27.

n42. The shari'a, literally meaning "the path" or "the way," is comprised of the written texts of the Qur'an and the written and spoken traditions of the Prophet Muhammad found in the Sunnah and Hadith. See, e.g., Frank E. Vogel, The Role of Shari'a in the Modern Legal Systems of the Middle East, 37 Private Investments Abroad 14-3 (Carol J. Holgren, et al. eds., 1994). Muslims consider the shari'a both a textual source of legal authority as well as a source of moral and ethical guidance. See, e.g., Mohammad Hashim Kamali, Principles of Islamic Jurisprudence 139-48 (1991). The interpretive methodologies applied to the shari'a are often referred to as usul al-fiqh. See Kamali, supra at 1. The shari'a may govern actions as a legally binding authority in countries where administrative provisions are not controlling. See generally, Kultgen, supra note 21, at 15-4-15-6. For more comprehensive analyses of the shari'a, see Kamali, supra at 1-2; see also Vogel, supra at 14-1 (providing a succinct discussion of the shari'a); cf. N.J. Coulson, A History of Islamic Law 184-85 (1964) (stating that where jurisdictional conduct is not proscribed by siyasa shari'a regulations, the principles of the shari'a will govern legal conduct).

n43. See IBA 6th Conference Reports, supra note 34, at v.

n44. See George C. Seward, Fifty Years in Retrospect, Forward to Global Law in Practice vii, vii (J. Ross Harper ed., 1997) (noting that IBA membership has reached over 18,000 lawyers and encompasses 173 national Bar Associations and Law Societies).

n45. IBA 6th Conference Reports, supra note 34, at v.

n46. See Fazlur Rahman, Law and Ethics in Islam, in Ethics in Islam 3, 8 (Richard G. Hovannisian ed., 1985) ("The Qur'an...is full of statements on the necessity of justice, fair play, goodness, kindness, forgiveness, guarding against moral peril (adl, qist, ihsan, taqwa, and their equivalents).").

n47. IBA 6th Conference Reports, supra note 34, at vi.

n48. See Hashmi, supra note 17, at 17-18 ("The Muslim states would strongly support...that the code of peace enjoys universal support as a normative framework for the conduct of interstate relations. For example, all of the approximately 50 Muslim-majority states are members of the United Nations.").

n49. IBA 6th Conference Reports, supra note 34, at vi.

n50. In confronting religious differences in legal issues, American lawyers should realize that their beliefs may have much more in common with their client or opponent's religious faith than initially perceived. The Qur'an places great emphasis on kindness, goodness, and justice. See generally Rahman, supra note 46. It calls for peaceful relations in numerous provisions. See, e.g., Qur'an 2:112 ("Rather anyone who commits his person

peacefully to God and is acting kindly will receive his earnings from his Lord. No fear shall come upon them nor will they be saddened."); Qur'an 5:69 ("Those who believe and those who are Jews, Sabeans and Christians - anyone who believes in God and the Last Day, and acts honorably, should have no fear nor will they be saddened."). Although other Qur'anic verses can be cited to counter the interpretation that Jews, Muslims, and Christians should live in harmony, such verses must be taken in their historical context. See, e.g., Qur'an 60:1 ("You who believe, do not take My enemy and your own enemy as friends, offering them affection while they disbelieve in any Truth that has come to you; they exile the Messenger as well as you yourselves just because you believe in God, your Lord."); Qur'an 5:51 ("You who believe, do not accept Jews or Christians as sponsors...."). These verses emerged in an age of great conflict and religious intolerance. They call for Muslims to stand their ground for their beliefs. See Qur'an 8:45 ("You who believe, whenever you meet with any armed force, hold firm and remember God often, so that you may succeed."). Any interpretive dichotomy resulting from these verses is countered through further Qur'anic evocations. See Qur'an 60:8-9 ("God does not forbid you to act considerately towards those who have never fought you over religion nor evicted you from your homes, nor [forbid you] to act fairly towards them. God loves the fairminded. God only forbids you to be friendly with the ones who have fought you over [your] religion and evicted you from your homes, and have abetted others in your eviction."); Qur'an 5:16 ("God thereby guides anyone who seeks His approval along pathways of peace; He leads them out of darkness into Light by His permission, and guides them along a Straight Road."). An appropriate interpretation of the Qur'an for today's rapid globalization and interconnectedness is that it is not for man to pass judgment on another's beliefs. See Qur'an 2:113 ("God will judge between them on Resurrection Day concerning how they have been differing."); Qur'an 10:99-100 ("So will you force mankind to become believers? It is not up to any soul to believe unless it [happens] with God's permission...."); Qur'an 10:109 ("Follow whatever has been inspired in you and be patient until God judges, for He is the best Judge.").

All references to the Qur'an are taken from The Qur'an, The First American Version (T.B. Irving trans., 1991). One should note that the only true and complete version of the Qur'an is considered to be that in its Arabic text.

n51. See al-Hibri, supra note 9, at 952; see also Rahman, supra note 46, at 3, 8.

n52. IBA 6[su'th'] Conference Reports, supra note 34, at vii.

n53. See al-Hibri, supra note 9, at 953 (reconciling her religious beliefs with American legal practices).

n54. See Law Without Frontiers, supra note 37, at 360-61 (maintaining the most recent copy of the IBA's International Code of Legal Ethics, reference IBA CLE Preamble, and Rule One in appendix 11).

n55. See id. at 360-61. IBA CLE Rule 1 states:

A lawyer who undertakes professional work in a jurisdiction where he is not a full member of the local profession shall adhere to the standards of professional ethics in the jurisdiction in which he has been admitted. He shall also observe all ethical standards which apply to lawyers of the country where he is working.

Id. at 360-61. Readers should note that this rule forces a lawyer working in the Middle East to abide by two potentially conflicting ethical codes: (1) Middle Eastern siyasa shari'a administrative regulations, and the shari'a itself and (2) the American Bar Association Model Rules of Professional Conduct or state equivalent.

n56. See id. at 360-61.

n57. See id.

n58. See Goebel, supra note 1, at 448-49 ("A legal mindset based totally upon rigid adherence to one country's legal system and practices is a serious but seldom acknowledged obstacle to the successful conduct of international business.").

n59. See Law Without Frontiers, supra note 37, at 360-64; see also IBA 6th Conference Reports, supra note 34, at v-vi.

n60. Law Without Frontiers, supra note 37, at 361 (reference IBA CLE Rule 2: "Lawyers shall at all times maintain the honour and dignity of their profession. They shall, in practice as well as in private life, abstain from any behaviour which may tend to discredit the profession of which they are members."). Self evident in the IBA CLE provisions is the fact that for a lawyer practicing in the Middle East, Western standards of conduct may not necessarily reflect the same degree of credit on the legal profession as Muslim standards.

n61. Id. IBA CLE Rule 4 states:

Lawyers shall treat their professional colleagues with the utmost courtesy and fairness. Lawyers who undertake to render assistance to a foreign colleague shall always keep in mind that the foreign colleague has to depend on them to a much larger extent than in the case of another lawyer of the same country. Therefore their responsibility is much greater, both when giving advice and when handling a case.

Id. 361.

n62. See id. One should interpret the elevated responsibility intrinsic in Rule 4 to extend to those clients or parties whom a practitioner represents on issues of foreign law. Naturally, they too will be less knowledgeable of foreign legal authority and much more dependent on the lawyer for advice.

n63. See Goebel, supra note 1, at 448.

n64. See Terry, supra note 38, at 5 n.5 (elaborating on the history of the Council of the Bars and Law Societies of the European Community, CCBE). Created in 1960, the abbreviation CCBE originates from the council's original title as the Conseil des Barreaux de la Communaute Europe. See id. Although the council changed its name in 1987 to Commission Consultative des Barreaux de la Communaute Europe, the acronym CCBE has been retained and is utilized extensively in reference to the European Community's Code of Legal Ethics. See id. See generally Toulmin, supra note 32, at 673-74 n.3 (discussing generally the application of the CCBE code in Europe).

n65. See Terry, supra note 38, at 8 ("Among other resources, the Working Group members consulted the codes that had been prepared by the International Bar Association, the Union International des Avocats, and the American Bar Association.").

n66. See id. at 9.

n67. See id. ("The CCBE adopted the code in less than thirty minutes on a unanimous vote by the national delegates to the CCBE from the twelve EC Member States.").

n68. See, e.g., id.

n69. See, e.g., id. at 13-14 & n. 42.

n70. See id. at 13 n. 42; see also World, supra note 41, at 546-49.

n71. In spite of the frequent criticism many post on the form of Turkish secular government, one should dismiss the misconception that Islam necessarily precludes democratic integration or rule. For a discussion on this point, see Azizah Y. al-Hibri, Islamic Constitutionalism and the Concept of Democracy, *24 Case W. Res. J. Int'l L. 1 (1992).*

n72. See Terry, supra note 38, at 18 ("The CCBE Code might be described as both a "legal ethics' code and a "conflicts of law' code.").

n73. See id. at 19. "For some topics the CCBE Code provides substantive legal ethics provisions. For other topics, however, the CCBE Code does not provide a substantive provision but instead merely tells a lawyer which state's legal ethics rules the lawyers should use. Such provisions function as "conflicts of law' provisions." Id.

n74. See id. at 11-13.

n75. The difficulty of applying such codes is evident in contemporary correspondence between law firms and bar associations in the United States. See, e.g., Haynes & Boone, L.L.P., supra note 14 (on file with the Texas International Law Journal).

n76. See Terry, supra note 38, at 15-16 ("Americans are accustomed to more detail and specification than often is used in Europe [in the drafting of ethical codes]."); see also Philippe Sarrailhe, Application of Professional Conduct Rules in Transnational Affairs, 38 Private Investments Abroad 2-1, 2-7 (Carol J. Holgren, et al. eds., 1995) ("[The] United States ... still boasts the most developed professional conduct rules in the world.").

n77. See Terry, supra note 38, at 15-16. It should be expected, however, that the Model Rules at least address some of the ethical concerns an international practitioner might face. The current ABA version merely intimates the necessity of considering cultural diversities. See, e.g., Model Rules of Professional Conduct Rules 1.1, 1.16 (1983).

n78. See Salbu, supra note 28, at 337-41 (discussing increased diversity in international business and the resulting increase in ethical dilemmas).

n79. See Model Rules of Professional Conduct Rule 8.5 & cmt. 6. Rule 8.5 states:

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction where the lawyer is admitted for the same conduct. (b)

Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows: (1) for conduct in connection with a proceeding in a court before which a lawyer has been admitted to practice (either generally or for purposes of that proceeding), the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and (2) for any other conduct, (i) if the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and (ii) if the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

Id. at Rule 8.5 (addressing disciplinary authority and choice of law). Comment 6 of Rule 8.5 further states: "The choice of law provision is not intended to apply to transnational practice. Choice of law in this context should be the subject of agreements between jurisdictions or of appropriate international law." Id. at Rule 8.5 cmt. 6.

n80. See id. at Rule 8.5 & cmt. 6.

n81. See id. at Rule 8.5(a).

n82. See id. at Rule 8.5 & cmt. 6.

n83. See Vagts, supra note 31, at 260-61.

n84. See Daehler, supra note 32, at 231.

n85. See Goebel, supra note 1, at 448.

n86. See Model Rules of Professional Conduct Rules 1.1, 1.2, 1.16, & cmts. Comment 5 to Rule 1.1 states: "Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners." Id. at Rule 1.1 cmt. 5. Rule 1.2 states: "When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct." Id. at Rule 1.2(e) (addressing scope of representation). Rule 1.16 states: "Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the rules of professional conduct or other law." Id. at Rule 1.16(a) (addressing declining or terminating representation) (emphasis added).

n87. See Daehler, supra note 32, at 230-34 (asserting that ethical conflict arising from ambiguity in the Model Rules of Professional Conduct results in a moral issue for the practitioner rather than an obligatory duty). Contrary to Daehler's morality thesis, this author takes the position that it is the lawyer's duty under the Model Rules of Professional Conduct to balance Western standards of ethics and morality with principles of the shari'a in order to determine the conflicts that may arise therefrom when handling a case concerning Islamic issues.

n88. See generally Joseph Schacht, An Introduction to Islamic Law (1964) (elucidating throughout the difficulty of applying Islamic law to legal contexts).

n89. See, e.g., Tamimi, supra note 35, at 135 (citing the fact that administrative law governs commercial and civil transactions in the United Arab Emirates but that "in the absence of any specific provisions, usage of the Islamic Shari'a will apply"); see also Vogel, supra note 42 (providing a succinct discussion of the shari'a).

n90. See, e.g., *U.C.C. 1-103* (1997), *Fed. R. Civ. P. 1*.

n91. See U.S. Const. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...."). One should note that the U.S. Constitution does not state that the judicial branch cannot take into account religious principles when rendering a court decision.

n92. See Azizah Y. al-Hibri, Faith and the Attorney-Client Relationship: A Muslim Perspective, *66 Fordham L. Rev. 1131, 1131-35 (1998).*

n93. See Model Rules of Professional Conduct Rule 2.1 and cmts. "In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation." Id. at Rule 2.1 (addressing the advisor) (emphasis added). "Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied." Id. at Rule 2.1 cmt. 2 (emphasis added).

n94. See id. at Rule 2.1.

n95. See id. at cmt. 2.

n96. See id. at Rule 2.1 & cmts.

n97. See id. at Rule 2.1 cmt. 2.

n98. See id. at Rule 2.1 & cmts.

n99. See Goebel, supra note 1, at 449; Lutz, supra note 29, at 59.

n100. See *Bluestein v. State Bar of Cal., 529 P.2d 599, 606 (Cal. 1974)* ("Giving legal advice regarding the law of a foreign country thus constitutes the practice of law.").

n101. For an American lawyer's perspective on dealing with the unique nature of shari'a law in Saudi Arabia, see generally Baroody, supra note 27.

n102. See Model Rules of Professional Conduct preamble & cmt. 6. "A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service." Id. at preamble cmt. 6.

n103. See id. at Rule 1.1 (suggesting that it would be a violation of the rules not to consider the shari'a when dealing with Islamic issues since competent handling demands inquiry into non-legal factors, and that "continued study and education" is necessary to maintain the "requisite knowledge and skill" in complex legal representation.); see also id. at Rule 2.1 (indicating that consideration of the shari'a is permissible in legal representation). Since principles of Islamic law will always be relevant to a practicing Muslim, they should always be considered in a situation where Islamic issues arise.

n104. See id. at Rule 1.1, 1.2 & cmt. 3. "A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities." Id. at Rule 1.2(b) (addressing scope of representation). "Legal representation should not be denied to people...whose cause is controversial or the subject of popular disapproval." Id. at Rule 1.2 cmt. 3 (suggesting that a lawyer dealing with Islamic issues who fails to consider the shari'a would in fact be denying his or her client full and competent legal representation in violation of the Model Rules).

n105. See id. at Rule 1.1.

n106. See id. at Rule 1.1 & cmts. 1, 2 (suggesting that "expertise in a particular field of law may be required" and that "competent representation can also be provided through the association of a lawyer of established competence in the field in question").

n107. See id. at Rule 1.1 (demanding that a lawyer be fully aware of the issues that may arise from his or her legal representation). Under this rule a lawyer may not ignore Islamic issues by simply applying Western standards without due consideration to the cultural aspects of the case.

n108. It would seem feasible that where public international law leaves a void, parties could attempt to fill that void by specifying their choice of legal ethics standards governing the transaction. Since the ABA Model Rules of Professional Conduct are not applicable to an international context, a client or lawyer could conceivably attempt to include a choice-of-ethics clause within an international lawyer-client contract.

n109. See Model Rules of Professional Conduct Rule 8.5(b)(2)(ii).

If the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

Id. (addressing choice of law) (emphasis added).

n110. See id.

n111. See Cooper & Humphreys, supra note 24, at 923-25.

n112. See Marc S. Cornblatt, US Perspective on International Commercial Transactions, 22 Int'l Legal Prac. 114, 114-17 (1997).

n113. See id. at 114, 116-17. "Despite what many Americans would like to believe, everyone everywhere does not follow the lead of the United States in everything. In commercial transactions and affairs, there is a very large part of the world whose legal and business systems do not function by American standards, practices and concepts." Id. at 114.

n114. Most Americans have a rudimentary understanding of Islamic law and generally equate Islamic law with the "eye-for-an-eye" principles of the Hadd. Principles of Islamic criminal law, however, are not indicative of the sophistication of Islamic legal interpretation. See Fazlur Rahman, The Concept of Hadd in Islamic Law, 4 Islamic Stud. 237 (1965); cf. Kamali, supra note 42 (outlining the sophisticated nature of Islamic legal principles); Khaled Abou El Fadl, The Authoritative and the Authoritarian in Islamic Discourses (2d ed. Dar Taiba 1997) (providing a contemporary look at the sophisticated nature of Islamic legal principles and their modern day interpretive application).

n115. Even among the more conservative Islamic states, there remain extremely divergent interpretations of Islamic law. Compare the legal systems of Iran, Saudi Arabia, Pakistan, and Afghanistan. These different interpretations arise from the different schools of Islamic law. For a look at the development of the shari'a, its role in Middle Eastern legal systems, and the development of different schools of Islamic law, see generally Coulson, supra note 42; Schacht, supra note 88; Vogel, supra note 42.

n116. See generally Kamali, supra note 42.

n117. See Coulson, supra note 42, at 86-102 (describing differences between four schools of major Islamic legal theory - Hanafis, Malikis, Shafi'is, and Hanbalis).

n118. See id. at 103-19.

n119. See Model Rules of Professional Conduct Rule 1.1.

n120. See Saad El-Fishawy, Contracts and Litigation in Islamic Law, 76 Am. Soc'y Int'l L. Proc. 62, 62 (1982) (discussing the divergence of opinion among Islamic jurists emanating from questions of the reliability and authenticity of the numerous hadith).

n121. See Goebel, supra note 1, at 448; see also Model Rules of Professional Conduct Rule 1.1 & cmt. 6 (requiring continued study and education).

n122. For an in-depth analysis of the importance of Islamic contract principles, see generally S.E. Rayner, The Theory of Contracts in Islamic Law (1991). The extreme importance Muslims place on contract arrangements is displayed in a dialogue Aramco General Counsel George W. Ray had with King Ibn Saud in 1947. See George W. Ray, Jr., American Lawyers and Islamic Law, 2 J. John Bassett Moore Soc. Int'l L. 30, 30 (1961).

After I had explained the duties of my position at some length and advised him of my need to know more about the law applicable in his nation, I asked [His Majesty King Ibn Saud] how I could ascertain that law. His reply was prompt and to the point. He advised me that if I wanted to know the law governing the relations between the State of Saudi Arabia and Aramco, I should look to the agreement between them, "for,' he said, "that contract is the law between the parties.'

Id. at 30.

n123. See al-Hibri, supra note 9, at 949.

n124. See id. at 947.

n125. See Mont P. Hoyt, Overview of Legal Aspects, in Current Legal Aspects of Doing Business in the Middle East - Saudi Arabia, Egypt, and Iran 2-5 (Warren G. Wickersham & Benjamin P. Fishburne, III eds., 1977) [hereinafter Doing Business in the Middle East]. See generally Nabil Saleh, The Law Governing Contracts in Arabia, *38 Int'l & Comp. L. Q. 761 (1989).*

n126. See Doing Business in the Middle East, supra note 125, at 3.

n127. See id.

n128. See id.

n129. See Rayner, supra note 122, at 91-100.

n130. See Marvin A. Chirelstein, Concepts and Case Analysis in the Law of Contracts 149-50 (3d ed. Foundation Press 1998). The Qur'an directly conflicts with the "efficient breach" concept by demanding that individuals avoid using contracts to take advantage of other parties. See Qur'an 16:94 ("Do not use your oaths to take advantage of one another.").

n131. See Chirelstein, supra note 130, at 149-50; see also Qur'an 16:94.

n132. Qur'an 5:1; see also 16:91. Contractual provisions within the Qur'an have also been interpreted to extend to international treaty agreements. See Gamal M. Badr, A Survey of Islamic International Law, 76 Am. Soc'y Int'l Proc. 56, 59 (1982); see also Qur'an 9:4 ("Fulfil any treaty [you have] with them until their period is up. God loves those who do their duty!").

n133. The majority of predominantly Muslim nations operate under a dual court system with both secular and Islamic courts. See Coulson, supra note 42, at 120-34. Qadi [judges] in either court system are likely to have discretion in considering whether or not contractual provisions are legally binding under the shari'a. See id. Regardless of the shari'a's legal implications on a court's decision, it will still bear heavy influence on questions of personal ethics for a Muslim bound by contractual provisions. See id.

n134. See Model Rules of Professional Conduct Rule 1.16.

n135. See id. at Rules 1.1, 1.3, 2.1; see also Lutz, supra note 29, at 59-60 (discussing a lawyer's obligation to acquire foreign law knowledge).

n136. Unlike the American judiciary, courts in the Middle East are not bound by principles of stare decisis. Although Islamic courts may base their rulings on civil code authority or administrative provisions, where authority does not exist, their qadi are free to render judgment as they see fit. See Coulson, supra note 42, at 29-35. Conflicts-of-law provisions cannot provide guidance for ethical dilemmas in such situations.

n137. See J.N.D. Anderson & N.J. Coulson, The Moslem Ruler and Contractual Obligations, in Selected Readings on Protection by Law of Private Foreign Investments 407, 415-20 (1964).

n138. See al-Hibri, supra note 9, at 950.

n139. See Anderson & Coulson, supra note 137, at 415-20.

n140. See Model Rules of Professional Conduct Rule 1.3 & cmt. 1.

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.

Id. at Rule 1.3 cmt. 1 (addressing diligence).

n141. Id. at Rule 1.16.

n142. For a discussion of the adversarial system's incompatibility with the post-modern world, see Carrie Menkel-Meadow, The Trouble with the Adversary System in a Post-Modern, Multi-Cultural World, 1 J. Inst. for Study Legal Ethics 49, 50-52 (1996).

The "adversary" model of the courtroom has inappropriately bled into and infected many other aspects of lawyering, such as negotiating both "in the shadow of the court" and outside of it in lawyers' transactional work....I am more concerned that the rhetoric and structure of adversarial discourse prevents not just better and nicer behavior, but more accurate and open thinking.

Id. at 50-52. Offering only her criticism, Menkel-Meadow offers no substitute for the adversarial model.

n143. See Qur'an 26:181-83; see also Qur'an 11:85.

n144. See Qur'an 26:181-83; see also Qur'an 11:85.

n145. See Model Rules of Professional Conduct Rule 1.3.

n146. See al-Hibri, supra note 9, at 949-50 (discussing the author's concern with fulfilling the professional standards of being an attorney - e.g., zealous representation of the client - without violating her religious beliefs).

n147. See Model Rules of Professional Conduct preamble & cmts. 2, 7 (arguably advocating zealous representation only in litigation context, e.g. "lawyer as advocate"); see also, Roger J. Goebel, Professional Responsibility Issues in International Law Practice, *29 Am. J. Comp. L. 1, 16 (1981).*

Many lawyers traditionally have interpreted their role as one of an unswerving champion of the client's interests, with no reflection upon the propriety of the client's goals and procedures... While this may be appropriate in defending a client in a criminal proceeding, or even in the conduct of many civil lawsuits, it seems an erroneous principle to guide the lawyer in a corporate or commercial context.

Id. at 16.

n148. See Model Rules of Professional Conduct Rule 1.3.

n149. See id. at Rule 1.3 cmt. 1.

n150. Id.

n151. See id.

n152. See id.

n153. See Model Rules of Professional Conduct preamble cmt. 4.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it,... it is also a lawyer's duty to uphold legal process.

Id.

n154. See id.

n155. Compare with similar discussion regarding IBA CLE Rules 2 & 4 supra, notes 60, 62.

n156. See Model Rules of Professional Conduct preamble cmt. 2. "As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications." Id.

n157. See id.

n158. See id. at Rule 2.1.

n159. See id. at Rule 1.16(a)(1).

n160. See id. at Rule 2.1; see also id. at preamble.

n161. See id. at Rule 1.7. "A lawyer shall not represent a client if the representation of that client may be materially limited by... the lawyer's own interests, unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation." Id. at Rule 1.7(b) (addressing the general rule regarding conflict of interest) (emphasis added); cf. al-Hibri, supra note 92, at 1139 (discussing a lawyer's obligations to a client, but not within the context of the Model Rules).

Furthermore, not all clients care about a spiritual approach or share the spiritual beliefs of their lawyer. For such reasons, it is imperative that the lawyer disclose to the client from the outset her approach to the practice of law, and identify her religious beliefs fully to the extent they are relevant to the case.

al-Hibri, supra note 92, at 1139. Failing to make such a disclosure could in some situations be viewed as a conflict of interest situation and a potential violation of Model Rule 1.16. See Model Rules of Professional Conduct Rule 1.16.

n162. See Model Rules of Professional Conduct at preamble, Rule 1.3 (discussing lawyer's duty to represent client with zeal); see also Goebel, supra note 147, at 21.

It is also appropriate to stress that the American international lawyer may, and often should, refer to moral and ethical considerations when local standards vary from those in the U.S., especially when conduct which is legal and ethically neutral in the U.S. may be regarded as socially irresponsible or ethically improper in a local country (even when not formally illegal).

Goebel, supra note 147, at 21.

n163. See Model Rules of Professional Conduct Rule 1.7 & cmt. 2. "A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third persons or by the lawyer's own interests." Id. at Rule 1.7(b). "If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation." Id. at Rule 1.7 cmt. 2.

n164. See generally Daniel Yergin, The Prize - The Epic Quest for Oil, Money & Power (1992); see also Anthony Cave Brown, Oil, God, and Gold, The Story of Aramco and the Saudi Kings (1999).

n165. See Tugendhat, supra note 11, at 272 (discussing Saudi cultural differences resulting in differing interpretations of early oil concession agreements and ultimately the expropriation of U.S. oil investments in Saudi Arabia).

n166. See Adnan Amkhan, The Effect of Change in Circumstances in Arab Contract Law, 9 Arab L.Q. 258, 258, 261-62 (1994) [hereinafter Amkhan, Effect of Change]; see also Adnan Amkhan, Force Majeure and Impossibility of Performance in Arab Contract Law, 6 Arab L.Q. 297 (1991).

n167. See Black's Law Dictionary 1267 (6th ed. 1990) ("A name given to a tacit condition, said to attach to all treaties, that they shall cease to be obligatory so soon as the state of facts and conditions upon which they were founded has substantially changed").

n168. See Amkhan, Effect of Change, supra note 166, at 258 n.1.

n169. See Model Rules of Professional Conduct Rule 1.5 & cmt. 3. "When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should offer the client alternative bases for the fee and explain their implications." Id. at Rule 1.5 cmt. 3 (addressing fees); see also Toulmin, supra note 32, at 681-83 (discussing potential solution for uncertainty of contingency fee arrangements through internationally approved fee scales).

n170. For a discussion on Islamic criminal penalties of the hadd, see Rahman, supra note 114.

n171. See Nabil A. Saleh, Unlawful Gain and Legitimate Profit in Islamic Law 13-15 (1986) (describing riba as literally "increase" or "gain"). The prohibition of riba emanates from the Qu'ran and has both broad and narrow interpretations within the Muslim community. See id. at 9-12, 15-18; see also Alexandra R. Hardie and M. Rabooy, Risk, Piety, and the Islamic Investor, 18 Brit. J. Middle E. Stud. 52, 57 (1991) ("The prohibition of interest appears in eight separate verses in four separate suras of the Qur'an.").

n172. See Terry, supra note 38, at 32-33 (discussing the skepticism Europeans generally maintain regarding American contingency fee arrangements).

n173. Qur'an 2:275, 3:130; see also Qur'an 4:160-61, 30:39.

n174. See Saleh, supra note 171, at 9.

n175. Perhaps an ethics topic ripe for discussion by one more learned in Rabbinic law than this author. See Daniel Klein, Comment, The Islamic and Jewish Laws of Usury: A Bridge to Commercial Growth and Peace in the Middle East, *23 Denv. J. Int'l L. & Pol'y 535-36 (1995)* (discussing the similarity of usury laws in Israel and the Middle East).

n176. See Terry, supra note 38, at 69 (Appendix B: Code of Conduct for Lawyers in The European Community (CCBE Code), Rule 3.3 Pactum de Quota Litis). "A lawyer shall not be entitled to make a pactum de quota litis." Id. at 69 (Rule 3.3.1).

By "pactum de quota litis" is meant an agreement between a lawyer and his client entered into prior to the final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.

Id. at 69 (Rule 3.3.2).

The pactum de quota litis does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of the competent authority having jurisdiction over the lawyer.

Id. at 69 (Rule 3.3.3).

n177. See Klein, supra note 175, at 547. Note that many Middle Eastern countries such as the United Arab Emirates allow interest below specifically mandated rates. Such arrangements may vary widely from country to country.

n178. See Noel Coulson, Foreward to Saleh, supra note 171, at xi.

n179. See Nicholas B. Angell, Islamic and Western Banking: A Comparison with Selected Legal Issues, 37 Private Investments Abroad 16-1, 16-15-16-20 (Carol J. Holgren, J.D. et al. eds., 1994) (discussing the impact of riba provisions throughout the Middle East).

n180. See Chibli Mallat, Islamic Law and Finance 42-45 (1988).

n181. See Model Rules of Professional Conduct Rule 1.5 ("A lawyer's fee shall be reasonable..."); cf. Kultgen, supra note 21, at 15-11.

Any transaction in which the subject matter, the price, or both, are not determined and fixed at the time of contracting is subject to attack as involving an unacceptable degree of gharar... The related concepts of riba and gharar are translated into a positive requirement that commercial contracts should create immediate and certain obligations... An agreement under which the obligation of one party is suspended on the occurrence of an uncertain future event or condition may be considered void.

Kultgen, supra note 21, at 15-11.

n182. See Saleh, supra note 171, at 49 (Gharar, literally "uncertain," is the Islamic prohibition against uncertain speculation and profit, often discussed alongside issues of riba.).

n183. Interestingly enough, the prohibition against riba works to the advantage of the lawyer, who could theoretically claim the contract invalid or seek recovery under principles of the shari'a after losing a case. It is hard to imagine that such an argument would stand in courts of American jurisprudence and given the transactional nature of most international representation, it is difficult to imagine a context in which such a situation would arise for an American lawyer conducting business in the Middle East.

n184. See Model Rules of Professional Conduct Rule 1.5; discussion of Rule 1.5, supra note 169.

n185. See Model Rules of Professional Conduct Rule 1.15 "Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated..." Id. at Rule 1.15(a) (addressing the safekeeping of property).

n186. The most obvious option to avoid an ethical conflict seems to be for the attorney and client to agree to place the funds in a non-interest bearing account. This may be problematic as well, however, as the fund may still violate provisions of riba by offering free services (unjust gain). Another option might be for the client and attorney to agree to use an interest bearing account with a rate found acceptable in the client's home country. See generally Ali Darrat, Note, Are Checking Accounts in American Banks Permissible Under Islamic Laws?, 2 Am. J. Islamic Soc. Sci. 101 (1985).

n187. See Klein, supra note 175, at 547.

n188. See Model Rules of Professional Conduct Rule 2.1.

n189. See id. at Rule 1.16.

n190. See id. at Rule 1.7.

n191. See id.

n192. See id.

n193. See id. Although a Muslim seeking an American attorney may be fully aware of the ethical conflicts which may present themselves, a lawyer operating under the Model Rules of Professional Conduct arguably still has a duty to address them even if not in extreme detail. See id.

n194. See id. at Rules 1.1, 1.3, 2.1, 1.16.

n195. See Law Without Frontiers, supra note 37, at 363 (reference IBA CLE Rule 14):

Lawyers should never disclose, unless lawfully ordered to do so by the Court or as required by statute, what has been communicated to them in their capacity as lawyers even after they have ceased to be the client's counsel. This duty extends to their partners, to junior lawyers assisting them and to their employees.

Id. at 363.

n196. Cf., e.g., Qur'an 8:27, 23:8-11, 70:32. See also Azizah al-Hibri, The Muslim Perspective on the Clergy-Penitent Privilege, *29 Loy. L.A. L. Rev. 1723, 1732 (1996)* ("The confidentiality requirement in Islam is extremely important, but is not absolute. It may be overridden in a specific case if observing it would cause greater harm to society or particular individuals in it.").

n197. See Model Rules of Professional Conduct Rule 1.6. "(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation...(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary: (1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm...." Id. at Rule 1.6(a)-(b) (addressing the confidentiality of information).

n198. See id. at Rule 1.6; see also Kamali, supra note 42, at 267-82 (discussing the Islamic concept of maslaha mursalah (consideration of public interest)). Maslaha mursalah arguably abrogates the duty of confidentiality in certain situations. See Kamali, supra note 42, at 267-82. Though this concept is widely recognized in the fiqh sciences, it does not find direct support in the shari'a. See Kamali, supra note 42, at 267-82.

n199. It should be noted that one acting on a client's confidences for one's own benefit - e.g. for personal sales, purchases, or investments - arguably violates provisions of riba and brings into question the validity of unjust gain and potential violation of "other law" under Model Rule 1.16. See, e.g., Model Rules of Professional Conduct Rule 1.16(a)(1).

n200. See id. at Rule 1.6.

n201. See al-Hibri, supra note 196, at 1730-31.

n202. See id. at 1725-26 (discussing a higher duty of confidentiality for an Imam). By analogy, a lawyer's expert training and increased knowledge places him in a similar situation. A lawyer, like the Imam, has a responsibility to hold a "higher standard of compliance" as a result of a deeper understanding of the law and an obligation to account for ethics and morality in his or her choice of conduct. See id. at 1725. Again note that maslaha mursalah is a prevalent concept in Islamic jurisprudence but does not find direct support in the shari'a. See Kamali, supra note 42, at 267-82.

n203. See Model Rules of Professional Conduct Rules 1.1, 1.3.

n204. See id. at 1.6 & cmt. 5.

n205. See, e.g., Foreign Corrupt Trade Practices Act of 1977, *15 U.S.C. 78.*

n206. See Daehler, supra note 32, at 229-34; see also Sarrailhe, supra note 76, at 2-12 (both suggesting that international practitioners should abide by the highest level of standard prescribed by federal regulations as a moral duty of the international practitioner).

n207. See Convention on International Bribery, supra note 25; OECD, supra note 25.

n208. See, e.g., Sarrailhe, supra note 76; Goebel, supra note 147; Daehler, supra note 32.

n209. See, e.g., Sarrailhe, supra note 76, at 2-8-2-10, 2-39-2-44; Goebel, supra note 147, at 50-57; Daehler, supra note 32, at 234-58.

n210. See Sarrailhe, supra note 76, at 2-39-2-44; cf. Goebel, supra note 147, at 50-57; Daehler, supra note 32, at 250-57.

n211. See Sarrailhe, supra note 76, at 2-39-2-44; cf. Goebel, supra note 147, at 50-57; Daehler, supra note 32, at 250-57.

n212. See Sarrailhe, supra note 76, at 2-39-2-44; cf. Goebel, supra note 147, at 50-57; Daehler, supra note 32, at 237-50.

n213. See Convention on International Bribery, supra note 25.

n214. See Sarrailhe, supra note 76, at 2-39-2-44.

n215. See Ronald A. Brand, External Sovereignty and International Law, *18 Fordham Int'l L.J. 1685, 1695-96 (1995).* "International law has begun to run directly to the individual. The state remains the organ through which the individual is represented in the development of international norms and mechanisms; but it may not always interfere when those norms are applied and those mechanisms are implemented." *Id. at 1695-96.* Cf. Joseph Schacht, Islamic Law in Contemporary States, in Selected Readings on Protection by Law of Private Foreign Investments 431 (1964).

n216. See Schacht, supra note 215, at 431-35 (discussing the tensions between Islamic law and Islamic government).

n217. See id.

n218. See id.

n219. See Model Rules of Professional Conduct Rules 1.1, 2.1.

n220. See Sarrailhe, supra note 76, at 2-42.

n221. The principle of maslaha mursalah cuts both ways on this point. Public policy may demand that a country with a struggling economy or poor health conditions not be further hindered by the costs of implementing higher regulatory standards. Yet, public policy may also demand that higher standards be met for the benefit of the world community. See Kamali, supra note 42, at 267-82.

n222. See Brand, supra note 215, at 1695-97.

n223. See Model Rules of Professional Conduct Rules 1.1, 2.1.

n224. See Khaled Abou El Fadl, Muslim Minorities and Self-Restraint in Liberal Democracies, *29 Loy. L.A. L. Rev. 1525, 1531 (1996)* (discussing hint of paranoia found in Western literature concerning Islam).

n225. See David A. Binder et al., Lawyers as Counselors: A Client-Centered Approach 9, 14 (1991) (noting the importance of considering non-legal factors in legal representation).

n226. A bridge to cultural misunderstandings may be needed now more than ever, not only in America but also throughout the rest of the world. See Carle Horllore, The Backlash, Hous. Chron., Dec. 8, 1998, at A1 (discussing the cultural intolerance currently running rampant throughout Europe).

n227. See al-Hibri, supra note 9, at 949-50; cf. El Fadl, supra note 224, at 1531.

n228. See El Fadl, supra note 224, at 1531.

n229. Compare IBA CLE Rules 2 & 4 with Model Rules of Professional Conduct Rule 2.1 & cmts. See also discussion supra notes 60, 62, 93.

n230. See Katrina Burger, Righteousness Pays, Forbes, Sept. 22, 1997, at 200-01 (discussing the increased marketability of ethical practices among big corporate firms); see also William Baldwin, Morality Plays, Forbes, July 29, 1985, at 42 (discussing the increased focus and profitability of ethical mutual fund portfolios).

n231. See Sarrailhe, supra note 76, at 2-13 (describing "lowest common denominator terminology").

n232. See Model Rules of Professional Conduct Rule 1.7 (suggesting that conflicts of interest can be avoided by a lawyer's consultation and consent with the client).

n233. See id. at Rules 1.1, 1.3.

n234. See Goebel, supra note 147, at 56-57.

n235. See id. Given the lack of emphasis placed on comparative law in the United States, a lawyer may have to actively search for an expert on the shari'a. In a case regarding Islamic issues, an appropriate course of conduct may also be for the lawyer to recommend an Islamic arbitration center as an option for Alternative Dispute Resolution.

n236. See John S. Murray et al., Negotiation 108 (1996) (citing Raymond Cohen, Negotiating Across Cultures 153-55 (1991)).

n237. See id. at 111 (citing Jeffrey Rubin, Negotiation: An Introduction to Some Issues and Themes, 27 Am. Behav. Scientist 135, 138-44 (1983)).

n238. See Model Rules of Professional Conduct Rules 1.2, 2.1.

n239. See Murray, supra note 236, at 111 (citing Raymond Cohen, Negotiating Across Cultures 153-55 (1991)).

n240. See id. at 109 (noting that Westerners are reputed to neglect the overall relationship with less culturally sensitive negotiating styles).

n241. See generally Roger Fisher & William Ury, Getting to Yes - Negotiating Agreement Without Giving In (Bruce Patton ed., 1991); see also William Ury, Getting Past No, Negotiating Your Way from Confrontation to Cooperation 17-19 (1993) (advocating the importance of understanding the party-opponent's interests).

n242. See Roger Fisher et al., Beyond Machiavelli: Tools for Coping with Conflict 2, 21 (1994) (advocating "forward-looking" thinking in the negotiation setting and recognizing that international conflict is often the result of individuals being "prisoners of [their] own thinking").

n243. See Kimberlee K. Kovach, Mediation: Principles & Practice 18-19 (1994) (discussing historical perspectives of mediation).

n244. See Raphael Patai, The Arab Mind 228-46 (1976) (describing mediation in the Arab world).

n245. See id. at 228-29.

n246. This is an area ripe for research. The author's discussions with Mr. Hazem Ghobarah, supra note 23, indicated that more and more American-Muslims are turning to their local religious leaders to resolve legal disputes arising from events such as car accidents.

n247. See Patai, supra note 244, at 229-30.

n248. See id.

n249. See id.

n250. See id. at 231-38 (describing various military-political controversies resolved through mediation); cf. Fisher, supra note 242, at 120-32 (discussing President Carter's successful mediation of the 1973 crisis between Egypt and Israel).

n251. See Newman & Hanessian, supra note 10, at 135.

n252. See Jack J. Coe, Jr., International Commercial Arbitration: American Principles and Practice in a Global Context 273-75 (1997).

n253. See Carolyn R. Ruis, Legal Practice Shaped by Loyalty to Tradition: The Case of Saudi Arabia, 7 Mich. Y.B. Int'l Legal Stud.: Issues of Transnat'l Legal Prac. 103, 107-11 (Linda Elliott et al. eds., 1985).

n254. See generally *Breard v. Greene, 118 S.Ct. 1352 (1998).*

n255. See id.

n256. See id.

n257. See *id. at 1354-55.*

n258. See id.

n259. See id.

n260. Id.

n261. See id.

n262. See David F. Forte, Islamic Law in American Courts, 7 Suffolk Transnat'l L.J. 1, 10 (1983).

n263. See id. at 10 ("In point of fact, however, American judges have never held that Islamic legal principles were "uncivilized' and therefore not amenable to enforcement in American courts.").

n264. See id. at 5-7.

n265. See *Fed. R. Civ. P. 44.1*.

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

Id. at 44.1 (addressing the determination of foreign law); cf. William B. Stern, Foreign Law in the Courts: Judicial Notice and Proof, *45 Cal. L. Rev. 23, 24-25 (1957)* (discussing the previous standard of foreign law as a question of fact).

n266. See *Fed. R. Civ. P. 44.1*.

n267. See Model Rules of Professional Conduct Rule 8.5.

n268. See Forte, supra note 262, at 10-11.

n269. See id.

n270. See id. at 31-32; see also *Restatement (Second) Conflict of Laws 10* (1969).

The rules in the Restatement of this Subject apply to cases with elements in one or more States of the United States and are generally applicable to cases with elements in one or more foreign nations. There may, however, be factors in a particular international case which call for a result different from that which would be reached in an interstate case. *Restatement (Second) Conflict of Laws 10*. An argument could be made that a court should not take into account the shari'a on the grounds that it is personal law. Cf. *Restatement (Second) Conflict of Laws 2* cmt. c.

Conflicts not dealt with in this Restatement. Certain types of conflicts that are not dealt with directly in the Restatement of this Subject are mentioned below: Conflicts of personal (non-territorial) law. In some states, various racial or religious groups have their own distinct system of law. A remnant of such a system is to be found in the United States in the personal law of the Indian tribes.

Restatement (Second) Conflict of Laws 2 cmt. c. This argument is distinguished by the fact that the shari'a is recognized by Middle Eastern governments as valid and binding law over all citizens and foreign guests.

n271. See Jacques deLisle, Disquiet on the Eastern Front: Liberal Agendas, Domestic Legal Orders, and the Role of International Law after the Cold War and Amid Resurgent Cultural Identities, *18 Fordham Int'l L.J. 1725 (1995)* (discussing the legal impact of the resurgence of ethnicity and religion in the post-cold war era); see also, e.g., Symposium, The Relevance of Religion to a Lawyer's Work: An Interfaith Conference, *66 Fordham L. Rev. 1075 (1998)* (discussing religion as it pertains to the legal profession).

n272. See El Fadl, supra note 224, at 1526 ("Nevertheless, there is no formal church in Islam. No single institution can formulate a single comprehensive view for all Muslims to adopt."). With many different schools of Islamic thought, the American attorney must be prepared to deal with conflicting interpretations of the shari'a when handling Islamic issues.

n273. See Kamali, supra note 42, at 168-96 (discussing ijma, "consensus of opinion"). Cf. El Fadl, supra note 224, at 1525-29 (discussing complexities of Islamic law).

n274. See Russell G. Pearce, Foreword: The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism, *66 Fordham L. Rev. 1075, 1079-81 (1998)* (discussing whether or not "legal ethics can benefit from theology" by helping a lawyer focus on ethics and morality, possibly resulting in more appropriate ethical choices in legal representation).

n275. See Model Rules of Professional Conduct Rules 1.1, 1.3.

n276. See discussion of the IBA CLE, supra section III.A. and the ABA Model Rules, supra section III.C.

n277. See Law Without Frontiers, supra note 37, at 227-36 (discussing the regulation of lawyers throughout the world but failing to address comparative standards in the Middle East).

n278. See Goebel, supra note 147, at 50 ("It is undeniably true, however, that different national outlooks and different cultural patterns in the world engender different regards of ethical conduct and respect for the law.").

n279. See Terry, supra note 38, at 12-13.

n280. See Hashmi, supra note 17, at 18; see also Badr, supra note 132, at 58. "In today's universal community of nations Islamic states are active subjects of international law and dynamic participants in international councils and organizations. Islam can make valuable contributions to the progressive development of the law in this universal international order." Badr, supra note 132, at 58.

n281. See Terry, supra note 38, at 15-16. See generally Bernard L. Greer, Professional Regulation and Globalization: Toward a Better Balance, in Global Law in Practice 169 (J. Ross Harper ed., 1997) (discussing the growing awareness that some regulations may be inappropriate in a globalized world).

n282. See Demetrios Dimitriou, Legal Ethics in the Future: What Relevance?, Prof. Law., Spring 1998, at 2 (1998) (discussing the need to look beyond the present and into the future in dealing with questions of legal ethics).

Our failure to anticipate future trends will inevitably assure the continued inability of our ethics rules to meet the needs of the profession, our clients, the public, and the judicial system as the pace of our society unfailingly quickens.

Id. at 2.

n283. See Vagts, supra note 31, at 260-61 (suggesting that regulation of counsel at the international level is largely non-existent and "perhaps a tribute to the professionalism of the lawyers involved").

n284. See, e.g., John F. Sutton, Jr. & John S. Dzienkowski, Cases and Materials on the Professional Responsibility of Lawyers (1989); Deborah L. Rhode & David Luban, Legal Ethics (2d ed. 1995); Geoffrey C. Hazzard, Jr. & Susan P. Koniak, The Law and Ethics of Lawyering (David L. Shapiro et al. eds., 1990) (taking a case-oriented approach, these casebooks are almost entirely concerned with local conduct in the United States and do not even attempt to address foreign ethical considerations); see also Restatement (Third) of the Law Governing Lawyers (Proposed Final Draft No. 2, 1998) (addressing "black letter" obligations for practicing American attorneys, yet failing to address ethical considerations in international ethical conflict situations); Law Without Frontiers, supra note 37.

n285. See Markesinis, supra note 26, at 6-7.

n286. See A. Kevin Reinhart, Islamic Law as Islamic Ethics, 2 J. Religious Ethics 186, 187 (1983). "An observer unfamiliar with the grand design is in no position to appreciate subtleties of ornament or texture. In short, students of Islamics have been reading the wrong books in the wrong way, which has led to both distaste and distortion in the treatment of Islamic Law." Id. at 187.

n287. The shari'a is much less concerned with cut and paste Lexis/Westlaw arguments than it is with the general principles resting behind a court's decision. See generally id.

n288. See Markesinis, supra note 26, at 6-7. Consider for example, the legal impact of the GATT, NAFTA, and EC agreements on trade (opening new markets and greater economic prosperity); of international arms control treaties on peace (a primary factor in stability during the Cold War era); of the Dayton Peace Accord Agreements and the Treaty of Versailles on war (helping to end or start conflict between European nations); of the Marshall Plan on trade (resulting in the successful economic reconstruction of Europe after World War II); of Aramco Oil concessions with Saudi Arabia on business (leading to technology transfer, oil development, and current business relations in the Middle East); and the German Constitution (resulting in the reunification of a divided Germany). Law has played an integral role in many more historical successes and failures too numerous to account.

n289. We should be building on the knowledge of our past relationships, forging amicable relationships on the basis of mutual understanding. Instead, this knowledge is often tucked away in the far reaches of the law library,

covered by dust and not reflected upon. As economic growth and prosperity continue to pull Western nations closer to the Middle East, we should not fail to recognize the need to further our knowledge and sensitivity to cultural differences. It will only be through the dissolution of cultural misconceptions that world peace can be achieved through law.

n290. See Reinhart, supra note 286, at 199. "As the intellectual realm of the moral life of a great religious civilization, the fiqh-sciences deserve to command our respect and attention. The sophistication, discipline, and moral aspiration of Islamic law may also evoke our admiration." Id. at 199.