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## **PERSPECTIVES ON THE MIDDLE EAST**

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Nicholas P. Connon, former Chair of the International Law Section, is the Co-Managing Partner of Connon Wood Scheidemantle LLP, a 15 attorney law firm based in Pasadena, California, that focuses on litigation and business oriented representations. Nicholas recently returned from the Middle East, having met with various practitioners and business leaders throughout the region. We had the opportunity to sit down with Nicholas to discuss his impressions of the current legal landscape and issues facing practitioners and businesses in the Middle East.

*Q: You recently came back from the Middle East. Where were you?*

*A: My colleague, Paro Astorian (who grew up in Beirut), and I were in Dubai, Abu Dhabi, Beirut and Amman. I also spent time in Kuwait.*

*Q: There has been a lot of discussion in the news lately about the Dubai financial crisis and how this may affect the entire Middle Eastern region. What was your impression of the current impact of the Dubai financial crisis?*

*A: Dubai is an amazing city, and the infrastructure that has been created in a relatively short period of time is extremely impressive. Frankly, to the untrained eye, you would not know that there is a financial crisis in Dubai by simply moving around the city. Construction projects and developments appear to be going forward towards completion with due speed. While there may be some projects that have been scaled back or slowed due to the financial crisis, I believe that the core focus of Dubai, as the chief financial and commercial hub of the Middle East, is here to stay. This is in large part due to the tremendous investment in infrastructure that Dubai and its leaders have made over the past several years, which I believe will prove to be a very wise decision despite the current financial crisis. It is for this reason that many companies, such as Halliburton, have major operations and corporate presence in Dubai. Dubai has some oil revenues, but not like those of Abu Dhabi, so the vision for Dubai has been to create an infrastructure and financial and commercial center that will sustain itself apart from oil revenues. I think Dubai has done a great job in moving towards this goal.*

That being said, local practitioners are nervous about the financial crisis. Many practitioners with whom I met have expanded the scope of their practices to venture beyond narrow areas of expertise that had been their focus previously. For example, litigation and, in particular, arbitration are becoming hot areas in Dubai and elsewhere in the Middle East, and local practitioners believe that these are areas that will continue to expand. While there are many international law firms in Dubai who have scaled back, this is no different than what law firms have been doing in the United States and elsewhere around the world. In my opinion, Dubai is here to stay and will continue to be a major player in the legal and financial markets in the Middle East for years to come.

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*Q: What are the differences for legal practitioners working in Dubai and elsewhere in the Middle East compared to the practice in the United States?*

A: That's a very broad question, and the practice varies from country to country and city to city, but let me try to generalize a bit and outline some of the major differences that I see in terms of litigation which is my area of practice. In the United States, our litigation and arbitration practice is highly developed and depends upon significant and long-standing legal precedent. This is not the case in many other parts of the world, particularly in emerging markets such as in the Middle East. As an example, the United Arab Emirates was formed in 1971 so it just celebrated its 38<sup>th</sup> anniversary as a country. In the UAE, the legal system and the courts are still developing. This does appear to create a certain amount of instability and uncertainty in terms of legal rulings, processes and decisions. The concept of precedent is not binding on the courts in many countries in the Middle East, so the rulings are very much dependent upon the local judge (there are no juries). Further, decisions are made based upon pleadings submitted by both sides without evidence. The concept of discovery, such as depositions and production of documents, is not generally permitted except under extraordinary circumstances.

I think most U.S. practitioners might find the legal process in many countries in the Middle East somewhat frustrating and potentially arbitrary. I think it is for this reason that most businesses do whatever they can to stay out of the local court systems and opt for arbitration of disputes. Most businesses also seek to have the arbitration of their disputes in a venue outside of the Middle East, such as Paris, London or New York, where there is a much more developed and established system of arbitration together with more experienced arbitrators.

I also note that, in most countries in the Middle East, it is not possible for foreign practitioners to appear in the local courts. Unlike in the United States where foreign attorneys can become licensed and then appear in court, or appear in court on a pro hac vice basis, court appearances are reserved, in large part, for native practitioners, and court proceedings are conducted in Arabic. This is another reason why most businesses prefer arbitration so that they can select their legal counsel of choice for legal disputes. Nonetheless, for businesses, the risks of litigation are much less than they can be in the United States. Large, complex litigations involving product liability issues or class actions are not permitted. The biggest risk is that a regulatory agency might shut down a business or seize its product if it proves to be a danger to the community, but the multi-million dollar tort awards for damages are not a part of the legal landscape at the moment. In the UAE, for example, if you kill someone, you are required to pay "blood money" to the relatives as a fine, and I was advised that the current price to be paid is about \$60,000 in the UAE. This fine can vary depending upon the decedent's religious affiliation, but the amount is still relatively modest in all cases compared to the United States.

*Q: How familiar are local practitioners with the legal practice in the United States?*

A: I would venture to say that many local practitioners are probably more familiar with our legal system than we are with their legal system. The influence of the United States is felt throughout many of the countries in the Middle East. Whether this is as a result of cultural awareness through media or just the influence that the United States has throughout the world, I was quite impressed with the knowledge base that many practitioners had about our legal system. I also think that there is a degree of respect that people throughout the world have for our legal system and institutions that we should always keep in mind. It is easy to focus on the bad rulings or bad experiences that people have with our legal system rather than the fact that we do have a system of laws applicable to everyone. I also think we should not forget that our system serves as a model of sorts around the world.

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*Q: You were also in Lebanon, which has a recent history of war and turmoil. What were your impressions of the legal environment and opportunities for growth in Lebanon.*

A: For the most part, I was in Beirut. I do not think you can really talk about the legal environment and opportunities in Lebanon without talking more generally about the state of the political affairs and the prospects for further conflict in Lebanon. It is still quite apparent that war has had a significant impact on this country. There are big scars on Beirut (and elsewhere in Lebanon) from the war with Israel in 2006, with many buildings still in a state of disrepair and ruin. The internal political environment also presents Lebanon with some challenging issues, given the ongoing power struggles among the sizeable Sunni, Shia, Christian and Druze religious groups and what appears to be a central government that faces difficulties internally and from its neighbors. Lebanon is not a large country, so you have these diverse religious groups living and working in close proximity. Historical tensions and fighting, particularly in recent times, color the landscape in Lebanon. If you drive around Beirut, for example, you see memorials to slain leaders (e.g. Rafik Al-Hariri's memorial next to Mohammad al-Amin Mosque in downtown Beirut, which incidentally is right next to the Marounite Church of Beirut) and banners on buildings with pictures of other public servants who have been assassinated. I would venture to guess that there is probably not a single person living in Beirut who has not had a family member, friend or close acquaintance killed over the past thirty to forty years in one of the various wars. And although there has been relative peace in Lebanon for the past couple of years, there is a feeling that one gets from talking to people (and driving behind military vehicles armed with soldiers who patrol the city) that this could change quickly under the right (or perhaps wrong) circumstances.

All of this being said, I believe that Lebanon, and Beirut in particular, has tremendous potential. If the political environment stabilized, I believe that there are great opportunities for business in this country, and it could easily serve as an important hub in the Middle East for commerce and banking, and given the beauty of this city, tourism (which is already a significant part of the local economy) would undoubtedly expand considerably. Unlike some countries in the Middle East, one gets the feeling that Lebanon is a real melting pot of culture and history, straddling the divide between the United States/Europe, on the one hand, and the Middle East, on the other. Many legal practitioners who are based in Beirut spend a lot of time practicing and doing business outside of the country in London or Paris or New York, or elsewhere in the Middle East, particularly in the area of litigation and arbitration. Language skills (many people, and certainly most attorneys, are fluent in Arabic, French and English) are impressive, and this provides flexibility to conduct business affairs in different venues. The legal opportunities and growth in Beirut seem to me to be very much dependent upon the country's future political stability, so it is really difficult to predict what direction Beirut will go.

*Q: During your meetings with various practitioners and business people, did you get a sense of what people expected in terms of growth areas within the legal and business arenas over the next few years and beyond?*

A: No one likes to predict the future, and if they do, they are usually wrong. However, I think there were some collective thoughts that I heard from practitioners in the Middle East about what they expected over the next few years.

First, with respect to the ambitious construction projects that have been ongoing in many of the countries that I visited, particularly Dubai, Abu Dhabi and Kuwait, practitioners seemed cautiously optimistic that existing projects would be completed. With respect to developments that have not started, these developments may be scaled back or some of them may be eliminated.

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However, as long as the price of oil in the area remains relatively strong in the near term, there should be sufficient long-term funding to service the costs of existing projects. Interestingly, I was told that at \$35 per barrel of oil, most of the oil producing countries break even, and above that, they can continue to invest in projects and businesses in their countries and around the world. Therefore at \$70 per barrel, there is still quite a bit of spending room.

Second, there is a general feeling that the legal framework for resolving disputes in the Middle East will continue to evolve, and by necessity, will become more stable and predictable over time. In order to attract outside capital, investment and businesses, practitioners in the Middle East feel that a more stable, developed and sophisticated legal system will necessarily have to emerge. They also believe that greater access to the legal system by outside practitioners will follow. If this is true, this should create significant opportunities for legal practitioners and law firms who already have a presence in these emerging markets and for those legal practitioners who have the experience and skills necessary to function in these emerging markets and deal with transnational disputes and issues. This has already happened in Dubai with respect to disputes in the financial sector that fall within the jurisdiction of the Dubai International Financial Centre (DIFC). The DIFC has its own courts that are based upon a common law system with most of the judges being former British judges. Legal practitioners, both Emirati and non-Emirati, expressed great satisfaction with the DIFC process, procedures and predictability of the results and rulings, so perhaps this is a model for development in other emerging markets.

Third, local practitioners noted that a major factor inhibiting greater expansion within these emerging markets and in the Middle East region generally is the political instability of the region. The Iraq and Afghanistan wars, terrorism, Iran's current situation, and the Palestinian/Israeli conflicts (along with other regionalized conflicts and disputes) have created a challenging environment and pose greater risk and apprehension about investing and doing business in the region. If political stability in the region can be enhanced, particularly given the potential oil revenues that the region will enjoy for many years to come, local practitioners expect much greater opportunities in the legal markets.

I believe that there is great opportunity in the Middle East for legal practitioners and international business over the years to come. However, time will tell how things will evolve and if the political environment, in particular, will continue to stabilize. I remain cautiously optimistic.

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