

# PANEL ON THE FUTURE OF INTERNATIONAL DISPUTE RESOLUTION

## **“THE FUTURE OF INTERNATIONAL DISPUTE RESOLUTION”**

### 1. Speakers

Christopher Thomas (moderator), Jean Allain, Raed Fathallah and Janet Walker.

### 2. Overview

The panel was focussed on a discussion of the evolution and the future of international dispute resolution. Over the years the principles surrounding international disputes have varied. The decisions on the international sphere have taken on a more binding effect. In addition, private parties are given the opportunity to commence proceedings against governments under international treaties and agreements.

### 3. Discussion

Jean Allain discussed the continued evolution of international adjudication. International law is finally moving towards a system based on rule of law. The trend in last 100 years could be best summarized in three stages: (i) the influence of NGOs resulting in the creation of an arbitration system under the *Hague Convention*; (ii) the establishment of an international court in the post war era (firstly as the Permanent Court of International Justice and later as the International Court of Justice); and (iii) the ‘legalization’ of international relations through development and codification of international law. Mr. Allain opined that the establishment of the United Nations has seen an explosive growth in multilateral treaties (such as the *Genocide Convention* and the *Vienna Convention on Law of Treaties*). In addition, States have moved towards an acceptance of the legitimacy and effectiveness of international courts. Some treaties even have their own dispute settlement mechanisms, such as the Law of the Sea Tribunal under the *United Nations Law of the Sea Treaty*, which gives the tribunal compulsory jurisdiction over disputes relating to the law of sea. Another key example is the binding dispute settlement mechanism under the WTO. All members of the WTO are subject to the dispute settlement mechanisms and are unable to opt out of the system.

Raed Fathallah analyzed the development of the investor-state arbitration. International commercial arbitration is a popular mechanism to resolve commercial disputes, as it is efficient, flexible and conducted by experts. The International Centre for Settlement of Investment Dispute (ICSID) was created by the World Bank to facilitate resolution of international investment disputes. The ICSID operates under the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention)*, where disputes are resolved through conciliation and arbitration. Awards are also granted pursuant to the *ICSID Convention*. Similar arbitration procedure is provided for under *NAFTA* Chapters 11 (investment) and 14 (financial services). *NAFTA* allow an investor from a member state to commence a proceeding, if the Member State is in violation of provisions under Chapter 11. The investor is allowed to commence arbitration either pursuant to the *ICSID Convention* or the *UNCITRAL Arbitration Rules*. Mr. Fathallah was of the opinion that international arbitration has