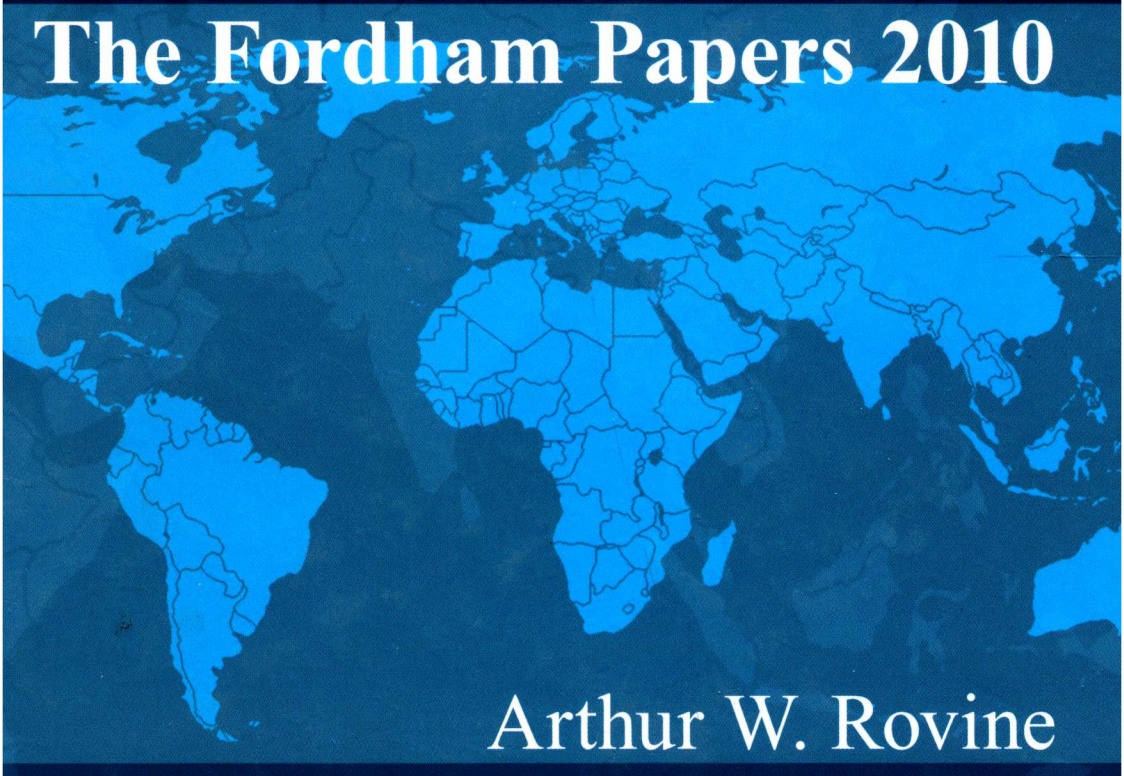
Contemporary Issues in International Arbitration and Mediation

The Fordham Papers 2010



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Contemporary Issues in International Arbitration and Mediation

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Introduction: The 2010 Revision of the UNCITRAL Arbitration Rules

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The year 2010 saw several significant developments in the world of international arbitration, including rules revisions that may have an impact on how we understand and engage in the process of international arbitration.

One of the important rules events in 2010, both commercial and investor-state, was the adoption on June 25, 2010 of the revised UNCITRAL Arbitration Rules. The revised Rules entered into force on August 15, 2010. The revision effort required four years, with twice-yearly meetings, one in Vienna at the UNCITRAL Secretariat headquarters, and one in New York at the United Nations. The Rules were initially issued in 1976 and had not been updated since. They have been used for *ad hoc* arbitrations, of course, since there is no institution to administer the Rules, used increasingly in recent years for investor-state arbitrations, most famously by the Iran-U.S. Claims Tribunal in the Hague from its inception in 1981 to the present day, in state-to-state disputes, and in commercial disputes administered by arbitral institutions. The discussion below addresses the most important of the revisions.

It should be noted at the outset that the revised Rules, in my judgment, accomplish the essential goal of making the arbitral process more fair. Whether the process will be more efficient, however, is a very different question. The answer remains to be seen. It should be noted that, as with all such rules exercises, the rules book always grows. It never gets smaller. Rules are added, or existing rules are augmented. Rarely is a rule deleted without a larger substitute. This is all done in the interest of fairness, and that interest is normally met and maintained. But inevitably the process becomes slower and more expensive. Fortunately, we have not reached in arbitration and will not reach the detail of the U.S. Federal Rules of Civil Procedure, an extraordinary example of detailed rules. Yet the international arbitration rules books continues to grow ever larger, as does the expense and length of time required to complete an arbitration. Obviously, that is not due entirely to more detailed rules. The insistence of parties in running the process as if it

were a litigation must bear the greater responsibility. But the rules are partly responsible, as a few of the matters below will demonstrate.

INTERIM MEASURES

Among the significant changes to the 1976 Rules were those made to Article 26, dealing with interim measures. The original Article 26 was straightforward. It permitted either party to request, and the tribunal to order, any interim measures it deemed necessary, including conservation of the goods forming the subject matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods. The measures might be set forth in an interim award, and security for costs of the measures might be required. Requests for interim measures addressed to a judicial authority were not (and are not under the revised Rules) deemed incompatible with, or a waiver of, the arbitration agreement.

The revised Article 26 is far more detailed, adding clarity and specific tribunal choices in ordering interim measures, and establishing several requirements for the requesting party to meet. The Article now reads quite a bit like U.S. law in this area.

Pursuant to the new Article 26, paragraph 2, the tribunal is authorized to issue interim measures, as examples, to parties to (a) maintain or restore the status quo pending the determination of the dispute, (b) take action to prevent, or refrain from taking action likely to cause current or imminent harm, or prejudice to the arbitral process, (c) provide a means of preserving assets out of which a subsequent award may be satisfied, or (d) preserve evidence that may be relevant and material to the resolution of the dispute.

Then come the requirements that requesting parties must meet. They must satisfy the tribunal that (a) harm not adequately reparable by an award of damages is likely to result if the interim measure is not ordered, and such harm substantially outweighs the harm likely to result to the party against whom the measure is directed if the measure is granted, and (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. These requirements apply to paragraph 2 (d) only to the extent the tribunal considers appropriate.

The tribunal may modify, suspend or terminate an interim measure it has granted, on its own initiative in exceptional circumstances, and may require the requesting party to provide appropriate security. The requesting party may be liable for any costs and damages caused by the measure to any party if the tribunal later determines that the measure should not have been granted in the circumstances then prevailing.

While an arbitral tribunal has always had the discretion to award interim measures of the foregoing kind and with the foregoing requirements, these changes to Article 26 could discourage or inhibit those who may wish to seek interim measures from agreeing to the revised Rules in the first place. On their face, they are far more stringent as to interim measures than the original 1976 Rules, and other institutional Rules. At the same time, arbitral tribunals will have far less discretion under the revised Rules in issuing interim measures since the requirements are now set forth with relative precision and must be met by the requesting party.

As an example of the traditional approach from other rules, the current ICDR Rule 21 on interim measures is very similar to the original 1976 UNCITRAL Rule 26. Pursuant to ICDR Rule 21, the tribunal may order whatever interim measures it deems necessary, including injunctive relief and measures for the protection or conservation of property. The tribunal may require security for the costs of such measures. A request for interim measures addressed by a party to a judicial authority is not deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. The tribunal may apportion costs associated with applications for interim relief. Nothing is said regarding conditions that must be met by the requesting party. Again, this is not to say that the tribunal, in exercising its discretion, may not impose conditions on the requesting party. But they are not mentioned in the ICDR Rules, which would appear, therefore, to have a less inhibiting effect. Similarly, the ICC and LCIA Rules say nothing about requirements that must be met by the requesting party before interim measures can be ordered.

It remains to be seen, of course, whether the new mandatory requirements for interim measures will have a constraining effect on parties considering whether or not to agree to the revised UNCITRAL Rules. Perhaps the interim measures requirements will influence institutional rules, perhaps not. Yet it seems clear that the interim measures requirements, whatever their wisdom, should be taken into account as a relevant factor in deciding whether to accept the revised Rules. In my judgment, the requirements that must be met by parties seeking interim measures add both to the fairness and the expense of the process, as well as its duration.

ARBITRATOR FEES AND EXPENSES

A further significant change in the Rules, a new Article 41, addresses fees and expenses of arbitrators. There seemed to be a strong feeling among the delegates, based primarily on anecdotal evidence, that too many arbitrators were charging far too much for their services. There was also a view that

arbitrators setting their own fees was somewhat akin to arbitrators being judges in their own cases. The conclusion was that the old provision in Article 39 was insufficient and needed real strengthening by taking away from arbitrators an unreviewed power to set their own fees.

The first requirement of the old Article 39 (1), repeated in the new Article 41 (1), was that the tribunal's fees had to be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case. Then Article 39 (2), repeated in essence in the new Article 41 (2), provided that if there were an appointing authority and if that authority had issued a schedule of fees for arbitrators in international cases which it administered, the tribunal, in fixing its fees, was to take that schedule into account to the extent it considered appropriate in the circumstances of the case.

Further, under the old Article 39 (3), if the appointing authority had not issued a schedule of fees for arbitrators in international cases, any party could at any time request the appointing authority to furnish a statement setting forth the basis for establishing fees customarily followed in international cases in which the authority appoints arbitrators. It was then provided in the old Article 39 (3) that if the appointing authority consents to provide such a statement, the tribunal in fixing its fees had to take such information into account to the extent that it considered it appropriate in the circumstances of the case. Finally, the old Article 39 (4) provided that in cases referred to in paragraphs 2 and 3, when a party so requests and the appointing authority consents to perform the function, the tribunal is to fix its fees only after consultation with the appointing authority, which may make any comment it deems appropriate to the tribunal concerning the fees.

Note in the old Article 39 the several instances of non-bindingness and discretion. *If* the appointing authority has issued a schedule of fees, the tribunal is to *take that schedule into account to the extent it considers it appropriate* in the circumstances of the case. *If* there is no schedule, any party may request a statement from the appointing authority of the basis for establishing fees, and *if* the appointing authority consents to provide such a statement, the tribunal is to *take the information into account to the extent that it considers it appropriate* in the circumstances of the case. *If* a party so requests, *and the appointing authority consents to perform the function*, the tribunal is to fix its fees only after *consultation* with the appointing authority, which *may* make *any comment* to the tribunal it deems appropriate concerning the case. There is no legal compulsion. No schedule of fees need be issued, and at most any schedule has to be taken into account to the extent considered appropriate. And if the appointing authority consents, there is to be consultation between the appointing authority and the tribunal. Nevertheless, the appointing authority has an important role, albeit one of persuasion, in

its interactions with the arbitrators. Over the years since 1976, that role has appeared to be strong enough to prevent abuse.

It might be thought that a process of this kind would be sufficient to maintain arbitrators' fees at a reasonable level, and I so argued, but to no avail. Quite apparently, the delegates to the UNCITRAL sessions revising the Rules didn't think the old Article 39 was adequate to the task of preventing abuse. And so the new Article 41 is very different. To be sure, under Article 41 (2), a tribunal acting under the revised Rules, in fixing its fees, need only take into account any schedule issued by the appointing authority, if there is one, to the extent considered appropriate. But then the approaches diverge sharply.

Under Article 41 (3), promptly after its constitution, the tribunal is to inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Then within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If within 45 days of receipt of the referral, the appointing authority finds that the tribunal's proposal is inconsistent with Article 41 (1), *i.e.*, the fees and expenses are not reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances, then the appointing authority is to "make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal."

Article 41 (4) takes the matter further still, moving from tribunal proposals to tribunal determinations of fees and expenses. Article 41 (4) (a) provides that when informing the parties of the arbitrators' fees and expenses that have been fixed in the final award pursuant to Article 40, the tribunal must explain the manner in which the amounts were calculated. Then within 15 days of receiving the tribunal's determination of fees and expenses, any party may refer for review by the appointing authority such determination. If there is no appointing authority, the review is to be made by the Secretary-General of the PCA.

If the appointing authority or the Secretary-General of the PCA finds that the tribunal's determination is inconsistent with the tribunal's proposal (and any adjustment thereto), or is otherwise "manifestly excessive," then within 45 days of receiving the referral, the appointing authority may make any adjustments to the tribunal's determination that are necessary to satisfy the criteria in paragraph 1 and any such adjustments are binding upon the tribunal. The adjustments are to be included by the tribunal in its award, or if the award has already been issued, are to be implemented in a correction to the award. To avoid delay, Article 41 (5) provides that throughout the procedure under paragraphs 3 and 4, the tribunal is to proceed with the arbitration.

Perhaps UNCITRAL felt it could not be seen as doing nothing in response to the perceived problem of egregiously high fees, though I believe the problem

is not all that common. Perhaps rare would be the more accurate term. Yet there certainly was a strongly-held view among the delegates that arbitrator fees and expenses, both proposed and determined, should be reviewed by an appointing authority with the power of binding decision. My own view is that implementation may be difficult in some, but not many instances. Some arbitrators will feel uncomfortable arbitrating a case for a two-month period while their proposed fees are being decided by the appointing authority. And they may feel more uncomfortable yet when the case has been fully decided and the appointing authority is obliged to reach a decision as to actual fees and expenses. With regard to both proposed and determined fees, a party first has to refer the matter to the appointing authority, and I don't believe this is likely to occur frequently.

It may well be the case that younger arbitrators wishing to build a career as arbitrators will not be dismayed by loss of control over their proposed or determined fees. More senior arbitrators may be unhappy with this approach. They may feel there is something unseemly about a process that indicates a perception of mistrust and lack of faith in the ultimate reasonableness of arbitrator fees. Most arbitrators are reasonable people, and most charge reasonable fees. Most appointing authorities are also reasonable, and even if not expert in what arbitrators typically charge for their work, are not likely to find frequently that the arbitrators' fees are unreasonable or manifestly excessive. It will be instructive to see whether the new UNCITRAL rules on fees and expenses are adopted by others. But again, the revised rule allows for greater fairness, and virtually invites greater expense. The hope is that the invitation will not be accepted too readily.

POSSIBLE WAIVER STATEMENT

One of the less fortunate additions, in my judgment, was a "possible waiver statement" set forth in an Annex to the Rules. It reads in its entirety as follows:

> *Note—if the parties wish to exclude recourse against the arbitral award that may be available under the applicable law, they may consider adding a provision to that effect as suggested below, considering, however, that the effectiveness and conditions of such an exclusion depend on the applicable law.*
>
> Waiver: The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.

The first clause of the Note strikes me as propounding an unwarranted assumption. The Note refers to parties who "wish to exclude recourse against the arbitral award that may be available under the applicable law...." (Underscoring added.) The unwarranted assumption is in the phrase "may be available." There is always recourse against an arbitral award under the New York Convention simply by testing in court whether the award is enforceable. Obviously, recognition and enforcement of the award may be refused pursuant to Article V of the Convention, though the grounds for such refusal are limited. Nevertheless, it is not a matter of recourse that *may* be available. Recourse *is* available.

Article V (e) of the Convention further provides that recognition and enforcement of an award may be refused, "at the request of the party against whom it is invoked" if that party furnishes proof that the award has "not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made." Many countries have grounds for setting aside awards which go beyond the limited grounds of the UNCITRAL Model Law. And even the Model Law, to which 67 countries are party, lists the same limited grounds for set-asides as the grounds for refusal to enforce under the Convention. So putting together the Convention, the Model Law, national legislation, there is necessarily a right of recourse against an award. Recognizing set-asides in countries not party to the New York Convention is the great gap in the Convention.

A further problem with the waiver statement is its possible unenforceability under domestic law. Under U.S. law, for example, it is not possible to enforce an agreement that requires the parties to such agreement to waive all rights of recourse to any court no matter how badly one or both parties have been treated by the arbitral tribunal. The savings clause in the waiver statement—"insofar as such waiver can validly be made under the applicable law"—might appear to answer this objection. But the problem is that litigation would be required to test the proposition that the waiver is or is not enforceable, that it can or cannot be enforced. The time, energy and expense of such litigation are hardly worth a test of a proposition that is not worth much to begin with, though it may be meaningful to the losing party in the arbitration.

Still further, parties are most unlikely to enter into such a waiver statement. Why should they waive any recourse to any court when they cannot know with precision what they may be waiving? The contours of all the grounds for set aside under various national laws, including those of the United States, and even for refusal to enforce, cannot be known in advance with exactitude. There would seem to be little benefit in chancing a waiver of unknown content. Too much may be given away. It has been argued that you waive whatever it is you can waive under the applicable law. For example, one could waive the ground of inability to make one's case before the

arbitrators. But why should anyone do that? What is the advantage? In my view, there is none.

The waiver approach does make the arbitral award the last word on any dispute that goes to arbitration. That could be a very good thing if the arbitral and judicial systems of dispute settlement were truly parallel. But they're not. Since arbitration has no regularized system of appeals, as does litigation, and since the grounds of refusal of enforcement and set aside are so limited in arbitration, it is asking a lot of parties in arbitration to waive any recourse to any court.

Perhaps most disturbing and puzzling is that the possible waiver statement makes no mention whatever of the New York Convention, the UNCITRAL Model Law, or the right of set-aside under applicable law in many jurisdictions. Indeed, the Convention, the Model Law, and set aside laws are not mentioned anywhere in the revised Rules. Surely it could have been said in the possible waiver statement that the parties waive any form of recourse consistently with the Convention, the Model Law, and any applicable set aside laws. But none of these are mentioned. At the sessions revising the Rules, they became a kind of taboo. No one I talked to was willing even to mention them. Why not?

Perhaps it was felt that references to the Convention, or the Model Law or set aside provisions would weaken the obligation in Article 34 (2) of the revised Rules which provides that "The parties shall carry out all awards without delay." Of course, if that clause were taken literally there would be no meaningful right to resist enforcement under the New York Convention and no right to move for a set aside under the Model Law or other applicable law. Yet it was generally agreed, with no one arguing otherwise, that Article 34 (2) does not prevent parties from resisting enforcement under the Convention, or seeking annulment under the Model Law, or pursuant to other national legislation. So why not say so? I also heard the view expressed in conversation outside one of the UNCITRAL sessions that it was an act of bad faith not to comply at once with an award and to compel the winning party to start enforcement proceedings under the Convention. I don't think reliance on the Convention can be an act of bad faith.

The question is necessarily raised as to what exactly parties are waiving if they do agree to the waiver statement. As noted, one might say that they are waiving whatever they can waive, consistently with applicable law. But what does that mean? Review of awards for errors of fact determinations? Review of awards for legal errors? Perhaps one or the other or both, but there was no consensus on the matter at the UNCITRAL sessions. And so we are left with a confusing and misleading possible waiver statement.

In my judgment, the best that can be said of the possible waiver statement is that it comes in an Annex to the revised Rules, is clearly not legally

binding, and the text contains no positive recommendation in its favor. My estimate is that, for the most part, the possible waiver statement will remain a dead letter. If I were advising a client on this matter, I would say that agreeing to the waiver statement comes too close to asking for trouble, and no such agreement should be entered into.

THE AWARD

The old Article 32 of the Rules provided in Article 32 (1) that in addition to making final awards, the tribunal is entitled to make interim, interlocutory, or partial awards. In the new Article 34 (1), those categories are gone, and instead it is provided that the tribunal may make separate awards on different issues at different times. This is an improvement, derived from the LCIA Rules. The categories of awards approach caused some confusion and served no particularly useful purpose. All awards are final and binding.

Under the old Article 32 (2) "The parties undertake to carry out the award without delay." Pursuant to the new Article 34 (2), parties "shall" carry out all awards without delay. This change was made primarily as a result of the U.S. Supreme Court decision in *Medellin v. Texas,* 552 U.S. 1, in the context of the UN Consular Convention. The Court cited Article 94 (1) of the U.N. Charter, which provides that "[e]ach Member of the United Nations undertakes to comply with the decision of the [ICJ] in any case to which it is a party" and held, *inter alia,* that "undertakes to comply" is non-self-executing and does not create enforceable law in the United States. It is doubtful that a losing party in a case governed by the UNCITRAL Rules could successfully avoid enforcement in a U.S. court on the basis of the old "undertake to comply" language. But the argument would likely be made, and perhaps in other countries as well. Rather than spend the time, effort and money litigating the issue, it was far easier to change "undertake" to "shall."

It was argued by some (outside of the UNCITRAL sessions) that "undertake" is actually stronger than "shall." But that position was not taken by anyone within the hall. In addition, the old Article 32 (2) and the new Article 34 (2) are filled with "shalls." It seemed sensible to correct the inconsistency.

JOINDER AND MULTIPLE PARTIES

Provision is now expressly made for joinder of additional parties who are party to the same arbitration agreement. Pursuant to Article 17 (5), the tribunal may, at the request of any party, order joinder of one or more third

persons provided such person is a party to the arbitration agreement and unless the tribunal determines that joinder should not be permitted because of prejudice to any of the parties. The tribunal may make a single award or several awards in the case. There is no provision in the revised Rules specifically addressing the question of non-signatories.

Article 10 addresses the question of arbitrator appointment where there are multiple parties. Where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment, the multiple parties jointly, whether as claimant or as respondent, appoint an arbitrator. If the number of arbitrators is other than one or three, the arbitrators are appointed in accordance with the method agreed to by the parties.

NOTICES

Pursuant to Article 2 (1), notices of any kind may be transmitted by any means of communication "that provides or allows for a record of its transmission." Electronic service of notices is permitted, provided the parties have specifically agreed to this in advance. There are now more detailed provisions regarding receipt of notices.

OTHER PROVISIONS

Exclusion of liability—The revised rules provide that, except for intentional wrongdoing, the parties waive to the fullest extent permitted under the applicable law, claims against the arbitrators, the appointing authority and any person appointed by the tribunal for acts or omissions.

Experts appointed by the tribunal—new provisions provide the opportunity for parties to object to an expert appointed by the tribunal.

Appointment of the arbitral tribunal and the appointing authority—new rules provide for agreement on an appointing authority if this has not been provided for in the arbitration agreement.

Avoidance of delay—a new provision in Article 17 (1) stipulates that the tribunal, in exercising its discetion, is to conduct the proceedings "so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute." This sounds routine and not controversial, but the provision brings the UNCITRAL Rules into line with many institutional rules that contain similar provisions, and is designed to address the all-too-common problem of tribunals allowing parties to delay the outcome of the case.

In sum, the revised Rules are an improvement. The 1976 Rules have now been modernized, and apart from modernization, the revised Rules would appear to establish a fairer approach to the process than previously, certainly with regard to interim measures, joinder, multiple parties and arbitrators' fees. At the same time, as noted, it must be said that in view of the changes, the UNCITRAL process is likely to be not only more fair, but more expensive and slower as well.

To date, the international community engaged in international arbitration has accepted this tradeoff. Indeed, the various sets of rules strongly resemble each other in most respects, even with certain differences of approach. As I noted in the 2009 volume of these papers, there is a process of convergence in international arbitration, particularly in procedure. To this the 2010 revisions to the UNCITRAL Arbitration Rules bear witness.

Contributors

Arthur W. Rovine has been serving as an arbitrator in international cases under NAFTA, ICSID and ICDR since his retirement from the law firm of Baker & McKenzie as of July 1, 2005. He is also the Director of the International Arbitrationand Mediation Conference at Fordham Law School, Editor of *Contemporary Issues in International Arbitration: The Fordham Papers,*and Adjunct Professor of Law at Fordham Law School. Mr. Rovine is also the current Chairman of the International Law Committee of the Association of the Bar of the City of New York, a Fellow of the American Bar Foundation, and a member of the College of Commercial Arbitrators.

Mr. Rovine was President of the American Society of International Law (2000-2002) and the Chairman of the International Law Section of the American Bar Association (1985-1986). He was also a member of the Board of Editors of the *American Journal of International Law* (1977-1987), and has been a member of the Council on Foreign Relations since 1987.

After joining Baker & McKenzie in 1983, Mr. Rovine represented many major clients in international arbitrations, including a large number of investor/state cases at the Iran-U.S. Claims Tribunal in The Hague and the UN Compensation Commission in Geneva. He has also had cases before the International Chamber of Commerce in Paris, the American Arbitration Association in New York, the Stockholm Institute, ad hoc arbitrations, and international litigations in U.S. Federal Courts. Mr. Rovine handled many claims for and against governments, including investment disputes with Iran and Iraq, and representation of the Government of Egypt in a major case against Iraq at the UN Compensation Commission.

Mr. Rovine's arbitration and litigation private sector clients included Rockwell International, General Dynamics, Fluor Corporation, Deloitte Touche Tohmatsu International, Touche Ross International, Combustion Engineering, John Brown Engineering, Nuclear Electric Insurance, Singer, and many others.

Prior to joining Baker & McKenzie in 1983, Mr. Rovine served in the Office of the Legal Adviser in the U.S. Department of State from 1972 to 1983. He established the *Digest of United States Practice in International Law* (1972-1974), and was then named Assistant Legal Adviser for Treaty Affairs (1975-1981). In that capacity he was responsible for the international law, constitutional law, and U.S. foreign relations law issues involved in many

treaties, agreements, and legislation, including the Algiers Accords with Iran, the termination of the Mutual Defense Treaty with Taiwan, the Taiwan Relations Act, the Panama Canal Treaties, the Egypt-Israel Peace Treaty, several human rights treaties, succession of states with respect to treaties, and the President's treaty powers. Mr. Rovine was then appointed the first United States Agent to the Iran-U.S. Claims Tribunal in The Hague from 1981 to 1983. In that capacity, and working with the Iranian Agent, European arbitrators and the Dutch Government, he helped establish the Tribunal, adapt the UNCITRAL Rules for the Tribunal, and helped developTribunal administrative procedures, privileges and immunities, payment mechanisms, etc. Mr. Rovine then argued cases at the Tribunal on behalf of the U.S. Government.

Prior to his government service, Mr. Rovine served as Counsel at the International Court of Justice in the *South-West Africa Cases* against South Africa (representing Ethiopia and Liberia) and in the *Namibia Advisory Opinion* (representing the International League for the Rights of Man as *amicus curiae*). Both of these cases involved apartheid issues and practices in South Africa.

John M. Barkett is a partner at the law firm of Shook, Hardy & Bacon L.L.P. in its Miami office. He is a graduate of the University of Notre Dame (B.A. Government, 1972, *summa cum laude*) and the Yale Law School (J.D. 1975) and served as a law clerk to the Honorable David W. Dyer on the old Fifth Circuit Court of Appeals. Mr. Barkett is an adjunct professor of law at the University of Miami Law School.

Mr. Barkett has, over the years, been a commercial litigator (contract and corporate disputes, employment, trademark, and antitrust), environmental litigator (CERCLA, RCRA, and toxic tort), and, for the past several years, a peacemaker and problem solver, serving as an arbitrator, mediator, facilitator, or allocator in a variety of environmental, commercial, or reinsurance contexts. He is a certified mediator under the rules of the Supreme Court of Florida and the Southern and Middle Districts of Florida and a member of the LCIA, and serves on the AAA and ICDR roster of neutrals, the CPR Institute for Dispute Resolution's "Panel of Distinguished Neutrals," and the National Roster of Environmental Dispute Resolution and Consensus Building Professionals maintained by the U.S. Institute for Environmental Conflict Resolution. Over the past 15 years, he has served or is serving as a neutral in matters where he has addressed or is addressing thousands of claims involving in the aggregate more than $1.7 billion. He has conducted or is conducting commercial domestic and international arbitrations under AAA, LCIA, UNCITRAL, and CPR rules. In November 2003, he was appointed by the presiding judge to serve as the Special Master to oversee