

Update on Restatement Project

Kluwer Arbitration Blog

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George Bermann, the ALI Reporter for the Restatement (Third) on the U.S. Law of International Commercial Arbitration, presented a wonderful summary of the current progress on the Restatement at the ASIL annual meeting last week. Here are a few key thoughts from my notes.

The Restatement is in its early stages and it could take between eight and twelve years to complete the project.

The Reporters are unusually transparent in presenting their progress to stakeholders. This is consistent with the intense interest in the project by the international arbitration bar.

The project is scheduled to have six chapters, and thus far the reporters have focused on the fifth chapter dealing with recognition and enforcement of awards. One of the most vexing issues the reporters have wrestled with in this context is the law governing the treatment of non-Convention awards. Competing views include state law, federal common law, and Chapter 1 of the FAA.

The next draft of the fifth chapter is scheduled for completion in May 2009. After completing a draft of the fifth chapter, the reporters will turn to the fourth chapter on vacatur and set aside.

This Restatement project is unusual in that many subjects reoccur at different stages in the process. The placement of subjects within the Restatement chapters is difficult and the reporters will place subjects in the Restatement based on their

“center of gravity.”

The reporters are attempting to be as comprehensive as possible, addressing subjects that may not be frequent subjects in practice.

One unsettled question is how much detail should be included in the third chapter on the arbitral proceedings. The orthodox view of restatements is that they are primarily intended for use by U.S. courts. If this is so, then details regarding the arbitral proceeding should be focused on subjects that are germane to court supervision of the arbitral process.

Another unsettled question is whether the Restatement should include any discussion of U.S. court assistance of foreign arbitral proceedings. No decisions have been made on the appropriate subjects for discussion of this topic.

The reporters intend to include a chapter on investment arbitration, but the details of that chapter are undefined.

Further details are available [here](#). George Bermann (Columbia) is the Reporter for the project and the Associate Reporters are Jack Coe (Pepperdine), Catherine Rogers (Penn State) and Chris Drahozal (Kansas).

Prof. Roger Alford