

## Andrea J. Menaker



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### Expertise

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### Awards

[White & Case Ranked Top Firm in World Bank Investment Arbitration](#)

[Carolyn Lamm, Andrea Menaker, Abby Cohen Smutny Named in Benchmark's Top 250 Women in Litigation Guide](#)

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### Practice Experience

Andrea J. Menaker serves as counsel in complex international arbitration cases involving contentious political issues. She has extensive experience in matters involving treaty-based claims, international investment protections, public international law, sovereign immunity, and the enforcement of foreign arbitral awards. Ms. Menaker has represented both claimant investors and respondent States in arbitrations before the International Centre for Settlement of Investment Disputes (ICSID) and its Additional Facility, the International Chamber of Commerce (ICC) and other arbitral institutions, as well as in ad hoc arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Ms. Menaker has been described in leading guides to the profession as "spectacular" and "tremendously skilled and highly effective," and is ranked by Global Arbitration Review as one of the top 45 international arbitration practitioners worldwide under the age of 45. She is frequently called upon to speak on international arbitration and investor-state dispute resolution issues. She received a White & Case Pro Bono Award for conducting a workshop in conjunction with the UNRCC on State-to-State dispute resolution procedures for Central Asian States in connection with a potential future waters treaty and preparing comparative law analyses for the Government of Nepal in connection with its drafting of a new constitution. She has served as an adjunct professor at Georgetown University Law Center, where she taught international commercial arbitration for several years, and has lectured at several other universities.

Prior to joining White & Case, Ms. Menaker was Chief of the NAFTA Arbitration Division for the US State Department where she represented the United States in investor-State arbitrations under the investment chapter of the North American Free Trade Agreement (NAFTA), and participated in the drafting of investment and dispute resolution provisions in United States' bilateral investment treaties and investment chapters of free trade agreements.

Ms. Menaker has served as counsel in numerous significant international arbitrations and related proceedings including:

- Representing the Republic of Uzbekistan in an ICSID arbitration, *Federal Elektrik Yatirim ve Ticaret A.Ş. and others v. Republic of Uzbekistan*, brought under the Turkey-Uzbekistan BIT, the ECT, and the Respondent's Foreign Investment Law in relation to a gas dispute.
- Representing OTMTI in an ICSID Arbitration, *Orascom TMT Investments S.à r.l. v. People's Democratic Republic of Algeria*, brought under the Belgo-Luxembourg-Algeria BIT, in a dispute arising out of an investment in the telecommunications industry.
- Representing the Republic of Uzbekistan in an ICSID arbitration, *Vladislav Kim and others v. Republic of Uzbekistan*, in a dispute arising out of an investment in the cement industry.
- Representing the Republic of Peru in an UNCITRAL arbitration, *The Renco Group, Inc. v. The Republic of Peru*, brought under the U.S.-Peru FTA in a dispute concerning a mining complex.
- Representing the Republic of Uzbekistan in an UNCITRAL arbitration, *Oxus Gold PLC v Republic of Uzbekistan*, arising under the UK – Uzbekistan BIT in a dispute concerning gold and silver mining.
- Representing the Republic of the Philippines in an ICSID resubmitted proceeding, *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines*, in a dispute concerning an airport terminal.
- Representing a U.S. electricity company in an ICSID proceeding and an annulment proceeding *TECO Guatemala Holdings, LLC v. Guatemala*, under

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### Publications

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- the DR-CAFTA arising out of its investment in an electricity distribution company.
- Representing the Republic of Uzbekistan in an ICSID arbitration, *Metal Tech, Ltd. v. Republic of Uzbekistan*, involving claims arising out of a joint venture engaged in mineral processing.
  - Representing thousands of Italian holders of Argentine sovereign bonds in an ICSID arbitration, *Abaclat and others v. The Argentine Republic*.
  - Representing JSC BTA Bank in an UNCITRAL arbitration *JSC BTA Bank v. The Kyrgyz Republic*, brought under the Kazakhstan-Kyrgyzstan BIT in a dispute arising out of an investment in a bank.
  - Represented an Asian football club in a claim filed by a South American coach before the Court of Arbitration for Sport.
  - Represented the Government of the Republic of the Philippines in an ICSID annulment proceeding, *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines*, to defend against annulment of an award dismissing all claims against the Republic in a dispute arising under the German-Philippines bilateral investment treaty relating to investments in a company granted a concession to construct and operate a passenger airport in Manila.
  - Represented the Government of the Republic of the Philippines in an ICC arbitration, *Philippine International Air Terminals Co., Inc. v. Republic of the Philippines*, involving claims of more than US\$1 billion arising out of a concession contract to construct and operate an airport terminal. All claims were dismissed.
  - Represented the Republic of Uzbekistan and OziqOvqatSanoat in a Vienna Centre Arbitration, *Roz Trading Ltd. v. Coca-Cola Export Corp., Republic of Uzbekistan and OziqOvqatSanoat*, in a dispute arising out of a joint venture agreement to bottle and distribute Coca-Cola products.
  - Represented the United States in a NAFTA Chapter Eleven/UNCITRAL arbitration, *Methanex Corp. v. United States of America*, involving claims totaling more than US\$970 million in a dispute challenging California's regulations banning the use of a gasoline additive. All claims were dismissed and the United States was awarded more than US\$3 million in costs and fees.
  - Represented the United States in the first claims under NAFTA Chapter Eleven to be successfully consolidated, *In re Consolidated Softwood Lumber Proceedings*, brought by three Canadian softwood lumber companies seeking more than US\$500 million in a dispute involving challenges to United States antidumping and countervailing duties imposed on Canadian softwood lumber and the Byrd Amendment. All of the claims were dismissed or withdrawn and the United States recovered costs and fees against one of the claimants.
  - Represented the United States in a NAFTA Chapter Eleven/UNCITRAL arbitration, *In re NAFTA Chapter Eleven/UNCITRAL Cattle Cases*, involving claims from more than 100 claimants for approximately US\$235 million in a dispute challenging the United States' closure of the border to imports of Canadian cattle following the discovery of a case of mad cow disease in a Canadian cow. All claims were dismissed.
  - Represented the United States in a NAFTA Chapter Eleven/UNCITRAL arbitration, *Glamis Gold Ltd. v. United States of America*, involving claims of US\$50 million arising out of a dispute concerning federal and state actions taken with respect to claimant's mining claims. All claims were dismissed and the United States was awarded two-thirds of its arbitration costs.
  - Represented the United States through the jurisdictional phase in a NAFTA Chapter Eleven/UNCITRAL arbitration, *Grand River Enterprises Six Nations, Ltd. et al. v. United States of America*, involving claims of more than US\$660 million arising out of a dispute concerning action taken in connection with the 1998 Master Settlement Agreement between various state attorneys general and the major tobacco companies. Significant portions of the claim were dismissed for lack of jurisdiction.
  - Represented the United States in a NAFTA Chapter Eleven/ICSID Additional Facility arbitration, *ADF Group, Inc. v. United States of America*, involving claims for US\$90 million arising out of a dispute concerning federally-funded state highway procurement practices. All claims were dismissed.
  - Represented the United States in a NAFTA Chapter Eleven/ICSID Additional Facility arbitration, *The Loewen Group, Inc. et al. v. United States of America*, involving claims of US\$725 million arising out of a dispute concerning litigation in Mississippi state courts. All claims were dismissed.
  - Represented the United States in a NAFTA Chapter Eleven/ICSID Additional Facility arbitration, *Mondev Int'l Ltd. v. United States of America*, involving claims for US\$50 million arising out of a dispute concerning litigation in Massachusetts state courts. All claims were dismissed.
  - Represented the United States in arbitration, *United States of America v. India*, arising under the Investment Incentive Agreement between the two nations for losses sustained by U.S. investors and lenders to an energy

project. The case was settled on favorable terms.

- Represented the United States in several arbitrations under NAFTA Chapter Eleven to which the Governments of Canada and Mexico were parties, such as *S.D. Myers Inc. v. Canada*, *Pope & Talbot v. Canada*, *UPS, Inc. v. Canada*, *Fireman's Fund Ins. Co. v. United Mexican States*, *GAMI Investments, Inc. v. United Mexican States*, *Marvin Roy Feldman Karpa v. United Mexican States*, *International Thunderbird Gaming Corp. v. United Mexican States*, and *Bayview Irrigation District, et al. v. United Mexican States*, where the United States invoked its right to make submissions on issues of treaty interpretation.
- Represented the United States in successfully defending against several motions filed by Tembec Inc. and its affiliates to set aside various orders and awards rendered by a NAFTA Chapter Eleven tribunal.
- Represented the United States in successfully defending against a motion to set aside the award dismissing Raymond Loewen's claims under NAFTA Chapter Eleven.
- Represented the United States in responding to applications under 28 U.S.C. § 1782 for evidence filed by a claimant pursuing a claim under NAFTA Chapter Eleven.

#### **Bars and Courts**

New York State Bar  
District of Columbia Bar

#### **Clerkships**

The Hon. Sidney H. Stein, United States District Court for the Southern District of New York

#### **Education**

JD, University of Washington School of Law, High Honors, Order of the Coif, Co-Editor-in-Chief, *Law Review*, Moot Court Honor Board, Order of the Barristers  
BS, Georgetown University, magna cum laude

#### **Professional Associations and Memberships**

American Law Institute, Elected Member  
American Society of International Law, Executive Council Member  
American Society of International Law, Dispute Resolution Interest Group, Co-Chair (2008-2012)  
American Society of International Law 2013 and 2009 Annual Meeting Planning Committee  
American Branch of the International Law Association  
Arbitration Institute of the Stockholm Chamber of Commerce, Member of the Board of Directors (2015-2018)  
ASIL-ABILA Joint Study Panel on International Commercial Arbitration  
British Institute of International & Comparative Law, Consultative Forum Member  
International Council for Commercial Arbitration, Chair of Programme Committee for 2016 Congress (Mauritius)  
International Law Institute, Advisory Board Member for Alternative Dispute Resolution Center  
UNCTAD, Investment Experts Group

#### **Awards and Recognition**

*Chambers Global*, Public International Law  
*Global Arbitration Review* "45 Under 45" (list of the 45 leading global international arbitration practitioners under 45 years of age)  
*The Best Lawyers In America*: International Arbitration-Commercial & International Arbitration- Governmental  
*International Who's Who of Commercial Arbitration*  
*Benchmark Litigation*: DC Local Star and International Arbitration National Star  
*Top 250 Women in Litigation, Benchmark Litigation*  
*Expert Guides*: Expert Commercial Arbitration and Women in Business Law (Commercial Arbitration) Leading Practitioner  
*Latin Lawyer*  
White & Case 2011 Pro Bono Award

#### **Publications**

- "The Effects of Regime Change and State Succession on Contractual and International Legal Obligations," *Proceedings of the Sixty-third Annual Institute on Oil & Gas Law* (IEL, CAIL) 2012
- "Courts Of Other Economic Communities: NAFTA," *The Rules, Practice, and Jurisprudence of International Courts and Tribunals* (Martinus Nijhoff) 2012 (with Brody Greenwald)
- "Rethinking the Negotiation of Investment Treaties," *The Mauritius International Arbitration Conference 2010: Flaws and Presumptions: Rethinking Arbitration law and Practice in a new Arbitral Seat* (Mauritius Gov't printing, PCA, ed.) 2011

- "The Determinative Impact of Fraud and Corruption on Investment Arbitrations," 25 *ICSID For. Inv. L.J.* 67, Spring 2010
- "US Model Bilateral Investment Treaty (2004)," *World Arbitration Reporter* (2nd ed.) 2010 (with Nicole Thornton)
- "Piercing the Veil of Confidentiality: The Recent Trend Towards Greater Public Participation and Transparency in Investor-State Arbitration," *Arbitration Under International Investment Agreements: A Guide to the Key Issues* (Oxford Press) 2010
- "What the Explosion of Investor-State Arbitrations May Portend for the Future of BITs," *The Future of Investment Arbitration* (ITA-ASIL, Oxford Press) 2009
- "Treatment of Non-Disputing State Party Views in Investor-State Arbitrations," *Contemporary Issues in International Arbitration and Mediation: The Fordham Papers*, Vol. 2, 2008
- "The Energy Charter Treaty and US Investment Treaties: An Overview of Key Contrasts," *Investment Protection and the Energy Charter Treaty*, 2008 (with Heather Walsh)
- "The Enduring Relevance of Iran-US Claims Jurisprudence in Investor-State Arbitration," *The Iran-US Claims Tribunal at 25: The Cases Everyone Needs To Know for Investor-State and International Arbitration*, 2007
- "Benefiting From Experience: Developments in the United States' Most Recent Investment Agreements," *UC Davis Journal of International Law & Policy*, Vol. 21, No. 1, 121, Fall 2005
- "Standards of Treatment: National Treatment, Most Favored Nation Treatment and Minimum Standards of Treatment," APEC Workshop on Bilateral and Regional Investment Rules and Agreements, Ministry of Economy, Mexico, for the APEC Secretariat, 2002
- "The Shareholder Proposal Process," *A Practical Guide to SEC Proxy and Compensation Rules*, 2d ed, 1998 Supplement (with Linda C. Quinn)
- "Shareholder Proposal Reform Redux," *Insights: The Corporate and Securities Law Advisor*, Page 19, December 1997 (with Linda C. Quinn)
- "The Shareholder Proposal Process," *A Practical Guide to SEC Proxy and Compensation Rules*, 2d ed, 1997 Supplement (with Linda C. Quinn)
- "Burdening the Plaintiff: Proving Employment Discrimination After *Kastanis v. Educational Employees Credit Union*," *Washington Law Review*, Vol. 70, Page 260, 1994-1995

#### Speaking Engagements

- "The Burden and Standard of Proof for Corruption in International Arbitration," ICC Institute Annual Meeting, Paris, Nov. 2014
- "International Arbitration and the Rule of Law," International Law Weekend, New York, Oct. 2014
- "Investment Arbitration of Natural Resource Disputes in Africa," ABA Int'l Section Spring Meeting, New York, Apr. 2014
- "The Objective Nature of Legitimate Expectations," BIICL Investment Treaty Forum, Paris, Mar. 2014
- "Sovereign Crises: The Relevance of P.R.I.M.E. Finance in Financial Services Disputes Under FTAs and BITs," P.R.I.M.E. Finance Annual Conference, The Hague, January 2014
- Lectures and workshops on investor-State arbitration, Singapore International Arbitration Academy, Singapore, Nov. 2013
- "The Current State of Transparency in Investment Arbitration," IBA Annual Conference, Boston, Oct. 2013
- "Confidential and Restricted Information in International Arbitration in the investor-State context," ASA (Association Suisse de l'Arbitrage) Conference, Bern, Switzerland, Oct. 2013
- "Dispute Resolution," Inter-American Development Bank Ministerial Meeting on Electricity Integration in MesoAmerica, Washington, DC, June 2013
- "The Fair and Equitable Treatment Debate: More Theoretical Than Practical?," Vale Columbia Center on Sustainable Int'l Investment, New York, February 2013
- "Discovery & Privilege in Global Disputes: Navigating Issues of Jurisdiction, Ethics, and Choice of Law," American Bar Association Section of International Law, Fall Meeting, Miami, October 2012
- "The Future of ICSID, Ad Hoc Committees, Appellate Tribunals, and Investment Arbitration," 21st ICCA Conference, Singapore, June 2012
- "Investment, Trade, Health & Environment: Is NAFTA/CAFTA More Than A Trade Agreement?," Juris Conferences, Washington, DC, March 2012
- "State Succession and Regime Change and Their Effects on Contractual and International Legal Obligations," Institute for Energy Law, 63rd Annual Oil &

- Gas Law Conference, Houston, February 2012
- "BITs Going Forward: What Needs to Be Changed?," Czech Republic Ministry of Finance Investment Treaty Arbitration Conference, Prague, October 2011
  - Women in Power: International Arbitration, Women's Bar Association, Washington, DC, October 2011
  - "Overview of US Negotiating Process for BITs and FTAs," Presentation for the Iraq Shura Council, Washington, DC, July 2011
  - "The Nuts and Bolts of an ICSID Arbitration," American Bar Association Section of International Law, Spring Meeting, Washington, DC, April 2011
  - "Is ICSID Losing Its Appeal . . . Again?," Moderator, ASIL Annual Meeting, Washington, DC, March 2011
  - "The Future of Investment Disputes," CPR Annual Meeting, New York, January 2011
  - "Rethinking the Negotiation of Investment Treaties," A Joint Conference of the Government of Mauritius, UNCITRAL, PCA, ICSID, ICC, ICCA and LCIA, Mauritius, December 2010
  - "International Investment Arbitration Procedure Roundtable," ABA Section of International Law Spring Meeting, New York, April 2010
  - "NAFTA and CAFTA Arbitration Roundtable," American University Washington College of Law, Washington, DC, February 2010
  - "How Tribunals Should Deal with Corruption," Centre for International Law & the National University of Singapore, Singapore, January 2010
  - "The United States' Experience and what it Portends for the Future of BITs," BICL Investment Treaty Forum, Investment Treaties at 50, London, May 2009
  - "Evidence Issues in Arbitration with States," PCA & UT Law School, The Hague, May 2009
  - "Is There a Place for Margins of Appreciation & Standards of Review in Applying International Investment Standards," 3rd Annual Investment Treaty Arbitration Conference, Juris Conferences, Washington, DC, April 2009
  - "When Is Environmental Protection a Taking under International Law," ABA Spring Meeting, Washington, DC, April 2009
  - "What Happens if the United States Loses an Investor-State Arbitration," DC Bar, Washington, DC, April 2009
  - "Practicing International Arbitration," Presentation to Global Scholars' Program at Georgetown University Law Center, Washington, DC, March 2009
  - "Women in International Arbitration," ASIL, ABA Section of International Law & Arbitral Women, Washington, DC, March 2009
  - "Interim Measures of Protection, Fifth Annual Seminar on International Commercial Arbitration," American University Washington College of Law, Washington, DC October 29, 2008
  - "Trends and Recent Developments in Latin America Investor-State Disputes," Juris Conference on Managing Business Disputes and Legal Risk in Latin America, Miami, October 23, 2008
  - "The Practice and Impact of Non-Disputing State Party Intervention in Investor-State Arbitration," Third Annual Conference on International Arbitration & Mediation, Fordham Law School, New York, June 16, 2008
  - "Expropriation Damages and Discrete Damage Problems," Remedies in Commercial, Investment & Energy Arbitrations Conference, Houston, Texas, April 2008
  - "Investor-State Arbitration," University of Georgia Law School, Athens, GA, November 2007
  - "Private Property and State Regulation," George Washington University Law School Symposium, Is There a New Common Law of Investment Arbitration?, Washington, DC, October 2007
  - "Investor-State Disputes: Is There a Controversy?," ICDR North America Dispute Resolution Series: ADR After NAFTA, Toronto, Canada, September 2007
  - "How Final an Award?: Review and Annulment in International Treaty Arbitration," DC Bar and ASIL, Washington, DC, July 2007
  - "Defenses Available to States in Investor-State Arbitration," International Law Institute, Washington, DC, June 2007
  - "The Energy Charter Treaty and Other Investment Treaties: A Comparison," ICSID-ECS-SCC Joint Conference on Investment Protection and the Energy Charter Treaty, Washington, DC, May 2007
  - "A Look Inside the Umbrella Clause Debate," Moderator, Juris Conference-Investment Treaty Arbitration, A Debate & Discussion, Washington, DC, May 2007
  - "Fair, Equitable and Ambiguous: What Is Fair And Equitable Treatment In

- International Investment Law?," ABA Spring Meeting, Washington, DC, May 2007
- "Settlement of Disputes," Conference on Investment and Trade in Latin America: The Chilean Experience, Washington, DC, April 2007
  - "The North American Experience with Investor-State Arbitration Under The NAFTA," Conference on International Arbitration, Buenos Aires, Argentina, April 2007
  - "The Future of BITs," Fourth Annual ITA-ASIL Conference, Washington, DC, March 2007
  - "Investment Treaty Arbitration in the 21st Century," Faculty for Mock Arbitration, ITA, Dallas, TX, June 2006
  - "Treaties and International Trade: Protecting States' Interests," National Association of Attorneys General Annual Chief Deputies' Meeting, Washington, DC, May 2006
  - "The Regime of International Arbitration: Treaties, Statutes and Rules," International Law Institute, Washington, DC, April 2006
  - "The Evolution of Fair and Equitable Treatment in International Law," ASIL 100th Annual Meeting, Washington, DC, March 2006
  - "International Standards for Expropriation, Valuation & Awarding Damages," Third Annual ITA-ASIL Conference, The Iran-US Claims Tribunal at 25: The Cases Everyone Needs to Know for Investor-State & International Arbitration, Washington, DC, March 2006
  - "Methanex Corp. v. United States of America: Its Contributions to Investor-State Arbitration," Harvard University Symposium: International Investment Law at a Crossroads, Cambridge, MA, March 2006
  - "NAFTA Chapter Eleven: Background and Current Issues," Columbia University, McGill University & ITAM, by video-conference, February 2006
  - "The Influence of NAFTA Chapter Eleven on the 2004 US Model BIT and Recent FTAs," British Institute of International & Comparative Law, London, UK, December 2005
  - "The 2004 U.S. Model BIT," American University Washington College of Law, Washington, DC, November 2005
  - "Expropriation: Recent Decisions and Treaty Practice; National Treatment; MFN Treatment in Recent Decisions," UNCTAD & OAS, Advanced Course on Managing Investment Disputes, Washington, DC, November 2005
  - "Methanex Corp. v. US: The Aftermath," DC Bar and ASIL, Washington, DC, October 2005
  - "Working Without a Net: The Role of Arbitrators in Investor-State Arbitration," ABA Section of International Law, Spring Meeting, Washington, DC, April 2005
  - "Dispute Resolution Mechanisms in Global Trade and Investment Agreements," National Conference of State Legislatures & National Association of Attorneys General Annual Conference, Washington, DC, April 2005
  - "Where do Bilateral Treaties Go From Here?," UC Davis School of Law Symposium, Davis, CA, March 2005
  - "Investor-State Arbitration Under the NAFTA," University of Georgia Law School, Athens, GA, October 2004
  - "Appellate Process for Investor-State Arbitration: Is the Train Leaving Union Station?," International Law Weekend 2004, New York, October 2004
  - "The Expropriation Annex in U.S. FTAs; The Minimum Standard of Treatment Provision; Innovations in Investor-State Procedures in the United States' Recent FTAs and Model BIT; Review of the NAFTA Cases," UNCTAD Seminar on Negotiating Investment Agreements, Tianjin, People's Republic of China, July 2004
  - "NAFTA Chapter Eleven Disputes: Key Questions and Controversies Affecting Companies Doing Business Between the United States, Canada and Mexico," DC Bar, Washington, DC, May 2004
  - "The Regime of International Arbitration: Treaties, Statutes and Rules," International Law Institute, Washington, DC, May 2004
  - "NAFTA Arbitration: The U.S., Canadian, and Mexican Views," Second Annual Miami International Arbitration Conference, Miami, Florida, January 2004
  - "The Impact of NAFTA on State Court Judgments – Welcome to the Age of Treaties, Chief Justice: You've Been Overruled!," Conference of Chief Justices, San Francisco, California, January 2004
  - "NAFTA Chapter Eleven and State Sovereignty," National Conference of State Legislatures, Washington, DC, December 2003
  - "International Regulatory Takings Claims," Georgetown University Environmental Law & Policy Institute, New York, October 2003
  - "NAFTA: Its Impact on Federal Judgments and the Liability of the Federal

Government," International Judicial Relations Commercial Law Working Group, Washington, DC, September 2003

- "The United States' Experience With Investor-State Arbitration," UNCTAD-OAS Intensive Training Course on International Investment Agreements, Port-of-Spain, Trinidad, September 2003
- "Investor-State Arbitration in the Americas: The Past, Present and Future," Inter-American Bar Association, New Orleans, LA, June 2003
- "The Regime of International Arbitration: Treaties, Statutes and Rules and How to Draft an Arbitration Clause," International Law Institute, Washington, DC, April 2003
- "NAFTA Chapter Eleven and the Environment," International Environmental Law Committee of the Association of the Bar of the City of New York, NY, April 2003
- "Standards of Treatment in Investment Agreements Signed by the APEC Economies: National Treatment, Most Favored Nation Treatment and the Minimum Standard of Treatment," APEC Workshop on Multilateral and Regional Investment Agreements, Mérida, Mexico, May 2002
- "NAFTA Chapter 11: Arbitrating Investment Disputes With Canada, Mexico and the United States," DC Bar, Washington, DC, March 2002

#### **Languages**

English  
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#### **Citizenship**

United States



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