

## Biography

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### Yas Banifatemi

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### Practice

Yas Banifatemi is a partner in Shearman & Sterling's International Arbitration Group and leads the firm's Public International Law Practice. She advises and represents States, State-owned entities and corporations on both public international law and international arbitration issues. She has acted as counsel and arbitrator in arbitration cases under the ICSID, UNCITRAL, ICC, LCIA, SCC, CRCICA and Swiss Arbitration Rules, with particular focus on international investment, oil & gas and general commercial matters.

Yas Banifatemi has been praised as being a “*star performer*” and a “*brilliant lawyer with a sharp intellect*” in *Chambers Global*. Clients also commented on the “*clarity of her opinions*,” describing her as a “*reliable and robust advocate*” having a “*thorough understanding of the law she practices*.” She appears in the “*45 Under 45*” feature of *American Lawyer's* January 2011 issue, a global ranking of “*The Best and the Brightest*” female lawyers under 45, and in the “*45 Under 45*” feature of *Global Arbitration Review's* August 2011 issue, a global ranking of the leading figures of the international arbitration bar under 45.

### Experience as Counsel

*Arbitrations in which Yas Banifatemi has appeared as Counsel include the representation of:*

- The majority shareholders in former Yukos Oil Company as Claimants in a series of three arbitrations against the Russian Federation in relation to the expropriation of their investment in the company. The claims are brought under the Energy Charter Treaty, a multilateral convention governing trade and investment in the energy sector, and compensation is being sought for an amount in excess of USD 114 billion. This matter is the largest arbitration ever in terms of amounts at stake. The arbitrations are conducted in accordance with the UNCITRAL Arbitration Rules and are administered by the Permanent Court of Arbitration (PCA) in The Hague. In an Interim Award of November 30, 2009, the Arbitral Tribunal decided that it has jurisdiction over the dispute and that the claims are admissible.
- Egyptian Natural Gas Holding Company (EGAS) and Egyptian General Petroleum Corporation (EGPC) in a dispute with East Mediterranean Gas S.A.E. (EMG), arising out of a long term gas supply contract between EGAS, EGPC and EMG.
- The Republic of Lithuania in two arbitration proceedings commenced by Russian State-owned gas company Gazprom. The first arbitration relates to Lithuania's unbundling of gas transmission from gas production and supply in the Lithuanian gas distribution company Lietuvos Dujos, in compliance with the EU Third Energy Package and in particular Directive (EC) 2009/73. The

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proceedings are brought under the 1999 Russia-Lithuania BIT and are conducted under the 1976 UNCITRAL Arbitration Rules. The second arbitration regards Gazprom's investment in the Kaunas Heat and Power Plant (Kauno Termofikacijos Elektrinė). The proceedings are brought under the 1999 Russia-Lithuania BIT and are conducted under the ICC Rules.

- The Arab Republic of Egypt in the ICSID arbitration brought by Hussain Sajwani, Damac Park Avenue for Real Estate Development S.A.E., and Damac Gamsha Bay for Development S.A.E. (ICSID Case No. ARB/11/16).
- The Arab Republic of Egypt in the ICSID arbitration brought by Bawabet Al-Kuwait Holding Company (ICSID Case No. ARB/11/6).
- The People's Democratic Republic of Algeria as Respondent in an UNCITRAL arbitration initiated by Orascom Telecom. The dispute relates to alleged breaches of the Algeria-Egypt bilateral investment treaty in relation to the operation of a mobile telephone company in Algeria. Over USD 15 billion is at stake.
- TNK-BP in a dispute with BP regarding TNK-BP's lost participation in the Arctic exploration project. The amount at stake in the dispute is estimated between 5 and 10 billion USD.

### Experience as Arbitrator

Chair, sole arbitrator and co-arbitrator in international arbitration proceedings under the ICC Arbitration Rules, the ICSID Arbitration Rules, the Swiss Rules of International Arbitration and the Arbitration Rules of the Cairo Regional Center for International Commercial Arbitration, as well as in *ad hoc* proceedings.

### Selected Professional Affiliations and Business Activities

Director of Studies, Public International Law, The Hague Academy of International Law (Summer 2004)

Lecturer, Public International Law, Panthéon-Assas University (Paris II) (1994-1996 and 1999-2000)

Lecturer, International Investment Law, Panthéon-Sorbonne University (Paris I) (since 2006)

Lecturer, International Arbitration Writing Workshop, Sciences Po (2012)

Guest Lecturer, Geneva Master in International Dispute Settlement (MIDS)

Co-Secretary-General, International Academy for Arbitration Law

Member, Editorial Board, ICSID Review, Foreign Investment Law Journal

Member, World Bank's Investment Across Borders (IAB)

Member, ILA Study Group on the Soft Law Instruments in Foreign Investment Law

Member, ILA Study Group on the Use of Private Law Principles for the Development of International Law

Member, IBA Investment Treaty Sub-Committee

Panel member, UNCTAD *ad hoc* Expert Group meetings

Member, International Arbitration Institute (IAI), Comité Français de l'Arbitrage (CFA), Swiss Arbitration Association (ASA), London Court of International Arbitration (LCIA)

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Member, American Society of International Law (ASIL), European Society of International Law (ESIL) and French Society of International Law (SFDI)

#### Education

Panthéon-Assas University (Paris II), Ph.D. in International Law, 1997 (with highest honors;  
Dissertation honored with a prize at the *Concours de Prix de Thèses* of Panthéon-Assas University (Paris II))

Harvard Law School, LL.M., 1997

#### Publications

Yas Banifatemi has written numerous articles on international arbitration and international law. She also regularly appears as a speaker, particularly on issues of investment arbitration and international law. Her publications include:

- *Jurisdiction in Investment Arbitration, IAI Series on International Arbitration No. 8* (Editor, Juris Publishing, forthcoming in 2012)
- *Precedent in International Arbitration, IAI Series on International Arbitration No. 5* (Editor, Juris Publishing, 2008)
- *Annulment of ICSID Awards, IAI Series on International Arbitration No. 1* (Co-editor, Juris Publishing, 2004)
- “Unresolved Issues in Investment Arbitration,” in *Modern Law for Global Commerce – Proceedings of the UNCITRAL Congress, 9-12 July 2007, Vienna* (forthcoming in 2012)
- “Provisional Application of the Energy Charter Treaty: The Negotiating History of Article 45,” in *Energy Dispute Resolution: Investment Protection, Transit and the Energy Charter Treaty* 191 (G. Coop ed., Juris, 2011)
- “Mapping the Future of Investment Treaty Arbitration as a System of Law – Remarks,” in *American Society of International Law - Proceedings of the 103rd Annual ASIL Meeting* 323 (2010)
- “The Law Applicable in Investment Treaty Arbitration,” in *Arbitration under International Investment Agreements* 191 (K. Yannaca-Small ed., Oxford University Press, 2010)
- “Defending Investment Treaty Awards: Is There an ICSID Advantage?,” in *50 Years of the New York Convention, ICCA Congress Series No. 14*, at 318 (2009)
- “The Emerging Jurisprudence on the Most-Favoured-Nation Treatment in Investment Arbitration,” in *Investment Treaty Law: Current Issues III*, at 241 (A. Bjorklund, I. Laird, S. Ripinsky eds., BIICL, 2009)
- “Negative Effect of Competence-Competence: The Rule of Priority in Favour of the Arbitrators,” in *Enforcement of Arbitration Agreements and International Arbitral Awards – The New York Convention in Practice* 257 (E. Gaillard and D. Di Pietro eds., Cameron May, 2008) (with E. Gaillard)
- “Le ‘droit au juge’ et l’arbitrage commercial international,” in *Libertés, Justice, Tolérance – Liber amicorum Gérard Cohen-Jonathan* (2004)

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- “Introductory note to ICSID: Salini Costruttori SpA & Italstrade SpA v. Kingdom of Morocco (Proceeding on Jurisdiction),” 42 *International Legal Materials* 606 (2003) (with E. Gaillard)
- “The meaning of ‘and’ in Article 42(1), second sentence, of the Washington Convention – The role of international law in the ICSID choice of law process,” 18 *ICSID Review* 375 (2003) (with E. Gaillard)
- “Le nouveau droit de l’arbitrage interne aux Etats-Unis (Revised Uniform Arbitration Act de 2000): La persistance des particularismes,” 2003(4) *Revue de l’arbitrage* 1195
- “La lutte contre le financement du terrorisme international,” 2002 *Annuaire Français de Droit International* 103
- “La restitution des avoirs juifs en déshérence sous l’angle du droit international public,” 1998 *Annuaire Français de Droit International* 76
- Collaboration with Emmanuel Gaillard on his International Arbitration column in the *New York Law Journal*:
  - “‘Biwater,’ Classic Investment Bases: Input, Risk, Duration” (Dec. 31, 2008)
  - “Court-ordered measures in Arbitral Discovery” (Dec. 13, 2007)
  - “The Representations of International Arbitration” (Oct. 4, 2007)
  - “The Denunciation of the ICSID Convention” (June 26, 2007)
  - “Extent of Court Review of Public Policy” (Apr. 5, 2007)
  - “A Black Year for ICSID” (Mar. 1, 2007)
  - “Autonomy of International Arbitration” (Dec. 14, 2006)
  - “ICC Pre-Arbitral Referee: A Procedure Into Its Stride” (Oct. 5, 2006)
  - “Switzerland Says *Lis Pendens* Not Applicable to Arbitration” (Aug. 7, 2006)
  - “Amended Arbitration Rules Now in Effect for Investment Disputes” (June 1, 2006)
  - “Prima Facie Review of Existence, Validity of Arbitration Agreement” (Dec. 1, 2005)
  - “Treaty-Based Jurisdiction: Broad Dispute Resolution Clauses” (Oct. 6, 2005)
  - “Establishing Jurisdiction Through a Most-Favored-Nation Clause” (June 2, 2005)
  - “Energy Charter Treaty: International Centre for Settlement Decision” (Apr. 7, 2005)
  - “The IBA Guidelines on Conflicts of Interest in International Arbitration” (June 3, 2004)
  - “Arbitration-Agreement Recognition: N.Y. Convention, National Law” (Dec. 8, 2003)
  - “‘KBC v. Pertamina’: Landmark Decision on Anti-Suit Injunctions” (Oct. 2, 2003)
  - “The First Association of Southeast Asian Nations Agreement Award” (Aug. 7, 2003)

### Bar Admissions/Qualifications

Paris

### Languages

French, English, Farsi

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#### Nationality

French, Iranian

#### Selected Recent Accolades and Rankings

- *Chambers Global 2012 – Public International Law (Global)*

“This firm has a strong reputation for investment arbitration and sources point to its increasing reputation for advisory and advocacy work. The team is regularly involved in cases relating to BITs, state responsibility and the law of the sea. Highlights include advising an oil company with respect to sanctions on Libya. Other work includes the team’s representation of a sovereign state in relation to energy policy matters in the context of an arbitration. It also acts for more than 50 civil parties in proceedings before an international tribunal established to prosecute key members of the Khmer Rouge. Sources say: ‘An extremely good practice.’ Based in Paris, Emmanuel Gaillard has a premium reputation for international arbitration and investment protection work. Sources say that he is ‘one of the leading figures in the arbitration community.’ Practice leader Yas Banifatemi is well respected for her investment arbitration expertise and is commended for her ongoing work in major cases alongside Gaillard.”
- *Who’s Who Commercial Arbitration 2011*

“Yas Banifatemi impressed our sources: ‘*She always has something thoughtful and thought-provoking to contribute,*’ according to a source.”
- *Chambers Global 2011 – Public International Law (Global)*

“This firm is highly respected for its investment treaty arbitration capability and also runs a substantial PIL advisory practice, covering matters such as treaty law, state succession and maritime boundary issues. It is especially visible acting for the majority shareholders in YUKOS in ECT claims against the Russian Federation. On the advisory side, highlights include advising the Rwandan government regarding the ownership of gas reserves in Lake Kivu. The group also advised OPEC on immunity issues. A star of the international arbitration world, Emmanuel Gaillard ‘*really impresses with his strategic thinking and deep knowledge,*’ say sources. Yas Banifatemi is the practice head and brings significant specialist PIL expertise.”
- *Chambers Global 2011 – Dispute Resolution: International Arbitration (France)*

“Trained in Paris and Harvard, trilingual Yas Banifatemi is a solid choice for handling international disputes, winning widespread praise for ‘*getting straight to the heart of the matter.*’ She is head of the office’s public international law practice and she continues to build her reputation in oil and gas and investment-related disputes.”
- *Chambers Europe 2011 – Dispute Resolution: International Arbitration (France)*

“Another key member of the team, Yas Banifatemi is highlighted for her capacity to ‘*resolve issues quickly and efficiently,*’ and for her expertise in investment disputes. “

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- *Chambers Global 2010 – Public International Law (Global)*

“This Paris-based operation has both a prominent presence in investment treaty arbitration and a growing PIL advisory practice. Its advocacy highlights include representing the majority shareholders of YUKOS in cases worth in excess of USD50 billion brought against the Russian government, and acting for claimants in two ECT arbitration cases against Poland and Hungary. The advisory practice offers pre-litigation or litigation consultancy to state entities and investors alike. Highlights also include advising Rwanda on issues relating to the ownership of Lake Kivu’s gas resources. Sources Say: ‘A top firm for investor-state arbitration.’ ‘A key and credible presence with an extremely strong team.’ Emmanuel Gaillard is recognised by market commentators as ‘a leading light’ in the field of investment treaty arbitration. PIL practice head Yas Banifatemi is considered by sources as ‘a brilliant lawyer with a sharp intellect and a thorough understanding of the law she practises.’”
- *Chambers Global 2010 – Dispute Resolution: International Arbitration (France)*

“Yas Banifatemi is lauded as a reliable and robust advocate and wins praise for her work on behalf of corporations and state-owned entities.”
- *Who’s Who Commercial Arbitration 2010*

“Shearman & Sterling LLP’s eight strong contingent is based on an ‘exceptionally impressive’ Paris office. Five partners make the grade, led by the ‘brilliant’ Emmanuel Gaillard. Respondents singled out Yas Banifatemi for praise . . . .”
- *Chambers Global 2009 – Public International Law (Global)*

“This firm is primarily recommended for its investment arbitration expertise, with the Paris office being particularly strong. The firm handles advocacy work involving issues related to the Energy Charter Treaty, BITs and state responsibility, among others. In addition, lawyers advise states and corporate entities on matters relating to treaty law, concessions, international boundaries and law of the sea. Emmanuel Gaillard wins praise for his ‘superb reputation in investment arbitration.’ Yas Banifatemi leads the firm’s PIL practice and is ‘a star performer.’ Highlights for the team include advising OPEC on PIL matters relating to a major US antitrust class action against the organisation. It also advises state entities and oil and gas companies on pipeline projects relating to maritime boundary issues and the status of pipelines in territorial and international waters.”
- *Chambers Global 2009 – Dispute Resolution: International Arbitration (France)*  
*Chambers Europe 2009 – Dispute Resolution: International Arbitration (France)*

“Yas Banifatemi . . . is known for her expertise in investment law. Deemed ‘gifted and very pleasant to work with,’ Banifatemi is particularly appreciated for the ‘clarity of her opinions.’”
- *Who’s Who Commercial Arbitration 2009*

“Emmanuel Gaillard heads the firm’s international arbitration practice and is listed alongside the ‘outstanding’ Yas Banifatemi. They consistently work together on ICSID arbitrations and act as a counsel in Energy Charter Treaty disputes.”

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- *Chambers Global 2008 – Public International Law (Global)*

“The Paris office of this US firm houses an investor-state dispute practice with a stellar reputation. Its lawyers are ‘*thorough, knowledgeable and understand commercial needs,*’ delivering an ‘*excellent work product*’ to clients. Working alongside top international arbitration specialist and head of the Paris office Emmanuel Gaillard, Yas Banifatemi is the firm’s PIL expert. Her practice covers issues of state responsibility and immunity, boundary disputes and Law of the Sea matters. One particular area of focus is advising oil companies and states on the PIL aspects of major oil pipeline projects. Clients describe her as ‘*excellent at what she does,*’ and find that she and Gaillard ‘*work well together and complement each other.*”
- *Chambers Global 2008 – International Arbitration (France)*  
*Chambers Europe 2008 – Dispute Resolution: International Arbitration (France)*

“Public international law specialist Yas Banifatemi impresses clients with her ‘thoroughness’ and quality of work.”
- *Global Arbitration Review – The GAR 100 Firms – 2007 edition*

“Banifatemi is ‘*experienced and excellent,*’ and ‘*very hard working.*’ She also combines practice with a substantial speaking schedule and was recently ranked in GAR’s all-female top-30 survey.”
- *Chambers Global 2007 – Public International Law*

“The group is best known for the work of its stellar Paris office, particularly in ICSID and BIT disputes. Its Singapore arm further contributes to the firm’s kudos in this respect. The group’s workload encompasses advice to major oil corporations on the implications of maritime and other boundaries for various projects, along with advising corporate entities on the implications of a State-to-State treaty for a transportation sector venture. Partner Yas Banifatemi in Paris is the firm’s leading PIL law specialist. She worked alongside head of international arbitration Emmanuel Gaillard in obtaining the first ICSID decision on interpretation, which found in favor of client Wena Hotels. The original case arose from a dispute under the UK-Egypt BIT.”