

Biography



Emmanuel Gaillard

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Emmanuel Gaillard has advised and represented corporations, States and State-owned entities in international arbitration cases for over 25 years. He has also acted as sole arbitrator, party-appointed arbitrator or Chairman under most international arbitration rules and is frequently called upon to appear as expert witness on arbitration law issues in international arbitration proceedings or enforcement actions before domestic courts.

He has written extensively on all aspects of arbitration law, in French and in English. In 1999, he co-authored *Fouchard Gaillard Goldman On International Commercial Arbitration*, a leading publication in this field. In 2007, he authored the first published essay on the legal theory of international arbitration based on his Course at The Hague Academy of International Law (*Aspects philosophiques du droit de l'arbitrage international*), subsequently published in English (*Legal Theory of International Arbitration*) as well as in the Arabic, Chinese and Spanish languages. He teaches International Arbitration and Private International Law at Paris XII University.

Emmanuel Gaillard is widely recognized as a leading expert on international investment arbitration, including arbitrations conducted under the auspices of ICSID (International Centre for Settlement of Investment Disputes). He has published since 1985 a yearly feature in the *Journal du Droit International*, commenting on ICSID decisions and awards. In 2004, he published a seminal volume on ICSID arbitration case law entitled *La Jurisprudence du CIRDI*, the second volume of which was published in 2010.

Emmanuel Gaillard has been appointed by France on the ICSID Panel of Arbitrators. He regularly acts as expert for the OECD (Organization for Economic Co-operation and Development), UNCTAD (United Nations Conference on Trade and Development) and UNCITRAL (United Nations Commission on International Trade Law). He has recently participated as an observer in the works relating to the revision of the UNCITRAL Arbitration Rules.

Emmanuel Gaillard chairs the International Arbitration Institute (IAI) and the International Academy for Arbitration Law (AIDA). He heads Shearman & Sterling's International Arbitration practice.

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Experience as Counsel

Numerous international arbitration proceedings, investment treaty and commercial, under the Arbitration Rules of ICC, ICSID, LCIA, SIAC and AAA, as well as in *ad hoc* arbitration proceedings, including under UNCITRAL Rules (oil & gas, international investment, construction, mergers & acquisitions and general commercial matters).

Pending or recent investment arbitrations in which Emmanuel Gaillard 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 114 billion US dollars. 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.
- The Republic of Lithuania in arbitration proceedings commenced by Russian State-owned gas company Gazprom in relation 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 proceedings are brought under the 1999 Russia-Lithuania BIT and are conducted under the 1976 UNCITRAL Arbitration Rules.
- 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.
- The People's Democratic Republic of Algeria in an ICSID arbitration initiated by Mærsk Olie, Algeriet A/S (ICSID Case No. ARB/09/14). The arbitration, which was brought under the Algeria-Denmark bilateral investment treaty, was in relation to windfall profit tax in the context of a production-sharing contract. Over USD 3 billion was at stake. A settlement was achieved.
- Viorla Micula as Claimant in an ICSID arbitration against the Republic of Romania (ICSID Case No. ARB/05/20). The dispute, which is brought under the Sweden-Romania bilateral investment treaty, arises out of the cancellation and withdrawal of a favorable customs and tax regime by the Republic of Romania in relation to a food products enterprise. The amount at stake is in excess of USD 1 billion.

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Pending or recent commercial arbitrations in which Emmanuel Gaillard has appeared as Counsel include the representation of:

- 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.
- EDF International as Respondent in an ICC arbitration in Zurich initiated by a company fully-owned by the German *Land* of Baden-Württemberg. The dispute arises from the acquisition by the *Land* of EDF's stake in an energy company based in the *Land* of Baden-Württemberg and raises complex issues of EU law. German law applies.
- A major European retail group as Claimant in an ICC arbitration in São Paulo against its Brazilian joint venture partner. The dispute concerns breaches of a shareholders' agreement concluded between the parties relating to the control of Brazil's largest retailer. Brazilian law applies.
- A French-German consortium in two ICC arbitrations in Stockholm against a Finnish utility company. The dispute arises from an agreement for the construction of a nuclear power plant in Finland. Finnish law governs and the language of the proceedings is English. Over USD 3 billion is at stake.
- Three European chemical companies in four ICC arbitrations in Paris and Geneva against European subsidiaries of a large North American chemical concern. The disputes arose from a joint venture agreement formed to manufacture a product used for the production of nylon, as well as from a related confidentiality agreement and the resulting settlement agreement entered by the parties to settle a previous dispute. French and Swiss law apply and the language of the arbitrations is both French and English.

Experience as Arbitrator

Chairman, sole arbitrator or member of the tribunal in numerous international arbitration proceedings under the Arbitration Rules of ICSID, ICC, LCIA, IACAC, AAA, Franco-German Chamber of Commerce, Zagreb Chamber of Commerce, Geneva Chamber of Commerce and Industry, Cairo Regional Center for International Commercial Arbitration, as well as in ad hoc (including UNCITRAL) arbitration proceedings.

Arbitrations in the public domain include:

- Commerce Group Corp San Sebastian Gold Mines, Inc. v. Republic of El Salvador (Emmanuel Gaillard, President of the *Ad hoc* Committee, ICSID Case No. ARB/09/17, pending). Dispute relating to a mining concession.
- Global Trading Resource Corp. and Globex International, Inc. v. Ukraine (Arbitrator, appointed by the Claimants, ICSID Case No. ARB/09/11). The Tribunal dismissed the claim in the first award rendered under ICSID Arbitration Rules 41(5), a provision added to the Rules in 2006 and allowing for summary dismissal of claims which are "manifestly without merit".

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- *Saba Fakes v. Republic of Turkey* (President, appointed by the parties, ICSID Case No. ARB/07/20): dispute relating to mobile telecommunications services. The Tribunal dismissed the claim, holding that it did not have jurisdiction in light of the requirement that an investment be made by the Claimant.
- *Shareholders of SESAM v. Central African Republic* (President, appointed by the parties, ICSID Case No. CONC/07/1): conciliation case concerning log production and processing enterprise.
- *Victor Pey Casado and President Allende Foundation v. Republic of Chile* (Arbitrator, appointed by ICSID, ICSID Case No. ARB/98/2): dispute arising out of the alleged expropriation of a newspaper company by Chile's military junta. The Claimants are relying on the provisions of the 1991 Chile-Spain Bilateral Investment Treaty. The amount in dispute is in excess of 500 million US dollars.
- *Cargill, Incorporated v. Republic of Poland* (Arbitrator, appointed by the Claimant, former ICSID Case No. ARB(AF)/04/2).
- *Canfor Corporation v. USA* (President, appointed by agreement between the parties, arbitration under the UNCITRAL Arbitration Rules and NAFTA): arbitration regarding the effect of U.S. antidumping and countervailing duty determinations (including the Byrd Amendment of 2000) on the softwood lumber industry made by the U.S. Department of Commerce. The amount in dispute was in excess of 250 million US dollars. This case was consolidated with two other arbitrations relating to softwood lumber before the same Consolidated Tribunal under NAFTA Article 1126.
- *Consortium Groupement L.E.S.I.-DIPENTA v. Algeria* (Arbitrator, appointed by the Republic of Algeria, ICSID Case No. ARB/03/8, award declining jurisdiction rendered on January 10, 2005) and *L.E.S.I. SpA and Astaldi SpA v. Algeria* (Arbitrator, appointed by the Republic of Algeria, ICSID Case No. ARB/05/3). Dispute arising out of the construction of a dam by Italian companies in Algeria. The Claimants were relying on the provisions of the 1991 Italy–Algeria Bilateral Investment Treaty. The amount in dispute was in excess of 115 million euros. A decision on jurisdiction was rendered in *L.E.S.I. SpA and Astaldi SpA v. Algeria* on July 12, 2006. On November 12, 2008, the Tribunal rendered an Award rejecting the claims brought against the Algerian Republic.
- *PT Aria West International v. PT Telekomunikasi Indonesia Tbk* (Arbitrator, appointed by the Claimant, ICC arbitration, Geneva), amount in dispute US\$ 1.2 billion, regarding a joint operating agreement between a foreign investor and Indonesia's State phone company for building and operating a fixed-lined phone service in West Java. The case settled as part of a 350 million US dollars buyout of Aria West by Telekom Indonesia.

Experience as Expert

Emmanuel Gaillard has appeared as expert in numerous international arbitration proceedings. Cases in the public domain include the ICC arbitration between Andersen Consulting and Arthur Andersen, the LCIA arbitration between True North Communications and Publicis, and the ICC arbitration between AT&T Corp. and Saudi Cable Company.

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He also appears as expert in court proceedings, in particular with respect to the recognition and enforcement of arbitral awards in a number of countries.

Recent involvements include expert legal opinions given:

- In the action brought before the U.S. District Court for the District of Columbia by International Bechtel Company against Dubai regarding the enforcement of an award set aside in the country of origin.
- In the action brought before the U.S. District Court for the Southern District of Florida by Four Seasons Hotels against Consorcio Barr for the enforcement of a AAA award rendered in Miami and set aside in Venezuela.
- In the action brought before the Superior Court of Quebec by Tusculum B.V. against Louis Dreyfus & Cie to vacate an order and final award by an ICC arbitral tribunal on the ground that it decided issues allegedly decided in an earlier partial award.

Publications

Author, *Legal Theory of International Arbitration*, Martinus Nijhoff, 2010.

Author, *Aspects philosophiques du droit de l'arbitrage international*, The Hague Academy of International Law, Martinus Nijhoff, 2008.

Co-editor, *Enforcement of Arbitration Agreements and International Arbitral Awards – The New York Convention in Practice*, Cameron May, 2008.

Author, *La jurisprudence du CIRDI*, Pedone, 2 volumes, 2004 and 2010.

Co-author, *Fouchard Gaillard Goldman On International Commercial Arbitration*, Kluwer, 1999.

Co-author, *Traité de l'arbitrage commercial international*, Litec, 1996.

General editor, *Fifteen Years of NAFTA Arbitration*, IAI International Arbitration Series No. 7, Juris Publishing, 2011.

General editor, *The Review of International Arbitral Awards*, IAI International Arbitration Series No. 6, Juris Publishing, 2010.

General editor, *Precedent in International Arbitration*, IAI International Arbitration Series No. 5, Juris Publishing, 2008.

General editor, *State Entities in International Arbitration*, IAI International Arbitration Series No. 4, Juris Publishing, 2008.

General editor, *Towards a Uniform International Arbitration Law?*, IAI International Arbitration Series No. 3, Juris Publishing, 2005.

General editor, *Anti-Suit Injunctions in International Arbitration*, IAI International Arbitration Series No. 2, Juris Publishing, 2005.

General editor, *Annulment of ICSID Awards*, IAI International Arbitration Series No. 1, Juris Publishing, 2004.

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Yearly commentaries on ICSID case law in the *Journal du Droit International* (since 1985).

Numerous other articles and book chapters on international arbitration and private international law.

Selected Professional Affiliations and Business Activities

Professor of Law, University of Paris XII

Visiting Professor of Law, University of Geneva, 2009 and 2011

Visiting Professor of Law, Harvard Law School, 1984

President, International Academy for Arbitration Law

Member, appointed by France, ICSID Panel of Arbitrators

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

Member, International Council for Commercial Arbitration (ICCA)

Chairman, International Arbitration Committee, International Law Association (1989-1996)

Member, Comité Français de Droit International Privé

Chairman, International Arbitration Institute (IAI)

Member, Comité Français de l'Arbitrage (CFA)

Member, Swiss Arbitration Association (ASA)

Member, London Court of International Arbitration (LCIA); former Court member (2002-2007)

Member, Board of Trustees of the Foundation for International Arbitration Advocacy

Bar Admissions/Qualifications

Paris

Languages

French, English, Italian

Nationality

French

Selected Recent Accolades and Rankings

Chambers Global 2011 – International Arbitration (Global)

“Emmanuel Gaillard leads on the top cases and is ‘one of the true gurus of the market. He’s terrific, and deserves everything he has achieved.’”

Chambers Global 2011 – International Arbitration (Global)

“This practice is based around its standout Paris team, but also has notable assets in Frankfurt, London and the USA. It attracted headlines in 2009-10 for its representation of the majority shareholders in YUKOS in a dispute involving questions about the extent of the Energy Charter Treaty (ECT). Other major cases include acting for an energy giant on two

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ICC arbitrations in Scandinavia regarding the construction of a nuclear power plant. Sources Say: "The prestigious Paris team is world-class, and the quality of the cases is excellent."

Chambers Global 2011 – International Arbitration (Europe-wide)

"This outstanding practice is unanimously praised for its high-quality individuals and noteworthy instructions. Key mandates include representing Yukos majority shareholders in arbitration with The Russian Federation at the Permanent Court of Arbitration in the Hague. The team has also acted for Areva on two ICC arbitrations with Teollisuuden Voima Oyj in Stockholm, concerning the construction of a nuclear power plant in Finland valued at EUR2.8 billion. Its Paris team receives five-star market approval, and the German office is also very highly regarded. Sources say: "This stellar team is very well organised and incredibly responsive."

Chambers Global 2011 – International Arbitration (France)

"Emmanuel Gaillard is 'at the top of his profession' and one of the leading arbitration specialists in the world. Head of the firm's international arbitration practice, he is active both as counsel and arbitrator. He has recently been active in headline energy and investment matters, such as acting for the shareholders in YUKOS in a case involving approximately USD100 billion in claims against the Russian Federation over the alleged expropriation of shareholders' investments."

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 2010 – International Arbitration (Global)

"The 'absolutely first-rate' Emmanuel Gaillard is the firm's standout individual, and has a very high status in the marketplace. He has a genuinely global practice, and is very much in demand as both counsel and arbitrator for some of the most important arbitrations."

Chambers Global 2010 – International Arbitration (Global)

"This primarily Paris-based group has strong international capabilities, with something of a focus on energy work. Sources are very positive about the quality of the major names at the firm, highlighting their impressive experience. Shearman has expanded its presence in the

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Middle East, and its strong position in the Far East has not been affected by restructurings there. Sources Say: 'It is extremely active in the field and has a lot of arbitral experience.' 'It has been the major player in Paris for a long time.'"

Chambers Global 2010 – International Arbitration (Europe-wide)

"Shearman & Sterling offers a distinguished international arbitration practice. Although it does not have the widest network in Europe, the firm covers numerous key arbitration jurisdictions and its Paris office has for many years remained at the pinnacle of European arbitration. The Paris office focuses on energy, investment treaty disputes and international disputes arising from M&A activity. Commentators are quick to praise the firm's Frankfurt office for its long experience of ICSID and UNCITRAL proceedings."

Chambers Global 2010 – International Arbitration (France)

"Emmanuel Gaillard ranks among the best arbitration specialists in Paris, and in the words of one interviewee, 'discussing Gaillard is an exercise in superlatives.' He works mainly as a counsel and focuses on oil and gas matters."

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 2009 – International Arbitration (Global)

"Emmanuel Gaillard 'is clearly a leader, and at the top of the pack' when it comes to international arbitration. 'He's hugely respected and a number-one player,' confirm peers. Often focused on investment, energy, construction and M&A cases, Gaillard recently represented Sonatrach in a UNCITRAL arbitration against Repsol YPF and Gas Natural."

Chambers Global 2009 – International Arbitration (Global)

"Shearman & Sterling's position as a leader in the market cannot be disputed,' assert peers of this outstanding international outfit During the past year, Shearman & Sterling has seen a considerable rise in its number of energy and investment-related disputes, a trend that sits alongside its stellar reputation in the construction and engineering industries."

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Interviewees enthusiastically rate the service offered here as ‘a fantastic experience for clients,’ and highlight the fact that ‘the lawyers will really get to the heart of an issue and anticipate all the significant problems that come up.’”

Chambers Global 2009 – International Arbitration (Europe-wide)

“Sources commend the international reach of this firm’s commercial arbitration team, and report that the group is ‘quite rightly thought of as being at the top of the arbitration tree.’ The Paris team is undoubtedly the nucleus of the practice, with its ability to handle the really big-ticket cases under the aegis of star performer and head of the firm’s international arbitration practice Emmanuel Gaillard. ‘Shearman’s reputation relies in no small part on the extraordinary abilities of Emmanuel,’ say peers; his ‘formidable presence in the courtroom and amazing grasp of the issues’ have made him a ‘hugely respected, number-one player in the field.’ His impressive track record covers a range of arbitrations spanning investment, construction, engineering, energy, M&A and joint venture issues, and he is also a highly sought-after arbitrator.”

Chambers Global 2009 – International Arbitration (France)

“Brilliant arbitrator and eminent scholar’ Emmanuel Gaillard is the practice’s leading figure. He is hailed as ‘one of the best arbitrators in the world,’ and clients rave about his ‘glorious pleading and superb arguments.’”

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.”