

Biography

Emmanuel Gaillard

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Emmanuel Gaillard has represented major corporations, States and State-owned entities in over 300 international arbitration cases. He has acted as sole arbitrator, party-appointed arbitrator or Chairman in more than 50 international arbitrations. He is also frequently called upon to appear as expert witness on arbitration law issues in international arbitration proceedings or enforcement actions before domestic courts.

Emmanuel Gaillard has written extensively on all aspects of arbitration law, in French and in English. He co-authored *Fouchard Gaillard Goldman On International Commercial Arbitration*, the leading and most often cited 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*, soon to be published in English as *Legal Theory of International Arbitration*). He teaches International Arbitration and Private International Law at Paris XII University.

Emmanuel Gaillard is widely recognized as a leading expert on ICSID (International Centre for Settlement of Investment Disputes) and international investment arbitration. 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*.

Emmanuel Gaillard was appointed by France on the ICSID Panel of Arbitrators. He also appears as an expert on the investment panels of OECD (Organization for Economic Co-operation and Development) and UNCTAD (United Nations Conference on Trade and Development), and participates as an observer in the works of UNCITRAL (United Nations Commission on International Trade Law) on the drafting of the new UNCITRAL Arbitration Rules.

Emmanuel Gaillard chairs the International Arbitration Institute (IAI). He heads Shearman & Sterling's International Arbitration practice.

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Experience as Counsel

Numerous international arbitration proceedings under the Arbitration Rules of ICC, ICSID, LCIA, SIAC and AAA as well as in *ad hoc* arbitration proceedings (areas of expertise include oil & gas, international investment, and mergers & acquisitions matters).

Pending or recent 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 100 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.
- 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 EUR 2.8 billion is at stake.
- The Republic of Gabon as Respondent in the ICSID case brought by Participaciones Inversiones Portuarias SARL under the Gabon – Belgium/Luxembourg bilateral investment treaty (ICSID Case No. ARB/08/17). The dispute relates to a concession to manage two Gabonese ports.
- Sonatrach in a UNCITRAL arbitration in Geneva against Repsol and Gas Natural. The dispute arose from delays in the completion of an integrated project including the development of existing gas fields, the construction of a liquefaction gas plant and upstream facilities, and the commercialisation of the liquefied gas. The applicable law was Algerian law and the proceedings were conducted in French. The Arbitral Tribunal held that the termination of the agreement by Sonatrach was lawful and justified, and that Sonatrach was entitled to keep all of the equipment, installations and works completed (valued at USD 580 million) before the termination of the agreement. The Tribunal also dismissed the Respondents' USD 3.1 billion counterclaim in its entirety.
- Thales and Thales Naval S.A. as Respondents in an ICC arbitration in Paris against the Navy of the Republic of China on behalf of itself and of the Republic of China. The matter concerns claims for restitution of monies corresponding to commissions allegedly paid in connection with the sale of six frigates by Thales to Taiwan in 1991. The amount at stake is in excess of 1 billion US dollars.

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

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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:

- Global Trading Resource Corp. and Globex International, Inc. v. Ukraine (Arbitrator, appointed by the Claimants, ICSID Case No. ARB/09/11).
- Saba Fakes v. Republic of Turkey (President, appointed by the parties, ICSID Case No. ARB/07/20): dispute relating to mobile telecommunications services.
- 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.
- Rail World LLC and others v. Republic of Estonia (Arbitrator, appointed by the Republic of Estonia, ICSID Case No. ARB/06/6).
- Ares International S.r.l. and MetalGeo S.r.l. v. Georgia (Arbitrator, appointed by the Claimant, ICSID Case No. ARB/05/23): dispute arising out of a steel industry project.
- 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

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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.

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, *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, 2004.

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

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

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

General editor, *States 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.

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

Visiting Professor of Law, Harvard Law School, 1984

Member, appointed by France, ICSID Panel of Arbitrators

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 Admission

Paris

Languages

French, English, Italian

Nationality

French

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Selected Recent Accolades and Rankings

Chambers Global 2009 – International Arbitration (Global)

Global Individual Ranking: Star performer

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)

Global Group Ranking: Band 1

“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. 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 – Public International Law (Global)

Global Group Ranking: Band 1; Global Individual Ranking: Band 2

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 Europe 2009 – Dispute Resolution: International Arbitration (Europe wide)

Individual Ranking: Star performer

“Shearman’s reputation relies in no small part on the extraordinary abilities of Emmanuel [Gaillard],” 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. Recent notable mandates include the ongoing representation of majority shareholders in YUKOS as claimants in three arbitrations against the Russian Federation in relation to the expropriation of their investment in the company, and the representation of Sonatrach in an UNCITRAL arbitration against Repsol and Gas Natural.

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Chambers Europe 2009 – Dispute Resolution: International Arbitration (Europe wide)

Group Ranking: Band 1

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. "

Chambers Europe 2009 – Dispute Resolution: International Arbitration (France)

Individual Ranking: Star performer

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 Europe 2009 – Dispute Resolution: International Arbitration (France)

Group Ranking: Band 1

Proclaimed a "definite leader in the French market," Shearman & Sterling offers "an absolutely superb team" of 30 lawyers and remains an authority on investment treaty, oil and gas, international law and IP matters.

Chambers Global 2008 – International Arbitration (Global)

Global Individual Ranking: Star performer

The jewel of the crown of Shearman's arbitration practice, Emmanuel Gaillard enjoys a reputation equally as illustrious as that of his Freshfields counterpart. Notable recent counsel work includes advising Yukos in a series of Russian disputes, and Gaillard also enjoys numerous appointments as an arbitrator.

Chambers Global 2008 – International Arbitration (Global)

Global Group Ranking: Band 1

This arbitral behemoth has been involved in more than 80 pending disputes over the past year, with a combined stake in excess of USD55 billion, a large part of which is made up from the firm's representation of Yukos in its USD33 billion dispute with the Russian Federation. Shearman's docket includes disputes from a full spectrum of areas including investment treaty, energy, finance, insurance, construction and general commercial matters. The firm remains fiercely committed to the scholastic development of arbitration through lectures and academic publications. Though it has a presence in the USA, Germany and Asia, Shearman's centre of gravity is, like its chief rival's, firmly routed in Paris, where the practice has been built around the solid reputation of Emmanuel Gaillard.

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Chambers Global 2008 – Public International Law (Global)

Global Group Ranking: Band 1

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)

Global Individual Ranking: Star performer

A leading international arbitration counsel and professor of law, Emmanuel Gaillard inspires much respect from his peers, who describe him as “unique”. He enjoys a particular intellectual and technical leadership as both the author of an international commercial arbitration treaty and the first lawyer to have obtained an ICC pre-arbitral referee decision. Clients are impressed by his “formidable presence in the courtroom” and his “amazing grasp of the most thorny competency and technical questions”.

Chambers Europe 2008 – Dispute Resolution: International Arbitration (Europe wide)

Individual Ranking: Star performer

Shearman’s reputation relies in no small part on the extraordinary abilities of Emmanuel Gaillard,” according to peers. The experienced Paris-based practitioner benefits from a CV that includes a raft of arbitrations across the globe in sectors spanning investment, construction, energy and M&A. Sources credit him with “a formidable presence in the courtroom and an amazing grasp of the issues.” He is equally adept as arbitrator or counsel.

Chambers Europe 2008 – Dispute Resolution: International Arbitration (Europe wide)

Group Ranking: Band 1

Sources commend the international reach of the firm’s commercial arbitration team. While the Paris office is undoubtedly the hub of the operation, interviewees are careful to draw attention to the highly successful Frankfurt branch, which handled a large volume of Asian work in the past twelve months, including BITs under ICSID and UNCITRAL guidelines. The Paris team’s ability to handle the really big-ticket cases is illustrated by star performer Emmanuel Gaillard’s continued role representing the major shareholder in YUKOS in an investment arbitration involving the Russian Federation. Interviewees report that the group is “quite rightly thought of as at the top of the arbitration tree.”

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Chambers Europe 2008 – Dispute Resolution: International Arbitration (France)

Individual Ranking: Star performer

A leading international arbitration counsel and professor of law, Emmanuel Gaillard inspires much respect from his peers, who describe him as “unique .” He enjoys particular intellectual and technical leadership both as the author of an international commercial arbitration treaty and as the first lawyer to have obtained an ICC pre-arbitral referee decision. Clients are impressed by his “formidable presence in the courtroom.”

Chambers Europe 2008 – Dispute Resolution: International Arbitration (France)

Group Ranking: Band 1

With 36 lawyers, Sherman & Sterling has the biggest international arbitration team in Paris. In addition to Emmanuel Gaillard’s impressive stature, clients acknowledge the team as a whole to be one of the best on the market. Its expertise covers a huge variety of sectors, industries and languages, constituting a distinct advantage over its competitors.

Chambers Global 2007 – International Arbitration

Global Individual Ranking: Star performer

Emmanuel Gaillard . . . specialises in complex investment and energy disputes, especially oil and gas-related matters. Interviewees claim that his immaculate reputation as one of the most significant figures in the field is fully deserved. Gaillard’s practice is not limited to counsel but also includes a significant number of appointments as arbitrator. His “outstanding sense of diplomacy” and a series of “brilliant performances” inspire great confidence in clients and peers alike.

Chambers Global 2007 – International Arbitration

Global Group Ranking: Tier 1

Sources are impressed by the group’s broad range of expertise, diversity of practitioners and “ability to handle anything.” The 11-partner global team, concentrated at the hub of the practice in the firm’s Paris office, comprises a healthy variety of multilingual individuals able to cover multi-jurisdictional disputes. Ground-breaking big-ticket arbitrations are the order of the day and the firm is representing the majority shareholders in the Yukos Oil case, the largest investment arbitration ever, which involves a series of arbitrations against the Russian Federation in which over USD33 billion is at stake.

Chambers Global 2007 – Public International Law

Global Group Ranking: Tier 1

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

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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.

International Who's Who of Commercial Arbitration – 2007 edition

Emmanuel Gaillard leads the firm's international arbitration practice from Paris. Gaillard's reputational capital has few peers in this field. Indeed, he was described by one source as "the perfect international arbitration lawyer." They went on: "He is an outstanding academic but also a down-to-earth practitioner with a stellar reputation in commercial and investment arbitration." Now with more than 250 arbitrations behind him as an advocate, and 50 plus matters as either sole arbitrator, party-appointed arbitrator or chairman, Gaillard is at present representing the majority shareholders in Yukos Oil Company in a series of three arbitrations against the Russian Federation. He is also representing Electricité de France (EDF) as claimant in two arbitrations in Geneva against Italian banks.

Chambers Global 2006 – International Arbitration

Global Individual Ranking: Star performer

Emmanuel Gaillard is 'such an enormous figure in the field' that 'when you talk about international arbitration you can't not talk about him.' A 'distinguished and able expert,' heremains at the forefront of many of the most significant developments in the field, whether acting as counsel or as arbitrator.

National Law Journal, "Arbitration's Glamorous Side," March 27, 2006

Gaillard, who is also a professor of law at the University of Paris XII, heads one of the most established treaty arbitration practices in the world. He started the practice 20 years ago, working predominantly on commercial arbitration until seven years ago. He has mostly trained other attorneys within the ranks of the firm to build the practice, which now has 11 partners and more than 50 associates.

Chambers Client Report, Issue 5, International Arbitration, page 14, February 2005

Explains Christine Guerrier, legal director for the litigation department of the Thales Group: 'Emmanuel Gaillard is very well connected in international arbitration circles. His experience is essential when it comes to deciding which arbitrator, which additional counsel and experts to select. These strategic choices can only be made by who's experienced and in the know.'