

## Biography

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### Emmanuel Gaillard

SHEARMAN & STERLING LLP  
114 avenue des Champs-Élysées  
75008 Paris  
France  
T: +33.(0)1.53.89.70.00  
F: +33.(0)1.53.89.70.70  
[egaillard@shearman.com](mailto:egaillard@shearman.com)

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*, 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*), subsequently published in English (*Legal Theory of International Arbitration*) as well as in the Spanish and Chinese 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). 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 USD 3 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 an 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 commercialization 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 concerned 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 was in excess of 1 billion US dollars.

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#### 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:*

- 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 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.

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- **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, *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, 2004.

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

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

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.

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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/Qualifications

Paris

#### Languages

French, English, Italian

#### Nationality

French