



Emmanuel Gaillard

International Lawyer Arbitrator

Overview

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 coauthored *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 is a Professor of Law at Sciences Po Law School, where he teaches international arbitration.

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). From 1985 to 2010, he published 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.

Languages

English & French

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 Arab Republic of Egypt as Respondent in an ICSID arbitration initiated by Ampal-American Israel Corporation and other investors (ICSID Case No. ARB/12/11) concerning alleged violations of investors' rights under the Egypt-U.S. and the Egypt-Germany bilateral investment treaties. The investment concerns a long term contract for the supply of natural gas.

- The Arab Republic of Egypt as Respondent in an investment arbitration concerning alleged violations of investors' rights under the Egypt-Poland bilateral investment treaty. The investment concerns a long term contract for the supply of natural gas.
- 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 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 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-Demark 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.

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 an ICC arbitration 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 3.5 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:

- Toto Costruzioni Generali S.p.A. v. Republic of Lebanon (President of the *Ad hoc* Committee, ICSID Case No. ARB/07/12), pending). Dispute relating to a highway construction.
- Group Corp San Sebastian Gold Mines, Inc. v. Republic of El Salvador (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”.
- 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. 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.

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, Ecole de droit, Sciences Po

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 Admission

Paris

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