

## **IN MEMORIAM: EMMANUEL GAILLARD**

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It is difficult to add meaningfully to all that has been said and written about the extraordinary Emmanuel Gaillard who left us far too soon. But I shall try.

Emmanuel has been described lately as a “titan” and a “giant.” Though he was those things, they fail to capture the humility and humanity that marked Emmanuel for the length of his career. Notwithstanding the monumental achievements he made, and the recognition he so richly deserved, Emmanuel remained throughout a modest, loyal and supportive member of the international arbitration community.

Emmanuel was the “complete” actor in the international arbitration arena. He was outstanding as counsel, arbitrator, teacher, scholar, mentor, as well as a most civic-minded member of the community. He was a model, not only because of the wide range of ways in which he contributed to the international arbitration enterprise, but also because he served that enterprise in all those capacities with the highest level of professionalism. There appeared to be no avenue of activity within the field for which he lacked the requisite talent and skills and to which he was unwilling or unable to direct his devotion.

As counsel, Emmanuel argued among the most prominent cases in the modern history of international arbitration, commercial and investment alike, including of course the case in which he won for his client the staggering sum of USD 50 million, but so very many others. As arbitrator, he exhibited all the qualities one wants of someone serving in that capacity, including seriousness of purpose, attention to detail, managerial skill, courtesy, and of course impartiality and independence. While acting in both of these capacities – counsel and arbitrator – Emmanuel was a mentor to countless young people entering, or hoping to enter, into arbitration practice.

As a life-long teacher, Emmanuel brought his dedication and capacity to inspire to classrooms at the University of Paris XII, Sciences Po Law School, the Geneva Master in International Dispute Settlement (MIDS) of the University of Geneva and the Graduate Institute of International and Development Studies and, along with his longtime colleague and

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collaborator, Yas Banifatemi, more recently at U.S. law schools no less prestigious than Harvard and Yale. He spoke widely in academic fora world-wide, so that those who were not formally his students could benefit from him and all his insights. The school where I teach – Columbia Law School – was among those beneficiary institutions. I myself first met Emmanuel some 40 years ago when we were both fairly young academics, near the start of our careers. I knew even then that, whatever might transpire thereafter, he would remain a constant friend and colleague.

Emmanuel's scholarship was exceptional both in quantity and quality, beginning most prominently with the Fouchard, Gaillard & Goldman treatise on International Arbitration, and culminating in his unique contribution to the international arbitration literature, the “Legal theory of International Arbitration.” In between and since there have appeared countless publications, both broad- and narrow-gauged works of profound appeal to practitioners and academics alike. Emblematic is his 2004 Commentary on ICSID Convention Case law, the first of its kind. But he could also be light-heartedly serious as when he delivered the 2020 Annual International Commercial Arbitration Lecture at American University Washington College of Law, Center on International Commercial Arbitration, entitled “Seven Dirty Tricks to Disrupt Arbitral Proceedings.” Thus, although Emmanuel had his fingers on all aspects of international arbitral practice – be it the use of arbitral anti-suit injunctions, the Energy Charter Treaty, or enforcement of awards annulled at the seat – he managed at the same time to elevate the level of inquiry and, in so doing, push the intellectual boundaries. Particularly salient has been his contribution to the emergence of an “a-national,” de-localized vision of the international arbitration phenomenon, untethering international arbitration to the extent feasible from the intrusions of national law. I had the personal honor and pleasure of co-authoring with Emmanuel the UNCITRAL Guide to the New York Convention. Relatedly, he along with Yas Banifatemi, created a New York Convention website that puts the websites of any and every other international convention to shame.

Ample mention has been made of Emmanuel's role as mentor. In none of his many capacities of endeavor did Emmanuel fail to perform that role and to perform it masterfully.

Not to be overlooked is Emmanuel's character best described as civic. Above and beyond all that has been mentioned, Emmanuel built institutions, all of which have endured and prospered. One can start of course with Shearman & Sterling, an international law firm that – as Global Head of Disputes and Global International Arbitration Practice Group Leader for 33 years – he personally put at the center of the international arbitration map. At his death, Emmanuel had just established a new professional entity, Gaillard Banifatemi Shelbaya Disputes, a global law firm with offices in London, Paris and New York. While building the Shearman & Sterling empire, Emmanuel formed the International

Arbitration Institute, a Paris-based institution that began with the relatively modest task of creating a roster of international arbitrators but moved on to produce an impressive series of studies in the field. Exactly ten years ago, Emmanuel conceived of and constructed the Paris Academy of International Arbitration, inspired in large part in its format by the Hague Academy of International Law, offering students classroom and extra-classroom exposure to learn about all aspects of international arbitration from leading figures in the field of international arbitration, as well as the possibility of building collegial relations with highly talented fellow students from around the world. I had the pleasure and honor of teaching a special course in the program's inaugural year, 2011, and will give the General Course in International Commercial Arbitration in the 2021 tenth-anniversary edition. Emmanuel truly built institutions. He was plainly “constructive” in all senses of the term.

I return to where I began. Emmanuel accomplished and contributed all that I have described, not only with apparent effortlessness, but without any need for credit or acclaim, deserving of that though he may have been. We all miss him and all his attributes, not least his generosity of spirit and his capacity to inspire