

Kluwer Arbitration Blog

A Tribute to Emmanuel Gaillard

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On the unexpected passing of Emmanuel Gaillard at age 69, Kluwer Arbitration Blog reached to practitioners around the world, asking them to share how Emmanuel Gaillard influenced them or the practice of international arbitration.

It would have been impossible to canvass everyone who has been touched in some way by Emmanuel Gaillard. Hopefully, the comments from those below will be seen as representing a broad range of those Emmanuel Gaillard influenced during his long career. Kluwer Arbitration Blog invites readers to add their own reflections in the comments section.



Emmanuel Gaillard 1952-2021

Emmanuel was arbitration's public intellectual in the French manner. Learned, witty, immensely charming, skilfully ambitious. He is irreplaceable.

Lord Leonard Hoffmann

It is so difficult to imagine the world of international arbitration without Emmanuel; every time I

try it makes me very sad... Among his many legal achievements, I will especially remember him as the co-author of the influential Fouchard/Gaillard/Goldmann treatise (F/G/G in my personal abbreviations); as the one who reformulated the lex mercatoria theory as a method of application of the law by international arbitrators rather than a set of rules; as one of the first within the arbitration community to spot the potential of investment arbitration when he started his Chronique of ICSID awards in the Clunet in the eighties... and there would be so much more to say... But above all I will remember him as a great human being!

Gabrielle Kaufmann-Kohler

To say that Emmanuel will be missed — which of course he will be — is a giant understatement. Having worked with Emmanuel for some 40 years, both starting as young faculty, I have never ceased to be inspired by, not only his brilliance, creativity, and professionalism, but also by his boundless capacity for loyalty, collegiality and friendship.

George Bermann

Emmanuel Gaillard's premature and sudden death is an immense loss for the world of arbitration. He joined a great doctrinal creativity and a tremendous success as a practitioner (both counsel and arbitrator).

Pierre Mayer

Emmanuel was a monument in international arbitration which he mastered and innovated as an academic, a counsel and an arbitrator. In all these different capacities, he will be badly missed by readers, students, mentees, colleagues, and his many friends among them. His combined legal knowledge, overall wisdom, social responsibility and kindness will be remembered by everyone who had the privilege of crossing his path.

Vera Van Houtte

As the few artists able to give a life to their art beyond their own creations, Emmanuel was not just a splendid technician of arbitration but he had also the talent to discover the legal order that international arbitration needed to breathe.

Yves Derains

Emmanuel was a brilliant lawyer, advocate, teacher and writer, but he was also a builder, founding and developing one of the top arbitration practices and launching the careers of dozens of budding arbitration lawyers, including myself. He was brave, charismatic, unconventional, he didn't take himself too seriously and he had a wicked sense of humour. He will be deeply missed.

John Savage QC

Emmanuel has greatly contributed to the nourishment of translational law making within the framework of the United Nations. His most recent keystone contribution, the Guide on the New York Convention and its associated web platform, remains a display of Emmanuel's openness and generosity. We feel an immense gratitude and will remember him very fondly.

Corinne Montineri

With Emmanuel, arbitration has lost a global leader. He was one of the best academics of his time, an outstanding arbitrator and a creative legal thinker. In many respects, he fathered arbitration as we know it today. We are all, in a way or another, indebted to him. And he had the passion of defense rooted in his heart; it is perhaps as the grand avocat that he was that I will remember and admire him more. My most friendly thoughts go to his familiars, colleagues and friends in this moment of grief.

Alexis Mourre

What I will hold on to from the 10 years I spent working in close collaboration with Emmanuel Gaillard at the start of my career is that being an accomplished international arbitration specialist requires a combination of qualities, those of a lawyer, a judge and a scholar. Emmanuel had all of them, at an unparalleled level. On a more personal level, he showed me that charisma also comes from paying genuine attention to others, no matter their standing. It is also because he was profoundly humane that his loss is so strongly felt.

Eric Teynier

This is what I can say in a few words. From my baby steps as a trainee until now, Emmanuel has been my teacher, my role model, my north. I will eternally remember those watchful eyes observing me with slight amusement as I would try to convince him to endorse my carefully considered argument. An immense privilege in my career has been to witness this arbitration luminary navigate particularly challenging cases and strategize a way forward where there didn't seem to be any to the rest of us. I will continue doing it the 'Gaillard way' to the best of my ability because that's the only way I know and because I have seen it win the day again and again with tribunals, clients and colleagues.

Tsegaye Laurendeau

A giant in our field and a great human being, whom I deeply admired.

Sarah Grimmer

There are many of us involved in arbitration not only because it is an intellectually challenging and professionally satisfying activity, but also because we believe that with our work we contribute to facilitating international commerce and therefore to economic progress and welfare. However, only a few truly shine in the international arbitration community by decisively contributing to the development of the institution. Undoubtedly Emmanuel Gaillard was one of them. He excelled as professor, counsel and arbitrator. Emmanuel was very aware of it and his self-esteem matched up his brilliance. He was a paladin of the delocalization theory of arbitration, with which you may agree or disagree, but it is unquestionable that this theory was innovative and has contributed to making international arbitration what it is today: the only sensible course to settle international disputes.

David Arias

In my first ever arbitration, ages ago, Emmanuel Gaillard was an impressive opponent. Last week, a few days after his passing, one of my students presented the Yukos award and included a tribute to him on her slides. It goes to show that Emmanuel has influenced, and will continue to influence, many generations of arbitration lawyers

Prof. Maxi Scherer

Emmanuel was a lawyer with the soul of an artist. He embraced the unconventional and relished any opportunity to shatter orthodoxies, doing so with incomparable grace, humor, and nonchalance. His understated demeanor was often tinged with a searing, easy wit that devastated his opponents. He was a caring and empathetic colleague, generous and incisive mentor, and fiercely protective friend; to be in his orbit was to be in a state of constantly learning. When I first met Emmanuel, he disagreed with everything I said, and then offered me a job. Little did I know at the time, he also gave me a home. Always demanding and encouraging, Emmanuel taught me and many others to have confidence in our instincts, yet I know that whenever I am confronted with a challenge, I will always ask what he would do. As we say in the Jewish tradition, “May his memory be a blessing.”

Daniel Reich

Emmanuel was as kind as he was brilliant. He was a mentor to me when I started in the field, as he was to so many young lawyers: generous with his time and prompt to demystify the world in which we operate with his usual wit and charm. While he was firmly anchored in France’s singular approach to international arbitration, his masterly Hague Lecture on the “Aspects philosophiques de l’arbitrage international” has re-laid the theoretical foundations of the subject in a way which will stand the test of time across all jurisdictions and legal traditions.

Salim Moollan QC

Nothing I could write about Emmanuel's influence would compare with his own voice, sharing his views and counseling me on how to think about arbitration. I am fortunate to have recorded the conversation in a 2007 interview.

0.00: The arbitration litigator;

0.39: Quantifying the value of an arbitration agreement;

1.17: The advantages of leading civil law seats of arbitration;

4.38: Why parties should prefer a sole arbitrator for most cases.

Michael Mcilwrath

<https://arbitrationblog.kluwerarbitration.com/wp-content/uploads/sites/48/2021/04/Emmanuel-in-his-own-words-2007.mp3>

Emmanuel was one of a kind. Among other things, he created a culture in his team where everyone working on a matter – from junior members to the most senior ones – was encouraged to express their views. His unique capacity and willingness to consider everyone's thoughts was extremely motivating and led everyone to give their best. That in turn made us all grow.

Coralie Darrigade

Emmanuel's acute intellect – reflected by an enigmatic smile that barely concealed the vivacity of his gaze –, his ability to go to the essentials in any circumstance and to make decisions, sometimes hasty, which set the path to move forward, always amazed me. Beyond the outstanding professional that Emmanuel was, I will always remember him as the affordable, generous and cheerful human being that convinced me to come back to Paris and join his arbitration team, which changed my life forever.

Fernando Mantilla-Serrano

Emmanuel possessed the encryption key of international arbitration, both from a theoretical standpoint and from a practical standpoint. You could learn more in five minutes with him than in ten years working on your own. It was an invaluable privilege to share the first 20 years of my professional life with him.

Philippe Pinsolle

Emmanuel was a “maestro”. A noun that applies only to a handful of individuals. He had not only the ability to transmit knowledge making complex subjects simple but a unique ability to understand what others were thinking, even before they could articulate their thoughts themselves. That is, he could “translate” what someone was thinking yet not saying. An uncanny ability to pierce other people’s mind and psyche and to see both the value and the error in their positions and believes. Emmanuel motivated all of us in his team to reach our potential, to overcome hindrances, whilst allowing us to develop our ideas and self-confidence by letting us find solutions through questioning and dialogue.

His unparalleled ability to “translate” and organise ideas in a logic and coherent manner resulted in, what I believe, is his biggest contribution to the field of international arbitration: a systematization of concepts and formulation of an order. Emmanuel did not disassociate theory and praxis. He applied what he taught with generosity and humanity.

Ximena Herrera

Emmanuel was one of the few in international arbitration who can truly be counted as foundational, having shaped not only the way we practise but the way we conceptualise this field. He inspired all who encountered him, with his originality, his brilliance, his effortless style and his wry smile.

Toby Landau

Emmanuel, above all else, personified the pleasure of arbitration. Everything that he did reflected his boundless passion, joy, and clarity. He juggled the most formidable legal questions with a youthful playfulness. He had an incomparable ability to step back, in the middle of a complex dispute, and look at it in a whole new light, quickly identifying the key issues that would “move up the needle,” as he liked to say. At the same time, he wasn’t shy about delving deep into thorny details to conceive new arguments. Most of all, he celebrated life ... with a mischievous smile and never-ending wit.

Maude Lebois

The ICCA Congress in Stockholm in 1990 offered two programmes, one of which was entitled ‘Preventing Delay and Disruption of Arbitration’, as ‘hot’ a topic 30 years ago as it is now. The other tackled the vexed question of effective proceedings in construction disputes. Those who opted for spoiling tactics were in for a treat. The rapporteurs were Johnny Veeder, whom I knew and with whom I had already had the pleasure to work, and Emmanuel Gaillard. That first encounter with Emmanuel was a revelation. Over two days, he and Johnny put on a masterclass of extraordinary and sustained quality, the one delivering insight and innovative ideas wrapped lightly in felicitous English, the other moving swiftly from what, over time, I was to come to recognise as a trademark somewhat hesitant start into full flight, matching Johnny point for point,

speaking without notes and in French of the highest quality. In the last session, Johnny switched to French and Emmanuel to English, It would be fair to say that, nonetheless, little was lost in translation. It was, quite simply, a tour de force.

So started a professional association and friendship with Emmanuel which it was a privilege to enjoy and to sustain over the next 30 years. He and Johnny were exceptional lawyers and scholars to whom the international arbitration community owes so much. Both are gone too soon, but none of us who has had the good fortune to know them and to count them as friends will ever forget them

John Beechey

A substantive professor, a fierce advocate, and a singular strategist. Emmanuel not only had it all, but he shared it all, with absolute genius. He guided me without ever seeking to teach me and in so doing taught me, and countless others, everything we know all the while giving us the freedom and confidence to grow. His vision and legacy will continue to influence generations of scholars and practitioners to come.

Mohamed Shelbaya

An original thinker who influenced a generation of lawyers through his writing and lectures, but also by his example of respect for others whatever the issue.

Julian Lew

Prof. Gaillard had the unique gift of being able to conceptualize investment arbitration at every level, from a broad legal philosophical perspective in his writings to the most practical, incisive and strategic approach in his representation of clients. He was a mentor, a teacher, a role model and a friend to so many in this field, and he will be greatly missed.

Meg Kinnear

Emmanuel's brilliance was obvious to everyone in the wider arbitration community, but working closely with him revealed less obvious values and qualities. For example, no matter the challenges of a case, his approach was always ethical and honest. He embraced diversity and led a truly inclusive practice. And, his unique combination of wit and quickness of mind added lightness and laughter to the toughest cases. What a loss that his journey was far too short.

Todd Wetmore

A giant amongst us Emmanuel Gaillard brought style, brilliance, courtesy and humility to his many roles including advocate, arbitrator, teacher, mentor and friend. As an advocate and arbitrator he

seamlessly fitted into the common and civil law traditions in a way few have done before him. As a teacher and philosopher he challenged the atrophy of thinking from which many of us lawyers suffer. As a mentor and friend to many his influence was deep and lasting. The sadness of his sudden passing is tinged by the memories we have of him, and in my case the very fresh memory of the skill of his advocacy in an arbitration the week before he left us.

Doug Jones

Over the past 10 years, I have had the privilege of working with Emmanuel on a daily basis. We have notably appeared or argued together in over 50 hearings. Emmanuel's style was unique: he could present the most complex issues in the simplest fashion, forcefully defend an argument without ever raising his voice, use humour to undermine the opposing side's position or to discredit disingenuous witnesses or experts, while always treating his opponents with respect. He made every hearing a treasurable experience: he would constantly reinvent himself and often catch even his closest colleagues off guard. One could not but admire him and be proud to count among his teammates.

Benjamin Siino

Emmanuel Gaillard not only practiced international arbitration, he lived and breathed it. Meeting him in November 2017 when he came personally to Lagos Nigeria to participate on a panel organized by the Lagos Court of Arbitration and Shearman & Sterling discussing current practice under the New York Convention was evidence of this. He didn't send someone, he came himself. He was unassuming, unpretentious and ever ready to expand the thresholds of knowledge.

Funke Adekoya

Emmanuel was a friend and a permanent source of inspiration through his writings, his personal style as counsel, his creativity, his dynamism, his vibrant personality. Few lawyers have contributed so much to the development of international arbitration. We will miss him enormously.

Bernard Hanotiau

Emmanuel Gaillard was a voice, literally and figuratively. In the literal sense: quiet, firm, rhythmic, recognizable among thousands; it lingers in the memory. In the figurative sense: in his advisory or arbitral work, in his courses, his conferences, his publications, firm, confident, clear, often original, always courageous; it will remain present for a long time in the development of international arbitration.

Pierre Tercier

Finally, on behalf of the new law firm that Emmanuel Gaillard had recently co-founded and bearing his name, *Gaillard Banifatemi Shelbaya Disputes*, those wishing to share memories, stories, anecdotes and sentiments are invited to email them to memories.emmanuelgaillard@gbsdspites.com, so they can be compiled into a book of remembrance. The firm will organize an event later this year in honor of their lost colleague, when conditions will permit in-person gatherings.


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