

Fouchard Gaillard Goldman
On
International Commercial Arbitration

Edited by
Emmanuel Gaillard
John Savage

Fouchard, Gaillard, Goldman

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TABLE OF ABBREVIATIONS

AAA	American Arbitration Association
AFDI	Annuaire français de droit international
AJDA	Actualité juridique – Droit administratif
AIA	Italian Arbitration Association
Alb. L. Rev.	Albany Law Review
All E.R.	All England Law Reports
Am. J. Int'l L.	American Journal of International Law
Am. Rev. Int'l Arb.	The American Review of International Arbitration
Ann. Inst. Dr. Int.	Annuaire de l'Institut de droit international
Ann. suisse dr. intern.	Annuaire suisse de droit international
App. Cas.	Appeal Cases
Arb. & Disp. Resol. L.J.	The Arbitration and Resolution Dispute Law Journal
Arb. Int'l	Arbitration International
Arb. J.	The Arbitration Journal
Arb. Mat.	Arbitration Materials
ATF	Arrêts du Tribunal Fédéral Suisse
Arbitration	Arbitration: The Journal of the Chartered Institute of Arbitrators
[Belg] Journ. Trib.	[Belgian] Journal des Tribunaux
BGB	Bürgerliches Gesetzbuch
BGBI.	Bundesgesetzblatt
BGH	Bundesgerichtshof
Brit. Y.B. Int'l L.	British Yearbook of International Law
Bull. ASA	Bulletin de l'Association Suisse d'Arbitrage
Bull. Civ.	Bulletin des arrêts de la Cour de cassation (chambres civiles)
Bull. Joly	Bulletin Joly
Brit. Y.B. Int'l L.	British Yearbook of International Law
Cah. Jur. Fisc. Exp.	Cahiers juridiques et fiscaux de l'exportation
CACNIQ	Quebec National and International Commercial Arbitration Centre
Cal. W. Int'l L.J.	California Western International Law Journal
Can. Bus. L.J.	Canadian Business Law Journal
C.A.	Recueil de jurisprudence du Québec, Cour d'appel

CEPANI	Belgian Centre for Arbitration and Mediation
Chron.	Chroniques (Daloz)
Colum. J. Transnat'l L.	Columbia Journal of Transnational Law
Comp. L. Y.B. Int'l Bus.	Comparative Law Yearbook of International Business
Daloz Aff.	Daloz Affaires
Dep't St. Bull.	Department of State Bulletin
DIS	Deutsche Institution für Schiedsgerichtsbarkeit
Disp. Resol. J.	Dispute Resolution Journal
D.L.R.	Dominion Law Reports
Doct.	Doctrine (Gazette du Palais)
D.P.	Recueil périodique et critique Daloz
DPCI	Droit et pratique du commerce international
Dr. mar. fr.	Droit maritime français
E.C.R.	Report of Cases before the Court of Justice of the European Communities
Ed. C.I.	Edition Commerce et Industrie (JCP)
Ed. G.	Edition Générale (JCP)
E.T.S.	European Treaty Series
F. 2d	Federal Reporter 2d Series
F. 3d	Federal Reporter 3d Series
F. Supp.	Federal Supplement
FIDIC	Fédération Internationale des Ingénieurs-Conseils
Fin. Times	The Financial Times
F.R.D.	Federal Rules Decisions
GATT	General Agreement on Tariffs and Trade
Gaz. Pal.	Gazette du Palais
IBA	International Bar Association
ICC	International Chamber of Commerce
ICCA	International Council for Commercial Arbitration
ICC Bulletin	The ICC International Court of Arbitration Bulletin
Int'l & Comp. L.Q.	International and Comparative Law Quarterly
ICSID	International Centre for the Settlement of Investment Disputes
ICSID Rep.	ICSID Reports
ICSID Rev. – Foreign Inv. L.J.	ICSID Review – Foreign Investment Law Journal
I.L.M.	International Legal Materials
I.R.	Informations Rapides (Recueil Daloz)
Int'l Arb. Rep.	International Arbitration Report
Int'l Bus. Law.	International Business Lawyer
Int'l Bus. L.J.	International Business Law Journal

Int'l Constr. L. Rev.	International Construction Law Review
Int'l Fin. L. Rev.	International Financial Law Review
Int'l Law.	International Lawyer
Int'l L. Rep.	International Law Reports
IPrax	Praxis des internationalen Privat- und Verfahrens- rechts
Iran-U.S. Cl. Trib. Rep.	Iran-United States Claims Tribunal Reports
J. Bus. L.	Journal of Business Law
JCP	Juris-Classeur Périodique (La Semaine Juridique)
J.-Cl. Comm.	Juris-Classeur Commercial
J.-Cl. Proc. Civ.	Juris-Classeur (Procédure civile)
J.-Cl. Dr. Int.	Juris-Classeur (Droit international)
J.D.I.	Journal du droit international
J. Int'l Arb.	Journal of International Arbitration
J.O.	Journal officiel
Journ. not. av.	Journal des notaires et des avocats
Jur.	Jurisprudence (Recueil Dalloz)
Law & Pol'y Int'l Bus.	Law and Policy in International Business
LCIA	London Court of International Arbitration
Leb. Rev. Arb.	The Lebanese Review of Arab and International Arbitration
Lég.	Législation (Dalloz)
Lloyd's Rep.	Lloyd's Law Reports
LMAA	London Maritime Arbitrators Association
L.N.T.S.	League of Nations Treaty Series
L.Q. Rev.	The Law Quarterly Review
McGill L.J.	McGill Law Journal
Mich. Y.B. Int'l Stud.	Michigan Yearbook of International Studies
NAI	Nederlands Arbitrage Instituut
NCPC	Nouveau Code de Procédure Civile
NJW	Neue Juristische Wochenschrift
Nw. J. Int'l L. & Bus.	Northwestern Journal of International Law and Business
N.Y.A.D.	New York Appellate Division
N.Y.L.J.	New York Law Journal
O.J.	Official Journal of the European Communities
O.A.S.T.S.	Organization of American States Treaty Series
Pas.	Pasycrie
Rass. dell'arb.	Rassegna dell'Arbitrato
Rec. Penant	Recueil Penant

Rev. arb.	Revue de l'arbitrage
Rev. Barreau	Revue du Barreau
Rev. belge dr. int.	Revue belge de droit international
Rev. Cor. Esp. Arb.	Revista de la Corte Española de Arbitraje
Rev. crit. DIP	Revue critique de droit international privé
Rev. der. Mercosur	Revista de Derecho del Mercosur
Rev. dr. com. belge	Revue de droit commercial belge
Rev. int. dr. éco.	Revue internationale de droit économique
Rev. dr. int. dr. comp.	Revue de droit international et de droit comparé
Rev. dr. int. pr. et dr. pén. int.	Revue de droit international privé et de droit pénal international
Rev. suisse dr. int. et dr. eur.	Revue suisse de droit international et droit européen
Riv. dell'arb.	Rivista dell'arbitrato
Riv. dir. int. e proc.	Rivista di diritto internazionale e processuale
RD McGill	Revue de droit McGill
RGDIP	Revue générale de droit international public
RID comp.	Revue internationale de droit comparé
RID éco	Revue internationale de droit économique
RIW	Recht der Internationalen Wirtschaft
R.S.O.	Revised Statutes of Ontario
RTD civ.	Revue trimestrielle de droit civil
RTD com.	Revue trimestrielle de droit commercial et de droit économique
S.C. L. Rev.	South Carolina Law Review
S.C.R.	Supreme Court Reports
S. Ct.	Supreme Court Reporter
Sem. Jud.	La Semaine Judiciaire
Somm.	Sommaires (Gazette du Palais)
St. John's L. Rev.	St. John's Law Review
S.C.J.	Supreme Court Journal
[Sw.] Journ. Trib.	[Swiss] Journal des Tribunaux
Sw. Rev. Int'l Antitrust L.	Swiss Review of International Antitrust Law
SZ	Sammlung zivilrechtlicher Entscheidungen
Texas Int'l L.J.	Texas International Law Journal
Tex. Rev. Civ. Stat. Ann.	Texas Revised Civil Statutes Annotated
TGI	Tribunal de Grande Instance
T.I.A.S.	Treaties and other International Acts Series
Tul. L. Rev.	Tulane Law Review
Tul. Eur. & Civ. L.F.	Tulane European & Civil Law Forum

U. Miami Y.B. Int'l L.	University of Miami Yearbook of International Law
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	International Institute for the Unification of Private Law
Uniform L. Rev.	Uniform Law Review
U.N.T.S.	United Nations Treaty Series
U.S.T.	United States Treaties and Other International Agreements
Virg. J. Int'l L.	Virginia Journal of International Law
WL	Westlaw
W.L.R.	Weekly Law Reports
World Arb. & Med. Rep.	World Arbitration & Mediation Report
Y.B. Com. Arb.	Yearbook Commercial Arbitration
ZPO	Zivilprozeßordnung

FOREWORD

This treatise is based on the authors' *Traité de l'Arbitrage Commercial International*, published in 1996 in the French language by Litec, Paris. However, this is not simply an English version. It is more in the nature of a second and revised edition, particularly given the rapid evolution of the law of international arbitration over the past three years. Several new arbitration statutes have come into force (notably in England in 1997, in Germany and Belgium in 1998, and in Sweden in 1999); major institutional arbitration rules were revised (including the International Arbitration Rules of the AAA in 1997 and the Arbitration Rules of both the ICC and LCIA in 1998); there have also been important decisions of both the courts and arbitral tribunals. These recent developments are of course fully considered throughout this book.

The original French language text, although a collective work, was divided between the authors as follows:

Part I	Definition and Sources	Philippe Fouchard
Part II	The Arbitration Agreement	Emmanuel Gaillard
	(on the basis of an early draft by Berthold Goldman)	
Part III	The Arbitral Tribunal	Philippe Fouchard
Part IV	The Arbitral Procedure	Emmanuel Gaillard
Part V	The Law Applicable to the Merits of the Dispute ...	Emmanuel Gaillard
Part VI	Court Review of Arbitral Awards	Emmanuel Gaillard

This English version has been prepared and edited by Emmanuel Gaillard and John Savage, both of Shearman & Sterling, with Philippe Fouchard contributing to its updating. It would not have been possible without the contribution of a team of lawyers and legal assistants from Shearman & Sterling's international arbitration group. The team was headed by Nanou Leleu-Knobil, who also researched and edited all references. We are also very grateful to Andrew Butler for his translation work.

About the authors

Philippe Fouchard is the General Editor of the *Revue de l'arbitrage*, the leading French-language arbitration journal. He is Professor of Law at the University of Paris II, where he teaches international business and arbitration law.

Emmanuel Gaillard is a partner in the Paris office of Shearman & Sterling, and heads the firm's international arbitration practice group. He is also Professor of Law at the University of Paris XII and was Visiting Professor at Harvard Law School in 1984.

The late **Berthold Goldman** was President of the University of Paris II, where he was also Professor of Law. He edited two major French international law publications, the *Juris-Classeur de droit international* and the *Journal du droit international*.

* * * * *

John Savage, co-editor of this book with Emmanuel Gaillard, is an English solicitor and a member of the Paris Bar. He is a member of Shearman & Sterling's international arbitration practice group, and is based in the firm's Paris office.

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