

LOUIS B. KIMMELMAN

INDEPENDENT ARBITRATOR

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SUMMARY

Louis B. Kimmelman is an independent arbitrator and New York qualified lawyer with over forty years of experience in resolving international commercial, construction and investor-state disputes. He teaches courses on international arbitration and litigation and speaks and writes frequently on international dispute resolution topics. Mr. Kimmelman is a Fellow of the Chartered Institute of Arbitrators (FCIArb).

Mr. Kimmelman has acted as counsel and arbitrator in a broad range of international disputes involving corporate parties and sovereign entities. Prior to January 2021, he was a partner in the New York office of Sidley Austin LLP, where he had been co-leader of Sidley's global international arbitration practice. Before joining Sidley, Mr. Kimmelman had been a partner in the New York offices of Allen & Overy LLP (2006-2013) and O'Melveny & Myers LLP (1988-2006), where he was responsible for leading the international arbitration practice in the Americas.

Mr. Kimmelman is active in the international arbitration community. He is Chair of the New York International Arbitration Center (NYIAC); is co-chair of the annual Fordham International Arbitration and Mediation Conference; and is an Adviser to the American Law Institute project on the Restatement of the U.S. Law of International Commercial and Investor-State Arbitration. He served as a member of the organizing committee of the inaugural New York Arbitration Week in 2019 and the first virtual New York Arbitration Week in 2020. He is a signatory to the ERA Pledge and has supported various events organized by ArbitralWomen.

Mr. Kimmelman is ranked in various international arbitration directories, including Who's Who Legal, Chambers USA, Chambers Global and Chambers Latin America. Clients and peers note that he is "a widely respected practitioner who attracts plaudits for his 'wonderful advocacy skills' and 'superior analytical ability.'" He is described as "excellent at identifying the arguments that would best serve his clients and advocating them with vigor and credibility" and is "very, very smart and knows everything about international arbitration."

Mr. Kimmelman is admitted to practice in New York and New Jersey and has testified as an expert witness on New York law. He received his B.A. from Yale College and his J.D. from Yale Law School and clerked for the Honorable Leonard I. Garth of the U.S. Court of Appeals for the Third Circuit.

PROFESSIONAL EXPERIENCE

INDEPENDENT ARBITRATOR	January 2021 - Present
SIDLEY AUSTIN LLP , New York, NY <i>Partner, Co-Leader, Global International Arbitration Practice (2014-2019)</i>	September 2013 – December 2020
ALLEN & OVERY LLP , New York, NY <i>Partner, International Arbitration Practice (practice leader for the Americas)</i>	November 2006 – September 2013
O'MELVENY & MYERS LLP , New York, NY <i>Associate / Partner, Co-Chair, International Arbitration Practice</i>	June 1985 – November 2006
TUNG, DRABKIN & BOYNTON , New York, NY <i>Associate / Partner, Litigation/Arbitration Practice</i>	January 1984 – May 1985
CLEARY, GOTTlieb, STEEN & HAMILTON , New York, NY <i>Associate, Litigation Practice</i>	October 1976 – December 1983

TEACHING EXPERIENCE

BROOKLYN LAW SCHOOL , Brooklyn, NY <i>Adjunct Professor of Law</i> Coach, Vis International Commercial Arbitration Moot Team	2003 - Present 2007 - Present
WASHINGTON COLLEGE OF LAW , American University, Washington, DC <i>Adjunct Professor of Law</i>	2010 - Present
GEORGETOWN UNIVERSITY LAW CENTER , Georgetown University, Washington, DC <i>Adjunct Professor of Law</i>	2016 - Present
Columbia Law School/Chartered Institute of Arbitrators Comprehensive Course on International Arbitration , New York, NY <i>Faculty</i>	2015 - Present

CLERKSHIP

Law Clerk, Honorable Leonard I. Garth, U.S. Court of Appeals, 3rd Circuit	1975-76
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EDUCATION

YALE LAW SCHOOL, New Haven, CT

J.D., 1975
Moot Court Prize Argument

YALE COLLEGE, New Haven, CT

B.A., 1972
Summa cum laude
Honors with exceptional
distinction in history

QUALIFICATIONS

Admitted to practice in New York (1977) and New Jersey (1975) and before several federal district and circuit courts

Fellow, Chartered Institute of Arbitrators (FCI Arb)

WORK EXPERIENCE

Representative Matters as Arbitrator

- SIAC arbitration: Co-arbitrator in a dispute between parties from China, Aruba and the U.S. and also the Government of the Lao People's Democratic Republic relating to the settlement of prior arbitrations.
- ICDR arbitration: Co-arbitrator in a dispute between parties from Hong Kong and Brazil relating to an exclusive marketing agreement.
- ICC arbitration: President of Tribunal in a dispute between parties from Israel and China relating to a shareholders agreement.
- *Ad hoc* arbitration: Presiding arbitrator in a dispute under the UNCITRAL Arbitration Rules between parties from Japan and Taiwan relating to a patent license agreement.
- ICC arbitration: Co-arbitrator in a dispute between parties from the U.S. and Spain relating to an asset purchase agreement.
- AAA arbitration: Co-arbitrator in a dispute between parties from the U.S. relating to a product development agreement.

- ICC arbitration: Chair of Tribunal in a dispute between parties from South Korea and the U.S. arising from an asset purchase agreement.
- ICC arbitration: Chair of Tribunal in a dispute between parties from Mexico and China arising from a commodity sale contract.
- ICDR arbitration: Chair of Tribunal in a dispute between parties from India and U.S. relating to a services agreement.
- ICC arbitration: Co-arbitrator in a dispute between parties from Venezuela, U.S. Canada and Germany relating to a construction project.

Representative Matters as Counsel in International Arbitration Disputes

Construction Disputes

- *Ad hoc* and ICC arbitrations: Represented a U.S. hotel builder and operator in two parallel arbitrations relating to delays and cost overruns in the construction of an international hotel project in Panama. The *ad hoc* arbitration (which was ordered by the Panama Supreme Court) applied Panama law to the claims, and the ICC arbitration applied Maryland law.
- KLRCA arbitrations: Represented a U.S. hotel builder and operator in seven related arbitrations based on seven contracts with an Indian company for the construction and operation of a luxury hotel in New Delhi, India. The dispute included the question of whether the arbitrations could be consolidated. The contracts were governed by Indian law.
- AAA arbitrations: Represented the U.S. subsidiary of a Japanese construction company in multiple construction disputes arising from commercial and industrial projects in the United States. These disputes were based on construction contracts governed by the law of various states of the United States.

Corporate Transaction Disputes

- *Ad hoc* arbitration: Represented a U.S. purchaser of assets in a purchase price adjustment arbitration before an accounting expert.
- *Ad hoc* arbitrations: Represented a German life sciences company in the acquisition of another life sciences company in the United States and in the arbitrations that followed relating to tax and regulatory issues under the transaction agreements governed by New York law.
- ICC arbitration: Represented the Italian and Netherlands purchasers of shares in a Mexican company in claims against the Mexican seller of the shares and its affiliates for breach of representations and warranties in the share purchase agreement and for fraud based on Mexican law.
- ICDR arbitration: Represented the Chilean seller of a business in a dispute with the Argentine purchaser relating to representations and warranties in the sales agreement governed by Chilean law.

Distribution Disputes

- ICC arbitration: Represented a U.S. food and beverage company in a dispute with a German manufacturer and distributor arising from the termination of the parties' cooperation agreement governed by Swiss law.
- ICC arbitration: Represented the U.S. distributor of bicycle products in a dispute with the French manufacturer arising from the termination of the distribution agreement governed by New York law.

Energy/Oil and Gas Disputes

- *Ad hoc* arbitration: Represented the BVI/Chinese owners/operators of an oil project in Africa in a dispute with a U.S. party relating to the meaning and scope of a net profits interest. The arbitration involved a two-week hearing conducted using a remote hearing platform.
- LCIA arbitrations: Represented a Mexican government-owned electricity producer in two LCIA arbitrations with U.S. parties relating to the operation of a natural gas pipeline system.
- ICC arbitrations: Represented four Singaporean EPC contractors in four separate arbitrations (administered together) against four Dutch parties alleging breaches of the four EPC contracts governed by New York law. These contracts provided for the construction and sale of oil drilling rigs for use in Brazil.
- ICC and LCIA arbitrations: Represented a Caribbean national oil company in two arbitrations relating to a failed joint venture to construct and operate a gas-to-liquids project. Both arbitrations resulted in awards that were confirmed by a federal court in New York.
- ICC arbitrations: Represented a Qatari LNG producer in a series of contract sales price review disputes under long-term LNG supply contracts with purchasers in Europe and in the resulting arbitrations.
- ICC arbitrations: Represented a Korean national oil company in two arbitrations arising from disputes concerning a joint venture to explore for oil in Siberia.

Financial Institutions Disputes

- ICC arbitration: Represented a subsidiary of a U.S. global financial institution and a German global financial institution in an arbitration with a South American sovereign for breach of contract governed by New York law arising from the failure of a local South American bank. The award was confirmed by a federal court in New York.
- ICC arbitration: Represented a subsidiary of a U.S. global financial institution in an ICC arbitration against a South American sovereign in which the sovereign alleged intentional misconduct by the foreign shareholders and directors of a local South American bank based on an agreement governed by New York law. The award was confirmed by a federal court in New York.

Investment Treaty Disputes

- ICSID arbitration: ICSID Case No. ARB/07/6, *Tza Yap Shum v. Republic of Peru*. Represented the Government of Peru in the first dispute commenced by a Chinese investor under the China-Peru bilateral investment treaty.

Patent Licensing Disputes

- AAA/ICDR arbitration: Represented an Asian telecommunications equipment manufacturer in an arbitration with a Swedish telecommunications equipment manufacturer regarding the FRAND terms of a license for a patent portfolio of standard essential patents governed by New York law.
- AAA/ICDR arbitration: Represented an Asian telecommunications equipment manufacturer in an arbitration with a U.S. licensor of patents involving claims of fraud in the inducement and breach of contract with respect to a patent license agreement governed by New York law.

Sale of Goods Disputes

- ICC arbitration: Represented a Chinese manufacturer of electronic products in an arbitration with a U.S. purchaser regarding alleged product defects based on a contract governed by New York law.
- ICC arbitration: Represented a Brazilian purchaser of turbines in a dispute with the U.S. manufacturer based on a New York law governed contract.
- AAA arbitration: Represented a Japanese manufacturer of testing equipment in a dispute with a U.S. purchaser regarding the quality of the equipment (and in parallel litigation).

Shareholder Disputes

- ICC arbitration: Represented a Netherlands shareholder and its Italian parent company in a dispute with the other shareholders of a Brazilian holding company under a shareholders agreement governed by Brazilian law relating to control of a major Brazilian telecommunications provider.
- ICC arbitration: Represented a Thai shareholder in a dispute with the majority shareholder of a mobile telecommunications company under a shareholders agreement governed by Thai law.

Transportation Disputes

- ICDR arbitration: Represented Bulgarian and Latvian companies in a dispute regarding the transportation of food products to Afghanistan.

Lawsuits against an Arbitral Institution and/or Arbitrator

- Counsel for the ICC International Court of Arbitration in a lawsuit brought by a Mexican party seeking to prevent a sole arbitrator in a Mexico City seated arbitration from rendering an award.
- Counsel for the ICC International Court of Arbitration and sole arbitrator in a lawsuit to recover damages brought by the losing party to an ICC arbitration. The judicial decision was reported: *Landmark Ventures, Inc. v. Cohen*, 2014 WL 6784397 (S.D.N.Y. 2014).
- Counsel for the ICC International Court of Arbitration in a lawsuit brought by a party to an ICC arbitration challenging the ICC Court's Rule 6(2) determination as to the prima facie existence of an agreement to arbitrate. The judicial decision was reported: *Global Gold Mining, LLC v. Robinson*, 533 F. Supp.2d 442 (S.D.N.Y. 2008).

Representative Matters as Counsel in Arbitration Award Enforcement Proceedings

- Counsel in three separate arbitral award enforcement proceedings brought in federal court in Washington, D.C. against the Government of Belize. These proceedings resulted in the confirmation of the three arbitration awards. Those decisions were then affirmed on appeal to the U.S. Court of Appeals for the D.C. Circuit and petitions for certiorari to the U.S. Supreme Court were denied.

Representative Litigation Cases involving International Disputes

- Counsel for a U.S. financial institution in cases filed in state and federal court in New York arising from the failure of Latin American financial institution.
- Counsel for a U.S. financial institution in a dispute pending in federal court in New York arising from an alleged breach of a joint venture agreement governed by New York law relating to a project in Mexico.
- Counsel for a U.S. oil and gas company in a lawsuit alleging human rights violations arising from the construction of a natural gas pipeline in Myanmar.
- Counsel for a European satellite operator in a lawsuit alleging contract and tort claims under U.S. law.
- Counsel for a foreign minority shareholder in a Cuban telecommunications company in resisting a writ of attachment obtained to enforce a judgment owed by the Government of Cuba.
- Counsel for a Japanese construction company in a lawsuit filed in the U.S. alleging contract, tort and statutory claims relating to the development of a resort in Malaysia.

PUBLICATIONS

- Co-author, “Arbitration of International Commercial Disputes,” *Successful Partnering Between Inside and Outside Counsel* (Robert L. Haig, ed. 2018).
- Co-author, “Litigating International Disputes in Federal Courts,” *Business and Commercial Litigation in Federal Courts* (Robert L. Haig, ed., 5th ed. 2021).
- “Warranties,” *Commercial Litigation in New York State Courts* (Robert L. Haig, ed., 5th ed. 2020).
- Co-author, “The Impact of the UNCITRAL Arbitration Rules,” *Interim and Emergency Relief in International Arbitration* (Diora Ziyayeva, ed. 2015).
- Co-author, “How to Make a Project Come Alive for a Tribunal: The Use of Demonstrative Evidence in International Construction Arbitration,” *Contemporary Issues in International Arbitration and Mediation: The Fordham Papers 2012* (Arthur W. Rovine, ed. 2013).
- Co-author, “Document Production in the United States,” *Document Production in International Arbitration* (ICC International Court of Arbitration Bulletin, 2006).

REPRESENTATIVE SPEAKING ENGAGEMENTS

- Co-Chair, Fordham International Arbitration and Mediation Conference, Fordham Law School, 2016, 2017, 2018, 2019, 2020
- Speaker, ICC Russia Conference, 2020
- Speaker, ICDR Y&I Conference, 2020
- Speaker, BVI International Arbitration Centre Conference, 2017
- Speaker, Caribbean Academy for Law and Court Administration Conference, 2016
- Speaker, XIII CBAr International Arbitration Congress (Brazil), 2014
- Speaker, International Law Institute Conference on Interim Measures in International Commercial Arbitration, 2014
- Speaker, Fordham International Arbitration Conference, Fordham Law School, 2012
- Speaker, FTI Spring International Arbitration Event, 2011
- Speaker, ICC Latin American Conference, 2004, 2005, 2007, 2010
- Speaker, ICC/USCIB New York Conferences, 2005, 2010
- Speaker, ICC/ICSID/ICDR Colloquium, 2003, 2005

PROFESSIONAL ACTIVITIES

Chair of the New York International Arbitration Center (NYIAC)

Co-Chair of the annual Fordham Conference on International Arbitration and Mediation

Member of the organizing committee of New York Arbitration Week

Adviser to the ALI Project on the Restatement of the U.S. Law of International Commercial and Investor-State Arbitration

Director and Executive Committee member of SICANA, Inc., the U.S. affiliate of the ICC International Court of Arbitration

Member of the ICC Commission on Arbitration for more than 15 years

Member of the ICC Latin American Arbitration Group

Member of the International Arbitration Club of New York

Member of the American Law Institute

Former Member, Executive Advisory Committee for CPR International Institute for Conflict Prevention and Resolution.

Former Chair, Arbitration Committee of the United States Council for International Business (the ICC National Committee for the United States)

Former Chair, International Commercial Disputes Committee of the New York City Bar