



TOBY T. LANDAU QC

MA, BCL (Oxon); LL.M. (Harvard); FCIArb; CARb;
Barrister (England & Wales), Attorney (New York)

ESSEX COURT CHAMBERS

24 Lincoln's Inn Fields London WC2A 3EG, UK
+44 207 813 8000, tlandau@aol.com

EDUCATION

Oxford University - Merton College (1987-1991):

- (1) BA (Law), First Class Honours (within top 3): 1990 (MA: 1994)
- (2) BCL (Bachelor of Civil Law - a Masters degree), First Class Honours: 1991

Eldon Law Scholarship (University prize awarded to the most promising student intending to qualify at the Bar);
Slaughter & May University Prize (for the best performance in Contract in Final Examinations);
College Exhibition;
Fowler Prize.

Inns of Court School of Law, Grays Inn, London (1991-2):

BVC – Bar Vocational Course (1992)

Middle Temple Queen Mother's Fund major Bar Scholarship
Middle Temple Harmsworth Bar Entrance Exhibition

Harvard Law School, Cambridge Massachusetts, USA (1992-3)

LL.M. (1993)

Kennedy Scholar
Harvard University Lewis Fellowship

BAR ADMISSIONS

Called to the Bar of England & Wales: 1993

Appointed Queen's Counsel: 2008

Admitted as an Attorney and Counsellor-at-Law by the State of New York: 1994

Called to the Bar of Northern Ireland: 2000.

CURRENT PROFESSIONAL POSITIONS & AFFILIATIONS

Barrister and Arbitrator in independent practice at Essex Court Chambers: October 1993 to date (Major pupillage scholarship: 1993)

Member of the Board of Directors of the London Court of International Arbitration (LCIA)

Fellow of the Chartered Institute of Arbitrators (FCIArb); Chartered Arbitrator (Carb) (by special election, with a waiver for the minimum age requirement)

Visiting Professor, King's College, University of London (as of Sept 2009)

Visiting Lecturer, Pakistan College of Law, Lahore

Member of the Executive Committee, Swedish Arbitration Association

Editorial Board: Journal of International Arbitration;
 Journal of Arab Arbitration;
 Global Arbitration Review

Committee Member of the International Arbitration Club.

Member of: Swiss Arbitration Association; LCIA
 American Society of International Law; International Law Association
 International Arbitration Institute; Commercial Bar Association.

PRACTICE

As Counsel: In private practice as a Barrister since 1994, specialising in international and commercial law, and in particular international and commercial arbitration.

Regularly advise and appear as Counsel before the English Courts and international arbitrations worldwide.

Prior to taking Silk in 2008: Chambers & Partners Award for "*Junior Barrister of the Year*" in the field of international arbitration, 2005 and 2007 (and short-listed for the same award – final 3 nominees – in 2006).

As Arbitrator: Chairman / Co-Arbitrator / Sole Arbitrator in over 50 major international arbitrations, including numerous appointments in:

-- Bilateral Investment Treaty cases, both under ICSID Rules (e.g. *SGS v Pakistan*; *Impregilo v Pakistan*; *Biwater v Tanzania*; *GEA v Ukraine*; *Gustav Hamester v Ghana*), as well as Stockholm Chamber of Commerce Rules (*Renta 4 v Russian Federation*).

- Institutional and *ad hoc* arbitration cases, ICC; LCIA; Stockholm Chamber of Commerce; Netherlands Arbitration Institute; International Arbitral Centre of the Austrian Federal Economic Chamber; ARIAS; CCIG (Swiss Rules); UNCITRAL.

Scope of Practice:

Broad commercial practice, with substantial experience both as Counsel and Arbitrator in: Foreign Investment; International Trade; Joint Ventures; Power and other large scale infrastructure projects; Oil & Gas; Telecommunications; Shipping; Agency and distribution (including commercial agency); Conflict of Laws; Public International Law (largely in the investment context).

Unreported Arbitration Cases

Counsel in over 260 international arbitrations in numerous countries worldwide, across the full spectrum of subject matter listed above. Most cases are confidential and are not reported.

Reported Treaty Arbitration Cases

Lead Counsel in a large number of BIT / Treaty arbitrations, of which a few are now in the public domain, including:

- *Chevron Block Twelve and Chevron Blocks Thirteen and Fourteen v. People's Republic of Bangladesh (ICSID Case No. ARB/06/10)* Case concerning exploration, development and production of natural gas. Arbitrators: Judge Thomas Burgenthal; Fali Nariman SC; John Beechey.
- *Foresti v South Africa (ICSID Case ARB(AF)/07/1)* Case against South Africa concerning Black Empowerment policies. Arbitrators: Professor Vaughan Lowe; Judge Charles Brower; Joseph Matthews.
- *Fondel v Azerbaijan (ICSID Case ARB/ 07 / 1)* Case against Azerbaijan involving take-over of a major aluminium plant. Arbitrators: David Williams QC; Judge Stephen Schwebel; Bill Rowley QC.
- *Tukcell v Iran (UNCITRAL Arbitration)* First BIT claim against the State, concerning the cancellation of a major telecoms licence. Arbitrators: Neil Kaplan CBE QC; Judge Charles Brower; Dr Abedian.

Other treaty cases (not in the public domain) include, as representative examples:

- claims arising out of carbon tariff legislation in the energy sector;
- a major eastern European telecoms BIT dispute (worth €2.2 billion);
- a major dispute between a South-East Asian investor, and a South-East Asian Government involving the telecoms sector.

Reported Cases Before the English Courts

The following is a selection of representative reported cases in the English Courts:

Dallah Real Estate and Tourism Holding Co v The Ministry of Religious Affairs, Government of Pakistan [2008] 2 Lloyd's Rep 535; [2008] 1 Lloyd's Law Rep Plus 83 (AIKENS J)

Successfully resisted the recognition and enforcement of a US\$20 million ICC award under the New York Convention (a rare instance of the English Court denying enforcement to an ICC Award).

Upheld in the Court of Appeal (WARD, MOORE-BICK, RIX LJ): [2009] EWCA Civ 755

Czech Republic v European Media Ventures SA [2008] 1 Lloyd's Law Rep 186; [2008] 1 All ER (Comm) 531; (2007) 2 CLC 908 (SIMON J)

Second BIT award to be challenged before the English Courts. Successfully resisted s.67 application, based on the interpretation of the COMECON era bilateral investment treaties.

Orascom Telecom Holding SAE v Republic of Chad [2008] 2 Lloyd's Law Rep 396; (2008) 2 CLC 296 (BURTON J)

Successfully secured an order executing an arbitral award against the assets of Chad in London, on the basis that the assets (bank accounts within a World Bank loan scheme) were not protected by sovereign immunity. Significant interpretation and application of the State Immunity Act 1978.

Syska v Vivendi Universal SA [2008] 2 Lloyd's Law Rep 636; [2008] 1 Lloyd's Law Rep Plus 88; (2008) 2 CLC 459 (CHRISTOPHER CLARKE J)

Successfully resisted jurisdiction challenge in a claim worth € 2.2 billion. Interpretation and application of the European Parliament and Council Regulation 1346/2000/EC on Insolvency Proceedings.

Upheld in the Court of Appeal (MUMMERY, LONGMORE, PATTEN LJ): [2009] EWCA Civ 677

Elektrim SA v Vivendi Universal SA (No 2) [2007] 2 Lloyd's Rep 8; (2007) 1 CLC 227 (AIKENS J)

Successfully resisted application for anti-suit injunction, in relation to foreign arbitration proceedings (one of Europe's largest telecoms disputes, worth over € 2 Billion). Key decision on the effect of the Supreme Court Act s.37.

Elektrim SA v Vivendi Universal SA [2007] 1 Lloyd's Rep 693; [2007] 2 All ER (Comm) 365; (2007) 1 CLC 16 (AIKENS J)

Successfully resisted application to set aside arbitral award on grounds that it was procured by fraud.

Republic of Ecuador v Occidental Exploration and Production Co (No 2) [2007] 2 Lloyd's Rep 352; (2007) 2 CLC 16 - Court of Appeal (SIR ANTONY CLARKE MR, BUXTON & TOULSON LJ)

Successfully defeated s.67 jurisdiction challenge against a BIT award – interpretation of US-Ecuador Treaty / Vienna Convention.

Republic of Ecuador v. Occidental Exploration and Production Co (No 1) [2006] 1 Q.B. 432; [2006] 2 WLR 70; [2006] 2 All ER 225; [2005] 2 Lloyds Law Re 707; [2006] 2 All ER 225; [2005] 2 All ER (Comm) 689; 23 September 2005, Times Law Report – Court of Appeal (LORD PHILLIPS MR, CLARKE AND MANCE LJJ)

First BIT award to be challenged before the English Courts. Key issue of non-justiciability, and the first full analysis by the English Court of Appeal on the juridical nature of bilateral investment treaties.

Weissfisch v Julius [2006] 1 Lloyd's Law Rep 716; [2006] 2 All ER (Comm) 504 – Court of Appeal (PHILLIPS LCJ, Sir ANTHONY CLARKE MR and MOSES LJ)

Successfully resisted application for anti-arbitration injunction. Seminal analysis by the Court of Appeal on the relationship between the English Court and international arbitration, in a multi-million dollar dispute.

A v B [2007] 1 Lloyd's Law Rep 237; [2007] 1 All ER (Comm) 591; (2007) 2 CLC 157 (COLMAN J)

Successfully resisted challenge to international arbitration agreement in multi-million dollar international dispute, involving allegations of fraud and misrepresentation against the arbitral tribunal itself.

Margulead Ltd. v. Exide Technologies [2005] 1 Lloyd's Law Rep 324; [2004] 2 All ER (Comm) 727 (COLMAN J)

Successfully resisted challenge to arbitral award on the basis of an alleged serious procedural irregularity. Analysis of key provisions of the Arbitration Act 1996.

LG Caltex Gas Co Ltd v. China National Petroleum Corp [2001] 1 WLR 1892; [2001] 4 All ER 875; [2001] 2 All ER (Comm) 97; [2001] BLR 325; 6 June 2001 Times Law Rep; (2001) CLC 1392 - Court of Appeal (LORD PHILLIPS MR; PILL AND KEENE LJJ).

Successfully resisted challenge to arbitration award. Very significant analysis by Court of Appeal of the jurisdiction scheme of the Arbitration Act 1996.

AT&T Corporation and Another v. Saudi Cable Co [2000] 2 Lloyd's Law Rep 127; [2000] 2 All ER (Comm) 625; [2000] BLR 293 & 743 23 May 2000 Times Law Reports – Court of Appeal (LORD WOOLF, MR, POTTER AND MAY LJJ)

Challenge to an arbitrator. Key decision on the concepts of “independence and impartiality”.

Agrokor A.G. v. Tradigrain S.A [2000] 1 Lloyd's Rep 497 (LONGMORE J)

Sale of goods (f.o.b.), repudiation and construction of prohibition clause.

Total Liban s.a.l. v. Vitol Energy S.A. [1999] 2 Lloyd's Rep 700 (GROSS QC)

Contract - Breach - Indemnity - Assignment – Champerty.

Wealands v. CLC Contractors Ltd, Key Scaffolding Ltd [1999] 2 Lloyd's Law Rep 739; [1999] BLR 401; 16 November 1999 Times Law Reps.; (1999) CLC 1821; (1999) CILL (2001) 74 Con LR 1 : Times, October 5, 1999 – Court of Appeal (NOURSE, MANTELL, MANCE LJJ)

Whether arbitrators have powers or jurisdiction to make an award for contribution under the Civil Liability (Contribution) Act 1978.

San Carlos Milling Ltd Inc v Mainsail Navigation Corp (The 'MAS Venture') [2000] All ER (D) 2544 (CRESSWELL J)

Shipping – Carriage by sea – Damages for breach of contract – Loss or damage to goods

Esso Petroleum Co Ltd v Texaco Ltd and others [1999] All ER (D) 1122 (CRESSWELL J)

Company – Articles of association – Directors – Whether directors of a joint venture vehicle company mere nominees or required to exercise discretion independently of appointing companies.

China Agribusiness Development Corporation v. Balli Trading [1998] 2 Lloyd's Law Rep 76 (1997) CLC 1437 (LONGMORE J)

Resisted an attempt to challenge recognition and enforcement of the first CIETAC award to be brought before the English Courts under the New York Convention 1958.

Egmatra A.G. v. Marco Trading Corporation [1999] 1 Lloyd's Law Rep 862 (Tuckey J)

One of the first challenges to an award under the Arbitration Act 1996 – detailed analysis of s.68 and “procedural irregularity”.

Villa Denizcilik Sanayi ve Ticaret AS v. Longen S.A. (The "Villa") [1998] 1 Lloyd's Law Rep 195 (MANCE J)

Appointment by the Court of an arbitrator; construction of arbitration provisions on appointment.

POLICY ADVICE AND LEGISLATIVE DRAFTING

Retained by the UK Government to advise on and assist in drafting the English Arbitration Act 1996, in conjunction with Lord Saville. Very closely involved in all policy aspects and all drafting of the Act, as well as the associated Rules of Court (1994-1997).

Advised on and co-drafted the Pakistan Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance, 2005 (implementing the New York Convention 1958 into Pakistan law).

Advised on the drafting of the Pakistan Arbitration (International Investment Disputes) Ordinance, 2006 (implementing the Washington Convention 1965 into Pakistan law).

Advised on and co-drafted the new Mauritius International Arbitration Act 2008.

2007-2008: Retained by Government of Bahrain to advise on and draft a new international arbitration regime, involving the compulsory transfer of commercial cases from the Bahrain Courts.

Member of the IBA Arbitration Sub-Committee, currently drafting the new (2009) IBA Rules on the Taking of Evidence.

United Kingdom Delegate at UNCITRAL (2000 to date). Closely involved in the negotiation and drafting of:

- the new UNCITRAL Arbitration Rules (member, in individual capacity, of UNCITRAL small expert drafting group).
- the 2006 amendments to the UNCITRAL Model Law (Articles 2; 7 [writing requirement] and 17 [interim measures]);
- the “*Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the New York Convention*” (adopted by UNCITRAL on 7 July 2006 at its thirty-ninth session);
- the pending amendments to the UNCITRAL Arbitration Rules (1976) (also member, in individual capacity, of UNCITRAL *ad hoc* Expert Group).

Draftsman of the ACAS Employment Arbitration Scheme (instructed by the UK Department of Trade & Industry (2000-1).

Advised on the drafting of the arbitration provisions of the Contract (Rights of Third Parties) Act 1999 (instructed by Law Commission and Lord Chancellor’s Department).

OTHER PROFESSIONAL ACTIVITIES

Trustee of the Chartered Institute of Arbitrators (2004 – 2009); Deputy Chairman of the Board of Trustees (2006-2008).

Appointed by Lord Chancellor to UK Government Standing Committee on Private International Law (1997 to 2008).

Annual visiting lecturer on arbitration law: Asser Institute, The Hague (1995 -2004).

Visiting Lecturer (Arbitration Law) – Research Society of International Law, Pakistan (2006-7).

Visiting lecturer on arbitration law at the International Development Law Organisation (Rome, 2003 and 2004).

Lecturer (as a UN consultant) on arbitration training course for Yemen judges and government officials, Sana’a, 2004.

Speaker (at invitation of the Chief Justice of Pakistan) at the Supreme Court of Pakistan, Islamabad, in August 2006, on the occasion of its 50th year celebration.

Ministry of Justice, Thailand (Arbitration Office): Legal Consultant (Harvard University Lewis Fellow) (1994).

Director of Studies and Lecturer: arbitration course at Thai Ministry of Justice (1993).

Visiting Lecturer: Chulalongkorn University (LL.M. Class) and Judge's Institute (1993).

World Bank/UNDP/Harvard Project: Editor and Co-Author of an Arbitration Manual for Government of Lao PDR (1992-93).

University of London: Law Tutor in contract and tort (1991-92).

Court of Appeal (Civil Appeals Office), London: Office Lawyer (1991)

Frequent ad hoc lectures in England and abroad on international arbitration and many aspects of commercial law.

PUBLICATIONS

“Reasons for Reasons: the Duty of Arbitrators in Investor-State Arbitration” (paper presented at the ICCA Congress in Dublin, June 2008, to be published by Kluwer in the ICCA Congress series, No.14 (2009)).

“Arbitral Lifelines”: The Protection of Jurisdiction by Arbitrators (paper presented at the ICCA Congress in Montreal, June 2006, published by Kluwer in the ICCA Congress series, No.12 (2007)).

Article II and the Requirement of Form, Chapter II.9 in Gaillard & Di Pietro (eds) *“Enforcement of Arbitration Agreements and International Arbitral Awards – The New York Convention 1958 in Practice”*, Cameron May, 2007 (with S. Moollan).

The Written Form Requirement for Arbitration Agreements: When “Written” Means “Oral” (paper presented at the ICCA Congress in London, May 2002, published by Kluwer in the ICCA Congress series, No.11 (2003)).

The Regularization of International Commercial Arbitration: Comparative Trends and Tensions (Chapter 17 of: *Dreams and Dilemmas: Economic Friction and Dispute Resolution in the Asia-Pacific*: ISEAS, Singapore, 2000)

The English Arbitration Act 1996: An Approach to Harmonisation. Revision des EUGVÜ, Neues Schiedsverfahrensrecht, 1999 (Band II)

UK government Consultation Report on the draft English Arbitration Bill (1994)

Hunter & Landau *The English Arbitration Act 1996: Text and Notes* (Kluwer, 1998)

Commentary on WIPO Arbitration Rules American Review of International Arbitration (Vol V - 1994), and published as a separate volume by Juris Publishing (2000)

The Effect of the New English Arbitration Act on Institutional Arbitration 13 J.Int.Arb.4 (1996) (cited by Mr Justice Lightman in ***Nigel Peter Albon v Naza Motor Trading*** [2007] EWHC 665 - ChD).

Introduction to the English Arbitration Act 1996: 35 I.L.M. 155 (1996)

1994 - to date: A large number of conference papers on arbitration law and practice.

Who'sWhoLegal 2009 / International Who's Who of Commercial Arbitration:

Ranked 5th in Global Ranking of most highly regarded individuals worldwide
(*"an absolute star"*).

Who'sWhoLegal 2008 / International Who's Who of Commercial Arbitration:

Ranked 9th in Global Ranking of most highly regarded individuals worldwide.
(*"Landau is 'first-rate' and routinely selected as the junior arbitration barrister of the year, it seems."*)

Who'sWhoLegal 2007 / International Who's Who of Commercial Arbitration:

Ranked 10th in Global Ranking of most highly regarded individuals worldwide.
(*"Toby Landau of Essex Court Chambers ... has a 'fantastic mind' and 'great experience' and is regarded as 'one of the brightest stars of all'."*)

Who'sWhoLegal 2006: Arbitration (*"Toby Landau 'knows arbitration law better than anyone alive.' Is 'the star of the younger generation' and 'everyone's first choice'."*)

Chambers UK 2009: International Arbitration – New Silk list. Also listed as Arbitrator (Tier 1).

"The benchmark for young stars,' new silk Toby Landau QC 'is going to become one of the top arbitration practitioners in the world.' In 2007 his appointments included Bywater v Tanzania, and he followed up his appearance in Occidental v Ecuador - the first bilateral investment treaty (BIT) case to come before the English courts - with EMV v Czech Republic, which was the second."

Also recommended for Public International Law – New Silk list:

"Toby Landau QC is 'a terrifically industrious' individual who acts as an international and commercial arbitrator at the same time as handling a renowned PIL practice. He is recommended as a 'fantastic advocate with a first-class mind, who is eloquent, meticulous and easy to work with.' Landau's work largely focuses on work regarding bilateral investment treaties, and he has acted in cases between Occidental Exploration & Production Company and the Republic of Ecuador."

Chambers UK 2008: International Arbitration – separate individual "Star" category (highest rated Junior Barrister). Also listed as Arbitrator (Tier 1).

"The fact that Toby Landau is the first name on most people's list of desired juniors ensured that there was no lack of superlatives to describe him when solicitors were interviewed. "A brilliant and accessible lawyer with an independent mind and a passionate and selfless commitment to the culture of arbitration, Landau is an absolute joy to work with - you could grow a plantation in the daylight that separates him from the other juniors." He is equally in demand as both arbitrator and counsel."

Chambers UK 2007: International Arbitration – separate individual “Star” category (highest rated Junior Barrister). Also listed as Arbitrator.

“His ‘excellent intellect and outstanding advocacy’ make Toby Landau the indisputable star of his generation. His ‘vast knowledge of arbitration’ means he is a first port of call for clients as one of the few true experts in the practice area. He also merits a place on Chambers’ table of arbitrators.”

Chambers UK 2006: International Arbitration – separate individual “Star” category (highest rated Junior Barrister).

“Toby Landau is ‘going places’. [Essex Court Chambers’] most mentioned practitioner, one observer remarked that ‘he and Veeder are like two peas in a pod.’ Still receiving instructions as counsel, he is now increasingly in demand as an arbitrator, with commentators stating: ‘He can handle disputes involving big bruising practices in a remarkable manner well beyond his years.’”

Chambers UK 2005: International Arbitration – separate individual “Star” category (highest rated Junior Barrister).

“Toby Landau will progress to the top of the field. He has an ‘encyclopaedic knowledge of arbitration combined with a gut instinct’ that makes him a popular choice among solicitors. Already he is increasingly recommended as arbitrator.”

Chambers UK 2003-4: International Arbitration – separate individual “Star” category (highest rated Junior Barrister).

“Toby Landau has established a practice distinguished from other advocates as one of the market’s ‘true international arbitration specialists.’ Some believe that he is set to be ‘one of the greats’”

Chambers Global 2009: “Most in Demand Arbitrators” - Global ranking and Europe-Wide ranking: Tier 1; Global Ranking in International Arbitration: Tier 1; Global Ranking in Public International Law: Tier 1.

“Toby Landau QC took silk in 2008, reflecting the impeccable quality of his prior work as a junior. ‘Extremely practical and very strong, Landau is a really impressive practitioner,’ say sources.”

“Essex Court Chambers ‘Toby Landau is enjoying a burgeoning profile as an arbitrator. Sources are impressed with the variety and quality of the proceedings he has been involved in recently’”.

Chambers Global 2008: “Most in Demand Arbitrators” - Global ranking: Tier 1; Leading Juniors: separate “Star individual” ranking.

“‘Toby Landau is seen by many as the logical successor to Veeder. Landau is renowned as a peerless advocate, a serious arbitrator and one of the world’s premier authorities on alternative dispute resolution. His relative youth speaks volumes about his ambition and efforts in the field up to this point.’”

Chambers Global 2007: Leading Individuals - Global ranking: Tier 2

“‘A very bright man’, Toby Landau is commended repeatedly both as counsel and arbitrator in all types of commercial disputes, especially those involving complex English law issues. He

is 'clearly one of the stars of the future' and is already making appearances in high-end disputes as arbitrator."

The Legal 500 2008: *"brilliant and easy to work with"*

The Legal 500 2007: Recommended in: Commercial Arbitration; Commercial Litigation; Public International Law

"A number of chambers' juniors are 'arbitration dynamite'. None more so than 'exceptionally able' Toby Landau, who is considered 'a brilliant and accessible lawyer with a strongly independent mind."

The Legal 500 2006: Recommended in:

- Commercial Arbitration (*"With [V V Veeder QC's] protégé 'exceptionally able' junior Toby Landau, the pair dominate this field."*)
- Commercial Litigation - Tier 2 (*"a 'highly praised' junior"*)
- Public International Law - Tier 3 (*"'star performer' Toby Landau is gaining considerable praise from solicitors"*).

The Legal 500 2005:

- Commercial Arbitration (*"Toby Landau remains the senior junior with the strongest reputation in international arbitration"*).
- Commercial Litigation - Tier 2 (*"Toby Landau is another junior picked out by solicitors for his 'helpful' and 'diligent' advice"*),

Global Arbitration Review:

- February 2006: *"45 under 45"* worldwide survey, with 8,000 votes cast: Ranked first (highest nominated individual worldwide).
- April 2006: Ranked in list of *"Superarbitrators"*

Legal Week (Nov 2004) – listed amongst the 16 most highly-rated barristers practising at the Commercial Bar.

The Lawyer: included in the alternative Silk list (*"Smooth as Silks"*) – April 2004 (ranked in top *"Leaders of the Pack"* tier).

Also recommended in **Legal Experts 2008** (and previous editions).
