



# ARBITRATION CHAMBERS

HONG KONG • LONDON • NEW YORK

## Michael Nolan

Independent Arbitrator

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Michael Nolan is an independent arbitrator based in New York and Washington, DC. He specializes in international disputes arising from commercial contracts, concession agreements and other government contracts, and investment protection treaties. Before becoming a full-time arbitrator and member of Arbitration Chambers, Mr. Nolan practiced with Milbank LLP, where he was a partner more than 20 years.

Mr. Nolan's arbitrations have involved many countries and legal systems on six continents. In addition to being an arbitration specialist, Mr. Nolan is a widely experienced litigator who regularly served while at Milbank as lead counsel for significant matters in U.S. state and federal trial and appellate courts and also handled adversarial aspects of bankruptcies and financial restructurings. Given the trans-national focus of his practice, Mr. Nolan has had overall responsibility for, and worked with locally qualified co-counsel on, national court and administrative proceedings in countries other than the United States, including Bermuda, the Federative Republic of Brazil, Canada, the People's Republic of China, the French Republic, the Federal Republic of Germany, the United Mexican States, Mongolia, the Netherlands, the Republic of Peru, the Philippines, the Russian Federation, the Republic of Singapore, the Swiss Confederation, the Republic of Turkey, Ukraine, the United Kingdom and the Bolivarian Republic of Venezuela.

Chambers and other legal directories consistently have recognized Mr. Nolan as a leading international arbitration specialist. Last year, Chambers described him as a "Superb lawyer"; "He's a good arbitrator for complex and technical issues. He's very technically sound and very smart". He was named by Benchmark Litigation as "International Arbitration Lawyer of the Year" in each of 2018 and 2019 and as "Lawyer of the Year" for "International Arbitration — Government" by Best Lawyers in America in 2020.

### Qualifications

- University of Chicago Law School, J.D. 1991
- Harvard University, B.A. 1988

## Principal Areas of Practice

- Commercial contracts
- Concession agreements and other government contracts
- International investment law and investor-State dispute settlement
- Energy, infrastructure and mining
- Satellites and telecommunications
- Intellectual property and licensing
- Hospitality and gaming
- Shareholder, joint venture and partnership matters
- Corporate transactions, including M&A
- Financings and securities

## Admitted

- New York (1992)
- District of Columbia (1992)

## Employment History

- Arbitration Chambers, Independent Arbitrator (July 2021 – present)
- Milbank LLP, Partner in New York and Washington, DC (1998 – June 2021)
- Milbank LLP, Associate in New York (1996 – 1998)
- Cravath, Swaine & Moore LLP, Associate in New York (1991 – 1995)

## Nominations as Arbitrator

Recent representative appointments include the following:

- Co-arbitrator in *Astronergy Solar Netherlands B.V. v. Republic of Bulgaria*. ICSID Case No. ARB/22/32.
- Co-arbitrator in *GMS Ventures and Investment Holdings Co. LLC/Jordan (Exempt) and GMS Ventures and Investments Holdings Company – Jordan (Free Zones) v. Republic of Iraq*. ICSID Case No. ARB/22/8.
- Co-arbitrator in LCIA arbitration seated in London relating to manufacture and distribution of vaccine in India in alleged violation of English law-governed license agreement and U.S. patents.
- Co-arbitrator in ICC arbitration seated in New York between Chinese-owned company and South American company relating to energy project in South America.
- Co-arbitrator in ACICA arbitration seated in Perth involving defense system construction and services.
- Co-arbitrator in multiple ICDR arbitrations seated in Arlington, Virginia brought by regional sub-contractors against U.S. government contractor for logistics support to augment U.S. military forces in Middle East.
- Co-arbitrator in HKIAC arbitration seated in Hong Kong involving alleged breach of shareholders' agreement for operation of post-secondary education programs in China.

- Emergency arbitrator in ICDR arbitration seated in New York involving temporary relief sought in connection with hospitality industry dispute regarding the termination of a management services agreement.
- Sole arbitrator in AAA arbitration seated in New York regarding alleged breaches of services agreement between prominent sports star and his talent agency.
- President of *ad hoc* Committee in annulment proceeding in *Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc v. Italian Republic*. ICSID Case No. ARB/17/14.
- President of *ad hoc* Committee in annulment proceeding in *Ecodevelopment in Europe AB and EcoEnergy Africa AB v. United Republic of Tanzania*. ICSID Case No. ARB/17/33.
- Member of *ad hoc* Committee in annulment proceeding in *Cyprus Popular Bank Public Co. Ltd. v. Hellenic Republic*. ICSID Case No. ARB/14/16.
- President of *ad hoc* Committee in annulment proceeding in *Mera Investment Fund Limited v. Republic of Serbia*. ICSID Case No. ARB/17/2.
- Member of *ad hoc* Committee in annulment proceeding in *Magyar Farming v. Hungary*. ICSID Case No. ARB/17/27.
- Member of *ad hoc* Committee in annulment proceeding in *Alghanim v. Jordan*. ICSID Case No. ARB/13/38.

### Appointments as Mediator

- Mediated dispute between aerostructures manufacturer and subcontracted manufacturer of major components for commercial airliner program.
- Mediated claims of age discrimination and retaliation by physician against hospital.

### Experience in Practice

The following are recent representative matters on the public record in which Mr. Nolan served as lead counsel:

- Representation of ABS Global, a Hong Kong-based satellite operator, against the Korean telecommunications company KTSat Corporation in ICC arbitration to invalidate the sale of a satellite to ABS on grounds including national security concerns. KTSat's claims dismissed, ABS's ownership of the satellite affirmed, and damages awarded to ABS for mitigation of KTSat's breaches.
- Representation of Bayer CropScience, AG against licensee Dow AgroSciences in ICC arbitration involving herbicide-resistant GMO products and allegations of breach of the French law-governed license agreement and infringement of Bayer's U.S. patents. Bayer awarded more than US\$455 million.
- Defense of Mongolia in an investor-State arbitration administered by the Permanent Court of Arbitration. Tribunal chaired by ICJ Judge Peter Tomka dismissed on jurisdictional grounds all claims by Chinese SOEs and related entities against Mongolia for revocation of mining license, parting ways with four tribunals that had previously interpreted identical language in other Chinese bilateral investment treaties as broad consents to arbitration, holding instead that jurisdiction existed to determine only the amount of compensation owed for a proclaimed expropriation of a foreign investment, not whether an unlawful expropriation had occurred.

- Representation of project companies jointly owned by Goldman Sachs Infrastructure Partners and Grupo Bursatil Mexicano against Mexican subsidiary of Spanish construction company Abengoa S.A., the general contractor for the engineering, construction, and installation of a wind farm in Mexico. The arbitral tribunal upheld the project companies' terminations of the agreements for cause and awarded damages on their counterclaims.

Mr. Nolan joined Milbank's New York office as an associate in 1996 with the goal of leveraging the firm's leading project finance practice as a platform to develop a premier international arbitration practice. During his years at Milbank, in addition to their primary work handling disputes, Mr. Nolan and his teams worked closely with project finance colleagues and the aviation, space and telecommunications practice groups on structuring transactions, especially aspects involving dispute resolution, governing law, the availability of treaty coverage, and protection against political and other non-commercial risks. At Milbank, Mr. Nolan also gained significant experience with intellectual property, particularly licensing, as well as the U.S. Foreign Corrupt Practices Act, non-U.S. anti-bribery laws, and sanctions programs.

Mr. Nolan became a partner in Milbank's New York office in 1998 and relocated to Washington, DC in 2000, at a time when treaty-based disputes and arbitration under the auspices of the World Bank's International Centre for Settlement of Investment Disputes (ICSID) were becoming a high-profile part of international arbitration. Investor-State arbitration has been a principal focus of Mr. Nolan's practice ever since.

Together with his then-recently retired partner, Mark Kantor, Mr. Nolan developed and co-taught the first course offered by Georgetown University Law Center on investor-State dispute settlement in the early 2000s. Mr. Nolan subsequently taught and continues to teach each year at Georgetown Law a primary course on international commercial arbitration. He co-authored with Frédéric G. Sourgens, a former Milbank associate who is now a Distinguished Professor of Law at Washburn University, a law school textbook on U.S. domestic arbitration and a second law school textbook on international commercial arbitration, both published by West Academic.

From 2011 through 2019, while a Milbank partner, Mr. Nolan was also the outside General Counsel of the Intellectual Property Owners Association, a Washington, DC-based, worldwide trade association of about 200 companies from many industries and fields of technology.

## Legal Teaching

Georgetown University Law Center, Adjunct Professor (2001 – present)  
American University Washington College of Law, Adjunct Professor (2021 – 2022)

## Selected Publications

Mr. Nolan frequently writes about arbitration and international law. Some of his published works are listed below.

### *Books:*

- *Experiencing International Arbitration: Resolving Cross-Border Disputes* (law school textbook with Frédéric G. Sourgens) (West Academic 2020).
- *Experiencing Arbitration* (law school textbook on U.S. domestic arbitration with Frédéric G. Sourgens) (West Academic 2019).

- *Reports of the Overseas Private Investment Corporation Determinations, Vols. I and II* (edited with Mark Kantor and Karl P. Sauvant) (Oxford University Press 2011).

#### Book Chapters:

- “At Cross Purposes”, in *Take the Witness: Tales of Cross-Examination* (Lawrence W. Newman and Timothy G. Nelson, eds.) (Juris Publishing forthcoming 2023).
- “George Bermann: the Advocate”, in *Liber Amicorum George Bermann* (Julie Bédard and Patrick Pearsall, eds.) (Juris Publishing 2022).
- “Jurisdictional Challenges”, in *The Guide to Challenging and Enforcing Arbitration Awards* (chap. 5 with Kamel Aitelaj) (J. William Rowley, gen. ed.; Emmanuel Gaillard, Gordon E. Kaiser and Benjamin Sino, eds.) (Global Arbitration Review 2<sup>nd</sup> ed. 2021).
- “Strategic Considerations Once a Dispute Has Arisen”, in *The Guide to IP Arbitration* (chap. 4 with Christopher J. Gaspar, Nathaniel T. Browand and Kamel Aitelaj) (John V. H. Pierce and Pierre-Yves Gunter, eds.) (Global Arbitration Review 2021).
- “When Intellectual Property is the ‘Investment’: Arbitrating Against Sovereigns”, in *The Guide to IP Arbitration* (chap. 9 with Christopher J. Gaspar and Kamel Aitelaj) (John V. H. Pierce and Pierre-Yves Gunter, eds.) (Global Arbitration Review 2021).
- “Dispute Resolution in Project Finance Transactions”, in *International Project Finance Law and Practice* (chap. 16 with Tom Canning, Erin Culbertson and Paul Kinnimont) (John Dewar, ed.) (Oxford University Press 3<sup>rd</sup> ed. 2019).
- “Admissibility”, in *The Investment Treaty Arbitration Review* (chap. 5 with Kamel Aitelaj) (The Law Reviews 4<sup>th</sup> ed. 2019).
- “Political Risk Insurance as a Means of Managing Investment Risks”, in *Business Guide to Trade and Investment, Volume 2 — International Investment* (chap. 5 with Erin Culbertson) (Arthur E. Appleton and Patrick F. J. Macrory, eds.) (International Chamber of Commerce 2018).
- “Political Risk Insurance and Guarantees from Public Providers”, in *Transnational Law of Public Contracts* (with Frédéric G. Sourgens and Mark L. Rockefeller) (Mathias Audit and Stephan W. Schill, eds.) (Bruylant 2016).

#### Articles:

- “China’s Outward Foreign Direct Investment and International Investment Law”, in *Journal of International Economic Law* (with Karl P. Sauvant) (2015).
- “Leviathan on Life Support? Restructuring Sovereign Debt and International Investment Protection after Abaclat”, in *Yearbook on International Investment Law & Policy 2011-2012* (with Frédéric G. Sourgens and Hugh Carlson) (Karl P. Sauvant, ed.) (Oxford University Press 2013).
- “The Limits of Discretion? Self-Judging Emergency Clauses in International Investment Agreements”, in *Yearbook on International Law & Policy 2011* (with Frédéric G. Sourgens) (Karl Sauvant, ed.) (Oxford University Press 2012).
- “Limits of Consent - Arbitration Without Privity and Beyond”, in *Liber Amicorum Bernardo Cremades* (with Frédéric G. Sourgens) (M.Á. Fernández-Ballesteros and David Arias, eds.) (La Ley, Madrid 2010).

- “The Interplay between State Consent to ICSID Arbitration and Denunciation of the ICSID Convention: The (Possible) Venezuela Case Study”, in *Transnational Dispute Management* (with Frédéric G. Sourgens) (September 2007).
- “The Arbitration Risk Facing Sovereign Investors”, in *International Financial Law Review* (with Mark Kantor and Edward G. Baldwin) (December 2005).

### **Professional Activities and Qualifications**

- Fellow, Chartered Institute of Arbitrators (FCIArb)
- Fellow, College of Commercial Arbitrators (CCA)
- Member, International Advisory Committee, American Arbitration Association (2016 – 2021)
- Director and Audit Committee Member, American Arbitration Association (2010 – 2016)
- Director, New York City International Arbitration Center (NYIAC) (2013 – 2021)
- Member, Users Council, Singapore International Arbitration Centre
- Overseas Affiliate, COMBAR, association of English and Welsh commercial barristers

### **Arbitration Panels**

- American Arbitration Association / International Centre for Dispute Resolution (AAA/ICDR) (Commercial, International and Large Complex Case lists)
- Australian Centre for International Commercial Arbitration (ACICA)
- British Virgin Islands International Arbitration Centre (BVI IAC)
- Hong Kong International Arbitration Centre (HKIAC)
- International Centre for Settlement of Investment Disputes (ICSID)
- List of Candidates Suitable for Appointment as Chairpersons for Arbitrations and TSD Expert Panel Proceedings under EU’s Trade Agreements with Third Countries
- Singapore International Arbitration Centre (SIAC)

### **Languages**

English (native); Spanish (working knowledge)

### **Nationality**

United States