

An International Arbitration Star With NY Roots: A Q&A with Wilmer's Gary Born

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Gary Born of WilmerHale.[/caption] At its best, international arbitration embodies what Wilmer Cutler Pickering Hale and Dorr's Gary Born calls it the five E's—efficiency, expedition, expertise, evenhandedness and enforceability. Many of the disputes involve vast sums of money and take place behind closed doors in places like London, Paris, New York, Geneva and Singapore. But Born, who heads Wilmer's 70-lawyer international arbitration practice and has participated in more than 600 arbitrations, recently shared his thoughts and insights on international arbitration with Lit Daily editor Jenna Greene **Jenna Greene: For two decades, you've been ranked as a top international arbitration practitioner. How did you get your start?** Gary Born: It was an accident. Coming out of the University of Pennsylvania Law School, I was fortunate to have the opportunity to clerk for both Judge Henry Friendly, on the Second Circuit, and Justice Rehnquist. When I had finished those clerkships, I spent a year hitchhiking across remote parts of Africa, after which I landed with Wilmer Cutler, as the firm was called back then. Being a junior associate, I was placed in a very small room and given timesheets to fill out every day. After three weeks of that environment, I had rethought my commitment to Big Law and began planning an exit. After

another few weeks, I had secured a position teaching Public International Law and International Litigation at the University of Arizona College of Law. I was about to head out the door for the Southwest when the firm asked me to spend a year in its London office—which I did. Although I did spend a year teaching in Arizona, I returned to the firm and my London stint was—accidentally—the beginning of my international arbitration career. **JG: What was your first international arbitration?** GB: I had the good fortune in my first international arbitration to represent Greenpeace against the Republic of France. A team of French agents had blown up Greenpeace's flagship vessel, the Rainbow Warrior, when it was moored in Auckland Harbor on its way to protest nuclear testing in French Polynesia. The agents had the misfortune, for France, of getting apprehended by the New Zealand authorities. Greenpeace came to Lloyd Cutler, and later me, and asked us to represent them against France in seeking compensation for their vessel. We persuaded the French to conclude an international arbitration agreement where the sole question was France's financial responsibility for what they insisted in calling "the incident in Auckland Harbor on the night of 10 July 1985." During the negotiations, Lloyd and I disagreed about where to arbitrate. The French, not surprisingly, argued very hard for Paris. After some hurried research, into then unfamiliar concepts of the arbitral seat and concepts of annulment, I reached the fairly obvious conclusion that Paris wasn't such a good idea. We ended up in Geneva, which turned out very well for our client. My major role at the time was to develop a damages theory for the Rainbow Warrior, which, inconveniently, had been a 35-year-old North Sea trawler with a disturbingly low market value. Nonetheless, after two years or so of arbitration, where we advanced the argument that the Rainbow Warrior had been the living embodiment of Greenpeace's commitment to the environment, we successfully obtained an award of some \$6 million for Greenpeace. It seemed like an auspicious start. **JG: As the chair of Wilmer's 70-lawyer international arbitration group, what are some of your goals for the practice?** GB: I want our practice to continue to define the market in terms of quality—quality of written and oral submissions and case preparation, as well as quality of life. There are some tremendous practitioners in the field, at other firms both in the U.S. and elsewhere. My goal is for our practice to continue to be recognized as providing the best available representation of our clients, in both their hardest cases and their other disputes, as well as the best experiences and training for our younger lawyers. Diversity is another priority—both in terms of nationalities, ethnicities and gender. International arbitration is necessarily more diverse than many practice areas and I want to see our group become even more representative of the clients we represent, the tribunals we appear before and the places where we practice. **JG: What do you look for in lawyers who are interested in joining the group?** GB: We look for lawyers who are passionate about international arbitration as a means of resolving commercial and other disputes and who meet the highest standards of excellence. Obviously, we want lawyers with records of academic achievement and high intellect, since those are attributes Wilmer lawyers are known for. Collegiality is also essential. The international arbitration group is very flat, with a premium on freely sharing ideas and robust discussion and testing of various approaches

