



The International Network for Women in Dispute Resolution

Leading Women in ADR

Beata Gessel-Kalinowska vel Kalisz, President of the Lewiatan Court, Poland



You are the founding partner of Gessel law firm, the President of the Lewiatan Court and member of the Lewiatan Court for many years, as well as visiting lecturer in M&A at the University of Cardinal Stefan Wyszyński in Warsaw.

You are active in arbitration and have succeeded in making the Polish arbitration community including the young generation more and more visible. You have received funds from the European Committee which allowed you to organise arbitration courses, trainings and conferences. We

see you on many panels around the world. Not only do you often have innovative ideas, but when you launch an idea you bring it to life.

You are the head of the Lewiatan Court since 2011. Is your appointment for a specific term? Can you share with us what was the career path that led you to this post? How did this adventure start and what motivated you?

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Annette Magnusson, , Director and Secretary General of the Arbitration Institute of the Stockholm Chamber of Commerce

What would you like for our readers to know about you?

I am fortunate to work in an inspiring environment with an inspiring mission. To me, this is very energizing.

You have been with the SCC for more than 2 years. How has the field changed during that span of time?

One example of change I think is that the international arbitration community has moved from discussing the problem of international arbitration, for example "time & costs", and instead moved towards talking about solutions. This is a good sign.

What indicators do you see that say something about the future of our field?

Costs will continue to be a key factor, including the developments we now see relating to the financing of disputes. In addition, I believe transparency will become more and more important, and as an institution we need to keep focusing on transparency as an element of foreseeability.

What experiences have you had which helped you advance in the field that others might find helpful?



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Sophie Henry, Secretary General, Centre de Mediation et d'Arbitrage de Paris

What would you like for our readers to know about you?

Having practiced as a lawyer for nearly a decade and one year as an expert at the European Economic and social Committee, I joined the Center for Mediation and Arbitration (CMAP) established by the Paris' Chamber of Commerce in 1995. I am currently the Secretary General of the CMAP which offers services of mediation and arbitration in accordance with its rules and to respond to the expectations of the business world.

You have been with (in the field) the CMAP for more than 10 years.

How has the field changed during that span of time?

I joined the CMAP at the beginning of 2000. Arbitration was already used and well-known in France. We worked extensively to familiarise the businesses and their representatives.

Nowadays, mediation and arbitration are two processes well recognised by businesses. We still need to help them use and integrate those processes in a more systematic way into their conflict resolution policies.



What indicators do you see that say something about the future of our field?

Regarding arbitration, the recent decree, promulgated in France in January 2011, demonstrates the legislator's welcoming views for this conflict resolution process. This text allows us to demonstrate even more to businesses the value of such practice. Consequently, the CMAP decided to revise its rules of Arbitration in March 2012 with regard to the new decree.

Regarding mediation, Mrs Feral-Schul, President of the Paris Bar Association, who is also a mediator, declared 2013 the Year of Mediation. Many events in this regard are being organised. This is a great indicator of what mediation can become.

Moreover, we notice that more and more law practitioners are aware of the field of Alternative Dispute Resolution (ADR).

At the European Union (EU) level, a lot of efforts are currently undertaken in order to develop the practice of mediation in EU member States. We are also taking part in this development.

Advancing women is an important goal for AW. How does the CMAP contribute to that effort?

Our lists of mediators and arbitrators are not entirely gender balanced. We notice that there is a proper balance between men and women mediators. However, our list of arbitrators is still mainly composed of men and we would like to include more women.

In contrast, the CMAP team is mainly composed of women: 7 women and one man, President Zakine, our special advisor. This was not a deliberated choice. It seems that women were more willing to enter a carrier in such a field. Finally, three women currently serve in our Accreditation and Appointments Committee for Mediation. Our

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Different perspectives, including that of users, I believe has been valuable. The experience of strategic work from a law firm perspective has also been important, and enabled cross-overs in internal and external projects in which SCC has been involved.

On what do you focus specifically during your third year in office?

At the moment we are modernizing internal systems to further enable electronic case management. We will also continue to focus on transparency and ways in which to regularly report on the inner life of SCC, while still maintaining confidentiality. Our UNCITRAL Rules and Procedures will also be revised this year.

Advancing women is an important goal for Arbitral Women. How does the SCC contribute to that effort?

SCC is one of the founding organizations of SWAN – Swedish Women in Arbitration Network – and continues to sponsor SWAN through events and publicity. In 2012, SWAN published the first edition of the SWAN directory, to increase visibility of women in arbitration, both as counsel and arbitrators.

Does your organization have a policy or practice to address the issue of increasing the number of women on the panel or in programs?

The SCC Board frequently discusses gender as one element of importance when deciding on the appointment of arbitrators in SCC cases. The same goes for the Secretariat when we organize events.

What steps should a woman take to becoming an active arbitrator or mediator?

I think the most important step in becoming an active arbitrator is to develop an expertise in one legal field (or several for that matter) and then make your colleagues aware of this expertise. It is important to keep in mind that the first stepping stone for most arbitrators is to be appointed co-arbitrator and this is done through recommendations or decision by other lawyers, i.e. your colleagues in the legal community. Step up to the plate when an opportunity is given to demonstrate your expertise – this is important. Don't be shy.

All of this is of course equally true for men, but perhaps the latter part of this advice is more directed towards women.

Challenges to arbitrators for failure to disclose conflicts of interest is a growing issue today. How is your organization proactively engaged in addressing this problem?

Arbitrators (and mediators) are required to fill in a form confirming impartiality and independence, and, as the case may be, make relevant disclosures.

Do you see a growing role for mediation in the field internationally in conflict resolution?

Definitely.

How do you envision technology impacting the ADR field in the near term? Long term?

Technology has the potential to reduce costs and speed up the procedure. This is an on-going process which will continuously impact international arbitration, including the manner in which cases are administrated and presented.

Annette Magnusson

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What is the "dead moose" under the table issue that no one is talking about in our field? (This may be an American expression, it means "big issue")

Dispute resolution specialists still have much to learn from their transactional colleagues in terms on how to organize work for cost efficiency and how to best help clients handle the daily commercial pressure they are under.

Whenever you are ready to leave the SCC, how would you like to be remembered?

At the SCC we work every day to offer the tools and services needed by business to solve disputes in a professional and efficient manner. Maintaining these values is one of my most important missions.

Gabrielle Nater-Bass

Beata Gessel-Kalinowska vel Kalisz

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My first contact with commercial arbitration was as a law student during my internship. My impression was that, becoming an arbitrator must be a crowning achievement of one's career. During those early years, I dreamt about arbitration but never thought that I would become an arbitrator. At the beginning of my career I was mainly involved in M&A, and with time, I became a specialist in M&A with 10 years of experience. I started receiving proposals to become an arbitrator. Each year the number of arbitrations in which I was involved was growing, reaching up to now nearly 80 arbitrations. This arbitration experience opened other doors. In 2005, I was offered the position of vice-president at the Lewiatan Court of Arbitration and in 2011, I became President of that Court. My mandate is for 3 years. In 2010 I joined ICC Poland and the same year I was chosen as a Polish representative for the ICC Arbitration Commission. What I consider to be a big milestone for my career was my nomination in 2010 as arbitrator in an ICC arbitration. Another big achievement that assured me that – what I do presents some sort of value for arbitration – was the Summit of European Arbitration Institutions that I organised with Sophie Nappert in 2011, with the participation of representatives of major European arbitration institutions and associations, as well as private practitioners and EU officials, during which we considered the future of international arbitration in Europe. Successes like these achievements motivate me to go on.

You have recently organised the 2nd edition of a conference on M&A in arbitration, the 1st one was in 2010 and both were very successful. Can you tell us a few words about this initiative?

The idea for the conference arose while I was working on my book on the legal concept of representations and warranties in M&A contracts. I was aware that, while most contracts include arbitration clauses, arbitration proceedings are - in principle - confidential; therefore, access to information about such cases and to awards is highly restricted. Also, while reviewing programs of arbitration events and of published arbitration awards, I have not encountered much material about arbitration practise concerning M&A contracts. It coincided with the special program I was working on for promotion of arbitration in Poland, as well as promotion of Poland in this respect abroad, and I thought that it would be a good idea to incorporate the conference into this program. I asked ArbitralWomen for support and thanks to the involvement of Yulia Andreeva (in charge of ArbitralWomen programs at that time), the conference co-chair of the first edition, we have managed to bring the idea to reality. We have assembled many interesting speakers. Organisations such as ArbitralWomen, the ICC International Court of Arbitration, and the

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American Bar Association accepted to be our partners for this event. The promotion program started in November 2009 and lasted until mid-2011; it was co-funded by the European Union Social fund. After a huge success of the first edition, we decided to organise a next one. In fact, it was Mirèze Philippe, the founding co-president of AW and member of the Board, who first gave me this idea, and who was very active and supportive; she had her part in developing the conference program and inviting speakers. The 2nd edition of the conference was held in June 2013 in Warsaw. Once again we managed to have many excellent speakers and worldwide recognised experts to join us for a 2-day extensive programme. The ICC international Court of Arbitration agreed to prepare a special edition of the ICC bulletin dedicated to the disputes arising from M&A transactions and included excerpts from ICC awards on the subject. The presentation of this bulletin at the conference was highly appreciated. We proved again that there is room for discussions on M&A in arbitration: 230 participants attended the first day of the conference and 200 the second day, in addition to 1193 who followed the conference online. Many participants expressed compliments. We can say without hesitation that the 2nd edition was like the first one a great success. Following the success of both editions of 2010 and 2013, we scheduled the dates for the third edition which will take place on 28 and 29 May 2015.

ArbitralWomen has sponsored both editions of the M&A conference, what triggered your choice and how has this partnership helped?

When the idea of the conference came to my mind and was taking shape, I realised that as a new comer not yet recognised internationally - I represented the Lewiatan Court of Arbitration, but the Court was as new as me in the international arbitration arena - it would be hard to find good speakers. I needed support, someone who would back me up and who could be my referral. I contacted Louise Barrington and arranged for a meeting. She agreed and so I flew to London to meet her and present my idea. I had a draft conference program ready; I knew who I would like to see on the panel; in other words, I had the whole concept in place. I became a member of ArbitralWomen and participated in an AGM in 2009 during which I presented my idea. ArbitralWomen accepted to sponsor my project and Yulia Andreeva worked hand in hand with me. I was given 'the AW brand' and a great support especially in reaching out to speakers and publicising the event.

Do you have specific goals that you would like to achieve during your term of office?

The main goal I have been trying to achieve becoming involved with the Lewiatan Court is promotion of arbitration as a way of resolving disputes in Poland. We still have a very small percentage of disputes resolved by arbitration; therefore most of the actions I have been involved in are turned in this direction. When I became a head of the Court, together with my colleagues we prepared and introduced new Court Rules, addressing most modern and current trends in arbitration. In Poland the new Rules were considered quite revolutionary. We relinquished appointments from a list of recommended arbitrators, introduced the Procedural Order and Procedural Timetable in the Rules and decided that jurisdictional issues must be first resolved by the arbitral tribunal; additionally we have set up prescribed time limits: 6 months for rendering the award and 3 months in fast track proceedings. This generated heated debates by arbitrators who were not used to being under limited timelines for the proceedings. The new Rules provide also for an emergency arbitrator procedure.

I was trying to bring a breath of fresh air to our arbitration community, break with our fossilised system and open up new modern trends in arbitration. To achieve this goal, we launched inter alia an Arbitrators' Club, a series of meetings with arbitrators and Court's governing bodies; we invited guests to exchange views and experiences, tackle important arbitration issues, integrate the arbitration community and get to know other perspectives and expectations towards arbitration.

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What are your major challenges as a woman at the head of this organisation? Advancing women is the goal for AW, does your organisation have a policy on advancing women? Does it have a policy or practice to address the issue of increasing the number of women on panels or in programs?

The number of women involved in arbitration is quite small. Therefore, I am a representative of a minority and this obviously affects my position. On the other hand I am used to acting in a world dominated by men. My core area of specialisation is M&A and there are not many women specialising in this area. I think that in general, it is difficult to 'get through' in arbitration.

We do not have a special policy, but when I became President of the Lewiatan Court I tried to invite all women whom I knew were active in arbitration to cooperate. The outcome is quite good. In the Court's governing bodies out of 3 Vice-presidents 2 are women. The same applies to the nomination committee. However, this is not the effect of the policy, it is rather the result of the expertise and initiative of the women composing the committee; their presence implies a kind of openness towards women in arbitration.

On a more practical aspect we organise specific events addressed to women. In the project funded by the EU, I mentioned earlier, advancing women was part of the agenda. We therefore organised a series of workshops for women-arbitrators and prospective arbitrators, which involved Mirèze Philippe. Since this program and my cooperation with ArbitralWomen, we have a strong ArbitralWomen representation on the Lewiatan Court supporting the Court's various activities, and the Court also supports ArbitralWomen by publicising its activities.

You have been involved in international arbitration for 8 years. How has the field changed during that span of time?

What do you see as the future of international dispute resolution?

Eight years is relatively a short period, and changes need much more time. I think you need 20 or 30 years' time perspective to be able to notice major changes. When I spoke to Professor Rajski, who has been an arbitrator for a few decades, he shared his experience and said that he saw an increase in over-lawyering, in building up too much legislation which results in over-elaborated awards (usually over a hundred pages long).

I think some kind of balance would be very much appreciated. We cannot stop changes, but what we could do is try to discuss the future and make it more simple; for example, have Arbitral Tribunals' decisions or awards easy to understand by the parties and not the counsel only. The losing party should be able to know why it lost. I think less formality would also make the proceeding faster.

From your own experience do you have advice for women seeking to further their careers in dispute resolution?

First of all they have to be brave in setting up their goals and not be afraid of coming up with new initiatives; then, they must stick to this goal and make every effort to make it happen. I believe women generally have great ideas, but sometimes lack self confidence in their possibilities. So we need to believe in ourselves and we need a strong drive to realise our dreams.

How can a woman practitioner use ArbitralWomen to advance her career?

I can share my own experience. When organising my first international conference, the first step I took was to contact AW. I had a concrete project and knew what I needed to achieve it; on this basis AW agreed to back me up. AW's support was also concrete

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since I could use their contacts and referrals; there was always someone who can advise me and share the experience. It is a great networking, ready to support women in the dispute resolution arena who have interesting ideas and projects.

Can you share with us what are the particular characteristics of ArbitralWomen?

Diversity, great enthusiasm, unlimited potential and ideas, willingness to work hard, and to help when needed.

What are your next projects?

I have plenty of ideas but not enough time. First of all, in two-years time the next Dispute Resolution in M&A Transactions conference to be held on 28 and 29 May 2015. I'm also working on an idea to set up an academic research and educational centre affiliated with the University of Cardinal Stefan Wyszyński, which will focus on commercial and investment arbitration, with the primary area of interest in CEE region. I have been thinking about new arbitration rules for stock exchange listed companies. We have also set up at the Court a small legislative group of academics who work on proposals of changes in regulation in the Polish civil procedural law. We would like to propose to the Ministry of Justice some amendments to our arbitration law based on the UNCITRAL Model Law, which are not bad, but are considerable changes in a few areas. On a more personal level, I would like to dedicate more time to academic activities and would love to finish my monograph on M&A in arbitration.

Mirèze Philippe

Dispute Resolution in M&A Transactions Conference

6-7 June 2013, Warsaw

The second edition of the International Conference on Dispute Resolution in M&A Transactions was held in the National Stadium in Warsaw, Poland on 6th and 7th of June 2013 under the honorary patronage of the Ministry of Foreign Affairs of the Republic of Poland. The event was organised by the Lewiatan Court of Arbitration with the participation of the ICC, ICC Polska, ABA Section of International Law and ArbitralWomen. It was chaired by Beata Gessel Kalinowska vel Kalisz, president of the Lewiatan Court of Arbitration in Warsaw.

The invited panelists covered a variety of issues related to problems arising from M&A transactions and their adjudication by different methods of dispute resolutions. The problems raised included hot topic in M&A Arbitration, procedural computation of damages in M&A transactions, specificity of M&A disputes in CEE Region, antitrust law issues and the role of mandatory public law in M&A

arbitration. The conference included the outstanding lecture of Dr Marc Blessing (Bär & Karrer AG, Switzerland) on practical issues arbitrating antitrust and M&A disputes from EU legislation perspective. The case study under the patronage of Dechert LLP focused on deadlock provisions in shareholders' agreement and ways of their resolution.

The first panel focused on hot topics in M&A Arbitration. Andrea Carlevaris, Secretary General of the ICC International Court of Arbitration discussed M&A cases submitted to ICC arbitration; he stated that c.a. 15% of the case load concern M&A transactions. Nelson Eizirik from Carvalhosa e Eizirik Advogados raised the issue of compulsory arbitration in shareholders disputes of companies listed in the New Market of the Brazilian Stock Exchange (BM&F Bovespa); requiring the listed companies to include in their bylaws the arbitration clause for the Market Arbitration Chamber. Penny Madden from Skadden Arps

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Committee for Arbitration is composed of one man and two women.

Does your organization have a policy or practice to address the issue of increasing the number of women on the panel or in programs?

In my view, women have a role to play in the field of ADR. We are really willing to include women to our lists and programs, but we don't have any particular policy about increasing the number of women who work at or are listed with the CMAP.

What steps should a woman take to become an active arbitrator or mediator?

There is no real difference between a man or a woman becoming a mediator. They are chosen for their professional competence and their knowledge of the business world in general. More specifically, they are evaluated on their knowledge of the business sector in which the dispute arises to make sure that they will be able to help the parties reach a viable agreement. Moreover, they are also chosen for their knowledge and ability to carry out the mediation process.

However, we find that there are much more male arbitrators than there are female arbitrators. This mainly comes from their background and the fact that Law professors and experts are still, usually, more male than female. We hope this will change and call out to women who want to become an arbitrator at the CMAP, to submit their application.

Challenges to arbitrators for failure to disclose conflicts of interest is a growing issue today. How is your organization proactively engaged in addressing this problem?

Each arbitrator working with the CMAP has to comply with our 'Arbitrators Ethic Rules'.

By applying our rules, (s)he undertakes to respect and apply strictly these rules.

Each signatory recognises that (s)he has been informed that a violation of any of the provisions of the arbitration rules will result in her/his personal

liability and furthermore her/his removal from CMAP's list of arbitrators.

The first article of these rules is about their independence and impartiality. It states that: "Before agreeing to be appointed, the prospective arbitrator shall: declare to the CMAP any possible past, present (and future) relationship with one or several of the parties, their lawyers or the other arbitrators (...)"

Do you see a growing role for mediation in the field internationally in conflict resolution?

We recently won, with ten other European mediation centres, a call for proposals published by the European Commission. This project called 'Go To mediation!' intends to tackle the deficit of information and lack of trust in mediation with cross-fertilisation of experiences and actions at the European level.

We also see that there has been real progress in the number of international mediations that take place with the CMAP, which is a great indicator.

How do you envision technology impacting the ADR field in the near term? In the long term?

Mediation and arbitration can be carried out through various technological means, such as videoconferencing, which allow them to be conducted throughout the world.

On another level, we created an ODR (Online Dispute Resolution) called Aegi Solutions (<https://www.aegisolutions.fr/cmap-reco/choix.do>). The online recommendation is an amicable procedure, constraining or not, in which the neutral 'recommends' a non-binding solution to the parties, that they can use as the basis for a settlement terminating their conflict. It also applies specifically to domain names.

Asoid Garcia-Marquez



ArbitralWomen and Hogan Lovells Seminar: Discussion with Cherie Booth CBE QC, Matrix Chambers and Mahnaz Malik, 12 Grays Inn Square

On 1 May 2013 Hogan Lovells, London, in collaboration with ArbitralWomen, hosted an evening seminar with Cherie Booth CBE QC of Matrix Chambers and Mahnaz Malik of 20 Essex Street in celebration of their recent designation to the ICSID panel of arbitrators and the continuing progress in the appointment of women in prominent roles within the international dispute resolution field. The event was attended by nearly a hundred participants.

Melanie Willems introduced the presentations by Cherie and Mahnaz with a few thoughts on the standing of women in arbitration. Her comments presented with some passion about the need for women to find a voice in the profession are summarised below. She pointed to ArbitralWomen as an excellent organisation to join if women wanted to be heard, and highlighted that the website presented a collection of highly qualified female candidates for the role of arbitrator and other dispute resolution practitioners in answer to all those who say "Where are the women?". Cherie congratulated Melanie for the excellent topical introduction.

The event summary is presented below by Julianne Hughes-Jennett from Hogan Lovells, and Nicole Martin, a new member of ArbitralWomen, shared her views on the event.

MirèzePhilippe

An introduction: some facts about women arbitrators

In 2012 Lord Sumption said that *"the fastest way to make enemies is to deliver a public lecture about judicial diversity"* (<http://www.supremecourt.gov.uk/docs/speech-121115-lord-sumption.pdf>).

Giving a lecture on judicial diversity might well make you some enemies, but at least you will have plenty of source material. It is, sadly, easy to find out how many women sit as judges, and to prove that women are hugely underrepresented. By contrast, so far as I am aware, the major arbitral institutions – the LCIA, the ICC – do not publish data on the gender of their arbitrators, and this is also not something which has been addressed in surveys of the profession. Perhaps it should be – see what you think.

When I say that I believe women are grossly underrepresented on arbitral tribunals, it would be fair for someone to ask: "How do you know?" I have the following anecdotal (so, admittedly subjective) evidence:

1. **Personally, I have never been involved – in a 23 year career so far - in any case in which there was a female arbitrator.**
2. **Despite attempting to, I have not been able to get arbitrators to agree to select a woman as their co-arbitrator.**
3. **Whenever I have sat as arbitrator, I have been the only woman on the tribunal.**

As to objective evidence (the best kind, we'll all agree), I have reviewed a sample of Commercial Court cases concerning arbitration awards where the tribunal is named. In only one of these cases was any member of the tribunal a woman.



Left to right : Melanie Willems, Mahnaz Malik, Cherie Booth
(Readers may view the photos of the London event under the Photos section available on the website)

Hogan Lovells Seminar

Anecdotally again, one arbitrator (whom I otherwise greatly respect) once told me: “The difficulty is that there are no good female arbitrators.” It pains me to repeat it, but he was absolutely convinced of this.

The position is only a little different in ICSID arbitrations. At least two women, (Professors Brigitte Stern and Gabrielle Kauffmann-Kohler) are among the most frequently appointed ICSID arbitrators. Even in ICSID arbitrations, though, the vast majority of arbitrators continue to be men.

When discussing trends in arbitration it is easy to give too much weight to ICSID arbitration, simply because the awards are generally publically available. The fact remains that the majority of arbitrations are not investor-state disputes, but commercial disputes between private parties. Let us take as our paradigm case a commercial arbitration, seated in London and subject to English governing law. In such a case any given member of the tribunal might well be a self-employed English barrister QC. If not, then they may instead be a partner or former partner in a solicitors firm. A small minority of arbitrators will come from other backgrounds.

According to statistics published by the Bar Council, in 2010 there were 1,397 self employed barrister QCs of whom just 152 (11%) were women. Of these 152, a substantial proportion will practice in fields such as crime, family law or personal injury. Historically women have been chronically underrepresented among commercial lawyers.

What this means is that if, when we choose arbitrators, we just default to picking a QC from the independent bar, then we are choosing from a pool in which women are already substantially underrepresented. That position might change a bit as women who are presently juniors rise through the ranks of the bar and are appointed Queen’s Counsel, but we cannot assume that will be the case, because if we look at the independent bar as a whole only around one third are female.

When looking for prospective arbitrators, then, the net may need to be cast just a little bit wider. There are some very capable, experienced women who are not Queen’s Counsel - senior juniors at the bar, partners at solicitors’ firms, or senior academics. I am not saying that the junior bar, or solicitors firms or universities are paradigms of gender equality. But if the imbalance stands to be redressed, and there is a will to appoint more women to decide disputes, all the resources available should be considered and drawn upon.

When it comes to partners in solicitors’ firms, the position is hardly better than it is with respect to QCs. In 2012 the Lawyer published data showing that just 9.4% of equity partners across the UK’s top 100 law firm were women (<http://www.thelawyer.com/revealed-females-make-up-less-than-10-per-cent-of-top-100s-equity-partner-ranks/1015190.article>).

What about judges? Only 26.6 per cent of the upper tribunal judiciary are women. Only 15.5 per cent of High Court judges are women. 10.5 per cent of Court of Appeal judges are women. None of the five heads of division is a woman. In the Supreme Court there is still only one woman.

This is out of step with the rest of the world. The average make-up of the judiciary across the countries in the Council of Europe is 52 per cent men and 48 per cent women. England and Wales is fourth from the bottom, followed only by Azerbaijan, Scotland and Armenia. It was accurately pointed out to me that the judiciary is made up of civil servants from the outset in some legal systems: this may be a reason as to why there is a better balance achieved. Be that as it may, it is fair to say, however, that, across Europe, the gender balance still gets worse the higher the court.

Professor Paterson at Strathclyde University has compared the proportion of women in the highest courts of the 34 countries in the OECD. At 8.0 per cent, we are at the bottom. The highest courts of all the other common law countries are more representative than ours: three out of the nine in the Supreme Court of the United States; three out of the nine in the Supreme

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Court of Canada; three out of the seven in the High Court of Australia; two out of five in the Supreme Court of New Zealand (The statistics in paragraphs 14, 15 and 16 appear in a speech given by Lady Hale in February 2013:

<http://www.supremecourt.gov.uk/docs/speech-130221.pdf>).

Of course, all this raises the question of whether the apparently low number of women who are appointed as arbitrators is just a result of the fact that women make up a minority of the QCs, partners in law firms and other professionals from whose ranks arbitrators are overwhelmingly drawn.

This is no doubt a factor in explaining the underrepresentation of women as arbitrators, but I do not believe that it is a complete explanation. After all, approximately 10% of silks and equity partners are women, but I would venture that far fewer than one in ten arbitrators is a woman. If that is true, then it remains correct to say that women are *disproportionately* less likely than men to be appointed as arbitrators.

When I started out in law twenty three years ago, everyone told me that the gender equality question in the field of law would be resolved by the time I achieved partnership. After all, 50% or more of entrants into the profession when I started out were women. What has happened? Nothing. The pace of change is breathtakingly dismal, and women lawyers do not appear to be being given a fair shot. To some extent, speculation about the reasons behind this is merely a side show. I know plenty of clever, ambitious and determined women. Equality is not a pipe dream – I suggest that the spot light should remain firmly on those who would deny women positions of authority or even a seat at the table.

As I mentioned, I have sometimes heard it said, or muttered, that the reason for not appointing women is because to do so would involve “*compromising on quality*” or a “*lowering of standards*”. Let me be frank - the unspoken truth is that an arbitrator being a man is not a guarantee of quality. Everyone will have come across male arbitrators who are outstanding, and male arbitrators whose work was utterly shambolic. I have no doubt that there will be women who turn out to be poor arbitrators, and women who turn out to be very good arbitrators. I suggest we appoint some more women, and find out.

Melanie Willems

Women in Arbitration

In view of the fact that just over a quarter of the 46 recent state designations to the ICSID panel were women, Cherie and Mahnaz shared their views on whether these numbers represents progress for women in arbitration or whether they are an indication that the arbitration community still has some way to go in recognising the talented women in the profession, and what can be done to redress the balance.

In what was a very frank and open discussion, Cherie and Mahnaz highlighted the particular challenges with respect to diversity in the international dispute resolution field, such as the small pool of regularly appointed arbitrators and barriers to entry this creates for those outside of that group. They encouraged law firms, arbitral institutions and users of arbitration to take simple but effective practical steps, such as actively considering and suggesting more female candidates for appointment, in order to ensure better representation of women at the top of the profession.

Cherie and Mahnaz also commented on other topical issues in the field of international investment arbitration , including the question of the separation between 'the bar and the bench' and whether arbitrators in the investment arbitration field must necessarily be 'pro-State' or 'pro-investor'. On the latter point, both speakers saw the merit of not being tied to one camp: it is essential for any arbitrator to have had experience of both sides.

Julianne Hughes-Jennett

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A Genuine Forum on the State of Women Arbitrators

ArbitralWomen and Hogan Lovells Evening Seminar set the tone for a an informative and thought provoking moderated discussion between Cherie Booth, QC and Mahnaz Malik. It was an event that I was eager to attend as a new member of ArbitralWomen. The evening did not disappoint the attendees who were greeted by the wonderful setting that Hogan Lovells provided.

There was a warm welcome expressed by Melanie Willems, ArbitralWomen representative who shared the dismal statistics confirming that women although trained and qualified were not being employed as arbitrators at the rate of their male counterparts. The evidence present was damning and yet inspiring for women to step up to the plate. Attendees were encouraged to join and to become ArbitralWomen members as it is an excellent organisation and the only one where women can be mentored and use it as a platform to further their career ambitions. ArbitralWomen was also cited for being a formidable resource of arbitration competence for which nominees for proceedings could be tapped.

Both Malik and Booth commented further on the reality of the underrepresentation of women from diverse backgrounds in the world of arbitration. Booth seized upon the momentum of their designations to strongly encourage that arbitration heads of law firms and sets use this time to change the *status quo* by actively nominating women to be on panels and arbitration tribunals. Booth also spoke directly to the women in arbitration in the auditorium encouraging each of us to take charge of our careers by building our profiles and presence. She borrowed the practical women's US movement titled 'Lean In', which is also the title of the book authored by Sheryl Sandberg (COO of Facebook) to cement her point.

Malik and Booth further encouraged women to actively pursue arbitration opportunities by simply asking for either male/female to be a mentor, or to learn by participating in training, attending networking events regularly. She expressed the sentiment that due to the lack of diversity and equality in the world of arbitration, arbitral decisions and awards were not undertaken with the consideration of the socio-political, and economic consequences to the state. She cited that a more sensitive approach was needed in investor state arbitrations, where state cultural and economic dynamics are not as thoroughly considered when making awards.

Malik spoke of her fast track on the international arbitration route during the seminar and at the reception. She shared her arbitration trajectory and proficiency of ICC, LCIA, ICSID rules. Malik has advised over 15 governments on bilateral and regional investment treaties and of her on-going arbitrations dealing with oil and energy dispute. I had an opportunity to speak to her during the reception and she was as intent upon communicating the directions that the field was headed in oil and energy a particular interest of mine and she also shared helpful recommendations on how to advance my career through further studies in substantive knowledge.

The reception was also where the majority of the attendees were able to network. It's where I met and spoke with Simon Nesbitt, the global co-head of international arbitration at Hogan Lovells, Julia Yun Hulme the Managing Director of Omnia Strategy (a new Booth effort that uses the UK ABS model to provide international legal consultancy), and counsel from Clifford Chance, Herbert Smith Freehills, and a number of its own counsel from within Hogan Lovells.

The evening was pitch perfect. Two arbitrators with such extensive experience in international arbitration giving back by offering tips and spurring women on to meet the new dispensation around the corner. It was an excellent for promoting the goals and ideas of ArbitralWomen. Hogan Lovells co-hosting duties were equally genuine as the firm has been cited for their investment in women at work. It definitely added tremendous value to my membership. Why, I was even attempting to recruit members the same evening whilst simultaneously networking. I look forward to attending future events and become more active in ArbitralWomen.

Nicole D. Martin

M&A Transactions

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focused on recent case law in England concerning interlocutory measures issued by English courts in support of foreign arbitration and the standard of review of arbitral awards. The practice of M&A disputes in Asia was presented by Michael Hwang S.C. Finally, Daniel Busse from Allen & Overy presented recent developments in M&A disputes in Germany, including interesting German case law on the shift of the burden of proof concerning intentional misconduct to the party alleging its good faith.

The second panel's topics covered procedural issues related to M&A arbitration. The panel composed of Philipp Habegger from Walder Wyss, Paweł Pietkiewicz from White&Case, Soteris Pittas from Soteris Pittas & Co. and Jacob Ragnwaldh from SCC and Mannheimer Swartling, was moderated by Mirèze Philippe from the ICC. It addressed issues related to bifurcation, discovery, fast track and emergency arbitrators.

The problem of computation of damages was discussed by the panel chaired by Julian Lew from Queen Mary University of London. Vladimir Bosiljevac from Harvard University presented the pitfalls of M&A transaction in relation to projected synergies. Anthony Charlton from FTI Consulting spoke about differences between business valuation and damage quantifications. The various methods of damage computation were discussed by Nick Andrews from Grant Thornton.

The closing remarks of the first day were presented by Catherine Kessedjian from University Panthéon-Assas in Paris.

The second day of the conference started with a lively discussion chaired by Małgorzata Surdek from CMS Cameron McKenna and Krzysztof Stefanowicz, from the Lewiatan Court of Arbitration. The panelists, Daniel Busse from Allen & Overy, Irina Nazarova from Engarde, Manfred Heider from VIAC and István Varga from Hungary debated over interesting facts related to problems encountered in arbitration in Central and East Europe Region. Some panelists expressed their concern on the implementation of common law concepts into the legal culture of the region rooted in Roman law. The question whether the expectations of the parties based in those jurisdictions necessarily include

the application of the legal concepts alien to their cultural background was vividly debated.

The next topic of the conference concentrated on the impact of antitrust law on M&A Arbitration Disputes. The panel chaired by Dr Marc Blessing was composed of Gordon Blanke from Habib Al Mulla, Mark Kantor, Jean-Claude Najjar from Curtis, Mallet-Prevost Colt & Mosle and Anna Maria Pukszo from Dentons. Jean-Claude Najjar shared his experience as former counsel of General Electric. Mark Kantor presented the examples of arbitration clauses in merger clearance agreements in US. Gordon Blanke focused on arbitration commitments arising from access commitments in merger clearance practice of EU. The panelists agreed that the arbitration was losing its privacy and was becoming state controlled process in merger cases.

The final panel raised the issue of mandatory public law in M&A arbitration. Irina Nazarova from Engarde presented case law on burden of proof in corruption cases. The thorough analysis of the published ICSID cases shows there is no approved standard of proof. Corruption and bribery were also discussed by Sylvia Tonova from Jones Day, who raised the issue of the legality of investment in investment arbitrations and the adoption of the principle in ICSID arbitral awards. The problem of money laundering and the arbitration misused by criminals were raised by Courtenay Griffiths QC. Maciej Jamka from K&L Gates spoke about the current developments in selected jurisdictions and the impact of insolvency of parties to the arbitration on the arbitral proceedings.

Prof. Tomasz Gizbert Studnicki from SPCG concluded with closing remarks on the notion of public law and its distinctive features.

The conference attended by over 200 participants from several countries was a success. The topics generated interesting discussions and comments.

Save the date in your agendas for the third M&A disputes conference scheduled to take place on 28 & 29 May 2015.

Dr Agnieszka Lizer-Klatka

Kudos!

Rashda Rana, an executive board member and treasurer of ArbitralWomen, has been elected the first female president of the Chartered Institute of Arbitrators' Australian branch."

Karyl Nairn, co-head of international arbitration at Skadden Arps Slate Meagher & Flom, has been made Queen's Counsel. The UK-qualified Australian is the third female solicitor advocate ever to achieve this honour. Nairn is one of only 14 women to be made a QC this year, out of the 26 who applied.

GAR Awards – Bogota

The award for best development of 2012 went to the American Arbitration Association, for the appointment of its first-ever female president, **India Johnson**. Rowley said it was encouraging to see Johnson join other female leaders of arbitral institutions such as **Chiann Bao** at the Hong Kong International Arbitration Centre, **Meg Kinnear** at ICSID and **Annette Magnusson** at the Arbitration Institute of the Stockholm Chamber of Commerce.

The runner-up prize for best lecture or speech of 2012 was **Lucy Reed** of Freshfields Bruckhaus Deringer for last year's Kaplan Lecture in Hong Kong, 'Arbitral Decision-making: Art, Science or Sport?'

Alexandra Dosman has been appointed Executive Director to the newly formed New York International Arbitration Centre (NYIAC). Formerly a Shearman & Sterling associate, Alexandra began her position in July.

Gabrielle Nater-Bass, partner at Homburger in Zurich **Sophie Lamb** partner at Debevoise & Plimpton in London and **Niuscha Bassiri**, partner at Hanotiau & van den Berg in Brussels are appointed to The Board of Directors of the Finnish Arbitration Institute

Tan Sri Dato' Lim Phaik Gan - ArbitralWomen wishes to share with its readers the tribute of Tan Sri Dato' Lim Phaik Gan rendered by Professor Datuk Sundra Rajoo.

ArbitralWomen was kindly authorized to publish the tribute. Tan Sri Dato' Lim Phaik Gan had an impressive career and could have been one of the women leaders that ArbitralWomen is interviewing for its Newsletter, considering that she served as Director of the Kuala Lumpur Regional Centre for Arbitration for many years.

Deepest Condolences

Tan Sri Dato' Lim Phaik Gan



Dear friends,

We are saddened by the passing of one of KLRCA's former Director, Tan Sri Dato' Lim Phaik Gan, on 7 May 2013 at the age of 96. The KLRCA would like to express its deepest condolences to the family for their loss.

Tan Sri Dato' Lim Phaik Gan or PG Lim as she was widely known, was born in England in 1918. After going through her early education in Penang Convent School, she furthered her studies in Girton College, University of Cambridge where she read law and history. She was called to the English Bar at Lincoln's Inn in 1948.

She was a Member of the National Consultative Council which was set up following the suspension of the Malaysian Parliament in 1969 and was the first Malaysian woman appointed to the United Nations in the 1970s. Tan Sri PG Lim also served as the Malaysian Ambassador to the former Yugoslavia, Austria, Belgium and the European Economic Community when Prime Minister Tun Abdul Razak named her as the Deputy Permanent Representative with the rank of ambassador.

She was made one of the Vice-Presidents of the United Nations Economic and Social Council.

Upon her retirement from Foreign Service, she became the Director of the Kuala Lumpur Regional Centre for Arbitration (KLRCA). As the longest serving Director of KLRCA namely, for 18 years (1982-2000), she set up KLRCA as a regional centre for arbitration in the Asia Pacific region.

Tan Sri PG Lim was a champion for the rights of women and the underprivileged, and a role model for all Malaysians. Her passing will certainly be felt as she was and will always be a great Malaysian.

Our most heartfelt sympathies goes to her family.

Kind regards,

Professor Datuk Sundra Rajoo
Director of KLRCA



Stockholm University Wins First Place for the Frankfurt Investment Moot

Triple Victory for Stockholm 25 March 2013 - Dominika Durchowska (Poland), Katrine Ritto Tvede (Denmark) and Aleksejs Ketovs (Latvia) brought Stockholm University to victory at the final of the Frankfurt Investment Moot, in Frankfurt. Thirty-eight teams from around the world competed in the Moot organized by the Merton Centre for European Integration and International Economic Order. The Stockholm team advanced number one after the preliminary rounds; and in the finals, arbitrated by Charles Poncet, Professor Muthucumaraswamy Sornarajah and Eduardo Silva Romero, the victory was given to the Stockholm team (Claimant) over Peking University, Shenzhen (Respondent). In addition, Dominika Durchowska was awarded the best advocate prize. The prize consists of the McDermott Will & Emery Scholarship for an LL.M in International and Comparative Dispute Settlement at Queen Mary School of International Arbitration in London. In

addition, each team member of the Stockholm team will receive a scholarship for a three-week placement at The Hague Academy of International Law. All members of the Stockholm team are students at the Master in Laws in International Commercial Arbitration Law at Stockholm University. Lindahl law firm sponsored the participation of the Stockholm team and Brian Kotick (Mannheimer Swartling), Celeste E. Salinas Quero (SCC) and Christina Khripkova coached the team. The SCC congratulates the Stockholm FIAM team and wishes them all the success in their future endeavors!

ArbitralWomen Network Around the World

Zurich

ArbitralWomen Breakfast Meeting in Switzerland

On June 17, 2013, ArbitralWomen held a breakfast meeting at the offices of Homburger in Zurich.

The breakfast meeting was open to Swiss ArbitralWomen members as well as females practitioners active in dispute resolution. It was organized and sponsored by **Gabriele Nater-Bass**, with 40 participants from the Zurich area were in attendance. The event began with an informal breakfast, followed by a presentation of ArbitralWomen members **Raphaëlle Favre-Schnyder** and **Sandra De Vito Bieri** on the topic of "The IBA International Principles on Conduct for the Legal Profession and the IBA Guidelines on Party Representation in International Arbitration and their effect on daily arbitration practitioners", which was followed by a lively and partly controversial discussion. The Zurich event Representation in International Arbitration and their effect on daily arbitration practitioners", which was followed by a lively and partly controversial discussion. The Zurich event served as a kick-off to promote the Swiss chapter of ArbitralWomen. A second event will take place shortly in Geneva for Geneva-based members and female practitioners



Left to right: Raphaëlle Favre-Schnyder, Gabrielle Nater-Bass (organizer and sponsor) and Sandra De Vito Bieri

Hong Kong

Louise Barrington hosted female arbitrators and coaches at the historic Helena May Club of Hong Kong for cocktails and a brief discussion of ArbitralWomen and its goals. Also attending were the members of EWHA Woman's University Law School of Korea, which is the only all-female law school in the world. EWHA expressed their warm thanks for having received an ArbitralWomen grant paying their registration fee for the Vis East Moot. Members and potential members discussed ways in which AW can partner with local or national organizations in order to promote women in dispute resolution around the world.



Vis Moot East Participants

Visit the Vis Moot websites for the results of the last competitions and the photos:

Vis competitions: www.cisg.law.pace.edu/vis.html

Vis East competitions: www.cisgmoot.org/index.php

See also the Special ArbitralWomen Newsletter about the Vis Moot

Registrations for the next edition of the Vis competitions will open on both websites of the Vis as of October 2013.

6-7 June 2013 Warsaw



Standing: Dominique Brown-Berset, Louise Barrington, Catherine Kessedjian, Beata Gessel, Agnieszka Rosalzka. Sitting: Mirèze Philippe, Penny Madden

(Readers may view the photos of the Warsaw event under the Photos section available on the website)

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Visit our website to search for appropriate and qualified dispute resolution practitioners.

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Women who wish to join the organization may submit an application with a C.V. directly to the website.

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ArbitralWomen Newsletter is a publication presenting information about international dispute resolution and women practitioners in this field. For questions or comments, select "Contact Us" on the homepage.