

Twentieth Anniversary ArbitralWomen

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Friday 22 November 2013 was a special day for ArbitralWomen. Twenty years ago the group was born. It has become well known by the arbitration community mainly since its electronic group on Yahoo and then it became more visible through its website since 2005.

At the ICCA conference in Bahrain in 1993, one lone woman managed to get one of over 20 speaking spots, while a handful of others braved a room full of men. Over coffee they gathered together and wondered aloud if there were other women out there, fascinated by the world of international arbitration, but frustrated in their isolation. Before leaving Bahrain addresses were traded, and each referred a few others, who in turn sent in other names, so that the "grapevine" produced the first List of Women in Arbitration. We called them arbitral women.

On 22 November 1993, eve of an ICC Institute conference, attended by women from all over the world, the first dinner was held, on an upper floor of a charming traditional Paris restaurant. The seating plan was arranged with flowers, with each woman receiving a small corsage at the entrance, and instructions to find the table matching her flower. Between courses, the ladies at each table stood to introduce themselves, their expertise and their interest in arbitration or mediation. As the evening progressed, the atmosphere in the room became electric; the energy of that group of 60 women is still memorable, even today after two decades.



Out of that original dinner came the idea to study Women in Arbitration. That was the study, when presented two years later at a Chartered Institute of Arbitrators conference in Boston, which spotlighted for the first time the paucity of women in international dispute resolution, and made it evident that something had to be done. **This was the birth of ArbitralWomen.**

Today we are several hundred strong, from all parts of the globe. We can be proud of our work in promoting women in dispute resolution through events, social gatherings, mentoring, coaching students to prepare them for the practice moots, and granting awards to assist women law students to participate at the Vis Moots in Vienna and Hong Kong. We are often called on for referrals and our website offers a "Find a practitioner" feature that allows searching for profiles by selecting criteria. In addition to the events we organize, once a year we are present at the IBA meeting and organize roundtable discussions with a breakfast. We also have one major event per year, such as the two-day conference we co-organized with the Lewiatan Court of Arbitration in June 2013 in Warsaw on the subject of arbitration in M&A. Groups of women from developing countries approach us for cooperation and for assisting them in their local initiatives.

In twenty years, we have made a great deal of progress, with women leading many arbitration commissions, serving as arbitrators and mediators, and taking a more visible role in the leadership of the arbitration community. However, women are still sadly under-represented as lead counsel in arbitrations, on arbitrator rosters, and as panel members in high-value, high-profile cases. There is still much work to be done if women are to achieve equal status with men in this field.

We try to lead one or several projects every year. The main projects currently are raising funds to support students and moot teams from developing countries; every year we have more requests and unfortunately no funds to respond to such a justified demand. We also launched a cooperation program consisting in cross-referencing with other bodies involved in dispute

resolution, such as hearing centers around the world; the idea is to cross-reference to each other on our websites and to contribute to promote some of our mutual activities. We have also started cooperating with Kluwer Arbitration blog. Other projects are in the pipelines, such as an inclusiveness program that we would like to propose to the arbitration community to invite the stakeholders be more active in including women on all boards (panels, tribunals, working groups and so on); the project was born during the conference on the women's day ArbitralWomen co-organised with the Chartered Institute on 8 March 2013 in Dublin. This project is supported by AW's president Dominique, who has been a champion of diversity in the field of arbitration for a long time, in particular when she was co-chair of the IBA Arbitration Committee. Dominique and Judith Freedberg who were among the 60 women who gathered 20 years ago when ArbitralWomen was born, found themselves ten years later to be at the head of the IBA Arbitration Committee which was an achievement by itself. The important thing is not for women to be appointed as arbitrators, counsel or expert-witnesses because they are women, but that, for equal talent and experience, women are nominated and appointed as a matter of course, and can therefore fully contribute to the development of a more effective dispute resolution process. Women have certainly a lot to contribute to improve the arbitration process.

ArbitralWomen is organizing a special event to celebrate its anniversary and the achievements of the last two decades, and also the many projects to come.

The group benefits from a wealth of ideas, although our practices do not allow us to do as much as we would like. Looking back at the past, we can appreciate the long way we have come through and be happy with the spirit we have instilled in this network.

We are grateful to our members for their continued support. We hope that other women practicing dispute resolution will join us and share with us the progress of the next 20 years!

*Louise Barrington & Mirèze Philippe, Founding Co-Pres.
Dominique Brown-Berset, President*



Leading Women in ADR

ArbitralWomen ('AW') has started publishing a year ago interviews with women leaders of dispute resolution ('DR') centres. Before starting to collect information, we did not expect to find so many women leading DR centres. ArbitralWomen wishes to offer its readers the possibility to learn about these women from all continents. Readers have discovered in newsletter n°7 interviews with **India Johnson**, President and CEO of American Arbitration Association (USA), and **Sarah Lancaster**, Registrar of the London Court of Arbitration (UK). Issue n°9 was devoted to three women leading DR centres in Europe: **Beata Gessel-Kalinowska vel Kalisz**, President of the Lewiatan Court (Poland), **Annette Magnusson**, Director and Secretary General of the Arbitration Institute of the Stockholm Chamber of Commerce (Stockholm), and **Sophie Henry**, Secretary General, Centre de Mediation et d'Arbitrage de Paris (Paris). This issue is dedicated to three women leaders in Latin America: **Diana Droulers**, Executive Director of the Arbitration Centre of the Caracas Chamber (Venezuela), **Carolina Diab**, General Director of CRECIG, Comisión de Resolución de Conflictos de la Cámara de Industria de Guatemala (Guatemala), and **Karin Helmlinger Casanova**, Executive Director and Secretary General of Arbitraje Internacional Santiago (Chili).

DIANA DROULERS

Head of Centro de Arbitraje
de la Camara de Caracas



You are the head of Centro de Arbitraje de la Camara de Caracas since 1998, and as such, you were elected President of the International Federation of Commercial Arbitration Institutions. What was the career path that led you to this post?

I graduated from law school in 1993 already married and with both of my children, and a little worried about finding work that could be compatible with a home life. It was a difficult time in Caracas since President Carlos Andres Perez had been ousted and there was a provisional government, in which one of my teachers was named finance Minister and he asked me to come and work with him heading his cabinet. During the 8 months we were in power it was much more than a master degree, it was pure learning about public finances and the public domain plus the inner workings of political power and bargaining. When that was coming to an end, a boutique firm in Caracas offered me a partnership. I was there for 2 years, doing corporate work mostly in telecommunications, when I got a call from a friend who was entrusted with setting up a government agency to materialize a law that I had participated in trying to pass while at the ministry. It was The Intergovernmental Decentralization Agency. There it was essential to set up a management team, and I became its first General Counsel. I traveled all 23 Venezuelan States and most of the 300 counties



supervising the projects that we financed. It was a great experience. For 3 years we channeled a percentage of the funds derived from value added tax to public works in different parts of the country. One of my pet projects in FIDES was the mediation and justice of peace programs that were being set up throughout the country - Dispute resolution!

When I left FIDES, I was immediately called by the President of the Chamber of Caracas because the arbitration law had just been passed and they were looking for somebody to start the arbitration institution in Caracas. It was 1998 and a very challenging election year. I kid them now, but they didn't know just what they were getting into!

The first thing I did was call other institutions in order to see how they worked, and they were very generous in sharing their knowhow. The Chamber of Commerce of Bogota had me for 3 weeks, Dr. Briner at the ICC Court for various training, and Bill Slate at AAA for a week of corporate office visits with all departments included. I am very grateful to each of them, it was a great experience, and extremely helpful.

It was through them that I realized that institutional work was extremely important, and that I came to know other institutions such as VIAC, Stockholm, LCIA. It was only natural that I become involved with IFCAI in 2003, and I was then asked to become a board member in Washington DC in 2004, and then in Tunis 4 years ago, President.

Is your appointment for a specific term?

Yes, in IFCAI there is a 4 year term, and I have been reelected this year for another 4 years. At the Caracas Chamber I was hired under contract by the then President and there is no specific term.

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

In IFCAI many goals have been achieved and yet there are always new ones, as the world rapidly changes and so does conflict resolution. One of the most important things for us is to provide the adequate quality of services to our clients. That means keeping the high

standards that are expected of us, and in order to achieve that we need to know what is happening in the field. We do certain research, the results of which are only for our members, unless otherwise decided. It is important to know that we work mostly for our members. This year we are aiming at raising our profile and becoming a network that can be used very successfully for gathering information. We work with UNCITRAL and it has been a good experience. To be able to tap into this resource of case information is an enormous benefit. Can you just imagine the amount of money that people entrust us with?

At the Caracas Chamber for the moment we are focused this year on technology improvements because our systems need to be renovated. That takes a lot of work, and sometimes it isn't easy to understand!

What are your major challenges as a woman at the head of this organization?

I would not say there are any different challenges except for those necessarily brought on by cultural differences in countries where women tend not to be so advanced in their work environment. I come from Venezuela, where women in the workplace have reached high positions. It is difficult for the modern woman because the family takes a lot of time to build, and it has to be nourished with presence and care. And we have to be involved in our families, friends and social life, teach and participate politically all while keeping up with what is happening in the world. One has to be in shape, and then there is work! So time tends to be very scarce for women, and we are expected not only to be successful in all, but also to look successful.

Advancing women is the goal for AW, does your organization have a policy on advancing women?

There is no official policy for advancing women, there are many institutions that are headed by women! Our Board has 4 out of 9 members are women, and we are careful in all events to have a balance of regions and cultures



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

When there are themes regarding institutions and their work, subjects pertaining to institutional work we always try to participate. As I said before, we have many women presiding institutions, and yes, when we organize events we always have many women on panels. This last year in the Caracas event we had women in every panel and in some even two.

You have been involved in international arbitration for 15 years. How has the field changed during that span of time?

It really has changed a lot. It seems to grow every year, there is a lot more interest in the field. Cases become bigger and more complicated, investment arbitration is of a new interest. It is good that this arbitration tool is being used, but in a sense sometimes it is being misused. And, in all events on tends to see a lot more younger women in arbitration events.

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

Choice. Many people are using arbitration because they don't think they have a choice, but arbitration should be only for those who want to work within the limits. It has become increasingly complicated because all the normal recourses for court procedures have been tried in arbitration and I am sure more are to come. We cannot push people to use this if they don't really believe in it as a way to resolve disputes. They will always end up going to court.

The future is teaching more people how to use arbitration effectively. In the future, there will be more and more cases, because the frontiers are erased throughout the world and trade and flow of goods and services shall continue to expand, arbitration will also grow, unless the users abuse it. Arbitration shall continue to be the best way to solve disputes for international contracts.

Don't think I don't like other forms of dispute resolution, in fact that is a big part of the choice, but

each has its niche, and mediation can be extremely useful for cases that aren't as complicated, or can resolve parts of a case. People tend to trust mediation a little less because it has no binding effect in most countries, however, the fact that the decision making process makes the person who participates responsible for the decision it has a positive aspect.

Dispute Boards are wonderful for big projects, but they have to be brought in early in the process and many cases have gone a little too far for those tools to be useful.

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

Work with what you have, take advantage of all opportunities, and above all do not see yourself as having a handicap. Women are a lot more resourceful than men; do not be afraid to be feminine. It is a lot easier to fit the image of the complete woman than it is to fit that of a complete man. It is also very important to have the right kind of partner. The international world is not that easy to understand and to belong in, so the right person alongside a woman is very important to further her career. I have had my husband beside me for 33 years. He is a very successful engineer and has a big business to run, but he stands beside me through all my adventures in the arbitration world.

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

AW offers a networking experience that takes one into different worlds and cultures. We have members from every area in dispute resolution, institutions, private practice, government etc. we also have people from all over the world. If people knew how many relations have been made this way, how inspiring other women can be, they would be members in two minutes.

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

To borrow words from Abraham Lincoln, it was created by the women for the women. This does not mean that

ARBITRALWOMEN

The International Network of Women in Dispute Resolution

we are against men; it just means that we understand that we the ladies need a little more encouragement to succeed in the international world.

Is there any particular issue in the field of ADR that you feel needs immediate attention?

Many things need attention all the time, but the first is that ADR needs to keep changing in order to keep up with the world. Technology is ruling a big part of the world, yet many in the world live without it. Cases coming from less developed countries need to be treated in the same way as the ones from developed countries, and yet they are not prepared for it. I think every state should have a multidisciplinary intergovernmental team to deal with arbitrations, instead of just relying on outside counsel.

Is there anything else that you would like our readers to know about you or your job?

I would not change my work for anything in the world! It has permitted me to meet and work with interesting people from all over the world; it is challenging and ever changing. I never have enough time for everything so there is always something interesting waiting for me tomorrow. Sometimes I am overwhelmed, but never bored.

Seriously, working in institutional arbitration gives one a different perspective and a much balanced view of what is happening in the field. We see many more cases than those in private practice, than those in courts, and we see things that never come to light because they are confidential. The cases that are talked about are those which show problems. There are many more that run like well-greased machinery? yet due to confidentiality they do not come to public light.

Interview by Rabab Yasseen

CAROLINA DIAB

Head of Comisión de Resolución de Conflictos de la Cámara de Industria de Guatemala



You are the head of Comisión de Resolución de Conflictos de la Cámara de Industria de Guatemala - CRECIG- (Dispute Resolution Center) since 2011. What was the career path that led you to this post?

Being a Corporate Lawyer, I have always been interested in ADR. In 2009 Cámara de Industria de Guatemala (Guatemalan Chamber of Industries) invited me to join CRECIG's Board of Directors, where we developed a strategic plan to improve and strengthen the Dispute Resolution Centre services, later I became General Director and have been implementing that plan since.

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

Yes, spread out ADR's, especially Arbitration, as a real and effective way to end conflicts peacefully, in a country where justice efficiency is much needed.

Can you tell us more about the CRECIG? Do you administer arbitration cases or only appoint arbitrators? Do you have domestic and international arbitrations?

Yes, at CRECIG we administer Arbitration cases, domestic and international, and also provide other ADR services, and have an important conferences and training program. Please visit our website to learn more about us: www.crecig.com.gt.



What are your major challenges as a woman at the head of this organisation?

Encourage and appoint, when possible, more professional women to integrate Tribunals. Before 2010 there were no women on our Arbitrators lists, now we have several.

Advancing women is the goal for AW, does your organisation have a policy on advancing women?

Not specifically, but our Board of Directors, understands the importance of gender equity and promotes it.

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

Yes, as part of our strategic plan, we invite women to take an active role in our discussion panels and to be members on our Arbitrators list.

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

I have been involved in international arbitration only academically, studying and determining issues to be addressed by our discussion panels to help expand ADR knowledge in my country.

I'm looking forward to opportunities to practice International Arbitration.

I do have practice experience in domestic arbitration and mediation which helps me understand the actual benefits of these procedures, and the appropriate way to expand their use and administer cases.

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

I think that Dispute Resolution Centres, have the power to impact in a positive way international dispute resolution. As long as Centres provide professional, efficient, and quick services, demand of services will maintain and increase.

Do you have relations or programs in common with other dispute resolution centres in Latin America? If not, do you think it would be valuable to have a sort of

a regional meeting from time to time to share experiences and help develop the field in dispute resolution in this region?

CRECIG has good relations with other Centres in Central and South America. Last November we helped ICC Guatemala and ICC Costa Rica coordinate the first regional meeting for arbitration development in Central America, which took place in our offices in Guatemala. It was an interesting event with the participation of Guatemala, El Salvador, Costa Rica, and Panama. Participants made a comparative analysis of the Arbitration Law of each country and shared best practices and experience. The next meeting will take place next February in Costa Rica.

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

Get involved. Go to conferences, study, and network.

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

Reading the articles posted on the web page, adding her resume, and networking.

Can you share with us what – in your view - are the particular characteristics of ArbitralWomen?

ArbitralWomen is an open window to what's happening in the world regarding Arbitration, and since it has a women point of view it can be a very helpful tool for learning and networking.

Interview by Mirèze Philippe



KARIN HELMLINGER CASANOVA

Head of the Santiago Arbitration and Mediation Center of the Santiago Chamber of Commerce



You are the head of the Santiago Arbitration and Mediation Center of the Santiago Chamber of Commerce. What was the career path that led you to this post?

I am indeed the Executive Director and Secretary General of the Santiago Arbitration and Mediation Center (Chili) and work in this institution since 1992. It was my first job once I finished Law School.

Can you tell us more about your dispute resolution centre? Do you administer arbitration cases or only appoint arbitrators? Do you have domestic and international arbitrations?

The Santiago Arbitration and Mediation Center (CAM Santiago) is a non-profit institution founded in 1992 by the Santiago Chamber of Commerce (CCS) with the backing of the Chilean Bar Association and different areas of the Chilean Confederation of Production and Commerce. CCS is in compliance with the law governing trade associations and is registered with the Ministry of Economy.

Since its foundation, CAM Santiago offers arbitration and mediation for the resolution of domestic and international disputes, the purpose being to provide

legal certainty and efficient solutions to the business and legal communities in Chili and abroad. With more than 2000 arbitrations conducted by the arbitrators of CAM Santiago involving more than 4000 companies and law firms, CAM Santiago has become an undisputed benchmark for dispute resolution in the country.

In 1998, the Center added mediation to its services, consisting of a voluntary method of dispute resolution through which the disputing parties negotiate directly, assisted by an expert and neutral mediator who helps them communicate effectively and design creative solutions to their problems.

Chile enacted in September 2004 the [Chilean International Commercial Arbitration Law](#) based on the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law (UNCITRAL); this was the result of an initiative of CAM Santiago with AMCHAM and The Chilean Bar Association.

CAM Santiago extended its services in 2006 to international commercial arbitration in order to resolve disputes in legal relations between parties from different countries, on the basis of its experience and the enactment of Law 19.971.

Can you report about some of the achievements of CAM?

Throughout its history, CAM Santiago has undertaken numerous projects and activities to spread and strengthen alternative methods of dispute resolution, such as the publication of decisions rendered by the Center's arbitrators, both written and online available on www.camsantiago.com, academic activities on ADR in Universities mainly through courses, seminars, LLM, and the creation of an online platform called e-camsantiago (www.e-camsantiago.cl), which is a software that enables the creation, maintenance and monitoring of national and international arbitration proceedings online, with interaction of arbitrators, parties and CAM Santiago, through the use of passwords.



On another aspect, the Inter American Development Bank (IADB) granted its support to the CAM Santiago's project for extending its array of arbitration and mediation benefits onto a national coverage. This collaboration and support has become a Programme for "The Expansion and Furthering of Commercial Arbitration and Mediation" (1999-2003) and "Strengthen E-Commerce Security and Trust" (2004-2007) for the development of high technologies for the online administration and follow up of arbitration and mediation cases.

As regards its international presence, the CAM Santiago was appointed as the Chilean Section of the Inter American Commercial Arbitration Commission (whose Spanish acronym is CIAC), currently based in New York.

What are your major challenges as a woman at the head of this organisation?

Being a woman has been an advantage for my career as Secretary General of CAM Santiago. My experience in cooperating with men in this practice field has been very easy and I never faced situations where I was refused as a spokesperson.

Advancing women is the goal for AW. Does your organisation have a policy on advancing women or a practice to address the issue of increasing the number of women on panels or in programs?

We are trying to increase the number of women on the arbitrators list of CAM Santiago.

You have been involved in international arbitration for 17 years. How has the field changed during that span of time?

There has been a tremendous change mainly since 2004. No international arbitration law existed in Chile before. CAM Santiago has played an important role in the education on International arbitration, before and after this Law (19.971). The Chilean Courts have been supportive to International arbitration within the limits of the arbitration law.

Also, arbitration has become increasingly more complex. Lawyers will have to specialize and get more

involved in international networks and studies on international arbitration.

Do you have relations or programs in common with other dispute resolution centres in Latin America? If not, do you think it would be valuable to have a sort of a regional meeting from time to time to share experiences and help develop the field in dispute resolution in this region?

Yes, we have Cooperation Agreements with arbitration centers in Sao Paulo and Lima, and a permanent connection with the different Centers that belong to IACAC.

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

Be passionate and constant and never renounce to your femininity which gives to your work as arbitrator a very special character.

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

I am just learning about AW and will certainly spread the word among my female colleagues. A dedicated network for women practitioners in dispute resolution is certainly important.

Interview by Mirèze Philippe



Articles Reported on Arbitralwomen Homepage

[Arbitration e-Review: Dispute Resolution in M&A Transactions– Tactics, Challenges, Defenses](#)

The second edition of the 'Dispute Resolution in M&A Transactions – Tactics, Challenges, Defenses' conference took place in June in Warsaw this year. The conference fulfilled its thought-provoking role and became a jumping-off point to further develop some of the issues raised during the conference. In this review, you will be interested to read the articles and reports from this conference, including an article from Mirèze Philippe who shared with us her thoughts on Fast-Track and Emergency Measures in M&A & JV Disputes in ICC Arbitration, illustrating them with numerous examples of the cases submitted to the ICC International Court of Arbitration in Paris.

[Can an Investor Claim Lost Profits for Breach of Pre-contractual Relations?](#)

Luigiterzo Bosca v Lithuania is one of rare cases where the arbitral tribunal dealt with protection of pre-contractual rights under the BIT and, especially, the extent of state's liability in cases of breaches in pre-contractual relations with an investor.

An abundant number of agreements have been and will be concluded between states and investors operating under the bilateral investment regime and even a larger number of negotiations will fail before reaching the final stage of signature. An investor may spend large sums of money with the aim of concluding an agreement with the state. If the final agreement is not signed, these investments may be lost. Is the bilateral investment regime able to assist investors where investors spend large sums of money and where the negotiations are terminated by the state? Would the investor only be able to recover its costs or could the state also be liable for the investor's lost profits?

By Vilija Vaitkute Pavan & Rapolas Kasparavicius

[Why bringing diversity to ADR Is a Necessity](#)

The dramatic absence of diversity in the neutrals selected for alternative dispute resolution (ADR) proceedings has flown under the radar. The International Institute for Conflict Prevention and Resolution (CPR) recently developed its 2013 Diversity Commitment as one way to address this problem. By adopting this readily usable tool, corporations, organizations and their counsel can demonstrate their commitment to diversity in their selection of mediators and arbitrators. CPR hopes that corporations' adoption of the Diversity Commitment will lead to a long-term paradigm shift.

By Laura A. Kaster & David H. Burt

[Alcatel-Lucent StrongHer](#)

ArbitralWomen reported in its [Newsletter of April 2013](#) about Alcatel-Lucent StrongHer "A grassroots movement to unleash feminine talent". See the clip broadcasted on Alcatel-Lucent website to present StrongHer. *"The video is full of energy and is more than just a presentation of the network"* said Virginie Gervais-Bazin, in charge of StrongHer External communication and partnerships, Budget and funding. *"It is a series of employees' enthusiastic testimonies on what StrongHer brings them and on the commitment of StrongHer with Corporate Diversity Leaders to increase the impact of diversity initiatives"*.

[American Diversity in International Arbitration 2003-2013](#)

When I was approached to return to issues of diversity in international arbitration, I decided to expand on the methodology I used in the 2003-2004 period in two earlier articles on American minorities in international arbitration. This work is an update and expansion of the work that went into my articles Benjamin G. Davis, *The Color Line in International Commercial Arbitration: An American Perspective*, (presented at the American Bar Association, Dispute Resolution Section Mid-Year meeting April 16, 2004), 14 *American Review of International Arbitration* (Columbia University) 461



(2004), Benjamin G. Davis, International Commercial Online and Offline Dispute Resolution: Addressing Primacism and Universalism 4 Journal of American Arbitration (Penn State Dickinson/Tulane) 79 (2005), and in the ABA Dispute Resolution Magazine (forthcoming Winter 2014). I examine American diversity in international arbitration across the broader target population for the ABA's Goal III diversity efforts: American women, American minorities, American lawyers with disabilities, and American LGBTQ lawyers. These four groups are the target population described in the American Bar Association's Goal III: Eliminate Bias and Enhance Diversity. In addition to sending a survey to 413 international arbitration practitioners of whom I was aware or to whom I was referred and listservs, I contacted a diverse group of international arbitral institutions around the world from some of whom I received data.

By Benjamin Davis

[Lists, Checklists, Guidelines, Principles, Techniques, Protocols, Best Practices: Are They Useful?](#)

The wealth of information available offers helpful and concise guidance and tools to assist practitioners in their daily practice. In an age where practitioners are short of time and are faced with a plethora of documentation to read, putting in place helpful guidance and tools may be of valuable assistance in ensuring that the basic issues for each stage of an arbitration are remembered. Lists, checklists, guidelines, principles, techniques, protocols, and best practices elaborated by organizations and working groups like UNCITRAL, IBA, ABA, ICC, or by law firms, facilitate the work of the parties in preparing and arguing their case, and help the arbitrators organize and conduct the proceedings.

By Karen Mills, Mirèze Philippe & Ileana M. Smeureanu

ArbitralWomen Activities



Mirèze Philippe reports about some of ArbitralWomen current activities.

Network: Gatherings organised around the world by ArbitralWomen members, such as the dinner in Paris of 4 December 2013 (see report in this issue), not only offer the opportunity to network, but also to debate in small forums on various dispute resolution related topics. They are also the occasion to communicate information about AW's activities and projects, such as those reported hereafter.

Members' roles: ArbitralWomen and the network are what its members make it. Members may have different roles depending on how much they wish to contribute. They may simply spread the word and invite other women practitioners in dispute resolution to join AW, and may participate to conferences and gatherings. They may also have a more active role by organising conferences or gatherings in their countries, by accepting to cooperate on some projects, or by proposing projects - which if accepted by the Board - may be led by the members proposing them, with the cooperation of the Board. ArbitralWomen is often invited to cooperate on some projects or to co-organise or speak at conferences. Each project requires that a member takes the lead.

AW Committees: Therefore, in addition to AW's Board, committees were created with volunteers who accepted to take the lead of a project with the assistance of the Board. Among the current



committees, Ileana Smeureanu is leading the cooperation with Kluwer Arbitration Blog, Gillian Lemaire is contributing to the cooperation program with other dispute resolution bodies, and Melanie Willems is in charge of organising the 2014 event in London to celebrate AW's 20th anniversary.

AW Board: In addition to its functions, the Board composed of 14 members each in charge of a specific task deals with various matters any time, including during week-ends and holidays. For instance, last summer the Board had to deal with two issues: criticism by a man against limiting AW's membership to women and misconception of AW's role, and a conference program speaking about diversity but where no women were invited to speak. In the first instance, ArbitralWomen explained that like any group or club, membership is open to a certain profile and the purpose of ArbitralWomen is to gather and promote women in dispute resolution; if the objective of a group is considered to be a discrimination towards people who do not respond to the profile of a group, then all groups are discriminatory, whether they are sports groups, intellectual, professional or social. Regarding the second instance, ArbitralWomen contacted the organisers who admitted not to have excluded women but they simply did not pay sufficient attention to the issue and did not know which women to contact; names were suggested and one woman was invited to join the panel on diversity. Searching profiles on basis of specific criteria is available on ArbitralWomen website with the 'Find a practitioner' feature.

Kluwer Arbitration Blog: ArbitralWomen started a cooperation with Kluwer Arbitration Blog and will be blogging as ArbitralWomen group starting from January 2014. Blog posts will address current issues in international dispute resolution. Editorial commentary and candid views are particularly welcome. Ileana Smeureanu is in charge of this cooperation program and will be assisted by an Editorial Committee including her and composed of Gillian Lemaire, Karen Mills and Mirèze Philippe. Members are encouraged to participate and to benefit from this opportunity to

share their views on current trends. The first blog posted on 16 January addressed issues related to "Lists, Checklists, Guidelines, Principles, Techniques, Protocols, Best Practices: Are They Useful?" by Karen Mills, Mirèze Philippe and Ileana Smeureanu.

Cooperation program: the Kluwer Arbitration Blog program is part of a larger initiative launched in 2013. The purpose of this program is to cooperate with entities involved in dispute resolution, e.g. organisations, institutions, firms, schools, publications and other bodies. Subject to reciprocity, ArbitralWomen aims to promote the activities of entities with which it cooperates on a dedicated webpage. Gillian Lemaire contributes to the putting in place of such program.

ArbitralWomen 20th anniversary celebration in London on 9 September 2014: Melanie Willems has taken the lead for the organisation of this very special event. Mark your agendas.

Events: ArbitralWomen organises or co-organises several events, some of which have become a tradition, such as the breakfasts at the occasion of the IBA meetings around the world. All events are published on ArbitralWomen website.

Moot competitions: one of the actions led by ArbitralWomen since several years is to support teams from developing countries who participate to arbitration and mediation competitions. So far ArbitralWomen was able to support four teams every year by paying the registration fee allowing them to compete, but wishes to support more if funds permit. This year ArbitralWomen will support two teams from India and Vietnam participating to the Vis Willem arbitration moot and one team from Kenya participating to the ICC mediation moot. ArbitralWomen have started calling for sponsorship to enable it to respond to requests received from several teams. ArbitralWomen considers it important to allow teams from countries where no funding is granted and no coaching is ensured, be trained and capable to participate to competitions like other teams.

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Mentoring program: the program started five years ago and allows members to benefit from mentoring by members more experienced. Mentors and mentees are matched according to their location so as to enable them to meet more easily if they wish.

Newsletter: it is usually published three times a year and is an information tool. It allows members and non-members to learn about the activities of the group, share information about the dispute resolution community, present profiles of women not only from the dispute resolution community but soon also from the business community. Similarly to publications and events, it is a communication and marketing tool.

Website: ArbitralWomen website offers the possibility to be visible, to contact members who chose to be visible on the extranet, to search for practitioners following selected criteria, to share information about events and publications, as well as to publish news. The recent news presented an initiative from women at Alcatel-Lucent called StrongHer, an article about ADR 'Why bring diversity to ADR is a Necessity', a comment about the Luigiterzo Bosca v Lithuania case 'Investor Claim Lost Profits', articles and reports from the second edition of the 'Dispute Resolution in M&A Transactions – Tactics, Challenges, Defenses', and a survey about 'American Diversity in International Arbitration 2003-2013' (read more on the [news page](#)).

Website: ArbitralWomen hopes to raise funds to allow it to upgrade its website. Ten years for a platform is old considering that information technology is in constant progress.

Members: are encouraged whenever they travel or participate to an event anywhere around the world to check whether any gathering is organised and if not to organise one with the help of a local member. This is the perfect opportunity to meet members from different regions and to network.

Reports from ArbitralWomen Members

Dinner to Honour Rashda Rana and Jo Delaney



Clockwise from left:

Michelle Sindler, Angela Ha, Louise Dargan, Mili Djurdevic, Frances Isaac, Mary Walker, Jo Delaney, Rashda Rana, Erika Hansen, Eriko Kadota, Anne Hoffman, Daisy Mallett, Bree Farrugia, Gitanjali Bajaj, Sonya Willis and Theresa Dinh

On **15 August 2013**, ArbitralWomen in **Sydney** gathered for a dinner to celebrate the appointment of Rashda Rana (Treasurer, ArbitralWomen) as the President of the Australian branch of the Chartered Institute of Arbitrators (CI Arb) and Jo Delaney as the Chair of the Education Committee of the CI Arb (Australia). The Australian branch of the CI Arb was established in 1995 and Rashda is the first female president of the Australian branch, which is a win for women everywhere.

Jo Delaney is a Special Counsel at the Sydney office of Baker & McKenzie and joined the firm when Sarah Lancaster left to take up her role as Registrar of the LCIA. Jo has practiced in international arbitration for the past 14 years with Clifford Chance in London. Her return to Sydney coincided with Rashda relinquishing her role as the Chair of the Education Committee in order to focus on the presidency.

After congratulating Rashda and Jo on their appointments, each of the women present introduced herself and spoke of how she has come to be involved



in dispute resolution, her concerns and ambitions. We then heard some of the impressive achievements and ongoing struggles of women working, or seeking work, in arbitration. In particular, it was wonderful to hear about the very important work that is being carried out by some of our members who have been pushing the frontiers both here and overseas. Some of the achievements of those present included lobbying to ensure that arbitration (whether as arbitrator or counsel) is continued to be recognised as constituting a proper part of barristers' work, assisting the United Nations to develop legal systems in emerging economies such as Cambodia and training and working with tribunals and in firms to develop arbitration expertise.

Over dinner, we discussed the difficulties women face in trying to promote themselves in the field of arbitration and explored ways in which women could endeavour to overcome these hurdles. We can all learn from and through the experiences of others, including some who weren't present but whose efforts were discussed. When discussing how to balance work and life with family, especially children, the importance of a strong support network at home and in the work place was evident. Husbands and partners of the women at the event were praised for their support and these men should also be afforded some recognition.

At the end of the night, we were all pleased that we had come together in a forum that was open and encouraging of each other. It was proposed that we organise an ArbitralWomen breakfast at the next international Sydney event, the IBA/Law Council on 6 December 2013 when there will be a chance for ArbitralWomen members from outside Australia to join in the discussions.

Whilst we acknowledged that most women face similar challenges, the celebration of two appointments of proactive and inspiring women to positions within the CI Arb (Australia) was a positive and promising development for women in arbitration.

Erika Hansen & Sonya Willis

ASA New Board Members

On **4 October 2013 in Bern**, ASA (the Swiss Arbitration Association) elected 24 new Board members for a three-year term beginning 2014. Two ArbitralWomen members were elected Gabrielle Nater-Bass of Homburger (also ArbitralWomen Board member) and Nathalie Voser of Schellenberg Wittmer. Six out of the 24 elected are women, which is a very important step for ASA considering that all members of the previous boards were male with only one woman, Gabrielle Kaufmann-Kohler as Honorary President. Another sign of the change operated is the corporate counsel on the new board who are both women, Isabelle Hautot (France Telecom-Orange) and Anke Sessler (Siemens).

It is also interesting to mention that two women, Andrea Meier of Wartmann & Merker (also in the new ASA board) and Noradèle Radjai of Lalive (AW member) co-chair ASA below 40.

We are happy to see more and more women take on responsible roles in ASA and the Swiss arbitration scene.

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AW Annual Breakfast during the IBA Conference

AW Breakfasts and round table discussions organised at the occasion of IBA Conferences has become a traditional event since a few years. Gabrielle Nater-Bass was the initiator of these traditional early meetings offering the possibility to participants to debate about current hot topics. The last breakfast was organised **in Boston on 7 October 2013** and rounded up 70 participants. Louise Barrington, Adriana Braghetta, Dominique Brown-Berset, India Johnson and Carole Malinvaud discussed about 'Resignation by and Termination of Arbitrators: Best Practice and Issues'. The event was sponsored by ICDR, BCDR-AAA, Homburger and Seyfarth Shaw. Sara Beiro Farabow, partner at Seyfarth Shaw who hosted the event, and who is an ArbitralWomen member, said a few words of welcome at the beginning. Luis Martinez, Vice President of the ICDR, made the closing remarks.



Left to right: India Johnson, Carole Malinvaud, Dominique Brown-Berset, Louise Barrington, Adriana Braghetta

GAR Live Paris



Juliette Fortin

The latest edition of GAR Live took place **in Paris on 15 November 2013**. The event which attracted an audience of a hundred participants was co-chaired by Philippe Pinsolle (Quinn Emanuel Urquhart & Sullivan) and Michael Polkinghorne (White & Case).

Over the course of three panels, the invited speakers covered a rich variety of critical topics in arbitration, from debating how to deal with corruption allegations in the course of arbitration proceedings, to discussing what mistakes to avoid in framing damages claims, all the way to analysing the major factors influencing the choice of the place of arbitration. The event closed with a lively Oxford Union-style debate.

The first panel, chaired by Pinsolle, brought together several doyens of the arbitration world in the form of Yves Derains (Derains & Gharavi), Bernard Hanotiau (Hanotiau & van den Berg), Stephen Bond (Covington & Burling), and Paul Cohen (Thompson & Knight). This panel discussed how arbitrators should approach corruption allegations in the context of international arbitration proceedings. The panellists appeared broadly to agree that arbitral tribunals were empowered to investigate allegations and suspicions of corruption, although they considered that there was no absolute duty for an arbitrator to do so. Their debate then moved on to considering what standard of proof needed to be met in respect of allegations of corruption. Although the panellists largely agreed that



the standard of proof was high, they noted that corruption is often difficult to prove in practice. A critical point raised by the panellists was that arbitration deals with civil rather than criminal matters, and that the relevant question is therefore not simply whether corruption took place, but rather whether it was relevant to a matter in dispute, for example by affecting the validity or enforceability of the contract.

The second panel, chaired by Polkinghorne, comprised three experienced expert witnesses from the forensic accounting profession: Anthony Charlton (FTI Consulting), Tim Giles (Independent Economics and Finance) and Jean-Luc Guitera (KPMG). Described by Polkinghorne as the “what not to do panel”, the panellists outlined a number of types of mistakes that can happen in the course of framing a damages claim. The panellists emphasized the importance of having an expert that was experienced not only in cross-examination, but also in the practices and actual methods applied in “real world” valuations and transactions. A recurring topic was also the expert’s ability to substantiate any claims made. Good knowledge of the legal framework and investment agreement, the consultation of authoritative data sources and industry experts, and thorough analysis of the parties’ own exhibits to spot contradictory statements were named amongst the key means to produce credible and clear-cut valuations and avoid the expert being compromised in the witness box.

After a networking lunch break, the final panel discussion was set to debate the process and factors behind the choice of the place of arbitration, and for this purpose the panel was entirely composed of in-house counsel. Peter Rees QC (legal director, Royal Dutch Shell plc) acted as chair over the panel that comprised Isabelle Hautot (general counsel, Orange), Christine Guerrier (VP for disputes and litigation, Thales), and Jean-André Diaz (special counsel, Total). This panel agreed that the financial and time efficiency of the enforcement process was a main factor in the selection of a suitable seat, alongside the neutrality of the forum. However, it was noted that a forum’s

neutrality actually often made the negotiation process harder, with Asian parties increasingly favouring centres outside Europe. Finally, the panellists stressed that they considered the seat of arbitration to be a more meaningful factor than the governing law of the contract.

As a follow-up to the panel discussions, a vivid Oxford Union-style debate was held with the stirring motion “This house believes that, in 30 years’ time, investment arbitration will be a thing of the past”, chaired by Charles Kaplan from Orrick Rambaud Martel, the venue sponsor of the event. Kaplan showed loyalty to his *alma mater* by insisting the debate would follow Cambridge Union rules! Yas Banifatemi of Shearman & Sterling was one of the debaters.

The day then found its closure with the traditional crystal ball-gazing session, where the two chairs Polkinghorne and Pinsolle offered their own visions of the future and the role of international arbitration in it.

Juliette Fortin, FTI Consulting (Paris)

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Patricia Shaughnessy Presided the CIETAC Cup



Patricia Shaughnessy in the centre

On **21st November 2013**, Patricia Shaughnessy, Director of the Master of International Commercial Arbitration Law program at the Stockholm university and member of ArbitralWomen, was the presiding arbitrator in the final round of the 11th CIETAC Cup (International Commercial Arbitration Moot & WILLEM C.VIS Moot International Selective Trials) held in **Beijing**. A two women team from Wuhan met a mixed team from Peking University Transnational Law team in a very close and impressive round, with the latter winning and the runner-up being Wuhan University. The two teams were exceptionally talented and well prepared. The competition is based on the Vis problem and the winning teams get CIETAC sponsorship. The other two judges at the final were Mr Philip Yang Liang Yee (former president of HKIAC) and Mr Zhang Yuqing (former director of Department of Treaty and Law, Ministry of Commerce of China).

In her speech at the ceremony, Patricia mentioned ArbitralWomen's 20th anniversary on 22 November to the over full room of more than 300 students and about 50 practitioners were more than 50% were women, noting that China is contributing to diversity in arbitration.

Mirèze Philippe, ICC (Paris)

Calculating Damages in International Arbitration: Methodology and Examples

At the occasion of the launch of the ICC's new Mediation Rules and a number of other arbitration events including the triple colloquium AAA/ICC/ICSID which rounded up a number of arbitral practitioners in **Paris** during the first week of December, 25 women practitioners gathered on **Tuesday 4 December 2013** under the auspices of ArbitralWomen at the *Al Mankal* restaurant in Paris. In addition to sharing some tasty mezze, the evening was the opportunity to exchange around the topic of damages in international arbitration.



Members present at the dinner in Paris on 4 December 2013

Juliette Fortin of FTI Consulting provided some interesting insights into the methods used by financial experts to calculate and defend damages quantifications in front of arbitral tribunals - a highly technical topic, essential to the sound resolution of disputes. For instance, Juliette highlighted that a widely accepted technique for calculating damages is based on the *discounted cash flows* methodology, i.e. the assessment of cash flows a company or project is expected to generate in the future.

As Juliette explained, an expert's scope of work is much more complex than applying a standard valuation technique. What is required is a detailed and bespoke assessment of the economic impact of the alleged wrongful action and using different valuation

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approaches to ‘triangulate’ the final damages amount. This highly technical analysis must be ultimately explained in the expert report in a succinct manner, for a non-technical audience. Juliette also provided a first-hand perspective on the challenges frequently faced by financial experts such as maintaining their independence and duty to the tribunal above their own client.

All around, a great evening of new and interesting exchanges spearheaded by ArbitralWomen’s dynamic figure head Mirèze Philippe. For the few first-timers like ourselves, it was a stimulating introduction into the world of ArbitralWomen – a unique forum for networking and exchanging ideas in a relaxed and intimate setting with a like-minded group of women representing a wide of range of experiences and nationalities. Amongst the nationalities represented at this event were Cameroon, the Democratic Republic of Congo, India, Lebanon, Romania, Iraq, Turkey, France, the United Kingdom, the United States and the Netherlands, a testament to the extraordinarily diverse base of the organisation.

Shruti Bakshi & Anne-Charlotte Adam, FTI Consulting (Paris)



Anne-Charlotte Adam

Shruti Bakshi

Women’s Building Club (‘Club des Femmes du Bâtiment’)



Caroline Duclercq on the right side in the back

As member of ArbitralWomen and member of a women’s club recently created in the construction industry, I contribute to the promotion of women in both sectors: dispute resolution and construction, where women remain a minority.

On **5 December 2013**, the *Club des Femmes du Bâtiment* (Women’s Building Club – « CFDB ») was officially launched at the occasion of the Commercial Real Estate Exhibition (« *Salon de l’immobilier d’entreprise* » - « SIMI »), held at the Palais des Congrès in Paris (see <http://contactcfdb.wix.com/cfdb#>! and http://www.linkedin.com/groups?home=&gid=7425007&trk=anet_ug_hm). The CFDB thanks Synergies (a consortium of construction companies) for its kind support and for the invitation to share its stand at the exhibition.

CFDB was created in November 2012 and is intended to gather and promote women in the construction industry, *i.e.*, not only employers, contractors, investors, developers or architects, but also related professionals, such as real estate counsel, persons involved in property management, technical, financial and legal experts. The Club currently counts approximately 25 women.

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CFDB main objectives are (i) identifying and promoting women in the construction industry; (ii) promoting sustainable integration of women in this industry; and (iii) developing and sharing common values and professional ethics, a spirit of friendship and solidarity.

To achieve these objectives, CFDB carries out various actions. It participates to construction exhibitions, promotes the industry and carries out training in schools. It organises events, such as conferences, thematic breakfasts, debates, sport events, and organises visits to construction sites such as the *Maison de la Radio* in Paris visited in October 2013. CFDB also cooperates with other clubs to promote women in the business field in general and is currently putting in place a mentorship program.

The Club organises lunch meetings every two months. Women involved in the construction field may apply for membership.

Caroline Duclercq, Altana law firm (Paris)

MARK YOUR AGENDAS

Next informal meeting before the IBA Day:

Breakfast in Paris on Friday 14 February 2014

ArbitralWomen's 20th anniversary:

London on 9 September 2014

30th AAA/ICC/ICSID Joint Colloquium



Clockwise left to right: Louise Barrington, Hilary Heilbron, Elizabeth Birch, Diana Droulers, Wendy Miles, Delissa Ridgway, Noor Davies, Eloise Obadia, Alina Leoveanu, Natalia Nur Adnan, Nayla Comair Obeid, Chiann Bao

On **6 December 2013, Paris** hosted the 30th AAA/ICC/ICSID Joint Colloquium on International Arbitration. Numerous participants from all over the world - practitioners, academics and students - attended five presentations on themes that reflected hot topics in recent arbitral practice. Among those, of particular interest were the enforcement of arbitration agreements and awards through investment arbitration, the role of emergency arbitrator, and the increasing risk exposure of institutions and arbitrators to post-award lawsuits and attacks. During the same event, the organizing institutions drew the line and reported on their 2013 activity. The Colloquium closed on a positive note and was followed by a cocktail reception.

Ileana M. Smeureanu, Jones Day (Paris)



COMMUNICATIONS ON AW WEBSITE

Newsletter

ArbitralWomen Newsletter is a trimestrial publication presenting information about international dispute resolution and women practitioners in this field.

Editorial Board: Debora Miller Slate, Mirèze Philippe, Lorraine de Germiny

Find a Practitioner

Find appropriate and qualified dispute resolution practitioners through the [multi-search tool](#).

Become a Member

Women practitioners in dispute resolution who wish to join the group may submit an application with a CV and a photo directly on the website.

Events and Sponsorship

Firms and organisations who would like to co-organise events with ArbitralWomen or have their events supported by ArbitralWomen may post a message under "[Contact us](#)".

Training and Competitions

ArbitralWomen publishes information about dispute resolution programs, scholarships, training etc. If you are interested to promote such programs you may post a message under "[Contact us](#)".

Job offers

ArbitralWomen publishes job offers. You may communicate any offer in the dispute resolution field and legal field in general by posting a message under "[Contact us](#)".

Cross-References and Cooperation

Firms and organisation who wish to cross-reference with ArbitralWomen on their website and cooperate with ArbitralWomen may post a message under "[Contact us](#)".

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Questions?

For any question, information, proposal, you may post a message under "[Contact us](#)".



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Anniversary Event – 2014 London

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