

INSPIRATIONAL WORDS ON DIVERSITY



President’s Column

In this special edition of the Newsletter, we publish several inspiring keynote addresses and presentations by our members on diversity issues. These include the keynote address by ArbitralWomen Co-Founder **Louise Barrington** on “Can ‘Inclusive’ Canadians Help Change the Face of International Arbitration?” at the ICC YAF North America Regional Conference in Montreal (June 2018), the keynote address by **Lucy Reed** on “The Math: Caution + Habit + Bias” at the 15th Annual ITA-ASIL Conference – Diversity and Inclusion in International Arbitration in Washington DC (April 2018), and the keynote address by **Adedoyin Rhodes Vivour** on “Promoting Gender Diversity in Arbitration in Africa” at the Women in Arbitration Conference in Nairobi (March 2018).



Dana MacGrath
AW President

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ArbitralWomen thanks all contributors for sharing their stories.

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Newsletter Editorial Board

Louise Barrington, Dana MacGrath, Karen Mills, Mirèze Philippe, Erika Williams

In their presentations, the speakers share a wealth of knowledge about diversity trends and statistics while offering inspiring ideas about ways to improve diversity.

We are pleased to be able to reproduce these thought-provoking remarks on diversity in this special edition of the Newsletter in order to extend their reach to all of our members. I wish to thank ArbitralWomen Co-Founder **Mirèze Philippe** for leading the effort to compile these inspiring presentations and Board Member **Erika Williams**, who chairs our Newsletter team, for making this special edition possible.

ROLE MODELS AND WOMEN INITIATIVES

ArbitralWomen Newsletters communicate to members and readers, generally on a quarterly basis, various information, news and reports, but also interviews with women leaders in dispute resolution and other leading profiles, inspirational presentations from women practitioners in dispute resolution, detailed reports of some events, initiatives led by women in their workplace and other initiatives and projects undertaken by women.

In this issue we are publishing:

- (a) inspirational presentations from ArbitralWomen members who kindly agreed to share their papers, namely Louise Barrington, Lucy Reed and Doyin Rhodes-Vivour;
- (b) a report about a CIArb conference held in December 2017 together with the speeches of the panelists; and
- (c) a report about Miller & Martin Women’s Network.

The diversity of women initiatives undertaken in their workplace is noteworthy. Some initiatives were reported in ArbitralWomen Newsletters, such as the Alcatel-Lucent StrongHer initiative (issue n°8) and the White & Case Women’s Initiative (issue n°11). ArbitralWomen welcomes reports about similar initiatives organised by women in their workplace.

We hope that members and readers will enjoy reading these speeches and reports.

By Mirèze Philippe

ArbitralWomen Co-Founder

Special Counsel, ICC International Court of Arbitration

INSPIRATIONAL WORDS FROM LEADING WOMEN IN ARBITRATION

Louise Barrington Keynote Address: Can “Inclusive” Canadians Help Change the Face of International Arbitration? ICC YAF North America Regional Conference in Montreal on 8 June 2018

Louise Barrington J.D., L.L.M, International Arbitrator, Hong Kong, Paris, London, Toronto (www.arbitrationplace.com) gave the following speech during the ICC Young Arbitrators Forum North America Regional conference.



Louise Barrington giving her Keynote Address

On a recent flight from Paris, I spied an article in the in-flight magazine citing Deloitte’s recent report “Outcomes over optics: Building inclusive organizations”. The Deloitte conclusion was that courageously inclusive companies, which take calculated risks and invest in innovation, are those which grow and create jobs in Canada. Other studies over the last decade have repeatedly demonstrated that corporate boards with diverse memberships make better decisions and show better financial results. A range of diverging ideas fosters conversations, creativity and adaptability. Employees in a

corporation that respects and encourages new ideas report better job satisfaction - and they stay longer.

But Canadians aren't trying hard enough. In our proudly multicultural, welcoming nation, most Canadian corporate entities continue to focus on our differences instead of welcoming and valuing individuals with something original to bring to the table. Deloitte cited our innate conservatism as the reason Canadian corporations are reluctant to change their corporate structures, even when faced with compelling evidence that it will help their bottom line. The Deloitte study encouraged Canadians to take advantage of our inclusive nature to gain market advantage, outlining a five-point approach to make that happen¹.

Finding that message in an Air Canada flight publication was proof that the diversity conversation is no longer the women and minorities issue it was once thought to be; it has gone mainstream.

Now what has this to do with international arbitration as practiced in Canada? Lack of diversity isn't just unfair. It is now recognised as an organisational problem. Excluding outsiders and clinging to comfortable but outmoded habits is not a recipe for success in today's changing world. That got me to thinking about Canada and diversity and arbitration. Although it hasn't yet been officially studied to any extent, what diversity does in a board room it should also be able to do in a law office. Or in an arbitration institution. Or in an arbitration tribunal. In fact, diversity and inclusiveness could very well be critical to the future of arbitration as it faces existential challenges from our rapidly changing business universe. And Canada, with our open, multi-cultural heritage, is well-placed to take a leading role.

If you have any doubt that arbitration as we know it must adapt, then consider the following four observations:

- 1 The way international business is conducted is changing, drastically and rapidly. The SMAC revolution (social media, mobility, analytics and cloud commerce) is challenging business operators to adapt -- not only how they do business -- but how they will resolve the inevitable disputes spawned by digital international business. My generation doesn't really master the new skills and technologies; it is the

millennials and Gen Y, who have grown up with these new technology-based elements, who are going to make the changes.

- 2 Geographically too, players are changing. Over one-third of the world's population is in China and India. Both economies are growing rapidly, with China vying with the U.S. for top spot in global trade. What makes us think that these new business operators will continue to use a dispute resolution system devised on another continent, in another century, and in vastly different conditions?
- 3 For a century, arbitration was touted as the commercial response to slow, non-neutral "foreign" courts. In this century, international business operators complain about the system that was sold as "faster, cheaper and more efficient" than state court determination. Those claims are now to a great extent false. Yet arbitration has not evolved to cure its own ills. We've been using bandaids where major surgery may be indicated. To meet the present demands of commercial operators and to anticipate their future needs, we need fresh cultural viewpoints, innovative ideas, and a willingness to risk change.
- 4 Arbitration's main advantages are its flexibility, its neutrality, and its finality. All of these are under attack -- from over-regulation, from the homogenously western face of the decision-makers, and from the resulting lack of credibility of "western arbitration" especially in the Eastern hemisphere. If the arbitration community cannot adapt to new business, we will be replaced.

But convincing ourselves of the advantages and even the necessity of diversity doesn't in itself translate into change. This is all too evident in the statistics about women in high positions in commerce, law firms, government and of course, in arbitration. Over my 25 years of studying the role of women and their progression in dispute resolution, and particularly in international arbitration, it has become clear that the dearth of women is part of the larger problem. Women aren't the only ones excluded from the "boys' club" or the "in crowd" of arbitration. Focusing on women is looking at one part of a much larger whole, which includes ethnicity, religion, culture, sexual preference, physical appearance, height, language or accent, physical ability and age. But the practical reality is that women are easy to identify. And if you can count it you have a shot at changing it. ArbitralWomen focusses on the

¹ www.canada175.ca/unitetoinclude

promotion of women but the behavioural changes we can achieve will benefit other “outsider” groups as well.

Women have made visible progress in the domain of international arbitration. In 1993, (although back then no one thought to ask) women were appointed in about 2% of cases. We could count the female arbitrators on our fingers. Now, as the arbitration institutions see the value in demonstrating their diversity, they rush to publish statistics that now show women getting between 15 and 25% of arbitral appointments.

Studies have shown however that this 15 to 20% mark is a danger point. It is critical at this point that both women and men not accept this level as “good enough”. Women have broken through the glass ceiling, but now is not the time to sit back and wait for parity to arrive. Just think about it. Despite the fact that since the 1970’s (that is TWO full generations) half of Canada’s law school graduates are women, and we’ve finally got to 15%? At this rate parity might be expected in about 100 years. But, in reality, if we stop now, not only will women fail to progress; women will lose ground. Without us calling them out, those in command (male and female) will return to past organisational habits. Habits that are perpetuated by deeply ingrained unconscious bias.

International arbitration carries over traditional corporate biases into the milieu of dispute resolution. Facing corporations reluctant to change their habits, in-house counsel and independent advisors know the mantra: “no one gets fired for buying IBM”. It seems safer to go with the name brand than to try out a new one, even if that new one promises improved performance and efficiency.

Here’s a question: who comes into your mind when you read the phrase: “an arbitrator with gravitas”? Did you think of a woman? I thought not! In a recent Toronto seminar of more than 50 people, only two raised their hands to say a woman had come to mind. And one of them confessed that the woman he thought of was his mother! Now gravitas may be an asset to an arbitrator, who is expected to command respect as a leader and an organiser as well as a judge. It is reassuring to have a steady dependable and respectable individual to judge your case. But is it really wise to demand gravitas of a candidate who has all the other knowledge, skills and judgment required for the job? Or is saying we need gravitas simply our unconscious bias code for “we’d feel

more comfortable with an older white male who *looks like a judge*”?

Although no one likely gets fired for doing it “the way we’ve always done it”, the risk is that the very existence of the company – or in our world, of international arbitration – is at stake. Just as new electronics can’t be repaired with obsolete tools, new kinds of “smart” disputes are going to need innovative “smart” dispute resolution tools. Those currently at the top of their arbitration careers, but who don’t know how to use email or edit in Word, much less deal with electronic discovery, will not be providing those solutions. And what of cyber security? How many of the “old guard” are confident that they are adequately protecting their information, and the information belonging to the parties? Most of us don’t understand how software works any more than we can repair our modern computer-driven cars. We don’t know what to look for, so how can we solve the problems? It will be the new kids on the block who bring with them the changes we need.

Still, we hesitate to welcome change. Having lived many years outside Canada, my perception is that Canadians – at least those of my generation and above – tend to be very conservative and risk averse. We are biased in favour of the known, the familiar, the safe and the comfortable. When we need to make decisions involving people, our unconscious uses mental shortcuts based on the attitudes and stereotypes that we’ve developed throughout our lifetime.

Unconscious bias is in every one of us. Do you think you are less biased than the average member of the society you live in? If you answered Yes, you should know that about 95% of people questioned answer Yes. Do the math; it just cannot be true. Unconscious bias bears no relation to intelligence, and your unconscious bias may be directly opposed to your conscious beliefs and opinions. If you don’t believe you are biased, spend 15 minutes to take one of the Harvard bias tests² - and marvel at what you learn.

Nobel Prize winner Daniel Kahneman has a book called *Thinking, Fast and Slow*,³ that gives us wonderful examples how our superfast processor and our slow

² www.implicit.harvard.edu

³ Penguin, 2011

methodical conscious brain work to complement each other, but also compete like jealous siblings. There are names for some different kinds of bias and what triggers them:

- Affinity bias (looks like me, went to my school)
- Similarity bias (thinks the way I do; we're on the same page)
- Beauty bias (60% of male CEOs are over 6 feet tall; only 15% of the US population is over 6 feet)
- Halo bias (he's so good looking and confident, he must be a good manager) or the reverse: the horns / cloven hoof) bias (he dresses sloppily so he must be incompetent and unprofessional)
- Confirmation bias (I see only information that reinforces my first judgment and am literally blind to the rest)
- Conformity bias (go along with first speaker's views, or with the majority – even if it's wrong!)

These biases affect the way we perceive different people and reality in general. They dictate how we will react to some people, whether we are friendly and helpful to them or not, and even whether we pay attention to them. Do we listen to one person more than another? Do we believe some people rather than others? And how do we use micro-affirmation (like saying mmhmm, yes, and nodding in agreement) to support or encourage some people? At this point the litigation counsel might be thinking, hmm, will my unconscious biases affect whether I will believe a witness or not? Answer: Yes! And so do those of judges and arbitrators.

Quickly now, what is the sum of $2 + 2$? How long did it take you to “know” this answer? A millisecond. Because it is simple, and probably the most familiar arithmetic problem in existence. Your unconscious brain knows it. Now, what is the product of 17×24 ? Kahneman explains that you know immediately two things: first, this is a multiplication problem, and second, you don't know the answer, so you'll have to work it out in your head. Now is the correct answer 40? Your unconscious brain knows that can't be correct. How about 40,000? Same thing. So the unconscious brain passes the problem to the conscious brain, which can slowly work it out: 7×4 is 28, carry the 2. 7×2 is 14 +2 is 16, so 168. Drop down a line and add 1×24 to get 408. Now your unconscious mind – even if you are a lawyer – can do simple math and is generally aware of the parameters of scale, so it quickly and automatically rules out 40 and 40,000. Then it passes the problem to the conscious, calculating brain. Now -

assuming you could do this multiplication in your head - could you do it while driving on a busy highway? The slow brain is not good at multi-tasking.

Here's an old puzzle that Kahneman uses.

A bat and ball cost \$1.10.
The bat costs one dollar more than the ball.
How much does the ball cost?

A number came to your mind. That number is 10 cents. Easy? This easy puzzle, says Kahneman, invokes an answer that is intuitive, appealing, and wrong. If the ball costs 10 cents, the total cost of the bat and ball will be \$1.20 – 10 for the ball and 1.10 for the bat. The intuitive answer came to your mind, but did you stop there, or did you resist your intuition and engage the plodding, conscious, calculating brain to get the right answer?

The neuropsychology of how blind spots betray our conscious logical decision-making processes is a fascinating study. Read *Blindspot: The Hidden Biases of Good People*⁴ for a fascinating introduction to how unconscious cognition controls human prejudices and behaviour. The decisions we make in our offices may not mean life or death, but they can have very far-reaching effects on the people we exclude out of habit. And they may make us blind to better choices, choices which could bring the competitive advantages of diversity in adapting and improving the way we do business and resolve our disputes.

Once convinced of the competitive advantage to be gained by embracing new actors, new ideas, and new methods, we need to confront our unconscious bias. We need to recognise how it holds us back, and substitute sane, fair and logically reasoned decisions - instead of relying on our reflexive “gut-reaction” and then finding ways to justify it.

Recognising our own blind spots is the first step in dealing with them so as to minimize their effect on decisions which although not life-threatening, may run counter to our expressed beliefs and values. But self-knowledge is just the first step on a difficult path, one that requires courage as well. Awareness of our biases alone will not change our behaviour.

In making decisions about arbitration – whether to initiate it, who to engage as counsel, who should make

⁴ Banaji and Greenwald, Delacorte Press 2013

up the counsel team, and who should be the arbitrator, you are not dealing in life and death. In our busy stressful lives, it is all too tempting to rely on intuitive, easy, familiar precedents and fail to engage the services of the plodding hardworking conscious brain.

Let us not be too quick to demonise our biases. Unconscious bias is not an enemy to be vanquished or a disease to be cured. It is part of a system that is vital to our survival. It is the product of our upbringing, our education, our religion and ethics and social situation. It is part of an amazing function of our brain which allows us to process at an unconscious level 60 million bits of information per second, while our conscious brain is using slow logic to mull things over. Our brain's ability to process information in a split second is a survival skill without which our ancestors would have perished to predators and we would not even be here. But this fast-processing brain works on experience; it forms stereotypes and judgments based on that experience; it accepts the family and the familiar as safe and dependable. It rejects the unfamiliar as unknown and therefore potentially dangerous. It causes us to have "blind spots" which influence our decisions, even when we think we are being logical. Simply put, when faced with a choice, your unconscious mind's superfast processor quickly arrives at a judgment, far ahead of the slow, methodical, logical conscious process of deciding. So by the time you get to your conscious decision, it has been influenced – stealthily, silently – by the superfast unconscious judgment. Then you try to explain rationally the reasons for choosing the same old, same old known, safe pair of hands, respected, - but possibly far too expensive for the case at hand and unavailable for meetings until 2021.

It is now that we need to do the real work to change our behaviour to reap benefits diversity can bring.

Any dieter will extol the virtues of her high protein, low carb, no-fat, high-fat, grapefruit, ketogenic diet or intermittent fast. Meanwhile, she bites into a Big Mac or Godiva biscuit, and hops into the car to drive 300 metres to take the elevator to her second story apartment. We all have experienced the disjunct between what we know is good and what we actually do. The truth is, old habits die hard. And in times of stress or trouble, we still crave our comfort food.

Without focus on the goal and a large dose of will power, we'll be packing on those pounds again.

Without obliging ourselves to engage the conscious mind to monitor "decisions" made by our unconscious mind, we will soon fall back into the same old habits.

Diversity is the beginning. Inclusiveness though, is the only way that lasting change can happen. An organisation can have a diversity policy in hiring, but if it sidelines the diverse employee, that employee will feel underappreciated and will hesitate to contribute his or her original ideas. Someone once said, "Diversity is being invited to the party. Inclusiveness is being asked to dance."

Kahneman and others have arrived at two conclusions, which are when read together, disturbing. The first is that we have difficulty in seeing our own blind spots, so we need others to notice and call us out. The second is that real change comes from the top, from those responsible for establishing the ethos of the organisation. This means that those at the top, those with clout, must encourage open conversations and allow others to call out bias when they see it. Think about it: how many junior associates are ready to knock on the senior partner's door and suggest that the firm needs a more inclusive hiring programme? And how many at the top are willing to listen?

Many firms are seeking wisdom in making changes which will ensure that those who haven't usually been invited to the party not only get invitations, but that their dance cards are full. Until now though, no one has applied the knowledge to the field of international arbitration.

ArbitralWomen has received a grant from the AAA-ICDR Foundation to develop The ArbitralWomen Diversity Toolkit™. We are studying the problem and working on strategies to resolve it by raising consciousness, by identifying unconscious bias, and by finding or designing ways to change the way we choose the people who we work with to resolve our disputes. We will launch the Toolkit™ in New York in November, as a one-day seminar to be delivered by AW trainers to law firms, corporate entities, arbitration institutions, and any group that wants to learn more. As a preview though, we will be thinking of ways to:

- set specific objective fair expectations for making decisions regarding arbitration
- avoid backlash by focussing on demonstrated talent and skill, not tokenism

- adopt personal and professional habits that challenge people’s traditional ideas; encourage openness to new viewpoints and cultures
- slow down decision-making to engage the reflective, calculating, logical brain
- challenge ourselves and others on decisions that appear to unfairly exclude someone, and
- empower those who are included as well as those who are inclusive

A twentieth century black revolutionary wrote, “There is no more neutrality in the world. You either have to be part of the solution, or you’re going to be part of the problem.” As Canadians with the most diverse population in the world, we are justifiably proud of our rich cultural heritage. We can take advantage of our multicultural society to include in our personal and professional life practices and connections that bring us into contact with people whose ideas are different from ours. Canadians are in a unique position to turn that cultural richness to developing arbitration as an inclusive process with the creative resources to adapt to the needs of new commerce.

Lucy Reed Keynote Remarks: The Math: Caution + Habit + Bias ¹

15th Annual ITA-ASIL Conference – Diversity and Inclusion in International Arbitration in Washington DC on 4 April 2018



Lucy Reed, Professor and Director, Centre for International Law, National University of Singapore

(Gonzalo Flores, ICSID Deputy Secretary-General, served as Commentator)

¹ I thank CIL Practice Fellows Rachel Tan Xi’En and Sarah Lim Hui Feng for their assistance with this talk, in particular with statistics. The views (and any mistakes) are my own.

Introduction

Thank you, and welcome to all. I see so many good friends here, who are absent from my life so far away in Singapore. And of course, I share the sadness in not seeing David Caron here today. David is a friend of over 30 years. We both were Presidents of the American Society of International Law and Chairs of the Institute for Transnational Arbitration and had many opportunities to scheme together about these organizations and many other things.

I hope that you are here not because you think I have all the answers to diversity issues and challenges in international arbitration. I certainly do not. I am better equipped to pose the questions than the answers. My personal preference is to take action to further diversity in international arbitration by teaching associates and students, by sponsoring, by networking, by appointing women and minorities to tribunals, and also by stepping back and making room in the front of the stage for the next generation. As such, I do not do much speaking anymore and I frankly feel uncomfortable to be viewed as part of the story of successful women in arbitration. I would rather make things happen.

Nor have I written much directly about diversity. Exhibit A of the small number of highly-visible women in international arbitration – and this makes me laugh – is the fact that I am often mistaken for Lucy Greenwood, who is here today. Recently, I was at a conference where a man came up to me and said:

“I really like your recent article.”
I said: “Oh really, which one?”
He said: “You know, the one about diversity.”
I said: “I really don’t think I have written about that recently.”
He said: “Oh yes, you have. I am sure you have.”
I said: “Really, I am not Lucy Greenwood.”
And he said: “No, I’m sure you are.”

There are not that many “Lucy’s.” I am the tall one for anyone who wants to know.

Humor aside, I think it is important to keep the hard facts and challenges front and center.

The first question is, why is diversity important? I think we all know the answer. We practice in a diverse global world with diverse disputes and therefore the people who resolve those disputes should be diverse and representative.

The second question is whether there is diversity now among arbitrators and lead counsel. The answer is no, not so much, and not as much by far as there should be. I think when we talk about this we have to keep in mind that arbitration tribunals are only three- or one-person strong. Women are not a minority, but we cannot aspire to 1.5 women per tribunal. We have to be looking at the broader pool of candidates to serve as arbitrators and lead counsel. That is what I call the “pool of experience.”

Recently, I saw a headline about the first-known three-woman tribunal. I am not sure what I think about that, because it may raise questions about whether that is diversity - to have three women on a tribunal? Does that mean it is also okay to have three men on a tribunal now? Of course the answer is no. It depends on the overall picture. But a three-woman tribunal does ring like a “*Man Bites Dog*” kind of headline. I remember when Chief Justice Beverley McLachlin from Canada was speaking about diversity and the judiciary at the American Society for International Law (ASIL) Annual Meeting a few years ago. She said: “Won’t it be nice when we get to the point where there aren’t headlines about appointments of women or an all-woman tribunal or more than 50% of women on the bench?” And the answer is it would be, but we have a long way to go for that.

As I was thinking about what I could say about diversity at large, I put my thoughts into the (partial) equation that is the title of my talk: “Caution + Habit + Bias.”

CAUTION + HABIT + BIAS = WHAT?

This equation equals what? Caution + Habit + Bias equals, or causes, low levels of diversity in international arbitration. This is my personal view after some 30 years in this practice. I wonder if we cannot change this equation.

Caution

I start with **caution** because states and private parties will continue to be cautious and conservative about appointing arbitrators in cases of any magnitude. Why is that? Because when we are talking about arbitration, we are talking about awards that are non-appealable and enforceable relatively easily around the world. It is like sudden death (except it is not so sudden or fast anymore). In any case, these are not disputes that any reasonable party is going to entrust to anyone but the most experienced arbitrators.

Who is in that group is another question. This requires a brief reprise of the history of international commercial arbitration. I have been struck that some of the young practitioners do not appreciate this history.

The key point is that no one started out to discriminate. If we go back to the 1980s and 1990s, arbitration was not a popular field of practice. With some exaggeration, it was not even a recognized field of practice, except for some Swiss professors. For example, when there were major Gulf oil disputes and **Alan Redfern** and **Martin Hunter** started practicing international commercial arbitration at Freshfields in the 1960s and 1970s, there was no international arbitration group. Actually, there was not even a litigation group at that time. Arbitration was seen as risky and perceived as soft. Alan and Martin, as some of you know, recruited **Jan Paulsson** in Paris, as another new specialist in arbitration. And there was born one of the first, if not the first, international arbitration groups within major firms – without any certainty of success. Other excellent practices have followed, mostly in Europe, New York and the US “oil patch.”

When international arbitration accelerated later, I would say in the 1990s in the wake of the Iran–U.S. Claims Tribunal and with increased foreign investment and bilateral investment treaties, there was a small cohort of experienced practitioners. As is generationally true of law firms and faculties at the time, it was predominantly men from western European commercial capitals. The parties new to this field – understandably – were cautious in appointing arbitrators from that cohort. They are still doing so, when it is no longer warranted.

The good news is that there is growing diversity in the number of experienced arbitrators in the growing pool of experience. Yes, the growth is slow. Given the high stakes in international arbitration, caution in appointments from the pool of experience continues.

Caution has to stay a factor in my equation. We cannot change it.

Habit

What **can** we change? This brings me to my second factor – **habit**. We know who we know. And so, when we look for arbitrators or lead counsel, we list people we know, rattling off our favorites. I am as guilty as anyone.

The Equal Representation in Arbitration Pledge – which was launched by an ambitious and energetic group of

women, including my former Freshfields partner **Sylvia Noury** – is important. I purposely took a backseat in the development of this, so the younger women have more space. I did go to some of the dinners at which the Pledge idea was floated for discussion. I remember one in Hong Kong where the head of a leading international arbitration group – a man – described how successfully the Pledge was working for his group. He called it the “five-minute rule,” by which he meant if the team took just an extra five minutes in listing names, they could and did think of names of experienced women, younger practitioners and non-Europeans. I follow this rule. How hard can it be? It is not rocket science to think more proactively about our appointments and recommendations.

The names that come up in that extra five (or more) minutes may not make it on your final list for a particular case, because they are not the right fit. Similarly, even though certain candidates make it on the list, they may not be selected for appointment. But, at least, those names get into play. They get into circulation. They get advertised and noticed. They start coming to mind – ideally by habit – and become part of a bigger pool.

As a (now former) Vice-President of the ICC Court of Arbitration, approving and observing arbitrator appointments, it is not a breach of confidence for me to tell you that there are many strong and diverse people sitting in arbitrations who are unknown to everyone in this room. I am also happy with the new ICC practice of posting on its website the names of all arbitrators in all cases, because this transparency allows more names to get into circulation. There is no breach of confidentiality as the tribunals are not matched to cases or parties. I would like to see other institutions do the same.

The institutions, we know, have long been better than parties in appointing diverse arbitrators. I have heard that the percentage of party appointments of women and minorities also is noticeably going up, since the Pledge was launched. To me, it is a positive sign that counsel are taking those extra five minutes.

I propose that we remove the factor of **habit** from my equation, because it hinders diversity unnecessarily.

Bias

Now I come to my third and final factor, which is **bias**. We all have to acknowledge a very thin boundary between habit and bias, especially unconscious bias. Habit is knowing and selecting the people we know; bias

slides into knowing and selecting people just like us. We all have biases. We should admit it.

The challenge is to recognize and confront and neutralize – or try to neutralize – our biases. This takes more than five minutes when we are building lists of potential arbitrators or lead counsel. This takes affirmative research. This takes going out and looking for new names and new people, which is why it is important to have more publicly available information on the pool of experience.

I am not sure whether habit or bias is more responsible for the discouraging statistics, but I think it is bias. And I will tell you why. It is the mysterious 16% diversity ceiling. The surveys – you will hear more about them from the panel – and the institutional data show fairly consistent percentages of women arbitrator appointments. In **Lucy Greenwood’s** research to mark the one-year anniversary of the Pledge, she points out that some 17% of total appointments in 2016 were women.² Professor Susan Franck’s survey from the 2014 ICCA Congress shows that 17.6% of total appointments were women.³ The International Centre for Dispute Resolution’s 2015 survey – 16%.⁴ The 2017 ICC Statistical Report – 16.7%.⁵ The LCIA in 2015—16% (now up to more than 20%).⁶ The Hong Kong International Arbitration Centre’s survey of 2016 –11.5%, now 16.5%.⁷ An outlier: in the Singapore International Arbitration Centre, women appointments are now up to 29.7%.⁸

Professor Debora Spar, who was one of the youngest female professors to be tenured at the Harvard Business School and who went on to become President of Barnard College, wrote a book in 2013 called *Wonder Women*,⁹ In that book, Professor Spar documented what she called “the 16% delusion.” She noticed that in every think tank

² Global Arbitration Review, A Year of the Pledge: New Data on Women Arbitrators, 18 May 2017

³ Susan D. Franck, James Freda, Kellen Lavin, Tobias Lehmann and Anne Van Aaken, The Diversity Challenge: Exploring the “invisible college” of International Arbitration (2015)

⁴ <https://www.whitecase.com/news/arbitral-institutions-respond-parties-needs>

⁵ <https://iccwbo.org/media-wall/news-speeches/icc-court-releases-full-statistical-report-for-2017/>

⁶ <http://www.lcia.org/News/lcia-releases-2017-casework-report.aspx>

⁷ <http://www.hkiac.org/about-us/statistics>

⁸ Singapore International Arbitration Centre Annual Report (2017)

⁹ Debora L. Spar, *Wonder Women: Sex, Power, and the Quest for Perfection* (2013).

report and at conference after conference the data repeated across different industries and sectors: 16.6% of Fortune 500 board members, women; 16% of partners in major law firms, women, 19% of surgeons, women. And this despite the fact that as early as 1994 women accounted for 50% of graduating physicians, 46% of graduating lawyers, and 48% of Ph.Ds.¹⁰

Why is this? Why is this 16% ceiling there? One reason may be that 16% is deemed “good enough”, regardless of the total size of the pool. Those who are graduating or hiring women may think that they have done well enough when they hit about 16%. At that percentage, they do not look for women for relevant vacancies unless and until a woman resigns or leaves her seat. In international arbitration, this probably translates to: “Look at me. Am I not great?” I appointed a woman to my last tribunal, and so I get a pass for a while.” This is far from looking for genuine diversity from the pool of experience, based on the requirements of each new case and the overall balance of tribunals as we appoint person after person or tribunal after tribunal. To me, the 16% ceiling looks to be influenced by bias.

Let me raise one more statistics point. This goes to unconscious bias, which many think is now gone. My statistics come from the Berwin Leighton Paisner 2016 diversity survey. Among other things, they found that 84% of participants said there are too many male arbitrators, but only 12% said that gender is important or very important. That means that 72% actually are **not** concerned about gender, despite what they said. When asked whether tribunals should have gender balance, assuming equal qualifications, 50% said this is desirable, 41% said it makes no difference, and 6% said affirmatively that gender balance is **not** desirable. Really, what is that about in this day and age?

I have some **positive** biases about arbitrator appointments. One is my bias for mid- to senior-level women arbitrators. The reason is not “just because.” I have thought about this carefully: I cannot think of a woman arbitrator with whom I have sat or worked who is not always fully prepared, hands-on, careful and responsible.

¹⁰ Debora L. Spar, *Wonder Women: Sex, Power, and the Quest for Perfection* (2013), pp177-178

My second positive bias is for youngish arbitrators. By youngish, I do not mean novice. I increasingly find myself unpopular in urging young practitioners not to lobby so hard for arbitrator appointments, at least in substantial cases. This is because, in my view, they are not ready for the responsibility of deciding cases. They lack the mileage necessary to build the judgment required. Indeed, I would say that their impatience to be arbitrators too early shows a lack of judgment. Further, a mistake early in one’s career can lead to a poor reputation.

At this point, I want to delete the factor of **bias** from my equation.

Inclusion

I now turn to the topic of **inclusion**. The title of this Conference is “Diversity and Inclusion in International Arbitration.” My keynote title in publicity said in parentheses that inclusion is another matter than diversity. I was taken to task on this by my friend **Judge Gabrielle Kirk McDonald**, who wrote: “Inclusion is not another issue, it is the real issue.” Judge McDonald is right in the normal sense of the term. But I am not talking about inclusion or exclusion of people from arbitrator appointments because of race or gender or even experience.

What I mean is that, in international arbitration, we are extraordinarily inclusive in terms of training, educating and welcoming newcomers. Look at the conferences, the trainings, the LLM programs in international arbitration. Look at the publications, the blogs, the Vis and other moot competitions, the young arbitrator groups. The participants in all these activities – the conference audiences, the students, the young and old arbitration practitioners – are extraordinarily diverse. My corporate partners used to say to us: “What are you arbitration lawyers doing? Why do you give away your hard-earned experience and intellectual property to your competitors, with your books and your speaking about how to practice international arbitration?” My answer was because we want to include more people, with more diversity, in the international arbitration community.

This is why I am adding the factor of **inclusion** to my equation, with some caveats. On the one hand, I think this kind of inclusivity is good, because it helps build the pool of experience. On the other hand, I must voice my one note of concern about our inclusivity, which probably is an unpopular note. I increasingly wonder

whether we are **over-inclusive**, given that this type of inclusion does not lead to actual work for a broader group. International arbitration is a small field. I do not agree with the conventional wisdom that it is growing. We enjoy superb training conferences, including the pioneer Institute for Transnational Arbitration (ITA) Dallas workshop and this joint ASIL-ITA program, but how many more should there be? How many more should we be supporting, at the expense – in substantial time and funds – of young and other aspiring entrants to a limited field?

Conclusion

Judge McDonald wrote to me: “Please do not accede to the time-worn excuse that we cannot find qualified arbitrators who are minorities.” I definitely do not. I do not accede to that, because we surely can find them. My point is that I fear we have **too many** qualified arbitrators and lead counsel, of both genders and many races and nationalities, to fill the arbitrator positions available in the market.

This means that those of us who are already up on stage need to redouble our efforts to see that the positions available are filled with more diverse arbitrators and lead counsel, whose names may not surface in a five-minute identification exercise. This also means that those of you wanting to enter the field must be realistic about prospects, and be both persistent and patient – always persistent and somewhat patient.

This is the final equation I reach, including both factors and a result:

Caution + Reasonable Inclusion + Patience + Persistence = Better Diversity

The factors of **habit** and **bias** are out. The factor of **caution** stays in. The factors of **reasonable inclusion**, **patience** and **persistence** are added, to achieve yet better diversity.

I look forward to listening to the panel discuss solutions. I hope one is extending the Pledge or encouraging pledges for other diversity categories, as I see the success of the Pledge as some evidence that my equation is good math.

Thank you.

Adedoyin Rhodes Vivour Keynote Speech: Promoting Gender Diversity in Arbitration in Africa

Women in Arbitration Conference in Nairobi on 23 March 2018

ArbitralWomen reported in its newsletter issue n°25 about this event at which Adedoyin Rhodes Vivour, C. Arb. Mediator, Chairwoman of the Chartered Institute of Arbitrators, Nigeria Branch, gave a key note speech. Hereafter is the speech she kindly accepted that we publish.



Adedoyin Rhodes Vivour giving her Key Note Speech

Distinguished Chair of the CIArb Kenya Branch, Ladies and Gentlemen, it gives me great pleasure to stand before you today to deliver the keynote address on the occasion of the inaugural Kenya ArbitralWomen Conference. It is significant that this event is being held in collaboration with the Chartered Institute of Arbitrators. One of the core values of the Chartered Institute of Arbitrators is “Dignity and Respect; treating all individuals with respect, valuing their contribution, and recognising the importance of diversity by the inclusion of all.” Indeed in Chebett’s (**Chebett Koske** is the Chief Executive Officer of the Chartered Institute of Arbitrators, Kenya Branch) invitation I was informed that this event will be held on an annual basis with the aim of enhancing and promoting women participation in ADR. No doubt, the Kenyan Branch appreciates the importance of diversity to the future of International

Arbitration. I do hope that at the end of this speech I would have successfully convinced any one of us here who still wonder “why the emphasis on promoting women participation in arbitration?” that gender diversity cannot be compromised.

ArbitralWomen is an international non-governmental organisation with the primary objective of advancing the interests of women and promoting female practitioners in international dispute resolution. ArbitralWomen is about gender diversity. Diversity is ‘the inclusion of different types of people (people of different races or cultures) in a group or organisation’.¹ Diversity means respect for and appreciation of differences in ethnicity, gender, age, national origin, disability, sexual orientation, race, education, and religion. If diversity is so wide why then the emphasis on women? Are women really disadvantaged? Why was it considered necessary to have an organisation solely devoted to the promotion of women in arbitration?

You will all agree with me that historically, the international arbitration arena was dominated by the proverbial ‘pale, male and stale’ or the ‘old, white, male.’ This is not altogether surprising as the first entrants into the field of international arbitration were predominantly white and from Europe or the United States.² A consequence of this is that the same crop of arbitrators were being appointed to resolve a larger percentage of international disputes. These repeated appointments began to raise concerns i.e. the likelihood of bias, partiality, less-availability, copy and paste awards, inefficiency of justice and delegation of arbitral duties.

Michael D. Goldhaber³ in his article “Madame La Presidente” written as recently as 2004 stated that

¹ <https://www.merriam-webster.com/dictionary/diversity>

² https://www.blplaw.com/media/download/Diversity_on_arbitral_tri_bunals_-_background_note.pdf, <https://www.cpradr.org/news-publications/articles/2015-03-03--old-white-and-male-increasing-gender-diversity-in-arbitration-panels>

³ Michael D. Goldhaber serves as U.S. Correspondent for the International Bar Association, IBAnet.org, and IBA Global Insight magazine. He previously served for 16 years as international correspondent for American Lawyer Media, where he wrote “The Global Lawyer” column, while launching Arbitration Scorecard and the Global Legal Awards. The recipient of numerous business media awards, Mr. Goldhaber writes widely on international human rights and complex business dispute. He is the author of A People’s History of the European Court of Human Rights (2nd ed., 2009), and Crude Awakening: Chevron in Ecuador (Kindle Single 2014). Mr. Goldhaber

arbitration is ‘dominated by a few aging men...pale, male and stale’ and “a woman who sits as a president of a major arbitral tribunal is a rare creature”.⁴ He further stated that the main reason for the dearth of women in high stake cases is a bias in appointments.⁵ For the doubting thomases let’s examine the international arbitration plane and available statistics.

Statistics

Louise Barrington, ArbitralWomen co-founding member with **Mirèze Philippe** recalls that the notion of paying attention to women in arbitration first occurred to her when she attended her first international conference as Director of the ICC’s Institute of World Business Law in the 1990’s.⁶ At that conference, an International Council for Commercial Arbitration (ICCA) conference of about 250 registered participants there were about half a dozen women. Louise recalls the women congregated together during a break and collectively recalled incidents, where they were the lone woman in a room of men, where the lead counsel was asked to bring coffee for her junior, and where some male counsel simply ignored their presence.⁷ Sadly that was the state of affairs then. Little wonder both Louise and Mirèze were moved towards working on this great initiative: ArbitralWomen.

There are various statistics which confirm the state of affairs existing at that time. **Lucy Greenwood** in her article ‘Diversity and Inclusion’ indicated that from data collated as recent as 1990 the percentage of females appointed as arbitrators was less than 5% up until 2010. In 2010 the numbers increased minimally to about 6% increasing gradually to 10% in 2012 and 15% in 2016. I am sure you will agree that the statement that women are largely under-represented and under-utilized in

clerked for First Circuit Judge Bruce Selya and U.S. District Judge Patti Saris. He is a graduate of Harvard College (summa cum laude, 1990), Columbia University Graduate School of Journalism (1997), and Yale Law School (1993), where he served as book reviews Editor for the Yale Law Journal.

⁴ M.D. Goldhaber; “Madame La Presidente - A woman who sits as president of a major arbitral tribunal is a rare creature. Why?” TDM3(2004), www.transnational-dispute-management.com www.transnational-disputemanagement.com/article.asp?key=158

⁵ ibid

⁶ Formerly known as ICC’s Institute of International Business Law and Practice

⁷ Louise Barrington ,Then and Now – A quarter Century of women in arbitration

international arbitration is an understatement. Under-represented and under-utilized because the percentage of very well qualified and competent women who are actively involved in international arbitration is comparatively low when compared to the actual number of women who are available and competent. Indeed the very few women who are involved are even involved at lower strata than the men who are their contemporaries; particularly with respect to high profile cases.

According to a 2010 report from American Arbitration Association (AAA), women were appointed in only 15% of cases involving large monetary claims, represented only 25% of the prestigious “National Roster”, and were selected only 13% of the time.⁸ Investment treaty arbitrations involve similarly grim statistics – in one study of nearly 250 well known investment-treaty arbitrations, only about 6% of appointments were women, and the majority of these appointments were to the same two well-known women.⁹

What are the reasons for this? Various factors are responsible including; implicit and/or explicit bias, Lack of transparency in the arbitrator selection process, preference of parties for selected few arbitrators, the pipeline leak and women not promoting themselves as much as they should nor taking enough care of each other professionally. Men largely do this.

Explicit Bias is the attitudes and beliefs we have about a person or group on a conscious level and is described as stereotypes and attitudes that we expressly self-report on surveys, recognize and embrace.¹⁰ Michael Goldhaber recounted a story told by **Lucy Reed**, co-head of Freshfields’ International Arbitration Group, of a client being ‘openly worried as to how the arbitrators on the panel would regard his nominee if he chose a woman. He ultimately chose a ‘usual (male) suspect.’

⁸ See Deborah Rothman, Gender Diversity in Arbitrator Selection <http://c.yimcdn.com/sites/www.wlala.org/resource/resmgr/imported/rothman.pdf>. Additionally, the AAA reports that in 2010 it conducted only 3 arbitrations in which the panel was comprised entirely of women.

⁹ Ibid; see also Lucy Greenwood, Unblocking the Pipeline: Achieving Greater Gender Diversity on International Arbitration Tribunals, 42 No. 2 INT’L LAW NEWS (Spring 2013)

¹⁰ Davis, Benjamin, American Diversity in International Arbitration 2003 – 2013 (Pre-Publication Draft) (December 13, 2013). University of Toledo Legal Studies Research Paper No. 2014-03

Implicit Bias is an unconscious bias and is based on the idea that individuals develop an embedded, unconscious belief and response system through repeated experiences and messaging. This results in us making automatic judgments about what category a particular person fits within and we often act on those judgments which often leaves us making unconscious assumptions which then affect our decision making¹¹. For instance, unconsciously amongst a crowd we tend to like people who look like us, think like us, come from backgrounds similar to ours and thus gravitate towards them.

Lack of transparency in the arbitrator selection process – as the most valuable information tends to be controlled by a small number of people – partners, large law firms, and very occasionally highly sophisticated clients or maybe the appointment committees of various arbitration organisations¹². Oft times parties appear to prefer the selected few arbitrators they are familiar with (or friendly with) leading to continuously repeated appointments for these few individuals leaving out equally qualified and competent others. The Pipeline Leak has been attributed to the dearth of women at the top end of most careers. Though a good number of women enter into professions a fewer number reach the peak of their careers. A study by PwC UK indicated that, in most ‘first world’ countries, entry-level men and women in the professional service sector are hired at an equal rate. Women were lost from the pipeline through voluntary termination at a rate two or three times faster than men once they reached mid-career level. Reasons for the pipeline leak included: lack of female role models; lack of mentoring opportunities; work/life challenges and perceived lack of flexibility; gender stereotyping; lack of opportunities; lack of clear career path; perceived lack of skills/experience¹³.

An arbitrator **Margaret Leibowitz** once noted that “a lot of arbitrators are chosen through the ‘old boy network’ in which men have traditionally taken care of each other

¹¹ See <http://perception.org/wp-content/uploads/2014/11/Transforming-Perception.pdf> and Lucy Greenwood & C. Mark Baker, Getting a Better Balance on international Arbitration Tribunals’ in Arbitration International 2012 Volume 28 Issue 4.

¹² Gary Born <http://www.arbitratorintelligence.org/gary-born-university-pennsylvania>

¹³ https://www.pwc.com/gx/en/women-at-pwc/assets/leaking_pipeline.pdf

professionally”¹⁴. To what extent do we women take care of each other professionally needs to be carefully thought through.

All these factors have in one way or the other contributed to the lack of enough women being considered for arbitral appointments. From my personal experience whilst women have contributed a lot in terms of service to the promotion of arbitration and ADR, giving of their time and resources they have not been commensurately given their due space nor recognition in the amount of arbitral work going on.

Does Diversity Matter?

Diversity in international arbitration is essential to the longevity and legitimacy of the process. Where the same arbitrators are chosen over and over again, it may lead to lack of availability of time to devote to the arbitration process. Lack of diversity increases conflict of interest cases making panels harder to constitute and where there is no disclosure, the resulting award may be set aside. Arbitration is self-regulated and the proceedings are confidential therefore there is a need for diversity of thinking on the panel to ensure the credibility of the outcomes. Thus, lack of diversity may affect the quality of arbitral awards leading to a “more narrowly informed body of doctrine”¹⁵. International arbitration involves parties from different jurisdictions, different cultures and different legal backgrounds. A more diverse panel is best equipped to deal with such disputes.

The Tribunal should be a representation of the whole society and should be made up of persons who are part of or understand the business, social, economic and cultural environment of the parties. **Caley Turner** notes that “high-profile white men” may be very effective arbitrators in most circumstances, they are not representative of society as a whole, and they cannot be expected to fully understand and effectively resolve

¹⁴ Caley Turner, “Old White Male”: *Increasing Gender Diversity in Arbitration Panels*, Student paper from Pepperdine Law School (2014). See also, Jane Byeff Korn, *Institutional Sexism: Responsibility and Intent*, 4 TEX. J. WOMEN & L. 83, 118 – 19 (1995).

¹⁵ Berwin Leighton Paisner’s report on International Arbitration Survey: Diversity on arbitral tribunals, Background note, https://www.blplaw.com/media/download/Diversity_on_arbitral_tribunals_-_background_note.pdf

disputes between individuals whose lives are not reflective of the traditional white male experience¹⁶.

A diverse tribunal should be better prepared, more task-orientated, and more attentive to the parties’ arguments than a non-diverse tribunal. Researchers have shown that teams with equal numbers of men and women, or with more women than men, performed a simulated management task better than all-male teams because of more cooperation and more variety in team members’ approaches to communications. It is also been proven that women have the ability to reduce gender biases and group-think problems and also possess a number of other gender specific traits that are highly compatible with arbitration including communication and decision-making styles, ability to multi-task, abilities to recognize other people’s emotions and perspectives and to detect deception¹⁷. Gender-balanced leadership improves corporate governance and lessens unnecessary risk-taking¹⁸. Men as we know are more versatile at taking risks.

Arbitration can be a very stressful assignment. In a recent study analyzing the effect of stress on the male and female performance it was found that while stress undermines emphatic abilities in men, including the abilities to recognize other people’s emotions and perspectives and to detect deception, it increases all of these abilities in women. It was found that male subjects when stressed become “more self-centered and less able to distinguish their own emotions and intentions from those of other people”. Indeed, these results are relevant to the arbitration process as it seems that including more women in the arbitration process could increase empathy and understanding amongst parties thus increasing the chances of coming to an arbitral decision that satisfies the parties involved in the process including the arbitrator¹⁹.

The ability of men on the other hand to be less emotional than women has its advantages in arbitration

¹⁶ Caley Turner, “Old White Male”: *Increasing Gender Diversity in Arbitration Panels*, Student paper from Pepperdine Law School (2014)

¹⁷ <https://www.cpradr.org/news-publications/articles/2015-03-03--old-white-and-male-increasing-gender-diversity-in-arbitration-panels>

¹⁸ [Lucy Greenwood](#), [C. Mark Baker](#), Is the balance getting better? An update on the issue of gender diversity in international arbitration, *Arbitration International* (2015) Vol 31 Issue 3 page 413-423.

¹⁹ Caley Turner, “Old White Male”: *Increasing Gender Diversity in Arbitration Panels*, Student paper from Pepperdine Law School (2014)

process, arbitration being a judicial process with no room for emotions. Though it's been argued that in view of the empathetic abilities in women including more women in high stake arbitrations increases empathy and understanding amongst the parties and increases the chance of coming to a resolution that satisfies all of the parties and not just the arbitrators²⁰.

Gender Diversity enables different strengths and qualities to be brought to the table. It assures us of the optimal use of available resources, enables relevant and competing considerations, creates an environment of unbiased decision making and enables the continuous availability of a wide variety of quality arbitrators, arbitrators who have been well trained and not just a select crop of arbitrators. .

Initiatives To Improve Diversity In The Interest Of Arbitration

ArbitralWomen, a non-profit organisation officially registered in 2005 was formed in 1993 and expanded mainly since 2000. The names of Louise and Mirèze can never be ignored when talking about the work of ArbitralWomen likewise the efforts of the various other women²¹ who have now joined this vibrant organisation dedicated to fostering the role of women in international dispute resolution through networking, communications and trainings²². ArbitralWomen is composed of a network of women from diverse backgrounds and legal cultures active in international dispute resolution in any role, including inter alia, arbitrator, mediator, expert, adjudicator, surveyor, facilitator, lawyer, neutral, ombudswoman, forensic consultant. The group has grown to nearly a thousand members from over 40 countries. In order to increase the active participation of women, ArbitralWomen has put in place a number of initiatives including a mentoring programme, a website where women members have the opportunity to upload their curriculum vitae and provide information on events around the world for its members and guests. Each year

²⁰ Ibid

²¹ Past Presidents of ArbitralWomen; Louise Barrington (Founding Co-President), Mirèze Philippe (Founding Co-President), Dominique Brown Berset (Past President), Rashda Rana SC (Past President), Asoid Garcia-Marquez (Interim President until 30 June 2018) <https://www.arbitralwomen.org/About-Us/AW-Board>

²² See Then and Now – A quarter Century of women in arbitration by Louise Barrington NYSBA *New York* Dispute Resolution Lawyer Spring 2012 Vol. 5 No. 1

ArbitralWomen gives a number of grants to teams competing in the Vis Arbitration Moot in Vienna or Vis East subject to those teams having at least 50% women. Men who have supported the goals and values of ArbitralWomen are recognised and awarded the Champion for Change award (previously known as the Honorable men award)²³.

The Equal Representation in Arbitration (ERA) Pledge²⁴ is a global initiative and a call to action for the arbitral community, with the simple objective of improving the profile of women in arbitration with the view to secure appointments of more women as arbitrators on an equal opportunity basis. The Pledge was formally launched in London in May 2016 and has attracted 2642²⁵ signatories from many arbitral institutions, law firms, arbitrators and clients. In a bid to promote appointment of women on an equal opportunity basis the ERA Pledge website has an arbitrator search tool on its website.

Various other initiatives on diversity include initiatives of various organisations aimed at highlighting the need of diversity in international arbitration²⁶.

²³ Some of the recipients of the Champion for Change award include: Michael McIlwrath, Global Chief Litigation Counsel for GE Oil & Gas (2017); Arthur Marriott Q. C. and Geoffrey M. Beresford Hartwell, Eur Ing Professor (2014); Mark Kantor, Professor at Georgetown Law Centre in Washington, D. C. (2011); Donald Francis Donovan, Partner, Debevoise & Plimpton LLP and Klaus Reichert SC, Senior Counsel practicing from Dublin and Brick Court Chambers, London (2010). <http://www.arbitralwomen.org/Cooperation/Honourable-Men>

²⁴ The Pledge began with a suggestion made at ICCA 2014 by Jacomijn van Haersolte-van Hof, director general of LCIA, that concrete action should be taken in order to see more women appointed as arbitrators. Sylvia Noury of Freshfields picked up on the idea and took it forward. Noury gathered a group of stakeholders at a dinner in London in April 2015 to discuss the under-representation of women arbitrators and potential solutions to cure this situation. Several dinners followed in various cities around the globe to discuss this issue and hear the views of the business and legal communities. Participants agreed that taking a pledge was the way forward. By signing a pledge and encouraging practitioners in dispute resolution to do the same, they would feel more committed to redressing the gender balance in arbitration. It was felt that without a joint commitment to change behaviours and to assess progress regularly, despite everyone's good will, gender equality would not be sufficiently prioritised.

²⁵ Signatories at 19th March 2018 <http://www.arbitrationpledge.com>

²⁶ Example of Initiatives highlighting the need of diversity in international arbitration include; (1) a search facility on the *ArbitralWomen* website; a tool introduced by Global Arbitration Review that provides information about arbitrators to arbitration users. (2) CPR (International Institute for Conflict Prevention &

Arbitral Institutions including the International Chamber of Commerce (ICC), Stockholm Chamber of Commerce (SCC), Swiss Chambers' Arbitration Institution have started publishing data and disclosing the statistics on the number of female arbitrators appointed in their cases unlike in the early days. The Board of the Swiss Arbitration Association (ASA) decided to include "gender" as a criteria on the search tool of its website and app along with an explanation on the reasons for including the new criteria²⁷. The International Chamber of Commerce (ICC) and Milan Chamber of Commerce are now publishing on their website the names of arbitrators sitting in their cases.

This was done in the hope that in addition to demonstrating the quality of their tribunals, the information will provide further incentive to promote regional, generational and gender diversity in the appointment of arbitrators expressed to be an utmost priority for ICC. ICC is also amongst the institutions that has pledged support for equal representation of women in Arbitration, joining a range of institutions and prominent members of the international dispute resolution community, as a signatory of the Equal Representation in Arbitration Pledge²⁸.

Resolution) National Task Force on Diversity in ADR chaired by Hon. Timothy K. Lewis of Schnaeder, Harrison, Segal & Lewis LLP and Hon. Shira A. Scheindlin tasked with the responsibility of devising practical strategies to increase the participation of women and minorities in mediation, arbitration and other ADR processes. See <https://www.cpradr.org/strategy/committees/diversity-task-force-adr>

²⁷ On the 3 February 2017 the ASA – the Swiss Arbitration Association, released a new version of its [ASA Profiles tool](#) which allows anyone to search for an arbitrator, counsel or expert with the right combination of skills and experience according to a number of pre-defined criteria, including specific industry experience, legal background, nationality, age and gender. In 2016 ASA signed the Pledge for Equal Representation in Arbitration. ASA Executive Director Alex McLin explained that "We felt strongly about translating our support for the Pledge into a concrete action that could address the underlying issue". He further explained that "By including a gender search field in our arbitrator selection tool, we allow practitioners consciously to address any subconscious selection bias that may be present." ASA President Elliott Geisinger believes that "the ability to search by gender contributes to awareness of the desirability of diversity on arbitral tribunals, and positively informs the selection process." See <http://www.arbitration-ch.org/en/asa/asa-news/details/994.new-asa-profiles-tool-reflects-arbitration-pledge-objectives.html>

²⁸ <https://iccwbo.org/global-issues-trends/diversity/>

The increase in the number of institutions that publish diversity-related statistics is a positive and essential first step given that without such statistics it is difficult to gauge how serious gender inequality in arbitration is and whether steps to improve matters have made any difference²⁹.

Statistics confirm the new focus on gender inequality due to the efforts to highlight the problem. Various institutions are now publishing names of female arbitrators that are appointed. In a recent 2016 survey the London Court of International Arbitration (LCIA) took the lead. Compared to 2015, LCIA made more appointments of more individuals, with a notable upward trend in the appointment of female arbitrators from 16% in 2015 to 20.6% in 2016. This was largely as a result of direct appointments by the LCIA, and of candidates not previously appointed³⁰. The Vienna International Arbitration Centre had an appreciable increase from 14.3% in 2015 to 17.1% in 2016. The International Centre for Dispute Resolution remained at 16% in 2015 and 2016. The International Chamber of Commerce recorded a 4.4% increase from its 2015 statistics (10.4%) to 14.8% in 2016³¹. Other arbitral institutions such as the German Institution of Arbitration and the Hong Kong International Arbitration Centre had a ratio of female arbitrator appointment of 13.2% and 11.5% respectively in 2016.

ICCA, for several decades had one female among its 40 members governing board. In 2012 there were 3 women including one vice-president. Today there are sixteen women, including three vice-presidents representing 40% of the governing board membership³².

Speaking at conferences exposes the potential of speakers. At an ICCA conference in the late 1980's referred to by Louise Barrington of about 250 participants there were less than half a dozen women in attendance. Now we see an appreciable number of

²⁹ Berwin Leighton Paisner's report on International Arbitration Survey: Diversity on arbitral tribunals, Background note; https://www.blplaw.com/media/download/Diversity_on_arbitral_tribunals_-_background_note.pdf

³⁰ <http://www.lcia.org/News/lcia-facts-and-figures-2016-a-robust-caseload.aspx>

³¹ Mirèze Philippe: How Has Female Participation at ICC Evolved? ICC Arbitrators, Court Members and Court's Secretariat Pg 38 :ICC Dispute Resolution Bulletin 2017 Issue 3

³² <http://www.arbitration-icca.org/about/governing-board.html>

improvement on the women allotted speaking slots at some international conferences. The upwards trend is no doubt due to increased awareness of the extent to which women were being marginalised –and I mean qualified and competent women. Numbers have risen up to 40% at some of these conferences. Conference organisers who reach the women speakers’ mark of 40% indeed not only appreciate but show their commitment to gender diversity issues. That should be the least minimum standard required to maintain gender diversity, moving up to 50%.

Recent initiatives to improve diversity in arbitration include the Alliance for Equality in Dispute Resolution launched in January 2018³³.

Africa In View

The challenges with Africa, apart from gender inequality, also includes the relatively low number of African arbitrators being appointed to resolve disputes even African disputes. As at May 2016, there were 71 Arbitral Institutions on record in Africa³⁴ and with the emergence of so many arbitration centres in Africa the expectation is that these centres would position themselves to resolve disputes originating within and outside the continent. However, the reality is that most African users nominate foreign arbitration institutions to administer their disputes. We must acknowledge that the international arbitral institutions have over the years built up a reputation in the dispute resolution field. Africa can only meet the expectations for setting up its centres through consistent efforts in the strive to achieve excellence, recognition for and confidence in its centres. Internationally recognized institutions did not build themselves up in one day, it takes time and years of sustained efforts. Africa’s arbitration centers have the potential of becoming leading arbitral institutions if the focus is maintained.

Gender diverse appointments by African Institutions and in Africa generally should be positively impacted by an increase in the number of arbitrations held within the continent and a corresponding increase in the number of arbitrators of African origin appointed. An increase in the

³³ Alliance for Equality in Dispute Resolution launched in January 2018 is co-chaired by Rashda Rana SC and Lucy Greenwood. See www.allianceequality.com

³⁴ Dr. Emilia Onyema; List of Arbitration Institutions in Africa (May 2016)

number of African lawyers representing disputants in such references should also have a positive effect as this would lead to exposure of African lawyers to the arbitration process. Many arbitrators commence their careers by being counsel in arbitration proceedings.

Regrettably there appears to be no available statistics on gender diverse appointments by African centres. It appears that a lot of headway has been made by International/Foreign Arbitral institutions especially with the publication of statistics of female arbitrator appointments, conspicuously absent are the statistics on appointment from African arbitral institutions.

Thus, there is a dearth on information on the statistics of arbitrators appointed by African arbitral institutions. A number of these institutions do not publish annual reports and where they do, information on appointments is lacking. The Kigali International Arbitration Centre (KIAC) and Cairo Regional Center for International Commercial Arbitration (CRCICA) are one of the few to publish reports on their caseload. However, information on the profile of arbitrators appointed or nominated to handle these cases has not been published in past years.

Some African arbitration centres have signed on to the ERA Pledge including the Cairo Regional Center for International Arbitration, Lagos Court of Arbitration, ICC South Africa, International Centre for Arbitration and Mediation Abuja (ICAMA) and Janada International Centre for Arbitration and Mediation (JICAM). Some African law firms have also signed on to the Pledge. The ERA Pledge was successfully launched in Abuja Nigeria on 25 October 2017. The expectation is that other African countries would not only follow suit by the formal launch but also take concrete steps to actualise the Pledge. I must commend the efforts of **Dr. Ismail Selim**, Director of the Cairo Regional Center for International Commercial Arbitration (CRCICA) in the CRCICA Annual Report 2017 affirmed that CRCICA will play a major role in the coming years, in promoting and ensuring diversity in arbitration through encouraging young arbitrators and especially women³⁵.

The CRCICA has taken other steps to address diversity concerns. On 19 November 2016, CRCICA and the

³⁵ See page 3 CRCICA Annual Report 2017; http://cricica.org/FilesEnglish/Annual%20Report_2017-05-31_11-51-17_0.pdf

Stockholm Institute of Arbitration (SCC) organised the Equal Representation in Arbitration (ERA) Pledge Breakfast. At the Breakfast views and recommended actions to address the gender imbalance in arbitrator appointments were discussed³⁶.

The Nigerian Experience

Generally, it's considered that the female arbitrators in Nigeria are prominent with a number having built up their reputations and active in the service of promoting arbitration and ADR. A number are also prominent in the various arbitral organisations. The Chartered Institute of Arbitrators Nigeria Branch has had seven Chairs (past and present) of which three are females.

The Young Members Group has had four Chairs (past and present) of which two are females. Currently, of the fifteen Executive Committee members, seven are females. Our past two Conference Planning Committee Chairs were female whilst presently, our Chair for the 2018 Conference Planning Committee is male with a female vice-chair.

A number of Nigerian female arbitrators are visible at conferences, domestic and international, are members of key arbitral organisations both local and international, they appreciate the importance of publishing and making themselves available for speaker slots at conferences and to invest in their career through continuous professional development training. However, due to the dearth of statistics, it cannot be said that the appointment of female arbitrators is at an encouraging level being gender sensitive.

The Way Forward

Promoting gender diversity requires the effort of all stakeholders, arbitral institutions, users, and arbitration practitioners. The efforts thus far need to be consolidated upon. All of us being stakeholders in ensuring the continuing efficacy of Arbitration need to play our role. Users particularly need to be more conscious of gender diversity when making appointments. Indeed, studies have shown that women are much more likely to be appointed by institutions rather than by co-arbitrators or the parties. Yes, when parties are making appointments they are least

concerned about gender their focus is on the efficiency of the arbitrator. However, a realisation that gender balanced tribunals may produce better outcomes should motivate them to ensure a more diverse panel.

Gender diversity is not about gender favoritism it's about appointment on an equal opportunity basis thus appointments of those who merit such appointments. Gender diversity does not connote an easy ride. We need to work hard and work smart. We need to be members of organisations involved in dispute resolution both at the regional and international level. We need to ensure a face is placed to our names. We need to take time to write articles, expose ourselves, give of our time to moot competitions and continue to build our networks. Continuous professional development is vital. We need to build and enhance our profiles. Women, we cannot afford to rest on our oars. We must be the best at what we do. We all have a duty to ensure the availability of quality arbitrators. We must be prepared to give our time to mentoring the younger ones, to be bold enough to take up responsibilities; and when we have been mentored, to carry on the flag of promoting gender equality. Ladies we must subject ourselves to exacting standards and focus on maintaining these standards. We cannot afford to compromise on excellence and professional integrity. Our words and deeds should not only reflect who and what we are but stand out as a generation of women arbitrators per excellence. However, remember that it is not how many appointments we get that truly matters most but how well we conduct the references we are involved in and the quality of our awards.

Men, be rest assured that we do not want to replace you. We want to work with you on an equal opportunity basis. We want our different strengths to be properly harnessed in the interest of the continuing efficacy of arbitration as *the* preferred mechanism for dispute resolution.

For the African men and women, we must all be pioneers in working towards regional collaboration and integration whilst striving to attain the standards of the Institutions who have initially laid the foundations for international institutional dispute resolution. We must learn from them.

Let's all pledge to make a difference, let's all commit to the ERA Pledge.

Thank you Ladies and Gentlemen.

³⁶ See page 23 CRCICA Annual Report 2017; http://crica.org/FilesEnglish/Annual%20Report_2017-05-31_11-51-17_0.pdf

CONFERENCE REPORT

Chartered Institute of Arbitrators' Young Members' Group (YMG) Annual Conference, Paris, 6 December 2017

The following is a report about CIArb YMG Annual Conference 2017 together with speeches of the panellists, prepared by **Natalia Otlinger**, CIArb Young Members Group Social Media Coordinator, ArbitralWomen member, and also a MA in Law candidate at the University of Law. The article was first published in the CIArb Young Members Group Newsletter on 26 June 2018 (available here: <http://www.ciarb.org/my-ciarb/past-events/ymg-international-arbitration-conference>).



L to R: Ronan O'Reilly (White & Case LLP, CIArb YMG Vice Chair); Nayla Comair-Obeid (CIArb President, now past President); Amanda Lee (Seymours, CIArb YMG Chair); Sophie Lamb QC (Latham & Watkins); James Bridgeman SC (CIArb Deputy President, now President)

On 6 December 2017, the Chartered Institute of Arbitrators' Young Members' Group (YMG) held the third of three global conferences entitled "Navigating through Common law and Civil law waters in International Arbitration" at the ICC in Paris. This conference considered civil and common law approaches to international arbitration from the perspectives of Europe and the Americas.

Introductory remarks - Ronan O'Reilly and Prof. Dr Nayla Comair-Obeid

Ronan O'Reilly (Vice-chair of the YMG) introduced the theme of the conference by referring to a nature inspired metaphor used in an article by Lord Neuberger to characterise the difference between common law lawyers and civil law lawyers:

"the ant is the common lawyer, collecting and using individual cases, seeing what works and what does not work and developing the law on an incremental, case by case, basis. The spider is the civil lawyer, propagating relatively detailed and intricate, principle-based codes, which can be logically, but relatively rigidly, applied to all disputes and circumstances."

O'Reilly then pressed the metaphor further and asked participants to consider whether, in international arbitration, common law ants frequently get caught in spiders' cobwebs, or if the norms and practices of the ants have become dominant in international arbitration.

Prof **Dr Nayla Comair-Obeid** (President of CIArb) added that although in the field of international arbitration, the legal background of the arbitrators should be irrelevant, arbitrators often tend to include their domestic experiences in the resolving process.

Keynote Speaker – Sophie Lamb (Latham & Watkins)

Delivering the keynote speech, **Sophie Lamb** considered the question of whether divergence in international arbitration is really the result of the difference between civil and common law traditions, whether it is more a question of experienced versus inexperienced arbitration practitioners.

Noting that "Young practitioners should avoid slipping into lazy generalisations and should approach the issue with fresh eyes" Lamb considered whether uniform rules and practices are always essential and whether they still serve their purpose of providing efficient dispute resolution.

On the question of experience, Sophie fully endorsed the appointment of more young practitioners as arbitrators, emphasising that the first appointment does not necessarily need to mean lack of experience, qualification, motivation or desire to provide excellent results.

Regarding the synergies between the two legal systems in international arbitration, Sophie referred to the fact that more than 100 countries had adopted the Model Law. She also underlined the significant impact of various soft law guidelines such as IBA Rules on the Taking of Evidence in International Arbitration and the CIArb Guidelines on Jurisdictional Challenges.

Sophie emphasised that the success of an arbitral seat is not determined by whether it is based in a common law or civil law jurisdiction. It is the attitude of the courts, respect for the rule of law, the experience of practitioners, accessibility of facilities and other factors that determine the popularity of particular seat.

The lack of meaningful divergence between civil and common law tribunals can be observed in the approaches adopted to procedural issues such as document production and pleadings. One area where significant divergence can be observed is the attitude of tribunals to their potential role in respect of settlement. Sophie gave the example of the German Institute of Arbitration (DIS) arbitration rules, which invite tribunals to direct the parties to a possible amicable resolution of their dispute. In Sophie's opinion, this approach corresponds with the expectations of commercial parties, but differs considerably from the approach taken by common law arbitrators.

Regarding substantive issues, Sophie noted that there are very few areas of divergence between the legal systems, and the only problematic issues may be the role of good faith and the requirement of strict compliance with notice requirements.

In concluding, Sophie emphasised that diversity is an excellent means to increase quality in international arbitration. She reminded participants that international arbitration is based on flexibility and its users should not be afraid to introduce national measures if they are more efficient and serve the parties' interests. Each dispute should receive an individual approach, and the essential task of the tribunal is to listen to the parties and their needs.

Overcoming procedural conflicts in international arbitration

The first panel session, 'Overcoming procedural conflicts in international arbitration' was jointly organised with Young ArbitralWomen Practitioners (YAWP) and moderated by **Amanda Lee** (YMG Global Chair,

Seymours). The distinguished panel of speakers comprised **Julien Fouret** (Betto Seraglini), **Battine Edwards** (Deloitte), **Caroline Duclercq** (Atlanta) and **Melissa Magliana** (Homburger, YAWP).

Julien Fouret opened the panel by outlining his approach to written and oral submissions, noting that as a civil law lawyer he relies heavily on written submissions, using oral submissions to highlight only the most important arguments. He provided practical examples of the benefits of considering the background of the parties and counsel, highlighting a case in which counsel from civil law backgrounds agreed to submit lengthy written memorials instead of adopting the proposed 'common law' procedural approach of preparing short written submissions followed by a two-week hearing. This approach ultimately reduced costs as a three-day hearing was sufficient. In contrast Julien noted that this approach, while beneficial for the parties and counsel, may have made it more difficult for the tribunal to draft the award.

Melissa Magliana considered different approaches to document production in civil and common law jurisdictions, contrasting the US position, where extensive discovery is one of the pillars of the whole system, with the far more restrictive approach adopted by jurisdictions such as Switzerland. Melissa referred to IBA Rules on the Taking of Evidence in International Arbitration, which address discovery. Although their application requires the parties' consent, it is usual practice to agree on their use. Melissa observed that most frequently, document production was not a significant challenge for counsel, but raised difficulties for the parties. Parties from common law jurisdictions normally have greater familiarity with the implications of extensive discovery requests and are usually better prepared to address document production requests. Such parties are more likely to have implemented document storage policies. Conversely, civil law parties may lack this experience and may be faced with the requirement to disclose documents without thought having been given to the potential need to disclose such documents to external parties.

Caroline Duclercq addressed different approaches to witness evidence. She described the challenge for civil law practitioners posed by witness preparation, a procedure with which they are unlikely to be familiar, noting that French lawyers have only been entitled to prepare witnesses in arbitration proceedings since 2008.

Conversely, many common law practitioners are trained to prepare witnesses for cross-examination. Further, Caroline observed that there are significant differences between civil and common law as to who can be a witness. In civil law systems, only third parties may be called as witnesses, while common law systems permit anyone to testify.

Battine Edwards concluded the session by considering approaches to expert evidence, noting that civil law favours tribunal-appointed experts whereas party-appointed experts are favoured in common law systems. Party-appointed experts are recognised as the norm, appearing in around 70% of disputes in common law jurisdictions, particularly in the quantum phase of proceedings. Procedure for dealing with experts are fairly standard under both systems; there is an increased tendency to adopt the so-called “hot-tubbing” technique, in which the tribunal questions the experts; and party-appointed experts increasingly meet ahead of the hearing to produce a statement of agreed and non-agreed issues. Reflecting on Battine’s observations, Caroline provided an example whereby party-appointed experts prepared a joint statement and the tribunal-appointed expert addressed the points of disagreements.

The role of arbitral institutions in building the synergy between common law and civil law

The second panel was moderated by **Noor Kadhim** (Vannin Capital) and provided the insight into the synergy between civil and common law seen from the perspective of different arbitral institutions. **Ziva Filipic** represented the most popular arbitral centre and host of the CI Arb YMG Conference – the ICC, **Valérieane Oreamuno** was from Swiss Chambers’ Arbitration Institution (SCAI), and **Hafez Virjee** represented DELOS, a recently founded arbitral institution.

Ziva Filipic started the discussion by providing data regarding the case load of ICC. Last year, the ICC registered 966 cases with over 3000 parties coming from 137 jurisdictions. The ICC noticed a significant growth in the number of cases from Latin America as well as treaty arbitration. Ziva mentioned an increase in the gender and regional diversity of the arbitrators, who came from over 70 countries. Regarding the use of relatively new ICC procedures, there were 69 applications for Emergency Arbitrator assistance which constituted a huge increase (the first year of its introduction recorded little over a handful of cases). The most recent novelty –

the expedited procedure introduced in Article 30 of the ICC Rules – also found great success, as there were 35 requests from the parties to opt-in to this regime. Ziva also mentioned ICC’s attempts to increase diversity in the arbitration appointments.

Subsequently, Valérieane Oreamuno explained the origin of the Swiss Chambers’ Arbitration Institution, formed since 2007 of seven independent arbitral institutions, now spread across three offices whose working languages are French, German and Italian (in Geneva, Zurich and Lugano). Since its formation, the centre has administered over 1000 cases with parties coming from 108 countries and 90% of the disputes being international. Of significance is that 90% of the disputes resolved via SCAI were seated in Switzerland as a very favourable jurisdiction. Regarding the substance of the cases, the majority involved sales of goods, trade in commodities and provision of services.

The incoming ‘start-up’ arbitral institution was DELOS, which aims to make the arbitral process more cost and time-efficient for smaller disputes. Hafez Virjee, a founder, explained that the reasons for establishing DELOS was the ongoing frustration from international parties regarding the duration and cost of arbitration. In DELOS’s key aims include: encouragement of active tribunals, promotion of “safe seats”, a practical approach, and adequate preparation during case proceedings. DELOS’ purpose is to handle cases while trying to avoid unnecessary costs, aided by the parties and the tribunal. DELOS’s aim is to resolve disputes up to 10 M Euros. Hafez emphasised the institution’s desire to appoint younger arbitrators who can obtain desirable experience with DELOS and then serve as arbitrators in more established institutions. Additionally, Hafez explained that DELOS’ founders’ inspiration was to enable access to arbitration for entrepreneurs and start-ups which at the beginning of their businesses cannot afford to refer their disputes to costlier institutions. He also mentioned that the one case DELOS has handled so far was resolved entirely on paper. Hopefully, there are many more to come, and DELOS will contribute to making ADR more accessible for the entire business community, and will encourage them to insert the DELOS model clauses in their contracts.

Post lunch address: James Bridgeman – Deputy President of the CIArb

Following the lunch break Amanda Lee introduced **James Bridgeman**, Deputy CIArb President, who gave a short address on the CIArb and YMG’s contribution to the arbitration community, noting the role played by young practitioner groups in the development of arbitration and the careers of practitioners such as Sophie Lamb.

Emphasising the importance of proper education and accreditation such as that provided by the CIArb on the arbitration practice, James concluded by expressing the CIArb’s gratitude to Prof Nayla Camair-Obeid for her contribution and support during her Presidency at the CIArb.

Views from different industries on the synergy and divergence between common and civil law

The third panel session was moderated by **Diana Bowman** (VINCI Energies). The distinguished panel of speakers comprised **Marie-Aude Ziadé** (Areva now Orano), **Aine McCartney** (Nordex), **Stefano Marzio** (Transdev Group) and **Annet van Hooft** (Van Hooft Legal).

Stefano Marzio considered arbitration clauses in the context of international mergers and acquisitions and public-private-partnership (PPP) transactions. At the beginning of his presentation, he noted that the expansion of cross-border investments has triggered the increase of more complex relationships between investors, service providers, lenders and States and inevitably, since some of those relationships fall apart, the best instrument to resolving disputes is the international arbitration. He emphasised the advantages of resolving disputes via arbitration such as neutral forum, procedural flexibility, technical experience, confidentiality, time, joinder of parties. In particular, lenders look very favourably at arbitration when the investment is made in countries which are perceived to have “unstable” legal systems. In the context of the drafting of arbitration clauses, Stefano underlined the importance of adapting an accurate wording by taking account of any factors that may affect the enforceability of the clause under applicable law (any mandatory requirements that may exist at the expected place of enforcement) and in order to avoid any risk of ambiguity (unclear wording will cause uncertainty and delay and can compromise the dispute resolution process). Stefano

made a general observation that under his experience in international project finance transactions even if the difference between common and civil law systems has certainly an impact on the technical procedure of the arbitration or on the interpretation of certain legal notions (familiar to one system rather than the other), such difference doesn’t have material consequence on the way the international arbitration clause is drafted/negotiated which remains relatively standard in order to meet international lenders and/or States’ requirements.

Annet van Hooft raised the risk of oversimplification and generalisation, mentioned by the keynote speaker Sophie Lamb, in giving the comparison between civil law and common law jurisdictions. However, with regard to arbitration clauses, Annet observed the different approaches made by parties from different legal traditions. Common law parties are usually more concerned about the confidentiality of their data and the discovery, while civil law parties seem not to be so aware of the consequences of these clauses. She gave an example of a French start-up which probably would not pay much attention to the provisions protecting its data and confidentiality of the disputes. Subsequently, Annet emphasised the importance of the choice of the seat which must be decided in the arbitration clause. Stefano added that in the negotiations between parties from the Middle East the issue of the seat of arbitration is so vital it can even be a deal-breaker.

Annet also mentioned the differences regarding privilege in discovery. In common law systems, there is a duty to disclose all evidence, including information which may work against the disclosing party. In contrast, in civil law there is a concept of legal attorney privilege ensuring confidentiality of communications between clients and their lawyers in the course of the provision of legal advice. One of the strategies used to avoid troublesome disclosure is to copy a lawyer on a majority of email communications. Aine McCartney also mentioned that in Germany non-disclosure agreements are commonly used. Moreover, the difference in approach to keeping records can be observed where one company with offices in England and Germany has two different regimes regarding the project management and storing documents.

Àine then considered on the question of the selection of counsel and arbitrators from different legal traditions. In Àine’s view, an arbitrator’s qualifications and experience are more determinative than their origin from common or civil law jurisdiction. However, having a mixture of lawyers from different legal backgrounds may be also problematic. Àine gave an example of ‘without prejudice’ agreements, which were challenging to understand for civil law lawyers and tribunals. She also pointed out that the required experience held by the counsel or arbitrators is of particular significance in construction disputes, especially as regards quantum or delay matters.

Finally, Marie-Aude Ziadé considered the differences regarding evidence and hearings between civil and common law traditions. She pointed out that the types of evidence presented in both jurisdictions are usually similar. However, differences can be observed in the weight which is given to particular types of evidence. Civil law lawyers are often keen to put more emphasis on written documents and even during their oral submissions they tend to refer to and quote what is provided in legislation or academic writings. In contrast, common law lawyers generally prefer to express their core arguments in their oral submissions and rely heavily on the cross-examination of the witnesses.

With regards to the use of experts, as already mentioned by one of the previous panels, Marie-Aude’s view is that civil law counsel generally prefer tribunal-appointed experts while common law practitioners would rather deal with independent experts appointed by the parties. Turning to the differences in opening statements, Marie-Aude observed that common law practitioners tend to emphasise the requirement of due process in their submissions, while civil law counsel focus more on equality of the parties. Furthermore, Marie-Aude commented that, for common law lawyers, opening statements can sometimes be more spontaneous and do not necessarily have to be purely based upon the previous written submissions. In her conclusion, Marie-Aude advised adjusting the style of oral presentations to the legal traditions of the arbitral panel rather than to the represented parties.

Diversity in international arbitration

The fourth panel considered the topic of diversity in international arbitration from different perspectives, i.e. geographic, gender, and legal/cultural. The panellists

were **Bobby Banson** (Smith & Adelaide), **Jodi-Ann Stephenson** (Eastern Caribbean Court), **Nora Fredstie** (Latham & Watkins) and **Alexander Leventhal** (Quinn Emanuel Urquhart & Sullivan). The panel discussion was moderated by Ronan O’Reilly (White & Case).

Bobby Banson presented on diversity in international arbitration from the Sub-Saharan African perspective. He indicated that although there has been a significant increase in foreign direct investment (FDI) disputes in Sub-Saharan Africa, the vast majority of these cases are not being resolved by African arbitrators. In his view, the main reason for this is the substantial shortage of experienced African arbitrators. Bobby further explained that investors have more trust in global law firms because they can provide more expertise and resources, which means local practitioners have a more limited role. Bobby also noted that African states which are respondents in FDI disputes rarely choose their own nationals to plead on their behalf or sit on the tribunal. The reasons given by states for this are insufficient experienced candidates and unreliable legal education obtained in African countries. Bobby pointed out that although some organisations such as the ICC and the CI Arb have made significant efforts to increase awareness of international arbitration in Africa and develop qualifications for African lawyers in the field of international arbitration, there is still significant room for improvement. He argued that to improve the diversity, African lawyers must be given more opportunities to study and practice international arbitration in developed countries so that they can obtain valuable experience which will lead to more appointments as counsel and arbitrator.

Jodi-Ann Stephenson presented on diversity from the Caribbean perspective. She highlighted some of the main causes for the lack of diversity, including, a lack of the awareness and experience of international arbitration, a lack of a complete list of Caribbean arbitrators, and a weak and ineffective support from the governments. A solution to these obstacles may be found in the engagement of regional and international arbitration community, e.g. through internship and mentorship schemes and employment opportunities for Caribbean practitioners. Jodi-Ann highlighted some of the strides that have been made in the region in an effort to make it more amenable to improving its role in the international arbitration community, e.g. the conference organised by

Jamaica International Arbitration Centre in collaboration with the ICC in August 2017.

Alexander Leventhal, who addressed diversity of cultural and legal background, stated that arbitration should be a reflection of the world in which it functions. In an increasingly globalized world, diversity is driven by party preferences and a predilection for an advocate or arbitrator with a similar mind-set as the individual choosing counsel or arbitrator. Among other reasons, Alexander noted, this has led to a pool of younger practitioners that is increasingly diverse and specialized in international arbitration much earlier than previous generations. As a result, young practitioners are more likely to be detached from the legal or cultural background from which they hail. Alexander outlined three significant areas in which the impact of diversity and specialization will be observed: (i) core values (ii) procedure and (iii) the choice of arbitrator. He noted that the new generation of practitioners in the arbitration community is expected to have modern, pro-arbitration views which will not be biased by their home countries' perspective and national civil procedures. They are more likely to understand the international and harmonised rules of international arbitration. On procedure, Alexander opined that for young practitioners the efficiency and need to meet clients' expectations will prevail over local customs. Concerning the choice of the arbitrator, the desire to get the favourable result will be the deciding factor when appointing the tribunal.

Finally, Nora Fredstie discussed the current gender imbalance within arbitration practices, highlighting a significant disparity at partner level, a narrowing but still apparent imbalance at counsel level, and a more even distribution of genders at the associate level that is reflective of the legal industry as a whole. Nora also touched on diversity in legal backgrounds, comparing those with a common law and civil law background, and noted that the principal causes for the lack of diversity are unconscious bias, meritocracy curse, societal factors and acceptance of status quo.

Comparative analysis in investment treaty law – macro and micro comparisons

The last panel moderated by **Athina Fouchard Papaefstratiou** (Eversheds-Sutherland) discussed the differences between common and civil law approaches in international investment disputes. The distinguished panel of speakers comprised **Patrick Pearsall** (Jenner &

Block), **Prof. Dr Yannick Radi** (University of Louvain), **Emilie Gonin** (Doughty Street Chambers) and **Dr Monique Sasson** (American University, JAMS International).

Dr Monique Sasson opened her presentation with a question whether there is a movement towards uniformed procedure and if so, what are the advantages and disadvantages of this approach. She argued that regardless of the origin of the arbitrators the procedures in ICSID cases are usually very similar to each other. The process is based on the ICSID Rules which provides for the procedural framework for all kinds of investor-state disputes. From the procedural point of view, there is no difference between common and civil law parties. The only distinction may be observed between UNCITRAL Rules and ICSID Rules with regards to the potential objection to the claims manifestly without legal merits (Article 41(5) of the ICSID Arbitration Rules). Subsequently, Monique considered the disadvantages of this uniformed procedure. She stated that, although the predictability of the outcome is vital for the substance of the dispute, it may be not so indispensable for the procedure. In her opinion, it is crucial, that the due process is always followed; however, it does not necessarily incline that the same procedure needs to be used for all investor-state disputes.

Prof. Dr. Yannick Radi elaborated on the issues concerning dissenting opinions in investment treaty law. He further explained that dissenting opinions are the area of middle ground between common and civil law system. Although dissenting opinions are nowadays commonly accepted, in the past they used to be a very sensitive issue in international law. Yannick focused on the issue of the impartiality of the arbitrator and the authority of arbitration tribunal. He stated that it is a common opinion that dissenting opinions are evidence of the partiality of the arbitrator and constitute a threat to the authority of the tribunal. He argued that dissenting opinions should not be understood as a sign of the bias or partiality of the arbitrator. In his opinion, conflicting views held by arbitrators can be explained by the conflicting approach to the investment arbitration such as public law approach and commercial law approach. He also pointed out that dissenting opinion upholds the authority of arbitral tribunals. Yannick argued that it is neither desirable nor possible to prohibit arbitrators not only to declare dissents but also to explain their reasons for their different opinion. In

conclusion, dissenting opinions reinforce the authority of the tribunals and of the investor-state arbitrations.

Emilie Gonin considered the problem of provisional measures in investment arbitrations. In particular, Emilie addressed the investment tribunal's ability to order provisional measure requiring the suspension of the state criminal proceedings. She described the problem from the two angles – first, the universal test for application of this kind of measures and second, the enforcement of them. Emilie observed the trend of acceleration and increase in the applications for the suspension of the criminal proceeding made by investment tribunals. Only in 2016, there were at least three ICSID tribunals dealing with these kinds of measures in the following cases: *Al Jazeera v Egypt*, *Marfin v Cyprus*, *Nova v Romania*. Moreover, recently an UNCITRAL tribunal ordered the suspension of the criminal proceeding in France in the case *Pugachev v Russia*.

The test for provisional measures is well established and provides that there must be *prima facie* jurisdiction, the measure must protect certain rights and be urgent, necessary and proportionate. Additionally, provisional measure suspending criminal proceedings should be granted only in the exceptional circumstances. Although it is too early to assess whether the cases mentioned above constitute a stable trend, the tribunal in *Nova v Romania* confirmed that state's right to conduct criminal proceedings is of no difference to other sovereign rights which may be suspended.

Furthermore, Emilie considered the problems concerning enforcement of the provisional measure concerning the two conflicting judgements of the UK courts of the first instance. In the first case, *Albania v Becchetti*, the court gave the permission to the provisional measure and suspended the extradition. In the second case *Adamescu v Romania* the court refused to suspend the extradition. In the contest of these conflicting judgment the High Court would have to decide of the hierarchy between the Extradition Act 2003 and Arbitration Act 1996 and ICSID convention which was incorporated into the English legal system.

The last speaker, Patrick Pearsall presented the problem of corruption allegations in the investment arbitration proceedings. In the beginning, Patrick described the undisputable fact that corruption is a public enemy number one and according to KPMG report 1.26 trillion

EUR is stolen each year from the developing markets. Patrick illustrated the problem by referring to a few investment arbitration cases. In the case of *World Duty Free v Kenya*, a 2 million USD bribe was given to obtain airport concessions. The fact that there was a corruption deprived the investor of the BIT protection, and it couldn't have pursued the claim against Kenya for expropriation. In the case *Metal-Tech v Uzbekistan*, the tribunal found that the investor cannot make an investment which is not in accordance with the national law and the corruption was prohibited by Uzbekistani legislation. Accordingly, the investment made by Metal-Tech was not conducted in accordance with the law, so it was deprived of the BIT protection. Another way in which corruption affected the investment arbitration took place in the case of *Siemens v Argentina*. The investor won the substantial claim, but when faced with the corruption allegations made by American and German authorities refrained from enforcing its award. With regards to these examples, Patrick addressed the issue of the role of arbitration tribunal in the fight against corruption. He mentioned many initiatives present in the international community stated that ICSID should play its part in the battle against corruption. He also referred to Trans-Pacific Partnership trade agreement which contains Anti-Corruption Chapter as an example of the legislation combating corruption.

The conference concluded with a vote of thanks from Amanda Lee, YMG Global Chair, who expressed the YMG's appreciation for the support of its generous host, the ICC, its sponsors, Deloitte and Hogan Lovells, and YAWP, the co-organiser of the first panel. Thereafter delegates attended a drinks reception generously hosted by Hogan Lovells.

WOMEN INITIATIVES IN THEIR WORKPLACE

Making a Women's Network Work for its Lawyers - The Miller & Martin Model

Too few women in the legal profession is a worldwide issue. The International Bar Association's report *Women in Commercial Legal Practice* summarizes responses to a worldwide survey, reflecting that firms across the world face the same struggles with hiring, advancement, and retention of women. Even worse, the research found alarming rates of bullying, sexual harassment, and discrimination, all of which were higher for women. Not only are these results alarming as a moral concern, but the results also highlight the multiple negative effects on a law firms' economic interests of turning a blind eye to diversity and inclusion.

The Background on Women in the Legal Profession

The United States does not differ from its international counterparts when it comes to lack of equal opportunities in the legal profession. On one hand, according to Law360's 2018 *Glass Ceiling Report*, women have made up at least 40 percent of law school graduates for more than three decades and roughly half of law school graduates for over a decade. Sadly, on the other hand, according to the American Bar Association, as of April 2016, women accounted for only 36 percent of legal professionals.

The American Bar Association's Commission on Women in the Profession reported that in 2017 women made up only 25 percent of general counsel at U.S. Fortune 500 companies and less than 20 percent at Fortune 501 to 1,000 companies. Additionally, according to Law360's 2018 *Glass Ceiling Report*, women represent only one-third of all attorneys in private practice. This number has remained the same for the past five annual law firm surveys conducted by Law360.

Not only is female representation low, but the U.S.'s National Association of Women Lawyers found that women lawyers earn six to ten percent less than what men in the same position earn. The 2017 Survey Report also found that among equity partners, women work the same number of hours as men, but their client billings

are eight percent less of those of men. Additionally, 97 percent of firms report their top earner is a man.

The numbers dwindle moving up the ranks of corporate and law firm hierarchies. According to the National Association of Women Lawyer's 2017 Survey Report, women represent only 30 percent of all non-equity partners and just 19 percent of equity partners. Additionally, of the roughly 350 firms surveyed by Law360, only 12 percent said they had a female chair, managing partner, or other commensurate position. Despite this low percentage of female heads, having a woman in charge makes a big difference in the number of female attorneys at the firm. Law360's Glass Ceiling data reports that at firms with a female head, women make up 38 percent of the lawyer headcount, compared with an average of 35 percent at all firms surveyed. These differences become more noticeable at the equity partner level, where women make up 25 percent of the equity partners at female-led firms, but only 20 percent at firms overall. Although having a woman in charge helps gender equity, female firm leaders are not enough to fully move the needle.

Women in U.S. Law Firms

In response to the low number of women in U.S. law firms in general and women in high-ranking positions, many firms have launched women's initiatives and are trying a variety of programs to promote gender equity. Some firms concentrate on programming, specifically holding programs focused on showing women how to rise in the ranks of the firm and tackle family and social hurdles. Other firms have specific assignment systems to ensure that junior attorneys' opportunities are not left to chance. These assignment systems track what projects young attorneys are spending time on, allowing supervisors to see how they might spread assignments more evenly. There also is growing support among some firms for terms and term limits on firmwide committee positions to ensure a variety of voices are heard. Finally, some firms, specifically women-led firms, have been pushing industry change related to work-life balance, such as remote working and parental leave policies. These policies reduce time expectations for new parents and allow attorneys to work from home a few days a week.

Miller & Martin, PLLC

Miller & Martin is a good case study for the ways in which a firm can foster a supportive network of female attorneys through an active Women's Network. Miller & Martin is a midsize Southeastern law firm with around 130 attorneys in Atlanta, Chattanooga, Nashville, and Charlotte. Like many of its peers, Miller & Martin recognizes the importance of a strong voice focused on and advocating for the unique needs of its women lawyers. Miller & Martin's Women's Network works to accomplish its goals by focusing on four primary areas: retention and advancement, business development, mentorship, and connectivity.



Women's Network at Miller & Martin, from left to right

*Top row: Varsha Ghodasra, Meghan Gordon, Meredith Lee, Rebecca Thornhill, Laura DiBiase, Lynzi Archibald, Alison Boyer, Christine Lee, Megan Welton, Stacie Caraway
Middle row: Tamra Harris, Eileen Rumpfelt, Karen Smith, Jessica Malloy-Thorpe, Kimberly Reeves, Marcy Eason, Alison Martin, Jenni Smith
Bottom row: Laura Ashby, April Holland, Candace Stevens, Erika Hyde, Haley Moody, Laura Ketcham, Leah Gerbitz*

Retention and Advancement

The Retention and Advancement directive of the Women's Network focuses on increasing women's access to quality work assignments, raising the number of women in firm management, and establishing work-life policies. The Network keeps an eye on various firm committees and practice groups and advocates for the advancement of women leaders into open positions.

Business Development

The Network recently led a half day business development training for all Women's Network members to encourage teamwork and cross-selling by women, to network within the firm, profession, and community, to improve access to professional development opportunities, and to market women inside and outside the firm. The training was led by **Marianne M. Trost** of Women Lawyers Coach, and focused on effective business development strategies for women, specifically how female attorneys could tailor business development to their individualized style and strengths.

The Network also has developed a turnkey seminar on implicit bias, including a more in-depth training module. Various members of the network have presented on implicit bias or given training sessions to business groups inside and outside the firm. This effort has provided a unique and timely speaking opportunity for multiple women attorneys, both partners and associates of the firm.

The Network also has focused its efforts on ensuring that its women attorneys become active in industry groups in their given cities, with a particular focus on women leadership organizations in those industries. In Chattanooga, the Network also has supported the community with direct sponsorship of organizations like The Women's Fund of Chattanooga and Chattanooga Women's Leadership Institute.

Mentorship

Miller & Martin as a whole has a robust mentorship program for its associates and summer associates. The Network's mentorship program acts primarily as an informal supplement, ensuring there are opportunities for young female associates to ask other female attorneys questions. In tandem with the connectivity initiative (below), the mentorship initiative works to create a support system in the firm.

Connectivity

The Network's connectivity goals include providing a support system for women within the firm, supporting community-based initiatives to advance women in the workforce, building goodwill in the firm and in the community, and fostering collaboration between women in the firm. To achieve this goal, the Network has held periodic internal lunches and happy hours among the female attorneys focused on women-specific discussion

topics, sponsored bi-weekly yoga, and funded a monthly meet-up breakfast for the firm.

One of the Network's recent successes had particular impact in the international community of Atlanta. Miller & Martin co-hosted a panel this past spring, entitled "Spotlight on Diversity: Professional Perspectives on Building an ADR Practice," which focused on how younger lawyers can build an alternative dispute resolution ("ADR") practice and current efforts being made in the international arbitration community to involve more diverse attorneys and arbitrators. The event brought together international, domestic, law firm, and corporate perspectives, with approximately 65 attendees.

The panelists discussed their individual paths to a career in ADR and **Mirèze Philippe**, ICC Special Counsel, noted that "the most important message is perseverance." The panelists also encouraged young practitioners to take advantage of every opportunity presented to them, with **Brent Clinkscale**, partner at Womble Dickinson, stating that a satisfactory career is "a journey." **Carita Wallgren-Lindholm** reminded the audience that "authority has many faces" and practitioners should embrace their innate strengths. Whereas **Adwoa Ghartey-Tagoe Seymour** aptly addressed the roles that in-house attorneys can play in the changing face of arbitration, urging practitioners to reach out directly to in-house counsel to introduce themselves and their areas of expertise. The panelists discussed how young practitioners should capitalize on their unique voices and use their diversity as an advantage. Mirèze Philippe provided insight on the efforts of ArbitralWomen to promote female practitioners, specifically describing the Equal Representation in Arbitration Pledge. The panelists' personal experience provided a model for young practitioners on how to develop an ADR practice, leaving all attendees with tangible methods for achieving success.

The Women's Network has been working hard to show the attorneys at Miller & Martin and the community that there is a highly organized group of women at Miller & Martin working to build relationships and support successful female attorneys throughout the industry.

By Leigh Shapiro, JD Candidate, Emory University School of Law and Eileen H. Rumpfelt, Miller & Martin, PLLC

MARK YOUR AGENDAS

The following events will be held in various locations worldwide. Save the dates and follow us on our website for further information on such events and other that we regularly add.

Date	Venue	Event
12 September 2018	London	Greater Diversification or Collaboration - ICC Arbitration Conference.
19 September 2018	London	ArbitralWomen Cocktails at the Ned.
20 September 2018	Singapore	Book launch by the Centre for International Law - Arbitration Under International Investment Agreements: A Guide to the Key Issues, edited by Katia Small.
21-23 September 2018	Toronto	Accelerated Route to Fellowship, organised by the CIArb Canada Branch
24 September 2018	Rome	5th Edition of the Certificate in International Commercial and Investment Arbitration.
26 September 2018	New York	7th Annual GAR Live New York conference.
26 September 2018	Dubai	Social Networking Event: Debating Key Issues for the Future of Arbitration.
28 September 2018	New York	13th ICC New York Conference on International Arbitration.
9 October 2018	Rome	ICCA-ASIL Task Force on Damages in International Arbitration Breakfast.
18 October 2018	London	TechArb and ArbTech.
18 October 2018	Melbourne	ArbitralWomen Breakfast Panel Event during Australian Arbitration Week
18 & 22 October 2018	Jakarta	Fellowship Award Writing Course and Exam, organised by CIArb Indonesia Chapter
30 October 2018	Hong Kong	ArbitralWomen-CIArb seminar - Skills that Make a Difference: Profile Building and Networking
30 October 2018	Hong Kong	AW Diversity Breakfast co-organised with CIArb East Asia Branch
8 November 2018	New York	ArbitralWomen Full-Day Conference and Launch of ArbitralWomen Diversity Toolkit™ followed by a Gala Dinner in New York City to celebrate the Jubilee.
8 November 2018	Ottawa	ICC Canada International Arbitration Conference and Hon. Marc Lalonde Tribute Dinner.
13 November 2018	Miami	ArbitralWomen breakfast event in conjunction with 2018 ICC Miami Conference
14 November 2018	Mexico	Conference (to be determined)
14 November 2018	Dubai	ArbitralWomen breakfast event in conjunction with Dubai Arbitration Week
22 November 2018	Paris	Anniversary dinner at Thoumieux for the 25-year jubilee.
30 November 2018	Dublin	Clarb YMG Conference 2018.

ARBITRALWOMEN ACTIVITIES, SERVICES & BENEFITS

ArbitralWomen enjoys a global presence in dispute resolution

- ✓ **Networking & Events:** we encourage our members to participate in and organise networking events in their respective countries and we assist them in doing so. Some of our regular events are informal, such as the SpeedNet events; others are more formal, such as Gala Dinners, conferences and breakfast panels. Firms and organisations wishing to co-organise events or have their events supported can contact us at events@arbitralwomen.org.
- ✓ **Increasing equality of representation at conferences:** some of our work involves encouraging conference organisers to increase equality of representation on speaking panels. Under-representation is often unintentional. We recommend or nominate women who are as experienced and reputable as men, if not more so.
- ✓ **Young ArbitralWomen Practitioners (YAWP):** inclusion, collaboration and knowledge-sharing are vital for bridging generational gap in dispute resolution. YAWP provides a forum in which young women practitioners can share experiences and practical advice on how to advance women's careers and accelerate their success.
- ✓ **Members Directory:** one of our goals is to showcase our members by increasing their visibility in the dispute resolution community. This is the objective of the Members Directory webpage which is increasingly used as a reference tool for appointments and referrals.
- ✓ **Find a Practitioner:** we provide a dedicated multi-search tool to find dispute resolution practitioners and speakers.
- ✓ **Mentorship:** members provide mutual beneficial support to each other through our mentoring programmes. These very successful programmes are examples of how more experienced members generously share experiences with other members so that the role of women in the field can continue to grow and strengthen.
- ✓ **Moot Competition Support:** we provide financial aid to support and promote the participation in moot competitions of law student teams consisting of at least 50% women, who would not otherwise be able to participate.
- ✓ **Publications:** we provide opportunities to enable our members to make valuable contributions to the publication of reports in our [Newsletter](#), on our [News](#) webpage, and on the [Kluwer Arbitration Blog](#), as well as in special publications such as the TDM Special Issues. Members can also upload their articles onto their profiles on the website and publicise matters of interest, expertise and skill.
- ✓ **Periodic Alerts:** we keep our membership informed of [events](#) and [news](#) in dispute resolution through periodic alerts.
- ✓ **Cooperation:** we cooperate with kindred organisations and programmes, such as the Pledge for Equal Representation in Arbitration www.arbitrationpledge.com and the Global Pound Conference www.globalpoundconference.org. Firms and organisations that wish to co-partner or cooperate with ArbitralWomen can write to contact@arbitralwomen.org.
- ✓ **Projects:** since promotion of women in dispute resolution is our primary underlying goal, we are committed to assisting members with projects that are in line with our objectives.
- ✓ **Gender Equality and Diversity:** we contribute to raising awareness about and promoting gender equality and diversity in a variety of ways.
- ✓ **Champion for Change:** we acknowledge the support of our male colleagues around the world by awarding a Champion for Change Award to men who have furthered the goals of ArbitralWomen and have supported women in the field of dispute resolution.
- ✓ **Training and Competitions:** we publish information about dispute resolution programmes, scholarships, training and competitions. You can send information to contact@arbitralwomen.org.
- ✓ **Job Offers:** we publish professional opportunities in the dispute resolution or legal field. You can send your offers to contact@arbitralwomen.org.

Questions? If you have any queries please contact us at contact@arbitralwomen.org

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ARBITRALWOMEN BOARD

Executive Committee

Name	Role on the Board	Nationality(ies)	Country of Residence
Dana MacGrath <i>Counsel at Sidley Austin, New York</i>	President, Events regional director North America	USA	USA
Asoid Garcia Marquez <i>In-house counsel at UNESCO, Paris</i>	Vice President, Chair of YAWP	Mexico	France
Louise Woods <i>Partner at Vinson & Elkins, London</i>	Secretary, Parental mentorship, Newsletter/News, Events regional director Europe	UK	UK
Juliette Fortin <i>Managing director at FTI Consulting, Paris</i>	Treasurer, Moot, UNCITRAL	France	France
Marily Paralika <i>Associate at White & Case, Paris</i>	Communications, Social media, Events coordinator	Greece	France
Karen Mills <i>Founding Member and International Counsel KarimSyah Law Firm, Jakarta</i>	Executive Editor, Mentorship, Moot	USA	Indonesia
Louise Barrington <i>Independent arbitrator, Canada & HK</i>	Co-founder, Events regional director Asia & North America	Canada, UK	Canada, HK
Mireze Philippe <i>Special counsel, Secretariat of ICC International Court of Arbitration, Paris</i>	Co-founder, Cooperation, Membership, Website	Lebanon, France	France

Board of Directors

Name	Role(s) on the Board	Nationality(ies)	Country of Residence
Affef Ben Mansour * <i>Of Counsel at Savoie Arbitration, Paris</i>	Newsletter/News, Parental Mentorship, Moot	Tunisia, France	France
Laurence Burger * <i>Partner at Landolt & Koch, Geneva</i>	Cooperation, Marketing/Sponsoring	Switzerland	Switzerland
Maria Beatriz Burghetto * <i>Of counsel at JA Cremades & Asociados, Paris</i>	Legal Services, Newsletter/News	Argentina, Spain	France
Valentine Chessa <i>Partner at Castaldi Partners, Paris & Milan</i>	Events coordinator & regional director, Kluwer	France	France
Diana Droulers * <i>Partner at Droulers & Asociados, Caracas</i>	Events regional director South America, UNCITRAL	Venezuela, France	Venezuela
Gaëlle Filhol * <i>Partner at Betto Seraglini, Paris</i>	Legal Services, Membership, Newsletter/News	France	France
Elena Gutiérrez García de Cortázar <i>International Arbitration Lawyer and Independent Arbitrator, Professor at law, Paris & Madrid</i>	Events regional director South America, Social media	Spain, Guatemala	France, Spain
Alexandra Johnson * <i>Partner at Bär & Karrer AG, Geneva</i>	Membership, Marketing/Sponsoring, Events regional director Europe	Jamaica, Switzerland	Switzerland

Name	Role(s) on the Board	Nationality(ies)	Country of Residence
Sara Koleilat-Aranjo * <i>Senior associate at Al Tamimi & Co, Dubai</i>	Events regional director MENA, Kluwer, Newsletter/News	Lebanon, France	Dubai (UAE)
Amanda Lee * <i>Consultant at Seymours, London</i>	YAWP, Mentorship, Website, Newsletter/News	UK	UK
Alison Pearsall <i>Legal counsel, Paris</i>	Mentorship, Parental mentorship, UNCITRAL	USA	France
Ileana Smeureanu <i>Associate at Jones Day, Paris</i>	Kluwer, UNCITRAL, Events regional director Europe	Romania, USA	France
Vanina Sucharitkul * <i>International arbitrator, Senior Lecturer at Université Paris Descartes, Paris</i>	Events regional director Asia, UNCITRAL, Newsletter/News	Thailand, USA, France	Paris, Bangkok
Erika Williams <i>Senior associate at McCullough Robertson Lawyers, Brisbane</i>	Newsletter, Events regional director	Australia	Australia

Advisory Board

Name	Role on the Board	Nationality(ies)	Country of Residence
Lorraine Brennan <i>JAMS arbitrator & mediator, New York</i>	Advisory	USA	USA
Dominique Brown-Berset <i>Partner, Brown&Page, Geneva</i>	Advisory	Switzerland	Switzerland
Gabrielle Nater-Bass <i>Partner, Homburger, Zurich</i>	Advisory	Switzerland	Switzerland

ARBITRALWOMEN INDIVIDUAL & CORPORATE MEMBERSHIP

↪ ArbitralWomen website is the only hub offering a database of **female practitioners in any dispute resolution role including arbitrators, mediators, experts, adjudicators, surveyors, facilitators, lawyers, neutrals, ombudswomen, forensic consultants**. It is regularly visited by professionals searching for dispute resolution practitioners.

↪ We encourage female practitioners to join us either individually or through their firm. Joining is easy and takes a few minutes: go to [‘Apply Now’](#) and complete the application form.

↪ **Individual Membership: 150 Euros.**

↪ **Corporate Membership:** ArbitralWomen Corporate Membership entitles firms to a discount on the cost of individual memberships. For **650 Euros** annually (instead of 750), firms can designate up to five individuals based at any of the firms’ offices worldwide, and for each additional member a membership at the rate of **135 Euros** (instead of 150).

↪ ArbitralWomen is globally recognised as the leading professional organisation forum for advancement of women in dispute resolution. Your continued support will ensure that we can provide you with opportunities to grow your network and your visibility, with all the terrific work we have accomplished to date as reported in our Newsletters.

↪ ArbitralWomen membership has grown to approximately one thousand from over 40 countries. Forty firms have so far subscribed a corporate membership, sometimes for up to 30 practitioners from their firms.