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When Did the Doors to Dispute Resolution Open for Women? by M. Philippe

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TDM SPECIAL ISSUE ON DEALING WITH DIVERSITY IN INTERNATIONAL ARBITRATION

WHEN DID THE DOORS TO DISPUTE RESOLUTION OPEN FOR WOMEN?

Mirèze Philippe *

Abstract

In a world where women outnumber men and where women are active in almost all business and legal fields, women remain under-represented in key positions. Women and men alike are trained and talented, and work as hard. Is the under-representation a question of discrimination or unconscious bias, or a question of sharing power?

This article is intended to give an overview of the involvement of women in international dispute resolution, how it has evolved in the last thirty years, and to explore options for improvements of the representation of women. Although progress is extremely slow, there have been many positive developments. The business and dispute resolution environments are aware of the dearth of women in key positions, and more and more various bodies have or are putting in place pledges intended to have stakeholders committing to change.

I – Women in Dispute Resolution

1. Does it matter?

Gender equality in international dispute resolution has been a hot topic in the recent years and is currently the subject of debate in several *fora*. What once was taboo has become an issue of discussion among business and legal practitioners worldwide. In the last decade there has been an explosion of articles, comments, press-releases and surveys (for example in the Atlantic, Financial Times, Careerist, New York Dispute Resolution Lawyer, Arbitration International) on gender and diversity. Discussions on blogs and list-serves such as Kluwer, LinkedIn or OGEMID (Oil-Gas-Energy-Mining-Infrastructure Dispute Management) continue to flourish (such discussions have been recurrent on OGEMID, for example, since 2009). Several papers and discussions have put the spotlight on women in the business and legal fields, and observed the evolution of their careers. It will come as no surprise to learn that it continues to be difficult to break the glass ceiling and to change mentalities which may be naturally biased. Practitioners, including institutions, law firms and Bars from several jurisdictions are realising more and more that there are issues that need to be addressed in a concrete way. Women in dispute resolution was a non-issue thirty years ago, as no one in the

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business and the legal communities was concerned or spoke about the lack of women in the international dispute resolution arena. As Lucy Greenwood puts it ¹, practitioners had become comfortable with the notion that women are a significant minority. Ben Davis provided interesting explanations about “explicit bias, implicit bias and stereotype threat” being emerging areas in neuroscience ². The subject of gender equality now matters and can no longer be moot.

Diversity is an added value for business and legal communities and is a business matter that can no longer be neglected. Evolution has started and will not stop. We are no longer in a position of watching where progress may lead us. We are in a period where women will no longer agree to step back simply because they are women. Discrimination towards women lasted several decades until the last twenty years where women dared to stand up and raise the unfair situation. The business and legal communities remain male-dominated and mentalities must change. Making suggestions is not enough. The time has come to undertake concrete actions jointly with all stakeholders from the business and legal communities to attain equality.

ArbitralWomen, a nonprofit organisation, started raising the alarm bell, first timidly in 1993, then more visibly since 2000, and in the last decade more and more actively. In the last three to four years, the business and legal communities began daring to speak about women in dispute resolution openly and not just in private groups, and in the recent months a number of conferences and meetings have been organised on this topic. ArbitralWomen was either invited to participate or to speak, or has organised or co-organised such events.

Women trained in law are entitled to build a career with the same chances as their male colleagues. For equal qualifications, women must be afforded the same opportunities as men. Women want to go on stage and stop remaining back stage while doing the same work as their male colleagues. They want to share the playing field with men. An arbitrator asked Louise Barrington in 1996 “*so, you are the young lady who wants to replace us*”, and Louise answered “*no, we don’t want to replace the men, only to join them*” ³.

There are many women who need to be given the chance to show their talents. Women bring to the field the wealth of their personalities which are complementary to the personalities of men. The synergy between the views and reflexes of men and women are invaluable. Women have different mindsets, perspectives and approaches. In general, the state of mind of women is not wild competition but cooperation and hard work. Women are good listeners and talented in multi-tasking. They are naturally more sensitive while being firm, and bring a

¹ Lucy Greenwood & Mark Baker, “Getting a better balance on international arbitration tribunals”, *Arbitration International*, vol. 28, n°4, 2012, page 653.

² Benjamin G. Davis, “American Diversity in International Arbitration 2003-2013”, *The American Review of International Arbitration*, vol. 25, n°2, 2014, page 255.

³ Louise Barrington “Then and Now – A Quarter Century of Women in Arbitration”, *New York Dispute Resolution Lawyer*, Spring 2012, vol. 5, n°1, page 16.

different atmosphere to the room. A German lawyer⁴ recently told the author that with women in law firms the atmosphere is better and that men behave and are more considerate. He considers that it is a good and balanced mixture to have male and female lawyers, and that the result of the approaches in the cases handled is better. He recognised that in order to fight against the tradition of male lawyers only, women must make more efforts than men. Noemi Gal-Or reported in an article⁵ the perception of some parties who consider that a dispute resolution process “*fairly inclusive of women adjudicators or neutrals promises to produce a socially and culturally fairer result for it will be representative of the composition of the human society*”.

In an interview given to the Financial Times, Emer Timmons president of BT Global Services UK, said that, “*Being a woman has made a difference to my career and I noticed very early on that I was different when surrounded by my male colleagues. But I had to stand out to be noticed as being good as well. I had to be very confident, and I knew that I needed to recognise my strengths but also those areas I needed to develop*”⁶.

Although women have come a long way thanks to other women who fought to get us on stage, and also sometimes thanks to men who have supported their struggle, much remains to be done. The evolution of women’s involvement in dispute resolution has become more and more visible mainly in the last fifteen to twenty years. The number of women nowadays is meaningful at all levels, although not sufficiently at the top. Women are no longer only para-legals or administrative secretaries to arbitral tribunals, but also lawyers representing the parties and arbitrators acting as sole arbitrators and chairpersons and not only as co-arbitrators. We are very far from reaching an appropriate balance. Concrete actions must be undertaken, and this has already started. Looking back at history allows us to assess the evolution achieved and to demonstrate that change was possible and still is. This is shown in Lucy Greenwood’s excellent articles, which provide a thorough assessment of gender diversity in international arbitration⁷.

The author joined the International Chamber of Commerce in 1984 and has been able to observe the tremendous change in the dispute resolution community over these past thirty

⁴ Dr Hans-Claudius Scheef from Kapellmann und Partner authorised the author to cite him. They both discussed about the role of women in law at the occasion of the Vis moot competitions in March 2015.

⁵ Noemi Gal-Or “The Under-Representation of Women and Women's Perspectives in International Dispute Resolution Processes”, *Transnational Dispute Management* (‘TDM’), July 2008, volume 5, issue 4, www.transnational-dispute-management.com.

⁶ “Women in the Workplace: Four Career Profiles”, *Financial Times*, 19 April 2012, Dina Medland interview with Emer Timmons, <http://www.ft.com/cms/s/0/49449396-7ce3-11e1-9d8f-00144feab49a.html#axzz3asgEanzg>.

⁷ Lucy Greenwood & Mark Baker, “Getting a better balance on international arbitration tribunals”, *Arbitration International*, vol. 28, n°4, 2012, page 653, and “Is the balance getting better? An update on the issue of gender diversity in international arbitration”, *Arbitration International*, 2015, 0, 1–11 doi: 10.1093/arbint/aiv034.

years⁸. This article traces the evolution of the role of women in international dispute resolution and when the doors began to open for women in this field (II). The general picture may seem discouraging, but the author's assessment of the progress achieved and about the future is positive. In order to substantiate her positive views, the author will share her experience from the ICC perspective (III) and from Arbitral Women's perspective (IV). The fact of having dispute resolution stakeholders openly address the issue and recently commit to change the situation in a concrete way is a victory in itself (V).

2. Exclusion of Women and Unconscious Bias

Women were not encouraged to study in general and were not allowed to the Bar until a few decades ago⁹. The arbitration field is no better although this field is quite recent, including for men. The exclusion of women in business and legal environments is a fact of history; it is similarly a fact of recent history that women are now sharing these fields which were previously reserved for men. In the last century and mainly since the 1950s women progressively started to go to university, graduate and then, if lucky, find a job. Nonetheless, even if women are trained, competent and experienced, leadership positions were and are seldom offered to them. They were unjustifiably considered incapable of fulfilling such roles and no one wanted to give them the chance.

Unfortunately women are not taken seriously and must invest much more efforts than their male colleagues before they get a chance to be heard and to be recognised. They are sometimes being ignored and some have experienced faces with a look of despise from males colleagues. They are not generally given the opportunity to plead the case they have been working on instead of having a male colleague or a male partner be the lead counsel. After maternity leave of only one month, a woman lawyer was not allowed to continue working on a case for which she had intensively prepared for the hearings. Women were excluded from building a career and progressing just because of their gender or because they had children.

The pressure on women does not leave space for errors¹⁰ and mistakes made by women are forever remembered as reported in a survey undertaken by the Women's Bar Association of the District of Columbia¹¹, which highlighted reactions and differences of views towards men and women. For example, when a man succeeds his success is attributed to his skills, whereas the success of a woman is related to luck; a man is assertive but a woman is considered

⁸ For further historical information see interview with the author by Marie-Claude Rigaud "Entrevue avec une professionnelle humaine et passionnée : la contemporaine Mirèze Philippe", *Journal of Arbitration and Mediation*, Editions Yvon Blais, 2012-2013, vol. 3, n°2, page 1.

⁹ Mary Jane Mossman "The First Women Lawyers: Piecemeal progress and Circumscribed Success", *Osgoode Halle Law Journal*, 2007, volume 45, n°2, page 379.

¹⁰ Mirèze Philippe "Les femmes dans le monde de l'arbitrage" (Women in arbitration), *Les cahiers de droit et procédure: L'arbitrage face aux évolutions contemporaines*, 20 November 2008, page 23.

¹¹ "Initiative on Advancement and Retention of Women", *Women's Bar Association of the District of Columbia, Reporter's Summary: Session 1, 6 January 2006*.

aggressive. Women must be capable in their professional life, present in their family and social life and, efficient everywhere. In summary “excellence” is required from women and they are expected to make efforts on all fronts ¹². These reactions are unfortunately not “clichés” but reality. Also, the process of recruitment and promotion is applied differently and the disparity between men and women appointed to important positions is significant.

Is the place of women different in other areas? Recent history shows that the doors have always been closed to women in all fields. Also, discrimination towards women, or simply exclusion of women, is related among other things to social, cultural and religious issues ¹³, which will not be discussed in this article. However, a few examples will illustrate the long history of conscious rather than unconscious bias. Women sometimes had to use a man’s name to be able to publish for example, like the French novelist Amantine-Lucile-Aurore Dupin best known by her pseudonym George Sand. At the same period in the 19th century Camille Claudel, the French sculptor, was more talented than her brother Paul Claudel and than August Rodin who apparently stole her ideas, but she was not allowed the place she deserved, spending the latter half of her life in an asylum. Many examples may be cited including from recent decades. Among the social issues for example, a perception of society in most countries was to consider that if a woman needed to work, it was because her husband or her father was unsuccessful in business; in mainly aristocratic families the dignity of the family could not suffer the insult of having a wife or a daughter at work. Luckily, this has changed, albeit slowly, during the last century. If we look at recent history it is surprising to discover that in France for example, women have only been allowed to vote since 1945 and to have their own bank account independently from their husband since 1965. Although the principle of equality between men and women in all fields was introduced in 1946 in the preamble of the French Constitution, equality was and is still far from being respected. In January 2015 a French champion sportswoman denounced the fact that more than 80% of sports games broadcast men, and that women must fight hard to be broadcasted from time to time; she added that a lot of pressure was put on women to prove that they are good and deserve to be recognised. In many Muslim countries women are not allowed to work; this is changing although too slowly. At the Willem C. Vis International Commercial Arbitration Moot this year, arbitrators had the opportunity to hear all-female teams from Saudi Arabia amongst others, and were impressed by the advocacy skills and talent of these women ¹⁴. Will these women be given the chance to play a role and hold the positions they deserve in the business and legal communities? It is to be hoped so.

¹² “The Experts Present the Research”, Initiative on Advancement and Retention of Women, Women’s Bar Association of the District of Columbia, January 6, 2006.

¹³ During the French revolution in the eighteenth century, the feminist movement started and in 1791, Olympe de Gouges, drafted the declaration of rights of women (Déclaration des droits de la femme et de la citoyenne). Examples of amazing women throughout the world who strived for the rights of women in all fields exist and are inspiring.

¹⁴ See [ArbitralWomen Newsletter n°14](#) reporting about the Moot competitions. The first women lawyers were admitted in Saudi Arabia only in October of 2013.

Conscious and unconscious bias in professional environments are not the only difficulties that women must face. Lack of support in their families and by society as a whole are also factors blocking women from building careers. Women are always faced with the obligation of taking care of the family and house-keeping and are not sufficiently supported by men. They may live in an environment in which they are expected to care for everything, so even at home equality of tasks is not yet the trend. Most women who have succeeded in their careers have been supported by their families and have been able to devote time to building their careers, therefore such support is indispensable. Unfortunately maternity is often cited as the major obstacle for women either to keep their position in a firm or to evolve. Some law firms have undertaken programmes within their firms to support women, but how many do that and how many allow women to break the glass ceiling?

On 14 November 2014, female lawyers and researchers from the countries of the Western Balkans met in Tirana with representatives from the United Nations Commission on International Trade Law (UNCITRAL), Judith Knieper, the German Arbitration Institution (DIS), Antje Baumman, and ArbitralWomen Beata Gessel-Kalinowska vel Kalisz, in the framework of the project “Gender-oriented implementation of ADR instruments in Western Balkans”, an initiative of Open Regional Fund for South East Europe Legal Reform supported by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) which was represented by Adela Liatja¹⁵. Speakers and participants discussed the difficulties women experience. It was noted that when women are successful, it is in general at some cost for their private lives and family needs. What pushes them forward is always motivation. It was further mentioned that few have role models, even if women are trained and competent they are not promoted, and that they have no supporters to lobby for them. Women should be promoted not because of gender balance, but for their talents, hard work, true commitment, passion for their profession, the way they focus on detail, their open minds and flexibility, and their communication skills. Interestingly, the statistics of the Croatian Arbitration Court showed that there are fewer cases of delay caused by women as compared to delay in cases handled by men (this is anecdotal as no other data allow to verify such a statement).

Can keeping the doors closed for women be considered discrimination, unfairness, heritage of unconscious bias, fear of losing or sharing power with women, or other societal heritage and attitude? The lack of gender equality probably stems from all these and other factors. As indicated by Rashda Rana in an interview with LexisNexis¹⁶, “*to some extent the problem lies in deep-rooted cultural perceptions and misperceptions*”. History should be remembered to help understand why things have been or are the way they are. History must serve to learn from past lessons, not to name and shame, but to improve situations.

¹⁵ [ArbitralWomen Newsletter n°13](#) .

¹⁶ Rashda Rana in an interview with LexisNexis on “Is there a gender gap in arbitration”, 7 April 2015, www.lexisnexis.com/uk/lexispsl/arbitration/home.

II – History of Women in Dispute Resolution

1. Women as Arbitrators

One of the reasons for the virtual absence of women arbitrators until recently was the fact that there were few women practitioners in dispute resolution and with a proven experience who could be considered for arbitrator appointments. Lucy Reed raised this issue in an interview with Michael Goldhaber in 2004¹⁷ and indicated that she was confident that fair representation would come with time. The change has started in the last twenty years, although the number of appointments of women remains significantly small.

The result of a survey regarding under-representation of women¹⁸ revealed that most of the participants thought that a “*party appointment system that enforces the status quo, by favoring an elite handful of repeat players, is the highest factor in favour of long standing under-representation of women in arbitration*”. This is unfortunately proven by some attitudes; a practitioner recently told the author that even if he had a list of arbitrators comprised of three women and one man with equal qualifications, he will always choose the man: this is conscious bias. When a party selects arbitrators diversity is the “the last feature on anyone’s mind”¹⁹. A sole woman arbitrator was once told by a male expert that she would not be capable of understanding his explanation.

While understanding that the concern is to find the most appropriate arbitrators, it is hard to understand why practitioners do not broaden the list of potential arbitrators by including women with equal profiles. It is consequently crucial to continue raising awareness. Ignorance of women arbitrators, mediators, experts, marine surveyors, engineers, adjudicators, etc. cannot be taken seriously today, as internet and the hundreds of networks in all professional fields offer access to data. Sir Frank Berman said in an interview with the Global Arbitration Review on 21 February 2013, that “*It is odd this impression arbitration gives of being a male club. Part of that is simply due to the way in which parties or law firms set about the process of choosing arbitrators*”.

An overview of the international dispute resolution arena in the 1980s and the 1990s shows a small number of women arbitrators who were visible or known and who can be considered as pioneers. The number has increased progressively from mid-1990s. Since 2000 the number of women arbitrators has increased in a significant way in many countries and has started

¹⁷ Michael D. Goldhaber “Madame La Présidente: A woman who sits as president of a major arbitral tribunal is a rare creature. Why?”, *Transnational Dispute Management*, July 2004, volume 1, issue 3, www.transnational-dispute-management.com. See also from the same author “Too Few Women Among Top International Arbitrators?”, *Law.Com*, 30 June 2009.

¹⁸ Annalise Nelson “Results of the Kluwer Arbitration Blog’s first poll”, 26 February 2013: <http://kluwerarbitrationblog.com/?s=Results+of+the+Kluwer+Arbitration+Blog%E2%80%99s+first+poll>. See also from the same author “The Representation of Women in Arbitration – One Problem, Two Issues”, *Wolters Kluwer, Law & Business*, 2 November 2012.

¹⁹ Lucy Greenwood & Mark Baker, “Getting a better balance on international arbitration tribunals”, *Arbitration International*, vol. 28, n°4, 2012, page 653.

emerging in other countries, although the number of appointments is insignificant. It is interesting from a historical perspective to mention a few names without being exhaustive as this would be a difficult exercise. To the author's best knowledge and after having discussions with several practitioners, women arbitrators that come to mind in the 1980s and 1990s are mentioned hereafter as an example.

In the 1980s the number of women arbitrators in the cases administered by the ICC was probably less than ten. Geneviève Augendre, Simone Rozès (the latter a retired magistrate) and Marianne Paillard du Chesnay were the first women arbitrators the author met. This number must have been similar in other arbitration institutions. A former ICC Counsel, Juan Iturriagagoitia Bassas, fought in 1985 to have a woman nominated as sole arbitrator in an international arbitration involving complex issues. He knew that this woman was the appropriate choice for the given case. The battle was not easy to win, but he eventually succeeded and the arbitration went very well.

Towards the end of the 1980s and the beginning of the 1990s women arbitrators were for example (by alphabetical order of the countries): Jacqueline Linsmeau and Vera van Houtte from Belgium, Carita Wallgren-Lindholm from Finland, Catherine Kessedjian from France, Antonias Dimolitsa from Greece, Teresa Cheng from Hong Kong, Karen Mills from Indonesia who is a US national, Dominique Brown-Berset and Teresa Giovaninni from Switzerland, and Carolyn Lamm and Edna Sussman from the United States. Between the 1990s and 2000 women started becoming more and more visible, such as Louise Barrington and Sophie Nappert from Canada, Brigitte Stern and Sarah François-Poncet from France, Sally Harpole from Hong Kong who is a US national, Eva Horvath from Hungary, Gabrielle Kaufmann-Kohler from Switzerland, Hilary Heilbron and Judith Gill from the United Kingdom, and Abby Cohen Smutny, Lucy Reed and Nancy Turck from the United States. Towards the end of the 1990s the number of women known in arbitration has significantly increased mainly in Europe and North America, and it would be hard to cite them; this period also included women from countries from which no women were previously visible, such as Loretta Malintoppi from Italy, Nayla Comair-Obeid from Lebanon, Jacomijn van Haersolte-van Hof from the Netherlands, and Mercedes Tarrazon Rodon from Spain. In the last decade the number of women in the cited countries has further increased, and again included countries where no women were yet visible, for example Rashda Rana from Australia who is also a British national, Adriana Braghetta from Brazil, Inka Hanefeld from Germany, as well as women from countries who started being more visible in arbitration, such as Vilija Vaitkute Pavan from Lithuania, Dorothee Ufot, Doyin Rhodes-Vivour and Funke Adekoya from Nigeria, Beata Gessel-Kalinowska vel Kalisz from Poland, Crenguta Leaua from Romania, and Bennar Balkaya from Turkey. As Rashda Rana has observed, female arbitrators are a 21st century phenomenon.

Regarding the appointment of women arbitrators and contrary to what commentators tend to say²⁰, the onus for addressing gender and diversity is not only on arbitration institutions but also on parties and practitioners. The author however agrees with Lucy Greenwood that “*each person involved in the process of nomination must take personal responsibility for considering a diverse range of candidates*”. The ICC International Court of Arbitration (“ICC Court”) and arbitration institutions in general appoint arbitrators only where the parties fail to appoint or to agree on the method of selection of arbitrators. The ICC appoints arbitrators in less than 25% of the cases as demonstrated below. Considering that parties nominate arbitrators in over 75% of the cases, to achieve rapid change, the parties and their representatives must make efforts to contribute to diversity.

In recent years the ICC has been more attentive to gender issues and started very recently to monitor the number of women arbitrators. This was not done in the past simply because the gender criteria was not among the elements used to generate statistics from the database, such as the place of arbitration, the applicable law or the number of arbitrators. Therefore, no data may be extracted as a statistic to distinguish between male and female arbitrators, but the revamping of the database will take into consideration such needs in the future. For the time being, counting the number of women arbitrators must be done by a staff member and this has been done since 2011. The author published numbers in 2013²¹ and the following table is an update which shows the slight evolution in the last four years.

Year	Total of confirmations / appointments	Individuals confirmed /appointed once	Individuals confirmed /appointed more than once	Individuals appointed by the Court	Number of women	Women appointed by the Court	Women nominated by parties / coarbitrators	Percentage of women arbitrators
2011	1341	900	441	318	75	36	39	8,3%
2012	1301	847	454	311	71	40	31	8,4%
2013	1329	919	410	328	99	57	42	10,8%
2014	1327	908	419	298	104	50	54	11,5%

The number of confirmations and appointments means the number of times arbitrators were confirmed or appointed during the year, as opposed to the number of different individuals confirmed or appointed (some individuals were confirmed or appointed more than once

²⁰ For example Lucy Greenwood & Mark Baker, “Is the balance getting better? An update on the issue of gender diversity in international arbitration”, *Arbitration International*, 2015, 0, 1–11 doi: 10.1093/arbit/aiv034.

²¹ [Arbitral Women Newsletter n°8](#) reporting about a conference organised on the Women’s Day in 2013.

during the year in different cases). The figures in the above table cover all categories of arbitrators: co-arbitrators, sole arbitrators and chairs of arbitral tribunals. Arbitrators are confirmed by the Secretary General of the ICC Court or by the ICC Court upon nomination by the parties or the co-arbitrators. They are appointed by the ICC Court either upon a proposal from an ICC National Committee or Group, or directly by the ICC Court. The difference between the number of women nominated by the parties and the number of women appointed by the ICC Court was small in 2011 and 2014, but increased in 2012 and especially 2013, when more women were chosen by the Court than by the parties.

When the ICC is called to prepare a list of arbitrators, either for arbitrations that it administers or in its role as Appointing Authority in *ad hoc* arbitrations, it includes women. Sometimes, at least for the time being, it is hard to find women experienced in certain fields, such as in satellites-related disputes.

Efforts have also been made by the ICC ADR department to appoint women mediators. This department also ensures that panels for conferences they organise are equally shared.

Year	Mediators appointed	Male mediators	Female mediators	Percentage of female mediators
2011	20	16	4	20%
2012	14	9	5	35,7%
2013	20	17	3	15%
2014	19	14	5	26,3%

A conference on women in arbitration was jointly organised by University Saint Quentin-Versailles (France), the ICC and ArbitralWomen on 5 May 2015 and was held at the ICC. The all-women panel examined whether it is different from other fields of law²². It is noteworthy to mention that this type of composition can only be found with conferences organised by ArbitralWomen where most of the panels are all-women. It was noted that women in arbitration is no different from women in other fields of law and that they face the same difficulties as women practitioners in general. The only difference is that the dispute resolution environment has become very ‘showbiz’ focused as Charles Brower described it, where practitioners must be seen on panels or participate in dispute resolution events, and must be mentioned in news published for example by the Global Arbitration Review. It was also indicated that some countries impose gender equality, such as Germany and France. These initiatives help balance the playing field. In her report about this conference Lara Elborno referred to a point raised on the tendency of parties to appoint arbitrators “*in their own image*” as one of the reasons why women are under-represented in this field, and to the

²² Lara Elborno “[Les Femmes dans l’arbitrage : est-ce si différent](#)”, Kluwer Arbitration Blog, 21 May 2015.

statement that “*in the short term, if women become better represented within the leadership positions of companies, they may be able to encourage the appointment of qualified women arbitrators. In the long run, gender parity within the leadership structures of companies would likely create a cultural shift and a more diverse corporate culture overall. This could in turn lead more of the male leadership to break the cycle of appointing mostly male arbitrators in favor of expanding the pool of arbitrators*”. It was likewise recommended that practitioners should consider mentoring the younger generation of women in order to simplify their access to the profession and to promote their sustained career development. The report further indicated that “*women self-marketing became an indispensable tool in a profession where success is largely driven by the visibility of our work, quality connections, and a good reputation*”.

2. Women as Arbitration Counsel

Women lawyers appearing in arbitration also seemed rare; in fact they were numerous, but usually working behind the scenes, with males in lead counsel roles. They prepare submissions and work closely on the arbitration cases, but in the past their names did not appear on the files and they did not appear in hearings, and when they did they would not speak. Many women from Europe and North America who worked in the shadow of reputed male arbitrators were compelled (and continue to be compelled) to leave one law firm and join another or start their own boutique practice, in order to progress.

Today, the picture is different: in almost one out of two ICC cases women represent parties and sometimes there are several women on each side. In some cases women act as arbitrators in addition to the women acting as counsel on both sides, although this remains rare. Their names are now visible, a trend that started in recent years, but it is impossible to know if and how many of these women are lead counsel or partners; the number is probably tiny. Nor does this mean either that these numerous women lawyers have succeeded in breaking the glass ceiling. The former Chief Judge of the State of New York, Judith Kay, said in an interview²³ that it is a “*Pity that despite our advances and society’s progress, women still have to work so hard simply to find our way through that glass ceiling. After nearly 50 years as a woman lawyer, I question whether that ceiling is really made of glass, which generally symbolizes a fragile object*”.

Cherie Blair QC addressed the situation at a conference held in New York on 22 April 2015 as reported by the Global Arbitration Review: “*If we don’t take positive action to address this and simply wait for natural selection to take its course, it could be 2115 before there is gender parity in the partnerships*” and she added “*Frankly, guys, we can’t wait that long*”.

²³ Judith Kay “Déjà vu: A Personal Reflection on Women in International Arbitration”, New York Dispute Resolution Lawyer, Spring 2012, volume 5, n°1, page 12.

Even very recent stories demonstrate that bias is still alive. At a recent dinner, a female lawyer was sharing a table with male lawyers of her own generation. During the conversation one of the male lawyers said to her that she ought to be home caring for her children rather than being at the dinner. She responded calmly that her kids are over five years old and are with their father, whereas one of the male lawyers sitting at the table had a three-day old child and perhaps ought to be at home helping his wife with the baby. There have been occasions when clients calling law firms to speak to the lawyer handling their case and asking for “Maître” X (title for a lawyer in French that does not distinguish the gender), on hearing a woman answer the telephone, have said they want to speak to the lawyer not to the assistant. There have also been instances of clients refusing to have their case handled by a woman and asking that a male lawyer takes the case. All women lawyers have war stories that they can tell, from the past and even nowadays.

Another type of prejudice is the notion that women cannot work long hours. Women can work as hard as men if not harder²⁴, but law firms need to be more flexible in terms of work and time organisation if they want to retain talented women.

Some business managers consider that diversity is necessary to ensure that “*those who represented their interests reflected the diversity of their employees, customers and the places where they do business*” as highlighted by Michael McIlwrath, who added that “*this is a business decision that also makes eminent sense for the choice of arbitrators*”²⁵. Law firms can communicate with more types of clients if they have diverse profiles on their teams.

Nevertheless, the number of women promoted to partnership is infinitesimal compared to the number of women associates. Similarly, the number of women QCs in England & Wales is only 12%. Many women are lost on the way, which was described as “*pipeline leak*”²⁶ by Lucy Greenwood. Efforts have been made recently to promote women to partnership²⁷, which is encouraging, although we are far from getting to equality. Efforts must be undertaken by all stakeholders for the advancement and retention of women in law firms and to ensure that the opportunity of hiring emerging female talents in dispute resolution is not missed.

²⁴ On 22 May 2015, the Global Arbitration Review reported about the GAR Award granted to Julian Lew as best prepared and most responsive arbitrator, and indicated that a special mention was made of Jennifer Kirby who even held a procedural telephone conference as sole arbitrator on the afternoon of her wedding.

²⁵ Sophie Nappert and Sarita Woolhouse “Diversity amongst Arbitrators and the Usefulness of Lists”, *Transnational Dispute Management*, September 2009, www.transnational-dispute-management.com.

²⁶ Lucy Greenwood & Mark Baker, “Getting a better balance on international arbitration tribunals”, *Arbitration International*, vol. 28, n°4, 2012, page 653.

²⁷ [ArbitralWomen’s Newsletter n°13](#) reporting about an impressive round of promotions to partnership of women in dispute resolution.

3. Women as In-house Counsel

A few women were very well known in France twenty years ago, like Mireille Bouzols-Breton, Christine Guerrier and Isabelle Hautot and are still holding major positions in big companies where they head the dispute resolution departments. In France, it seems that more than 80% of in-house counsel positions are held by women, many of whom are in leadership positions. It is not the same in law firms which cannot today pride themselves on having women partners in sufficient number.

The importance of women in-house counsel has increased tremendously over the years²⁸. The management of the companies for which they work and the outside counsel hired to represent these companies in arbitration cases, rely increasingly on the in-house counsel. In-house counsel know better than anyone the issues at stake and the strategies that their companies could be using in given cases. Arbitration institutions have been particularly attentive in recent years to the role in-house counsel play from the drafting of an arbitration agreement until the end of any dispute settlement; in this respect, the ICC launched in 2014 a Guide on Effective Management of Arbitration²⁹ meant mainly for in-house counsel and other party representatives. It is not clear however, that these women are choosing other women to represent them or as arbitrators.

4. Women as Speakers

It is likewise hard to have women invited to speak on panels at conferences. The only pleasant exception was at the conference in Dublin on the Women's Day mentioned above, because the conference was about women and organised by women. Women outnumbered men at this conference. On this aspect, there has been an evolution in the last decade, but we still struggle to get at least one woman per panel at every conference organised. Efforts have been made by ArbitralWomen in the last decade to raise awareness and try to have organisers invite women to speak on panels. Louise Barrington (Founding Co-President of ArbitralWomen with the author), Lorraine Brennan (former President of ArbitralWomen), and Rashda Rana (the current President) have been particularly attentive to this problem. They have drawn organisers' attention to the fact that practitioners expect more balanced panels and greater efforts to be made towards inclusiveness rather than exclusiveness. They have invited organisers who claimed that they found no women speakers or no women available, to browse ArbitralWomen's website or to approach ArbitralWomen for suggestions, before concluding that no women exist in the pool of practitioners with equal qualifications or that no women

²⁸ Awareness of their role was mainly raised by Jean-Claude Najjar former GE head of legal department, who founded the Corporate Counsel International Arbitration Group (CCIAG).

²⁹ Mirèze Philippe "[Effective Management of Arbitration; A Guide for In-House Counsel and Other Party Representatives](#)", Kluwer Arbitration Blog, 22 July 2014.

are available. Finally, ArbitralWomen also informs organisers who make no efforts that their events will not be promoted or attended by ArbitralWomen.

Two years ago, ArbitralWomen was surprised to discover that a conference on diversity was organised in North America with no woman on the panel. ArbitralWomen contacted the organisers who confessed that they had simply not thought about inviting women but promised to give it a thought on a future occasion: can we place this argument on the ground of unconscious bias or a true conscious bias? In a conference organised in Europe in 2015, out of 24 speakers only one woman with no dispute resolution background was on the programme. Again, ArbitralWomen contacted the organisers who alleged that they had been unable to find any available women. They eventually called on another woman, this time from the dispute resolution community, then invited a second one and ultimately a third one, all three ArbitralWomen members. Is this acceptable nowadays where a significant number of experienced women practitioners exist in several countries around the world?

Some event organisers tend to pay attention and have both genders represented on panels. However, and regardless of the country where events are taking place, men significantly outnumber women speakers. There may not have been enough women competent and experienced twenty years ago, but this has changed, and alleging that there are no women who fill the profiles required is simply inaccurate.

It was likewise rare until fifteen years ago to see many women attend conferences. Their participation has increased over these years and they have their word to say during the conferences, when in the past they would attend without daring to speak because of the attitude of mockery of their male colleagues, which sometimes persists. The author was pleasantly surprised recently to see women in Arab countries daring to interact at conferences, making comments right to the point and expressing themselves fluently in foreign languages. This evolution has taken place over the last five years and is welcomed.

5. Exposure of Practitioners

Women now comprise well over half the graduating law school classes in most countries around the world. Exposure of young practitioners, including young women, has increased tremendously, mainly thanks to several young arbitrator groups founded in the last decade by organisations such as ICC, LCIA, CPR, IBA and OGEMID. Young arbitrators, women and men, are now given the opportunity to speak on panels and become visible. Exposure is also facilitated with the numerous newsletters published by organisations and law firms, and news published on blogs such as Kluwer's blog, to which young practitioners contribute. This trend will help young women and men become involved at higher levels and be appointed as arbitrators much faster than previous generations. This is another remarkable evolution

Exposure is similarly facilitated when women and men, including young practitioners participate in working groups of various organisations such as the International Bar Association (“IBA”), the International Law Association (“ILA”) or UNCITRAL, although these groups include very few women and hardly any women chairs. Dominique Brown-Berset, past President of ArbitralWomen, reported in an interview that she was the first woman co-chair of the arbitration committee of the IBA. Together with fellow members of the committee they developed a culture followed by all her successors to have committees composed of half women and half men. She made sure that after she stepped down there would be another woman in charge³⁰.

The moot competitions have also been instrumental in gaining exposure for participants at all levels, students, coaches, evaluators of students’ memoranda, and arbitrators. These competitions have opened the doors wide to young practitioners in the last fifteen years. The networking between all participants increases chances to hire young practitioners, invite speakers on panels, select arbitrators and remain connected.

In the last two decades several Masters and LL.Ms in arbitration have developed around the world, mainly in Paris, London, Geneva, Stockholm and Miami. In 2015, the first fully on-line law school, Swiss International Law School, headed by Professor Ingeborg Schwenzer opened its doors. These courses provide students with solid training before they start professional life. However, competition is greater today and finding a job in dispute resolution has become more difficult. Older generations were trained directly on the field and were not exposed to the difficulty of finding a job as competition was much less significant. Young women, in fact women in general, need to be assertive and persistent, and to grasp every opportunity afforded to them to obtain exposure in the dispute resolution community.

6. Women as Leaders of Dispute Resolution Centres

The first woman at the head of the Secretariat of the ICC Court was in 1982 when Tila Maria de Hancock filled the position of Director of the Secretariat. In the 1990s Eva Horvath was President of the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry and in the late 1990s Diana Droulers became Executive Director of the Court of Arbitration of Caracas (Venezuela). In 2001 Anne-Marie Whitesell was appointed Secretary General of the ICC Court and in 2008 Crenguta Leaua was Vice President of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania. These women are pioneers in the world of arbitration.

Interestingly, the majority of dispute resolution institutions around the world are now headed by women in various roles: as presidents, vice-presidents, directors, secretaries general and deputy secretaries general. ArbitralWomen published interviews with a few of these leaders in

³⁰ Jill Evans “Redressing the balance”, *The Resolver*, May 2012, page 10.

its Newsletters³¹. To mention a few names without being exhaustive: in Latin America Diana Droulers as above mentioned (Venezuela); Karin Helmlinger Casanova, Executive Director and Secretary General of Arbitraje Internacional Santiago (Chili); Carolina Diab, General Director of CRECIG, Comisión de Resolución de Conflictos de la Cámara de Industria de Guatemala (Guatemala). In North America: India Johnson, President and CEO of the American Arbitration Association (USA); Meg Kinnear, Secretary General of the International Centre for Settlement of Investment Disputes (ICSID). In Europe: Heidi Merikalla-Teir, Secretary General of the Arbitration Institute of the Finland Chamber of Commerce (Finland); Sophie Henry, Secretary General of the Centre de Mediation et d'Arbitrage de Paris (France); Irina Guérif, Secretary General of the Chambre Arbitrale Internationale de Paris (France); Francesca Mazza, Secretary General of the Deutsche Institution für Schiedsgerichtsbarkeit (Germany); Beata Gessel-Kalinowska vel Kalisz, President of the Lewiatan Court of Arbitration (Poland); Elena Gutiérrez Garcia de Cortázar, Secretary General of the Madrid Court of Arbitration (Spain); Annette Magnusson, Director and Secretary General of the Arbitration Institute of the Stockholm Chamber of Commerce (Sweden); Tatyana Slipachuk, President of the Ukrainian Arbitration Association (Ukraine); Jacomijn van Haersolte-van Hof, Director General of the London Court of International Arbitration and many women are also members of the LCIA Court (UK). In Africa: Bintou Djibo Boli, Secrétaire Permanent Centre d'Arbitrage et de Médiation (Burkina Faso); Coumba Diatigui Diarra, Director of the Conciliation & Arbitration Centre of Mali (Mali); Megha Joshi, Executive Secretary/CEO of the Lagos Court of Arbitration (Nigeria); Bernadette Uwicyeza, Secretary General of the Kigali International Arbitration Centre (Rwanda). In Asia: Chiann Bao, Secretary General of the Hong Kong International Arbitration Centre; Wenying Wang, Secretary General of CIETAC Hong Kong. In Australia: Deborah Tomkinson, Secretary General of the Australian Centre for International Commercial Arbitration (ACICA).

The Global Arbitration Review (“GAR”) awarded the American Arbitration Association for the best development of 2012 which consisted in appointing its first-ever female president, India Johnson.

It is also noteworthy to mention that Nassib Ziadé, Director of the Dubai International Arbitration Centre (DIAC) from 2011 to 2013 appointed several women to the Board of Trustees: Sheikha Haya Rashid bin Khalifa from Bahrain, Loretta Malintoppi from Italy and Vera van Houtte from Belgium. Unfortunately, after Ziadé’s departure from the DIAC no woman is any longer on the Board.

³¹ See [ArbitralWomen Newsletters n°7, 9, 10, 11, 13](#).

III – History of Women and Women leaders at the ICC

1. The International Chamber of Commerce (“ICC”)

The ICC was founded in 1919 and the International Court of Arbitration in 1923. The ICC was not only a pioneer in dispute resolution, but was also a pioneer in appointing women to major positions since the 1960s where Marie-Constance Psiménos de Metz-Noblat held the position of First Director of the ICC for several decades. In 1982, Tila Maria de Hancock was appointed Director of the Secretariat of the ICC Court and held this position until 1985. In 1996 the ICC appointed Maria Livanos Cattau as Secretary General of the ICC, and in 2001 Anne-Marie Whitesell at the head of the Secretariat of the Court.

2. The International Court of Arbitration (“Court”)

ICC arbitration is a fully administered process which benefits from the supervision of the ICC Court composed of 144 members from 90 countries. This demonstrates the diversity of legal systems and points of view represented on the Court. Women have been appointed as Court members since 1984: one from Colombia, Maria Clara Betancur de Helo and the other from Madagascar Yolaine Anta Rakotomanga. A Greek member of the Court Antonias Dimolitsa (who was also one the pioneer women arbitrators as mentioned above) was appointed at the beginning of the 1990s and was the sole woman on the Court for a decade.

After 2000 the number increased progressively and since 2012. Thanks to John Beechey, who was President of the ICC Court until end June 2015, the number has reached 23 women, which represents 16% of the 144 Court members. The new President of the Court Alexis Mourre taking office in July 2015 announced his intention to have an equal number of men and women as Vice Presidents of the Court. This intention became a reality and the ICC World Council appointed in June 2015 for a period of three years as of 1 July 2015, a new Bureau of the Court including the following women: Vera Van Houtte (Belgium), Yas Banifatemi (France/Iran), Inka Hanefeld (Germany), Yoshimi Ohara (Japan), Wendy Miles (New Zealand), Funke Adekoya (Nigeria), Crenguta Leaua (Romania), Anne Véronique Schlaepfer (Switzerland), Lucy Reed (United States).

3. The Secretariat of the Court

The Court is assisted by a Secretariat with a highly qualified staff, composed of 100 members from 25 countries with as many languages spoken, and half of the staff is constituted of lawyers. In the 1980s, the teams in charge of administering arbitration cases were composed of a Counsel, usually a man, and a Deputy Counsel and an Assistant, usually women. In 1995, a former Secretary General of the Court, Eric Schwartz, insisted on having a woman

appointed as Counsel, promoting Anne Cambournac from the position of Deputy Counsel to Counsel. He was a pioneer and succeeded in this double step which later allowed the appointment of other women. In 2015, eight out of the nine teams of the Court's Secretariat are headed by women Counsel.

It is not only the struggle of women that causes women to be recognised and appointed to high positions; it is also thanks to the support of men that doors can be opened to women. It is logically a joint effort considering that society is composed of men and women. Going against old traditions requires the courage to stand up and shake a well-established system. The evolution at the Secretariat started in the 1990s during the decade which saw gradual progress towards more and more inclusion of women on the dispute resolution scene.

The other evolution that occurred around that time was the appointment of men to hold the position of Deputy Counsel, which formerly was exclusively staffed by women. This evolution continued with the appointment of male assistants in the last five years. True diversity is beneficial for women and men, who both now have the opportunity to advance to Counsel or even higher – on the basis of merit.

4. The ICC World Business Women

Finally, in 2012 World Business Women (“WBW”), a staff driven initiative, was launched on the occasion of International Women’s Day, to promote gender diversity and better gender balance. Elizabeth Thomas-Raynaud, ICC Senior Policy Manager who chairs the Steering Committee of WBW, said in an interview: *“We are a young initiative with still much work to be done but the initiative has been a catalyst. Already, as a result of our efforts, recruitment of experts and executives at ICC are becoming more sensitized to the importance of ensuring qualified women candidates are identified and put forward for consideration wherever they are underrepresented”*³².

³² See the press release on ICC website [http://www.iccwbo.org/News/Articles/2012/ICC-World-Business-Women-launched-by-staff-on-International-Women-s-Day\(2\)/](http://www.iccwbo.org/News/Articles/2012/ICC-World-Business-Women-launched-by-staff-on-International-Women-s-Day(2)/).

IV – History of ArbitralWomen

1. Foundation of ArbitralWomen and Perseverance

ArbitralWomen, a nonprofit organisation gathering women practitioners in international dispute resolution, is a network of women from diverse backgrounds and legal cultures active in this field³³. It was set up to offer opportunities to meet other women in the field, exchange ideas, mentor new practitioners and celebrate the future of women in arbitration.

Women had no network as men did. And in the dispute resolution business, where being known and trusted is essential, networking is indispensable³⁴. Women lacked visibility in dispute resolution and were missing from the dispute resolution arena. These factors triggered the creation of ArbitralWomen. In 1993, Louise Barrington who participated in an International Council for Commercial Arbitration (“ICCA”) congress in Bahrain, noticed that there were less than ten women including herself out of 250 participants. She wanted to find out about women practitioners in dispute resolution and sent a chain letter. She received dozens of responses and sixty women participated in a first dinner on 22 November 1993. ArbitralWomen was born.

At the beginning, we meet sporadically, about once a year but we quickly saw that we needed to stay in touch, keep each other informed about news from the business and the dispute resolution communities, and support each other. In 2000, a Yahoo group launched by the author, had the benefit of keeping members in touch, but we needed to become visible to reach out to a larger number of practitioners. We therefore created our own website in 2005. Sophie Nappert and Sarita Woolhouse reported that *“Visibility and networking are important features of the arbitration world. Organisations like ArbitralWomen provide women with a means to share experience, make their own lists and be generous with their knowledge, contacts and recommendations”*³⁵.

The task has not been easy since 1993. ArbitralWomen was very much resisted, criticized and mocked. Perseverance and patience paid despite the attitude of some colleagues, both male and female. Nevertheless, especially since 2005 ArbitralWomen has become more and more known and recognized.

The evolution also started with a little help from our friends as the Beatles would sing. The presence of women in the world of dispute resolution was particularly visible at the ICCA Congress in June 2006 in Montreal and in June 2008 in Dublin where the participation of women made the difference. Out of the 600 and 750 participants respectively, one sixth were

³³ For further information go to www.arbitralwomen.org.

³⁴ David Samuels “Onwards and upwards. The women of arbitration”, Global Arbitration Review, Volume 2, Issue 4, 2007; Samuels interviewed a number of women practitioners to prepare a special issue on women.

³⁵ Sophie Nappert & Sarita Woolhouse “Diversity Amongst Arbitrators and the Usefulness of Lists – An OGEMID Discussion, Transnational Dispute Management, September 2009, www.transnational-dispute-management.com.

women, and among speakers on the podium one third were women at ICCA Dublin. On both occasions, the webpages of the ICCA Congress referred to ArbitralWomen, which has been a significant boost for the organisation. ArbitralWomen owes this support to men who encouraged ArbitralWomen's actions, Donald Francis Donovan from Debevoise & Plimpton and Klaus Reichert from Brick Court Chambers. Both received an Honourable Man Award by ArbitralWomen to thank them for their continuous active support.

Louise Barrington received the CPR Institute's third annual "Award for Outstanding Contribution to Diversity in Alternative Dispute Resolution" in 2011 in New York³⁶ for her achievement and for her diversity vision, first by having envisioned a group that would support women in arbitration, and second by creating the Vis Moot East in 2003-2004 in Hong Kong.

ArbitralWomen's work has largely been facilitated by electronic networking and by ArbitralWomen's activities which added to its visibility. Significant efforts were made to promote the network, maintain contact among women practitioners, organise events, mentor young practitioners, support Vis Moot competition teams and publishing a newsletter.

ArbitralWomen is a resource for arbitrators, mediators, experts, lawyers and dispute resolution practitioners from jurisdictions around the world, and a source of referrals for women and men. A few years ago a Bahraini lawyer asked the author for referrals of marine surveyors. Twelve names, including seven men and five ArbitralWomen were suggested. The lawyer selected a woman. The group has grown to over a thousand members in more than forty countries.

Rashda Rana, ArbitralWomen's President summarised our objectives and projects very well in an interview with LexisNexis³⁷. The perception has changed in a meaningful way since then and ArbitralWomen has gradually become known and recognised and is now constantly invited to organise joint events.

2. Celebrating Women in Dispute Resolution

A conference on "Conflict Resolution: Peace, Practice, Perspectives – Celebrating Women as ADR Leaders", organised on International Women's Day took place in Dublin on 8 March 2013. The event was co-organised by the author from ArbitralWomen and by Anne-Marie Blaney now Chair of the Chartered Institute of Arbitrators, Irish Branch, and Maura Butler Chairperson of the Irish Women Lawyers Association³⁸. This was the first conference that spoke about women in dispute resolution and it will be followed by new editions every two to

³⁶ See <http://www.cpradr.org/EventsEducation/AnnualAwards/DiversityAward/2010DiversityAward.aspx>.

³⁷ Rashda Rana in an interview with LexisNexis on "Promoting the work of women in the arbitration community", 16 July 2014, www.lexisnexis.com/uk/lexispsl/arbitration/home.

³⁸ See [ArbitralWomen Newsletter n°8](#) for further information and content of the presentations.

three years. The second edition is planned to take place on the International Women's Day in Geneva in 2016.

The conference highlighted the contribution and expertise of women in dispute resolution, promoted gender equality and addressed issues facing women's participation. Appropriately for International Women's Day, the majority of speakers and participants were women.

Anne-Marie Blaney said at the conference *“that the conference was inspired by the wish to highlight the contribution and expertise of women in dispute resolution and, in doing so, promoting gender equality by identifying the current involvement of women and addressing issues facing women's participation at all levels”*. She observed that *“Dublin was a particularly apt venue for this conference, given the increasing prominence of women lawyers in Irish political and legal spheres. In 1990 Mary Robinson became Ireland's first woman President followed in 1997 by another academic lawyer, Mary McAleese, who served two terms. In 2011, Máire Whelan SC was appointed as the first woman Attorney General and four months later the Honorable Mrs Justice Susan Denham became the first Chief Justice. Shortly thereafter the first woman Director of Public Prosecutions, Claire Loftus, Solicitor and the first woman Chief State Solicitor, Eileen Creedon, were appointed”*.

The conference featured presentations by the Honourable Ms Justice Maureen Clark of the High Court, first Irish Judge of the International Criminal Court and president of the Irish Women Lawyers Association, Paulyn Marrinan Quinn, first insurance ombudsman and first ombudsman for the Defence Forces, Rowena Mulcahy, Taxing Master of the High Court, Muriel Walls, mediator and collaborative practitioner, and Anne-Marie Blaney, solicitor and mediator.

ArbitralWomen hosted a particularly lively panel chaired by the then ArbitralWomen president Dominique Brown-Berset. The panel focused in particular on the role and representation of women in the international dispute resolution arena with presentations from Melanie Willems, Head of International Arbitration at Andrews Kurth LLP, Chitra Radhakishun, Manager of the UNCTAD Project on Dispute Settlement in International Trade, Investment and Intellectual Property, James Bridgeman, barrister at law, the Law Library (Dublin) and Lamb Chambers (London), and from the author. Dominique emphasised the need for women recognised as top practitioners in international arbitration to use their standing and reputation to lobby. She added that they should also contribute to ensure that women are perceived and treated the same way as their male counterparts with equal talents, when it comes to appointing arbitrators or lead counsel. The author suggested actions for the future in order to improve women representation as explained below.

This unique conference was a call to action, encouraging women to use their political voice and to assume decision making roles, working with stakeholders to achieve quick progress in equality of appointments. *“We hope that this day was the kick-start for active contributions towards change”* said Maura Butler who added *“that this conference was the embodiment of*

how women work differently together – we are very good at collaborative processes, where the ‘greater good’ is the objective”.

V. Moving Forward and Committing to Change

1. ArbitralWomen Gender Equality Chart

ArbitralWomen highlighted at the Dublin conference³⁹, that looking forward to the future we should contribute to move things faster than in the last thirty years, so that the celebration of International Women’s Day does not remain a celebration for what has been so far achieved, but rather a celebration of the equality which is being achieved. It therefore, first suggested organising a similar gathering every two years to assess what has been achieved further and setting objectives for the following years, hoping that very soon equality will no longer be an issue; and second, it announced that ArbitralWomen intends to launch an inclusiveness programme or a gender equality chart by which it would invite major organisations, law firms and arbitration users to contribute to a joint action intended to improve the number of women arbitrators, lead counsel, partners and speakers. The purpose of such programme is also to collate hard data on women’s appointments worldwide and to assess measurable effects of our efforts. Such project is an ideal opportunity for collaborative work between all key stakeholders, in order to ensure that the results are comprehensive and meaningful.

The programme would include commitments by stakeholders to: (i) keep data in order to assess and publicise the efforts undertaken yearly; (ii) encourage those who have no programmes in place to contribute to the collaborative work; (iii) encourage conference organisers to have equal representations on panels and publicise their efforts; (iv) foster women’s professional groups and cross-reference to such groups. This project is still work in progress.

ArbitralWomen is not in favour of quotas because they can come at the cost of quality. Every community or jurisdiction does not have the same level of experienced practitioners in some areas of law. This may lead to an effect which is the opposite of promoting talented practitioners.

2. Diversity pledge

Gender diversity and equality have recently become a hot topic in the business and legal communities. This is positive as some groups have chosen to address the problem and take concrete action towards change. It is worthwhile to mention a few examples of commitments and pledges. For example the Law Council of Australia published in May 2015 a Diversity

³⁹ See [ArbitralWomen Newsletter n°8](#).

and Equality Charter by which the Australian legal profession commits to promote diversity, equality and inclusion⁴⁰.

The International Institute for Conflict Prevention & Resolution (CPR) published a Diversity Commitment⁴¹ which is available online and can be signed. Olivier André, Vice President International and Dispute Resolution Services at CPR, indicated to the author that CPR's Diversity Commitment is one of the first commitments or pledges officially issued in the field of dispute resolution. This example is an interesting and an inspiring one; it is worth mentioning the text which provides as follows:

“We recognize that our greatest successes come when we value and draw upon the knowledge, experience and talents of all people by being both diverse and inclusive. To achieve those successes, our organization seeks diversity not only in its work force but also in its providers of goods and services. We see great value in diversity and inclusion among those who represent our organization, we see equal value in diversity and inclusion among those who mediate and arbitrate our matters. Therefore, we actively support the inclusion of diverse mediators and arbitrators in matters to which we are a party or counsel. To implement our commitment to diversity and inclusion in the selection of neutrals: We ask that our outside law firms and counterparties include qualified diverse neutrals among any list of mediators or arbitrators they propose. We will do the same in lists we provide”.

Signatories are invited to sign the Commitment by indicating their company or law firm and their position; all signatories are listed on the webpage of CPR.

Another recent initiative was undertaken by Sylvia Noury, a partner at Freshfields, who gathered a group of major stakeholders including arbitration institutions, law firms, in-house counsel and ArbitralWomen in London on 29 April 2015 to discuss the problem and potential solutions. Participants agreed that a pledge proposed by Sylvia Noury to be signed by stakeholders will contribute to addressing the unjustifiable under-representation of women. Work on the pledge is currently ongoing. Once the process has been completed, the pledge will be publicised and appropriate actions taken as provided in the pledge. Gathering major stakeholders who agreed that a pledge would be useful is a double victory. Patience and perseverance pay in the long run.

⁴⁰ Diversity and Equality Charter of the Law Council of Australia:

http://www.lawcouncil.asn.au/lawcouncil/images/Diversity_and_Equality_Charter.pdf

⁴¹ CPR National Task Force on Diversity:

<http://www.cpradr.org/PracticeAreas/NationalTaskForceonDiversityinADR/SigntheDiversityCommitment.aspx>

3. Possible change

There are synergies among the various initiatives and groups who can cooperate in order to stimulate a constructive and effective joint action. The greater the number of stakeholders involved, the more we will see and have organisations, dispute resolution institutions and law firms contribute to eliminating the gender imbalance.

Diversity must be taken seriously, because women and men are entitled to build a career regardless of whether they have children. Women must be offered the same chances as men, and should not be stopped in their progress because of motherhood. Technology allows to work from anywhere and at any time, so there is no excuse about inefficiency due to temporary absence. Moreover, law firms should not assume that mothers do not want to travel, plead, speak, publish or otherwise, they should ask their opinion instead of deciding for them. Women now refuse to sacrifice their career or their family, one does not exclude the other, and they can have it all as Ania Farren said ⁴².

Diversity and gender equality are important for mainly two reasons: from the marketing perspective it gives better exposure and attracts more clients who see that firms have an open mind on these issues, and from the communication perspective it allows clients to communicate with people who have the same profiles and who can better understand them. The best example is the Secretariat of the ICC Court where a multiplicity of cultures and languages are represented, allowing the Secretariat's staff to speak to lawyers and arbitrators from various jurisdictions and cultures and communicate on the same level of understanding as such jurisdictions and cultures.

To finish on a note full of hope, here is an exceptional but real example: in the ICSID case opposing OTMTI to Algeria where a jurisdictional hearing took place in Paris in May 2015, Gabrielle Kaufmann-Kohler sat as president, Brigitte Stern and Albert Jan van den Berg as party appointed arbitrators, and Andrea Menaker and Carolyn Lamm represented Claimants, while Yas Banifatemi and Emmanuel Gaillard represented Respondents. Women were in leadership roles on all sides of the table. Change is possible, and our mission is to contribute to make it happen more quickly than in the last thirty years.

⁴² See [ArbitralWomen Newsletter n°14](#).