



ISSN : 1875-4120  
Issue : (Provisional)  
Published : May 2016

This article will be published in a future issue of TDM (2016). Check website for final publication date for correct reference.

This article may not be the final version and should be considered as a draft article.

#### Terms & Conditions

Registered TDM users are authorised to download and print one copy of the articles in the TDM Website for personal, non-commercial use provided all printouts clearly include the name of the author and of TDM. The work so downloaded must not be modified. **Copies downloaded must not be further circulated.** Each individual wishing to download a copy must first register with the website.

All other use including copying, distribution, retransmission or modification of the information or materials contained herein without the express written consent of TDM is strictly prohibited. Should the user contravene these conditions TDM reserve the right to send a bill for the unauthorised use to the person or persons engaging in such unauthorised use. The bill will charge to the unauthorised user a sum which takes into account the copyright fee and administrative costs of identifying and pursuing the unauthorised user.

For more information about the Terms & Conditions visit [www.transnational-dispute-management.com](http://www.transnational-dispute-management.com)

© Copyright TDM 2016  
TDM Cover v2.0

# Transnational Dispute Management

[www.transnational-dispute-management.com](http://www.transnational-dispute-management.com)

## Speeding Up the Path for Gender Equality by M. Philippe

### About TDM

**TDM** (Transnational Dispute Management): Focusing on recent developments in the area of Investment arbitration and Dispute Management, regulation, treaties, judicial and arbitral cases, voluntary guidelines, tax and contracting.

Visit [www.transnational-dispute-management.com](http://www.transnational-dispute-management.com) for full Terms & Conditions and subscription rates.

### Open to all to read and to contribute

TDM has become the hub of a global professional and academic network. Therefore we invite all those with an interest in Investment arbitration and Dispute Management to contribute. We are looking mainly for short comments on recent developments of broad interest. We would like where possible for such comments to be backed-up by provision of in-depth notes and articles (which we will be published in our 'knowledge bank') and primary legal and regulatory materials.

If you would like to participate in this global network please contact us at [info@transnational-dispute-management.com](mailto:info@transnational-dispute-management.com): we are ready to publish relevant and quality contributions with name, photo, and brief biographical description - but we will also accept anonymous ones where there is a good reason. We do not expect contributors to produce long academic articles (though we publish a select number of academic studies either as an advance version or an TDM-focused republication), but rather concise comments from the author's professional 'workshop'.

**TDM** is linked to **OGEMID**, the principal internet information & discussion forum in the area of oil, gas, energy, mining, infrastructure and investment disputes founded by Professor Thomas Wälde.

# Speeding Up the Path for Gender Equality

*Mirèze Philippe\**

One of the most significant changes in the recent years is the progressive mind-opening of practitioners in favour of diversity, women and young practitioners in international dispute resolution. This article provides unrivalled statistics on women arbitrators in ICC arbitrations (I) and discusses some constraints related to selection of arbitrators (II). A short overview of the change of the environment in the international dispute resolution arena is then presented (III). ArbitralWomen's efforts related to gender equality and to raising awareness about unconscious biases are next discussed (IV). Finally, it salutes another historical initiative which started a movement rapidly developing, the Equal Representation in Arbitration (ERA) Pledge, now signed by the ICC (V).

## **I – Unrivalled Statistics on Women Arbitrators in ICC Arbitrations since 2010**

Progress has been very slow, as demonstrated by the statistics provided in the tables below which serve as one example of the situation in general. There have been, however, many positive developments and others are taking place, as the business and legal communities are more and more committing to change. It is consequently hoped that the international arbitration community will attain a certain balance in the future.

The author pointed out, in an article published in July 2015<sup>1</sup>, that in recent years the ICC has been more attentive to gender issues. For example, the ICC Court started very recently to monitor the number of women arbitrators. Statistics on women arbitrators did not exist in the past because gender criteria was not among the elements used to generate statistics from the database, unlike other data such as the number of arbitrators, the place of arbitration or the applicable law. Hence, no data could be extracted to distinguish between male and female arbitrators. For the purpose of publishing statistics, therefore, staff members had to collect and sort information starting from year 2010.

The author published numbers the first time in 2013 and then in 2015<sup>2</sup>. On 11 May 2016, the ICC published its annual statistics and for the first time it has disclosed statistics on gender balance. The ICC announced that women arbitrators represented just over 10% of all appointments and confirmations of arbitrators in 2015, and that they were more frequently appointed or confirmed as co-arbitrators (43%) than they were as sole arbitrators (32%) or

---

\* Mirèze Philippe is Special Counsel at the Secretariat of the ICC International Court of Arbitration, Founding Co-President of ArbitralWomen with Louise Barrington and Board member, and member of the Equal Representation in Arbitration Steering Committee. The views expressed are those of the author alone and should not be regarded as representative of or binding upon the ICC, the Court or its Secretariat.

The author is extremely grateful to her colleagues at the ICC who have been collecting and sorting the data meticulously.

<sup>1</sup> See article published by the author: [When did the Doors to Dispute Resolution open for Women?](#), TDM Special Issue on Diversity, TDM vol. 12, issue 4, July 2015

<sup>2</sup> Ibid footnote 1

tribunal presidents (25%)<sup>3</sup>. The disclosure of gender statistics forms part of ICC's on-going strategy to enhance both the transparency and diversity of international arbitration.

As in the previous years the author will provide hereafter detailed tables and some explanations.

Last year the number of women arbitrators nominated by the parties and the co-arbitrators or appointed by the ICC Court has slightly increased to 10.4% compared to 9.7% in 2014. These appointments represented 136 women out of 1313 arbitrators. The Court appointed more women than the parties and the co-arbitrators nominated collectively, *i.e.* 73 as opposed to 63. Therefore, encouraging all players to consider offering equal opportunities for equal qualifications will certainly increase the chances of seeing more women appointed in the future.

The following tables provide information about nomination of women arbitrators in ICC arbitrations from 2010 to 2015. Most of the data is published for the first time and compares numbers of men and women arbitrators, their age, their origin and who nominated or appointed them.

### 1. Number of men and women confirmed or appointed

Criteria	2010	2011	2012	2013	2014	2015
Number of men and women confirmed or appointed	1331	1341	1301	1329	1327	1313
Number of women confirmed or appointed	96	103	102	119	129	136
Percentage of women	7.2%	7.0%	7.8%	9.0%	9.7%	10.4%

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 an ICC Group, or directly by the ICC Court.

The number of confirmations and appointments means the number of times arbitrators were confirmed or appointed, as opposed to the number of different individuals confirmed or appointed (some individuals were confirmed or appointed more than once during the year in different cases). The figures in the above table cover all categories of arbitrators: co-arbitrators, sole arbitrators and presidents of arbitral tribunals.

---

<sup>3</sup> See ICC press-release on “ICC Arbitration posts strong growth in 2015” dated 11 May 2016: <http://www.iccwbo.org/News/Articles/2016/ICC-Arbitration-posts-strong-growth-in-2015/>

## 2. Origin of nominations and appointments of women

Criteria	2010	2011	2012	2013	2014	2015
Number of women confirmed or appointed	96	103	102	119	129	136
Number of women nominated by the parties in any role	34	45	40	44	54	53
Number of women presidents nominated by the co-arbitrators	14	16	17	9	21	10
Proposal of arbitrators in any role by National Committees and their appointment by the Court	44	36	41	47	44	52
Direct appointments by the Court	4	5	2	18	9	21
Appointments by other appointing authorities	0	1	2	1	1	0

Parties sometimes designate in their arbitration agreements a specific appointing authority. Such agreements are rare, as revealed by the numbers mentioned above, and designate namely the President of the ICC, other arbitration institutions than the ICC, state courts or professional corporations. The designated appointing authorities are requested to make a proposal of arbitrators who may then be appointed by the Court.

The difference between the number of women nominated by the parties and the co-arbitrators and the number of women appointed by the ICC Court is now and then insignificant, as demonstrated in the above table. In 2010, the number happened to be the same, *i.e.* 48. In 2011 and 2012 the parties and the co-arbitrators nominated more women than the Court, respectively 20 and 14 more. In 2013, the Court appointed 65 women as opposed to 53 collectively by the parties and the co-arbitrators. In 2014, the numbers were almost the other way round, 75 collectively by the parties and the co-arbitrators and 53 by the Court. Finally, in 2015 the parties and co-arbitrators collectively nominated fewer women than the Court, 63 as opposed to 73.

These numbers tend to demonstrate that no large disparity exists between the number of women nominated collectively by the parties and the co-arbitrators and the number of women appointed by the Court. However, it must be noted that the Court appoints arbitrators in less than 25% of the cases, where parties fail to nominate or to agree on the method of selection of arbitrators or when co-arbitrators do not succeed to select a president. In contrast, 75% of the arbitrators are nominated by the parties. However, numbers alone do not represent the only factors to take into account when analysing the situation as will be discussed below; additional constraints must be considered.

## 3. Role of women confirmed or appointed

Criteria	2010	2011	2012	2013	2014	2015
Number of women confirmed or appointed	96	103	102	119	129	136
Sole arbitrators	31	28	31	50	42	44
Presidents of arbitral tribunals	25	26	31	17	34	34
Co-arbitrators	40	49	40	52	53	58

The numbers above show that women act as co-arbitrators, as well as sole arbitrators and presidents of tribunals.

#### 4. Multiple nominations of women

Criteria	2010	2011	2012	2013	2014	2015
Number of individual men and women confirmed or appointed once	866	900	847	919	908	907
Number of individual women confirmed or appointed once	66	59	53	77	83	78
Percentage of women	7.6%	6.5%	6.2%	8.3%	9.1%	8.6%
Number of men and women confirmed or appointed more than once	465	441	454	410	419	406
Number of women confirmed or appointed more than once	30	44	49	42	46	58
Percentage of women	6.4%	10%	10.8%	10.2%	11%	14.3%
Women confirmed or appointed twice	7	8	10	21	17	23
Women confirmed or appointed three times	4	5	5	0	4	4
Women confirmed or appointed four times	1	1	2	0	0	0
Women Confirmed or appointed six times	0	0	1	0	0	0
Women confirmed or appointed nine times	0	1	0	0	0	0

Multiple nominations of women arbitrators are rather exceptional. For instance, in 2015 only 58 women were confirmed or appointed more than once as opposed to 348 men.

#### 5. Age of men and women confirmed or appointed

Criteria	2010	2011	2012	2013	2014	2015
Average age of men and women	56.9	57.0	57.2	56.7	57.0	-
Average age of men	57.7	57.6	58.0	57.7	57.9	-
Average age of women	48.6	49.8	48.6	48.2	49.9	-
Percentage of women under 40 years	23.6%	25.4%	23.2%	27.8%	22.3%	-
Percentage of women from 40 to 49 inclusive	36.1%	25.4%	40.6%	35.1%	32.0%	-
Percentage of women from 50 to 59 inclusive	26.4%	28.1%	20.3%	20.6%	21.4%	-
Percentage of women from 60 and over	13.9%	21.1%	15.9%	16.5%	24.3%	-

As confirmed by the numbers in the table above, the average age of women arbitrators is in general younger than men arbitrators. Women have started later in the field of dispute resolution than men. Thus, in general women come from younger generations compared to men, who have been in this field for a longer time. The author has shared in a previous

article <sup>4</sup> historical information about the entry of women in the arena of dispute resolution. The data showed that from the 1980s until the mid-1990s a small number of women were visible in arbitration (although many were back-stage), as opposed to men. Men, of course, dominated this field in majority and still dominate it in general.

The statistics for 2015 regarding age are not yet available, but are unlikely to differ notably from previous years.

## 6. Geographical origin of women confirmed or appointed

Criteria	2010	2011	2012	2013	2014	2015
North and West Europe	58	46	51	63	78	67
Central & East Europe	12	12	12	15	9	16
North America (USA & Canada)	15	19	14	15	13	15
Latin America & Caribbean	6	6	9	15	8	16
Central & West Asia	2	10	5	6	6	8
South & East Asia	1	1	2	2	7	4
Oceania	1	4	7	2	6	6
North Africa	1	3	1	1	1	4
Sub-Saharan Africa	0	2	1	0	1	0
Total number of countries	25	29	31	33	29	40

The first comment regarding the table above relates to the serious difficulty in finding women practitioners in regions where women are under-represented. We hear sometimes in arbitration conferences a call for help finding women practitioners in Latin America, Asia, Africa and the Middle East, and this need may indeed be confirmed.

Independently from this difficulty, it must be noted that the majority of the arbitrations involved parties from the regions the most represented in the table above, although the 801 filings in 2015 involved 2,283 parties from 133 countries and independent territories <sup>5</sup> but they are not predominant.

## II - Constraints in the Selection of Arbitrators

The selection of arbitrators is a multifaceted process and may entail difficulties in finding the appropriate arbitrators in given cases. Arbitration users want experienced and efficient arbitrators, who do not inflate the time and expenses invested in deciding a dispute. Users of course also want arbitrators who are independent, impartial and available. This summarises the expectations of the parties but defines some of the facets involved in the process of selecting arbitrators, which may at first sight seem straightforward. The other facets of the selection process may be more complex.

In some cases, the requirements of the parties, whether agreed upon in their arbitration agreement or subsequently, add to the elements in given cases. Those additional requirements constitute further constraints to be considered by the Court when appointing arbitrators.

<sup>4</sup> Ibid footnote 1

<sup>5</sup> See statistical reports on the ICC website at <http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Arbitration/Introduction-to-ICC-Arbitration/Statistics/>

By way of example of constraints stemming from parties' agreements, in an arbitration agreement a few years ago, the parties had indicated that "*any arbitrator(s) must be attorneys-at-law with at least 40 hours of certified arbitration training, have arbitrated or mediated or a combination of both 50 disputes, and be experienced in international transactions of goods*". Such requirements make it difficult to find appropriate profiles, whether men or women. In such situations, it may potentially be easier to find a man responding to such criteria considering that the number of men arbitrators is still nowadays greater than the number of women arbitrators, although this is changing. In addition to these requirements, the language of the arbitration, the applicable law, the expertise in a given economic sector are yet further criteria to keep in mind.

Another example is the case where parties object in their arbitration agreement to the appointment of a national from certain countries. This may seem futile if other elements, such as the knowledge of the language of arbitration and/or the law applicable to the merits do not add to such constraints, for instance a requirement of a non-Romanian arbitrator who spoke Romanian as recently occurred in one case.

When the Court confirms or appoints arbitrators, it must consider several elements.

First, prospective arbitrators must complete a statement of acceptance, availability, independence and impartiality ("Statement") (article 11(2) of the ICC Arbitration Rules). If prospective arbitrators disclose facts or circumstances which may be of such a nature as to call into question their independence in the eyes of the parties, the parties' comments are requested. Arbitrators may be confirmed by the Secretary General. If a party objects to confirmation, the Court may have to examine whether the arbitrators may be confirmed or appointed.

Second, the sole arbitrator or the president must be of a nationality other than that of the parties (article 13(5) of the ICC Arbitration Rules), unless the parties have agreed otherwise.

Third, in appointing arbitrators the Court must consider the prospective arbitrators' nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals. The Court must also consider the arbitrators' availability and ability to conduct the arbitration in accordance with the Rules (article 13(1) of the ICC Arbitration Rules). In this regard, the residence of the arbitrators is considered for the economy of the arbitration in cases where the amount in dispute does not warrant flying arbitrators to the place of arbitration. Also, the Court has refused to appoint arbitrators in a few cases where the prospective arbitrators were not able to hear the parties in the language of the arbitration and/or to draft the award in such language. The Court has also refused to confirm arbitrators whose availability was unlikely to enable them to devote appropriate time to the arbitration in which they were proposed.

As a result, considering all of these elements together, appointing arbitrators is far from being a straightforward matter. The process is time consuming. Moreover, the Court may face difficulties in finding appropriate profiles while trying to take diversity and gender into consideration.

When ICC National Committees or ICC Groups propose arbitrators to be appointed by the Court, they are encouraged by the Court to diversify the proposals and expand them to women and young arbitrators. The change is already visible; in recent cases, some National

Committees were able to propose more female prospective arbitrators than men to be considered by the Court in a given case. And in a very recent case, three of the four prospective arbitrators proposed were females. Likewise, when the ICC submits lists of arbitrators to the parties upon their request, the ICC includes women on those lists.

The Court also takes into consideration the profile of the prospective president who will sit with the co-arbitrators appointed by the parties. On occasions, it may be difficult for the time being in given cases to find women with confirmed experience in certain fields, such as in satellites-related disputes.

### **III - Change of Environment in the International Dispute Resolution Arena**

The world of arbitration has changed since the 1980s. The dispute resolution community was much smaller in the 1980s with very few practitioners from emerging economies until the 1990s. The population of dispute resolution practitioners has grown significantly since then, mostly as a result of post-graduate dispute resolution education programmes and various arbitration and mediation practice moots, which contributed to training several hundreds of young women and men. These new generations have gained experience through the years and increased the number of practitioners throughout the world, although in some countries the community of practitioners remains presently small and sometimes very small.

The age of the dispute resolution practitioners is younger. In the 1980s and 1990s the average age of the arbitrators was approximately 65-70 years. This average dropped to 55-60 years since year 2000. The age of women arbitrators is ten years younger.

Exposure of young practitioners including women and men has increased tremendously through the young arbitrators groups founded in the last decade by various organisations, including the ICC. Young practitioners are being given the opportunity to speak on panels and become visible. Exposure is also facilitated through the numerous newsletters published by organisations and law firms and news published on blogs to which young practitioners contribute. These exposures have helped young women and men become involved at higher levels and get appointed as arbitrators much faster than previous generations for whom such opportunities were not available until 15 to 20 years ago.

This global change is also visible in terms of diversity and of gender.

While diversity emerged slowly, the change is more visible in some countries such as UK, as opposed to others, for instance in Asia where in general it was more difficult for occidental practitioners –and, even more so, more women– to be accepted by local communities; they have started becoming progressively visible since year 2000.

Until recently, there were few women practitioners in dispute resolution with proven experience who could be considered for arbitrator appointments. This situation has changed mainly towards the end of the 1990s, even if the number of appointments remains scarce. In the past, women more often held positions as paralegals or administrative secretaries to arbitral tribunals or, when they worked on arbitration cases, they would remain back-stage and their names would not be listed among the lawyers representing a party in a case. In recent years, female lawyers representing the parties have become visible and have started more often to be appointed as sole arbitrators and presidents of arbitral tribunals and not only



as co-arbitrators <sup>6</sup>. Unlike older times, in one out of three to four ICC arbitrations women represent parties. Sometimes there are several women on each side, although it is difficult to know if and how many of them are lead counsel; the number is probably tiny. In a few cases, women sit as arbitrators in addition to the women acting as counsel on both sides, but this remains a minority.

The business and legal communities are increasingly aware of the imbalance in gender which lasted for centuries. What once was taboo or even a non-issue – because the dispute resolution environment was male dominated and the community was not preoccupied by the dearth of women until recently – is no longer an embarrassing issue to be avoided. Quite to the contrary, the topic has become fashionable and is at the centre of discussions, whether in public forum organised around the world or in private groups, reflecting for instance about ways for improving the number of women on arbitration panels.

#### **IV - Gender Equality and Unconscious Bias – ArbitralWomen’s Efforts**

Combined with the issue of diversity, the related subject of biases has become a true trend mainly since year 2015. One of the conferences dedicated to this field which may have inspired the following ones was the ITA Workshop in Dallas in June 2015 featuring “Subconscious Influences in International Arbitration”. José Ricardo Feris, Deputy Secretary General of the ICC International Court of Arbitration inspired the author to develop the subject of “Unconscious Bias in International Arbitration” that she has been organising around the world in her role as ArbitralWomen Board member. The first panel was jointly organised with the ICC in Miami in November 2015 and, following the huge success of the conference <sup>7</sup>, the event is being replicated in various cities around the globe. The success of this topic reveals the need to raise awareness and to reflect on situations of biases. It is fascinating to see the number of practitioners who have joined the debate all across the board including men and women. This by itself is a victory; it is one step further towards positive change and we must build on this momentum to change the playing field faster than in the past. Raising awareness is powerful when many join the movement.

“Unconscious bias refers to the notion that, despite our best efforts, our rational faculties are often overruled by preferences and prejudices of which we are not even aware” as defined by one author <sup>8</sup>. Bias infiltrates us unconsciously. We would be naïve to believe that bias does not exist in any of our decision making processes, whether in our private or professional life, considering that every human being has natural inclinations generated by the environment and the background. Computers function only on logic, human beings function with their emotions, preferences, and cultural, educational and social backgrounds, in addition to personal experiences. Bias may accordingly also influence the impartiality of arbitrators and may arise during the conduct of a procedure, the deliberations or the drafting of an award <sup>9</sup>. Unsurprisingly, bias also influences decisions related to gender, diversity, communities, young generations and any situation, given that preferences are intrinsic to human beings.

---

<sup>6</sup> Ibid footnote 1

<sup>7</sup> See report in ArbitralWomen’s [Newsletter issue 16 of December 2015](#)

<sup>8</sup> Paul Cohen “Bytes and Prejudice: Technology as a means to address unconscious bias in arbitration”, *Journal of Technology in International Arbitration (JTIA)*, 57, 2015

<sup>9</sup> See “*Arbitrator Decision-Making: Unconscious Psychological Influences and What You Can Do About Them*”, Edna Sussman, 24 *AM. REV. INT’L ARB.* 487 (2013))

Hence, is the under-representation of women in lead positions, on executive boards, arbitral tribunals, panels and speakers and so on a question of discrimination, unconscious bias or sharing power? <sup>10</sup> Sometimes, one of the three ingredients is the reason for under-representation, but it may happen that all three combine to be the explanation for unbalanced situations in certain circumstances.

Therefore, what can we do to eliminate or at least minimise the effects of unconscious bias, and how can we modify our decision making process? Raising awareness by discussing the issue in various forums, debating with a variety of groups around the globe, confronting ideas and acknowledging our perceptions are first steps towards possible change. This is precisely what ArbitralWomen has been doing and that Sylvia Noury has also been recently doing as discussed below. There are also many initiatives across the globe.

ArbitralWomen has been campaigning for gender equality in the dispute resolution business since its formal existence in 2000 (it started in 1993 as an informal group) through events organised around the world, its newsletters and several activities designed to support and promote women in this field. ArbitralWomen co-organised on 8 March 2013, with Anne-Marie Blaney, chair of CI Arb Ireland, its first International Women's Day to celebrate women as ADR leaders. The topic of the Day was "*Conflict Resolution: Peace, Practice, Perspectives*" <sup>11</sup>. The huge success proved to Anne-Marie Blaney and the author that such a forum must be repeated every two to three years to take stock of any progress in the field. A second edition took place on 16 March 2016 at UNESCO House in Paris, where the main topic of discussion was "*Women in Dispute Resolution: Evolution or Revolution?*" <sup>12</sup>. Regular discussions are taking place at conferences ArbitralWomen organises on the topic of unconscious bias. Finally, ArbitralWomen has co-published with the online journal Transnational Dispute Management (TDM) in July 2015 a special issue on the broader topic of "*Diversity in International Arbitration*" <sup>13</sup>. A book on "*Women Pioneers in Dispute Resolution*" <sup>14</sup> was likewise co-published in September 2015; it was part of a project on "*Gender Oriented Implementation of the ADR Instruments in the Western Balkan*", financed by the German Federal Ministry for Economic Cooperation and Development and implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH. The book showcases the stories of a number of women pioneers in any way in the field.

At the UNESCO conference, representatives of institutions (Sasha Carbone from AAA, USA, Mirèze Philippe from ICC France, Funmi Roberts FCI Arb from LCA Nigeria and Kathryn Sanger from HKIAC Hong Kong) also advocated the need for institutions, lawyers and parties to commit to change moving forward. The author urged all stakeholders and players in the industry to take an active role by officially committing to change, whether they sign a pledge or not, and by including women on lists of nominations. In addition, all players must publish reports and numbers every year in order to assess the progress and to reflect about other solutions if progress is not as fast as everyone expects it to be. The author also reminded that all should take an active role by encouraging organisers to include women on panels of speakers; ArbitralWomen has a few times refused to publicise events or participate in such events when organisers have not included women on the panels. The more

---

<sup>10</sup> Ibid footnote 1

<sup>11</sup> See ArbitralWomen's [Newsletter issue 8 of April 2013](#)

<sup>12</sup> See report in ArbitralWomen's [Newsletter issue 17 of April 2016](#)

<sup>13</sup> See TDM Special Issue on [Diversity in International Arbitration](#)

<sup>14</sup> Book on Women Pioneers in Dispute Resolution available on [ArbitralWomen's website](#)

practitioners stand against lack of gender diversity, the more the dispute resolution community will count with everyone's influence.

Moreover, diversity is an economic reality that practitioners should take into account because it adds value as everyone contributes something different. Gender equality is a means for economic development; societies in which gender equality is infringed perform poorly. Joy Lofthouse, who piloted Spitfires during the second world war, said that there were 164 women to fly the Spitfires and they were welcomed by men. But, the minute the war ended there were no place for the female pilots to continue a career as pilot - women were sent back to kitchens. Such biases have no logical explanation.

Change is possible, it is taking place, and the mission of everyone is to contribute to make it happen more quickly than in the past.

## **V - Equal Representation in Arbitration (ERA) Pledge**

Sylvia Noury, a partner at Freshfields, gathered a group of stakeholders at a dinner in London on 29 April 2015 to discuss the topic of unjustifiable under-representation of women arbitrators and potential solutions to cure this situation. Participants agreed that, by signing a pledge and encouraging practitioners in dispute resolution to do the same, those practitioners would feel more committed to improving the situation and reaching a certain balance. A draft pledge was discussed at every dinner organised around the world and was modified when necessary following the discussions, aimed at reaching commitments acceptable to the various players in dispute resolution.

The ICC International Court of Arbitration was represented by the author, who announced at the dinner that she had no doubt about the ICC's willingness to sign the pledge considering the efforts that the ICC had been undertaking in the last two decades, and more particularly recently by the current management of the ICC Court, Alexis Mourre, Andreas Carlevaris, José Richardo Feris, Alexander Fessas and Emmanuel Jolivet. The ICC has promoted more and more women at the Secretariat of the Court; eight of the ten case management teams are headed by women; and the teams in charge of Internal Practices, Documentation, Publications, ICC Arbitration & ADR Commission, and Promotion & Marketing are likewise headed by women. The number of female Court members has grown in recent years. Last year, Alexis Mourre, President of the ICC Court, nominated nine women and eight men as vice presidents of the Court. The Court has been particularly attentive in recent years to include more women on panels of arbitrators. In order to achieve a better number, the Court has just issued a note to the ICC National Committees encouraging them to favour gender diversity when proposing prospective arbitrators for consideration by the Court. The note also requested that the composition of nominations commissions should achieve generational and gender diversity in order to reflect the various components of local arbitration communities.

The Equal Representation in Arbitration (ERA) Pledge ("Pledge")<sup>15</sup> has now become reality and is being officially launched during GAR Live London on 18 May 2016. The Pledge, is already available for signature online<sup>16</sup>. Gender equality has changed in the last decade but

---

<sup>15</sup> See the Equal Representation in Arbitration (ERA) Pledge and Commentary on ArbitralWomen's website <http://www.arbitralwomen.org/Cooperation/Gender-Equality>. A dedicated website for the Pledge will be launched on 18 May 2016.

<sup>16</sup> [Click here](#) to sign the Pledge.

quite insufficiently and very slowly. So, the Pledge is the perfect tool to help speed up the path and is therefore timely. This is yet another victory towards improving women's representation in dispute resolution. The simple fact of gathering players in dispute resolution to discuss the problem and potential solutions has already had a positive effect, given that many players accepted to join forces and contribute to the change.

Before the Pledge was even officially launched, a few people and organisations signed it. ArbitralWomen was probably the first organisation to sign the Pledge at its conference on 16 March 2016 at UNESCO, where the Pledge was also signed by the hundred participants present at that conference. Chairperson Kaj Hobér and Secretary General of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) Annette Magnusson also recently signed the Pledge.

Andrea Carlevaris, Secretary General of the ICC Court, signed the Pledge on 8 May 2016. By signing the Pledge, said Carlevaris, the ICC confirmed once again its willingness to join forces with the international dispute resolution community to achieve a better representation of women on arbitration panels considering the number of talented women. Supporting this initiative and signing the pledge is consistent with the Court's policy in the recent years to see more women appointed on arbitral tribunals. Having these players rally the movement will certainly help to level the playing field, which would be difficult to achieve otherwise.

## **Conclusion**

While the numbers provided in the tables above reveal a small number of women arbitrators, it must be highlighted as revealed in table n°2 that change requires sustained efforts by all players. Thus, the onus for addressing gender equality is on all players in their various roles. As demonstrated in this article and the previous one by the same author <sup>17</sup>, change is taking place. In light of all the initiatives reported previously and reported in this article, the author is convinced that next year's statistics will show progress. It will also be interesting to see in a year how the Pledge has been implemented by the various players and the result of the efforts which will no doubt be undertaken.

---

<sup>17</sup> Ibid footnote 1