



ArbitralWomen/CI Arb International Conference, UNESCO House, Paris, 16 March 2016

President's Column

In 2013 and 2014, we recognised and celebrated a number of significant events. In particular, in September 2014, we celebrated the 20th anniversary of ArbitralWomen in London and, the previous year, in Dublin, we held the first International Women's Conference which questioned inequality in the workplace and sowed the seeds for initiatives to redress the balance. In the ArbitralWomen/CI Arb International Conference held at UNESCO House in Paris on 16 March 2016, we explored the ways in which we can achieve our goals and what the different players in the industry can contribute to the process of achieving equality and diversity. This edition of the Newsletter is dedicated to that Conference.

This Conference represented yet another new chapter in the life and work of ArbitralWomen. It followed hot on the heels of a few particularly hectic years of campaigning by ArbitralWomen for gender equality in the dispute resolution sector, including the very successful TDM publication on the broader topic of *'Diversity in International Arbitration'* last year. It seemed an opportune time to develop that theme and look for feasible, workable solutions, acceptable to all players in our industry.

One of the main objectives of ArbitralWomen is to promote and improve the role and position of women in the dispute resolution community around the world. To date, that objective has been pursued on a piece-meal basis. Now, through events such as this conference we are seeking to be a force for true progress. The time has come for a more concerted effort in not only taking a stand for equality and justice universally but also in pushing for it. The inequality and inequity of the current position cannot be permitted to remain.

Inside...

President's Column	1-4
Our Loss: Judge Judith S. Kaye	5-7
ArbitralWomen/CI Arb International Conference	
Introduction	8
Keynote Address by Hilary Heilbron QC	9-13
Reports from the Conference Sessions	14-23
Other highlights of the day in pictures	24-27
Conference Sponsors and Supporters	28
Stop Press	29
ArbitralWomen Activities	30
ArbitralWomen Board	31

ArbitralWomen thanks all contributors, and Alix Povey for her help in preparing this Newsletter.

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The Conference, therefore, took as its theme: ***'Improving the role of Women in Dispute Resolution: Evolution or Revolution?'*** By electing this topic we intended to cover the spectrum of ideas concerning a central notion - whether we need to take revolutionary action to achieve parity or whether we are content to amble along allowing matters to take an evolutionary course.

There are pros and cons in opting for either contention. We deliberately chose the theme because over the past few years even though there have been strides in the field of gender diversity and the campaigns for gender equality, the change has been slow and there have been many vociferous commentators who claim that in time things will improve. That type of complacency is not good enough. We want progress but what does that progress look like and what is the pace of progress that will satisfy all? I was not disappointed by the exciting possibilities the day brought!

With the participation of speakers from all over the world, from a variety of different practices, firms and institutions, the debate during the day was exciting, informative, interactive and, ultimately, encouraging. We were urged in various ways to play our part in improving the role of women in dispute resolution. We were very lucky that so many wonderful women had agreed to participate, including all the delegates.

The day started with an inspirational keynote speech by **Hilary Heilbron QC**: *'Positivity, Perseverance and Empowerment – the Road to Equality and Diversity'* in which Hilary urged women to seek out alternative ways to become better known in the international arbitration community and to gain more experience in dispute resolution.

One of the ways she highlighted was by women taking up tribunal secretary roles. She prompted ArbitalWomen to take an active role in promoting that stance which we certainly will be doing with our revamped website. Hilary's speech is reproduced in this Newsletter in full.

The first session, chaired by **Lucy Greenwood**, Norton Rose Fulbright (Marketing Director AW), with panellists **Erin Miller Rankin** of Freshfields Bruckhaus Deringer in Dubai, **Anne-Marie Blaney**, Chair CI Arb Ireland, **Juliette Fortin** of FTI Consulting in France (and Treasurer of AW) and **Nagla Nassar** of Nassar Law, Cairo, Egypt, set the scene for the overall theme of the Conference – *Improving the Role of Women in Dispute Resolution: Evolution or Revolution?*: Where are we with equality? How is inequality or bias manifested? What is the position in different parts of the world? Is there a 'natural course' for correcting the position? In particular, the panellists examined the real problem with pipeline leak – women leaving or dropping out of practice such that there are far fewer women at the senior echelons of the profession than at the entry level. If we do not retain women throughout the duration of their careers, we cannot hope to have an impact on the number of women at the top end of the profession. This session mentioned possible initiatives but at this stage of the Conference focused more on increasing awareness and highlighting the problems rather than finding solutions.

Session 2, chaired by **Clare Connellan** of White & Case (Events Director AW), with panellists **Toni Pincott** of Nera, **Joanne Prior** of Blackrock PM, **Laura Hardin** of Alvarez & Marsal and **Roula Harfouche** of Accuracy showcased the wonderful talents of a group of women operating in a tough professional and very male-dominated field: forensic experts.

The session explored how experts and lawyers can work together as a winning team and each speaker gave invaluable tips on how they have succeeded in a difficult field of

endeavour; tips which are capable of replication in the still male-dominated world of dispute resolution/the legal profession.

Session 3, chaired by **Gillian Carmichael Lemaire**, was a mock arbitration with a twist. The twist was a fun reversal of roles where the tribunal comprised junior female practitioners and the counsel were senior practitioners - something you would never see in reality! The tribunal comprised **Asoid Garcia Marquez** of UNESCO (Chair of Tribunal), **Marily Paralika** of White & Case as the Claimant's nominee arbitrator and **Ileana Smeureanu** of Jones Day as the Respondent's nominee arbitrator. Counsel for the Claimant was played by **Carine Dupeyron** of August & Debouzy and Counsel for the Respondent was **Ana Vermal** of Proskauer. This particular proceeding faced a number of (deliberate, scripted) problems, including a challenge against the Chair of the tribunal on the grounds of lack of impartiality and independence, very biased party-nominated arbitrators and a lack of understanding of the process by all players!!

Session 4, chaired by **Gabrielle Nater-Bass**, was also a fun session but dealing with a serious issue: lack of female tribunal members and in that sense followed on from the 'mock' position in Session 3. Session 4 was an Oxford style debate. The Motion was: *'This House believes that all Arbitral Tribunals should be required to have at least one female arbitrator.'*

The speakers For the Motion were **Olga Hamama** of Freshfields Bruckhaus Deringer in Germany (and co-chair of DIS40) and **Tuuli Timonen** of White & Case in Finland (and co-chair Young Arbitration Club Finland).

The speakers Against the Motion were **Ruth Byrne** of King & Spalding in London (and co-chair YIAG) and **Melissa Magliana** of Homburg in Switzerland (and co-chair ASA, member of YAWP executive Committee). Both teams fought a difficult battle. At the end of the day, the winner was gauged by the 'clap-o-meter' (the decimal din of applause). Ultimately, it was impossible to differentiate between the For and Against applause!

Just before Session 5 got underway, we aired a special video prepared by one of the delegates, **Armaghan Azhar** from Allameh Tabataba'i University in Tehran, Iran. I was extremely pleased that we had been able to secure the attendance of a delegate from Iran so soon after the lifting of the sanctions. She introduced the concept behind the video (to promote a book on women in Iran). You can view that video here:

<http://www.ciarb.org/news-views-events/events/awconf/presentations>

It is a very powerful portrayal of the role and potential of women.

Session 5 was intended to bookend Session 1 and to bring the theme full circle: what initiatives exist to help improve diversity and what more can we do? I chaired this session with panellists from each continent and from a variety of backgrounds: **Mirèze Philippe** of the ICC Court of International Arbitration, France (co-founder ArbitralWomen), **Sasha Carbone** of AAA USA, **Andrea Hulbert** of Hulbert Volio & Parajeles Costa Rica, **Funmi Roberts** of LCA Nigeria and **Kathryn Sanger** of Clifford Chance (and HKIAC). In this session we examined and discussed current and possible solutions to the following questions:

- a. *We need a variety of approaches to level up the playing field, and a variety of role models to demonstrate that there is no one 'right' way to achieve equality and greater diversity. What are the different approaches?*
- b. *What are the best ways to engage men in this pursuit for greater diversity?*
- c. *Unconscious bias has recently been a topic of discussion in relation to a variety of relationships. What can be done to eliminate or minimise the effects of unconscious bias?*
- d. *What are the initiatives that institutions have in the pipeline to improve the position of women?*
- e. *How do cultural differences affect diversity? How can we harness the positives from different cultures to improve diversity?*

For now, I have highlighted only the issues discussed. The answers will be uploaded on to the website in due course. Our new website will have a page dedicated to the papers and contributions from the Conference. Our membership will be notified as the papers for each session are uploaded on to the website.

The Pledge was then the subject of a separate session at which point I spoke briefly about the development of, and the reasoning behind, The Pledge. The Pledge is an important initiative instigated by **Sylvia Noury** of Freshfields to garner support from the legal community internationally to improve the representation of women on arbitral tribunals.

I announced ArbitralWomen's commitment to The Pledge. To add symbolism to the moment, I signed a hardcopy version of it and invited everyone there to sign it too, which they did. That document will be photographed by our very professional photographer, **Andy Barker** (who took all the beautiful photos on the day), and we will retain it on our website as well as in our archives as an "historical" document recording an historical moment for ArbitralWomen.

Just before dinner, **Mirèze Philippe** demonstrated some of the capabilities of our new website which will soon be fully functional. My thanks to her, on behalf of the Board, for her unfailing dedication to seeing this project through to fruition. It has been a hard road but she has prevailed, with good humour, against all the difficulties.

A day such as this is simply not possible to achieve without the assistance of a great team. On behalf of ArbitralWomen, I wish to thank and acknowledge the assistance of the **Chartered Institute of Arbitrators** for their invaluable support in partnering with us to make this Conference possible. In particular, I would like to thank **Anthony Abrahams**, the Director General of the CI Arb, for taking the initiative to increase female membership of the CI Arb and improve the involvement of women at the CI Arb. As we are kindred organisations with similar aims, I am very glad that this initiative is taking place through, and with the help of, ArbitralWomen. I would also like to thank **James Barrett**, formerly of the CI Arb, now at the United Nations Principles for Responsible Investment, who so graciously looked after all the arrangements, advised sagely and returned for the day to keep things in check for us! CI Arb has reported on the Conference in the following press release:

http://www.ciarb.org/news-views-events/ciarb-news/news-detail/news/2016/03/18/ciarb-and-arbitralwomen-promote-equal-opportunities-for-women-on-arbitral-tribunals?utm_source=Chartered%20Institute%20of%20Arbitrators&utm_medium=email&utm_campaign=6921384_eSolver%20-%20April%202016&utm_content=CIArb%20promotes%20equal%20opportunities%20for%20women%20on%20arbitral%20tribunals&dm_i=I8H,44CKO,FJO15A,EYLDD,1

I would also like to thank our photographer, **Andy Barker**, who did a fabulous job following us all around all day. She has produced magical photos including a photo of all delegates and speakers still there at the end of the day. Finally, on behalf of the Board of ArbitralWomen, I would like to thank all our speakers, sponsors and supporters who contributed to making the Conference a highlight of the year.

It is always difficult to end the column on a sad note but I wanted to pay tribute to a wonderful woman who passed away in January, **Judge Judith S. Kaye**, a judge in the New York Court of Appeals. She was a truly inspirational woman, a remarkable judge and a campaigner for the rights of women. I had the good fortune to meet her in Singapore in 2008 when she was embarking on a third career as an arbitrator. She was warm and encouraging. I want to remember her for what she said in her dissent judgment in *Hernandez v Robles* (2006), a case involving same-sex marriage but which applies equally and as forcefully to the discrimination still experienced by women today : *"The long duration of a wrong cannot justify its perpetuation, no matter how strongly tradition or public sentiment might support it."*

I believe that true dignity and human happiness consist of empowering women to acquire strength in all they do on an equal footing to men. Judith Kaye stood for the same principles and we pay tribute to her in this Newsletter. I am grateful to **Edna Sussman** for her tribute to Judith Kaye.

Rashda Rana SC



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Rashda Rana SC pictured at UNESCO.

OUR LOSS: JUDGE JUDITH S. KAYE

4 August 1938 – 7 January 2016



Judge Judith S. Kaye

It is with sadness and gratitude that I write these few words about Judge Kaye's life, a life impossible to capture on paper. I met Judge Kaye in connection with the creation of the New York International Arbitration Center. She was the driving force and made it possible. And she achieved that goal while making every one of us who worked with her feel her warmth and enjoy her humor. I offer here a short summary of her life and invite you to read the excerpts below from the article she wrote in 2012 for the New York State Bar Association Dispute Resolution Section entitled *Déjà Vu: A Personal Reflection on Women in International Arbitration*, reflecting on entering the world of international arbitration, which at that time had as few women as the law firm world had 50 years earlier.

Edna Sussman

On January 7, 2016, the New York community, and the world, lost **Judith S. Kaye**, a towering figure who left an indelible imprint on the New York courts and on New York society. She served for 25 years on the New York Court of Appeals, the highest court of the State of New York, 15 of them as Chief Judge. Judge Kaye joined the international arbitration community when she reached the court's mandatory retirement age of 70.

Judith Kaye was born in a small town in upstate New York to Jewish immigrants from Poland who had fled religious persecution. Her parents lived on a small farm and later, in their village, opened a women's clothing store in which Judith worked from the time her nose reached the counter. She attended a one-room schoolhouse and was so bright that she graduated from high school at 15, after skipping two grades. A 1958 graduate of Barnard College, Ms. Kaye sought to become a journalist. She worked for a short time as a reporter for the Hudson Dispatch in Union City, New Jersey and was assigned, as women generally were in those days, to cover society news. Thinking that it would help her in her goal of becoming an international reporter, she worked as a copy editor by day and took night classes at NYU Law School, from which she graduated in 1962, sixth in a class of 290, of whom just ten were women.

Following graduation, she joined the firm of Sullivan & Cromwell, one of New York's most prestigious firms. After a stint in IBM's legal department and working part-time as an assistant to the Dean of NYU Law School, while raising a family, she joined the firm of Olwine Connelly where she became the first woman to be named partner. In 1983 **New York Governor Mario Cuomo** appointed her to a vacancy on the Court of Appeals. Judge Kaye was the first woman to serve on that court. She was appointed Chief Judge of that court in 1993, a position she held longer than any of her 21 male predecessors.

As a judge, she was valued as a collegial consensus builder and wrote many significant majority opinions. Judge Kaye is widely regarded as one of the great American jurists. In cases involving education funding, free speech, and gay rights, she was a staunch defender of equality. She is also remembered for her dissenting opinion in a case in which a four-judge plurality ruled that same-sex couples did not have a constitutional or statutory right to marry. In that prescient dissent, Judge Kaye, relying on the equal protection clause of the United States Constitution, wrote: *"I'm confident that future generations will look back on today's decision as an unfortunate misstep."*

The New York legislature and the U.S. Supreme Court later came to the same conclusion. Lamenting the small number of women on the bench throughout the United States at the start of her judicial career, Judge Kaye launched her “red shoes” campaign, a proxy for urging the appointment of more women to the bench.

As Chief Judge she was also chief administrator of the 16,000-employee statewide judicial system. In the words of **NYC Mayor Bloomberg** *“She was a trailblazer in every sense of the word. She was the first chief judge to have a vision of a justice system that was not only blind to bias, but also centered on solutions.”* Among many other innovations, Judge Kaye created problem-solving courts that combined punishment with help by giving judges more options and defendants more opportunities, through counseling, treatment, and social services. She launched the commercial division to provide judges specializing in complex commercial matters. Under her guidance court-supported mediation centers were founded throughout the state. Committed to equality and equal participation by all in societal duties, she eliminated occupational exemptions for jury service (including for lawyers) which meant that even mayors and CEOs would have to serve on juries.

Upon leaving the bench, ever energetic and seeking opportunities to make a difference, Judge Kaye devoted herself to issues relating to improving the lives of children and, to our great benefit, she enthusiastically joined the community of international arbitration. She served with distinction on many arbitral panels and on various arbitration-related committees. Judge Kaye’s signal achievement in the international arbitration world was envisioning and launching the New York International Arbitration Center. Without her unique talent in cajoling forty New York law firms to participate in the venture there would be no Center today. Her determination and perseverance made it happen, an enormous achievement given the initial skepticism she faced. In a sign of admiration and an acknowledgment of her pivotal role in its creation, following her death, the Center’s Board of Directors, comprising a lawyer from each of the member firms, voted to bestow the honor of “Founding Chair” on Judge Kaye and to hold an annual lecture in her honor.

On a personal note, I would like to say that Judge Kaye was a class act. She was funny, stylish and had unmatched warmth. In the words of **Judge Albert M. Rosenblatt**, who sat with her on the Court of Appeals:

“It had never been attempted of course, but I would make an analogy to a blindfold tasting. I suggest that if the person with whom Judith was speaking was unidentified, an observer would not be able to tell whether she was speaking with a governor, a mail room attendant, a judge, or someone there to shampoo the rugs or take out the trash. She treated everyone with graciousness and good nature, with not a grain of haughtiness. That is what she was really like.”

Judge Kaye is survived by her three children and her grandchildren. Her husband, whom she met during her time at Sullivan & Cromwell and to whom she was devoted, predeceased her in 2006.



Edna Sussman, SussmanADR LLC

Excerpts from Judge Kaye's article: *Déjà Vu: A Personal Reflection on Women in International Arbitration*,

New York Dispute Resolution Lawyer, Vol. 5 No. 1
(Spring 2012)

I have a sense of "deja vu all over again" (to quote Yogi Berra) about the place of women lawyers, particularly in the fascinating world of arbitration that is increasingly a part of my life.

Getting Beyond The Front Door - I had my first real taste of being a female lawyer in a virtually all-male world in the early 1960's, still in the lifetime of many of our readers. One of ten women in a class of 300 at New York University Law School, I set my sights on the unattainable goal of a position in the Litigation Department of a major Wall Street firm.

I've heard Justice O'Connor – just a couple of years ahead of me at Stanford Law School – tell of her own extensive job-hunting efforts, which netted her an offer of a secretarial position in a major California firm. Ultimately I did better, securing a spot in the Litigation Department at Sullivan & Cromwell, but only after scores of written and oral rejections saying, in essence, "Our quota of women is filled." The only other Wall Street firm to offer me a position made clear that my compensation would be lower than my male classmates. Today, of course, that is illegal conduct. It's all much more subtle today.

What stands out for me is not simply that law firms did such things but that they did so routinely, openly, even proudly if they actually employed a woman attorney. But even more breathtaking is the fact that women were so accepting for so long. The reasons were, after all, perfectly sound, weren't they? Clients wouldn't have us; we would not be able to travel to distant cities with male colleagues; we couldn't work late (all-nighters were unthinkable); and we were in the law only to find husbands, then we would leave the profession...

Fast Forward Fifty Years - So imagine my disappointment, in 2009, as I settled into my "after (Chief Judge) life" at the great international firm of Skadden, Arps, to be greeted by headlines that for me harked back to the early days, like "Too Few Women Among Top International Arbitrators." In all the articles, the very same few women arbitrators, and single digit statistics, are featured. By now I can recite the names and numbers, not far above those 1962 law school statistics, despite female law school graduates topping fifty percent in recent decades. A Sorbonne professor is quoted as saying, "Of course progress is being made, but the progress is quite slow," the author concluding that "the dynamics of arbitral selection and the incentives at major law firms suggest that parity will be a long time coming." A dismaying message I am seeing played out in real life.

For me a number of the "explanations" offered – for example, that clients prefer experienced lawyers who project an image or gravitas with which they are familiar – resonate with sounds of the '60's. When I visited a recent meeting of ArbitralWomen, I saw lots of gravitas, lots of highly credentialed, highly experienced, highly impressive women. 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 fifty years as a woman lawyer, I question whether that ceiling is really made of glass, which generally symbolizes a fragile object.)

The Positive Signs Ahead - I have now collected several articles on the subject of women in international arbitration and learned of surveys on the subject which in a sense is good news. The imbalance, dismal though it may be, is being noticed, talked about. A sign on the wall of a client's facility decades ago left me with an unforgettable message: "People Do What You Inspect." Greater public consciousness, even in the very private arbitration world, matters. And there are simply more of us—more networking, more channels of mutual support and mentoring, more exposure, all of which translates into greater opportunity.

So though I am sorely disappointed that, half a century later, we seem still to be breaking the glass, or reinventing the wheel, the road ahead is distinctly more promising.

ArbitralWomen/CIArb International Conference: Improving the Role of Women in Dispute Resolution: Evolution or Revolution?

16 March 2016

UNESCO House, Paris

On behalf of both ArbitralWomen and the Chartered Institute of Arbitrators, thank you to all those who attended, participated in, or otherwise supported the recent ArbitralWomen/CIArb International Conference at UNESCO House in Paris.



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Opening of the Conference.*

As all those who attended will no doubt agree, the conference was a huge success and brought together a large number of successful women in dispute resolution for empowering and thought-provoking discussion. The participation of ArbitralWomen and CIArb members from around the world and from different levels of seniority in the profession made for a fantastic day and a rich exchange of ideas on how the role of women in dispute resolution could be further improved. You will all have seen what can be achieved through collaboration and we hope that you will all encourage other women in dispute resolution to join ArbitralWomen.

For those who were not able to attend, this Special Edition of the Newsletter includes a copy of **Hilary Heilbron QC's** keynote address and a few short articles summarising, and further interrogating, some of the topics discussed on the day. One message that stood out for me was the consensus that in order to improve the role of women in dispute resolution, we all need to do more to encourage men to engage with ArbitralWomen, and with the wider debate, all over the world. I hope you will all encourage the men you work with to join in the debate!



Louise Woods, Senior Associate, Vinson & Elkins RLLP (AW Newsletter Committee)

Keynote Address: Positivity, Perseverance and Empowerment – the Road to Equality and Diversity

Hilary Heilbron QC, Brick Court
Chambers, London



@www.andybarker.com

Hilary Heilbron QC delivering her Keynote Address.

It is a great honour to give this address this morning to such a distinguished audience and I feel very privileged to have been asked.

It is most fitting that today's conference should take place in this iconic Unesco building.

As Article 1 of Unesco's constitution provides, its purpose in summary:

is to contribute to peace and security by promoting collaboration among nations through education, science and culture in order to further universal respect for justice, the rule of law, human rights and the fundamental freedoms of the Charter of the United Nations without distinction of race, sex, language or religion.

Today, some 70 years after its inception, gender equality is firmly embedded as one of Unesco's two global priorities, for as it acknowledges, gender equality is not only a fundamental human right, but a necessary foundation for the creation of sustainable and peaceful societies.

Unesco's brief in this respect is wide ranging, attempting to tackle a huge array of problems around the world arising from all forms of gender diversity, from education to difficulties in the workplace and matched by a huge number of initiatives.

These wider issues in our global society provide the backdrop to today's conference seeking to improve the position of women in dispute resolution, particularly international arbitration.

We should recognise however that the progress of women in all walks of life is a reflection of their progress in society as a whole and the huge changes that have taken place in the last century, and dispute resolution is no exception.

Nor should we forget that international arbitration has an added dimension, because the issue is not, as in many other cases, a national one buttressed by the existence or otherwise of national laws to outlaw discrimination and prejudice.

The issue is self-evidently international. The parties, their lawyers and other participants, ex hypothesi, come from all regions and all countries.

As a means of dispute resolution it is cross-cultural, multi-religious and multi-ethnic.

This means that in discussing the need for improving the role of women in international arbitration we should not lose sight of the fact that this is only part of the goal towards a much wider diversity, as it should be in dispute resolution generally.

Arbitral tribunals and practitioners need also to reflect the breadth of ethnicity, religion and cultures represented by the participants whom they serve.

But today's conference, coming as it does a week after International Women's Day, provides a valuable opportunity to discuss the progress, past and future, of women in what one might term, the disputatious part of the legal profession, with particular focus on female arbitrators and arbitration practitioners.

However, no consideration of gender diversity in our profession is complete without giving it some perspective in the historical context of society as a whole.

Women arbitrators do not always seem to have had such a bad deal. Homer in the Odyssey speaking of Arete, (wife of Alcinous, the ruler of the Phaeacians) stated:

"She has plenty of decent common sense and, if she feels like it, she resolves their disputes – yes, those of the men as well."

In France for example in the Middle Ages, although women had been precluded from being arbitrators by canon law, this does not appear to have extended to queens, princesses, duchesses and other women of distinguished rank who could be chosen as arbitrators and make legal awards.

Women's plight deteriorated in society more generally in many countries, including my own, England, in the late eighteenth and nineteenth century as societies moved from agricultural to a manufacturing and industrialised base and women's role in the legal arena was no exception.

Women came to be regarded as inferior beings, subjugated to their husbands. This led to far reaching rights being given to the husband: for instance as to the wife's property, to the custody of the person, to the administration of chastisement; and to consortium and service.

It reached its nadir in the Victorian Era, when England's Empire stretched far across the world, exemplified by Queen Victoria herself, who, in a letter to Theodore Martin, wrote:

"The Queen is most anxious to enlist everyone who can speak or write to join in checking this mad, wicked folly of "Women's Rights", with all its attendant horrors, on which the poor feeble sex is bent, forgetting every sense of womanly feeling and propriety.... It is a subject which makes the Queen so furious that she cannot contain herself. Woman would become the most hateful, heartless and disgusting of human beings were she allowed to unsex herself; and where would be the protection which man was intended to give the weaker sex?"

She was certainly no female emancipist.

A century ago women's expectations were very different and it was largely the two world wars which brought about a change in aspirations and ambitions, as women recognised and relished the fact that they could work, having done so during the wars.

If we look back to 1916, a hundred years from today, in neither the UK, USA nor France, did women even have the vote, which was not granted respectively until 1918 (and universally 1928); in 1920 in the USA; and only 1944 here in France.

And in England women were not allowed to enter the professions until Sex Disqualification (Removal) Act 1919.

Moreover in England, in 1918 the Income Tax Act classified married women as incapacitated persons along with infants and lunatics.

There were no maternity – or paternity rights, quotas, targets, crèches, flexible working. Women had to just get on with it. It was a different era.

And many millions did: not just those who worked in the professions or better paid jobs, but the armies of women who worked just to make ends meet: cleaners; nurses; factory workers – they could not afford child care – they managed with the help of families, but it was very tough.

It is really only relatively recently that legislation and other initiatives have been introduced to promote equality and outlaw sex discrimination.

Statistically the great leap forward has been in the number of working married women and women with children, previously financially supported by their husbands, who now work, single women always having the incentive to earn their own living.

But even today women face struggles to break glass ceilings: not slip on slippery floors and be able to be sufficiently acrobatic to "lean in". There undoubtedly remain barriers, gymnastic or otherwise, to progression for women, although they are receding.

Not a day goes by when we do not read of some new initiative, book, personal success story or, more likely, lack of success story relating to women.

Nor will there be many of us lawyers in this room today who do not have their own tale of discriminatory attitudes and actions, whether small or large, to tell.

We have all heard the excuses historically trotted out to justify lack of equality for women: women do not have the staying power; they do not have the desire to be at the top; their voices are not strong enough to be successful advocates etc. Women tend to be judged by different criteria from men.

When I started at the Bar in England, it was rare indeed for there to be another woman at conferences with clients. I was the only woman in my chambers for ten years and there were only two or three women practising in the Commercial Court where I practice. Such experiences will be replicated by many in this room.

But my story pales by comparison to my mother's in the middle of the last century, England's first woman judge and first joint Queen's Counsel.

While historically there have been pioneers and individual success stories which have given encouragement to women to follow a legal career, it is abundantly clear to me that the driving force to the increased empowerment of women lawyers today has been the sheer unstoppable tide of women entering the workforce worldwide and in the context of today's conference, entering the legal profession, the numbers now exceeding those of men.

In its wake this sea change to the face of the workplace has brought very different expectations from women from those even twenty years ago. Women will no longer put up with the attitudes and lack of equal opportunities that their forbears did - and rightly so.

It has, in turn, led male lawyers

- to acknowledge the inevitability of a high proportion of female colleagues;
- to accept that their presence has not led to forensic Armageddon;
- to appreciate that women represent a vast untapped pool of immense legal talent;
- to recognise that their clients likewise comprise numerically many influential women;
- to recognise too the imperative to do something about it; and
- to try to eradicate systemic gender bias in their firms and organisations.

Great strides have been made in the law including international arbitration, but arbitral appointments in particular have lagged behind and it is that which I wish to discuss this morning.

Why is this and what can be done about it so as to empower women further to become arbitrators?

The question has to be addressed at two levels: generically and individually.

But first it is important to acknowledge that the function of an arbitrator is to be an independent and impartial judge determining, in usually an unappealable way, a party's dispute.

An arbitrator brings to bear not only his or her experience of legal disputes, but also the ability to step back into the neutral arena of assessment of witnesses, evidence and law and decision making.

It is different from being counsel, although it is something many of us combine with our practices as counsel. Just because you are a good counsel or lawyer does not

necessarily mean you are a good arbitrator and vice versa – as with everything one needs to prove oneself.

At the generic level, there is no doubt that bodies such as ArbitralWomen and the Chartered Institute ("CI Arb"), and those who have devoted their energies to them, have done an enormous amount to raise awareness of the issue of the dearth of female arbitral appointees and to change gender attitudes to dispute resolution. This excellent conference is but one of many examples and you will no doubt hear of more today.

Many other initiatives are and continue to be taken around the world by various bodies involved in international arbitration and by institutions. Legal firms have diversity programmes for their associates and partners.

Collective pressure can have an added force. Collective bodies can provide solidarity as well as an opportunity to share issues and remedies and to seek mentors and guidance from those with shared experiences.

But at a generic level, there are wider issues at play. For however well-intentioned statements of intent are, it is actions which count and there remain impediments to fulfilment of equal opportunity. Let me mention three:

In particular, in order to be an arbitrator, one needs to have experience. Parties do not want lawyers to cut their teeth as an arbitrator on a major case and their lawyers are understandably reluctant to recommend novices whether male or female. Institutions, unburdened by client relationships, are more willing and frequently do try out new arbitrators.

The problem is that, as with judges in those legal systems where there is not a separate judicial profession, the pool of experienced female legal practitioners of a certain age is smaller than the pool coming up, something which should be self-rectifying in a few years. But the statistical imbalance does not fully explain the current limited number of female appointments.

Another key problem is the impact of cultural issues and the different attitudes towards women and in particular women professionals in different jurisdictions.

Finally, while lawyers may feel under pressure to put forward women as arbitrators, it is the client who makes the final decision. Absent it being unlawful not to choose a woman, we come back to the issue of attitudes to women in society as a whole and that too takes time. My sense is that it is less our legal colleagues, but the lay client, who does not always feel comfortable having a female arbitrator when it expects the other party's arbitrator will be male.

However, ultimately one's success as a lawyer, an arbitral practitioner and as an arbitrator is an individual accomplishment. A good female lawyer in a not very gender progressive firm may excel – a lone star in the firmament, but a bad lawyer in a diversity friendly firm may not.

Too often there is not enough consideration given by individual lawyers and prospective arbitrators as to what they can do to promote themselves, relying too much instead on a change of attitude towards women – a rather nebulous concept which may or may not happen in certain quarters and is by no means a cure-all.

Positivity and perseverance and a little patience are, in my view, key bywords to women's progress and success in the arbitral marketplace. Negativity and defeatism should be eschewed.

It is often said, and I believe in many cases with some justification, that it is a characteristic of women that they are not sufficiently assertive. It is not a criticism – it is how many women are – but we should recognise it and deal with it.

At one level: why let a male colleague take credit for your idea, why let a male colleague dominate the conversation, why not display some humour rather than always laughing at their – often bad – jokes.

But at another more important level I mean assertive in the sense of not expecting work or appointments to fall into one's lap. A professional reputation as an arbitral lawyer needs to be established as a first step to being an arbitrator.

But how does a firm of lawyers in Korea know about you, whether you are a good and experienced lawyer and arbitrator unless they have read your work or met you or know of your reputation, whether you are a man or a woman.

This can only be done, by writing articles or books, attending and eventually speaking at international arbitral conferences, making yourself known to institutions and getting known as a very competent practitioner and we will no doubt hear more practical ideas as to how to achieve this and how to overcome the various obstacles facing women, as today's conference progresses.

But if a novice English speaking male arbitral practitioner practising in France can get an appointment from a Far Eastern Party for example, why should a woman not try to follow the same trajectory.

There are practical issues too if one is working in a firm of lawyers who are reluctant to release lawyers, whether male or female, to act other than occasionally as arbitrators as, although it carries esteem, it does not produce profit for the firm in the way acting as a lawyer does. And then there are

the conflicts that firms throw up.

Opportunities, unless one wants to be a full-time arbitrator, are therefore limited in any event.

Success in the legal profession generally does not come overnight. There will be knocks - we have all had them - but women should not allow themselves to be driven off course. Women need to be resilient and instead analyse whether there is something extra that they can do next time and be dogged in their determination to attain their goals.

But it also requires a positive attitude. Too often there is a knee jerk reaction that a failure to succeed, whether as a legal practitioner or as an arbitrator, is because the individual is a woman. I have seen this reaction by women lawyers so many times in my career.

Sometimes unfortunately, particularly in the past, this has been the case, but more often today it is not or at least not the whole reason - and for every failure to get a case as a lawyer or counsel or an appointment as an arbitrator, there may well be an opportunity because you are a woman given the almost universal acceptance of the need for gender diversity.

Such negativity should, in my view, be replaced with the self-confidence and self-belief that you can succeed if you are good enough and work hard enough. But equally it is imperative that if an opportunity to sit as an arbitrator comes one's way, one uses it to shine by good preparation, speedy responses and a display of knowledge and understanding of the issues.

It really does not help an individual woman's cause to be constantly looking over her shoulder to blame someone or something else, rather than finding a path to achievement. That is not to say that there may well be occasions where the discrimination or prejudice is so blatant that something needs to be done about it, but merely e.g. because a male colleague gets more appointments than you should be the incentive to go out there and try to get more yourself.

In all this there is also one elephant in the room - and that is that at an individual level many women lawyers, not all by any means, surprisingly do not support women either by appointing them as counsel or arbitrators – I wonder how many women in this audience have suggested a woman arbitrator.

Let me conclude with a suggestion:

One way that lawyers can get known internationally for potential arbitral appointments is by acting as Arbitral Secretaries. Arbitral Secretaries provide a marvellous apprenticeship to being an arbitrator. A lot of tribunals do not use them because they have to pay for them themselves or because they do not know suitable candidates.

I would like to propose that ArbitalWomen and the Chartered Institute - and for that matter other institutions - introduce an online database or roster of people willing to act as Arbitral Secretaries for free, save for their reasonable expenses, to which those willing to take on the role can have their name and cv added. It should be open to men too.

It would require agreement of their firms to release the individual, but it would go on the person's cv and expose them to the international arbitrator circuit. It has the added attraction to firms to agree to release the individual in that it will be seen as a positive initiative towards gender diversity and will not be as time intensive as releasing one of the team to sit as an arbitrator.

Most professions have on the job training of real life situations, but there is no on the job training for arbitrators and mock situations can only be second best. Hopefully, if taken up, this initiative will encourage more arbitrators to use Arbitral Secretaries, even if their role in a particular case is limited, so as to provide valuable experience to aspiring arbitrators.

So my message to women involved in all aspects of dispute resolution is to be individually positive, persevere, be resolute and not give up and with a little patience combined with the wider initiatives that are being taken, more and more women will be empowered on the basis of equality to achieve their goals whether as lawyers, arbitral practitioners or arbitrators.

For all the difficulties that women still face, there is also today a surprising amount of goodwill towards increasing gender diversity.

Anticipating the first session, as you will have gathered, I am an evolutionist: not a revolutionist – and that is probably a good time to stop.

Hilary's proposal in her Address relating to the creation of a roster of candidates, both men and women, willing to act as Arbitral Secretaries for free as a step to becoming known internationally for potential arbitral appointments has received considerable publicity including a reference in the Law section of the UK newspaper The Times on 17 March 2016 and in GAR on 21 March 2016. In comments to GAR Hilary welcomed the debate that has ensued and recognised that the issue of who paid for or subsidised the Arbitral Secretaries in particular situations: their firms or the tribunal, would need some refinement.

In her Address Hilary mentioned that her mother was England's first woman judge and first joint Queen's (or in those days King's) Counsel. Modestly, she did not mention that she is the author of her mother's biography, "Rose Heilbron: Legal Pioneer of the 20th Century: Inspiring Advocate who became England's First Woman Judge". I highly recommend reading her fascinating account of her mother's outstanding life. Hilary notes that when Rose was sworn in as a KC in April 1949 "women were only just beginning to climb the equality ladder." Whilst she points out that the situation today "is a far cry from 1949", her meticulous narrative of her mother's life is also an important reminder of the time it has taken (and still is taking) for progress to occur and of the issues that women continue to face from one generation to the next in their quest for equality.



*Gillian Carmichael Lemaire, Newsletter Director, FCI Arb
Founder, Carmichael Lemaire (Paris)*

Reports from the Conference Sessions

Report from Session 1: *Evolution or Revolution: What are the ways in which we can improve the role of women in dispute resolution?*



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Session 1 panel, L to R: Lucy Greenwood, Erin Miller Rankin, Anne-Marie Blaney, Juliette Fortin and Nagla Nassar.

The panel was chaired by **Lucy Greenwood**, FCI Arb, author of *Getting a Better Balance on International Arbitration Tribunals*, Arbitration International 2012, vol 28 and *Is the Balance Getting Better? An Update on the issue of Gender Diversity in International Arbitration*, Arbitration International 2015, vol 31. The panel comprised: **Erin Miller Rankin** ACI Arb, Freshfields, Bruckhaus Deringer, Dubai, **Anne-Marie Blaney** MCI Arb, CI Arb Republic of Ireland, **Juliette Fortin**, FTI Consulting, France and **Nagla Nassar**, Nassar Law, Cairo, Egypt.

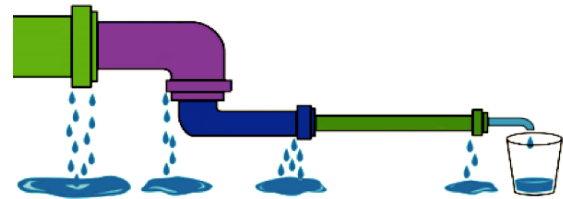
Lucy Greenwood began the discussion by asking the audience to visualize pairs of occupations and attribute a gender to each one. This exercise emphasised the effect of gender stereotyping on each of us and sensitised the audience to the fact that unconscious bias is intrinsic. Lucy emphasised the tiny percentage of women sitting as arbitrators by reminding the audience that there is the same proportion of female arbitrators as there are female construction workers (around 6%). She also noted that although there is a higher percentage of female partners in law firms, if female partners continue to be promoted at current rates it will be 2115 before there is parity. Lucy quoted Sheryl Sandberg, the influential author of *Lean In* and chief operating officer of Facebook. Apparently Sandberg dreams of a future where there will be no female leaders...there will just be leaders. Lucy noted that she shared this sentiment with regard to arbitrators.



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Comments from the floor from Monica Feria-Tinta.

Juliette Fortin reviewed the statistics showing the representation of women in different roles in the dispute resolution field and discussing what has been termed “pipeline leak”, represented below.



Amongst other statistics, the panel noted that ICSID tribunals in 2006 comprised 3% of women, whereas this rose to 5.61% in 2015 (although **Gabrielle Kaufmann-Kohler** and **Brigitte Stern** accounted for 75% of the appointments of women). Juliette noted that in 2011 around 6% of arbitrators were female and she contrasted this with representation in the judiciary, which was 15% in the UK, 30% in the US and 54% in France.

Anne-Marie Blaney said that enhancing gender equality ensures economic and business benefit. The introduction of legislative gender quotas in the 2016 Irish General Election and the appointment of a Ministerial Panel of Adjudicators under the Construction Contracts Act 2013 reveal diverse challenges and responses. The Electoral (Amendment) Political Funding Act 2012 s 17 (4 b) addressed biases by legislating for the use of gender quotas for candidate selection on an equal representational basis. The Act applies to qualified political parties, with a reduction in party funding as a sanction for non-compliance.

Historically, Ireland has trailed behind the EU average of 28% female representation with 16% (139 men/27 women) elected members of parliament following the 2011 general election. The Act was a success in achieving greater diversity. The number of women running in the 2011 election doubled to 30%. There was an increase of 6% to 22% in terms of elected women. Prior to the legislative measure, a government committee heard that a 2008 EP study noted that [European Parliament's Committee on Women's Rights and Gender Equality on 'Electoral Gender Quota Systems and their implementation in Europe'] '[t]he selection and nomination process is sometimes called 'the secret garden of nomination... Although voters may be able to choose candidates, they do so only after political parties have limited the option. Thus parties are the real gatekeepers to public decision making bodies.' In an unsuccessful High Court challenge to the legislation [Mohan v Ireland and the Attorney General, High Court 2016, IEHC 35], the State's expert witness Dr Buckley highlighted that the gender quota and sanction is to shape the conduct of political parties. The sanction is not criminal in nature and the purpose is to create a legal norm in a manner that is not strictly coercive, not limiting for full participation in the electoral process and promoting affirmative actions. It is a fast-track measure that is effective in a shorter time (2016 and the following election). It is also gender neutral as it provides for equal representation for men and women.

The second example discussed by Anne-Marie was the appointment by the Irish government of an all-male panel of thirty Adjudicators for a five year period in November 2015 pursuant to criteria under Section 8 of the Construction Contracts Act, 2013.

There is excellent occupational diversity on the successful panel in terms of engineers (8), barristers (4), solicitors (3), architects (7), quantity surveyors (3) and chartered surveyors (5). The low number of female Architects, Engineers, Surveyors and Fellows of the Chartered Institute of Arbitrators demonstrates that very few women may have even submitted an application. However the higher 51/49 % female/male ratio for solicitors and a 60/40 % male/female barrister ratio, suggests that women candidates might be sourced. This example is indicative of the 'strong gender patterns in relation to subject choice at third level education with men dominating in engineering and related subject areas and women dominating in health, welfare and education, which impact on women's future lives'. [Towards Gender Parity in Decision Making in Ireland- an initiative of the national women's strategy 2007-2016.] An emphasis on diversity to challenge traditional stereotyping and biases is a common goal. Mentoring-building confidence and supporting female participation are ways to improve participation. The active contribution, support and participation of men are essential. Visionary initiatives such as the 'Women for election' campaign succeeded in the aim to 'Inspire-Equip-Inform' for public life. Tailored programmes, networks, advocacy and campaigning are essential. Data capture, review and analysis are also essential to enhancing gender diversity, Anne-Marie noted.

Erin Miller Rankin discussed how the representation of women has evolved over the years. Erin noted that international arbitration is still very much an emerging market and often we forget how 'young' the practice of international arbitration is. Erin also noted that we needed to remember why diversity in arbitral tribunals is important in the first place,

such as ensuring the retention of top talent for the tribunal and benefiting from various advantages that women arbitrators offer to tribunals. The problem still remains that the pool of senior female arbitrators is small. However, that is by far not the only issue. Parties and institutions need to avoid appointing "old faithfuls" as that leads to cementing existing bias. She felt that no one part of the arbitration community seemed to want to take responsibility for gender diversity and it was difficult to ensure that everyone works together to improve female participation in this field. Erin also said there was a need for transparency at the institutional level, quoting the business mantra: "if you can't measure it, you can't manage it".

Finally, the panel considered other jurisdictions where women face additional obstacles in carving out a career in international dispute resolution.

Nagla Nassar stated that the progressive evolution of women's status as professionals is hindered by cultural factors, particularly in the Middle East. In Egypt, 60% of law students are women and 40% of Egyptian households are supported by women, yet women are still underrepresented in all professions and on all levels because of cultural factors. Nagla noted that there are both cultural conceptions that can internally affect a woman's decision making process and cultural biases which impact her status through external elements - those concepts with which women are raised in order to fulfil a limited, pre-conceived, role as a mother and obedient housewife. Nagla said that women in Egypt are taught very early in life that real success is measured by their ability to fulfil such a role and that no alternative route will provide her with social status or security.

The route to such success requires her to be passive, accommodating and, above all, “a giver capable of self-denial.” These, of course, are not recipes for professional success or advancement. Upon graduation, women opt for the less visible jobs reflecting the values which have been ingrained in them. Nagla noted her feeling that there is a cultural belief that women are biologically different and, hence, not capable of carrying out professional duties to the fullest. Nagla also indicated that it is difficult to rationalise this in the face of the above mentioned statistics showing that 40% of households in Egypt are being supported by women and women represent the majority of university students.



Lucy Greenwood, Foreign Legal Consultant, Norton Rose Fulbright LLP and ArbitralWomen Board Member

Report from Session 2: Experts and Lawyers: Building a winning combination

The second session was a panel discussing best practices for the lawyer-expert relationship.

When lawyers and experts work together, the quantum expert has a significant role to play - not only in valuing our clients' claims but also in helping lawyers to understand how best to explain and present the claims to tribunals. Four leading quantum experts shared their experiences to provide practical tools for that working relationship: **Toni Pincott** (Nera), **Joanne Prior** (Blackrock PM), **Laura Hardin** (Alvarez & Marsal), and **Roula Harfouche** (Accuracy), moderated by **Clare Connellan** (White & Case). The experts discussed: (i) how and when to involve the quantum expert, including in bifurcated cases; (ii) how to gather the data and information needed for the expert's assessment; (iii) how to prepare expert testimony; and (iv) how to build your career, challenging the way lawyers and experts think about appointments.



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Session 2 panel, L to R: Clare Connellan, Toni Pincott, Roula Harfouche, Joanne Prior and Laura Hardin.

Early Involvement

Involve the quantum expert as early as possible. The advantages of doing so include: allowing the legal team to get an early and reasonably accurate idea of the likely loss amount, vetting possible claim and loss scenarios, and ensuring consistency between the various submissions. Early involvement is also appropriate in cases that have been bifurcated into liability and quantum phases. Comments about the quantum (including, for example, appropriate approaches for valuation) may be made at the liability phase, and involving the expert in those discussions will avoid inconsistencies in approach between the phases. The advantages of early involvement outweigh the additional costs that may be incurred. If a client remains reluctant to incur such costs, then consider at least interviewing and appointing experts at an early stage, if only to ensure that the other side does not appoint your preferred candidate.

Legal and client teams should work closely with experts following engagement. Experts can review and comment on submissions, develop document requests, identify topics for inclusion in witness statements, and develop strategies for cross-examining opposing experts. Keep quantum experts informed throughout the proceedings as, for example, new strategies may have an impact on damages.

Maintaining independence is important. Experts welcome constructive dialogue, and it is in the client's interest to have a credible expert, not one repeating the party line and likely to be ignored.

Data Gathering

Teamwork and communication between expert, client and counsel teams is essential. The client needs to understand the role of the independent expert and the expert needs to be aware of the roles of the various stakeholders and their motivation(s) with respect to the dispute (*i.e.* money, reputation, and so on).

Contemporaneous documents are important in helping an expert form and support her opinion. Face-to-face meetings with client representatives as well as written document requests can both be used to ensure that the expert has sufficient information about all relevant issues.

Data management can be expensive, particularly in large international arbitrations. Potential costs as well as data management tools (including those used by the client) should be considered at an early stage.

Preparing to Testify

The jurisdiction of the case often affects how and in what way lawyers will prepare expert witnesses. Regardless, it is important that experts be prepared to present their opinions in a way that is useful for the Tribunal.

Start early and finish early. On large cases, it may be appropriate to begin preparing an expert two or three months in advance of a hearing. Last minute changes to the scope or content of an expert's testimony as well as late night sessions the day before testifying are to be avoided. An expert needs to be well-rested and alert when testifying.

When preparing with an expert, it is important for a lawyer to listen carefully so as to ensure that the expert's testimony will be accessible and consistent with other aspects of the case. Mock cross-examination or "attorney questions" are a particularly useful form of preparation for experts. Practice questions can alert the expert to additional lines of attack or weakness in the opinion that the expert may not have been able to identify herself.

Consider a presentation for direct examination. A presentation provides an expert with an opportunity to explain complex but important points as well as to engage in a direct dialogue with the tribunal.

Be wary of re-direct. Re-direct examination can be the most stressful part of testimony for an expert. Lawyers should listen carefully during cross-examination, as an expert may indicate certain topics that they would like to discuss on re-direct. Lawyers should also consider discussing possible re-direct topics with the expert in advance and using the expert's second chair to assist in the preparation of re-direct questions.

Expert conferencing (also called "hot tubbing") can be effective, but it is important to consider the seniorities and the personalities of the experts involved. The experience can be improved for an expert where the lawyers have developed a set of rules (*e.g.* time limits, speaking order).

Anchoring – the repeated use of certain reference points during testimony – can be persuasive to a tribunal. The experience of the panel suggests that this technique may develop naturally from the themes that have been identified in the reports submitted prior to any testimony. When using this technique, it is important for an expert to maintain her independence and not to become an advocate.

Experts can also play effective roles in mediations. Quantum experts can, for example, make interventions designed to educate the mediator or be available for side-meetings with the parties, other experts, and the mediator as needed. When determining the expert's role, consider whether the expert will become privy to without prejudice information and whether this will affect the expert's ability to testify should the mediation be unsuccessful.

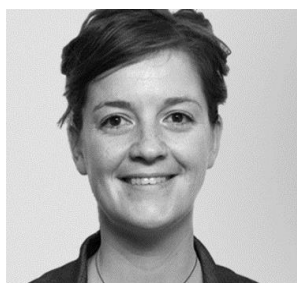
Building Your Career

The selection of an expert witness is important. Quantum experts have historically been male and from Western Europe or the US, often from larger firms. This is particularly so in construction cases. Be aware of your own possible unconscious bias when considering potential experts. Rather than focus on what an expert has looked like in the past, focus on the needs of the case as well as the availability of potential experts. Consider appointing women.

Develop your reputation. Make sure that you are getting noticed by those that work with you and put time into making sure that you are being recognized for the skills that you have. When doing so, be yourself, focusing on the characteristics and skills that you can bring to the table. Although it may be difficult or unnatural, it is important to talk about your skills and accomplishments with those in your industry.

Build relationships and develop skills. Consider attending internal and client events in order to raise your profile. Consider asking your firm for a coach/mentor or reaching out to an organisation like ArbitralWomen to assist in building contacts as well as marketing and advocacy skills.

Get your first appointment. A significant challenge in the career of a quantum expert is getting your first appointment as a testifying expert. To overcome this challenge, focus on hard work, remaining credible and balanced, and ensuring all those in the room will give you a good recommendation. Also consider finding smaller cases and seeking out other opportunities such as depositions in the U.S. Remember that, regardless of age or gender, an expert testifying for the first time is going to be well prepared.



*Clare Connellan, Partner,
White & Case (top) and
Kirsten Odynski, Associate,
White & Case*

Report from Session 3: *Mock Arbitration with a Twist*



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Session 3 panel, L to R: Gillian Carmichael Lemaire, Carine Dupeyron, Marily Paralika, Asoid Garcia-Marquez, Ileana Smeureanu and Ana Vermal.

A script for Session 3, a mock arbitration with a twist, was cleverly written by **Rashda Rana** and had the dual benefit of keeping delegates wide awake right after lunch by its sheer entertainment value, and raising a number of procedural and substantive issues which were commented upon by the session's Chair, **Gillian Carmichael Lemaire**, as the hearing (a Preliminary Conference) progressed. As mentioned in Rashda Rana's President's Column, the twist was an unusual reversal of roles: the tribunal members were played by the more junior practitioners and the counsel were senior practitioners. Our "actors", tribunal **Asoid Garcia Marquez**, **Marily Paralika** and **Ileana Smeureanu**, and counsel **Carine Dupeyron** and **Ana Vermal**, although initially concerned that the audience would conclude that they were incompetent given the misunderstandings of the process written into the script, soon threw themselves into their roles and had as much fun as their audience. They clearly did not become lawyers for nothing and are to be congratulated on their acting ability!

In addition to her role in Session 3, **Carine Dupeyron** kindly agreed to let us have her reflections further to the Conference (below).

Gillian Carmichael Lemaire

Using Force Tranquille: How Today's Women, Together, Could and Should "Have It All"

I was asked, as a panellist during the International Conference at UNESCO House, whether I would be prepared to write brief comments on the Conference and share personal views about the topic(s) discussed. I enthusiastically accepted and here I am, tackling for the first time in writing the immense theme of Women and their place in the world of Dispute Resolution, specifically in the Arbitration community, and touching on the even wider subject of Women and the management of their careers.

There are two angles to this debate that I would like to raise: the first one is a classic view from the "outside": what can be done to encourage women in our profession, to avoid seeing a dwindling number of women colleagues as the years pass by, in short to have an equal representation of women and men representing clients and sitting on panels. On that question, I will ground my personal reflection in the vivifying Oxford style debate that we heard on 16 March at UNESCO House, which focused on the classic and always polemical discussion on quotas, that is whether "all Arbitral Tribunals should be required to have at least one female arbitrator". The second angle has its source in more internal debates that many women lawyers have had, and sometimes have expressed – but not always... - during their professional careers: how, in this profession, can we set things up so that women can "have it all"? I was inspired in this thought by an enlightening article by Anne-Marie Slaughter, published in the Summer of 2012, and provocatively entitled "Why women can't have it all." I can only recommend reading

her short paper (available at <http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020/> or listening to her talk recorded at TEDGlobal https://www.ted.com/talks/anne_marie_slaughter_can_we_all_have_it_all).

Obviously, my purpose here is not to provide solutions to these much debated topics. Numerous essays, theses and other thorough studies have been made and are available to any interested person. Rather, I would like to share my conviction that Generations X and Y will continue to discuss, explore and invent their own solutions to achieve the fair and desirable objective of equal representation and equal success of women in the international arbitration community.

The solutions are multi-faceted and will be adapted to each person, male or female, who considers that the objective of gender equality in arbitration is worth making the effort for, worth going out of his/her way to achieve. Accordingly, unanimity of solutions or the fact that one single, powerful way forward has to be supported by a vast majority of the people in the room is not, in my view, necessary. This was the difficulty affecting the Oxford style debate we heard during the Conference. Indeed, while numerous pragmatic ideas and approaches could be drawn from each intervention, it ended up dividing the audience into the "pros" and "cons". Amusingly enough, this division showed its own diversity, without any overwhelming majority on one side or the other. In practice, should the conclusion not rather be that all roads leading to the goal of "one female member per Tribunal" are worth taking?

In other words, everyone convinced that this goal is worth a commitment is free to build up his/her arguments to get there. These arguments, to be effective, have to match your personality, your own convictions and what you are able to convey and do in your environment. To go one step further, should we admit that, maybe, theoretical discussions belong in the past, and positive, pragmatic acts coming from different viewpoints and personalities but leading to the same objective are today's way forward? In practice, it means that should you be convinced that an institution should set up quotas, go ahead and support this idea, work it out with the institutions you meet, mention it, develop it and spread it. If you do not personally believe in quotas, there are still numerous things to do, on a daily basis, towards the same achievement: it starts from encouraging women in your team to grow their practice and their experience so that they reach arbitrator level, to proposing female names in every list you set up, whether for panellists to a conference, or for writing an article in an arbitration review; it also happens by systematically shining the light on female players when choosing legal experts or *quantum* experts and obviously every time an arbitrator list has to be drafted. As we all know, visibility is key for an arbitrator: hence anything meant to enhance the visibility of female players will be a positive step towards that objective.

To sum up, there are many paths to improving the representation of women in dispute resolution and there is no need to all agree on one, and one only. To the contrary, the diversity of the initiatives increases in my view their likelihood of success.

So that is the outside view. Now, what about the inside, the question of personal balance, too often crafted as whether “women could have it all”? This complex question evokes, amongst many other things, the organisation of our work environment (are the current hourly billing standards appropriate?) and the timing of a career in light of the diversity of our personal ambitions. To these questions that any female lawyer has encountered in her life, there is – again – no ready-made answer... but certainly many opportunities.

I am first convinced that our generation actually has built up an exceptional awareness of and maturity about these issues, together with a true consciousness of the need for solidarity. With the assistance of the fantastic technologies of the 21st century, the objective of “having it all” has never been so reachable.

I have found this maturity in the blossoming of talks and discussions and the debates between females in our profession. The atmosphere has nothing to do with the battles I imagine our predecessors had to conduct in the sixties, seventies and eighties to make room for themselves in very male professional environments. Today’s calm approach is, to me, incredibly more powerful. Re-using here a successful slogan of the French political world in the eighties, this “*Force tranquille*” (“Quiet Force”, but nothing to do with a well-known movie franchise) is certainly the way to go forward. It is non polemical and is based on the now (almost) common understanding across genders that gender equality is a positive factor in any professional organisation – we can all in that regard thank McKinsey for their yearly reports “Women matter” at <http://www.mckinsey.com/global-themes/women-matter>.

They have led, and will continue to lead, discussions on women’s visibility and adapting working environments. However, I admit that these discussions would certainly not have known their current progress if two far more powerful forces had not already paved the way for a revolution in the work environment: internet - based technologies and Generation Y.

To take a step back, I have regularly wondered how professional women of earlier generations managed their personal and professional lives and families when there was no blackberry, no smart phones, no high-speed Internet and no “home office”. Observing Generation Y, I am amazed that communication technologies are part of their way of life and that the frontier that I once cultivated between personal and professional times and places, is becoming incredibly more blurred. Once one has accepted that we are now always connected, at any time, more or less anywhere in the world, high-tech is an amazing opportunity to assist us in managing all aspects of our lives. In that respect, I consider that we are incredibly fortunate.

Lines are blurring, partly because of us, partly because the world is changing and the opportunities that this momentum creates will be seized by us, in the legal industry, in the international arbitration community, to review things differently.

Time for a conclusion to a paper that has touched on many topics, with in reality one single ambition: to share my conviction and enthusiasm that nothing will happen if we do not make it happen... but that our generations have the intelligence, the maturity and all the tools, many more than the others before us, to make changes and progress occur.

Carine Dupeyron, Partner, August & Debouzy



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Carine Dupeyron greets delegates.

Report from Session 4: *This House Believes That All Arbitral Tribunals Should Be Required to Have at Least One Female Arbitrator*



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L to R: Ruth Byrne, Gabrielle Nater-Bass, Tuuli Timonen, Olga Hamama and Melissa Magliana.

The fourth session was an Oxford style debate on the motion *"This house believes that all arbitral tribunals should be required to have at least one woman"* chaired by ArbitralWomen Vice-President **Gabrielle Nater-Bass**.

While the debate was framed in the context of the motion under consideration, the debaters used the opportunity to address the challenges of, and consider possible solutions to, the underrepresentation of women in dispute resolution and in particular on arbitral tribunals.

Pleading in favour of the motion were **Olga Hamama** of Freshfields Bruckhaus Deringer, Frankfurt, and **Tuuli Timonen** of White & Case, Helsinki. In her opening statement, Olga emphasised the importance of having female role models on arbitral tribunals, arguing that *"if you cannot see it, you cannot be it"*. Olga highlighted the underrepresentation of women on arbitral tribunals on the basis of recent statistics from arbitral institutions, which show that on average women continue to represent a mere 10-15% of arbitrator appointments, whereas the number tends to be even lower when it comes to appointments by the parties. Olga also indicated that Chambers and Partners' 2015 list of "Most in Demand Arbitrators" globally only includes two women out of a list of 35, Ms. **Gabrielle Kaufmann-Kohler** and Ms. **Brigitte Stern**. Tuuli noted that, as the statistics demonstrate, the industry remains characterised by a conscious or unconscious bias against female arbitrators. As a consequence, imposing a quota of one female arbitrator per three member tribunal -

as drastic as it may seem - is the only means to allow women at least comparable opportunities as men to serve as arbitrators. As we stand in 2016, the current situation proves that simply imposing soft rules and guidelines is not enough to reach that goal and provide for equal opportunities.

Pleading against the motion were Ruth Byrne of King & Spalding, London, and **Melissa Magliana** of Homburger, Zurich. In her opening argument, Melissa emphasised that the lack of women on arbitral tribunals was only the tip of the iceberg and that it was the overall lack of representation of women in senior positions at law firms and elsewhere that required tackling. Melissa further argued that the motion proposing the adoption of quotas would be harmful to women, was contrary to the principle of party autonomy that was key to arbitration, and was in any event impossible reasonably to implement in practice. Picking up on the need to take action to address the greater problem of the lack of women in leadership positions, Ruth in rebuttal made three concrete proposals for actions that women could proactively take. Ruth proposed that women create visibility and opportunities for the women around them; actively engage in these issues at all stages of their career; and seek to change the rigid law firm structures that are inadequately tailored to women and to the flexibility that many of them require.

After a discussion following questions from the audience, the debate concluded with a vote on the motion. While the debate may have been spawned by the motion and its proposal for a quota, it was clear that the issues raised transcended the motion and called on all participants to question the true reasons for which women are underrepresented on arbitral tribunals as well as what women could do to change this going forward.

Melissa Magliana, Counsel, Homburger AG



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Melissa Magliana taking part in the debate.

Report from Session 5: *Diversity in Dispute Resolution*



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Session 5 panel, L to R: Mirèze Philippe, Sasha Carbone, Rashda Rana, Andrea Hulbert, Funmi Roberts and Kathryn Sanger.

During this session we explored current initiatives and steps we can take to develop these further.

The session was chaired by **Rashda Rana** and consisted of a panel drawn from all corners of the earth: **Sasha Carbone**, AAA, USA; **Mirèze Philippe**, ICC, France; **Funmi Roberts**, LCA, Nigeria; **Kathryn Sanger**, Clifford Chance & HKIAC, Hong Kong and **Andrea Hulbert**, Hulbert Volio & Parajeles, Costa Rica.

There are many initiatives underway across the globe. Dealing effectively with diversity and equality are fashionable topics right now. The speakers were tasked with drawing out some of the significant steps being taken by different players in dispute resolution.

The debate took place through a Q&A, first, of the panel members and then through interaction with the audience. Recognising the need for a variety of approaches to level out the playing field, and a variety of role models to demonstrate that there is no one 'right' way to achieve equality and greater diversity, Sasha and Mireze were asked to talk about the different approaches available to us which might help to achieve that.

Sasha commented that trying to increase the success of women in this profession requires a sustained effort by all constituents to the process. To do that, women need to be represented not just on panels but also on lists being distributed to parties to begin with. She stressed how institutions need to look at the listing and appointment process to remove barriers that might limit the frequency with which women are appointed and listed on panels as well as breaking the mould of how arbitrators get selected by parties. As an example of this, Sasha referred to the way in which the AAA has addressed this.

The AAA case management programming provides a reminder to the case managers to make sure that the lists that are sent out are at least 20% diverse in terms of women and minorities.

Sasha suggested that this can be done partly by there being a greater recognition and commitment of users that there is value in having a diversity in their arbitral pool and secondly, by increasing visibility of potential candidates by allowing parties to more readily search for candidates. She highlighted the AAA new platform, Arbitrator Select, which allows parties to search the entire Roster of Panellists.

Mirèze's comments in response urged all of us (all stakeholders, all players in the industry) to take an active role. She gave examples of ways in which we might do that: committing to change, being proactive about nominations and panel representation (whether at a conference panel or on a tribunal) and making best use of role models.

The next question, which was dealt with by Funmi and Kathryn, concerned the best ways to engage men in this pursuit for greater diversity. This was particularly important given the paucity of male attendees at the Conference. Funmi started by stressing that men must be part of the conversation and bring the issue to the fore at every platform of engagement. She set the scene by explaining the necessity of identifying the reasons for men's low sense of engagement on the topic of equality and diversity. She cited three main reasons: fear (of losing status or of being seen as part of the problem); apathy (lack of concern about gender equality or not seeing a compelling reason to be involved) and ignorance (genuine lack of awareness).

She suggested that we sponsor and showcase the gender disparity; empower and encourage women to speak up about the advantages of diversity at every opportunity; identify male influencers and make them diversity ambassadors/champions to help facilitate the desired change; women already strive to outperform men in order to gain continued acceptance. We must continue to do this and the key message was that diversity is gender inclusive and men are as much a part of it as women.

Kathryn agreed that men have been described as the "gatekeepers" for gender equality and in order to bring about equality and greater diversity and the ways in which we might achieve this inclusion, education and understanding. As parents of boys, both Funmi and Kathryn agreed that these steps must begin at home.

Mirèze and Andrea then responded to the question of unconscious bias: unconscious bias has recently been a topic of discussion in relation to a variety of relationships. They were asked, what can be done to eliminate or minimise the effects of unconscious bias?

Mirèze started by highlighting that under-representation cannot be explained by any one factor but rather is a conglomeration of issues of discrimination, unconscious bias and retention of it in the hands of a few. She commented on how the subjects of unconscious bias and gender equality have only recently lost the mantle of being taboo in polite circles. It is also naïve to think that bias does not exist in any decision-making process, whether in our private or professional lives. But acknowledging our perceptions is a first step towards possible change. Having become aware of it, how do we eliminate it? Mirèze offered a number of ways: continually raising awareness; industries setting measurable objectives; putting in place funding for the sustainable development of ways to fight for greater women's rights; social education and greater societal participation in the fight.

Andrea responded with comments concerning ways in which we can turn the unconscious bias into a conscious reality. This can be demonstrated by the various studies in which selection of candidates (in her example, musicians for an orchestra) was through blind auditions – for example, without reference to gender of the player and initiatives such as the HeForShe campaign and the initiatives underway in Costa Rica to help achieve gender parity. Andrea echoed the words of the female executives of Intel Corp: *"We are problem-solvers. We like the challenge of making the im-possible, possible"*.

Kathryn and Sasha then took us through a number of initiatives that institutions have in place or in the pipeline to improve the position of women. Kathryn said that in the past few years there has been a growing recognition that diversity should mean better, not lower, quality. If proof of this were needed, she referred to a number of studies which have found that companies who have three or more women in senior management functions perform better from an organisational perspective, return on equity and share price metrics. She then turned her mind to institutions. She focused on a significant and key area: transparency - the key to identifying what action is needed. Arbitral institutions have the tools and are best-placed to capture relevant diversity data. In a tour de force, she then gave concrete examples of the initiatives underway at the LCIA, ICC, JAMS, ICSID, AAA/ICDR, Finland Chamber of Commerce, Netherlands Arbitration Institute, PCA, HKIAC, LCA and NYIAC. She concluded by saying that although there is clearly more to be done, and a long way to go, the momentum to change thinking and to effect real change has started.

Sasha supported Kathryn's view and analysis and added that we are seeing more concerted and sustained action by institutions who are putting into action the diversity principles that they are advancing. This is the challenge that we need to continue building upon in terms of what works in advancing diversity and sharing practices among institutions. She also added that it is important for executives within institutions to be held accountable for results within their control.

To top off the discussion Andrea and Funmi dealt with how cultural differences affect diversity. They discussed how we can harness the positives from different cultures to improve diversity.

Andrea started by defining culture:

"Culture...is...the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group...". She said that as culture is a mind-set, that is, the established set of attitudes held by someone, then that mind-set should be capable of being changed, altered, and moulded. That can happen through education, again, starting at home with the toys children play with, or women being raised to see their equals as their friends and not as rivals, by delimiting the assumed traditional role of women as one of submission and sacrifice. She said that one can be a professional, mother and wife by having the appropriate partner at home and the appropriate partner at the office. She presented statistics drawn from various studies which all showed the underrepresentation of women in law and business and that the rationale of the situation was "unconscious bias". Andrea urged us to educate people in turning the unconscious into conscious and achieve real change in the perception of gender characteristics.

Funmi supported the proposals by pointing out that worldwide, men are seen as 'leaders' and the premium placed on the boy child creates many opportunities and opens more doors for men than women. Gender norms are usually set by culture, some for good and otherwise, particularly in terms of sustaining imbalance of power between men and women (patriarchal mode). However, women are in the main respected and this can be turned to our advantage.

The session was heavily interactive such that it ran well over its allotted time. Thank you to all those who contributed to the discussion from the floor. It was simultaneously enthralling, exciting, educative and encouraging.

Rashda Rana SC

Other highlights of the day in pictures

We have featured some of Andy Barker's photos of the Conference and hope that you will take the time to view her other photos, which will shortly be available on the new ArbitralWomen website. In particular, we did not have space in this Newsletter to include the many great photos of our panellists. A few more highlights (all @www.andy.barker.com) are shown below.

Networking throughout the day



Funmi Roberts chats to a fellow delegate.



L to R: Emmanuelle Becker Paul, Nicolas Bourdon and another delegate.



Coffee break



Delegates exchanging business cards.



L to R: Frederica Bocci, Maria Theresa Trofaier, Kathryn Sanger

Closing of the Conference



Asoid Garcia-Marquez closes the Conference.



Panellists and delegates pose for a group photo at the end of the Sessions.

Some comments from delegates:

Dilber Devitre, Homburger: *"Truly inspirational! This conference was a real eye-opener into the problems women face in arbitration today and the way we can jointly resolve this."*

Armaghan Azhar, Iran: *"First time in Europe... First time impressed by fabulous female leaders of the world first time women got courageous enough to have their voices heard. I hope one day the world will care to realise the unique value of every human being."*



Iranian delegate Armaghan Azhar

Sheraton Doyle, 39 Essex Street Chambers: *"It was a good conference with excellent speakers, with people who share their experience with everyone in the room."*

Lucy James, Trowers & Hamlin LLP: *"The conference resonated with me. It was about supporting more junior colleagues."*

Comments ingathered by Ileana Smeureanu, Board Member and Associate, Jones Day



Ileana Smeureanu (L) with Asoid Garcia-Marquez and Mirèze Philippe.

The Pledge



Mirèze Philippe looks on as Rashda Rana signs The Pledge.

Drinks Reception and the new ArbitralWomen website



Mirèze Philippe demonstrates the capabilities of the new ArbitralWomen website, to be launched soon, after months of hard work by her and fellow Board member Ana Carolina Weber.

Conference Dinner



A lively dinner was enjoyed by all and provided an opportunity for more networking.



Relaxing at the end of a long day: Asoid Garcia-Marquez, Tuuli Timonen and Myfanwy Wood.

Thank you again to the Conference Sponsors and Supporters

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Memorial for the late Arthur Marriott QC

A Memorial for Arthur Marriott QC will be held on 19 May 2015 at 5pm in the chapel at Gray's Inn, followed by a reception in the Bingham Room at Gray's Inn. Enquiries to Paul Cohen, Partner, Perkins Coie LLP (Pcohen@perkinscoie.com).

YAWP Launch

As we go to press ArbitralWomen will have launched its YAWP initiative in Zurich on 7 and 8 April, including a keynote speech by Paula Hodges QC, a networking dinner, and a conference dedicated to the topic "The Future of International Arbitration: Building Your International Arbitration Career". YAWP is a group for young female practitioners, run by a committee chaired by Gabrielle Nater-Bass, ArbitralWomen's Vice-President. Our next Newsletter will report on the launch of this important initiative.

Next Newsletter

In addition to reporting fully on the YAWP launch, our next Newsletter will include our regular features on Members on the Move, Events and articles published in the Kluwer Arbitration Blog. Members are encouraged to contribute to the Newsletter and may send contributions to any member of the Newsletter Committee (see below) or via Contact Us on the website.

ArbitralWomen Activities

Newsletter

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

Newsletter Director: Gillian Carmichael Lemaire; **Newsletter Committee for this edition:** Mirèze Philippe, Rashda Rana, Louise Woods; **Executive Editor:** Karen Mills.

Find a Practitioner

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

Become a Member

Women practitioners in dispute resolution who wish to join the group may submit an application with a CV and a photo directly on the website. "[Become a Member](#)".

Events and Sponsorship

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

Cross-References and Cooperation

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

Mentorship Programme

[Click here](#) for the application form to be completed, to be a mentor or mentee.

Vis Moot Support

[Click here](#) for the application form to be completed by moot competition teams consisting of at least 50% women, to submit a request for financial assistance for the Vis Moot or Vis East.

Training and Competitions

ArbitralWomen publishes information about dispute resolution programmes, scholarships, training etc. To promote such programmes you may post a message under "[Contact us](#)".

Job offers

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

Copyright and reference

If you use any information from our Newsletters including bibliographies communicated for information, we request that you refer to ArbitralWomen or the relevant Newsletter(s).

Questions?

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

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ArbitralWomen Board members present at the Conference