



One of the Many Aspects of Diversity in International Arbitration: the Role of Women

Diversity in arbitration: new goals to reverse the same old trend?

The first entry for *diversity* in the Oxford dictionary is that it is a noun that means 'a range of many people or things that are very different from each other'; the second entry refers to 'the quality or fact of including a range of many people or things.' Diversity therefore refers to something that is different than the norm, from what is standard and usual, from what the majority is used to dealing with and seeing, both in a professional context and elsewhere.

But the pattern, norm or standard itself does not need to be explained and described to arbitration practitioners (e.g. party representatives, legal counsel, arbitrators, court agents, administrative staff from institutions, IT teams). What definitely does need to be explained and described (and even just spoken about

¹ See <https://www.oxfordlearnersdictionaries.com/definition/american_english/diversity> accessed 9 October 2022.



Constança Borges Sacoto

International Litigation and Arbitration



Diana Nunes

International Litigation and Arbitration

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more openly) is diversity in all its forms and the need to accept that the arbitration world is not yet diverse and that it needs to be in order to fulfil its main purpose: to be an alternative, fair and efficient method of dispute resolution.

If the first step to become more diverse is to acknowledge that the arbitral world in general is not sufficiently diverse, the second step is to create awareness so that decision-makers address the issue properly.

Diversity in all its forms has been a real concern across all sectors for many years now and international arbitration is no different. The path towards greater diversity should be seen as a human rights issue and is definitely not limited to gender. In fact, the debate has broadened to include underrepresented groups based on race, ethnicity, nationality, sexual orientation, disability and other factors. Purely from a practical perspective, what has become overwhelmingly apparent in recent years – and is backed by studies – is that diversity increases productivity and achieves better results. So much so that many argue that arbitral tribunals made up of people with diverse backgrounds, origins and experiences would likely improve the quality of arbitration and result in more balanced and just decisions.²

² McKinsey & Company, 'Diversity Wins: How Inclusion Matters' (2022), p 3, shows that the more diverse companies are, the better business results they are likely to achieve, available at <https://www.mckinsey.com/~/_/media/mckinsey/featured%20insights/diversity%20and%20inclusion/diversity%20wins%20how%20inclusion%20matters/diversity-wins-how-inclusion-matters-vf.pdf> accessed 9 October 2022.

This article addresses only the topic of gender diversity in arbitration; a difficult task given that not all arbitral institutions publish detailed information about their arbitrators and it is even harder to obtain information about *ad hoc* arbitrations. That said, public data confirm that there is a significant disparity in the number of men and women sitting on arbitration tribunals.³

With this in mind, the third step to promote and increase diversity is to focus on identifying the real reasons for this disparity and find effective ways of creating conditions so that men and women are more equally represented.

Based on the admittedly limited data available, we first analyse women's presence in arbitration and then reflect on what we can do to promote and increase gender diversity in arbitration, conscious of the proven positive correlation between diversity and performance in many fields.⁴

³ For detailed information on gender disparity in arbitral tribunals, see 'ICCA Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings – 2022 update' pp 211–215 <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf> accessed 6 October 2022.

⁴ McKinsey & Company, 'Diversity Wins: How Inclusion Matters' (2022), p 3, <https://www.mckinsey.com/~/_/media/mckinsey/featured%20insights/diversity%20and%20inclusion/diversity%20wins%20how%20inclusion%20matters/diversity-wins-how-inclusion-matters-vf.pdf> accessed 9 October 2022. Relating to the wider topic, see 'Gender Diversity in Boardrooms Gains Momentum' <<https://www.chicagobusiness.com/custom-media/woman-up-latham/gender-diversity-in-boardrooms-gains-momentum.html>> accessed 17 October 2022.

⁴ McKinsey & Company, 'Diversity Wins: How Inclusion Matters' (2022), p 3, <https://www.mckinsey.com/~/_/media/mckinsey/featured%20insights/diversity%20and%20inclusion/diversity%20wins%20how%20inclusion%20matters/diversity-wins-how-inclusion-matters-vf.pdf> accessed 9 October 2022. Relating to the wider topic, see 'Gender Diversity in Boardrooms Gains Momentum' <<https://www.chicagobusiness.com/custom-media/woman-up-latham/gender-diversity-in-boardrooms-gains-momentum.html>> accessed 17 October 2022.

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The role of women in international arbitration: numbers and other facts

Women are still underrepresented in the world of international arbitration. Data from the late 20th century and early 21st century are scarce, but it is apparent that women have only very recently begun to play a more active role in this area.⁵

2022. Additionally, as regards the correlation between diversity and good decision-making in international arbitration, see N. Allen, L. Díaz de Córdova and N. L. Hall, 'If Everyone Is Thinking Alike, Then No One Is Thinking: The Importance of Cognitive Diversity in Arbitral Tribunals to Enhance the Quality of Arbitral Decision Making' (2021) 38:5 *Journal of International Arbitration*, p. 601, available at <https://www.kluwerarbitration.com/document/kli-joia-380502?_ga=2.147791668.2014781571.1658241564-1344811470.1658241564> accessed 17 October 2022.

⁵ According to the 'ICCA Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings – 2022 update' pp 55–60, <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf>

One of the most important documents on the subject is the ICCA Report of the Cross-Institutional Task Force of Gender Diversity in Arbitral Appointments and Proceedings – which was updated in 2022 – that provides extremely valuable information about arbitration practice, the barriers women still face and proposes ways to address women's underrepresentation.

According to the information the Task Force collected, women are now more represented (though not yet enough)

accessed 17 October 2022, the appointment of women as chair of arbitral tribunals has increased slightly (ICAC – from 27.8% (2020) to 35.5% (2021); ICC – from 26.6% (2020) to 28.7% (2021); ICDR – from 24.1% (2020) to 22.1% (2021); ICSID – from 22.2% (2020) to 37.3% (2021)). As for LCIA, there was a slight decrease from 34.6% (2020) to 29.1% (2021). Moreover, the percentage of all-men tribunals is 97.5% (compared to 2.5% of all-women tribunals).

Data show a positive trend as progressively more women are being appointed as arbitrators, although this appears to be a result of institutional appointments rather than party appointments. We still have a good way to go to overcome the unconscious biases parties have when selecting their arbitrator

in the most important international arbitration institutions:⁶

(1) ICAC – women arbitrator appointments remained steady between 2017 (31.3%) and 2021 (35.5%);

(2) ICC – women arbitrator appointments by parties went from 4.3% in 2010 to 17.5% in 2021 while institutional appointments went from 13.6% in 2010 to 39.5% in 2021;

(3) ICDR – women arbitrator appointments increased from 17.5% in 2015 to 26.2% in 2021;

(4) ICSID – women arbitrator appointments by parties increased from 6.3% in 2012 to 20% in 2021 and by institution from 5% in 2012 to 43.5% in 2021;⁷

⁶ For detailed data and information on gender disparity in arbitral tribunals, see 'ICCA Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings – 2022 Update' <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf> accessed 6 October 2022.

⁷ According to 'The ICSID Caseload – Statistics' – 2021–22 issue, on average, 87% of appointments were men and 13% were women between 1966 and 2021. The data also show that fewer women are appointed by parties than by institutions (of the 762 women arbitrators appointed,

(5) LCIA – women arbitrator appointments by parties went from 5.3% in 2012 to 15.9% in 2021 and by institution from 15% in 2012 to 47.4% in 2021.

Two of the most important arbitral institutions in Portugal and Spain are also committed to gender diversity: CIAM⁸ has been promoting conferences on diversity and five out of six of the arbitrators appointed in 2021 were women,⁹ and CAC¹⁰ has recently created a specific diversity commission as part of its 2022–25 strategic plan.

claimants appointed 38 while ICSID appointed 118). For 2021, the statistics show that women account for 31% of appointments (nine of the 49 arbitrators appointed by parties were women, while the ICSID appointed 26). For further information, see <<https://icsid.worldbank.org/sites/default/files/Caseload%20Statistics%20Charts/The%20ICSID%20Caseload%20Statistics%202021-2%20Edition%20ENG.pdf>> accessed 7 October 2022.

⁸ *Centro Internacional de Arbitraje de Madrid* (Madrid International Arbitration Centre).

⁹ See information on CIAM's website at <<https://madridarb.com/estadisticas-de-ciam-en-el-informe-del-icca-en-materia-de-diversidad-de-genero-en-arbitraje-internacional/>> and also the 'ICCA Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings – 2022 update' p 214 <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf> accessed 6 October 2022.

¹⁰ *Centro de Arbitragem Comercial* (Commercial Arbitration Centre based in Lisbon).

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This shows that women are becoming more involved and that, as the changes that the arbitral institutions are advocating forge ahead, women's global representation is expected to increase significantly in the coming years

The following table, taken from the ICCA Report,¹¹ shows an overall upwards trend in the number of women who were appointed arbitrators from 1990 to 2021 (Figure 1).¹²

Even though the gap between men and women is still wide, data show a positive trend as progressively more women are being appointed as arbitrators, although this appears to be a result of institutional appointments rather than party appointments. This shows that we still have a good way to go to overcome the unconscious biases parties have when selecting their arbitrator. But at the same time, it is also very encouraging to see that arbitral institutions are really committed to increasing women's representation, which gives them more visibility and experience and in turn will hopefully result in women also being appointed more by parties.

We also note that the ratio of repeat appointments is similar between men

and women,¹³ which only shows that the international arbitration world is reticent to appoint first-timers.¹⁴ As to nationality, most of the women arbitrators appointed are from Western Europe (45.4%) and Asia (18.1%),¹⁵ probably because women in these countries (i) are more likely to have better access to higher education and thus to higher positions; and (ii) their perceived position as caregivers is also changing. Both factors are probably key

¹³ In terms of appointments in the HKIAC, IAC, ICC, ICSID, ICDR, LCIA, MIAC, SCC and VIAC in 2021, repeat appointments of women were slightly higher (37%) than of men (35.2%). See 'ICCA Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings – 2022 update' p 42 <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf> accessed 6 October 2022.

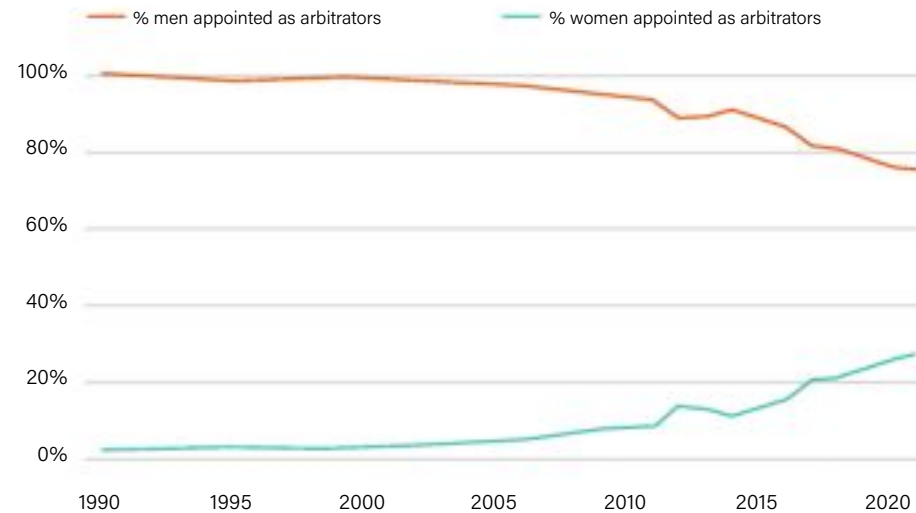
¹⁴ The entry barriers are relevant to both party appointments (as parties will more likely choose an arbitrator based on his or her experience in a given field, especially in complex arbitrations) and institutional appointments (most institutions require a level of experience as arbitrator or in the field of international arbitration to be included on the arbitrators' list). For further information on the issue of first timers, see 'ICCA Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings – 2022 update' pp 45–48 <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf> accessed 17 October 2022.

¹⁵ 'ICCA Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings – 2022 update' pp 66–67 <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf> accessed 6 October 2022.

¹¹ 'ICCA Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings – 2022 update' p 28 <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf> accessed 6 October 2022.

¹² Although most arbitral institutions (except the ICC) have no information from this period.

Figure 1. Women as a proportion of total arbitrator appointments, 1990-2021



Graph Source: ICCA Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings – 2022 Update

to understanding why women are still so underrepresented.

As to arbitration conferences, the data show that women outnumber men in 'Only diversity/young practitioner events'.¹⁶ They are also strongly represented in young practitioners' groups (e.g. 44 of the ICC YAF Representatives and head of chapters are women (compared to 38 men) and women represent 49% of all

¹⁶ 'ICCA Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings – 2022 update' p 298 <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf> accessed 6 October 2022.

members of Young ICCA).¹⁷ This shows that women are becoming more involved and that, as the changes that the arbitral institutions are advocating forge ahead, women's global representation is expected to increase significantly in the coming years.¹⁸

¹⁷ 'ICCA Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings – 2022 update' pp 188 and 328 <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf> accessed 6 October 2022.

¹⁸ Many women acting in international arbitration confirmed that this was their experience in a series of interviews conducted by Jorge Luis Collantes González for *Hablando con ellas. Conversaciones con veinticuatro mujeres protagonistas del arbitraje*, (Biblioteca de Arbitraje del Estudio Mario Castillo Freyre, Volume 99).

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In summary, if both law firms and arbitral institutions work towards building a gender-diverse arbitral community, we will no doubt start seeing more women (i) in conferences, discussing substantive issues; (ii) in legal counsel teams; and (iii) in arbitration courts (as sole arbitrators, chairs and co-arbitrators)

Two of the most important initiatives that address gender diversity in arbitration are the Equal Representation in Arbitration Pledge ('ERA Pledge') and ArbitralWomen ('AW').

The ERA Pledge was drafted in 2015 and its two main objectives are to (i) 'improve the profile and representation of women in arbitration, and (ii) 'appoint women as arbitrators on an equal opportunity basis'.¹⁹ The ERA Pledge has more than 5,000 signatories – both organisations and individuals –, including arbitral institutions (ICC, ICDR, LCIA, etc.) and law firms.²⁰

AW has been an international NGO established since 2005.²¹ AW's main role is also to promote gender equality in alternative dispute resolution, by

offering mentorship programmes and other initiatives designed for young practitioners.

The ICC made a series of commitments in its Gender Balance Pledge,²² mostly aimed at achieving more diverse panels. On 11 May 2020 the ICCA also published its Diversity and Inclusion Implementation Plan²³ that sets out several actions ranging from education to recruiting to promote young practitioners and greater diversity.

The reasons why there are fewer women arbitrators than men are very different and complex to tackle and require an in-depth analysis that falls outside the scope of this article, but two important factors include the failure to retain talent in the legal professional and the unconscious bias of counsel and

parties – both men and women – when appointing an arbitrator.²⁴

As regards initiatives aimed at increasing diversity, the ICCA Report refers to the following (among others):²⁵ (i) number of women staff in lead positions; (ii) training on unconscious bias; (iii) numbers of men and women panellists at events; (iv) women practitioners in working groups, task forces, committees, boards, on behalf of employer or in personal capacity; (v) use of gender-neutral terms in documents; and (vi) young practitioners' groups.

Additionally, according to a White & Case survey on diversity on arbitral tribunals, the most effective initiatives to address diversity seem to be (i) 'appointing authorities and institutions adopting an express policy of suggesting and appointing diverse candidates as arbitrators' and (ii) 'commitment by counsel to suggesting diverse lists of arbitrators to clients'.²⁶ Avoiding panels of only male speakers in conferences,²⁷

¹⁹ For further information on the ERA Pledge, see <<http://www.arbitrationpledge.com/about-the-pledge>> accessed 7 October 2022.

²⁰ The full list of all ERA Pledge institutional signatories is available at <<http://www.arbitrationpledge.com/organisations>> accessed 7 October 2022.

²¹ For further information on AW's role and initiatives, see <<https://www.arbitralwomen.org/aw-outline/>> accessed 7 October 2022.

²² World Business Women's Gender Balance Pledge <<https://iccwbo.org/content/uploads/sites/3/2018/10/icc-gender-balance-pledge-3.pdf>> accessed 6 October 2022.

²³ 'ICCA Diversity and Inclusion Implementation Plan' (11 May 2020) <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/icca_diversity_and_inclusion_implementation_plan_final_11may2020.pdf> accessed 7 October 2022.

²⁴ Which is particularly significant when appointing first timers. For further information on why gender diversity is lacking in international arbitration, see 'ICCA Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings – 2022 update' pp 89–117 <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf> accessed 6 October 2022.

²⁵ 'ICCA Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings – 2022 update' pp 303–356 <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf> accessed 6 October 2022.

²⁶ For further details on the White & Case survey, see <<https://www.whitecase.com/insight-our-thinking/diversity-arbitral-tribunals-whats-prognosis>> accessed 7 October 2022.

²⁷ For further information on this matter, see by L. Greenwood and S. Jhangiani, 'Women's Voices Matter:

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webinars and other public appearances is mentioned as another way of gaining parity for women in international arbitration.

Diversity: from a guiding principle to an undisputed/undeniable pattern

Even though women's representation in arbitration is growing, we are still some way off not having to write articles such as this one.

There is no doubt that 'nonhomogeneous teams are simply smarter',²⁸ so why is gender diversity still an issue for women in arbitration? There is no simple or straightforward answer, but the most common ones are (i) family/caring responsibilities, (ii) office environment, (iii) difficulties managing dual careers, (iv) a lack of female role models and mentors, and (v) a lack of flexible work options and attitudes to flexible working.²⁹

With regard to flexible work options, the Covid-19 pandemic forced us into a change that showed us that flexibility and productivity are not mutually exclusive. Many companies have been

implementing flexible work options since. In fact, arbitration and its successful remote and semi-remote hearings have proven that flexibility is key to efficiency.

However, the most difficult problems for women in arbitration still relate to sociological issues (i.e. family/caring responsibilities and the office environment) that derive directly from their perceived role in society and how women are treated in the workplace. These issues are not new, so we should really have found a way to overcome them by now.

It is not in the arbitration community's hands to change how society views women in general, but it can make a difference by showing that women are as important as men and by taking measures to promote and achieve a gender diverse arbitral community. The ICC took a major step in this direction when it appointed Claudia Salomon as its president in July 2021, who became 'the first woman President of the ICC Court in its almost 100-year history'.³⁰

In terms of arbitration practitioners, it is not only arbitral institutions that need to act – by appointing women as arbitrators, giving them more visibility in panels and conferences and promoting mentoring programmes –, but also law firms, which are where many arbitration practitioners start their journey. Law

³⁰ For additional information on Claudia Salomon's appointment, see <<https://salomonarbitration.com/>> and <<https://iccwbo.org/media-wall/news-speeches/client-mindset-takes-centre-stage-under-new-icc-court-president-claudia-salomon/>> accessed 17 October 2022.

the Case for the Extinction of Manels' available at <<http://arbitrationblog.kluwerarbitration.com/2020/09/22/womens-voices-matter-the-case-for-the-extinction-of-manels/>> accessed 7 October 2022.

²⁸ For further developments and data on this matter, see D. Rock and H. Grant, 'Why Diverse Teams are Smarter' (4 November 2016) *Harvard Business Review Blog* <<https://hbr.org/2016/11/why-diverse-teams-are-smarter>> accessed 9 October 2022.

²⁹ L. Greenwood, 'Women in Arbitration – Progressing through the Pipeline', p 4, <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/gender-diversity-webinar-Lucy-Greenwood.pdf> accessed 9 October 2022.



firms should, on the one hand, have gender-diverse teams – which in general is still not happening – and, on the other, encourage clients to have gender diverse arbitration panels, by being proactive and explaining to them the benefits of having a non-homogeneous panel decide their case. In fact, awareness and information often go a long way to resolving bias issues, so if parties' representatives see the advantages of having a gender diverse panel they will no doubt start appointing men and women on an equal opportunity basis.

In summary, if both law firms and arbitral institutions work towards building a gender-diverse arbitral community, we will no doubt start seeing more women (i) in conferences, discussing substantive issues; (ii) in legal counsel teams; and (iii) in arbitration courts (as sole arbitrators, chairs and co-arbitrators). The main goal should be to achieve parity so that men and women are equally represented in arbitration and diversity is no longer an issue that needs to be addressed because it is truly embedded in arbitration practice.

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