

Roundtable Report : “Les femmes dans l’arbitrage, Est-ce si différent?”

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In previous posts, contributors have addressed the lack of gender diversity in arbitration. One post discussed the low percentage of women arbitrators in commercial and investment arbitration as well as the inconsistency between the percentage of female law graduates compared to female arbitrators and partners on international arbitration teams. Another blog shed light on the issue from the Brazilian context, and the first Kluwer Arbitration blog poll surveyed its readership for their views on the main factors contributing to the underrepresentation of women in arbitration.

For the purpose of this present post, I will explore some of the issues that were the focus of a recent roundtable on women in arbitration. On 5 May 2015, the *Université de Versailles* and its Master Arbitrage et Commerce International in cooperation with the ICC and ArbitralWomen organized the roundtable, “*Les femmes dans l’arbitrage, est-ce si différent?*” to contribute to the growing discussions on gender equality within the arbitral community. Taking place at the ICC, more than 75 participants, both women and men, attended the event, which was moderated by Sandrine Clavel and featured leading Paris-based women practitioners and academics including Claire Bouglé-Le Roux, Caroline Duclercq, Laurence Kiffer, Carole Malinvaud, and Mirèze Philippe.

The roundtable commenced with engaging observations on the role of women arbitrators historically. Claire Bouglé-Le Roux recalled that women arbitrators were prohibited under Roman Law but permitted under Canon Law in limited circumstances (often familial disputes). At the time, women were seen as possessing distinct qualities such as favoring “peace” which made them effective arbitrators in those cases.

The discussion quickly evolved to encompass contemporary issues such as the role of women in arbitral institutions. Mirèze Philippe, Special Counsel at the ICC, mentioned that the first time a woman was appointed Counsel at the ICC was in 1995 – a double evolution as it was also around that time when men would start to hold the position of Deputy Counsel (previously reserved only for women). Further, in the 1990s, there was only one woman member of the ICC International Court of Arbitration whereas today 23 out of the 130 members of the Court are women (Ms. Philippe will provide historical facts and information in the TDM issue to be published as indicated below). These numbers show that while we are certainly far from equal representation between genders, progress is being made slowly, with some aspects developing more quickly than others. Ms. Philippe invited the audience to consider, for example, that today the majority of arbitral institutions are led by women

(see the interviews with women leaders in ADR in [ArbitalWomen Newsletters](#)).

Panelists also invoked the recent gender equality laws in France which may serve to increase the number of women appointed as arbitrators or as lead counsel in arbitrations. One of the laws, « la Loi du 27 janvier 2011 relative à la représentation équilibrée des femmes et des hommes au sein des conseils d'administration et de surveillance et à l'égalité professionnelle » also known as la Loi Copé-Zimmermann seeks to establish quotas (at least 40% women by January 2017) for the boards of directors and supervisory boards of companies employing over 250 people and generating more than €50 million in turnover.

It is also part of a larger trend – Germany recently introduced similar quotas (at least 30% women by 2016) for the boards of large companies. In 2003, Norway became the first country in the world to impose gender quotas for the boards of publicly listed companies. Commentators in the United States have applauded these initiatives and considered whether the U.S. should follow in Europe's footsteps.

In my view, there are a couple of reasons why legislation like this could be helpful in increasing the number of women appointed as arbitrator or as lead counsel. A previous entry pointed to the tendency of parties to appoint arbitrators “in their own image” as one of the reasons why women are underrepresented in this field. Thus, in the short term, if women become better represented within the leadership positions of companies, they may be able to encourage the appointment of qualified women arbitrators. In the long run, gender parity within the leadership structures of companies would likely create a cultural shift and a more diverse corporate culture overall. This could in turn lead more of the male leadership to break the cycle of appointing mostly male arbitrators in favor of expanding the pool of arbitrators. In this way, the quotas are not only an end goal but also a means to inspire the progression of the corporate culture towards favoring diversity.

Increasing the visibility of women in arbitration will require a pro-active approach from the entire arbitration community. Attorneys and institutions alike should actively seek out competent women arbitrators. Seasoned practitioners should consider mentoring the younger generation of female attorneys in order to simplify their access to the profession and to promote their sustained career development. On the flip side, as young female arbitration attorneys, our own self-marketing becomes an indispensable tool in a profession where success is largely driven by the visibility of our work, quality connections, and a good reputation.

In the meantime, the dialogue continues. This summer, TDM in collaboration with ArbitalWomen will publish an issue on diversity in arbitration, and public forums like this roundtable continue to flourish. We are a far cry from the days when the eminent jurists would ask “can a woman arbitrate?” but we have not reached the point in time where talented women arbitration practitioners are as visible as their male counterparts. The work of raising awareness started mainly by ArbitalWomen years ago must continue through conscious efforts by all to make the arbitral community as diverse as its cases.