

Latest Chairman Designations to the ICSID Panels Substantially Increase Diversity

Kluwer Arbitration Blog

November 5, 2017

Chiara Giorgetti (Richmond School of Law)

Please refer to this post as: Chiara Giorgetti, 'Latest Chairman Designations to the ICSID Panels Substantially Increase Diversity', Kluwer Arbitration Blog, November 5 2017, <http://arbitrationblog.kluwerarbitration.com/2017/11/05/latest-chairman-designations-icsid-panels-substantially-increases-diversity/>

On 15 September 2017, the Chairman of the Administrative Council of the International Centre for Settlement of Investment Disputes (ICSID) designated new members to the Panel of Arbitrators and the Panel of Conciliators.

This is momentous. For the first time, the lists contain an equal number of female and male members, and a geographical diversity has also been enhanced. Indeed, it is surprising that it has not been more widely reported.

As is well-known, ICSID maintains a Panel of Arbitrators as well as a Panel of Conciliators. Under Article 13 of the ICSID Convention, each of its Contracting States may designate up to four persons to each Panel. In addition, the Chairman of the Administrative Council (the Chairman) may designate up to ten persons to each panel, to serve for a renewable term of six years.

Being on the Panel of Arbitrators is important because, under the ICSID Convention (Arts. 38 and 40), when asked to make an appointment, for example when the parties are unable to appoint members of the Tribunal 90 days after the registration of the request for arbitration, the Chairman must make the appointment from the Panel of Arbitrators. Thus, the Chairman appoints about 25% of all tribunal members and 100% of annulment Committees members. In addition to being prestigious, therefore, being on the Panel of Arbitrators enhances the chances and opportunities to be nominated as arbitrator and sit in ICSID arbitral tribunals and annulment committees.

The latest appointment occurred on 15 September 2017 (effect on 16 September 2017) when Dr. Jim Yong Kim, President of the World Bank Group and as such Chairman of the Administrative Council, designated 10 persons to the Panel of Arbitrators and 10 persons to the Panel of Conciliators. The full list of appointees is available [here](#).

Half of the new appointees are women. The new appointees are all highly qualified, solid and respected lawyers. The new appointees to the Panel of Arbitrators are Funke Adekoya, partner at ALEX Legal Practitioners in Nigeria, Yas Banifatemi, partner at Sherman & Sterling LLP in Paris, Lucinda A. Low, partner at Steptoe Johnson LLP in Washington D.C. and presently President of the American Society of International Law (ASIL), Loretta Malintoppi, barrister at 39 Essex Chambers in Singapore and Professor Yuejiao Zhang of Tsinghua University Law School and former member of the WTO appellate body.

Under-representation of women in international arbitration is a recognized problem and many scholars, the present author included, have called for action to enhance equal representation in arbitration. For example, since 2015, several members of the arbitration community, including institutions and law-firms, have taken "the pledge" to take action "to increase, on an equal opportunity basis, the number of women appointed as arbitrators in order to achieve a fair representation as soon as practically possible, with the ultimate goal of full parity." ICSID's new nominations are the pledge in action.

As I argued in my article "Who Decides Who Decides", institutions can play a pivotal role in making international arbitration more inclusive and enhance diversity by expanding the pool of arbitrators when making appointments. The new nominations by ICSID demonstrate the potential and significance of this role, and should be recognized. Let's hope now that parties follow this lead and also include the many qualified women candidates when making appointments.