

ArbitralWomen: Career Paths in Arbitration

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On September 25, 2019, a program on “Career Paths in Arbitration” took place in Boston, MA, at Harvard University. The program was sponsored and organized by ArbitralWomen, Young ArbitralWomen Practitioners (“YAWP”) and the Boston International Arbitration Council (“BIAC”). The event was supported by the United States Council for International Business (“USCIB”), the Harvard International Arbitration Law Students Association (“HIALSA”), and Harvard Law School Women’s Law Association (“WLA”). All panelists and the moderator are members of ArbitralWomen.

Isabel Yang, Founder and CEO of ArbiLex, moderated the discussion. Topics ranged from the career paths of the panel speakers, hot topics and trends in the practitioners’ jurisdictions, career advice, and final a question and answer segment.

Ema Vidak Gojkovic, an associate at King & Spalding and former member of the Steering Committee of YAWP, opened the conversation by giving a general overview of international arbitration, as many in attendance at Harvard were law students new to the practice area. Betsy Hellmann, counsel at Skadden, Arps, Slate, Meagher & Flom, explained that from her time in law school she was interested in international disputes and as an associate was encouraged to gain experience in both international arbitration and general litigation. Litigators’ experience in U.S. litigation, particularly in discovery, depositions, and cross

examinations give American trained attorneys an advantage in arbitral proceedings. Moreover, American litigators are prepared to take arbitration from cradle to grave, all the way from the initiation of arbitral proceedings to enforcement actions in courts, if necessary. Conna Weiner, Arbitrator, Mediator and Special Master at JAMS and vice-chair ICC-USCIB Northeast Arbitration Committee, discussed the differences between being a mediator and an arbitrator. The role of a mediator is to listen, be patient, and employ the power of persuasion to bring the parties to a resolution. An arbitrator, in contrast, has the power to impose rules, procedures, and outcomes. Ms. Weiner explained that her years of experience as an in-house counsel equipped her well for being both a mediator and arbitrator, as in-house counsels must understand the positions of all parties in disputes in order to best counsel their internal clients. Dana MacGrath, President of ArbitralWomen and Investment Manager and Legal Counsel at Bentham IMF, described how her experience practicing international arbitration as an advocate and arbitrator prepared her for her work at Bentham, a third-party litigation and arbitration finance company. She can properly evaluate the strengths and weakness of claims that Bentham considers funding, and then advise the company about which cases to fund and on what terms.

The conversation then turned to developments in international arbitration across different regions of world. Ms. Vidak Gojkovic shared that in London there is still a great deal of uncertainty as to how Brexit will play out, however the city is not concerned with losing its place as a center for international arbitration. In Latin America, Ms. Hellmann noted arbitrators' increasing sensitivity to potential issues of corruption so as not to issue unenforceable awards. Ms. MacGrath stated that various geographic markets have recently embraced third-party funding for arbitration, with some governments, particularly in Asia, adopting specific legislation to allow third-party funding of arbitration.

Ms. Weiner detailed her efforts through her work with BIAC to promote Boston as an arbitral seat. Boston is a booming city with highly internationalized life sciences and healthcare sectors, which would benefit from international arbitration as their dispute resolution mechanisms for cross-border ventures. One of the challenges in promoting international arbitration in Boston, Ms. Weiner noted, is a bias against arbitration by U.S. lawyers. Ms. Weiner often hears that U.S. litigators feel as though arbitraion is a black box, without the check points in U.S. litigation that give

parties to a dispute insight into how the judge views the case, such as during arguments on motions to dismiss or summary judgment.

Ms. MacGrath explained that companies, however, want to find good business resolutions for disputes. She noted that they often opt for mediation before commencing arbitral proceedings in order to seek an efficient negotiated resolution. Mediation and arbitration are frequently better avenues to preserve the business relationship between the parties than litigation. Ms. Hellmann added that a major factor that allows for the preservation of business relationships through arbitration is the confidentiality of proceedings. Enforceability, confidentiality, and neutrality are what set international arbitration apart from litigation and make it an appealing method of dispute resolution.

The conversation concluded with a discussion of diversity in the field of international arbitration. Ms. MacGrath noted the progress made in the last five years in diversifying the field. She explained briefly the work of ArbitralWomen, of which she is President. ArbitralWomen works to promote women in international arbitration by mentoring female practitioners, connecting women with through networking events and promoting its members' professional developments and achievements on ArbitralWomen's website and social media. Ms. Weiner highlighted the importance of such efforts by explaining that international arbitration is a highly referral-based field, so growing a broad network, having visibility, and establishing expertise is vital. The more diverse practitioners are seen, the more will be involved in proceedings, since diversity begets diversity. Ms. Vidak Gojkovic described the work by ArbitralWomen's group focused on young practitioners, called Young ArbitralWomen Practitioners group (YAWP). YAWP amplifies the accomplishments of young practitioners and promotes their development. She also described *YAWP Inspire!*, an initiative that makes available to a broad audience inspiring interviews of leading female practitioners and arbitrators in international arbitration.

An additional important effort towards improving diversity is the formation of the International Council of Commercial Arbitration (ICCA) Task Force on Gender Diversity and Discrimination in International Arbitration. Numerous arbitral institutions and international organizations have joined ICCA's effort to study the need for and benefits of greater gender diversity among counsel, tribunals, and clients. The task force will be proposing initiatives to promote diversity in international investment and commercial arbitration at the next ICCA Congress, in

May 2020 in Edinburgh, Scotland.

While there has been progress in diversity, as the panelists noted during the “Career Paths in Arbitration” program, there is still much work to be done to remove the “pale, male, and stale” image of international arbitration and achieve greater diversity. Such diversity should aim at including gender, but should extend to all kinds of diversity, including promoting young practitioners to have on-your-feet roles at arbitration hearings, and thereby develop the new generation of international arbitration practitioners.