

# Kluwer Arbitration Blog

## 2021 In Review: Continued Strides in Favor of Diversity and Sustainable Development in International Arbitration

Kiran Nasir Gore (Associate Editor) (The George Washington University Law School) · Sunday, February 27th, 2022

As the field of international arbitration continues to mature, our community grows alongside it. Last year, Dr Maria Fanou and I **wrote** about this topic from the lens of virtual platforms. We optimistically opined that the increasingly virtual world presented an opportunity for greater collegiality and equity. In late 2020, Maguelonne de Brugiere and Cherine Foty **also reflected** on the impacts of COVID-19 on diversity and sustainability and referred to the pandemic as a “natural accelerator” for positive behavioral shifts. In this post, which reflects on key developments and blog posts during 2021 and looks ahead to 2022, I remain optimistic that the international arbitration community continues to collectively progress in favor of greater diversity and sustainably-sound practices.

### Diversity

Diversity is of course intersectional. In 2022, this statement rarely raises eyebrows and a variety of initiatives and perspectives bring attention to this fact. At the beginning of the year, the **launch of Racial Equality for Arbitration Lawyers (REAL)** took place, which coincided with Martin Luther King Day. The initiative has already been immensely successful and has resulted in the awarding of 70 scholarships to lawyers and law students around the world to participate in training and other educational programs – an achievement that was nominated for a **2022 GAR Pledge Award**.

2021 also saw growth of the **Rising Arbitrator Initiative (RAI)**, which aims to support the next generation of arbitrators around the world by creating a support network and encouraging best practices. RAI started off 2021 by **interviewing** Claudia Salomon, who was recently appointed the first woman President of the **ICC International Court of Arbitration** in its more than 100-year history.

While female leadership within our community is a great achievement, Noor Kadhim reminds us that this is **not the moment to rest on our laurels**. Indeed, in a March 2021 interview, **Judge Gabrielle Kirk McDonald** noted that, from her point of view, it is only the representation of white women that has improved: “When I say women, unfortunately I mean white women...Although women as a group are doing better, though still not where they should be, race trumps gender,

because Black women are still in the lowest of all categories.” Judge McDonald’s perspective brings into stark relief the vast amount of work still required within our community.

In a [September 2021 post](#), Archismita Raha, Shreya Jain, and Juhi Gupta thoughtfully echoed this sentiment. They examined the gender gap by looking at data provided by arbitral institutions and the metrics it failed to account for – especially its failure to take into account country-specific data, and the oft-ignored challenge of sustainable participation, which entails making opportunities available to a more diverse set of younger practitioners so that they can one day assume leadership positions.

With respect to arbitrator appointments, [much of the data](#) reveals that corporations – and the counsel they select – are ideally placed to cause a sea change by exercising their economic clout. This aligns well with ideas discussed at [New York Arbitration Week](#) and [CanArbWeek](#). Arbitration remains a service industry and, as the industry’s needs and demands change, the arbitration community (which includes practitioners and arbitrators alike) will need to evolve to keep pace and reflect the diversity of cultural understandings, linguistic skills, and other talents required to resolve particular disputes. Meanwhile, unconscious bias may impact the decisionmaking process and drawing from a more diverse arbitrator and mediator pool can help parties reach a more fair decision. At the end of 2021, the [USA Subcommittee for the ERA Pledge](#) launched to help raise awareness of and address challenges unique to this large and diverse jurisdiction. Arbitrator Intelligence, for its part, seeks to address the arbitrator challenge from a [data-driven point of view](#) – it is impossible to appoint an arbitrator whose qualifications and track record remain unknown.

## Sustainability

While the post-COVID period has accelerated our community’s attention to and comfort with virtual meetings and hearings in lieu of frequent and extraneous travel, the question remains how quickly we may fall back on old ways as corporate and governmental travel restrictions are lifted and business returns to normalcy. The [2021 Queen Mary University/W&C International Arbitration Survey](#) examined the external factors that may contribute to whether arbitration is actually becoming “greener.” In particular, the Survey included a list of measures that might be used to reduce the environmental impact of international arbitration and respondents were asked to answer whether they had experience using that measure, and whether they thought the measure should be used in the future. While the findings were mixed, the dialogue created by the Survey questions is surely a fruitful one. Meanwhile, paperless practices within law firms and as part of arbitrations continue to gain traction.

The broader global dialogue on sustainable development cannot be ignored and creates further pressure. The [COP26 Summit](#) took place in October/November 2021 and was the first since the Paris Agreement of COP21 and sought to raise consensus of climate change challenges and seek international support for positive initiatives. Recently on the Blog, Anja Ipp [drew attention](#) to the substantive nexus between international investment law, arbitration, and climate law. Stephan Minas also [examined](#) whether arbitration presents a venue for carbon market disputes. Just last week, the European Commission published a proposed [Directive on “Corporate Sustainability Due Diligence.”](#) The Directive aims to impose enforceable obligations on large European companies, and on large non-EU companies doing business in Europe, drawing attention to their

environmental impacts, operations, and corporate supply chains. Collectively, these various ideas dovetail to suggest that we should expect greater synergies between pressing climate-related challenges and international investment and commercial law.

## Concluding Remarks

Despite pandemic-related slowdowns and shutdowns, 2021 proved to be a significant year for greater diversity and sustainable development among the international arbitration community. Conversations were launched (virtually and in-person) to support greater substantive engagement in 2022 and beyond. Few would argue with the need for greater intersectional diversity among practitioners and arbitrators to serve arbitration users and stakeholders and significant efforts are underway to support emerging talent. Meanwhile, the pressing global need for more sustainable and environmentally-sound business practices is gaining prominence. The arbitration community is watching these developments closely and appears well-poised to respond in a greener and earth friendly way.

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