

Kluwer Arbitration Blog

The representation of women in arbitration – one problem, two issues

Annalise Nelson (Associate Editor) · Friday, November 2nd, 2012

Over the summer, I read two discussions that gave some fascinating, albeit wholly depressing statistics about women arbitrators. The first was a great discussion initiated by Lucy Greenwood of Fulbright & Jaworski on the OGEMID listserv, which noted that only 6.5% of all commercial arbitrator appointments (both party appointments and institutional appointments) are of women.¹⁾ The second was an article by Gus Van Harten, which found this very same meager number—6.5%—as the percentage of women appointed as ICSID arbitrators through May 2010.²⁾

For many women in arbitration, this information is probably not a surprise. Both discussions helpfully identify some additional cold, hard data on an issue that has been on the table in arbitration circles for a while—the underrepresentation of women leadership in arbitration.

But to speak from the perspective of a younger professional, the composition of arbitration leadership is only a part of the representation problem. For young women in a tough economic market, possibly carrying law school debt, old enough to be starting families or at least contemplating that possibility, the issue can be a bit more existential.

Will I be able to get a job in international arbitration? Will I at least be able to land a job in a firm that has an arbitration practice, even if they're not currently hiring? When will I be "established" enough and experienced enough that it's "okay" for me to go on maternity leave? What am I going to do with my toddler when I have that hearing scheduled in London or Singapore? Can I carve out a career for myself that balances arbitration practice with academia? And so on.

I'd like to suggest, therefore, that the issue of the representation of women in arbitration can be broken down into at least two general categories. One, of course, is the *leadership* issue: how many women receive arbitrator appointments, partnerships in firms, management positions at arbitral institutions. The other issue, which inevitably will affect leadership tomorrow if not today, is that of *sustainable participation* in arbitration: whether young women interested in arbitration are finding sufficient opportunities to practice and gain experience, whether they're staying in these opportunities, and whether firms and institutions are creating a flexible enough environment for women (and men) with families.

As to the first issue, we have at least some ideas of the immediate causes of the paucity of women leadership in arbitration (although much work remains to be done on this topic). Ms. Greenwood's initiative led to an interesting discussion of the often-hierarchical and closed-loop pattern of

arbitrator appointments, and some commentators cited the tendency of parties to appoint arbitrators “in their own image.” Under this theory, parties who appoint their choice of arbitrators are innately drawn to people “like them,” who are more likely to sympathize with their positions and to “talk the same talk.” (See, in this respect, Michael Goldhaber’s 2004 TDM [article](#), which describes this tendency and borrows the phrase “pale, male, and stale” to describe its results.)

Another aspect of appointment bias that has frequently been identified is the tendency of parties to conservatively choose “known quantities”—arbitrators who have extensive experience and name recognition. In the still-opaque world of arbitration, where few decisions are published, it can be difficult to know first-hand an arbitrator’s strengths and weaknesses. Word-of-mouth, name recognition and repetition of appointments can come to serve as a proxy for quality—and at the same time, become a recipe for insularity, concentration of authority, and exclusion of new players, including women.

As to the second issue, the sustainable participation of women in arbitration, we have anecdotal and circumstantial evidence, if not systematic surveys. Ms. Greenwood notes that while 65% of graduate trainees in the UK are women (and I would add that about 50% of law graduates in the U.S. are women), only 11% of partners in the top ten international arbitration teams (according to GAR) are women. Evidence, at the very least, of a “leaky pipeline” that loses women somewhere between entry-level positions and leadership in arbitration (at least as “leadership” is defined within law firms and in tribunals).

Of course, the issue of sustainable participation of women isn’t unique to the practice of arbitration. To the contrary, this larger topic became one of the run-away journalistic hits of the summer. An essay by Anne-Marie Slaughter, entitled “[Why Women Still Can’t Have it All](#),” became the most-read article in *The Atlantic*’s history and spawned a flurry of responses around the internet, both supportive and critical.

But it’s worth reading Ms. Slaughter’s article, if you haven’t already, because so many of the issues she identifies are ones that women (and men) in arbitration may find themselves confronting if and when they decide to have families. To name a few: lack of workplace acknowledgement of the scheduling challenges facing working parents (doctor’s appointments, early bedtimes), “unrelenting” travel (often international), office “face-time” requirements, and the sheer volume of working hours necessary to succeed in competitive professions. To which I would add: managing schedules and calls with clients in different time zones, job opportunities that are only available at firms or institutions far from one’s spouse or family, and a culture of technology requiring one to remain constantly “plugged in” to email and voicemail.

Ms. Slaughter’s article doesn’t just speak to the handful of women with ultra-elite credentials and years of experience who could fairly consider themselves to be her peers. It speaks—and speaks powerfully—to the younger generations of women who aspire to become the next Anne-Marie Slaughters in ten or twenty years’ time. It speaks of the practical and the logistical, forcing seemingly mundane issues like school conferences onto the table for discussion with the more intractable issues—like the glass ceiling and yes, appointment bias—that are already there.

Are these two issues, leadership and sustainable participation, distinct? Absolutely. The dynamics affecting women in arbitration leadership are not necessarily the same dynamics women face in starting and developing their careers in arbitration. Not all of today’s arbitrators spent their pre-arbitrator careers in law firms. Arbitrators can be pulled from a variety of different sectors,

including academia, diplomacy and the national and international judiciary. Not all attorneys in arbitration practice view appointment as arbitrator as the apotheosis of their careers.

Most importantly, these two issues may require different fixes. Getting more women into tribunals will require us to navigate tricky issues related to the party appointment system and institutional rules (a subject that merits its own post). Getting more women into arbitration jobs—whether they be at firms, in institutions, with individual arbitrators, or even within academia—requires us to think about arbitration as a legal service, an industry and a workplace.

But in my mind, at least, there is little doubt that these two issues are connected. The arbitration community would do well to be concerned not only about today's scarce few women arbitrators, but also the young women that will step into their shoes in a few decades.

In my next post, I will address how the expansion and development of arbitration in recent years may affect the working dynamics for the next generation of arbitration practitioners, men and women alike. In the meantime, I'd welcome your comments on leadership and sustainable participation in arbitration.

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please [subscribe here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).

Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the
newly-updated
*Profile Navigator and
Relationship Indicator*



 Wolters Kluwer

References

Ms. Greenwood's numbers were based on statistics provided to her by the Stockholm Chamber of Commerce and the LCIA, and the 6.5% figure included both party-nominated and institution-appointed arbitrators. Disaggregated, fewer than 6.5% of party-nominated arbitrators were women, while greater than 6.5% of institution-appointed arbitrators were women.

Mr. Van Harten noted that of the total 247 individuals who have been appointed in the 249 known ICSID cases up through May 2010, only 10 were women, or 4%. Of them, two women, Gabrielle Kaufmann-Kohler and Brigitte Stern, together captured 75% of female appointments.

This entry was posted on Friday, November 2nd, 2012 at 12:17 am and is filed under [Appointment of arbitrators](#), [Women in arbitration](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can skip to the end and leave a response. Pinging is currently not allowed.