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# Kluwer Arbitration Blog

## “Breaking In: How International Arbitration Becomes More Diverse” – A Report from the GAR Connect Event

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On 1 September 2021, Global Arbitration Review (GAR) launched a new diversity-themed addition to its GAR Connect series, “Breaking In: How international arbitration becomes more diverse.”<sup>1)</sup> The event, co-chaired by **Adriana Braghetta (Adriana Braghetta Lawyers)**, **Nayla Comair Obeid (Obeid & Partners)**, **Vladimir Khvalei (Baker McKenzie)**, and **Kevin Kim (Peter & Kim)**, showcased individuals and ideas from seats or regions newer to international arbitration, along with some of the challenges that newcomers to the world of international arbitration face.

### Keynote Address

The keynote address was delivered by **Gaston Kenfack Douajni (Director of Legislation, The Ministry of Justice, Cameroon)**. Mr. Douajni raised criticisms on appointments of arbitrators specifically in Africa. He shared his exchange with the late Emmanuel Gaillard, who agreed with him that arbitration will only be “truly international” when renowned arbitral institutions appoint African arbitrators in cases that do not necessarily involve African parties.

He remarked that the “condescension and paternalism” with which some practitioners view African arbitrators and institutions are “not likely to promote diversity in international arbitration.” He also observed that a small pool of international arbitration practitioners from developed countries are regularly appointed in international arbitration. As a result, the arbitrations take longer as it is “not humanly possible” for arbitrators sitting simultaneously in several cases to manage them.

In concluding his address, Mr. Douajni quoted Winston Churchill: “*criticism can be disagreeable, but it is necessary. It’s like pain to the human body: it calls attention to what’s wrong.*” He explained that calling attention to the lack of geographical diversity in the appointment of arbitrators emphasizes that this deficit impacts the effectiveness of international arbitration.

### Building a Local Arbitration Bar

The panel was moderated by **Adriana Braghetta (Adriana Braghetta Lawyers)** and featured speakers **Lucas Britto Mejias (TozziniFreire)**, **Una Cho (Kim & Chang)**, **Ahmed Ibrahim (Independent Arbitrator)**, and **Sanjeev Kapoor (Khaitan & Co)**. Each speaker explained the steps taken in their jurisdictions—Brazil, South Korea, Egypt, and India—that led to the rise of international arbitration and the establishment of a local arbitration bar.

For Brazil, Mr. Mejias stated that there are four main factors: (1) modern and strong arbitration law; (2) courts supporting arbitration; (3) a strong arbitration community; and (4) a large and diverse business community that favors arbitration, particularly due to delays in decision by the courts and arbitration being a better mechanism to resolve specialist disputes.

Ms. Cho stated that the same factors helped the development of international arbitration in South Korea. She stated that the Asian financial crisis in 1997 also played a role, as insolvencies of companies were resolved through arbitration.

Mr. Ibrahim highlighted the fact that all four countries were business hubs in their region. In Egypt, the economy relies heavily on sectors like telecom, which in turn promotes dispute resolution through arbitration.

Mr. Kapoor also noted that similar factors led to the expansion of international arbitration in India. He added that a very reactive legislature and reduction of court interference in arbitral awards have played a major role. Mr. Kapoor mentions that talented Indian lawyers who study and train abroad have returned to India to develop the market. High-proficiency in English and the fact that India follows the common law system have also helped.

### **Barriers to Real Diversity; How to Expand the Arbitrators Pool?**

Clients, institutions, counsel, and arbitrators argue that the pool of arbitrators should reflect the world it serves. However, it is easier said than done to introduce young faces, particularly from less popular legal systems. Speakers **Diamana Diawara (Africa Director for Arbitration and ADR, ICC)**, **José Feris (Squire Patton Boggs)**, **Kevin Nash (Deputy Registrar & Centre Director, SIAC)**, **Emilia Onyema (Professor, School of Oriental and African Studies, University of London)**, and moderator **Vladimir Khvalei (Baker McKenzie)** discussed methods to do so while maintaining international arbitration's reputation for excellence.

There are three types of diversity issues to becoming an arbitration practitioner: gender, age or experience, and ethnic diversity.

As for gender, based on [2020 ICC Dispute Resolution Statistics](#), the number of women arbitrators increased by 2.3 percent. However, there is regional disparity, and female arbitrators in Europe lead in the number of appointments compared to female arbitrators in other regions.

As for age and experience, while prior knowledge and trust are essential in arbitral appointments, there has been a tendency to appoint younger practitioners as arbitrators in institutions, as seen in the ICSID list of arbitrators. They will provide fresh ideas that would encourage the parties to appoint them instead of traditional names. For practitioners in some regions with fewer arbitrations, achieving the requisite experience level may require practicing abroad—but that changes once arbitration becomes more popular.

However, as to national origin, while French, English, or American arbitrators often practice anywhere, there is an obstacle for arbitrators from other jurisdictions to practice outside their regions. Even though there is a talent pool of arbitrators in Latin America, developing them in the other areas requires more time. Local arbitration institutions could offer a solution by appointing young arbitrators with diverse characteristics as arbitrators, for example, on behalf of the non-participating respondent in cases or nominating young arbitrators as chairs of arbitral tribunals.

Diverse students and practitioners should also consider internships in international organizations such as the United Nations Conference on Trade and Development (UNCTAD), joining young arbitration groups, publishing or speaking at events, and differentiating themselves by getting a degree in international law or obtaining a Ph.D. to build their way in the arbitration world.

Even though education in other jurisdictions helps students and young practitioners build a global network of future arbitrators, there are some obstacles to pursuing these goals, such as financial difficulties. In this regard, several initiatives such as the [Racial Equality for Arbitration Lawyers \(R.E.A.L.\)](#) aim to provide opportunities to diverse students and practitioners.

### **Debate: Is the Future of International Arbitration Regional?**

**Nakul Dewan SA (Twenty Essex), Mustafa Hadi (Berkeley Research Group), Ucheora Onwuamaegbe (Arent Fox), and Janet Walker (Independent Arbitrator)** argued for and against the debate motion. The debate was judged by **Sheika Haya Rashed Al Khalifa (Haya Rashed Al Khalifa), Nayla Comair Obeid (Obeid & Partners), and Elie Kleiman (Jones Day)**.

The first group argued that international arbitration in the future would focus on regional hubs, as shown in the [2021 Queen Mary report](#) that found that the regional seats in arbitration are increasing. In this regard, Singapore and Hong Kong are as popular arbitration seats as Paris or London. The key reasons that made the regional seats more attractive are more support for arbitration by local courts, improved neutrality, impartiality of the local legal system, and a better track record in implementing agreements to arbitrate and arbitral awards.

BITs have also caused the development of regional arbitration centers, such as in the case of Turkey for the China-Turkey BIT. The customers determine the future, not the suppliers, and the parties prefer some centers with shared languages and business cultures. Parties engaging in regional transactions are keen to find someone who understands their needs and the business environment.

The second group argued that the future of international arbitration is not regional. Arbitral awards are enforced globally through the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Technology and new types of transactions will make participation in arbitration easier, and arbitration over these new transactions (such as cryptocurrency) is often focused on subject matter, not geography. All countries must come together to protect the future of international arbitration, and students and young practitioners can benefit from learning from those in other regions.

### **Concluding Thoughts**

The event shed light on several questions and issues that are not often touched upon in international arbitration conferences and literature. One issue that was briefly addressed was access to training for junior lawyers from newer arbitration jurisdictions. One of the participants mentioned that only one arbitration center is currently running a virtual internship. Inequalities in access to training exist and have long-term ramifications. More initiatives and broader discussions on reducing inequality in access to training are the need of the hour.

The discussions, especially with people who likely share the same experiences relating to diversity, allowed attendees to reflect not only on the current shortcomings but also the ways forward to achieving more diversity—whether in race, gender, or age—in international arbitration. There is no dearth in initiatives on the part of organizations in achieving diversity. To name a few, organizations such as [ArbitralWomen](#), [Rising Arbitrators Initiative](#) and the [Racial Equality for Arbitration Lawyers \(R.E.A.L.\)](#) were launched towards this goal. Recently, Arbitrator Intelligence also [launched a diversity campaign](#) to collect feedback that will make it easier for parties, counsel, and institutions to appoint diverse and newer arbitrators.

The event gave a unique opportunity to connect practitioners from across the world and hear inspirational figures share their experience in tackling the challenges to “break in” the world of international arbitration. The authors believe that although there is still much work to be done, the recent increase in the number of initiatives and events like this show that we are moving in the right direction.

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## References

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