

Kluwer Arbitration Blog

Declining Professional Diversity in International Arbitration

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In her [blog post on 27 February 2022](#), Kiran Nasir Gore expressed measured optimism regarding the international arbitration (IA) community's collective progress towards greater diversity especially over the last few years. She highlighted various recent initiatives and developments including [Racial Equality for Arbitration Lawyers \(REAL\)](#), the [Rising Arbitrators Initiative \(RAI\)](#) and the appointment of first woman President of the ICC International Court of Arbitration. We should certainly celebrate this advancement of equality in race, age and gender although Gore pointed out that the main beneficiaries of the closing gender gap are white women based in Europe or North America.

In addition, we should be aware that the burgeoning debate seems to leave out discussion of a further area where diversity is lacking in the IA community – an analysis of professional diversity. While the key groups and publication outlets for IA are dominated nowadays by those practising primarily as full-time lawyers, there is hardly any awareness or sustained discussion about the limitations of overlooking diversity of professional backgrounds, perhaps partly because arbitration rules usually do not require arbitrators to have any specific experience, training or qualifications.

However, involving more non-lawyer practitioners (NLPs, such as engineers, architects, accountants) or those who are primarily academics could significantly reduce the persistent [formalisation in IA](#). Expanding professional diversity could also lead to other benefits, including indeed more gender diversity, given that academia does not have the same [non-linear remuneration structures](#) for lawyers that disadvantage career progression for many women. These and other issues associated with professional diversity are outlined in our recent research article entitled "[Lawyers and Non-Lawyers in International Arbitration: Discovering Diminishing Diversity](#)". That research article also empirically analyses the ways legal practitioners have come to prevail across the key nodes of influence within the IA sector. The rest of this blog post introduces our key empirical findings.¹⁾

Associations and Institutions Promoting Arbitration

First, we examined key groups that promote IA but do not themselves administer arbitration cases. The influential groups examined were the International Council for Commercial Arbitration

(ICCA), the Chartered Institute of Arbitrators (CIArb) and the International Bar Association (IBA).

The ICCA Board as of September 2021 largely comprised individuals falling primarily in the category of practising “Lawyer” (84%), executives of “International or Arbitral Organisations” (IAOs, typically leaders within arbitral institutions) (5%), “Mixed” (typically those having multiple professional engagements) (5%) and “Academic” (4%, essentially full-time). We also examined the composition of ICCA Taskforces for all years: Lawyer (61%), IAOs (18%), lawyers and NLPs working in Litigation Finance (7%), Mixed (7%) and Academic (6%). Authors of entries in the Young ICCA Blog between 19 October 2010 and 17 February 2021 fell into the categories of Lawyer (86%), Academic (10%) and Mixed (2%). Analysis of presentations in ICCA Congresses and related chapters in the ICCA Congress Series over the last 30 years also indicated the growing prevalence of Lawyers (60% over the entire period) within ICCA publications, and in parallel reflecting only small proportions of IAOs (14%), Academic (12%) and Mixed (9%).

The lack of diversity in professional backgrounds was also salient in the other groups. For example, the vast majority of CIArb Board Members in 2021 were from the Lawyer category (78%), in contrast to NLPs making up 15% of the Board (despite the earlier influence of NLPs in CIArb until around the 1990s) and no members falling into the Academic category. Speakers in CIArb Webinars from July 2020 to March 2021 comprised Lawyers (75%), Academic (12%), NLPs (9%) and IAOs (2%).

Meanwhile, the data is comparable at the IBA. As for the committee membership for proliferating IBA instruments, such as the Evidence-Taking Rules, there was an even heavier prevalence of Lawyers (95%) although this was less surprising given that the IBA is essentially a global federation of lawyers’ associations. Similarly, for IBA webinars, mostly from 2020 but also some from 2021, 94% of the key participants were Lawyer; only 4% could be coded as IAOs, while 2% were Academic.

Arbitration Institutions and Their Leaders

Next, we analysed the international and regional arbitration institutions having high caseloads and/or those deemed reasonably representative of civil or common law traditions and geographical diversity. These were the International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), the Swiss Arbitration Centre, the International Centre for Dispute Resolution (ICDR), the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKAIC), the China International Economic and Trade Arbitration Commission (CIETAC), the Australian Centre for International Arbitration (ACICA), the Asian International Arbitration Centre (AIAC), the Japan Commercial Arbitration Association (JCAA), the Korean Commercial Arbitration Board (KCAB), the Thai Arbitration Institute (TAI) and the newer Thai Arbitration Centre (THAC).

To discern professional diversity within the leadership of these arbitration centres, we looked overall at the membership of various Boards, Councils, Committees, Taskforces and Courts as of 2021. The combined analysis confirmed Lawyers’ predominance (76%), as well as the comparatively small ratios of NLPs (11%), Academics (6%) and IAOs (1%). We further investigated speakers and moderators at webinars and conferences organised by those arbitration centres in 2020 and the first half of 2021: Lawyers (80% in 2020 and 83% in 2021), IAOs (8% and

4% respectively), Academics (5% and 6%) and NLPs (4% and 5%).

Indicative Journals, Books and Blogs

We also considered major journals for international arbitration, complementing an [earlier analysis of periodicals and other publications](#). These were Arbitration International (associated with the LCIA), Arbitration: The International Journal of Arbitration, Mediation and Dispute Management (CIArb), Asian International Arbitration Journal (SIAC) and the Journal of International Arbitration (published by Wolters Kluwer). Again, the overall extent of Lawyer involvement was striking. Editors of these four journals as of September 2021 were mostly Lawyer (75%), although there were somewhat more Academic (22%) than say for the leadership of the arbitration institutions as examined above. Then, we examined all the discernible articles (other than book reviews) published in the four journals from the late 1980s, when three were being published and some debate emerged about the role of NLPs in arbitration.²⁾ Sampling the journals essentially at five-yearly intervals (in 1989, 1994, 1999, 2004, 2009, 2014 and 2019-21) gave the following proportions for authors: Lawyer (71%), Academic (19%), IAOs (2%), NLPs (4%) and Mixed (3%). Analysing authorship categories over time found that absolute numbers and proportions of articles written by Lawyers had grown, especially over 2000-2010.

We further studied editors and authors of influential books and blogs. For books, for example, we investigated the International Arbitration Law Library Series published by Wolters Kluwer, with 59 titles since 1993 when the first volume of the Series was published. Coding editors and authors of these volumes and individual chapters demonstrated the dominance of Lawyer (50%) although a significant minority were from Academic (39%). Other professions such as IAOs, NLPs and Mixed occupied relatively small proportions (3%, 2% and 6%, respectively). On blogs, our analysis concentrated on Kluwer Arbitration Blog (KAB), as one of the most well established and widely read arbitration-related blogs. Comparing the KAB's editorial team for August 2021 and 2018 (the latest year for which the Wayback Machine online allowed us to access a snapshot of the list of all editors), 80% were Lawyers and 20% were Academics. In addition, we studied backgrounds of blog authors in February, June and November of 2009, 2014 and 2019-21. The sampling found a similar prevalence of postings by Lawyer (79%), some by Academic (16%) and very occasionally by authors from an IAO (2%).

Concluding Remarks

The phenomena confirmed by our empirical research are clear: the entrenchment of lawyers through the world of IA, and the corresponding decline in involvement and influence of full-time academics and especially other NLPs. This growing lack of diversity in professional backgrounds contrasts with gender diversity, which has [experienced some statistical improvements](#) in appointments of arbitrators or other leadership positions in some arbitration centres. One response to that ongoing “[diversity deficit](#)” might be to encourage more involvement of academics and NLPs in the leadership and activities of the significant arbitration associations and centres, as well as leading publication venues. Such a response will help the IA sector develop diversity of perspectives because, as Joshua Karton [suggests](#), such diversity may be enhanced by arbitrators with varied experiences who may think differently from the arbitration mainstream. At least, we

need more discussion and ongoing debate about the remarkable and continuing decline in professional diversity within IA.


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References

As elaborated in the research article, including the methodological Appendix, we basically categorised all individuals in accordance with their primary profession at the time they were a member of the relevant arbitral organisation, the relevant publication was written, or the relevant presentation was given.

?2 Asian International Arbitration Journal was published from 2005.

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