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## Book of Abstracts

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**Cultural competencies among arbitration practitioners in Germany and CIS countries**

Elena BEZELGUES (BEZELGUES Law Firm)

Irrelevant misunderstandings or minor disagreements can arise or existing ones can escalate into major crises, resulting in significant costs and sometimes more lasting damage to future prospects. Differences in business culture can be a greater roadblock to successful outcomes than even language differences. Whether culture comes from the country of origin or from a variety of other sources, it has an influence on how people think and act. Given these influences, it can be assumed that culture has a prominent role in and influence on people's interactions, including their disputes.

Culture can arise in an arbitration proceeding at almost every juncture. Cultural issues may affect how the parties select the arbitrator(s), seat of arbitration, applicable law or language. The aim of this article is to provide a comprehensive summary of cultural competencies among arbitration practitioners with respect to the following: the definition of the cultural competence; the relevance of the cultural competence in arbitration proceedings; and how is cultural competence being developed among arbitration practitioners in Germany and CIS countries (Belarus, Russia, Ukraine, Kazakhstan).

**Proxies and Simulacra: Can AI Supply Sustainable Diversity in Arbitration?**

Henry Allen BLAIR (Mitchell Hamline School of Law and London Metropolitan University)

Professor William W. Park once remarked that "[i]n real estate the three key elements are 'location, location, location,'. . . in arbitration the applicable trinity is 'arbitrator, arbitrator, arbitrator.'" But arbitrators, as numerous empirical analyses demonstrate, and our own lived experiences confirm, tend to be cut from the same cloth. Very little diversity along any metric exists. Despite the undeniable multitude of values diversity brings, and despite survey evidence demonstrating that parties desire for greater variety on arbitral panels, not much has changed over the past twenty years. The standard explanation for the gap between aspiration and practice has been pragmatic:

parties' primary concern by the time that they are confronted with arbitrator selection is making sure that they have an expert decision maker. Experience as an arbitrator serves as the most readily available proxy for expertise and competence. So, parties chose the same arbitrators repeatedly. Of course, implicit—and perhaps sometimes explicit—biases are also certainly at play.

Some commentators have proposed a technological solution to the so-called arbitrator diversity paradox. Developments, especially artificial intelligence (AI) and blockchain technology, are disrupting the traditional format and conduct of arbitrations. In line with this trend, AI applications currently used to screen job candidates could be used for the appointment of arbitrators, either directly by the parties or by the overseeing institution. Such AI applications may be able to optimize arbitrator selection, retaining the best virtues of party choice and autonomy while avoiding biases and evaluating potential arbitrators on more telling metrics than simple experience.

This paper will evaluate these claims and the promise and peril of using AI to foster sustainable diversity in international arbitration.

**Navigating the practicalities of achieving diversity in arbitration**

Animesh Anand Bordoloi (O.P. Jindal Global University), Natasha Singh (NALSAR University of Law)

Available literature points that although most countries had their own form of private dispute settlement akin to an unorganized form of arbitration, the development to modern International Commercial Arbitration as we see it today dates back to several concrete steps taken in the 20th century by Western countries. Decades later this forms one of the contributing factors for practitioners from such regions enjoying most appointments as arbitrators, leading to serious debates on diversity in Arbitral Tribunals. Through this research, I would like to look into the various factors that affect the idea of 'inclusivity' as well as 'diversity' and how these ideas fare with the primary principles of arbitration. The research would discuss the various initiatives that have been undertaken to increase all forms of diversity – nationality, race, gender, culture and will study the effectiveness of the same. It would also analyze the idea of familiarity in appointment of arbitrators, including the idea of an arbitrator's previous experience and if at all it would be fair to ask parties

to give up on their autonomy while pushing for diversity in the tribunal, which might in some jurisdictions also give rise to appeals against the awards passed. The research begins with a hypothesis that there exists an inherent tension between these ideas. Given that most legislations recognize the flexibility of parties as essential, the idea of increasing diversity might be a tough challenge. Here, I would like to discuss as a case study, the structure of the Indian judicial system, which in the absence of any definite setup has struggled to create diversity, especially from the gender aspect. Lastly, the paper would discuss plausible solutions, structures and stakeholders which if identified as well as regulated efficiently can play a significant role in pushing for such changes.

**The cultural sensitivity in harmonisation of international arbitration: lessons from China**

Qingxiu Bu (Sussex Law School)

Cultures shape the instincts and expectations of stakeholders in the international arbitral process. Such a variable may psychologically influence an arbitrator's performance and credibility, as well as how she or he is perceived by the other players in an arbitration. Although arbitration has emerged as a credible means of resolution of cross-border disputes involving parties from variant cultures, the research of cultural ramifications remains underdeveloped within the existing literature. China has a distinct cultural approach to international arbitration, which is uniquely characterised that Chinese parties prefer non-confrontational methods of conflict resolution. In the rapidly expanding field of international arbitration, however, the cultural effect should not be read too widely given the increasing convergence in both rules and norms, which is arguably perceived to result from economic rather than cultural factors. In response to the inquiry, this paper seeks to fill that gap by providing an in-depth critique of the role of culture in cross-border arbitration.

**Cultural diversity in international arbitration in Europe: the race to 55**

Rodrigo Carè (CARE International Counsel Studio Legale, Rome)

Parties to ICC and LCIA proceedings hail from all over Europe. Nevertheless, the lawyers routinely instructed in high value,

complex, international arbitration mandates in Europe tend to be English, Swiss, or French, and Australians and New Zealanders are more represented than, say, Germans or Italians. For the purpose of this study, we will consider the country in which a lawyer has obtained his or her first law degree as the determining cultural factor.

This is also the consequence of law firms recruiting efforts having focused so far on certain diversity factors1 over others. In comparison, it has been reported that in London's top investment banks only 55% of recruits are native English speakers. Non-native English speakers are the majority in another area of international practice, EU competition law. A diverse international arbitration community should aim at least to reach these numbers.

It is the belief of this author that the drive to diversity must be fueled by the end-users of international arbitration, setting clear expectations in terms of diversity of the teams they instruct.4 This is particularly true for the many companies in the energy and construction sectors headquartered in continental Europe, that are often engaged in international arbitration and routinely instruct lawyers in foreign jurisdictions.

**Cultural competence: the hidden aspect of competent arbitrators**

Monica Chan (University of Macau)

In the international commercial world, multinational corporations invest enormous money in conducting research to understand a specific jurisdiction's business situation and economic prospects before they make any investments. Yet, in international commercial arbitration, it is less common to see that parties invest time and other resources to understand the arbitrator(s) appointed. Very often, an arbitrator may be appointed based on his or her expertise, academic and professional qualifications, as well as work experience in arbitration. However, very few academic literatures have discussed the significance of how an arbitrator's cultural competence would affect the dynamics of arbitration, if not, the outcome. When we talk about arbitration or ADR in general, all that the disputable parties are concerned about, are simply expectations. Oftentimes, parties' expectations may not be the same as those from their legal representatives and even more so, the arbitrator(s) if they did not come from the

same backgrounds and/or cultures. At the end of the day, they may not be on an equal footing. Thus, using arbitration as a tool often goes further than just resolving a dispute or legal issue; the relevance of socio-cultural factors shall not be ignored. This paper attempts to explore the underlying rationales as to why cultural competence of an arbitrator plays a crucial role in the context of arbitration, discuss the potential aspects of cultural competence required from an arbitrator, and the way forward in the development of cultural competencies and promotion of diversity in the international arbitration community.

**Investment arbitration between cohesion and diversity**

Fernando Dias Simões (Faculty of Law of the Chinese University of Hong Kong)

The community of investment arbitrators is frequently described as small and close-knit. At its centre stands a nucleus of repeat arbitrators whose radiation is particularly forceful in the evolution of the community and the regime more generally. This influence is amplified in the case of practitioners who switch between the roles of counsel and arbitrator in different disputes. This traditional depiction of this group as compact and intimate generates different reactions among scholars and practitioners. Some argue that the existence of a small group of repeat players contributes to the accumulation of a capital of experience and even promotes the multilateralization of International Investment Law. Others believe that arbitrators seek to ensure their survival and retain their influence by deliberately keeping the group small and inculcating a univocal approach to the field.

The United Nations Commission on International Trade Law (UNCITRAL)'s Working Group III (Investor-State Dispute Settlement Reform) is currently considering different models for reshaping the way adjudicators are selected and appointed. One of the key proposals on the table – the creation of a permanent investment court – could spell the demise of the community of investment arbitrators as we know it and lead to its replacement with a brand-new adjudicative community. This article questions whether such a radical overhaul would efficiently address the concerns raised by the current appointment practice. In addition, it contends that the diversification of the arbitral community should not be achieved at the expense of experience. Moving to

a whole new institutional framework with a brand-new cast of adjudicators will not necessarily address the perceived flaws of the current regime. The focus should be on technical expertise and competence, not on the creation of an 'ideal' adjudicative community filled with individuals without any 'suspicious' past connections.

**Recognition and enforcement of foreign arbitral awards: the Vietnamese approach**

Van Dai Do (Ho Chi Minh City University of Law), Hoang Tu Linh Tran (Ho Chi Minh City University of Law)

Vietnam in 1995 joined many other ASEAN countries as a party to the New York Convention of 1958 and implemented it in the same year. While the Convention has laid down a common ground for recognizing and enforcing foreign arbitral awards, each signatory has its way to interpret and apply as a matter of domestic law. Although voluminous literature has addressed this issue across different jurisdictions, little, if any, ink has been spilled on the Vietnamese approach. This paper seeks to enrich the existing scholarship by clarifying three sets of issues.

First, the subject matter of recognition and enforcement is "foreign arbitral awards," but the Convention remains open when an award falls under this concept. The paper will therefore clarify the ability to recognize and enforce: a partial arbitral award; a decision to recognize the agreement of the parties; a decision to apply emergency interim measures; or a foreign arbitral award whose seat of arbitration is in Vietnam.

Second, as the Convention has very few provisions regulating procedures, it is then governed by national laws. The paper will focus on clarifying the characteristics of Vietnam in terms of procedures, such as the statute of limitations for requesting recognition and enforcement; the competent authority for recognition and enforcement; the conditions for the presence of the executor; or the effect of the decision on recognition and enforcement in Vietnam.

Third, the Convention has grounds for refusing recognition and enforcement, but it is still quite general. The article will also clarify how to understand/apply these grounds in Vietnam, such as

when the arbitration agreement is established by an unauthorized person; the executor is not properly notified; or the arbitral award is contrary to the fundamental principles of Vietnamese law.

**"Insurance policy" and gender-ethnic diversity in international commercial arbitration**

Bryan Christiano Eduardus (Universitas Indonesia)

Gender and ethnic inequalities in the workplace have been the norm for decades without any effective action being taken to address them, even though they have caused great harm to women and ethnic minorities around the world. This is also the case in international arbitration, which should reflect a global commitment to equality and inclusivity. This commitment must be embodied in the selection of the diverse character of the arbitrators as the face of the international arbitration process. Diversity in the process itself can be classified using the term "RAGE" which includes race, age, gender, and ethnicity. The purpose of increasing diversity is not merely to eliminate inequality, but also as an effort to enrich the resulting decisions by considering factors such as socio-political, basic realities, different perspectives, and diverse cultural backgrounds. As a form of Alternative Dispute Resolution (ADR), arbitration bodies have many fields, of which International Commercial Arbitration is one of them as an alternative method of resolving cross-border commercial transaction disputes that cannot be resolved by national courts. The current climate of international arbitration is broadly a gated community. It is understandable that the parties and advisors still choose the same name of the arbitrator, not only because they are experienced, but also a kind of "insurance policy" where if something happens in the case, in this case, the company loses, the one that has chosen the arbitrator is not to be blamed. This paper will elaborate on the influence of the concept of "insurance policy" on efforts to bring about sustainable diversity, specifically in International Commercial Arbitration.

**Public services arbitration in Turkey**

Mustafa Alper Ener (Ankara Hac? Bayram Veli University Faculty of Law), Tu?çe Ergüden (City University of London)

The way for international arbitration in Turkey has been paved with the following amendment made in the first paragraph of

Article 125 of the Constitution, with the Law No. 4446 dated 13.08.1999; in concession terms and contracts related to public services, it may be envisaged that disputes arising from these will be resolved through national or international arbitration. International arbitration can only be applied for disputes with foreign elements. After this amendment, arrangements regarding arbitration in Turkey gained momentum. However, at this point, a dual distinction emerges. On the one hand, there are ?stanbul Tahkim Merkezi (?stanbul Arbitration Center) established by the state by law, and arbitration centers established on the expectations and needs of the private sector. In this sense, the issues and opportunities within the scope of diversity will be discussed through the example of Turkey.

**Longevity of the new large-scale international arbitration through a more harmonized arbitration culture**

Edoardo Gandini (University of Milano – La Statale), Marzia Scura (Attorney in Milan)

The recent significant business evolution in a number of emerging countries and regions has spurred a growth in the commercial arbitration market as a convincing and reliable means of dispute resolution and, inevitably, is inducing the flowering of several arbitration institutions in countries with no considerable arbitration tradition – such as, for example, Central Asia, Latin America, Africa.

This current, more delocalized, framework of arbitration suggests that the time has come to address some of the most widely reported critical issues in the arbitration chronicles, namely (i) the kindness of the legal system towards arbitration; (ii) the professionals' cultural disparities and differences, that frequently erode the effectiveness of the mechanism, and (iii) the costs of the proceedings.

Since the fundamental bedrocks of arbitration are consensus and autonomy of the parties, the Authors deem that a welcoming legal environment and a better practice in managing cultural differences in international arbitration may be crucial for a more viable outcome of the entire proceedings.

Lack of harmonized arbitration culture means lack of uniform international arbitration practice: typical examples are, inter

alia, different approaches to case presentation, evidence policy, decision-making process. With a new and larger arbitration community emerging, especially in previously underrepresented countries, today, more than ever, legal practitioners from different countries are required to shrink distance and get closer to each other.

The purpose of this article is to explore the proper road to sustainability of the arbitration ecosystem which can be ensured through a more homogeneous arbitration education in search of common approaches and standards of resolving international commercial disputes. This is something that needs to be seen as an opportunity, rather than a frightening experience.

**An introductory proposal for an economic approach to sustainable diversity in investor-State arbitration**

Roberto Isibor (Università Bocconi, Italy)

The promotion of sustainable diversity might be the "right thing to do", but is (also) a rational goal to pursue from an economic perspective? Is the economic analysis of law suited to make this kind of statement?

Whereas the economic approach to public international law is becoming a seminal field of research, vast potential areas of analysis have hitherto not been systematically explored. Building upon the well-accepted maturity of this area of study, this Paper will thus explore the potentiality (and challenges) of extending the economic approach to sustainable diversity in investor-State arbitration.

It is here argued that the insights from economic approach to law can be applied to investor-State arbitration if we agree that goal-norms in investment law regimes can be benchmarked on the basis of a pre-defined "criterion of the right". In this regard, the Paper suggests that by assuming the existence of an interrelation between adjudication and international investment flows, it could be argued that the increase of such flows is the basic goal of any investment law regime, being then the common criterion of the right for any other goal-norm pursued by the relevant actors. From this perspective, it is then further possible to argue whether and to which extent the maximization of sustainable diversity in public law adjudication can be a cost or a benefit to that basic goal of flow improvements.

In conclusion, by addressing the methodological foundation of economics analysis of sustainable diversity in investor-State arbitration, it will be argued that Alexy's proportionality analysis is an economic test absolutely apt to be the pillar for normative analysis of goal-norms in public law adjudication.

**"Diversifying the dominant demographics in international arbitration – the how, the why and the (maybe) solution"**

D'Andra A. Johnson McKinney (Bancroft & Hughes Nassau), Theominique D. Nottage (Arbitration Consultant Government of The Bahamas)

The world of international arbitration is still largely dominated by the "pale, male and stale" demographic notwithstanding the concerted efforts of organizations like the International Council for Commercial Arbitration and Arbitral Women in advocating for gender diversity and greater inclusion. This dominance results in significant obstacles to the advancement, in international arbitration, of black, brown, and young, female practitioners located in emerging jurisdictions based on mere demographics. As women, who are of colour, under 40 years of age and based in an emerging jurisdiction, we experience every facet of what it means to be diverse. Notwithstanding the fact that we are educated and experienced in the world of international arbitration, we see very little of ourselves reflected in the international arbitration community.

So, what will it take to develop sustainable diversity in the international arbitration ecosystem? Firstly, we think it necessary to briefly address why and how the industry remains dominated by the same demographics despite the global evolution of leadership demographics. Secondly, we think it necessary to survey the experiences of diverse women in key emerging markets like the Caribbean, Latin America and Africa to truly understand the challenges and obstacles that women like us face in emerging markets when competing globally. Finally, we will address solutions to the problems highlighted in the survey and indicate how such solutions will benefit the industry.

**Shaping international investment law through the Africanization of investment law teaching in Africa**

Louis Koen (University of Johannesburg, South Africa)

International Investment Law (IIL) is facing a legitimacy crisis over fears that it may inhibit states ability to regulate in the public interest. Several African states have played an important role in reform efforts. Several new-generation BITs concluded between African states such as the Morocco-Nigeria BIT have been hailed as excellent models for investment law reform globally. The reforms being spearheaded by African states are now commonly referred to as the Africanization of IIL.

Notwithstanding Africa's growing contribution to international reform efforts, only 2% of all arbitrators appointed in arbitration proceedings at the International Centre for the Settlement of Investment Disputes (ICSID) between 1966 and 2020 were from Sub-Saharan Africa. In its most recent statistics, the ICSID indicated that in 2020 only 3% of arbitrators were from Sub-Saharan Africa. This while Sub-Saharan African states were the Respondents in 12% of all cases initiated in 2020. There is accordingly a clear need to see greater inclusion of arbitrators from Africa in investment arbitration.

This contribution will look at legal education as a critical aspect for the increased participation of Africans in investment arbitration. It is argued that law schools need to expose students to information on IIL as a potential career option. However, this contribution proposes that such education must also be deeply rooted in the Africanization of IIL. Increased appointment of arbitrators from Africa is insufficient if such arbitrators follow a fundamentally Eurocentric understanding of IIL. It has long been recognised that "values and philosophies that law lecturers instil in law students can contribute to the legal order of the future". This contribution explores methods in which legal education can promote the core values underlying the Africanization of IIL.

**Diversity in international arbitration: the case of Ad Hoc arbitration**

Eva Litina (University of the Aegean, Greece)

Arbitration has faced considerable criticism for lack of diversity in terms of gender, age and nationality. Here is a lot of discussion and surveys on (lack of) diversity in international arbitration, while several initiatives aim to promote the inclusion of women and different racial groups in international arbitration.

In the same way as biodiversity is essential in ecology, the promotion of diversity in international arbitration would enrich the international arbitration community and improve arbitral decision-making. However, there are still many obstacles facing diverse and underrepresented groups (such as minorities, LGBTQ individuals, persons with disabilities) to enter the international arbitration field. Furthermore, while the role of arbitral institutions in increasing diversity has been stressed, the case of ad hoc arbitration seems more complicated.

This article aims to first discuss the barriers to enter the arbitration field, such as accessibility of education, conferences and events, internships, moot court competitions and career opportunities. Secondly, it critically examines the potential and contribution of recent initiatives in promoting diversity and inclusion. Finally, the article discusses the specific challenges of ad hoc arbitration and proposes some ideas to increase diversity in this field.

**Challenging homogeneity in international arbitration: Towards more diversity and inclusion in counsel teams**

Roopa Mathews (LALIVE)

Despite its name, international arbitration has long been dominated by a relatively homogenous crowd. And although the lack of diversity in the field has been the subject of significant criticism, much of the focus has been on the lack of diversity in the appointment of arbitrators. While the appointment of arbitrators from diverse backgrounds remains an important issue, with still a long way to go, this article addresses a topic that has attracted less attention thus far: diversity in counsel teams.

Counsel teams in international arbitration cases tend to be marginally more diverse than the arbitrators they appoint. But the reality is that they too are dominated by white, English-speaking men qualified to practise law in only a handful of jurisdictions. This demographic is reflected in senior positions at many of the leading law firms in the international arbitration market.

Because of the benefits that diversity brings to performance, greater diversity among counsel is important to enable law firms to deliver the best possible client service. It is also needed to achieve sustainable diversity in international arbitration. In particular, partners and other senior practitioners at law firms represent a sizeable pool for potential new arbitrator candidates. Improving the diversity of counsel will therefore hopefully lead to greater diversity in the next generation of arbitrators.

This paper makes practical proposals to promote diversity and inclusion in the international arbitration practices of major international law firms.

**"The tip is not the iceberg": designing the effective remedy for the lack of gender diversity in East Asian arbitral institutions**

Munkhnaran Munkhtuvshin (Nagoya University)

Women arbitrators are occasionally selected to "embellish the hearing room" usually full of men not only in Western but also in East Asia. Between 2018 and 2021 (March,) the Japanese Commercial Arbitration Association had a total of 40 appointments of arbitrators. Among them, only three were women. In 2020, only 22.8% of the overall appointments in the Hong Kong International Arbitration Center were female arbitrators. In the same year, the percentage was 19% in Mongolian International Arbitration Center.

Most scholars usually show a party-blame approach to choosing male arbitrators over female ones due to parties' implicit bias or information asymmetry (Rothman, 2012; Greenwood, 2017.) However, very few of the former studies focused on the issue's correlation with sexism and gender bias in law firms where future arbitrators are prepared.

This paper argues that parties' implicit bias towards women arbitrators is not the only reason for the problem. The lack of gender diversity in arbitration is the tip of the iceberg: the gender inequality in law firms. Women lawyers cannot enter into the market for arbitrators due to the gender bias and sexism in their law firms. In the arbitral institutions in East Asia, only around 13% to 25% of the panels of arbitrators are women. This insufficient number of female arbitrators is one of the main reasons parties end up choosing male arbitrators.

Feminist activists in the arbitration community urge parties to choose women arbitrators by several efforts such as "The ERA Pledge". However, without enough supplies in the market, demanding customers to buy the product is an unwise idea. For overcoming the problem in the East Asian context, the research suggests law firms develop an effective policy for fight sexism and gender-based harassment in their firms, and researchers to more focus on the iceberg itself, not the tip.

**Third party funding as a key to enhance Vietnam's involvement in international arbitration**

Quang Anh Nguyen (Hanoi Law University)

In ecology, it has long been recognized that biodiversity is essential for a sustainable ecosystem. The same holds true for arbitration. In recent years, the international arbitration community has witnessed a gradual trend toward diversity. One feature of that trend is the increasing involvement of parties from the developing world. However, there remain certain obstacles hindering their participation in international arbitration, with cost among the most prolific ones. Being mostly small and medium enterprises (SOEs), parties from developing countries often find it challenging to secure sufficient funding for their arbitration. A possible solution for this problem is third party funding (TPF). While this concept is well established in the Western legal world, it was not until recently that it became a phenomenon in Asia. In Vietnam, where cost is always an important concern in any dispute settlement process, the market for TPF in arbitration has yet to develop, and the country currently lacks any legal regime for this activity. However, among developing countries, there are

conflicting arguments about the effects of TPF. While TPF can provide impecunious parties with necessary financial aids to pursue their claims, thus encouraging them to participate more actively in international arbitration, it may result in some loss of autonomy on the part of the funded party. In addition, there is a fear that allowing TPF may trigger more disputes against developing states in investment arbitration. This paper would evaluate both sides of the argument and argue that Vietnam should embrace TPF as a means to increase its enterprises' involvement in international trade.

**Diversity in arbitration through a call for anonymity.**

Izabella Prusskaya (Carey Olsen)

The lack of diversity in the arbitration community is a problem that has not been treated properly over the years. The main tool in enhancing the diversity has been the raising of the awareness among the users, but the results are not impressive.

More women shall be appointed as arbitrators, people from different races shall be in arbitrators' pools, young and talented should have more opportunities. We all understand this and so do our clients. However, what is the obstacle then? Is that our unconsciousness, prejudice towards certain groups, simple myths?

There is no universal answer as to what can be done, but we have been talking about the diversity in arbitration for too long and it is now time to act.

I suggest we use anonymity as a tool in bringing more diversity in the arbitration world. Moreover, anonymity should become a standard. Job applications process – the CVs shall be anonymous, people should only be assessed by their skills and competences, at least at the elimination stage. Arbitrator appointment process – law firms shall give their clients anonymous notes on the potential candidates stating what their background is and disclose names only after the initial elimination.

Anonymity is, of course, not a pill that will cure all. It would not solve the problem of unequal promotions or of the division of workload and cases. However, in some aspects of the arbitral community functioning it will bring more equality and would, at least, give many a chance.

**Equal gender rights in international arbitration – still a room for improvement**

Weronika Rydzińska-Zowczak (Independent attorney)

It is difficult to talk about gender equality in international arbitration when it comes to arbitrator nominations. This paper aims to provide an overview of the data relating to the small number of appointments of women arbitrators in international arbitration, as well as to present the initiatives taken by institutions around the world that are working to combat this trend by taking measures to increase gender diversity in international arbitration.

Data shows that between 2015 and 2019, the number of appointments of women arbitrators did not exceed 30% of the total number of appointments. On the other hand, a situation has got better and trend can be observed in which the number of women appointed doubled or tripled during this period. The Report published by ICCA regarding the Inter-Institutional Task Force on Gender Diversity in Appointments and Arbitration Proceedings (2020) shows an improvement in the appointment of women arbitrators.

This paper provides a comprehensive analysis of the data identified in the ICCA Report. The analysis seeks to demonstrate that there is room for improvement in gender diversity in international arbitration, although the data indicate not dynamic improvement in that scope.

Institutions around the world have endeavoured to create real change in the appointment of women as arbitrators in international arbitration. Arbitration institutions and non-governmental organisations are working hard to increase gender diversity in international arbitration around the world. These include: the Arbitration Pledge, the African Promise and initiatives undertaken by ArbitralWomen. This paper examines, analyzes and comments on these initiatives.

In conclusion of this paper, it is emphasised that although there have been improvements in gender diversity, there is still no equality. There are still a few appointments of women made by parties, arbitrators and institutions which diverge significantly from the men's case. In general, there is still a great amount of work to be done in this area.

**Invisible inequality: the lack of regional diversity in international arbitration**

Umika Sharma (National University of Singapore)

With a marked shift in the regional makeup of parties in both investment and commercial arbitration, a corresponding shift in the regional diversity of arbitrators has still not come about. It could be because of an incomplete understanding of why there is a lack of regional diversity in international arbitration. This paper will discuss the movements of users of international arbitration from a Western to a non-Western makeup and use that as a starting point to focus on why a similar shift in the arbitrator population has not yet happened. Primarily, it will explore why there is a lack of regional diversity in this field of law.

The main theoretical framework of the paper will be around the idea of an invisible and subtle form of inequality that exists in prestigious international arbitration appointments. The findings will be based on over 30 semi-structured interviews conducted across 8 jurisdictions and multiple original quantitative data sets focussing on the regional diversity of practitioners and arbitrators.

Such an empirical analysis can bring out new perspectives on why there is regional inequality in a field of law that prides itself in its global appeal.

This framework will explore many ideas, including the underpinnings of the social capital that practitioners and arbitrators rely on in a supposedly meritocratic field. Moreover, an interdisciplinary approach will feed into this framework where a historical and socio-legal analysis will be combined to understand the resistance to regional diversity. Thus, the paper can potentially contribute to advancing the understanding of a lack of regional diversity in international arbitration and pave the way forward for bringing about lasting change.

**Dynamics of transnationality and epistemic community in commercial arbitration: rethinking through a narrative of hegemony**

Hosna Sheikhattar (Leiden Law School), Mansour Vesali Mahmoud (Shahid Beheshti University, Tehran)

Despite the increasingly diversified discourses in international commercial arbitration, as a device of socio-legal regulation, commercial arbitration remains a relatively under-theorized subject. Theory is used in this context as a set of presuppositions, beliefs, or perspectives through which a practice can be approached.

Notably, far too little attention has been paid to analysing international commercial arbitration through the prism of postcolonial theory. A postcolonial perspective is broadly understood as a conceptual reorientation towards power and wealth disparities in the aftermath of the end of the formal colonial era.

With this in mind, two fronts in international commercial arbitration invite a postcolonial analysis. One is the transnational account of arbitration. Since the 1960s, some passionate liberal arbitration lawyers in continental Europe have advocated the idea of arbitration as an autonomous transnational legal order. Despite the fierce opposition of legal positivists against the idea of transnational autonomy of arbitration, international arbitration remains intertwined with different organizing notions claiming to transcend national boundaries. Moreover, following a shift from an Austinian concept of law as a command of the sovereign to broader accounts of law, non-state actors are increasingly involved in producing norms for a globalized economy. Borrowing from Pistor's "The Code of Capital", this paper aims to redirect the focus of the debate of transnational law and arbitration to relations of sovereignty and property being manifested in coding of the capital by lawyers backed by the state coercive power.

The other front discussed in this paper is the epistemic community of arbitration. The notion of epistemic community, deemed generally as the mechanism through which specialists bring with them their cultural background and mindsets to a certain field, will be employed to study the manner in which

concepts and practices in international arbitration have been shaped under the hegemony of western legal traditions.

**"Harmony in diversity": ASEAN's arbitration reform in taming the "unruly horse" of public policy exception**

Tang Yi (University of Hong Kong)

With the signing of the Regional Comprehensive Economic Partnership (RCEP) in 2020, the economic relationship with the ASEAN member states is in the spotlight. And a rising volume of economic transactions generated by the RCEP, and correspondingly a growing number of cross-border commercial disputes involving ASEAN parties are anticipated. Arbitration, as the primary means of resolving international commercial disputes, is argued to be adopted within and beyond ASEAN.

Interestingly, the ten ASEAN jurisdictions represent varying and diversifying degrees of development, including both the leading jurisdiction in arbitration in the Asia Pacific such as Singapore and the least developed jurisdiction such as Myanmar. The fact that these ASEAN jurisdictions are at extremely different or various stages of development in arbitration, indeed provides us with a unique and golden opportunity to study their various reform efforts and initiatives.

Looking at the latest developments and salient issues in arbitration in ASEAN member states, it is found that several jurisdictions (e.g., Thailand, Vietnam and the Philippines etc.) have made particular efforts (or taken significant initiatives) in addressing public policy challenges to arbitral awards and their enforcement in recent years.

The public policy exception (under Article V(2)(b) of the New York Convention), which expresses policy considerations for non-enforcement of arbitral awards, is frequently characterized as an "unruly horse" due to its ambiguity and indeterminacy. Focusing on the different practice of the selected ASEAN jurisdictions in interpreting and applying the public policy, this Article attempts to examine whether these jurisdictions with diverse legal culture and at various stages of development in arbitration may adopt different attitudes towards public policy exception (or take different initiative/reforms), and to shed light on whether there is a development pattern of "harmony in diversity" in their reform

efforts in taming the "unruly horse" of public policy exception to arbitral enforcement.

**International Arbitration: the role of institutions in promoting equal career opportunities**

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In international arbitration, as in any area of life, there is a lack of diversity. In the work teams of law firms, in arbitration institutions, in arbitration tribunals, in States and in companies. This is not only a gender problem, but also problems related to age and ethnics.

The biases are well known: a European or North American arbitrator, male and white, for example, is seen as more capable. And if he is over 50 years old, all the better.

This paper will address the need to promote diversity in the selection of arbitrators, with the understanding that this can in no case be achieved through normative impositions, but through the united contribution of all actors in the field of international arbitration, in order to achieve a culture of promoting diversity, which should be seen as beneficial and not as an empty end in itself.

Starting from the premise that ethnic diversity in arbitral tribunals is a necessity to ensure well thought out and reasoned decisions, surrounded by multiple points of view, the different ways of promoting this diversity, through initiatives such as R.E.A.L., Pledge or Arbitrator Intelligence, will be discussed.

The background to this work will be that the unfair biases that lead to ethnic and gender imbalance in arbitral tribunals must be gradually eliminated. But it will also address ways to promote access to a career in arbitration for those who come from jurisdictions unfriendly to ADR or who have few resources and thus little chance to succeed.