

Tipping the balance – diversity and inclusion in international arbitration

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ABSTRACT

Since publishing ‘Getting a Better Balance on International Arbitration Tribunals’ in *Arbitration International* Volume 28, Issue 4 in 2012 and ‘Is the Balance Getting Better? An Update on the Issue of Gender Diversity in International Arbitration’ in *Arbitration International* Volume 31, Issue 3 in 2015, the author has witnessed an increase both in women’s visibility in international arbitration and in general awareness of this issue. There has been a significant change in attitudes in a short period of time. However, translating the change in attitudes to a meaningful change in the number of appointments to tribunals of women and other diverse candidates, as well as more junior arbitrators, will only result from a change in the amount of information available to parties when they appoint arbitrators. The author attributes the lack of diversity in this field to the issue of information asymmetry and the problem of the ‘solicited feedback loop’ and believes that increased transparency and greater access to information is the only way to secure significant change.

THE RED ALIEN FROM MARS IS STILL PUZZLED

Over five years ago, I asserted that international arbitration practitioners were comfortable with the notion that women were a significant minority, if not a tiny fraction of the international arbitrator population.¹ The year 2016 was the year that the international arbitration community became less comfortable with that notion and implemented concrete proposals to address the ‘unacceptable’² level of underrepresentation of women on international arbitration tribunals.

The focus of much of the discussion has to date been on the representation of women on arbitration tribunals. However, there is a compelling need to widen the discussion to embrace initiatives that would not only change the male/female composition of tribunals but also change the race/background/age of tribunal members.

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1 Lucy Greenwood and C Mark Baker, ‘Getting a Better Balance on International Arbitration Tribunals’ (2012) 28 *Arb Intl* 653.

2 Sylvia Noury, ‘Noury: We Owe it to Women and the Future of the Law’ <<http://globalarbitrationreview.com/article/1036340/noury-we-owe-it-to-women-and-the-future-of-the-law>> accessed 16 January 2017.

Written back in 2000, the opening paragraph of Dr KVS Nathan's article 'Well, Why Did You Not Get the Right Arbitrator?' appears to be just as true today:

An observer from planet Mars may well observe that the international arbitral establishment on Earth is white, male and English speaking and is controlled by institutions based in the United States, England and mainland European Union. For the most part, arbitrators and counsel appearing actively in international arbitral proceedings originate from these countries. The majority in a multi-member international arbitral tribunal is always white. The red alien from Mars will be puzzled in his own way because the majority of the published disputes before international arbitral tribunals involve parties from the developing countries and nearly three-quarters of the people on Earth live in those countries and are not white and more than half the total population are women.³

Within a relatively short period of time, the issue of the lack of diversity in international arbitration, and the underrepresentation of women in particular, has moved from an issue that was rarely discussed, with articles such as Dr Nathan's being the exception rather than the norm, to one that has been highlighted in the national press.⁴ There has been a movement away from opinions that linked an increase in diversity with a decrease in quality,⁵ which suggested that promoting diversity would 'border on malpractice'⁶ and which considered that a diverse tribunal could 'risk divergence at every issue and bring the whole process into stalemate'.⁷ The international arbitration community now has, in contrast, enthusiastically embraced the overwhelming empirical evidence supporting the conclusion that diverse groups produce better outcomes.⁸ Far from fearing 'malpractice', senior arbitration practitioners

3 KVS Nathan, 'Well, Why Did You Not Get the Right Arbitrator?' (2000) 15(7) *Mealey's Intl Arb Rep* 24.

4 See, for example, 'Arbitrators Take the Pledge for Gender Equality'. *The Times London* (2016).

5 See, for example, comments such as 'I recall an esteemed colleague, who acts as both counsel and arbitrator, stating at a conference that, when asked by a client to select an arbitrator, the desirability of promoting diversity is the last feature on anyone's mind. "We are not being asked to make a statement" he said, "we are asked to pick the best person for the job"', Anonymous posting to OGE MID@mailtalk.ac.uk (9 February 2012), perpetuating the notion that improving diversity on tribunals would result in the appointment of less skilled arbitrators.

6 See, for example, comments such as 'I think too much is made of women in arbitration. My view is that you select the best arbitrator for the job, man or woman. It just so happens that in current circumstances there are more good men than good women. That is the result of historical circumstance, not of any innate difference between men and women. But I would ask those who say that the current situation is a disgrace: What would they do to remedy the situation? Would they risk a client's arbitration by selecting an inexperienced arbitrator just to promote diversity? I think that would border on malpractice.' Anonymous posting to OGE MID@mailtalk.ac.uk (30 June 2009).

7 See, for example, comments such as 'Diversity does not feature in parties' agendas . . . parties want an arbitrator who will hold sway vis-à-vis the others . . . a "diverse" tribunal may risk divergence at every issue and bring the whole process into stalemate.' Anonymous posting cited in posting by Sophie Nappert to OGE MID@mailtalk.ac.uk (10 February 2012).

8 There are numerous studies showing that genderbalanced leadership: (i) improves corporate governance, (ii) lessens unnecessary risktaking, and (iii) reduces so-called 'group-think'. A McKinsey study reviewed 101 companies which published the composition of their governing bodies and found that companies with

across the globe are acknowledging the research concluding that increasing diversity improves performance and are supporting diversity initiatives in this field. Paula Hodges QC's published comment, '[j]ust as diversity brings richer results, richer decision making in all walks of life, it's exactly the same for arbitrators',⁹ reflects a growing sentiment among arbitration practitioners that the time has come to address this issue.

This article summarizes current data on the representation of women on arbitral tribunals and also addresses other available data in relation to the appointment of nonstereotypical arbitrator candidates. It goes on to identify the lack of transparency in this field as a key reason for the lack of diversity on arbitration tribunals.

IS THE BALANCE TIPPING IN RELATION TO THE REPRESENTATION OF WOMEN ON ARBITRATION TRIBUNALS?

In 2012, the International Chamber of Commerce (ICC) stated that it did not routinely capture information tracking the gender of arbitrators appointed in ICC arbitrations.¹⁰ Now, however, the ICC not only publishes information on the gender of its arbitrators,¹¹ but announced that from mid-2016 it would publish the names of arbitrators appointed in its cases.¹² Achieved in a relatively short period of time, this change is striking. Other arbitration institutions, which did not previously maintain gender diversity statistics, have also begun to publish data. Notable examples are the Hong Kong International Arbitration Centre (HKIAC), the German Arbitration Institution (DIS) and the Swiss Chambers' Arbitration Institution (SCAI).

As a result of improved data capture, we are able to monitor the data more easily. In general, the numbers are improving.

In relation to investment treaty arbitration, in 2006, Professor Susan Franck carried out detailed research into investment treaty arbitrations by analysing the population of investment treaty arbitrations that were publicly available at that time.¹³ She concluded that women made up to 3% of appointed arbitrators; in 2012, I updated her research and found that the figure was then 5.63%, and this figure remained

three or more women in senior management functions scored more highly for each organizational criterion (such as direction, motivation, leadership, work environment) than companies with no women in senior positions. McKinsey then conducted a further study, into the 89 European listed companies with the highest level of gender diversity in top management posts and concluded that there was 'no doubt' that the companies with greater gender diversity in leadership outperformed their sector in terms of return on equity and stock price growth. For further discussion see Lucy Greenwood and C Mark Baker, 'Is the Balance Getting Better? An Update on the Issue of Gender Diversity in International Arbitration' (2015) 31 *Arb Intl* 413.

9 Paula Hodges QC, quoted by Christine Simmons, 'Pledge to Name More Women as Arbitrators Reaches U.S.Firms' <<http://www.law.com/sites/almstaff/2016/06/21/pledge-to-name-more-women-as-arbitrators-reaches-u-s-firms/?sreturn=20160917181329>> accessed 21 June 2016.

10 Greenwood and Mark Baker (n 1) fn 9.

11 The ICC first published statistics on the representation of women on its arbitration tribunals in 2015, 'ICC Arbitration posts strong growth in 2015' International Chamber of Commerce <<http://www.iccwbo.org/News/Articles/2016/ICC-Arbitration-posts-strong-growth-in-2015/>> accessed 11 May 2016.

12 'ICC Court Announces New Policies to Foster Transparency and Ensure Greater Efficiency' International Chamber of Commerce <<http://www.iccwbo.org/News/Articles/2016/ICC-Court-announces-new-policies-to-foster-transparency-and-ensure-greater-efficiency/>> accessed 5 January 2016.

13 See Susan Franck, 'Empirically Evaluating Claims About Investment Treaty Arbitration' (2007) 86 *NC L Rev* 1.

largely constant when reviewed in 2015. However, this figure relates to all International Centre for the Settlement of Investment Disputes (ICSID) appointments. Looking at figures for appointments made only in 2015, which is more relevant to current initiatives, 24 out of 195 arbitrator appointments made were of women, ie 12.3% of total appointments.¹⁴

In relation to international commercial arbitration, the 'baseline' statistics collated in relation to the launch of the Equal Representation in Arbitration Pledge certainly show an improvement, although some of this 'improvement' may well be attributable to better access to information. In 2012, what I termed my 'best estimate' of the percentage of women on international arbitration tribunals was 6%,¹⁵ subsequently I revised that figure to 10%,¹⁶ and in light of the recent data (and recognizing the efforts of the institutions in recording the information), I believe this should be revised again, to around 15%.

The Equal Representation in Arbitration Pledge was the first global initiative to address the underrepresentation of women in international arbitration which gained traction within the community.¹⁷ Not only did it chime with growing dissatisfaction with the status quo, but it was also backed by sufficient resources to garner support on a global scale. Signatories to the Pledge commit to increase, on an equal opportunity basis, the number of women appointed as arbitrators, with a view towards reaching the ultimate goal of full parity. Specifically, signatories promise to take steps to ensure that, whenever possible, a number of goals are met. These goals include, for example, that committees, governing bodies, and conference panels in the field of arbitration include a fair representation of women; that list of potential arbitrators, or tribunal chairs include a fair representation of female candidates; and that entities in charge of arbitral institutions include a fair representation of female candidates on rosters and lists of potential arbitrator appointees and appoint a fair representation of women to tribunals. The standard of 'fair representation' is deliberately intended to be a flexible one, on the basis that what is considered 'fair' changes depending on the context.¹⁸ Only a few weeks after its launch, the Pledge had received over 1000 signatories including law firms, arbitration institutions, companies, universities, and individuals.¹⁹

A cornerstone of the Pledge is the commitment to capture and publish data relating to the appointment of female arbitrators. As highlighted in previous papers, and as noted by Jacomijn Van Haersolte von Hof, Director General of the London Court of International Arbitration (LCIA), there has, to date, been a 'dearth' of data in relation

14 'The Baseline: Gender Diversity on Tribunals at the End of 2015' *Global Arb Rev* <<http://globalarbitrationreview.com/news/article/35330/baseline-gender-diversity-tribunals-e>> accessed 16 January 2017.

15 Greenwood and Mark Baker (n 1) 653.

16 Greenwood and Mark Baker n (8) 413.

17 The Pledge initiative originated from a suggestion made by the Director General of the LCIA Jacomijn van Haersolte-van Hof in 2014. Since April 2015, the initiative has been sponsored by a number of founders, mainly by Sylvia Noury, a partner in the Freshfields Bruckhaus Deringer's international arbitration group in London.

18 *ibid.*

19 'Equal Representation in Arbitration' <<http://www.arbitrationpledge.com/>> accessed 16 January 2017.

to diversity in the international arbitration field.²⁰ If nothing else is achieved through the existence of the Pledge, the change in attitudes to capturing the data in international arbitration institutions who are signatories to the Pledge has been remarkable.²¹

THIS ISSUE GOES BEYOND ENSURING THE EQUAL REPRESENTATION OF WOMEN

Dr Nathan's red alien's bewilderment principally arose because 'the majority of the published disputes before international arbitral tribunals involve parties from the developing countries and nearly three-quarters of the people on Earth live in those countries and are not white'.

The available data on this issue supports a conclusion that international arbitration still suffers from an overrepresentation of Anglo-European arbitrators and an underrepresentation of arbitrators from developing countries.

A total of 119 arbitrators from 40 different countries were appointed in ICSID cases in the 2016 fiscal year. Out of the arbitrators, conciliators, and ad hoc committee members appointed by parties and by ICSID, 45% was from Western Europe and 61% was from Western Europe or North America. Thirty-six per cent was from either South America, Central America, and the Caribbean, the Middle East and North Africa, Sub-Saharan Africa, and South and East Asia, and the Pacific. That number goes down to less than 18% when the South and East Asia and the Pacific group of arbitrators are excluded. In relation to party appointed arbitrators only, 67% came from Western Europe or North America. Comparing these numbers to the geographic regions parties to ICSID cases hail from is instructive. While 22% of parties came from Eastern Europe and Central Asia, only around 2.5% of ICSID arbitrators came from that region. 13% of ICSID parties came from the Middle East and North Africa, but only 4% of ICSID arbitrators came from those regions. Similarly, 11% of ICSID parties came from Sub-Saharan Africa, but only 1.5% of ICSID arbitrators came from that region.²²

In relation to ICC arbitrations, in 2015, arbitrators of 77 different nationalities were either confirmed or appointed under the ICC rules. The parties in these cases

20 Jacomijn van Haersolte-van Hof, Director General of the LCIA relied on various sources including LCIA and ICC statistics to conclude that women made up between 6% and 11% of arbitrators—'a dismal rate' <<http://globalarbitrationreview.com/news/article/32781/>> accessed 16 January 2017.

21 Within a matter of months after the launch of the Pledge, the following arbitration institutions were signatories: Arbitration Center of Mexico; Australian Centre for International Commercial Arbitration; BVI International Arbitration Center; Camera Arbitrale Nazionale Ed Internazionale Di Milano; Centro de Arbitraje de Amcham Perú

Centro de Arbitraje de la Cámara de Caracas; Centro de Mediación y Arbitraje de la Cámara de Comercio e Industria de El Salvador; CEAC; IBERO; CRECIG

Corte de Arbitraje del Ilustre Colegio de Abogados de Madrid; Corte Vasca de Arbitraje;

ICC International Court of Arbitration; ICDR; Lima Chamber of Commerce – Arbitration Center; Ljubljana Arbitration Centre at the Chamber of Commerce and Industry of Slovenia; Mumbai Centre for International Arbitration; New Zealand International Arbitration Centre

SIAC; SCAI

FAI; SCC; DIS; LCIA; VIAC; WIPO Arbitration and Mediation Center. Major companies that are signatories include BP, General Electric, Posco Energy, and ConocoPhillips.

22 https://icsid.worldbank.org/apps/ICSIDWEB/resources/Documents/ICSID_AR16_English_CRA_bl2_spreads.pdf accessed 16 January 2017.

were from 133 different countries. Of the arbitrators, 67.5% was of various European nationalities; 75% of the arbitrators was either European, American, Australian, or Canadian. Less than 34% of the arbitrators came from South America, Asia, Africa, and the Middle East, and a significant number of those arbitrators were dual nationals, typically also possessing a European nationality.²³

The data collection exercise undertaken by Professor Susan Franck at the 2014 Congress of the International Council for Commercial Arbitration also confirms that international arbitrators form a predominantly male and homogenous group.²⁴ When the participants in Professor Franck's survey were narrowed down to only those identifying themselves as arbitrators, 82.4% was men and 17.6% was women. As Professor Franck noted there was also a 'gray hair factor'; although participants in the survey were typically in their late 40s, those individuals identifying themselves as arbitrators were older, with a median age of 53. In relation to nationalities, the greatest representation was from Europe and North America; with the lowest representation from Africa and Asia.²⁵

WHAT IS THE REAL CAUSE OF THIS ISSUE?

The difficulty we face in addressing diversity issues in international arbitration is rooted in the lack of transparency in the manner in which arbitrators are appointed, and in the problem of identifying where responsibility for addressing the issue lies. Unlike some, I do not subscribe to the belief that institutions bear a greater or even sole responsibility for addressing the issue.²⁶ In recent years, the institutions have largely stepped up to the task of recording diversity information, which puts the community in a position to be able to monitor the situation more easily. However, the institutions are not responsible for appointing arbitrators in the vast majority of cases. As the International Centre for Dispute Resolution (ICDR) stated in 2014, we make 'very few direct, administrative appointments on cases' but claimed that 'we can exert an influence, which we do'.²⁷ Other institutions are in the same position.²⁸ Addressing the lack of diversity on tribunals, simply cannot be wholly delegated to the institutions in order to absolve the parties of responsibility. Anyone who makes an arbitral appointment, or compiles a short list of potential candidates for an appointment, has a duty to adopt an approach that does not disadvantage diverse candidates.

23 <<http://iccwbo.org/Products-and-Services/Arbitration-and-ADR/ICC-Arbitral-Tribunals/> and <http://hsfnotes.com/arbitration/2014/09/09/the-icc-2013-statistics-another-busy-year-for-international-arbitration/>> accessed 16 January 2017.

24 Susan D Franck and others, 'The Diversity Challenge: Exploring the "Invisible College" of International Arbitration' 53 Colum. J. Transnat'l L. 429

25 *ibid.*

26 Many commentators have indicated that the onus of addressing these issues is on the institution. By way of an example of these views, see the posting by Baiju Vasani to OGE MID@mailto:mailtalk.ac.uk (30 June 2009, 10.11 CST) 'Re a remedy, this may sound simplistic, but the onus has to be on the institutions. The anonymous author is correct in so far as it is difficult for counsel to advocate an inexperienced arbitrator even in what counsel – and we as a community (note the focus on "big dollar" cases in rankings and write-ups) – may perceive as a "smaller" case. To the client, who may not have many arbitrations on its books, its arbitration is not "small" at all. Not so institutions, who can put forward a new/female/diverse candidates in a "smaller" case.' in Greenwood and Mark Baker (n 1) 653.

27 Greenwood and Mark Baker (n 8) 413, fn 52, Email from Steve Anderson, ICDR, 3 September 2014.

28 *ibid.*

If we are to meaningfully change the composition of our arbitral tribunals then counsel and arbitration users, as those who select party appointed arbitrators, have to change the way in which they do so. The system of appointing arbitrators is opaque and fundamentally flawed. No other industry operates by appointing skilled workers without a review of their previous work or without a truly informed understanding of how they will carry out the work. Change will only be achieved by first, identifying and acknowledging the factors that cause us to gravitate towards the 'usual suspects' and secondly, ensuring there is greater access to information about the candidates we are considering.

ELIMINATING DISTRUST AND INSECURITY

The main barrier to addressing this issue is, arguably, simply lack of familiarity with potential arbitrator candidates, rather than any real bias or prejudice against appointing diverse candidates. Apparently, the Dalai Lama believes that a lack of transparency results in distrust and a deep sense of insecurity. When seeking information on potential arbitrators, any counsel will be familiar with a certain sense of insecurity, fear of making the wrong choice, and distrust in relation to the information they are receiving.

To reduce this insecurity we must equip ourselves with sufficient objective information about potential candidates to avoid the effect of the 'solicited feedback loop', where responses to questions about the calibre of a potential arbitrator are highly influenced by the motives of the respondent. This solicited feedback loop describes the situation that arises when counsel, coarbitrators, chairs, potential arbitrators, and potential counsel all form part of the same group from whom feedback is sought when considering arbitral candidates. As a result, not only is any inherent bias against appointing diverse candidates perpetuated, but also the loop encourages highly conservative choices.²⁹

The information asymmetry in the arbitration market, exacerbates the issues, parties face in appointing diverse candidates. Parties do not have access to sufficient information in order to allow them to make an informed decision, and this drives

29 As discussed at length in 'Getting a Better Balance on International Arbitration Tribunals' and 'Is the Balance Getting Better? An update on the issue of gender diversity in international arbitration', gender stereotyping has been identified as one of the most powerful influences on decision making, particularly when considering women for leadership positions, and thus may lead to an inherent bias against appointing women and other diverse candidates as arbitrators. In 2011, a study of law students considered whether they were affected by gender bias. The study found that participants reported strong correlations between Judge/Male and Paralegal/Female and Work/Male and Home/Female. This was true regardless of the gender of the participant, see, Justin D Levinson and Danielle Young 'Implicit Gender Bias in the Legal Profession: An Empirical Study' (2010) 18; Duke J Gender L & Pol'y 1. A 2009 study, investigating the promotion of women to partner level in law firms 'found consistent gender bias at the upper levels of corporate firms' and concluded that 'women who were hired as entry level associates by firms were much less likely than their male counterparts to be promoted to partner'; see, Elizabeth H Gorman and Julie A Kmec 'Hierarchical Rank and Women's Organizational Mobility: Glass Ceilings in Corporate Law Firms' (2009) 114 Am J Soc 1428-9. Because white men have traditionally dominated the arbitrator 'bar', choices for arbitrators are negatively affected by gender stereotyping about the appropriate candidate for the position, therefore female and ethnically diverse arbitrators face an additional hurdle in being appointed. However, the law student study also found that it is possible to counteract the effect of implicit bias, once that bias is identified and acknowledged.

many of the problems in opening up the market to diverse or more junior applicants. One of the problems of information asymmetry is its potential to create a so-called 'market of lemons'.³⁰ A market of lemons presents itself when one of the parties to a transaction, usually the party providing a good or service, has more information about the quality of the product than the other party of the transaction, namely, the purchaser. Because purchasers do not have enough information about the quality of the product, they are willing to purchase products in that market only for a certain price, and no more. In international arbitration, however, the converse is true; even though both parties largely suffer from the same lack of information. Because there is an element of fear of 'getting it wrong' (suffered both by the person soliciting the information on a candidate and on the solicitee, who may be blamed for giving the positive feedback) which is exacerbated by the difficulty of reviewing first hand an arbitrator's previous work, the result is a market where parties overvalue 'experienced' arbitrators. The market for arbitrators therefore consists of at least two 'submarkets': one composed of well-known arbitrators, and another one composed of relatively inexperienced, but qualified ones; this second group is not only larger than the first group, but younger and more diverse. Information asymmetry affects the market as a whole but disproportionately affects the second group. Because parties do not have enough information on the second group, they select more frequently from the members of the first group, even in the face of dissatisfaction with the outcomes of some previous arbitrations conducted by arbitrators from that pool. This imbalance results in parties defaulting to known arbitrators, and excluding others, such as young or new arbitrators, and women and minorities.

In the words of Malcolm Gladwell '... mediocre people find their way into positions of authority. . . because when it comes to even the most important positions, our selection decisions are a good deal less rational than we think'.³¹ In international arbitration, despite our best efforts, the process of selecting an arbitrator is significantly less scientific than it could be. Given the lack of available information, particularly in relation to how an arbitrator is likely to conduct a case, parties looking for an arbitrator base their decision largely on three factors: word of mouth, nationality of the arbitrator, and legal education.³² Those factors are unreliable and insufficient to make a truly informed decision. In relation to word of mouth recommendations, the quality of the answer in terms of the provision of useful information is heavily driven by the identity of the questioner, and the motive of the respondent. In relation to nationality and/or legal education, for example, there is frequently an assumption that common lawyers will act in significantly different ways to civil lawyers, for example, be more amenable to broad disclosure requests. In practice, this is not necessarily the case. In a discussion with *Global Arbitration Review*, arbitrator Peter Leaver QC noted how parties who appoint him are often 'surprised . . . at how reluctant I am, as

30 George A Akerlof, 'The Market for "Lemons": Quality Uncertainty and the Market Mechanism' (1970) 84 *QJ Econ* 488.

31 Malcolm Gladwell, 'Blink: The Power of Thinking Without Thinking' (2005).

32 Ema VidakGokjovic, Lucy Greenwood and Michael McIlwrath 'Puppies or Kittens? How Better to Match Arbitrators to Party Expectations' (2016) *Austrian YB on Intl Arb*.

an English lawyer, to grant disclosure'.³³ We should not make assumptions as to how arbitrators will behave based upon their nationality and legal education. Nor should we make assumptions as to the calibre of an arbitrator based on responses to limited enquiries made by interested parties.

The only way to counter assumptions is by facilitating access to information that allows us to challenge them. There are projects underway that aim to undercut the effect of the solicited feedback loop, and to provide information on how arbitrators conduct arbitration proceedings and, ultimately, issue a decision. Probably, the most remarkable project is Arbitrator Intelligence, a public database that will ultimately provide information on published and unpublished awards, and feedback from users.³⁴ Arbitrator Intelligence aims to promote transparency regarding the selection of international arbitrators, by publishing arbitral awards in order to assist members in selecting an arbitrator. It will also collect feedback about the arbitration decision process after awards are issued. Once fully developed, Arbitrator Intelligence will make such information available to parties through an online interface. This tool is likely to provide parties with a more efficient, transparent, and reliable process in selecting arbitrators for the resolution of a dispute. In 'Does your Arbitrator Prefer Puppies or Kittens?' my coauthors and I suggested that arbitrators complete a publicly available questionnaire indicating their soft skills and case management preferences.³⁵ Parties could also request that arbitrators provide appropriately redacted awards and details on their previous cases, such as, for example, the time taken between closing the hearing and final award in their last five cases. The real change will come when the solicited feedback loop is redundant because there is access to a comprehensive database of international arbitrators, showing their work, their experience, and their preferences. It is only then that arbitrators, of whatever gender, race, or nationality, will be able to compete on a level playing field.

DON'T TAKE THE QUICK EXIT

The key to addressing diversity and inclusion issues across the board is avoiding 'quick exits for lazy minds'³⁶ and reaching, without more, for that 'usual' arbitrator candidate. If the best estimate of 15% women on tribunals is a defensible figure, and I believe it is, then there has already been some change in the composition of tribunals in recent years. Signatories to the Pledge appear to be taking their obligations seriously and, at the very least, a dialogue about the homogeneity of international arbitration tribunals has begun. However, there is much work still to do. As those who appoint arbitrators, and those who may wish to be appointed, we must commit

33 Ema Vidak-Gokjovic, Lucy Greenwood and Michael McIlwrath, quoted in 'Puppies or Kittens? Join the Debate' (2016) <<http://kluwerarbitrationblog.com/2016/08/08/puppies-kittens-better-match-arbitrators-party-expectations-results/>> accessed 16 January 2017.

34 *ibid* 67.

35 For a more detailed discussion of these points, see, Ema Vidak-Gokjovic, Lucy Greenwood and Michael McIlwrath (n 32) 'Puppies or Kittens? How Better to Match Arbitrators to Party Expectations' (2016) *Austrian YB on Intl Arb*.

36 Suzy Kassem, born in Toledo, Ohio (1 December 1975), is an American author, filmmaker, philosopher, cultural critic, essayist, and poet of Egyptian descent. 'Rise Up and Salute the Sun': 'A lion of truth never assumes anything without validity. Assumptions are quick exits for lazy minds that like to graze out in the fields without bother.'

to avoid the quick exit, and take time to ensure that all our short lists contain diverse candidates. As Professor Davis stated: 'there are not as many as there ought to be, but it is slightly better than it was'.³⁷ There is, of course, 'room for many more'.³⁸ The arbitration community has shown through its enthusiastic reception of the Pledge, that it is committed to addressing the representation of women on arbitration tribunals, there needs to be the same commitment to making international arbitration tribunals truly diverse and properly reflective of the parties appearing before them.

37 Ben Davis 'American Diversity in International Arbitration' (2013) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2364967> accessed 16 January 2017.

38 Negro Spiritual 'The Gospel Train'.