

# Arbital Women

## A Study of Women in International Commercial Arbitration

*Louise Barrington*

This story begins in Bahrain in February of 1993. The setting was the biennial congress of ICCA, the International Council of Commercial Arbitrators. There were about 250 participants as I recall, and at one of the breaks five women found themselves gathered around a coffee table. Looking around us, we realised that we were the only women in that huge hall.

As a newcomer to the world of arbitration, I was struck then and many times in the following months by the absence of women on panels of speakers and even in the audiences. The others commented on their feeling of isolation in a world of men. Some talked of being the only woman in a room full of arbitrators and counsel and clients, or going to conferences where there were no women or only one woman (as in Bahrain) on the panels. Someone mentioned being mistaken for the secretary when she was in fact lead counsel on the file. We wondered if there were others out there - others who also felt this isolation. And if so, where were they and how were they responding?

Then the coffee break was over and we went off to listen to the (male) experts. The story might have ended there, but my curiosity was piqued. Back in Paris I realised that of all the five women who had spoken that day, I was probably the only one in a position with the physical set up to do anything concrete. So I made up a list of all the women in international arbitration I knew. Being new at the game, I came up with about twelve. I wrote to each of the other women from Bahrain, enclosing the list, and asking for additions. As the replies came in, the list got longer and longer. I sent the same request to the women who'd been added to the list. It turned into a chain letter, and the number mounted to over a hundred. Even now, every few weeks someone will tell me about a woman who has

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recently joined the ranks, or who has been active for years but had escaped my attention.

In November 1993, the ICC Institute was having its annual meeting, and our topic was a fascinating one - the use of experts in international arbitration. Figuring that some women would be coming to Paris for the conference, I sent out an invitation to the hundred women on my list to join me for dinner the evening before. I reserved a little room in a nice restaurant and then went off to the ICC Congress in Cancun for a couple of weeks.

On my return to Paris, my secretary informed me that 40 women had accepted the invitation and we'd have to change restaurants to find a bigger room.

I also began to get telephone calls from men. Several pleaded with me for an invitation. One man asked to be named an honorary woman for the evening. One offered to jump out of a cake at the end of our dinner. Another, an internationally renowned gentleman, whose name I will never divulge, volunteered to wear a dress if that would get him in.

We finished by having 60 women to dinner that night.

It's hard to put into words the energy and ambience that pervaded the room that night, but there were several factors present. Conviviality was the initial basis; we had no working agenda, no great expectations. If there was one common attitude at the outset it was curiosity: who were all these women? Few of us were acquainted with more than 8 or 10 others in the room. Which isn't surprising, considering that 13 different countries were represented around our 6 tables.

As the meal progressed, more and more women stood to introduce themselves and their experience to the group, and between the presentations, the noise level rose considerably as women discovered more and more about their neighbours and their activities. Curiosity gave way to the aura of excitement that developed that evening, as well as a sense of purpose.

Time after time we heard comments from women who felt isolated, constrained and under-appreciated as international arbitration experts. There were as well, thank heaven, some great success stories - of women whose names are well-known to everyone in this field, who have built up terrific reputations and followings by their work and perseverance.

So, there was excitement because so many of us were amazed by the quality and extent of the experience of the group, and there was hope as we also considered its potential. Ideas began to fly around, first that

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evening, and later by telephone and letter from the original 60 participants and from other women who had heard about the dinner and were interested in following it up, or at least getting their names on my list of women in arbitration.

For months afterward, the question was 'What now? We have seen the talent available; it's obviously under-used. How can we build on this initial enthusiasm to create progress?'

An association of women in arbitration, a study group for women in arbitration, a handbook, a women's directory, specialised research by and about women in the field - all kinds of ideas for furthering women's progress in international commercial arbitration were suggested. Had we built a bandwagon, we'd have had lots of people wanting to jump on. And from then on, every time I attended an international arbitration meeting I heard the questions, 'So, what are you doing now, for women in arbitration?' My reply was, for a long time, 'Nothing much'.

At one point, I'd hoped to broaden our network and diffuse the potential political reaction by holding a second dinner in another city. The logistics proved difficult, and thus far we have not been able to arrange it. So, having decided to keep a low profile, I concentrated on enlarging the list, obtaining CV's from women who wanted to send them, and passing along news about women to those - both female and male - who might be interested. Several well-known male arbitrators told me: 'I'd be quite happy to appoint a woman, but I just don't know any experienced ones'. I sent them the list, cautioning that there was no quality control here, but at least it was a starting point for contacts.

One colleague asked to publish the list in a major international arbitration journal. That was over a year ago, and so far it hasn't appeared. I think he may be having difficulties with his co-editors.....

Meanwhile, the list grew, and continues to grow, until today it number 214 women, all more or less active in one aspect or more of international commercial arbitration. And I kept getting these telephone calls. 'What can I do to further my interest and career opportunities? Who can I contact for help?'

And all along, curiosity stirred, I wanted to know more about these 200-plus women who'd made the effort to make themselves known. How successful were they? Did they all experience the isolation that many had mentioned at the original dinner? How could women help other women to advance? Thus was born the pink questionnaire. I gave the first draft to Vera Van Houtte who suggested several refinements, mainly for

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comparative purposes. And we finished up with four pages and 27 multi-part questions. Eighty women took the trouble to reply, and after some substantial computer problems I was finally able to begin analysing the responses this spring.

The questionnaire was divided into five parts: personal information, arbitration experience, attitudes, attitudes of others, and advice. Getting to know the 80 people who responded was a first step. The second stage was to find the success stories, the women who considered themselves happily active in the field, to see if there were any common threads. I was betting that the advice from these successful women would be invaluable for the others.

## **Part 1 - Personal Information**

The respondents were of 24 different nationalities, and five of them had double nationality. These women live in 21 different countries. By far, most of the respondents are living in France (23); but before dismissing the study as far too 'franco-francais', note that among these 23 French residents we find a Mexican, a Lebanese, an Italian, an Englishwoman, an Australian, an American and a Swiss.

I was surprised that less than half (33) of the respondents are bilingual. Of those, 16 or 20%, speak 3 or more languages fluently. Almost all those who responded (75 of 78 who answered the question) had a legal background, and to my surprise I didn't hear from any engineers. Three quarters were married or living with a significant other, the others being single, widowed or divorced. Half had dependent children.

## **Part 2 - The Work**

The majority (49) practice law, whether alone, in a firm, or with a corporation. A large number gave 'other' as their work, and upon examination we meet retired state court judges, university researchers and professors, as well as employees of arbitral organisations such as the ICC and the Iran-U.S. Claims Tribunal. Forty-three respondents are either partners in law firms or shareholders in their corporation. Twenty-three

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are salaried employees in a variety of different areas; two are currently on leave, and the rest seem to be independent fee earners.

Only 9 respondents work for large law firms, at least by U.S. standards, that is with more than 200 lawyers. However, since the vast majority of respondents were resident in Europe, where firms tend to be much smaller, this is not too surprising. Neither was it surprising to learn that only 20% (17) women work in firms where there are equal numbers of male and female professionals.

Many women didn't mention what proportion of their work concerned arbitration, but 19 said it represented at least 50% of their activity. Nearly everyone (72) expressed the wish to be more involved in arbitration work than she currently is. That isn't surprising since one motivation for filling in the questionnaire is doubtless the opportunity to make oneself known on our fledgling women's network.

Of our 80 respondents, 40 had acted as sole or lead counsel, 37 as junior or assistant counsel, 10 as secretary to an arbitral tribunal, 22 as co-arbitrator, 23 as chair or sole arbitrator, 8 as experts. Twenty-five listed other functions, which on inspection proved to be mainly research and administration work.

Only 10% of the women claimed to have acted as counsel, either lead or assisting, in more than 20 arbitrations. Thirty-five respondents said they had acted in fewer than 5 cases.

One of the most revealing - and encouraging - bit of information that came out was that exactly one-half of the women now involved in international commercial arbitration have become involved over the past 10 years. Now this probably has a lot to do with the age of the respondents. Three-quarters of the respondents were between the ages of 30 and 50 years old. Thus, they have become involved during that 30 to 40 year old period when legal practitioners tend to consolidate their experience and acquire a professional reputation.

By far, the most common entry role is as lead counsel (21) or assistant counsel (22), but I was interested to see also that nearly 20% of the respondents started out in international arbitrations as either chair (8) or co-arbitrator (7). Among all those just starting their arbitration careers, (and included here are those who began as arbitrators, counsel, tribunal secretary, expert and 'other') 18 were named by a client, 21 by a partner in their own firm, 8 by a colleague from another firm, 14 by an arbitral institution, and 5 were recommended by former law professors.

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Who chooses women arbitrators? Twenty-four women were chosen for the first time by one of the parties to the case. Eleven were proposed as chair by the co-arbitrators. And 16 were named by an arbitral institution. Ten women said they had been chosen by another woman.

As to the arbitral tribunal itself, three women recalled having been involved in a case where the entire tribunal (or sole arbitrator) was female. The more common configuration however, is the isolated woman in a room full of men. Only 15 of the 80 had been involved in an arbitration where another woman was acting as counsel or arbitrator. Of these, only three had had this experience more than once.

I was interested to see if there was any correlation between professional public image and arbitration activity. An overwhelming 56 women said they spoke in public on international arbitration topics, with 25% doing so on a regular basis. Forty-nine said they speak regularly on other legal topics, and 44 said they write articles on international commercial arbitration. This correlation becomes more interesting later, when we look at the women who seem to be enjoying the greatest success in the field.

Lastly, I wanted to know in which fields of international business these women were working.

Over half work in sales of goods, and 30 listed agency, franchise and licence work. The third biggest area was construction, and transfers of technology came in at 16 or 20%. Five women spend over 75% of their time on sales of goods, while four concentrate on construction and four others gave other special areas of expertise, such as shipping, sport, joint ventures, finance and insurance.

### **Part 3 - Attitudes**

I asked if women felt that women are generally seriously under-represented, somewhat under-represented, or about equally present with men in international commercial arbitration. Surprisingly enough, fewer than half answered the question, but only one of the 26 who did respond felt that women were about equally present with men. Then, when asked whether the under-representation was more marked in international arbitration than in other areas of law, 56 answered positively.

I was criticised by a couple of women for asking questions about lifestyle and personal situations. They wrote 'Would a man be asked these

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questions'? The answer is, probably not, although every lawyer knows that both men and women share the 'too much work too little family' syndrome. In fact it turned out not to be a real issue, with only 20 of the 80 experiencing any real difficulty in reconciling an arbitration practice with their family and childcare responsibilities. Furthermore, 22 said that despite frequent travel and sometimes long hours, arbitration work was easier to organise than other areas of practice, as arbitrators and counsel do not have to fit into rigid public Court schedules.

In the Attitudes section I also asked women if they noticed any differences in the way women approached an arbitration as opposed to their male counterparts, and whether they had noticed any evolution in the presence and roles of women.

When the former Secretary General of the ICC heard about this presentation he asked if women's unique characteristics, finesse, subtlety and intuition - had something special to contribute to the arbitral process. I replied that it was not so much the quality of women's presence in arbitration, but rather their absence from the ranks of grand old men, that I wanted to know about.

Nevertheless, 16 women - 20% - did notice differences. Some replied in the first person, speaking of themselves and their own differences. Other described tendencies they had witnessed in others. Here are some samples, none of which is at this point empirically verifiable:

Women prepare more, are more amenable, are tactful, better listeners and have a more sharing approach. Men have less patience, are more aggressive, frequently approaching discussions as a power struggle, and are more strategy-oriented than women.

Women are seen as more impulsive in hearing, perhaps because they have prepared in advance, and are generally more efficient and quick during the proceedings.

Several respondents mentioned that women are more subtle, yet tenacious in their approach, often demonstrating a high level of attention to precise detail and a client-oriented attitude.

Being less individualistic than men, women are good team players and they spend less time talking at great length.

Well, after that catalogue of virtues, one wonders why anyone ever bothers calling on men to arbitrate!

I also asked about how women might perceive themselves as receiving different treatment in international commercial arbitration.

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Although half of the respondents claimed to notice a difference in treatment, only 28 gave specific examples. By far the most cited example was the element of surprise, mentioned by eight women. Some added that the surprise or novelty effect was very positive, in that everyone paid more attention to them, but one woman felt it disconcerted her male colleagues.

Seven women mentioned a feeling of lack of credibility, that they had to prove themselves; one said that male colleagues can be rather patronising, making comments about welcoming the 'lovely lady', and she sensed a slight presumption of incompetence. This was echoed by a woman in shipping arbitration, who said that 'looking good does not help one's professional credibility either'.

Two women mentioned specific problems about Middle Eastern men who refused to shake hands with a woman or who insisted on addressing their comments to her (male) assistant. One lamented that she was unable to participate in an arbitration held in Algeria because her boss was afraid to expose her to the integrist troubles there. One had felt obliged to draw the sole arbitrator's attention to the (unspecified) 'improper behaviour' of her male adversary.

One woman chairing a tribunal was mistaken for a secretary. Another mentioned being taken for a trainee and ignored for much of the proceedings.

All the news is not bad, however. Some positive observations included: receiving closer attention because of the novelty effect; an easier, more relaxed atmosphere during the proceedings; increased respect and politeness among the adversaries.

#### **Part 4 - The Stars**

I thought it would be interesting to pick out the most successful women from the 80 who responded, and to see if there were any common threads that might have contributed to their success. I looked for women who said arbitration represented 50% or more of their work, and who had participated as arbitrator or as counsel in many international arbitrations. I chose eight women who seemed to be outstanding. Without downplaying the qualities of these eight, I want to point out that at least three of the best-known, busiest women in international commercial arbitration had not

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responded to the questionnaire. But since I know them fairly well, I can assure you that they do share the characteristics I am about to mention.

Among my eight stars were two Dutch, two Swiss, one French, one German, one Norwegian and one Finn. No Americans! A couple of the American respondents were very experienced, but only in domestic arbitration. So for the purposes of this study, I couldn't count them.

Six of the eight are between 40 and 50 years old, with one younger and one older. This surprised me at first; I had assumed they would be a little older. However, when one realises that it is only in the past twenty years that women have been largely represented in the legal profession, it does explain why more of the stars have not been around as long.

Two were bilingual, one trilingual, and four have four fluent languages. All but one has a Master of Law and one has a doctorate.

One was single and the other seven married, with one, two or three children. Who said it is impossible to combine a career with children? These women are proving it can be done.

One woman, the doyenne of the group, claims to have taken part in over 100 arbitrations. Among the other seven, figures varied, but together they had participated as arbitrator, counsel, assistant counsel or experts, in over 275 arbitrations. One woman listed only 13, but stated that 90% of her professional work involved arbitrations; I know her, and she works on big, complex cases involving mergers and financing montages.

Where are the preferred areas of specialisation for these eight women? One woman said all her arbitration work involved shipping law, and another spends all her time on joint venture agreements and disputes relating to them. By far though, the most popular field was in sales, with construction law not far behind. These results are hardly surprising when one looks at the subject matter of the bulk of arbitration cases.

One common thread, which was not at all surprising, was that every one of the eight speaks in public on the topic of international arbitration. Seven of the eight also speak on other legal topics, and six of them write at least occasionally on arbitration topics. Are they invited to speak and to write because they arbitrate? Or are these women invited to arbitrate because they've made themselves known by speaking or writing? I can only venture the guess that each feeds the other. If that is the case, for those starting out, it would be a good idea to get invited to speak, and then be so impressive that everyone in the room wants to name you as arbitrator in their next case.

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So if the study holds true, to be a successful arbitral woman, you should be Dutch or Swiss, 45 years old, bilingual at least, have several diplomas, speak in public and write at least occasionally, married and have 1.75 children, and specialise in sales, construction, shipping or joint ventures.

## **Part 5 - Evolution**

Of the eighty respondents, thirty felt that there has been some positive evolution in the presence of women in the field. (A few were adamant that no such evolution was observable or even possible!). Changes have mainly been observed since the beginning of the 1990's. The most often mentioned change was the increased presence of women in high profile situations such as conferences and seminars, and as authors. One law professor mentioned seeing many more women in her arbitration course at law school and a few mentioned that some men are pushing to help and support women, often by suggesting them as arbitrators.

Women are more visible than in the past. Networking also seemed to be a major factor; participating at meetings and conferences is the major way to network, but several respondents mentioned that original dinner in November 1993 as a great impetus to know their sister-colleagues, and as an exercise in consciousness-raising. An American living in Europe stressed the importance of solidarity among women seeking to further arbitration careers.

The wish for solidarity is however, by no means universal. I did not receive responses from three women who are among the most successful in Europe, who did not like the idea of any kind of women's group or study. In private conversations with these three, all stressed the value of hard work, of making the 'right' contacts, and of simply attracting business by being excellent. All were extremely reluctant to become involved in anything resembling a women' organisation or support group, gauging that it would probably have more negative than positive effects on their careers.

From an institutional point of view as well, women are more visible. The London Court of International Arbitration has a new Director, Madeleine May. At the ICC, three of our six teams of counsel are now headed by women. Assistants had traditionally been female, but in 1995 the first assistant was promoted to counsel.

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There has also been some progression in the choice of women as arbitrators. In 1990 the ICC Court named 517 arbitrators, of whom 4 were women. In 1995, out of a total of 766 arbitrators named by the ICC, 22 were women. This huge jump represents an increase over the last five years from .78% to nearly 3%!

At the London Court, the news is less positive. Madeleine May and Bertie Vigrass tell me that in the history of the LCIA, only two women have been confirmed as arbitrators!

Michael Hlering, General Counsel of AAA, said that the 1990 figures were not available but that in 1995, in 200 international cases, 26 women were named as arbitrators. This looks like 13% until you realise that in many of the 200 cases, three arbitrators would be named. So the percentage, although probably bigger than ICC's, is still small. Mr Hlering added that when he joined the AAA five years ago, his efforts to get women arbitrators accepted were unsuccessful, because the parties generally struck them from proposed arbitration lists. So there is work to be done in educating the clients!

### **Part 6 - Advice**

Of course, what most women - and many men - want to know is, what are the secrets for success, for being chosen and for establishing a reputation? Almost all of 80 the respondents had advice, although some said they really wanted to get advice from the others.

Here are some samples:

- Know your subject, then write and speak in public.
- Walk the fine line between wimp and bitch.
- Find a mentor.
- Act like a man.
- Be cleverer than a man.
- Work hard and be authoritative.
- Be a law professor.
- Network: become involved with others doing arbitration.
- Be tough, persistent, professional and organised.
- Handle stress well.

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From the eight stars, the following pearls of wisdom:

- Work on legal engineering - the management of large and complex cases, and learn to handle cyclical stress.
- Be yourself, but very professional.
- Acquire skills in areas where arbitration is frequently used.
- Promote yourself actively in the right circles, even though this tends to be difficult for women, who are more modest about their accomplishments.
- Again, find a mentor or sponsor who will support your efforts and help you advance.
- Be a superb lawyer.

### **Part 7 - And now what?**

Many men and some of the women asked why I had limited the study to asking women these questions. They felt that many of the answers lay with our male colleagues. Quite simply, I wanted to get to know my female colleagues. That was the first reason for starting all of this. And I feel I've got a fairly good picture of the typical successful woman in international arbitration.

But that need not be the end of the story, so this Part is not called a Conclusion. I agree that the men's answers can give us a great deal of insight, particularly about how we are perceived, rather than how we think we are perceived. That might be the second stage of the study: men's attitudes toward their female colleagues.

Men also have told me that women are not the only ones who feel left out. Many men are frustrated at not being allowed into some inner magic circle. Han Van Houtte sent me an article recently about the new technocrats versus the grand old men of arbitration. It described the rise of young men - and women - who have studied and trained and who are using their procedural competence in trying to break into what seems to be a closed circle. That phenomenon will be for others to study.

Another next step: I would like to see a colloquium about women in arbitration, and invite men too. I remember one man's comment when we were talking about the women's dinner which was about to take place. 'So you're the women who want to replace us!' Absolutely not. I started off

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curious, and continued because women seemed to want me to. This is no political, feminist affirmative action group, but simply as a gentle push in the right direction and a greater use of the talent which is there. And by getting to know each other, and to appreciate each other's skills and limitations - not only the women, but arbitrators in general - we can contribute to raising and maintaining the quality of the arbitral process in general.

In closing, a final piece of advice, in chorus, from three of the eight stars:

**Just Do It!**