

Then and Now—A Quarter Century of Women in Arbitration

By Louise Barrington

I attended my first international conference as Director of the ICC's Institute of International Business Law and Practice (now mercifully renamed the Institute of World Business Law) in Bahrain in the late 1980s. The occasion was a conference of ICCA and there were about 250 participants at the three-day affair. At a break during the second day, pouring coffee for myself and the woman next in line, we realized that all of the women in the room had congregated at that table. There were about half a dozen of us. We began to chat, and although the theme of that Bahrain conference has long ago fled my memory, the theme of our coffee break chat has not.

We remarked on the absence of women on the conference panels (there was only one out of about 40 speakers in Bahrain) and even in the audience. Several recalled incidents where they were the lone woman in a room of men, where lead counsel was asked to bring coffee to her junior, and where some male counsel simply ignored their presence. The somewhat rueful laughter led to some curiosity about whether there were other women involved in arbitration whom we hadn't met, whether their experiences were similar, and how were they dealing with life in a world of males.

Back in Paris, I took the list of those women, and added to it another half dozen names I'd encountered during my first few months at the ICC. I sent a note around to the women on the list and asked them to add any names they knew, and send it back to me. I then wrote to the new names and asked them to do the same. The list grew to nearly 150 names in the space of a couple of weeks, and thereafter, others continued to trickle in. I didn't know what I'd do with the list, but figured it might one day serve some useful purpose.

The Institute's Annual Meeting takes place each October, and on the assumption that some of the women on my list would be coming to Paris to attend the conference, I invited them all to a dinner the night before. My secretary and I reserved a private room in a cozy little bistro near the ICC, and I went off to Mexico for a couple of weeks. On my return, my secretary exclaimed, "You'll have to find a bigger place, the bistro can't take more than 40!"

At that first dinner 60 women attended, from 13 different countries. Between the aperitif and the soup, each of the 10 women at the first table rose briefly to introduce herself and her interest in arbitration. As each course and table took the spotlight, the atmosphere underwent a marked change. The evening had begun with friendly curiosity: who were all these unknown faces and why hadn't we met before? The animation escalated, with the increasing awareness of the talent and power in that room. Many of those who shared that first evening still agree that it was an unforgettable moment.

In the following months and years I continued to receive letters and suggestions from women who had experienced the excitement of that evening and the hope it could lead to something concrete. Women who missed that first dinner wrote in to be added to the list. The list lengthened as I continued collecting CVs. Male colleagues had remarked to me and others: "I'd be happy to appoint a woman arbitrator, but I don't know any qualified ones." The list was our answer. It was a start.

The next task was to find out something about these women, with the goal of finding out what factors contributed to the success of those few whose names were household words. In 1995 I distributed a 5-part extensive questionnaire to all the women (by then over 200) on my list, to see what they could tell me. Eighty of them spent about an hour to tell me about their personal circumstances, their experience in arbitration, their own attitudes and those of their co-workers and their advice to others.

Of the 80, thirty felt that there had been some progress for women in arbitration since the early 1990s. With more women in the practice of law, some achieved recognition as speakers and authors. Women were lining up to take newly established arbitration courses in law schools. There were a few men who actively promoted their female colleagues. And, there were a few successful women who loathed the idea of any focus on gender; they felt a gender-based approach would do more harm than good.

To my amazement, Geoffrey Beresford Hartwell asked me to talk about my findings at a conference of the Chartered Institute of Arbitrators in Boston in 1996. That conference made me famous—or rather infamous—among men who came up to me at coffee breaks saying, "So you're the young lady who wants to replace us?" My answer then and now is the same: we don't want to replace the men, only to join them.

Soon afterwards, while I was starting up ICC Asia in Hong Kong, it was my colleague Mireze Philippe who took on the challenge of creating a Yahoo! Website to focus the energies of those women on the list and to expand it and create a forum for discussion. We began to have irregular dinners and mini-seminars in a number of cities, usually tacked on to an ICC arbitration commission meeting, an international conference or the Vis Moot. The numbers grew and women met and the network strengthened.

Women progressed, but in 2003, Focus Europe's first study of large arbitrations highlighted the dearth of women in the top cases: only two women were arbitrating these cases. By the time Michael Goldhaber published his "Madame La Presidente" article in 2009, women were arbitrating 4% of these cases. A few women were very

successful and busy, but many others had yet to break into the cabal of international arbitration.

Women also have taken on substantial responsibility for arbitration administration. Anne Marie Whitesell recalls being one of only two women counsel at the ICC Secretariat when she arrived. (The very first female assistant counsel promoted to counsel was in 1995.) Anne Marie worked her way to the top job as Secretary General, and when she left in 2009, two-thirds of counsel and assistant counsel were women.

In 2005, again largely through the efforts of Mireze Philippe, ArbitralWomen came into existence as a not-for-profit company under French law. ArbitralWomen is a network dedicated to fostering the role of women in international dispute resolution, through networking, communications and training. The inaugural general meeting took place in Montreal during the ICCA conference. In the seven years of its existence it has grown to close to 500 members around the world.

Today, ArbitralWomen organizes dinners, informal meetings and seminars around the world for its members and guests. In 2008 a mentoring programme began to match up experienced women in the field with those just starting out. ArbitralWomen gives out a number of grants each year to teams competing in the Vis Arbitration Moot in Vienna or the Vis East—provided those teams have at least 50% women. A quarterly Newsletter features members and their activities, and the ArbitralWomen website is a forum for members to post their CVs and exchange messages. A directory of members lets members and visitors alike to locate experts, counsel, arbitrators or speakers with an amazing range of expertise. In addition, countless numbers of professional connections and friendships have formed among ArbitralWomen. The group also recently introduced an award to honour men who have worked to promote the goals and values of the group.

The impetus for recognizing women came from women, but in recent years the broader arbitration community has recognized the importance of encouraging women to exercise their talents. In 2006, the Toronto chapter of the International Law Association featured a star-studded panel called “The Changing Face of International Arbitration” in which a number of prominent men and women commented on the need for diversity in arbitration, and progress made to date. CPR established a diversity committee, and the committee presents an annual award for diversity in arbitration. In 2011, JAMS featured a panel in New York on the role of women in arbitration. Global Arbitration Review (GAR) published a list of the Top 30 Female Arbitration Practitioners in 2007. In GAR’s current list of the “Top 40 under 45,” women occupy 10 slots. As women now outnumber their male colleagues at law schools around the world, and upon graduation many may enter the international arbitration field, that number should rise.

ICCA, known colloquially as “the gods of arbitration” for decades had one lone female among its 40 members. Today there are three, including one vice-president. Even at the top, there is some slight movement. The Dublin conference of 2008 featured women in 40% of its speaking slots. Sadly, that record has not even been approached in Rio, Geneva, or on this year’s programme for Singapore. More positive was the Young ICCA Workshop held in 2011, where of 20 speakers, 7 were women.

As well as the publicity, women are taking interesting gender-based initiatives which may have far-reaching repercussions beyond the realm of gender balance. A network of women’s arbitration centres has been created in India. In Albania, a group of women lawyers and dispute resolvers has formed to attempt to bring two competing factions of government to a level of cooperation that will repair their broken system. These and other events highlight the female talent available in the field and recognize talented women who can serve as role models for the future.

Because of the private nature of international arbitration proceedings no one really knows how many new ad hoc cases are introduced each year. But judging anecdotally and from the institutional statistics around the world, it is clear that interest and respect for arbitration has mushroomed in the past 30 years. The growth of arbitration around the world, the feminization of the practice of law, and the efforts of many dedicated women and men together are literally changing the face of international arbitration.

In September of 2011 I attended the Latin American conference in Miami. Of the 360 delegates, over 40% were women, a far cry from half a dozen out of 250 in Bahrain. Many of the Miami women were young, and just starting out in the field. It will be interesting to see how many of them will remain to climb the ladder and join that list of top arbitrators under 45, and then progress to the highest ranks of the field. What does seem clear, however, is that women have come a long way since Bahrain. As one of the GAR laureates was able to say, “...being female may even be an advantage in some respects. People nowadays are more conscious of the need to have balance in cases and conferences. There are more opportunities for women.”

Our work is not complete. Until those percentages rise to around 50%, women will need to work hard and work smart to gain and retain the progress we’ve made. Competition to enter the field is tough, for both women and men. But looking back to 1985, it’s comforting to know that the door is now very much open to talented, persistent women who insist on taking their place in the world of international arbitration.

Louise Barrington is FCIArb (Chartered Arbitrator), Principal of Aculex Transnational Inc, Hong Kong, Paris, Toronto, and co-founding president of ArbitralWomen.