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Analysing Appointments in International Arbitration

Nationality, Ethnicity, Race, and Legal Training of Arbitrators

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1. Introduction

International arbitration[1] has become a popular method of resolving transnational disputes due to the neutrality of the process, the level of party autonomy, the flexibility of the arbitration proceedings, as well as the efficient enforcement of arbitral awards.[2] As a result, the caseload of arbitration institutions has been growing steadily,[3] but there has been criticism among international arbitration practitioners[4] of the lack of diversity among arbitrators.[5] So far, most attention has been devoted to gender diversity, leading to numerous steps to promote the appointment of female arbitrators. These include actions taken by arbitration

[1] The chapter's discussion pertains to both international commercial arbitration and international investment arbitration.

[2] See School of International Arbitration Queen Mary University of London and White and Case, '2015 International Arbitration Survey: Improvements and Innovations in International Arbitration' (2015) 2, 5.; School of International Arbitration Queen Mary University of London, '2018 International Arbitration Survey: The-Evolution of International Arbitration' (2018) 5–8.

[3] See the caseload comparison of the leading arbitration institutions in Gary Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014) 94–95.

[4] It is challenging to identify the 'international arbitration community'. For the discussions of this chapter, it includes international arbitration counsels, arbitrators, arbitration institutions' staff, in-house counsels involved in arbitration, as well as academics. See also Susan D Franck and others, 'The Diversity Challenge: Exploring the "Invisible College" of International Arbitration' (2015) 53(3) Columbia Journal of Transnational Law 430.

[5] See, for example, ibid; Berwin Leighton Paisner International Arbitration Group, 'Diversity on Arbitral Tribunals: Are We Getting There?' (2016).; Jacomijn J van Haersolte-Van Hof, 'Diversity in Diversity' in Albert Jan van den Berg (ed), *Legitimacy: Myths, Realities, Challenges* (Kluwer Law International 2015).; Christophe Seraglini, 'Who Are the Arbitrators? Myths, Reality and Challenges' in Albert Jan Van den Berg (ed), *Legitimacy: Myths, Realities, Challenges* (Kluwer Law International 2015).; Lucy Greenwood and Mark Baker, 'Getting a Better Balance on International Arbitration Tribunals' (2012) 28(4) Journal of the London Court of International Arbitration.; African Association of International Law, 'Tribunals Need Africans, Says His Excellency Judge Abdulqawi Ahmed Yusuf, Vice-President of the International Court of Justice,' (1 December 2015),<www.aail-aadi.org/single-post/2015/12/01/"Tribunals-need-Africans"-says-His-Excellency-Judge-Abdulqawi-Ahmed-Yusuf-vicepresident-of-the-International-Court-of-Justice> accessed 29 February 2020.

Monika Prusinowska, *Analysing Appointments in International Arbitration* In: *Identity and Diversity on the International Bench*. Edited by: Freya Baetens, Oxford University Press (2020).
DOI: 10.1093/oso/9780198870753.003.0008.

institutions,[6] as well as less formal initiatives. The latter include the Pledge for Equal Representation in Arbitration, signed by over 3,600 individuals and organizations,[7] and ArbitralWomen, an international non-governmental organization bringing together female practitioners in international dispute resolution.[8] As a result, the number of female appointments has increased, yet it is still far from the number of male appointments.[9]

Yet, diversity aspects, other than gender, such as nationality, race/ethnicity, and age, as well as their intersectionality,[10] are still waiting to be more fully addressed. Certain voices within the international arbitration community have taken steps to promote more diversity along these lines.[11] Initiatives include the Alliance for Equality, a non-profit organization advocating increased inclusivity in dispute resolution and equal opportunities 'regardless of location, nationality, ethnicity, sexual orientation, gender or age'.[12] However, further progress needs to be made particularly with regard to non-Western arbitrators. The respondents to the *2016 Berwin Leighton Paisner International Arbitration Group Survey on Diversity in Arbitration* showed significant dissatisfaction with the current pool of adjudicators in this respect. For example, 80% expressed the view that arbitral tribunals contained too many white arbitrators and 64% agreed that there were too many arbitrators from Western Europe or North America.[13] Furthermore, 54% thought it would be desirable for arbitrators to come

[6] See, for example, the International Court of Arbitration at the International Chamber of Commerce ('ICC') reporting on the progress in 'ICC Court Sees Marked Progress on Gender Diversity' <https://iccwbo.org/media-wall/news-speeches/icc-court-sees-marked-progress-gender-diversity/> accessed 29 February 2020.

[7] The Pledge for Equal Representation in Arbitration seeks to increase, on an equal opportunity basis, the number of women appointed as arbitrators in order to achieve a fair representation as soon practically possible, with the ultimate goal of full parity. (see the official website <www.arbitrationpledge.com>accessed 29 February 2020.

[8] The ArbitralWomen is an organisation providing a platform for female dispute resolution practitioners. Among the purposes of the ArbitralWomen are advancing the interest of female dispute resolution practitioners, promoting diversity, providing professional development opportunities and mentoring. See the official website <www.arbitralwomen.org/>accessed 29 February 2020.

[9] To illustrate, the ICC reported that in 2018 were 32% of women were appointed as a president and 30% as a sole arbitrator. See the ICC's official website <https://iccwbo.org/media-wall/news-speeches/icc-arbitration-figures-reveal-new-record-cases-awards-2018/>accessed 29 February 2020.

[10] See more about the intersectionality in Joshua Karton and Ksenia Polonskaya, 'True Diversity Is Intersectional: Escaping the One-Dimensional Discourse on Arbitrator Diversity' (*Kluwer Arbitration Blog*, 10 July 2018) <http://arbitrationblog.kluwerarbitration.com/2018/07/10/true-diversity-is-intersectional-escaping-the-one-dimensional-discourse-on-arbitrator-diversity/> accessed 29 February 2020.

[11] See, for example, the ICC reporting on the increased participation of arbitrators from growing economic regions, like Asia and North Africa, as well as on the rising number of younger arbitrators: the ICC's official website <https://iccwbo.org/media-wall/news-speeches/icc-arbitration-figures-reveal-new-record-cases-awards-2018/>accessed 29 February 2020.

[12] The Alliance for Equality focuses specifically on addressing the lack of diversity in relation to ethnicity and geography in international arbitration. It provides trainings on diversity and inclusion and networking opportunities. See the official website <www.allianceequality.com/> accessed 29 February 2020.

[13] Berwin Leighton Paisner International Arbitration Group, 8, see <www.bclplaw.com/en-US/thought-leadership/diversity-on-arbitral-tribunals-are-we-getting-there.html>accessed 29 February 2020.

from more diverse ethnic and national backgrounds.[14] Fewer than a third of the participants of the 2018 survey conducted by the School of International Arbitration of Queen Mary University (London) believed that any progress had been made in the previous five years in terms of tribunal members' diversity in terms of geographic origin, age, or cultural/ethnic background.[15]

This chapter first demonstrates that the current pool of international arbitrators is close to homogenous in terms of adjudicators' nationality, race/ethnicity, and place of legal training (common or civil law system). Subsequently, it discusses why diversity matters in international arbitration and why it is important to promote diversity. Further, the chapter examines the factors that parties and arbitration institutions take into account in the selection process in order to better understand what is expected of a potential appointee. This analysis is informed by the findings of the author's Survey of Arbitrators concerning appointment incentives. This Survey focused on non-Western arbitrators, and Chinese arbitrators in particular, to explore why they are seldom appointed, despite the substantial involvement of Chinese parties in international arbitral cases. The final section of the chapter draws on these findings to discuss possible strategies to promote diversity.

2. The Current Pool of International Arbitrators

The international arbitration system is often described as being dominated by 'male, pale and stale' arbitrators.[16] This perception is supported by empirical investigations. For example, in 2016 Susan D. Franck surveyed nearly 400 participants at the biannual meeting of the International Council for Commercial Arbitration (ICCA).[17] The survey findings confirm that international tribunals are dominated by male, senior arbitrators from developed countries. More specifically, according to Franck's study, the median international arbitrator is a 53-year-old man, who is a national of a developed State with approximately ten previous arbitral appointments. This section presents the (2.1) nationality, (2.2) race/ethnicity, and (2.3)

[14] See ibid.

[15] School of International Arbitration Queen Mary University of London (2018) 16–18.

[16] See Samaa A F Haridi, 'Towards Greater Gender and Ethnic Diversity in International Arbitration,' (2015) 2 (2) *Bahrain Chamber for Dispute Resolution* International Arbitration Review 307. See also Yves Dezalay and Bryant Garth (eds), *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (The University of Chicago Press 1996), 34–36.; James Crawford, 'The Ideal Arbitrator: Does One Size Fit All?' (2017) 32(5) American University International Law Review. for the description of evolution of a 'typical' arbitrator from 'Grand Old Men' through 'Technocrats' proficient in the art of arbitration to 'Managers' effectively directing the proceedings.; Susan D Franck and others, 'International Arbitration: Demographics, Precision and Justice' in Albert Jan van den Berg (ed), *Legitimacy: Myths, Realities, Challenges* (ICCA Congress Series 2015).; also Franck and others referring to the 'invisible college' of arbitrators.

[17] Franck and others (n 4) 466. See also another study of Malcolm Langford, Daniel Behn, and Runar Hilleren Lie, 'The Revolving Door in International Investment Arbitration' (2017) 20 (2) Journal of International Economic Law.

legal training (common law/civil law system) of arbitrators, showing that the diversity of arbitrators, in particular regarding their nationality and race/ethnicity, is limited.

2.1 Nationality

The charts below compare the nationality of arbitrators to that of the parties involved in international arbitral proceedings.[18] These comparisons show that parties originate from Western (in particular the US, the UK, Switzerland, France, and Germany) as well as non-Western countries (in particular China, Russia, India, and Brazil), while arbitrators originate predominantly from Western countries (including UK, US, Switzerland, and Germany) and the involvement of non-Western arbitrators is very limited.

2.1.1 Arbitrators

Table 8.1 below presents the nationality of arbitrators appointed by five arbitration institutions (who were named as the preferred choice of parties in international commercial arbitration) in 2018.[19]

Moreover, in the field of investor-State arbitration, the International Centre for Settlement of Investment Disputes (ICSID) data is a good example of the situation in investment arbitration.[20] By the end of 2018, ICSID arbitrator, conciliator, and ad hoc committee member appointees in cases registered under the ICSID Convention and the Additional Facility Rules came from: Western Europe (47%), North America (Canada, Mexico, and US) (20%), South America (11%), South and East Asia and the Pacific (11%), Middle East and North Africa (4%), Eastern Europe and Central Asia (3%), Central America and the Caribbean (2%), and Sub-Saharan Africa (2%).[21] The top five nationalities were: France, USA, UK, Canada, and Switzerland.[22]

[18] For the case of China, the concept of 'nationality' was broken down to China Mainland and Hong Kong, for the purposes of the discussion on the Arbitrators' Appointment Survey. See section 5 below.

[19] These five arbitration institutions have been named as the preferred choice of parties in international commercial arbitration. See School of International Arbitration Queen Mary University of London (2018) 13.

[20] ICSID was selected for a number of reasons. One, the ICSID Convention, the basis for ICSID arbitration, has been so far ratified by 155 Contracting States (see the official website of ICSID <https://icsid.worldbank.org/resources/rules-and-regulations/convention/overview> accessed 31 July 2020.

Two, ICSID has accumulated significant amount of experience with 706 involving parties from all over the world as of the end of December 2018. See International Centre for Settlement of Investment Disputes, 'The ICSID Caseload – Statistics (Issue 2019-1),' (2019): 7. Three, ICSID offers the considerable public access to data important for the discussion in the context of this chapter.

[21] ibid 19.

[22] ibid 22. When looking further at the list of top appointees in the ICSID cases, it can be observed that among the top 25 arbitrators (measured by the number of appointments) only four were not nationals of Western states. However, even these four do not seem to be representative of the rest of the

Table 8.1 Nationality of arbitrators appointed by five leading arbitration institutions in 2018

Institution[a]	Top nationality	2nd nationality	3rd nationality	4th nationality	5th nationality
ICC[b]	UK	Switzerland	USA	France	Germany
SIAC[c]	Singapore	UK	Australia	USA	Malaysia
HKIAC[d]	UK	Hong Kong	Dual nationals	Singapore	China Mainland
LCIA[e]	UK	USA	France/ Ireland	Australia	Germany
SCC[f]	Specific nationalities not available	Specific nationalities not available	Specific nationalities not available	Specific nationalities not available	Specific nationalities not available

[a] Top five preferred arbitration institutions according to the 2018 International Arbitration Survey: The Evolution of International Arbitration.

[b] International Court of Arbitration at the International Chamber of Commerce (ICC)

[c] Singapore International Arbitration Centre (SIAC)

[d] Hong Kong International Arbitration Centre (HKIAC)

[e] London Court of International Arbitration (LCIA)

[f] Arbitration Institute of the Stockholm Chamber of Commerce (SCC); the specific nationalities of arbitrators were not made available; only the regional representation is given: 210 of arbitrators from Europe, 5 from North America, 5 from Asia, and 3 from Australasia in 2018.

2.1.2 Parties

Table 8.2 below presents the nationality of the parties in cases handled by the same five arbitral institutions in 2018.

Furthermore, in terms of the geographic distribution of State parties involved in ICSID cases, the landscape has been dominated by Eastern Europe and Central Asia (26% of cases), South America (23% of cases), and Sub-Saharan Africa (15%). This is followed by the Middle East and North Africa (11%), Western Europe (8%), South and East Asia and the Pacific (7%), Central America and the Caribbean (6%), and North America (Canada, Mexico, and US) (4%).[23] The PluriCourts Investment Treaty Arbitration Database (PITAD), which collects and analyses information about investment arbitration cases, provides more information on the participation of parties from specific States in ICSID and other investment arbitration

world. For example, the representative of Bulgaria (the only arbitrator from Eastern Europe on the list), Stanimir Alexandrov has been a US resident for nearly three decades and conducted a significant part of his education and practice in the US. See more in Langford, Behn, and Lie (n 17) 309–10.

[23] International Centre for Settlement of Investment Disputes, 11.

Table 8.2 Nationality of parties in cases handled by five leading arbitration institutions in 2018.

Institution & percentage of international cases[a]	Top user	Top foreign user	2nd top foreign user	3rd top foreign user	4th top foreign user	5th top foreign user
ICC[b]	N/A	USA	France	Brazil	Spain	Germany
SIAC 84%[c]	Singapore	USA	India	Malaysia	China Mainland	Indonesia
HKIAC 71.7%[d]	Hong Kong	China Mainland	British Virgin Islands	USA	Cayman Islands	Singapore
LCIA 80%[e]	UK	India	Russia	Cyprus	USA	UAE/British Virgin Islands
SCC 48%[f]	Sweden	Russia	Germany/ Ukraine	Azerbaijan	Finland/ USA/UK	Cyprus/ Norway

[a] Top five preferred arbitration institutions and percentage of international cases handled by them in 2018.

[b] No distinction of types of cases; most frequent nationalities among parties

[c] 84% of new cases filed with the SIAC were international (ie at least one party was not from Singapore)

[d] 71,7% of all arbitration cases submitted to the HKIAC were international (ie at least one party was not from Hong Kong)

[e] 79% of parties to LCIA cases were international (ie at least one party was not from the UK)

[f] 50% of SCC cases were international (ie at least one party was not from Sweden)

cases.[24] According to PITAD, private investors from the US, the Netherlands, UK, Germany, and Spain have appeared most frequently as claimants, while Argentina, Venezuela, Spain, Canada, the Czech Republic, and Mexico have appeared most often as respondents.[25]

2.2 Race/Ethnicity

Generally, 'race' is defined as 'one of the groups that people are divided into according to their physical characteristics, such as skin colour', while ethnicity should

[24] See <www.jus.uio.no/pluricourts/english/topics/investment/research-projects/database.html> accessed 29 February 2020.

[25] Daniel Behn, Malcolm Langford, Ole Kristian Fauchald, Runar Lie, Maxim Usynin, Taylor St John, Laura Letourneau-Tremblay, Tarald Berge, and Tori Loven Kirkebø, 'PITAD Investment Law and Arbitration Database: Version 1.0, Pluricourts Centre of Excellence', University of Oslo (31 January 2019) <https://pitad.org/index#welcome>accessed 29 February 2020.

be understood as 'a large group of people who have the same national, racial, or cultural origins, or the state of belonging to such a group'.[26] These divisions need to be approached cautiously since there are no universally accepted classifications.[27]

The lack of ethnic and/or racial diversity was for example brought to the fore in November 2018 when the popular African-American rap star Jay-Z halted an arbitration between his company, Roc Nation, and the clothing company, Iconix, after arguing that the lack of African-American arbitrators in the case left him vulnerable to unconscious bias.[28] Jay-Z's representatives had been asked to identify four arbitrators from the American Arbitration Association (AAA)'s Large and Complex Cases roster. When reviewing a list of more than 200 potential candidates based in New York, they found that the list had no African-American arbitrators who possessed the necessary expertise. Jay-Z's representatives alleged that the arbitration agreement was void for the reason of violating New York's public policy against racial discrimination.[29] The case was resumed in January 2019, when the AAA allowed the dispute to be heard by a three-arbitrator panel instead of a single arbitrator, and offered five African-American candidates.[30]

This lack of diversity is also apparent in investment arbitration. None of the ten most-appointed ICSID arbitrators, as of 2017,[31] were Asian or black. The only

[26] According to the Cambridge Dictionary (online edition).

[27] See more in Ann Morning, 'Ethnic Classification in Global Perspective: A Cross-National Survey of the 2000 Census Round' (2008) 27(2) Population Research and Policy Review. See also the official website of the United Nations in which the fluidity of the concepts is pointed out: 'The specific ethnic and/or national groups of the population which are of interest in each country are dependent upon individual national circumstances. Some of the criteria by which ethnic groups are identified are ethnic nationality (i.e., country or area of origin, as distinct from citizenship or country of legal nationality), race, colour, language, religion, customs of dress or eating, tribe, or various combinations of these characteristics. In addition, some of the terms used, such as "race", "origin", or "tribe", have a number of different connotations. The definitions and criteria applied by each country investigating ethnic characteristics of the population must, therefore, be determined carefully and with the involvement of or consultation with representatives of the groups which it desires to categorize. By the nature of this topic, these categories and their definitions will vary widely from country to country; therefore, no internationally accepted criteria are possible.' https://unstats.un.org/unsd/demographic/sconcerns/popchar/popcharmethods.htm> accessed 29 February 2020. For the sake of discussion of this chapter, the five categories of race and ethnicity follow the American Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity by the Office of Management and Budget defining racial and ethnic categories as follows: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander, and White. See more specific explanations of particular categories on the official website of the Office of Management and Budget <https://obamawhitehouse.archives.gov/omb/fedreg_1997standards>accessed 29 February 2020.

[28] See <www.theguardian.com/music/2018/nov/29/jay-z-logo-lawsuit-racial-bias>accessed 29 February 2020.

[29] See Joshua Karton, 'Can I Get A ... Diverse Tribunal?' (*Kluwer Arbitration Blog*, 7 December 2018) (accessed 29 February 2020).

[30] See <www.reuters.com/article/us-people-jayz-lawsuit/jay-z-wins-fight-for-african-american-arbitrators-in-trademark-case-idUSKCN1PO32T>accessed 29 February 2020.

[31] Brigitte Stern (France), Gabrielle Kaufmann-Kohler (Switzerland), L Yves Fortier (Canada), Charles Brower (US), Francisco Orrego Vicuña (Chile), Albert Jan van den Berg (the Netherlands), J Christopher Thomas (Canada), Bernard Hanotiau (Belgium), Karl-Heinz Böckstiegel (Germany), VV Veeder (UK), Bernardo Cremades (Spain), Piero Bernardini (Italy). Twelve names are listed because two arbitrators with the same number of appointments shared the eighth position, for the same reason two others shared the ninth position. See more in Langford, Behn, and Lie (n 17) 309–10.

'diverse element' in this white-dominated group was the Chilean Francisco Orrego Vicuña, who passed away in 2018.

2.3 Legal Training

Another aspect of diversity is the legal training of arbitrators. In the context of this chapter, this should be understood as a division between common law and civil law legal backgrounds. The differences between the two systems are not particularly significant in international arbitration since tribunals do not apply national court procedural rules unless parties agree otherwise. Furthermore, international arbitration aspires to build bridges for parties with different legal backgrounds, so there has been a convergence of civil and common law practices.[32] For example, soft law instruments have been produced with the aim of bridging the differences between various legal cultures such as the 2010 International Bar Association (IBA) Rules on the Taking of Evidence in International Commercial Arbitration. The foreword to these Rules states: '[t]he IBA Rules of Evidence reflect procedures in use in many different legal systems, and they may be particularly useful when the parties come from different legal cultures'.[33] Nonetheless, differences between common and civil law systems should not be disregarded since, firstly, parties and their counsel may have different expectations toward procedure and, secondly, arbitrators' backgrounds can affect their shaping of proceedings.

A new soft law instrument, the Rules on the Efficient Conduct of Proceedings in International Arbitration (Prague Rules), created in response to dissatisfaction with evidence-taking practices, observes that the IBA Rules are closer to the common law practice, resulting in procedural inefficiencies.[34] The Prague Rules propose an alternative set of rules which are closer to a civil law approach.[35] Franck's 2016 study of ICCA subjects (primarily acting as counsel in international arbitration, arbitrators, or both) revealed the variety of their legal training.[36] The dominant legal training was in common law: 46% of all participants were exclusively trained in common law jurisdictions, while only 30% were exclusively trained in civil law jurisdictions. A quarter (24%) of all participants were trained in both civil and common law jurisdictions. Amongst participating arbitrators, 38.5% were trained exclusively in common law, 33.8% in civil law, and 27.7% in both.

[32] See, for example, Born (n 3) 2207–10.; Tom Ginsburg, 'The Culture of Arbitration' (2003) 36 Vanderbilt Journal of Transnational Law; and Gabrielle Kaufmann-Kohler, 'Globalization of Arbitral Procedure,' (2003) 36 Vanderbilt Journal of Transnational Law.

[33] See <www.ibanet.org/ENews_Archive/IBA_30June_2010_Enews_Taking_of_Evidence_new_rules.aspx>accessed 29 February 2020.

[34] The Working Group of the Prague Rules was made mainly of civil law background practitioners (see the official website:<http://praguerules.com/working_group/>accessed 29 February 2020.

[35] See the Note from the Working Group on p 2 of the Prague Rules.

[36] Franck and others (n 4) 455.

3. Why Diversity in International Arbitration Matters

International arbitration should be an inclusive system since its goal is to address transnational disputes involving parties from all over the world. As aptly summarized by the authors the 2018 School of International Arbitration Queen Mary University of London survey:

> Arbitration has evolved to become a profoundly international practice: an ever-larger number of high-stakes disputes are being resolved across multiple jurisdictions, in virtually all existing legal systems, and involving parties from all over the world. It should therefore follow that the group of decision-makers called to resolve these disputes reflects the colourful fabric of the community of arbitration users. However, statistics on arbitral appointments seem to bear out the general sentiment within this community that this is hardly the case.[37]

The limited diversity of international arbitration adjudicators can produce a number of undesired consequences. Three of them are discussed below: section 3.1 the threat to the legitimacy of the system, section 3.2 the negative impact on procedural efficiency, and section 3.3 the lower effectiveness of non-diversified teams and the problem of 'group think'.

3.1 Lack of Diversity Threatens the Legitimacy of International Arbitration

If the pool of arbitrators is not (or barely) diverse, this risks undermining the legitimacy of the entire system of international arbitration.[38] In this chapter, 'legitimacy' should be understood as perceiving the authority of international arbitration as justified.[39] Generally, adjudicators should reflect the society in which they operate, as representativeness enhances a sense of fairness and public trust in the system,[40] which in turn increases the acceptance of arbitral decisions.[41] The range of parties resolving their disputes by means of arbitration has become more diverse, but the same cannot be said about international arbitration adjudicators.[42] Participants

[37] School of International Arbitration Queen Mary University of London (2018) 16.

[38] See, for example, Cesare Romano, Karen Alter, and Yuval Shany, *The Oxford Handbook of International Adjudication* (OUP 2014) 16–18.; also Haridi, (n 16) 307–08.; Franck and others, (n 4) 467–70, 96.; Hof in *Legitimacy: Myths, Realities, Challenges*, (n 5) 639.

[39] See Nienke Grossmann, 'Legitimacy and International Adjudicative Bodies' (2009) 41 George Washington International Law Review 115.

[40] This been stressed, for example, in the context of juries, see Christina S. Carbone and Victoria C. Plaut, 'Diversity and the Civil Jury' (2014) 55 William & Mary Law Review.

[41] See more in Franck and others (n 4) 496–97.

[42] See also section 2.1.1 above.

of the 2018 Queen Mary survey stressed that fairness is one of the main motives behind choosing international arbitration as a method of resolving disputes,[43] as it is connected with the perception of being represented and sufficiently 'heard' as a party.[44] Given the variety of parties involved in international cases, fairness can be better secured by a diverse panel of arbitrators. Introducing culturally diverse adjudicators would allow for a better understanding of non-Western parties' perspectives.[45]

As pointed out by Salim Moollan in his speech at the 2016 ICCA Meeting in Mauritius, the lack of diversity can lead to the risk of arbitration being perceived as a 'foreign process imposed from abroad, as an unwanted but inevitable corollary of trade and investment flow'.[46] In a similar spirit, the then Vice-President of the International Court of Justice, Judge Abdulqawi Ahmed Yusuf from Somalia observed that there is significant pressure on African countries to participate in international investment arbitration, yet, if the community will not welcome African arbitrators in tribunals, there is a risk that Africans will reject the system.[47] Concerns about legitimacy are particularly relevant in investment arbitration, where arbitrators' decisions may affect State policy matters and have an impact on all citizens of a particular country.

3.2 Lack of Diversity Negatively Impacts Procedural Efficiency

If the pool of arbitrators is not (or barely) diverse, this may have a negative impact on procedural efficiency because of the continuously growing caseload of arbitration institutions[48] and the time needed to render quality decisions. Paired with a limited number of available arbitrators, this can lead to difficulties in the efficient delivery of quality outcomes.[49] In fact, arbitration has been criticized by users for being too slow (and too expensive).[50] Where there is a small and uniform

[43] School of International Arbitration Queen Mary University of London, '2013 International Arbitration Survey: Corporate Choices in International Arbitration - Industry Perspectives' (2013) 7.

[44] See Haridi, 307–08.; Darius J. Kambata, 'Tensions between Party Autonomy and Diversity' in Albert Jan van den Berg (ed), *Legitimacy: Myths, Realities, Challenges* (ICCA Congress Series 2015), 615–16.

[45] Christopher Seraglini, 'Who Are the Arbitrators? Myths, Reality and Challenges' in Albert Jan van den Berg (ed) *Legitimacy: Myths, Realities, Challenges* (ICCA Congress Series 2015) 597.

[46] Salim Moollan, 'Invitation to ICCA Mauritius 2016 Presented by Mr. Salim Moollan' (*ICCA Official Website*, 9 April 2014)<www.arbitration-icca.org/AV_Library/ICCA_Mauritius_2016_by_Salim_Moollan.html>accessed 29 February 2020, 1.59–3.17 min <www.arbitration-icca.org/AV_Library/ICCA_Mauritius_2016_by_Salim_Moollan.html>accessed 29 February 2020.

[47] African Association of International Law. available at <www.aail-aadi.org/single-post/2015/12/01/>'Tribunals-need-Africans'-says-His-Excellency-Judge-Abdulqawi-Ahmed-Yusuf-vicepresident-of-the-International-Court-of-Justice (accessed 29 February 2020).

[48] See the comparison of caseload of international arbitral institutions in Born (n 3) 94–95.

[49] Franck and others 505.

[50] According to the survey conducted by the School of International Arbitration, Queen Mary University of London in 2015, cost and lack of speed were named as some of the worst features of

circle of arbitrators deciding disputes, there is also an increased risk of conflicts of interests, which in turn can lead to problems with constituting arbitral tribunals ready to hear cases impartially and independently.[51] As pointed out by the LCIA Director, Jacomijn van Haersolte-Van Hof, new arbitrators need to enter the system in order to ensure the system's sustainability for future disputes, as well as its competitiveness.[52]

3.3 Lower Effectiveness of Non-diversified Teams and the Problem of 'Group Think'

Homogenous teams perform less effectively than diverse ones and face the problem of 'group think', a phenomenon where a group of people make non-optimal or even irrational decisions due to an urge to conform, a desire for group consensus, and a wish to avoid alternative or critical positions. Diverse teams generally perform more efficiently and do not suffer from the 'group think' syndrome.[53] Diversity's positive impact on team performance has recently been discussed in the context of the need to diversify companies' boardrooms.[54] The main reasons for the better performance of diverse teams include: (1) improving the decision-making process by being able to draw upon a wider array of knowledge; (2) being more innovative, as well as overcoming tendencies toward 'group thinking'; and (3) an ability to see alternative solutions when making decisions together.[55]

international arbitration. See School of International Arbitration Queen Mary University of London and White and Case (n 2) 2, 7 (2015)

[51] Adriana Braghetta, 'Diversity and Regionalism in International Commercial Arbitration,' (2015) 46(4) Victoria University of Wellington Law review 1256–57.

[52] See Hof in *Legitimacy: Myths, Realities, Challenges*, 648.; Jacomijn van Haersolte-van Hof, 'LCIA's Director General Jackie Van Haersolte-Van Hof on Diversity; Why It Matters and What We Can All Do About It,' *Scottish Arbitration Centre Newsletter* (2015) <https://us2.campaign-archive.com/?u=6f57b2ebaad804398b0bf50db&id=425cb9b5e8> accessed 29 February 2020. See also Haridi, 309.

[53] See, for example, David Rock and Heidi Grant, 'Why Diverse Teams Are Smarter' *Harvard Business Review* (4 November 2016); see also Max Nathan and Neil Lee, 'Cultural Diversity, Innovation, and Entrepreneurship: Firm-Level Evidence from London,' (2015) 4 Economic Geography 89.; Scott E Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton University Press 2007).

[54] See, for example, Niclas L Erhardt, James D Werbel, and Charles B. Shrader, 'Board of Director Diversity and Firm Financial Performance. Corporate Governance: An International Review' (2003) 11 Corporate Governance: An International Review and Renee B Adams and Daniel Ferreira, 'Women in the Boardroom and Their Impact on Governance and Performance' (2009) 94 Journal of Financial Economics.

[55] See Rock and Grant.; Nathan and Lee; Irving L Janis, 'Groupthink,' in Harold J Leavitt, Louis R Pondy, and David M Boje (eds), *Readings in Managerial Psychology* (The University of Chicago Press 1980).

4. Factors Taken into Account in Making Appointments

This section explores the factors that are taken into account when appointment decisions are made by parties and arbitration institutions, in order to better understand what is expected of a potential appointee and how this can affect diversity.

4.1 General Issues

Parties play a key role in deciding who will resolve their dispute. They are largely free to design the procedure through specifying the number of arbitrators, mode of appointment, and required characteristics such as language abilities, nationality, or area of expertise. Arbitrators have to be impartial and independent, and where this is not the case, parties can seek to challenge and remove them, as reflected in arbitration rules, like the UNCITRAL Model Law on International Commercial Arbitration (UNCITRAL Model Law),[56] as well as institutional rules.[57] Arbitrator also have to act without undue delays, and can be removed if they do not perform their duties timely.[58] On the question of nationality, the UNCITRAL Model Law provides that no person should be precluded from acting as an arbitrator by reason of his or her nationality, unless otherwise agreed by the parties.[59] Some institutions provide for the 'nationality exclusion rule'. This means that an arbitrator either sitting alone or presiding over a panel should not have the same nationality as either of the parties involved, unless the parties decide otherwise.[60] In ICSID, the majority of arbitrators must be nationals of States other than a State party to the dispute or a State whose national is a party.[61]

4.2 Factors Relevant for Parties

According to the 2010 Queen Mary survey, the top attributes considered by counsels representing the parties are: open-mindedness and fairness of an arbitrator, prior experience of arbitration, quality of awards, availability, reputation, and

[56] Art 12 of the 2006 UNCITRAL Model Law.
[57] See, for example, Art 14 of the 2017 ICC Rules.
[58] See, for example, Art 14 of the 2006 UNCITRAL Model Law and Arts 13(3) and 17(2)(3) of the 2016 SIAC Rules.
[59] Art 11(1) of the 2006 UNCITRAL Model Law.
[60] See, for example, Art 13(5) of the 2017 International Court of Arbitration at the International Chamber of Commerce ('ICC') Rules, also Art 11(2)(3) of the 2013 Hong Kong International Arbitration Centre ('HKIAC') Rules, Art 6(1) of the 2014 London Court of International Arbitration ('LCIA') Rules, and Art 17 of the 2017 Arbitration Institute of the Stockholm Chamber of Commerce ('SCC') Rules.
[61] Art 39 of the ICSID Convention and Rule 1(3) of the ICSID Arbitration Rules.

knowledge of applicable law.[62] Gender, religion/faith, and nationality were considered least important. According to survey conducted by the Berwin Leighton Paisner International Arbitration Group, the most important attributes of arbitrators include: expertise, efficiency, informal feedback from other practitioners, as well as perceived gravitas/ability to influence other members of the tribunal.[63] In addition, this survey also sought to explore whether the factor of ethnicity/nationality was important: almost two-thirds of the participants found this factor to be of low relevance. The least important one was gender.[64] In sum, parties seek to have an experienced, efficient, and fair arbitrator with good reputation. They are not concerned (or less) about factors such as nationality, race/ethnicity or gender.

4.3 Factors Relevant for Arbitration Institutions

An examination of the rules of the leading arbitration institutions leads to similar conclusions. Beyond the requirement of impartiality and independence, the nationality exclusion rule (if applicable), as well as criteria prescribed by the parties, arbitration rules stress that the availability of an arbitrator to efficiently conduct the arbitral proceedings is the main factor.[65] Possessing experience in arbitration is another attribute generally considered relevant.[66] In addition, dependent on the circumstances of a specific case, other factors may include, for example, subject matter expertise or language abilities.[67] ICSID arbitrators must be persons of high moral character with recognized competency in the fields of law, commerce, industry, or finance, who may be relied upon to exercise an independent judgment.[68] Further, both ICSID and parties may additionally take account of an arbitrator's knowledge of relevant law and other areas of expertise, experience, language

[62] See School of International Arbitration Queen Mary University of London, '2010 International Arbitration Survey: Choices in International Arbitration' (2010) 25–26 and 34. The survey participants included general counsels, heads of legal departments, specialist legal counsels, and regional legal counsels from various jurisdictions.

[63] The survey participants included arbitrators, corporate counsels, external lawyers, arbitration institutions' staff working across diversified geographical regions in the world. See more Berwin Leighton Paisner International Arbitration Group>, 5.

[64] More specifically, the factor of nationality/ethnicity was found to be 'neither important nor unimportant' or 'not important at all' by respectively 30% of survey respondents (60% in total) and 14% found it to be 'not that important'. 22% of the participants considered it 'important'. See ibid 8.

[65] See Art 13(1) of the 2017 ICC Rules, Art 13(2) of the 2016 SIAC Rules, Art 5(4) of the 2014 LCIA Rules, Art 11(6) of the 2018 HKIAC Rules, Art 17(7) of the 2017 SCC Rules.

[66] See, for example, the SIAC Standards for Admission to SIAC Panel mentioning an appropriate level of expertise and experience in international arbitration (see <http://siac.org.sg/our-arbitrators/standards-for-admission-to-siac-panel>accessed 29 February 2020) or the Criteria for HKIAC's List of Arbitrators (see <http://hkiac.org/arbitration/arbitrators/criteria-application>accessed 29 February 2020.

[67] See, for example, Art 5(9) of the 2014 LCIA Rules.

[68] According to Art 14(1) and Art 40(2) of the ICSID Convention.

capabilities, availability, as well as possible conflicts of interest, and the overall cohesiveness of the tribunal.

5. Arbitrators' Appointment Survey

The author of the present chapter conducted a survey of 95 global arbitration practitioners asking about their preferences when appointing arbitrators in international disputes (see Annex).[69] The objective was to focus specifically on the nationality of arbitrators. Further, the survey asked a number of questions relating specifically to the appointment of Chinese arbitrators, because non-western and/or non-white candidates are seldom selected to resolve transnational disputes, even though non-western and/or non-white parties (and in particular Chinese parties) frequently use international arbitration and have the concomitant power of selection. The online survey contained 15 questions, was launched on 19 April 2018 and closed on 9 May 2018.[70] There were multiple choice questions and open questions.[71] Admittedly, there are several limitations to this type of survey, one of which pertains to the narrow sample of responses. Nonetheless, given the fact that the pool of survey participants was diverse in terms of nationality, amount of international arbitration experience and region of practice, it is submitted that the data generated by the survey can assist to better understand the factors influencing the selection of arbitrators.

5.1 Methodology and Profile of Survey Participants

The survey was completed by 95 arbitration practitioners coming from various jurisdictions: 8.3% (8) of participants were from mainland China, also 8.3% (8) from Hong Kong, while the remaining 83.6% (79) came from other countries and regions.[72] The participants reported to practice primarily in the region of Europe and Asia, with a lesser amount of practice in other regions, including North America,

[69] For the purposes of this survey, this should be understood as disputes in which the parties are from different jurisdictions, or disputes where the parties are from the same jurisdiction, but an international element is involved.

[70] The Smart Survey program was used to collect the answers and was announced via the LinkedIn portal and through personalized emails.

[71] In some questions, the participant could choose only one and in some a few/all answers that applied; in one question, they were asked to rank according to preferences. The participants did not have to respond to all questions (question 5 was skipped by one participant, question 9 by five, question 10 by one, question 13 by 10, question 14 by 13 participants).

[72] The other countries and regions included Switzerland, Singapore, Austria, Taiwan, UAE, USA, UK, Russia, Poland, Ireland, Germany, Mexico, India, Malaysia, Brazil, France, Australia, South Korea, Kenya, Turkey, Italy, Belgium, Greece, the Netherlands, Israel, and Czech Republic.

the Middle East, Latin America, Africa, and Oceania.[73] In the five years preceding the survey, the biggest group was primarily involved in international arbitration as arbitration counsel (68.4%). This was followed by 19% who were mainly involved as arbitrators, 6.3% as the staff of arbitration institutions, 1% as an in-house counsel. 5.3% chose the answer 'other'.[74] Survey participants were also asked about the number of cases in which they had been personally involved in the five years preceding the survey. The biggest group reported to be involved in over 20 cases (38%), followed by the involvement in 11 to20 cases (25.6%), five to 10 cases (20%), and one to five cases (16%).

5.2 Key Findings

Survey participants were asked about their practices when appointing arbitrators in international cases. The most common sources for obtaining information on a prospective arbitrator were 'colleagues' (selected by 87.4% of the participants) and 'arbitrator's profiles available on the internet' (72.6%). This was followed by 'industry reviews and rankings' (36.8%), information provided by arbitration institutions' (35.8%), 'external counsel' (13.7%). 14.7% of the participants chose the answer 'other'.[75] Among 'other' factors listed by the participants were: counsel/firms have appointed the arbitrator before, internal information available in the law firm, the institution's know-how, personal knowledge, awards, publications, conference attendance, members of the institution's board (in case of the institution's staff), databases such as the ArbitralWomen, the Energy Arbitrators List, the Newton, the Global Arbitration Review etc. Reputation in the arbitration community, previous experience with an arbitrator and legal background were selected as the most important factors when appointing an arbitrator (selected 62, 53, and 53 times respectively).[76] This was followed by the availability of an arbitrator, technical expertise, efficiency, neutrality, and language capabilities (selected 38, 37, 29, 23, and 18 times respectively). The least important factors among those listed in the question were education and age of a prospective arbitrator (selected respectively 8 and 3 times). A number of the participants (13) used the option of 'other' factors, including personality traits, motivation, predicted sensitivity to certain arguments, soft skills and likely procedural preferences, focus on diversity in terms

[73] The participants could choose a few regions. Europe (chosen 59 times) and Asia (chosen 53 times) were the most common choices; the participants practiced also in other regions, including North America (chosen 14 times), the Middle East (chosen 12 times), Latin America (chosen 11 times), Africa (chosen 9 times), and Oceania (chosen 7 times).

[74] In case of choosing the 'other' option, the participants described their primary involvement as: 'all of the above', 'arbitration counsel as well as arbitrator', 'administrative secretary', 'tribunal secretary', and 'expert witness'.

[75] Participants could select up to three factors.

[76] The survey participants could choose up to three answers.

of gender, personal recommendations of colleagues and friends previously dealing with a prospective arbitrator, quality of previous awards, and clarity of presentations made during industry seminars.

One set of questions aimed to explore whether participants preferred any particular nationalities. For example, respondents were asked about their preferences concerning an arbitrator's nationality, assuming that the parties to the dispute would not involve any of these nationalities. The participants were asked to rank: France, Hong Kong, Mainland China, Switzerland, UK, and USA.[77] Overall, the participants ranked them in the following order: UK, Switzerland, France, Hong Kong, USA, and Mainland China. Notably, however, eight participants stressed in the subsequent open questions[78] that an arbitrator's nationality as such is not important to them. To illustrate, one of the participants stated: '[t]o me, nationality is a relatively unimportant criterium in selecting an arbitrator. If I am satisfied that a mainland Chinese arbitrator is independent, impartial and he/she has experience as an arbitrator as well as industry-specific experience, I would not hesitate to recommend such arbitrator'.[79]

The survey explored whether survey participants would prefer an arbitrator from Mainland China or Hong Kong, highlighting the differences between Mainland China and Hong Kong arbitrators, such as their legal background (Mainland China has a civil law system, while Hong Kong has a common law system) and English language capabilities (English is one of Hong Kong's official languages, while it is not commonly used in Mainland China).[80] In response to this question, 61.7% of participants indicated they would prefer an arbitrator from Hong Kong; almost 30% of the participants expressed no preference while the remaining group (8.3%) would prefer a Mainland China arbitrator. When asked about the reasons underlying their choice, participants who had indicated their preference for Hong Kong arbitrators listed the following reasons: their experience with international arbitration (mentioned 24 times),[81] familiarity with the common law system (mentioned

[77] Mainland China and Hong Kong were combined with four commonly selected nationalities of arbitrators.

[78] In particular, in the last question 'Is there anything you would like to add to your answers in this survey (including any general remarks regarding the survey)?' There were also six suggestions (in question 9) that the question to rank the nationalities ranking was too narrow (or had limited answer options) and more details about a particular case would need to be known in order to consider the nationality factor.

[79] Answer to question 14: 'What are the factors that could encourage you to appoint a mainland Chinese arbitrator for international arbitration cases in the future?'

[80] When discussing the case of China, it is important to note the distinction between Mainland China and Hong Kong Special Administrative Region ('SAR'). Between 1898 and 1997 Hong Kong was a British colony, but in 1997, it was transferred to mainland China. Since then, Mainland China and Hong Kong have functioned under the doctrine of 'one country, two systems', which means that until 2047, Mainland China will allow Hong Kong to continue to govern itself and maintain an independent legal system.

[81] Related to that was mentioning that the perception of Hong Kong as being more 'international' and therefore arbitrators generally having more 'international' approach (mentioned 8 times)

17 times),[82] the perceived independence/neutrality of an arbitrator (mentioned 10 times), and English language abilities (mentioned 9 times).

This was consistent with responses to another question where participants who had indicated that, generally, they do not appoint Chinese arbitrators,[83] were asked to explain why. The main reasons were: their legal background, language capabilities, and experience in international arbitration (selected 38, 35, and 34 times respectively).[84] The responses to the survey's open questions showed a lack of familiarity with Chinese arbitrators by 19 survey participants. Unsurprisingly participants highlighted they might potentially appoint more Chinese arbitrators, if they had more international experience (the answer appearing 28 times), English language capabilities (18 times), and exposure to the common law system (5 times), or if participants had cases with Chinese elements (5 times).

To summarize, the survey results show that the most important factors for appointing an arbitrator are reputation, experience, availability, technical expertise, efficiency, neutrality, and language capabilities. This largely confirms previous studies. An apparent desire for common law exposure, however, was a new discovery. An arbitrator's nationality does not matter, as long as they are qualified. One survey participant stressed: '[i]n choosing an arbitrator my preference is to identify a competent person from my region (Eastern and Central Europe). Too many Swiss, French, British and American arbitrators have been appointed in the cases coming from the regions these arbitrators have no idea about, no understanding of and no experience at all. Some nations are overestimated in their capacity to understand others and it doesn't help arbitration'. Another problem voiced by the survey participants was the lack of familiarity with arbitrators, in particular Chinese arbitrators.

6. Ways to Improve the Diversity among International Arbitrators

Enhancing the diversity of the arbitral system could prove to be challenging. Lucy Reed in her keynote address at the 15th Annual ITA-ASIL Conference on 'Diversity and Inclusion in International Arbitration' explained the problem as follows:

> The math is not hard: the numbers readily prove that international arbitration is not diverse. […] Harder is to quantify the impact (if any) on arbitral justice.

[82] Some participants added that if an arbitrator is familiar with the common law procedure, then she or he is also more familiar with international arbitration procedure.

[83] 85% of the participants stated that they never appointed a Chinese arbitrator in a case not involving China; 10.5% have never been involved in cases not involving China; 3.1% appointed a Chinese, but only in a minority of cases; and 1 participant (1%) appointed a Chinese arbitrator in a majority of cases.

[84] The participants were asked to choose as many answers as applied.

> Harder still is to identify, confront and accept our role in the causes, which is the first step in finding workable solutions. Long experience suggests that it is caution, habit and, yes, bias that underlie our non-diverse practice.[85]

One critical problem lies in the parties' choices. As mentioned in the survey analysis by the Berwin Leighton Paisner International Arbitration Group: '[f]or the most part, parties have one opportunity to have a dispute determined in their favour and, for wholly legitimate reasons, they will have a very short-term self-interested view of the appointment process'.[86] That means that parties and their counsel may prefer to appoint the same arbitrators repeatedly, not only because of their expertise and experience, but also as a kind of 'insurance policy': if the case is lost, those who appointed the arbitrator are less likely to be blamed for taking a risk in their choice of appointment.[87] Nevertheless, parties and their representatives also express their concerns about the limited diversity among arbitrators. Rogers calls this the 'diversity paradox'.[88]

One important question is, therefore, how to address parties' autonomy and apparent lack of incentive to consider diversity when it comes to specific appointment decisions. Abolishing party autonomy is not the solution. Rather, it is important to show that their current choices are not necessarily the best policy, especially in the longer run. Fostering diversity should not happen at any cost: experience and quality will always remain critical, particularly because arbitral awards cannot be appealed against, so there is no 'second chance'.[89] Common efforts are needed in order to promote awareness of diversity, to support less obvious choices of arbitrators, and to work on diversity going hand in hand with quality. A few possible suggestions on how to improve diversity are explored below.

First, arbitration institutions are well-placed to play an important role in fostering diversity. Numerous institutions compile the list of arbitrators that parties can refer to when selecting arbitrators;[90] they also deal with default appointments and publish data on appointments. For example, since 2015, the ICC has published the names and nationalities of arbitrators in specific cases, as well as whether they were appointed by the parties or the institution.[91] This improves transparent

[85] See the website <www.cailaw.org/Institute-for-Transnational-Arbitration/Events/2018/ita-asil.html>accessed 29 February 2020. For more about the reasons for a limited diversity in the context of gender, see Greenwood and Baker, 658–63.

[86] Berwin Leighton Paisner International Arbitration Group, 2.

[87] Braghetta, 1256.

[88] Catherine A. Rogers, 'The Key to Unlocking the Arbitrator Diversity Paradox?: Arbitrator Intelligence' (*Kluwer Arbitration Blog*, 27 December 2017)<http://arbitrationblog.kluwerarbitration.com/2017/12/27/on-arbitrators/> accessed 29 February 2020.

[89] See Kambata in *Legitimacy: Myths, Realities, Challenges*, 636.; Seraglini in *Legitimacy: Myths, Realities, Challenges*, 605–06.

[90] This is the case, for example, for SIAC and HKIAC.

[91] See the official website of the ICC <https://iccwbo.org/dispute-resolution-services/arbitration/icc-arbitral-tribunals/>accessed 29 February 2020.

decision-making and motivates other institutions to do so as well. The institutions also have a chance to facilitate the creation of a more diverse pool of prospective arbitrators through professional training in less developed jurisdictions, more diverse tribunal secretaries, and inviting potential arbitrators as speakers to their conferences. Second, since appointment decisions are initially made by parties, legal counsel could include more diverse candidates in the lists of potential arbitrators they present to their clients. Counsel could also make an effort to become more familiar with a wider range of potential candidates, for example through consulting arbitration institutions. Developments on the side of parties and in-house counsel are particularly desirable, since, as illustrated by the 2018 Queen Mary survey, this is where there is fiercest resistance to improving diversity.[92]

Third, aspiring international arbitrators can themselves take action to promote more diversity by increasing their own visibility through networking, participation in industry organizations and events, and publishing on international arbitration and related matters. In the case of China, many international arbitration stakeholders are simply not familiar with Chinese arbitrators. It is essential for Chinese practitioners (and other underrepresented groups) to build their expertise, which includes improving their foreign language abilities, familiarity with international arbitration procedures and exposure to the common law system. Reputation can be seen also in a broader context, eg the reputation of a particular country in the international arbitration arena. For example, China is not perceived as a particularly arbitration-friendly place. The respondents to the 2010 Queen Mary University Survey perceived the country (together with Russia) as one of the least favoured venues for international arbitration.[93] Chinese arbitration has been criticized by commentators for, among other, the high level of governmental influence and the limited powers of arbitrators to decide on their own jurisdiction and interim measures.[94] This in turn influences perceptions of Chinese arbitrators. Therefore, it is up to China to adjust its arbitration law and practice, which would in turn help to improve the image of Chinese arbitrators and lead to more appointments.

Fourth, law schools and academic societies can assist in promoting diversity. For example, students (and practitioners) should be exposed to international arbitration practice through curricula, open lectures, and international arbitration

[92] School of International Arbitration Queen Mary University of London, '2018 International Arbitration Survey: The Evolution of International Arbitration,' 19.

[93] School of International Arbitration Queen Mary University of London, '2010 International Arbitration Survey: Choices in International Arbitration,' 17 and 20. For more on the perception of arbitration in China, see also John Savage, 'Navigating the Pitfalls of Arbitration with Chinese Parties' (December 2010) The Metropolitan Corporate Counsel.

[94] See, for example, Manjiao Chi, 'Are We "Paper-Tigers": The Limited Procedural Power of Arbitrators under Chinese Law' (2011) 2 Journal of Dispute Resolution.; Peter Thorp, 'The PRC Arbitration Law: Problems and Prospects for Amendment' (2007) 24(6) Journal of International Arbitration.; Jingzhou Tao, 'Salient Issues in Arbitration in China' (2012) 27(4) American University International Law Review.

skills training. Arbitration moot competitions, such as the Vis Moot,[95] give students a chance not only to train for a couple of months, but also to meet arbitration practitioners and have them assess their abilities. Other possible initiatives include improving students' foreign language capabilities and cooperation between academic and arbitration institutions. Academic research into diversity, such as that conducted in this volume, is also important for raising awareness. For example, one of the participants to the author's survey stated that the survey made them 'reflect on why [they] do not consider arbitrators from mainland China'. Fifth, nonprofit organizations, such as the Alliance for Equality,[96] can help build awareness among stakeholders of international arbitration, and in particular parties and their representatives who primarily decide on appointments. For example, these nonprofit organizations could offer unconscious bias training.

7. Conclusion

A significant diversity deficit exists in international arbitration including with respect to the nationality of arbitrators and their race/ethnicity. Increased diversity will enhance the system's legitimacy and its effectiveness. However, in order to achieve this, efforts need to be made by all stakeholders, including parties and their representatives, who have been particularly resistant to promoting diversity, as well as arbitration institutions, prospective arbitrators, and academia.

Annex Arbitrators' Appointment Survey: Instructions and Questions

Thank you for agreeing to participate in this survey concerning the appointment of arbitrators in international arbitration. It aims to deepen the available research and, in part, to concentrate on the appointment of Chinese arbitrators. The survey should take approximately 10 minutes to complete. Your participation will be kept fully confidential and your name will not appear in any materials related to the survey. The closing date for responses is 9 May 2018 and the results will be published in an academic article in summer 2018. It would be of great help to this research project if you would please forward this survey to other potentially interested respondents. Further information can be obtained from Monika Prusinowska: prusinowska.monika_cesl@cupl.edu.cn

All questions are concerned with international disputes ONLY. For the purposes of this survey, this should be understood as disputes in which the parties are from different jurisdictions, or disputes where the parties are from the same jurisdiction, but an international element is involved.

[95] See the official website of the Vis Moot <https://vismoot.pace.edu/>accessed 29 February 2020.

[96] See the official website of the Alliance for Equality <www.allianceequality.com/> accessed 29 February 2020.

1. **Your name:**
2. **Your email address:**
3. **You are from:**
   Mainland China
   Hong Kong
   Other (please specify):
4. **In which region(s) do you principally practice? (Please choose all that apply)**
   Africa
   Asia
   Europe
   Latin America
   North America
   Middle East
   Oceania
5. **In how many international arbitration cases have you been personally involved during the past 5 years? (Please also include on-going cases)**
   None
   1–5 cases
   5–10 cases
   11–20 cases
   Over 20 cases
6. **What has been your primary involvement in international arbitration during the past 5 years?**
   Arbitration counsel
   In-house counsel
   Arbitrator
   Staff of the arbitration institution
   Other (please specify):
7. **What sources do you primarily refer to when obtaining information about arbitrators? (Please choose up to 3)**
   Information provided by arbitration institutions
   Arbitrator's own profile available online
   Industry reviews and rankings
   Colleagues
   External counsels
   Other (please specify):
8. **What factors regarding an arbitrator do you usually take into consideration when making an appointment in international arbitration cases? (Please choose up to 3)**
   Age
   Availability of an arbitrator
   Education
   Efficiency
   Language capabilities
   Legal background
   Neutrality
   Previous experience with an arbitrator
   Reputation in the arbitration community
   Technical expertise
   Other (please specify):

9. **In choosing an arbitrator, what would be your preference regarding the arbitrator's nationality (assume a dispute does not involve any of the nationalities listed below). When ranking please consider the nationality factor only.**
   France
   Hong Kong
   Mainland China
   Switzerland
   United Kingdom
   USA
10. **Assume a dispute does not involve either a mainland Chinese or a Hong Kong party. Which would be your preference, if you had to choose between a mainland China and a Hong Kong arbitrator?**
   An arbitrator from mainland China
   An arbitrator from Hong Kong
   No special preference between the two
11. **If you answered 1) 'An arbitrator from mainland China' or 2) 'An arbitrator from Hong Kong' in the preceding question, what would be the factors influencing your preference?**
12. **Have you appointed a mainland Chinese arbitrator for a case NOT involving a mainland Chinese party in the past 5 years?**
   Yes, in a majority of cases
   Yes, in a minority of cases
   No
   I have never been involved in a case not involving a mainland Chinese party
13. **If you answered 2) 'Yes, in a minority of cases' or 3) 'No' in the preceding question, what were the factors that influenced your decision not to appoint more arbitrators from mainland China in international arbitration cases? (Please choose all that apply)**
   Education
   Experience
   Language capabilities
   Legal background
   Technical expertise
   Other (please specify):
14. **What are the factors that could encourage you to appoint a mainland Chinese arbitrator for international arbitration cases in the future?**
15. **Is there anything you would like to add to your answers in this survey (including any general remarks regarding the survey)?**