

Developing Diversity within Diversity Discourse: Remembering Non-Lawyers in Arbitration, in Asia and Beyond

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Introduction

- The international arbitration (IA) community has progressed towards greater diversity over the last few years in race, age and gender.
- **Yet** there is a curious lack of diversity within the burgeoning debate on the lack of diversity in IA – little or no discussion about professional diversity.
- Nowadays, the key groups and publication outlets for IA are dominated by those practising primarily as full-time lawyers.
- **Yet** involving more non-lawyer practitioners (NLPs, such as engineers, architects, accountants) or those who are primarily academics could significantly reduce the persistent formalisation (and cost) in IA, which has spread to Asia, and have other benefits (eg further gender diversity).
- So, let's analyse empirically how legal practitioners have come to prevail across the key nodes of influence within the IA sector.

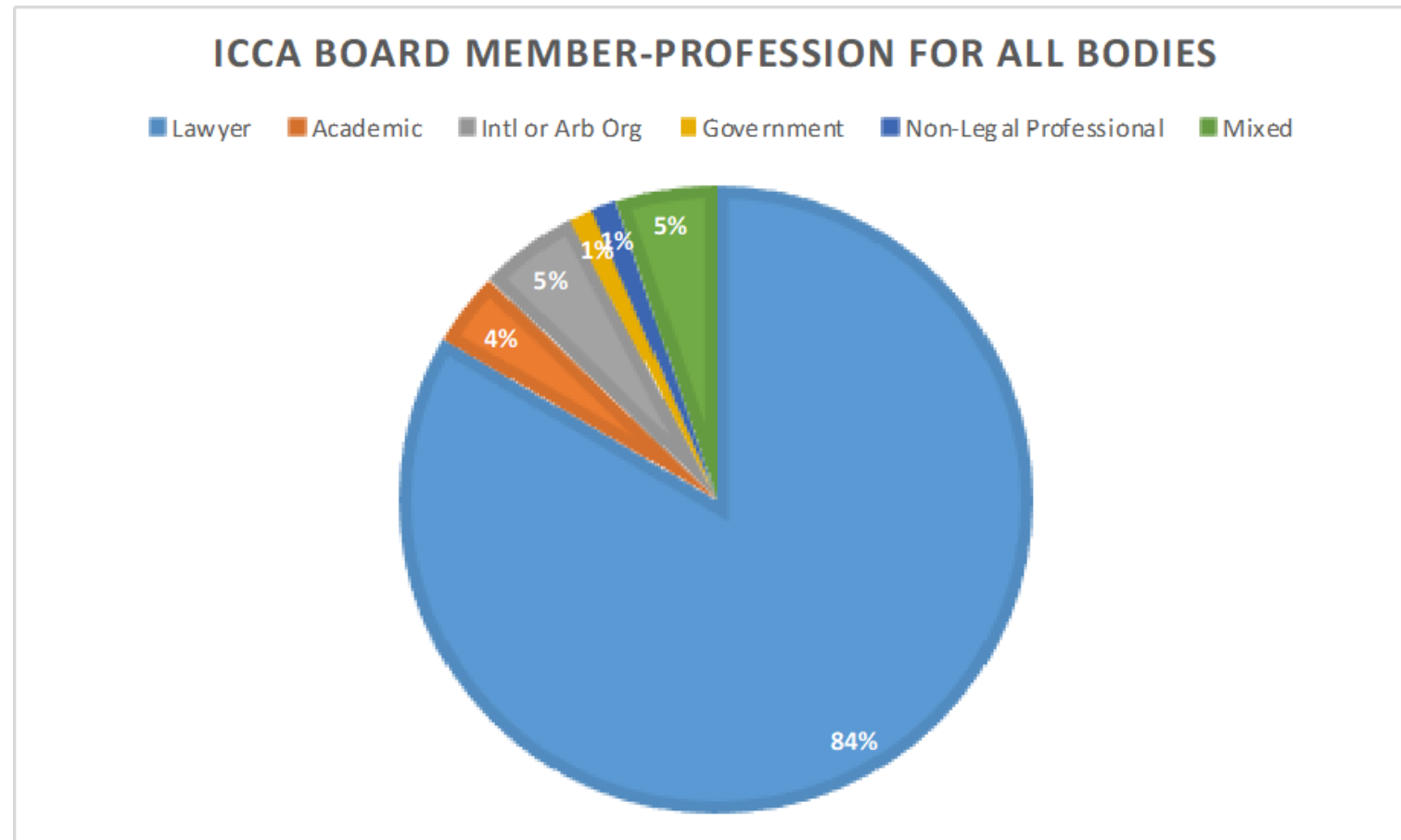
Our research

- Our quantitative analysis focused mainly on the roles of NLPs and Academics relative to lawyers in (1) various associations and (2) institutions engaged in arbitration, as well as in (3) influential publication venues.
- Key categories adopted for our coding are:
 - **‘lawyer’**, with subcategories of ‘lawyer’, working most of their time in law firms, ‘in-house lawyer’, ‘barrister’, ‘judge’, for retired judges working as lawyers and/or arbitrators;
 - **‘academic’**, with full-time ‘professor’, ‘lecturer’, ‘researcher’, ‘fellow’, and ‘student’ sub-categories;
 - **‘international or arbitral organisation’** (mostly comprising those working in arbitration institutions, who nowadays typically have lawyer backgrounds); and
 - **‘non-legal professional’ (NLPs)**, including ‘engineer’, ‘business executive’, ‘surveyor’ and ‘architect’ sub-categories.
- The rest of this presentation introduces our key empirical findings.

1. Associations and Institutions Promoting Arbitration

- We examined leaders of influential groups promoting IA but without themselves administering arbitration cases:
 - The International Council for Commercial Arbitration (ICCA)
 - The Chartered Institute of Arbitrators (CI Arb)
 - The International Bar Association (IBA)

ICCA Board Members

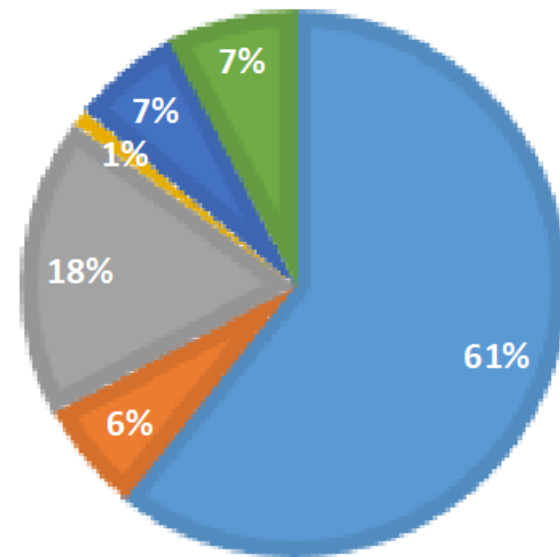


***Appx 22%** of the members were based in Asia.

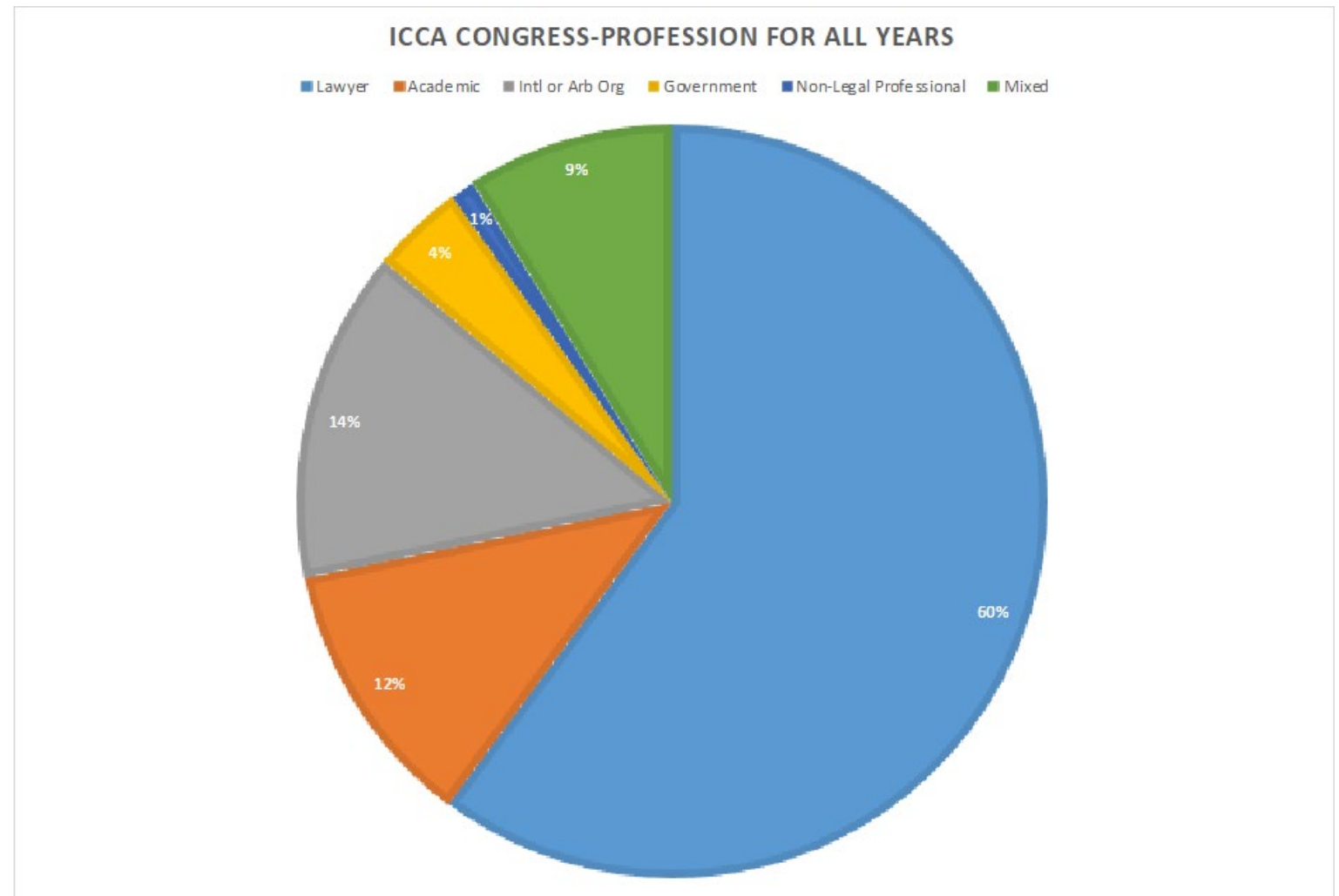
ICCA Taskforce Members

ICCA TASKFORCE-PROFESSION FOR ALL YEARS

■ Lawyer ■ Academic ■ Intl or Arb Org ■ Government ■ Litigation Finance ■ Mixed

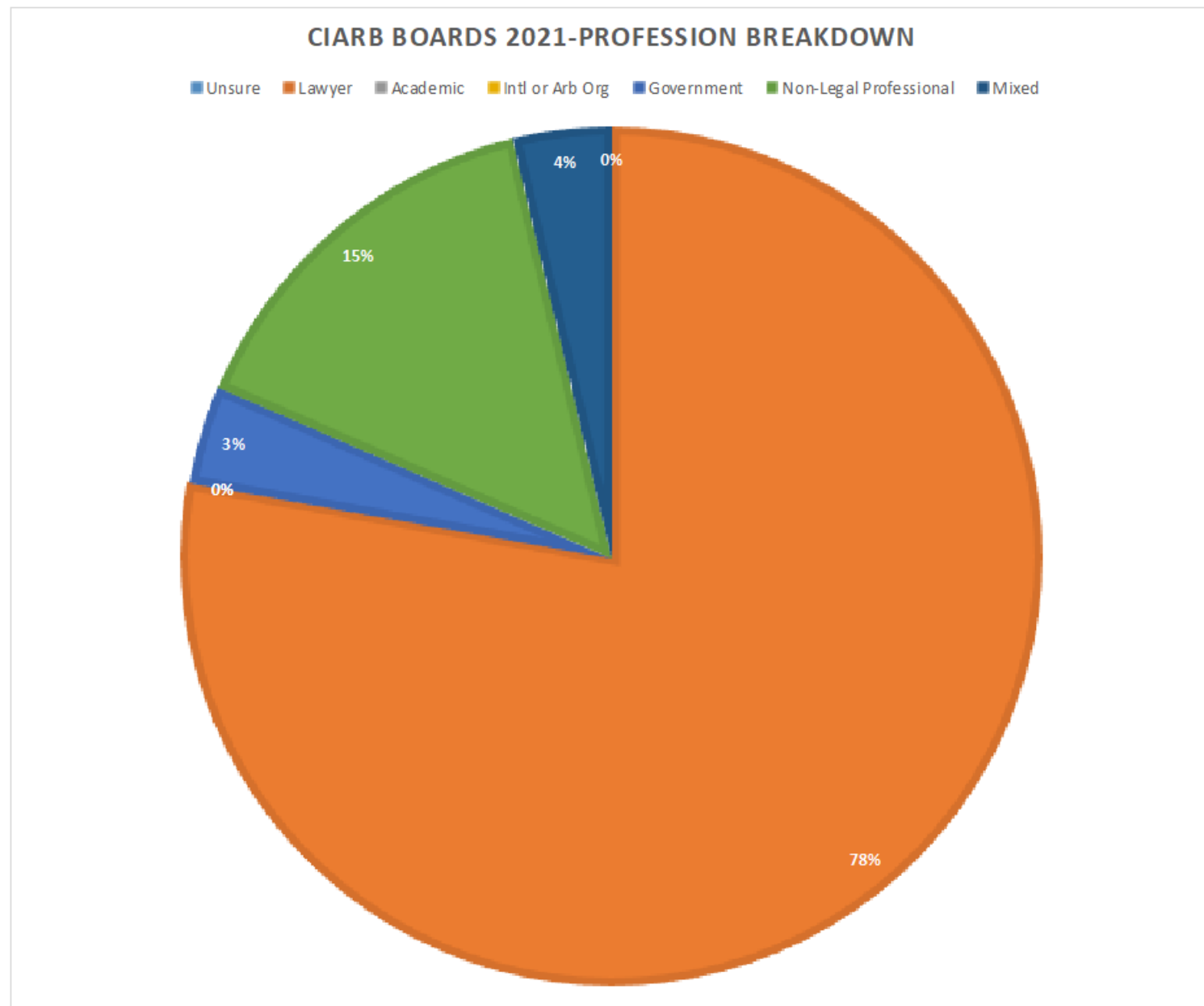


ICCA Congress Speakers



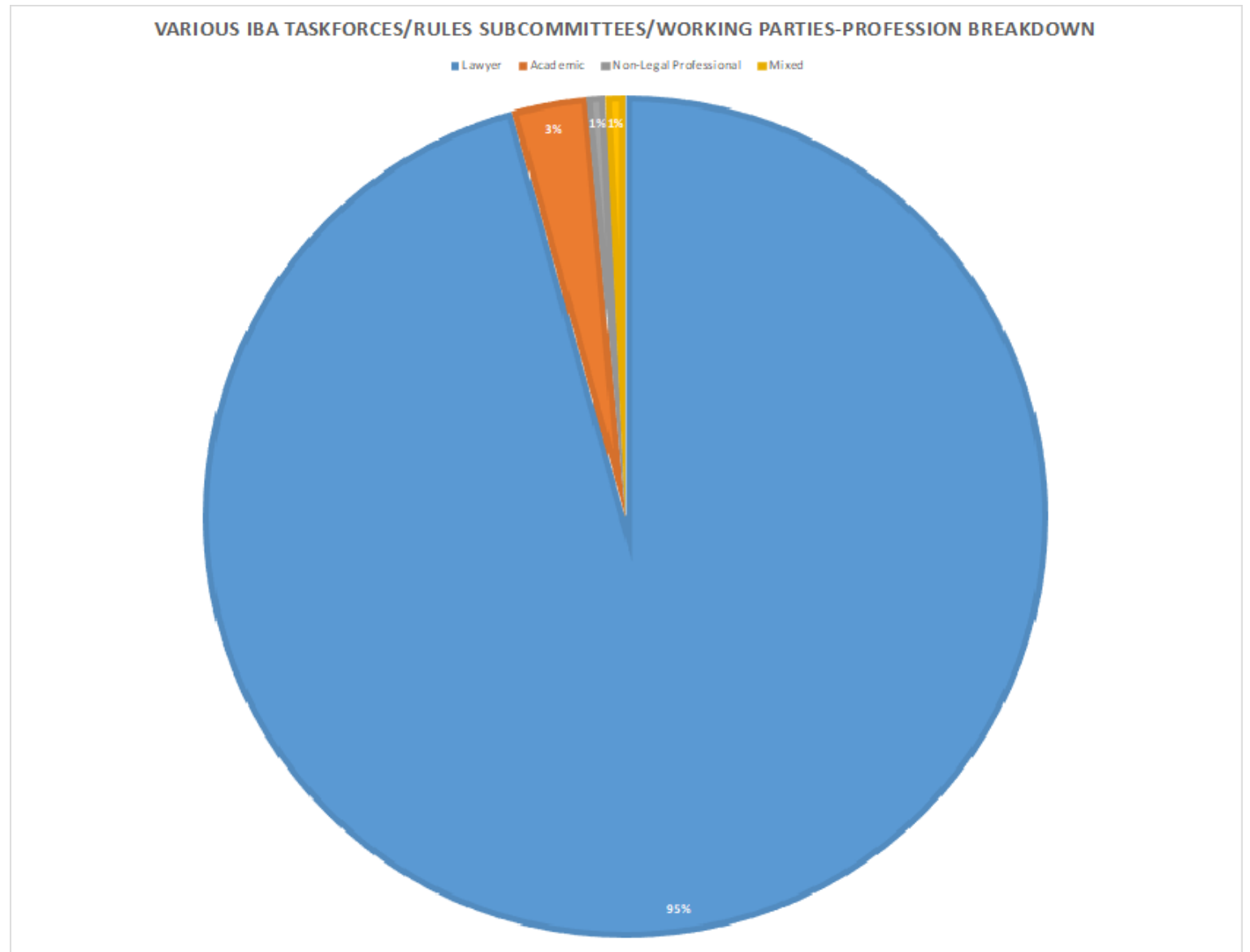
*Among 20 congresses held between 1982 and 2018, **six** congresses were hosted by Asian cities: Tokyo (1988), Seoul (1996), New Delhi (2000), Beijing (2004), Singapore (2012) and Mauritius (2016).

CIArb Board Members



*Only one board member (among 26) was based in Asia.

IBA
Taskforce/Subcommittee
Members



*Among 21 members of the Arbitration Committee, **four members** were based in Asia.

2. Arbitration Institutions and Their Leaders

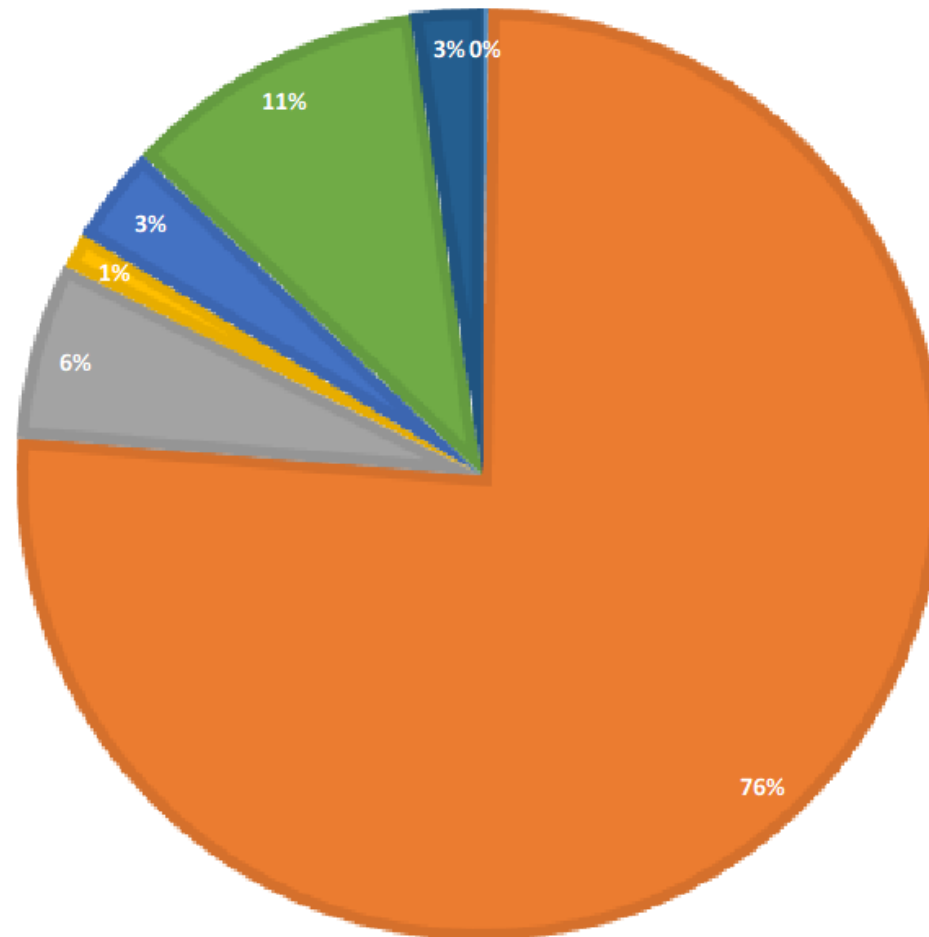
- Next, we analysed the international and regional arbitration institutions having high caseloads and/or being reasonably representative of civil or common law traditions and geographical position, **including several across Asia:**
 - The International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), the Swiss Arbitration Centre, the International Centre for Dispute Resolution (ICDR), **the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKIAC), the China International Economic and Trade Arbitration Commission (CIETAC), the Australian Centre for International Arbitration (ACICA), the Asian International Arbitration Centre (AIAC), the Japan Commercial Arbitration Association (JCAA), the Korean Commercial Arbitration Board (KCAB), the Thai Arbitration Institute (TAI) and the newer Thai Arbitration Centre (THAC).**

*bold = Asian institutions

Leadership
of arbitration
centres (as
of 2021)

ARBITRAL INSTITUTION BOARDS/COUNCILS/COMMITTEES/TASKFORCES/COURTS 2021- PROFESSION BREAKDOWN

■ Unsure ■ Lawyer ■ Academic ■ Intl or Arb Org ■ Government ■ Non-Legal Professional ■ Mixed



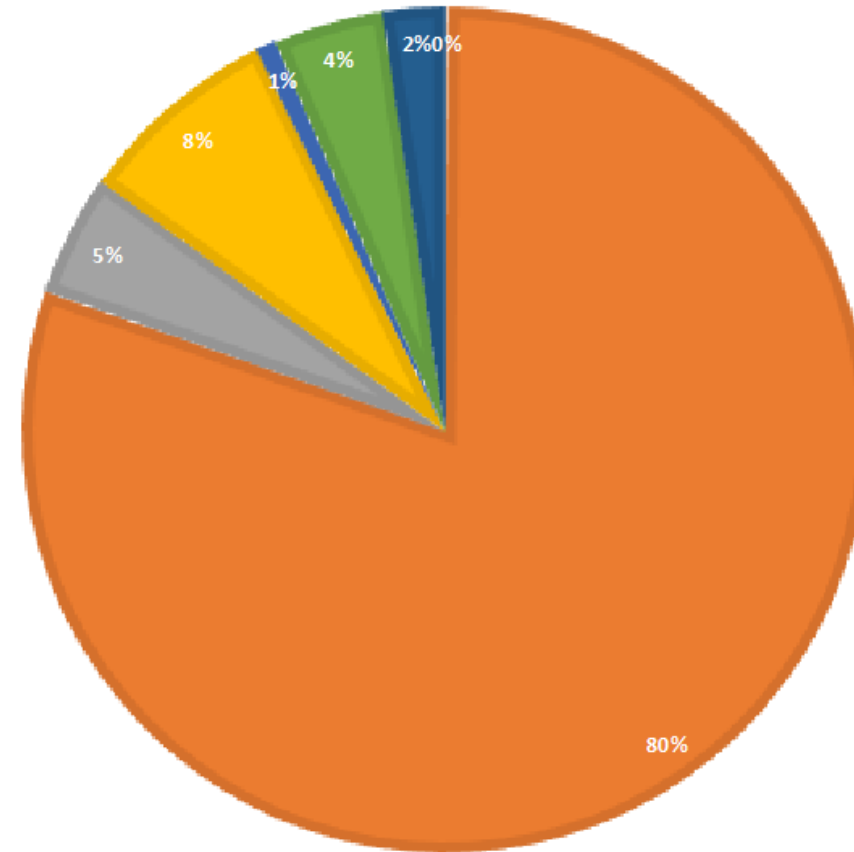
Main Professions of
Members of Arbitration
Centre
Boards/Councils/Courts
(2021)

Arbitral Institution	Unsure	Lawyer	Academic	Intl or Arb Org	Government	Non-Legal Professional	Mixed
ICC	1	174	11	3	1	16	5
CIArb	0	21	0	0	1	4	1
ACICA	0	28	1	1	1	1	1
LCIA	0	13	0	1	0	0	1
SIAC	0	39	0	0	0	1	0
JCAA							
(Japan)	1	18	2	1	2	19	1
HKIAC	0	45	2	0	0	5	1
KCAB							
(Korea)	0	21	2	0	0	0	1
CRCICA							
(Egypt)	0	21	4	0	3	1	4
Stockholm	0	14	1	0	0	0	0
DIS							
(Germany)	0	38	8	1	4	1	2
Swiss	0	8	0	0	1	2	0
AAA/ICDR	0	80	6	1	0	19	0
TAI	0	2	0	0	1	0	0
THAC							
(Thailand)	0	13	6	1	10	5	0
Total	2	535	43	9	24	74	17

Arbitral Institution Conference/Webinar 2020

ARBITRAL INSTITUTION CONFERENCE/WEBINAR 2020-PROFESSION BREAKDOWN

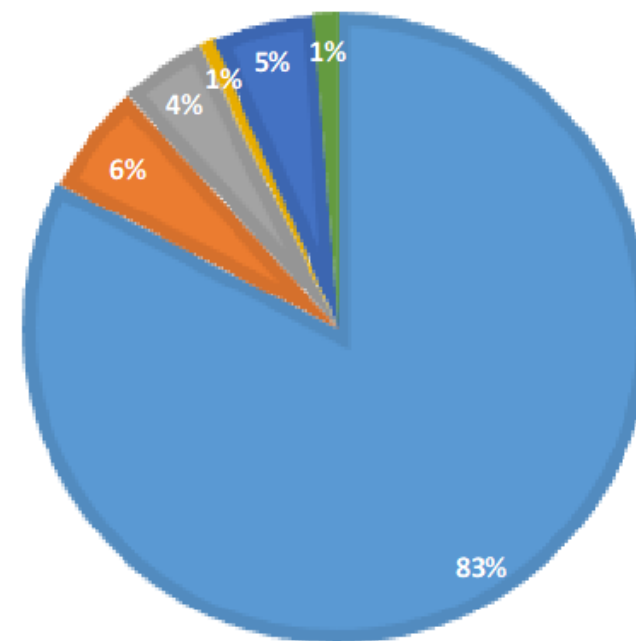
■ Unsure ■ Lawyer ■ Academic ■ Intl or Arb Org ■ Government ■ Non-Legal Professional ■ Mixed



Arbitral Institution Conference/Webinar 2021

ARBITRAL INSTITUTION CONFERENCE/WEBINAR 2021- PROFESSION BREAKDOWN

■ Lawyer ■ Academic ■ Intl or Arb Org ■ Government ■ Non-Legal Professional ■ Mixed

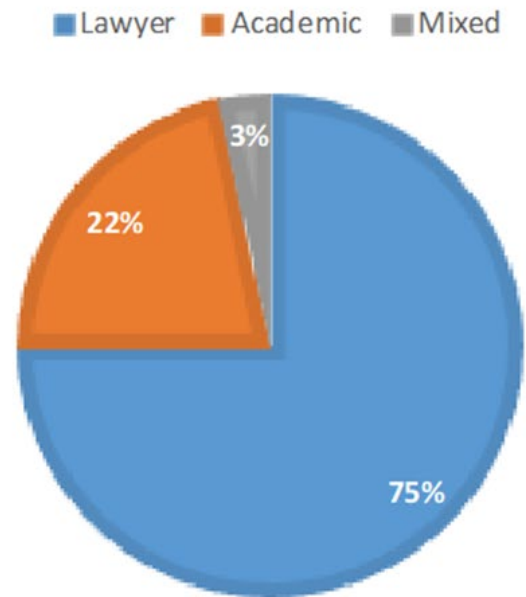


3. Indicative Journals, Books and Blogs

- We considered major journals for IA in 1989, 1994, 1999, 2004, 2009, 2014 and 2019-21. The journals are:
 - Arbitration International (associated with the LCIA);
 - Arbitration: The International Journal of Arbitration, Mediation and Dispute Management (CIArb);
 - **Asian International Arbitration Journal (SIAC)**; and
 - Journal of International Arbitration (Wolters Kluwer)
- We also studied editors and authors of influential books and blogs, ie, the International Arbitration Law Library Series published by Wolters Kluwer (59 titles since 1993) and the Kluwer Arbitration Blog (KAB).

Journal Editors for the Four Journals

JOURNAL EDITORS-PROFESSION FOR ALL JOURNALS

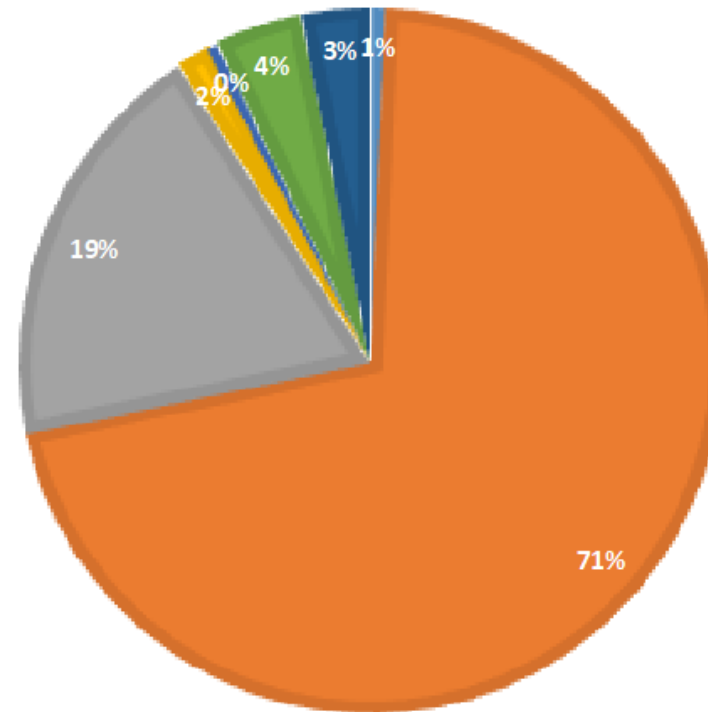


*The proportions of the editors based in Asia are: Arbitration International (**0%**), Arbitration (**12%**), Asian International Arbitration Journal (**67%**) and Journal of International Arbitration (**15%**).

Journal Authors

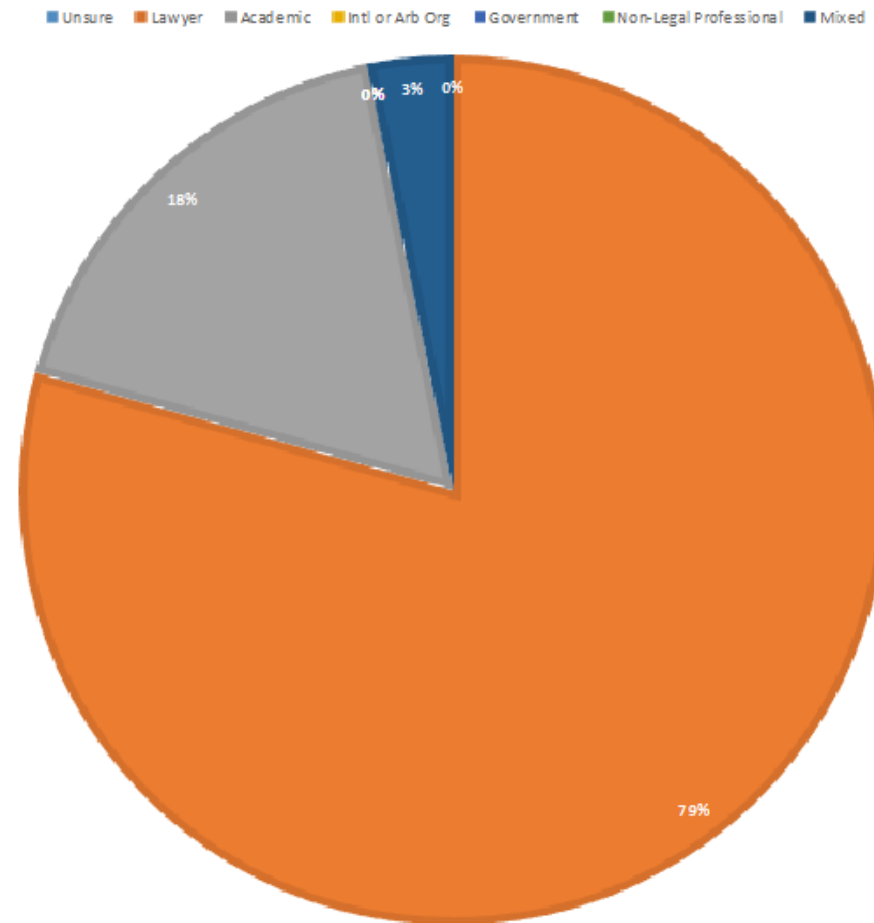
JOURNAL ARTICLES-PROFESSION FOR ALL YEARS

■ Unsure ■ Lawyer ■ Academic ■ Intl or Arb Org ■ Government ■ Non-Legal Professional ■ Mixed



Asian International Arbitration Journal: Authors

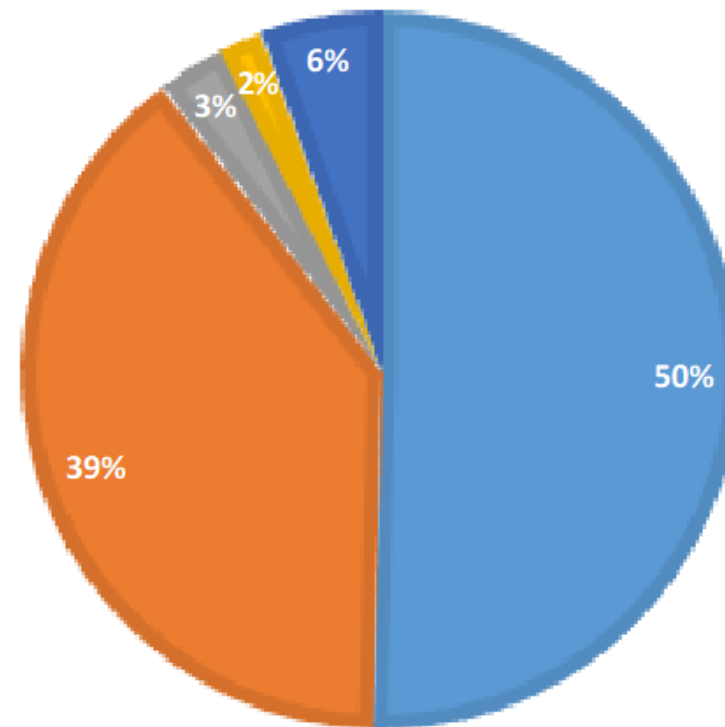
ASIAN INTERNATIONAL ARBITRATION JOURNAL-PROFESSION BREAKDOWN



The International Arbitration Law Library: Editors and authors of the books and individual chapters

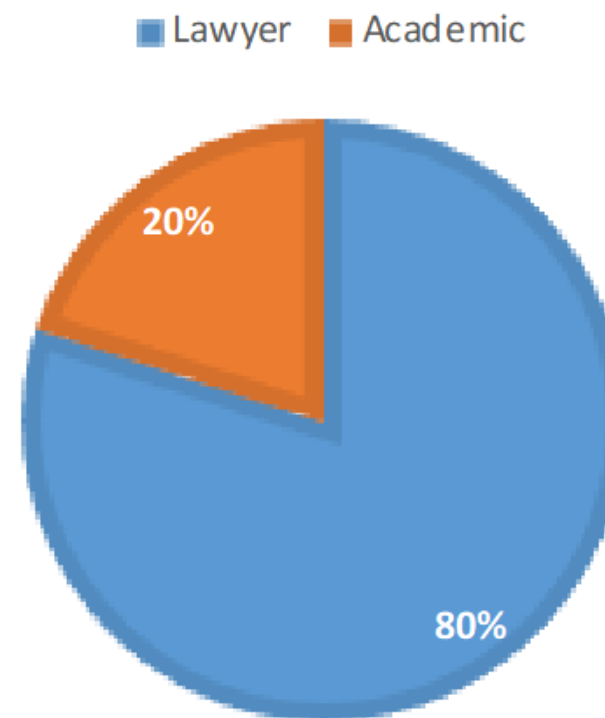
BOOKS-PROFESSION FOR ALL YEARS

Lawyer Academic Intl or Arb Org Non-Legal Professional Mixed



KAB Editors in 2018 and 2021

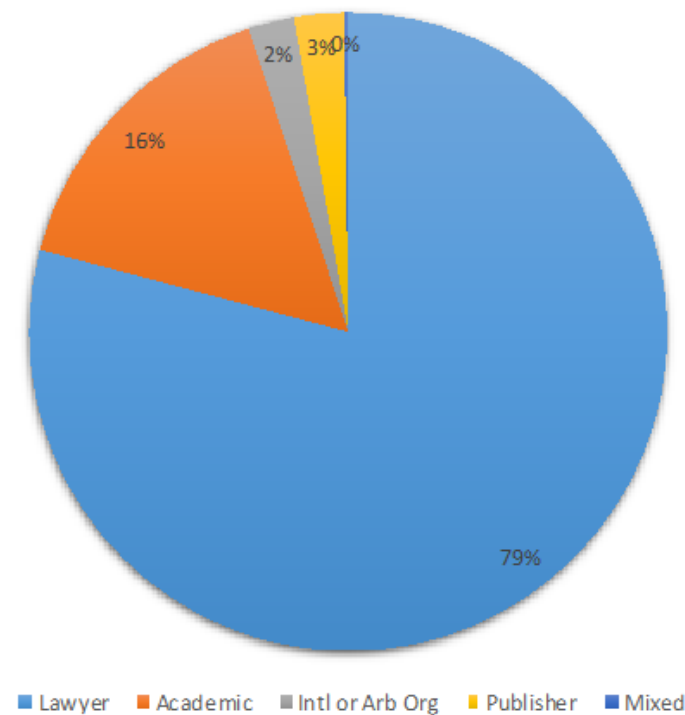
KAB 2018 AND 2021 EDITORS-PROFESSION BREAKDOWN



*In 2021, **around 17%** of the board members were based in Asia.

KAB Blog Authors in
February, June and
November of 2009,
2014, 2019-21

Blogs-Profession for All Years



Conclusions

- Our empirical research confirmed the entrenchment of lawyers through the world of IA, and corresponding decline in involvement and influence of full-time academics and especially other NLPs.
 - As some (civil law tradition?) Asian arbitration initiatives have had more involvement from academics, the growing ‘lawyerisation’ of IA may also limit some efforts to expand geographical / cultural diversity.
- One response to this “diversity deficit” might be to encourage more involvement of academics and NLPs in the leadership and activities of the significant arbitration associations and centres, as well as leading publication venues.
- At least, we need more (ongoing) discussion about the decline in professional diversity in the IA sector.

Thank you!

Longer paper than in the ALSI conference materials is available at:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3926914