

## Celebrating women in WTO dispute settlement

The WTO dispute settlement system recently reached a milestone, when a woman was selected to serve on a panel for the 100<sup>th</sup> time since the establishment of the WTO in 1995. This represents an achievement not only for the WTO, but for international adjudication more generally.

Traditionally, women have not been well represented on international adjudicative bodies. For example, during its more than 75 years of operation, almost all judges of the International Court of Justice (ICJ) have been male. Only four women have been elected to the ICJ, the first ever in 1995<sup>1</sup>, and four women have served temporarily as *ad hoc* judges in specific cases before the Court.<sup>2</sup> One woman, Dame Rosalyn Higgins, has served as President of the Court. The International Tribunal for the Law of the Sea has a shorter yet similar history. Only one woman has been elected to the Tribunal out of a total of 41 judges elected since August 1996<sup>3</sup>, and no women have served temporarily as *ad hoc* judges in specific cases. The field of investor-state arbitration has not fared much better. A 2015 study found that only 25 of the 499 arbitrators appointed in such disputes between the 1970s and the end of 2014 were women, making up approximately five per cent of the total.<sup>4</sup> The European Court of Human Rights features slightly higher numbers, with 37 (or approximately 16 per cent) of the 184 judges elected since 1959 being women.<sup>5</sup> Ms Işıl Karakaş of Turkey is currently serving as the Vice-President of the ECHR, following in the footsteps of one other woman Vice-President.<sup>6</sup>

The same tradition was found in international trade adjudication, where only five per cent of the 168 *ad hoc* panelists who served during the GATT period were women. The eight pioneers were from Chile; Hong Kong, China; Japan; New Zealand; Singapore; Sri Lanka; and Switzerland. They served in 11 disputes out of a total of 132 reports issued under the GATT, which is approximately eight per cent.

The WTO dispute settlement system has fared somewhat better. Of the 209 WTO panels composed since 1995<sup>7</sup>, 90 have included women panelists, representing approximately 43 per cent of the total number of panels composed. Of the 277 individuals selected to serve as panelists since 1995, 39, or approximately 14 per cent of them, were women. Fourteen panels have been chaired by women.<sup>8</sup> Canada has provided the highest number of women panelists (five), while Chile, Mexico,

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<sup>1</sup> Dame Rosalyn Higgins of the United Kingdom, serving from 1995 to 2009; Ms Xue Hanqin of China, elected in 2010 and currently serving on the Court; Ms Joan E. Donoghue of the United States, elected in 2010 and currently serving on the Court; and Ms Julie Sebutinde of Uganda, elected in 2012 and currently serving on the Court.

<sup>2</sup> Mrs Suzanne Bastid of France, serving in Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* (Tunisia v. Libyan Arab Jamahiriya); Ms Louise Arbour of Canada, serving in *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*; Ms Hilary Charlesworth of Australia, serving in *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*; and Ms Christine van den Wyngaert of Belgium, serving in *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*.

<sup>3</sup> Ms Elsa Kelly of Argentina, elected in 2011 and currently serving on the Tribunal.

<sup>4</sup> Cf. "An Empirical Analysis of Diversity in Investment Arbitration: the Good, the Bad and the Ugly" by Robert Kovacs and Alex Fawke, published by Transnational Dispute Management (Vol. 12, issue 4, July 2015) – available at <https://www.transnational-dispute-management.com/article.asp?key=2241>.

<sup>5</sup> Ms Alvina Gyulumyan of Armenia; Ms Gabriele Kucsko-Stadlmayer of Austria; Ms Elisabeth Steiner of Austria; Ms Ljiljana Mijović of Bosnia and Herzegovina; Ms Zdravka Kalaydjieva of Bulgaria; Ms Snežana Botoucharova of Bulgaria; Ms Ksenija Turković of Croatia; Ms Nina Vajić of Croatia; Ms Helga Pedersen of Denmark; Ms Julia Laffranque of Estonia; Ms Pauliine Koskelo of Finland; Ms Päivi Hirvelä of Finland; Ms Nona Tsotsoria of Georgia; Mrs Angelika Nussberger of Germany; Ms Renate Jaeger of Germany; Ms Síofra O'Leary of Ireland; Ms Ann Power-Forde of Ireland; Ms Ineta Ziemele of Latvia; Ms Danutė Jočienė of Lithuania; Ms Stéphanie Mourou-Vikström of Monaco; Ms Isabelle Berro of Monaco; Ms Wilhelmina Thomassen of the Netherlands; Ms Hanne Sophie Greve of Norway; Ms Iulia Motoc of Romania; Mrs Kristina Pardalos of San Marino; Mrs Antonella Mularoni of San Marino; Ms Alena Poláčková of the Slovak Republic; Mrs Viera Strážnická of the Slovak Republic; Ms Helena Jäderblom of Sweden; Ms Elisabet Fura of Sweden; Ms Elisabeth Palm of Sweden; Ms Helen Keller of Switzerland; Mrs Denise Bindschedler-Robert of Switzerland; Ms Mirjana Lazarova Trajkovska of the former Yugoslav Republic of Macedonia; Ms Margarita Tsatsa-Nikolovska of the former Yugoslav Republic of Macedonia; Ms Işıl Karakaş of Turkey; and Ms Ganna Yudkivska of Ukraine.

<sup>6</sup> Ms Elisabeth Palm of Sweden served as Vice-President of the ECHR from 1998 to 2001.

<sup>7</sup> To date, 239 panels have been established, but only 209 have been composed thus far.

<sup>8</sup> Mrs Carmen Luz Guarda of Chile was the Chair of the Panels in *Australia – Automotive Leather and US-Section 110(5) Copyright Act*. Mrs Claudia Orozco Jaramillo of Colombia was the Chair of the Panels in *US – Section 129(c)(1) URAA*, *Canada – Wheat Exports and Grain Imports*, and *US – Washing Machines*. Ms Margaret Liang of Singapore was the Chair of the Panels in *EC – Sardines* and *Korea – Bovine Meat*. Ms Elaine

and Switzerland have each provided three. Ms Claudia Orozco of Colombia has served on 12 different panels, while Ms Eni Neri de Ross of Venezuela has served on 10.

Since the establishment of the Appellate Body in 1995, there have been 25 Appellate Body Members, four (or 16 per cent) of which have been women.<sup>9</sup> Although there have been periods where almost half of the Members of the Appellate Body were women<sup>10</sup>, currently only one woman is serving as a Member of the seven-member Appellate Body, namely Ms Yuejiao Zhang of China.<sup>11</sup> Three women have chaired the Appellate Body.<sup>12</sup>

In sum, the WTO record stands out positively in comparison with that of many other international dispute settlement bodies, although more progress could be made.

With the celebration of the 100<sup>th</sup> instance of a woman serving on WTO panels, the organization thanks the women panelists for their hard work and dedication in the service of the WTO dispute settlement system, one of the WTO's most lauded success stories.

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Feldman of Canada was the Chair of the Panel in *Argentina – Preserved Peaches*. Ms Luz Elena Reyes de la Torres of Mexico was/is the Chair of the Panels in *EC – Countervailing Measures on DRAM Chips* and *Indonesia – Safeguard on Certain Iron or Steel Products*. Ms Marta Lucia Ramirez de Rincon of Colombia was the Chair of the Panel in *US – Large Civil Aircraft (1st Complaint)*. Ms Debra Steger of Canada was the Chair of the Panel in *Mexico – Olive Oil*. Ms Leora Blumberg of South Africa was the Chair of the Panel in *Argentina – Import Measures*. Ms Deborah Milstein of Israel is the Chair of the Panel in *European Union – Anti-Dumping Measures on Biodiesel from Indonesia*.

<sup>9</sup> Ms Merit E. Janow of the United States, serving from 2003 to 2007; Ms Lilia Bautista of the Philippines, serving from 2007 to 2011; Ms Jennifer Hillman of the United States, serving from 2007 to 2011; and Ms Yuejiao Zhang of China, serving from 2008 to 2016.

<sup>10</sup> Between 2008 and 2011, Ms Lilia R. Bautista of the Philippines, Ms Jennifer Hillman of the United States, and Ms Yuejiao Zhang of China thus served simultaneously as Members of the Appellate Body.

<sup>11</sup> Ms Yuejiao Zhang's second term officially terminated on 31 May 2016 but, in accordance with section 15 of the Working Procedures for Appellate Review, she is still serving on the Appellate Body in order to complete the appeals to which she was assigned before her term expired.

<sup>12</sup> Ms Lilia R. Bautista of the Philippines chaired the Appellate Body from 2010 to 2011. Ms Jennifer Hillman of the United States chaired the Appellate Body in 2011. Ms Yuejiao Zhang of China chaired the Appellate Body from 2011 to 2012.