

# Kluwer Arbitration Blog

## Tel-Aviv Arbitration Week: Ethics – The Hidden Principle for International Arbitration Success and Development

Nathan Rothstein, Jasmine Goldofsky (Gornitzky & Co) · Friday, July 14th, 2023

This post presents some highlights from the workshop titled “Ethics in Arbitration”, as well as relates an important value the authors took away from listening to workshop’s notable speakers, as part of [Tel Aviv Arbitration Week](#) (“TAAW”) 2023.

The Tel Aviv Young Arbitral Forum was established in 2020 by [Ayelet Hochman](#) (White & Case), [Nuna Lerner](#) (Gornitzky & Co.), [Kirtan Prasad](#) (RPC) and [Galina Usorova](#) (Stephenson Harwood), with the objective of specifically providing young practitioners with high quality events focused on international arbitration in Israel.

The workshop was opened by the ICC YAAF representative to the Middle East, North Africa & Turkey, Nuna Lerner. The keynote speech was given by [Gábor Damjanovic](#) (Damjanovic & Partners Law Firm) and the following panel was moderated by Ayelet Hochman and featured, [Benny Winston](#) (Herzog Fox & Neeman) [Julie Raneda](#) (Schellenberg Wittmer), [Tomas Vail](#) (Vail Dispute Resolution), and [Yael Ribco Borman](#) (Gaillard Banifatemi Shelbaya Disputes). The final presentation was given by [Dr. Crina Baltag](#) (Stockholm University), and closing remarks were given by [Anna Riquetti](#) (RPC).

The workshop was kicked off by Ms. Lerner who introduced the topic of ethics in arbitration. She elucidated the need for this principle in order for the field of international arbitration to flourish at all, since ethics is the basis for trust, allowing for confidence-building and the sequential development and success of arbitration.

### **Rules, Regulations and Practices May be Different, but Ethics are Universal**

Mr. Damjanovic followed Ms. Lerner’s opening remarks with his speech titled “Rules, Regulations and Practices May be (are) Different, but Ethics are Universal”, relating to the audience that trust is not a given in the field of international arbitration as there is usually a lack of the ability to appeal, strict confidentiality as well as a general lack of understanding of this platform’s usefulness by “outsiders”.

Mr. Damjanovic then expounded on the current and past political instability in Hungary because of the lack of “checks and balances” within the governing bodies, comparing the beginnings of Hungary’s political strife to Israel’s current precarious judicial-political circumstances. Mr.

Damjanovic's examples highlight the importance of clarity and integrity for stability and success in all fields. He consequently delved into the importance of integrity, and how great effort and time goes into becoming a well-respected and established professional, stating that he sees integrity as the most important attribute to be aware of when choosing an arbitrator.

Mr. Damjanovic then brought up the importance of cultural awareness in international arbitration, the importance of pushing for a level and ethical playing field and of being inclusive and understanding to other parties, their needs and limits. For example, as an arbitrator dealing with non-participating parties, he raised those issues which would have been raised by respondent, and even reached out to respondent for comment on these matters.

### **Ethics Across Jurisdictions**

Following the keynote, a panel moderated by Ms. Hochman was held, discussing "Ethics Across Jurisdictions", bringing views from Hong Kong, the UK, US, Israel Germany, France, and Uruguay.

Mr. Vail, qualified both in New York and England, began by discussing the necessity of ethical guidelines for counsel, as "Integrity raises legitimacy, accordingly raising efficiency (stopping guerrilla tactics) and awareness regarding integrity worldwide". On the other hand, strong guidelines can harm flexibility and create ambiguity if poorly worded, ultimately yielding the opposite result.

Mr. Vail then dove into the ethical guidelines available today, like the [IBA Guidelines on Conflicts of Interest](#), the [LCIA Rules](#) and the [Chartered Institute of Building Set of Rules](#) which also have specific rules regarding integrity. He likewise related the difference between the US and UK in terms of their emphasis on integrity, relating that the US counsel has an obligation to prepare witnesses, a breach of which is malpractice. While in the UK, counsel may interview witnesses, however coaching is considered unlawful.

Additionally, another example of rules regarding integrity can be found in English law, where disclosure is necessary for the choosing of arbitrators, as ruled in *Halliburton Company v Chubb Bermuda Insurance Ltd*. The LCIA and ICC similarly held that the failure to disclose may show bias. On the other hand, GAFTA decided that this depends on parties' expectations of what is necessary.

Ms. Hochman, qualified in New York and Israel, strengthened Mr. Vail's words, rehashing the importance of acting ethically and with integrity, "...it only takes 5 seconds to destroy one's integrity that took a lifetime to build" and "word passes fast and far".

Ribco Borman, qualified in Uruguay and Germany, then mentioned that different rules come to fill the gap relating to integrity, on an international, national and institutional level. For example, in Uruguay, there are no mandatory ethics rules, just guidance provided by lawyer associations. On the other hand, one is obligated to abide by French or German ethical rules as a French or German practitioner or practitioner in France or Germany. This can of course be complicated for a legal professional from a different background, as for example, in France, communication with the opposing counsel is confidential until disclosed to the tribunal, though in other countries this is not the case.

Ms. Raneda, licensed in Singapore, offered that it is important to understand what rules apply to you when you work in different jurisdictions. Bringing an example of how the UK prohibits “witness prep” while in Singapore this is allowed, she added that when there is confusion in deciding the relevant rule, the more stringent principle is usually applied, though this should be raised with the tribunal at the first CMC in order to finalize the relevant rules from the beginning. Too many sets of rules can be overly problematic and confusing.

Ms. Raneda then expounded on the question of who can enforce the ethical rules. On one hand, enforcement by the tribunal/institution would be an overreach of power; on the other hand, national rules and/or national bar rules might not affect foreign counsel. She brought up an example from 2021 in England where a secretariat was engaged by two separate entities, in two separate proceedings related to the same matter. Advice was provided to one side in each of the different cases. The secretariat felt that internal rules should allow for this, yet the court decided that an institution could not act in this manner.

Mr. Winston, licensed in New York and Israel, conveyed that in Israel, there are general legal ethics regulated by law and Israel’s Bar has purview over foreign counsel. However, with regards to ethics provisions relating specifically to international arbitration, other than soft law, there aren’t any, though there is a bill currently being prepared based off of Model Law. This is where common law comes into the picture to fill the gap, applying rules applicable to judges also onto arbitrators.

### **UNCITRAL/ICSID Code of Conduct for Arbitrators in Investor-State Dispute Settlement**

After the above panel, Dr. Baltag began her presentation on “UNCITRAL/ICSID Code of Conduct for Arbitrators in Investor-State Dispute Settlement” by stating that currently there are two sets of international codes of conduct, one for judges and another for arbitrators. In 2015-2016, proposals were considered relating to ethical rules and in 2017, a paper was written regarding ethics in international dispute resolution. Meetings are currently ongoing regarding the creation of the code of conduct, and there is great interest in finalizing these rules before UNCITRAL’s summer meeting.

These potential rules are relevant to arbitrators and candidates wishing to become arbitrators, and include rules regarding integrity, independence, impartiality, confidence, disclosure and compliance with the code of conduct. There are a few important developments yet to be decided regarding the integrity of the process of choosing arbitrators, including limitation on arbitrators taking on multiple roles (“**double hatting**”) and the scope of arbitrators’ disclosure.

### **Conclusion**

The authors see great importance in holding a high ethical standard by all those lucky enough to be part of the international arbitration community, especially in countries like Israel where the field is still developing and becoming more and more popular by the year. The necessity of these important standards hold even greater weight in lieu of the fact that the international arbitration community in Israel is still small, naturally raising the chance of double hatting, and sequentially, the need for greater ethics awareness. Upholding a high ethical standard especially in these tumultuous times can truly raise international arbitration’s popularity within Israel and

internationally.

Over the next few days we will feature posts about Tel Aviv Arbitration Week; these posts were written by members of the International Arbitration team of Gornitzky & Co, under the direction of Ms. Nuna Lerner.

---


*To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).*


### **Profile Navigator and Relationship Indicator**

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



 Wolters Kluwer

This entry was posted on Friday, July 14th, 2023 at 8:21 am and is filed under [Ethics](#), [Israel](#), [Tel-Aviv Arbitration Week](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.

