Kluwer Arbitration Blog

2025 PAW: Navigation Cross-Cultural Dynamics in International Arbitration

Ravi Aswani · Friday, April 18th, 2025

In the splendid surroundings of the Hyatt Paris Madeleine, over 50 attendees gathered in the early evening of 9 April to hear the latest thoughts on Navigation Cross-Cultural Dynamics in International Arbitration, an official PAW event hosted by Rajah & Tann.

The event aimed to foster dialogue on how cultural differences affect communication, business practices, negotiation, and dispute resolution. Rather than seeking a uniform approach, it emphasised understanding how legal systems, societal norms, and individual values shape perceptions of justice. The discussion highlighted that greater cultural literacy improves procedural fairness and enhances the legitimacy of international arbitration, boosting confidence in compliance with awards.

Moderated by Dr. Vanina Sucharitkul from Rajah & Tann, this engaging panel session featured esteemed members from the firm including, Shilin Huang and Chuan Thye Tan. The event was further enriched by distinguished guest speakers: Dr. Hamid Gharavi (Derains & Gharavi), Dr. Mahmood Hussein (M&CO Legal), and Loretta Malintoppi (39 Essex).

Cultural Differences during Arbitral Proceedings

The panellists shared their experiences of confronting cultural differences in arbitral tribunals. Loretta Malintoppi reminded attendees that whilst in broad terms the question of cultural differences in international arbitration was a well debated topic, there is always something new to discuss. She noted that in Italian practice, parties and counsel may be very reluctant to raise matters of independence and impartiality, even where potentially justifiable doubts as to those matters existed. Malintoppi recalled an early career experience where French and Spanish counsel exhibited starkly different attitudes to dress and forms of address. The Spanish counsel, dressed in sneakers and using first names, contrasted with the formality of the French counterpart in a suit—leading the latter to suspect undue familiarity, despite none existing. This illustrated how professional style differences can colour perceptions.

Shilin Huang, gave the memorable example of a scene from the Tony Award winning play Chinglish (written by David Henry Hwang) where the intentions of the US and Chinese characters were the same, but the outcomes diametrically opposed due to their different cultural backgrounds.

This resonated with the audience and with the other panel members, many of whom had seen similar experiences in their own arbitrations.

Mahmood Hussein made an impassioned call for the development of a more transnational arbitration culture, with the need for a move away from a heavily common law influenced system of international arbitration which does not necessarily sit well in all civil jurisdictions. Mahmood Hussein also highlighted the importance of broadening the pool of potential arbitrators, not just in the UAE, but around the world.

Chuan Thye Tan raised a number of thought-provoking questions. These included what it really means to describe a country as having a melting pot culture, a label frequently applied to Singapore. He also questioned whether the present consultation process in Singapore including in particular potential reform surrounding a right to appeal on a point of law could get in the way of increasing cultural sophistication in the arbitral decision-making process. If ultimately more cases fell to be materially decided on pure black letter law questions, that could have the unintended consequence of parties then nominating more traditional or senior "legal" arbitrators, particularly those with common law backgrounds. That could paradoxically have the effect of undoing some of the recent good progress made in increasing cross-cultural competency within the community of arbitrators in Singapore.

Vanina Sucharitkul informed attendees that the IBA Guidelines on Conflicts of Interest in International Arbitration (commented here) remained relatively unfamiliar to many practitioners in Thailand. This had the effect of parties regularly raising challenges based on grounds that may not be recognised within the broader international arbitration community. The practical reality is that even unmeritorious challenges often result in arbitrators resigning in order to "save face". This has, in turn, encouraged certain counsel to resort to guerrilla tactics, filing multiple baseless challenges to obstruct proceedings — with the consequence that decade-long arbitrations are not unheard of in Thai practice.

Contract Interpretation Across Cultures

The discussion turned to divergent approaches to contract interpretation across jurisdictions. While some traditions favour literal reading of the text, others weigh party intent, good faith, or even religious principles such as mutual consent or the avoidance of harm.

According to Mahmood Hussien, taking account of cultural background of the parties is fundamental. He recalled an incident where an engineer arbitrator who had practical experience of how notice requirements worked clashed with a senior English silk arbitrator whose approach was very much to focus on the written 15 day requirement and whether, as a matter of fact, it had or had not been complied with (with no consideration of why if it had not been). In his experience, civil law arbitrators, especially those schooled in Sharia traditions, had a completely different approach to concepts such as good faith, and public policy which could be particularly important in the Sharia context.

Hamid Gharavi emphasized that the core of the debate centers on the governing law. He argued that the cultural backgrounds of the parties involved should not influence the interpretation of contractual terms. Instead, it is essential to adopt a consistent culture of contract interpretation.

Loretta Malintoppi built on this idea and made the important point that unconscious bias could have a part to play in cultural misunderstandings and miscommunications, requiring awareness and humility on the part of arbitrators especially regarding the existence of such bias and a positive attitude towards taking mitigating measures.

Communication Styles in Procedural Dynamics

The panellists explored how cross-cultural differences shape procedural exchanges, particularly in witness examination. Loretta Malintoppi remarked that the IBA Guidelines reflect the dominance of common law practices. She commented that the field had long been subject to the "Americanisation" of procedure, driven by Anglo-Saxon law firms, and while some balance had emerged, the IBA Guidelines further entrenched common law norms, such as cross-examination, forcing civil law lawyers to adapt.

Mahmood Hussein highlighted the critical importance of understanding the well-known differences in legal norms about the coaching / preparation of witnesses and problems which could arise as a result. He also added that in his arbitrations, arbitrators from common law or Western backgrounds found it difficult to understand the concept of loyalty to an employer which forms an important part of the factual matrix against which the employees' evidence should be understood.

Shilin Huang reminded the attendees about the potentially different meanings of "yes" and "no" in Chinese culture. He further observed that an arbitrator cognizant of the cultural nuances would have to exercise caution in intervening to elicit the intended meaning as this could come across as evincing partiality or favouritism for a particular party. The risks could in his view be mitigated by ensuring proper discussion about such matters both within the tribunal and between the tribunal and counsel prior to or at the outset of the evidentiary hearing.

Regarding expert testimony, Vanina Sucharitkul shared that in some Asian arbitrations, a renowned professor may be appointed by one party, while the other nominates a junior academic. Out of deference, the junior expert may acquiesce to the senior, even if their expert reports diverge. Loretta Malintoppi agreed this power dynamic has contributed to a decline in the use of expert hot-tubbing.

Hamid Gharavi spoke about the cultural variations in how witnesses structure responses. In common law systems, direct "yes" or "no" answers are expected. In contrast, witnesses from some cultures offer explanations first—an approach that may be perceived as evasive, uncooperative or unreliable in the eyes of an arbitrator. Gharavi recommended that witnesses be advised to give the succinct answer first, followed by context. Such dangers could in his view be overcome by simply informing the witness that they should try to give the "yes" or "no" answer first and then set out any explanations or qualifications necessary to contextualise the answer. Hamid Gharavi reminded attendees of the Turkish proverb: "Everyone eats yoghurt in their own way."

Conclusion

Vanina Sucharitkul concluded with a call to action in her remarks, raising the challenging question of whose responsibility it is to adapt — and to ensure that all stakeholders within the international

arbitration community are equipped with the necessary tools to navigate cross-cultural complexities. This adaptation is essential to navigate the complexities of cross-cultural dynamics, reminding us that cultural competency is more than a soft skill; it is a vital tool for fostering fairness, credibility, and trust in international arbitration. Overall, this was an inspiring and thought-provoking event which will live long in the memory of those who were able to attend.

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This entry was posted on Friday, April 18th, 2025 at 8:07 am and is filed under Culture, Paris Arbitration Week
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