

The 2014 ASA Prize for Advocacy in International Arbitration

A Laudatio of Raed Fathallah

by Franz T Schwarz

It is a privilege to be an advocate. To speak for someone else, to speak out for their interest – it is a noble calling. It is not an overstatement that a truly independent bar, free from political influence and government pressure, has been instrumental in establishing the rule of law and is rightly considered a hallmark of modern democratic societies. In that sense, a functioning international arbitration bar plays a crucial role in facilitating international trade and commerce.

In the United States, professional ethical rules require a lawyer to represent a client with “zeal” – that is, with ardent fervor, a measure of passion, in the pursuit of the client’s interests. In my native Austria, a lawyer is required to present the client’s position “*unumwunden*” – that is, without restraint. In Switzerland, the language of professional obligations appears more nuanced, but in preparation for today, I came across Art. 24 of the Professional Rules of the Swiss Bar Association, which provides „*Die Kollegialität darf die Interessen der Mandanten nicht beeinträchtigen.*“ -- “The principle of collegiality [towards other lawyers] must not affect the interests of the client.” One could meditate for quite some time over this rule alone, but the ultimate message is clear: as an advocate, you put your client’s interests first.

Of course, there are limits, lines not to be crossed. Some are obvious: those are the boundaries of legality. Some are more nuanced. When does an advocate’s conduct become “over-zealous”? When is it inappropriate, and as a result, ineffective?

These questions arise in any forensic arena, but they apply with force in our chosen field. On the one hand, it is said that some lawyers lose their national inhibitions when set free in an international theatre. No longer under the watchful eye of their local bar and engaged in a purely private dispute resolution mechanism, they feel strangely liberated – and when

confronted with perhaps alien evidentiary techniques, they perceive themselves no longer as “officers of the court.” On the other hand, international arbitration, perhaps more than other areas, seems to live by a self-regulating and unwritten code of conduct. In a world as small as ours, if you compromise your integrity; tarnish your reputation; damage your credibility – you are quickly left with nothing at all. Needless to say, this will not be in your client’s interest.

The ASA Prize for Advocacy in International Arbitration, awarded every other year, affords us all the opportunity to pause and reflect on these issues.

The Award is based on the ASA Charter on Advocacy, which is a statement in itself. In a typically Swiss *melange* of understatement and pragmatism, ASA has chosen not to publish a finger-wagging guideline or rulebook of what you must and must not do as an international advocate. Instead, it has chosen to address the topic in an affirmative manner that rewards positive examples, and in the process, provides inspiration and reflection to us all.

The Charter is mandatory reading. If you have not yet read it, or have not read it for a while, please do so immediately upon conclusion of this conference.

The Charter is not a sentimental document. It recognizes that lawyers must present their client’s case forcefully – but notes that, in the interest of efficiency and fairness, and given the international nature of disputes so resolved, counsel is required to always be mindful of the different perspectives that arbitrators and opponents from around the globe may have. The Charter is not about abandoning the “zeal” – it is instead about truly effective advocacy that resolves disputes so that, where possible, business relations can continue.

This year’s recipient of the ASA Prize for Advocacy in International Arbitration, selected from a impressive pool of highly talented candidates, both newcomers and established practioners, exemplifies – and in many ways embodies -- the values laid down in the Charter.

As is often the case in our field, Raëd Fathallah's personal biography predestined him for international arbitration. Raëd was born in Lebanon, where he spent the first 17 years of his life and where he experienced in full, and all around him, the suffering of civil war. We shall return to this.

Raëd then moved to Québec, where he passed his baccalaureate and, still aged only 17, began the study law at the University of Ottawa. After obtaining his "*Licence en Droit Civil*" (or L.L.L.) in 1994, he passed the Québec "*Ecole du Barreau*" in 1995. At the age of 22, he graduated from

New York University School of Law with a Master of Comparative Jurisprudence in 1996. At that point in his life, Raéd returned to Canada, training with Marc Lalonde at Strikeman Elliott. He was admitted to the Québec Bar in 1997, and then packed his bags once more to return to New York, practising law first with Mayer Brown, then at White & Case.

It would seem that criss-crossing the Saint Laurence was no longer enough, so Raéd crossed an ocean to do post-graduate studies at Lincoln College in Oxford. There, he obtained his Dr Phil. in 2007, with a thesis with the singing title “International Law and Investment Treaty Arbitration.”

Making a habit of crossing the waters after completing a degree, Raéd was now to cross the the English Channel – arriving to practise at White & Case's Paris office. Raéd eventually joined Bredin Prat in 2005. Having qualified as Solicitor (England & Wales) in 2005 and gained admission to the Paris Bar in 2007 – the date of his future admission to the Swiss bar is not yet known – Raéd was promoted counsel at Bredin Prat in 2008 and became a partner in 2011. And this is where he practices today.

In his personal and professional biography, it is easy to see how Raéd comfortably transcends both common and civil law jurisdictions – a significant advantage, and perhaps a crucial feature, when practicing arbitration in the truly international sense.

But this was only the starting point for ASA’s selection process. The arbitration practitioners that ASA has interviewed all concur, first of all, that Raéd Fathallah is an exceptionally gifted advocate, not least because of *"the immense quality of the background work ... and of the reasoning"*. One seasoned practitioner called him *"one of the brightest"*, who delivers *"first-class work"*.

Importantly, many observers emphasised Raéd's intellectual honesty, which is of course a central feature of excellence in advocacy and one on which the ASA Advocacy Charter places great value.

Raéd's style is also something that interviewees consistently praised as the exact opposite of the abrasiveness and slashing tone so strongly discouraged by the ASA Advocacy Charter and all-too-frequently encounter in everyday practice. When speaking of Raéd, people note his measured tone... one of them used the French term *"raffiné"*, which says it all. I should perhaps add that this interviewee also noted Raéd's impeccable manners, which may sound quaint, but should not.

Of course one of the most frequently-heard comments one hears about Raéd is that he is not just multi-lingual – being perfectly and equally at ease in Arabic (his native tongue), English and French – but also multi-cultural. Raéd never forgot his Lebanese roots. In North America, he was frequently

moving between a "Latin" and an "Anglo" environment. He then broadened his horizon to include Europe, first England and then France. This has produced an advocate who not only listens, but understands.

This, in turn, brings me to the last – and perhaps most striking – recurrent comment that ASA has heard. Time and again, Raëd was commended for the respect he shows to other peoples' opinions. I said earlier that his early days may have contributed to forming his qualities as an arbitration advocate. He grew up in a country torn by civil war. Raëd's great merit is to have transformed his personal experiences into a desire and ability to negotiate adversarial confrontation with dignity and respect. And this in many ways captures the essence of good advocacy: firm disagreement rather than abrasive tactics; reasoned substance rather than empty threats.

It is a privilege to be an advocate. It is my privilege today to ask you, dear Raëd, to now come to the stage to receive the Prize that you so well deserve.