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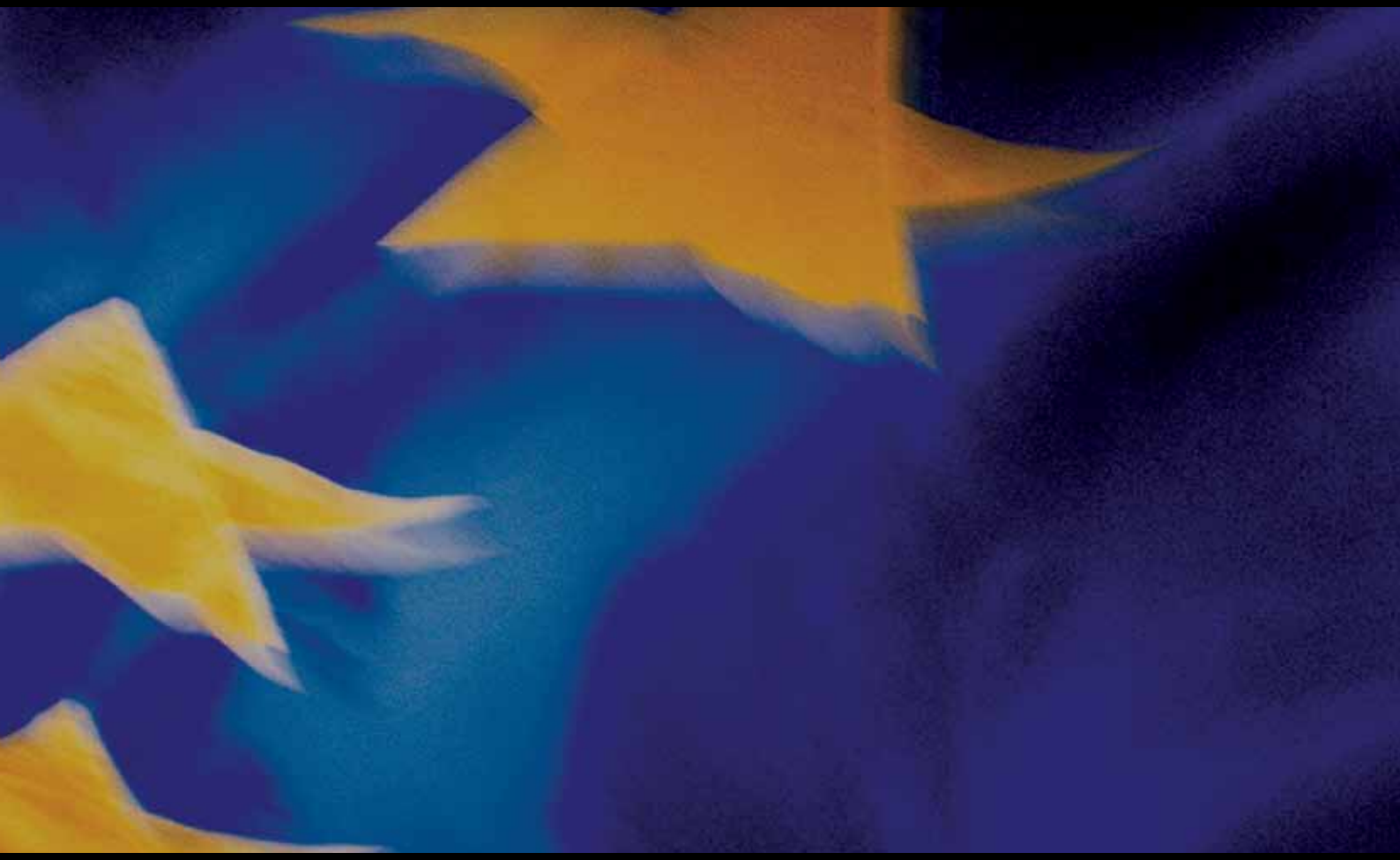

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Introduction

Stefano Azzali
Secretary general, Milan Chamber of Arbitration

Arbitration in Italy: a general overview

Until a few decades ago, arbitration in Italy played a very limited role for the resolution of commercial disputes. Arbitration proceedings conducted in our country were few, most of them ad hoc, domestic and in the hands of a very restricted group of professionals (essentially lawyers). Italian legislation at that time was quite poor and did not particularly favour arbitration, and judges and tribunals saw arbitration as a competitor, a sort of 'enemy' to be fought.

So the very limited use of arbitration in Italy was not only a technical issue but also a cultural one. Fortunately, things have changed in recent years, starting with the 1994 reform of Italian arbitration legislation, broadened in 2006 with the Legislative Decree No. 40.

The current legislation, contained in the 8th title of the Italian Code of Civil Procedure-CCP (articles 806 to 840), is not based on the UNCITRAL Model Law, although it does follow the same pattern and share the same basic principles to a wide extent.

First of all, Italy has adopted a unitary approach, applying the same provisions to both domestic and international proceedings: the (more flexible) provisions previously applied only to international arbitrations have been extended to national proceedings.

On one hand, the new discipline has clarified – and updated – some crucial issues, such as: arbitrability (which is now broader); the form and scope of the arbitration agreement; the rights and duties of the arbitrators (including the grounds for their challenge); and the time allowed for rendering the award. On the other hand, some issues have been provided with a regulation for the first time: multiparty proceedings; institutional arbitration (now expressly recognised); third-party intervention; and the state court's assistance in taking of evidence. Party autonomy – in the choice of the language, the substantive applicable law, the seat, etc – has been greatly recognised.

It is worth mentioning that today, according to the Italian CCP, arbitral awards can not be challenged on the grounds of violation of the 'rules of law' unless otherwise (and expressly) agreed by the parties. The two reforms (in 1994 and 2006) did not modify the provisions governing the recognition and enforcement of foreign awards in Italy, which are based on the 1958 New York Convention.

Finally, the arbitrators have no authority to grant interim or conservatory measures. Such power is recognised in the state courts only. This is a negative aspect of Italian legislation, although one, I believe, has a limited impact in our arbitration practice.

Generally speaking, we can say that the present Italian arbitration legislation does meet users' needs, providing them with a modern, up-to-date and flexible discipline. Looking at the European panorama, it is a 'good' discipline – not the best one but certainly not the worst. However, recent improvements of Italian arbitration market are not limited to such technical (ie, normative) aspects.

First of all, the attitude of Italian judges towards arbitration has changed; a more friendly and respectful approach has been widely established. A recent analysis of the single grounds for refusing enforcement in Italy, along with a review of recent case law, shows the commitment of Italian courts throughout the years to ensuring the largest possible recognition of awards rendered abroad.[1]

Today, the practitioners involved in arbitration are not limited to a small elite: they are greater in number, they are younger, they are not based in two major cities only (Rome and Milan), and they know arbitration well. There are many examples of this renewed spirit, such as the recent creation of the ArbIt (Italian Forum for Arbitration and ADR), a private association of young lawyers aimed at promoting arbitration and developing its culture in Italy and abroad.

A crucial role in the promotion of arbitration in Italy has also been played by the Milan Chamber of Arbitration (CAM) and the Italian Arbitration Association (AIA).

The first one, a special branch of the Milan Chamber of Commerce, is located in the Italian industrial and business capital and is very active in the administration of arbitral proceedings. The second one, based in Rome, has been active in the study of arbitration, publishing *Rivista dell'Arbitrato* (the only Italian review exclusively focused on arbitration) and reforming the legislation.

All these initiatives have played a crucial role in the promotion of arbitration and the improvement of the Italian situation; they have helped propel Italy into the international arbitral landscape, removing it from isolation.

The Milan Chamber of Arbitration-CAM

Despite its young age (it was created in 1986), the Milan centre has become the leading ADR institution in Italy.

The number of cases administered is constantly increasing, up to an average number of 130 to 150 arbitrations[2] and 1,000 to 1,500 mediation proceedings per year. The number of international cases is also increasing (currently to around one-third of the annual caseload), such as the number of foreign parties making references to a CAM arbitration clause in their contracts.

A fact worth mentioning is the gradual 'death' of the so-called 'informal' arbitration, the existence of which (limited to the Italian market) has caused many problems to users in the past in terms of circulation of such awards outside Italy (because of the non-application of the New York Convention to informal awards, having contractual effects only). In 2011, informal proceedings represented only 5 per cent of CAM arbitrations.

CAM is also very active in promoting ADR methods thanks to its Studies and Documentation Centre, its training activity, its network of collaboration agreements and international alliances and, more recently, its editorial initiatives (such as the recent presentation of Guidelines for anonymous publication of arbitral awards).

Since 1991, the Milan Chamber of Arbitration has played host to the Milan Club of Arbitrators, an informal group of renowned experts and international arbitration practitioners that meets

every year in Milan to discuss current topics and to contribute, through proposals and 'motions', to the development of international arbitration. For this reason, the Milan Club is invited on a regular basis to attend, as 'observer', the UNCITRAL sessions on Arbitration and Conciliation.

As far as the administration activity is concerned, in 2010, CAM modified – further to the 2006 reform and taking into account the experience gained in the last decade – its set of rules, inspired, on one hand, by an higher recognition of parties' freedom and, on the other hand, by a stronger role of the Institution in its administration activity.

Parties are free to decide the language of the proceedings, the applicable law, the seat, the place of the hearings, the number of arbitrators and many other aspect of the proceedings. They can appoint the arbitrators without being bound to a list or a roster.

However, the institution maintains control of the independence and impartiality of the arbitrators (through a confirmation process – a real and severe one – of all of them), of the cost of the proceedings and of its duration.

The CAM Rules are flexible and easily adapted to the parties' needs, and can lead to a real international process. According to article 14.5 of the Rules, when the parties have different nationalities and the appointment of the chair (or of the sole arbitrator) has to be done by the institution, the CAM Arbitral Council (composed by Italian and non-Italian members) shall appoint – without any intervention by National Committees or other bodies – a person of a nationality other than those of the parties.

Another relevant feature of CAM is providing support to the parties and to the arbitrators in the organisation of the proceedings. Hearings are organised by the Secretariat and many of them take place at the CAM premises (1,195 hearings between 2008 and 2011). CAM case managers support the arbitrators in drafting the minutes of such hearings and in assisting their activity during the entire process (including, but only upon request, the control of the draft award in order to verify its non-compliance with formal requirements).

The above-mentioned reforms, the friendly attitude of Italian courts, a new dynamic group of professionals active at international level, and a dynamic, user oriented arbitral institution, all contribute to Italy's renewed role exceeding national boundaries.

I believe it is not by chance that two young Italian lawyers and arbitration specialists, Francesca Mazza and Andrea Carlevaris, have been chosen to lead two of the most important arbitral institutions – respectively, the DIS (German Arbitration Institution) and the ICC Court of Arbitration. At the risk of sounding immodest, I'd like also to mention my role, since 2009, as secretary treasurer of the International Federation of Commercial Arbitration Institutions (IFCAI).

Another clear signal of the growing importance of Italy in the international arbitration panorama is the application of the 2010 CAM Arbitration Rules to the 18th edition, in 2011, of the Willem C Vis International Commercial Arbitration Moot, the well-known competition that takes place every year in Vienna.

These recognitions have given Italy a worldwide popularity and importance in the ADR world, contributing to the establishment of strong collaborative relationships between CAM and other arbitral centres.

Promoting arbitration throughout the Euro-Mediterranean region

I truly believe that mutually beneficial cooperation (which is not incompatible with fair competition) among arbitral institutions is a key element to further spread arbitration practice.

Arbitral institutions can certainly be enriched by the experience of centres operating in different cultural and economic environments, improving their services and answering parties' needs. Consequently, these collaborations lead to a wider use of institutional arbitration – especially by companies not overly familiar with this system of dispute resolution – and, therefore, to the development of business relationships, cross border investments, joint ventures and partnerships.

This sort of 'domino effect' also applies to North-South (Euro-Med) relations, where the network of CAM alliances will have a positive effect, we believe, on arbitration in the entire Mediterranean region and, at the end of day, on Euro-Med and Med-Med business. For this reason, since 2003, the Milan Chamber has developed strong relations with arbitral institutions operating in the Mediterranean area.

Moreover, in April 2012, a memorandum of understanding was signed among CAM and five Mediterranean institutions[3] (and also open to other centres), a sort of network of Mediterranean arbitration centres with two main objectives: to promote arbitration in the Mediterranean trade area and to develop a reliable and predictable arbitral practice in the region based on common principles and procedural standards.

The challenge is to strengthen regional and local arbitration centres rooted in their territories in order to bring arbitration services closer to local businesses and make them more accessible, from a geographic and economic point of view, to small and medium-sized companies (the real protagonists of Mediterranean economy), who are thus far not so familiar with arbitration. We are talking of an interchange between the EU and Mediterranean countries, in 2011, of €277 billion.[4]

For the same reasons, CAM has also promoted strong collaborative relations in Europe with other centres, such as the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), the International Arbitral Centre of the Austrian Federal Economic Chamber (VIAC), and the German Arbitration Institution (DIS).

The collaboration among these institutions has led to the organisation of several public meetings to compare the respective practices on specific aspects of case administration (the appointment and independence of arbitrators, costs, etc). This public comparison, on the one hand, gives centres the opportunity to improve their services and, on the other hand, allows the parties to better understand the peculiarities of each arbitral system and consequently pick the centre that best suits their needs.

It is worth underlining how certain centres have included representatives of other institutions in their technical bodies – for example, CRCICA has appointed non-Egyptian members to its advisory committee, which is now composed of Asian, African and European members; the same has happened at the Dubai International Arbitration Centre, which now includes in its board of trustees and its executive committee experts from Asia, Africa, Europe and Australia; the director of CRCICA, Mohamed Abdel Raouf, has been appointed as member of the SCC Board in Stockholm; and so on.

Finally, I wish to mention a significant event occurring in Israel where the Jerusalem Arbitration Centre (JAC) was established by way of a partnership between ICC Palestine and ICC Israel, and under the auspices of the ICC Court of Arbitration.[5] The JAC aims to provide an independent, neutral and apolitical forum for disputes arising out of commercial exchanges between Israelis and Palestinians (amounting yearly to US$4 billion). For Israeli and Palestinian parties, accessing the state courts of the other party is very difficult. Creating an Israeli-Palestinian centre has been envisaged as the most concrete and profitable way for all the stakeholders to overcome these difficulties.

New arbitration rules

While some Mediterranean centres have begun to harmonise their practices, in Europe, primary institutions have issued new arbitration rules.

After three years of intense work undertaken by a small drafting committee of up to 20 members, supported by a wider task force of about 200 members, and a consultation process with ICC national committees around the world and the ICC Commission on Arbitration, the new ICC Arbitration Rules entered into force on 1 January 2012.

The new set of rules introduces many changes on important topics such as case management, joinder of additional parties, multiparty and multi-contract arbitration and consolidation, and emergency arbitrators. According to Peter Wolrich, chairman of the ICC Commission on Arbitration: "The new Rules meet the growing complexity of today's business transactions, the needs surrounding disputes involving states, and the demand for greater speed and cost-efficiency."

After the revision of the ICC Rules, a similar change took place in Switzerland. On 1 June 2012, the new revised version of the Swiss Rules of International Arbitration came into force. Under the previous Swiss Rules, cases were administered by the various Swiss Chambers that had adopted the Rules. According to the new Rules, arbitration services will now be provided on behalf of the Chambers by the new Swiss Chambers' Arbitration Institution, an association incorporated under the laws of Switzerland as a separate legal entity, which is independent of the Chambers.

As some commentators have pointed out, this may be a huge step for arbitration in Switzerland, considering that it took 10 years for the Swiss Chambers to merge behind a single set of arbitration rules, and now the seven leading Chambers from all across the Country have agreed on a joint administrative structure.

Furthermore, the VIAC recently formed a group of Austrian and foreign experts in the field of arbitration to work on a new version of its Rules. It has been announced that, following in the footsteps of the revised ICC Rules, the main topics under discussion will be multiparty arbitration, multi-contract arbitration and joinder. The new version of the VIAC Rules is expected to be published on 1 January 2013.

Finally, outside Europe, the revision of the Arbitration Rules of the Istanbul Chamber of Commerce must also be mentioned. The new Rules came into force on March 2012 in accordance with the New Turkish Code of Civil Procedure (CCP) No. 6100 of 2011. The 2011 CCP includes a totally revised chapter on domestic arbitration, which is closely aligned with the 2001 Turkish Act on International Arbitration No. 4686 (AIA) and hence, indirectly, with the 1985 UNCITRAL Model Law.

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In conclusion, the radical changes undergone during the last decade in Italy show a marked trend in favour of arbitration and make Italy a much more arbitration-friendly country than it used to be. The action undertaken by other players in the region – such as the network of alliances – is a very encouraging signal for a brighter future of arbitration in the entire Mediterranean area.

However, one thing should be clear to all: if we want arbitration to maintain success in the future, we need to work to make it more and more respondent to users' needs. Institutions are playing their role in this respect, but all the participants in the process should do their part.

Notes

1 See Piero Bernardini, 'Riconoscimento ed esecuzione dei lodi stranieri in Italia', *Rivista dell'Arbitrato*, 2010, 03, 429.

2 From 2008 to 2011, CAM has received 530 new arbitration cases.

3 The centres are: Centre for Arbitration, Mediation and Conciliation of Algiers www.caci.dz; Cairo Regional Centre for International Commercial Arbitration www.crcica.org.eg; Tunis Mediation and Arbitration Centre www.ccat.org.eg; Arbitration Centre of the Istanbul Chamber of Commerce www.ito.org.tr; Arbitration Court of Morocco www.iccmaroc.ma. Such Network is coordinated by the Institute for the Promotion of Arbitration and Mediation in the Mediterranean (ISPRAMED) www.ispramed.it.

4 http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/regions/euromed/.

5 www.iccisrael.co.il/en; www.iccpalestine.com/index.php?lang=en&page=132309160122.

About the author

Stefano Azzali, secretary general of the Milan Chamber of Arbitration, is a lawyer graduated from the University of Genoa, School of Law.

He also acts as secretary treasurer of the International Federation of Commercial Arbitration Institutions (IFCAI) and as secretary general of the Italy-China Mediation Centre. He is member of the board of directors of the Institute for the Promotion of Arbitration and Conciliation in the Mediterranean (ISPRAMED).

Since 2005, he has been visiting professor of arbitration law at Bocconi University, School of Law, in Milan and, in 2012, he has been a fellow at the Center for Transnational Litigation and Commercial Law at New York University, School of Law.

Between 2001 and 2007, he chaired the disciplinary commission of the Italian Football Federation (FIGC), where he is now member of its Federal Court of Justice.

He is the author of various articles and publications on arbitration, and a member of the panel of arbitrators before various arbitral institutions (ICDR, VIAC, CIETAC, etc). He has acted as arbitrator in several institutional proceedings (ICDR Rules, DIS Rules, Swiss Chambers Rules, etc).

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