MILAN CHAMBER OF ARBITRATION

Beyond judgments. Towards solutions

BETWEEN SAFEGUARD AND SABOTAGE

Reflections from the 2025 Italian Arbitration Day

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On 4 June 2025, the 4th edition of Italian Arbitration Day (IAD) was held in Milan, organized by **CAM** and **AIA**, titled **International Arbitration: False Friends and True Foes—Navigating the Fine Line Between Use and Abuse**. It brought together around 200 people, including lawyers specialized in law and arbitration from all over the world.

From the introduction of **Professor Maria Beatrice Deli** and **Stefano Azzali**, it became clear that the theme proved timely. Arbitration's most celebrated features—flexibility, autonomy, confidentiality—are increasingly vulnerable to misuse. Yet eliminating these features would mean losing the very essence of arbitration. The challenge lies not in rejecting these tools, but in understanding how they can be misused, and how to safeguard their legitimate use.

As lawyers or practitioners, we are trained to dissect the cases that went wrong. But this tendency can distort our perception. The fact that we spend more time discussing abuses than successes does not mean arbitration is broken. It means we care enough to protect it.

Panel I: State Court Remedies—Support or Intrusion?

The panel formed by **Angelo Anglani**, **Hussein Haeri**, **Lara Hammoud**, and **Isabelle Michou** discussed the tension between arbitral autonomy and state court intervention, focusing on anti-suit, anti-arbitration injunctions, adding much nuance to this debate.

We heard about the "battle of jurisdictions": anti-suit, anti-anti-suit, and even anti-enforcement injunctions, going far beyond the classic discussion of the landmark case *Ust-Kamenogorsk Hydropower Plant JSC v AES Ust-Kamenogorsk Hydropower Plant LLP* (2013). The presentation pointed out to these remedies, while sometimes disruptive, being also essential tools for upholding arbitration agreements. The English courts, for instance, have resumed issuing anti-suit injunctions post-Brexit, even when the seat is elsewhere, provided English law governs the arbitration agreement. This was illustrated in *UniCredit v RusChem* (2024), where jurisdictional strategy became a central issue.

Yet the divergence across jurisdictions remains stark. As pointed out by a panellist during the IAD, French courts, for example, lack the power to issue anti-suit injunctions altogether, based on principles of consent and the absence of contempt powers. In Russia, instead, courts have

increasingly asserted jurisdiction over arbitration-related matters, raising concerns about forum shopping and fragmentation.

The panel also addressed the troubling rise of legal action against arbitrators. From the Qatari tribunal's criminal convictions to the Spanish prosecution of an arbitrator for defying a court order, the message was clear: the age of absolute immunity is over. But accountability must not become harassment. Institutions and courts must strike a balance—protecting arbitrators from intimidation while ensuring ethical standards are upheld.

Panel II: Internal Tools—Flexibility or Freefall?

The afternoon sessions turned inward with a panel formed by **Cecilia Carrara**, **Carlos Alberto Carmona**, **Dyalá Jiménez**, and **Melissa Magliana**. They examined how arbitration's internal mechanisms can be manipulated. The panellists personal views on those mechanisms were particularly invigorating.

Challenges to arbitrators, once rare, are now strategic. Disclosure obligations vary widely, and institutions face pressure to balance transparency with efficiency. The Milan Chamber of Arbitration (CAM), for instance, intervened in the discussion to say they encourage disclosure but leave the decision to challenge in the hands of the parties. This "moral obligation" is commendable, but it also reveals the limits of institutional power.

Procedural calendars, counsel changes, and interim measures were also discussed. Arbitrators often face dilemmas: should they allow a change of counsel that may delay proceedings? Should they enforce a procedural timetable agreed months earlier, even when circumstances change? These questions have no easy answers, but they underscore the need for judgment, not just rules.

The panel also explored the decision-making process itself. Cognitive biases, emotional fatigue, and external pressures can affect arbitrators' reasoning. One panellist noted that decision-making begins the moment someone says "hello"—tone, clarity, and even posture can shape impressions. Another, however, said that drafting the award is often when the real adjudication begins, requiring a deep understanding of the dispute's core questions. These reflections reminded us that arbitration is not just about rules—it's about people, and the subtle dynamics that shape their decisions.

Keynotes and Reverse Debate: A Broader Lens

The keynote speeches added depth to the day's discussions. **David W. Rivkin**'s call to return to the "town elder" model, meaning starting each case with a blank page and designing the procedure from scratch, was particularly resonant. His emphasis on early determination and proactive case management reminded us that flexibility must be used wisely, not passively.

Gabrielle Kaufmann-Kohler focused her keynote on the risks of over-professionalisation. Arbitration has become so complex that its efficiency is at risk. The "hearing before the hearing" phenomenon, endless procedural incidents, and due process paranoia are symptoms of a system under strain. Her call to "roll up our sleeves" and reclaim arbitration's original mission—resolving disputes efficiently and fairly—was a powerful reminder of what is at stake.

Ismail SELIM, President of IFCAI, also presented on the legitimacy of institutional arbitration and the impact of institutional rules. He vouched for Institutions serving as regulatory bodies and for the importance of sharing anonymised decisions. Ismael highlighted the CAM Rules as an inspiration, noting they apply regardless of how they're labelled, thus preventing the misuse of objections based on different names.

The Reverse Debates, led by **Niccolò Landi** and **Roberto Calabresi**, were a refreshing departure from traditional panels. By turning the spotlight onto the audience, they fostered spontaneous engagement and revealed the diversity of perspectives within the audience (and arbitration community). Questions about arbitrator profiling, institutional responsibility, and the ethics of resignation sparked lively exchanges and candid reflections.

Looking Forward: Responsibility Without Rigidity

Following the closing remarks of **Andrea Carlevaris**, it became clear that the IAD did not offer easy answers, but it did offer clarity: arbitration's legitimacy depends on how we use its tools—not just what those tools are. Abuse is not always blatant. It can be procedural, strategic, or even linguistic. (Is "due process" a shield—or a sword?)

As we move forward, we must embrace complexity without losing sight of purpose. Arbitrators, institutions, and counsel must act not just as technicians, but as stewards of a system built on trust. That means resisting the temptation to over-engineer, over-litigate, or over-protect.
In Milan, we began to redraw the lines between use and abuse. The challenge now is to keep drawing—thoughtfully, courageously, and together.