

# Milan chamber: the good, the bad and the ugly

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Taking inspiration from Sergio Leone and **Alan Redfern**, delegates at the Milan Chamber of Arbitration's latest annual conference discussed the "good, the bad and the ugly" of reasoning and dissenting in arbitration.

This much-awaited virtual gathering on 26 November – which always takes a cinematic theme – was chaired by **Stefano Azzali**, general director of CAM and moderated by **Massimo Benedettelli**, partner at Milan's ArbLit. It was attended by approximately 120 participants from 13 jurisdictions.

The title of the event was inspired by the famous 1966 "spaghetti western" directed by Sergio Leone and close to that of Redfern's celebrated 2003 Freshfields Lecture – "Dissenting Opinions in International Commercial Arbitration: the Good, the Bad and the Ugly". It aimed to give participants an overview of the reasoning in international arbitration awards, along with the reasons for dissents, and to stimulate to debate.

Discussions focused on how, when and to what extent arbitral tribunals should give reasons in support of their decisions and on the "proper" behaviour of an arbitrator who disagrees with the majority.

In an introductory speech, Benedettelli stressed the importance of reasoning as an essential feature of any adjudicatory process, including arbitration. Reasons are crucial, he argued, not least because of the impact they may have on the validity and enforceability of the award and on the scope of its *res judicata* effects.

Good reasoning furthermore contributes to the legitimacy of international arbitration and to the authority and reputation of each professional sitting as arbitrator. As Benedettelli said, wrong awards remain wrong awards even when they are not challengeable.

The event continued with three different sessions presided over by distinguished practitioners.

A session on "the good" saw Spanish arbitrator **Juan Fernandez-Armesto** and German arbitrator **Klaus Peter Berger** agree on the importance of reasons and their relevance not only to the parties, but to all other stakeholders in the arbitral process, from the administering institution to the annulment court.

They stressed the importance of good reasoning to ensure the integrity of the arbitral process and analysed examples of "badly drafted" reasoning (especially on quantum) in a real but redacted award, along with the impact it had in the set aside action which followed.

In a session on "the bad", Swiss arbitrator **Pierre Tercier** and Dutch arbitrator **Vera van Houtte** discussed situations where reasoning is unnecessary or poor. The panelists stressed the special need for sound reasoning in certain circumstances – such as when issuing interim or conservative measures or procedural orders – and to what extent arbitral tribunals are bound by the same standards as national courts.

In a session on "the ugly", British arbitrator **Wendy Miles QC** and Italian arbitrator **Franco Ferrari** engaged in a lively Oxford-style debate, with Miles arguing that dissenting from arbitral awards is wrong and Ferrari that it is welcome in certain circumstances (as readers know, this does not mean they actually believe what they pleaded).

Miles noted that evidence that dissenters mostly side with their appointing party and that dissents negatively affect awards' stability and effectiveness and the reputation of the process as a whole. Ferrari said that when prompted by genuine reasons, not pleasing the appointing party, dissents play an important role in arbitration, stimulating debate and forcing the majority to test the validity of its reasoning.

Dissents do not weaken awards and preventing them would be against the point of arbitration, which allows for tribunals of more than one individual to decide by majority following an internal debate in which different opinions are proffered, he argued.

Called to vote on whether dissenting opinions are "good" or "bad", a strong majority of participants (67%) voted in their favour.

The success of the CAM annual conference (which is now in its 16th year) reflects the importance of the institution in the international arbitration arena. The last available CAM annual report, for 2020, shows that the institution administered hundreds of cases (numbers increased by 13.4% from 2019) with a total value of close to €1 billion.

At the same time, the average duration of arbitral proceedings administered by CAM fell 17% from 2020 to 2021.

The main organiser of the annual conference is **Lucia Santucci**, who had the idea of the cinematic theme.