RELATIONSHIP BETWEEN ARBITRATION AND BANKRUPTCY PROCEEDINGS IN RECENT CASE LAW OF THE ITALIAN SUPREME COURT

By Roberto Oliva

Introduction.

Arbitration law does not exist in Italy as a discrete piece of legislation. On the contrary, it is incorporated: (i) in the Italian Code of Civil Procedure (Articles 806-840); and (ii) in certain Acts: amongst them, it is worth mentioning Legislative Decree no. 5 of 17 January 2003, containing provisions governing corporate arbitration, and Royal Decree no. 267 of 16 March 1942 (the '**Italian Insolvency Law**'), containing provisions governing, *inter alia*, the relationship between arbitration and insolvency proceedings.

Italian law does not strictly follow UNCITRAL Model Law: so, for instance, Italian Arbitral Tribunals do not usually have jurisdiction to issue interim orders (they only have that jurisdiction in the matter of corporate arbitration, and only to order the stay of a challenged resolution passed by a company's General Meeting or Board of Directors).

Nonetheless, Italian law does favour arbitration.

Indeed, as a general rule, any dispute is capable of arbitration, provided that the parties are allowed to dispose of its subject matter (with a few exceptions and/or limitations: for instance, with respect to labour law disputes).

In other words, all the disputes concerning disposable rights are capable of arbitration. Whilst it could be disputed whether a specific right is disposable or not (in fact, there are at least two lines of cases with respect to certain rights in corporate matters, such as the right to challenge a resolution approving the company's financial statements), when a State Court or an Arbitral Tribunal are satisfied that a right is actually disposable, they will also state that a dispute concerning that right is capable of arbitration.

Moreover, recent studies found that Italian State Courts are supportive of arbitration and that Italian judges tend to uphold awards ([1]). Indeed, as a matter of fact, in 2007-2014, out of 99 decisions issued by four Courts of Appeal (the Courts of Milan, Turin, Genoa and Brescia), in proceedings for the setting aside of an arbitration award, only four decisions granted the claimant's request: 95 awards out of 99 were upheld.

In addition, since a number of years Italian Parliament

has been supporting ADR mechanisms (and arbitration amongst them) trying to reduce the caseload of State Courts (and therefore improve their efficiency).

It is in that very perspective that we should regard the reform of articles 806-840 of Italian Code of Civil Procedure, which took place in 2006.

That reform contains interesting provisions: for instance, it expressly addresses the issues of multi-party arbitration (Article 816(d) of Italian Code of Civil Procedure) and of intervention/ joinder of a third party (Article 816(e) of Italian Code of Civil Procedure). It also expressly sets forth that arbitration awards have the same effects as a judgment issued by a State Court (Article 824(b) of Italian Code of Civil Procedure – nonetheless, it is still required a State Court's *exequatur* in order to enforce the award: Article 825 of Italian Code of Civil Procedure).

If we would like to understand the purpose for which the above mentioned reform was enacted, we should look at new article 808(d) of Italian Code of Civil Procedure. This Article contains a construction rule, whereby if a doubt arises as to the scope of an arbitration agreement, it has to be construed in the broadest possible manner, as '*extending to all disputes arising from the contract or from the relationship to which the agreement refers.*'

In conclusion, it appears that Italian law follows a facilitative approach: if the parties wish to have their disputes settled by arbitration, they should be allowed to do so. In the matter of private law, Italian State Courts hold exclusive jurisdiction over a limited number of cases; over a few exceptional cases, if we regard commercial and corporate disputes. Moreover, even if the wording of the arbitration agreement is not crystal clear, the parties are allowed to have their disputes settled by arbitration – and if the scope of the arbitration clause is unclear, the wider construction is to be preferred.

Moreover, this facilitative approach chimes with policy issues. In other words, if the parties are allowed to have (as they wish) their disputes settled by arbitration, the fulfilment of their wish also advantage the legal system as a whole, and the Courts system in particular. Indeed, the more disputes are settled by arbitration, the less caseload have State Courts. The less caseload have State Courts, the more is improved their efficiency. As a consequence, State Courts may hear more cases concerning non-disposable rights (that is to say, disputes which are not capable of arbitration) and, at the end of the day, deliver their decisions (within a reasonable time frame) where they are actually needed.

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In that general framework, it is rather surprising to find – as some recent researches found – that in 2014 only 713 administered arbitration proceedings were commenced in Italy ([2]), whereas in judicial year 2014/2015 361,083 civil and commercial lawsuit were brought before Italian State Courts ([3]).

As far as commercial international arbitration is concerned, the reason behind those figures is that, whilst agreement entered into between Italian and foreign companies usually include an arbitration clause, the usual seats of arbitration are located abroad (mainly in Switzerland, France and the United Kingdom).

Moreover, leading Italian arbitration institutions do not have a specific set of rules for small claims nor for fast-track arbitration. Therefore, these claims are often dealt with in ad-hoc arbitration proceedings, which do not feature in statistics.

Eventually, since in Italy arbitration costs more than litigation (and as already mentioned there are no specific rules for small claims), a number of disputes are not settled by arbitration because of their low value.

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Notwithstanding the above outlined general framework, in insolvency matters Italian law does not favour arbitration. In particular, Italian law does not generally allow a claim to be brought against a bankrupt defendant ([4]) in arbitration proceedings (whereas, on the one hand, a bankrupt claimant usually may – and shall – bring its claims in arbitration proceedings, if an arbitration clause has been entered into; and, on the other hand, a party to a pre-bankruptcy, such as a composition with creditors, may be able to be a party to arbitration proceedings also as a defendant).

The main reason lies in some rules of Italian Insolvency Law.

In the following sections of this article, these rules of Italian Insolvency Law and some recent decisions of the Italian Supreme Court concerning their construction are examined, also in the light of the provisions of EC Regulation no. 1346/2000 on insolvency proceedings.

Italian Insolvency Law and arbitration.

Italian Insolvency Law does not exclude nor prevent any relationship between arbitration and insolvency proceedings.

On the contrary, a number of rules of Italian Insolvency Law implies that such relationship is possible – and they govern it.

As a matter of example: Article 25 of Italian Insolvency Law sets forth that the Judge in charge of the bankruptcy proceedings ('*giudice delegato*') appoints the arbitrators, on request of the bankruptcy's receiver.

It is clear, therefore, that an arbitration agreement may be binding (and it is actually binding) upon the bankrupt debtor: otherwise, it would be meaningless a provision, such as that contained in Article 25 of Italian Insolvency Law, concerning the appointment of an arbitrator.

Moreover, the bankruptcy receiver may enter into a brand new arbitration agreement. Indeed, Article 35 of Italian

Insolvency Law sets forth that, in order to do so, he has to obtain the authorisation from the creditors' committee (thus implying that, with such authorisation, the receiver is actually entitled to agree upon an arbitration agreement).

Nonetheless, as already said, in insolvency matters Italian law does not favour arbitration having regard to the disputes where the bankrupt debtor is the defendant (that is to say, the disputes concerning his debts).

In this respect, the fundamental rules we have to regard are those set forth by Articles 24 and 52(2) of Italian Insolvency Law.

Under article 24 of Italian Insolvency Law, the Court opening bankruptcy proceedings (the **'Insolvency Court'**) has exclusive jurisdiction over all the claims resulting from such proceedings including, *inter alia*, all the claims brought towards a bankrupt defendant concerning its contractual or tort liability.

Moreover, article 52(2) of Italian Insolvency Law sets forth that any claim brought against a bankrupt defendant must be verified according to special procedural rules contained in Italian Insolvency Law. These rules provide that the creditors file a petition with the Insolvency Court (as a matter of fact, with the receiver), the receiver prepares a draft of statement of liabilities, including or excluding the creditors' claims, the Insolvency Court (to be more precise, the Judge in charge of the bankruptcy proceedings) upholds or rejects the claims on a summary judgment (based on the receiver's draft and the possible comments on it by the creditors). In other words, the creditors' claims are examined in summary proceedings, where tort claims and, in general, claims without written evidence tend to be rejected. Only after that summary phase, a creditor may have a full trial on its credit: in the appeal proceedings against the summary judgment of the Insolvency Court.

Another rule concerning the relationship between arbitration and bankruptcy proceedings is that contained in Article 83(b) of Italian Insolvency Law. As a general rule, the bankruptcy receiver is granted by the law with the power to terminate any contract in progress (and not fully performed by both parties) entered into by the bankrupt debtor before the declaration of bankruptcy. Under Article 83(b) of Italian Insolvency Law, if the receiver terminates a contract in progress containing an arbitration clause, arbitration proceedings possibly commenced on the basis of that clause cannot continue (and obviously cannot be commenced).

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In other words: in insolvency matters, the facilitative approach on arbitration does not chime with policy issues. At least, not always.

In the case of a bankrupt claimant, the facilitative approach prevails: arbitration proceedings may be commenced or may continue, as the case may be (although it is disputed whether they should be reinstated after the declaration of bankruptcy). If the arbitrators were appointed before the declaration of bankruptcy, they hold their position. If the bankrupt party to the arbitration proceedings is requested to appoint an arbitrator, the appointment shall be made by the Judge in charge of the bankruptcy proceedings. The receiver is even entitled to enter into a brand new arbitration agreement (if authorised to do so by the creditors' committee). Should a dispute arise with respect to the contract containing that arbitration agreement, it is clear that the receiver is also entitled to commence arbitration proceedings.

In this framework, the facilitative approach does not prevail only in the case provided for by Article 83(b) of

Italian Insolvency Law: if the bankruptcy receiver terminates a contract in progress which contains an arbitration clause, arbitration proceedings possibly commenced on the basis of that clause cannot continue, nor can they be commenced. It is an exception to the separability principle – maybe, the only one (and for sure the most relevant one) provided for by Italian law. Nonetheless, this exception was expressly enacted by Italian Parliament, so it is not possible to bypass it.

On the contrary, in the case of a bankrupt defendant, policy issues prevail – without any exception (at least, with respect to the relationship between arbitration and insolvency proceedings). Insolvency Courts only have jurisdiction over claims against a bankrupt debtor. That jurisdiction excludes any other possible jurisdiction: the jurisdiction of other Courts and the jurisdiction of an Arbitral Tribunal.

A number of reasons support the exclusive jurisdiction of Insolvency Courts (and the special procedural rules referred to above) and none of them refers to arbitration. The main reason is that the exclusive jurisdiction of Insolvency Courts can (at least, theoretically) assure a better fulfilment of the *pari passu* principle and the participation of all the creditors to the collective procedure, which on the contrary is endangered if a number of Courts (and Arbitral Tribunals) had jurisdiction over the claims against a bankrupt debtor. It is therefore clear the reason why the facilitative approach prevails in the case of a bankrupt claimant: in that case the respect of the *pari passu* principle is not at all endangered.

Claims towards a bankrupt defendant, also in the light of EC Regulation on insolvency proceedings.

As already said, the jurisdiction over claims against a bankrupt debtor only lies with the Insolvency Court and, *a fortiori*, a bankrupt defendant cannot be brought before an Arbitral Tribunal, according to settled case law.

It is likely that the seminal case of that doctrine, that is to say the first case of the Italian Supreme Court which stated that principle, is a decision issued in 1969 ([5]). In that case, the Italian Supreme Court ruled that all the agreements on jurisdiction – and amongst them arbitral agreements – are terminated by law as a consequence of the bankruptcy of a party thereto.

In other words: the initial doctrine of the Italian Supreme Court is that policy issues always prevail. No matter if the parties agreed upon an arbitration clause. Their agreement is automatically terminated by law, as a direct consequence of the declaration of bankruptcy of a party thereto. There is no room left for any facilitative approach.

It is clear that the above mentioned doctrine was too rigid, since it failed to distinguish between very different cases (that is to say, the case of a bankrupt claimant and that of a bankrupt defendant).

Nonetheless, that doctrine was not repealed. On the contrary, it was refined.

Indeed, the Full Chamber of the Italian Supreme Court refined the above mentioned doctrine ([6]), stating that jurisdiction over a bankrupt defendant cannot rest with an Arbitral Tribunal, due to the fact that, as already mentioned, the jurisdiction over all the claims brought towards a bankrupt defendant only lies with the Insolvency Court (article 24 of Italian Insolvency Law).

Thereafter, a number of further decisions upheld that refined doctrine ([7]).

The last of such decisions was issued in 2015 ([8]): apart from confirming the doctrine at hand, it also distinguished the case of a claim brought toward a bankrupt defendant (over which an Arbitral Tribunal does not have jurisdiction) from the case of a claim brought by a bankrupt claimant (over which an Arbitral Tribunal does have jurisdiction, even if it was appointed before the declaration of bankruptcy).

Therefore, the 2015 decision of the Italian Supreme Court distinguished the cases where facilitative approach prevails (the case of a bankruptcy claimant, over which Arbitral Tribunals may have jurisdiction) and the cases where policy issues prevail (the case of a bankrupt defendant, over which the Insolvency Courts only have jurisdiction).

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Does EC Regulation no. 1346/2000 on insolvency proceedings affect the above summarised doctrine, in the case of insolvency proceedings opened in Italy and arbitration proceedings pending abroad?

Pursuant to the above mentioned EC Regulation, the law of the Member State where insolvency proceedings were opened also determines, amongst other things, the effects of insolvency proceedings on proceedings brought by individual creditors, except for pending lawsuits (article 4(2)(f)). Indeed, under article 15 of the EC Regulation, the effects upon pending lawsuits are determined by the law of the Member State in which they are pending.

Some Member States Courts hold that a 'pending lawsuit' under article 15 of EC Regulation no. 1346/2000 is only an individual enforcement procedure ([9]). Other Courts, on the other hand, hold that the above mentioned Article also applies with respect to proceedings on the merits, including arbitration proceedings ([10]). The latter construction is now confirmed by the wording of article 18 of EU Regulation no. 848 of 20 May 2015 (that is to say, the new Regulation on insolvency proceedings, which applies starting from 26 June 2017), whereby *'The effects of insolvency proceedings on a pending lawsuit or pending arbitral proceedings concerning an asset or a right which forms part of a debtor's insolvency estate shall be governed solely by the law of the Member State in which that lawsuit is pending or in which the arbitral tribunal has its seat.'*

That issue was also examined by the Full Chamber of the Italian Supreme Court ([11]).

The case heard by the Italian Supreme Court concerned an Italian defendant and an Egyptian claimant which in August 2000 entered into an agreement whereby the claimant leased two hotel premises to the defendant.

In December 2010, a dispute arose between the parties with respect to an alleged breach on the part of the defendant. In the claimant's opinion, such breach resulted in the termination of the agreement. Therefore, it commenced the ICC arbitration provided for in the lease agreement.

Pending the arbitration proceedings, at the end of 2011, the defendant went bankrupt.

In February 2012, the claimant requested to be admitted to the defendant's statement of liabilities, the Insolvency Court being the Court of first instance of Milan. In its application, the claimant noted the pending ICC arbitration proceedings (that is to say, arbitration proceedings governed by French law) and, referring to article 15 of EC Regulation no. 1346/2000 and the applicable French procedural rules, requested to be admitted to the statement of liabilities on a temporary basis, subject to the outcome of the mentioned arbitration proceedings.

In June 2012, the Court of first instance of Milan ruled in favour of the claimant and admitted it to the defendant's statement of liabilities on a temporary basis, pursuant to article 55(3) of Italian Insolvency Law ([12]).

Nonetheless, in October 2012, the claimant appealed the ruling of the Court of first instance of Milan. In fact, it claimed that the Court's decision was partially wrong, since it applied the *pari passu* principle to its credit (which it claimed it was a preferential credit, that it to say a credit to which the *pari passu* principle does not apply). The defendant appeared in Court opposing the claim and counterclaiming the exclusive jurisdiction of Italian Courts, and namely of the Insolvency Court (preventing the jurisdiction of ICC Arbitral Tribunal), over claimant's credit.

In February 2014, the claimant referred the case to the Italian Supreme Court, so as to have a final decision on jurisdiction (under Italian law, until the Court of first instance issues the decision on the merits, each party may request the Italian Supreme Court to rule on jurisdiction over the case).

In the proceedings before the Italian Supreme Court, the claimant asserted that jurisdiction over the dispute was governed by EC Regulation no. 1346/2000. Pursuant to articles 4(2)(f) and 15 of the Regulation, the opening of insolvency proceedings in a Member State (in this case, in Italy) would not prevent the jurisdiction of another Member State (in this case, France) where a lawsuit was already pending. Indeed, only French law might determine the effects of the opening of insolvency proceedings on French pending lawsuits. According to French law, if the Arbitral Tribunal had already been appointed at the time of the opening of insolvency proceedings, arbitration proceedings may continue as long as the claimant requests to be admitted to the debtor's statement of liabilities subject to the outcome of arbitration proceedings. All these requirements (Arbitral Tribunal already appointed; request to be admitted to the statement of liability on a temporary basis, that is, subject to the outcome of arbitration proceedings) were fulfilled in the case at hand.

The Italian Supreme Court held that the claimant's request was inadmissible for procedural reasons (in fact, the Court of first instance of Milan had already issued its decision on the merits). Nonetheless, the Italian Supreme Court also took the chance to indicate its interpretation of article 15 of EC Regulation no. 1346/2000 and confirm the exclusive jurisdiction of Insolvency Courts.

Indeed, the Italian Supreme Court held that, in the case

it heard, the above mentioned Regulation did not apply, because it only regulates *'the relationship arising from insolvency proceedings of parties having their residence or registered office within the European Union'* (as already said, the claimant was an Egyptian company). Moreover, even though EC Regulation no. 1346/2000 applied, it would only govern *'the effects of the opening of insolvency proceedings on pending proceedings, not the effects of pending proceedings on the jurisdiction of Insolvency Courts. Articles 4 and 15 of the Regulation do not govern the jurisdiction, although these provisions identify the law governing the effects of insolvency proceedings on pending proceedings.'* The Italian Supreme Court therefore concluded that the case at hand (that is to say, the case of arbitration proceedings commenced in France before the opening of insolvency proceedings in Italy) *'is not governed by Articles 4(f) and 15 of EC Regulation no. 1346/2000.'*

It seems that the Italian Supreme Court considered that article 15 of the Regulation in force only concerns the effects of the opening of insolvency proceedings on a lawsuit pending in another Member State. In other words, that lawsuit may continue if it is so allowed by the law of the Member State where that lawsuit is pending. Nonetheless, the effects on bankruptcy statement of liabilities of the decision issued in the pending proceedings are governed by the law of the Member State where the insolvency proceedings were opened. In Italy, such a decision would not have any effect, since – as the Italian Supreme Court noted – *'it is settled case law of this Court, that the parties are not allowed to bring before an Arbitral Tribunal claims towards a bankrupt defendant. Indeed, the jurisdiction of an Arbitral Tribunal is in any case prevented by the exclusive jurisdiction of Insolvency Courts over such claims.'*

In other words, the Italian Supreme Court confirms that, in the case of a bankrupt defendant, the policy issues shall prevail. The scope of the facilitative approach is very limited: arbitration proceedings pending abroad may continue, if the foreign law so allows, but they have no effect on Italian insolvency proceedings.

These conclusions are certainly right under Italian law; nonetheless, they could prove wrong under EU law. It is therefore likely that the Italian Supreme Court will refine its doctrine – as we will see in the next section of this article.

Claims brought by a bankrupt claimant, counterclaim against it and *Kompetenz-Kompetenz* doctrine.

As seen in the previous section, for the time being the Italian Supreme Court does not distinguish, in the light of EC Regulation no. 1346/2000, the case of arbitration proceedings pending abroad from the principle laid down with respect to the different case of a domestic arbitration commenced against a bankrupt defendant. Nonetheless, in another case a (partial) distinction was made in the light of *Kompetenz-Kompetenz* doctrine.

The claimant, an airport management company, and the defendant, an airline company, in 2007 entered into an airport service agreement which contained an arbitration clause providing for an international arbitration under LCIA rules.

Once the agreement had expired, the claimant (in the meantime admitted to a pre-bankruptcy) requested, and was granted with, a European payment order pursuant to EC Regulation no. 1896/2006, that is to say an *ex parte* order, which was issued by an Italian Court.

The defendant requested the Court to set aside the payment order, objecting to the jurisdiction of Italian Courts, since the parties had agreed upon the referral of all their disputes to arbitration under LCIA rules.

Pending the proceedings for the setting aside of the payment order, the claimant went bankrupt.

In the meantime, the defendant commenced the arbitration proceedings provided for by the above mentioned arbitration clause and, in those proceedings, it also brought a (counter)claim against the claimant.

The defendant also referred the case to the Italian Supreme Court, so as to have a final decision on jurisdiction over the case.

The Italian Supreme Court ruled that the arbitration agreement was enforceable, was not terminated due to the declaration of bankruptcy of the claimant nor could it be terminated by the bankruptcy receiver under Article 83(b) of Italian Insolvency Law. As a consequence, the Italian Supreme Court held that the jurisdiction over that dispute rested with the Arbitral Tribunal.

Moreover – and this is the interesting point of the decision –the Italian Supreme Court ruled that, although in its opinion the case at hand was not governed by EC Regulation no. 1346/2000 on insolvency proceedings, the Court was nonetheless *'prevented from deciding on the jurisdiction of the Arbitral Tribunal over the counterclaim (...) concerning the alleged credit towards the bankrupt debtor. Indeed, once the jurisdiction of Italian Courts has been excluded, as a result of the arbitration clause which referred the dispute to a foreign Arbitral Tribunal, it is on the Arbitral Tribunal to determine the rules governing the arbitration procedure.'*

The Italian Supreme Court applied the *Kompetenz-Kompetenz* doctrine and thus reached the conclusion that it is not up to Italian Courts to determine the effects of Italian insolvency proceedings on arbitration proceedings pending abroad.

Nonetheless, the Italian Supreme Court did not expressly rule on the vice versa, that is to say on the effects of an arbitration award issued abroad on insolvency proceedings pending in Italy.

Conclusions.

In the light of the recent case law of the Italian Supreme Court, the relationship between arbitration and insolvency proceedings under Italian law may be summarised as follows:

(i) a bankrupt party may act as a claimant in arbitration proceedings (commenced after or even before the declaration of

bankruptcy), provided that the agreement containing the arbitration clause has not been terminated by the bankruptcy receiver – that is to say, in that case the facilitative approach prevails;

(ii) on the contrary, if the agreement containing the arbitration clause has been terminated by the bankruptcy receiver, the clause is unenforceable and arbitration proceedings possibly pending cannot continue nor be commenced – that is to say, this is an exception to the separability principle and policy issues prevail;

(iii) the jurisdiction over claims or counterclaims ([13]) towards a bankrupt party only rests with Insolvency Courts – that is to say, policy issues prevail;

(iv) it is disputed whether the above mentioned jurisdiction of Insolvency Courts also excludes the jurisdiction of a foreign Arbitral Tribunal in arbitration proceedings commenced before the declaration of bankruptcy – that is to say, the facilitative approach may (or may not) prevail. In the next few years we would be able to appreciate if the case law is actually moving in the direction – which in fact EU law requires – of distinguishing between that very case (arbitration proceedings commenced abroad against a defendant that thereafter went bankrupt) and the general rule indicated in no. (iii) above.

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1 Alison Ross, *Italian judges tend to uphold awards, research shows*, GAR, 2016
2 ISDACI, VIII Report on ADR in Italy, 2016: http://www.isdaci.it/wp-content/uploads/2016/05/eBook_Ottavo-rapporto.pdf.
3 According to the data made available by the Ministry of Justice: https://www.giustizia.it/giustizia/it/mg_2_15_7.wp.
4 In this article, when reference is made to a bankrupt party to (judicial or arbitration) proceedings, that reference has to be intended as made to proceedings concerning an asset or a right which forms part of a debtor's insolvency estate. Moreover, reference to insolvency proceedings has to be intended as a reference to bankruptcy proceedings, unless otherwise specified, whereas the relationship between arbitration and pre-bankruptcy proceedings falls outside the scope of this article.
5 Italian Supreme Court, III Civil Chamber, decision no. 2064 of 11 June 1969.
6 Full Chamber of the Italian Supreme Court, decision no. 9070 of 6 June 2003.
7 See, for instance, Italian Supreme Court, I Civil Chamber, decision no. 3918 of 17 February 2011.
8 Italian Supreme Court, I Civil Chamber, decision no. 13089 of 24 June 2015.
9 The High Court of Ireland so ruled in *Flightlease Ireland Ltd., Re* [2005] IEHC 274: http://www.bailii.org/ie/cases/IEHC/2005/H274.html.
10 In this respect, see *Syska v Vivendi Universal SA & Ors* [2008] EWHC 2155 (Comm): http://www.bailii.org/ew/cases/EWHC/Comm/2008/2155.html, thereafter upheld by *Syska & Anor v Vivendi Universal S.A. & Ors* [2009] EWCA Civ 677: http://www.bailii.org/ew/cases/EWCA/Civ/2009/677.html.
11 Full Chamber of the Italian Supreme Court, decision no. 15200 of 21 July 2015.
12 Under article 55(3) of Italian Insolvency Law, contingent claims are admitted to bankruptcy statement of liabilities on a temporary basis; thereafter, they are finally admitted (or finally not admitted), depending on the occurrence (or non-occurrence) of the event(s) they are conditional upon.
13 Although there is no precedent decision of the Italian Supreme Court on that very point (that is to say, a counterclaim raised in arbitration proceedings towards a bankrupt claimant), the jurisdiction over that counterclaim would likely rest with Insolvency Courts, in the light of the same rationale whereby they have jurisdiction over a claim towards a bankrupt defendant (and therefore the proceedings could be bifurcated, as it happens in the case of a counterclaim raised against a bankrupt claimant in litigation proceedings: in this respect, see Full Chamber of the Italian Supreme Court, decision no. 21499 of 12 November 2009).
48 CCI Arbitration award n° 1788, 1971, observations by DERAINS, Y., in «Le statut des usages du commerce international devant les juridictions arbitrales », *Revue d'arbitrage*, 122, 1973, p. 142.
49 CCI Arbitration award n°3202, 1978 in *JDZ*, 1979, p.1003 observations by DERAINS, Y.
50 CCI Arbitration award n°3288, April 1981 quoted by HORSMANS, G., in « L'interprétation des contrats internationaux » in *L'apport de la jurisprudence arbitrale, Publication CCI*, n° 440/1, 1986, p. 151.
51 PAMBOUKIS, C., *Op.cit.*, p.107; BAINBRIDGE, S., «Trade Usages in International Sales of Goods: An analysis of the 1964 and 1980 Sales Convention» in *Virginia Journal of International Law*, vol.24, 1984, p.623.
52 UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, Dispute Settlement – International Arbitration – 5.5 Law governing the Merit of the Disputes, 2005, 4.2, p.24.
53 CORDERO MOSS G., *Op.cit.*, p.56.
54 *Ibid.*, p.57.
55 PEEL, E., «The Common Law Tradition: Application of Boilerplate Clauses» in CORDERO MOSS, G., (ed.), Boilerplate Clauses, International Commercial Contracts and the Applicable Law, Cambridge, Cambridge University Press, 2011, pp.136 et suite.
56 CORDERO MOSS, *Op.cit.*, p.57.
57 GOODE, R., «Usage and its Reception in Transnational Commercial Law» in *New Developments in International Commercial and Consumer Law*, Proceedings of the 8th Biennial Conference of the International Academy of Commercial and Consumer Law, Hart Publishing, 1998, p.9.
58 *Ibidem.*
59 *Ibidem.*
60 *Ibidem.*
61 UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, United Nations Convention on Contracts for the International sale of Goods, 11 April 1980, art. 9.2).
62 INTERNATIONAL STANDARDIZATION ORGANIZATION – INTERNATIONAL ELECTROMECANIC COMMISSION, *Guide 2 - Standardization and related activities — General vocabulary*, Eighth edition, 2004, 3.2, p.12: «*Document established by consensus, and approved by a recognized body, that provides for common and repreated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context*».
63 *Ibidem* : «*Standards should be based on the consolidated results of science, technology and experience, and aimed at the promotion of optimum community benefits*».
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65 INTERNATIONAL STANDARDIZATION ORGANIZATION, World distribution of ISO 9001 certificates in 2013
66 INTERNATIONAL STANDARDIZATION ORGANIZATION, « What is a standard? » sur http://www.iso.org
67 GOODE, R., *Op.cit.*, p.12.
68 UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, Report of the United Nations Commission on International Trade Law on the work of its first session, Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216), para. 48.
69 UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, Forty-fifth session Report (25 June-6 July 2012), General Assembly Official Records Sixty-seventh session Supplement No. 17, A/67/17, chap. XIV, B., §144
70 UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, Report of the United Nations Commission on International Trade Law on the work of its first session, Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216), para. 48.
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