Kluwer Arbitration Blog

Second International Conference for a Euro-Mediterranean Community of International Arbitration

Amir Matar (Founding Member of the Arab Legal Forum) · Thursday, December 24th, 2015

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On 12 November, fifteen of the foremost arbitration specialists in the world met in Cairo to discuss the future of arbitration in the Euro-Mediterranean area (comprising, collectively, the European Union (EU) and Middle East and North African (MENA) regions). The symposium was jointly hosted by the Organization for Economic Co-operation and Development, the Cairo Regional Centre for International Commercial Arbitration (CRCICA) and the United Nations Commission on International Trade Law (UNCITRAL). The conference addressed the varying cultural and historical ties that bind states in the Euro-Mediterranean area together and the need for further cooperation between States in the EU and MENA. Below, there is a synopsis of some of the critical ideas put forward, and assess the idea of the Euro-Mediterranean region as a potential community, and what type of framework could encourage further economic and social cooperation between countries in such region.

This post is particularly focused on the discussion about the viability of the Euro-Mediterranean region as a community, and what type of framework could encourage further economic and social cooperation between States in the region.

By bringing together experts and professionals in international arbitration and investment from the EU and the Middle East and North Africa (MENA), the conference sought to promote the Euro-Mediterranean area as a community of States and institutions that could do more to secure further investments given its critical geopolitical influence and the economic might of some States in the region.

Dr Georges Abi-Saab, one of the key-note speakers at the event, who is an Egyptian-Swiss lawyer, professor of international law and international judge, questioned the labelling of the Euro-Mediterranean area as a *community*. He defined the term *community* in sociological terms as a grouping of people based on scope and intensity, which varied depending on whether one spoke of a family (high scope/intensity) or group of nationals (lower scope/intensity). Dr Abi-Saab advocated for a more precise use of the term *community*, questioning whether there was any commonality between the Euro-Mediterranean countries to speak of a community. Dr Abi-Saab concluded that States in the region fulfilled the definition of a community, arguing that there are

two forms of commonality in the Euro-Mediterranean region: history and geography. However, he lamented the reality of arbitration as it is practised in the Euro-Mediterranean region today, pointing to the excessive documentation that was produced in international arbitration today, and considering that the simplest requests are met with excessive aggressiveness by opposing counsel. He argued against the "discovery" procedure that has seeped into international arbitration, and the length of time it takes to draft and decide on requests for documents using the Redfern schedule. This, Abi-Saab argued, was the result of the "*increasing Americanisation of procedures*". American law firms, he argued, have increased the costs of arbitration, making it a less simple and a more rigid form of dispute resolution than it has been in the past, when he first started practising in the 1960's. Further, in Dr Abi Saab's opinion, the IBA rules on taking evidence in arbitration were almost a "carbon-copy" of US laws. Dr Abi-Saab concluded by advocating a civil-law-centric approach to arbitration in the Euro-Mediterranean area, given the near-universal adoption of the civil law system in the region for at least two hundred years.

Following on from Dr Abi-Saab's criticism of arbitration as it is practised today, Michael Schneider, head of arbitration at LALIVE, cited the Iran-US Claims Tribunal as an example of a tribunal that was mostly run by American lawyers, but which adapted a hybrid and simplified procedure, that in his view has become a paragon for cost-efficiency in dispute resolution.

Dr Schneider then compared the 2010 UNCITRAL Rules of Arbitration with those of other arbitral institutions and concluded that they offered a shorter and more simplified process to resolve disputes, which ultimately saves time and cost. He argued for further cooperation both within the MENA region countries and between the MENA region and the EU, and with UNCITRAL (notably, its valuable working sessions) in order to promote the publication of judicial and arbitral decisions region-wide and to encourage the proliferation of consultations, seminars and symposia. These ultimately serve to integrate the legal community in the MENA region with the wider legal community, such as that of the EU.

Dr Schneider then talked about that the Islamic tradition of "tahkim" i.e., arbitration in Arabic, which was often used in the past by previous Islamic communities to resolve disputes. He questioned whether it is being practiced in the present day in the MENA region, and if so, how was a "tahkim" conducted.

Stefano Azzali, the head of the Milan Chamber of Arbitration (MCA), discussed the Institute for the Promotion of Arbitration and Mediation in the Mediterranean (ISPRAMED) and its initiative to define seven common principles to apply to arbitration centres throughout the Euro-Mediterranean region. These principles relate to the neutrality of arbitrators, clarity on how arbitrators are selected, transparency in arbitral procedure, costs, time and multiparty arbitration. Dr Azzali concluded that the idea of a Euro-Mediterranean arbitration centre was undesirable, given that the many regional centres already in place were adequately equipped to do the job. He viewed such concept as more of a political one, created from the top-down, to impose a false sense of community, and did not necessarily respond to users' desires or needs.

This post is in agreement with Dr Azzali. Often, elements of commonality are artificially constructed for the sake of political expediency. For example, there are few, if any, cultural or historical ties between Greece and Finland. Notwithstanding, they are both part of the EU, which is a union of States that are said to share certain nebulous "European values" of democracy and a free society. Whilst not opposed to political constructs for a valuable end goal, in this case, is not convincing that an arbitral institution alone, without some sort of trade or association agreement

between all the countries in the Euro-Mediterranean region, is useful to bolster trade among regional States. Although there are existing association agreements between individual MENA countries and the EU, there is no comprehensive agreement covering the region – without this, there is little hope to promote further trade and cooperation between investors.

Investors and commercial entities in MENA and the EU use arbitral institutions such as the ICC, CRCICA and DIAC, but I would argue that the correlation between the availability of facilities to resolve their disputes and the ability of these institutions to promote or further cooperation and investment is non-existent. The region needs a comprehensive framework in order to promote further political and economic cooperation in the Euro-Mediterranean area, not a couple of arbitral institutions that cooperate loosely. A more useful form of cooperation between the existing arbitral institutions in the Euro-Mediterranean area would be to roll-out similar, if not identical rules to be applied to arbitrations being heard in these varying institutions.

As to Dr Schneider's question on the practice of *tahkim*, or arbitration in Arabic, in the region, the answer is that there is no distinctive "Islamic" feature to *tahkim*. Indeed, tahkim is simply the Arabic word for arbitration, and the principles set out in the Quran, the *Sunna* and practice of the Prophet's companions regarding *tahkim* are, in the opinion of the author, largely the same principles that guide all of today's international arbitral institutions.

Given that the tradition of *tahkim* is largely the same as the European tradition of arbitration, the process of unifying institutional rules across the Euro-Mediterannean region is largely simple and politically viable. When investors and other economic actors are aware that the Euro-Mediterranean region has a strong multilateral agreement for economic cooperation backed by real investment protections, guarantees and a string of neutral centres with rules that appeal broadly to economic actors in the region and a reputation for efficiently resolving a dispute in a professional manner, then they may be more encouraged to increase cross-border and cross-regional investments in the Euro-Mediterranean.

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