CEPANI NEWSLETTER 69

BELGIAN CENTRE FOR ARBITRATION AND MEDIATION • NPO

RESPONSIBLE EDITOR : MICHEL FLAMÉE

NOVEMBER 2012

Agenda

20 November 2012
17:00-20:00

Huldezitting ter ere van Prof. Guy Keutgen
Séance d'hommage en l'honneur du Prof. Guy Keutgen

12 December 2012
13:30-17:30

Colloquium ter gelegenheid van "het tienjarig bestaan van het reglement ter beslechting van de geschillen inzake .be domeinnamen" / Colloque à l'occasion des "10 ans d'existence du règlement pour la résolution des litiges concernant des noms de domaine.be" (the presentations will be held in Dutch and French)

31 January 2013
12:00-14:00

CEPANI40 lunch debate with Prof. dr. Olivier Caprasse on the topic of "Document production in national and international arbitration"

For more information on our upcoming activities, please consult **www.cepani.be.**

The CEPANI Newsletter always appreciates receiving interesting case law and legal doctrine concerning arbitration and alternative dispute resolution. Any relevant articles, awards, events and other announcements can be sent to newsletter@cepina-cepani.be. CEPANI may publish and/or edit contributions at its discretion.

News

Articles

Legislation, Doctrine & Jurisprudence

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News

Hommage en l'honneur du professeur Guy Keutgen
Huldezitting ter ere van Professor Guy Keutgen

M. Michel FLAMEE, président du CEPANI, M. Didier MATRAY, vice-président du CEPANI et M. Philippe LAMBRECHT, secrétaire général du CEPANI ont le plaisir de vous informer de la séance d'hommage en l'honneur du professeur Guy KEUTGEN pour son action de promotion de l'arbitrage qui aura lieu le 20 novembre 2012, à 17h, salle Horta, rue Ravenstein 4, 1000 Bruxelles suivie d'une réception à 19h.

Dhr. Michel FLAMEE, voorzitter van CEPANI, dhr. Didier MATRAY, vicevoorzitter van CEPANI, en dhr. Philippe LAMBRECHT, secretaris-generaal van CEPANI hebben het genoegen u mee te delen dat de huldezitting ter ere van professor Guy KEUTGEN voor zijn inzet ter zake van het promoten van arbitrage op 20 november 2012 om 17u doorgaat (zaal Horta, Ravensteinstraat 4, 1000 Brussel). De huldezitting zal gevolgd worden door een receptie om 19u.

Le programme est le suivant:

Het programma luidt als volgt:

17.00 **Allocution de bienvenue - Welkomstwoord**
Prof. dr. Michel Flamée, VUB, bijzonder mandataris NBB
Prof. Philippe Lambrecht, UCL, administrateur-secrétaire général de la FEB

17.15 **Portrait - Portret**
Prof. dr. Maud Piers, UGent
Marc Dal, avocat

17.30 **Bonnes pratiques en arbitrage national et international : proposition d'état des lieux**
Goede praktijken inzake nationale en internationale arbitrage : voorstel voor een inventaris
Vera Van Houtte, vicevoorzitter van het internationaal Arbitragehof van ICC, advocaat
Prof. Olivier Caprasse, ULg et ULB, avocat

18.00 **Présentation du Liber Amicorum et Verbi Amicorum**
Presentatie van het Liber Amicorum en Verbi Amicorum
Prof. dr. Johan Erauw, UGent, advocaat
Prof. Didier Matray, ULg, ancien bâtonnier
Prof. Georges-Albert Dal, UCL, ancien bâtonnier

18.30 **L'importance du règlement des différends liés aux investissements par l'arbitrage comme outil de diplomatie économique**
Het belang van de regeling van geschillen ivm investeringen door arbitrage als instrument van economische diplomatie
Didier Reynders, vice-premier ministre et ministre des affaires étrangères, du commerce extérieur et des affaires européennes

18.50 **Remerciements – Dankwoord**
Prof. Guy Keutgen

19.00 **Réception - Receptie**

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Conseil Scientifique du CEPANI du 25 octobre 2012

By Caroline VERBRUGGEN, ***Lawyer DLA Piper Brussels***
Member of the Scientific Committee of CEPANI

Le Conseil scientifique du CEPANI s'est réuni le 25 octobre dernier sous la présidence du Vice-Président Me Didier Matray, avec la participation des membres suivants: A. Fettweis, D. Philippe, D. Struyven, E. Van Campenhoudt, D. Van Gerven et C. Verbruggen.

Le projet de programme de la journée d'étude à l'attention des magistrats a été présenté, prévoyant l'intervention d'orateurs et magistrats néerlandais et français.

Cette journée d'étude aura lieu en janvier 2013. Le conseil a également discuté du programme de deux colloques futurs, l'un relatif à la confidentialité, et l'autre à l'arbitrage et au droit des assurances. Le projet de l'organisation à Bruxelles d'un cours relatif à l'arbitrage, destiné aux praticiens et juristes d'entreprises, a également été évoqué. Un partenariat pourrait être envisagé avec les universités.

Articles

Report on the 57th session of UNCITRAL Working Group II ("Arbitration and Conciliation"): Preparation of a legal standard on transparency in treaty-based investor-State arbitration – Difficulty to reach consensus (1-5 October 2012, Vienna)

By Herman VERBIST, ***Lawyer at the Ghent and Brussels Bars (Everest attorneys)***
Visiting Professor at the University of Ghent

The 57th session of UNCITRAL Working Group II (Arbitration and Conciliation) was held in Vienna from 1 to 5 October 2012. It was CEPANI's eigth session as "observer". The "members" present at the meeting in Vienna represented 39 countries and among the "observers" (of which Belgium) there were 18 countries represented. 5 intergovernmental organizations and 26 non-governmental organizations (of which CEPANI) were als represented. In total, more or less 200 persons attended this session. However, not everyone participated actively in the discussions.

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This was the fifth session of UNCITRAL Working Group II committed to the preparation of a legal standard on transparency in treaty-based investor-State arbitration. As the previous sessions on this subject, it was chaired by Mr. Salim Moollan.

At the 55th session in Vienna in October 2011 (see H. VERBIST, "Report of the 55th session of UNCITRAL Working Group II in Vienna, 3-7 October 2011", *CEPANI Newsletter* no. 60, p. 7-11), the Working Group had done a first reading of the draft rules on transparency in treaty-based investor-State arbitration that had been elaborated by the UNCITRAL Secretariat. Those draft Rules had been made on the basis of the discussions held at the Working Group's session of 4-8 October 2010 in Vienna (see H. VERBIST, "Report of the 53rd session of UNCITRAL Working Group II in Vienna, 4-8 October 2010", *CEPANI Newsletter* no. 50, p. 4-7) and at the session of 7-11 February 2011 in New York (see H. VERBIST, "Report of the 54th session of UNCITRAL Working Group II in New York, 7-11 February 2011", *CEPANI Newsletter* no. 54, p. 4-10).

At the 56th session in New York in February 2012 (see H. VERBIST, "Report on the 56th session of UNCITRAL Working Group II in New York, 6-10 February 2012", *CEPANI Newsletter* no. 63, p. 5-9), the Working Group had started with the second reading of the draft rules on transparency in treaty-based investor-State arbitration, more particularly Articles 1 and 2. At the 57th session in Vienna in October 2012 the second reading was continued with respect to Articles 3 to 9 and also, again, with respect to Article 1.

(i) Difficulty to reach consensus

The elaboration by the UNCITRAL Working Group of draft rules on transparency in treaty-based investor-State arbitration is an almost revolutionary work which causes the delegations to reconsider the view they traditionally had on arbitration as a confidential dispute settlement mechanism. Given the public funds involved in investment arbitration, there is a recognised public interest for the decisions taken by arbitral tribunals in investor-State arbitrations. This aspect of transparency, however, may sometimes come into conflict with an interest of data protection, protection of national policies or other national interests such as a security interest.

Moreover, given the total number of about 3.000 bilateral investment treaties signed so far by the various States (UNCTAD *World Investment Report 2012*, on http://www.unctad-docs.org/files/UNCTAD-WIR2012-Full-en.pdf), the States are struggling with the question whether or not the new rules on transparency should be made applicable to all those existing treaties and, if so, how this could be done.

UNCITRAL's practice of working on a basis of consensus has contributed in the past to giving a worldwide support to the rules and model laws it elaborated. As the policies of the Member States of UNCITRAL in the field of investment are not all identical, it turns out to be difficult to find a consensus as to the form and the content of the transparency rules which the working group is asked to elaborate. During the 56th and the 57th sessions of the Working Group some Member States have indicated that there is no consensus and that they therefore can not accept the texts thusfar discussed.

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As the secretary of UNCITRAL has set out both at the 56th and 57th sessions, the concept of consensus used by UNCITRAL means that there is no vote on rules of model laws that are elaborated and that there have been no objections to such rules or model laws. The consensus of the Member States is understood so as to capture the substantially prevailing position of the delegations. Generally, this reflects the view of a wide majority and is therefore considered to be more than a simple majority.

On a number of aspects, there was a consensus reached at the last 57th session, but on other aspects there was not (see the Report of Working Group II on the Work of its fifty-seventh session, 12 October 2012, A/CN.9/760, www.uncitral.org). On the aspects where no consensus was reached, the Secretariat is asked to formulate new proposals for the 58th session of the Working Group in February 2013 in New York. But there will also be proposals by some delegations.

The European Union plays an important role in the debates, given its exclusive power in the field of foreign investments since the entry into force of the Lisbon treaty. Pursuant to Article 3(1)(e) of the Treaty on the Functioning of the European Union, the Union henceforth has exclusive competence a.o. in the area of common commercial policy, which includes a competence on foreign direct investment. But the European Members States do not all share the same view on every aspect as it was seen during the UNCITRAL Working Group meetings.

(ii) Publication of documents

The proposed Article 3 of the draft transparency rules deals with the documents that ought to be made publicly available with respect to an investor-State arbitration. Consensus was reached that the request for arbitration, the response to the request for arbitration, further written submissions by the disputing parties, written submissions by the non-disputing party to the treaty and by third persons, transcripts of the hearings (if available), orders and decisions of the arbitral tribunal should be made automatically available to the public.

Whilst the exhibits are not among the documents that are subject to automatic disclosure, a list of exhibits, if it exists, should be made available to the public (A/CN.9/760, par. 14-16, p. 5). Subject to the exceptions of Article 8, the arbitral tribunal will, on its own initiative or upon request from a disputing party or from a non-disputing party, and after consultation with the disputing parties, have the discretion to decide whether or not and how to make available to the public any other documents (A/CN.9/760, par. 28, p. 7).

Witness statements and expert reports should also be made available, unless pursuant to Article 8 there is a rule that witnesses and experts need to be protected (A/CN.9/760, par.

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20-21, p. 6). If transcripts of hearings contain confidential information, they can be redacted (A/CN.9/760, par. 23, p. 6).

(iii) Publication of arbitral awards

The proposed Article 4 did not raise any discussion, as there is broad support that arbitral awards in investor-State arbitrations should be made publicly available, subject to the exceptions of Article 8. The proposed Article 4 will, however, be deleted as a separate article and included in the proposed new Article 3 (A/CN.9/760, par. 38, p. 8).

(iv) Submissions by third persons ("Amicus curiae")

Pursuant to the proposed Article 5, after consultation with the parties, the arbitral tribunal may allow a third person that is not a disputing party and not a non-disputing party to the treaty ("third person") to file a written submission with the arbitral tribunal regarding a matter within the scope of the dispute (often referred to as "*amicus curiae*" submissions). Such third person wishing to make a submission shall apply to the arbitral tribunal and provide specific information: a description of the third person; a disclosure of any affiliation, direct or indirect, it may have with a disputing party (A/CN.9/760, par. 43, p. 9); provide information on any government, person or organization that has provided to the third person (i) any financial or other assistance in preparing the submission, or (ii) substantial assistance in either of the two years preceding the request, such as, for instance, funding approximately 20 per cent of its overall operations annually; description of the nature of the interest that the third person has in the arbitration; identification of the specific issues of fact or law in the arbitration that the third person wishes to address in its written submission (A/CN.9/760, par. 51, p. 11). The third person may make an "*amicus curiae*" submission both on matters of fact and on law (A/CN.9/760, par. 53, p. 11).

The arbitral tribunal will have the power to impose conditions on the third person for the filing of the written submission. The arbitral tribunal shall ensure that the submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party. It shall also ensure that the disputing parties are given an opportunity to present their observations on the submission by the third person (A/CN.9/760, par. 54-57, p. 11).

(v) Submission by a non-disputing party to the treaty

The proposed Article 6 deals with the possibility for a non-disputing party to the treaty to file submissions in the arbitration. No consensus could be reached yet as to whether the home State of the investor "may" be allowed or "shall" be allowed to express its views on issues of treaty interpretation (A/CN.9/760, par. 59-63, p. 12).

As regards the right of a host State to file comments on further matters within the scope of the dispute, it will be for the arbitral tribunal to decide whether or not to allow a submission from a host State. The arbitral tribunal will however not be able to invite on its own initiative the non-disputing party to a treaty to

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make further submissions on matters within the scope of the dispute since such initiative could risk a politicization of disputes and could put the non-disputing party to a treaty in a more privileged position than any third party to the dispute (A/CN.9/760, par. 69-70, p. 13).

The arbitral tribunal shall not draw any inference from the absence of any submission or response to any invitation. The arbitral tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party. It shall also ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by a non-disputing party to the treaty.

(vi) Publicity of hearings

Whilst there was significant support for the principle set out in the proposed Article 7 that the hearings should be public, subject to the exception to protect confidential or sensitive information or the integrity of the arbitral process pursuant to Article 8, it was unclear whether consensus was reached on this matter. A number of delegations requested to reserve the right for the parties to the arbitration to agree on not having open hearings. This issue was left open for further deliberation (A/CN.9/760, par. 82, p. 15).

In the meantime, it was agreed that the arbitral tribunal may make logistical arrangements to facilitate the public access to hearings, including where appropriate by organizing attendance through video links or such other means as it deems appropriate, and that it may, after consultation with the disputing parties, decide to hold all or part of the hearings in private where this is or becomes necessary for logistical reasons (A/CN.9/760, par. 88, p. 15).

(vii) Exceptions to transparency

The exceptions to transparency are to be set out in the proposed Article 8 of the rules. Consensus was reached on the principle that confidential or protected information shall not be made available to the public or to non-disputing parties. No consensus could be reached yet as to the laws under which should be determined whether information is confidential or protected. However, there was unanimous support for the proposition that it was not permissible for a State to adopt UNCITRAL rules on transparency and then use its domestic law to undermine the spirit (or the letter) of such rules (A/CN.9/760, par. 103, p. 18).

The arbitral tribunal, in consultation with the parties, shall make arrangements to prevent any confidential or protected information from being made available to the public, including by putting in place, as appropriate, (i) time limits in which a party, non-disputing party, or third person shall give notice that it seeks protection for such information in a document, (ii) procedures for the prompt designation and redaction of the particular confidential or protected information in such documents, and (iii) procedures for holding hearings in private to the extent required by Article 7 (A/CN.9/760, par. 110-112, p. 19).

Where the arbitral tribunal determines that information should not be redacted from a

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document, or that a document should not be prevented from being made available to the public, any disputing party, non-disputing party or third person that voluntarily introduced the document into the record shall be permitted to withdraw all or part of the document from the record of the arbitral proceedings (A/CN.9/760, par. 114, p. 20).

It was also agreed that information shall not be made available to the public pursuant to Articles 2 to 7 of the rules on transparency where the information, if made available to the public, would jeopardise the integrity of the arbitral process, (a) because it could hamper the collection or production of evidence, or (b) because it could lead to the intimidation of witnesses, lawyers acting for disputing parties, or members of the arbitral tribunal, or (c) in comparably exceptional circumstances (A/CN.9/760, par. 118-119, p. 20-21).

(viii) Repository of published information ("Registry")

Whilst there is general support to have a repository of published information ("registry") regarding treaty-based investor-State arbitrations, the delegations could not yet find a consensus as to whether there should be a single registry or several registries and, as the case may be, which institution(s) would be designated to act as registry. It was nonetheless agreed that if there would be consensus to have a single registry, then UNCITRAL would be the preferred repository institution, if it had the capacity to so act. It was also agreed that if the consensus would consist in having multiple institutions as repositories, then a central website should be established, preferably by UNCITRAL, to serve as a hub of information linking to such institutions' repository function.

The UNCITRAL Secretariat will liaise with arbitral institutions to assess the costs and other implications of acting as a repository and will report back to the Working Group at its next session (A/CN.9/760, par. 120-122, p. 21).

(ix) Costs

The Working Group considered, for the first time, the issue of costs of transparency procedures and how they should be borne. After discussion, it was agreed that third parties requesting access to documents would only be required to meet the administrative costs of such access (such as photocopying, shipping, etc.). The Secretariat of UNCITRAL was given a mandate to draft language reflecting that agreement for consideration by the Working Group at its next session (A/CN.9/760, par. 130, p. 22).

(x) Instrument for implementing the rules on transparency

Finally, the question was discussed again whether the rules on transparency should be implemented in the context of both existing and future treaties and whether an

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international convention should be prepared with a view to promoting the application of a legal standard on transparency to investment treaties.

No consensus could be reached as to whether the rules on transparency will be made applicable on an "opt-in" basis, *i.e.* if States to an investment treaty express their consent thereto, or whether the rules on transparency shall apply on an "opt out" basis to any arbitration initiated under the UNCITRAL Arbitration Rules pursuant to an investment treaty, unless the treaty provides that the rules are not applicable.

However, after discussion, it was agreed to amalgamate various proposals and to consider the new proposal at the next session. The amalgamated proposal consists of an amended Article 1 on the scope of application of the transparency rules and also of a new Article 1(4) of the UNCITRAL Arbitration Rules of 2010, in order to articulate the link between the existing UNCITRAL Arbitration Rules and the transparency rules. The new Article 1(4) of the UNCITRAL Arbitration Rules would provide that for treaty-based investor-State arbitrations, the UNCITRAL Rules of Arbitration would include the UNCITRAL Rules on Transparency subject to the provison of Article 1 of the transparency rules. The proposed new Article 1 of the transparency rules would provide that: 1.) the UNCITRAL rules on transparency would be applicable only to arbitrations under a treaty concluded after the coming into effect of the transparency rules, unless the parties have agreed otherwise ("opt out"); 2.) in respect of (i) investor-State arbitrations initiated under a treaty concluded before the date of coming into effect of the transparency rules and of (ii) investor-State arbitrations initiated under any other rules or *ad hoc*, the UNCITRAL transparency rules shall apply only if (a) the disputing parties agree to their application ("opt in"), or (b) the parties to the treaty, or in the case of a multilateral treaty, the home State of the investor and the respondent, have agreed to the application of the transparency rules after the date of coming into effect of the transparency rules (A/CN.9/760, par. 132-133, p. 23).

Furthermore, the UNCITRAL Secretariat was given the mandate to prepare wording for (i) a convention on transparency in treaty-based investor-State arbitration, to include a draft clause permitting a reservation thereto, and (ii) for a unilateral declaration. Both these proposals will be considered at the next session of the Working Group (A/CN.9/760, par. 141, p. 24).

At the following Working Group session in February 2013 in New York the discussion will be continued on the matter of form and structure of the transparency rules and the third reading of the substance of the transparency provisions will be started.

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Report on the Young ICCA Workshop "Strategy considerations in international arbitration" (Berlin, 24 October 2012)

By Marijn DE RUYSSCHER, *Lawyer at the Brussels Bar (Lydian Lawyers)*

Young ICCA was established in 2010 as a worldwide arbitration knowledge and skills network for young arbitration practitioners. It operates under the auspices of ICCA, the International Council for Commercial Arbitration. Young ICCA regularly organizes arbitration workshops all over the world and has a mentorship program and a blog (http://www.youngicca-blog.com) on which young practitioners and students may publish articles and share experiences.

The theme of the 24 October 2012 Young ICCA workshop in Berlin was "strategy considerations in international arbitration" both prior to and at the hearing. There were about 40 participants, mostly coming from Germany, Switzerland, Belgium and the United Kingdom.

1. Strategy considerations prior to the hearing

The first panel consisted of Boris Kasolowsky (Freshfields) and Alexandra Schluep (Schutte Schluep & Heide-Jorgensen) who shared their ideas on (i) the application for interim measures, (ii) witness evidence to interpret contracts and (iii) client handling. After both speakers had set out their vision, Prof. Böckstiegel and Alexander Steinbrecher (in-house counsel Bombardier) gave their input on what had been said, respectively, from the arbitrator's and the client's perspective.

As regards interim measures it was argued that security for costs requests are quite frequent nowadays and that attachment procedures also could be useful from a tactical point of view because of the element of surprise. From a Dutch perspective it was stated that such attachment proceedings often actually avoid further proceedings on the merits. In Prof. Böckstiegel's experience, interim measures are requested in about a quarter of all arbitrations. Sometimes requests are merely strategic and, as a consequence, usually not granted. From the client's side, the biggest concern was whether such interim measures are necessary and, if so, whether the decision ordering them as enforceable in the relevant jurisdictions.

There was some reluctance to use expert witnesses for contract interpretation. According to Prof. Böckstiegel, their input could be useful when applying foreign law, but then preferably only by way of a written witness statement. There was a broad agreement that the use of fact witnesses is useful, but should be well thought through and that witnesses who are not convincing should not give oral testimony.

On the subject of client handling and specifically budget handling, views from the attorney's and client's side were quite opposite. Mr. Steinbrecher argued that his company dislikes the accepted mechanism of paying attorneys by their hourly rates. His company always tries to find other arrangements with attorneys in order to motivate them to work as efficient as possible (e.g., a fee cap). According to Mr. Kasolowsky, hourly rates are still the most commonly

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accepted way of remunerating attorney's services and this should not be a problem if there is good communication with the client. It was also said that good preparation of a file by the client before handing it over to the attorney, could already save much time, and thus costs.

2. Strategy considerations at the hearing

The second panel consisted of Ndanga Kamau (King & Spalding) and Melanie Van Leeuwen (Derains & Gharavi) who shared their views on (i) the reading of and interaction with the members of the tribunal and opposing counsel, (ii) acquainting the tribunal with the relevant issues and evidence, and (iii) leading the tribunal to the desired resolution of the dispute. Again Prof. Böckstiegel and Alexander Steinbrecher gave input from their respective positions.

It was emphasized that the choice of arbitrators is crucial, as their background can make certain arguments more easy to accept. Once at the hearing, you need to be flexible with your arguments. If you see that your audience reacts (or not) to certain arguments, be ready to spend more or less time arguing it, or even change the order of your arguments.

According to Prof. Böckstiegel opening statements are sometimes presented too fast. He also considers the use of post-hearing briefs essential in complicated cases. He prefers the use of "e-briefs", electronic documents that include clickable links to the references, as this facilitates the work of arbitrators.

Mr. Steinbrecher considered it crucial that their party-appointed arbitrator have (i) a persuasive and strong character, (ii) experience and sufficient time, (iii) a pro-settlement approach, (iv) strong case management skills and (v) a practical approach rather than a strict legal approach. He favors the use of communication specialists to review briefs in order to simplify their wording, before presenting them to the tribunal.

It was also argued that in major cases, there should be a core bundle with the most important exhibits, as it cannot be expected from the arbitrators to give all the boxes with exhibits the same attention. Ms. Kamau questioned the usefulness of presenting boxes full of exhibits to the tribunal and argues that the younger generation has a chance to change such practices by only presenting those documents that are really relevant, thus saving time and costs both for counsel and for the tribunal.

As far as the last impression is concerned, it was held crucial to use the knowledge of what you have seen during the hearings. You had the chance to observe the arbitrators and should thus have clues as to which arguments they are mostly interested in. Also it is not wrong to ask the arbitrators whether they would like to hear more on certain subjects, or whether everything is clear to them.

3. Conclusion

The Young ICCA workshop proved to be an interesting workshop where ideas were shared and presented in a spontaneous way. The fact that the event took place around the conference table of a (rather small) conference room contributed to Young ICCA's approach that knowledge and information should be shared in an accessible way. After the workshop, a lunch was served and there was room for some further discussions between the participants, while enjoying the views on autumnal Berlin from the 23rd floor terrace.

The event was filmed and should be available soon on the website of Young ICCA.

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Legislation, Doctrine & Jurisprudence

Jurisprudence

- President of the Commercial Court of Kortrijk 6 august 2012, *Tijdschrift@ipr.be* 2012/3, p. 48-49

  Proceedings for interim or provisional measures – International competence – Article 10 of the Belgian Code on Private International Law ("CPIL") – Appointment of an expert – Irrelevance of an exclusive arbitration agreement in view of Article 10 CPIL

  Kortgedingprocedure – Internationale bevoegdheid – Artikel 10 WIPR – Voorlopige of bewarende maatregelen – Aanstelling deskundige – Geen invloed van een exclusief arbitragebeding op artikel 10 WIPR

  Procédure de référé – Compétence internationale – Article 10 CDIP – Mesures provisoires ou conservatoires – Désignation d'un expert – Pas d'influence d'une clause d'arbitrage exclusive sur article 10 CDIP

Doctrine

- M. AUDIT (ed.), *Contrats publics et arbitrage international*, Bruxelles, Bruylant, 2011, 234p.
- T. AYOGLU, "Application of Trade Usages in International Institutional Arbitration – Some Reflections", *ASA Bulletin* 2012/3, p. 516-538
- A. BRIDOUX, *Les écrits en médiation selon le code judiciaire*, Bruxelles, Larcier, 2011, 232p.
- A. DIMOLITSA, "L'extension de la clause compromissoire à des non-signataires: rien de neuf", *ASA Bulletin* 2012/3, p. 516-538
- U.A. OSENI and H.A. KADOUF, "The Discrimination Conundrum in the Appointment of Arbitrators in International Arbitration", *Journal of International Arbitration* 2012/5, p. 519-544

Varia

Upcoming ICC YAF activities (November 2012)

- The ICC Young Arbitrators Forum is hosting a series of activities throughout November 2012, including:
  - An event in Kiev on 14 November 2012 on "Understanding the Value of Evidence in International Arbitration". This event will precede the Kiev Arbitration Days 2012.
  - A seminar in Prague on 20 November 2012 on the "Selection of Arbitrators and Liability in International Arbitration"; and
  - A seminar in Madrid on 22 November 2012 on "Class Arbitration".

More information on the above listed activities, as well a full overview of all ICC YAF activities is available on http://www.iccwbo.org/training-and-events/young-arbitrator-forum/.

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ICC Conference on Third Party Funding in International Arbitration (26 November 2012, Paris)

- Third-party funding has undoubtedly become a fact of life in the world of arbitration, despite reservations in some quarters. This conference will first consider the various funding techniques specific to international arbitration and then look at some of the legal issues raised by such funding and the reactions it may arouse amongst international arbitration practitioners. With this Conference the ICC Institute of World Business Law wants to contribute to reflection on new practices in international arbitration and is inspired by the wish to see those practices develop in a way that is compatible with the basic principles which ensure the parties' rights. The full program and registration form can be found at http://www.iccwbo.org/Training-and-Events/All-events/Events/2012/Third-Party-Funding-in-International-Arbitration/.

Studieavond "Arbitrage en bemiddeling: welke verwachtingen en welke clausules?" (27 november 2012, Gent)

- Op 27 november 2012 geeft Mr. Luc Demeyere, lid van de Raad van Bestuur van CEPANI, een uiteenzetting over arbitrage en bemiddeling. Na een kritische vergelijking van de twee instrumenten tot conflictbeslechting, zal Mr. Demeyere, onder meer, dieper ingaan op de vragen hoe met aangepaste clausules een 'conflict over het conflict' vermijden en hoe beide instrumenten eventueel te combineren? Het volledige programma en het registratieformulier zijn beschikbaar op: http://www.mdseminars.be/nl/opleidingen/2012-11-27-arbitrage-en-bemiddeling-welke-verwachtingen-en-welke-clausules-gent.html.

ICC Advanced PIDA training on International Commercial Arbitration (3-6 December 2012, Paris)

- ICC is offering an Advanced PIDA Training on International Commercial Arbitration in Paris on 3 to 6 December 2012. The advances level training provides participants with an in-depth experience and understanding of the ICC Arbitration procedure through the study of a mock case under the 2012 ICC Rules of Arbitration. The complete program and registration form can be retrieved at http://www.iccwbo.org/training-and-events/all-events/events/advanced-pida-training-on-international-commercial-arbitration/?utm_source=Mailing&utm_medium=Email&utm_campaign=PIDADEC2012.

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