

Agenda

19 September 2013

CEPANI40 lunch debate with Mr. Michael Bühler on the topic of "The 2012 ICC Arbitration Rules: a first critical assessment after 18 months"

11 October 2013

Joint Conference CEPANI -VIAC

24 October 2013 (14:00-17:30)

CEPANI40 seminar on the topic of "The new 2013 CEPANI Rules of Arbitration" (all presentations will be held in English)

6 November 2013 (9:30-16:30)

CEPANI colloquium on the topic of "De nieuwe Belgische arbitragewet / La nouvelle loi belge sur l'arbitrage"

16 January 2014

CEPANI40 lunch debate with Mr. Charles Price on the topic of "Arbitration - Vive la différence"

20 February 2014 (9:00-18:00)

Annual CEPANI seminar on the topic of "Arbitration and Confidentiality" (the presentations will be held in Dutch and French)

27 February 2014

CEPANI40 lunch debate with Prof. Hakim Boularbah on the topic of "L'arbitre conciliateur: possibilités, limites et précautions"

For more information on our upcoming activities, please consult our website:

www.cepani.be

News

- [CEPANI welcomes 4 new board members and 17 new members in 2012-2013](#)
- [CEPANI40 seminar on "The New 2013 CEPANI Rules of Arbitration" on 24 October 2013 and special offer by Larcier/Bruylant](#)
- [Report on the CEPANI General Assembly of 20 June 2013 \(by Gautier Matray\)](#)
- [Report on the summer classes by the International Academy for Arbitration Law \(by Dodo Chochitaichvili\)](#)

Legislation, Doctrine & Jurisprudence

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Varia

- [2nd Karl-Heinz Böckstiegel Lecture](#)
(13 September 2013, Bergisch Gladbach)
- [NAI Secretariscursus \(7 oktober 2013, Rotterdam\)](#)
[Barcelona Bar Association International](#)
- [Arbitration Congress II \(24-26 October 2013, Barcelona\)](#)

CEPANI welcomes 4 new board members and 17 new members in 2012-2013

CEPANI has the pleasure of announcing that the following 4 individuals have accepted to serve on its board of directors:

Benoît Allemeersch	<i>Professor at Katholieke Universiteit Leuven Lawyer at the Brussels bar</i>
Huguette Geinger	<i>Lawyer at the Supreme Court Professor at Vrije Universiteit Brussel Professor at Universiteit Antwerpen</i>
Bernard Tilleman	<i>Dean of the Faculty of Law at Katholieke Universiteit Leuven</i>
Caroline Verbruggen	<i>Judge at the Brussels Court of First Instance</i>

In the past year 2012-2013 CEPANI has also welcomed 17 new members:

Benoît Allemeersch: *Professor at Katholieke Universiteit Leuven, Lawyer at the Brussels bar* **Adnan Amkhan Bayno:** *Chairman, Mena Chambers* **Maxime Berlingin:** *Lawyer at the Brussels bar* **Thierry Bernard:** *Lawyer at the Paris bar* **Fons Borginon:** *Lawyer at the Antwerp bar* **Niuscha Bassiri:** *Lawyer at the Cologne and Brussels bars* **Marco Bronckers:** *Lawyer at the Brussels bar* **Kristof Cox:** *Manager Commercial Law at Deloitte Belgium* **Paul Demaret:** *Rector of the College of Europe* **Vanessa Foncke:** *Lawyer at the Brussels bar, Co-chair of CEPANI 40* **Grégoire Jakhian:** *Lawyer at the Brussels bar* **Christoph Liebscher:** *Lawyer at the Vienna and Czech bars* **Monica Mächler:** *Member of the Management Board of Deutsche Börse, Lawyer* **Jos Mertens:** *Lawyer at the Ghent bar* **Giulia Mauri:** *Lawyer at the Brussels bar* **Paul Van den Bulck:** *Lawyer at the Brussels and Paris bars* **Stéphane Willemart:** *Lawyer at the Brussels bar*

Membership of CEPANI is open to any individual of any nationality demonstrating a specific interest in arbitration and/or mediation. More information on how to become a member of CEPANI can be found on the CEPANI website or by [clicking on the following link](#).

CEPANI40 seminar on "The New 2013 CEPANI Rules of Arbitration" on 24 October 2013 and special offer by Larcier/Bruylant

On Thursday 24 October 2013 from 2:00 p.m. until 5:30 p.m. CEPANI40 is hosting a seminar on "The new 2013 CEPANI Rules of Arbitration". The presentations will all be held in English which will provide an excellent opportunity to international attendees to get acquainted with the new CEPANI Arbitration Rules that will also be the applicable procedural rules during the 21st Annual Willem C.

Vis International Commercial Arbitration Moot 2013-2014. The seminar will be followed by a networking cocktail. The registration form is available on the CEPANI website or by clicking [on the following link](#).

Participants to the seminar can also benefit from the special offer by Larcier/Bruylant to purchase the new book by Mr. Dirk De Meulemeester and Prof. Herman Verbist "Arbitrage in de praktijk - Op basis van het CEPANI Arbitragereglement van 1 januari 2013 met verwijzingen naar deel VI van het Gerechtelijk Wetboek" at the reduced price of 85 EUR instead of 95 EUR provided that a proof of registration for the seminar is submitted together with the purchase order form [here attached](#).

We look forward to welcoming you to this CEPANI40 event.

14:00	Introduction and overview of the major changes in the new 2013 CEPANI Arbitration Rules Speaker: Michel FLAMEE , President of CEPANI
14:10	Increased efficiency of CEPANI Arbitration Speaker: Pascal HOLLANDER
14:40	CEPANI Emergency Arbitration Speaker: Herman VERBIST
15:10	Confidentiality and the position of the arbitrator in CEPANI Arbitration Speaker: Charles PRICE
15:40	Coffee break
16:00	Multi-party CEPANI Arbitration Speaker: Didier MATRAY
16:30	The role of the Courts in view of CEPANI Arbitration Speaker: Jean-Pierre FIERENS
17:00	Question Time
17:15	Final notes Benoît KOHL and Vanessa FONCKE , co-chairs of CEPANI40
17:30	Cocktail

Report on the CEPANI General Assembly of 20 June 2013



**By Gautier MATRAY,
Lawyer at the Brussels bar (Matray, Matray & Hallet)
Member of the CEPANI40 Steering Committee**

20 June 2013 will be known as a landmark date in the field of arbitration in Belgium as the annual General Assembly of CEPANI collided with some other milestones: the launch of a new (the first) Belgian review dedicated to arbitration, the award of the CEPANI scientific prize and the confirmation that Belgium has a brand new arbitration law (that was enacted on 24 June 2013 and published on 28 June 2013).

The launch of b-Arbitra

b-Arbitra, the Belgian review of arbitration, will fill a need and will reflect the richness of what is experienced and thought in Belgium in the field of arbitration. The two editors in chief are Ms. Maud Piers and Mr. Jean-François Tossens. b-Arbitra will publish content in the three official languages and in English. It is intended to serve as a tool to promote Belgium as a place of arbitration and to demonstrate that Belgium deserves to be quoted among the top countries with respect to arbitration.

Two renowned international practitioners, Mr. Stephan Kröll and Ms. Sophie Nappert, gave a brilliant presentation at this occasion. Mr. Stephan Kröll impressed the audience with an exemplary speech on the "Role and Limits of Party Autonomy in Arbitration" and raised some questions for reflection. For example, it is well known that under specific circumstances Belgian law authorizes the parties to exclude any recourse against the award, including the setting aside of the award. However, how should the courts react towards a clause creating new causes for annulment not provided by law? Surely that would be a good subject for a study to be published in a future issue of b-Arbitra. Ms. Sophie Nappert reminded the participants that arbitration faces real criticisms as a method of resolving disputes. Furthermore given the rise of arbitration as a way of settling disputes between States and foreign investors, those critics only tend to gain weight. A private individual from a foreign country can now disapprove and put into question laws voted by a sovereign State. Confidentiality is also evermore questioned. Voices rise against the lack of accountability of arbitrators and arbitral institutions. The arbitration community should take the problem into consideration and adapt.

The award of the CEPANI scientific prize

Every three years CEPANI awards a scientific prize of 10.000 EUR in order to reward research in the field of arbitration by young authors.

This edition was an absolute success in terms of diversity, content, quality and number of works in competition for the scientific prize.

The jury, composed of Filip de Ly, Olivier Caprasse, Thomas Clay, Laurence Idot, Herman Verbist and Jean-Pierre Fierens, decided to award the prize to two authors:

- Ms. Laure Bernheim-Van De Castele for her work "Les principes fondamentaux de l'arbitrage";

- Ms. Claire Debourg for the work "Les contrariétés de décisions dans l'arbitrage international".

The new Belgian arbitration law

On 16 May 2013 the Belgian House of Representatives adopted the bill no. 53-2743 that will replace the Sixth Part of the Belgian Civil Procedure Code (*Code judiciaire/Gerechtigd Wetboek*) and will thoroughly modernize the Belgian arbitration law.

The main purpose of the reform is to align Belgian arbitration law with the UNCITRAL Model Law and to confirm Belgium's friendliness towards arbitration.

The new Belgian arbitration law chose not to distinguish between international and domestic arbitration. To this extent, the new law maintains the status quo in Belgium. The drafters of the new law believed that the frontier between domestic and international arbitration is not always easy to draw. Moreover they intended to provide equal treatment to domestic and international arbitration and saw no reason why domestic arbitration should be treated under stricter terms.

The new law transposes the improvements of the UNCITRAL Model Law adopted in 2006 regarding the validity of arbitration agreements and interim measures. An arbitration agreement does not have to be concluded in writing to be valid under Belgian law (however, when disputed, the existence of the arbitration agreement has to be evidenced in writing). In addition, interim measures ordered by an arbitral tribunal shall be recognized as binding and shall be granted enforcement by the courts.

As to the grounds for annulment of an arbitral award and the refusal to enforce it, the new Belgian law contains some provisions in addition to the UNCITRAL Model Law.

First, an arbitral award rendered in Belgium may be set aside if it fails to state the reasons on which it is based. The duty to state the reasons of a decision is considered an essential feature of every jurisdictional decision in Belgium. However, if the award is rendered in a country where the reasoning of an arbitral award is not mandatory, the lack of reasons will not prevent an arbitral award from being enforced.

Second, the setting aside of an award may also be granted if the arbitral tribunal exceeded its powers. A topical example of this occurs when the arbitrators decide as *amiables compositeurs*

without the consent of the parties to do so.

Third, in addition to allowing the annulment of an award which violates public policy, the new law expressly provides that an arbitral award may be set aside if it was obtained by fraud.

The lawmaker also decided to maintain a special feature of Belgian arbitration law relating to the setting aside of arbitral awards. Pursuant to the new Article 1719 of the Civil Procedure Code (which reproduces provisions previously contained in Article 1717 § 4 of the Code), the parties to an arbitration taking place in Belgium have the possibility to renounce in advance to requesting the setting aside of an arbitral award. However this possibility is available only if the parties do not have their registered seat, their primary place of business, or a branch in Belgium. If one of the parties is an individual, that party should neither be of Belgian nationality nor a Belgian resident. In other words, the waiver is solely available to legal persons and individuals that have no ties with Belgium.

The new law should also put an end to some debates that agitated the arbitration community in Belgium and abroad.

For example, the Court of Appeal of Brussels decided in 2005 that challenges of arbitrators ought to be exclusively submitted to the national courts and that the system whereby challenges are decided by an arbitral institution contravenes public policy... It is now expressly stated that the parties are free to organize the procedure applicable to the challenge of arbitrators as they see fit, e.g. by reference to the rules of an arbitral institution.

Under the previous law, an arbitral award could be set aside not only if it failed to state its reasons, but also if it contained contradictory provisions. There were some recurring discussions as to whether the contradiction had to exist in the operative part of the award or whether any contradicting provisions in the reasoning of the arbitral tribunal could justify the setting aside of the award. Another aspect of controversy was whether a reasoning fraught with contradictions could qualify as a reasoning at all. The debate should now come to an end. Pursuant to the explanatory statement accompanying the new law, the presence of contradictory provisions in an award is no longer a ground for annulment.

Report on the summer classes by the International Academy for Arbitration Law (Paris, 1-19 July 2013)



**By Dodo CHOCHITAICHVILI,
Associate at DLA Piper UK LLP (Brussels)**

From 1 to 19 July 2013 the International Academy for Arbitration Law offered advanced summer courses in Paris to young practitioners, academics, magistrates, doctoral students and government representatives with diverse backgrounds and experiences. Based on a total of 241 applications from candidates originating from 67 countries, the Arbitration Academy welcomed 76 participants to the 2013 session. This year, the program of the Arbitration Academy, which is an initiative of the Comité français de l'arbitrage and is chaired by Prof. Emmanuel Gaillard, was focused on international arbitration, in particular on investment treaty arbitration, and was given by leading professors in this field.

Overview of the program

The program included a general course on international investment arbitration given by Prof. David Caron. Prof. Caron rendered the classes interactive by actively involving the participants, e.g., by organizing a mock arbitration case designed to help understand the perspective of the arbitrator. As part of the many themes addressed during the classes, issues were lectured and debated on such as the selection and challenge of the arbitrator, the importance of the first session and the interim measures, preliminary objections, evidence, document production and expertise, and the deliberation on and drafting of the award.

In addition there were a number of special courses on specific topics. Prof. Alain Prujiner examined the differences between the European and Northern American approaches to (class) arbitration and consumer law. Prof. Brigitte Stern went through several ICSID awards and decisions to help understand the importance of the use of public international law and general



principles of international law and their application to investment arbitration, e.g., the interpretation of texts in investment arbitration and the ILC Articles on State responsibility. Prof. Susan Franck gave the inaugural class for a course on the empirical assessment of investment arbitrations. Prof. Horacio Grigera Naon presented a comparative study of competence-competence by analyzing US and non-US court decisions and arbitral awards. Finally, Prof. Andrea Bjorklund went through the procedural challenges facing investors and states in investment arbitration. In addition to the general and specialist lectures (for which a huge list of recommended reading materials was received), the participant could attend an ICSID workshop at the World Bank office in Paris and follow a seminar on state-to-state arbitration given by the Deputy Secretary-General of the Permanent Court of

Arbitration. Furthermore, there was the ICC workshop at the ICC's premises during which the resolution of mock cases based on the 2012 ICC Arbitration Rules was discussed. Finally, Mr. Nassib Ziadé gave an introduction to the DIAC Arbitration practice.

The Berthold Goldman Lecture

The Arbitration Academy organized two public lectures that gathered the arbitration community from Paris and which presented excellent opportunities for networking. The first lecture was an inaugural lecture at the impressive Paris Court of Appeal given by Mr. Gilbert Guillaume on the financial default of states before the international judge and arbitrator.

The other prestigious lecture given in the memory of Berthold Goldman was hosted at the Cercle de l'Union Interalliée where Mr. Yves Derains delivered a speech on one of the most notable arbitration cases in history: the Chromalloy case. The case concerned an award rendered in Cairo applying Egyptian law, whereby the arbitral tribunal ordered the Egyptian government to pay a certain amount to Chromalloy, an American company active in the field of aviation. The Egyptian Court of Appeal annulled the award on the ground that the arbitral tribunal failed to apply the applicable Egyptian administrative law to an administrative contract (a military procurement contract concluded between Chromalloy and the Egyptian Government). Chromalloy applied to US and French courts to enforce the award, whereupon both jurisdictions granted the enforcement, but for different reasons.

The US approach taken by the District Court for the District of Columbia was that there was an arbitration clause in the contract, which was not subject to appeal to any court or to judicial review by the US court. The US approach has, however, evolved since then, explained Mr. Yves Derains, such that the enforcement of an annulled award has been limited by US courts. In France, the Paris Court of Appeal upheld the award on the basis of the provisions of the New York Convention. The Court ruled that the award rendered in Egypt was an international award which, by definition, was not integrated to the country of the seat of arbitration. Therefore, even though the award had been annulled in Egypt, the existence of the award was not affected, and its recognition in France was not contrary to international public order.

Mr. Derains stated that this case illustrated one of the only cases



where there was a convergence between the US and French approaches to international arbitration. He argued that the New York Convention created diversity in the enforcement of awards between states and averred that one of the most important issues to determine was whether the award was of an international nature or was instead

linked to the law of one country. Mr. Derains questioned why "secondary jurisdictions", where the parties seek the enforcement

of an award, should be prevented from enforcing an award since they only have to decide on the enforcement of the award on the basis of the New York Convention, without the state of the arbitration seat having to exercise influence on the future of the award.

Conclusion

The Arbitration Academy has delivered an excellent program both on the teaching and networking sides. The three weeks allowed the participants from different continents to create solid links among themselves. Despite the different backgrounds, experiences and views on international arbitration were shared. Good memories will remain: the brown bag lunch with Prof. Emmanuel Gaillard during which he outlined his vision on the legal theory of international arbitration, the discussions on the topic proposed by the Arbitration Academy (i.e. the parties' right to appoint their own arbitrator in international arbitration) and the picnics organized after classes where the sunny Parisian lifestyle was enjoyed ...

References

Legislation

- Wet van 24 juni 2013 tot wijziging van het zesde deel van het Gerechtelijk Wetboek betreffende de arbitrage, beschikbaar op <http://www.ejustice.just.fgov.be/wet/wet.htm>

Loi du 24 juin 2013 modifiant la sixième partie du Code judiciaire relative à l'arbitrage, disponible sur <http://www.ejustice.just.fgov.be/loi/loi.htm>

Act of 24 June 2013 amending the sixth part of the Judicial Code concerning arbitration (see official Dutch and French versions above)

Jurisprudence

Belgium

- O. CAPRASSE, "Les grands arrêts de la cour de cassation belge en droit de l'arbitrage", *b-Arbitra* 2013/1, p. 137-168
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- D. DE MEULEMEESTER en H. VERBIST, *Arbitrage in de praktijk – Op basis van het CEPANI-Arbitragereglement van 1 januari 2013 en met verwijzingen naar deel VI van het Gerechtelijk Wetboek*, Brussel, Bruylant, mei 2013, 550p.
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- D. VAN GERVEN, “Arbitrage: meer dan ooit een alternatief voor de rechtbank (het nieuwe CEPANI arbitragereglement)”, *Ad Rem* 2013/2, p. 26-27
- H. VERBIST, “Transparency in Treaty Based Investor State Arbitration – The Draft UNCITRAL Rules on Transparency”, *Tijdschrift@ipr.be* 2013/2, p. 73-98

International

- F. BACHAND and F. GELINAS (eds.), *The UNCITRAL Model Law after 25 years: global perspectives on international commercial arbitration*, New York, Juris, June 2013, 300p.
- J. GRENIG and R. SCANZA (eds.), *Case preparation and presentation: a guide for arbitration advocates and arbitrators*, New York, Juris, June 2013, 371p.
- S. HUBER and B. SHEPPARD JR. (eds.), *AAA Yearbook on Arbitration and the Law – 25th edition*, New York, Juris, August 2013, 650p.
- E. LEIMBACHER, “Efficiency under the New ICC Rules of Arbitration of 2012: first glimpse at the new practice”, *ASA Bulletin* 2013/2, p. 298-315
- A.G. MAURER, *Public policy exception under the New York Convention: history, interpretation and application-revised edition*, New York, Juris, June 2013, 398p.

2nd Karl-Heinz Böckstiegel Lecture (13 September 2013, Bergisch Gladbach).

On 13 September 2013, the 2nd Karl-Heinz Böckstiegel lecture will take place at Grandhotel Schloss Bensberg in Bergisch Gladbach. The lecture by Professor Albert Jan van den Berg, (Hanotiau & van den Berg, Brussels) will address the topic "Should the Setting Aside of an Arbitral Award Be Abolished?". The lecture will be followed by a reception and dinner in the evening. The program and registration form are available online at www.dis-arb.de.

NAI Secretariscursus (7 oktober 2013, Rotterdam).

Op 7 oktober 2013 organiseert het NAI een secretariscursus. De docenten, Marieke van Hooijdonk, Rieke Smakman en Fredy von Hombracht bespreken, onder meer, de taken van de secretaris en hoe deze het best kunnen worden uitgevoerd. Deze cursus is toegankelijk voor juristen die al als secretaris optreden, maar ook voor hen die dat in de toekomst graag willen doen. Het voorlopige programma en het inschrijvingsformulier zijn beschikbaar op <http://www.nai-nl.org/nl/form.asp?id=21>.

Barcelona Bar Association International Arbitration Congress II (24-26 October 2013, Barcelona).

From 24 to 26 October 2013 the Barcelona Bar Association is hosting the second part of its International Arbitration Congress on the topic of "An in-house view". The full program and the registration form are available on <http://www.icab.cat/?qo=eaf9d1a0ec5f1dc58757ad6cffdacedb1a58854a600312cc2d373401687f1ddf3b1f7fdf398c8842>.

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