

Agenda

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"

17 January 2014

Joint Conference CEPANI -VIAC

20 February 2014

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

- [Colloque du CEPANI sur "La nouvelle loi belge sur l'arbitrage" le 6 novembre 2013 au Palais d'Egmont](#)
- [CEPANI colloquium over "De nieuwe Belgische arbitragewet" op 6 november 2013 in het Egmontpaleis](#)
- [Report on the CEPANI40 lunch debate with Mr. Michael Bühler on "The 2012 ICC Rules of Arbitration: a first critical assessment after 18 months" \(by Ahmed Tayane\)](#)
- [Mastering the Challenges in International Arbitration \(Stockholm, 29-30 August 2013\) \(by Marijn De Ruyscher\)](#)
- [Report on the Dutch Arbitration Day \(The Hague, 25 September 2013\) \(by Sigrid Van Rompaey\)](#)

Legislation, Doctrine & Jurisprudence

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Varia

- [The Pierre Coppens Prize](#)
- [DIS Autumn Conference on "The ADR services of the DIS" \(16-17 October 2013, Berlin\)](#)
- [DIS40 Autumn Colloquium \(16 October 2013, Berlin\)](#)
- [ICC 11th Annual Miami Conference \(3-5 November 2013, Miami\)](#)
- [UGent studienamiddag m.b.t. "De nieuwe arbitragewet: essentiële bepalingen en hun praktische werking" \(12 december 2013, Gent\)](#)

Colloque du CEPANI sur "La nouvelle loi belge sur l'arbitrage" le 6 novembre 2013 au Palais d'Egmont

Le mercredi 6 novembre 2013, le CEPANI organise un colloque sur "La nouvelle loi arbitrage belge" dans le cadre impressionnant du palais d'Egmont.

Les participants seront accueillis à 9h30 par le Président du CEPANI, M. Michel Flamée. Le ministre de la justice Annemie Turtelboom introduira ensuite le sujet de cette journée d'étude.

Dans les présentations qui suivront, tant en néerlandais qu'en français, des orateurs éminents traiteront tous les éléments essentiels de la nouvelle loi belge sur l'arbitrage. Le Commissaire européen au Commerce, M. Karel De Gucht, clôturera les activités de la matinée par un discours sur "L'importance de l'arbitrage pour le commerce international". Le Vice-premier ministre et ministre des affaires étrangères, du commerce extérieur et des affaires européennes, M. Didier Reynders, clôturera à 16h les activités de l'après-midi par un discours sur "La place de Bruxelles dans l'arbitrage international".

[Vous trouverez le programme intégral ci-dessous.](#) Le formulaire d'inscription est disponible sur le site web de CEPANI ou en cliquant [sur le lien suivant.](#) Le jour du colloque, les participants recevront une farde avec une documentation détaillée.

Le CEPANI espère pouvoir vous y accueillir nombreux.

CEPANI colloquium over "De nieuwe Belgische arbitragewet" op 6 november 2013 in het Egmontpaleis

Op woensdag 6 november 2013 organiseert CEPANI een colloquium over "De nieuwe Belgische arbitragewet" in het indrukwekkende kader van het Egmontpaleis.

Om 9u30 worden de deelnemers verwelkomd door de Voorzitter van CEPANI, dhr. Michel Flamée, waarna mevrouw de minister van justitie Annemie Turtelboom het onderwerp van de studiedag zal inleiden.

In de navolgende presentaties, die afwisselend in het Nederlands en het Frans zullen worden gegeven, zullen prominente sprekers alle essentiële elementen van de nieuwe Belgische arbitragewet behandelen. Europees Commissaris voor Handel, dhr. Karel De Gucht, zal de werkzaamheden in de voormiddag afsluiten met een uiteenzetting nopens "Het belang van arbitrage in de internationale handel". Vice-eerste minister en minister van buitenlandse zaken, buitenlandse handel en Europese zaken, dhr. Didier Reynders, zal om 16u de werkzaamheden in de namiddag besluiten met een uiteenzetting nopens "De plaats van Brussel in internationale arbitrage".

[Het volledige programma vindt u onderaan dit artikel.](#) Het inschrijvingsformulier is beschikbaar op de CEPANI website of door [de volgende link te volgen.](#) De deelnemers ontvangen op de dag van het colloquium een uitgebreide documentatiebundel.

CEPANI hoopt u talrijk te mogen begroeten.

Programme - Programma		
9:30	Accueil par M. Flamée , président of CEPANI	Ontvangst door M. Flamée , voorzitter van CEPANI
9:40	Propos introductifs par A. Turtelboom , Ministre de la Justice	Inleiding door A. Turtelboom , Minister van Justitie
Président de séance / Voorzitter van de zitting M. Flamée , président du CEPANI - voorzitter van CEPANI		
10:00	La genèse et les principales caractéristiques de la loi par G. Keutgen , président honoraire du CEPANI	Het ontstaan en de belangrijkste kenmerken van de wet door G. Keutgen , erevoorzitter van CEPANI
10:30	L'arbitrabilité par B. Allemeersch , professeur à la KULeuven, avocat	De arbitreerbaarheid door B. Allemeersch , professor aan de KULeuven, advocaat
10:50	L'encadrement judiciaire de la procédure par P. Taelman , professeur à l'UGent, avocat	De gerechtelijke omkadering van de procedure door P. Taelman , professor aan de UGent, advocaat
11:20	Pause café	Koffiepauze
11:40	Le tribunal arbitral par F. Lefèvre , avocat	Het scheidsgerecht door F. Lefèvre , advocaat
12:10	La conduite de la procédure arbitrale par D. Matray , vice-président du CEPANI, ancien bâtonnier, professeur à l'ULg	Het verloop van de arbitrageprocedure door D. Matray , ondervoorzitter van CEPANI, oud-stafhouder, professor aan de ULg
12:40	L'importance de l'arbitrage dans le commerce international par K. De Gucht , Commissaire européen au Commerce	Het belang van arbitrage in de internationale handel door K. De Gucht , Europees Commissaris voor Handel
13:00	Déjeuner	Lunch
Président de séance / Voorzitter van de zitting D. Matray , vice-président du CEPANI - ondervoorzitter van CEPANI		
14:00	Les mesures provisoires et conservatoires par O. Caprassé , professeur à l'ULg et à l'ULB, avocat	De voorlopige en bewarende maatregelen door O. Caprassé , professor aan de ULg en aan de ULB, advocaat
14:30	Les recours contre la sentence arbitrale par H. Verbist , avocat	Rechtsmiddelen tegen de arbitrale uitspraak door H. Verbist , advocaat
15:00	Table ronde sous la présidence de J. Erauw , professeur à l'UGent, avocat avec la participation de G.A. Dal , professeur émérite de l'UCL, ancien bâtonnier, D. De Meulemeester , avocat, L.	Rondetafel onder voorzitterschap van J. Erauw , professor aan de UGent, advocaat met deelname van G.A. Dal , professor emeritus van de UCL, oud-stafhouder, D. De Meulemeester , advocaat, L. Demeyere , advocaat en Ch.

	Demeyere , avocat et Ch. Price , avocat	Price , advocaat
16:00	La place de Bruxelles dans l'arbitrage international par D. Reynders , Vice-premier Ministre et Ministre des Affaires étrangères, du Commerce extérieur et des Affaires européennes	De plaats van Brussel in de internationale arbitrage door D. Reynders , Vice-Eerste Minister en Minister van Buitenlandse Zaken, Buitenlandse Handel en Europese Zaken
16:30	Fin de séance	Einde zitting

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



By Ahmed TAYANE,
Lawyer at the Brussels bar (Loyens & Loeff)

Almost 1 year and 9 months after the new 2012 ICC Rules of Arbitration came into force, it is time to look back and make a critical assessment of those rules. Did the changes really affect the 759 requests for ICC arbitration that were filed in 2012, and more generally the proceedings brought before the ICC Court?

Key speaker, Mr. Michael Bühler, who co-chaired the Task Force of the ICC Commission on Arbitration on the Revision of the ICC Arbitration Rules, started off by clarifying that the new rules themselves did not contain drastic changes. As we know, the main purpose was to adapt the rules to the latest arbitration practice and evolution of the ICC mechanism. The perfect example is the ICC Court's prima facie control under Article 6(3) of the ICC Rules of Arbitration. This article implemented the Court's practice and codified the Secretary General's role as gatekeeper, in order to avoid a waste of resources and increase efficiency.

So were there any failures? Mr. Bühler, who had invited the attendees to submit their remarks and critiques prior to the lunch debate, was happy to conclude that apparently no big failures were detected so far. He also noticed, however, that there is room for improvement, and seemed disappointed about (the lack of efficient use of) some of the new rules. One example is Article 24 which pertains to the application of case management techniques to control time and costs in arbitration. So far the insertion of this article did not bring along the envisaged results, although the ICC clearly wanted to address the rise in costs of arbitration through case management conferences.

The new 2012 Rules of course also brought along successes. According to Mr. Bühler, there were a lot of complaints about the uncertainty as to when the arbitral tribunal would submit its draft award. Through the insertion of Article 27, pursuant to which the tribunal has to inform both the Secretariat and the parties of the date by which it expects to submit the award, and the time limit of Article 30, the parties now have a better view on the timetable of the arbitration proceedings.

In short, the new 2012 Rules have generally been received and assessed favorably, and do embody the best practice of institutional arbitration. Mr. Bühler concluded that "This is proven by the fact that the ICC Arbitration

Rules are the reference and source of inspiration to other arbitration institutions, and the ICC remains the most preferred and widely used arbitration institution”.

Mastering the Challenges in International Arbitration (Stockholm, 29-30 August 2013)



**By Marijn DE RUYSSCHER,
Lawyer at the Brussels bar (Lydian)
LL.M. International Commercial Arbitration Law, Stockholm
University (2008)**

On 29 and 30 August 2013, the Stockholm University Master Program of International Commercial Arbitration Law celebrated its 10th year of existence by organizing a two-day conference on 'Mastering the Challenges in International Arbitration'. The conference took place at the renowned Grand Hôtel in Stockholm, which became for two days the heart of high-level and challenging discussions on current issues of international arbitration.

The conference was divided into 7 sessions. During each session a panel of international arbitration specialists discussed a topic, while being challenged by a moderator as well as by questions from the audience.

Both on the first and the second day, Professor Julian Lew had the honor of making an opening address. The first day he discussed autonomy and regulatory controls in international arbitration. The second day he gave an overview of the history and the importance of teaching (international) arbitration.



The first session concerned the issue of arbitrability and mandatory law. Panelists were Lars Heuman, Julian Lew, Corinne Montineri and Tatyana Slipachuk and the moderator was Patricia Shaughnessy. One of the questions in debate was whether it is possible to avoid national regulatory laws by choosing a favorable arbitral seat. According to Lars Heuman, this is possible by choosing

Sweden as arbitral seat. However he did point out that there is a risk when later enforcing the award abroad. Corinne Montineri from UNCITRAL pointed out that the UNCITRAL Model Law does not specify what is arbitrable and what not because the views of the member countries were too divergent on this issue. She announced however that a new discussion on this topic will take place at UNCITRAL as from next year and that UNCITRAL might succeed in making recommendations on (certain aspects of) arbitrability.

The second session dealt with the issue of corruption within arbitration and specifically which role the arbitrator has to play when confronted with evidence or suspicions of corruption. The topic was discussed by Sophie Nappert, Ilya Nikiforov and Martina Polasek and moderated by Constantine Partasides. Sophie Nappert emphasized that there is no uniform interpretation of what corruption is and that most arbitral tribunals will not report signs of corruption to the authorities, also because it is unclear to which authorities they should do so. From a Russian perspective, Ilya Nikiforov explained that the notion corruption as such can only be used when there is a criminal conviction by a state court. In the absence of such criminal conviction, arbitral awards could however still be set aside by rephrasing the corruption argument to, for example, deficiencies in the formation of the contract.

The last session of the first day concerned corporate compliance, risk avoidance and dispute policies and strategies.

The second day started with a lively and interactive debate between panelists Manuel Arroyo, Janet Walker, John Fellas and James Hope, with

Doug Jones as moderator, on the topic of the managerial (or mismanaging) arbitrator. Janet Walker argued that arbitrators should work pro-actively and not only involve counsels but also the clients directly. John Fellas emphasized the importance to tailor-make each arbitration and not use standard model proceedings. As far as the arbitrators' possibility to invoke ex officio principles of law or arguments not made by the parties, the general consensus was that this is less problematic when it concerns documents already presented to the arbitrators, but that in any event the arbitrators should give the parties the opportunity to comment before rendering an award.

Another notable session of the second day concerned the challenge of arbitrators. The debate was moderated by Annette Magnusson (SCC) while Chiann Bao (CIETAC), Andrea Carlevaris (ICC) and Li Hu (HKIAC) shared their respective arbitral institutions' rules and practices on the challenge of arbitrators. Edgar Martinez provided the input from the counsel side. He stated that if a client really wants to challenge an arbitrator, counsel should do this, but not after first having informed the client fully of the possible consequences.

Further sessions included regulating counsel and arbitrator conduct (with a discussion on the 2013 IBA Guidelines on Party Representation in International Arbitration) and arbitrating with a state or state-controlled party.

The excellently organized conference was well-attended by a large group of international arbitration practitioners, including a large delegation of alumni from the Master Program of International Commercial Arbitration Law. Many speakers, as well as the representatives from the ICAL Alumni Association, paid tribute to the founders and organizers of the program, Professor Lars Heuman (now retired) and Patricia Shaughnessy. The gala dinner at the Opera Terrace, with a spectacular view on Stockholm, proved to be a perfect conclusion of the conference.

(Photos courtesy of the ICAL Alumni Association)



Report on the Dutch Arbitration Day (The Hague, 25 September 2013)



**By Sigrid VAN ROMPAEY,
Lawyer at the Brussels bar (Matray, Matray & Hallet)
Legal attaché at CEPANI**

On 25 September 2013 the Dutch Arbitration Association ("DAA") launched its inaugural event, the Dutch Arbitration Day, in The Hague. The DAA's purpose is to promote the use and knowledge of arbitration as a preferred dispute resolution method, both at a national and international level, as well as to promote the Netherlands as a place for arbitration.

During the first plenary session, with a panel of eminent arbitrators such as Filip De Ly, Gerard Meijer, Albert Jan van den Berg, Klaus Reichert and Henk Snijders, different questions were raised on the law and practice of interim measures. For instance, when a tribunal can issue interim measures in the form of an award, can it also do so in the form of an order? Insight in this matter was given by Filip De Ly (Professor of Law at Erasmus University in Rotterdam). Whereas an award needs to meet strict requirements, for example, regarding motivation and signature, it is also final and binding and has to be submitted to the court for scrutiny in case of ICC arbitration. The procedural order is amendable, more flexible and not scrutinized in case of ICC arbitration. Those different procedural consequences raised the question of party autonomy: do parties decide whether they want an award or an order to be issued? Both Filip De Ly and Klaus Reichert (Brick Court Chambers) agreed that the extent of an interim measure is much influenced by national customs.

The second plenary session focused on challenge proceedings, with a panel of experts composed of Nigel Rawding (LCIA), Jason Fry (ICC), Judith Levine (PCA), Willem van Baren (President NAI), Will Tonkens and Dominique Hascher (French Supreme Court). The interaction with the audience led to an entertaining discussion on the growing pressure of transparency. The corporate world did not seem favourable to transparency due to the extension of the proceedings this communication of the reasoning and motivation will instigate, in particular, by the very likely challenge of the tribunal's motivation. This position was justified as follows: when a company entrusts an arbitral tribunal with the resolution of their dispute in full, why would it not have confidence in this same tribunal to settle challenge requests?

The third plenary session handled the topic of the setting aside and enforcement of an award.

Further breakout sessions were held in smaller groups on transport, construction and investment treaty arbitration, as well as on efficiency and flexibility.

Overall the seminar was organised very professionally and proved to be an added value for arbitration practitioners due to the numerous renowned speakers the association managed to gather. The Dutch Arbitration Day is hopefully the first of many to come.

I would like to conclude with a quote by a worldwide esteemed arbitrator during the investment treaty arbitration breakout session: "If you haven't been challenged as an arbitrator in an investment treaty arbitration, you are a nobody."

References

Legislation

Belgium

- Wet van 24 juni 2013 tot wijziging van het zesde deel van het Gerechtelijk Wetboek betreffende de arbitrage, beschikbaar op <http://www.cepani.be/NL/Default.aspx?Pid=553>

Loi du 24 juin 2013 modifiant la sixième partie du Code judiciaire relative à l'arbitrage, disponible sur <http://www.cepani.be/FR/Default.aspx?Pid=784>

Act of 24 June 2013 amending the sixth part of the Judicial Code concerning arbitration, unofficial version available at: <http://www.cepani.be/EN/Default.aspx?Pid=859>

International

- Revised Commercial Arbitration Rules of the American Arbitration Association, as applicable to AAA administered arbitration filed on or after 1 October 2013, available on <http://www.adr.org>

Jurisprudence

- Brussels Court of Appeal 24 October 2011, *N.J.W.* 2013, p. 602-605

Arbitrage – Arbitrageovereenkomst – Hoedanigheid van de arbiter (in een vennootschap) – Facturatie van de door de arbiter geleverde prestaties

Arbitrage – Convention d'arbitrage – Capacité des arbitres (en société) – Facturation des services rendus par l'arbitre

Arbitration – Arbitration agreement – Capacity of (incorporated) arbitrators – Invoicing of services rendered by the arbitrator

Doctrine

Belgium

- D. DE MEULEMEESTER en M. PIERS, "The new Belgian arbitration law", *ASA Bulletin* 2013/3, p. 596-602
- M. TRAEEST, "Encore...un arrêt de la Cour de cassation sur l'arbitrabilité des litiges relatives à la résiliation, sous l'empire de la loi du 27 juillet 1961, des concessions de vente exclusive" (note sous Cass. 14 janvier 2010), *R.C.J.B.* 2013, p. 255-276
- J. VAN DE VELDE en A. VANDERHAEGHEN, "Hoedanigheid arbiter" (noot onder Brussel 24 oktober 2011), *N.J.W.* 2013, p. 605-606
- X., "Wetgeving – Arbitrage – Wet van 24 juni 2013 tot wijziging van het zesde deel van het Gerechtelijk Wetboek betreffende de arbitrage", *N.J.W.* 2013, p. 588-590

International

- D. BRAY and H. BRAY, *Post-Hearing Issues in International Arbitration*, New York, Juris, September 2013, 402p.
- G. CARDUCCI, "The New EU Regulation 1215/2012 of 12 December 2012 on Jurisdiction and International Arbitration: With Notes on Parallel Arbitration, Court Proceedings and the EU Commission's Proposal", *Arb.Int.* 2013/3, p. 467-491
- G. HANESSIAN (ed.), *ICDR Awards and Commentaires*, New York, Juris, September 2013, 578p.

Varia

The Pierre Coppens Prize

In September 2014, the three-yearly Pierre Coppens Prize in the amount of 15.000 EUR will be awarded. This prize aims at rewarding a doctor, graduate or master of laws from a European university who is under forty years of age and who has written a book dedicated to a fundamental theme of business law or any legal theme related to business associations (business law, tax law, employment law, public law, European law, international law...). The age requirement is applied at the time of the paper's publication. The study must be an original work, written in French, Dutch, English, German, Italian or Spanish. The prize will be awarded by an inter-university jury. Candidates are invited to send six copies of their paper before the 1st of March 2014 to the President of the Jury, Prof. Yves De Cordt at UCL. More information can be obtained by emailing catherine.vanderlinden@uclouvain.be.

DIS Autumn Conference on "The ADR services of the DIS" (16-17 October 2013, Berlin)

On 16-17 October 2013 DIS is hosting its Autumn Conference on the topic of "The ADR services of the DIS". The Conference will be opened by a reception and dinner on 16 October 2013 at 7.30 p.m. at "Orangerie im Schloss Charlottenburg". The full program and registration form are available online at www.dis-arb.de (section "Events").

DIS40 Autumn Colloquium (16 October 2013, Barcelona)

On 16 October 2013, prior to the opening of the DIS Autumn Conference, DIS40 is organizing a colloquium on the topic of "Playing by the rules: counsel conduct in international arbitration". The colloquium is open to arbitration practitioners up to approximately forty years of age. The registration form is available on the DIS website (www.dis-arb.de) in the "events" section.

ICC 11th Annual Miami Conference (3-5 November 2013, Miami)

This year's ICC annual Miami conference will take place on 3-5 November 2013. The conference provides an indispensable update on developments in international commercial arbitration in Latin America and is the most important gathering for the Latin American arbitration community. The conference attracts approximately 400 participants representing about 30 nationalities. The

program and registration form are available online on <http://www.iccwbo.org/Training-and-Events/All-events/Events/2013/International-Arbitration-in-Latin-America--The-ICC-Perspective/>.

UGent studienamiddag m.b.t. "De nieuwe arbitragewet: essentiële bepalingen en hun praktische werking" (12 december 2013, Gent)

Op 12 december 2013 organiseert de Faculteit Rechtsgeleerdheid van de Universiteit Gent een studienamiddag waarop de meest essentiële bepalingen van de nieuwe Belgische arbitragewet zullen worden belicht. Acht sprekers behandelen een selectie van nieuwe wetsbepalingen en geven aan hoe deze praktische inslag hebben op het verloop van arbitrage op het Belgische grondgebied. Zij brengen onmisbare informatie voor advocaten, bedrijfsjuristen, magistraten en academici die met arbitrage te maken hebben. Alle praktische informatie en het inschrijvingsformulier zijn beschikbaar op http://www.intersentia.be/docs/LR-132422%20Intersentia_arbitragewet.pdf.



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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.
