

Editors in chief: Marijn De Ruyscher, Maarten Draye, Sophie Goldman and Olivier van der Haegen



AGENDA

3 APR 2019	(18:00 - 19:30)	CEPANI40 – White & Case seminar on Oral Advocacy at the occasion of the Brussels Pre-Moot
4-5 APR 2019	(09:00 - 18:00)	Brussels Pre-Moot
13 APR 2019	(17:00 - 19:00)	CEPANI40 – White & Case networking drink at the occasion of the Vis Moot
8 MAY 2019	(17:00 - 19:00)	CEPANI40 event on EU law and Arbitration
6 JUN 2019	(16:00 - 17:00)	General Assembly CEPANI
13-14-15 NOV 2019	(00:00 - 00:00)	50 years CEPANI celebrations

REPORTS

- » [LUNCH DEBATE ON THE “PRAGUE RULES”: A\(N\) \(R\)EVOLUTION OR MUCH ADO ABOUT NOTHING?](#)
- » [JOINT CEPANI/NAI COLLOQUIUM – DO ARBITRAL AWARDS REVEAL THE TRUTH?](#)

LUNCH DEBATE WITH
PASCAL HOLLANDER
AND CHRISTOPH
LIEBSCHER ON "THE
"PRAGUE RULES" ON THE
EFFICIENT CONDUCT OF
PROCEEDINGS IN
INTERNATIONAL
ARBITRATION: A(N)
(R)EVOLUTION OR MUCH
ADO ABOUT NOTHING?"

(BRUSSELS, 26 FEB 2019)



Beatrice Van Tornhout
Associate
HANOTIAU & VAN DEN BERG
Brussels

The stage of the afternoon discussions was set by a delightful buffet lunch and a warm welcome by the Chairman of CEPANI, Mr **Dirk De Meulemeester**. He introduced the two speakers, each distinguished arbitrators in their own right, who would go toe to toe on the Rules on the Efficient Conduct of Proceedings in International Arbitration, better known as the "Prague Rules", in the course of the next hour.



Dr **Christoph Liebscher**, from Liebscher Dispute Management, had been a member of the Working Group which drafted the Prague Rules, and could therefore offer insider insights on the inception of the Prague Rules, as well as on some of their highlights.

He emphasised that the Prague Rules are not to be construed as some sort of Cold War attack on the well-established IBA Rules on the Taking of Evidence in International Arbitration, but rather as a unique opportunity to challenge the way things have always been done.



Dr Liebscher further underscored that said Rules, which were officially launched on 14 December 2018, are the brainchild of close to three years of intense discussions and debates within the arbitral community, as well as much arduous work from a team of drafters from varying legal backgrounds. While the Prague Rules are often presented as a more civil law oriented set of rules than the IBA Rules, he noted that "civil law legal traditions" in themselves vary strongly. The proposed Rules aim at providing the arbitral community with an alternative, more streamlined procedure actually driven by the tribunal.

On the other hand, Mr **Pascal Hollander**, partner at Hanotiau & van den Berg and former Vice-Chair of the IBA Arbitration Committee, could not have been better placed to delve into possible pitfalls and critical considerations when attempting to apply this new set of Rules, as opposed to the IBA Rules.

In particular, he commended the drafters of the Prague Rules for their diligent and incessant work on this very ambitious project, but noted, however, that whether the end result was worth the effort, only time will tell.

Mr Hollander underscored that many provisions of the Prague Rules did not raise any concerns, yet that others, such as article 2 regarding the Case Management Conference, were, in his opinion, unrealistic and overly optimistic. He also remarked that he would personally be reluctant to shift the lead role during the cross-examination of fact witnesses from counsel to the tribunal, as proposed in article 5 of the Prague Rules.

To finish off, both speakers emphasised the value of opening up a constructive discussion regarding alternative views on conducting arbitral proceedings and welcomed the Prague Rules as yet another soft-law tool to add to the arbitrator's toolkit.

The IBA Guidelines can be consulted [here](#).

For the Prague Rules, click [here](#).

**JOINT CEPANI – NAI
COLLOQUIUM ON "DO
ARBITRAL AWARDS
REVEAL THE TRUTH?"**

(BRUSSELS, 21 MAR 2019)



Nadir Khalil
Associate
ALLEN & OVERY
Amsterdam

On 21 March 2019, NAI and CEPANI organised a joint colloquium on whether arbitral awards reveal the truth and the expectations in that regard of parties, counsel and arbitrators. A book with the participants' written contributions was prepared in advance of the colloquium.

After a welcome by **Dirk De Meulemeester** (President, CEPANI), **Bernard Hanotiau** (Hanotiau & van den Berg) in his keynote speech probed into the philosophical underpinnings of the concept of truth in arbitration, arguing that the goal of both civil law- and common law-style proceedings is not that arbitral awards should actually correspond with reality, but that they are coherent with the evidence presented. What parties really want, Mr Hanotiau argued, is that tribunals resolve disputes in a reasonable manner that is coherent with the facts. Other factors than accuracy, such as the rules of evidence, the burden of proof, cultural factors and language will inform a tribunal's appreciation of the evidence and its view on the truth.

The first presentation dealt with the instruments available to parties in the search for the truth. **Rob Hoefnagels** (SPIE Nederland B.V.) dealt with expert evidence in construction disputes, arguing from practical experience that parties can be faced with significant difficulties when trying to measure costs of delay and disruption retroactively. **Luc Imbrechts** (Imbrechts & Van den Nest) set out the documentary instruments available to parties and explained how a paper trail during a project can be useful for its neutrality, accuracy and contemporaneity.

The second presentation concerned the instruments available to counsel in the search for the truth. **Hetty de Rooij** (BarentsKrans) explained from

practical examples how even minor untrue statements by counsel, witnesses or experts can irreparably damage counsel's credibility in the eyes of a tribunal and argued for counsel's obligation to truthfulness. **Dorothee Vermeiren** (Clifford Chance) set out and explained the advantages and limitations of various procedural instruments available to counsel and explained the particular rules governing unlawfully obtained evidence under Belgian law.

Prof **Daan Asser** (Hoge Raad (ret.), Leiden University (*em.*)) then provided a judicial perspective on the role of arbitrators in searching for the truth, drawing on basic principles of civil procedure common to Belgium and the Netherlands. Prof Asser argued that the role of arbitrators in the selection and production of evidence is limited in comparison to the role played by state courts and set out various evidentiary tools available to arbitrators in the fact finding process.

Marieke van Hooijdonk (Allen & Overy) and **Yves Herinckx** (Herinckx SPRL) gave a joint presentation on the impact of IBA guidelines and rules on the search for the truth in arbitration. They set out the various 'truth seeking' tools of the IBA Party Representation Guidelines and the IBA Evidence Guidelines, touching upon the Prague Rules initiative, counsel's duty of candour, issues encountered in document production and the use of witnesses and experts.

The closing panel discussion concerned arbitration users' expectations on searching the truth and was chaired by **Luc Demeyere** (Contrast). Broadly, the panellists agreed that while users' goal is not the actual truth, the arbitration process must impart on the users the perception of fair truth-seeking. **Patrick Baeten** (Engie) explained that users expect a tribunal to find a balance between truth-seeking and other factors. **Hamish Lal** (Akin Gump Strauss Hauer & Feld) posited as key expectations that a Tribunal can operate a Redfern schedule, can draw inferences from gaps and can weigh all evidence and see contradictions. **Vanessa Foncke** (Jones Day) focused on counsel's responsibilities in managing users' expectations. In closing, Rob Hoefnagels and the other panellists touched upon the costs and burden of arbitration to users, cultural differences and the ICC's Expedited Procedure.

In his closing remarks, **Gerard Meijer** (President, NAI) summarised the participants' contributions. He drew attention to the extended truth-searching role by extension of state courts, through which arbitral awards can enter the public sphere. He argued that the public perception of both investment and commercial arbitration is under pressure and, consequently, the arbitration community cannot afford to take a lax approach to the truth. Mr Meijer concluded that even with its limitations and exceptions, truth-searching is essential to arbitration.



NEWS

» DO ARBITRAL AWARDS REVEAL THE TRUTH?

The Reports from the third joint CEPANI-NAI colloquium of 21 March 2019 have been bundled into a book edited by **Luc Demeyere**, with contributions by the event's speakers.

The arbitral award is the outcome of arbitral proceedings during which the parties may have presented opposing facts, views and arguments. One of the main concerns of the stakeholders in these proceedings is to detect dishonesty or disinformation, but is this sufficient to establish the truth? Is the truth multifaceted or plain? After an introductory essay, a Belgian and a Dutch practitioner jointly analyse the instruments available for parties, for counsel and for arbitrators, their use and effectiveness.

For more information and to order, see the [Wolters Kluwer website](#).

» B-ARBITRA 2018/2

The latest edition of the Belgian Review of Arbitration b-Arbitra is out now. Click [here](#) to consult the table of contents. Subscriptions are available at [Wolters Kluwer](#).

» CEPANI 2018 STATISTICAL REPORT

The 2018 CEPANI Statistical Report is released. Click here to [consult](#).

VARIA

- » From 1 to 5 April 2019, **Paris Arbitration Week** will bring together the international arbitration community during a week of academic debate and professional exchange in a friendly atmosphere in the beauty of the City of Lights. With over 35 official professional and academic events, two official social gatherings accessible to all public and over 1000 participants from all over the world, the week is designed to facilitate maximum participation and provide optimal value to those taking part in it. For more information, see [here](#).
- » Op maandagnamiddag 25 april 2019 gaat een studienamiddag door over het onderwerp **ADR in de Belgische context van internationale zakelijke transacties**. Waar ADR-technieken bij conflictenregeling in de meeste sectoren van het maatschappelijke leven hun waarde bewezen wegens hun specifieke eigenheid, grote flexibiliteit en rechtlijnige procedures zal o.a. worden nagegaan of dat eveneens zo is voor zakelijke disputen, bij complexe financiële of commerciële transacties waar vaak een internationale dimensie voor bijkomende complicaties zorgt? Welke de voor deze materies de bestaande instrumenten zijn? Hoe werken ze? En de voordelen ervan zijn, en wat de valstrikken? Voor meer informatie en inschrijving, zie [hier](#).
- » Op vrijdagmiddag 28 juni 2019 wordt het **70-jarig bestaan van het Nederlands Arbitrage Instituut (NAI)** én het afscheid van zijn huidige directeur, Fredy von Hombracht-Brinkman, gevierd in Rotterdam. Vanuit diverse invalshoeken zal worden teruggeblikt op, maar vooral ook gereflecteerd over, de huidige en toekomstige positie van het NAI en de daarbij betrokken "spelers" in het veld van de alternatieve geschillenbeslechting. Een en ander zal vervolgens op feestelijke wijze worden voortgezet. Inschrijven kan via [deze link](#).
- » On Friday 10 May 2019, the **100th Anniversary of the ICC International Court of Arbitration** will take place in Geneva on the topic "*Enforcement, setting aside and related treaty claims: a view from Europe*". Several parallel events will take place in the morning and the evening will conclude with a cocktail. For the full program and information on how to register, click [here](#).
- » The EUIPO Boards of Appeal, together with the EUIPO Academy and the International Cooperation and Legal Affairs Department of EUIPO, are organising the **second IP Mediation Conference**, which will be held in Alicante on 30-31 May 2019. More information click [here](#).

Responsible publisher: D. De Meulemeester

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SAVE THE DATE



Dear colleagues and friends,

CEPANI is proud to be celebrating its 50 years of existence in 2019.

Please save the date so we can celebrate this milestone together!

The festivities will take place on November 13, 14 and 15, 2019.

THE FACTS

13 November 2019	20.00	CEPANI40 kick-off Cocktail <i>in a trendy Brussels bar</i>
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14 November 2019	09.00-14.00	CEPANI Colloquium <i>CEPANI, Brussels</i>
	14.00-17.00	Academic Session <i>BOZAR, Brussels</i>
	18.00-23.00	Gala dinner <i>BOZAR, Brussels</i>
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15 November 2019	10.00-13.00	CEPANI40 morning debate <i>Brussels</i>

Official invitation will follow.

Kind regards,

Dirk De Meulemeester,
President CEPANI

Emma Van Campenhoudt,
Secretary General CEPANI