

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



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AGENDA

4 OCT 2019	(16:00 – 18:45)	ICC YAF – Cepani 40 event on “Favor Arbitrandum: more than a motto?”
13 NOV 2019	(19:00 - 00:00)	CEPANI40 Kick-off party of CEPANI's 50th Anniversary celebrations
14 NOV 2019	(09:00 - 14:00)	CEPANI Colloquium on “L'arbitrage et les sociétés - Arbitrage en vennootschappen”
14 NOV 2019	(14:00 - 17:00)	Academic Session
14 NOV 2019	(18:00 - 23:00)	Gala Dinner in celebration of CEPANI's 50th Anniversary
15 NOV 2019	(10:00 - 13:00)	CEPANI40 morning debate on “Artificial Intelligence, Blockchains and International Arbitration - what to expect?”

REPORTS

- » [REPORT ON THE 70TH SESSION OF UNCITRAL WORKING GROUP II ON ARBITRATION AND CONCILIATION \(VIENNA 23-27 SEPTEMBER 2019\)](#)
- » [REPORT ON THE CEPANI EVENT: ‘A DISPUTE? THINK ABOUT ARBITRATION – BRUSSELS, THE EUROPEAN ARBITRATION HUB’ \(SEOUL 23 SEPTEMBER 2019\)](#)

**REPORT ON THE 70TH
SESSION OF UNCITRAL
WORKING GROUP II ON
ARBITRATION AND
CONCILIATION**

**(VIENNA 23-27 SEPTEMBER
2019)**



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For a number of years, CEPANI has participated as an observer in the activities of Working Group II of the the United Nations Commission on International Trade Law (UNCITRAL). From 23 to 27 September, a CEPANI delegation attended the 70th session of this Working Group in Vienna.

After Working Group II's successful completion of a project relating to mediation which resulted in the [Singapore Convention](#), at its fifty-first session, the UNCITRAL Commission decided to mandate Working Group II to take up issues relating to expedited arbitration. It was suggested that the work could consist of providing information on how the UNCITRAL Arbitration Rules could be modified (including by parties) or incorporated into contracts via arbitration clauses that provided for expedited procedures or in guidance to arbitral institutions adopting such procedures, in order to ensure the right balance between fast resolution of the dispute and respect for due process.

The Working Group, chaired by **Mr. Andrés Jana** (Chile) felt that the work should focus on improving the efficiency of the arbitral proceedings, which would result in the reduction of the cost and duration of the proceedings. The scope of the project was subject to discussions during the sixty ninth session in New York in February 2019.

After this initial discussion in New York, the Working Group agreed that it would first focus on establishing an international framework on expedited arbitration, without any prejudice to the form that such work might take. It was further agreed that the Working Group would then consider aspects relating to emergency arbitration, adjudication, early dismissal and preliminary determination by arbitral tribunal.



The Working Group generally agreed that it should focus on international arbitration adopting a generic approach. While the preliminary focus of the work would be on international commercial arbitration, its impact on investment and other types of arbitration would be assessed at a later stage, depending on the outcome of the work. Ahead of the session in Vienna, the UNCITRAL Secretariat prepared a [preparatory document](#) containing a number of possible draft provisions for discussion by the Working Group.

With regard to the applicability of expedited rules, discussion arose regarding the question whether there should be a presumption that the expedited arbitration rules would apply to disputes arisen after the coming into force of such rules. A concern repeatedly raised was that parties might not be aware of the existence of any new expedited rules. In this regard, the majority of delegations, including Belgium,

advocated that express consent of the parties would be necessary for expedited arbitration to apply.

The Working Group further considered which criteria could determine when expedited arbitration would apply. While it was noted that many expedited rules of arbitral institutions had in place a financial threshold which would trigger the application of expedited arbitration, doubts were expressed on whether work by UNCITRAL should include such a threshold. Doubts were also expressed on whether other criteria (for example, the characteristics of the case and relevant circumstances) could be used to determine the applicability of expedited arbitration.

During the 70th session of the Working Group this September in Vienna, the observing institutions were asked to share their experience on the determining criteria. Like CEPANI, the vast majority of the institutions all apply a financial threshold tailored to their respective markets. For obvious reasons it would be virtually impossible to agree on a general amount for all the Member States, as the amounts currently applied in the different States varied from US\$100.000 up to US\$ 6.000.000. One possible solution would be for the parties to agree on their own threshold in the same manner as they agree on other aspects of the arbitration, such as the applicable law and the seat of arbitration.

As to the number of arbitrators, most Member States agreed for 1 arbitrator to be the default rule, notwithstanding the possibility of 3 arbitrators when agreed upon by both parties or when the complexity of the case would require an arbitral tribunal composed of 3 arbitrators.

Who appoints the arbitrator? The delegations generally agreed for parties to appoint the arbitrator. However, if they cannot come to an agreement within a certain time frame (e.g. after 15 days), an appointing authority should have the power to do so. The ICC shared its experience stating that only in 18 out of 69 cases in the context of expedited proceedings, the arbitrator was appointed by the parties.

Next, the debate turned to the time period between the different stages. Most delegations advocated a general time limit. Regarding the question whether a hearing should be the default rule or should be avoided, the Member States pointed out the positive effect on efficiency a hearing can have.

Finally, with regard to the rendering of the award, as currently drafted, the provision foresees for the arbitral tribunal to state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons have to be given. This final part of the provision received criticism, also from CEPANI, clarifying that, as is the case in most other rules, CEPANI Rules require every arbitral award to provide reasons, also in emergency arbitration or in expedited cases (Art. 22(1) of the Expedited Rules). One of the reasons being that absence of reasons is a ground for setting aside under Belgian law.



Throughout the debates due process paranoia – i.e. user criticism that arbitral tribunals sometimes fail to take robust decisions in situations where due process is not actually at stake out of fear for setting aside – played a central role in revising the different provisions. A further recurring question was how to address the absence of an arbitral institution in an ad hoc framework such as the UNCITRAL Arbitration Rules.

Finally, on early dismissal and preliminary determination, after having heard the different views, the Chair considered this subject could benefit from additional information on the use of such tools in international arbitration and domestic court

practice leaving the delegations some homework for the next session, which will be held in New York in February 2020.

For more information on the activities of UNITRAL Working Group II, see [here](#).

**REPORT ON THE CEPANI
EVENT: 'A DISPUTE? THINK
ABOUT ARBITRATION –
BRUSSELS, THE EUROPEAN
ARBITRATION HUB'**

(SEOUL, 23 SEPTEMBER 2019)



Cédric Alter
Partner
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CEPANI went Gangnam style

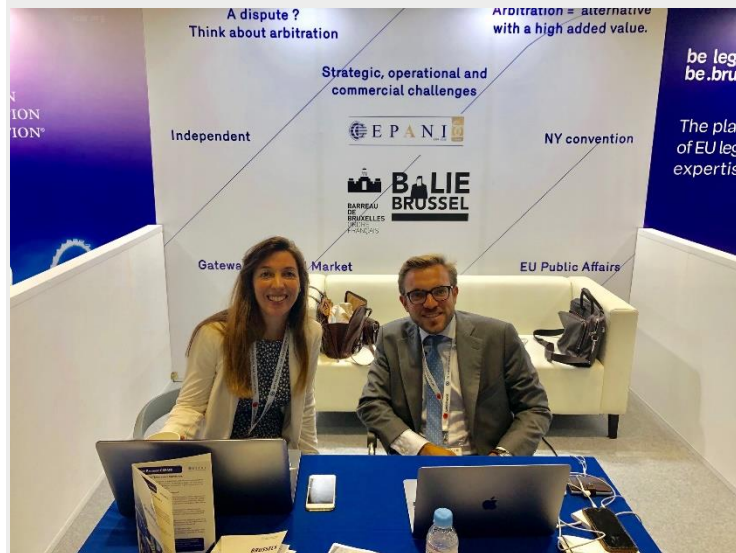
On 23 September 2019, during the International Bar Association (IBA) annual conference in Seoul, the business-support agency of the Brussels-Capital Region (hub.brussels) and CEPANI jointly organized a seminar & networking dinner to promote Brussels and CEPANI under the title 'A dispute? Think about arbitration – Brussels, the European Arbitration Hub'.

After some welcome words by **Mr. Victor Dulait** (Area Manager East Asia at hub.brussels), a presentation was given on this topic by **Mr. Peter Callens**, in his capacity of President of the Brussels Bar (Dutch language section) and board member of CEPANI.



The presentation included the following topics: what is special about Belgium in general and Brussels in particular, new legal framework (judicial code and CEPANI rules), no distinction between national and international arbitration, arbitration institute with tradition (you know which one I am talking about).

No details were omitted, including the glass of beer and the chocolate, and a very convincing case was made by Mr. Callens in front of an audience with Korean practitioners and businessmen, as well as some well-known colleagues who made the trip to Seoul.



It is worth mentioning that in addition to this event, both CEPANI and the Brussels bar (**Ms. Isabelle Andoulsi** and **Mr. Pierre-Yves Thoumsin**), as well as hub.brussels (Mr. Victor Dulait), were present through the entire duration of the conference at dedicated corners in the main hall of the conference, giving a strong visibility to our country.

Well done Belgium!

» REGISTRATION CEPANI'S 50TH ANNIVERSARY CELEBRATIONS STILL OPEN



CEPANI will celebrate its 50th anniversary on 13, 14 and 15 November 2019.

It is important to celebrate this half-century of existence, which has seen CEPANI establish itself as the main arbitration centre in Belgium, and gain a steady reputation and respect on the national and international stage.

This is a wonderful occasion to commemorate the achievements of CEPANI over the last 50 years and to thank all the people who have pursued them. It is also an opportunity to think about the future of CEPANI and the challenges it will encounter in the next 50 years.

For more information and registration, check www.cepani50.be

CEPANI viert in 2019 haar 50ste verjaardag.

Het is belangrijk om deze halve eeuw te vieren, waarin CEPANI zich tot het belangrijkste arbitragecentrum van België heeft ontwikkeld en een gerenommeerd en gerespecteerd centrum op het nationale en internationale toneel.

Dit evenement zal de gelegenheid zijn om de verwezenlijkingen uit het verleden in herinnering te brengen, alsook de verschillende personen dankzij welke CEPANI zich heeft kunnen ontwikkelen te bedanken, alsook om een blik te werpen op de toekomst.

Voor meer informatie en inschrijving, check www.cepani50.be

Le CEPANI fêtera en 2019 son cinquantième anniversaire.

Il est apparu important de fêter ce demi-siècle d'existence, qui a vu le CEPANI s'imposer comme le centre d'arbitrage le plus important en Belgique et comme un centre renommé et respecté sur la scène européenne et internationale.

Cet événement sera l'occasion de se remémorer les acquis du passé et de remercier chaleureusement les différents acteurs qui ont permis au CEPANI de se développer, mais également et surtout de se tourner vers le futur.

Pour plus d'informations et enregistrement, visitez www.cepani50.be

» B-ARBITRA 2019/1

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.

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