



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



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AGENDA

13 NOV 2019	(19:00 - 00:00)	CEPANI40 Kick-off party of CEPANI 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 of CEPANI 50th anniversary
15 NOV 2019	(10:00 - 13:00)	CEPANI40 morning debate on "Artificial Intelligence, Blockchains and International Arbitration - what to expect?"

REPORTS

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**REPORT ON THE ICC YAF -
CEPANI 40 CONFERENCE:
FAVOR ARBITRANDUM: MORE
THAN A MOTTO?**

(BRUSSELS 4 OCTOBER 2019)



Benedicte Melot
Associate
Quinz, Vilvoorde

To kick off October 2019, ICC YAF and CEPANI40 organized an evening conference at Loyens & Loeff Brussels on the concept of *Favor Arbitrandum*. As interesting as its name sounds barbaric, the topic was brilliantly exposed to an audience of ca. 35 arbitration practitioners by keynote speaker **Olivier Caprasse**. Mr. Caprasse was accompanied by four panellists who touched upon specific aspects of *Favor Arbitrandum*: Jasmine Rayée (Loyens & Loeff Brussels), Marily Paralika (Fieldfisher Paris, ex counsel ICC), Clément Fouchard (Reed Smith Paris) and Benjamin Siino (Shearman & Sterling Paris).

Favor Arbitrandum refers to the “pro-arbitration bias”, or, put more simply, the attitude aimed at facilitating dispute resolution through arbitration, or more specifically at facilitating smooth conduct of arbitration proceedings once started. Mr. Caprasse distinguished these two levels, analysing first the principle of “*Favor Arbitrandum and Arbitration*”, and second the principle “*Favor Arbitrandum within Arbitration*”. As to the *first*, Mr. Caprasse developed several examples of how lawmakers, arbitrators, parties and counsel (can) favour arbitration in specific situations. As to the *second*, Mr. Caprasse outlined three specific illustrations on how to search for efficiency in arbitration proceedings once started. Among these, he gave the audience some tips and tricks on how to solve issues related to conflicting concerns in the process. These included the importance of transparency and relevance of making the right choices when shaping the conduct of arbitration proceedings. Regarding transparency for example, Mr. Caprasse namely exposed his views on conflicting concerns regarding awards publication, as well as the procedure leading to the appointment of the arbitral tribunal. The main take-away of the first part of this conference can be summarised as follows: even though arbitration is not the panacea, the flexibility it offers – especially in international contexts – is usually a good reason to keep the path leading to it wide open. Therefore, it is key that parties, counsel and

arbitrators develop a conscious attitude favouring arbitration before, during and after the arbitration process.



The panellists then each detailed specific situations where arbitration actors can (and should) apply *Favor Arbitrandum*. *First*, Ms. **Jasmine Rayée** talked about the pro-arbitration approach of third parties (e.g. state courts) when reviewing the validity of arbitral agreements. She elaborated on how a jurisdiction’s attraction power for arbitration highly depends on local legislation and its interpretation. *Second*, Ms. **Marily Paralika** examined the role arbitral institutions can play in facilitating arbitration. As member of the ICC, she stressed the importance for these institutions both to safeguard integrity of the process and to address the needs of users in order to establish their trust in the legitimacy of that process. *Third*, Mr. **Clément Fouchard** addressed the importance of *Favor Arbitrandum* in the conduct of proceedings *sensu stricto*. In doing so, he outlined some tensions that can exist between arbitrators and judges or between arbitrators and parties, and how one shall try to blunt them, aiming at facilitating an efficient process. *Finally*, Mr. **Benjamin Siino** concluded this stimulating evening conference by analysing the principle of *Favor Arbitrandum* under the New York Convention, herewith providing the audience with useful insights on how to apply *Favor Arbitrandum* in the execution of arbitral awards.

The conference ended by an informal networking drink, during which speakers and participants pursued interesting debates regarding questions raised during the conference, but also general discussions regarding activities of ICC YAF and CEPANI40. Thank you all!

**REPORT ON THE DUTCH
ARBITRATION DAY**

**(AMSTERDAM, 10 OCTOBER
2019)**



Guillaume Croisant
Associate
Linklaters, Brussels

The Dutch Arbitration Association held its seventh annual conference on 10 October 2019, at the Hermitage Museum. This year’s event focused on the “*Challenges and Opportunities in a new Decade: The Impact of the Changing Legal and Political Landscape on Arbitration*”.

The day started with a very enriching diversity networking breakfast, where **Thomas Stouten** (Counsel, Houthoff, Rotterdam) moderated a panel on “Implicit bias, diversity and inclusiveness within the arbitration community”, composed of **Lisa Bingham** (Legal Counsel, Permanent Court of Arbitration), **Jan de Houwer** (Professor at Ghent University, Department of Experimental-Clinical and Health Psychology) and **Marily Paralika** (Partner, Fieldfisher, Paris)



After a few words of introduction of **Natalie Vloemans** (President of the Dutch Arbitration Association, partner at Ploum, Rotterdam), the two keynote addresses were delivered by **Lord Mance** (Barrister, 7 King’s Bench Walk, London) and **Stephen Jagusch QC** (Partner, Quinn Emanuel Urquhart & Sullivan, London) before a full house of around 200 attendees, many coming from abroad. Lord Mance discussed the convergences and divergences of arbitration and court litigation, following his return to the world of arbitration after his tenure as Deputy President of the Supreme Court, whilst Stephen Jagusch QC made an outspoken and thought-provoking presentation of what he considers the “Right, the Wrong and the Ruinous” of contemporary international arbitration.

The keynote addresses were followed by a presentation by **Rogier Schellaars** (Partner, Van Doorne, Amsterdam) of the results of an empirical survey on “The Dutch view on arbitration as a means of dispute resolution” (described as the Dutch version of the well-known Queen Mary and White & Case survey), which concluded that arbitration is by far the favourite dispute resolution mechanism for international disputes, whilst Dutch courts are favoured for domestic ones.

The morning sessions ended with a panel discussion between, **R.A. Dudok van Heel** (Senior Judge of the Amsterdam District Court and the Netherlands Commercial Court, Amsterdam), **Françoise Lefèvre** (Partner at Linklaters, Brussels) and **Niek Peters** (Partner at Cleber, Amsterdam), led by **Adam Badawi** (Professor at UC Berkeley). This lively session was an excellent opportunity for the audience to hear about the handling of the first cases by the recently set up Netherlands Commercial Court. The Belgian lawyers were reminded that the timeline of a potential creation of a Brussels International Business Court was as foggy as the Brexit one, which is perhaps no coincidence as one of the main rationales for this proposed new court was to attract Brexit-related disputes...

After the traditional lunch cruise on the Amsterdam canals, the afternoon was launched by a second panel discussion, on the challenges and opportunities that investment courts may bring to investment arbitration. The panel, moderated by **Gabriel Bottini** (Partner, Uría Menéndez, Madrid), was composed of **Matthias Kuscher** (Partner, De Brauw Blackstone Westbroek, Amsterdam), **Chin Leng Lim** (Professor at The Chinese University of Hong Kong and Barrister, Keating Chambers,

London), **Margaret Clare Ryan** (Counsel, Shearman & Sterling, London) and **Jeff Sullivan** (Partner, Gibson, Dunn & Crutcher, London).

The participants could then choose among three break-out sessions. The first one, on enforcement of arbitral awards against states and state immunity: international developments and recent case law, was animated by **Hannah van Roessel** (Director and Senior Legal Counsel, Omni Bridgeway, Amsterdam), **Hakim Boularbah** (Partner, Loyens & Loeff, Brussels), **Monica Feria-Tinta** (Barrister, Twenty Essex, London), **Gerard Meijer** (Partner, Linklaters, Amsterdam, and President of the Executive Board of the Netherlands Arbitration Institute), and **Freerk Vermeulen** (Partner, NautaDutilh, Amsterdam). The second panel – composed of **Melanie van Leeuwen** (Partner, Derains & Gharavi, Paris), **Daniel Cooper** (Partner, Covington & Burling, London), **Kim Lucassen** (Partner, Loyens & Loeff, Rotterdam) and **Kathleen Paisley** (Partner, Ambos NBGO, Brussels) – discussed the protection of personal data in arbitration in light of the GDPR. The participants could also enjoy an art tour of the collections of the Hermitage.

Finally, **Gerard Meijer** briefly introduced **Camilla Perera-de Wit**, the new Secretary-General of the Netherlands Arbitration Institute.

The day was concluded with sparkle and wit by a dissenting opinion of **Boom Chicago**, a well-known Amsterdam comedy troupe.

NEWS

» 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

» **SAVE THE DATE: CEPANI40 WILL HOST THE FOURTH GLOBAL CONFERENCE OF THE CO-CHAIRS' CIRCLE ON 4TH AND 5TH JUNE 2020!**

CEPANI40 has won the bid to host the Fourth Global Conference of the Chairs' Circle (the "CCC Global Conference").

The CCC Global Conference is an international arbitration conference organized as a joint effort by 38 groups of young arbitration associations from around the world. Its aim is to bring the future generation of arbitration practitioners together in order discuss current topics in the field and give them the opportunity to expand their professional network. The first three editions of the CCC Global Conference proved to be a tremendous success, with attendance by more than 200 practitioners.

After Berlin (2014), in Helsinki (2016) and in Rome (2018), the fourth edition will take place in Brussels on 5th and 6th June 2020. Save the date and keep posted... More info will follow soon!

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