

CEPANI



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



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## AGENDA

3-7 FEB 2020	(00:00 - 00:00)	CEPANI delegation in New York for Working Group II UNCITRAL
4 JUN 2020	(16:00 - 19:00)	CEPANI General Assembly
5-6 JUN 20120	(00:00 - 00:00)	CCC Global Conference

## REPORTS

- » [CEPANI'S 50TH ANNIVERSARY: REPORT ON THE MORNING COLLOQUIUM ON "L'ARBITRAGE ET LE DROIT DES SOCIETES – ARBITRAGE EN VENNOOTSCHAPPEN"](#)
- » [CEPANI'S 50TH ANNIVERSARY: REPORT OF THE AFTERNOON ACADEMIC SESSION](#)
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CEPANI'S 50TH ANNIVERSARY:

REPORT ON THE MORNING  
COLLOQUIUM ON  
"L'ARBITRAGE ET LE DROIT  
DES SOCIÉTÉS – ARBITRAGE  
EN VENNOOTSCHAPPEN"

(BRUSSELS, 14 NOVEMBER  
2019)



Claire Larue  
Associate  
Loyens & Loeff, Brussels

The day after a great Kick-off party that would have made Gatsby green with envy, CEPANI's 50th anniversary celebrations began, in a more serious way, with a very interesting colloquium on the theme "L'arbitrage et les sociétés – Arbitrage en vennootschappen".

The colloquium opened with a word from the President of the CEPANI, **Dirk De Meulemeester**, who introduced Professor Doctor Emeritus **Guy Keutgen**, honorary president of the CEPANI, who presided the colloquium.

As an introduction, **Didier Matray** (Matray Matray & Hallet) explained the benefits of arbitration for the resolution of corporate law disputes, including the advantages of provisional measures and emergency arbitration and shared ideas from our German neighbours. Next, the first keynote speakers **Stan Brijs** and **Karen Paridaen** (NautaDutilh) discussed the issue of the arbitrability of company law disputes (occurring at the incorporation, operation or dissolution stages). Mr. Brijs and Ms. Paridaen addressed the issues posed by the introduction of a black list in the Code of Economic Law by the Law of 4 April 2019 (the B2B Law) which, among others, lists as abusive any clause intended to "cause the other party to renounce any means of recourse against the company" and by the unfortunate wording of the legislator who interpreted this provision in the preparatory works as also referring to arbitration clauses. Both speakers further pointed out that legal doctrine and scholarly articles were more needed than ever to challenge the legislator's at times unfortunate choice of words.

The colloquium continued with a presentation by **Olivier Caprasse** (Olivier Caprasse law firm) regarding the arbitration agreement in company law. Mr. Caprasse began his speech by presenting some issues concerning disputes "with" companies, namely (i) the situation of groups of contracts and (ii) the question whether companies in a group are all bound by an arbitration clause accepted by one of them. Mr. Caprasse then tackled issues in relation to disputes "within" a company, namely the wording of the arbitration clause and the place where the clause needs to be inserted (articles of association, etc.).

CEPANI'S 50TH ANNIVERSARY:

REPORT ON THE AFTERNOON  
ACADEMIC SESSION

(BRUSSELS, 14 NOVEMBER  
2019)



Quentin Declève  
Associate  
Van Bael & Bellis, Brussels

On 14 November 2019 in the afternoon, as part of the celebrations for its 50th anniversary, CEPANI organized an academic session at BOZAR where legal arbitration experts from various arbitral institutions gathered to discuss the key similarities and differences between arbitral institutions regarding (i) the appointment of emergency arbitrators; (ii) the composition of arbitral tribunals; (iii) the conduct of arbitration; (iv) expedited proceedings; (v) scrutiny and control of arbitral awards; and (vi) costs. The discussion was moderated by **Mr Andrea Carlevaris** (BonelliErede).



After a short coffee break, **Patrick Van Leynseele** and **Charline Ampe** (Daldewolf) took the floor for the third presentation, discussing how to apply the different means available to settle company law disputes. Their presentation addressed in particular the new Company and Association Code, Articles 1731 et seq. of the Judicial Code and the role of mediators.

Next was a presentation from **Didier Leclerc** (BDO Legal) and **Sophie Goldman** (Tossens Goldman Gonne) on selected issues in post-acquisition arbitrations. They started by exposing the recurrent problems regarding buyer's information and establishment of seller's fraud. Next they tackled the issues surrounding guarantee clauses and determination of damages. They concluded their presentation with a brief overview of some procedural issues, including the specificities of presenting evidence and evaluating damages in arbitration.

The colloquium ended with a final address by the Vice-President of the CEPANI, Professor **Philippe Lambrecht**, highlighting the flexibility of the new Company and Association Code and the (long-awaited) changes it has brought.

This thoughtful morning ended with a well-deserved traditional walking lunch before continuing with the afternoon program.

First, on the issue regarding the appointment of emergency arbitrators, **Ms Annette Magnusson** (Secretary General of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC)) highlighted the fact that, while the notion of emergency arbitrator is now perceived as something normal, it was originally seen as a threat to the regular arbitration proceedings. She also emphasized that, as a rule, the SCC seeks to appoint an emergency arbitrator within 24 hours of receiving the application and any emergency decision on interim measures shall be made not later than 5 days from the date upon which the application was referred to the emergency arbitrator.

Secondly, the panel discussed the issues regarding the composition and constitution of arbitral tribunals. To this end, **Mr Dirk De Meulemeester** (President of CEPANI) explained CEPANI's Appointing Committee's role in scrutinizing the disclosures made by potential arbitrators.



Thirdly, the panellists discussed various issues regarding the conduct of arbitration proceedings. More particularly, the panel discussed the question of whether arbitral institutions were allowed to administer arbitration cases under other rules than their own. On this point, **Ms Irene Welser** (Board member of the Vienna International Arbitration Centre (VIAC)) emphasized the fact that, contrary to the CEPANI arbitration rules, VIAC is entitled to administer cases conducted pursuant to other rules than the Vienna Rules (unless those proceedings would deviate fundamentally from the Vienna Rules). She further explained that the possibility offered to VIAC to administer cases conducted pursuant to other rules than the Vienna Rules allows flexibility and is a useful tool to maintain the coherence of defective arbitration clauses.

Fourth, **Mr Viktor von Essen** (Deputy Secretary General of the German Arbitration Institute (DIS)) discussed the ways expedited proceedings were being managed and organized. Ms Annette Magnusson (SCC) further emphasized that if the parties opt to use expedited proceedings, they must accept that "the costume is tighter than the regular proceedings" and that not all the elements of traditional arbitration (such as document production or witness statements) are available in such expedited proceedings.

Fifthly, commenting on the inclusion, in the 2020 new CEPANI rules, of a mandatory scrutiny mechanism for arbitral awards, **Mr Marc Henry** (President of the Association Française d'Arbitrage) highlighted that only half of the arbitral institutions in the world provided for such mechanism in their arbitration rules. He also stressed that the fact that an arbitral institution offers such mechanism does not appear to be a key criterion when parties select a particular arbitral institution to administer their case.

Finally, on the issue of costs, **Mr Gerard Meijer** (President of the Netherlands Arbitration Institute (NAI)) noted that costs vary among arbitration institutions but that those costs depended upon the services offered by each arbitral institution.

The academic session was then concluded with a short presentation, by **Benoît Kohl** (Stibbe/University of Liège) and **Maxime Berlingin** (Fieldfisher) of the [Liber Amicorum](#) edited on the occasion of the CEPANI's 50th anniversary, and by a presentation of the special edition of [b-Arbitra](#) by **Jean-François Tossens** (Tossens Goldman Gonne) and **Annet van Hooft** (Van Hooft Legal).

**CEPANI'S 50TH ANNIVERSARY:**

**GALA DINNER AT BOZAR**

**(BRUSSELS, 14 NOVEMBER 2019)**



On the evening of 14 November 2019, CEPANI organized a Gala Dinner in one of the most iconic building in Brussels, the Bozar, designed by the famous Belgian architect Victor Horta. The event was attended by more than 230 arbitration and ADR practitioners from Belgium and abroad.

The Gala started with a cocktail reception and was followed by a sumptuous diner accompanied by live music. Mr. **Dirk De Meulemeester**, the President of CEPANI, delivered a hilarious speech – to the level of some of the best White House correspondents' dinner speeches – made of anecdotes on the CEPANI's most legendary members and tributes to the CEPANI's management team, stressing the organizational skills (and Spartan text messages) of Ms. **Emma Van Campenhoudt**, CEPANI's Secretary General and the linchpin behind the flawless orchestration of the celebrations.

During the dinner, some of the most prominent figures of CEPANI, Prof. **Guy Keutgen**, honorary President, Prof. **Bernard Hanotiau**, honorary Vice-President

and Ms. **Vanessa Foncke**, former co-chair of CEPANI 40, addressed the audience to share their finest memories.

The night of 14 November 2019 will surely be remembered as one of the most enchanting gathering of arbitration and ADR specialists under the shining stars of the capital of Europe



The pictures of the Gala Dinner will be posted shortly on CEPANI's website.

A video report of the 14 November Gala Dinner can already be accessed through [this link](#).

## CEPANI'S 50TH ANNIVERSARY:

### REPORT ON THE CEPANI 40 MORNING DEBATE ON ARTIFICIAL INTELLIGENCE, BLOCKCHAIN AND INTERNATIONAL ARBITRATION – WHAT TO EXPECT ?

(BRUSSELS, 15 NOVEMBER 2019)



Nathan Tulkens  
Avocat - Advocaat  
Clifford Chance LLP, Brussels

To close the celebrations for the 50th anniversary of CEPANI, Stibbe's Brussels office hosted a CEPANI 40 morning debate on a highly enticing and hot topic: *Artificial Intelligence, Blockchain and International Arbitration – What to Expect ?*

A generous breakfast and a foggy morning view from the 13th floor of the Central Plaza building awaited the enthusiastic participants after the memorable gala dinner of the preceding night at Bozar.

After a word of welcome by **Nicolas Résimont** (Stibbe) and introductory remarks by **Sophie Goldman** (Tossens Goldman Gonne), a brilliant keynote speech was given by **Sophie Nappert** (3VB), enabling everyone in the room to share the same basic concepts and thus setting the ground for the panel discussions that followed. Ms. Nappert insisted on the fact that the impact of new technologies, such as AI and blockchain, on international arbitration is not a matter of the future but very much of the present and that it cannot simply be ignored by practitioners given that it questions some of the core values of international arbitration. She also introduced the audience to Kleros, an online dispute resolution protocol which uses blockchain and crowdsourcing to adjudicate disputes and which claims to bring "*justice for the unjusticed*", just as Bitcoin brought "*banking for the unbanked*". In a nutshell, Kleros is a decentralised court system allowing arbitration of smart contracts by crowdsourced jurors relying on economics incentives. It has the ambition to become a proxy for arbitration in a range of contractual disputes, from very simple to highly complex ones.

A captivating panel debate then kicked off. Next to Sophie Nappert, the panel was composed of **Clément Lesaege** (CTO of Kleros), **Gauthier Vannieuwenhuysse** (Hogan Lovells) and **Niuscha Bassiri**, (Hanotiau & van den Berg), acting as moderator.

Each of the panelists shared their views on the interplay that should take place between new technologies and international arbitration and answered questions from the audience, often sparking heated reactions. Mr. Lesaege provided useful explanations on the functioning of Kleros, while Mr. Vannieuwenhuysse translated some of the key concepts into layperson's terms, or should I say lawyer's terms. The exchanges were brilliantly steered by the moderator, Ms. Bassiri, who did not hesitate to step in at times to redirect the debate or to provide her own opinion.

A key take-away came from Ms. Nappert who stressed the need for strengthened communication channels between international arbitration practitioners and experts in new technologies, to the benefit of all actors involved and to help extend the limits of the current construct of international arbitration.



The morning debate ended with closing remarks and acknowledgments by **Benoit Kohl** (Stibbe) and **Sigrid Van Rompaey** (Matray, Matray & Hallet), followed by a pleasant walking lunch during which the audience had the opportunity to prolong the discussion with the speakers in smaller circles. Many thanks to all attendees!

## NEWS

### » 50<sup>TH</sup> ANNIVERSARY EVENTS PICTURES AND VIDEOS

The pictures of the 50th anniversary events will soon be made available on the CEPANI website.

A video report of the 14 November 2019 academic sessions and of the Gala Dinner can already be accessed through [this link](#).

The video report on CEPANI's history – which was showcased during the academic session and during the Gala Dinner – can be accessed through [this link](#).



» **WOLTERS KLUWER OFFERS 30% PROMOTION**

To celebrate CEPANI's 50<sup>th</sup> anniversary, Wolters Kluwer offers all CEPANI members an exclusive discount on ALL Kluwer Law International book publications.

The bespoke promotional code 'CEPANI2019EOY' shall apply a 30% discount on any order\* from the International market segment of the Wolters Kluwer [eStore](#) and is valid until December 31st 2019.

IMPORTANT: A price increase to the older (per 2018) titles is due to go into effect on 1st January 2020. To avoid disappointment and to make budgets go further, please order now.

Please note: the reduction is \*not valid on Visser's Annotated European Patent Convention, 2019 edition, ISBN 9789403518848.

» **SIGNATURE OF A COOPERATION AGREEMENT CEPANI / SCMC**

On November 20, 2019 The Belgian Centre for Arbitration and Mediation CEPANI, represented by its Board member Mr. Marc Dal, and Ms. Wei Zhang, Director of The Shanghai Commercial Mediation Centre (SCMC), signed a cooperation agreement enabling the two organizations to become more closely involved. Both institutions are convinced that the use of commercial arbitration, mediation and other forms of alternative dispute resolution through fair and expeditious procedures lends confidence and stability to international trade. The co-operating institutions have therefore pledged to cooperate in the advancement of arbitration, mediation and other forms of alternative dispute resolution as a means of settling disputes arising out of international commercial transactions.



» **SAVE THE DATE: CEPANI40 WILL HOST THE FOURTH GLOBAL CONFERENCE OF THE CO-CHAIRS' CIRCLE ON 5<sup>TH</sup> AND 6<sup>TH</sup> 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!

## VARIA

- » On 12 December 2019, NAI and Young NAI will hold their annual **end of the year event**, which is aimed at bringing together Dutch and international arbitration practitioners. This year, a panel of experts will explore whether it is prudent to modify the NAI Arbitration Rules to reflect the possibility of expedited proceedings, as an additional option to other current tools on offer that allow for parties to resolve their disputes quickly and efficiently. The panel of Dutch and international speakers will discuss the topic from different angles (e.g. private practitioner, in-house counsel, academic, arbitrator). For more information, see [here](#).

**Responsible publisher:** D. De Meulemeester

**Editorial board:** G. Keutgen, S. Van Rompaey, M. Berlingin, P. Callens, G. Coppens, M. Dal, M. Draye, V. Foncke, S. Goldman, C. Price, E. Stein, P. Wautelet.