Editors in chief: Maxime Berlingin, Maarten Draye, Sophie Goldman and Sigrid Van Rompaey

AGENDA

9 NOVEMBER 2016	(13:00-18:30)	CEPANI ADR Academy: Second Class on "specific issues on mediation"
2 DECEMBER 2016	(10:00-15:30)	Colloque Francarbi "Regard croisés sur le principe du contradictoire"
9 DECEMBER 2016	(13:00-18:30)	CEPANI ADR Academy: Third Class on "the A in ADR"
13 DECEMBER 2016	(14:00-17:30)	Colloquium "Arbitration meets the Competition Authorities"
12 JANUARY 2017	(09:00-17:00)	La Stratégie dans l'Arbitrage International/ De Strategie in Internationale Arbitrage
9 MARCH 2017	(14:00-19:00)	Third Party Funding in Arbitration

REPORTS

» REPORT ON UNCITRAL'S 65TH SESSION ON A UNIFORM LAW INSTRUMENT ON THE ENFORCEABILITY OF COMMERCIAL SETTLEMENT AGREEMENTS RESULTING FROM CONCILIATION (WORKING GROUP II: ARBITRATION AND CONCILIATION)

» REPORT ON THE ICC COMMISSION ON ARBITRATION AND ADR MEETING IN WASHINGTON

» COMPTE-RENDU SUR LE DÉJEUNER DEBAT AVEC LE PROF. JACQUES HERBOTS: « ARBITRAGE EN CHINE »

» REPORT ON THE DUTCH ARBITRATION DAY ON "QUALITY CONTROL IN INTERNATIONAL ARBITRATION"

REPORT ON UNCITRAL'S 65TH SESSION ON A UNIFORM LAW INSTRUMENT ON THE ENFORCEABILITY OF COMMERCIAL SETTLEMENT AGREEMENTS RESULTING FROM CONCILIATION (WORKING GROUP II ARBITRATION AND CONCILIATION)

Maryam Salehijam
LL.M., Ph.D. Candidate
(University of Ghent)

The WG II continued its works on the preparation of an instrument on the enforcement of international commercial settlement agreements (iCSAs) resulting from conciliation.

In its 65th session, the WG II worked for two weeks towards developing an instrument addressing the enforceability of conciliated settlement agreements. Although no consensus was reached, there was an agreement amongst the delegates that there is a need for an instrument; whether it be in form of a model law or a convention. The main obstacles standing in the way of a consensus relate to the contrasting national approaches to the enforcement of the iCSA and status of mediation/conciliation within the different jurisdictions and legal cultures.

There is a clear divide amongst those States with flexible systems of law and those that function on the basis of detailed statutes. While the latter favour a flexible approach to the issue of formal validity and defences, the former are firm on the need for clear form requirements (e.g. the iCSA must be in writing, signed, etc.) and strict defences that go as far as providing for unenforceability on the basis of the third party neutral's conduct.

It will be a challenge for the WG II to come to a consensus in light of the above differences, not only regarding the form of the proposed instrument,

but also aspects such as formal validity and defences, as these aspects reflect a State's core contract law principles. It is to be seen during the next WG II meeting scheduled for February 2017 in New York.

The CEPANI was represented at the 65th session of UNCITRAL's Working Group II in Vienna by Vanessa Foncke, Sigrid Van Rompaey, Maarten Draye, Dirk De Meulemeester, and Maryam Salehijam.

REPORT ON THE ICC COMMISSION ON ARBITRATION AND ADR MEETING IN WASHINGTON

Yves Herinckx
Lawyer at the Brussels Bar (Herinckx)

The ICC Commission on Arbitration and ADR held its latest semi-annual meeting in Washington DC on Saturday 17 September 2016. The time and location were, as usual, aligned on the Annual Conference of the International Bar Association which started the next day for a week in the same town.

The Belgian National Committee of the ICC was represented by a delegation of six members – all of them also members of the CEPANI, and including CEPANI's President Dirk De Meulemeester.

The main subject of discussion of the day was the proposal by the ICC Court to insert in its Arbitration Rules a set of "Expedited Rules for Small Claims": claims up to $2,000,000 would in principle be dealt with by a sole arbitrator, without terms of reference, without a hearing, without examination of witnesses or experts, and within a time limit of six months. Alexis Mourre, the President of the Court, explained that the proposal was driven by a strong demand from many users, especially in Asia, for shorter and cheaper procedures in low-stakes disputes.

The proposal gave rise to a lively debate. Most participants were very supportive of the idea generally. At the same time, many remarks were expressed about specific points. The Court will consider the comments made during the debate and expects to finalise the Expedited Rules in time for their entry into force on 1 January 2017.

The day also included reports by the President of the Court and the Secretary General, Andrea Carlevaris, about the activities of the Court and the Secretariat. James Nicholson reported on the activities of the Centre for ADR. Victoria R. Orlowski presented a proposed revision of the rules of ICC as appointing authority in UNCITRAL or other *ad hoc* arbitration proceedings. The final report of the Task Force on International Arbitration and Financial Institutions was approved by the full Commission.

The next meeting of the Commission will take place in Paris on 25 April 2017.

COMPTE-RENDU SUR LE DÉJEUNER DEBAT AVEC LE PROF. JACQUES HERBOTS: « ARBITRAGE EN CHINE »

Gautier Matray,
Avocat au barreau de Bruxelles (Matray, Matray & Hallet)

L'empire du milieu est plein de contrastes. Historiquement on a pu déceler dans la culture chinoise une forme de réticence à recourir aux procès.

L'Empereur Kang-hsi aurait même fait en sorte que les cours et tribunaux soient aussi mauvais que possible afin que ses sujets tentent de résoudre leurs différends par la voie de l'arbitrage. Mais curieusement, l'arbitrage tel que nous le connaissons en Europe n'a véritablement fait son apparition en Chine que dans les années 50.

Comme toujours lorsqu'il est question de statistiques, la Chine ne manque pas d'étonner. Plus de 200 institutions d'arbitrage sont actives sur le territoire. Et la principale, la CIETAC, a enregistré 1.435 nouvelles affaires en 2011, dont 470 à caractère international. Un chiffre supérieur à celui dont font état des institutions d'arbitrage aussi reconnues que la *Cour internationale d'arbitrage de la Chambre de commerce internationale*, la *London Court of International Arbitration*, ou encore l'*American Arbitration Association*.

Même si la tendance semble bien être en faveur d'un rapprochement vers les principes admis par les législations occidentales modernes, l'arbitrage en Chine présente encore quelques différences marquées. La tradition confucianiste amène ainsi les arbitres à rendre plus fréquemment des sentences fondées sur l'équité et à endosser volontiers le rôle de médiateur pendant la procédure d'arbitrage.

Si la distinction entre l'arbitrage interne et l'arbitrage international n'est pas neuve, le droit chinois se distingue en ce qu'il contient une classe

intermédiaire : l'arbitrage ayant une dimension internationale (« *foreign-related arbitration* »).La loi chinoise sur l'arbitrage contient une obligation de désigner une institution d'arbitrage. Dès lors, la validité d'une convention d'arbitrage prévoyant un arbitrage *ad hoc* ne devrait pas être reconnue sur le territoire.

Par ailleurs, un tribunal arbitral ayant son siège en Chine n'est pas habilité à statuer sur sa propre compétence. Cette question est du ressort de l'institution d'arbitrage ou des cours et tribunaux étatiques. Enfin, le tribunal arbitral ne dispose pas du pouvoir d'ordonner des mesures provisoires et conservatoires.

Certains cas de refus d'exécution de sentences arbitrales internationales défavorables à des entreprises chinoises ont pu refroidir l'enthousiasme de certains pour l'arbitrage en Chine. Les choses vont toutefois en s'améliorant.

La Chine est signataire de la Convention de New York pour la reconnaissance et l'exécution des sentences arbitrales étrangères. En outre, des conventions particulières ont été conclues avec Hong Kong et Macau afin que les sentences rendues dans ces régions administratives spéciales bénéficient d'un statut similaire à celui découlant de la Convention de New York.

« *Apprendre sans réfléchir est vain ; réfléchir sans apprendre est dangereux* » disait Confucius. La clarté de l'exposé (trilingue), l'intérêt des problématiques présentées, et la disponibilité du Professeur Herbots pour répondre à toutes les questions de l'assemblée auront permis à chacun des participants d'éviter les remontrances de Confucius.

REPORT ON THE DUTCH ARBITRATION DAY ON "QUALITY CONTROL IN ARBITRATION"

Georgios Fasfalis,
Lawyer at the Thessaloniki Bar (Greece)
(Hanotiau & van den Berg)

On 5 October 2016, the Hermitage Museum in Amsterdam opened its doors once again for the 4th edition of the Dutch Arbitration Day. The topic of the event was "Quality Control in Arbitration".

In light of the topic, Gerard Meijer on behalf of the Dutch Arbitration Association welcomed the guests by wondering what are the main factors that can provide quality in arbitration. He mentioned that arbitration is as good as all of its players, be that arbitrators, institutions, users, counsel or even the courts and passed the torch to the panellists that would explore the views of all those above-mentioned players.

The first panel composed of Mr. Thabiso van den Bosch as a moderator, and Mr. David Blackmon, Ms. Susanne Gropp-Stadler, Mr. Adrian Howes and Ms. Jasmin Kaboni-Voit as speakers, who gave very interesting insights into what are the users' expectations in arbitration proceedings, mainly regarding the efficiency of the proceedings and the active role that counsel and arbitrators should play.

This panel discussion was followed by the keynote address given by Mr. Philippe Pinsolle. During said address, Mr. Pinsolle suggested that quality has a different meaning in commercial, investment and sports arbitration and gave concrete separate proposals for the future of (each one of these kinds of) arbitration and went on to cede the floor to the representatives of the arbitral institutions for their views.

Mr. Andrea Carlevaris, Ms. Jacomijn van Haersolte-van Hof and CEPANI's President Mr. Dirk de Meulemeester were there to take the lead and discussed about the role of arbitral institutions. Issues covered included the selection/confirmation of arbitrators, or whether and to what extent should arbitral institutions monitor the work of the arbitrators and questions related to the end phase of an arbitration.

The final panel of the day, which was moderated by Mr. John Fellas, dealt with the views of counsel and arbitrators regarding the question whether there is any room for improvement in arbitration. The speakers, Mr. Jason Fry, Mr. Albert Marsman, Mr. Robin Oldenstam and Mr. Serge Zwanen engaged in a very interesting and lively conversation and made reference to the viewpoints of all the other speakers of the conference.

Mr. Wieger Wielinga summarized the positions expressed throughout the day, with Mr. Jurjen de Korte announcing the closing of the proceedings of the conference.The day was concluded with a drinks reception at the Hermitage, followed by an excellent dinner by the Amstel river..

NEWS

» ENGLISH HIGH COURT AFFIRMS RECOVERY OF THIRD PARTY FUNDING COSTS IN ICC ARBITRATION PROCEEDINGS

In the case of *Essar Oilfields Services Limited v. Norscot Rig Management Pvt Limited,* the English High Court upheld the decision of the sole arbitrator, Sir Philip Otton, in ICC arbitral proceedings, permitting the recovery of third party funding under section 59(1)(c) of the Arbitration Act 1996 (the "Act") and Rule 31(1) of the ICC Arbitration Rules (the "Rules").

» ADR ACADEMY: REGISTER NOW!

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There are a few places left for the ADR Academy! For more information and how to enroll, please check out the CEPANI website

VARIA

» COLLOQUE FRANCARBI: Le contradictoire dans l'arbitrage

Francarbi organise le 2 décembre 2016 à Bruxelles un colloque sur le thème du contradictoire. Il s'agit d'un principe essentiel à respecter tout au long de la procédure arbitrale sans quoi la sentence peut être annulée. Tout arbitre doit donc l'avoir constamment à l'esprit avec ses exigences et ses limites. Nous espérons vous accueillir nombreux à cette occasion!

» THE 2017 BRUSSELS PRE-MOOT

We are happy to invite you to the Brussels Pre-Moot which will take place on 3 and 4 April 2017 in Brussels. Following its success of the last editions, the Brussels Pre-Moot will be held again this year. We encourage participants from all over the world to see how they deal with the challenges of emergency arbitration, multiple parties to arbitration and avoidance of contracts under the CISG that are subject of the 24th VIS International Commercial Arbitration Moot. We invite all arbitrators and arbitration counsels to act as arbitrators in our competition!

» ICC YAF: Distribution Law and Arbitration (4 November 2016, Turin)

The ICC Young Arbitrators Forum (ICC YAF) is co-hosting a conference in Turin on 4 November with the University of Turin, the Piedmont and Aosta Valley Section of the Italian Society for International Organization (SIOI) and the Moot Alumni Association Turin (MAAT). The conference will focus on the use of arbitration as an alternative dispute resolution method to settle distribution law based claims. Practitioners from Belgium, France, Italy, Singapore and Switzerland will discuss the issues, limits and opportunities of arbitrating distribution claims with particular attention to multiparty disputes.

» ICC YAF: Arbitrating Intra-Corporate Law Disputes (9 December 2016, Brussels)

The ICC Young Arbitrators Forum (ICC YAF) is co-hosting a conference in Brussels on 9 December 2016 with CEPANI40. In many countries, arbitration is regarded as the preferred method for adjudicating intra-corporate disputes. In other countries, some obstacles can still be found for those companies willing to include an arbitration clause in their bylaws. Arbitration raises several potential issues as regards the arbitrability of (all) intra-corporate disputes, the protection of minority shareholders, confidentiality and third parties' rights. Young professionals coming from the four corners of Europe will discuss the pros and cons of arbitrating intra-corporate disputes. The full program will be available on the ICC YAF website and the CEPANI website shortly.

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