

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



AGENDA

11 MAY 2017	(14:00-18:00)	« Au secours, un Etat dans mon arbitrage ! » « Les particularités de l'arbitrage commercial impliquant des personnes de droit public »
8 JUNE 2017	(15:00-16:00)	Conseil d'administration / Raad van bestuur / Board of directors
8 JUNE 2017	(16:00-18:00)	Assemblée Générale / Algemene Vergadering / General Assembly
13 JUNE 2017	(14:30-18:30)	Interactive knowledge sharing session at the ICC International Court of Arbitration
5 OCTOBER 2017	(12:30-18:30)	Tribunal Secretaries – Joint Colloquium CEPANI - NAI

REPORTS

- » [REPORT ON THE ICC COMMISSION ON ARBITRATION AND ADR MEETING AND THE 1ST ICC EUROPEAN CONFERENCE IN PARIS \(24-25 APRIL 2017\)](#)
- » [REPORT ON THE CEPANI LUNCH DEBATE WITH ANDREA CARLEVARIS \(21 APRIL 2017\)](#)
- » [REPORT ON THE 2017 BRUSSELS PRE-MOOT \(3-4 APRIL 2017\)](#)
- » [REPORT THE 24TH EDITION OF THE WILLEM C. VIS MOOT COURT IN INTERNATIONAL COMMERCIAL ARBITRATION \(6-13 APRIL 2017\)](#)
- » [JOINT CEPANI40 - LYDIAN NETWORKING DRINK IN VIENNA AT THE OCCASION OF THE WILLEM C. VIS MOOT \(8 APRIL 2017\)](#)

**REPORT ON THE ICC
COMMISSION ON
ARBITRATION AND ADR
MEETING AND THE 1ST ICC
EUROPEAN CONFERENCE
IN PARIS**



*Yves Herinckx
Member of the Brussels Bar
Solicitor of England and
Wales*

The ICC Commission on Arbitration and ADR held its latest semi-annual meeting on 25 April 2017. This followed the ICC's European Conference on Arbitration held the day before. Both events took place in Paris.

The delegation of the Belgian National Committee to the Commission meeting included its two new members, Audrey Goessens and Flip Petilion.



The new Expedited Procedure Rules, applicable since 1st March 2017, were a recurrent topic of discussion on both days. Alexis Mourre, President of the

**REPORT ON THE CEPANI
LUNCH DEBATE WITH
ANDREA CARLEVARIS**



*Maxime Berlingin
Of Counsel - Fieldfisher
Lecturer at Saint-Louis University
- Brussels*

The CEPANI, with the support of ICC Belgium, organised on 21st April 2017 a luncheon with keynote speaker Andrea Carlevaris, Secretary General of the ICC International Court of Arbitration. That was the last time Mr. Carlevaris spoke at the CEPANI in this capacity as he will step down on 31st May 2017 to return to private practice. This gave the opportunity to Dirk De Meulemeester, Chairman of the CEPANI, to thank him for the central role he played for arbitration during the 4,5 years as the head of the ICC Court Secretariat, as well as for the very good collaboration with the CEPANI during this period.

Mr. Carlevaris presented the 2017 Revision of the ICC Arbitration Rules applicable as from 1st March 2017 and aimed at increasing efficiency, transparency and ethics in ICC arbitrations.

The main topic of the lecture given by Mr Carlevaris was the most significant amendment provided by the revised rules, i.e. the new expedited procedure rules which provide for a streamlined arbitration with a reduced scale of fees. One of the important features of this procedure is that the ICC Court may appoint a sole arbitrator, even if the arbitration agreement provides otherwise. Moreover, there are no Terms of Reference in the expedited procedure.

ICC International Court of Arbitration, and others made it clear that the ICC will be firm in its expectation that proceedings be concluded within six months of the initial case management conference: time extensions may be granted but they will be as rare as possible and short. Participants were reminded that parties who wish their arbitration clause to opt out from the Expedited Procedure Rules, or to set another threshold for their application than the 2,000,000 US\$ set out in the Rules, need to do so clearly - merely providing for three arbitrators is not sufficient to constitute an opt-out. About one third of the ICC's caseload has stakes below 2,000,000 US\$ and will be eligible for expedited handling. For a full understanding of the Expedited Procedure Rules, one must look at the 2017 Arbitration Rules (Article 30 and Appendix VI) and at the latest version of the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration.

One of the panels at the Conference provided a very transparent insight into the process of appointment of arbitrators by the ICC Court and its National Committees. Representatives of the French and German committees, in particular, explained the process they follow in order to ensure the selection in each case of good arbitrators. Alexander Fessas, Secretary General designate of the ICC Court, stressed the importance of disclosures by prospective arbitrators and confirmed that the making of a disclosure does not necessarily lead to non-appointment.

The Commission meeting had a busy agenda, including a presentation by Prof. Gabrielle Kaufmann Kohler on "settlement facilitation" by arbitrators. The speaker drew a clear distinction between fully fledged mediation - which generally includes separate caucuses between the mediator and each party, and is not appropriate for arbitrators - and settlement facilitation, which arbitrators may usefully engage in whenever the circumstances permit. Arbitrators should obtain the parties' informed consent before doing so, with a waiver of grounds of challenge of the arbitrators in case the attempted settlement fails, and should not put excessive pressure on the parties to settle their case.

The next Commission meeting will be held in Sydney on 7 October 2017. The 2nd ICC European Conference on Arbitration will take place in Paris on 9 April 2018.



These expedited procedure rules will automatically apply to all arbitrations with amounts in dispute below US\$2 million, subject to the parties' power to exclude their application. An important number of cases will consequently be eligible for the application of the expedited rules as, pursuant to Mr. Carlevaris, about one third of the ICC's caseload has stakes below US\$2 million.

Parties who do not wish their arbitration conducted in accordance with the expedited procedure rules - or to set another threshold for their application than the US\$2 million - need consequently to clearly opt out, it being understood that the mere fact that the arbitration clause provides for the appointment of three arbitrators is not sufficient *per se*.

Mr. Carlevaris also addressed other minor changes introduced by the revised rules such as the reduction of the time limit for establishing Terms of Reference from two months to one month and the possibility for any party to be in a position to ask the ICC Court to provide reasons for its decisions, such as decisions on challenges of arbitrators, *prima facie* jurisdictional decisions and consolidations.

BRUSSELS HOSTED PRE-VIS MOOT COURT ON APRIL 3-4, 2017



*Nicolas Vanderstappen
Associate - Cleary Gottlieb Steen
& Hamilton LLP*

In preparation of the 24th Willem C. Vis International Commercial Arbitration Moot Court, a pre-moot took place in Brussels on April 3-4, 2017. The event welcomed 12 teams that argued a case concerning a commercial litigation between an airplane engine blades supplier and an engine manufacturing company. The case raised several questions of jurisdiction and procedure and was ultimately pleaded in Vienna between April 7 and April 13, 2017. The Brussels pre-moot participants were University of Auckland (New Zealand), University of Denver (USA), University of Edinburgh (UK), University of Ghent (Belgium), The Hague University of applied Sciences

(Netherlands), University of Liège (Belgium), Catholic University of Louvain (Belgium), Pontifical Catholic University of Parana (Brazil), University Paris V-Descartes (France), Pontifical Catholic University of Rio Grande do Sul (Brazil), University of Tirana (Albania), and the National Law Institute University Bhopal (India). The competition was organised by Tossens Goldman Gonne and co-hosted by Linklaters and Jones Day at their offices in Brussels.

D. De Meulemeester, P. Hollander, and V. Foncke judged the final round between the teams of the University of Parana and Denver University, respectively finalist and winner of the Brussels competition. The teams from Edinburgh and Auckland reached the semi-finals. The panel was impressed by the level of the legal arguments and the pleading skills of the teams. With respect to the participating Belgian teams, Ghent and Louvain made it to the quarter finals. All teams were well prepared and presented well-reasoned legal arguments. On the evening of the second day, all participants (panellists and students), as well as practitioners gathered for a pleasant cocktail at the Brussels office of Tossens Goldman Gonne, a perfect opportunity to get to know each other in a lovely atmosphere and share impressions of the past two days. A special thanks goes to Sophie Goldman, Audrey Goessens and Jean-François Tossens for the organisation of the event and we wish to meet again next year.

REPORT THE 24TH EDITION OF THE WILLEM C. VIS MOOT COURT IN INTERNATIONAL COMMERCIAL ARBITRATION



*Marie Umbach
Student at the Catholic
University of Louvain (UCL)
Participant at the Vis Moot*

The 24th edition of the Willem C. Vis Moot Court in international commercial arbitration took place in Vienna from 8 to 13 April 2017. This year's problem was based on the CAM-CCBC rules, and revolved around a dispute between a manufacturer of fan blades and a producer of jet engines. In this case, the claimant 1) argued that the correct price for the sale of 2000 fan blades was higher than the price the respondent agreed to pay because of an exchange rate quarrel, and 2) claimed that the respondent had to bear the charge of a bank levy deducted for an anti-money laundering investigation. The respondent, in addition to rejecting those claims, argued that the claims were time barred, and required to be provided with security for its arbitration costs.

Today, there are many moot court competitions for law students to take part in. But the Vis Moot is unlike any other. First, it is an international competition, and it is pretty amazing to see so many cultures gathered in one place. Next, participants have the opportunity to participate in pre-moots all around the world, in places such as Moscow, Rio de Janeiro or New York. We took part in pre-moots in Brussels, London, Düsseldorf and Belgrade, and they were perfect opportunities to get a glimpse into the world of arbitration and its actors. Also, the pre-moots allow to improve under real conditions: our biggest challenge was to answer the arbitrators' questions correctly as well as nicely, but after so many pleadings, we ended up doing not so bad on that score.

What is more, the competition begins in October and ends in April, which means it takes up seven months of your life. These are intense months during which you form unbreakable bonds with your team, and your team ends up becoming your family. To summarize it in one sentence, the Vis Moot is the perfect combination between an amazing learning experience and an adventurous, fun-filled journey.

All in all, the Vis Moot brought me something that no class could ever teach me: it pushed me into the real world, away from the shelter of university and into a place where not everybody is kind and impartial, patient and understanding. Sometimes it was rough, sometimes it felt unjust. But at all times, it was a great introduction to both the exciting parts and the challenges of life in legal practice.

JOINT CEPANI40 - LYDIAN NETWORKING DRINK IN VIENNA AT THE OCCASION OF THE WILLEM C. VIS MOOT



*Kevin Ongenae
Associate - Jones Day*

The CEPANI40 networking event at the occasion of the Willem C. Vis Moot has quickly become an annual tradition. Since the first edition in 2014, which was organised to highlight the use of the 2013 CEPANI Rules in the international mooting competition, this was already the fourth - fully booked - edition. But tradition does not mean things cannot change. This year, a new venue was selected and the event was held in the colonial greenhouse bar at Planter's House. The setting was almost as distinguished as its international public, which consisted of counsel, arbitrators, academics and, last but not least, the future generation of practitioners. After a brief word of welcome by CEPANI40 co-chairs Vanessa Foncke and Benoît Kohl, guests were treated to a fine selection of cocktails, kindly sponsored by Lydian, which was represented by Yves Lenders and Marijn De Ruyscher. The event was, in line with the tradition, a great success.

NEWS

» ICC HAS APPOINTED NEW MANAGING COUNSEL OF THE ICC COURT

ICC has appointed Ziva Filipic as new Managing Counsel of the ICC Court. The move follows the recent appointment of a new Secretary General and Deputy Secretary General of the ICC Court.

» ICC REVEALS RECORD NUMBER OF NEW ARBITRATION CASES FILED IN 2016

The International Court of Arbitration of the International Chamber of Commerce (ICC) has announced record figures for new cases filed for administration under ICC rules in 2016. For more information, see [here](#).

» 4TH EDITION DISPUTE RESOLUTION IN M&A TRANSACTIONS CONFERENCE

For the fourth time, the Lewiatan Court of Arbitration has the pleasure of inviting you to the Dispute Resolution in M&A Transactions conference in Warsaw on 18 and 19 May 2017. This is a truly unique event and the biggest conference on M&A arbitration in the region. For more information and registration, see [here](#).

» ICCA 2018 SYDNEY PRESENTS THE PRELIMINARY PROGRAMME FOR THE 24TH ICCA CONGRESS TO BE HELD IN SYDNEY, AUSTRALIA FROM 15 – 18 APRIL 2018. THE THEME FOR THE 24TH CONGRESS IS “EVOLUTION AND ADAPTATION: THE FUTURE OF INTERNATIONAL ARBITRATION”

The theme for the 2018 Congress has been chosen to highlight arbitration as a “living” organism which has proven adaptable in the past to new substantive and practical challenges, and that today – under attack from various quarters – will need to demonstrate its adaptability again. Under this theme, a range of programs will be developed to address the evolving needs of users (both commercial and investor-State), the impact of the rapidly changing face of technology on the practice of arbitration, the expectations of the public, and the convergence or divergence of legal traditions and cultures. For more information, click [here](#)

VARIA

- » 12 May: ICC YAF - Conference in Rome: "The Law Applicable to International Investment Disputes"
- » 14 May 2017: 2nd ICC Africa Regional Arbitration Conference in Lagos
- » 17 May 2017: ICC YAF - Conference in Warsaw: "Need for speed in international commercial arbitration?"
- » 19 May 2017: ICC YAF - Conference in Budapest: "Interim Measures and Security for Costs in Arbitration Proceedings"
- » 27 June 2017: 3rd ICC Asia Conference on International Arbitration in Singapore

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