

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



AGENDA

24 MARCH 2018	(17:00 – 19:00)	Joint CEPANI40 - LYDIAN networking drink at the occasion of the Vis Moot
7 JUNE 2018	(14:00 – 19:00)	Assemblée Générale/ Algemene Vergadering/ General Assembly
	(17:00 – 18:00)	Prof. Ferrari (NYU) on “limits to party autonomy in international commercial arbitration”
8 JUNE 2018	(09:00 – 12:00)	Clinical Seminar BSC-CEPANI on “Arbitration and Competition”
27 JUNE 2018	(10:30 – 12:00)	Mission Princièrre économique belge Argentine-Uruguay / Belgische Prinselijke Economische Missie Argentinië-Uruguay: Event CEPANI: « Brussels, International Arbitration Hub »
18 OCTOBER 2018	(14:00 – 18:00)	CEPANI40 Academic Conference on the “Annulment and Enforcement from a comparative law perspective”

REPORTS

- » [REPORT ON 68TH SESSION OF THE UNCITRAL WORKING GROUP II \(DISPUTE SETTLEMENT\) \(NEW YORK, 5-9 FEBRUARY 2018\)](#)
- » [REPORT ON THE CLUB ESPAÑOL DE ARBITRAJE'S THIRD ANNUAL CONFERENCE: “THE PRESENT AND NEAR FUTURE OF NEW TECHNOLOGIES IN ARBITRATION” \(BRUSSELS, 23 FEBRUARY 2018\)](#)
- » [COMPTE-RENDU DU BRUSSELS PRE-MOOT 2018 \(BRUSSELS, 19-20 FEBRUARY 2018\)](#)

**REPORT ON 68TH SESSION OF
THE UNCITRAL WORKING
GROUP II (DISPUTE
SETTLEMENT) (NEW YORK, 5-9
FEBRUARY 2018)**



Maarten DRAYE
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The 68th session of the Working Group II (DISPUTE SETTLEMENT) of the United Nations Commission on International Trade Law (UNCITRAL) took place in New York from 5 to 9 February 2018. CEPANI took part in the Working Group as observer with a five-member delegation consisting of Emma Van Campenhoudt, Sophie Goldman, Vanessa Foncke, Maxime Berlingin and Maarten Draye. The Belgian observer seat was taken by Jean Christophe Boulet (advisor at the Belgian Ministry of Justice), who was assisted by Benoît Kohl.

During this session, after three years of negotiations, the Working Group completed its work on the preparation of a draft Convention and a draft amended Model Law on the enforcement of international commercial settlement agreements resulting from mediation.

The draft Convention, provisionally entitled "United Nations Convention on International Settlement Agreements Resulting from Mediation", contains the conditions under which courts of contracting member states agree to enforce international commercial settlement agreements resulting from mediation. Such enforcement will take place in accordance with the rules of procedure of the state where enforcement is sought (i.e. the *lex fori*). In terms of scope, the draft convention only applies to agreements that are international and record a settlement on a commercial dispute, provided that this settlement was reached through the intervention of a mediator. To reduce ambiguity on this point, the Working Group chose to adopt the term "mediation" instead of the term "conciliation" that has been used in UNCITRAL texts in the past. Worth noting is further that the mediation requirement *inter alia* means that the draft convention does not apply to consent awards (i.e. settlement agreements recorded by arbitral tribunals, which are enforceable as arbitral awards through the New York Convention of 1958), or settlements reached before or recorded by state courts that are enforceable as judgments. To be enforceable, the settlement agreement must further be in "writing". This is defined broadly as "recorded in any form", including electronic communications of some sort. Finally, the draft convention also lists a limited number of grounds for refusing to grant relief.



Broadly speaking, these grounds fall within the following categories: issues surrounding the validity or binding nature of the settlement agreement; a breach by the mediator of applicable standards; lack of impartiality or independence of the mediator; granting relief would be contrary to public policy under the *lex fori*; or where the subject matter was not capable of settlement through mediation under the *lex fori*.

The draft Model Law is similar in content to the draft Convention. It is intended to amend the existing UNCITRAL Model Law on International Commercial Conciliation (2002), which did not address the issue of enforcement. The new Model Law is provisionally entitled "UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002)".

Both draft instruments will be considered for finalization by the Commission at its upcoming session in New York (25 June-13 July 2018). Further information can be found on the Working Group's website.

Having completed its work on the draft instruments, the Working Group considered the following possible future topics:

1. Possible revision of the UNCITRAL Conciliation Rules (1980);
2. Expedited arbitration procedure and adjudication;
3. Uniform principles on the quality and efficiency of arbitral proceedings.

The Working Group concluded that priority should be given to expedited rules as part of a more general discussion on uniform principles, that could serve as an umbrella for future topics. Furthermore, the Working Group agreed to bring the issue of adjudication to the attention of the Commission, but considered that further information would be needed.

The Commission will decide on the future mandate for Working Group II at its upcoming session.

**REPORT ON THE CLUB
ESPAÑOL DE ARBITRAJE'S
THIRD ANNUAL
CONFERENCE: "THE PRESENT
AND NEAR FUTURE OF NEW
TECHNOLOGIES IN
ARBITRATION" (BRUSSELS, 23
FEBRUARY 2018)**



Pratyush Panjwani, Associate,
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(Brussels)

On 23 February 2018, the Club Español de Arbitraje ("CEA") organized its Third Annual Conference, which was hosted and sponsored by Stibbe and FTI Consulting. After the success of the first two editions of this annual event, both of which showed a proclivity for tackling innovative topics for discussion, the topic for this year's Conference was "The present and near future of new technologies in arbitration". Appropriately described during the welcome

remarks by Ms. Emma Van Campenhoudt as a "modern and trendy topic", this discussion, just like its predecessors, attracted over 100 participants, including arbitration practitioners, enthusiasts and aspirants alike, together with representation from arbitral institutions and companies that are frequent users of arbitration. Also represented was the community of technical experts, particularly from the field of data science.

The keynote address was delivered by Ms. Sophie Nappert. The speech, accompanied by an interesting powerpoint presentation, was titled "Algocracy in Arbitration", which term ("algocracy") is a derivative of "algorithm" and "democracy". Ms. Nappert took us through various ongoing developments being conducted in the field of artificial intelligence ("AI"), which, together with the internet, has created a democratic playing field for humans to operate and interact with technology. She spoke about how AI will soon leave a lasting impact on arbitration as a field of practice by introducing algorithmic decision making using machine learning software, which may possibly even reduce the work force involved in arbitration today. According to Ms. Nappert, the only aspect where human judgment still trumps algorithmic decision making is the more intangible values such as empathy, compassion and fairness. In light of this, she called upon us to realize the opportunity that AI offers us to win back the trust in fellow humans, while

simultaneously embracing the advancements in technology and keeping pace with them.

This speech created the perfect platform for the two panels of speakers that followed, with the first one focusing on the present technologies being used in arbitration and the second one highlighting potential future technologies that may have an impact.



The first panel, moderated by Ms. Dodo Chochitaichvili and Mr. Maxime Berlingin (Fieldfisher), saw speeches from Ms. Erica Stein (Dechert LLP, Brussels), Mr. Matthew Buckle (Norton Rose Fulbright, London), Dr. Franz Stirnimann Fuentes (Froriep, Geneva) and Mr. Alexander Fessas (ICC Paris). Ms. Stein discussed how consent to arbitrate in today's day and age can be given by and through digital means, such as by email correspondence, and whether and how such consent is recognized within the regime of Article II of the New York Convention 1958. She was followed by Mr. Buckle who advocated for a case-by-case approach in relation to admissibility of hacked information and documents as evidence in arbitration, taking us through various jurisprudential approaches across the world in relation to this threshold question that touches upon parties' good faith conduct. Thereafter, Dr. Fuentes addressed the issue of confidentiality in the digital age, speaking about how confidentiality today has evolved from interpersonal confidentiality to technological confidentiality. In this regard, he suggested that as arbitration practitioners it is incumbent upon us to be

aware of potential security hacks, of which law firms are often targets, establish security protocols at workspaces and train staff to this effect, and ensure a minimum level of virus protection. Lastly, Mr. Fessas addressed the current use of technology in institutionally administered arbitration, and suggested that it is the need of the hour for arbitrators to polish their technological skillset with the ready help of arbitral institutions, while at the same time maintaining the parties' fundamental expectations from arbitration and thus not using very costly and complicated technologies.

The second panel, moderated by Mr. José Rafael Mata Dona and Ms. Niuscha Bassiri (Hanotiau & van den Berg), saw a more futuristic expedition undertaken by Mr. Erik Schäfer (Cohausz & Florack, Düsseldorf), Mr. Charles Raffin (Hardwicke, London), Dr. (Dr.) Meliora Meschi (FTI Consulting, Paris) and Mr. Mohamed S. Abdel Wahab (Zulficar & Partners, Cairo). Mr. Schäfer, taking a leaf from the recent ICC Report on Information Technology and International Arbitration, by the Commission co-chaired by him, discussed various technological innovations in recent years and their potential impact on arbitration in the near future. Touching upon aspects of AI that Ms. Nappert referenced, such as decision making through machine learning and portals for contract formation, Mr. Schäfer called upon practitioners, especially arbitral institutions, to take the lead in familiarizing themselves and the users of arbitration with these innovations.

Thereafter, Mr. Raffin spoke about protection and acquisition of electronic evidence, taking us through the basics of the components of electronically stored information, such as metadata, and indicating avenues that can help protect such information from requests in document production procedures or otherwise. Dr. Meschi, the only data scientist on the panel, then took the discussion on AI further by explaining the basics of machine learning and data mining, while simultaneously urging us to realize that while a software may be readily available and easy to use, it's worth ultimately depends on the human behind the software.

Lastly, Mr. Wahab concluded the discussions by highlighting the necessity of being techno-literate in today's day and age, and the need to bridge the gap between AI and international arbitration, by acquainting oneself with technology and making it a friend, as opposed to a competitor.

Without surprise, the Conference saw an active participation from the audience, evidencing that the topic under discussion had left the listeners with a sumptuous amount of food for thought to comprehend and further explore the relationship between humans and their created offspring, which is technology.

COMPTE-RENDU DU BRUSSELS PRE-MOOT 2018 (BRUSSELS, 19-20 FEBRUARY 2018)



Maxime Malherbe
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Début 2017, la Ruritanie a été secouée par un scandale impliquant plusieurs ministres, hauts fonctionnaires et diverses agences gouvernementales. Notamment, nombre de certificats falsifiés ont permis la vente de fèves de cacao avec le label « sustainably grown » alors que ces dernières avaient été cultivées dans des zones protégées. Delicately Whole Foods (Claimant) et Comestibles Finos Ltd (Respondent), convaincus qu'un monde meilleur et plus juste est possible, ont été les premières victimes de ce scandale. Une question liée à la responsabilité sociétale des entreprises en découle. Les gâteaux au chocolat fabriqués par Claimant et vendus à Respondent remplissent-ils les conditions du contrat et peuvent-ils être considérés comme conformes au sens de l'article 35 de la Convention de Vienne sur la vente internationale de marchandises ?

Claimant et Respondent ne sont en tout cas pas sur la même longueur d'ondes. Suite à une tentative de médiation avortée, Claimant n'a eu d'autre choix que d'initier une procédure d'arbitrage. Afin de préparer la défense des parties en cause, 366 universités à travers le monde ont été contactées. Des mémoires ont été rendus en décembre 2017 pour la défense de Claimant et en janvier 2018 pour celle de Respondent. Les audiences se dérouleront à Vienne à la fin de ce mois.

Impatients de tester leurs arguments face à d'autres équipes, une centaine d'étudiants, communément appelés « mooties », représentant seize universités européennes s'étaient donnés rendez-vous à Bruxelles les 19 et 20 février derniers. Ce rassemblement constituait la cinquième édition du Brussels Pre-Moot organisé par le cabinet Tossens Goldman Gonne, en collaboration avec Linklaters et Jones Day, et sous les auspices du CEPANI. Cette épreuve précédait la vingt-cinquième édition du célèbre Vis Moot.



La première édition du Brussels Pre-Moot avait eu lieu en 2014, année où le règlement d'arbitrage du CEPANI était applicable à la procédure. Depuis lors, la réputation de cet événement n'a cessé de grandir. Ce dernier est d'ailleurs maintenant repris parmi les « most prestigious Pre-Moot events around the globe » dans l'ouvrage dont la lecture est indispensable à tout

mootie : The Complete (but unofficial) Guide to the Willem C. Vis International Commercial Arbitration Moot.

Cette année encore, le Brussels Pre-Moot a réuni les plus grands arbitres du Royaume, et notamment Niuscha Bassiri, le Professeur Jacques Herbots et Charles Price pour arbitrer la finale qui a opposé les Universités de Mannheim et de Rotterdam. La victoire a été décernée à la première.

L'évènement s'est clôturé par une réception dans les magnifiques locaux de Linklaters. Tous les participants remercient sincèrement Sophie Goldman, Audrey Goessens et Jean-François Tossens pour la parfaite organisation de l'évènement.

NEWS

» CEPANI 40 EVENT DURING THE VIS MOOT IN VIENNA

The 24th edition of Willem C. Vis International Commercial Arbitration Moot will take place from 23 March to 29 March 2018 in Vienna. The traditional CEPANI 40 networking drink (co-hosted by Lydian) will be held on Saturday 24 March 2018 from 5 to 7 PM at Planter's Club. For more information and registration, [see here](#)

» NEW CEPANI RULES!

[New CEPANI ADR Rules](#) and [new CEPANI Rules for domain name dispute resolution](#) are in force as from January 1st, 2018. They are available in English, Dutch and French.

» SALES ON CEPANI BOOKS!

!! 50% SALES AND MORE on the CEPANI Books Collections!! Please find the purchase form [here](#). Complete it and send it back to the Secretariat by email: info@cepani.be

» NEW BOOK ON "ARBITRATION IN THE DIGITAL AGE, THE BRAVE NEW WORLD OF ARBITRATION" BY PROF. MAUD PIERIS AND PROF. CHRISTIAN ASCHAUER

Arbitration in the Digital Age analyses how technology can be efficiently and legitimately used to further sound arbitration proceedings. The contributions, from a variety of arbitration scholars, report on current developments, predict future trends, and assesses their impact from a practical, legal, and technical point of view. The book also discusses the relationship between arbitration and the Internet and analyses how social media can affect arbitrators and counsel's behaviour. Furthermore, it analyses the validity of electronic arbitration and awards, as well as Online Arbitration (OArb). The volume establishes, on a very practical level, how technology could be used by arbitration institutions, arbitrators, parties to an arbitration and counsel. This book will be of special interest to arbitrators and lawyers involved in international commercial arbitration

For more information, click [here](#)

» ICCA 2018 SYDNEY WILL ADDRESS "EVOLUTION AND ADAPTATION: THE FUTURE OF INTERNATIONAL ARBITRATION"

ICCA 2018 Sydney released the preliminary programme for the 24th ICCA Congress to be held in Sydney, Australia from 15 to 18 April 2018. The theme for the 24th ICCA Congress is "Evolution and Adaptation: The Future of International Arbitration"

This theme 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

VARIA

- » The [2nd ICC European Conference on international arbitration](#) will be held on 9th April 2018 during the [Paris arbitration week](#). It will be followed by a an [ICC advanced training on “Drafting enforceable awards”](#), which will take place on 11th April 2018.
- » The [third Global Conference of the Co-Chairs’ Circle](#) (“the CCC Conference”) will be held in Rome on Friday 18 and Saturday 19 May 2018. Contact ago@cepani.be if you want to be part of the CEPANI 40 delegation.

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