

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



AGENDA

21 MAR 2019	(14.00 - 18.00)	Joint Colloquium NAI – CEPANI (Brussels)
3 APR 2019	(18.00 - 19.30)	CEPANI40 – White & Case seminar on Oral Advocacy at the occasion of the Brussels Pre-Moot
4-5 APR 2019	(09.00 - 18.00)	Brussels Pre-Moot
13 APR 2019	(17.00 - 19.00)	CEPANI40 – White & Case networking drink at the occasion of the Vis Moot
8 MAY 2019	(17.00 - 19.00)	CEPANI40 – Van Bael & Bellis event on EU law and Arbitration
6 JUN 2019	(16.00 - 17.00)	General Assembly CEPANI
13-14-15 NOV 2019	(00.00 - 00.00)	50 years CEPANI celebrations

REPORTS

- » [JOINT CONFERENCE CEPANI40 – NAI JONG ORANJE – DIS 40](#)
- » [ANNUAL CONFERENCE OF THE BELGIAN CHAPTER OF CEA](#)

**JOINT CONFERENCE
CEPANI40 – NAI JONG
ORANJE – DIS 40 : BATTLE
OF JURISDICTIONS, SEATS
AND ARBITRAL
INSTITUTIONS ?**

(AMSTERDAM, 15 FEB 2019)



Adrien Fink
Associate
Laga

On 15 February 2019, NAI Jong Oranje, CEPANI40 and DIS40 organized a half day seminar in Amsterdam aimed at comparing the arbitration proceedings in the Netherlands, Belgium and Germany (and the rules of their respective institutions).

This seminar offered the opportunity to compare the conduct of arbitral proceedings in these three countries. The role of the arbitral institutions and of state courts in each were also analyzed.

The first panel was moderated by **Roelien van den Berg** (Omni Bridgeway) and concerned the conduct of arbitral proceedings in each jurisdiction. **Nadir Khalil** (Allen & Overy) started with a presentation of the Dutch specificities. He explained the role of Dutch arbitral tribunals in granting interim relief, by explaining the applicable principles under Dutch law by giving concrete examples from his practice. He further emphasized the quite unique (actually shared with Belgium) possibility for arbitral tribunals to impose penalties (astreintes/dwangsom). Second came a presentation by **Guillaume Croisant** (Linklaters) who promoted very brightly the Belgian arbitration law and the CEPANI rules, presenting amongst others the arbitrability questions that arise under Belgian law, the availability of mechanisms to join third parties under the CEPANI rules and the recent trends in Belgian case-law. **Muge Erdogmus** (Bodenheimer

Herzberg) followed with a presentation of the German system. She explained the cultural specificities of arbitrating international disputes in Germany, showing that German arbitrators tend to be more active as from the start of the proceedings. Those very interesting and diverse presentations were followed by a lively debate between the panelists on various follow-up topics, including the role of arbitral secretaries in each jurisdiction.

The subject of the second panel was the role of state courts. This panel was moderated by **Dr. Benjamin Lissner** (CMS). **Marjolein van Rest** (BarentsKrans) for the Netherlands, **Olivier van der Haegen** (Loyens & Loeff) for Belgium and **Christian Steger** (Latham & Watkins) for Germany presented the role of the state courts before, during and after arbitration proceedings in their respective country.

The third panel was moderated by **Maarten Draye** (Hanotiau & van den Berg). **Mirjam Trouw** (case manager NAI), **Camille Libert** (case manager CEPANI) and **Chun-Kyung Paulus Suh** (counsel DIS) participated in this panel. After having described their respective institution, they presented successively the role of their institution in the arbitration proceedings. One of the topics touched upon was the IT systems used by each institution in communicating with arbitrators and parties and in particular the security of these systems. Camille Libert for CEPANI took the opportunity to present some of the features of the future CEPANI rules which will enter into force on 1 January 2020. She described the main changes of these new rules (formalization of the scrutiny of the draft award by CEPANI, integration of the accelerated proceedings in the rules (for all claims with an amount below EUR 100.000)).

This seminar was a very good occasion for young Belgian lawyers to understand the operation of arbitration proceedings held under the NAI or DIS rules.

**IV ANNUAL CONFERENCE
OF THE BELGIAN
CHAPTER OF THE CLUB
ESPAÑOL DEL ARBITRAJE:
"ARBITRATION AND ADR
IN BIG CONSTRUCTION
PROJECTS OF STRATEGIC
INFRASTRUCTURE"**

(BRUSSELS, 15 FEB 2019)



Dr. Flavia Marisi
Attorney-at-Law

On 15 February 2019, the Belgian Chapter of the Club Español del Arbitraje held its IV Annual Conference on "Arbitration and ADR in BIG construction projects of strategic infrastructure" in partnership with Jones Day and Omni Bridgeway. **Vanessa Foncke**, Jones Day, Brussels, and **Emilio Paolo Villano**, Belgian Chapter of the Club Español del Arbitraje, Brussels, welcomed the Conference participants at the Brussels premises of Jones Day.

Professor **Nicolas Angelet**, Université Libre de Bruxelles, Brussels, delivered the keynote speech on the role of arbitration to serve the common good. Professor Angelet proposed three main ideas to achieve this aim: letting arbitration embrace new areas of the law, such as climate change and human rights; ensuring that all businesses, including SME's, have access to

arbitration; and fostering diversity in arbitration professionals, which will increase the quality of decision making.

The Conference was structured in two sessions. The First Panel, moderated by Professor **Patricia Saiz**, ESADE Law School, Barcelona, and titled "Investment arbitration: where do we stand?", addressed the most pressing issues in investment arbitration. **Antonio Vázquez-Guillén**, Allen & Overy, Madrid, retraced the history up to the most recent developments of investment arbitration cases against Spain in the renewable energy sector. **Tim Maxian Rusche**, European Commission, Legal Service, Brussels, in his capacity of lawyer and academic, illustrated that there is no place for intra-EU BITs after the Achmea decision (C-284/16), recalling that EU law provides remedies for a complete protection of investments, and evoking the principle of mutual trust between Member States. **Ignacio Santabaya**, Jones Day, Madrid, took the audience through the Vattenfall II case (ICSID Case No. ARB/12/12), and elaborated on the difficulty to find a balance between the investor's legitimate expectations and the State's freedom to regulate. Finally, Professor **Petra Butler**, Victoria University of Wellington, provided a *ius naturale* approach, as opposed to legal positivism, and analysed the relationship between investment arbitration and human rights.

The Second Panel, under the chairmanship of **Alexander Hansebout**, Altius, Brussels, tackled "Dispute resolution in big-scale construction projects". **Francesco Andreano**, Stairwise, Turin, highlighted the paradox of the lack of discipline on delays vis-à-vis the significant damages they cause, both in terms of suspension of operations, and loss of opportunities. **Ioana Knoll-Tudor**, Jeantet, Paris, focused on liability in subcontracting chains: she presented different ways to draft back-to-back contracts, and elaborated on the importance of drafting thorough dispute resolution provisions, reflecting on various issues, including the possibility for the sub-contractor to join a case between the main contractor and the client. **Monica Feria-Tinta**, 20 Essex

Street, London, spoke about States and State-owned enterprises as procuring entities or main contractors, and suggested to focus, before the start of any contract, on reflecting on how the contract relates to treaty protection, and clarifying the obligations both parties need to comply with. **Hannah Van Roessel**, Omni Bridgeway, Amsterdam, discussed third-party funding in large construction projects, distinguishing between merits funding and enforcement funding, and recalling that the success of financing litigation depends on the actual payment, as the award being in favour of the funded party cannot be considered as sufficient. Finally, **Jacques-Alexandre Genet**, Archipel, Paris, introduced the main challenges to the enforcement of arbitral awards against States and State-owned entities, and advised to ensure to fully comprehend the State structure, which is relevant for conduct identification and attribution.

The conclusive remarks were delivered by **José Antonio Cainzos Fernández**, Honorary President of the Club Español del Arbitraje, Partner at Clifford Chance, Madrid, who recollected the main ideas emerged during the debate, and closed the Conference with recommendations on the selection of experts, whose role has a notable impact on the outcome of arbitration cases: they should be able to teach, and have technical knowledge, personal credibility, flexibility, and modesty.

NEWS

» **B-ARBITRA 2018/2**

The latest edition of the Belgian Review of Arbitration b-Arbitra is out now. The table of contents can be found [here](#). Subscriptions are available at [WoltersKluwer](#).

» **CEPANI 2018 STATISTICAL REPORT**

The 2018 CEPANI Statistical Report is released. Click here to [consult](#).

» **ENROLL AS AN ARBITRATOR FOR THE 6TH BRUSSELS PRE-MOOT!**

The 6th Edition of the Brussels Pre-Moot will be held on 4th and 5th April 2019. The Brussels Pre-Moot is a pre-competition for the popular Willem C. Vis International Commercial Arbitration Moot on International Sales Law and International Arbitration in Vienna and Hong Kong. The Pre-Moot will help the teams to improve their pleading skills just before the official Moot in Vienna.

To enroll as an arbitrator, please go to www.brusselspremoot.be.

VARIA

- » The next **IBA Annual Arbitration Day** will be held on March 15, 2019, in Montréal, Québec, Canada. An impressive group of speakers will cover a variety of timely topics, including mandatory rules and lois de police, trade sanctions, NAFTA/USMCA and other trade agreements, as well as data protection, privacy, confidentiality and cybersecurity. For more information click [here](#).
- » Op vrijdagmiddag 28 juni 2019 zal te Rotterdam een bijzonder symposium plaatshebben wegens het **70-jarig bestaan van het Nederlands Arbitrage Instituut (NAI)** én het afscheid van zijn huidige directeur, Fredy von Hombracht-Brinkman. Vanuit diverse invalshoeken willen we hierbij graag terugblikken, maar vooral ook reflecteren op de huidige en toekomstige positie van het NAI en de daarbij betrokken “spelers” in het veld van de alternatieve geschillenbeslechting. Een en ander zal vervolgens op feestelijke wijze worden voortgezet. Nadere informatie volgt.
- » The EUIPO Boards of Appeal, together with the EUIPO Academy and the International Cooperation and Legal Affairs Department of EUIPO, are organising the **second IP Mediation Conference**, which will be held in Alicante on 30-31 May 2019. More information click [here](#)

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SAVE THE DATE



Dear colleagues and friends,

CEPANI is proud to be celebrating its 50 years of existence in 2019.

Please save the date so we can celebrate this milestone together!

The festivities will take place on November 13, 14 and 15, 2019.

THE FACTS

13 November 2019	20.00	CEPANI40 kick-off Cocktail <i>in a trendy Brussels bar</i>
14 November 2019	09.00-14.00	CEPANI Colloquium <i>CEPANI, Brussels</i>
	14.00-17.00	Academic Session <i>BOZAR, Brussels</i>
	18.00-23.00	Gala dinner <i>BOZAR, Brussels</i>
15 November 2019	10.00-13.00	CEPANI40 morning debate <i>Brussels</i>

Official invitation will follow.

Kind regards,

Dirk De Meulemeester,
President CEPANI

Emma Van Campenhoudt,
Secretary General CEPANI