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AGENDA

23 MARCH (DOHA)

Belgian Economic Mission to Qatar & the United Arab Emirates: Prof. Didier Matray on "Brussels: International Arbitration Hub"

23-24 MARCH 2015

Brussels Pre-Moot 2015

27 MARCH - 2 APRIL 2015 (VIENNA)

The 22nd Willem C. Vis International Commercial Arbitration Moot

5 MAY 2015 (17:30-19:30)

CEPANI40 debate evening with Ms. Erica STEIN and Ms. Hilde VAN DER BAAN on "Appointment of arbitrators: parties v arbitral institutions"

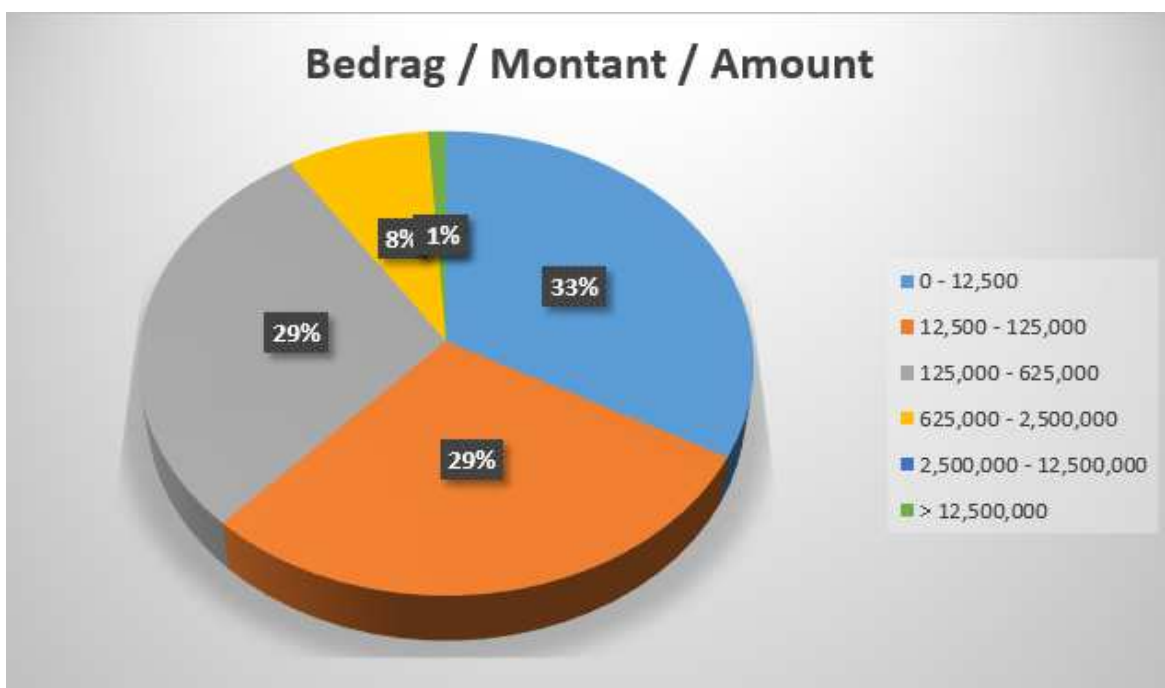
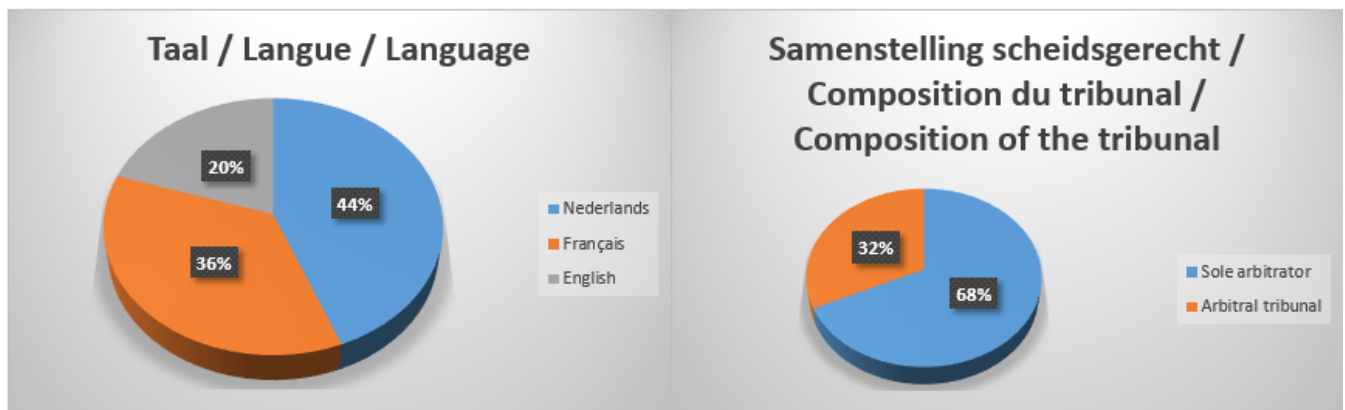
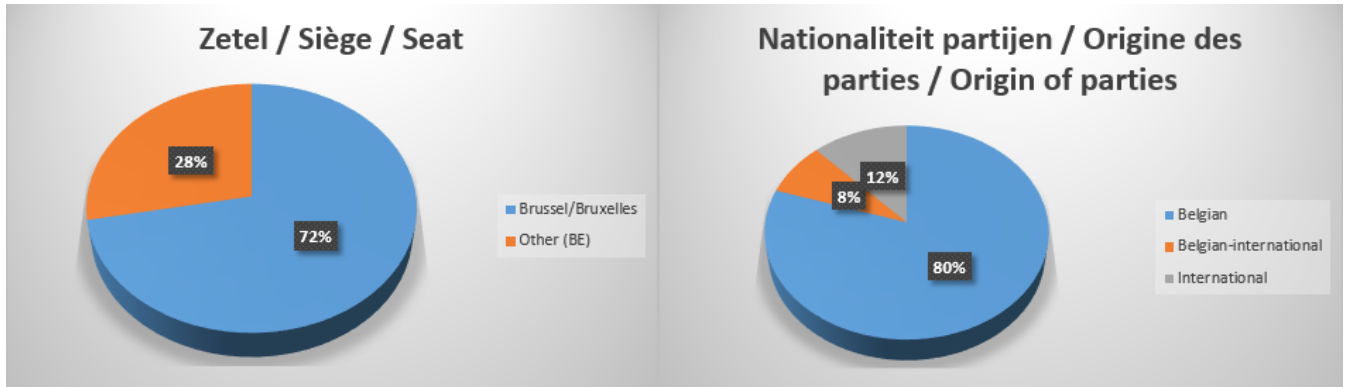
20 OCTOBER 2015 (13:00-18:00)

CEPANI40 Fall Conference: What a Counsel in Arbitration can do, must do or must not do?

For more information on our upcoming activities, visit www.cepani.be. You can also directly register online by clicking on the CEPANI event of your choice.

NEWS

CEPANI STATISTICS FOR 2014



THE 2015 CEPANI ACADEMIC PRIZE



One of CEPANI's goals is to actively promote the knowledge and popularity of arbitration, encouraging the practice both nationally and internationally. Without a doubt, our young professionals take up a central spot in the elaboration of this mission. To support this young talent in particular, and offer them the chance to develop themselves, CEPANI organises the Academic Prize.

The goal of this competition is to offer young professionals with an interest in the field the chance to gain recognition among their peers, and seize a spot for themselves in the world of arbitration.

CEPANI's Academic Prize, which amounts to € 5.000, is awarded every three years to a relevant contribution in national and/or international arbitration. The competition is open to anyone who is under the age of 40 on September 1 of the year in which the prize is awarded.

If you wish to enrol in the competition, [please find the Rules, containing all practical information, on our website by clicking here](#). They are available in English, Dutch, French and German.

For more information, please contact Ms. Emma Van Campenhoudt, Deputy Secretary General of CEPANI, at +32 2 515 08 35 or info@cepani.be.

CEPANI looks forward to your contributions!



REPORT ON EFILA'S INAUGURAL CONFERENCE AT THE UNIVERSITY OF LONDON: 'EU LAW AND INVESTMENT TREATY LAW: CONVERGENCE, CONFLICT OR CONVERSATION' (LONDON, 23 JANUARY 2015)



by Maxime BERLINGIN, lawyer at the Brussels Bar (NautaDutilh) and Teaching Assistant at Saint-Louis University (Brussels)

The European Federation for Investment Law and Arbitration (EFILA) marked the commencement of its activities on Friday, 23 January 2015, at the University of London's Senate House with an inaugural conference entitled "EU Law and Investment Treaty Law: Convergence, Conflict or Conversation". Three CEPANI members - Professor Hans van Houtte, Professor Gerard Meijer and Ms. Erica Stein - participated in and spoke at the conference.

EFILA has been established to promote, at the European level, all aspects of EU and international investment law, including arbitration. EFILA strives to facilitate a meaningful exchange of views on relevant and timely issues vital to the development of EU investment law and policy.

An impressive array of public and private sector stakeholders attended, representing the European Commission, the European Parliament and European governments as well as arbitral institutions, trade associations, academia and private practice. A stimulating debate ensued on recent EU investment policy and the challenges associated with the use of Investor State Dispute Resolution (ISDS), a highly topical subject given the controversy over its proposed inclusion in the Transatlantic Trade and Investment Partnership (TTIP), amongst other international agreements currently being negotiated. The conference was structured around five panels, which focused on the pros and cons of the existing ISDS system, the relationship between international law and EU law in the context of investment arbitration, BITs between EU Member States and third countries, the future of treaty-making in the context of investor-state resolution and, finally, the future of investment policy and its effects on foreign direct investment and dispute resolution.

The conference demonstrated overall that views on the relationship between EU law and investment treaty law depend on one's view of EU law in the hierarchy of laws, i.e. whether one believes EU law is supreme or merely forms part of international law.



REPORT ON CEPANI40 LUNCH DEBATE WITH MS. NIUSCHA BASSIRI ON 'ARBITRAL SECRETARIES - THE EXPOSED GHOSTWRITER' (27 FEBRUARY 2015)



by **Stéphanie SEEUWS, lawyer at the Brussels bar (Jones Day)**

On Friday 27 February 2014, Jones Day Brussels hosted a CEPANI40 lunch debate with Ms. Niuscha Bassiri, lawyer at Hanotiau & van den Berg, on the topic of arbitral secretaries. Having experience as counsel, arbitrator and arbitral secretary and being involved as the chair of the Young ICCA task force, Ms. Bassiri was able to provide insights on the more controversial questions with regards to arbitral secretaries.

The starting point of the debate was the Young ICCA Guide on Arbitral Secretaries, which codifies the existing best practices in the field and is supported by two surveys conducted by the Young ICCA task force in preparation for the 2012 ICCA Congress in Singapore. Given the potential benefits in efficiency and cost savings that an arbitral secretary can bring to the arbitral process if used properly, the guide emphasises a more transparent and robust approach to the role of secretaries in arbitration.

On a preliminary note, Ms. Bassiri underlined the distinction between, on the one hand, an assistant to the tribunal and, on the other hand, an arbitral secretary. Where an assistant's task would be limited to the mere administrative aspects of an arbitration, the task of an arbitral secretary goes beyond the administrative aspect and concerns the overall management of the arbitration.



Article 1 of the Young ICCA Guide addresses general principles on the appointment and use of arbitral secretaries. Ms. Bassiri pointed out that, according to the 2012 survey, there is an overwhelming support for the use of arbitral secretaries in general. Of particular importance in this regard, is the need for a formal appointment process. To promote transparency and protect the legitimacy of the international arbitration, an arbitral secretary should only be appointed with the knowledge and consent of the parties. The most common reason for objecting to the use of an arbitral secretary is the risk that an arbitrator would delegate a part of his or her decision-making in a way that would dilute the arbitrator's mandate.

Further, Article 2 of the Young ICCA Guide concerns the appointment of arbitral secretaries. Ms. Bassiri observed that there is a growing support for a statement of independence and impartiality from the arbitral secretary and that the arbitral tribunal would be in the best position to confirm that the arbitral secretary is in fact independent, impartial and free of conflict of interests. Additionally, each party should be provided with the opportunity to raise objections to the proposed appointment of the arbitral secretary – an idea that was overwhelmingly supported by the 2013 survey – and with the assurance that arbitral secretary will be bound by the same rules of confidentiality and privacy as the arbitrators themselves.



The most controversial questions with regards to arbitral secretaries relate to the role of arbitral secretaries, which is addressed in Article 3 of the Young ICCA Guide. While there is a uniform recognition that an arbitral secretary's role may legitimately go beyond the purely administrative, the specific tasks of an arbitral secretary have been the cause of many debates. Ms. Bassiri identified several of the more controversial issues, such as whether an arbitral secretary can research questions relating to the factual evidence, draft procedural orders and review party submissions and evidence. In particular, she referred to the hypothesis where an arbitral secretary would attend the tribunal's deliberations and draft appropriate parts of the award.

Finally, Article 4 of the Young ICCA Guide concerns the costs, including the arbitral secretary's remuneration.

Ms. Bassiri's presentation sparked some interesting thoughts on the issue of the annulment of arbitration awards by the courts on the grounds of improper use of an arbitral secretary and on the advantage of transparency of an hourly fee rather than a lump sum fee

arrangement for arbitral secretaries.

COMPTE RENDU DE LA VISITE ORGANISÉE PAR LE CEPANI ET LE COMITÉ BELGE DE LA CCI DE LA COUR INTERNATIONALE D'ARBITRAGE DE LA CCI (PARIS, 4-5 MARS 2015)



Par Cédric ALTER, avocat au barreau de Bruxelles (Janson Baugriet)

Beau succès pour cet évènement organisé conjointement par le CEPANI et la CCI et consistant en une visite d'une délégation belge dans les locaux de la CCI à Paris. Ce sont en effet pas loin de 50 participants qui avaient répondu présent à l'appel ainsi lancé. Il faut dire que les organisateurs avaient mis les petits plats dans les grands. L'évènement commençait le mercredi 4 mars à 18h30 par un dîner organisé à la résidence de l'ambassadeur de Belgique à Paris, situé rue de Surène. Une visite de ce bâtiment chargé d'histoire fut brillamment menée par **M. Richard Flahaut de la Billarderie**, lequel est historien d'art, délégué National des parcs et jardins et conservateur à l'hôtel de Matignon. **M. l'Ambassadeur Patrick Vercauteren Drubbel** nous fit ensuite l'honneur d'un dîner à sa résidence, dans une ambiance empreinte de raffinement et de convivialité.

La visite de la CCI débuta le jeudi matin dans ses locaux situés Avenue du Président Wilson.

Le programme démarra par une introduction de **M. Andrea Carlevaris**, secrétaire général de la Cour Internationale d'Arbitrage et directeur du 'ICC Dispute Resolution Services'. Celui-ci nous a exposé les développements récents généraux concernant la CCI tels que le déménagement depuis un an et demi vers les nouveaux locaux de l'Avenue Président Wilson, ainsi que l'arrivée à échéance fin juin du mandat de certains membres de la Cour. Le mandat de Président de la Cour va également être renouvelé à cette occasion et la candidature d'Alexis Mourre a été proposée. L'orateur expose également les tendances récentes comme, par exemple, l'augmentation de l'utilisation des services de la CCI par les Etats-Unis (un bureau a été ouvert à New York), la France et le Brésil. Des développements intéressants sont également à relever dans les 'Emergency Arbitration' ainsi que dans les arbitrages d'investissements.



Mme. Calliope Sudborough, Manager au Centre International de la CCI pour les ADR a ensuite exposé le fonctionnement du centre et ainsi que les différents règlements, à savoir essentiellement les 'Mediation Rules' et les 'Expert Rules'.

L'exposé suivant a été donné par **Mme. Anne Secomb** qui nous a présenté la 'ICC Commission on Arbitration and ADR activities'. Cette commission agit, en synthèse, comme un *'think-tank'* et participe également à l'élaboration des différents règlements et guidelines. A cet égard, les comités nationaux proposent des sujets de travail, puis des task-forces sont mises sur pied (exemples: 'Decisions as to costs', 'Task-force on Financial Institutions and International Arbitrations').

Une table ronde sur les pratiques de la CCI, notamment pour les arbitrages impliquant un arbitre ou une partie belge, a ensuite été menée par **Alexander G. Fessas**, Managing Counsel, et avec la participation de différents Counsels, à savoir **Gustav Flecke-Giammarco**, **Marie-Camille Pitton**, **Diamana Diawara** et **Alina Sartogo**. Les statistiques pour 2014 ont été abordées à cette occasion: 791 nouveaux cas enregistrés en 2014, 459 sentences rendues, 21 % des sentences rendues concernant le secteur de la construction et 19% celui de l'énergie, 75 % des cas portant sur un montant supérieur à 1.000.000 USD, 31 % des parties situées en Europe de l'Ouest. Parmi les pourcentages on relèvera également que le tribunal arbitral est constitué à concurrence de 59 % par les parties et de 18 % sur proposition des comités nationaux. Une discussion vivante a également été menée sur les critères qui pourraient permettre de choisir un arbitre belge ou de situer le siège de l'arbitrage à Bruxelles (neutralité, législation en matière d'arbitrage, profils des arbitres,...).

Les exposés se sont clôturés enfin par une présentation sur les 'ICC Policy and Business Practices' par **M. Stefano Bertasi**. Il s'agit d'une autre facette de la CCI qui concerne moins directement les praticiens de l'arbitrage mais qui revêt néanmoins un intérêt certain dans le commerce international. A cet égard, la CCI a un double rôle de *'policy advocacy'* (lobbying auprès de différentes organisations) et d'élaboration de différentes documentations telles que les 'Rules on Documentary Credits', les 'Incoterms' ou encore les 'ICC Model International Franchising Contract', par exemple.

Cette intéressante matinée s'est clôturée par un lunch permettant de poursuivre les discussions et de nouer d'intéressants contacts.



REPORT ON THE INTERNATIONAL CONFERENCE 'EMERGENCY! INTERIM AND CONSERVATORY MEASURES IN ARBITRATION' (WARSAW, 11 FEBRUARY 2015)



By Joanna KOLBER, lawyer at the Brussels Bar (Strelia)

On 11 February 2015, a conference on interim and conservatory relief in arbitration took place at the University of Warsaw. The conference was organised by the Center for Dispute and Conflict Resolution of the Warsaw University's Law Faculty on the occasion of the Warsaw Pre-Moot.

The conference's programme included speeches and panel discussions by international arbitration practitioners and attracted a broad audience.

The eminent Professor Jerzy Rajski opened the event with a keynote speech. He stressed the parties' need for interim relief and wondered whether the new institution of emergency arbitrators will prove useful in practice. The conference was divided into three panels moderated by Professors Krystyna Szczepanowska-Kozłowska, Marek Wierzbowski, and Andrzej Wiśniewski.

The first panel considered whether "emergency arbitrators are a new species of private judges". During this panel, Jean-Pierre Fierens and Joanna Kolber (both from Strelia) spoke on the topic of emergency arbitration under CEPANI Rules and in Belgian law and practice. Other panelists presented the perspectives on emergency arbitration from their respective areas of practice: Maria-Hauser Morel on the ICCs, Piotr Gałzka on the perspective of the Court of Arbitration at the Polish Bank Association, Tero Kovanen on the Finnish perspective, and Natalia Petrik on the SCCs. So far, only the ICC and SCC have administered emergency

proceedings prior to constituting an arbitral tribunal. Whether the parties choose arbitration or state courts as their forum for obtaining interim relief at this stage of their dispute seems to depend largely on the context of the dispute, the effectiveness of the applicable interim relief enforcement system, and the effectiveness of the ease and speed in obtaining interim relief before state courts.

The second panel focused on interim relief after constituting an arbitral tribunal. The panelists exchanged experiences on the efficiency of such relief in their jurisdictions: Switzerland (Thierry P. Augsburg), Ukraine (Yuliya Chernykh), Czech Republic (Lukas Klee), Germany (Karl Pörnbacher), and Poland (Justyna Szpara). The panel stressed that the system works in practice but highlighted the traditional difficulties relating to the enforcement of interim measures and their true effect on the parties' positions pending the resolution of the dispute.

The last panel, composed of Polish arbitration practitioners (Marcin Aslanowicz, Beata Gessel Kalinowska vel Kalisz, Bartosz Krużewski, Paweł Pietkiewicz, Marcin Dziurda), gathered the insights from the previous considerations and reflected on the way forward and on how to make the system of interim protection in arbitration more effective. It is crucial that this system ensures procedural justice while developing commercially viable solutions as interim measures.

Numerous thought-provoking discussions ensued between the panelists and the participants during the conference and followed late into the evening during the reception.

THE 2015 BRUSSELS PRE-MOOT (23-24 MARCH 2015)



On 23 and 24 March 2015, the Brussels Pre-Moot, a pre-competition for the popular Willem C. Vis International Commercial Arbitration Moot on International Sales Law and International Arbitration, will be organised by Strelia with the kind co-operation of Stibbe, Linklaters and FEB, under the auspices of CEPANI and ICC Belgium.

This year's moot case concerns emergency arbitration proceedings, multiple parties to arbitration and avoidance of contract under the CISG. The following universities will compete in the general rounds and in the knock-out rounds: Université Catholique de Louvain (Belgium), Universiteit Gent (Belgium), Université de Liège (Belgium), University of Auckland (New Zealand), Edith Cowan University (Australia), Erasmus University Rotterdam (the Netherlands), University of New South Wales (Australia), University of Osnabrück (Germany), Jagiellonian University (Poland), Università degli Studi di Pavia (Italy), Center for Transnational Legal Studies London (UK), University of Sydney (Australia), Pontifical Catholic University of Rio Grande Do Sul (Brasil), National University of Singapore (Singapore), Paris René Descartes University (Paris 5) (France) and University of the State of Rio de Janeiro (Brazil).

The best two universities will participate in the Pre-Moot final, which will be held by the arbitrators Françoise Lefèvre, Prof. Johan Erauw and Prof. Jean-François Tossens.

Please find the full programme below. All further information can be found at www.brusselspremoot.be.

Sunday 22nd March 2015

18:00 Informal welcome drink
Location: Monk Bar

Monday 23rd March 2015

11:00 First General Round
Locations: law firms Strelia, Linklaters and Stibbe

13:00 Arbitrators' luncheon. (Registration required)
Location: Linklaters

15:00 Second General Round
Locations: Strelia, Linklaters and Stibbe

18:30 Announcement of the results and schedule for the knock-out rounds
Location: Stibbe

Tuesday 24th March 2015

9:00 8th Finals
Locations: Strelia and Stibbe

11:00 Quarter finals
Locations: Strelia and Stibbe

13:00 Arbitrators' luncheon (Registration required)
Location: Strelia

14:30 Semi finals
Location: Stibbe

17:00 Final (registration required)
Location: Federation of Enterprises in Belgium

19:00 Awards reception (invitation only)
Location: Federation of Enterprises in Belgium

THE ANNUAL WILLEM C. VIS INTERNATIONAL COMMERCIAL ARBITRATION MOOT (VIENNA, 27 MARCH - 2 APRIL 2015)



The Willem C. Vis International Commercial Arbitration Moot is one of the most prestigious international moot court competitions for law students in the world. Since 1994, it has been held annually in Vienna, Austria attracting more than 300 law schools from all around the world and spurring the creation of more than twenty pre-moots each year before the actual rounds are held in Vienna.

The Official Welcome and Reception take place on Friday 27 March 2015. The general rounds of the oral arguments take place at the Law Faculty of the University of Vienna (Juridicum) from Saturday to Tuesday. The elimination rounds among the highest ranking teams take place on Wednesday and Thursday, culminating in the final argument. The 22nd Moot closes with an awards banquet following the final argument on Thursday 2 April 2015.

Please find all further information [at the Moot website](#).

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VARIA

- [Belgian Economic Mission to Qatar & the United Arab Emirates: Prof. Didier Matray on "Brussels: International Arbitration Hub" \(23 March 2015, Doha\)](#)

During the Belgian Economic Mission to Qatar & the United Arab Emirates, presided over by HRH Princess Astrid of Belgium and in the presence of, a.o., HE Didier Reynders (TBC), Federal Deputy Prime Minister and Minister of Foreign Affairs and European Affairs, HE Geert Bourgeois, Minister-President of the Government of Flanders and Flemish Minister for Foreign Policy and Immovable Heritage and HE Cécile Jodogne, Secretary of State for Foreign Trade & Investment for the Brussels-Capital Region and Minister of the French Community Commission in charge of Civil Service and Health Policy, CEPANI Vice-President prof. Didier Matray will present a seminar on "Brussels: International Arbitration Hub". The seminar will take place on March 23 in Doha - Abu Dhabi and will discuss the different unique aspects and advantages of Brussels as place of arbitration.

- [The 13th Biennial IFCIAI Conference co-organised with the BCDR-AAA \(23 March 2015, Bahrain, Manama\)](#)

The programme and registration form can be found at <http://www.bcdr-aaa.org/en/events/the-13th-biennial-ifcai-conference>.

- **IFCAI Generaly Assembly (24 March 2015, Bahrain, Manama)**

On March 23, the International Federation of Commercial Arbitration Institutions (IFCAI) and the Bahrain Chamber for Dispute Resolution (BCDR-AAA) are organising a joint conference on the topics of 'Hot Issues in International Arbitration in the Arab World' and 'Arbitral Institutions and Issues of Conflicts of Interest'. On March 24, IFCAI holds its Generaly Assembly. A CEPANI delegation headed by CEPANI President Dirk De Meulemeester will attend both the Conference and the General Assembly.

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The CEPANI Newsletter always appreciates receiving interesting case law and legal doctrine concerning arbitration and alternative dispute resolution. Any relevant articles, awards, events and other announcements can be sent to newsletter@cepni.be. CEPANI may publish and/or edit contributions at its discretion.

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