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NEWS

CEPANI40 LUNCH DEBATE WITH MR. RUTGER METSCH ON "THE 2015 INTERNATIONAL ARBITRATION SURVEY CONDUCTED BY QUEEN MARY UNIVERSITY OF LONDON: IMPROVEMENTS AND INNOVATIONS IN INTERNATIONAL ARBITRATION"



On 4 December 2015, CEPANI40 is organising a lunch debate with **Mr. Rutger Metsch** on the topic of the most recent **Queen Mary University Arbitration Survey**.

Rutger Metsch is the White & Case Research Fellow at the School of International Arbitration, Queen Mary University of London. He conducts research on the attitudes of various stakeholders in international arbitration towards innovations of the field and teaches "Strategic Decision Making for Lawyers" in Queen Mary's LLM programme. He holds an LLB (honours) in International and European Law from the University of Groningen and obtained an LLM (distinction) in Comparative and International Dispute Resolution at Queen Mary.

Rutger will speak about the findings of the "2015 International Arbitration Survey: Improvements and Innovations in International Arbitration", a major empirical investigation into arbitration practices and trends worldwide. The survey addresses a variety of topics, such as the evolution of seats and institutions, the perceived effectiveness of innovations to control time and cost, the use of soft law and guidelines, and the role and regulation of specific actors in arbitration. The 2015 Survey is the sixth carried out by the School of International Arbitration and the third organised in partnership with White & Case LLP. With 763 questionnaire responses and 105 personal interviews, the 2015 Survey collates the views of the largest pool of respondents to date.

When: 4 December 2015, 12:00 - 14:00

Where: Grand Salon
VBO/FEB, Ravensteinstraat 8 rue Ravenstein, 1000 Brussels

Price: €60 (VAT excl.)

[Register online](#)

"EU LAW AND ARBITRATION": ORGANISED BY CLUB ESPANOL DEL ARBITRAJE (CEA) IN COLLABORATION WITH CEPANI, ICC AND DIS, WITH THE SUPPORT OF THE VBO/FEB AND THE BRUSSELS SCHOOL OF COMPETITION



El Club Español del Arbitraje (the "CEA") is a Spanish non-profit organisation constituted in 2005 with the purpose to promote arbitration as an alternative method of conflict resolution and the development of arbitration in Spanish and Portuguese or Latino-American component. The CEA counts with more than 900 members of 43 countries and 28 international chapters. In cooperation with CEPANI, ICC and DIS and with the support of the VBO/FEB and the Brussels School of Competition, the CEA is organising a colloquium on EU Law and Arbitration on 19 February 2016.

When: 19 February 2016

Where: VBO/FEB, rue Ravensteinstraat 4, 1000 Brussels

Registration:

The event is free of charge, however, registration is required. In order to register, please send an e-mail to ceabelgium@outlook.com providing your name, surname, contact details and professional association.

Programme:

13h30 Registration of participants

14h00 Welcome speeches

14h20 Introductory Keynote Speech

Stavros Brekoulakis, Professor in International Arbitration and Commercial Law at Queen Mary University of London

14h45 Panel 1 - EU competition law and commercial arbitration

Moderator: Caroline Bechtel, Head of Case Management, Deutsche Institution für Schiedsgerichtsbarkeit - DIS, Cologne

- Andrea Carlevaris, Secretary General of the ICC Court of Arbitration, Paris
Powers and duties of arbitrators in applying EU and national competition law
- Thomas Voisin, Quinn Emanuel, Paris
Practical issues faced by arbitrators when dealing with questions of EU competition law
- Damien Geradin, EDGE Legal, Brussels
Public policy exception and risk of non--enforceability of arbitral awards for violation of antitrust provisions: where do we stand?
- Edurne Navarro Varona, Uría Menéndez, Brussels
The role of the European Commission and NCAs in international commercial arbitration

Debate - Q&A

16h15 Coffee break

16h40 Panel 2 – EU Law and Investment arbitration
Moderator – Juan Fernandez-Armesto, Armesto & Asociados, Madrid

- Assimakis Komninos, White & Case, Brussels
Are bilateral investment treaties on a collision course with EU law?
- Niuscha Bassiri, Hanotiau & Van den Berg, Brussels
Some paradigmatic cases other than Micula
- Fernando Castillo De La Torre, EU Commission – Legal Service, Brussels
EU Commission intervention in arbitral proceedings: More Than an Amicus of the Court?
- Carmen Martinez Lopez, Three Crowns, London
The Commission's Investment Court System proposal for resolving investment disputes: a critical assessment

Debate - Q&A

18h10 Conclusive Remarks
Joachim Knoll, Lalive, Geneva

18h35 Cocktail Reception



CEPANI WORKING GROUP ON EFFECTIVE CASE MANAGEMENT



By Luc DEMEYERE, Member of the CEPANI Board of Directors and lawyer at the Brussels Bar (Contrast Law)

CEPANI recently developed the "Arbitration Timeline", a tool for guiding you through the CEPANI Rules. The Arbitration Timeline provides a visual breakdown of the successive stepping stones of the arbitration procedure. By each stepping stone you will find the number of days provided for in the CEPANI Arbitration Rules.

Monitoring the length of the arbitration procedures is a major concern for CEPANI, and this tool will serve as a yardstick for assessing the speed of the arbitration proceedings you participate in, either as party, counsel or arbitrator. Organising and deciding on the Procedural Timetable will remain the privilege of the arbitral tribunal after consultation with, and as the case may be, agreement between the parties and the arbitral tribunal. Each stepping stone is commented on, assisting you in considering different approaches and in

opting for one approach rather than for another. To consult the Arbitration Timeline, please consult the [CEPANI homepage](#) or [click here](#).

Comments from users of the Arbitration Timeline will be highly valued and can be addressed to the CEPANI Secretariat at info@cepani.be.

CEPANI's concern to make arbitration proceedings progress is further expressed in the strengthening of the conditions under which time extensions can be granted. See [Practical arrangements regarding the conduct of CEPANI arbitration proceedings](#).

REPORT ON THE CEPANI ARBITRATION ACADEMY (CLASSES OF 17 NOVEMBER 2015 AND 27 OCTOBER, BRUSSELS)



By Timothy VAN DE GEUCHTE, Lawyer at the Ghent Bar (Portelio)

On 27 October 2015, the first class of the fall sessions of the CEPANI Arbitration Academy was held. **Prof. Didier Matray, Dr. Herman Verbist** and **Prof. Jean-François Tossens** shared their expertise on different issues that may arise in complex arbitrations. Prof. Matray started with a presentation on the scope of complex arbitrations, dealing with such topics as groups of contracts, classwide arbitration and restrictions on involving non-signatories in an arbitration. Dr. Herman Verbist continued with an interactive discussion regarding the appointment of the arbitration panel in multiparty arbitrations, the voluntary or forced intervention of third parties and the consolidation of parallel arbitration proceedings. The closing presentation by Mr. Jean-François Tossens provided insight and useful guidelines in various procedural challenges, including cross claims, "amicus curiae" briefs and "res judicata" effects. All presentations were supported by video testimonials by experts such as **Prof. Bernard Hanotiau, Mr. Jean-Pierre Fierens** and **Ms. Hilary Heilbron, QC**.



Last week's class of the fall sessions, held on 17 November 2015 and hosted by **Mr. Pascal Hollander, Ms. Françoise Lefèvre** and **Prof. Benoit Allemeersch**, dealt with witness evidence. The first part of the class consisted of an introduction to oral evidence, written witness statements, rules of professional conduct and how to prepare a witness. The panel then continued by giving very practical guidelines on how one should approach its "own" witness and how you can get the most out of a cross examination. This was all demonstrated by having prof. Allemeersch "take the stand" to be examined by "opposing counsel" Ms. Françoise Lefèvre. Not only was this quite the opposite of the traditional PowerPoint seminar,

it also allowed for easily improving some practical skills in a very pleasant atmosphere. For me, the highlight of this class was the time dedicated to extensive practical exercises in small groups, allowing participants to familiarise themselves with the techniques of witness examination on the basis of a mock case. By successively assuming the role of witness and counsel, participants were challenged to put theory into practice. Each group was guided by one of the speakers, which allowed some very concrete fine-tuning of the participants' approach of direct or cross examinations. It was by far the most practical and fun seminar I attended in quite some time.

With two "expert" level classes behind me and one to go, I can warmly recommend the CEPANI Arbitration Academy to everyone interested in domestic or international arbitration.



DUTCH ARBITRATION DAY ON "TESTED IMPROVEMENTS IN INTERNATIONAL ARBITRATION" (15 OCTOBER 2015, AMSTERDAM)



By Julien FOURET, Lawyer at the Paris Bar (Partner at Betto Seraglini)

In the beautiful setting of the Hermitage Museum in Amsterdam the 3rd Dutch Arbitration Day was held and attended by no less than 120 participants.

After the opening remarks made by **Prof. Gerard Meijer**, Chairman of the Board of the Dutch Arbitration Association, the first keynote address was delivered by **Prof. Bryant Garth**. The topic of his address was "Legal Sociological view on international arbitration". Prof. Garth went back to his 1996 acclaimed book, *Dealing in virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*, in an attempt to identify the trends and evolution in the sociological background of our specific legal industry. Prof. Garth noted that one of the findings of the book was namely that this informal, settlement-oriented system became formalised and litigious and was becoming even more so. Furthermore, the idea of fierce personal competition amongst arbitrators to gain a reputation, hoping to be selected for arbitration panels, has even multiplied through the narrow prism of investment arbitration. That latter subsystem of international arbitration has even become a major focus of attention even outside the legal sphere. Even though Prof. Garth was encouraged by the audience to consider publishing a second edition of his book, he noted that many authors have reused and adapted some of his findings that thus remain more or less the reality some 20 years after their first publication.

The first Panel, chaired by **Mr. Jurjen de Korte**, focused on "Increased Expediency". With insight from **Prof. Kaj Hober**, **Prof. Loukas Mistelis** and **Ms. Patricia Nacimiento**, the

panelists commented on some of the recent findings of the 2015 Queen Mary/White & Case International Arbitration Survey on Improvements and Innovations in International Arbitration. One of the points highlighted by Prof. Mistelis concerned the worst perceived characteristics of arbitration, namely costs, lack of effective sanctions during the arbitral process and lack of insight into arbitrators' efficiency as the top three choices. All of the panelists debated these points, and many others contained in the Survey, notably the issue of transparency. Prof. Kaj Hober indicated that he had been pushing for years for the SCC to have reasoned decisions but failing so far he would push for the same while acting as the Chair of the Board as of 2016.



One of the highlights of the Day was the keynote speech of **Lord Williams of Baglan** on the "Shifting Balances in Asia". This non-legal, non-arbitration speech, one of the most rightfully acclaimed features of the day, offered extremely useful insights into the various challenges ahead regarding the foreign policy of some of the most powerful nations in Asia, notably mainland China and its relationship with the USA. The keynote speaker discussed the possible, or impossible, implications of the USA in the region and the various consequences that this could have on their other foreign policy spheres of influence, notably in the Middle East, depending on the EU's future foreign policy in these various regions as well. However, being surrounded by arbitration practitioners, questions naturally arose regarding the disputes in the South China Sea and the Chinese attitude towards the arbitration pending before the arbitral tribunal under the aegis of the PCA with the Philippines.

The second Panel of the day, moderated by **Prof. Stefan Kröll**, was titled the "Youngsters' Panel" and was comprised of a pro-con debate on two principal issues put to the panelists as well as the floor. The first debate focused on the hot topic of whether institutions should exclusively appoint arbitrators or if parties should retain the power to nominate their "own" arbitrator. **Ms. Emma van Campenhoudt**, Deputy Secretary General of CEPANI, took the pro institution's view whereas **Ms. Mirjam van de Hel-Koedoot** took the pro party's view. Both indicated that it was of course a posture for the sake of the debate. The overall feeling was that this should indeed be an issue that should be discussed in order to evaluate how to improve some of the recurring issues regarding conflicts and quality of arbitrators that are regularly raised in various surveys. The second issue opposed **Mr. Niek Peters** and **Mr. Florian Mohs** on the exclusion of state court review of arbitral awards at the seat of arbitration due to the recent change in the Dutch Arbitration law to reduce the formerly known three instances of state court review of award to now two instances. The question was thus to determine if the legislator had gone far enough? Mr. Peters took the position that state court review is important, while Mr. Mohs argued that it can be excluded or, at least, the option to exclude it should be given to the parties, like in France or Switzerland. This encouraged a vivid debate with the audience that also tackled the absence of negative competence-competence in the Netherlands, which most viewed as an unfortunate situation compared to for example France.

The Final Panel of the day was entitled "Checks and Balances" in international arbitration and was moderated by **Ms. Annet van Hooft**. The idea behind the panel discussion, and the discussion with the audience, was that when you talk about checks & balances, there is a prime role for the arbitral tribunal as it must keep the proceedings on track and ensure due process. **Mr. Louis Flannery** first controversially wondered whether or not it was time to introduce a sort of TripAdvisor with respect to arbitrators. The idea would notably be to apply

to arbitrators the same ethical requirements in terms of behaviour as imposed to counsels and to ensure transparency, feedback and some type of accountability to the arbitral community for problematic behaviors. After a somewhat heated debate, **Mr. Julien Fouret** introduced the idea that the "collective memory" of arbitral institutions is nowadays the closest one gets to an informal TripAdvisor, a collective memory that sometimes serves as the basis to amendments of some of the institutional rules. The idea debated was whether the internal information that the institutions possessed on arbitrators' behaviour could be of benefit to the overall arbitral community by being more easily available. Finally, **Mr. Thomas Johnson** tackled this issue by attempting to analyse the arbitrator's performance in the ICSID/Investment treaty sphere where there is more transparency, also raising the question as to whether a list of arbitrators, a permanent court or an appellate body could alleviate, or not, some of these concerns.

The final words of this very fruitful and interactive day were given by the concluding speech offered by **Mr. Maarten Drop** who reminded the audience of the numerous issues raised and points debated throughout the entire day.

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- A. CARLEVARIS a.o. (ed.), *International Arbitration under Review: Essays in honour of John Beechey*, Paris, ICC Pub. 2015, 468p.
- N. PETERS, *IPR, Proces & Arbitrage: over grondslagen en rechtspraak*, Apeldoorn, Maklu 2015, 401p.

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VARIA

• Andorra becomes 156th state to accede to the New York Convention

On 22 June 2015, Andorra acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, becoming the 156th state to do so. Following the deposit of its instrument of accession, the treaty entered into force for Andorra on 17 September 2015.

• ICC publishes its 2014 statistics

The International Chamber of Commerce (ICC) has published its latest dispute resolution statistics for 2014. The statistics reveal that its caseload continues to expand: the ICC had 863 new cases last year involving over 140 countries. Of these 863 new cases, more than 90% were arbitrations. The opening of two new secretariats based in Hong Kong and New York most likely played into this expansion.

[A summary of the ICC statistics is available here.](#)

- **Draft revision of notes for organising arbitral proceedings approved by UNCITRAL**

The United Nations Commission on International Trade Law (UNCITRAL) has approved, in principle, the draft revision of the Notes on Organising Arbitral Proceedings at its 48th annual session. After further revisions to the draft by the UN Secretariat, it will then be considered for adoption at the next annual session, held in New York in 2016.

- **Exequatur in France: No distinction between foreign commercial and administrative law awards**

Since the 19th century, France has had a dual jurisdictional system. The administrative courts have jurisdiction to hear most disputes involving public entities, while the judicial courts have jurisdiction over all other disputes. The issues which may arise when determining which court system has jurisdiction are entrusted to a special court.

The issue of determining such jurisdiction arose recently regarding the grant of exequatur orders and challenges brought against these orders. In July 2015, the Cour de Cassation ruled that the exequatur for foreign administrative awards can be sought under the same conditions as those which apply to foreign awards in international commercial arbitration, i.e. before the judicial courts.

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