

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



AGENDA

7 JUNE 2018	(16:00 – 17:00)	Assemblée Générale/ Algemene Vergadering/ General Assembly
7 JUNE 2018	(17:00 – 19:00)	Prof. Ferrari (NYU): "Limits to party autonomy in International Commercial Arbitration"
8 JUNE 2018	(09:00 – 12:00)	Clinical Seminar BSC-CEPANI on "Arbitration and Competition"
19 JUNE 2018	(17:00 – 20:00)	CEPANI40 event: "Du neuf en matière de MARC !/ Nieuwigheden op het gebied van ADR ! »
6 JULY 2018	(10:00 – 15:00)	CEPANI Intern Day
31 AUGUST 2018	(10:00 – 15:00)	CEPANI Intern Day
7 SEPT 2018	(12:00 – 14:00)	Lunch Debate: TRAC Arbitration: A reliable forum in Iran
14 SEPT 2018	(08:30 – 18:00)	YOUNG ICCA - CEPANI40 Skills Training Workshop on "Cross-examination in international arbitration"
15 OCT 2018	(00:00 – 00:00)	Brussels Mediation Week (15-19 October 2018)
18 OCT 2018	(14:00 – 18:00)	CEPANI40 Half-day Academic Conference on the "Annulment and Enforcement from a comparative law perspective"

REPORTS

- » [DE HERZIENING VAN DE ADR-REGLEMENTEN VAN CEPANI IN 2018](#)
- » [REPORT ON THIRD CO-CHAIR'S CIRCLE GLOBAL CONFERENCE 2018 IN ROME: INTERNATIONAL ARBITRATION, LOCAL ADMIRATION \(17-19 MAY 2018\)](#)
- » [REPORT ON THE ICC BELGIUM ANNUAL MEETING \(23 MAY 2018\)](#)
- » [REPORT ON THE PANEL DISCUSSION AT THE BRUSSELS GLOBAL LAW WEEK: "IS EVERYTHING ARBITRABLE?" \(16 MAY 2018\)](#)



Dr. Herman VERBIST
Partner
Everest advocaten

Naast arbitrage biedt CEPANI (het Belgisch Centrum voor Arbitrage en Mediatie) nog 5 andere vormen van alternatieve geschillenbeslechting aan: (i) mediatie, (ii) mini-trial, (iii) deskundigenonderzoek, (iv) de aanpassing van overeenkomsten, en (v) de bindende derdenbeslissing voor geschillen inzake ".be"-domeinnamen. Voor elk van deze procedures beschikt CEPANI over een afzonderlijk reglement, dat beschikbaar is in het Nederlands, het Frans en het Engels. Deze kunnen allen gedownload worden op de website van CEPANI (www.cepani.be).

Nadat het arbitragereglement in 2013 werd herzien, heeft CEPANI in 2018 haar mediatiereglement, mini-trialreglement, reglement inzake deskundigenonderzoek evenals het reglement betreffende de aanpassing van overeenkomsten herzien, die gezamenlijk de "ADR-reglementen" genoemd worden.

De aanpassingen aan de ADR-reglementen van CEPANI brengen deze reglementen helemaal up-to-date, zodat alle aanpassingen die in 2013 aan het CEPANI-arbitragereglement werden aangebracht nu ook in deze reglementen werden aangebracht. Maar er werden daarnaast ook enkele bijkomende aanpassingen aangebracht, rekening houdend o.m. met de trend naar meer digitale communicatiemethodes. In het kader van het digitale

THIRD CO-CHAIR'S CIRCLE
GLOBAL CONFERENCE 2018 IN
ROME: INTERNATIONAL
ARBITRATION, LOCAL
ADMIRATION

(ROME, 17-19 MAY 2018)



Jonathan RUFF
Senior Associate
Loyens & Loeff, Amsterdam

Amid pizza, pasta and gelato, against the background of the Colosseum, Pantheon and *Forum Romanum*, and under a more than generous Mediterranean sun, the Eternal City offered the scenery of the 2018 edition of the Co-Chair's Circle (CCC) Global Conference on Friday 18 and Saturday 19 May 2018, hosted by the Italian Forum for Arbitration and ADR (Arblt).

The CCC Global Conference is an international arbitration conference organized as a joint effort by the different groups taking part in the CCC. The CCC is a platform for cooperation and networking between groups of young arbitration practitioners from around the world. At this moment, around 40 national and transnational groups of young arbitration practitioners are affiliated with CCC. Following previous CCC conferences in Berlin (2014) and Helsinki (2016), Rome was the host of the third CCC Global Conference.

The *Aula Magna* of the Rome Tre University was the splendid and spacious venue of the mind provoking program of this year's conference, covering a broad range of contemporaneous subject matters in the field of arbitration and international dispute resolution.

The conference started with opening remarks by Giovanni Serges, the director of the Department of Law of Rome Tre University, followed by welcome remarks by Valentine Chessa (co-chair of Arbit), Maria Beatrice Deli (Secretary General, Italian Association for Arbitration and ICC Italy) and Benedetta Coppo (Head of the Rome branch office of the Milan Chamber of Arbitration). A keynote speech was delivered by Alexis Mourre, President of the ICC Court of Arbitration.

This first part of the morning was followed by two panel discussions. The two main subject matters that were discussed in the context of the first panel, titled

tijdperk wenst CEPANI zoveel als mogelijk de correspondentie via de digitale weg te laten verlopen. In de verschillende ADR-reglementen wordt nu voorzien dat een verzoek en de bijlagen bij dat verzoek elektronisch moeten worden ingediend, alsook in één papieren exemplaar op de zetel van CEPANI, en voorts dat het antwoord en de bijlagen bij dit antwoord elektronisch alsook in één papieren exemplaar moeten worden ingediend.

In de verschillende reglementen werden bepalingen toegevoegd in verband met de beperking van de aansprakelijkheid van de neutrale derde en van CEPANI, en ook in verband met de vertrouwelijkheid van de procedure. Evenwel, anders dan bij mediatie en mini-trial en bij een procedure tot aanpassing van overeenkomsten, is een procedure van deskundigenonderzoek in beginsel niet vertrouwelijk. Het moet immers mogelijk zijn voor de partijen om zich in een procedure voor de rechtbank of in een arbitrage te beroepen op de bevindingen uit het deskundigenonderzoek. De partijen behouden weliswaar de vrijheid om de vertrouwelijkheid van het deskundigenonderzoek overeen te komen.

In het mini-trialreglement, het reglement inzake deskundigenonderzoek evenals het reglement betreffende de aanpassing van overeenkomsten wordt een "voorafgaande bepaling" toegevoegd dat CEPANI een onafhankelijke instelling is die de procedures administreert volgens haar reglement.

In de reglementen inzake deskundigenonderzoek en aanpassing van de overeenkomsten wordt een bepaling opgenomen over de "andere kosten", zoals de uitgaven gedaan door de partijen voor hun verdediging.

Voor een uitgebreide bespreking van de wijzigingen aangebracht aan de verschillende reglementen, verwelkomt CEPANI40 u op 19 juni 2018 tijdens de Presentatie van de nieuwe Bemiddelingswet en de recent herziene « ADR » reglementen van CEPANI op het kantoor van Daldewolf van 17u-19u, gevolgd door een cocktailreceptie, voor meer informatie over de verschillende sprekers en het programma, [klik hier](#).

'the arbitrators of tomorrow', were 'how to get that first appointment and continue to be appointed' and 'business development at the associate level'.

After a coffee break, the second panel discussion started, under the heading 'The future of cross-border disputes settlement: back to litigation?' During this panel, a presentation was given on the 2005 The Hague Convention on Choice of Court Agreements, outlining the 'architecture' of this convention. Also, by means of a number of examples, the application of this convention was compared to the result under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in terms of, *inter alia*, the validity of choice of court agreement/arbitration agreement and enforceability of a judgment/arbitral award.

The end of the second panel was the 'cue' for a full-fledged Italian *pranzo* lunch. The organizers of the event took the adage 'When in Rome, do as the Romans do' to heart.



CEPANI40 Delegation

The first part of the afternoon program consisted of a number of debates between young practitioners, on topics as diverse as the gender diversity in arbitration, the necessity or usefulness of document production in arbitration, whether arbitrators should impose limitations on submissions and/or evidence to keep proceedings manageable, whether arbitration is only as good as the counsel to the parties and whether an administrative secretary to a tribunal is 'the fourth arbitrator'.

After the debates, the last panel discussion of the day took place on the question how, when and why party appointed experts are necessary/useful in arbitration. This last panel was followed by conclusive remarks on the part of the organizational committee, thus heralding the evening's social event.

Here, Italy's reputation in the field of aesthetics and living *la dolce vita* became manifest. Dinner was served in the garden of Palazzo Brancaccio, an oasis of serenity and a true treat for the senses in the middle of Rome. As the evening evolved, the buffet dinner and animated conversations were taken over by the ever-increasing volume of pop and dance music, seducing the participants to dance the night away under the Roman sky.

The conference came to an end on Saturday in a relaxed manner at 'The Sanctuary', a lounge bar/restaurant. During this brunch event the participants

REPORT ON THE ICC BELGIUM ANNUAL MEETING

(BRUSSELS, 23 MAY 2018)



Mathieu MAES
Secretary General
ICC BELGIUM

Members of ICC Belgium, the Belgian chapter of the International Chamber of Commerce (ICC) gathered at the Federation of Enterprises (FEB) for the Annual General Meeting 2018 on 23 May.

As the world business organization, ICC is the only business organisation admitted as an Observer at the United Nations General Assembly, and its International Court of Arbitration® is the world's preferred institution for high-value, complex multi-party and multi-contracts disputes across the globe. While ICC took up its position as observer to the General Assembly on 1 January 2017, aiming to contribute directly to the work of the General Assembly and to promote the essential role the private sector will play in implementing the UN's 2030 Agenda for Sustainable Development, the Court revealed in March 2017 its latest figures, with a total of 810 new cases filed in

were afforded a chance to reflect and contemplate on the events of the previous day, while enjoying soft ambient music and Asian/Italian fusion cuisine.

Saturday afternoon, after the conclusion of the CCC Global Conference, the CCC Retreat took place. During this session, a number of subject matters of a more 'administrative' nature concerning the various young arbitration practitioners groups were discussed, among which the location of the 2020 CCC Global Conference. CEPANI40 has been chosen to host this event in Brussels! Congratulations!

2017, which included 135 cases related to a set of very small claims in a collective dispute. Cases filed in 2017 involved 2,316 parties from a record 142 countries, compared with 137 countries represented in 2016. Newly-registered cases represented an aggregate value in dispute of over US\$ 30.85 billion in 2017, while the average amount in dispute in new cases stood at US\$45M with over 60% of all cases filed having an amount in dispute exceeding US\$2 million. The 1,548 pending cases at the end of 2017 represented an average value in dispute of US\$ 137,325, 630. In 2017, the ICC Court saw as well an increase in the total number of women arbitrators. Women arbitrators represented 16.7% of all arbitrators nominated or appointed by the parties, co-arbitrators or by the Court. This represents an increase from 14.8% of nominations or appointments made in 2016. In 2017, of 1,488 arbitrators nominated or appointed, 249 were women, representing 85 nationalities. This compares with 209 of 1,411 arbitrators in 2016. The Court appointed a higher percentage of women (45%) than the parties themselves (41%) and the co-arbitrators (13.7%).

Arbitration stood firmly high on the agenda of ICC Belgium in 2017, with among other activities, the visit of Belgian practitioners to the Court in Paris, France, and the visit of the Secretary-General of the Court designated in 2017, Alexander Fessas, to Antwerp.

During the AGM 2018, Members elected as new President of ICC Belgium, Vincent Reuter, former Managing Director of the Walloon Union of Enterprises (UWE) and former Chair of the Board of Credendo, the official Belgian export credit agency.

ICC Belgium's annual report 2017 can be downloaded [here](#).

REPORT ON THE PANEL DISCUSSION AT THE BRUSSELS GLOBAL LAW WEEK: "IS EVERYTHING ARBITRABLE?"

(BRUSSELS, 16 MAY 2018)



Alexandre HUBLET
Associate
White & Case, Brussels

For the second year in a row, the Brussels Global Law Week (organized by the Perelman Centre for Legal Philosophy at the *Université libre de Bruxelles*) hosted a seminar over the role of international arbitration in globalization of law.

This year, I had the chance to moderate a fascinating debate focusing on investment arbitration, and the legitimacy criticism it is facing. Three distinguished and experienced speakers joined the debate.

First, M. John Willem, Partner at White & Case Paris, who is experienced with international arbitration proceedings before various institutions, including the International Centre for the Settlement of Investment Disputes (ICSID) and who represented both investors and States.

Secondly, Prof. Nicolas Angelet, who is Professor of international law at the *Université libre de Bruxelles* and a Partner at Liedekerke, with extensive experience in investment law and a member of the ISCID Panel of Conciliators and Arbitrators.

Thirdly, M. André von Walter, who is legal counsel and negotiator in the Directorate General for Trade of the European Commission and focuses on developing the EU approach to investment dispute resolution. He represented

the European Union in bilateral investment negotiations with, among others, Singapore, Canada, Japan and the United States.

The discussion started with an overview of the origin of investment arbitration, which finds its legal ground in a galaxy of Bilateral Investment Treaties, containing both substantive rules, often broad and unprecise (such as 'fair and equitable treatment'), and a dispute settlement clause.

Many criticisms arose against investment arbitration in the recent years. These mainly concerned (i) the costs of the procedure, (ii) the lack of predictability in the absence of a binding precedent system (with States having to defend themselves several times for the same issue), (iii) the fact that public measures can be questioned by an *ad hoc* tribunal and (iv) the lack of legal review of the award.

This system is however appreciated by investors for the possibility to directly sue the State without referring to local courts. Seeing the media attention over investment arbitration, there is however a reluctance from investors to become the 'worst case', making investors cautious not to bring too aggressive or too 'original' claims.

An important critic is the bias that arbitrators would have in favour of the investors (who are always claimants and thus creating the 'business'). John Willems raised that there is a difference between the perception of the bias in favour of arbitration and case-law. In practice, investors only prevail in 25% of the cases. However, Prof Angelet raised the chilling effect of investment arbitration because of which threats to file investment arbitrations make State reluctant to enact legal changes. For example, seeing the proceedings started by Philip Morris, some States postponed their legislation for neutral packages.

However, everyone is perceived as having a bias, and judges in a court system will be perceived as bias in favour of the States. As a consequence, a system without any (perception of) bias is not possible. The current possibility for each party to appoint one arbitrator appears as a fair compromise to this issue.

Another criticism often raised against (investment) arbitration is lack of transparency, since briefs and hearings are not public (even if ICSID awards are well published). In practice, it appears that States are more reluctant to

transparency and that it is often the (the President of the) Tribunal who pushes for transparency. Some hearings are now available online. Even if these videos are not widely watched (which is understandable seeing their length), the mere fact that the proceeding does not take place behind closed doors reinforces the system.

In this context of international criticism, the European Commission is advocating for a new settlement mechanism for investment disputes. This new system would be the implementation of a (international) court with 2/3 of judges from each signing party and 1/3 of judges from third countries. Judges will be professionals, paid by the States and with the prohibition to act as lawyers at the same time. Each tribunal would be composed by one judge from each country and one from a third country.

The European Commission is currently proposing this court mechanism in all its new investment treaties (as in the famous CETA with Canada). To ensure the success of this court system, the European Commission would like to use the model of the Mauritius Convention, which is a 2014 convention under the auspices of UNCITRAL on transparency in investment arbitration. To avoid having to change all their BITs to apply this convention, the Mauritius Convention is one instrument that States ratify and which applies when both parties come from a State having ratified the Mauritius Convention (or when the claimant specifically accepts to apply the Mauritius Convention in a case where the defendant is a signatory). This would mean that, without having to change current BITs, other States could join this system.

In addition, this court system could allow to reduce the costs of investment disputes, opening the door to claims from small to medium size companies.

The court system is still under construction and several issues are not yet fixed. For example, it is not possible at this stage to determine whether this system will be closer to arbitration or international justice. This is of paramount importance at enforcement stage, since an arbitral award can be widely enforced thanks to the New York Convention.

The European Commission is aware that this system will need a long time to enter into force and to compete with investment arbitration (and for example the Washington Convention). It can at least put some pressure on the current system and force to some (needed) changes.

To conclude, investment arbitration is facing an important legitimacy crisis. If everyone around the table agreed that a dispute settlement mechanism should be in place for investment disputes, future developments will indicate whether this new system tends more for an international court system or a (revised?) arbitration. Another solution which was raised was to clarify the substantive provisions of investment law, to leave less room for interpretation. This would ensure predictability and answer to large criticisms investment arbitration is facing.

NEWS

» **BREAKING NEWS: CEPANI40 WILL HOST THE NEXT CO-CHAIR'S CIRCLE GLOBAL CONFERENCE!**

We have the pleasure to announce that during the [CCC retreat in Rome](#) (gathering the co-chairs of around 40 groups of young arbitration practitioners), CEPANI 40 was selected to host the next Co-Chair's Circle Global Conference! The 4th edition of this event will take place in Brussels in May 2020.

The CCC Global Conference is an international arbitration conference organized as a joint effort by the 35 different below 40/45 groups, including CEPANI 40. Over 190 young arbitration practitioners from 20 countries attended the last CCC Conference in Rome.

More details will follow In due course.

» **CEPANI ACADEMIC PRIZE 2018**

One of CEPANI's goals is to actively promote the knowledge and use of arbitration, among others by encouraging the study of arbitration on a national and international level. Without a doubt, our young professionals take up a central spot in the elaboration of this mission.



To support this young talent, CEPANI takes great pride in organizing an Academic prize which rewards an outstanding paper in the field of national or international arbitration. The goal of this competition is to offer young professionals with an interest in the field the chance to gain recognition among their peers. CEPANI's Academic Prize, which amounts to € 5.000, is awarded every three years. The competition is open to anyone who is under the age of 40 on the 1st of September of the year in which the prize is awarded, i.e. 1st of September 2018.

» PROF. FERRARI : GUEST SPEAKER OF THE CEPANI GENERAL ASSEMBLY

CEPANI has the pleasure to welcome Prof. Ferrari as its guest speaker for the next General Assembly, which will take place on 7 June 2018.

Franco Ferrari is a Professor of Law and the Director of the Center for Transnational Litigation, Arbitration and Commercial Law at New York University School of Law. Prof. Ferrari joined NYU on a full-time basis in September 2010, after serving as visiting professor at NYU for various years. Previously, he was chaired professor of comparative law at Tilburg University in the Netherlands and Bologna University in Italy as well as chaired professor of international law at Verona University in Italy.

After serving as member of the Italian Delegation to various sessions of the United Nations Commission on International Trade Law (UNCITRAL) from 1995 to 2000, he served as Legal Officer at the United Nations Office of Legal Affairs, International Trade Law Branch (2000-2002), with responsibility for numerous projects, including the preparation of the very first edition of the UNCITRAL Digest on Applications of the UN Sales Convention (2004).

Prof. Ferrari has published more than 280 law review articles in various languages and authored and edited 25 books in the areas of international commercial law, conflict of laws, comparative law and international commercial arbitration. He is a member of the editorial board of various peer reviewed European law journals (Internationale Handelsrecht, European Review of Private Law, Contratto e impresa/Europa, Revue de droit des affaires internationales) as well as the General Editor of the European International Arbitration Review. He also acts as arbitrator both in international commercial arbitrations and investment arbitrations.

» CEPANI INTERN DAYS

Following the three previous editions that encountered a great success, CEPANI has the pleasure of organizing the fourth edition of its "Intern Days": a unique opportunity for law students as well as newly qualified lawyers to take a look behind the scenes and spend a whole day at the CEPANI offices in the heart of Brussels. Interns will receive a full tour of the CEPANI offices, presentations on the CEPANI ADR Rules and on arbitration in Belgium by successful practitioners and arbitration experts, a welcome pack and lunch with a couple of CEPANI members.

The Intern days will be held on **the 6th of July** and on **the 31th of August 2018**. There are already fully booked!

» CEPANI RELEASES BROADCAST

As part of its mission to promote the use of ADR, CEPANI released a broadcast. In 90 seconds, this broadcast explains briefly but clearly what arbitration is and highlights its many benefits for users.



The result can be seen [here](#).

VARIA

- » ICCYAF will hold its Europe Regional Conference in Lisbon from 28 to 30 June 2018. For more information, see [here](#).
- » Dirk De Meulemeester parlera à la matinée d'étude « **Un tribunal de l'entreprise anglophone à Bruxelles** » organisée par la Fédération des entreprises de Belgique, au sujet de : « *la BIBC et l'arbitrage : des compléments naturels* » (Bruxelles, 26 juin 2018). Pour plus d'information, cliquez [ici](#)./ Dirk De Meulemeester zal op de studiedag "**Een Engelstalige ondernemingsrechtbank in Brussel**", georganiseerd door het Verbond van Belgische Ondernemingen, spreken over: "*het BIBC en arbitrage als natuurlijke aanvullingen op elkaar*" (Brussel, 26 Juni 2018). Voor meer informatie, zie [here](#).
- » Erasmus School of Law, the Max Planck Institute for Procedural Law Luxembourg and the Montaigne Center for Rule of Law and Administration of Justice (Utrecht University) will hold a seminar on "**Innovating International Business Courts: a European Outlook**". Philippe Lambrecht will speak about the proposal for the Brussels International Business Court (Rotterdam, 10 July 2018). For more information, see [here](#).

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