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CEPANI
THE BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

WOORD VAN DE VOORZITTER

Het is een ware eer me, in mijn hoedanigheid van Voorzitter van CEPANI, tot u te mogen richten in deze inleiding. Ik heb namelijk het genoegen u ons activiteitenverslag voor het jaar 2023 voor te stellen.

De belangrijkste opdracht van CEPANI is het beheren van arbitrageprocedures die in overeenstemming met haar Reglement zijn ingeleid. In dit verslag vindt u verschillende statistieken voor het jaar 2023 die betrekking hebben op de door CEPANI beheerde arbitrageprocedures.

Daarnaast werd CEPANI in 2023 door de Minister van Justitie gevraagd om na te denken over de aanpassing van sommige bepalingen van boek 6 van het Gerechtelijk Wetboek, die aan arbitrageprocedures gewijd is. De werkzaamheden van de CEPANI-werkgroep die daartoe is opgericht, werden gedurende het hele jaar 2023 voortgezet. Aan het einde van die werkzaamheden kon CEPANI een voorontwerp van wet houdende hervorming van diverse bepalingen van het Gerechtelijk Wetboek met betrekking tot arbitrage indienen bij de Minister van Justitie. Die bepalingen werden goedgekeurd door het parlement en gepubliceerd in het Belgisch Staatsblad op 29 maart 2024. Ik ben dan ook erg verheugd met het hernieuwde vertrouwen van de Federale Overheidsdienst Justitie en het kabinet van de Minister van Justitie met betrekking tot de ontwikkeling van deze nieuwe regelgeving.

Ook dit jaar nam het aantal activiteiten van CEPANI verder toe teneinde onze missie inzake het promoten van alternatieve geschillenbeslechting te volbrengen.

Gedurende het hele jaar hebben we de verschillende alternatieve geschillendbeslechtingsmethodes en de belangrijke waarden die CEPANI met haar activiteiten wil verdedigen, in de verf gezet.

Op onze Algemene Vergadering van 1 juni 2023 hadden we binnen die context het genoegen een boeiende lezing bij te wonen van Mr. Stéphanie Boyce over het thema *'Why diversity matters and why each of us has a responsibility to build truly diverse and inclusive professions'*.

Op dezelfde dag reikte mr. Niuscha Bassiri, in haar hoedanigheid van voorzitter van het comité voor de toekenning van de wetenschappelijke prijs van CEPANI, de prijs voor 2021 uit aan dr. Karim El Chazli voor zijn proefschrift over het onderwerp: *'De onpartijdigheid van de arbiter - Een onderzoek naar de implementatie van de vereiste van onpartijdigheid van de arbiter.'* Namens CEPANI wil ik hem daarvoor nogmaals feliciteren.

Op 17 november 2023, tijdens ons jaarlijks colloquium dat werd voorbereid door ons dynamisch Wetenschappelijk Comité en diens voorzitter, Mr. Dirk De Meulemeester, hadden we de gelegenheid om onze kennis rond het onderwerp '*ESG and International Commercial Arbitration, beyond the acronyms*' te vergroten. Op de dag van de conferentie werd een wetenschappelijk werk met bijdragen van de verschillende sprekers, uitgegeven door Kluwer in de CEPANI-collectie, aan de vele deelnemers overhandigd.

U zult in dit jaarverslag ook kunnen lezen dat onze lopende werkgroepen ('Greener Arbitration' en 'Arbitration & Construction') en de vaste commissie 'Diversity and Inclusion' heel wat vorderingen maakten. Ik wil hen dan ook hartelijk bedanken voor hun inzet.

CEPANI bleef met succes talrijke evenementen organiseren voor de jonge juristen. Zo was CEPANI aanwezig op de Job Days georganiseerd door de Belgische rechtenfaculteiten, nam het deel aan verschillende workshops in samenwerking met ELSA (European Law Students Association), organiseerde het de 'CEPANI Summer Intern Days' ... En natuurlijk werden ook verschillende activiteiten aangeboden door CEPANI40 (Brussels Pre-Moot for the Willem C. Vis International Commercial Arbitration Moot, webinars en workshops, summer drinks ...) Mijn oprechte dank gaat uit naar het Steering Committee en de medevoorzitters van CEPANI40 voor al hun inspanningen. Het lijdt geen twijfel dat dergelijke evenementen de belangstelling van rechtenstudenten en jonge beoefenaars van juridische beroepen voor de praktijk van alternatieve geschillenbeslechting zullen vergroten.

We organiseerden ook met succes het eerste 'level' van de CEPANI ARBITRATION ACADEMY. De deelnemers kregen in dat eerste level een algemene en praktische inleiding in de arbitrageprocedure door een

team van ervaren professoren, die ik hartelijk wil bedanken. We hebben het genoegen om u in het najaar van 2024 ook het '*CEPANI ARBITRATION ACADEMY - Expert Level*' aan te bieden!

Daarnaast deden we ons centrum, België en Brussel in 2023 meermaals internationaal schitteren. Zo waren we onder meer aanwezig op de *Paris Arbitration Week* en op de jaarlijkse conferentie van de *International Bar Association*. Daarnaast waren we in Genève voor een evenement over '*Hot topics in International Arbitration*' en in Luxemburg voor ons gezamenlijke colloquium met het *Luxembourg Arbitration Centre* (LAC), de *Luxembourg Arbitration Association* (LAA), het *Netherlands Arbitration Institute* (NAI) en de *Dutch Arbitration Association* (DAA). CEPANI zal ook present tekenen in Londen tijdens de *London Arbitration Week* 2024, en zal deelnemen aan de prinselijke economische missie naar Noorwegen in juni 2024!

Ik kan me alleen maar verheugen op de vele activiteiten die ons in 2024 te wachten staan, waaronder de feestelijkheden voor het 55ste jubileum van CEPANI op 23 mei. Ik hoop velen onder u daar te zien!

Tot slot wil ik de leden van het Secretariaat van CEPANI, die verantwoordelijk zijn voor het dagelijkse beheer van de arbitrageprocedures, van harte bedanken. Zonder hun onschatbare hulp zouden de verschillende activiteiten van CEPANI niet kunnen worden georganiseerd.

Ik wens u een uitstekende lectuur.

Benoît Kohl

Voorzitter | Président | President

LE MOT DU PRESIDENT

C'est un grand honneur pour moi de vous adresser cette introduction en ma qualité de Président du CEPANI. J'ai le plaisir de vous présenter notre rapport d'activité pour l'année 2023.

La première mission du CEPANI consiste à administrer les procédure d'arbitrage qui sont initiées en application de son Règlement. A cet égard, le lecteur prendra connaissance, dans ce rapport, des différentes statistiques, pour l'année 2023, concernant les procédures d'arbitrages administrées par le CEPANI.

En 2023, CEPANI a également été invité, par le Ministre de la Justice, à réfléchir à une adaptation de certaines dispositions du Livre 6 du Code judiciaire, consacrées à la procédure d'arbitrage. Les travaux du groupe de travail constitué à cet effet par le CEPANI se sont poursuivis durant toute l'année 2023. Au terme de ses travaux, le CEPANI a pu transmettre au Ministre de la Justice un avant-projet de loi portant réforme de certaines dispositions du Code judiciaire en matière d'arbitrage. Ces dispositions ont été votées par le Parlement et publiées au *Moniteur belge* le 29 mars 2024. Je me réjouis de la confiance renouvelée accordée par le Service Public Fédéral Justice et par le Cabinet du Ministre de la Justice en vue de l'élaboration de cette nouvelle réglementation.

Cette année encore, les activités du CEPANI se sont également multipliées afin de mener à bien notre mission de promotion des modes alternatifs de règlement des différends.

Tout au long de l'année, nous avons mis en avant les modes alternatifs ainsi que les valeurs importantes que le CEPANI entend défendre au travers de ses activités.

Dans ce cadre, lors de notre Assemblée Générale du 1er juin 2023, nous avons eu le plaisir d'assister à la conférence passionnante donnée par Me. Stéphanie Boyce sur le thème : « *Why diversity matters and why each of us has a responsibility to build truly diverse and inclusive professions* ».

Le même jour, Me. Niuscha BASSIRI, en sa qualité de présidente du comité d'attribution du prix scientifique du CEPANI, a remis le prix 2021 au Dr. Karim EL CHAZLI pour sa thèse sur le sujet : *"L'impartialité de l'arbitre - Etude de la mise en oeuvre de l'exigence d'impartialité de l'arbitre."* Je lui présente encore, au nom du CEPANI, toutes mes félicitations.

Le 17 novembre 2023, lors de notre colloque annuel préparé grâce au dynamisme du comité scientifique et de son présidente, Me Dirk Demeulemeester, nous avons eu l'occasion d'approfondir ensemble nos connaissances sur le thème « *ESG and International Commercial Arbitration, beyond the acronyms* ». Un ouvrage scientifique, reprenant les contributions des différents orateurs et publiés aux éditions Kluwer dans la collection du CEPANI, a été remis le jour de la conférence aux nombreux participants.

Nos groupes de travail en cours (« Greener Arbitration » et « Arbitration & Construction ») ainsi que le standing committee « *Diversity and Inclusion* » ont également réalisés diverses avancées dont vous pourrez prendre connaissance dans ce rapport annuel. Je les remercie chaleureusement pour leur implication.

Le CEPANI a continué d'organiser avec succès de nombreux évènements à destination de la communauté des jeunes juristes : présence aux JobDays organisés par les facultés de droit belges, participation à différents Workshops en collaboration avec ELSA (European Law Students Assiciation), organisation des « CEPANI Summer Interndays », … Sans oublier, bien entendu, les diverses activités proposées par le CEPANI40 (Brussels Pre-Moot for the Willem C. Vis International Commercial Arbitration Moot, Webinars et workshops, Summer drinks,…). Je remercie très sincèrement le *steering-comittee* et les co-présidents du CEPANI40 pour l'ensemble de leurs efforts. Nul doute que ces évènements permettent d'accroître l'intérêt des étudiants en droit et des jeunes praticiens du droit pour la pratique des modes alternatifs de règlement des différends.

Nous avons également organisé avec succès le premier « *level* » de la CEPANI ARBITRATION ACADEMY. Les participants ont bénéficié d'une introduction générale et pratique à la procédure d'arbitrage par une équipe de professeurs chevronnés que je

remercie vivement. Nous aurons le plaisir de vous proposer la « *CEPANI ARBITRATION ACADEMY – Expert Level* » durant cet automne 2024 !

Par ailleurs, nous avons, en 2023, à diverses occasions, fait rayonner notre centre, la Belgique et Bruxelles à l'international. Je peux citer, entre autres, notre présence à la *Paris Arbitration Week* et à la conférence annuelle de *l'International Bar Association*. Nous étions également à Genève, pour un évènement sur le thème « *Hot topics in International Arbitration* » et à Luxembourg pour notre colloque commun avec la *Luxembourg Arbitration Centre* (LAC), *Luxembourg Arbitration Association* (LAA), la *Netherlands Arbitration Institute* (NAI) et la *Dutch Arbitration Association* (DAA). Le CEPANI sera également présent à Londres durant la *London Arbitration Week* 2024, et participera, en juin 2024, à la mission économique princière en Norvège !

Je ne peux que me réjouir des nombreuses activités qui nous attendent en 2024 et notamment les célébrations des 55 ans du CEPANI le 23 mai prochain. J'espère vous y voir nombreuses et nombreux !

Enfin, je tiens à remercier chaleureusement les membres du Secrétariat du CEPANI, qui assurent au quotidien l'administration des procédures d'arbitrage, et sans le précieux concours desquelles les différentes activités déployées par le CEPANI ne pourraient être organisées.

Je vous souhaite une excellente lecture.

Benoît KOHL

Voorzitter | Président | President

CEPANI STATISTICAL SURVEY 2023

Origin of the Parties

 v.  = 43%

 v.  = 48%

 v.  = 9%

France	2
Germany	3
Luxembourg	1
The Netherlands	2
Cyprus	1
Italy	1
Austria	1
United Kingdom	1
Taiwan	1
Czech Republic	1
Lebanon	1
Denmark	1
Hong Kong	1

Language of the arbitral proceedings

DUTCH	FRENCH	ENGLISH
17%	22%	61%

Place of the Arbitration

 74%  26% 

Nature of the dispute

Civil Law Agreements = 9%

Service Agreements = 48%

Share Purchase Agreements = 43%

Amount in dispute

< € 100.000,00 →	22%
€ 100.000,00 – € 200.000,00 →	14%
€ 200.000,00 – 500.000,00 →	9%
€ 500.000,00 – 1.000.000,00 →	9%
€ 1.000.000,00 – 10.000.000,00 →	32%
> € 10.000.000,00 →	14%

Arbitral Tribunal

= 44% Chair chosen by
- Parties = 86%
- Appointments Committee = 14%

= 56% Arbitrator chosen by
- Parties = 22%
- Appointments Committee = 78%

1 Emergency Arbitrator

1 Challenge / Replacement

♀ 23%* ♂ 77%

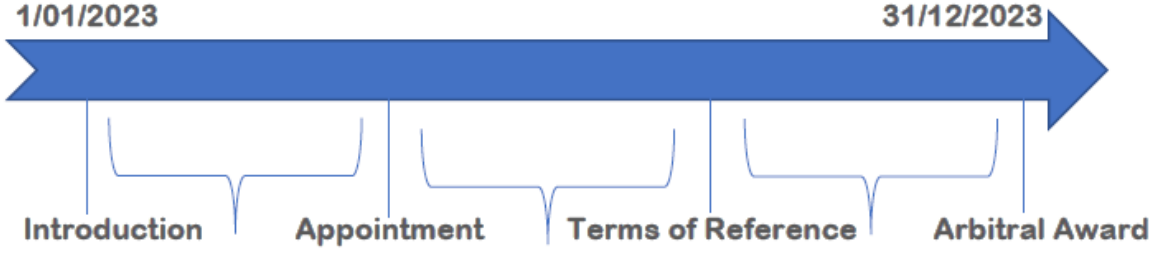
- Parties = 57%
- Appointments Committee = 43%

↓40y 13% ↑40y 87%

- Parties = 25%
- Appointments Committee = 75%

*Subtle precision, these numbers take into consideration ALL the appointments made in 2023, meaning confirmations by the Appointments Committee of Party appointed Co-Arbitrators or Party appointed Sole Arbitrators/Chairs along with the appointments made by the Appointments Committee itself. When taking into consideration only the appointments made by the Appointments Committee itself (thus excluding all confirmations of Party appointed Arbitrators), 37,50% of these appointments are women in 2023.

Average duration of the arbitral proceedings



TOTAL average duration → 15 months

QUI SOMMES NOUS?

Le recours à l'arbitrage est de plus en plus souvent privilégié pour résoudre les différends. Celui-ci offre en effet un certain nombre d'avantages non négligeables : il est rapide, confidentiel et financièrement intéressant.

Le CEPANI, qui est le Centre belge d'arbitrage et de médiation, aide les parties à résoudre leurs différends commerciaux de manière sûre et efficace. Il s'engage à offrir aux parties en conflit le cadre juridique et administratif adéquat, afin d'assurer le meilleur traitement du litige.

Fondé en 1969, le CEPANI est aujourd'hui le principal centre d'arbitrage en Belgique. Il a étendu ses activités à d'autres formes de règlement des litiges. Situé au cœur de Bruxelles, qui accueille plusieurs institutions européennes ainsi que de nombreuses sociétés et organisations internationales, le CEPANI offre ses services dans un contexte national et international.

UNE DOUBLE MISSION

► Encadrer les procédures arbitrales et autres procédures qui appliquent les règlements du CEPANI

Le CEPANI désigne des arbitres, des médiateurs, des experts et des tiers indépendants. Il encadre le déroulement des procédures et offre des conseils pratiques ainsi qu'un soutien administratif. Outre l'arbitrage, le CEPANI gère également des procédures de médiation et de mini-trial et assure le suivi des conflits liés aux noms de domaine « .be ».

► Promouvoir l'arbitrage, la médiation et les autres formes de règlement alternatif des litiges

Le CEPANI organise régulièrement des conférences, des colloques, des séminaires ; il décerne un prix scientifique et publie des ouvrages sur le thème de l'arbitrage.

En matière de règlement alternatif des litiges, le CEPANI offre ses compétences uniques en Belgique.

L'ARBITRAGE, LE BON CHOIX POUR MON ENTREPRISE ?

LES AVANTAGES DE L'ARBITRAGE

En tant que mode alternatif de règlement des litiges, qui trouve une assise légale dans le Code judiciaire, l'arbitrage offre les **garanties** et la **sécurité juridique** habituelles, avec en prime une plus **grande flexibilité** et une **gestion efficace du temps**.

LES LITIGES POUVANT ÊTRE RESOLUS PAR L'ARBITRAGE

► Affaires financières, commerciales ou industrielles
► Conflits entre associés commerciaux
► Questions liées à une construction ou à la (co-)propriété immobilière
► Gestion de patrimoine, testaments et successions
► Conflits impliquant la responsabilité professionnelle
► Affaires bancaires et liées au droit des sociétés

LA PROCEDURE D'ARBITRAGE

Les parties peuvent soumettre leur différend à un tribunal arbitral, composé d'un ou de trois arbitres ou plus.

Après avoir examiné la demande et les arguments des parties, celui-ci rendra ensuite une décision contraignante, la « sentence arbitrale ».

L'arbitrage ne peut se dérouler qu'avec le consentement de toutes les parties impliquées. Ce consentement peut faire l'objet d'une clause incluse dans tout contrat au moment de sa signature ou d'un accord spécifique conclu après la naissance du litige.

ARBITRAGE INSTITUTIONNEL ET ARBITRAGE *AD HOC*

Les parties qui souhaitent voire résoudre leur conflit par l'arbitrage peuvent opter pour l'arbitrage *ad hoc*, ou pour une procédure supervisée par un centre d'arbitrage tel que le CEPANI.

Dans l'hypothèse d'un arbitrage ad hoc, la procédure est intégralement gérée par les parties ou les arbitres. La survenance de

difficultés peut en prolonger la durée. Les parties paient les frais et honoraires directement aux arbitres.

L'avantage de l'arbitrage institutionnel réside dans le fait que les parties peuvent se fonder sur le règlement du centre pour mener la procédure d'arbitrage. Il garantit une procédure équitable, sûre et rapide au terme de laquelle sera rendue une sentence arbitrale. Le règlement du CEPANI est concis et il offre un cadre contractuel souple aux parties.

UN ARBITRAGE CEPANI

Le CEPANI offre aux parties souhaitant entamer une procédure de résolution de conflit tout le support nécessaire. Il fournit aux parties un règlement – la dernière version du règlement d'arbitrage est entrée en vigueur le 1er janvier 2023 – offrant un cadre juridique clair et précis pour la conduite de la procédure. Le CEPANI n'exerce pas lui-même les fonctions d'arbitre, de médiateur ou de tiers indépendant.

Le Centre garantit la compétence et l'impartialité des arbitres, médiateurs et tiers indépendants, qu'il désigne en tenant compte des spécificités de chaque affaire qui lui est confiée. Les honoraires des arbitres et les frais dus au centre sont déterminés conformément à un barème dont le montant est calculé sur la base du montant des demandes.

Le Secrétariat du CEPANI veille à l'application correcte du règlement du CEPANI par les arbitres. Ce faisant, le Centre peut assurer le déroulement rapide et efficace de chaque procédure.

En termes de logistique, le CEPANI met à la disposition des parties :

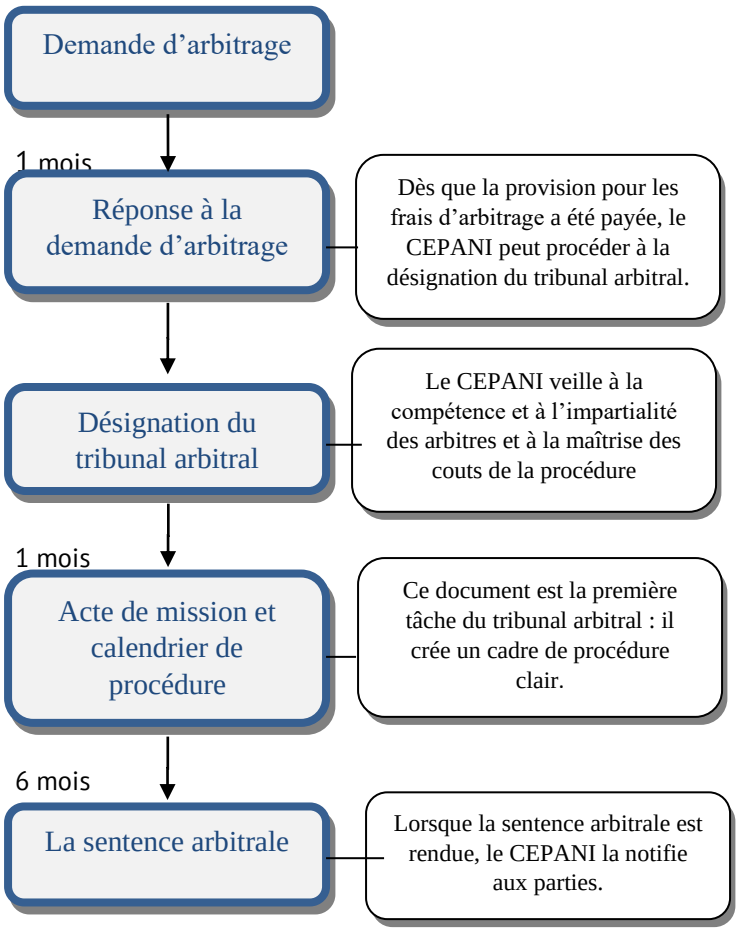
- Des salles de réunion / « breakout rooms »
- Un service de restauration
- Un soutien IT
- Le Wi-Fi, un service de photocopie, d'impression, de fax …

Le rôle du CEPANI est de créer un cadre légal et administratif sûr et de garantir une procédure confidentielle, impartiale et équitable.

Les parties peuvent insérer une clause d'arbitrage dans leur contrat ou convenir d'un arbitrage après la naissance d'un conflit. Les parties qui souhaitent faire référence au règlement d'arbitrage du CEPANI sont invitées à insérer dans leurs contrats la clause type suivante:

"Tous différends découlant du présent contrat ou en relation avec celui-ci seront tranchés définitivement suivant le règlement d'arbitrage du CEPANI par un ou plusieurs arbitres nommés conformément à ce règlement."

Aperçu de la procédure



Dans le cas d'un litige d'importance pécuniaire limitée, le CEPANI propose une procédure simplifiée. Sont visés les conflits pour lesquels le montant de la demande principale et de l'éventuelle demande reconventionnelle ne dépassent pas 100.000 EUR. Si, au cours de la procédure, le montant total des demandes principale et reconventionnelle vient à excéder ce montant, cette procédure reste applicable, sauf si les parties en conviennent autrement.

Pour les litiges d'importance pécuniaire limitée, le CEPANI propose une procédure moins coûteuse et plus rapide :

- une procédure accélérée est d'application pour les litiges dont l'enjeu est inférieur à 100.000 EUR
- procédure simplifiée /pas d'Acte de Mission
- délais plus courts

ANDERE METHODEN VAN GESCHILLENBESLECHTING

Mediatie

Mediatie is een alternatieve methode van geschillenbeslechting waarbij partijen een derde persoon (de bemiddelaar) verzoeken hen te helpen om een minnelijke regeling te vinden voor hun geschil dat voortvloeit uit eender welke contractuele of andere juridische relatie.

Mini-trial

Mini-trial is de perfecte procedurevorm voor iedere ondernemer die een geschil zo snel en efficiënt mogelijk wil oplossen zodat op korte termijn de normale handelsrelaties zouden kunnen worden hervat. In een mini-trial duidt iedere partij een hooggeplaatste verantwoordelijke aan als bijzitter in het mini-trialcomité. Deze vertegenwoordiger moet voldoende bevoegdheid hebben om de partij te kunnen binden wanneer een minnelijke regeling wordt bereikt. CEPANI duidt de voorzitter van het comité aan.

Technisch deskundigenonderzoek

Indien partijen tijdens een CEPANI-procedure met eventuele technische moeilijkheden worden geconfronteerd, kunnen zij beroep doen op het CEPANI-reglement voor technisch deskundigenonderzoek. Het technisch deskundigenonderzoek is ook mogelijk buiten een CEPANI procedure.

Een dergelijk deskundigenonderzoek kan een minnelijke regeling tussen partijen faciliteren of waardevolle gegevens opleveren. Indien nodig, kunnen partijen de resultaten van het deskundigenonderzoek in latere juridische procedures of in een arbitrage aanwenden. Tenzij anders overeengekomen, zijn de resultaten en conclusies van de expert bindend.

Aanpassing van overeenkomsten

De omstandigheden waarin een overeenkomst wordt gesloten, kunnen mettertijd veranderen. Dan kan de noodzaak ontstaan om de overeenkomst te herzien en waar nodig aan te passen aan de veranderde omstandigheden. Ook voor die procedure biedt CEPANI de juiste ondersteuning. Bij het opstarten van een procedure tot aanpassing van overeenkomsten benoemt CEPANI een onafhankelijke derde beslisser, die ofwel bepaalde aanbevelingen zal opstellen voor de betrokken partijen, ofwel, indien beide partijen daarmee op voorhand instemmen, een regel zal formuleren die hen definitief bindt.

NOG STEEDS NIET OVERTUIGD?

U beheert dagelijks uw onderneming met alle daarbij horende strategische, operationele en commerciële uitdagingen. Dit vormt een veeleisende en uitdagende opdracht. Er kan zich ten allen tijde een geschil voordoen met uw cliënten, leveranciers of vennoten. Het is in uw belang dat een dergelijk geschil **snel** en **efficiënt** kan worden behandeld.

Hebt u al gedacht aan arbitrage?

Een beslechting van een conflict via arbitrage laat toe om zeer snel **een beslissing te bekomen wanneer de situatie dringend is**. Uw geschil wordt op definitieve wijze behandeld **door competente en ervaren arbiters**. U kan zelfs arbiters kiezen die gespecialiseerd zijn in de sector waarin u actief bent of in de materie van het betrokken geschil.

De arbiters zijn geheel onafhankelijk en beslissen volledig neutraal. De zaken kunnen in om het even welke taal behandeld worden of in om het even welk land gekozen door de partijen. **De vertrouwelijkheid is gegarandeerd** – uw bedrijfsgeheimen en know-how zijn beschermd.

De beslissingen van de arbiters hebben **dezelfde waarde als beslissingen van de rechtbanken.** Zij beslechten daadwerkelijk de geschillen en laten u toe om beslag te leggen op de goederen van uw schuldenaar in meer dan 150 landen ter wereld.

Arbitrage biedt u een alternatieve manier van geschillenbeslechting aan met een grote toegevoegde waarde.

CEPANI biedt u tevens bemiddelings- en verzoeningsdiensten aan, evenals andere manieren van alternatieve geschillenbeslechting die steeds de voorkeur geven aan een minnelijke oplossing.

HET ONDERZOEK NAAR EN DE PROMOTIE VAN ARBITRAGE – WETENSCHAPPELIJKE ACTIVITEITEN VAN CEPANI

Net zoals 2022, vormde 2023 een jaar vol hoogwaardige wetenschappelijke evenementen.

CEPANI

ACTIVITEITENKALENDER

Hierna volgt een opsomming van de evenementen waaraan CEPANI en CEPANI40 actief heeft deelgenomen en die door CEPANI werden georganiseerd doorheen het jaar 2023:

THIRD EDITION OF CEPANI40'S "MEET THE EXPERTS" BRUSSELS

Brussels - 19 januari 2023

On Thursday 19 January 2023, the CEPANI40's "Meet the Experts!" event returned for a third edition hosted, for the first time in-person, in the Brussels office of Allen & Overy.

Much like the previous editions, the event aimed at giving young practitioners an opportunity to hear directly from experienced lawyers about their work as arbitrators and – for the first time in this third edition – more generally, about their careers in the field of arbitration.

After an introduction by **Lauren Rasking** (Allen & Overy), CEPANI40 Co-Chairs **Katherine Jonckheere** (Lalive, London) and **Guillaume Croisant** (Linklaters, Brussels) moderated a lively and thought provoking Q&A session with a panel of four Belgian and international experts:

Pascal Hollander (Partner, Hanotiau & van den Berg, Brussels);

Maude Lebois (Partner, GBS Disputes, Paris);

Emma Van Campenhoudt (Secretary General, CEPANI);

Marieke van Hooijdonk (Partner, Allen & Overy, Amsterdam).

Through questions that had been sent by the audience ahead of the session, the four panellists shared their insights on a number of topics, ranging from advice on how to navigate a career in arbitration and land a first appointment as arbitrator, to thoughts about handling challenges in arbitral proceedings and promoting diversity in all aspects of arbitration.

The panellists shared some tips on how to effectively manage arising opportunities and multiple pressures in order to build a fulfilling career in arbitration. Their advice was, amongst others, to:

- Learn as much as possible from working in a broad range of fields, whether in arbitration, litigation or even fields not directly related to dispute resolution;

- Gain visibility, for example by publishing articles, speaking at conferences, or getting involved in professional associations;

- Be intentional and selective in the choice of these activities, depending on what fits best with one's career path;

- Be patient;

- Be mindful about how to evolve within a firm, such as fostering key client relations, developing a specific expertise or benefiting from the guidance of a mentor;

- Know your limits and be passionate about the work.

When discussing first appointments as arbitrator, the panellists emphasized again the importance of the visibility that can arise from publications and other academic engagements, and the relevance of experience acquired through work as a tribunal secretary. The experts also highlighted the value of being able to seek the support and insight of experienced lawyers when faced with procedural difficulties. Finally, they emphasised the key role of arbitral institutions in opening up the arbitration field to young and diverse profiles. The recent change in the CEPANI rules to formally integrate diversity and inclusion considerations in the appointment of arbitrators was highlighted as another step in the right direction.

The participants had the opportunity to network after and (welcomed innovation of this year!) before, the event during networking drinks.

A likely fourth edition of the event will no doubt be a great opportunity to continue these discussions and shed light on other thorny aspects of arbitration work!

BY Lucy Stewardson

Associate, Linklaters (Brussels)

CEPANI40 WEBINAR : "virtual hearings. Lessons learned"

Brussels - 16 February 2023

On 16 February 2023, CEPANI40 invited prominent arbitration practitioners to discuss their experience with virtual hearings and what lessons they learned. The panellists engaged the audience with an interactive mock prehearing conference hosted by Opus 2 where Mr. **Malik Baba** (Stibbe) advocated for holding the hearing on the merits virtually and Mr. **Jan Janssen** (Petillion) and Ms. **Lauren Rasking** (Allen & Overy) argued against a virtual hearing ("**VH**"). The prehearing conference was brilliantly moderated by a Sole Arbitrator, Ms. **Erica Stein** (Stein Arbitration), and held according to the prehearing protocol (Procedural Order No.1), which was provided to the participants in advance of the webinar.

The theme of Mr. Baba's oral submissions in favor of VH was a famous proverb: "necessity is the mother of invention". According to Mr. Baba, Covid-19 restrictions caused arbitration practitioners to start resolving disputes through a remote forum. Why not embrace progress and continue enjoying the benefits of VH? Mr. Baba named several advantages of VH that made it preferrable to an in-person hearing ("**IPH**"). In particular:

1. VH is cost-effective. This is particularly true in multijurisdictional disputes as arbitrators, counsel, parties, experts and witnesses are no longer required to travel and stay in hotels. Parties will also save costs for renting conference rooms that may be rather expensive.
2. VH is time-efficient and allow easy scheduling of the hearing, since the time previously required for traveling can be saved. Thus, time set aside for the hearing is reduced.
3. VH is more convenient because: (i) counsel can more comfortably attend to other urgent matters from their office if the need arises; (ii) it is easier to do last minute legal research to address the tribunal's questions from the office where the legal team has all its resources available, including a library; and (iii) it ensures minimal disruption to private life when all participants may enjoy the comfort of one's home at night and see their

family – this will help with the performance at the hearing.

VH reduces the impact on the environment by eliminating travel to a hearing venue.

For the sake of completeness and anticipating Respondent's submissions, Mr. Baba chose not to shy away from potential shortcomings of VH commenting on three major disadvantages. The first is the loss of the human aspect. "In other words, counsel would need to see people in the flesh, otherwise they would lose the ability to rely on body language" and to assess a witness' or expert's credibility or arbitrators' perceived sensitivity to it. However, it is doubtful that this constitutes a convincing argument against VH as participants can scrutinize body language equally well through a screen when faces are seen in close-up. Moreover, a witness or an expert can be nervous, and their body language can be misinterpreted. Therefore, it would not be worth incurring the costs of a face-to-face meeting (IPH), which in any event could be unreliable. The second drawback is the risk of technological issues such as unstable internet connections, audio- and visual- IT problems etc. However, such risks can be mitigated with appropriate measures such as organising testing sessions before the hearing, having a reliable hearing services provider as well as a local IT team ready to resolve any immediate problems. Third, it could be inconvenient for participants from different time zones to participate in VH. Yet, this issue is manageable – the parties can agree on shorter hearing days, unusual starting and finish times or more convenient times for each party in turn. Mr. Baba concluded that most of these challenges could be mitigated if the parties engaged constructively early on.

In response, Respondent's team objected to holding a VH in this arbitration as being unfair, costly and uncertain. Ms. Rasking alleged that VH would violate Respondent's right to present its defense and would be prejudicial to her client's right to a fair and efficient resolution of the dispute. She started her argument by rebutting Claimant's submissions:

1. VH will create a particular disadvantage to Respondent due to the time zone difference as Claimant proposed a timing that was favorable to it. Participation in the hearing during inconvenient and unreasonable hours will affect Respondent's team's performance,

concentration and ability to respond effectively to questions, preparation and coordination both within a team and with a client.

2. Technological issues such as poor internet connection, audio- and video- disruption and/or trouble with documents that are being displayed could affect the quality and continuity of the hearing.

3. The parties will incur additional costs to set up and manage the platform to be used for VH, costs of hosting data online and constant IT support. These costs will be disproportionate and unreasonable.

4. Furthermore, ethical behavior cannot be guaranteed or controlled in a virtual environment. To the contrary, VH will create opportunities for misconduct – like coaching witnesses or interference by third parties – and a hearing protocol will be insufficient to prevent this type of behavior.

5. VH will raise serious concerns about confidentiality/security of information that have been exchanged during VH and a leak of sensitive data.

Mr. Janssen added four more reasons to reject Claimant's request for VH:

1. The energy of IPH has a positive effect on the quality of the debate and creates (i) a more cooperative atmosphere, which in turn leads to better fact-finding and (ii) an opportunity for counsel to meet in the corridor and remove some tension from the proceedings.

2. Body language, which is essential for good communication, gets lost in VH. Thus, it will not be possible to see the immediate rection of opposing counsel or a witness as direct eye contact will be lost during cross-examination in VH.

3. It is easier to sabotage VH and delay the proceedings, where the costs of such delay, given the collective billing rates of tribunal members and counsel, are enormous.

4. It is tiresome to look at your own image on the screen the entire day, screen fatigue affects concentration on legal and factual issues of the case.

Following the parties' oral submissions, Ms. Stein invited Ms. **Roopal Patel** (Opus 2) to explain the technical side of having VH and what services the platform offers. Ms. Patel focused on four distinct parts of the hearing, which are the venue, the people, the interaction between the participants, and the supporting records and services, which could

include the hearing bundle and the transcripts. The only component that fundamentally differs when it comes to VH is the venue. Ms. Patel added that the platform – which is a cloud-based solution accessible via dedicated URL and specific user credentials – allows counsel to communicate and collaborate with colleagues effectively within one environment and to navigate through case materials easily as each side prepares for and participates in the VH. The solution also offers a real-time transcription and an activity wall. She concluded that the platform is fully managed by a dedicated support staff ready to help any minute.

After having heard the parties' submissions and the presentation of Opus 2, Ms. Stein closed the mock conference part and opened Q&A part of the webinar, which was joined by CEPANI40 Co-Chairs Ms. **Katherine Jonckheere** and Mr. **Guillaume Croisant**. The speakers were invited to share top tips for advocating in VH. When answering a question about "the key logistical points to think about when organising" VH, Mr. Baba highlighted the importance of: (i) selecting a suitable video conferencing system and (ii) ensuring the confidentiality/security of the proceedings. Ms. Patel added that: (iii) planning and testing the system would be critical to any VH to make sure everything would go smoothly. Speaking about the future of VH in post-pandemic era, Ms. Stein observed the trend that parties were more willing to keep short (i.e. limited in scope) hearings remote/online and to hold longer hearings with a debate between the parties in person. Lastly, the speakers commented on "the upcoming greener arbitration trend" by opining that – in their experience – parties started to increasingly raise environmental concerns when deciding on conducting arbitrations digitally, i.e., refraining from using hard copies, and deciding whether to opt for VH instead of IPH.

BY Krystyna Khripkova

Counsel, Integrites (Kyiv and Brussels)

2023 BRUSSELS PRE-MOOT FOR THE WILLEM C. VIS INTERNATIONAL COMMERCIAL ARBITRATION MOOT

Brussels - 21-22 March 2023

On The 7 th edition of the Brussels Pre-Moot for the Willem C. Vis International Commercial Arbitration Moot started on Tuesday 21 March, when 19 teams (the University of Palestine could not make it) arrived from four continents in Brussels, sometimes flying from (very) far away and braving jetlag.

The Pre-Moot gathered teams from Ankara University, China-EU School of Law, Ecole du Barreau de Paris (EFB), Erasmus University Rotterdam, Ghent University, Leopold-Franzens-Universität Innsbruck, Maastricht University, National University of Rosario, Queen Mary University of London, The Hague University of Applied Sciences, Ukrainian Catholic University, University of Basel,

Delhi, University of Liège, University of New South Wales, University of Oslo, and University of Warsaw.

This year, the Pre-Moot was organised under the auspices of **CEPANI40** by **Guillaume Croisant** (Co-Chair) and **Alexandre Hublet** (Member of the Steering Committee), and co-hosted by the Brussels offices of **Linklaters LLP and White & Case LLP**. The pleadings and networking events took place at both law firms, which are conveniently within walking distance of one other.

After the teams' registration, the first general round was launched simultaneously at both law firms. The teams, their coach(es) and the arbitrators were then kindly invited to participate in the networking lunch organised at Linklaters LLP, which was the perfect occasion to meet, discuss and share anecdotes on the intense but rewarding experience that the Willem C. Vis

International Commercial Arbitration Moot is. The second and third general rounds followed in the afternoon.

The day ended with a networking reception at White & Case LLP, which allowed teams, coaches and arbitrators to further meet and exchange over drinks and appetizers – all tired but enriched by the very pleasant first day of the Pre-Moot, and ready for the second one!

On Wednesday morning, participants met up for the fourth general round. The top eight teams then advanced to the final rounds: the grand finale saw the universities of Copenhagen and Queen Mary London face off at White & Case, arbitrated by **Benoît Kohl** (CEPANI President), **Erika Stein** (Stein Arbitration) and **Sophie Goldman** (past organiser of the Pre-Moot). In the end, it was the University of Copenhagen that came out on top, after a very high-quality final.

The Pre-Moot brought together more than 130 arbitration practitioners acting as arbitrators, with various levels of experience with the Vis Moot. Arbitrators were mostly lawyers or coaches, but also legal advisors at arbitral institutions (such as ICC in Paris and UNCITRAL in Geneva) and alumni from previous editions of the Moot and working in different sectors.

Many thanks to all the arbitrators, and stay tuned for the 2024 Brussels Pre-Moot!

BY Charlotte Pfeiffer

Associate, Linklaters (Brussels)

CEPANI EVENT: "THE (UN)USUAL SUSPECTS" EFFICIENCY AS A FUNDAMENTAL PRINCIPLE OF INTERNATIONAL ARBITRATION (29 MARCH 2023)

CEPANI, the Netherlands Arbitration Institute (NAI), the Vienna International Arbitral Centre (VIAC), and the Association Française d'Arbitrage (AFA) joined forces for the second time in a row at the Paris Arbitration Week (PAW), this year to explore the topic of efficiency from the perspective of arbitration under the respective rules of these four institutes. The roughly 100 participants were rewarded for their early alarm (the event started at 8:30am) by a breakfast featuring specialities from the four countries, including Dandoy speculoos.

The participants were welcomed by **Roland Ziadé** (co-head of the global arbitration practice of Linklaters, whose Paris office kindly hosted the event), before an introduction by **Gerard Meijer** (NAI President), who moderated the lively panel debate with witty humour and great energy. After having made clear that the "unusual suspects" did not refer to the distinguished speakers of course, but to regional institutions vis-à-vis the bigger international institutions such as the ICC, Mr. Meijer introduced the concept of efficiency of, and in, arbitration, and whether it constituted a fundamental principle of international arbitration (in light of the European Court of Human Rights' case law and the legal maxim "justice delayed is justice denied"). He also managed to foster an interactive debate throughout the event, reassuring the participants as from the start that they did not need to disguise their comments as questions, but that interventions and comments were most welcome!

The representatives of the four institutions, and the audience, discussed topics including the effects of the flexibility of institutional rules on efficiency, the effect of the desire for speed on efficiency, organisational aspects of an institute's secretariat that may impact efficiency, various procedural features and mechanisms, and of course costs.

Camilla Perera-de Wit (NAI Secretary General) started the discussion by presenting how flexible the NAI rules and Dutch arbitration act were, before **Marc Henry** (AFA President) made the case that the "need for speed"

should not be, per se, the holy grail and should not jeopardise the quality of the arbitral tribunal's decision. He defended the position that celerity is not a principle of international arbitration, but at most a rule of good conduct to help guarantee due process. A number of participants pointed out that the responsibility to ensure the efficiency of the arbitral process did not lie only with the arbitrators (who may be victims of "due process paranoia" when it comes to e.g. limit the number of submissions or the procedural deadlines), but also with the parties (prompt to submit increasingly longer submissions and abundant exhibits).

Benoît Kohl (CEPANI President) and **Emma Van Campenhoudt** (CEPANI Secretary General) then discussed how the organisation of SMIs ("small and medium institutes") can entail increased efficiency and responsiveness (without offence to the ICC, whose chair of the ICC Commission on Arbitration and ADR, Melanie van Leeuwen, was present in the audience and described herself as a "great supporter" of the four institutions), including in the context of emergency arbitration. Mr. Kohl pointed out that those procedures of course almost start on a Friday or just before/during the holidays, and that a heads-up call ahead of the filing of the request will always be highly appreciated by CEPANI! Urgent relief under the NAI Arbitration Rules, that allow summary proceedings closed to Dutch state court kort geding proceedings, was also discussed by Ms Perera-de Wit and Mr Meijer.

Mr. Henry then touched upon the topic of early determination, that is usually possible either (i) by the arbitral institution, before the constitution of the arbitral tribunal (e.g. AFA, CEPANI, ICC rules), or (ii) by the tribunal after the constitution of the same (e.g. LCIA, ICSID, PCA rules). In his view, early determination should be generalised before the institutions rather than the arbitrators. In the audience, Bernard Hanotiau made the point that, in his experience, early determination requests are barely ever granted by arbitrators in practice.

Niamh Leinwather (VIAC Secretary General) presented the challenge procedure at VIAC, which is of the responsibility of its board, before a discussion on expedited proceedings. Mr. Kohl pointed out that it was quite usual, for CEPANI expedited proceedings, to see proceedings looking very much alike to the proceedings conducted under the normal rules (drawing up of terms of reference even when they are not required, deadlines of several months for submission, several hearing days, etc.)

Finally, the institutions discussed the added value of the "light scrutiny" (i.e. on formal aspects, calculations, costs, etc. but not a review of the tribunal's position and argumentation) they usually conduct. Mr. Kohl pointed out that, for CEPANI proceedings, the scrutiny lasts around one week. It is conducted first by the counsel in charge, then reviewed by the Secretary General, and finally by the President.

Mr. Meijer then concluded the lively debate, before the second part of the networking breakfast.

CEPANI40 EVENT: THE WORLD POST-ACHMEA: NATIONAL COURTS' TREATMENT OF INVESTMENT ARBITRATION (29 MARCH 2023)

CEPANI40 teamed up with several other below 40 organisations (CFA40, ASA below 40, YCAP, ICC YAAF, LCIA YIAG, ICDR Y&I, DIS40, AFM below 40 and PVYAP) to bring a panel discussion titled "The world post-Achmea: National courts' treatment of investment arbitration".

Over one hundred PAW delegates gathered at the offices of August Debouzy – and many others followed online – for a discussion about how national courts have dealt with the infamous judgment of the Court of Justice of the European Union (CJEU) in Slovak Republic v Achmea B.V. of 6 March 2018. In Achmea, the CJEU ruled that the arbitration clause contained in the Netherlands-Slovakia Bilateral Investment Treaty (BIT) was incompatible with EU law (and, by implication, investor-state arbitration conducted under BITs between EU member states generally).

The panel was expertly moderated by **Laura Halonen**, Of Counsel at WAGNER Arbitration, who noted at the outset that the effects of the Achmea ruling have reverberated around the world. Since then, most EU Member States have concluded a multilateral treaty terminating the BITs between them, including, controversially, the sunset clauses in those BITs (which extend protection of investments made prior to the date of termination of the BIT for a specified period of time). However, the biggest impact, Ms Halonen noted, has been seen in domestic courts which have been faced with decisions on whether to annul or enforce investment

arbitration awards rendered under intra-EU BITs (as well as awards in intra-EU arbitrations under the Energy Charter Treaty (ECT), since the CJEU's subsequent ruling in *Moldova v Komstroy* of 2 September 2021 which extended the *Achmea* reasoning to intra-EU arbitrations brought under the ECT).

The distinguished panellists, all having personal experience with the interesting topic, guided the audience through an impressive *tour d'horizon* of the developments in their respective jurisdictions:

-**Tiffany Comprés**, Partner at FisherBroyles (covering the US)

- **David Goldberg**, Partner at White & Case (for the UK)

- **Veronika Korom**, assistant professor at ESSEC Business School (for France)

- **Tim Rauschning**, Counsel at Luther (for Germany)

- **David Sandberg,** Senior Associate at Mannheimer Swartling (for Sweden)

Ms Korom started by sharing her observations on the April 2022 Paris Court of Appeal's annulment of intra-EU investment arbitration awards in *Strabag v Poland* and *Slot v Poland* for lack of a valid arbitration agreement, based on *Achmea*. In doing so, the Paris Court of Appeal abandoned previous French case law favourable of upholding arbitration agreements based on the common intention of the parties without reference to any national law.

Next, Mr Sandberg gave the lay of the land in Sweden, where the Supreme Court handed down the key decision in late 2022. After having sought a preliminary ruling from the CJEU, the Swedish Supreme Court set aside an intra-EU arbitration award in *PL Holdings v Poland*, ruling that intra-EU arbitrations are contrary to public policy. As Mr Sandberg pointedly noted, in the specific circumstances of the case, the Supreme Court could nonetheless not have set aside the award on the basis of invalidity of the arbitration agreement because – in accordance with Swedish law – Poland had waived such an objection by not raising it during the arbitration.

Mr Rauschning closed the 'European' loop by discussing how intra-EU awards have not fared much better (at least from the investor's perspective) in the German courts, which is where *Achmea* originated. A constitutional complaint against the German courts' annulment of the award brought by *Achmea*, arguing that the CJEU's judgment was an ultra vires act, is currently pending. *Achmea's*

reasoning was again confirmed in the context of pending intra-EU arbitrations against Croatia and the Netherlands, although the Berlin regional court has rejected an application to declare inadmissible an intra-EU ICSID arbitration against Germany due to the nature of ICSID arbitrations – which decision is on appeal.

Ms Halonen then guided the discussion to the treatment of intra-EU investment arbitration awards outside the EU. Ms Comprés began by explaining that presently the key precedent in the US is the D.C. Court of Appeals' upholding of the intra-EU ICSID award in Micula v Romania. The Court rejected Romania's objections on the basis of Achmea, albeit on the narrow ground that a valid agreement to arbitrate existed at the time of the underlying events as well as the commencement of the arbitration (2005), which preceded Romania's accession to the EU (2007).

Mr Goldberg concluded the overview of developments in the different key jurisdictions by recounting his experience arguing the subject before the UK Supreme Court in *Micula v Romania*. The Supreme Court dealt a significant blow to *Achmea* by ruling that intra-EU ICSID arbitral awards will be enforced in the UK because it had acceded to the ICSID Convention (1967) before it joined what later became the EU (1973). Post-Brexit UK has therefore become a particularly attractive jurisdiction for enforcement of intra-EU arbitral awards, whether rendered under a BIT or the ECT, at least when it comes to ICSID awards. The UK Supreme Court's reasoning can nonetheless not hypothetically be extended to awards that require enforcement under the New York Convention, to which the UK acceded only in 1975.

An intercontinental battle of EU courts, on the one hand, and, on the other, UK and US courts, is therefore underway when it comes to treatment of intra-EU investment arbitration awards.

The speakers concluded by sharing their thoughts on recent developments in the context of anti-suit injunctions; in particular, the anti-suit injunctions applied for by Spain in renewables cases *9REN Holding v Spain* and *NextEra Energy Global Holdings v Spain* in various EU jurisdictions to stop US courts from enforcing intra-EU awards. These have in turn been responded to by (anti-)anti-suit

injunctions in the US courts, leading to two very recent orders by the DC District Court, both issued on the same day by the same judge (Judge Tanya Chutkan). In both cases, the DC Court opined that the investors' success in confirming and enforcing the awards was highly likely. As observed by Ms Comprés, these cases will bring the EU and the US head-to-head.

Ms Comprés' observations necessarily did not include a discussion of the decision that came out in the US on the same day of the panel, in *Blasket Renewable Investments v Spain,* where Judge Richard Leon for the DC Court refused to enforce an ECT award against Spain based on *Achmea*, because of lack of a valid arbitration agreement.

The highly informative panel ended with comments from the audience, including a few remarks by the esteemed professor George Bermann, who was Chair of the PL Holdings v Poland arbitral tribunal and gave further valuable insights on the topic. Professor Bermann particularly noted the distinction made by the CJEU between investment and commercial arbitration and how, although it may seem like it, we have not seen every scenario. The panel agreed that national courts' treatment of *Achmea* will give plenty of material for another discussion on the same topic at the next Paris Arbitration Week.

After a drinks reception kindly hosted by August Debouzy, many participants joined the Young Arbitration Cruise, which has now become one of the recurring highlights of the PAW (organised jointly by ICC YAAF, PVYAP and CFA40)

CEPANI'S D&I ADAPTATION OF RULES SHORLISTED AT THE 2023 GAR AWARDS (30 March 2023)

In recognition for the change of its Arbitration Rules making explicit the taking into account of D&I considerations in the appointment of arbitrators, CEPANI was

shortlisted for two awards during the Global Arbitration Review (GAR) Awards 2023, (i) the Equal Representation in Arbitration (ERA) Pledge Diversity Award and (ii) the Arbitral Institution that impressed in 2023.

CEPANI was represented by its President (Benoît Kohl) and Secretary General (Emma Van Campenhoudt), and by three members of its D&I standing committee (Sophie Goldman, Werner Eyskens and Guillaume Croisant – the fourth member of the committee is Niuscha Bassiri)

BY Guillaume Croisant

Managing Associate, Linklaters

and CEPANI40 Co-Chair

BY Katherine Jonckheere

Counsel -Litigation and Disputes at bp (London)

and member of the CEPANI40 steering committee

BeNeLux Arbitration and ADR Group: "Getting to know each other and what to expect from the future"

Brussels -20 April 2023

On 20 April 2023, the Luxembourg Arbitration Centre (LAC) and the Luxembourg Arbitration Association (LAA) hosted the first joint event of the "BeNeLux Arbitration and ADR Group".

This BeNeLux Arbitration and ADR Group was launched on 8 September 2022, when the LAC, the LAA, the Belgian Centre for Arbitration and Mediation (CEPANI), the Netherlands Arbitration Institute (NAI) and the Dutch Arbitration Association (DAA) signed a cooperation agreement at the Peace Palace in The Hague.

The purpose of the BeNeLux Arbitration and ADR Group is to strengthen cooperation and promote arbitration and other ADR mechanisms in the BeNeLux area.

An appropriate first step for this exciting project to strengthen the ties between the Belgian, Dutch and Luxembourg arbitration communities was to get to know each other and brainstorm about the possible joint initiatives that the group could bring about. And so it happened on 20 April 2023, in Luxembourg.

The grey sky and light drizzle contrasted sharply with the buzzing excitement inside the Luxembourg Chamber of Commerce (LCC). The conference kicked off with a warm welcome from Anne-**Sophie Theissen** (Secretary General of the LAC and Director Legal and Tax of the LCC) and **André Prüm** (President of the LAA and Professor at the Luxembourg University), as well as an introduction from **Maxime Berlingin** (Chairman of the BeNeLux Arbitration and ADR Group) and **Estelle Brisson** (Communication of the LAA).

Keynote speaker **Filip de Ly** (Professor at the Erasmus University in Rotterdam and Chairman of the International Commercial Arbitration Commission of the International Law Association) gave his views on the comparative features and challenges of arbitration in the BeNeLux, leaving the audience pondering about the use of slides, the order of countries in the BeNeLux abbreviation and, more fundamentally, the desirability

of different rules governing domestic and international arbitrations.

Next up was a panel discussion on the reasons to choose a seat of arbitration in the BeNeLux. Moderated by Jan Schaefer (Partner at King & Spalding), representatives from each of the countries gave their best elevator pitch to demonstrate the attractiveness of the various seats: **Camilla Perera-de Wit** (Secretary-General and Director-General of the NAI) and **Roelien van den Berg** (Partner at Avizor Advocates & Arbitrators) promoted the Netherlands; **Maarten Draye** (Partner at Hanotiau & van den Berg) and **Vanessa Foncke** (Partner at Jones Day) defended the Belgian colours; and **Laure-Hélène Gaicio-Fievez** (Partner at BSP) and **Nicolina Bordian** (Legal adviser at the LAC) supported a Luxembourg seat. Although the author of this report may be biased, the argument based on the Belgian culinary scene got quite some traction in the audience.

The Minister of Justice of the Grand Duchy of Luxembourg, **Sam Tanson**, was proud to announce that she had "just signed the new arbitration law, so it will be published in the next few days" (NB: the new law entered into force on 25 April 2023). This modern framework, inspired by the UNCITRAL Model Law, intends to make arbitration more flexible, efficient, and attractive for parties seeking to resolve their disputes by granting extended powers to tribunals and limiting the grounds for setting aside awards.

The following panel discussed essential tips for enforcing an arbitral award in the BeNeLux. Led by **Hilde van der Baan** (Partner at Allen & Overy), the panellists explained the similarities and differences between the various countries at the enforcement stage: **Mirjam van de Hel-**Koedoot (Partner at NautaDutilh) for the Netherlands, **Hakim Boularbah** (Partner at Loyens & Loeff and Professor at the University of Liège) for Belgium **and Clara Mara-Marhuenda** (Partner at Arendt & Medernach) for Luxembourg.

Last but not least, the final panel explored whether a BeNeLux Uniform Arbitration Act and/or a Single BeNeLux Arbitration Court would benefit the BeNeLux Arbitration Community. Panellists **Gerard Meijer** (President of the NAI), **Françoise Lefèvre** (Member of the ICC Court of Arbitration) and **Elisabeth Omes** (Partner at Elvinger Hoss Prussen), moderated by **Maxime Berlingin**, exchanged views on the pros and cons of a Uniform Arbitration Act and discussed what such an act should look like and how it could be enforced across the BeNeLux. At the end of a lively debate (including my personal favourite quote: "The UNCITRAL Model Law is like a pizza

Margherita – you can add toppings"), the BeNeLux Arbitration Community attending the conference took a vote and most certainly welcomed this ambitious initiative.

This interesting day was topped off with a wine tasting and dinner at a wine estate in the Luxembourgish Moselle. The dreary weather outside (drizzle had meanwhile turned into moderate thunderstorms) could not dampen the jovial mood between the newly established and reinvigorated alliances made between the various arbitration communities. We were told that 2022 had not produced the highest volume of Luxembourg wine but the quality was beautiful – perhaps an apt description of this ambitious and first-class project for BeNeLux Arbitration.

BY Lauren Rasking

Senior Associate - Allen & Overy

and CEPANI40 Co-Chair

CEPANI's annual general meeting and the keynote speech of Ms I. Stephanie Boyce ("Why diversity matters and why each of us has a responsibility to build truly diverse and inclusive professions")

Brussels - 1st June 2023

CEPANI held its annual general meeting on 1 June 2023.

Benoît Kohl (CEPANI President) chaired the meeting and presented, together with **Emma Van Campenhoudt** (CEPANI Secretary General), the annual accounts for 2022, the budget for 2023 and the key events of 2022.

It was also the opportunity to adapt CEPANI's bylaws to the new Code of Companies and Associations. At this occasion, the board of directors has been reduced to 17 members: Benoît Allemeersch, Patrick Baeten, Maxime Berlingin, Olivier Caprasse, Stéphanie Davidson, Dirk De Meulemeester, Maarten Draye, Vanessa Foncke, Sophie Goldman, Hilde Jacobs, Benoît Kohl, Françoise Lefèvre, Philippe Lambrecht, Maud Piers, Marco Schoups, Emma Van Campenhoudt and Sigrid Van Rompaey.

The past directors were warmly thanked for their extensive contribution to CEPANI and were granted the title of honorary director.

The general meeting was concluded with a keynote speech of **Ms I. Stephanie Boyce** on "Why diversity matters and why each of us has a responsibility to build truly diverse and inclusive professions". The theme of the event was chosen to mark CEPANI's adaptation of its Arbitration Rules to take diversity and inclusion into consideration in the appointment of arbitrators. Continuing to foster diversity and inclusion in its own organisation is also a priority for CEPANI.

The Presidents of the French-speaking and Dutch-speaking Brussels Bars, **Mr Emmanuel Plasschaert** and **Mr Bernard Derveaux**, were associated to the event and welcomed Ms Boyce, together with CEPANI's representatives.

Ms Boyce, currently Linklaters' global Strategic Advisor on Diversity, Equity and

Inclusion, was the 177th, the sixth female, the first Black office holder, the first person of colour and the second in-house solicitor in almost fifty years to become president of the Law Society of England and Wales. She made a compelling case, based on her own personal career path and the challenges she encountered, on the importance of diversity, equity and inclusion in the legal profession.

As Ms Boyce pointed out:

"*Women are three times less likely than men to be appointed as an arbitrator. The rule change undertaken by CEPANI, an express requirement to consider diversity and inclusion when appointing arbitrators is one way of ensuring that discrimination has no place in arbitration let alone dispute resolution.*
There is no "one-size-fits-all" magic solution to implementing equity, diversity and inclusion. Decisions are under increasing scrutiny, and achieving greater diversity and inclusion in arbitration appointments is recognised as a way of improving decisions to ensure the best possible outcomes and sends a loud signal that diversity in arbitration is important and is being taken seriously. Harnessing different views helps weigh up issues in more detail and enables consideration of the effects on those impacted by those decisions."

Her presentation was followed by a lively discussion with the audience, which continued over the drink reception.

BY Emma Van Campenhoudt

Secretary General, CEPANI

For over 50 years, CEPANI, Belgium's "epicentre" of arbitration and mediation, has been on a mission to encourage and propagate academic research and know-how in arbitration, both nationally and internationally. In view of this mission, the young and youngish generation of arbitration practitioners certainly occupy a central place– just look around you. After all, it is the responsibility of young scholars to keep the torch of academic curiosity burning. To channel this noble mission, CEPANI created the Academic Prize.

The aim of this prestigious award is to provide those young professionals, who are interested in arbitration and alternative dispute resolution, with an opportunity to seize a spot for themselves in the world of arbitration, by enabling their works to get greater recognition and wider audience.

CEPANI's Academic Prize is awarded every three years. The contest is open to all candidates under 40. The amount of the prize is 5.000 EUR.

The works under consideration were submitted in 2021, hence this is the 2021 edition. Due to the pandemic, the awarding of this important academic prize has been postponed from 2022 to this year.

The 2021 edition was a great success, consisting of eight superb applications from international practitioners from Belgium, Canada, Egypt, France, Germany, Mexico, Poland and Turkey.

Moreover, the 2021 edition was marked by the overall extremely high quality of the publications in competition as well as diversity of topics.

Four of the publications were in English, three in French and one in Dutch.

The names of the eight authors and their publications that participated in the 2021 edition are the following:

- **Ilka Hanna BEIMEL** for her work on: "*Independence and Impartiality in International Commercial Arbitration - An Analysis with Comparative References to English, French, German, Swiss, and United States Law*";

- **Jonathan BROSSEAU** for his work on: "*Applicable Ethical Framework: How the New York and ICSID Conventions Induce Light, Darkness, and Shadow in the Arbitral Space";*

- Karim EL CHAZLI for his work on: "*L'impartialité de l'arbitre - Etude de la mise en oeuvre de l'exigence d'impartialité de l'arbitre";*

- Alexander FAVOREEL for his work on: "*Onafhankelijkheid en onpartijdigheid van de arbiter bij vrijwillige, commerciële multi party arbitrage* - De samenstelling van het arbitragetribunaal en de *mogelijkheid tot wraking bij vrijwillige, commerciële multi party arbitrage";*

- Léonor JANDARD for her work on: "*La relation entre l'arbitre et les parties* ***- Critique du contrat d'arbitre";***

- Rahmi KOPAR for his work on: "*Stability and Legitimate Expectations in International Energy Investments*";

- Sebastián PARTIDA for his work on: "*La convention d'arbitrage dans le droit des nouvelles puissances économiques*";

- Piotr WILIŃSKI for his work on: "*Excess of Powers in International Commercial Arbitration - Compliance with the Arbitral Tribunal's mandate in a comparative perspective*".

Amongst the eight contributions, two were found to be of an exceptional quality and received the highest "marks" from the jury.

The international jury of this edition was composed of the following persons:

- Mr. Patrick BAETEN, Secretary General at Besix;

- **Prof. Stavros BREKOULAKIS,** Professor at the Queen Mary University of London and arbitrator practicing at 3 Verulam Buildings (Gray's Inn), London;

- **Prof. Eric DE BRABANDERE,** Professor at Leiden University**,** Attorney at the Brussels Bar, DMDB LAW;

- Ms. Sophie GOLDMAN, Attorney at the Brussels Bar, Tossens Goldman Gonne;

- Dr. Gabriele RUSCALLA, Attorney at the Paris Bar, Liedekerke;

- **Ms. Niuscha BASSIRI,** chair of the jury**,** Attorney at the Cologne Bar and Member of the Brussels Bar, Hanotiau & van den Berg.

After careful examination of the works submitted and several elaborated deliberations, the jury has decided to award the 2021 edition of the Academic Prize to **Dr. Karim EL CHAZLI** for his thesis on the topic: *"L'impartialité de l'arbitre - Etude de la mise en oeuvre de l'exigence d'impartialité de l'arbitre."* Congratulations, Dr. El Chazli!

This work is of exceptional quality. It makes a very significant contribution to the world of arbitration and provides food for thought on a rather complex, but foundational, issue: that of how impartiality of arbitrators is actually perceived v. how it should be perceived. The piece contains a thorough examination of this issue through an extensive overview of jurisprudence, and it arrives at a clear conclusion with novel thoughts and perspectives.

The jury was particularly impressed by the thought process and the manner in which Dr. El Chazli worked through the lawyers of the topic to arrive at a potential solution when addressing the challenges to impartiality. Dr. El Chazli introduces the concept of the "risk of impartiality", which entails a consideration of factors extrinsic to partiality that play a role in the analysis of impartiality. It is this novelty of perspective presented with clarity that has led the jury to conclude that this work will no doubt be the basis of future debates and – who knows – be the beginning of a game-changing approach towards impartiality of arbitrators.

Moreover, the piece is easy to follow. The analytical rigor is well complemented by structural semblance and clarity of thought. Even non-native speakers with French-language skills will have little difficulty following the comprehensive stock-taking of issues and sub-issues.
The jury was also impressed by the contribution of D**r. Piotr WILIŃSKI** for his work on: "*Excess of Powers in International Commercial Arbitration - Compliance with the Arbitral Tribunal's mandate in a comparative perspective*". The comparative approach follows a structured methodology with extensive research provided in support. This too is a very easy read of a complex topic, which the jury highly recommends.

From a practical point of view, the litigator, in particular, will value this contribution immensely as it not only provides answers to all questions on the

tribunal's mandate, but is also a source of inspiration. Arbitrators, too, will be well-advised to have this excellent paper at hand.

Therefore, the jury awards Dr. Wiliński's contribution with a special mention. Congratulations, Dr. Wiliński!

And, finally, congratulations to all participants! It was a pleasure for the jury to read, review and discuss the wonderful and important contributions of the 2021 edition.

BY Niuscha Bassiri

Partner, Hanotiau & van den Berg.
and chair of the jury

Colloque médiation et arbitrage : premiers réflexes et outils pratiques

Bruxelles - 2 juin 2023

Le CEPANI a organisé, le 2 juin 2023, un colloque sur la médiation et l'arbitrage en partenariat avec la Conférence du jeune barreau de Bruxelles et l'institut des juristes d'entreprise, avec le soutien de la FEB (où se déroulait l'événement).

Celui-ci a débuté par une présentation de **Mme Sandra Becker** (médiatrice, PMR-Europe) sur la communication non-violente, en vue de donner de premiers outils en cas de participation à une médiation.

Un premier panel, constitué de **Charlotte De Muynck** (avocate (Monard Law), médiatrice), **Gil Knops** (avocat (elegis), médiateur) et **Vanessa Depoortere** (juriste d'entreprise (Belga Films) et médiatrice) a ensuite évoqué le déroulement d'une médiation (Comment initier et aborder une réunion de médiation ? À quoi être attentif ? Faut-il des écrits ? Un dossier de pièces ? Comment préparer le client ? Comment choisir son médiateur ? Qui paye et combien ? La médiation, cela marche ? La médiation est-elle conciliable avec la procédure judiciaire ? …).

Le second panel, constitué de Mme **Françoise Lefèvre** (avocate, arbitre, médiatrice), **Lily Kengen** (avocate, Tossens Goldman Gone) et **Jean-François Lerouge** (juriste d'entreprise, Equans) a exposé les particularités de la procédure d'arbitrage (Convient-il de conseiller une procédure d'arbitrage via un centre d'arbitrage ou une procédure ad hoc ? Comment rédiger ou comment comprendre la clause d'arbitrage qui lie mon client ? Comment choisir l'arbitre ? Puis-je me calquer sur une procédure judiciaire pour défendre mon client ? À quoi s'attendre ? Que se passe-t-il si mon adversaire fait défaut ? …).

Chaque panel a exposé, de manière pratique et interactif, les atouts et spécificités du mode alternatif de résolution de conflit faisant l'objet de son exposé, sous la forme d'échanges et de questions, en offrant un retour d'expérience et de bonnes pratiques .

BY Guillaume Croisant

Managing Associate, Linklaters

and CEPANI40 Co-Chair

CEPANI40's event on damages and quantum valuation in international arbitration

Brussels - 8 June 2023

On 8 June 2023, CEPANI40 organised an event on damages and quantum valuation in international arbitration, an issue some might say is the most important in an arbitration. The event, which was hosted by Liedekerke in Brussels, was divided into two parts: (i) a training workshop; and (ii) a panel discussion.

Introducing and moderating the workshop was **Ms. Iris Raynaud**, a senior Associate at Hanotiau & van den Berg (Brussels). In the training workshop, **Ms. Fabienne Borde**, Managing Director in the Expert Services practice of Kroll (Paris), and **Mr. Benoit d'Udekem**, Vice-President (Brussels) in Analysis Group, shared their key and valuable understanding of how experts assess contractual damages in commercial disputes. The presentation covered a wide range of issues, including: (i) in which cases can quantum experts assist in evaluating damages; (ii) how can quantum experts help establish or contest a claimant's entitlement to damages; (iii) how do quantum experts approach the estimation of damages; and (iv) how do quantum experts account for the passing of time until the Arbitral Award is issued. They used an interactive and examples-based approach to break down complex concepts of quantum valuation so as to help even those unfamiliar with the topic grasp the concepts with ease. From the outset, Ms. Borde and Mr. d'Udekem encouraged questions from the audience, which then led to an interactive discussion between them and the attendees. This interactive discussion was often based on practical experiences the attendees had, wherein they sought the keen insight of Ms. Borde and Mr. d'Udekem to better understand how experts valued the quantum in certain situations and what were the considerations that experts weighed when making their calculations.

The second part of the event, the panel discussion, brought into the room representatives of the three groups of people that are involved in an arbitration when it comes to damages: an arbitrator, a counsel, and the experts in damage valuation.

The panellists included **Mr. Bruno Hardy**, an arbitration counsel from Liedekerke (Brussels), **Ms. Niuscha Bassiri**, a seasoned arbitrator and Partner at Hanotiau & van den Berg (Brussels), and two damages valuation experts, **Mr. Matthias Cazier-Darmois**, a Partner at HKA (Paris), and **Ms. Battine Edwards**, a Forensic Partner at Deloitte Forensic (Paris). Moderating the panel was **Ms. Beatrice Van Tornout**, a Senior Associate at Liedekerke (Brussels).

The topics that were touched on by the panel covered both practical and academic issues that arise in an arbitration. For example, one of the issues the panel engaged in was when it came to causality, what role did a quantum expert play, what is their added value and the boundaries they adhere to. A common thread amongst the panellists was that there are two aspects to causation: the issue of causation as a legal question and the issue as a factual question. From a counsel's perspective, Mr. Hardy explained that the value is added when we have experts involved in the case from the beginning as they open a box of facts on counterfactuals, which more often than not, counsel do not turn their mind to. From a tribunal's perspective, Ms. Bassiri explained that the most convincing way of dealing with this issue would be to have an industry specific expert explain the assumptions made and the quantum expert to use those assumptions in their calculation. From the damages expert's perspective, Mr. Cazier-Darmois and Ms. Edwards touched on the boundaries they set depending on the extent of documentation available, especially when looking at the "but for" scenarios.

Another interesting discussion that took place concerned the effect of instructions counsel give to experts. From the expert's perspective, both Mr. Cazier-Darmois and Ms. Edwards shared that the instructions essentially set the scope of assessment the expert carries out. Mr. Cazier-Darmois drew a distinction between good instructions, which aim to keep the expert focused on things that fall within their

expertise, and the not so good instructions, which tend to sensor the expert's opinion on matters that can harm the case. Ms. Bassiri added to this discussion, and explained that, more often than not, to get away from the "hired gun" image that is often painted of experts, an expert can maintain credibility before the tribunal by stating the kind of assumptions and instructions counsel has given to the expert.

The panel did not shy away from discussing one of the more prevalent topics in international arbitration: the current and prospective impact of Artificial Intelligence on damages valuation. Other issues that were discussed included (i) the strategic decisions related to procedure when it comes to expert reports; (ii) difficulties experts deal with when there is either too much or to little data; (iii) some problems faced when it comes to damages analysis; (iv) recommendations about the flow of documents between parties' counsel; (v) tips for preparing experts for cross-examination; and (vi) an expert's code of ethics.

Guillaume Croisant (Linklaters Brussels), CEPANI40's Co-Chair, concluded the event with a few words on upcoming CEPANI40's activities and on the Equal Representation for Expert Witnesses (ERE) Pledge (see more here: https://www.expertwitnesspledge.com/take-the-pledge)
The participants could then continue the discussion during a drink reception.

BY Priyanka Shinde

Hanotiau & van den Berg

Le CEPANI participe à la mission économique princière au Sénégal
21-25 mai 2023

Le CEPANI a participé à la mission économique qui s'est déroulée au Sénégal du 21 au 25 mai 2023 sous la présidence de Son Altesse Royale la Princesse Astrid, Représentante de Sa Majesté le Roi.

La mission princière au Sénégal, organisée principalement par Hub-Brussels a connu un franc succès avec près de 370 membres de la délégation. Dans le cadre de cette mission, Hub-Brussels a mis sur pied plusieurs séminaires qui se sont tenus le 22 mai 2023 à Dakar. L'un d'entre eux portait sur le secteur des services et a permis de mettre à l'honneur plusieurs entreprises belges actives dans ce secteur. Le CEPANI figurait parmi elles et y était représenté par Aimery de Schoutheete, qui s'est attaché à promouvoir Bruxelles comme place d'arbitrage et du CEPANI comme institution arbitrale.

BY Emma Van Campenhoudt

Secretary General, CEPANI

CEPANI INTERN DAYS

Brussels - 4 July and 29 August 2023

On 29 August, with a small group of young professionals and students, we were invited to discover the CEPANI from the inside on the occasion of the CEPANI Intern Days.

The day started with a presentation given by **Benoît Kohl,** the President of the CEPANI. He provided a broad overview of the arbitration mechanism and offered an insight of the CEPANI, its role and rules. In that frame, the interns had the opportunity to learn more about the peculiarities of arbitration, its main differences from other alternative dispute resolution methods and the latest amendments of the CEPANI Rules (scrutiny, terms of reference and diversity).

This first presentation was followed by a session on 'Belgian arbitration law in practice'. **Guillaume Croisant** (Managing Associate, Linklaters; co-chair of CEPANI40), gave practical tips on the way to write a proper arbitration clause, shared practical examples in that respect and explained the key steps in standard arbitration proceedings.

The interns then headed towards the Bozar restaurant to have lunch with other members of the CEPANI. This was the perfect place to discuss informally, get to know each other and share our respective experiences.

Back to the CEPANI, the interns visited the premises and attended a third presentation given by the Secretariat. **Emma Van Campenhoudt** (Secretary General, CEPANI) and **Astrid Moreau** (Legal Attaché, CEPANI) drew the attendees' attention to the specific modalities to be aware of when launching arbitration proceedings before the CEPANI. The advice given was very practical and helpful for any future contacts with the CEPANI.

Whether it is because you are an arbitration practitioner or simply because you are eager to discover arbitration, the CEPANI Intern Days will definitely open you up to this world.

BY Nargisse El Houti and Louis Cornet

Associates, Baker McKenzie

UNIVERSITÉ D'ÉTÉ AVOCATS.BE

23 August 2023

Ce 23 août 2023, les organisateurs des Universités d'été d'Avocats.be ont été particulièrement bien inspirés en organisant un atelier intitulé « l'arbitrage en pratique ».

C'est peu dire qu'un panel « de choix » avait été composé pour l'occasion. Ainsi donc, il leur revenait la mission de parcourir ce mode alternatif de résolution des conflits en long et en large, et en quatre heures s'il vous plait ! Une véritable gageure…

Comme toujours avec verve, **Olivier Caprasse** (professeur à l'ULiege et l'ULB, et praticien bien connu) a ouvert les « hostilités » en nous rappelant (notamment) dans son propos introductif qu'il convenait de resituer l'arbitrage dans le vaste choix des modes alternatifs de résolution des conflits ou encore en opérant une distinction entre l'arbitrage d'investissement et l'arbitrage commercial. Et de conclure avec sa formule consacrée (non sans me renvoyer par là quelques années plus tôt sur les bancs de l'Université Libre de Bruxelles) : « l'arbitrage n'est pas la panacée. La panacée, c'est d'avoir le choix ». Assurément, il ne saurait être démenti.

Guillaume Croisant (collaborateur senior, Linklaters ; co-président du CEPANI40) a pris le relais en nous entretenant du déroulement de l'arbitrage, depuis la convention d'arbitrage jusqu'à la constitution du tribunal arbitral. Avec une approche originale puisque partant d'une clause d'arbitrage « pathologique » (la fameuse « clause de minuit »), ce fut l'occasion pour lui d'évoquer tour à tour les notions d'arbitrabilité, les institutions, le droit applicable ou encore les situations multi-contrats / multi-parties, avant d'aborder les éventuels incidents pouvant apparaître et, finalement, la mise en place du tribunal arbitral.

Stéphanie Davidson (associée, Leysa ; membre du Conseil de l'Ordre) abordera alors (comme si nous y étions) la procédure à suivre devant les arbitres. Débutant sa présentation par la remise du dossier au tribunal arbitral, et allant jusqu'à l'« après-audience », elle suscitera la curiosité du public en évoquant les échanges de mémoires post-audience auxquels les habitués du Palais sont

moins coutumiers que ceux fréquentant les cénacles d'arbitrage…

Une (courte) pause plus tard, c'est avec un café à la main que nous écouterons **Sophie Goldman** (associée, Tossens Goldman Gonne) aborder plus spécifiquement le délibéré arbitral aboutissant à la sentence du même nom. Y seront évoqués les similitudes et les différences existantes entre sentence arbitrale et décision judiciaire, ou encore les délais, les effets, etc…
Assistance de juristes oblige (est-ce le propre de notre profession ?), un détour par les « incidents » s'imposera : *quid* si le tribunal arbitral tarde à rendre sa sentence ? *Quid* en cas de refus d'un arbitre de prend part au délibéré ? *Quid* en cas d'erreur matérielle ?

C'est finalement à **Caroline Verbruggen** (conseillère à la Cour d'appel de Bruxelles ; co-rédactrice en chef de b-Arbitra) qu'il reviendra de clôturer cette matinée. Avec sa position privilégiée de conseillère auprès de la cour d'appel de Bruxelles, qui d'autre qu'elle pour nous entretenir du rôle des juges étatiques (belges) dans l'arbitrage ? De l'intervention du juge des référés à l'étape essentielle de l'*exequatur*, en passant par l'annulation de la sentence le cas échéant, l'intervenante nous rappellera le rôle fondamental du juge étatique, non sans souligner le paradoxe selon lequel un arbitrage réussi est un arbitrage sans juge étatique.
En définitive, c'est une matinée des plus intéressantes à laquelle nous avons eu le plaisir d'assister. Le tout sous l'égide de **Marc Dal** (associé, Daldewolf), aussi bienveillant qu'attentif au respect du timing revenant à chaque intervenants (difficulté qu'il convient de ne pas sous-estimer…).
Assurément, l'éventuel regret des participants résidera sans aucun doute dans le laps de temps trop court dont disposaient les intervenants pour nous entretenir de leurs expériences respectives.
Pour le reste, c'est une assemblée conquise qui se dirigera ensuite vers le buffet !

BY Benoit Thomas

Solutio, lawyers & mediators

CEPANI40 SUMMER DRINKS

Brussels - 4 July and 29 August 2023

On 31 August 2023, CEPANI40 organised the third edition of its annual "summer" drinks at the rooftop of the Jam hotel. Despite the typical Belgian weather, the event was again a great success, gathering around 70 participants and a dozen of umbrellas (that could fortunately quickly be put away) for an enjoyable networking activity just before the start of the judicial year.

It was the occasion for CEPANI President Benoît Kohl to announce that **Lauren Rasking** will be taking over from **Katherine Jonckheere** as CEPANI40 Co-Chair (together with **Guillaume Croisant**, who remains in place). Benoît warmly thanked Katherine, who moved in-house, for her tremendous work as Co-Chair over the last year. During this busy year, CEPANI40 organised among others a new edition of "meet the experts", a webinar on virtual hearings, the re-launch of the Brussels Pre-Moot, an event on the future of investment arbitration at the Paris Arbitration Week (together with other below-40 organisations), a workshop on damages and quantum valuation and – of course – the summer drinks.

Katherine will remain part of CEPANI40's Steering Committee, also composed of **Iris Raynaud, Beatrice Van Tornout, Lily Kengen, Dodo Chochitaichvili, Sophie Bourgois, Astrid Moreau, Bart De Bock, Jan Janssen, Alexandre Hublet and Adrien Fink**.

Below-40 practitioners may become a member of CEPANI40 for free by registering at info@cepani.be.

BY Emma Van Campenhoudt

Secretary General, CEPANI

L'ARRÊT THIBELO DE LA COUR DE CASSATION DU 7 AVRIL 2023 : UNE CHANCE POUR L'ARBITRAGE ET/OU UN CHAMP DE RUINES POUR LE DROIT BELGE DE LA DISTRIBUTION COMMERCIALE ?

Bruxelles -22 septembre 2023

Le 22 septembre 2023, **Pascal Hollander** (Partner, Hanotiau & van den Berg) et **Arnaud Nuyts** (Partner, Liedekerke) ont animé un déjeuner-débat des plus appétissants dans les bâtiments du CEPANI. Celui-ci portait sur le revirement de jurisprudence spectaculaire opéré par la Cour de cassation dans son arrêt THIBELO du 7 avril 2023. La Cour a décidé que les litiges relatifs à la fin d'un contrat de concession de vente exclusive exécuté sur tout ou partie du territoire belge sont arbitrables et ce même si les arbitres appliquent un droit étranger. Pour parvenir à cette conclusion, la Cour de cassation a considéré que les articles X.35 à X.39 du Code de droit économique (ci-après, « CDE ») (ex-loi du 27 juillet 1961) ne constituent pas des dispositions de lois de police au sens de l'article 9.1 du Règlement Rome I et que, par conséquent, au regard de la primauté du Règlement sur le droit national, le choix par les parties d'un droit étranger devait être respecté.

M. Hollander a ouvert le déjeuner-débat en présentant l'arrêt THIBELO, soulignant que cette décision marque la fin de plus de 50 ans de controverses. Il a ensuite rappelé le contexte nécessaire afin de saisir l'importance de l'arrêt. En se référant au principe de l'autonomie de la volonté des parties énoncé à l'art. 3.1 Conv. Rome/Rome 1, M. Hollander a souligné que les lois de police peuvent constituer une exception à ce principe. Il a rappelé, à cet égard, qu'une loi de police est définie à l'art. 9.1 Rome I comme toute « disposition impérative dont le respect est jugé crucial par un pays pour la sauvegarde de ses intérêts publics (…), au point d'en exiger l'application à toute situation entrant dans son champ d'application, quelle que soit par ailleurs la loi applicable au contrat ».

M. Hollander s'est ensuite penché sur l'arrêt UNAMAR de la Cour de justice du 17 octobre 2013. Dans cet arrêt, la Cour de justice avait déclaré que la « juridiction saisie constate de façon circonstanciée que, dans le cadre de cette transposition, le législateur de l'État du for a jugé crucial, au sein de l'ordre

juridique concerné, d'accorder à l'agent commercial une protection allant au-delà de celle prévue par ladite directive, en tenant compte à cet égard de la nature et de l'objet de telles dispositions impératives ». Ce faisant, l'arrêt a limité la marge de manoeuvre du juge national.

M. Hollander en est alors venu à l'arrêt THIBELO, précisant qu'il s'agissait au premier abord d'un litige « classique » de résiliation de concession de vente qui faisait l'objet d'un arbitrage CCI à Vienne. Le concessionnaire a porté l'affaire devant le tribunal de l'entreprise d'Anvers, dont le jugement a fait l'objet d'un appel devant la cour d'appel d'Anvers. Dans son arrêt du 10 mars 2021, la cour d'appel a considéré que la loi applicable à la détermination du caractère arbitrable d'un litige se faisait selon la Convention de Genève de 1961 et que, par conséquent, le juge peut tenir compte de son propre droit pour ne pas reconnaître la clause d'arbitrage. Par ailleurs, la cour d'appel a invoqué les articles 1676, §1, et 1676, §4, CJ, tout en rappelant que l'art. X.39 CDE n'interdisait pas expressément l'arbitrage et qu'il s'agissait d'une lex specialis par rapport à l'art. 1676, §1, CJ. Un pourvoi en cassation a alors été introduit et il a été confirmé que l'arbitrabilité doit être appréciée par référence à l'art. X.39 CDE et non par rapport à l'article 1676, §1, CJ.

L'affaire a finalement été portée devant la Cour de cassation, qui a rendu son arrêt le 7 avril 2023. La Cour a confirmé que la loi applicable à l'arbitrabilité est la lex fori au sens de l'art. VI. 2 Convention de Genève de 1961 et que le litige n'est pas arbitrable s'il est exclu par une règle juridique pertinente de la loi du for. La Cour a ensuite rappelé qu'un litige relatif à la résiliation d'une concession de vente est une cause de nature patrimoniale et, partant, qu'elle est en principe arbitrable conformément à l'art. 1676, § 1, CJ et à l'art. X.39 CDE. Puis, de manière surprenante, la Cour mentionne des dispositions du Règlement Rome I en abordant notamment l'art. 3.1 Rome I qui énonce le principe de l'autonomie de la volonté des parties et les art. 9.1 et 9.2 Rome 1 qui définissent la notion et l'application des lois de police. Elle cite ensuite quelques passages de l'arrêt UNAMAR, soulignant que la notion de loi de police doit être interprétée de façon restrictive et doit protéger les intérêts publics de l'Etat.

La Cour de cassation a alors déclaré que les articles X.35 à X.40 CDE relatifs à la résiliation unilatérale des concessions de distribution exclusive accordées pour une durée indéterminée protègent essentiellement des intérêts privés et ne sont donc pas des lois de police au sens de l'article 9.1 Rome I. Par conséquent, le juge belge saisi d'un litige relatif à la résiliation d'une concession de vente à laquelle le Règlement Rome I est applicable ne peut, en dépit de l'art. X.39 CDE, faire abstraction du droit choisi par les parties pour appliquer les dispositions précitées de droit belge. L'arbitrabilité

d'un tel litige ne peut donc pas être conditionnée au fait que les arbitres devront y appliquer les dispositions de droit belge précitées ou un droit étranger offrant une protection équivalente au concessionnaire.

Ce cadre posé, M. Hollander a partagé quelques-unes de ses réflexions à l'assemblée. Tout d'abord, il a très justement fait observer il n'avait jamais été question de loi de police jusque-là. C'est en effet le Parquet général qui l'avait soulevé et la Cour de cassation a alors saisi cette occasion pour poser un arrêt de principe.

Selon l'arrêt UNAMAR, la marge de manoeuvre du juge national est limitée et il lui appartient de faire une appréciation circonstanciée. La Cour a donc estimé que les art. X35-40 CDE protègent des intérêts particuliers. Elle a également dû tenir compte de l'évolution du droit international privé et du fait que le droit des conflits de loi en 2023 n'a plus rien à voir avec celui de 1961. De cet arrêt découlent plusieurs conséquences importantes. Le débat sur l'arbitrabilité des litiges relatifs à la résiliation d'une concession de vente est réglé et, à présent, ces litiges peuvent être réglés par la voie de l'arbitrage indépendamment du droit appliqué. En outre, cette solution pourrait avoir des implications considérables pour les litiges portés devant les Cours et tribunaux : le juge belge devra en effet respecter le droit applicable choisi par les parties et il n'y aura plus de possibilité de demander l'application du droit belge en lieu et place de la loi choisie par les parties devant un juge étranger d'un Etat membre de l'UE. Cela pose par ailleurs la question de l'application du droit belge par des arbitres en cas de choix par les parties d'une autre loi. M. Hollander a clôturé sa présentation en soulignant l'importance de la négociation de la clause de droit applicable dans les contrats.

Arnaud Nuyts entama alors le débat ! Selon lui, aucune disposition n'exclut l'arbitrabilité dans le cadre des contrats de concession au sens de l'art. 1676 CJ. Cette disposition offre pourtant aux parties la possibilité de soulever un déclinatoire de juridiction, lequel prive les tribunaux étatiques de leur pouvoir et non une règle de compétence territoriale au sens de l'art. X.39 CDE. Selon M. Nuyts, le problème est que la Cour de cassation a justifié l'arbitrabilité des litiges relatifs à la résiliation d'une concession de vente en arguant que, comme ces dispositions protègent des intérêts privés, ce ne sont pas des lois de police. Cette jurisprudence pourrait avoir des effets délétères sur les lois protectrices d'intérêts privés (e.g. en droit du travail). A son sens, la lecture de l'arrêt UNAMAR est contraire à l'art. 9 Rome I dont la définition de loi de police s'inspire initialement d'un arrêt concernant les règles de protection du travailleur. Par ailleurs, l'arrêt UNAMAR n'exclut pas expressément les lois de police. En effet, il est fait mention d'« intérêt jugé essentiel par l'Etat ».

BY Alexandra Keutgen

Legal Trainee, CEPANI

Par ailleurs, selon cette jurisprudence, il faut vérifier tant les termes de la loi, que son économie générale, mais aussi analyser l'ensemble des circonstances de l'espèce. Le texte de l'art. X.39 CDE précise que « dans le cas où le litige est porté devant un tribunal belge, celui-ci appliquera exclusivement la loi belge ». M. Nuyts a relevé que les travaux préparatoires indiquaient une volonté claire du législateur d'assurer la protection des consommateurs belges. Les lois protégeant des intérêts privés peuvent donc être des lois de police. Par conséquent, la solution de l'arrêt THIBELO ne peut pas s'imposer. Le résultat aurait dû être obtenu par les règles sur l'arbitrage en corrigeant le droit belge et non en s'aventurant et travestissant les lois de police protectrices.

M. Hollander et M. Nuyts ont encore poursuivi le déjeuner-débat par quelques brefs échanges avec les participants. Le déjeuner-débat s'est finalement conclu par des commentaires et des questions pertinentes de l'audience. Les participants sont repartis, le ventre plein et la tête bien remplie.

ALTERNATIVE DISPUTE RESOLUTION TRAINING COURSES GIVEN TO CAPA PROFESSORS

Brussels – 26 september 2023

in a room at of the Poelart Palace of Justice, **Alexandre Hublet** (Local Partner, White & Case) and **Gautier Matray** (Partner, Matray Matray Hallet) had the opportunity to promote arbitration and other alternative dispute resolution (ADR) methods during a special ADR training session given to CAPA (*Certificat d'aptitude à la profession d'avocats)* professors. What could be better than teaching those who teach?

CEPANI President Benoît Kohl and CEPANI Secretary General Emma van Campenhoudt were also present at the session to answer any questions and provide additional remarks to the speakers' intervention. Mr. Hublet started the session by setting out the basics of arbitration, covering the definition of arbitration and that of other ADR mechanisms, the advantages and disadvantages of arbitration, the notion parties to the arbitration proceedings as well as the evolution of ADR mechanisms.

Mr. Matray then outlined three points that are just as important in arbitration as in court proceedings: (i) freedom of evidence, (ii) time limits and (iii) appeal procedures. Benoît Kohl and Emma van Campenhoudt further contributed to the discussion by sharing their experience, providing clarification on specific topics, and answering questions from the CAPA professors.

BY Alexandra Keutgen

Legal Trainee, CEPANI

CEPANI ANNUAL COLLOQUIUM: ESG AND INTERNATIONAL COMMERCIAL ARBITRATION BEYOND THE ACRONYMS

Brussels - 17 November 2023

ESG, the topic of this year's annual colloquium of CEPANI, and its growing importance for commercial arbitration was introduced by **Mr Dirk De Meulemeester**, President of CEPANI Academic Committee.

He set out the scene of the full-day seminar by explaining how companies, and their directors and officers, are subject to an increasing pressure from stakeholders (including legislators, regulators, investors, employees, the civil society and customers) to conduct their businesses in a sustainable manner, taking into consideration Environment, Social and Governance ("ESG") factors. This "ESG megatrend" has entailed a wave of new regulations and landmark court cases, as well as associated new litigation and liability risk. These developments will lead to, or play an important role in, a material number of claims, including many claims that could be subject to arbitration.

I then had the pleasure to give the first presentation with **Ms Rachel Barrett** (Global Head of ESG, Partner, Linklaters London), to provide a general introduction to the ESG key trends and developments and its associated litigation and liability risks. We gave a brief overview of the emergence of this megatrend and the key drivers associated with the shift from what has historically been mostly soft law standards to ever-increasing mandatory obligations. The main legal developments in the key areas were described and tested on their relevance to commercial and investment arbitration. We came to the conclusion that the rapid change brings many uncertainties and risks as the new standards are far-reaching and untested, thereby creating a fertile ground for disputes.

Next, **Ms Emily Hay** (Counsel HVDB, Brussels and Singapore) and **Ms Lisa Bingham** (former Deputy Director ICCA, The Hague) focussed on the environmental and social components of ESG and how these are tied into contractual clauses in the supply chain. This includes the development of ESG regulation of supply chains, i.e. from of soft-law initiatives in order to align best practices and provide guidance to companies to hard law obligations in several jurisdictions (Corporate Sustainability Due Diligence Directive). They further examined the different purposes that ESG contractual clauses may serve in supply chain contracts (compliance, assigning liability, avoiding ESG risks). Finally, the issues arising in the arbitration of supply chain disputes related to ESG contractual clauses were discussed, including matters related to contractual cascading, standard-setting for the substance of ESG obligations, issues concerning third parties and public interests, as well as remedies.

Afterwards, **Ms Laurie Achtouk-Spivak** and **Ms Naomi Tarawali** (Partners, Cleary Gottlieb, Paris and London respectively) addressed the increasing focus on ESG from various stakeholders in general terms for context, whereby accountability on the part of government and corporate actors have become crucial and whereby the regulatory landscape on ESG is converging from 'voluntary' to 'legally mandated'. They then discussed the growing importance of ESG-related matters in the M&A context, in particular the impact on the transactions, the growing prominence of ESG issues in the negotiation and due diligence of transactions and how ESG risks may be addressed in the transaction documentation. Finally, the likely sources of post-M&A ESG-related disputes were identified and the features that make arbitration particularly suitable in this area. In particular it concerns the ESG due diligence during the selection process of potential targets and the actual due diligence; the ESG representations and warranties in SPAs; the post-acquisition claims on appropriate disclosure of ESG issues and accuracy of seller ESG representations; and the evidence in post M&A claims.

Prof. Xavier Dieux then discussed ESG disputes between shareholder and company, or among shareholders.

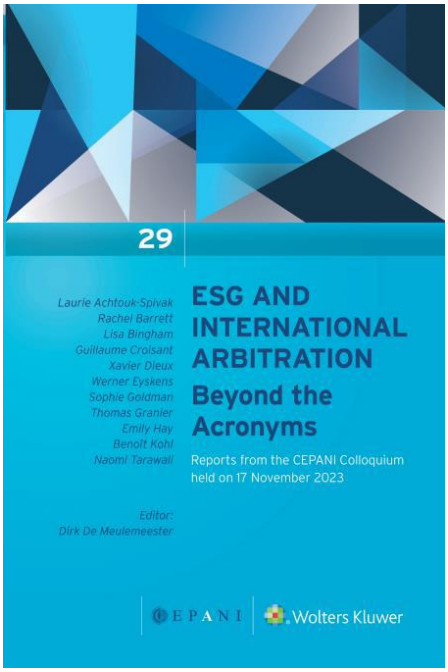
Shareholder disputes relating to ESG arising from articles of incorporation and shareholders' agreements, ESG as a component of company duty of care and shareholder/company claims against directors/management.

It was then the turn of **Mr Thomas Granier** (Partner, Anima Dispute Resolution) to address the public interests at stake in ESG, whether arbitration is an appropriate forum and whether existing and anticipated ESG legislation is mandatory law. He submitted that if ESG Protective Regulations were to become mandatory provisions or components of international public policy, this would be very relevant for international arbitration since would be entitled to refuse to recognize or enforce awards whose recognition or enforcement would allow the award creditor to reap the benefits from a violation of human rights or environmental damages resulting from its activities. He made the case that arbitrators – the past proves this – are able to (i) take into account the objectives of compliance regulations and ensuing mechanisms and (ii) are able to adjudicate contractual disputes concerning ESG issues.

Mr Werner Eyskens (Partner, Crowell & Moring Brussels) and **Ms Sophie Goldman** (Partner, Tossens, Goldman, Gonne) took a different angle. They addressed the way the chosen dispute resolution mechanism itself may impact on users' abilities to meet their own ESG goals. The authors address the question whether arbitration is or can become an ESG-compliant way of resolving international commercial disputes? The answer is complex and full of nuance. The conclusion is that a healthy sense of reasonable compromise is key to the sustainable successful long-term application of ESG principles in the arbitration process.

Last but not least, a panel discussion of in-house counsel was the perfect opportunity to see how ESG criteria and regulations were already embedded in the companies' day-to-day management, processes and contractual relationships. The panel, chair by **Mr Patrick Baeten** (Secretary General, Besix), was composed of **Ms Olivia De Patoul** (General Counsel Belgium & France, Deminor), **Ms Saskia Mermans** (Group general counsel, KBC) and **Ms Anne-Berangère Sudraud** (Legal Director Lhoist Western Europe).

Mr Benoît Kohl, President of CEPANI, concluded this very instructive day.
The tradition of CEPANI's annual colloquiums was well-respected and the participants received a book gathering the speakers' contributions, available on Kluwer Arbitration:



BY Guillaume Croisant

Managing Associate, Linklaters

and CEPANI40 Co-Chair

TALE OF TWO TEENAGERS 2013-2023: TEN YEARS OF UNCITRAL MODEL LAW IN BELGIUM / TEN YEARS OF B-ARBITRA

Brussels -16 november 2023

On 16 November, CEPANI had the pleasure to celebrate the tenth anniversary of its arbitration journal, b-Arbitra, and of the UNCITRAL Model Law. To commemorate this special milestone, the arbitration community got together and various high-level legal experts discussed the ten years of b-Arbitra as well as the ten years of case law based on the UNCITRAL Model Law, followed by a panel discussion to see how Belgian practice compares with case law in neighbouring jurisdictions.

To kick off the event, **Ms Maud Piers** (Ghent University, Former co-editor-in-chief b-Arbitra), presented the ten years of b-Arbitra in a new legal landscape as more and more Belgian arbitration-related jurisprudence is being published every year. **Mr Vincent Verschoor**, (Wolters Kluwer International) then showed how they integrated the review into their products and made b-Arbitra accessible to practicioners worldwide.

The lessons of ten years of case law on UNCITRAL Model law in Belgium were to be discussed by **Mr Jean-François Tossens**, (Tossens Goldman Gonne, former co-editor-in-chief b-Arbitra), but he was unfortunately unable to attend the event. Therefore, **Mr Maarten Draye** (Hanotiau & van den Berg, Brussels) graciously stepped in and put his knowledge to good use as co-editor-in-chief of b-Arbitra, presenting a selection of reviewed Belgian case law from the last ten years. His outstanding exposé provided the ideal springboard for a panel discussion on the different approaches of neighbouring countries to the same problems as those facing Belgium.

The first topic was about the lack of reasoning as a ground for setting aside. **Ms Annet van Hooft** (Van Hooft Legal, Paris, former co-editor-in-chief b-Arbitra) explained that under French law, lack of reasoning is a ground for setting aside only in the context of domestic and not international arbitration proceedings. Under Dutch law, jurisprudence generally only allows for setting aside if the reasoning is manifestly inadequate. In Belgium, **Mr Draye** confirmed that lack of reasoning can be a ground for refusing enforcement of an arbitration award but that a possible exception is provided for foreign proceedings. **Mr Stefan Kröll** (Professor Bucerius Law School, Chairman German Arbitration Institute, Hamburg) then followed with German law and indicated that the lack of reasoning is a violation of German law, unless the parties have agreed otherwise, and could lead to the setting aside of the award. In Switzerland however, **Ms Alexandra Johnson** (Pestalozzi, Geneva) stated that the right to be heard does not grant a right to a reasoned award and lack of

reasoning is not deemed to be incompatible with public policy. In fact, an award may only be set aside if its outcome is contrary to public policy, even if it fails to provide reasons for the decisions. On the other side of the Channel, **Ms Claire Morel de Westgaver** (Bryan Cave Leighton Paisner, London) noted that in England and Wales, the lack of reasoning is not considered as a separate ground for setting aside. However, the law states that awards should contain reasons, unless the parties have agreed otherwise.

The second topic concerned the scope of the national judge's review of public policy violations. Ms van Hooft pointed out that France has adopted a maximalist approach. This entails that when an international arbitral award is challenged on the grounds of violation of French international public policy, the French judge can examine the claim thoroughly, even in the light of new evidence. Under Dutch law, courts may refuse recognition and enforcement of the arbitral award if they find that it would be contrary to public policy. They also adopt a maximalist approach, however only breaches of the most fundamental nature are considered public policy violations. On the other hand, Ms Johnson explained that Swiss courts have adopted a minimalist approach, considering that setting aside awards on grounds of public policy is "chose rarissime". There is no de novo review and the notion of public policy is very narrow. In Germany, Mr. Kröll referred to a recent German Supreme Court case in which the Court stated that, since any breach of competition law is a breach of public policy, the application of competition law is fully reviewable under German law. For the rest, challenges based on violations of public policy have been unsuccessful, except in cases where procedural public policy, such as the right to be heard, was breached. Ms Morel de Westgaver pointed out that the English courts have also adopted a minimalist approach, as the threshold for setting aside an award on grounds of public policy is high. Mr Draye finally explained that in Belgium a recent Supreme Court appears to adopt a minimalist approach, whereby the state judge should not carry out an in-depth examination of the merits of the case to assess whether public policy standards were correctly applied to the facts by the arbitral tribunal, but only assess whether the outcome of the award or its enforcement would constitute a violation of the public policy rule in dispute.

The third topic addressed the importance of the right of access to justice in arbitration. Ms. **Johnson** stated that in Switzerland, an arbitration agreement could eventually be terminated unilaterally if a party is unable to pay the advance on costs to initiate the arbitration proceedings. In addition, in case of domestic arbitration, the party withdrawing from the arbitration in case of impecuniosity may proceed before the ordinary court. For her part, **Ms Morel de Westgaver** explained that the English courts had held in a 2014 case that a party's failure to pay its share of the advance on the costs constituted a breach of the arbitration agreement, but was not considered a repudiatory breach. Consequently, the arbitration agreement was not inoperative in light of the Arbitration Act. **Ms van Hooft** followed by saying that French courts consider that impecuniosity should not affect the arbitration agreement and that it is up the arbitral tribunal to ensure that no denial of justice results on account of the financial health of a party. However, according to **Mr Kröll,** German courts consider that keeping the parties in an arbitration agreement when their financial resources make it impossible for them to pursue their claims in practice would amount to a denial of justice. For Belgium, **Mr. Draye** mentioned a recent Belgian decision, ruling that in a case where the parties have provided for the possibility of appealing against the award, the losing party who is not able to pay the costs requested for the appeal is allowed to bring an action for annulment before the courts.

The last topic covered the consequences of failure to issue an award within the time limit. **Ms Morel de Westgaver** began by stating that the arbitral tribunal has a general duty to avoid unnecessary delay according to English caselaw. **Ms van Hooft** explained that there is no legal time limit in French law to render an award. If an award is issued outside of the contractually agreed time limit, it is subject to challenge as it could be argued that the arbitral tribunal ruled without respecting the mandate given to it, which could also result in the arbitrator's liability. The same applies in the Netherlands, with the difference that the liability of arbitrators is similar to that of the judges, which is to say that arbitrators can only be held liable in exceptional situations. Likewise, in Belgium, **Mr Draye** noted that the late issuance of an award could constitute an excess of powers on the part of the arbitral tribunal and constitute a ground for setting aside. In Germany, an award has yet to be set aside

due to a late issuance of an award according to **Mr Kröll.** It may only have an impact on the arbitrator's fees. In Switzerland however, Ms. Johnson stated that an arbitral award rendered outside of the time limit is not null but may be set aside, in which case the arbitrator is liable for full compensation.

The panel discussion provided a wonderful opportunity for insightful exchanges and valuable comparisons between the various jurisdictions close to Belgium. After these very rich talks, **Ms Caroline Verbruggen** (Judge at the Brussels Court of Appeal and co-editor-in-chief b-Arbitra) offered great concluding remarks. The evening carried on with a networking cocktail offered by the publisher Wolters Kluwer.

BY Alexandra Keutgen

Legal Trainee, CEPANI

HOT TOPICS IN INTERNATIONAL ARBITRATION – CEPANI/ASA/HUB BRUSSELS EVENT

Geneva- 22 november 2023

CEPANI40, the Swiss Arbitration Association (ASA) and HUB Brussels teamed up to strengthen the links between the Brussels and Geneva (and, more broadly, Belgian and Swiss) arbitration communities by organising a first joint-event at the Hôtel de la Paix Ritz Carlton in Geneva, before a likely similar event in Brussels.

After welcoming words of **H.E. Pascal Heyman**, Belgian Ambassador to Switzerland**, Mr Xavier Favre Bulle**, President of the Arbitration Court of the Arbitration Court of the Swiss Arbitration Centre and **Mr Vincent Subilia**, Director General of the Geneva Chamber of Commerce, the keynote address was masterfully delivered by **Mr Dirk De Meulemeester**, Honorary President of CEPANI. After an introduction discussing the early days of arbitration and the Alabama case held in Geneva, he focused on three main issues: (i) the efficiency of arbitration and the role of the arbitrators in this context, (ii) legitimacy of arbitration (including diversity and inclusion) and (iii) the emergence of new markets, especially in South America.

The two first topics were then covered at more length by the panel during a lively discussion (including with the audience, which proved very engaged) chaired by **Mr Guillaume Croisant** (Co-Chair, CEPANI40; Managing Associate, Linklaters Brussels), and composed of **Ms Françoise Lefèvre** (Member of the ICC Court of Arbitration; Partner at Lefèvre Arbitration); **Ms Melissa Magliana** (member of the board of ASA; partner at LALIVE in Zurich) and, for the users' perspective, **Mr Patrick Baeten** (General Secretary, Besix).

BY Emma Van Campenhoudt

Secretary General, CEPANI

REPORT ON THE MEETING OF UNCITRAL WG III IN VIENNA

Vienna- 9-13 October 2023

UNCITRAL's Working Group III ("WG III") on Investor-State Dispute Settlement Reform met in Vienna from 9 to 13 October 2023. WG III had two main items on its agenda: "**Draft provisions on the establishment of an advisory centre on international investment law" and "Draft provisions on procedural and cross-cutting issues**".

Since 2004, CEPANI is represented in UNCITRAL's Working Group II on Dispute Settlement. As from now, CEPANI will be represented in UNCITRAL's Working Group III.

Advisory centre

The first item on the agenda of WG III related to the proposed establishment of an Advisory Centre on International Investment Law ("*Advisory Centre*"), and a set of draft provisions relating thereto. The Advisory Centre would be mandated *"to provide technical assistance and capacity-building with regard to international investment law and investor-State dispute settlement (ISDS) and provide legal support and advice with regard to ISDS proceedings, including representation services"* (Draft Provision 2).
Much of the discussion on the establishment of an Advisory Centre centered around organizational and structural questions such as financing, fee structure, the role and function of the governing board, the procedure to be followed, and the mandate of the Advisory Centre more generally.

An important issue, however, which was the subject of much discussion, related to the question of who could benefit from the services of the Advisory Centre. The question was whether the services would be available to Member States, non-Member States, and/or non-Member non-States (in particular micro, small and medium-sized enterprises ("*MSMEs*")), as is envisaged in Draft Provisions 6 § 3 and 7 § 3). In particular, the Member States disagreed mostly as to whether non-Member States and MSMEs could benefit from assistance with regard to ISDS proceedings. Concerns were raised as to the financial implications of the latter, the fees to be charged, and possible conflicts of interest. More generally, it seems that the discussion on who should be given access to the services of the Advisory Centre were matters of principle, some states favoring access to Member States and MSMEs of Member States, while others were in favor of giving access to (Member) States only.

Draft provisions on procedural and cross-cutting issues

The second item on the agenda of WG III were the "Draft provisions on procedural and cross-cutting issues". These provisions are divided into several sections, covering "Submission of a claim – Conditions and Limitations" (A), "Conduct of Proceedings" (B), and "Decisions by Tribunals" (C). The Secretariat had also prepared **annotations to the draft provisions**.

There was much discussion on the status and objective of the draft provisions. The draft provisions, according to the Secretariat, *"were prepared for inclusion in existing and future international investment agreements ("IIAs")"* (para 3). As several delegations observed, the objective of the draft provisions requires careful consideration. Some delegations noted that the Draft Provisions could be used as model provisions which States could use with or without modifications in their IIAs, or could be used as a set of provisions for a future **multilateral instrument**, in effect retrofitting these into to existing IIAs. Other delegations, however, questioned the usefulness of drafting model clauses, and instead considered that the focus should be on the multilateral instrument. Another option proposed by some States was to consider the inclusion of certain provisions as an update to the UNCITRAL Arbitration Rules. These new or additional rules could then be limited to (treaty-based) investor-state arbitration and serve as an update along the lines of the recently adopted reformed ICSID Arbitration Rules. In this respect, some delegations noted that the draft provisions in Section B in particular (covering evidence, bifurcation, consolidation of proceedings, the code of conduct, and security for costs amongst others) could be interesting as updates to the UNCITRAL Arbitration Rules.

In relation to the Draft Provisions in Sections A and C it was argued by some delegations that these could best be used as model provisions to be used by States for inclusion in their IIAs. Other delegations, however, questioned whether the consideration of provisions as they are now drafted, were indeed part of the mandate of WG III which should focus on procedural questions only. The Draft Provisions in these sections in particular were considered by some delegations to venture too much into substantive law questions, such as "Denial of benefits" (Draft Provisions 9), "Shareholder claims" (Draft Provision 10), "Right to regulate" (Draft Provision 12), and "Assessment of damages and compensation" (Draft Provision 23) amongst others. The latter also attracted much debate in general, as some delegations observed that limiting damages and compensation to *"the total expenditures incurred by the claimant"* (Draft Provision 23 § 8), was contrary to the customary international law principle

of *restitutio in integrum*. Other delegations pointed to the occasional excessive nature of damages and compensation awarded in ISDS, and the use of the DCF-method in circumstances where this would not be warranted. The idea to have tribunal-appointed experts (Draft Provision 23 § 5) received support. Other Draft Provisions, such as the "Right to regulate" (Draft provisions 12), were not discussed and will be taken up in the next meeting of WG III.

BY Eric De Brabandere

Partner - DMDB Law

ICC YAAF EVENT: EMERGENCY! I NEED INTERIM RELIEF?

Brussels – 20 October 2023

On 20 October 2023, an ICC YAAF practical workshop was held at **Linklaters Brussels** on emergency arbitration under the ICC Rules of Arbitration. The event was co-organised by two CEPANI members, Ms **Iuliana Iancu** (ICC YAAF Representative for Europe, Partner Hanotiau & van den Berg) and Mr **Guillaume Croisant** (Co-Chair, CEPANI40; Managing Associate, Linklaters LLP, Brussels).

Ms. Iancu began the event with a welcome speech before Mr. Croisant introduced the speakers of a panel discussion on emergency arbitration. The speakers were Ms **Shannen Honoré** (Deputy Counsel, ICC International Court of Arbitration), Ms **Lauren Rasking** (CEPANI40 Co-Chair; Senior Associate, Allen & Overy LLP, Brussels) and Ms **Catherine Schroeder** (Independent Arbitrator & Counsel, Schroeder Arbitration). The speakers shared their experience of emergency arbitration under the ICC Rules and gave practical advice on how to proceed in such situations. They also pointed out differences between the ICC and the CEPANI rules.

Following a walking lunch at noon, the participants were divided into three teams (claimant, respondent, and emergency arbitrator) and began to work on a mock case created by Ms. Iancu, giving them a very practical insight into emergency arbitration proceedings. After drafting their submissions, the teams argued orally, and the emergency arbitrator's team then drafted and delivered its decision. The event ended with closing remarks from the co-organizers and concluded by networking drinks.

BY Alexandra Keutgen

Legal Trainee, CEPANI

IBA ANNUAL CONFERENCE PARIS

Paris- 29 October- 3 November 2023

CEPANI had the opportunity to promote Belgian arbitration at the 2023 International Bar Association Annual Conference in Paris, which took place between 29 October and 3 November 2023. In collaboration with brussels.hub, the Flemish and French-speaking sections of the Brussels Bar (Balie Brussel and Barreau de Bruxelles) and IBJ-IJE (Instituut voor bedrijfsjuristen – Institut des juristes d'entreprise), CEPANI presented the attractive legal features of Belgium and the Brussels region to the thousands of lawyers and legal experts who had come from all over the world to gather in Paris.

On 30 October 2023, the Ambassador of the Kingdom of Belgium in Paris, **Mr Jo Indekeu**, hosted an event entitled « Brussels, your Legal Hub for Europe », organised by hub.brussels. CEPANI was invited to highlight Brussels as a place for ADR and arbitration, while the other partners promoted Brussels as the gateway to the European legal market, with its lawyers and company lawyers. The moderator was **Mr Patrick Dillen** (former Vice-President of the Flemish section of the Brussels Bar and Partner at DWL LAW) and speakers included **Mr Bernard Derveaux** (President of the Flemish-speaking sections of the Brussels Bar and Partner at KS4V attorneys), **Mr Emmanuel Plasschaert** (President of the French-speaking sections of the Brussels Bar and Partner at Crowell), **Ms Vanessa Foncke** (Partner, Jones Day, and member of the board of administration of CEPANI), **Ms Julie Dutordoir** (Director General at IBJ/IJE) and **Mr Olivier Costa** (Economic and Commercial Counsellor at the Embassy of Belgium in France). The event was followed by a lively drink reception with guests who had the opportunity to chat with various partners and learn more about Brussels.

BY Alexandra Keutgen

Legal Trainee, CEPANI

!!! CEPANI/CEPANI40 ACTIVITIES IN 2024 !!!

CHANGE OF CIRCUMSTANCES: A COMPARATIVE ANALYSIS UNDER BELGIAN, SPANISH AND PORTUGUESE LAWS – 6 February 2024

The CEPANI round table held on 6 February 2024, titled "The Change of Circumstances in Dispute Resolution: Lessons from Abroad on the Revision of Contracts," provided an insightful discussion on the legal concept of "*hardship*". Distinguished legal experts from Belgium, Spain and Portugal explored their respective legal frameworks, highlighting the nuances, practical implications and comparative aspects of handling changes of circumstances. Despite sharing several common features, the legal frameworks of these countries are not identical.

Mr. Benoît Kohl, President of the CEPANI and Professor at the University of Liège, opened the session by emphasising the notable reform in the Belgian Civil Code regarding the notion of "*hardship*." The round table then unfolded through three panels, addressing the criteria of application, clause drafting and the effects of changes of circumstances on contracts.

The first panel, moderated by **Mr. Kohl**, presented the legal frameworks of each country. **Ms. Florence George** (lawyer; Professor at the University of Namur) highlighted the inclusion of hardship in Article 5.74 of the Belgian Civil Code, moving beyond the traditional confines of force majeure and abuse of right. The Belgian regime now allows contract adaptation subject to certain conditions (*i.e.,* it must be in line with what the parties would have reasonably agreed on) or termination. In case of failure of negotiations, the parties can also seize a judge to adapt or terminate the contract. There is no hierarchy between adaptation and termination of the contract. The new concept raises questions, namely about negotiation obligations and the role of judicial intervention in adapting or terminating contracts (the judge being bound by the *ultra petita* limitation) as well as whether the debtor would be able to invoke the change of circumstances if it did not ask the creditor to renegotiate the contract and is in breach of contract.

Ms. Heidi Lopez Castro (lawyer) presented Spain's approach, where since 1940 hardship has been governed by the doctrine of rebus sic stantibus. This doctrine, while not codified, has evolved to address extraordinary and unforeseeable circumstances affecting long-term contracts. It has been developed at the intersection of the principles of good faith, *pacta sunt servanda* and the disappearance of the

cause. Courts apply this doctrine restrictively, requiring an event of extraordinary and unforeseeable nature beyond the control of the parties. Such doctrine has been considered as a subsidiary remedy, which must be requested by a party. One particular aspect is that the parties do not have the duty to renegotiate. As regards the remedy, adaptation seems to be the main and favoured remedy and termination is a subsidiary remedy, with the *ultra petita* limitation. The Spanish courts are cautious about the application of the doctrine. The 2008 economic crisis justified the application of rebus sic standibus although the criteria of application remained strict. Whether Covid-19 satisfies the change of circumstances criteria has not yet been decided by the Supreme Court.

Ms. Lurdes Vargas (Assistant Professor at Universidade Lusofona, Researcher of CEAD) discussed the conditions under Article 437 of the Portuguese Civil Code for invoking a change of circumstances. The criteria include: an abnormal change; the performance of the obligations affects the principle of good faith and does not fall under the risks inherent to the contract. The injured party has the right to terminate the contract or to adapt it, except when that party was in default at the time the change of circumstances occurred. In addition, courts intervention is not mandatory for invoking this change or seeking remedies. The presentation highlighted the importance of good faith and fairness in contract adjustments, aiming for an equitable distribution of risk between the parties in order to restore balance.

The second panel, moderated by **Ms. Vargas**, was composed of **Ms. Heidi Lopez Castro** (Partner, Uria Menéndez, Madrid), **Mr. Ignace Claeys** (Partner, Eubelius, Brussels; Professor at the UGent), **Mr. Alexandre Mota Pinto** (Partner, Uria Menéndez, Lisbon) and **Mr. Rafaël Jafferali** (Partner, Simont Braun, Brussels; Professor at the Free University of Brussels). It tackled several practical questions, including the future challenges of hardship, considerations for clause drafting, examples of change of circumstances, the relevance of international instruments and the burden of proof. The debate also covered the assessment of what constitutes an abnormal or extraordinary event and the evaluation of the risk assumption by the debtor, particularly in complex contracts, along with the causal link between the change of circumstances and the contractual obligations.

The third panel, moderated **by Mr. Jafferali** was composed of **Ms. Dorothée Vermeiren** (Partner, Clifford Chance, Brussels), **Ms. Lopez Castro, Mr. Sander Van Loock** (Associate, Simont Braun, Brussels) **and Mr. Antonio Pedro Pinto Moreto** (Associate Professor at the Autonomous University of Lisbon, lawyer). It explored various interesting questions, such as the obligation to continue fulfilling contractual duties post-change of circumstances, the possibility of seeking interim relief and provisional measures in court and the arguments for

contract adaptation or termination. The panel also indicated that in practice parties have some preference not to empower judges or arbitrators to decide on changes of circumstances, favouring contract termination in the event of unsuccessful negotiations. Finally, the applicability of changes of circumstances to arbitration clauses, especially for a party under financial difficulties (e.g., impecuniosity) was debated, questioning whether such scenarios would invalidate arbitration clauses.

Mr. **Denis Philippe** (lawyer, Professor at the Catholic University of Louvain) offered concluding remarks, highlighting the restrictive criteria for the application of hardship, and noting that often the parties themselves reject the hardship clause. He emphasised the importance of parties maintaining control over their destiny and suggested the involvement of observers or experts to facilitate dispute resolution. With creativity and careful drafting, hardship clauses can be effectively utilised.

The introduction of the concept of hardship in Belgian law brings both apprehension and excitement, as noted by **Mr. Jafferali.** The comparative analysis of Belgian, Spanish and Portuguese laws during the round table offered valuable insights for legal practitioners facing the complexities of hardship clauses in contract law.

BY Dodo Chochitaichvili

Partner Ariga

Report on the meeting of UNCITRAL WG III in Vienna 22-26 January 2024

UNCITRAL's Working Group III ("WG III") on Investor-State Dispute Settlement Reform met in Vienna from 22 to 26 January 2024. WG III had two main items on its agenda: "Draft statute of an advisory centre" and "Draft provisions on procedural and cross-cutting issues". The deliberations were a continuation of the discussions at the previous session in which the same items were discussed.
Since 2004, CEPANI is represented in UNCITRAL's Working Group II on Dispute Settlement. As of 2023, CEPANI is represented in UNCITRAL's Working Group III.

Advisory Centre

The first item on the agenda of WG III related to the proposed establishment of an Advisory Centre on International Investment Law ("Advisory Centre"), and a

set of provisions relating to a draft statute. The Advisory Centre would be mandated "to provide technical assistance and capacity-building with regard to international investment law and investor-State dispute settlement (ISDS) and provide legal support and advice with regard to ISDS proceedings, including representation services" (Draft Provision 2).

At the present session, much of the discussion on the establishment of an Advisory Centre had centered around organizational and structural questions such as financing, fee structure, the role and function of the Governing Committee, the appointment, role, function, and mandate of the Executive Director, and the activities of the Advisory Centre more generally.

Specific points raised included notably the required majority for decision-making by the Governing Committee, the technical assistance to be provided for by the Centre, the question whether the Advisory Centre should also be involved in state-to-state dispute settlement, the precise activities the Centre could or should be involved in (technical assistance and capacity-building), and the access of non-Members (States and regional economic integration organisations) to the Centre and its activities (as a matter of principle, or the conditions under which such access could be granted).

In relation to the question whether non-Member non-States ((M)SMEs) could access the Centre, the proposal made was to remove assistance with regard to ISDS proceedings. However, even the access of (M)SMEs to technical assistance and capacity-building (Draft provision 6 (4)) created disagreement among the States in WGIII. It was in the end agreed that the Executive Director could allow Non-Members to participate in technical assistance and engage in capacity-building activities, and that other persons or entities ((M)SMEs) could also participate in a limited set of the Centre's activities, such as those relating to the holding seminars and conferences, the functioning as a forum for the exchange of information and sharing of best practices, and functioning as a repository of information and related resources (Draft provision 6 (1) (c)-(e).
Discussions, finally, also addressed the financing of the Centre, the fees to be charged, and the classification of member States.

The Working Group agreed that the remaining articles and the Annexes would be addressed at the next session, including overarching questions such as location of the Centre and its position within the United Nations system.

Draft provisions on procedural and cross-cutting issues

The second item on the agenda of WG III were the "Draft provisions on procedural and cross-cutting issues". These draft provisions were not discussed, as most of the session revolved around the proposed establishment of an Advisory Centre. It

was however decided that the Secretariat should classify the draft provisions into those that could supplement the UNCITRAL Arbitration Rules, those that could function as model provisions for States to include in their investment treaties, and those that were truly cross-cutting in nature.

Belgium hosts the 7th Intersessional Meeting of UNCITRAL WG III on 7 and 8 March 2024

Belgium is hosting the 7th Intersessional Meeting of UNCITRAL WG III., on 7 and 8 March 2024 at the Egmont Palace in Brussels. The theme of the Intersessional Meeting is "Improving Access to Justice for All".

The programme is available here, and features (TBC) opening remarks by the Belgian Minister of Foreign Affairs **Hadja Lahbib**, UNCITRAL Secretary **Anna Joubin-Bret**, and UNCITRAL WG III Chair **Shane Spelliscy**. The intersessional will cover various topics, and is divided into four panels. Panel I covers "Access to Justice in the context of ISDS", Panel II addresses the "Standing Mechanism", Panel III focuses on the "Establishment of an Advisory Center", and finally, Panel IV will tackle the "Procedural Rules Reform".
Registrations for the public session on 7 March are open (until 23 February 2024).

BY Eric De Brabandere

Partner - DMDB Law

STORIES FROM A YOUNG ARBITRATOR

EPISODE 17 – IURA NOVIT ARBITER?

Jan Janssen
Senior Associate,
Petillion (Brussels)

Da mihi factum dabo tibi ius (give me the facts, I will give you law) is a maxim meaning that the parties to a dispute must present evidence to the tribunal, which will arrive at a legal decision based on the parties' evidence. For a young practitioner, it may look like a daunting task to lay out the legal reasoning, when the parties to a dispute limit themselves to providing the facts on which the decision must be based. If only it were that easy. The role of an arbitral tribunal involves much more than analysing the evidence the parties have adduced and determining how the law must be applied to the facts of a matter.

The principle, and its corollary *iura novit curia* (the court knows the law), stem from the civil law tradition. These principles have seeped through international courts, that widely recognize *iura novit curia* as a general principle of law, and common law courts may also raise matters of public policy *sua sponte*. In conjunction with globalisation and international trade, legal practitioners may observe the approximation of laws and differences in legal culture getting attenuated by repeated encounters.

The extent to which arbitral tribunals may apply the *iura novit curia* or *iura novit arbiter* principle is debated, particularly in an international context. Some jurisdictions that apply the *iura novit curia* maxim treat foreign law as an issue of fact, rather than an issue of law. When conflicts of laws rules require the application of foreign law, it may be up to the parties to adduce the applicable principles of foreign law.

But international arbitrators do not know the concept of 'foreign law'. One day, they may serve as an arbitrator in proceedings that are governed by the laws of Belgium as lex loci arbitri, while the CISG is the substantive law or lex causae to be applied to the merits of the case, and the law applicable to the arbitration agreement may be Swiss law. Another day, the lex loci arbitri could be French law, the lex causae the laws of Panama, supplemented by mandatory provisions of Italian law, and the law applicable to the arbitration agreement, the laws of England and Wales. Is it reasonable to assume that arbitrators are familiar with all those legal systems and that they can navigate them when presented with factual evidence only?

When parties are well represented, they contribute to the arbitral tribunal's knowledge of the law. Through the quality of the debate between parties, it will be relatively easy for the arbitrator to understand which parts of the law applicable to the dispute must be studied to render justice through an enforceable award.

The situation becomes more complex in case of a default or when there is an imbalance in the quality of the parties' representation. It is not uncommon for a young arbitrator to be confronted with situations where the parties and their representatives are not so familiar with arbitral proceedings and/or the law applicable to the dispute. In such event, there is a fine balance to be struck between 'educating' the parties in the interest of procedural efficiency, on the one hand, and preserving the equality of arms, party autonomy, and avoiding the appearance of bias, on the other hand. It may prove delicate to raise issues of law that have not been addressed by the parties. Not raising a legal issue may be a deliberate choice and raising it could create frustration on the parties' side.

In assessing whether an issue should be raised proactively by the tribunal, relevant factors to be considered are: (i) is the legal issue essential to resolve the dispute that is presented to the tribunal (e.g. essential to establish jurisdiction and ensuring a solid award)?; (ii) does the issue constitute a matter of public policy ?; (iii) how is the iura novit curia principle implemented in the lex loci arbitri ; (iv) is there a risk that raising the issue would put, or be perceived to put, one of the parties in a more advantageous position?

When the latter risk is present, the consideration factors must be weighed properly, which is a delicate exercise, particularly for a sole arbitrator. Justice must not only be done; justice must also be seen to be done, and any appearance of bias is to be avoided at all times.

Irrespective of how careful the arbitrator has been in his balancing exercise of raising the issue, the way he or she presents the issue to the parties is of critical importance. A successful communication can only be achieved if the arbitrator shows a genuine willingness to understand the parties' respective positions and interests and when the parties recognize that their response to the question will assist the arbitrator in fulfilling his or her duties.

As the proceedings evolve, it becomes important to get a common understanding between the parties and the arbitral tribunal as to the issues that must be decided. This exercise may have been commenced

when agreeing on terms of reference. However, the terms of reference should not be the endpoint for listing the issues. A dispute may have ripened and some issues that the parties considered to be relevant may no longer be relevant, whereas other issues might have gained importance. I see benefit in arbitrators taking a proactive role in discussing the list of issues with the parties. When a tribunal indicates the issues it would like the parties to focus on, time and money can be saved. And if a party considers that the tribunal errs by focusing on a particular issue, it can explain why it believes the tribunal is wrong. Such opportunity risks being missed if a tribunal adopts a more passive approach. But a proactive approach requires good preparation and active listening. An arbitrator who raises issues that are only tangential in nature risks to lose the trust of the parties. The same will happen if an arbitrator misses out on important issues, relevant to the dispute.

It will seldom be sufficient for an arbitrator to know the law. Arbitrators must be able to grasp the tensions that exist between the parties and work with the parties in managing the procedure efficiently. *Communicationis et psychologia novit arbiter* may not yet exist as a legal maxim; it is an aspiration arbitrators should aim at when fulfilling their duties and administering justice.

EPISODE 18 – ADAPT, EXPLAIN, AND MOVE FORWARD

Pia Sobrana GENNARI CURLO

Partner - LMBD (Brussels)

Every time that the CEPANI monthly Newsletter is out, I am drawn to the column "Story from a young arbitrator". It is full of valuable tips and insights, not only from a technical point of view, but also from a psychological one, illustrating that many of the experiences that one can have when sitting as a sole (young) arbitrator are in fact widely shared by others.

Dr. Farouck El-Hosseny's contribution (Episode 6) "*Dealing with the complexities of unsophistication*" struck a chord with me. He wrote that "dealing with unsophisticated parties and counsel can lead to complexities, or perhaps even complications"; a reality I personally experienced in one of my first cases. The Respondent had decided to defend himself with no legal representation. He was a middle-aged person, lacking any legal knowledge and living abroad. In addition to legal and procedural hurdles, practical difficulties further emerged due to distance, connectivity, and cultural differences.

Upholding Article 1699 of the Judicial Code (which enshrines the principle of equal treatment of the parties to the arbitration proceedings), I was committed to ensuring that the unrepresented party understood its rights and obligations and that the rights of defense were respected, notwithstanding the imbalance in the quality of representation of the parties.

The challenge I was faced with was to enable a party who was largely unfamiliar with the practice of litigation to assert its rights and arguments, to identify its claims no matter their form, to organize the large number of documents to be submitted, and to do so within the reasonable limits of the mandate given by the parties - all of this while maintaining fairness to both sides, without acting as a de facto advocate for the Respondent and consequently prejudicing the Claimant's interests. As Iris Raynaud recalled (Episode 15), the rights of defense are not unlimited and have to be balanced with other considerations, such as the need for efficiency of the proceedings (See C. Verbruggen, "Commentary on Article 1699" at [26], "Commentary on Article 1717" at [41], in *Arbitration in Belgium, A Practitioner's Guide*, N. Bassiri & M. Dray (eds), pp. 273 and 469). These tasks required much more work and energy than I had originally expected.

I felt that by being pedagogical, by taking the time to listen even more to the parties, I would be able to reassure them (especially the Respondent) and to establish the authority necessary for the efficient conduct of the proceedings in their best interests.

André Faurès wrote that "*Certain human qualities are also desirable in the role of arbitrator (…): i. Intellectual and moral honesty and strength of character in the face of all forms of temptation, a prerequisite for independence of mind; ii. The ability to take decisions and decide difficult issues, requiring perseverance; iii. A sense of responsibility; iv. A sense of what is reasonable and fair, which is essential for assessing abuse of rights or the good faith of the parties; v. The willingness to listen to the parties' presentations; vi. Courtesy; vii. A knowledge of psychology; viii. Availability, necessary for diligent handling of the case and a decision within a reasonable time; ix. Discretion, x. Authority, especially in the case of the chairman who leads the proceedings. Generally speaking, an arbitrator must have the "ability to judge*". (A. Faurès, J. Van den Heuvel, « Qualités de l'arbitre – Kwaliteitsvereisten van de arbiter », Macht en Onmacht van de Arbiter – L'arbitre : pouvoirs et statut – Rapporten van het Colloquium van CEPINA van 28 maart 2003 – Actes du Colloque du CEPANI du 28 mars 2003, Bruylant, 2003, pp. 19 et 20).

While I resonate with André Faurès' list every time I sit as an arbitrator, I believe that a pedagogical approach throughout the arbitration process also contributes to ensuring that justice be truly delivered, particularly in the context of arbitration, where parties choose (and then place their trust in) a third party (in this case through CEPANI) to resolve their dispute, and often hope to quickly resume a good business relationship. While my background in academia (as a lecturer at university) has undoubtedly shaped this belief in pedagogy, I think it is rather a cross-cutting quality which can smooth many challenges.

Achieving a swift and definitive resolution of what had become an intractable and important dispute for the parties, one of whom refused to engage a lawyer, was a very rewarding achievement both from a legal and a human point of view. Like Karen Paridiaen (Episode 13), taking on the role of judge in these circumstances reminded me of the importance of a well-prepared case, both in form and substance. The avalanche of claims and arguments forced me to examine a multitude of legal issues and to remain concise. A full and thorough study of the case before the hearing was essential to avoid time-consuming outbursts and to maintain order during the hearing. From a human point of view, it was very satisfying to have the unrepresented party made aware of their rights, obligations and the applicable rules, and remaining confident in the neutrality and impartiality of the arbitrator, who was seeking the truth while taking into account the human beings involved.
Having navigated the complexity of unsophistication, I welcome handling the simplicity of sophistication.

WERKGROEPEN

GREENER ARBITRATION

VOORZITTERS: Adrien FINK

Flip PETTILLION Astrid MOREAU

LEDEN: Sophie GOLDMAN

Lauren RASKING

Iuliana IANCU

The goal of the Committee is to make CEPANI lead the way in Belgium in the field of greener arbitration, and dispute resolution proceedings in general. The Committee met on 12 January, 16 February, and 14 March 2023 and (via email) in preparation of the CEPANI Board of Directors meeting on 12 March 2024.

At its first meeting of 12 January 2023, the Committee discussed different ways to achieve that goal and at subsequent meetings it adopted proposals for submission to the board for final approval.

1. The Committee proposed the signing by CEPANI of the International Green Pledge.

   The Board approved this proposal in June 2023.

2. The Committee further proposed the adoption by the Board of the CEPANI Greener Arbitration Pledge. The text is meant to be used by individual counsel, their firms, and arbitrators. The objective is for these individuals to publish the text on their website or in their firm brochures.

   In March 2024, the Board approved the Pledge and its promotion by CEPANI.

3. The Committee proposed the adoption by the Board of sample language that can be incorporated in a Procedural Order (PO) No. 1 or in Terms of Reference (ToR).

   In March 2024, the Board approved this language and the promotion by CEPANI of its use in arbitration proceedings.

4. The Board invited the Committee to further work on the promotion of the Committee's goals and its achievements.

   To inform practitioners and arbitrators on the Committee's activities and achievements, the Committee will prepare a text for publication in b-Arbitra. In addition, the Committee will take initiatives comparable to those taken by the Diversity Committee.

5. Upon suggestion of the Committee, the CEPANI secretariat took action for CEPANI to obtain the Ecodyn label1 (expected to be awarded mid-2024).

6. Together with CEPANI 40, CEPANI and the Campaign for Greener Arbitrations (CGA)2, the Committee will organise a webinar on greener arbitration, focusing on what this means in practice. While the CGA will give a broader, international outlook and provide examples of similar initiatives in other jurisdictions/other arbitration institutes, the Committee will highlight the work done (and to be continued) in the Belgian arbitration community. The webinar is expected to take place in June 2024 (TBC) and target all practitioners and arbitrators.

1 Ecodynamix Organisation Label – an initiative of Bruxelles environnement/Brussel Leefmilieu (https://www.ecodyn.brussels/?lang=nl).

2 The CGA is a group of arbitration practitioners committed to achieving sustainable change in the way in which arbitrations are managed, which started with the 'Green Pledge' initiative of Lucy Greenwood (https://www.greenerarbitrations.com/about).

STANDING COMMITTEE "DIVERSITY & INCLUSION"

LEDEN:

Niuscha BASSIRI

Guillaume CROISANT

Werner EYSKENS

Sophie GOLDMAN

A la suite des recommandations du Groupe de travail en 2022, un comité permanent « diversité & inclusion » a été mis sur pied en 2023. Celui-ci est composé des anciens co-présidents du groupe de travail, Werner Eyskens et Sophie Goldman, ainsi que de Niuscha Bassiri et Guillaume Croisant.

La première tâche du groupe de travail fut d'assurer la communication au sujet de l'importante modification de l'article 15.1 du Règlement CEPANI au sein de la communauté arbitrale, belge mais aussi étrangère, au travers différentes publications dans b-Arbitra, la Revue de Droit Commercial, le GAR et L360. Pour rappel, l'article 15.1 du Règlement précise à présent la nécessité de prendre en compte des considérations de diversité et d'inclusion dans le cadre de la nomination des arbitres :

«*Article 15. – Nomination et confirmation des arbitres*
1. Le Comité de Nomination ou le Président nomme ou confirme le Tribunal Arbitral conformément aux règles suivantes. Il tient notamment compte de la disponibilité, des qualifications et de l'aptitude du ou des arbitres à mener l'arbitrage conformément au Règlement, et de considérations relatives à la diversité et à l'inclusion ».

Cette annonce de l'ajustement n'est pas passée inaperçue et a certainement contribué à un mouvement plus large dans la communauté de l'arbitrage. Par exemple, la NAI a également inclus des références explicites à la diversité et à l'inclusivité dans le contexte de la nomination des arbitres dans la règle 15.5 de son nouveau règlement de 2024.

Le comité a ensuite organisé l'invitation et la venue de Mme Stephanie Boyce en tant qu'oratrice à l'assemblée générale du CEPANI 2023 qui a livré un Keynote speech très inspirant sur le thème de "*Why diversity matters and why each of us has a responsibility to build truly diverse and inclusive professions*"

Le comité a encore été ponctuellement consulté au cours de l'année 2023 par le secrétariat et/ou le conseil d'administration sur certains sujets spécifiques tels que, par exemple, la relecture des nouveaux statuts du CEPANI sous l'angle « diversité ».

Pour le surplus, le comité se réunit sur une base régulière afin d'identifier ce qui peut encore être fait pour améliorer la diversité et l'inclusion au CEPANI et afin d'examiner les progrès accomplis à la suite des différentes mesures prises sur recommandations du groupe de travail (voy. à leur sujet le rapport annuel de 2022). Le comité permanent est invité à porter à l'ordre du jour de chaque réunion du conseil d'administration un point spécifique relatif à la diversité et l'inclusion au sein du CEPANI ou de la communauté arbitrale plus généralement.

***

N.a.v. de aanbevelingen van de Werkgroep "Diversity & Inclusion" van 2022, is een permanente Commissie "Diversity & Inclusion" opgericht in 2023. Deze is samengesteld uit de voormalige co-voorzitters van de werkgroep, Werner Eyskens en Sophie Goldman, samen met Niuscha Bassiri en Guillaume Croisant.

De eerste taak van de Commissie bestond uit de communicatie omtrent de belangrijke aanpassing van artikel 15.1 van het CEPANI Reglement naar de bredere arbitrage gemeenschap, zowel in België als in het buitenland, d.m.v. diverse publicaties, waaronder b-Arbitra, het Tijdschrift voor Belgisch Handelsrecht, GAR en L360. Ter herinnering, artikel 15.1 van het CEPANI Reglement bepaalt nu dat overwegingen van diversiteit en inclusiviteit in overweging dienen genomen te worden in het kader van de benoeming van arbiters:

"*1. Het Benoemingscomité of de Voorzitter benoemt of bevestigt het Scheidsgerecht in overeenstemming met de hiernavolgende regels. Hierbij wordt meer bepaald rekening gehouden met de beschikbaarheid, de kwalificaties en de bekwaamheid van de arbiter(s) om de arbitrage te voeren overeenkomstig het Reglement, en overwegingen van diversiteit en inclusie*".

Deze bekendmaking van de aanpassing is niet onopgemerkt voorbijgegaan en heeft zeker bijgedragen tot een bredere beweging in de arbitragewereld. Zo heeft het NAI in artikel 15.5 van haar nieuw Reglement van 2024 ook uitdrukkelijke verwijzingen opgenomen naar diversiteit en inclusiviteit in het kader van de aanstelling van arbiters.

De Commissie heeft voorts de uitnodiging en deelname georganiseerd van Stephanie Boyce als spreker op de CEPANI algemene vergadering van 2023, waar zij de key note speaker was over het onderwerp "*Why diversity matters and why each of us has a responsibility to build truly diverse and inclusive professions*".

De Commissie is tevens punctueel aangesproken in de loop van 2023 door het Secretariaat en/or de Raad van Bestuur over een aantal specifieke onderwerpen, zoals, bijv. het nazicht van de nieuwe statuten van CEPANI vanuit het oogpunt van diversiteit.

Voor het overige komt de Commissie op regelmatige basis samen teneinde verdere doelstellingen voor de verbetering van diversiteit en inclusie binnen CEPANI te identificeren en teneinde de

vooruitgang op te volgen n.a.v. een aantal van de aanbevelingen die de werkgroep formuleerde (zie het jaar verslag van 2022). De Commissie is uitgenodigd om voor de dag orde van elke vergadering van de Raad van Bestuur een specifiek onderwerp aan te reiken m.b.t. diversiteit en inclusiviteit binnen CEPANI of binnen de bredere arbitrage gemeenschap.

ARBITRATION AND CONSTRUCTION

VOORZITTERS:

Marco SCHOUPS

LEDEN:

Helga VAN PEER

Françoise LEFEVRE

Nicolas RESIMONT

Vera VAN HOUTTE

Vanessa FONCKE

Elke VAN OVERWAELE

Koen VAN DEN BROECK

Benoît KOHL

1. PLAN

1. The Board of Cepani gave a green light to continue the brainstorm re a special center for construction disputes within Cepani with a proper name and website and maybe a specific set of rules, aimed at the construction sector.

2. The Cepani Construction dispute resolution platform aims to become the go-to platform for dispute resolution in construction matters, offering advice to parties how to resolve their dispute, be it through mediation, binding or non-binding expert opinion & arbitration, fast track or not.

The general objective is to set up a platform that makes the difference with the state court procedures, such as an integrated flexible instrument of dispute prevention-management-resolution through mediation/ early determination/ etc and arbitration (fast track and full blown) where parties can pick what is convenient for their situation.

2. NEXT STEPS FOR THE WC : TOPICS TO BE EXAMINED

On the basis of the paper submitted to the Board, the working Group examines at the moment the following six topics :

1. Ensure the quality of the participants
2. Create transparency
3. Develop specific rules & texts for disputes in the construction sector, a.o. mediation,& expert opinion (binding – not-binding),

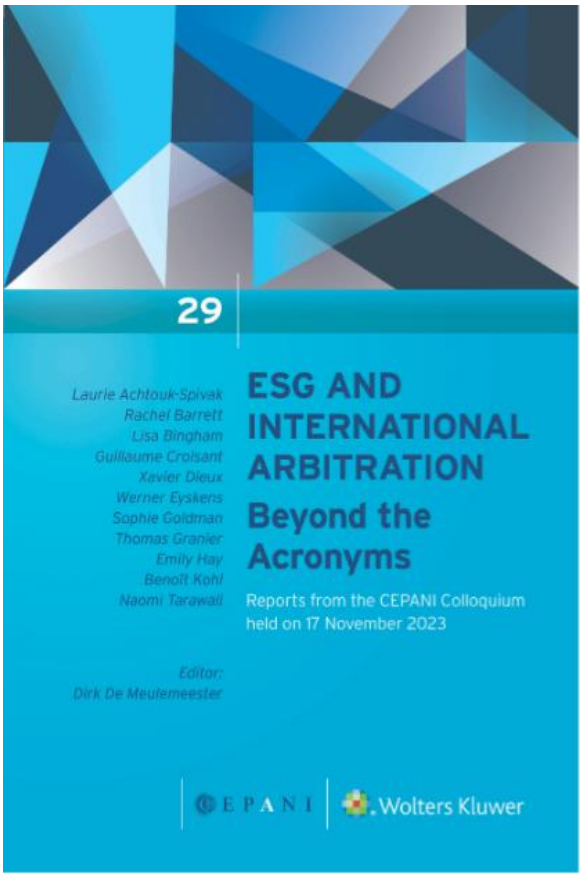
4. Develop specific solutions regarding multi-party disputes
5. Ensure speedy resolution of the case if arbitration is chosen
6. Manage costs

One member of the WG has the specific task to function as a ‘sounding board’ or informal liaison committee with the future clients of the new dispute center, meaning the in-house counsel of the major companies and administrations active in the construction business.

The WG met on 5 February 2024, 20 March 2024 & 22 April 2024 and continues its work. It aims to have a draft proposal ready mid 2024.

PUBLICATIONS

OUVRAGES SCIENTIFIQUES



The book ESG AND INTERNATIONAL ARBITRATION - Beyond the Acronyms contains contributions that form the basis of the presentations held at the CEPANI Colloquium which took place in Brussels on 17 November 2023. The various contributions focus on all aspects of ESG in international arbitration.

ESG issues are front and centre of corporate compliance programs, newspaper headlines and investment portfolios. But ESG is more than a buzzword, and there are several dimensions to its significance for international arbitration. As ESG regulation shifts from soft law guidance towards more stringent legal requirements of climate transition, disclosure, reporting, supply chain due diligence, contractual assurances, and remediation of adverse human rights and environmental impacts, ESG will increasingly be encountered in the subject matter of public and private commercial disputes. In order to be equipped for this emerging area of disputes, it is important for dispute resolution practitioners to familiarise themselves with ESG as a concept, relevant applicable legal frameworks, and the implications for international disputes and for arbitral proceedings.

The book contains contributions **Rachel Barrett** (Partner Linklaters, London), **Guillaume Croisant** (Managing Associate Linklaters, Brussels), **Emily Hay** (Counsel HVDB, Brussels), **Lisa Bingham** (former Deputy Director ICCA, The Hague), **Laurie Achtouk-Spivak** (Partner Cleary Gottlieb, Paris), **Naomi Tarawali** (Partner Cleary Gottlieb, London), **Xavier Dieux** (Brussels), **Thomas Granier** (Asaso & Co Paris), **Werner Eyskens** (Partner Crowell, Brussels), **Sophie Goldman** (Partner Tossens, Goldman Gonne, Brussel), **Dirk De Meulemeester** (Partner at De Meulemeester & De Brabandere, Brussels) and **Benoît Kohl** (President of CEPANI).

NEWSLETTER

CEPANI publiceert maandelijks een nieuwsbrief met korte informatieberichten omtrent arbitrage en CEPANI. Deze nieuwsbrief wordt elektronisch gepubliceerd en is beschikbaar op onze website.

Veel dank aan Guillaume Croisant, Karolien Emmerechts, Iuliana Iancu en Sander Van Loock die er elke maand voor de publicatie van instaan.

B-ARBITRA

b-Arbitra is the Belgian journal for arbitration. Launched in 2013, b-Arbitra is an initiative of CEPANI, the Belgian Centre for Arbitration and Mediation. 2023 was a particular year for b-Arbitra which celebrated its tenth anniversary (see report on the event for this occasion on page 59).

The journal is published by Wolters Kluwer and appears two times per year. It is available in hard copy and online through jura.be and kluwerarbitration.com.

b-Arbitra includes contributions in English and in French, Dutch and German, the three official languages of Belgium. Each article and court decision is accompanied by an abstract in English.

In 2023, as in previous years, two issues were published, with particularly interesting doctrine articles, case law, documents and reviews.

b-Arbitra aims to support scientific research on fundamental issues related to arbitration and to promote a critical and innovative analysis of these issues as well as of more concrete topics that are important for the arbitration public. The journal also aims to initiate a debate on new issues in the field of arbitration and to provide a forum for the exchange of information in Europe, in light of the internationalization of arbitration and the increase in cross-border disputes. As Belgium has adopted the UNCITRAL Model law and court decisions in relation to arbitration are not systematically published by the Judiciary, b-Arbitra also seeks to make Belgian arbitration related case law as widely available as possible.

Current editors-in-Chief are Caroline Verbruggen and Maarten Draye, assisted by an editorial board composed of Lisa Bingham, Olivier Caprasse, Alexander Hansebout Melissa Magliana, Claire Morel de Westgaver, Maud Piers, Erica Stein, Jean-François Tossens, Annet van Hooft and Herman Verbist.

Proposals for articles, interesting case law or any other question or comment in relation to b-Arbitra can be sent to the Co-Editors-in-Chief at b-arbitra@wolterskluwer.com.

STATISTICAL OVERVIEW

This yearly report provides a statistical overview of CEPANI arbitration in 2023 and its evolution in comparison with past years.

In this report, you will find information about proceedings administered by CEPANI such as the origin of the Parties, the language and the seat of the arbitration, the constitution of Arbitral Tribunals, statistics on the appointed Arbitrators, the average duration of CEPANI arbitration procedures and more.

The impact of the economic crisis has led to fewer arbitration proceedings initiated in 2023 than in previous years. This was also reflected in other national arbitration institutions.

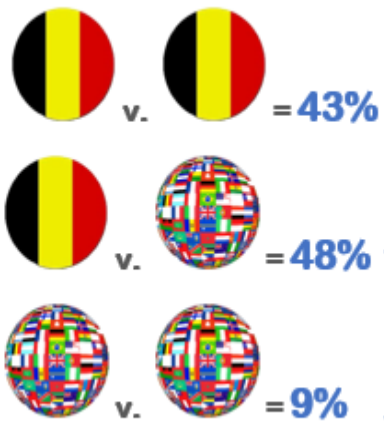
Furthermore, the general trend of internationalisation has continued its pace; this reflects in the origin of the Parties, the language of the arbitration and the nationality of the appointed Arbitrators.

More striking is the amount in dispute that is generally overall higher than in 2022. Indeed, no less than 46% of the CEPANI arbitration procedures involved cases over one million euros, while in 2022 en 2021 33% of the cases involved a similar claim.

Finally, CEPANI continues its commitment to ensure that each case is handled with the requested efficiency and rapidity and in accordance with the specific needs of the Parties.

PARTIES

Origin of the Parties



France	2
Germany	3
Luxembourg	1
The Netherlands	2
Cyprus	1
Italy	1
Austria	1
United Kingdom	1
Taiwan	1
Czech Republic	1
Lebanon	1
Denmark	1
Hong Kong	1

In 2023, 43% of the cases were introduced between Belgian Parties, 48% involved at least one Belgian and one international Party, and 9% of the cases involved solely international Parties.

Compared to 2022, procedures involving only international Parties have increased by 6%, procedures involving at least one Belgian and one international Party have increased by 16%, while on the other hand procedures involving exclusively Belgian Parties have decreased by 22%.

LANGUAGE

DUTCH	FRENCH	ENGLISH
17%	22%	61%

In 2023, the French cases have decreased by 35%, while the Dutch cases have increased by 1% and the English cases have increased with no less than 34% in comparison to 2022.

Indeed, 61% of the cases were introduced in English, 17% in Dutch and 22% in French.

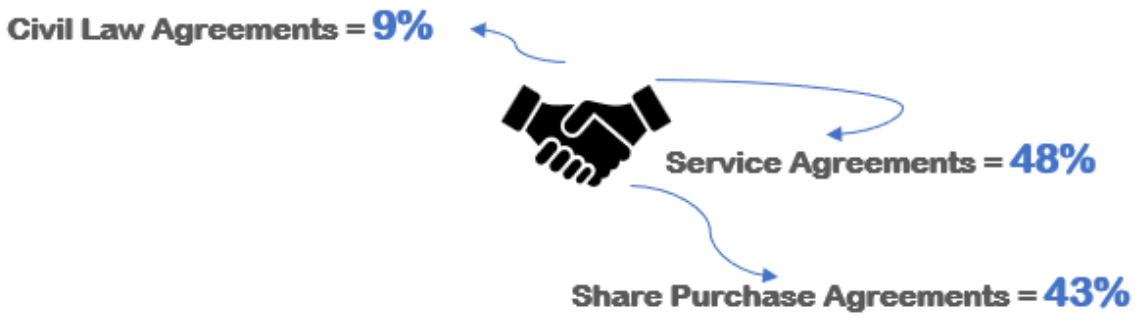
PLACE OF ARBITRATION

Brussels as place of arbitration is a steady trend.

In 2023, 74% of the cases have chosen Brussels as seat of their arbitration and 26% of the cases had their seat in another city, which were all located in Belgium.

In comparison to 2022, 84% of the cases had Brussels as seat of arbitration, while 16% of the cases had their seat in another city.

NATURE OF THE DISPUTE



In 2023, 9% of the cases concerned general issues of civil law;
48% related to a service agreement; and
43% related to a share purchase agreement.

In comparison to 2022, share purchase agreement related disputes have increased with 35% (!), while civil law agreement related disputes have decreased with 10% and service agreement related disputes with 9%.

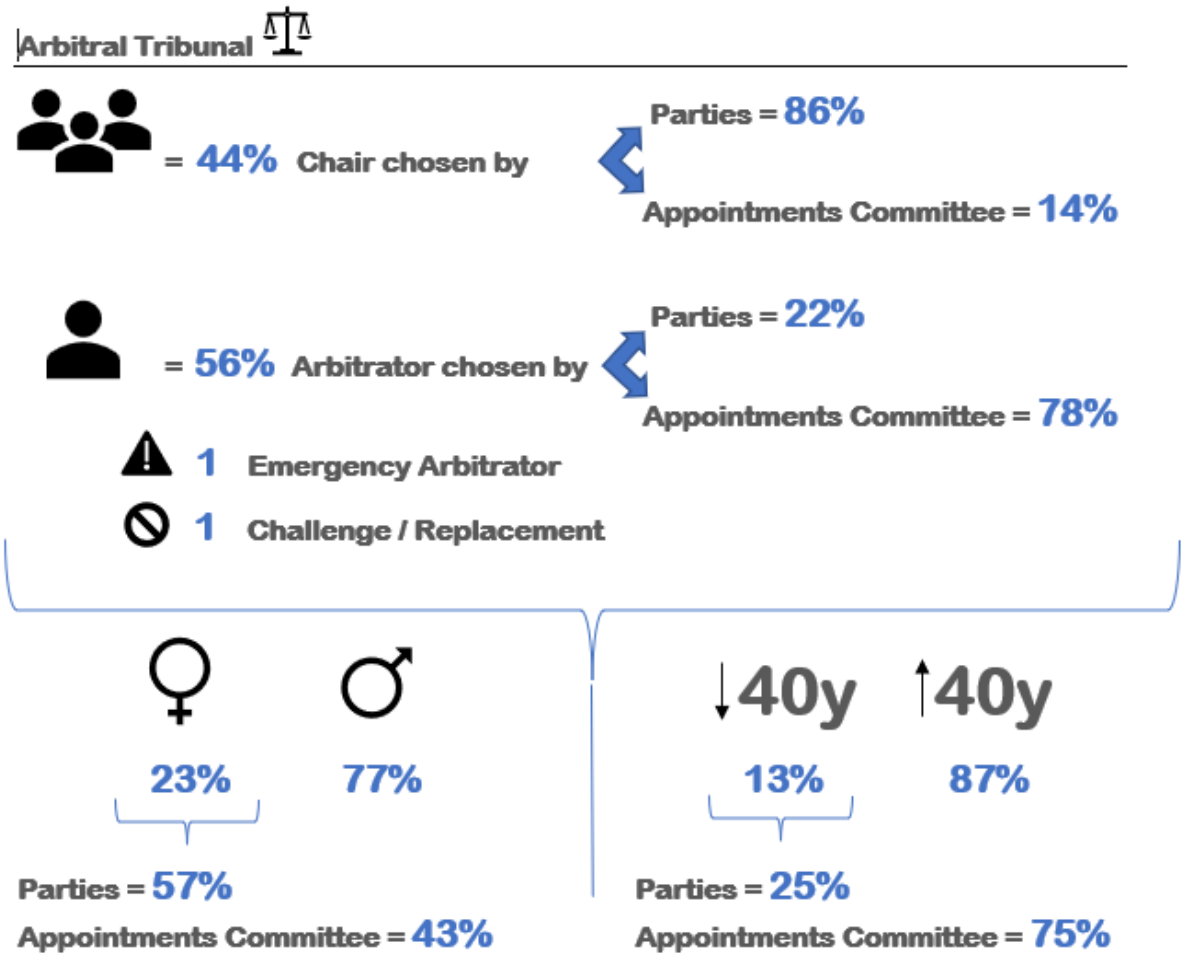
AMOUNT IN DISPUTE

< € 100.000,00 →	22%
€ 100.000,00 – € 200.000,00 →	14%
€ 200.000,00 – 500.000,00 →	9%
€ 500.000,00 – 1.000.000,00 →	9%
€ 1.000.000,00 – 10.000.000,00 →	32%
> € 10.000.000,00 →	14%

From the above, it is clear that expedited proceedings (< € 100.000,00) have been very successful (22% of the cases), while cases over 1 million euros have also increased (46% of the CEPANI cases compared to 33% in both 2022 and 2021.

ARBITRAL TRIBUNAL

CONSTITUTION



Subtle precision, these numbers take into consideration ALL the appointments made in 2023, meaning confirmations by the Appointments Committee of Party appointed Co-Arbitrators or Party appointed Sole Arbitrators/Chairs along with the appointments made by the Appointments Committee itself. When taking into consideration only the appointments made by the Appointments Committee itself (thus excluding all confirmations of Party appointed Arbitrators), 37,50% of these appointments are women in 2023.

As we know, increasing diversity in arbitrations does not depend only on the institutions but also on the Parties.

The majority, *i.e.* 56%, of the Arbitral Tribunals were composed of a Sole Arbitrator. 44% of the Tribunals were composed of three Arbitrators.

In comparison to 2022, 69% of Sole Arbitrators were appointed.

This evolution marks an important change compared to the previous years where a majority of the Arbitral Tribunals were composed of three Arbitrators.

WOMEN IN ARBITRATION

In 2023, 23% of the Arbitrators appointed were women, 43% of which were appointed by the CEPANI Appointments Committee and 57% directly by the Parties.

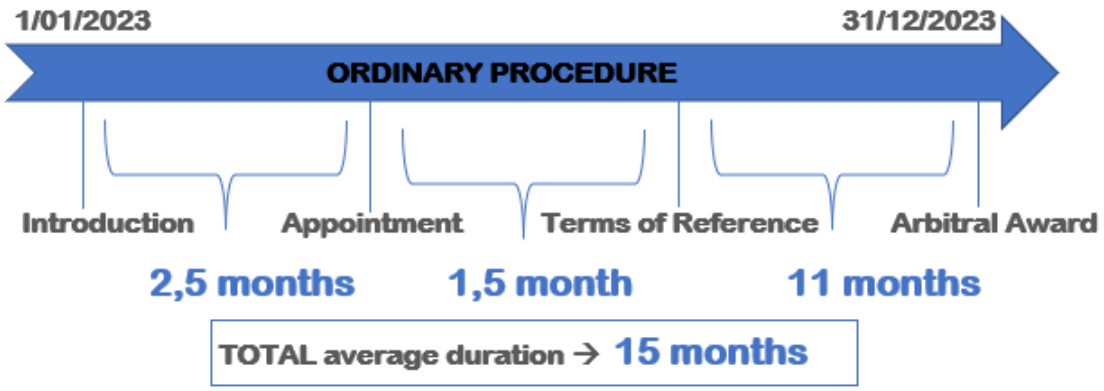
In 2020, 15% of the appointed Arbitrators were women. In 2021, 35% of them were women and in 2022 40%.

YOUNGSTERS IN ARBITRATION

In 2023, 13% of the Arbitrators appointed were below 40 years old.

75% of them were appointed by the CEPANI Appointments Committee, 25% by the Parties.

AVERAGE DURATION OF CEPANI PROCEEDINGS IN 2023



In 2023, an arbitration procedure administrated under the CEPANI Arbitration Rules lasted **15 months,** calculated as follows:

- Introduction to the constitution of the Arbitral Tribunal = 2,5 months.

The CEPANI Arbitration Rules provide for a one-month deadline for Parties to pay the advance on arbitration costs. The Appointments Committee shall only appoint the Arbitral Tribunal when the advance on arbitration costs has been paid in full.

In practice the 2,5 months are due to delays when paying the advance on arbitration costs.

- Constitution of the Arbitral Tribunal to the Terms of Reference = 1,5 month.

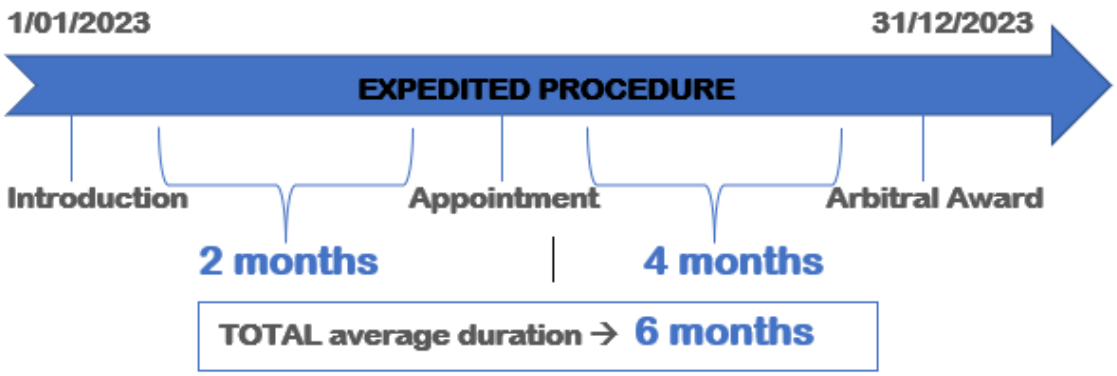
The CEPANI Arbitration Rules provide for a one-month deadline. Clearly, Arbitrators - in collaboration with the Parties and their Counsel – have made every effort to meet this strict deadline.

- Terms of Reference to the Arbitral Award = 11 months.

When drawing up the Terms of Reference, or as soon as possible thereafter, the Arbitral Tribunal will organise a case management meeting between the Arbitral Tribunal and all Parties involved in the proceedings. This meeting may take place in person or via telephone or video conference. After having consulted the Parties, the Arbitral Tribunal will draw up in a separate document the Procedural Timetable.

The CEPANI Arbitration Rules grant the Arbitral Tribunal a deadline of six months to render its Arbitral Award as from the signature of the Terms of Reference. The average time limit of 12 months is due to the fact that Procedural Timetables are established in consultation with the parties and exceeding – and thus extending – the six-month deadline provided for in the CEPANI Arbitration Rules.

In comparison with 2022, an arbitration proceeding lasted an average of 16 months.



Following Article 29 of the CEPANI Arbitration Rules, the expedited procedure shall apply if the amount in dispute does not exceed the amount of € 100.000,00 or if the Parties so agree.

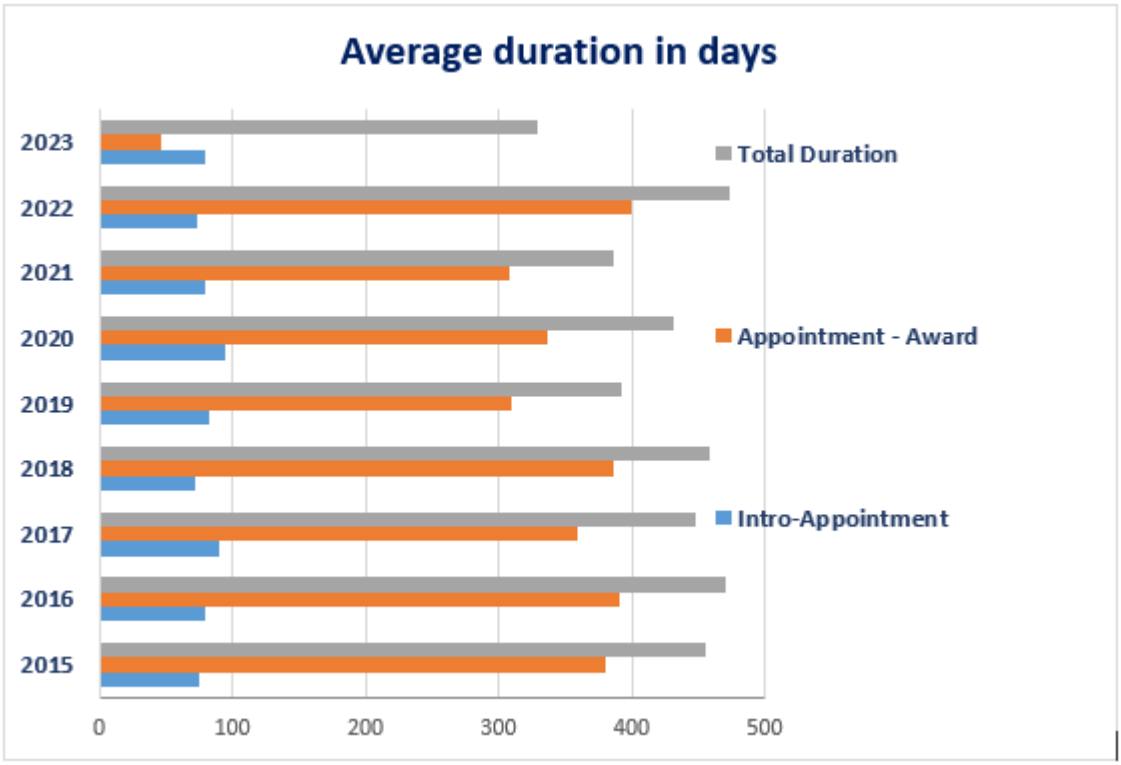
In the context of an expedited procedure there are no Terms of Reference.

Moreover, the deadline granted to the Tribunal to make the Arbitral Award is 4 months as of the date of the establishment of the Procedural Timetable.

In comparison with 2022, an expedited proceeding under the CEPANI Rules lasted 8,5 months.

Constitution of the Arbitral Tribunal to the Arbitral Award = **12,5 months**

Total average duration of CEPANI arbitration procedures in 2023: **15 months**



MANAGEMENT VAN CEPANI

Benoît Kohl

Voorzitter (06.2020-…)

Philippe Lambrecht

Vice- Président (09.2017-…)

Maud Piers

Vicevoorzitter (06.2017-…)

Emma Van Campenhoudt

Secrétaire – Générale (09.2017-…)

Astrid Moreau

Attachée juridique (04.2021-….)

Camille Libert

Adviseur (03.2015-…)

LEDENAFDELING

In **2023** viel ons de eer te beurt om als leden te mogen verwelkomen:

1. **Marc Johnen**
2. **Kris Wagner**
3. **Taco Wiersma**
4. **Geoffroy Froidbise**
5. **Yannick Radi**
6. **Trees Vuylsteke**
7. **Charles Marquand**
8. **Arie Van Hoe**
9. **Axelle Zenati**
10. **Lauren Rasking**
11. **Marcin Menkes**
12. **Michael De Boeck**
13. **Dario Johannes Hug**
14. **Jean-Sebastien Lenaerts**
15. **Stefano Medenesi**

Hoe lid worden?

Eénieder met belangstelling voor arbitrage of bemiddeling, ongeacht zijn/haar nationaliteit, kan lid worden van CEPANI.

De leden van CEPANI genieten de volgende voordelen:

- Een verminderde inschrijvingsprijs voor alle activiteiten van CEPANI;
- Een verminderde prijs voor de boeken en tijdschriften die CEPANI publiceert;
- Vermelding in de ledenlijst op de CEPANI-website;
- Vermelding in het repertorium van de CEPANI-leden.

Let wel: lidmaatschap van CEPANI biedt geen garantie of recht op een benoeming tot arbiter.
Iedere aanvraag tot lidmaatschap dient via het online formulier te worden bezorgd aan de voorzitter van CEPANI.

De aanvraag wordt op de eerstvolgende vergadering voorgelegd aan de Raad van Bestuur, die vervolgens beslist of de voorgelegde kandidatuur wordt aanvaard.

Overeenkomstig de statuten moet een kandidatuur steeds worden ondersteund door twee bestaande leden van CEPANI.

Vervolgens vragen wij u een recente versie van uw Curriculum Vitae te sturen aan info@cepani.be.

Tot slot dient u de twee bestaande leden te vragen hun ondersteuning van uw kandidatuur bekend te maken in een schrijven gericht aan de voorzitter van CEPANI per e-mail: evc@cepani.be

In 2022 bedraagt de prijs voor het lidmaatschap 255,00 EUR excl. BTW (303,55 EUR incl. BTW).
Het lidmaatschapsgeld omvat een jaarabonnement op het Belgisch tijdschrift voor arbitrage b-Arbitra.

Wij danken u alvast voor uw interesse in CEPANI en kijken er naar uit u te mogen verwelkomen op onze activiteiten!

DANKBETUIGING

Chaque année, je prends un moment pour exprimer ma profonde gratitude envers les personnes qui ont contribué à nos activités et à notre développement.

I am deeply grateful for the invaluable contributions of Prof. Benoit ALLEMEERSCH, Ms. Dorothée VERMEIREN, Prof. Olivier CAPRASSE, Ms. Vanessa FONCKE, Prof. Jean-François TOSSENS, and Ms. Sophie GREMAUD, who served as co-chairs for the first level of the CEPANI ARBITRATION ACADEMY. Their unwavering dedication, expertise, and guidance have been instrumental in shaping the program and nurturing the next generation of arbitration professionals.

Je tiens également à exprimer ma gratitude envers M. Geert Jocqué pour son rôle actif au sein de la composition du Comité de Récusation du CEPANI jusqu'en 2023. De même, je tiens à remercier Me. François Cuvelier pour sa contribution de qualité au comité de rédaction de la Newsletter. Je souhaite chaleureusement la bienvenue à Me. Karolien Emmerechts, qui prend la relève avec enthousiasme et engagement.

Ik wens ook alle leden van de werkgroepen van harte te bedanken voor hun onvermoeibare investering in de ontwikkeling van CEPANI alsook de leden van de “Steering Committee van CEPANI40” voor hun diverse initiatieven voor jonge professionelen met interesse voor arbitrage.

Last but not least, I thank CEPANI’s incredible, dynamic and reliable team, without which all this would not be possible!

EMMA VAN CAMPENHOUDT

DIRECTOR SECRETARY GENERAL CEPANI

PARTNERSHIPS

Le CEPANI faisant office de voie d'accès à la communauté belge de l'arbitrage, de nombreuses entreprises ont manifesté leur intérêt à collaborer avec lui.

Le CEPANI a décidé d'accéder à ces demandes, tout en appliquant des normes strictes.

En tant que centre d'arbitrage, le CEPANI estime que l'indépendance, l'impartialité et l'intégrité constituent des exigences primordiales et cruciales pour assurer son bon fonctionnement et inspirer la confiance auprès de ses utilisateurs.

Par conséquent, les partenaires du CEPANI doivent être des entreprises qui appliquent elles-mêmes des normes strictes, jouissent d'une réputation sans faille et figurent au premier plan dans leur domaine.

Partners van CEPANI mogen op geen enkele manier betrokken partij zijn bij arbitrageprocedures die CEPANI leidt.

Aangeslotenen of personeelsleden van CEPANI-partners mogen geen functies uitoefenen in de bestuursorganen van CEPANI en mogen evenmin worden aangesteld of bekrachtigd als arbiter, mediator, scheidsrechter of expert.

Partnerships worden aangegaan met het oog op een langdurige relatie en kunnen alleen op een niet-opzichtige en esthetisch verantwoorde manier in beeld komen op de CEPANI-website, in de CEPANI-newsletter en tijdens conferenties waarvan CEPANI of CEPANI40 de hoofdorganisator is.

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LEGAL

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Op 15 november 2016 is CEPANI een partnership aangegaan met Wolters Kluwer Belgium voor een aanvangsperiode van vijf jaar.

Dit partnerschap werd in 2021 verlengd. De samenwerking is nu voor onbepaalde tijd gesloten en zal jaarlijks worden geëvalueerd.

Wolters Kluwer Belgium biedt informatie, software en diensten aan juridische, tax, accounting, finance en HSE professionals en bedrijven. Ze helpen hun klanten efficiënter en effectiever te werken en vol vertrouwen beslissingen te nemen.

Wolters Kluwer staat ook in voor de wetenschappelijke verzameling van CEPANI alsook b-Arbitra.

De teksten die verschenen zijn in de congresboeken van CEPANI en in b-Arbitra, zijn raadpleegbaar via de platformen KluwerArbitration, KluwerLawOnline, KluwerArbitrationBlog en Jura.

IBJ IJE
INSTITUUT VOOR BEDRIJFSJURISTEN
INSTITUT DES JURISTES D'ENTREPRISE

Het Instituut voor bedrijfsjuristen (IBJ), opgericht bij wet van 1 maart 2000, is de federale beroepsorganisatie voor bedrijfsjuristen die waakt over de intellectuele onafhankelijkheid van zijn leden. In deze voortdurend evoluerende bedrijfswereld, wil het IBJ een baken zijn voor bedrijfsjuristen in hun cruciale rol van business partner en juridische raadgever van hun onderneming.

Het Instituut volgt de ontwikkelingen en trends van het beroep op de voet en speelt proactief in op de actualiteit van de juridische wereld.

Als kenniscentrum is het Instituut zowel een antenne als klankbord voor zijn leden. Hiervoor organiseert het IBJ tal van opleidingen om de kwaliteit van het beroep te versterken, dit in de vorm van een verplichte Voortgezette Opleiding.

De bedrijfsjuristen zijn wettelijk gebonden en beschermd door de vertrouwelijkheid van hun adviezen die een belangrijke impact hebben op de goede werking van hun bedrijf.

De bedrijfsjurist speelt ook een rol in het voorkomen van gerechtelijke en administratieve procedures, in een land waar hun aantal, achterstand en gebrek aan financiering groot zijn. In geval van geschil is de bedrijfsjurist vaak de best geplaatste persoon om de toepassing van alternatieve methoden van geschillenregeling, zoals arbitrage en bemiddeling, te bevorderen. In dit kader onderhouden wij nauwe banden met CEPANI.

Le CEPANI et l'Institut des juristes d'entreprise (IJE) sont convaincus d'une part, de la sécurité et de la confiance que l'arbitrage et les modes alternatifs de règlement des litiges peuvent apporter aux opérateurs économiques en tant qu'instrument de règlement rapide et équilibré des litiges et d'autre part, de son apport au développement de l'économie nationale et internationale.

Le CEPANI et l'IJE échangent des informations et publications d'intérêt commun concernant l'arbitrage et les ADR et se tiendront mutuellement au courant des conférences et formations qu'ils organisent. Les évènements du CEPANI et de l'IJE sont mentionnés sur leurs sites web et dans leurs bulletins d'informations respectifs.

Le CEPANI et l'IJE invitent à chacune de leurs manifestations un représentant de l'autre organisation qui sera dispensé des frais d'inscription.

Selon Benoît Kohl, Président du CEPANI « Tant l'Institut que le CEPANI ont la volonté d'être au service des entreprises. Le juriste d'entreprise est la première personne confrontée aux conflits et c'est lui qui proposera à sa Direction de recourir à une médiation, ou le cas échéant, d'initier un arbitrage. Face à ce constat, des rapprochements se sont opérés, surtout et en particulier durant la crise sanitaire, où l'on s'est rendu compte que la médiation et

l'arbitrage constituent de formidables outils au bénéfice des juristes d'entreprise ».

Marc Beyens, Président honoraire de l'IJE, indique également « *Nous représentons deux organisations qui ne poursuivent aucun but lucratif et nous veillons à la défense d'intérêts collectifs. A travers l'expérience des juristes d'entreprise, nous nous rendons compte que souvent, ce ne sont pas les procédures judiciaires qui mènent au meilleur résultat. Parmi les solutions que le CEPANI offre, il y a d'abord la médiation. J'ai moi-même eu plusieurs expériences de médiation voire de conciliation, qui permettent aux parties de comprendre les besoins des uns et des autres, et d'être acteur de la solution, plutôt que de s'en remettre à un juge. Nous estimons qu'il est important de sensibiliser nos 2300 membres, juristes d'entreprise, aux avantages des méthodes alternatives de règlements de conflits, et de faire connaître le CEPANI, qui offre un cadre permettant d'atteindre une solution satisfaisante pour les conflits auxquels nos membres sont confrontés* ».

NOTES

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CEPANI npo

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