Association for International Arbitration
In Touch

*We're proud to inform you in this newsletter about the latest developments in the field of ADR. From an interesting article on mediation in the USA to some very surprising figures on mediation in Belgium. We also inform you that our ABAS Brussels Arbitration School is fully booked, we will therefore have another session in February 2015. This follows the request of many interested persons that are currently on a waiting list. In addition AIA became involved in yet another new project `FBA` : Federation of Belgian Arbitration Centers. Last but not least, save the date to our New Years reception: 7 January 2015.*

# AIA Brussels Arbitration School (ABAS)

***(1 week intensive training)***

**(our November session is FULLY BOOKED, the next session takes place from the 9th until the 13th of February 2015)**

**DAILY PROGRAM:**

| Date | Timing | Names of modules |
|---|---|---|
| **Monday 9th Feb 2015** | **9.00 – 12.30** | • Code(s) of conduct for the arbitrator, lawyer and legal counsel involved in an arbitration procedure (9.00 – 10.00)<br>• Social security formalities & tax implications (10.15 – 11.15)<br>• Liability risks of the arbitrator and existing insurance tools (11.30 – 12.30) |
| | **14.00 -18.30** | • Comparing arbitration with other ADR tools (14.00 -15.00)<br>• Overview of the arbitration procedure (15.15 – 16.15)<br>• Overview of arbitration forms & styles (16.30 – 17.30)<br>• Overview of arbitration costs (17.45 – 18.30) |
| | | • The arbitration clause / agreement to arbitrate, with elaboration on hybrids (9.00 – |

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| | **14.00 - 18.30** | • The arbitrability of disputes (14.00 -15.30)<br>• The arbitrator's competence (15.45 - 17.00)<br>• Arbitration & third parties (17.15 - 18.30) |
| **Wednesday 11th Feb 2015** | **09.00 - 12.30** | • Challenging the arbitrator (9.00 – 10.00)<br>• *In limine litis* arguments & consequences (10.15 – 11.15)<br>• Evidence in arbitration (11.30 – 12.30) |
| | **14.00 - 18.30** | • Hearings (14.00 – 14.45)<br>• Interim measures (15.00 – 16.00)<br>• Expert interventions (16.15 – 17.00)<br>• Interrelation with public tribunals (17.15 – 18.30) |
| **Thursday 12th Feb 2015** | **09.00 - 12.30** | • Termination of proceedings (9.00 – 10.00)<br>• Types of awards & dissenting opinions (10.15 – 11.15)<br>• Drafting & registration of awards (11.30 – 12.30) |
| | **14.00 - 18.30** | • Interpretation and correction of awards (14.00 – 14.45)<br>• Possibility for appeal? + consequences) (15.00 – 16.00)<br>• Interrelation with mediation / conciliation (16.15 – 18.30) |
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| | **14.00- 18.00** | • Meeting the Belgian arbitration & conciliation centers (14.00 – 18.30) |
| | **18.30** | **Certification ceremony** |

**FEE*:**

*Professional/Private practice/Company Standard*

Full package - 800 EUR

1 day - 200 EUR (depends on places available)

*AIA Members*

Full package - 400 EUR

1 day - 100 EUR (depends on places available)

*excl. VAT

Registration form

Please send an email for details. Seats are allocated on a first come, first served basis.

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## We are also on socal media!

## Follow us!

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**SAVE THE DATE**

***NEW YEARS RECEPTION***

**The Association for International Arbitration will be presenting its 2015 AGENDA on the 7th of January 2015.**

The venue is yet to be confirmed. There will be special guests, this event is not to be missed!

**NEW! - ADR News**

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The Association for International Arbitration introduces a new segment in its newsletter where it will cover all the latest and most recent news in the field of ADR worldwide!

- Twenty Second Annual Willem C. Vis International Commercial Arbitration Moot (March 27-April 2, 2015 – Vienna) & Twelfth Annual Willem C. Vis (East) International Commercial Arbitration Moot (March 15-22, 2015 – Hong Kong SAR): The problem has been released on the Vis Moot website.
- FIAC Moot Case-study available - for the first time, an ICSID arbitration case!
- The Stockholm Chamber of Commerce recently launched a blog about the dispute resolution mechanism Investor State Dispute Settlement (ISDS)
- On 6 October, Kenny macAskill MSP, the Cabinet Secretary for Justice, launched the new Scottish Arbitration Center premises.
- A committee has been appointed to revise the SCC Rules with the aim of putting the news rules into force during the SCC centenary in 2017.

**ADR professionals and experts are kindly invited to submit news related to ADR tropics to AIA.**

**Sponsored by:**

Clients look to Billiet & Co Lawyers for excellence, a creative and individual approach to solving problems, and a deep understanding of Belgian and European law.

**In partnership with:**

Sign up to become a member of AIA!

Membership of AIA takes the form of yearly subscriptions. All members benefit from a number of advantages available on the website!

The annual membership fee is 200 EUR, or 150 EUR for members under 40 years of age (VAT excluded). Fill in our online form at the bottom of our Membership page by clicking the signup button below.

**EMTPJ 2015**

**Now Open For Registrations - 25% early bird discount!**

On the 17th-29th of August 2015, the European Mediation Training for Practitioners of Justice (EMTPJ) session will run for its 6th consecutive year. For more information about the EMTPJ please visit our website.

Don't miss this opportunity and register now! Please, send the AIA team an email for preliminary registration.

We encourage mediators who can demonstrate 200 hours mediation experience and 20 mediation cases, to apply for the AIA's Qualifying Assessment Program (QAP) which will take place at the end of the EMTPJ 2015 session on the 30st of August 2015. Please visit our website for details.

CALLING ALL EMTPJ ALUMNI

**You are an EMTPJ alumni and you:**

1. Want to provide feedback on the EMTPJ?
2. Would like to share your mediation experience since the EMTPJ?
3. Would like to have a profile visible on the EMTPJ website?

If so: visit and read our EMTPJ Alumni page, then fill in our online feedback questionnaire and send it to emtpj@arbitration-adr.org with a picture of yourself if desired.

We will provide the following starring system:

- 1 Star = EMTPJ graduate
- 2 Star = 50 mediations+
- 3 Star = 100 mediations+

**We Recommend to attend:**

- ASA Below 40 Autumn Seminar 7 November 2014 - Getting to know the industries – energy, construction, financial services, Dolder Grand Hotel, Zurich
- Sign up now for the CIArb Young Members Group Annual Conference in London
- Symposium on international commercial arbitration 11 November, Moscow
- Young ICCA Skills Training Workshop taking place on 6 November 2014 in Dublin
- Young ICCA Skills Training Workshop taking place on 14 November 2014 in Sydney
- The Swedish Arbitration Association organizes a seminar on the revision of the Swedish Arbitration Act, Tuesday 18 November 2014
- Seminar 3rd of December: on the future of European Investment Treaty Protection and ISDS in London
- GAR Live Dubai is taking place on Thursday 20th November at the Dubai International Arbitration Centre: **AIA members get a discount**, please find the link for this discount here, the program can be found here.
- The Cairo Regional Centre for International Commercial Arbitration (CRCICA) has the pleasure to announce holding Sharm El Sheikh IV: "The Role of State Courts in International Arbitration" on 16-17 November 2014 at Savoy Hotel, Sharm El Sheikh, Egypt.

## Mediation in Belgium: an interview with some members of the Future of Mediation in Belgium group (FMB)

In the FMB committee it has been considered that there is a need for new laws on mediation in Belgium. Here the reader can find some of the findings of the FMB working group. The working group moderates each session. The working group is currently composed of Benoit Simpelaere, Ivan Verougstraete, Jef Mostinckx, Johan Billiet, Philippe Billiet, Willem Meuwissen and Georges Hanot.

*What is the FMB initiative?*

The FMB initiative is an initiative that aims to provide a joint communication platform to all mediation stakeholders, thereby offering them the opportunity to contribute to identifying best practices (including legal amendments) and setting out a common action plan for the enhancement and promotion of Mediation in Belgium. The new FMB session will take place 15 May 2015.

*What is the mediation paradox?*

An increased use of mediation can result in significant cost and time benefits. This makes mediation a useful tool to reduce judicial backlog and realize public and private cost savings. However, mediation remains not often used in the absence of new rules and/or policy. Reason is that mediating is not a natural tendency of human beings in general, nor of businessmen in particular when it comes to resolving conflicts. Many still feel that putting the problem in the hands of lawyers and judges gives them comfort. Accordingly, mediation is something not inherent in dispute resolution, it needs to be incentivized: Knowing mediation is loving mediation, but if you don't get to know it, you cannot love it…

*Is mediation popular in Belgium?*

Mediation is not yet understood as a primary way of dealing with disputes: only about 1% of cases are being mediated. When mediation is used in Belgium, it is either at an early stage (following an early advice to mediate) or at a late stage when parties have carried significant time and costs related to litigation.

*Is there a high success rate of mediation? And what are the average time and costs?*

The success rate of mediation is estimated at approximately 75%.

According to some sources the average time for a single mediation is 35 days, while for a single litigation it is 505 days. This means that mediation is 14 times faster than court proceedings.

Allegedly, the average cost for a single mediation is 3.478 EUR while for a single litigation it is 12.286 EUR. This would mean that mediation is almost 4 times cheaper.

*Have measures in Europe made mediation more popular?*

Soft measures such as strong confidentiality protection, frequent invitation by judges to mediate and a solid mediator accreditation system have not generated any major effect on the occurrence of mediations, more is needed!

*What kind of suggestions does the FMB committee have?*

For example a certain degree of compulsion to mediation or at least an informative session can already generate a significant number of mediations. Also to provide some incentives for parties who choose to mediate could make it more popular, for example tax benefits or a refund of costs. According to some, it may even be beneficial to impose sanctions for parties refusals to attend mandatory mediation. A variety of suggestions have been made during the last FMB session.

*Are others invited to the FBM sessions?*

Yes for sure! As stated earlier, the initiative aims to provide a joint communication platform to all mediation stakeholders, in order to stand united in the approach of policy makers. Therefore, participants from the field are warmly welcomed to join the next FMB session on **May 15th, 2015**.

To read the first and second FMB reports, go visit our new FMB blog

## new: BLOG on future of mediation in Belgium

**Memorandum between the Shanghai Arbitration Commission and the Institute of**

# Arbitration

On 27th October 2014 Mr. Shen Hanghao from the Shanghai Arbitration Commission, Mr. Liu Ping from the Shanghai Minicipal People's Government and Mr. Le Fevere Didier from the Institute of Arbitration signed a memorandum in Brussels.

The Parties desire to strengthen the relations and to develop the mutual co-operation in the field of commercial arbitration, IP and maritime affaires. This protocol aims to create a practical framework for relations and establish ways to support cooperation between them in order to achieve common objectives.

They will regularly exchange information on arbitration issues and practices in Belgium, Europe and the People's Republic of China with a view to promoting arbitration as a means of settlement to all disputes arising between the maritime business and IP sector.

The Parties will render all possible assistance to each other in regard of any arbitration suits and in general they will render maximum help to each other in all disputes arising between European and Chinese companies.

In the interest of the business sector the Parties will exchange information on arbitration procedures and publications on the existing laws and regulations pertaining to arbitration in their territories.

Each of the parties shall exert their best efforts to assist in making arbitration awards issued by the other party executable in their territories.

The parties will organize or participation in seminars, conferences, forums and specialized workshops and training courses in the field of arbitration.

The **Association of International Arbitration (AIA)** and the **European Freight & Logistics Leaders Association** (F&L) gave a global view of the transport sector and their expertise in arbitration.

## Mediation in the US

***by William Turner***

*William C.Turner holds a Master of Trial Laws from Georgetown University,(Washington D.C), a Juris Doctorate from Emory University and has received a number of awards and recognition for his contribution to Mediation and Arbitration. He sits as a Pro-Tem Judge,and a Settlement Judge, and has mediated several thousand cases in litigation over his 44 years of trial and alternative dispute resolution practice .*

As the U.S is a highly litigious society, mediation has become a highly popular alternative form of resolution to avoid the extensive financial costs, the high stress and the lengthy additional time as well as the unknown risks associated with trying a case before a judge or jury. Presently there are many types of mediation employed in the U.S. The most common forms are facilitative, evaluative, and collaborative. Facilitative (or transformative) mediation is often used in smaller civil cases involving neighborhood disputes where the parties meet personally with each other to resolve issues with the assistance of a specially trained mediator. In many states, such as here in Nevada, parties seeking divorce must first mediate their differences using either a form of facilitative or collaborative mediation. In collaborative mediation, the parties and their counsel all work together to resolve their differences, pursuant to a court order, meeting together in a neutral setting. The parties are expected to share all information that will help resolve the case. If no resolution occurs, then mediation counsel must withdraw and new counsel will be selected.

Most commercial cases or other type of cases in dispute such as medical malpractice, real estate, construction, etc., are generally mediated, using an evaluative technique. In this type of mediation, the parties meet separately with a single mediator, and information in these separate meetings, called caucuses, is kept confidential unless permission is given to the mediator to disclose it to help both parties resolve the case. The mediator is usually picked by the parties for his expertise in the area of dispute, and is relied on often, in confidence, to give his candid opinion of each parties chance of success, and the weaknesses and strengths of their cases. Mediators who have extensive experience can often select a viable monetary number for settlement before the parties do, based upon their thorough knowledge of the case and the privately discussed positions of the parties. In all mediations, the success of the mediation depends on how well the mediator understands the case and the crucial need for the mediator to listen to and to focus on the real spoken or unspoken desires of the parties.

While most mediators in the U.S. are Lawyers, mediators can be chosen for their specific knowledge of an area, and can be highly successful without being attorneys. Where the claim is for less than $10,000 the courts often use skilled laymen that volunteer their time and efforts at no cost to the courts to mediate the case first before it goes to trial. These mediations have had a very high success rate. Most State Courts and Federal Courts now, by

law, require mandatory mediation before trial and the Judges themselves will often act as the Mediator. In Nevada, the law goes farther and requires the parties in most civil cases to mediate after trial before the losing party has the right to appeal the decision to a higher court.

In summary, mediation in the last 30 years has become a major component of all litigation in the U.S., and a very successful one in assisting litigants and the courts to resolve issues without trial.

## Report on the "Effective management of arbitration: a guide for in-house counsel" seminar

***by Cecile Oosterveen (Association for international Arbitration)***

Cecile attended the effective management of arbitration seminar on the 30th of September at the VBO-FBE premises. This seminar was organised by the International Chamber of Commerce in Belgium (ICC Belgium), the Belgian Centre for Arbitration and Mediation (CEPANI), the Institute of Company Lawyers (IBJ-IJE) and the Federation of Enterprises in Belgium (VBO-FEB).

Hereby a report of what suggestions some of the speakers made at this seminar on effective management of arbitration.

Mrs. Van Houtte opened the seminar with a short introduction. She mentioned that so far there has not been criticism on the quality of arbitration but mainly on the time and cost of arbitration. Following the opening statement by Mrs. Van Houtte; Mr. Imbrechts, Mr. Baeten and Mr. Van Cutsem shared their experiences in the management of arbitration proceedings.

Luc Imbrechts, who previously headed the legal department of Jan De Nul, started with an illustration of the costs that are involved when dealing with an arbitration. He continued by focusing in an amusing way on means to make arbitration more costly. He advised for example to dispute the neutrality of the arbitrator, not to use drop box but always hard copies, not to fear hot tubbing, to neglect post hearing briefs, to use multiple rounds of written submissions...

Patrick Baeten, general counsel of GDF Suez, followed by making a valuable comment that the guide is intended only for in house counsel, but that according to him such a guide should also be created for external counsel and for arbitrators. Laurent van Cutsem of Besix added that one should always settle if this is possible.

Erica Stein, counsel at Dechert LLP, made some suggestions to make arbitration less costly. She believes that the Request and Answer for arbitration have a purely procedural role and thus should not be too long. She also finds that the terms of reference serve to define the mission of the Arbitral Tribunal. In her experience, in practice, Tribunals do not like this list of issues but she believes that they are beneficial, since such a list creates a benchmark what to focus on in submissions for the claimant at the outset, which reduces time and costs. Moreover, she believes that document production is 9 times out of 10 used to disprove the other side, not to prove their own case. Her advice is that parties could agree in procedural order number 1 on the burden of proof of the production to avoid this misuse of document production. In addition, with regard to expert witnesses, she suggests that experts should file the first report in the first round. Then the experts of both parties should not go directly to the second round but following the first round they should meet and see where they divert and meet. The second report should only focus on where they divert.

According to Ralph de Wit, the venue of the hearings should be linked to the parties` place of residence in order to avoid excessive travel. In addition he believes that an hourly rate

system of lawyers should be avoided, and instead a fixed fee should be made (percentage based). Lastly, he submits that it would be beneficial for time and cost to put a cut off moment on document production unless there is compelling reason not to do so.

## Guerilla Tactics

***by Hannah Somsen***

"*The absence of common or defined ethical standards to guide … a great diversity of practitioners obviously poses serious difficulties and has the potential to create an uneven battleground that can ultimately affect fairness and integrity in international arbitrations*"

This quote from the Chief Justice of Singapore refers to phenomenon of so-called 'guerrilla tactics'. The emergence of discussions on the phenomenon of guerrilla tactics has only recently captured the interest of practitioners and scholars in the arbitration field, and invites research and further discussion of the topic. The main question is whether the instruments that are currently in place suffice, and a uniform code of conduct is desirable in order to prevent the adoption of guerrilla tactics in the future.

Guerrilla tactics are a widespread phenomenon, and may occur at several stages in the proceedings. There are endless ways in which counsel may influence arbitral proceedings, and cause significant delays resulting in higher costs for parties. A recent survey estimated that a staggering 68% of counsel and arbitrators have witnessed guerrilla tactics. Although it is challenging to pin-point the exact cause for the increase in guerrilla tactics, it is clear that the root of the problem resides in different codes of conduct that counsel are trained to obey in their home jurisdictions. It is therefore crucial for the arbitration community, and the legitimacy of arbitration as a whole, to engage this problem.

Arbitral Tribunals may deal with guerrilla tactics in several ways. When parties agree to adopt the the IBA international Code of Ethics (1956 and 1957), the IBA General Principles of the Legal Profession (2006), or any other legal instrument, it is clear that it is up to the Tribunal to interpret these rules and discipline parties if necessary. Guerrilla tactics become more problematic, however, when the parties have not adopted such rules, or when the arbitral institution that administers the proceedings has no such rules in place.

In view of the increase of guerrilla tactics and the boundless imagination of counsel to find new ways to obstruct proceedings, the instruments and rules that are currently in place are not entirely effective. Though they do, to some extent, create a general understanding of professional conduct in international arbitration, they lack binding force and general applicability.

There are several ways in which parties themselves can avoid guerrilla tactics at different stages of the proceedings. Although it may lead to an increased workload for the drafters of the arbitration clause and the parties, these solutions may prove effective. Although the idea of a uniform code of conduct for counsel may appear attractive to some, significant reservations remain. It is doubtful that the adoption of such a uniform code is likely in the near future.

There are several potential alternative solutions, however. The most logical and simple solution would be for parties to agree beforehand which code of conduct applies to the proceedings. Whatever solution the arbitration community chooses to adopt, the concern expressed by the Chief of Justice of Singapore in the opening quote remains a significant and valid one.

**Global Arbitration Review Life Paris, 14 November 2014**

***Interview with the organizers***

*What is the purpose of the annual Global Arbitration Review Live Paris?*
The Paris event is to give us - as a magazine - a chance to visit Paris and connect in person with people we don't otherwise see all that often. And it generates great copy. Look at how much IA talent there is there – and who we have speaking on our programme. The challenge of course is getting the local audience – especially the French speakers – to come out, as conference going is not so much part of their tradition.

*Which topics and trends will predominate the event?*
Abuse of treaty rights - is there yet a doctrine (and if not what can be learned from areas such as tax, where there does appear to be such a concept, to deter the supposed beneficiaries of international tax treaties from abusing them?); and how to amend long term contracts (about anything – not just gas prices), using arbitration - skilfully.

There's also what promises to be a cracking in-house counsel Q&A panel, and a debate on whether "more data about arbitrators" will help, or hinder the process.

*Why these?* Well, they were picked because the two co-chairs Michael Polkinghorne and Philippe Pinsolle find them interesting subjects – and I because, as the secretary to the tribunal so to speak, hadn't seen them done yet anywhere else. But I have noticed in recent months that they're all subjects that are being talked about a lot in private. So I feel quite smug that once again the programme in Paris makes GAR quite "cutting edge".

*Do you usually have in-house counsel speakers? What is the added value of hearing in-house counsels at such an event ?*
When in Paris – yes. This is the second all in-house panel we've put on. Elsewhere – yes, but seldom an entire panel of them. Paris gives us that option, which we like to take. When you think about it, the question should be the other way around. Why don't all arbitration events regard in-house counsel as essential ingredients? But as we all know, sometimes arbitration seems to exist in a client free zone. This is changing, as concern about costs rises. The challenge when one does put them on the bill is to find people who know a lot, but aren't "the same old faces". I believe we've done that. We also of course have them on the long-term contracts panel. It would be impossible I think to put a session like that on without in-house participation.

*Where else have these events taken place ? Are the topics chose region-specific ?*
This year we've GAR Live London, Frankfurt, Istanbul, New York and Hong Kong and we'll soon be in Sydney and Dubai. Next year we will be going to many of those again, and also to Brazil and Singapore, and will be doing some mono-focus days.

*Who is the target audience?*
Anyone who appreciates an arbitration conference that entertains as it educates. Our motto is, after all, "a little less talk, a little more conversation``.

**The second annual GAR Life Paris, 14 November at 31, Avenue Pierre 1er de Serbie, Paris: AIA members get a discount, please find the link for this discount** here**, the program can be found** here**.**

# Support the Federation of Belgian Arbitration Centers In Belgium (FBA) Initiative!

The FBA initiative is an initiative that aims to provide a joint communication platform to all arbitration institutes.

The second meeting concerning this initiative will be held at the AIA premises at **14 November 2014, 14h.**

## Partner AIA in the spotlight: this month: Brussels Diplomatic Academy

Vrije Universiteit Brussel

BRUSSELS DIPLOMATIC ACADEMY
ECONOMIC DIPLOMACY & INTERNATIONAL BUSINESS

The **Brussels Diplomatic Academy** (BDA) has a clear focus on economic diplomacy and international entrepreneurship. They prepare students for a career in diplomacy and international business. In addition, the Academy offers a comprehensive range of seminars and executive courses to diplomats and business people. The institute is the first point of call for consultancy, research and coaching on all aspects of diplomacy and international business.

BDA also organizes some courses together with the Association for International Arbitration. The courses include:
- A course on investment Arbitration
- A course on Enhancing the Peaceful Settlement of disputes between states
- Dispute settlement in China

AIA members get a **10 % discount** on **all** trainings by the BDA.