

## **MINUTES OF THE 13<sup>TH</sup> IFCAI GENERAL ASSEMBLY**

held at the The World Bank, Washington DC  
on the occasion of the 8<sup>th</sup> Biennial IFCAI Conference

2.00pm, 2 June 2005

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**PRESENT:** Ulf Franke (President) (Stockholm Chamber)  
M.I.M Aboul-Enein (Cairo Centre)  
Stefano Azzali (Milan Chamber of Arbitration)  
Diana Droulers (Caracas Chamber of Commerce)  
Dair Farrar-Hockley (CIArb)  
Alexander Komarov (ICAC, and Maritime Arb. Comm., Moscow)  
Milanka Kostadinova (ICSID)  
GK Kwatra (Indian Council of Arbitration)  
Sergei Lebedev (Maritime Arb. Comm., Moscow)  
Gustaf Möller (Central Chamber of Commerce of Finland)  
Richard Naimark (AAA)  
Tatsuya Nakamura (Japan Comm. Arb. Ass.)  
Antonio Parra (ICSID)  
Chiara Roncarolo (Milan Chamber of Arbitration)  
Christopher To (HKIAC)  
Anne Marie Whitesell (ICC)  
Erik Wilbers (WIPO)  
Adrian Winstanley (LCIA)

### **1. WELCOME**

1.1 The President welcomed members and expressed his thanks, on behalf of all of IFCAI, to ICSID (and to Antonio Parra and Milanka Kostadinova, in particular) for the outstanding arrangements that they had made for the meetings of IFCAI Council and the General Assembly and, most notably, for the 8<sup>th</sup> Biennial Conference.

### **2. ADOPTION OF THE AGENDA**

2.1 The agenda for this meeting, which had been circulated earlier and was now tabled, was adopted by unanimous agreement.

### **3. MINUTES OF THE 12<sup>TH</sup> GENERAL ASSEMBLY**

3.1 The Minutes of the 12<sup>th</sup> General Assembly, held in Vienna, on 26 June 2003, and circulated on 27 August 2003, were approved by the General Assembly and signed by the President.

### **4. MINUTES OF THE INTERIM MEETING OF IFCAI MEMBERS**

4.1 The Minutes of the interim meeting of IFCAI Members, held in Beijing, on 16 May 2004, and circulated on 2 November 2004, were approved by the General Assembly and signed by the President.

### **5. 8<sup>TH</sup> BIENNIAL IFCAI CONFERENCE**

5.1 At the President's request, Antonio Parra reported that around 120 delegates had now registered for the conference. Though some of these had been invited to attend free of charge (including 10 ICSID staff members and 15 members of the World Bank legal department) anticipated income was around US\$20,000, which Antonio expected should cover the costs.

5.2 The conference was to be held in the Lewis Preston Auditorium, with an informal seating arrangement, to encourage a more relaxed atmosphere and free-flowing discussion.

5.3 Kluwer, Oceana, and Thomson would be exhibiting relevant new titles.

5.4 The President reported that Bill Slate and Eva Horvath were unfortunately not now able to attend, but that Richard Naimark and Stefano Azzali had kindly stepped into their shoes on the panels on which they were to have spoken.

5.5 The President noted that this conference was also the 20<sup>th</sup> anniversary conference of IFCAI, which had been founded in Canada in June 1985.

5.6 The General Assembly enthusiastically endorsed the thanks expressed earlier by the President for the efforts of all those at ICSID involved in arrangements for the conference.

5.7 The President also thanked ICSID for their kind invitation to panellists and heads of institutions to a dinner that evening, to be hosted by Roberto Dañino, Senior Vice President and General Counsel of the World Bank and Secretary General of ICSID.

## 6. SECRETARY-TREASURER'S REPORT

6.1 At the President's request, Adrian reported that IFCAI funds currently stood at around US\$93,000, with around another US\$2,000 anticipated from members who were late with their subscriptions.

6.2 Adrian tabled a report on membership as at 27 May 2005. He asked the General Assembly to note that there were 51 fully paid-up members as at that date (including one new member – the Venice Chamber of Arbitration) and three members with subscriptions outstanding for 2005 only, to whom reminders would shortly be sent.

6.3 There were 14 members with subscriptions more seriously in arrears, the membership of some, but not all, of whom would most probably lapse, and 21 institutions whose membership had lapsed from prolonged non-payment of subscriptions in light of the policy that had been enforced since the last General Assembly.

6.4 Three applications for membership were being processed – from CAMARB of Brazil; from the newly reorganised Dubai International Arbitration Centre (DIAC), and from the Institute of Arbitrators and Mediators of Australia (IAMA).

6.5 Adrian anticipated, therefore, that total membership would be around 60 by the end of the year.

6.6 Dair Farrar Hockley asked whether it was a specific IFCAI objective to expand the membership, to which Adrian replied that, whilst it was certainly an objective to include as many *bona fide* institutions as possible, the objective was not to increase numbers for the sake of numbers alone.

6.7 The President suggested, and it was agreed, that this point should be developed when the meeting turned its attention to the purposes and activities of IFCAI, later in the agenda.

## 7. IFCAI CONSTITUTION

7.1 The President thanked Adrian Winstanley for having produced a draft Constitution that appeared to reflect the mission of IFCAI very well and expressed his thanks also to members who had commented on earlier drafts.

7.2 The President invited Adrian Winstanley to lead the discussions on the draft and Adrian tabled a revised draft, reflecting the amendments agreed by the Council.

7.3 It was then agreed that the General Assembly review the draft line by line.

7.4 Adrian drew to the attention of the meeting the inclusion of the word "*investment*" wherever the word "*commercial*" had appeared in the body of the Constitution, in response to Antonio Parra's concerns that investment arbitrations should be distinguished from purely commercial arbitrations.

7.5 He said that, in light of comments received from Mauro Ferrante of AIA, the Council had thought it appropriate to amend references to ADR procedures, so as more carefully to distinguish these from arbitration, whilst recognising that in some jurisdictions the term "*ADR*" included arbitration.

7.6 He said that Dr Aboul-Enein had argued strongly in favour of retaining the distinction between institutional and general members and that the Council recommended that that distinction should remain. The General Assembly concurred.

7.7 Whilst acknowledging Stefano Azzali's caution that problems could arise where the number of Vice Presidents exceeded the number of "*ordinary*" members of the Council, it was agreed that the number of VPs, and of Councillors, should be six in each case and that Officers should be appointed for a term of up to 4 years and be eligible for reappointment.

7.8 In due course, a new draft was agreed; the most extensive amendment to the draft that had been tabled being the treatment of references to ADR.

7.9 In short, it was agreed that ADR be dealt with in a separate Article, which would simply provide that the provisions of the Constitution extended, *mutatis mutandis*, to all forms of ADR and providers of ADR services. This was considered the most effective way of, on the one hand, maintaining the distinction between arbitration and ADR, as most commonly understood, whilst avoiding confusion in those jurisdictions where the expression included arbitration.

7.10 The new Constitution was **ADOPTED** by the General Assembly, without dissent and is attached to these Minutes.

## 8. ELECTIONS TO THE COUNCIL

8.1 The President reported that, since the election of the present Council in Prague in June 2001, Yousif Zainal, Pierre Karrer and Francis Gurry had stood down from Office, each on having relinquished, or changed, their position within their respective institution.

8.2 The President said that he, Dr Aboul-Enein, Alexander Komarov, Professor Tang Houzhi, Bill Slate, Anne Marie Whitesell and Adrian Winstanley were all willing to stand for re-election to the Council.

8.3 It was also the recommendation of the Council that Alexander Komarov (currently a Councillor) be appointed a Vice President; that Gabrielle Kaufmann-Kohler (ASA) be appointed to the Council, also as a Vice President; and that Stefano Azzali (Milan Chamber), Laurence Boo (SIAC), Jens Bredow (DIS), and Diana Droulers (Cámara Comercio Caracas) all be appointed Councillors, should they be willing to accept, and that one vacancy be left open pending the appointment of

Antonio Parra's successor, as it was the Council's view that ICSID should continue to be represented.

8.4 If these recommendations were approved, the Council for the next term would comprise of Ulf Franke, as President, Dr Aboul-Enein, Gabrielle Kaufmann-Kohler, Alexander Komarov, Professor Tang Houzhi, William Slate and Anne Marie Whitesell, as Vice Presidents; Eva Horvath, Stefano Azzali, Diana Droulers, Laurence Boo and Jens Bredow, as Councillors (with the ICSID vacancy to be filled later in the year) and Adrian Winstanley as Secretary-Treasurer.

8.5 Stefano Azzali and Diana Droulers accepted the nomination and the full Council, as proposed, was **ELECTED** by the General Assembly, with the appointments of Laurence Boo, Gabrielle Kaufmann-Kohler and Jens Bredow subject to their acceptance, which the President would seek shortly to confirm.

8.6 The Council was mandated by the General Assembly to fill the one remaining vacancy at such time as ICSID were able to confirm which of their Officers should sit on the Council.

## 9. **UPCOMING IFCAI MEETINGS**

### *Kiev*

9.1 The President reported that Professor Pobirchenko had confirmed that he would host an IFCAI event in Kiev in October 2006.

9.2 The President proposed that an interim meeting of IFCAI members be held on the afternoon of 19 October, to be followed, on the 20<sup>th</sup>, by an arbitration conference, in which it was hoped that as many IFCAI members as possible would participate. The General Assembly concurred.

### *General Assembly and 9<sup>th</sup> Biennial IFCAI Conference, 2007*

9.3 The President reported the Council's discussions as to where the 2007 General Assembly and Conference might be held. He said that suggestions had included a Gulf State, possibly Dubai, (particularly given that the 7<sup>th</sup> Conference would have been held in Bahrain had it not been for the Iraq war) and Latin America.

9.4 He invited the General Assembly to make its proposals, in the hope that the venue for 2007 could be agreed at this time.

9.5 Mr Kwatra proposed that the 2007 conference should be held in New Delhi and he offered the full support and cooperation of the Indian Council of Arbitration to ensure that it would be a most successful and memorable conference.

9.6 After extensive discussions, it was agreed that Mr Kwatra's offer should be accepted, with the choice of New Delhi being in accord with the objective of choosing venues to reflect the geographical spread of the membership and acknowledging the positive offer and commitment of an institution represented at this General Assembly.

9.7 Mr Kwatra expressed his thanks and undertook to revert to the President with proposed dates in late October, November, or early December 2007, within the next month or so.

## 10. **IFCAI NEWSLETTER**

10.1 The President thanked Milanka for her great work in producing the IFCAI Newsletter; thanks echoed by the General Assembly as a whole.

10.2 Adrian reported that the basic cost of the target two issues per year (which did not take account of the considerable time given freely by Milanka) of US\$10,000, was only US\$2,000 less than the total IFCAL income from membership subscriptions and that ICSID were due \$10,000 from the reserve to which he had referred earlier.

10.3 He said, and it was agreed, that an increase in the annual subscription would be required in the near future, though it was agreed that any increase be deferred for the moment, pending a decision on the utilisation of the present surplus.

10.4 Dair Farrar Hockley said that, in light of the just-rearticulated aims and objectives of IFCAL, he thought it essential more effectively to reach out to a much wider audience, both of institutions and of the users of the services of those institutions. He recommended, to this end, that a Newsletter should be produced electronically on an IFCAL website, whether or not there continued to be a hard-copy version.

10.5 Acknowledging the considerable financial cost, and more considerable non-financial cost, of producing the Newsletter, it was agreed that there should be at least one hard-copy issue per year, but, to make sense of the concept of "News", with such additional issues as events might warrant in between times, and with possible additional electronic versions once or twice a year.

10.6 Adrian Winstanley acknowledged that the creation of a website was long overdue and said that, with the approval of the General Assembly, he would take steps to remedy this at the earliest opportunity. The General Assembly mandated Adrian to take this forward.

10.7 Erik Wilbers proposed, and it was agreed, that, in the first instance, links be established to and from the new website and the sites of IFCAL members, so as at least to provide people logging into the website with IFCAL news from the linked sites.

10.8 Milanka would liaise with Adrian Winstanley, in the first instance, on the future production of the Newsletter, once she could assess the commitment in light of developments within ICSID.

## 11. **PURPOSES AND ACTIVITIES OF IFCAL**

11.1 At the President's invitation, Adrian reported his earlier suggestion at the Council meeting that IFCAL might fund, or sponsor, research into an area of direct interest to arbitral institutions, though he acknowledged that such a project could not be on the same scale as that recently undertaken by the Global Center.

11.2 He said that he had it in mind that this might be undertaken in cooperation with an academic body such as the London-based School of International Arbitration, possibly involving other similar academic bodies in other jurisdictions.

11.3 The suggestion was well received and the following were proposed as possible subjects for such a project: the cost of arbitration; the enforcement of Awards (with emphasis on the advantages of institutional arbitration); the immunity of arbitral institutions (suggested by Diana Droulers); criteria for the empanelment of arbitrators, with the aim of improving quality (proposed by Mr Kwatra); the interpretation, and impact, of Public Policy issues in the rendering and enforcement of arbitral awards (proposed by Sergei Lebedev); and broader analysis of the distinguishing features of institutional and ad hoc arbitration (proposed by Erik Wilbers, who acknowledged that this might be too broad a topic for a modestly-funded research project).

11.4 The President proposed that, as a separate project, a task force should be set up to look into the desirability and feasibility of establishing a universally-applicable code of ethics and standards for arbitral institutions. He said that, if the

General Assembly agreed, his proposal was that that task force should comprise of Richard Naimark and Anne Marie Whitesell (who had already agreed to serve) and Stefano Azzali and Diana Droulers (if they would accept). Stefano and Diana said that they would and the Council was mandated by the General Assembly to pursue these proposals.

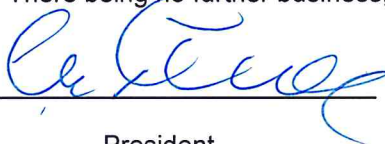
11.5 Picking up on his earlier intervention, Dair Farrar Hockley proposed, and it was agreed, that IFCAI should make every effort to meet its declared aims and objectives, as one step towards which it should actively seek to identify the institutions which were not yet, but which should be, members of the Federation.

12. **INSTITUTIONAL SECTION**

12.1 Dr Aboul-Enein said that, given the lateness of the hour, it was not appropriate to move to a full meeting of the Institutional Section. He said that the proposed topic of conflicts of interest was, however, on the agenda for the conference the following day and that that would be the opportunity for members to debate the issue and generally to air their views.

13. **CLOSE OF MEETING**

13.1 There being no further business, the meeting was declared closed at 5.25pm.



President



Date