

MINUTES OF THE MEETING OF THE IFCAI COUNCIL

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

10.00am, 2 June 2005

IFCAI COUNCIL MEMBERS PRESENT:

Ulf Franke (President)
M.I.M Aboul-Enein
Alexander Komarov
Antonio Parra
Anne Marie Whitesell
Adrian Winstanley

ALSO IN ATTENDANCE:

Richard Naimark (AAA)

APOLOGIES:

Apologies had been received from:

Eva Horváth
Tang Houzhi
William Slate

1. WELCOME

1.1 The President welcomed Council members and expressed his thanks to Antonio Parra and, through him, to Milanka Kostadinova, for their outstanding efforts in all aspects of the preparations for the following day's 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 PREVIOUS MEETING

3.1 The Minutes of the previous meeting, held in Beijing, on 16 May 2004, and circulated on 2 November 2004, were approved by the Council and signed by the President.

4. GENERAL ASSEMBLY

4.1 Antonio Parra said that he understood from Milanka Kostadinova that around 20 IFCAI members would be represented at the General Assembly, which was to follow this meeting.

5. **8TH BIENNIAL CONFERENCE**

5.1 Antonio said that 116 delegates had registered for the conference, to be held the following day, of whom 54 were paying delegates, producing an anticipated income around US\$20,000, which Antonio believed would cover of the cost of the event.

5.2 Delegates attending free of charge included 10 ICSID staff members and 15 members of the World Bank legal department.

5.3 The conference would be held in the Lewis Preston Auditorium, which was large enough to allow a more informal seating arrangement, with delegates sitting around large circular tables, each of which was equipped with microphones for questions and answers.

5.4 The publishers Kluwer, Oceana, and Thomson would be exhibiting relevant new titles at the conference.

5.5 The Council collectively echoed the President's earlier thanks and appreciation at the sterling work of Antonio, Milanka and their team.

6. **FINANCES AND MEMBERSHIP**

6.1 The President asked Adrian Winstanley to up-date the Council on finances and membership.

6.2 Adrian said that reserves were standing at around US\$93,000, as at the beginning of May, with around another US\$2,000 anticipated from members who were late with their subscriptions. He distributed copies of the relevant bank statement.

6.3 Adrian then tabled a report on membership as at 27 May 2005. He asked the Council to note that there were 51 fully paid-up members as at that date, including one new member – the Venice Chamber of Arbitration. There were three members with subscriptions outstanding for 2005 only; the Cairo Centre, CAMM of Madagascar, and the Indian Council of Arbitration. These members would be sent a reminder and he anticipated that all would bring their subscriptions up to date.

6.4 There were 14 members with subscriptions more seriously in arrears, the membership of some of whom would most probably lapse. However, these included the 3 Chinese members, from whom subscriptions were expected shortly.

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

6.6 Taking account of all of the above, Adrian anticipated that members would number around 60 before the end of the year.

6.7 Finally, Adrian drew to the attention of the meeting the names of the 21 institutions whose membership had lapsed from prolonged non-payment of subscriptions.

7. **IFCAI CONSTITUTION**

7.1 The President thanked Adrian for having produced a draft Constitution that appeared to require only minor amendment to achieve a final version that would be acceptable to the Council and to the General Assembly and he asked Adrian to lead the discussions.

7.2 Adrian tabled a draft that had been revised to the extent of including the word “investment” wherever the word “commercial” appeared in the body of the Constitution, in response to Antonio Parra’s concerns that investment arbitrations should be distinguished from purely commercial arbitrations.

7.3 In light of comments received from Mauro Ferrante of AIA, it was agreed 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.

7.4 There was some discussion of the provisions for the rejection of applicants considered unsuitable and for the removal of existing members, but it was concluded that the text, as drafted, should stand.

7.5 Dr Aboul-Enein argued strongly in favour of retaining the distinction between institutional and general members and it was agreed that that distinction should remain. However, it was agreed that the reference, at draft Article D.3 to separate meetings of the members of the institutional section, should be deleted, as members of the general section could, similarly, meet separately, should they so wish, and, anyway, the meetings of one section would be open to the members of the other.

7.6 It was agreed also that there should be six VPs and six Councillors; that Officers should be appointed for a term of up to 4 years; that the Council should meet at least once a year; and that a quorum for the Council should be three Officers, of whom one must be the President or a Vice President.

7.7 A revised draft would be prepared in time for the General Assembly.

7.8 The President added that, in his view, a President should serve for no more than two four-year terms, though he did not think it necessary to make this a stipulation in the Constitution.

8. ELECTIONS TO THE COUNCIL

8.1 The President noted 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 He noted that Erik Wilbers, of WIPO, and Mr Kwatra, of the Indian Council of Arbitration, had offered themselves for appointment to the Council, but that no other candidates had been proposed by members. It was agreed that the Council should, nonetheless, make its own recommendations to the General Assembly, with a view to establishing the Council for the next four years.

8.3 The President, Dr Aboul-Enein, Anne Marie Whitesell, Alexander Komarov and Adrian Winstanley each confirmed that they were willing to put their name forward for re-appointment. In light of Antonio Parra’s impending retirement from ICSID, and having agreed that ICSID should continue to be represented on the Council, it was agreed that one vacancy be left, pending the appointment of Antonio’s successor.

8.4 After further discussion, it was agreed that the Council should recommend to the General Assembly that Alexander Komarov 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), Lawrence Boo (SIAC), Jens Bredow (DIS), and Diana Droulers (Cámara Comercio Caracas) all be appointed Councillors.

8.5 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, Bill Slate and Anne Marie Whitesell, as Vice Presidents; Eva Horvath, Stefano Azzali, Diana Droulers, Lawrence Boo and Jens Bredow, as Councillors (with the ICSID vacancy to be filled later in the year) and Adrian Winstanley as Secretary-Treasurer.

9. **UPCOMING IFCAI MEETINGS**

Kiev

9.1 The President said that, after some misunderstanding, Professor Pobirchenko had confirmed that he would host an IFCAI event in Kiev in October 2006.

9.2 Alexander Komarov asked when that confirmation had been received, given the recent upheavals in the Ukraine, to which Adrian replied that Professor Pobirchenko had written to that effect within the last 3 or 4 weeks.

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

General Assembly and 9th Biennial IFCAI Conference, 2007

9.4 There was a discussion as to where the 2007 General Assembly and Conference should be held. Suggestions included a Gulf State (particularly given that the 7th Conference would have been held in Bahrain had it not been for the Iraq war) and Latin America.

9.5 It was agreed, in due course, that the General Assembly be invited to make its proposals and, if possible, settle for a venue for 2007.

10. **IFCAI Newsletter**

10.1 The President asked Antonio to express the gratitude of the Council, once again, to Milanka for her great work in producing the IFCAI Newsletter.

10.2 Antonio said that he understood that production of the next Newsletter was well advanced, though the demands of these meetings and of the Conference, and the internal changes in ICSID occasioned by his own departure, had necessarily taken priority over the Newsletter. He understood, nonetheless, that it might be ready for a publication some time in July.

10.3 Antonio said that the basic cost per issue was running at around US\$5,000, which did not take account of the considerable time given freely by Milanka.

10.4 Adrian noted that the cost of the target two issues per year, at US\$10,000, was only US\$2,000 less than the total IFCAI income from membership subscriptions and that ICSID were due US\$10,000 from the reserve to which he had referred earlier.

10.5 It was agreed that an increase in the annual subscription would be essential, were IFCAI to wish to undertake other projects to further its newly-stated objectives. It was also agreed, however, that the increase be deferred for the moment, pending a decision on the utilisation of the present surplus.

10.6 After discussion, the consensus was that, whilst a subscription of US\$1,000 per annum was not unreasonable for the leading institutions, US\$400 or US\$500 was the limit for many of the newer and smaller institutions. It was agreed, also, that it would be too complicated, and potentially divisive, to establish criteria that would allow a two-tier subscription rate.

11. PURPOSES AND ACTIVITIES OF IFCAI

11.1 The President said that he and Adrian Winstanley had been discussing the importance of IFCAI doing more to raise its profile in the arbitration community and said that he hoped that projects could be identified by members, to this end.

11.2 Adrian suggested that IFCAI 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.


11.3 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.

11.4 The suggestion was well received and it was agreed that the costs of arbitration, or the enforcement of Awards (with emphasis on the advantages of institutional arbitration) might be suitable subjects.

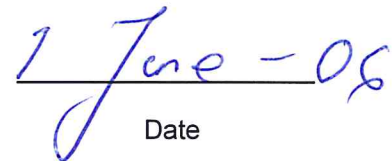
11.5 Richard Naimark proposed that, as a separate project, a task force be set up to look into the desirability and feasibility of establishing a universally-applicable code of ethics and standards for arbitral institutions. (It was subsequently agreed, at the lunch that followed this meeting, that that task force should comprise of Richard Naimark, Anne Marie Whitesell, Stefano Azzali and Diana Droulers.)

12. CLOSE OF MEETING

12.1 There being no further business, the meeting was declared closed at 12.55pm.



President



Date

