

MINUTES OF THE 12TH IFCAI GENERAL ASSEMBLY

held at the International Arbitration Centre of the Austrian Federal Economic Chamber

2.15pm, 26 June 2003

PRESENT: Ulf Franke (President) (Stockholm Chamber)
M.I.M Aboul-Enein (Cairo Centre)
Karl-Heinz Böckstiegel (DIS)
Jens Bredow (DIS)
Diana Droulers (Caracas Chamber of Commerce)
Dair Farrar-Hockley (CIArb)
Francis Gurry (WIPO)
Klaus Hanebuth (Waren-Verein, Hamburg)
Manfred Heider (Intl. Arb. Centre, Vienna)
Eva Horváth (Hungarian Chamber of Commerce)
Tang Houzhi (CIETAC; CMAC; CCC)
Pierre Karrer (ASA)
Jong-Hee Kim (Korean Arbitration Board)
Tae-Hoon Kim (Korean Arbitration Board)
Bohuslav Klein (Arbitration Court, Prague)
Alexander Komarov (ICAC, and Maritime Arb. Court, Russia)
Milanka Kostadinova (ICSID)
GK Kwatra (Indian Council of Arbitration)
Crenguta Iona Leaua (Court of Intl. Comm. Arb., Romania)
Jesper Lett (Copenhagen Arbitration Centre)
Toshio Matsumoto (Japan Shipping Exchange)
Werner Melis (Intl. Arb. Centre, Vienna)
Dobrosav Mitrović (Foreign Trade Court of Arbitration, Serbia)
Gustaf Moller (Central Chamber of Commerce of Finland)
Nageeb Ahmed Obeid (Yemeni Center)
Josef Okolski (Court of Arbitration Warsaw)
Igor Pobirchenko (Intl. Comm. Arb. Court, Ukraine)
Mario Riccomagno (Mediterranean Maritime Arb. Assoc)
Rinaldo Sali (Chamber of Arbitration, Milan)
Tatyana Slipachuk (Intl. Comm. Arb. Court, Ukraine)
Christopher To (HKIAC)
Ann Marie Whitesell (ICC)
Erik Wilbers (WIPO)
Adrian Winstanley (LCIA)

1. WELCOME

1.1 The President welcomed members and recorded a vote of thanks to the Vienna Centre, and to Werner Melis and Manfred Heider, in particular, for their hospitality.

2. **MINUTES OF THE 11TH GENERAL ASSEMBLY**

2.1 The Minutes of the 11th General Assembly, held on 21 June 2001 in Prague, were approved by the General Assembly and signed by the President.

3. **ADOPTION OF THE AGENDA FOR THE ASSEMBLY**

3.1 The agenda for the 12th General Assembly, which had been previously circulated and was now tabled, was adopted.

4. **IFCAI CONFERENCE**

4.1 The President reported that there had been in excess of 100 registrations for the 7th Biennial IFCAI Conference, which would be held the following day, 27 June.

4.2 He reminded members that the conference was to have been held in Bahrain in March, but that, in light of the tensions in the region, which culminated, in due course, with the war in Iraq, and at the request of Yousif Zainal, it had been decided to re-schedule the conference.

4.3 The President expressed his thanks, on behalf of all IFCAI members, to the Vienna Centre, for having so willingly and effectively taken the conference on. He thought that the conference theme, on the UNCITRAL interim measures debate, was of particular interest to members and that it would undoubtedly stimulate very worthwhile discussions.

4.4 The President said that he was sorry to report that Bill Slate had been unable to attend, due to his wife's indisposition. Members joined the President in wishing her a speedy recovery.

4.5 He said that Donald Donovan had also sent his apologies and that his place, at the conference, was to be taken by James Castello.

5. **IFCAI NEWSLETTER**

The President thanked Milanka Kostadinova for her efforts in producing the second edition of the re-vamped IFCAI Newsletter, copies of which she had kindly brought for distribution.

The Assembly expressed its appreciation to Milanka and her colleagues at ICSID for another excellent Newsletter and it was agreed that members should make use of this valuable forum for promoting institutional arbitration and for disseminating news and views.

It was agreed, however, that the Newsletter should not be used for self-promotion by individual institutions, though members were welcome to report briefly on

developments within their institutions in the designated "*news from IFCAI members*" section.

Members were asked to let Milanka have any articles or news items for the next Newsletter, by 15 September 2003.

6. REPORT BY THE CHAIRMAN OF THE INSTITUTIONAL SECTION

6.1 Dr Aboul-Enein presented his report on the activities of the IFCAI Institutional Section.

6.2 He confirmed that, following a resolution passed in Geneva in 1997, the Institutional Section had held meetings in Paris, twice, in New York and in London, all of which had provided the opportunity for wide-ranging and valuable exchanges of views among IFCAI members.

6.3 He said that the Paris meeting, in November 2002 was typical of the format, covering the advantages of institutional arbitration; experiences of online arbitration; arbitrators' fees; and the IBA initiative on conflicts and disclosure.

6.4 He welcomed the decision to hold the next Institutional Section meeting in Beijing, as a timely move to an eastern jurisdiction.

6.5 Dr Aboul-Enein advised members that the Cairo Centre would be celebrating its 25th anniversary in January 2004 and invited all IFCAI members to participate in the silver jubilee celebrations.

6.6 Members thanked Dr Aboul-Enein for his kind invitation, but it was agreed that there should be no official IFCAI meeting in January 2004, though it was hoped that individual members would take up the offer to attend the celebrations.

6.7 Dr Aboul-Enein called for a wider and fuller exchange of information among member institutions and anticipated that the IFCAI website would prove a useful medium for this purpose.

6.8 Adrian Winstanley advised that progress on the website had been slow, though a number of domain names had been acquired.

6.9 He said, however, that he had had initial discussions with the LCIA's website designer and expected the website to be up and running by the end of the year.

6.10 It was agreed that, as a minimum, the site would list members and their contact co-ordinates; would give details of meetings and conferences with which members were involved; would display the IFCAI Constitution (once approved); and would include links with members' own websites.

6.11 In closing, Dr Aboul-Enein expressed the hope that cooperation among member institutions would increase and would prove ever-more effective in the achievement of common objectives.

7. SECRETARY-TREASURERS REPORT

7.1 Adrian Winstanley reported that IFCAI reserves had stood at US\$46,240 at the beginning of January 2002, when stewardship of the IFCAI account had passed from AAA to LCIA. He said that reserves now stood at US\$69,180, with most members who were expected to pay their 2003 subscriptions already having paid.

7.2 He said that the only major payment due from IFCAI funds was settlement of the production costs of the re-vamped IFCAI Newsletter, which had been borne, in the first instance, by ICSID.

7.3 Adrian reported the view expressed at the Council meeting that morning that, although the US\$200 subscription was an insignificant sum for many IFCAI members, there should be no increase at this stage. The Assembly concurred.

8. MEMBERSHIP

8.1 Adrian tabled a list of current IFCAI members, split to show the 55 members who were fully-paid-up; the 9 members with subscriptions outstanding for the year 2003 only; and the 20 members with subscriptions outstanding for more than one year.

8.2 He drew to the Assembly's attention the 6 new members who had joined IFCAI since the date of the last Council meeting; these members coming from Egypt, Finland, Madagascar, Palestine, Tunisia and Yemen. The meeting expressed its welcome to those members.

8.3 Adrian reminded the Assembly that it had been agreed, and minuted, at the General Assembly in Prague in June 2001, that, if a member organisation failed to pay the annual subscription, after reminders and without satisfactory explanation, that organisation should be removed from membership. He said that reminders had been sent to all members who were in arrears.

8.4 Adrian reported the Council's view that he should write to members currently in arrears by more than one year to advise them that they had been removed from membership. The Assembly concurred.

8.5 Adrian confirmed that, once those members had been removed, there would be a total of 64 member institutions, coming from 42 countries.

9. **8TH BIENNIAL CONFERENCE, 2005**

9.1 The President reported the recommendation of the Council that ICSID's kind offer to host the 8th Biennial Conference should be accepted. This was to be scheduled for 3 June 2005, with a Council meeting and General Assembly to be held on 2 June and with the theme to be decided nearer the date.

9.2 The Assembly was unanimous in support of the proposal and recorded a vote of thanks to ICSID.

10. **IFCAI INSTITUTIONAL SECTION MEETING, 2004**

10.1 The President confirmed that the ICCA 2004 Conference in Beijing was scheduled for 16, 17 and 18 May 2004, starting with a reception on the evening of the 16th.

10.2 He said that there would be an IFCAI Council meeting, in Beijing, on the morning of 16 May 2004 and proposed that this should be followed, after lunch, by a meeting of the Institutional Section. The Assembly concurred.

10.3 Professor Tang said that CIETAC would hold a seminar in Shanghai on 19 May, which he hoped IFCAI members would attend.

11. **ELECTION OF COUNCIL MEMBERS AND OFFICERS**

11.1 The President asked Adrian Winstanley if he would address the meeting on the subject of elections to the Council.

11.2 Adrian said that, among the papers which had been passed to him, on taking office as Secretary of IFCAI, were two versions of the aims and objectives of IFCAI, though these did not appear to amount to a full "*Constitution*".

11.3 Nonetheless, he said, it was clear both from these documents, and from past practice, that IFCAI Council members were to be elected by members at a General Assembly, for a term of two years.

11.4 That being the case, members and Officers of the Council were now due either for retirement or for re-election and it was open to the General Assembly to elect such additional members as they wished, as the "*Constitution*" placed no limit on the number of Council members.

11.5 Regrettably, however, there was no formal procedure for the designation by members of candidates for election to the Council, and members had not been canvassed for their views.

11.6 He said that the Council was also conscious of the fact that the present membership of the Council was not sufficiently representative of the spread of jurisdictions among the IFCAI membership.

11.7 Adrian reported the Council's proposal that, in the circumstances, notwithstanding the accepted shortcomings in representation on the Council, the General Assembly be asked to agree that the present Officers and members of the Council should remain in office until the next General Assembly, by which time, proper procedures would have been put in place.

11.8 After discussion, this proposal was agreed and the present members and officers of the Council were re-elected, save for Yousif Zainal, who had relinquished office at the GCC Centre in Bahrain and was not, therefore, currently actively involved with a member institution.

11.9 The President proposed that Adrian Winstanley be mandated to draft a new Constitution for IFCAI, which would provide, *inter alia*, an effective mechanism for the selection and election of Council members. This mandate was confirmed.

12. PURPOSES AND ACTIVITIES OF IFCAI

12.1 The President said that he wished to encourage the General Assembly to consider the purpose and activities of IFCAI, with a view to extending these beyond the present regular meetings, conferences and Newsletter.

Lobbying and VAT

12.2 Jens Bredow proposed two areas in which IFCAI might become actively involved. The first was in the general field of political lobbying, in areas of concern to arbitral institutions; for example in the promotion of the institutional arbitration option in investment treaties. Second, was in the specific area of TVA/VAT, which had become a matter of pressing concern for many, if not all, IFCAI member institutions.

12.3 It was agreed that the IFCAI Council should consider the lobby-group proposal and report back to members.

12.4 It was also agreed that more immediate action should be taken as regards the TVA/VAT issue, to which end, Adrian Winstanley and Jens Bredow would liaise with a view to producing a questionnaire for all member institutions concerning their respective treatment of TVA/VAT in respect both of arbitrators' charges and of the institutions' own administrative charges.

12.5 Members were asked to complete the questionnaire at the earliest opportunity following its circulation, so that the information obtained could be collated and reported back to members, with a view to deciding whether some collective approach to the problem might be appropriate.

12.6 It was agreed, however, that the issue had to be approached cautiously and sensitively, to avoid making an already difficult situation worse.

Standard procedures

12.7 The President then summarised a proposal, put forward by the Ukraine Arbitration Centre, that IFCAI should adopt a schedule of standard requirements to be met by institutions in the administration of arbitrations.

12.8 He reported the Council's view, however, that, whilst it might be useful to articulate the minimum standards required of an institution for membership of IFCAI, there could and should not be a common view, as the different features, services and procedures of the various institutions were important factors for parties considering which institution to use in any given set of circumstances.

12.9 It was agreed that a report comparing the administrative procedures of leading IFCAI members would be a worthwhile project and might, most usefully, be published through the IFCAI website. This would enable potential users of the services of member institutions to compare the different approaches and would also provide a useful checklist for less-well-established arbitral institutions.

Research

12.10 The President reminded the Assembly of the presentation that had been given by Richard Naimark to the meeting of the Institutional Section in Paris, in November 2002.

12.11 At that time, Mr Naimark had confirmed that IFCAI members would be consulted on the content and form of the questionnaire that was to form the basis of an ambitious empirical research project, to be undertaken by the Global Center for Research.

12.12 The President said that it was regrettable that there appeared to have been no follow-up to those proposals and sought the views of the General Assembly as to how best to proceed as regards research, which he considered to be a highly desirable project for IFCAI to become involved with.

12.13 After discussion, it was agreed that an officer designated by the President, or the President himself, should contact the Global Center to find out the status of the project; confirm IFCAI's continuing interest in the project; and report back to members.

13. EXCHANGE OF INFORMATION AND VIEWS

13.1 Dr Aboul-Enein touched on issues of concern from the Cairo perspective, including the apparent increase in challenges to arbitrators; a trend towards higher fees for arbitrators; and the apparent more-frequent adoption of *ad hoc* arbitration procedures.

13.2 He noted trends towards more multi-cultural arbitration; online arbitration; the use of interim measures; and the inclusion of express confidentiality obligations in arbitration agreements.

13.3 Crenguta Leaua reported that a new law had been enacted in Romania concerning the enforcement of Court judgments, but expressly ruling out the enforcement of arbitral decisions.

13.4 The Assembly was concerned to hear of this development, which reinforced the validity of Jens Bredow's proposals for a lobbying role for IFCAI.

13.5 Professor Tang expressed the view that member institutions should take an active role in their respective jurisdictions to promote and support the UNCITRAL initiative on interim measures in arbitration.

13.6 It was agreed, however, that much still remained to be discussed on the interim measures question and that views would be further developed during the course of the following day's conference.

13.7 The President reported that a new draft of the report of the IBA working group on conflicts and disclosure was at an advanced stage, and that many IFCAI members had made significant contributions to the development of this report

14. **OTHER BUSINESS**

Invitation by Ukraine Arbitration Centre

14.1 The President reported that the Ukraine Centre had kindly invited IFCAI to hold a seminar in Kiev in the autumn of 2004 and he recommended that this invitation should be accepted, a proposal which was unanimously approved.

14.2 The President confirmed that members would be circulated nearer the date with more details of the nature and theme of the Kiev seminar.

Arbitrator's checklist

14.3 The President referred the meeting to the draft checklist for arbitrators and parties, with regard to the appointment of arbitrators, which Neil Kaplan had proposed might be adopted by IFCAI.

14.4 After discussion, it was agreed that, whilst the checklist would undoubtedly be a useful tool in *ad hoc* proceedings, it should not be adopted by the umbrella organisation of arbitral institutions, most of which had established rules and procedures which dealt fully with matters covered by the checklist.

14.5 The Assembly recorded its thanks to Neil Kaplan for having produced what remained a useful set of guidelines.

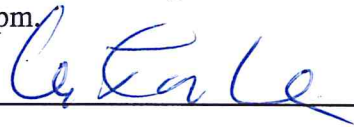
Insurance

14.6 Jens Bredow asked what insurance provisions member institutions had in place, if any, to protect their secretariat staff and/or arbitrators appointed by them. It appeared from discussions that few members had insurance of this kind in place.

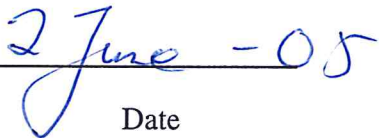
14.7 Adrian Winstanley said that LCIA had obtained insurance cover of this type, though at a considerable premium and confirmed that he would summarise the cover provided for the benefit of other members.

15. **CLOSE OF MEETING**

15.1 There being no further business, the meeting was declared closed at 4.40pm.



President



Date

