

INTERNATIONAL FEDERATION OF
COMMERCIAL ARBITRATION INSTITUTIONS

(IFCAI)

Minutes of the General Assembly

held in New York

Thursday 13 May 1999

A General Assembly of the International Federation of Commercial Arbitration Institutions was held on Thursday 13 May 1999 at the offices of the American Arbitration Association in New York.

The following member organisations were represented at the meeting:

AUSTRALIA

The Institution of Engineers Australia
Antonio A. de Fina

AUSTRIA

International Arbitral Center of the Austrian Federal Economic Chamber
D.Dr. Werner Melis

BAHRAIN

G.C.C. Commercial Arbitration Centre
Yousif Z.A.M. Zainal

CANADA

The Québec National and International Commercial Arbitration Centre
Dr. Nabil N. Antaki

CHINA

China International Economic and Trade Arbitration Commission
Professor Tang Houzhi

CZECH REPUBLIC

Arbitration Court attached to the Economic Chamber of the Czech Republic
Dr.jur. Bohuslav Klein

EGYPT

The Cairo Regional Centre for International Commercial Arbitration

Dr.M.I.M. Aboul-Enein

ENGLAND

The Chartered Institute of Arbitrators

Kerry R.K. Harding

London Court of International Arbitration

Mrs. Madeleine May

Bertie W. Vigrass

FRANCE

ICC International Court of Arbitration

Dr. Horacio A. Grigera Naón

GERMANY

Deutsche Institution für Schiedsgerichtsbarkeit e.v.

Jens Bredow

ITALY

The National and International Arbitration Court of Venice

Professor Avv. Roberto Ceccon

JAPAN

The Japan Commercial Arbitration Association

Yoshihisa Hayakawa

The Japan Shipping Exchange, Inc.

Toshio Matsumoto

KOREA

The Korean Commercial Arbitration Board

Dr. Lee Soonwoo

POLAND

Court of Arbitration at the National Economic Chamber in Warsaw

Jozef Okolski

Polish Arbitration Association

Dr.habil Tadeusz Szurski

RUSSIA

International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation

Alexander Komarov

Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation

Serguei Lebedev

SWEDEN

Arbitration Institute of the Stockholm Chamber of Commerce
Ulf Franke

SWITZERLAND

Association Suisse de l'Arbitrage
Dr. Pierre A. Karrer
Dr. Marc Blessing

WIPO Arbitration and Mediation Center
World Intellectual Property Organisation
Dr. Francis Gurry

Zurich Chamber of Commerce
Claudia Kälin Nauer

TUNISIA

Mediterranean Arbitration Council
Habib Malouche

UKRAINE

International Commercial Arbitration Court at the Ukrainian
Chamber of Commerce and Industry
Professor Dr. Igor Pobirchenko
Tatyana Slipachuk

UNITED STATES OF AMERICA

American Arbitration Association
Michael F. Hoellering
William K. Slate II

Centre for Conciliation and Arbitration
St. Mary's University School of Law
Wayne I. Fagan

Welcome and Introductions

The meeting was opened at 4.30pm. by Mr. Michael F. Hoellering, President of the Federation. He welcomed all present with a special mention of those attending their first meeting.

Members then introduced themselves in turn.

Agenda Item No.1: Adoption of the Minutes of the Interim Meeting

Upon a motion duly made, the Minutes of the Interim Meeting held in Paris on Sunday May 3rd 1998 were approved and adopted.

Agenda Item No.2: Adoption of the Agenda for the Meeting

The proposed Agenda for the Meeting was presented by the President. Upon a motion duly made, the Agenda was adopted as presented.

Agenda Item No.3: President's Report

Mr. Michael F. Hoellering, President, reported that during the last six months, his office was busy with preparations for the Vth Biennial Conference, including the design of the substantive agenda, signing up of speakers, contracting for suitable facilities, and other logistics. More than 110 participants are expected at the Conference, including representatives of twenty-three arbitral institutions from twenty-two countries. The contractual arrangements between the Federation and AAA as host organization are on customary terms, with the Federation assuming responsibility for the substantive program and the host organization assuming all financial obligations, with a modest royalty to be returned to the Federation. Speakers are exempted from the registration fees. Those institutions who wish to display their promotional materials may do so on the table provided for this purpose. With the outstanding faculty and choice of topics to be explored, a truly stimulating interesting day lies ahead.

The President noted that Volume 15 of the Federation's Newsletter was published in March and circulated to all members and interested persons. Some of the more significant noted trends will be the subject of the Conference proceedings, such as the growing and importance of multilateral and bilateral treaties in fostering arbitration, and the impact on arbitration of electronic communication.

Turning to institutional cooperation, the President noted the increase in educational programs jointly sponsored by two or more member institutions around the globe. New regional initiatives are being implemented in the Arab world and in Latin America. Last year alone, the AAA held joint programs with the London Court, the Cairo and GCC Centres, and ADR organizations in Argentina, Brazil, Chile, Peru and Costa Rica. The AAA/ICC/ICSID Joint Arbitration Colloquium is now in its 15th year. Worthy of note also is the Willem Vis International Arbitration Moot which provides law students from all over the world an opportunity to learn about the arbitration process. Since it was established in 1993, the competition has almost doubled in size each year. All such activities are in harmony with the Federation's objective of promoting greater use of international commercial arbitration and facilitating the exchange of information on the services provided by commercial arbitration entities.

The President noted that the continuing favorable evolution of international commercial arbitration would benefit from increased participation by member institutions in ongoing arbitration projects. The comments filed by Jens Bredow, on behalf of the German Arbitration Institute, on the proposed revisions to the IBA's Rules on Evidence provide an illustration of such activity. UNCITRAL also will be considering shortly some thirteen topics - from conciliation to the enforcement of awards set aside in the State of origin - as possible items of future work. While the Federation is not yet accredited to UNCITRAL, it may participate fully in these discussions as an observer and there is room for a Federation representative at the session. The President requested anyone interested in representing the Federation to let him know so that arrangements can be made. Additionally, there are national initiatives which will impact on international arbitration, such as newly proposed ethical rules, provisions on the unauthorized practice of law, the conduct of advocates, and of providers of arbitration services. Close monitoring and institutional involvement in such projects, for the good of the process, would be desirable.

Finally the President updated information on the Institute for Dispute Resolution Research, the concept for which was introduced by Bill Slate at the Paris meeting. While a great deal of valuable information on arbitration is being provided by ICCA through its Yearbooks and National Reports, the need for accurate in depth data on all aspects of private dispute resolution remains unmet. With funding of \$1.2 million per year for next five years now assured, the establishment of such an independent, worldwide Institute to focus on the practice, attitudes, opportunities, and gain a deeper understanding of this aspect of international commercial activity is about to be realized. The organizational structure for the Institute will ensure its impartiality and independence. It expects to work closely with Federation members, respecting their institutional interests and privacy needs.

Mr. Hoellering concluded his report by thanking the members for their helpful contributions, by expressing appreciation to Mr. Vigrass for his valuable assistance, and to the Council for its continuing support and helpful guidance.

Agenda Item No.4: Secretary-Treasurer's Report

Mr. Bertie W. Vigrass, Secretary-Treasurer, presented his report. He said that following the Paris Interim Meeting a year ago he had concentrated on establishing a true and accurate membership of the Federation. He said that the present membership was 79 organisations from 46 countries. He then made available to all members present a new "Directory of Members". He said that this included a copy of the Governing Document; the names of the present IFCAI Council Members; a list of the 46 countries from

which membership was drawn, and the names of the member organisations and of the Presidents or Chief Executives. He said that a copy of the full "Directory" containing the full addresses, telephone and fax numbers and e-mail details, would be forwarded to any member on request.

He said that his next project would be to set up some form of database of Members' particulars. Several member organisations had already forwarded to him copies of their constitution, their rules, their publicity material etc. He said that he would shortly be inviting others to do the same.

Turning to financial matters, Mr. Vigrass said that the collection of the Annual Subscription for the year beginning August 1998 had entailed much more work than should have been necessary. Many members had not responded to the initial invoice and had needed several reminders until payment was made. Twelve member organisations had still not paid the last Annual Subscription. He reminded members present that there were three options as far as method of payment was concerned. Payment could be made by cheque, drawn on a USA bank; bank-to-bank payment, or by credit card (Mastercard, Visa or American Express). He hoped that in future years members would react to the first invoice without waiting for reminders.

He reported that income for the twelve months since the Paris Interim Meeting had been -

	<u>US\$</u>
Members Subscriptions	5988
Geneva Conference	4000
Interest	730
Total	<u>10718</u>

Expenditure had been -

	<u>US\$</u>
Meeting room in Paris	1581
Secretarial expenses	1279
Total	<u>2860</u>
Balance for the year	<u>7858</u>

He said that reserves were now 37,582 US\$. This was satisfactory but it did not reflect the true position. The A.A.A. had made no charge for its services over the last few years and this included the President's expenses, the cost of the Newsletters, postage, communications etc. The expenses of the Secretariat had also been kept to the absolute minimum and had been subsidised personally by the Secretary-Treasurer in a number of ways. The present situation could not continue indefinitely and he urged members of IFCAI to consider the future and to accept the need for a continual build-up in the reserves and to work towards a situation where the administrative work of IFCAI could be covered without subsidy.

The President supported this view and invited members to consider whether there should be any change to the present level of Annual Subscription which was 100 US\$. There then followed a discussion which resulted in a recommendation that the Annual Subscription should be increased forthwith to 200 US\$. The recommendation was formally proposed and seconded and approved unanimously.

Upon a motion duly made, the financial report was adopted.

Agenda Item No.5: Institutional Section Chairman's Report

Dr. M.I.M. Aboul-Enein gave a report on the activities provided for members of the Institutional Section. He said that these had started a year ago with a special meeting in Paris which had been well attended. A second meeting had been held earlier in the afternoon with an even better attendance. The subjects covered at both meetings had been directly related to the day-to-day activities of institutional members and had led to a most valuable exchange of information and experience. He looked forward to further meetings at future Assemblies of the Federation.

Agenda Item No.6: General Update on the von Hoffman Case

The President reminded members of the problem facing certain arbitral institutions and arbitrators arising out of the judgment of the European Court of Justice delivered on September 16, 1997 on the Professor von Hoffman Case, relating to the payments of VAT/TVA by international arbitrators. He invited Dr. Horacio A. Grigera Naón to report on the latest situation.

Dr. Naón responding said that there was little progress to report. The work of the European Commission had been affected by the recent resignation of all of the European Union Commissioners. Contact had been maintained with Mr. Monti (the European Commissioner at present responsible for VAT/TVA). It was believed that the Commission understood the problem facing institutions and arbitrators, but it was likely that any review by the Commission would cover other VAT issues much wider in

nature than those relating only to arbitration. As far as timing was concerned, he thought that there might be some movement by the end of the year but he felt that it would be well into next year before clarification could be expected.

There then followed a general discussion on the present situation and the policy being adopted by a number of institutions and arbitrators. It was believed that more arbitrators were beginning to apply VAT/TVA as a safeguard, in the absence of firm guidance. It was apparent that a difference in approach was being adopted by the ICC, the LCIA, and the Arbitration Institute of the Stockholm Chamber of Commerce. This was inevitable in the absence of firm rulings on the matter by the European Commission and the national authorities.

The President thanked Dr. Naón for his report and promised that members would be kept informed of developments in the von Hoffman Case.

Agenda Item No.7: Suggestions for the 6th Biennial Conference in 2001

The President raised the matter of the next IFCAI Biennial Conference. He said that he had no firm proposals to make and as yet he had received no firm offers from member organisations to mount the event. He said that it might be appropriate to consider South America as a venue for the Conference, but this would depend upon an offer being received from an institution in the region capable of mounting such a Conference.

The President invited members to submit proposals should they so wish, if it was their wish to host the next Biennial Conference. All proposals received would be considered by the Council of IFCAI.

Agenda Item No.8: Election of Officers and Council Members

The President reported that all present Officers and Council Members had indicated their willingness to continue, with the exception of Vice-President Hiroshi Hattori. He said that he had received a proposal that Professor Tang Houzhi be elected a Vice-President to fill the vacancy caused by Mr. Hattori's withdrawal. The proposition was put to the meeting and Professor Tang Houzhi was voted unanimously to the office of Vice-President.

A proposal was then received that Mr. Yousif Z.A.M. Zainal be appointed to fill the vacancy as Councillor. This was approved unanimously.

The President then drew attention of the Meeting to the situation regarding the President and Secretary-Treasurer. He said that neither he nor Bertie Vigrass could go on in these roles indefinitely. It was a matter which members of IFCAI would need to address some time in the future and he hoped that members would bear this in mind and begin to think of possible successors.

Agenda Item No.9: Other Business

The matter of the date of the next Interim Meeting was raised and it was felt that the time of the next ICCA Congress - 2nd/3rd March 2000 in New Delhi might be appropriate. The President said that this would be considered by the IFCAI Council.

Dr. Tadeusz Szurski raised the matter of a more formal Constitution for the Federation. Mr. Vigrass said that at the Seoul Meeting in 1997 it had been agreed that for the next few years the Federation would operate under a Governing Document (a copy of which is reproduced in the "Directory of Members") until it had built up assets and a level of activity which would justify a more formal Constitution. The President thanked Dr. Szurski for raising the matter and said that consideration would be given to certain amendments and additions to the present Governing Document but he was anxious to avoid too rigid a structure so early in the life of the organisation.

Mr. Harding, speaking on behalf of Members, thanked Mr. Hoellering and Mr. Vigrass for the work they were doing for the Federation. This was supported with acclaim.

There being no other business the meeting closed at 5.25pm.