

**INTERNATIONAL FEDERATION OF COMMERCIAL
ARBITRATION INSTITUTIONS**

Minutes of the Interim Meeting

Held in Paris

Sunday, May 3, 1998

An Interim Meeting of the International Federation of Commercial Arbitration Institutions was held on Sunday May 3, 1998 at the Hotel Inter-Continental in Paris.

The following member organizations were represented at the meeting:

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

Abu Dhabi Commercial Conciliation and Arbitration Center
Mr. Aoun A. Al-Jenaibi

Arab Association for International Arbitration
Mr. Bandar Ben Selman Ben Mohamed Al Saud

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

Arbitration Court of Hungarian Chamber of Commerce and Industry
Dr. Eva Horvath

Arab Association for International Arbitration
Maitre Abdul Hamid El-Ahdab

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

Australian Center for International Commercial Arbitration
Professor Michael Pryles

Belgian Center for Arbitration and Mediation
Mr. Guy Keutgen

Cairo Regional Centre for International Commercial Arbitration
Dr. M.I.M. Aboul-Enein

Chamber of National and International Arbitration of Milan
Mr. Stefano Azzali

China International Economic and Trade Arbitration Commission
Professor Tang Houzhi

Court of Arbitration at the Polish Chamber of Commerce
Dr. Tadeusz Szurski

Danish Committee of International Arbitrators
Dr. Allan Philip

Deutsche Institution fuer Schiedsgerichtsbarkeit e.V.
Mr. Jens Bredow

European Court of Arbitration
Mr. Mauro Rubino-Sammartano

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

Hong Kong International Arbitration Centre
Mr. Peter Caldwell
Mr. Christopher To

Indian Council of Arbitration
Mr. A.K. Kwatra

I.C.C. International Court of Arbitration
Dr. Horacio A. Grigera Naon
Dr. Robert Briner

International Commercial Arbitration Court of the Chamber of
Commerce and Industry of Romania
Professor Dr.Dr. Tudor Popescu

International Commercial Arbitration Court of the Chamber of
Commerce and Industry of the Russian Federation
Mr. Alexander Komarov

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

International Arbitral Law Center
Dr. Jorge Luis Santana

Japan Commercial Arbitration Association
Mr. Norihiko Maeda
Mr. Hiroshi Hattori
Mr. Tatsuya Nakamura

Japan Shipping Exchange
Mr. Takao Tateishi

London Court of International Arbitration

Mr. Bertie W. Vigrass

Mrs. Madeleine May

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

Mr. Sergei Lebedev

Mediterranean Arbitration Council

Mr. Habib Malouche

The Chartered Institute of Arbitrators

Mr. Arthur Harverd

Dr. Nael Bunni

Mr. Kerry R.K. Harding

The Korean Commercial Arbitration Board

Dr. Lee Soonwoo

The Lebanese Arbitration Center

Professor Selvin Jahel

Maitre Hadi Slim

The Mediterranean Maritime Arbitration Association

Mr. Mario Riccomangno

The National and International Arbitration Court of Venice

Professor Avv. Roberto Ceccon

Tribunal Arbitral de Barcelona

Mr. Antonio de P. Escura

Tribunal Arbitral de la Camara Argentina de Comercio

Mr. Horacio Raul Zapiola Perez

World Intellectual Property Organization
Dr. Francis Gurry
Ms. Deborah Enix-Ross

Zurich Chamber of Commerce
Mrs. Claudia Kalin-Nauer

together with other members of the Council of I.C.C.A. as observers.

Agenda Item No. 1: Welcome and Introductions

The meeting was opened at 5:15 by Mr. Michael F. Hoellering, President of the Federation. He welcomed all present with a special mention of those attending their first meeting. He reported that two organizations had joined since the last Assembly - The International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry, and the National and International Arbitration Court of Venice, both being represented at the meeting. He said that two other organizations had applied to join within the last few days - the Lebanese Arbitration Court and the Indian Council of Arbitration. Both organizations were represented at the meeting and the applications were being processed.

Members then introduced themselves in turn.

Agenda Item No. 2: Adoption of the Minutes of the IXth General Assembly

Upon a motion duly made, the Minutes of the IXth General Assembly held at the offices of the World Intellectual Property Organization in Geneva on Thursday October 23, 1997 were approved and adopted.

Agenda Item No. 3: 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. 4: President's Report

The President first noted the publication of Volume 14 of the IFCAI Newsletter which again reports on recent developments in dispute resolution worldwide, and was recently sent to members and interested persons. Its content reflects the ongoing evolution of a worldwide system of international commercial arbitration through (1) continuing modernization of international arbitration regimes (2) significant increases in cases handled by arbitral institutions (3) the fine tuning of institutional rules, and (4) increased institutional interaction in the educational sphere - all of which indicate continuing growth and positive development in response to the needs of the dynamic, increasingly interdependent, world marketplace.

Referring to last year's Geneva Conference, the President stated that it was highly successful, attracted about 150 participants from thirty countries, with wide representation from institutions, practice, industry, universities, and the judiciary. The published proceedings will be available shortly. The President expressed special thanks to Francis Gurry and his colleagues at WIPO for hosting the Conference, and introducing the concept of "on line" dispute resolution.

The President referred to two other noteworthy events - the 60th jubilee celebration of the Russian International Arbitration Court at which, along with others, he represented the Federation and the AAA, and the Arab Arbitration Institutions Conference held in Cairo under the auspices of the Arab League, which resulted in the creation of a new Secretariat in Cairo, headed by Dr. Aboul-Enein, to foster increased cooperation between arbitral institutions in the region.

The President concluded his remarks by noting that the 40th anniversary of the New York Convention was not only being addressed in Paris, but will also be the subject of a commemorative program at U.N. Headquarters in New York on June 10, 1998. The program will be followed by a reception co-sponsored by the Association of the Bar of the City of New York and the

American Arbitration Association. Notice of the event was previously sent to all IFCAI members. Those wishing to attend need to register through UNCITRAL in Vienna.

Ageda Item No. 5: Secretary-Treasurer's Report

Mr. Bertie W. Vigrass, Secretary-Treasurer, presented his report. He said that following the General Assembly in Geneva last October he had concentrated on five main objectives-

- (I) to establish the true and accurate membership of the Federation. There had previously been some doubt about one or two organizations listed as members.
- (ii) to allocate members of the Federation to one of the three Sections of the Federation based upon their activities.
- (iii) to up-date the records of all members - addresses, telephone and fax numbers and, where appropriate, e-mail details.
- (iv) to obtain all outstanding payments of the 1997 Annual Subscription.
- (v) to up-date the Governing Document following the decisions made at the Geneva General Assembly and at the Seoul Meeting.

He then circulated to all members present a copy of anew "Directory of Members" which he said had been compiled on the basis of information received and the work undertaken since the Geneva General Assembly.

He drew attention to the first three pages of the Directory which contained an up-date of the Governing Document and to the following page on which were listed the names of the present Council Members. In the next section were listed the 43 countries worldwide from which the 70 member organizations of the Federation were drawn. The final section of the Directory contained details of all present members (by country) with their latest addressses, telephone and fax numbers and e-mail details where

appropriate. The allocation to sections was indicated by a letter linked to the membership number - "A" for the Institutional Section and "G" for the General Section.

Mr. Vigrass said that, in making the allocation to Sections, he had found no member organization which should be appropriately allocated to the "Affiliate" Section. He suggested that, at some future Assembly, it might be appropriate to consider whether the "Affiliate" Section should be eliminated, leaving the Federation with just two Sections - the "Institutional Section" and the "General Section."

There being no comments on the Secretary-Treasurer's general report, Mr. Vigrass then went on to give a financial report. He reminded members that at the General Assembly in Geneva on October 23rd last year he had reported that the funds of the Federation at that time stood at US\$ 26,744 and in addition a financial contribution in respect of the Geneva Conference was expected.

The number of non-payers had been reduced to 8. All had received at least three reminders and with the latest reminder a note to say that if no payment had been received by May 31, 1998, it would be assumed that the organization was no longer interested in continued membership of the Federation and its name would be removed from the Membership list.

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

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

The President reminded members of the special meeting which had taken place following the General Assembly in Geneva last October, the purpose of which had been to discuss 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 said that a copy of the Resolution arising out of the meeting and subsequently adopted by the Council of IFCAI had been attached to the

Minutes of the General Assembly. He invited Dr. Horacio A. Grigera Naon to report on the latest situation.

Dr. Naon responding, said that following a preliminary meeting with Mr. Monti (the European Commissioner responsible for VAT/TVA) last December, a meeting was held at the end of March between Mr. Aurillac (ICC Vice President), Mr. Dominique Hascher (General Counsel to the ICC Court of Arbitration), Mr. Johnny Veeder (LCIA) and Mr. Aujean (the Head of DG XXI, responsible for VAT/TVA) and his colleagues.

The meeting was friendly and time was allowed for the fullest discussion on the von Hoffman problem. However, the Commission confirmed its position and it is clear that there is now no likelihood whatsoever of persuading it towards a different policy.

The Commission does not dissent from the criticisms of the von Hoffman judgment or its probable effect on the European marketplace. Nonetheless, it will not support any ad hoc solution, such as the textual proposal which was made (inserting the word "arbitrators" in the third indent). The Commission's view is that the only chance of ameliorating the effect of the von Hoffman judgement is a general solution dealing not only with our problem but with several other problems arising from the Sixth Directive. The Commission is preparing a package of proposed reforms to the Eighth Directive which may be ready by the end of the year. To this end, the Commission requested assistance in assessing and understanding the practical effects of the von Hoffman judgement, both for institutional and ad hoc arbitration.

Dr. Naon concluded by confirming that there was now no alternative but to adopt the policy regarding VAT/TVA imposed by the von Hoffman judgment. The ICC was in the process of preparing policy guidance for its arbitrators.

There then followed a general discussion about the issues raised. Dr. Allan Philip enquired whether lawyers acting as arbitrators would be required to conform, in view of the specific reference to lawyers in the third indent of

Article 9. Mr. Vigrass drew attention to the fact that certain arbitral institutions (such as the LCIA), separated the charges for administrative work from that of the arbitrator's fees and expenses. The latter being paid direct by the party responsible for payment to the arbitrators concerned. He said that the von Hoffman case referred only to arbitrators and he suggested that arbitral institutions should continue to operate under existing arrangements until directed otherwise by their national tax authorities.

Dr. Briner, responding to both points, said that in the case of lawyers acting as arbitrators, they were most certainly subject to the von Hoffman judgment. In the case of arbitral institutions, he said that reference had been made to them in the Opinion given by Advocate General Fennelly, although he conceded that there was no reference to this in the von Hoffman judgment.

The President thanked Dr. Naon for his most helpful report and promised that members would be kept informed of future developments in the von Hoffman case.

Agenda Item No. 7: Data Collection and Research

The President reminded members that one of the aims and objectives of the Federation was to facilitate the gathering and distribution of information, and the promotion of research. He felt that this was a subject which should be central to the future work of the Federation.

He made reference to the creation of a Worldwide Research Institute by the American Arbitration Institution. He invited Mr. Slate to explain the nature and background to this initiative. Mr. Slate said that the Institute would be an independent organization and its aim would be to provide a global data base on arbitration matters and related methods of dispute settlement. He invited the co-operation of arbitral institutions worldwide in support of this project. He said there was great merit in shared data and this would be available to those involved.

Several members spoke in support of the project. Dr. Bunni offered the co-operation of the Resources Centre of the Chartered Institute of Arbitrators, Professor Pryles made reference to developments in Australia. Dr. Eva Horvath drew attention to the work of UNCITRAL in this area.

The President thanked members for their interest and offers of co-operation, and said that in his view this work fell into the intellectual pattern of the Federation. It complemented the work of the ICCA and its Yearbooks, and that of the Asser Institute.

Agenda Item No. 8.: 1999 New York Conference

The President reminded members that it had been agreed that the next IFCAI Congress and General Assembly should be in New York in the Spring of 1999 hosted by the American Arbitration Association. He said that a date had now been fixed for the Congress and accommodation at the Grand Hyatt Hotel had been secured. The date would be Friday May 14, 1999.

Mr. Slate confirmed that the AAA was looking forward to hosting the Congress and Assembly and would do all it could to make the occasion a great success.

The President then invited ideas for the theme of the Congress and subjects to be covered. Several members put forward suggestions and these were noted by the President who confirmed that they would be taken into consideration when the IFCAI Council prepared the program. He invited members to send in further ideas, but stressed that there was now some urgency in the matter as the latest date for promotion of the Congress would be January 1999.

There being no other business, the meeting closed at 6:15 p.m.

Mr. Kerry 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.

