

**INTERNATIONAL FEDERATION OF COMMERCIAL
ARBITRATION INSTITUTIONS**

Minutes of the IXth General Assembly

Held in Geneva

Thursday, October 23, 1997.

The IXth General Assembly of the International Federation of Commercial Arbitration Institutions was held on Thursday, October 23, 1997 at the offices of the World Intellectual Property Organization in Geneva.

The following member organizations were represented at the meeting:

American Arbitration Association

Mr. Michael F. Hoellering

Mr. William K. Slate II

American Institute of the Stockholm Chamber of Commerce

Mr. Ulf Franke

Arbitrage et Conciliation pour le Cinema et L'Audiovisuel

Mr. Antoine Virenque

Beijing Conciliation Center

Mr. Kang Ming

Belarus

Mr. Valeri G. Vasiliev

Ms. Nina M. Vasilieva

Cairo Regional Center 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

Conciliation and Arbitration Commission of Madrid Chamber of
Commerce and Industry
Mr. Julio Gonzalez Soria

European Court of Arbitration
Mr. Mauro Rubino-Sammartano

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

Euro-Arabe de l'Arbitrage International
Sir Michael Kerr

German Arbitration Institute
Professor Karl-Heinz Böckstiegel

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

Hong Kong International Arbitration Center
Mr. Niels Kraunsoe

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

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

I.C.C. International Court of Arbitration
Dr. Robert Briner

International Commercial Arbitration Court of Romanian Chamber of
Commerce and Industry
Mr. Victor Babiuc
Professor Tudor Popescu

Israeli Institution of Commercial Arbitration
Professor Smadar Ottolenghi

Japan Commercial Arbitration Association
Mr. Hiroshi Hattori

Japan Shipping Exchange
Mr. Toshio Matsumoto

Kuala Lumpur Regional Center for Arbitration
Mrs. P.G. Lim

London Court of International Arbitration
Mr. Bertie W. Vigrass

The Permanent Court of Arbitration, The Hague
Mrs. Judith Freedberg

St. Mary's Conciliation and Arbitration Center
Mr. Wayne I. Fagan

Swiss Arbitration Association
Dr. Pierre A. Karrer
Dr. Marc Blessing

Tribunal Arbitral de Barcelona
Mr. M. Antonio de. P. Escura

World Intellectual Property Organization
Dr. Francis Gurry

Agenda Item No. 1: Welcome and Introductions

The meeting was opened at 3:00 p.m. by Mr. Michael F. Hoellering, President of the Federation. He welcomed all present with a special mention of those attending their first meeting. He also expressed appreciation to the World Intellectual Property Organization for hosting the meeting. Members then introduced themselves in turn.

Agenda Item No. 2: Adoption of the Minutes of the Seoul Meeting

Upon a motion duly made, the Minutes of the Seoul Interim Meeting held at the Korean Commercial Arbitration Board on October 9, 1996 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 reported that since the Seoul meeting three new organizations have joined the Federation. Firstly, the ICC International Court of Arbitration, represented by President Robert Briner and Secretary Horacio A. Grigera Naon, is now a full participating member. Given the ICC's prominent role in international commercial arbitration, this is a particularly welcome development. Also joined in 1997 were the Association Euro-Arabe de l'Arbitrage International, described in the inaugural letter sent to members in April by its President Sir Michael Kerr, and the Mediterranean Arbitration Council, a new arbitration initiative in that region, headed by President Habib Malouche, a founding member of IFCAI.

Expressions of interest in membership were also received from the International Commercial Arbitration Court of Russia, headed by Professor Alexander Komarov; and, the Russian Maritime Arbitration Commission, chaired by Professor Sergei N. Lebedev. Both institutions are attached to the Russian Chamber of Commerce and Industry.

The President noted that in the course of the year, the Council's main attention was directed to three areas - the organization of the Biennial Conference, review and updating of IFCAI membership records, and how best to enhance communication among member institutions.

Firstly, considerable effort has gone into the preparations for the Conference. The Conference theme - The Institutional Response to the Changing Needs of Users - is a highly pertinent one, and the faculty assembled outstanding. Almost 200 persons, representing a broad range of advocates, administrators, jurists and users from all parts have registered, and it is expected that the Conference will be a huge success. The President expressed gratitude to Mr. Gurry and his colleagues for their hospitality and splendid organizational work.

At the Seoul meeting a decision was taken to thoroughly review and update membership records, and to enhance dues collection. A detailed report on this initiative will be presented by Mr. Bert W. Vigrass, Secretary-Treasurer, whose efforts in tackling this challenging task are greatly appreciated.

On the subject of communications, the President stated that while the Federation has done an excellent job in conducting informative dispute resolution conferences, as in Cairo, Milan, Hong Kong, and now Geneva, it has not yet institutionalized a regular process for member organizations to share informally their experiences and common concerns. This would be particularly useful given that the bulk of international arbitration proceedings are conducted by these institutions. He noted that this was considered by the Council and that Dr. Aboul-Enein, Chairman of the Institutional Section, will be presenting a relevant proposal.

The President concluded his remarks by thanking all Council members for their support in furthering the aims of the Federation. Since the IFCAI now includes practically every leading arbitral institution in the world, it is in a unique position to contribute meaningfully to the further advancement of arbitration and other private means of dispute resolution worldwide.

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

Mr. Bertie W. Vigrass, Secretary-Treasurer, presented his report. He said that following the Seoul Interim Meeting, high priority had been given to updating the membership records of the Federation.

A year ago the figures being quoted on membership were 91 Member organizations from 51 countries. It was known that several organizations had ceased to exist and others had failed to pay Membership Dues for 1996, and in certain cases previous years.

He said that contact had been made with all organizations on the membership list. All had been invited to confirm that details on the IFCAI records were correct, or to amend them. They were also invited to send to the Secretariat copies of Rules and publicity leaflets as appropriate. The aim being to set up a database about IFCAI Membership.

Many responded and a good start had been made in correcting the Membership records and in establishing the database. Attention was then concentrated on members who had failed to pay Annual Dues for 1996 and in some cases previous years. All were sent a reminder in March 1997. All who did not respond were sent a further letter in April in which they were advised that if no response had been received by the end of June, it would be assumed that they were no longer interested in continuing in membership of IFCAI and their membership would therefore be suspended.

He said that this operation had now been completed and 23 organizations on the original list had been removed from membership. These organizations would of course be free to apply for reinstatement, but they

would be required to pay a year's annual dues. They would not however be pressed for back payments as they had been removed from membership.

A revised membership list was then circulated. This gave the current membership as 67 arbitral bodies from 41 countries. Mr. Vigrass said that it was likely that several telephone and fax numbers were incorrect and he invited all present to check their entry and to let him know after the meeting if amendments were necessary.

Mr. Vigrass said that another exercise had been completed since the Seoul meeting. This was the allocation of members into the Sections. He circulated details of the result of this allocation, together with a statement of the criteria for the Institutional Section.

He said that he wished to make it clear that this was a preliminary selection and he invited anyone who felt that his or her organization had been wrongly allocated to notify him at the end of the meeting.

He said that he had been interested to find that no organization at present in membership appeared to fall into the "Affiliate" Section. This raised the issue as to whether it was necessary to have three sections in future, and whether the Federation should be structured with only two sections - the Institutional Section and the General Section. He suggested that this was a matter which should be considered at some future date.

A financial statement was then circulated. Presenting this, Mr. Vigrass said that it had been prepared on a "cash received" basis. When the statement had been prepared about two weeks earlier, 37 out of the current membership of 67 had paid the 1997 Subscription. Invoices had been sent out in August. More members had since paid. A reminder would be sent out in the near future to all members who had not paid by then.

He said that the IFCAI income was derived from two main sources, the Annual Dues from members and contributions from Conferences such as the one which would follow in Geneva the following day. He said that, for the first time there was an expenditure item on an IFCAI financial

statement. This related to the Secretary-Treasurer's outlay on postage, fax, typing, printing, etc. during 1996 and 1997. No charge had been made by the American Arbitration Association for the administrative charges related to the President's office. Mr. Hoellering indicated that so far the AAA had been pleased to cover these expenses. In the meantime priority should be given to building up the reserves of the Federation. The financial report showed a balance of US\$26,744 on October 15, 1997.

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

Agenda Item No. 6: Institutional Section Activity Proposal

The President invited Dr. M.I.M. Aboul-Enein, Chairman of the Institutional Section, to present his proposals for the future activities of the Section.

Dr. Aboul-Enein reminded members that one of the aims and objectives of the Section was to arrange regular meetings of chief executives and leading institutional representatives to share experiences and discuss matters of common concern related to the day-to-day administration of international arbitrations and other such proceedings. He then circulated a copy of a proposed Resolution for consideration.

Following discussion and upon a motion duly made, the Resolution was adopted as presented. A copy of the Resolution is attached to these Minutes. It was agreed that arrangements should be made as soon as appropriate for the first meeting of members of the Institutional Section.

Agenda Item No. 7: The 1999 IFCAI Conference

Turning to this item, the President invited Dr. Francis Gurry to report on arrangements for the Conference which was to take place on the following day.

Dr. Gurry said that there had been a very good response and he was expecting an attendance of around 190. A very good team of speakers had been selected and all had produced the text of their papers which would

be included in the Conference folders. He said that there would be facilities for simultaneous translation English/French. The Conference luncheon, to be addressed by Robert Badinter, President of the Court of Conciliation and Arbitration by the Organization for Security and Cooperation in Europe, would take place at the Inter-Continental Hotel which was only a short walk from the WIPO Center. He also noted that Dr. Kamil Idris, the newly appointed Director General of WIPO, would be present at the opening ceremony. He concluded his remarks by suggesting, in light of prior conference venues, that consideration be given to North America as a possible next site.

The President thanked Dr. Gurry and WIPO for the great support given to IFCAI and the excellent arrangements. He then recalled the prior conferences and requested the recommendations of the members with regard to the 1999 Conference.

Mr. William K. Slate II, President of the American Arbitration Association, indicated that the AAA would be pleased to host the 1998 Conference in the United States, if that is the wish of the membership. Following discussion and a formal proposal by Mr. Ulf Franke, it was decided unanimously, that the next IFCAI Biennial Conference will be held in New York with the AAA acting as host organization.

The matter of timing was then discussed and the feeling expressed that in Spring rather than in the Autumn might be preferable. The President said that he would check on possible clashing events and that a Conference date would be selected accordingly, and the members notified as soon as a firm date had been established.

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

The President reported that there were vacancies on the Council for two vice-presidents and a Councillor. The present officers and members of Council offered themselves for reelection. He suggested that Dr. Horacio A. Grigera Naón, Secretary General of the ICC International Court of Arbitration, be elected a Vice President. Mr. Ulf Franke was nominated for the other vacancy. Both nominations were approved.

Mr. Vigrass proposed that Mr. Kerry R.K. Harding, Secretary General of the Chartered Institute of Arbitrators, be appointed a Councillor. This was approved.

A motion was then made for present Officers and Council Members to be reappointed. This was approved, the Council being constituted as follows:

President	:	Mr. Michael F. Hoellering
Vice Presidents	:	Dr. M.I.M. Aboul-Enein
	:	Dr. Marc Blessing
	:	Mr. A.A. de Fina
	:	Mr. Ulf Franke
	:	Dr. Francis Gurry
	:	Mr. Hiroshi Hattori
	:	Mrs. P.G. Lim
	:	Dr. Horacio A. Grigera Naón
	:	Dr. habil Tadeusz Szurski
Secretary-Treasurer	:	Mr. Bertie W. Vigrass
Councillors	:	Professor Tang Houzhi
	:	Kerry K.R. Harding

Agenda Item No. 9: Other Business

The President announced that a special meeting had been arranged to follow the close of the General Assembly for representatives of member organizations based in European Union countries.

The purpose of the meeting was to discuss the judgment of the European Court of Justice delivered on September 16, 1997 on the Professor von Hoffman Case, relating to the payment of VAT/TVA by international arbitrators.

There being no other business, this part of the meeting was closed at 4:30 p.m.

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The President next introduced for discussion the substantive topic of the proper role of an arbitral institution in furthering the interests of international commercial arbitration in national courts.

He noted that while institutions strive to make arbitration as self-contained as possible, leading commentators continue to stress the importance of the courts, and provided two quotations:

“The law of private arbitration is concerned with relationships between the courts and the arbitral process.” Mustill & Boyd - Commercial Arbitration

“Arbitration, despite its supposed “contractual” “private” and “autonomous” character, is effectively inoperable, if not inconceivable, without tolerance and contingent support of the usual national judicial institutions.” Reisman, Craig, Pash & Paulson - International Commercial Arbitration

He then provided some examples of situations in which institutional intervention in judicial proceedings might serve to advance the cause of international arbitration, i.e.:

Expanding the domain of arbitration - In the early 1980's, both the ICC and AAA filed amicus curiae briefs with the U.S. Supreme Court in the Mitsubishi case. The court's ultimate decision that antitrust issues are arbitrable had a significant impact on the further development of international arbitration law and practice.

Fostering arbitral efficiency - In one recent case in country X, whose arbitration law is being developed, a party dissatisfied with the arbitrator's ruling commenced legal proceedings against the arbitrator to enjoin further arbitration and for a monetary penalty. The institution's intervention in support of the arbitrator and the process resulted in a dismissal of the suit and resumption of arbitral proceedings. Such situations also arise when a party moves to vacate the award, and names the institution and arbitrators as parties defendant, seeking either the arbitrators' testimony and/or

notes. How arbitrators' interests and those of the process become intertwined is also apparent from the Von Hoffman case.

Group of companies doctrine - Several institutions and the Federation were approached recently by counsel to international cases requesting that the institution intervene with the court to urge that arbitration be directed against non-signatories under the "group of companies doctrine."

Enhancing judicial awareness - It has been proposed that institutional efforts to better familiarize judges with the New York Convention would achieve more consistent application of its provisions.

Following a discussion of relevant institutional practices, and the limits on non-party institutional intervention under different national legal regimes, the meeting concluded at 5:45 p.m.

Special Meeting

The special meeting for representatives of institutions based in EU countries was well attended and there was a very constructive discussion by Mr. V.V. Veeder Q.C. A copy of the Resolution arising out of this meeting subsequently adopted by the Council is attached to these Minutes.

Resolution

Recognizing, that an important aim of the Federation is to encourage the active cooperation between commercial arbitration entities to further improve, promote, and facilitate the use of arbitration, conciliation and other forms of dispute resolution worldwide; and

Noting, that the Federation's membership has evolved so as to include the major arbitral institutions in the world; and

Being of the view that a regular ongoing dialogue amongst such institutions would be of considerable benefit in furthering such cooperation and in advancing the objectives of the Federation,

It is hereby resolved, as follows:

(1) Each year, as a regular feature of its programmatic activity, the Institutional Section will arrange a meeting of its members to share experiences and discuss matters of common concern relating to the day to day administration of international arbitration and other dispute resolution proceedings;

(2) Each such meeting will be hosted by a member institution, preferably in rotation, with the choice of venue being based on the convenience of the majority of members and host institution;

(3) It is understood that such meetings will supplement, and not replace, the Federation's regular biennial public conferences, such as held in Cairo, Milan, Hong Kong, and Geneva.

INTERNATIONAL FEDERATION OF COMMERCIAL ARBITRATION INSTITUTIONS

(IFCAI)

INSTITUTIONAL SECTION

Preliminary Allocation

Chairman: Dr. M.I.M. Aboul-Enein

Vice Chairman: Mr. Ulf Franke

AUSTRALIA

Australian Centre for International Commercial Arbitration

AUSTRIA

International Arbitral Center of the Austrian Federal Economic Chamber

BAHRAIN

G.C.C. Commercial Arbitration Centre

CANADA

The Québec National and International Commercial Arbitration Centre

British Columbia International Commercial Arbitration Centre

CHINA

Beijing Conciliation Centre

China International Economic and Trade Arbitration Commission

COLOMBIA

El Centro de Arbitraje y Conciliación Mercantiles Camara de Comercio de Bogota

CROACIA

Permanent Arbitration Court at the Croatian Chamber of Commerce

JAPAN

The Japan Commercial Arbitration Association

The Japan Shipping Exchange Inc

KOREA

The Korean Commercial Arbitration Board

MALAYSIA

The Kuala Lumpur Regional Centre for Arbitration

NETHERLANDS

Netherlands Arbitration Institute

International Bureau of the Permanent Court of Arbitration

POLAND

Court of Arbitration at the Polish Chamber of Commerce

SINGAPORE

Singapore International Arbitration Centre

SWEDEN

Stockholm Chamber of Commerce - the Arbitration Institute

SWITZERLAND

WIPO Arbitration and Mediation Center

USA

American Arbitration Association

INTERNATIONAL FEDERATION OF COMMERCIAL ARBITRATION INSTITUTIONS

(IFCAI)

SPECIALIST/GENERAL SECTION

Preliminary Allocation

Chairman: Dr. Marc Blessing

ARGENTINA

Comite Internacional de Derecho Arbitral

Comisión de Arbitraje y Mediación de la Camara Argentina de Comercio

AUSTRALIA

The Institution of Engineers

BAHRAIN

Bahrain Chamber of Commerce

BELGIUM

Centre Belge pour l'étude et la Pratique de L'Arbitrage National et International (CEPANI)

Institute for National and International Arbitration (INIA)

CHILE

Inter-American Commercial Arbitration Commission - Chile

DENMARK

Danish Committee of International Arbitrators

DOMINICAN REPUBLIC

Tribunal de Conciliaciones y Arbitrajes

ENGLAND

The Chartered Institute of Arbitrators

SCOTLAND

Scottish Council for Arbitration

SPAIN

Conciliation and Arbitration Commission, Madrid Chamber of
Commerce and Industry

Corte Espanola de Arbitraje

Tribunal Arbitral de Barcelona

SRI LANKA

Sri Lanka National Council

SWITZERLAND

Association Suisse de L'Arbitrage

Zürich Chamber of Commerce

THAILAND

The Arbitration Office, Ministry of Justice

TUNISIA

Mediterranean Arbitration Council

UNITED ARAB EMIRATES

Abu Dhabi Chamber of Commerce and Industry

UNITED STATES OF AMERICA

Centre for Conciliation and Arbitration

Society of Maritime Arbitrators Inc.

INTERNATIONAL FEDERATION OF COMMERCIAL ARBITRATION INSTITUTIONS

(IFCAI)

INSTITUTIONAL SECTION

1. Membership

- (a) Membership of the Section is open to member organisations of the Federation directly involved in international arbitration, with the prime function of providing day-to-day administrative support and assistance to commercial arbitration in its various forms, employing permanent staff and relying on this work as an important source of income.
- (b) Membership of the Section requires the approval of Council.
- (c) Members of the Section may be required to pay a supplementary Annual Subscription at a level to be determined by Council.

2. Aims and Objectives of the Section

- (a) to establish and maintain a day-to-day working relationship between members of the Section in matters related to the administration of domestic and international commercial arbitration for the purpose of an exchange of information and experience.
- (b) to arrange meetings of Chief Executives and other representatives of members of the Section on an annual, and when appropriate, a more frequent basis, to discuss matters of common interest related to the day-to-day administration of arbitrations.

3. Administration

The affairs of the Section shall be administered by a committee consisting of a Chairman and two Vice Chairmen appointed by Council. The Committee shall have power to co-opt other members as appropriate.

IFCAI GENEVA RESOLUTION
of 24 October 1997

The Members of the International Federation of Commercial Arbitration Institutions (IFCAI) at the meeting on 24 October 1997 at WIPO's Headquarters in Geneva:

Noting the European Court of Justice's decision of 16 September 1997 in the von Hoffmann Case C-145/96 under the European Union's Sixth VAT/TVA Council Directive 77/388/EEC of 17 May 1997, Article 9(2)(e) - third indent (Place of Supply of Arbitrator's Services);

Comprehending the effect of the ECJ's decision to mean, inter alia, that foreign non-EU users of international commercial arbitration will be required to pay VAT/TVA whenever or wherever an EU arbitrator is appointed who is registered for VAT-TVA within the European Union;

Observing that if this were so, it is a fundamental change in the practice hitherto of international commercial arbitration, within and without the European Union, involving arbitrators from the European Union; and

Concerned, for the future, that this change (amongst other undesirable effects) would lead to the resolution of EU disputes by non-EU arbitrators outside the European Union contrary to the current development of arbitration and EC Community Law in the "European Market Place", arbitration being by far the preferred system and dispute resolution in the field of international trade in the European Union (as elsewhere);

RESOLVED:

1. At the national level, that each EU-member of IFCAI is requested to take urgent practical steps to bring to the attention of its Government the imminent threat to international commercial arbitration represented by the ECJ's decision;
2. At the level of the European Commission, that each EU-member of IFCAI is requested to work closely with the ICC and its National

Committees on the ICC's initiative to bring to the attention of the European Union the need to amend, as rapidly as possible, the Sixth VAT/TVA Directive by adding the word "arbitrator" to Article 9(2)(e) - third indent and to implement other solutions; and

3. Within IFCAI, that all members are requested to exchange information on the general problem posed by the ECJ's decision, to be communicated to the IFCAI President and the ICC which will also act as coordinator