

INTERNATIONAL FEDERATION OF COMMERCIAL ARBITRATION INSTITUTIONS

Minutes of the Interim Meeting
Held in Seoul, Korea

Wednesday, October 9, 1996

An Interim Meeting of the International Federation of Commercial Arbitration Institutions was held on Wednesday, October 9, 1996 at the offices of the Korean Commercial Arbitration Board, Seoul, Korea.

The following members' organizations were represented at the meeting:

American Arbitration Association
Mr. Michael F. Hoellering
Judge Howard M. Holtzmann

Arbitration Court attached to the Economic
Chamber of the Czech Republic and Agricultural
Chamber of the Czech Republic
Dr. Bohuslav Klein
Dr. Vojtech Trapl

Australian Centre for International Commercial Arbitration
Mr. Michael Pryles

Beijing Conciliation Centre
Mr. Zhu Jianlin

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

Chartered Institute of Arbitrators
Mr. G. Beresford Hartwell

Mr. Nael G. Bunni
Ms. Karen Gough
Mr. Kerry Harding

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

China International Economic and Trade Arbitration Commission
Professor Tang Houzhi

Corte Espanola de Arbitraje
Dr. Bernardo M. Cremades

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

German Arbitration Institute
Dr. Jens Bredow

G.C.C. Commercial Arbitration Centre
Mr. Yousif Zainal

Hong Kong International Arbitration Centre
Mr. Peter Caldwell

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

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

Institution of Engineers, Australia
Mr. Antonino de Fina

Japan Commercial Arbitration Association
Mr. Hiroshi Hattori
Mr. Masako Fuju

Japan Shipping Exchange
Mr. Hironari Tanimoto
Mr. Takao Tateishi

Kuala Lumpur Regional Centre for Arbitration
Ms. P.G. Lim

Maritime Arbitration Commission of Moscow
Professor Sergei Lebedev

Netherlands Arbitration Institute
Professor Dr. Albert Jan van den Berg

London Court of International Arbitration
Mrs. Madeleine May
Mr. Bertie W. Vigrass

Swiss Arbitration Association
Dr. Marc Blessing

World Intellectual Property Organization
Mr. 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 Korean Commercial Arbitration Board for hosting the meeting. Members then introduced themselves in turn.

Agenda Item No. 2: Adoption of the Minutes of the Hong Kong Meeting

Upon a motion duly made, the Minutes of the Hong Kong General Assembly held on November 22, 1995 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 Hong Kong meeting four new organizations have joined the Federation:

Bologna Institute of Arbitration Culture
Mr. Giorgio Bernini

Corte Espanola de Arbitraje of Madrid
Dr. Bernardo Cremades
Mr. Jose Luis Roca Aymar

Association Libanaise de L'Arbitrage
Mr. Samir Abillamah

Mauritius Chamber of Commerce and Industry
Mr. Barlen Pillay

Since 1990, thirty-two new organizations altogether have joined the Federation. Of this number, twenty-two are leading arbitral institutions in their respective countries directly involved in administering and promoting the use of international commercial arbitration. The other ten, in keeping with the organizational structure adopted in Cairo, are organizations involved in arbitration and/or private dispute settlement as a secondary activity, and entities with a demonstrated interest in dispute resolution but not having direct involvement.

One membership application received in 1996 was not processed because the entity was a joint stock company operating on a for profit basis. The President noted that when the Federation was established it was with the understanding that membership would be open only to not-for-profit organizations. He suggested that it might be useful to adopt a formal resolution to that effect. Upon a motion duly made, this policy was reaffirmed.

Publications

In the last year, two new publications were issued by the Federation:

1. A book titled "Globalization and Harmonization of the Basic Notions in International Arbitration" containing the papers and proceedings of the Federation's Hong Kong Conference, published by the Hong Kong Centre;
2. IFCAI Newsletter No. 12 containing general information on worldwide developments, conferences, and publications in the field of international arbitration and dispute settlement.

Observer Status at WIPO and UNCITRAL

Applications to obtain observer status for the Federation at the above organs of the United Nations were filed on June 3 and September 30, 1996 respectively. The application to the World Intellectual Property Organization will be processed at the next ordinary session of the governing bodies of WIPO in September of 1997. In the meantime, by invitation of WIPO Secretary General Arpad Bogsch, the Federation will receive notices of meetings and may participate as an observer at WIPO sessions of interest. Similarly, pending final action on its application by the U.N. Economic and Social Council, Dr. Gerold Herrmann, Secretary of UNCITRAL, has invited the Federation to participate as observer at relevant sessions of the Commission.

Institutional Cooperation

The reorganization of arbitration activities in the People's Republic of China, similar developments in Russia and the countries of Eastern Europe, and the growing acceptance of commercial arbitration throughout the Middle East and Latin America have all contributed to increased institutional cooperation, and a growing number of visits by delegations of one country to member institutions of another. These wide ranging exchanges should further contribute to the harmonization of the basic notions in international arbitration.

Educational programs, co-sponsored by member institutions, at times with the Chartered Institute of Arbitrators, were held in various locales, including Argentina, Canada, England, Egypt, France, Mexico and the United States.

At the request of the International Bureau of the Permanent Court of Arbitration in the Hague, member institutions continued to provide services as Appointing Authority under the UNCITRAL Arbitration Rules.

The Inter-American Commercial Arbitration Commission adopted new institutional arrangements and rules provisions. The Japan Commercial Arbitration Association produced a video which refers prominently to its cooperative agreements with other arbitral institutions, and to the Federation itself. And, raising institutional cooperation to still another level, the American Arbitration Association, British Columbia International Commercial Arbitration Center, Mexico City National Chamber of Commerce, and Quebec National and International Commercial Arbitration Center have joined in establishing the Center for Arbitration and Mediation in the Americas (CAMCA), a new trilateral entity, operating under uniform rules, procedures and policies, to facilitate arbitration and mediation of private commercial disputes arising in the sphere of NAFTA.

1997 Conference

It has become customary for the Federation to conduct an international conference every two years dealing with current aspects of administered international commercial arbitration and private dispute settlement. Past conferences were hosted by member institutions in Cairo in 1991, Milan in 1993, and Hong Kong in 1995.

Based upon expressions of interest and offers received, the President proposed that the next conference be held under the auspices of the World Intellectual Property Organization in Geneva. WIPO has offered to host the conference at its headquarters facilities, and to handle the logistical arrangements, including publicity, simultaneous interpretation, and the publication and distribution of the proceedings in a conference book. Included would be two days' of hotel accommodations and living expenses for speakers. A registration fee of approximately SF400 is contemplated.

Following discussion of these particulars, and upon motion duly made, WIPO's offer was accepted and the date of the conference set for Friday, October 24, 1997. Members were encouraged to suggest topics which might be usefully included on the conference agenda.

Agenda Item No. 5: Financial Report

Mr. B.W. Vigrass, Secretary-Treasurer, presented a financial report. He made reference to a financial statement which had been tabled. He said it might appear a little unusual as it did not contain a record of expenditures. He said that the statement was in fact correct as no expenditure had been incurred since the formation of the Federation.

The cost of printing, mailing, facsimiles and publishing of the Newsletter had been absorbed by the President's office. The Secretary/Treasurer had also absorbed all his costs related to printing, postage, telephones, facsimiles, etc. This situation cannot continue indefinitely and in due course costs will have to be borne by the Federation. In the meantime the priority should be to build up financial resources for the future.

He said that the general fund now totaled U.S.\$23,065, an increase of U.S.\$7,446 since the last meeting. The Federation's income was derived from two main sources - from annual membership subscriptions and contributions in respect of conferences and meetings. Dues for 1996 had been received from 39 member organizations. Member organizations which had not yet paid would be followed-up and a decision would have to be made at some future date concerning action to be taken in respect of persistent non-payers.

In response to a question, the President confirmed that some members had not paid

the previous year's dues. He was of the opinion that at this stage in the development of the Federation, too much pressure should not be applied on struggling organizations for payment until it became clear that the member concerned was unreasonably withholding payment.

The Secretary/Treasurer promised to provide a full report on the state of payment of membership dues at the next General Assembly.

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

Agenda Item No. 6: Report of the Constitutional Committee

The President introduced this subject by noting that the Federation has no formal Constitution at the present time. It functions under a Statement of Aims which sets out its sphere of activity and provides for a Council, a President, a number of Vice Presidents and Councillors and a Secretary/Treasurer.

He said that at the General Assembly in Stockholm in 1991, the suggestion had been made for a study to begin to extend the governing document. This was accepted and work commenced, to be continued during the Assemblies in Cairo (1992), Vienna (1994) and Hong Kong (1995). A working group consisting of Mr. Vigrass (Chairman), Dr. M.I.M. Aboul-Enein, Dr. Eva Horvath and Mr. A. de Fina had been formed, and he invited Mr. Vigrass to give a progress report.

Mr. Vigrass reminded the meeting of the discussion document which had been submitted to the Hong Kong Assembly and that it had been agreed that wider consultation on some of the issues raised was desirable. He said that following this decision, copies of the discussion document had been sent to all members of the Federation in November 1995, with an invitation for comments on the issues raised and any other matter considered to be appropriate. He said that the response had been very encouraging and many very thoughtful suggestions and comments had been received. However, it was clear that there was little unanimity on many of the major issues. The overall result had been to widen the list of issues which would need greater study.

Powerful and compelling arguments had also been put forward against the preparation of a formal Constitution for the Federation at this time. These related to the diverse nature of the bodies in membership. It was felt that premature adoption into a formal Constitution of certain matters which might appear restrictive or controversial might alienate sections of the membership, which would be counter productive to the Federation's aims and objectives.

The working group had considered these factors and believed that a pragmatic approach was desirable. This was to continue under the existing Statement of Aims at this

time, incorporating new features from time to time when general agreement had been achieved. He said that if this approach was accepted, a start could be made on some of the issues which had been identified in the paper submitted to the meeting.

There then followed a general discussion on the proposition. Many members present expressed views and it became clear that there was no enthusiasm for the adoption of a formal Constitution at this stage. The suggestion that the governing document should be developed on a step-by-step basis was supported.

It was agreed that a document would be prepared setting out the present Statement of Aims. A copy to be attached to the Minutes of the Meeting. It is further agreed that the working group should continue with the task of monitoring the views of members on the major issues and making proposals for incorporation into the governing document when agreement had been achieved on any of them.

Agenda Item No. 7: Other Business

The President reported that the IFCAI was still without an official logo. In the interests of conveying a consistent, clear identity for the Federation, it would be desirable to develop one. He circulated a number of suggestions and invited members present to express views. The one chosen by the majority of those present, to be considered by the Council for adoption, is attached to these Minutes.

There being no other business, this portion of the meeting was closed at 4:15 p.m.

Agenda Item No. 8: Emergency Interim Relief Procedures

The President introduced Mr. Francis Gurry to lead the discussion of emergency interim relief procedures in international arbitration.

Mr. Gurry opened the discussion by describing the draft WIPO Emergency Relief Rules which are being proposed as an optional feature of WIPO arbitration. These would apply only when parties have specifically designated their application in the arbitration agreement. The standard recommended WIPO arbitration clause would be amended to contain additional words which, if not struck out by parties adopting the clause, would have the effect of incorporating the draft rules, in addition to the WIPO Arbitration Rules, in the arbitration agreement.

Two separate procedures for requesting emergency relief are provided for in the draft, one being inter-partes with requisite notice, the other ex-parte, where service of a request for relief on a party may risk irreparable damage to a party's rights. Because of the requirements

of the New York Convention that each party be given the opportunity to present its case, the rules use the term "order" for the decision of the Emergency Arbitrator in an ex-parte procedure, in contrast to the term "award" used in respect of the inter-partes procedure.

In the discussion that ensued a number of issues were explored, such as the current need for such a procedure, the complementary role of the courts with respect to interim measures, appropriate time limits, the constitution of a standby panel of arbitrators ready to serve on very short notice, and the enforceability under the New York Convention of interim emergency relief awards. While divergent views were expressed on some of the issues, it was recognized that there are situations in which such arbitral emergency relief would be desirable; also, that where a final interim award is considered to be an award at the place of arbitration, such award should be enforceable under the New York Convention.

The discussion of this subject concluded at 5:30 p.m.