

MINUTES OF THE 15TH IFCAI GENERAL ASSEMBLY

held at Le Palace Hotel, Gammarth, Tunis
on the occasion of the 10th Biennial IFCAI Conference

at 2.00pm, 27 May 2009

PRESENT: Ulf Franke (President) (Stockholm Chamber)
Ibrahim Ahmad (Arab Chamber of Conciliation and Arbitration, Egypt)
Nicki Alvey (CIArb)
Stefano Azzali (Milan Chamber of Arbitration)
Jae Moon Doh (KCAB)
Diana Droulers (Caracas Chamber of Commerce)
Abdelwahab El Behi (CCAT)
Nabil Elaraby (Cairo Centre)
Jason Fry (ICC)
Rainer Füg (ASA and Swiss Chambers' Arbitration)
Claudine Helou (Arab Association for International Arbitration
and the Euro-Arab Association for International Arbitration)
Joseph Huse (DIFC-LCIA Arbitration Centre)
Yeon Ho Kim (KCAB)
Kwang Soo Kim (KCAB)
Crenguta Leaua (Chamber of Commerce of Romania)
Habib Malouche (Mediterranean Arbitration Council, Tunisia)
Gustaf Möller (Central Chamber of Commerce of Finland)
William Slate (AAA)
Wang Wenyong (CIETAC and CMAC)
Erik Wilbers (WIPO)
Adrian Winstanley (LCIA)
Nassib Ziade (ICSID)

ALSO IN ATTENDANCE:

Ebrahim Al Mulla (Emirates International Law Center)
Ahmed Sheta (Qatar Center for Arbitration)

1. WELCOME

1.1 The President welcomed IFCAI members and expressed his gratitude to the Tunis Center of Conciliation and Arbitration (CCAT), and to Dr Abdelwahab El Behi (and his assistant, Donia Labidi), in particular, for their excellent organisation, which promised a most successful, and well attended, 10th IFCAI conference, to be held over the following day and a half.

2. DR MOHAMED ABOUL-ENEIN

2.1 The President said that the occasion was, however, inevitably affected by the untimely death of Mohamed Aboul-Enein, in Washington the previous November.

2.2 It was Dr Aboul-Enein who had first proposed that the conference be held in Tunis and who had drawn up the first draft programme.

2.3 Dr Aboul-Enein had, he said, done a great deal for the development of arbitration in the Arab world, and was the longest standing Officer of IFCAI.

2.4 Dr Elaraby said that Dr Aboul-Enein had, for 25 years, been committed to the Cairo Centre, and to the furtherance of justice through arbitration, and it was agreed by all that his death was a loss to the whole international arbitration community.

2.5 At the President's request, delegates rose to observe a moment's silence as a mark of respect to Dr Aboul-Enein.

Note Dr Habib Malouche later handed a personal note of remembrance to the President, with the request that it be circulated to members. Dr Malouche's note is attached to these Minutes.

3. **ADOPTION OF THE AGENDA**

3.1 The agenda for the General Assembly, which had been circulated earlier and was now tabled, was adopted by unanimous agreement.

4. **MINUTES OF THE 14TH GENERAL ASSEMBLY**

4.1 The Minutes of the 14th General Assembly, held in New Delhi on 21 October 2007, and circulated on 17 October 2008, were considered by those who attended the meeting to be an accurate record, and were approved by the Assembly and signed by the President.

5. **10TH BIENNIAL IFCAI CONFERENCE**

5.1 At the President's invitation, Dr El Behi reported that 22 speakers were confirmed for the conference, together with more than 300 participants from 24 different countries.

5.2 He said that it was an honour for CCAT, and for him personally, to have been invited to host the conference and that he very much hoped that it would live up to expectations; of which those at this meeting thought there would be no doubt.

5.3 The President repeated his thanks to Dr El Behi and his team, and added his thanks to Stefano Azzali, who had taken on the task of supporting Dr El Behi's organisation of the event.

6. **SECRETARY-TREASURER'S REPORT**

6.1 The President invited Adrian Winstanley to up-date the General Assembly on IFCAI's finances and membership.

6.2 Adrian reported that, as at the end of May 2009, the IFCAI account stood at approximately US\$108,000.

6.3 As at the date of this meeting, there were 37 fully-paid-up members of IFCAI, with another 18 whose subscriptions were outstanding for the current year only.

6.4 The following new members were included in the paid-up 37: the Arab Association for International Arbitration, Paris; the DIFC-LCIA Arbitration Centre, Dubai; the Euro-Arab Association for International Arbitration, Paris; the GCC Commercial Arbitration Centre, Bahrain; and the Sharm El Sheikh International Arbitration Centre, Egypt.

6.5 The subscriptions of the Kuala Lumpur Regional Centre and the Permanent Arbitration Court at the Croatian Chamber of Commerce were outstanding for 2008 and 2009 and these members would, therefore, be struck off, in accordance with the Constitution.

6.6 The following ten members had been struck off since the last General Assembly: the Arab Association for International Arbitration (subsequently re-applied and re-admitted, as advised earlier); the Beijing Conciliation Centre; CAMARB, Brazil; CAMM, Madagascar; DIAC, Dubai; the Arbitration Court of the Mongolian Chamber of

Commerce; the Madrid Court of Arbitration; the Malta Arbitration Centre; the Sri Lanka National Arbitration Centre; and the Tahkeem Centre for Settlement of commercial disputes.

6.7 Ahmed Sheta, of the Qatar Center for Arbitration, who had been invited to remain as an observer, said that the Qatar Center wished to apply for membership of IFCAI, and Adrian confirmed that he should address his application to the new Secretary Treasurer of IFCAI, whose appointment would be the subject of further discussion at this meeting.

Note *It was agreed at this point to reverse agenda items 7 and 8, so that the election of Council Officers would be dealt with before amendments to the IFCAI Constitution were considered.*

7. ELECTION OF COUNCIL OFFICERS

7.1 The President reported that a committee of the Council, comprising William Slate, Diana Droulers and Jason Fry, had been appointed to review the proposals made by members and to consider, themselves, other suitable candidates for appointment to the IFCAI Council.

7.2 He invited William to address the Assembly on the committee's work and on the conclusions that it, and subsequently the Council, had reached.

7.3 William thanked the President and confirmed that the committee had sought diligently to comply with its mandate and had considered all candidates proposed by IFCAI members, in response to the Secretary Treasurer's two emails inviting nominations, along with others whose names had arisen during the course of their six deliberations.

7.4 In total, 24 candidates had been considered, and whilst these included the members of the committee themselves, each had recused himself or herself of any part in the consideration of his or her candidacy.

7.5 Of the current members of the Council, the following were either not standing, or were not eligible, for re-election: the President, Gabrielle Kaufmann-Kohler and Lawrence Boo.

7.6 The committee had been guided by the requirement of the IFCAI Constitution that due regard be given to a balanced international representation, and the committee had also considered institutional experience and service to the IFCAI mission.

7.7 The committee had, therefore, proposed to the Council and its President that the following candidates be put to the General Assembly for election to the Council:

- 7.7.1 in place of the retiring President, Diana Droulers;
- 7.7.2 in place of Adrian Winstanley, as Secretary Treasurer, Stefano Azzali;
- 7.7.3 as Vice Presidents, Dr Nabil Elaraby (CRCICA), Jason Fry (ICC), Yu Jianlong (CIETAC), Alexander Komarov (ICAC, Russia), William Slate (AAA) and Adrian Winstanley (LCIA);
- 7.7.4 as Councillors, Abdelwahab El Behi (CCAT), Jens Bredow (DIS), Piotr Nowaczyk (Polish Chamber), Minn Naing Oo (SIAC), Yaneth Quiroz (CANACO) and Nassib Ziadé (ICSID).

7.8 These nominees, he noted, comprised two persons from Asia, two from North Africa (Arab States), two from Latin America, two from North America, five from Central and Southern Europe, and one from Northern Europe.

7.9 The President expressed his thanks to the committee for undertaking this difficult task, and formally recommended that the candidates proposed be elected to the Council by the General Assembly, in accordance with Article E.4 of the IFCAI Constitution.

7.10 These proposals were unanimously agreed by the Assembly, which duly APPOINTED the following Officers for an initial four-year term, effective at the conclusion of this General Assembly: Diana Droulers, as President; Stefano Azzali, as Secretary Treasurer; Nabil Elaraby, Jason Fry, Yu Jianlong, Alexander Komarov, William Slate and Adrian Winstanley, as Vice Presidents; and Abdelwahab El Behi, Jens Bredow, Piotr Nowaczyk, Minn Naing Oo, Yaneth Quiroz and Nassib Ziadé, as Councillors.

7.11 Adrian Winstanley stood to express his thanks to the President, on behalf of the IFCAI Council and the general membership, for 8 years of unstinting support, which were to come to an end today.

7.12 He presented the President with a handmade stationery box, with inscribed silver plaques, as a token of the appreciation of the IFCAI Council and members.

7.13 The Assembly was unanimous in confirming the sentiments expressed by Adrian and offered a round of applause for the retiring President, who responded that it had been a great pleasure, and a privilege, to serve.

7.14 Diana Droulers thanked the President and the Assembly for their confidence in appointing her to the Presidency and said that it would be a great challenge to follow so effective a predecessor.

Note *It was subsequently learnt that Piotr Nowaczyk was no longer an Officer of the Arbitration Court at the Polish Chamber, and that his appointment to the IFCAI Council could not, therefore, stand. The Council will confer and will bring its recommendations for a candidate to fill the vacant position, to the next General Assembly, mindful of the same criteria that have guided the selection committee.*

8. IFCAI CONSTITUTION

8.1 The President reminded the Assembly that certain amendments to the Constitution had been proposed by the Council, and that a marked-up draft had been circulated to all members, with a view to discussing and, if agreed, to confirming these amendments.

8.2 However, at the meeting that had preceded the General Assembly, it had been agreed by the Council that a more general review of the Constitution should be undertaken, for which purpose, a committee, initially comprising William Slate (chairing), Jason Fry and Adrian Winstanley had been constituted.

8.3 The President asked if Dr Elaraby, just appointed a VP of the Council, would join this committee, and Dr Elaraby confirmed that he would be pleased to do so.

8.4 In the circumstances, no decisions on the Constitution were to be taken at this time, and the matter would be put on the agenda of the next General Assembly.

9. IFCAI WEBSITE

9.1 Diana Droulers was invited by the President to demonstrate the nascent IFCAI website.

9.2 Diana showed the Assembly the proposed layout, home page, prompts and links for the website, and said that she was constrained from progressing the site much further for lack of input from member institutions.

9.3 Accordingly, she urged members present (and, through the Minutes, those not present) to provide her urgently with at least basic information about their institutions, such as contact coordinates, the identity of Officers, some short introductory text, links to their rules and so forth.

9.4 In response to a question from Erik Wilbers, Diana confirmed that IFCAI had secured a number of domain names, including ifcai.com, ifcai.org, and ifcai.net.

9.5 She confirmed also that the intention was that there should be public access to parts of the site and also password-protected access to other parts for members only.

9.6 After further discussion, the Assembly thanked Diana for persevering with the difficult task of setting up the website that members had long agreed would be an important asset in the future development of IFCAI.

10. **IFCAI ACTIVITIES**

16th General Assembly

10.1 The President reported the Council's decision that the 16th IFCAI General Assembly would be convened in Rio de Janeiro in May 2010, on the occasion of the ICCA conference in that city; exact date to be advised by the Secretary Treasurer nearer the time.

11th Biennial Conference

10.2 The President reminded the Assembly that recent IFCAI conferences had been held in Vienna (2003, in place of Bahrain); Washington (2005); and New Delhi (2007); with the current conference in Tunis in the days following this Assembly.

10.3 It was the recommendation of the Council, he said, that the 11th Biennial Conference, to be held in 2011, take place in Poland; a proposal supported unanimously by the Assembly.

Research projects

10.4 The President reminded the Assembly of the establishment, in October 2007, of a research committee, comprising Stefano Azzali (Chair), Lawrence Boo (subsequently replaced by William Slate), and Jens Bredow. (Item 7.10 of the Minutes of the 14th General Assembly refers.)

10.5 Following an exchange of emails among the members of this committee and the Council, and in-person discussions, the committee had decided to embark upon a survey on the enforcement of, and compliance with Awards, as many institutions lost touch with their Awards once the proceedings were at an end.

10.6 Jason Fry wished to stress that the study would not only look at the enforcement of Awards through the Courts, but also at voluntary compliance with Awards, and settlements following the issue of Awards; emphasising that there was a large gap in information about what happened to Awards between the date of their issue and their eventually reaching the Courts for some enforcement or appeal procedure.

10.7 It was believed by the committee that this research would be most useful, both to IFCAI members and to the wider arbitration community, and, after further discussion, it was agreed that this project should be initiated.

10.8 Stefano Azzali said that the project would rely to a considerable degree upon the assistance of all IFCAI members, and that the committee would revert in due course with a more detailed brief, as to the objectives and methodology.

11. CLOSE OF GENERAL ASSEMBLY

11.1 There being no further business for the General Assembly, the Assembly was declared closed at 3.25pm.

President

Date

INSTITUTIONAL SECTION

1. Following a short break, the institutional section meeting commenced, in accordance with the agenda that had been separately circulated.

Effects of the economic crisis on arbitration

2. All the representatives of administering institutions confirmed significant increases in case numbers since the economic crash the previous year.

3. It appeared that a significant proportion of this exceptional growth could be categorised as debt-collection arbitration, much of it arising from commodity disputes.

4. Another common theme was that, alongside the sharp increase in case numbers, there was a significant increase in early settlements.

5. It was reported that Dubai had, before the crash, been very much litigation-averse, but that since the crisis, a substantial amount of litigation and arbitration had been commenced in Dubai and, it seemed likely, in the Gulf as a whole.

6. All of the institutions experiencing a credit-crunch-driven surge were having some difficulty coping with the additional administrative burden, which meant either a greater imposition on existing staff, or recruiting additional staff who would probably be in excess of requirements as the surge diminished. Of paramount concern was maintaining administrative standards.

7. All were agreed, however, that the rate of increase was unsustainable and that normal business would resume in due course, as economies recovered and, in the usual counter-cyclical fashion, litigation and arbitration declined. Some institutions were, therefore, recruiting additional staff on short-term contracts.

8. It was generally agreed, therefore, that the bubble would burst; followed by a steady deceleration; a plateau and (as a result of fewer contracts being written during the crisis) even a decline from the level of cases that might have been expected with usual growth rates.

9. The timeframe for this adjustment was unknown, but most thought that it would begin within the next twelve months.

Areas of future growth

10. It was agreed that the present economic turmoil was likely to spawn longer-term growth in hedge fund and bank-to-bank disputes.

11. It also seemed likely, given the growing shift towards environmentally-friendly technologies, that new “green” industries might be a source of future work.

12. At the same time, many of those present were experiencing a growth in alternatives to arbitration; notably in mediation and in fast-track procedures.

13. There was also some shift towards “advisory” (non-binding) arbitration, though it seemed something of a misnomer to describe such processes as arbitration at all, given that they did not result in an enforceable award.

14. It was, however, generally agreed that the institutions should be as flexible as possible in the services and procedures that they offered, in order to keep up with the demands and expectations of the users of their services.

A common IFCAI voice

15. It was generally agreed that it was unlikely that there would be many issues on which the diverse and geographically-dispersed IFCAI members would have a common view. This had, indeed, been the conclusion when an earlier proposal that IFCAI might apply for observer status on the UNCITRAL working groups was not pursued.

16. It was, however, agreed that IFCAI members would benefit were they to share experiences from their respective jurisdictions.

17. Problems of jurisdiction arising in insolvency proceedings in Romania were raised by way of an example, and where the unresolved question was whether an arbitration clause survived the insolvency of one of the parties.

18. The current US situation, in which attempts were being made to introduce legislation, said by some to be aimed effectively at abolishing arbitration in consumer and employment disputes, was proposed as another illustration of the sort of issue on which shared experiences would be of use.

Use of technology

19. Online arbitration (and mediation) was gaining ground at a number of the institutions represented at the meeting, including the Milan Chamber, AAA and ICC.

20. This was agreed to be a development in which all member institutions should take an interest and in respect of which those institutions now operating on-line systems might share their experiences, as to the technology, the benefits and the pitfalls, with other member institutions; albeit properly protecting confidential details as regards their specific modus operandi and software.

Other items for discussion

Appeals tribunals

21. Mr Sheta had, during the General Assembly, suggested that IFCAI might wish to extend its research project to cover an investigation of the feasibility and desirability of establishing appeals tribunals to take the place of State Courts in all appeals against arbitral awards.

22. However, given Mr Sheta's status as an observer only, his earlier remarks were not included in the General Assembly Minutes, but it was agreed that the discussion might resume at this point.

23. Dr Elaraby thought it most unlikely, and this was agreed, that State Courts would ever cede ultimate jurisdiction to private tribunals in these matters, or that the majority of parties would wish to see the jurisdiction of the State Courts ousted in this way.

24. This was not to say, however, that some private appellate tier might not be workable in certain jurisdictions and certain circumstances, and it was agreed that this might be a suitable topic for a future IFCAI conference.

Institutions' and arbitrators' liability

25. Some of those present were aware of an increasing willingness on the part of parties to sue the arbitral institutions and the arbitrators appointed by them.

26. An institution might, for example, be sued on the grounds that it had appointed a bad arbitrator, resulting in a bad award and a wrongful substantial loss to the party against whom the award had been made.

27. There were also new cases in which individual arbitrators were being sued for the reimbursement of their fees by parties which had successfully appealed an award.

28. It was agreed that, if this were to develop into a trend, rather than to prove no more than an aberration, it was all the more important that good standards (and good insurance) should be maintained, to defend against charges of careless appointment of poor tribunals.

29. In the extreme, a continuing trend along this unwelcome path might result in difficulties in recruiting good staff to institutions and in appointing good arbitrators, if any of these were to consider themselves exposed to a high risk of personal liability arising from the proper conduct of their duties.

30. It was further agreed that, even if no uniform standard could be established for member institutions, IFCAI might, through a committee of representatives of the most established institutions, help new member institutions to bring their standards up to optimum levels.

Close of meeting

31. The meeting of the institutional section concluded at 5.00pm.