

## **MINUTES OF THE 16<sup>TH</sup> IFCAI GENERAL ASSEMBLY**

held at

ICC Brazil, Rio de Janeiro, Brazil

at 3.00 pm on Wednesday 26 May 2010

**PRESENT:** Diana Droulers (President) (Caracas Chamber of Commerce)  
Stefano Azzali (Milan Chamber of Arbitration)  
Werner Melis (VIAC)  
Nicki Alvey (CIArb)  
Adrian Winstanley (LCIA)  
Jalal El Ahdab (Euro-Arab Association for International Arbitration)  
Jens Bredow (DIS)  
Chiann Bao (Hong Kong International Arbitration Centre)  
Tatsuya Nakamura (Japan Commercial Arbitration Association)  
Jae Moon Doh (KCAB)  
Paul-Jean Le Cannu (Permanent Court of Arbitration)  
Piotr Nowaczyk (Polish Chamber)  
Ignacio De Castro (WIPO)  
Luis Martinez (AAA)  
Meg Kinnear (ICSID)

### **1. WELCOME AND INTRODUCTION**

1.1 The President welcomed IFCAI members and expressed her gratitude to the ICC Brazil and to Mrs Adriana Braghetta for their hospitality and the warm welcome reserved to IFCAI members.

### **2. ADOPTION OF THE AGENDA**

2.1 The President proposed the General Assembly to postpone to the next meeting the discussion on the amendments to the IFCAI Constitution (point 6 of the Agenda). Bill Slate (chairman of the Constitution Committee) had to return to the States to represent AAA in an unexpected official hearing before US Government officials. Without him, any decision on this matter would not be based on a full “picture” of the situation and on the work done so far by the Committee. The review of the Constitution is not an urgent matter and the comments drafted by some Council member deserve proper consideration.

The agenda, which had been circulated earlier, has been modified accordingly and adopted by unanimous agreement.

3. **ADOPTION OF THE MINUTES OF THE 15<sup>TH</sup> GENERAL ASSEMBLY, HELD IN TUNIS ON 27 MAY 2009**

3.1 The Minutes of the 15th General Assembly, held in Tunis on 27 May 2009, and circulated on 3 August 2009, were considered by those who attended the meeting to be an accurate record, and were approved by the Assembly and signed by the President.

4. **THE SECRETARY-TREASURER'S REPORT**

4.1 The President invited Stefano Azzali to up-date the General Assembly on IFCAI's finances and membership.

4.2 Stefano Azzali reported that, as at the end of May 2010, the IFCAI account stood at approximately US\$ 117.000.

4.3 As at the date of the meeting, there were 33 fully-paid-up members of IFCAI, with another 22 whose subscriptions were outstanding for the current year only (see the complete list attached); 1 member (Permanent Arbitration Court at the Croatian Chamber of Commerce) informed the Secretary Treasurer that its subscription fees for 2008, 2009 and 2010 have been approved and they will be paid shortly [*Note: such fees have been actually received on July 7, 2010*].

4.4 The subscription of the Kuala Lumpur Regional Centre was outstanding for 2008 and 2009 and this member would, therefore, be struck off, in accordance with the Constitution. The President will write a letter to the Kuala Lumpur Centre to better understand the reason of their decision to step out of the Federation.

4.5 The President will also solicit some Latin American centre (Bogotá, Santiago, Panama etc) to adhere in the future to the Federation.

4.6 According to the Secretary Treasurer report, the Arbitration Court at the Polish Chamber had been included in the list of members that did not pay the subscription fee for 2009. The Polish Chamber's representative (Piotr Nowaczyk) noted that such information was wrong and that the Chamber had regularly paid last year's fee. The Secretary Treasurer, taking good note of such information, informed the Assembly that, in the process of taking over his duty, the update of membership data had been inevitably gradual.

5. **APPOINTMENT OF ONE NEW IFCAI COUNCIL OFFICER**

5.1 The President reported that, after the election of the new Council Officers (Tunis, May 2009), the Federation had been informed that Piotr Nowaczyk was – at the time of the Tunis General Assembly – no longer the President of the Arbitration Court at the Polish Chamber. For this reason, his appointment to the IFCAI Council could not stand and a new Council Officer had to be elected by the General Assembly (according to the procedure stated in the Constitution).

5.2 Names of candidates – to be proposed by the Council to the General Assembly – had been collected by the President (further to the Secretary Treasurer's communication to all Federation members, dated April 9, 2010) and discussed during the Council meeting.

5.3 The President informed that the only name collected from IFCAI members of possible candidates, was the name of Annette Magnusson, Secretary General of the Arbitration Institute of the Stockholm Chamber of Commerce. The name of Annette Magnusson does meet the requirement of IFCAI Constitution, that aims to guarantee a balanced international representation within the Council, an institutional experience and service to the IFCAI mission.

5.4 Therefore, the name of Annette Magnusson had been proposed by the Council to the General Assembly for election.

5.5 Piotr Nowaczyk noted that Sweden cannot be considered “Central Europe” and her appointment does not answer the need of the Federation to guarantee a representative of such geographical area.

5.6 The President and the Secretary Treasurer clarified that there is no obligation, for the Assembly, to appoint a “Central European” Officer. According to the Federation’s Constitution, no Council seat can be “reserved” to specific members or nations.

5.7 Adrian Winstanley added that no other name of candidates had been proposed to the President within the time limit communicated to all members.

5.8 This proposal had been unanimously agreed by the Assembly, which duly appointed Annette Magnusson as Officer for the four-year term commenced in May 2009.

## 6. IFCAI ACTIVITIES

### ***Time and place for 2011 11th Biennial Conference and 17th General Assembly***

6.1 The President reminded that, as agreed in Washington and Tunis, the next Biennial Conference will be held in Berlin, Germany, in May 2011.

6.2 As for the date of the conference, the Council decided to hold the Opening Ceremony on Monday evening, May 16, 2011; the Conference on Tuesday, May 17 (all day) and on Wednesday May 18 (half day, until noon), 2011.

6.3 Such dates will give the opportunity, for those interested, to attend ICCA Anniversary celebration, to be held in Geneva, Switzerland, on Friday, May 20, 2011.

6.4 Jens Bredow, representing DIS (as hosting institution) proposed, as topic of the conference, “*Costs in arbitration*”. The proposal has been supported unanimously by the IFCAI Council.

6.5 Adrian Winstanley proposed to consider, for the 12<sup>th</sup> Biennial Conference, a location in Latin America, like for example Bogotá.

6.6 The Council decided to call for the 17<sup>th</sup> General Assembly in Berlin, Germany, on Monday, May 16, 2011, approximately from 4.30 pm to 6.30 pm (just before the Opening Ceremony of the 11<sup>th</sup> Biennial IFCAI Conference).

**Please save the above mentioned dates**

### **Research projects**

6.7 At the President's invitation, the Secretary Treasurer – as coordinator of the Research Committee – updated the meeting on the research activity.

6.8 In Tunis and Washington, the Council decided to focus the research activity on awards and their compliance worldwide. The idea has been to conduct not an academic research but a “user survey” to see what happens to the award *after* it has been issued. The study should 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. The survey should fill the gap of information about what happened to awards between the date of their issue and their eventually reaching the Courts for some enforcement or appeal procedure. This research would be most useful, both to IFCAI members and to the wider arbitration community.

6.9 Firstly, as decided in Washington, the Secretary Treasurer has contacted Uncitral (Mr. Sorieul) collecting information on their similar projects. Mr. Sorieul informed Stefano Azzali that the survey carried out jointly by Uncitral and IBA was related to the legislative implementation by States of the New York Convention. It dealt with the legislative framework put in place by States, and did not include reference to parties' practices. The guide that the Commission has decided to develop based on that survey is meant to assist Governments and the judiciary in the interpretation and application of the Convention. For this reason, the projects of Uncitral and IFCAI seem to be complementary and Uncitral expressed its interest to cooperate with the Federation and to share the information so far collected during the implementation of its survey.

6.10 Secondly, the Research Committee has drafted a very first version of the template to use in order to collect information. The template must be “basic”, simple and easy to be completed. Further to Council members comments, a second draft of the template has been drafted (and circulated among IFCAI member institutions attending the General Assembly) for comments and proposals.

6.11 The discussion focused on the final goal of the survey (Meg Kinnear), on whether the template should be sent to the counsel of the winning party only (for Jens Bredow and Ignacio de Castro, probably yes), on the criteria to identify the “winning party” (for Adrian Winstanley, the party more interested to “use” the award; for Jalal El Ahdab, the party that had the majority of claims recognized). The issue of the real reliability of the survey has been also raised by Meg Kinnear.

6.12 As for the collection of data, the template shall be forwarded by each IFCAI member institution to the counsels of every party (claimant and defendant) involved in an arbitration proceedings administered by such institution and terminated with an award. The selection of the “winning party” may be difficult, in some cases impossible, and time consuming for the arbitral institution requested to collect information. The template itself shall make reference to the case number and the parties' names. The information submitted, on the same proceedings, by both parties (that may turn to be the winner and the loser) shall coincide; if one party only replies, information on that specific case shall be those ones.

6.13 The Secretary Treasurer shall also draft a standard message to be used by IFCAI member institutions when requesting the information to the parties of their proceedings. Such message shall be attached to the template.

6.14 The templates filled by the parties and collected by each IFCAI member shall be forwarded to the Secretary Treasurer. For this reason, the project would rely to a considerable degree upon the assistance of all IFCAI members.

6.15 The information so collected shall be organized, ordered and processed by a law school student to be selected for an internship (6 months + 6 months commitment). The student, hosted by the Milan Chamber of Arbitration, shall use the Chamber's facilities and shall regularly refer to the Research Committee. The Council has asked the Secretary Treasurer to proceed with the selection of such individual.

**More detailed information about the survey (and the documents to be used) shall follow.**

#### ***IFCAI website***

6.16 The President informed the Assembly about the development of our website ([www.institutionalarbitration.org](http://www.institutionalarbitration.org)). So far, the website of the Federation does not contain many information about member institutions. She explained that she was constrained from progressing the site much further for lack of input from members. Accordingly, she urged members present (and, through the Minutes, those not present) to provide her with:

- each member institution's logo
- a list of forthcoming events organized by each member institution
- basic information about each member institution (such as contact coordinates, identity of Officers, some short introductory text, links to their rules etc). In order to guarantee uniformity in the presentation of such information, a template shall be shortly forwarded to all members.

Any comments by members about possible improvement of the website (to be addressed to the President) will be welcomed.

#### ***Uncitral activity***

6.17 The Secretary Treasurer informed the Assembly that, further to a request, Uncitral Secretariat communicated that IFCAI complies with the criteria for obtaining observer status and will be invited to join W.G. II (Arbitration and Conciliation).

The Assembly expressed its appreciation for the recognition by Uncitral and for the high visibility that, such participation, shall guarantee.

IFCAI will be represented – at their own expenses - by Council members. Council members agreed to ask the President and Annette Magnusson to guarantee IFCAI participation to the next Uncitral working sessions.

Unless previously instructed by the Council, Federation representatives shall follow the working sessions without expressing any official "IFCAI position".

## **7. CLOSE OF GENERAL ASSEMBLY**

7.1 There being no further business for the General Assembly, the Assembly was declared closed at 16.45 pm.

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President

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Date