

MINUTES OF THE IFCAI COUNCIL

held in Caracas, Venezuela

13 March 2013, 2.30pm

PRESENT

Diana Droulers (President) (Caracas Chamber of Commerce – Venezuela)
Stefano Azzali (Secretary-Treasurer) (Milan Chamber of Arbitration – Italy)
Adrian Winstanley (LCIA – England)
William K Slate II (AAA – USA)
Mohamed Abdel Raouf (CRCICA – Egypt)
Jens Bredow (DIS – Germany)

1. PRESIDENT'S WELCOME

The President thanks all those present for attending.

2. APOLOGIES FOR ABSENCE

Minn Naing Oo, Yaneth Quiroz, Yu Jianlong, Abdelwahab El Behi and Annette Magnusson communicated their impossibility to attend this meeting.

3. ADOPTION OF THE AGENDA

The Agenda for the Council, which had been circulated earlier and is now tabled, is adopted by unanimous agreement.

4. MINUTES OF THE PREVIOUS MEETING

The Minutes of the Council meeting held in Singapore on 10 June 2012 and circulated on 1st February 2013, are approved by the Council and signed by the President.

5. FINANCES AND MEMBERSHIP

At the President's invitation, the Secretary Treasurer updates the Council on IFCAI's finances and membership.

5.1 The Secretary Treasurer reports that, as at 1st March 2013, IFCAI's bank account stood at US\$ 75,084.

5.2 As at the date of the present meeting, there are 58 fully paid-up members.

5.3 According to the Constitution, the Arab Chamber of Conciliation and Arbitration (Egypt) has been struck off for non-payment of 2011 and 2012 subscriptions.

5.4 The application for membership received from the Bahrain Chamber for Dispute Resolution (BCDR-AAA) is in course of execution.

5.5 The President underlines how the amount of the annual subscription fee has been fixed around 10 years ago and never raised. An increase now is necessary, mostly because it is strongly encouraged a growth of the Federation activity. The reasons why members institutions do subscribe to the Federation is because of the advantages that IFCAI activity may lead to institutional arbitration and, indirectly, to their services.

The mission of the Federation is to promote the use of commercial and investment arbitration, as well as to establish and maintain cooperation among its members. In order to reach such goals, IFCAI needs to move forward its activity organizing events, launching surveys, etc. Therefore, the Federation needs to rely on a stronger economic base and, consequently, needs to ask for its members' support.

Doubling the annual fee may sound inappropriate but, being the fee still very low (and ideally affordable by almost all IFCAI members), the Council unanimously decides to raise such subscription to 400 US\$ starting from the 2013 annual fee.

5.6 For the same reasons, and for necessity to start new projects (such as drafting a list of useful service providers for internal use) and to conclude pending projects (such as the IFCAI website), the Council, further to the decision taken in Singapore on 11 June 2013, agrees to devote on a yearly basis a sum of money to cover the costs (or part of the costs) of the secretarial activity related to the office of the Secretary Treasurer.

The Council believes that a job description has to be drafted (in bullet points) in order to clarify which secretarial activities should be covered by such individual.

The secretarial assistance should be associated to the Secretary Treasurer's office. Starting from 2013, the sum granted to the Secretary's office will be of 12.000 US\$ (a sum that can be adjusted, increased or decreased, depending on the activity performed by such office).

6. PROPOSALS BY THE NOMINATING COMMITTEE FOR THE AMENDMENT OF THE CONSTITUTION

6.1 The President thanks the Nominating Committee for the excellent job done and asks its Chair, Adrian Winstanley, to report about the outcome of its activity.

6.2 Adrian Winstanley submits to the Council the final report of the Nominating Committee (attached to this minutes).

6.3 The Nominating Committee takes this opportunity to stress the importance to modify the Constitution as far as the following matters are concerned:

6.3.1 *Terms of office issue*

The Committee considers the provision of Article 2(b) of IFCAI Constitution, that Officers of the Council may be elected "*to the same office*" for a total of 8 years (which has the potential to entrench in office the same individual for a total of 32 years - 8 in each of the separate Offices -), to run counter to the renewal and regeneration of IFCAI.

Mindful of the desirability of the election of Presidents with significant prior IFCAI experience and of the need for continuity, the Committee proposes an amendment to Article 2(b) to the following effect:

"All Officers of the Council shall be elected for a 4-year term and shall be eligible for election for one further 4-year term only, whether to the same office or to some other office, with the sole exception of promotion to the Presidency, where an Officer who has already served either 4 or 8 years may be elected to the Presidency to serve for a maximum of two further 4-year terms."

6.3.2 **Reserved seats issue**

The Committee has discussed the sensitive issue of whether the pattern of appointments to the Council amounts to a *de facto* policy of reserving seats within the Council to the officers of a selected number of members institutions.

Whilst the Council strenuously refuses the introduction of such a policy, it maintains that it is the individual, and not his/her institution, that influences election to the Council, and that there is no doubt that the senior officers of the most recognised arbitral institutions are likely to have the experience and influence that makes them a valuable asset to IFCAI Council. Furthermore, although Councillors must be members institutions officers, they are elected as individual. For this reason, if a Councillor resigns from his/her institutional position, his/her seat within the Council shall be declared vacated.

In conclusion, the Committee believes that no seat should be reserved to major institutions: therefore, no change of the Constitution is needed to rule the "seat issue".

6.3.3 **Change of institution issue**

The Committee proposes to clarify that no one who is vacating an IFCAI office on his/her retirement from the institution by which he/she is engaged may nominate his/her successor at the institution for appointment to the Council. This does not preclude other Officers of the Council making such a nomination.

Nevertheless, there is no reason to leave the Council if there is continuity: a Councillor who is changing his/her engagement from one institution to another one (no matter whether he/she does not move the very next day), can remain within the IFCAI Council since he/she has been appointed as individual.

6.4 In order to take advantage of the work done by the Nominating Committee, the Council expresses its intention to create an *ad hoc* Committee for the revision of the Constitution, composed by Adrian Winstanley, Bill Slate and Jens Bredow and hopefully by other Council members willing to collaborate.

7. **APPOINTMENT OF NEW IFCAI COUNCIL OFFICERS**

7.1 The Nominating Committee, having due regard to a balanced international representation and recommending that individuals appointed for the first time to the Council serve first as Councillor and that none of the existing Officers still within their first term of office be appointed to any other office, expresses its proposal as follows:

- 7.1.1 that **Mohamed Abdel Raouf** (CRCICA, Egypt – Egyptian),
Annette Magnusson (SCC, Sweden – Swedish),
Meg Kinnear (ICSID, USA – Canadian)
remain as Vice Presidents;
- 7.1.2 that **Andrea Carlevaris** (ICC, Paris – Italian),
Doug Jones (ACICA, Australia – Australian)
remain as Councillors, all being eligible for reappointment to the same office or to another on the expiry of their first terms;
- 7.1.3 that, having each been in their current office for one 4-year term (though in IFCAI office for 8 years in total)
Diana Droulers (Caracas Chamber, Venezuela – Venezuelan)
Stefano Azzali (Milan Chamber of Arbitration, Italy – Italian)
be appointed for a further, and final, 4-year term as President and Secretary Treasurer, respectively;
- 7.1.4 that the following nominees be appointed as Councillors
Chiann Bao (HKIAC, Hong Kong – Chinese)
India Johnson (AAA/ICDR, USA – American)
Alexey Kostin (Int.Commercial Arbitration Court, Russia - Russian)
Nassib Ziadé (DIAC, United Arab Emirates – Lebanese/Chilean)

President: Diana C. Droulers - Secretary-Treasurer: Stefano Azzali

Vice Presidents: Mohamed Abdel Raouf; Yu Jianlong; Meg Kinnear; Annette Magnusson, William K Slate II; Adrian Winstanley
Councillors: Jens Bredow; Andrea Carlevaris; Abdelwahab El Behi; Doug Jones; Minn Naing Oo; Yaneth Quiroz

7.2 The Nominating Committee communicates that the Council members not confirmed have not been included in the list mainly because of their impossibility to participate more actively in the Federation activity (being their merits and high qualifications undisputed).

7.3 The Council, expressing its appreciation and thanks for the tremendous work done, unanimously supports the conclusion of the Nominating Committee that will constitute the proposal to be submitted – according to the Constitution – to the General Assembly. It also wishes to thank the members stepping down for their support in IFCAI activity.

8. IFCAI 12th BIENNIAL CONFERENCE

8.1 The President is sorry to inform the Council that the next day's Biennial Conference will be affected by national mourning and to the recent declaration of next Friday as non-workable day. For these reasons, the one and a half day will be squeezed in one day only.

8.2 The President reports that the number of participants is good (around 100 people), most of them coming from Venezuela with around 30 foreigners.

8.3 The Council expresses its appreciation for the work done and wishes to thank Diana Droulers and her staff for the organization of the event.

9. IFCAI INSTITUTIONAL ARBITRAL AWARDS USER SURVEY

According to the outcome of the survey so far reached, the President stresses the importance to “freeze” the presentation of IFCAI survey. Further consideration should be needed.

10. IFCAI WEBSITE

The President urges the necessity to include new information, hopefully thanks to the secretarial assistance of the Secretary Treasurer's office.

11. IFCAI MEMBERS' PROPOSALS

11.1 The Council discusses in depth the proposal presented by Mr. Tang (CIETAC) to appoint Mr. Ulf Franke as Honorary President of the Federation (attached to this minutes as part of it) and decides that it cannot be accepted missing any honorary position in IFCAI Constitution. The general topic may be discussed within the *ad hoc* Committee to be appointed for the revision of the Constitution.

11.1.1 As an alternative to the inclusion of an honorary position, IFCAI may constitute a Special Award Program to salute and reward/recognize individuals (for example, the young generation) that have contributed to the development of institutional arbitration.

11.2 An initiative – supported by all Council – to be organized is a meeting devoted to Latin American arbitral institutions only (as potential new IFCAI members) which might be held in Miami on the occasion of the 2014 ICCA meeting. Further information shall follow.

11.3 Bill Slate offers his contribution – thanks to his experience at the ICDR in similar activity – to any future activity involving the collection of data.

11.4 As for the proposals for future activities received by members, the Council defers the discussion to the General Assembly to be held immediately after the present Council meeting.

12. DATE AND PLACE OF NEXT MEETINGS

12.1 The next meeting of the Council will take place in Paris on Thursday afternoon, December 5, 2013, on the occasion of the following day's 30th Joint Colloquium of AAA/ICC/ICSID. As usual, the Secretary Treasurer will ask hospitality to the hosting institution (ICC). Further details shall follow in due course.

12.2 The next General Assembly will take place in Miami on the occasion of the 2014 ICCA Congress (6-9 April 2014). Further details shall follow in due course.

13. CLOSE OF THE MEETING

There being no further business, the meeting is declared closed at 4.30pm.

President

Date