



Minutes of the Paris Board-Council Meeting CB#58
Monday 17th, Tuesday 18th, November, 2014
9.00 am -2.00 pm – Including lunches
Club FNTP premises

List of Participants

| CICA Board Members | Federation | Position | |
|------------------------|---------------------------------|--|-----------|
| Daniel Tardy | FIEC | CICA Past President and Treasurer | 1 |
| Martin Carriquiry | FIIC | CICA Senior Vice-President | 1 |
| Manuel R. Vallarino Q. | FIIC | CICA President | 1 |
| Emre Aykar | FIEC | CICA Senior Vice-President | 1 |
| Other Participants | Federation | Position | |
| Yang Fei | CHINCA | Silver Friend of CICA | 1 |
| Zhang Xiang | CHINCA | Director – Silver Friend of CICA | 1 |
| Jose Carlos martins | FIIC | CBIC President | 1 |
| Ulrich Paetzold | FIEC | FIEC DG | 1 |
| Frank Kehlenbach | EIC | EIC Director | 1 |
| Denise Soares Putzke | FIIC | CBIC Advisor | 1 |
| Michel Démarre | FNTP/SEFI/EIC | FNTP Delegate General – Gold Friend of CICA / EIC Past President | 1 |
| Yoshihiro. Yamaguchi | OCAJI | Blue Friend of CICA | 1 |
| Secretariat | Organization | Position | |
| Roger Fiszelson | CICA | CICA DG | 1 |
| Fanny Dastugue | CICA | CICA Assistant to DG | 1 |
| Absent , Excused | Organization | Position | |
| Thomas Rogge | FIEC | CICA Past President | |
| Bruno Dupety | SEFI | SEFI President – Gold Friend of CICA | |
| Fernando Lago | FIIC | CICA President PPP Working Group | |
| Barry Brown | CCA | CICA Past President – Silver Friend of CICA | |
| S. Bora | SUMMA | Blue Friend of CICA | |
| Kazuyuki Yahara | OCAJI | Blue Friend of CICA | |
| H. Buyukbas | Turkish Contractors Association | Gold Friend of CICA | |
| Cigdem. Cinar | Turkish Contractors Association | Gold Friend of CICA | |
| Burak Talu | DOGUS | Blue Friend of CICA | |
| Philippe. Bard | DEMATHIEU & BARD | Blue Friend of CICA | |
| Philippe Matière | MATIERE S.A. | Blue Friend of CICA | |
| A. Serebrennikov | INTERTEST SA | Blue Friend of CICA | |
| Jerzy Kaliski | KRAKBAU S.A. | Blue Friend of CICA | |
| Total : | | | 14 |

President MR. VALLARINO made a welcome announcement. He expressed the hope for CICA to continue and to be reinforced. He expects to see everyone again at next CICA Board-Council Meeting and possibly more participants.

1/10

1. Approval of the Minutes of the Board-Council Meeting of Ankara of May 13th, 2014

The minutes of the Board-Council Meeting of Ankara of May 13th, 2014 are approved.

2. Statutory Matters

2.1. Finance and Budget 2014: Financial Report by Treasurer, D. TARDY

D. TARDY presented the accounts.

Thanks to new contributions and to exceptional incomes from FNTF, CICA managed to stabilize its cash and to avoid the next President of CICA to fill a bankruptcy file. CICA has enough money for a year.

We shall reach equilibrium and have an expense for 1.5 management members for CICA.

To be sure to reach equilibrium in CICA accounts we need Friends of CICA. Friends of CICA are not budgeted.

E. AYKAR asked Y. YAMAGUCHI for OCAJI to become a golden member of CICA. He asks the same to CHINCA adding that the silver membership is already a good step.

How CHINCA and OCAJI could participate is a key issue. Ms Zhang Xiang noticed that beyond the type of membership, the real point for CHINCA is to determine how they could participate to CICA.

The budget was approved.

2.2. Renewal of the Presidency

E. AYKAR was elected as the new President of CICA under the flag of FIEC. M. AYKAR agreed and thanked the members and friends of CICA. He will take over from MR. VALLARINO on the 1st of January of 2015. MR. VALLARINO and M. CARRIQUIRY suggested it is better for the new presidency to start at the beginning of a new year to have clear situation and accounts.

E. AYKAR suggested the election of one more Board member. M. CARRIQUIRY approved the suggestion and confirmed FIEC should appoint another Vice-President. E. AYKAR agreed.

U. PAETZOLD said we need to check the CICA status. The Board decided FIEC should elect a new Vice-President at his meeting on the 2nd of December.

3. Events since last Ankara Board-Council Meeting (May 13th, 2014)

3.1. FIDIC-MDBs conference

The FIDIC MDBs conference documentation was given to the participants. R. FISZELSON requested the participants to pay a particular attention to the EIC and SEFI presentations.

- The first point discussed was the **revision of the FIDIC White Book**.

D. TARDY stressed the fact the revision of the FIDIC White Book is an interesting opportunity to collaborate with FIDIC. M. CARRIQUIRY said it is a good thing but it is made by FIDIC and put too much the things on their side. Some articles are hard.

D. TARDY answered this is why FIDIC ask for our comments.

R. FISZELSON insisted on the need to comment the fight against corruption issue.

F. KEHLENBACH affirmed the wish of the EIC to be included in the reflection for the revision of the FIDIC White Book. He also expressed the EIC concerns. The EIC are rather critical and want to be involved if CICA has a Working Group created on this matter. The consultants seem only to be responsible for Due Care and Diligence. It is not much. The contractors have a “fit for purpose” responsibility. The consultants should have a higher liability. The question of the confidentiality clause was also raised.

D. TARDY stressed that it is the first time FIDIC listens to us on this matter.

E. AYKAR said CICA needs to express its comments and send the document back to FIDIC. Based on his experience, MR. VALLARINO explained sometimes it can take 16 drafts to finally come to an agreement. (Cf. Common position on the fight against corruption)

M. CARRIQUIRY started a discussion to understand who the client is and who the consultant is.

F. KEHLENBACH said the liability should not be on the same engineering firm and wonders what is the validity of a document which does not make a distinction between public and private clients.

M. CARRIQUIRY said there should be a special document.

R. FISZELSON said we need to see in case of global contracts.

MR. VALLARINO explained CICA work is to rewrite the draft to adapt to the Contractors/ Engineering firms.

U. PAETZOLD wondered if maybe we need a Grey Book.

E. AYKAR said if a consultant verifies a design for a contractor there is also a consultant role.

F. KEHLENBACH and M. DÉMARRE underlined it is a tradition for the EIC to have a dialogue with FIDIC.

CHINCA expressed its wish to participate in the works for the revision of the FIDIC White Book.

Y. YAMAGUCHI said that the clauses protect the consultant too much.

Everyone agreed.

MR. VALLARINO insisted we need to have a joint statement to express CICA position to FIDIC. In this regard, we need to receive the comments from OCAJI and CHINCA.

Y. YAMAGUCHI added that the lack of ability of the consultant is the main cause of troubles and so they should share the responsibility.

M. DÉMARRE said it is not only a problem of ability of the consultant but also of insurance. The consultants are reluctant to responsibility beyond Reasonable skills and Diligence. He referred to a report from the Court of Auditors. DG Development. The consultants should have more responsibility but beyond this remains the issue of their final capacity and possibility to get insurance. M. DÉMARRE is not really optimistic.

F. KEHLENBACH said it is a kind of hiding behind “we cannot insure”. This is a British argument. Common Law countries should be distinguished from Civil Law countries.

U. PAETZOLD said that for English lawyers, the “fit for purpose” notion applies.

E. AYKAR added that in Africa, the contracts are not usually based on English Law and different laws are valid. F. KEHLENBACH concluded there is a lot of work to be done.

R. FISZELSON asked if it could be useful to contact representatives of the private insurance market to discuss with them.

M. DÉMARRE suggested to have a look at FNTF and Syntec works.

- The second point discussed was the **Disputes Resolution**

R. FISZELSON introduced this point by asking what early prevention could be done in what concerned disputes resolution. How can we ally with engineering companies to solve and even prevent disputes?

F. KEHLENBACH commented the client always deletes its clause and that the notices of dissatisfaction are not enforceable.

In the UK it works well. 90% of the disputes are solved by adjudication.

It is important to see what is the value in practice.

R. FISZELSON emphasized on the cost and lengths of the disputes resolution. The companies are usually opposed to have two levels of jurisdiction, except in the case of a Dispute Adjudication Board (DAB) where the decision is accepted as enforceable.

M. DÉMARRE said it is useful as long as it is set up from the beginning of the contract and that the DAB is not only useful in the UK. It can be a good solution elsewhere too. However the cost of DAB when it is used during the whole life of the contracts can be a barrier.

The Disputes Resolution Board Foundation is located in Seattle. R. FISZELSON will ask them for some more information.

3.2. International Chamber of Commerce

ICC increased its participation in B20 and G20.

It is important for CICA to work closely with ICC.

What role could former CICA President Dr BELHASA play?

M. DÉMARRE pointed out that Turkey will organize the next G20 meeting and it is a good opportunity for CICA to express its positions. It is of great importance to work on the update of the UN Millennium Development Goals. In the last ones, infrastructure was not mentioned at all.

R. FISZELSON added CICA needs to pay attention to Human Rights that will be included in the Business Rights. It is a very important topic and one needs to be careful not to endorse principles that cannot be respected. The two main topics are Social Corporate Responsibility and Human Rights that are a quite new trend.

U. PAETZOLD added that the focus is now also on the labor conditions and the textile sector is an example and probably it will extend to every sector with a subcontracting chain.

3.3. UNCITRAL

The revision of the UNCITRAL PPP Model Law was rejected in the agenda of the official works of the Commission.

Push from the US and Canada.

It was rejected to be in the agenda of the Commission in 2014 but it will be evoked again in 2015. The preparation of the works with UNCITRAL is needed. CICA – SEFI have a great influence.

The UNCITRAL Secretariat is located in Vienna. Caroline NICHOLAS is the point of contact.

Another conference call is planned in December or January.

3.4. World Bank

A hard work is done by the EIC and CICA. U. KRENZ is working very hard on this.

F. KEHLENBACH would like CICA to check the exact deadline to submit the comments to the Bank.

E. AYKAR underlined U. KRENZ is very pessimistic on this issue and asked if there is any light for a change in this matter?

F. KEHLENBACH raised the problem of the Government Procurement Agreement and of the necessity to use ICB after a threshold.

R. FISZELSON said it is voluntary unclear for the World Bank to have free hands.

The Procurement Policy Reform approach of the African Development Bank is very interesting since it is different.

CICA need to meet the Executive Directors of the World Bank to make them know the CICA position. It is one of the most important goals of the meeting with the World Bank in Washington.

F. KEHLENBACH insisted we need to hurry since the window to lobby closes.

R. FISZELSON invited the participants to discuss this with B. BECQ during the Round Table.

F. KEHLENBACH suggested a CICA mission in Washington in February.

M. CARRIQUIRY asked CICA to provide the useful documents in due course since FIIC met with the World Bank and didn't have in their possession the World Bank Powerpoint document that should have been given by CICA for FIIC to review it.

MR. VALLARINO made the point the World Bank do not allow more than one participant.

M. CARRIQUIRY suggested to have a World Bank Expert inside CICA.

CICA and FIIC should organize a Skype conference call for the Frankfurt meeting of the 12th of December.

3.5. African Development Bank (AfDB)

It is important to know what other development banks do to reform their procurement.

R. FISZELSON asked for someone from FIIC to join the meeting taking place in Abidjan.

3.6. CIAN (Conseil des Investisseurs Français en Afrique)

There are several institutes in Africa (at least 15 centers to certify).

These Human Resources excellence centers would help to understand the companies HR needs in Africa.

E. AYKAR described the idea as a "wise step".

R. FISZELSON insisted on the need to introduce capacity building for workers in the contract and to escape from the charity approach. M. CARRIQUIRY agreed it is a good idea to include this contribution for society in the big contracts.

3.7. ISMED – OECD

The ISMED-OECD roadmap was adopted.

4 Task Forces work on recommendations and technical specifications.

The four themes are the following:

- Guarantees and bond refinancing, led by Caisse des Dépôts et Consignations and Multilateral Investment Guarantee Agency (MIGA, World Bank)
- International Arbitration, led by UNCITRAL
- Islamic finance, led by Paris Dauphine University
- Public-Private Partnerships, led by CICA and IFEJI (French and international lawyers association).

The recommendations and technical specifications will be presented during the ISMED – OECD conference held in Paris on December, 4th, 2014.
The views of CICA are important in this matter.

4. CICA strategy

4.1 UNECE

A letter of comfort was obtained and shows the full support of the French Government to the creation of a Center of Excellence in France under the auspices of UNECE. This process is only part of the project of creating regional hubs on PPPs to improve the legal, institutional framework and best practices for the security of investments. The aim is to attract long term investments (insurance, private equity, private pension funds etc.) finance for infrastructure.

E. AYKAR asked how many centers already exist. He was answered a few other centers already exist such as:

- one in Philippines on Health
- one in India on Roads
- one in Azerbaijan on Information and Communication Technologies (ICT).

R. FISZELSON evoked the conclusions of a study of the IMF. The conclusions made by the IMF are exactly the same as the center of excellence recommendations.

A cooperation with the public institutions is needed. There is a certain need for infrastructure for development. Given the existing constraints on the public budgets, we need to attract private Investors and Lenders.

In the Memorandum of Understanding it will be determined how to develop the regional hubs.

J.C. MARTINS gave the example of Brazil where the budget for PPPs is of USD 200 billion for the next four years. This money will be only for logistics: airports, highways, railways (10 000 km), ports.

R. FISZELSON asked who could be the CBIC counterpart for the UNECE meeting in Geneva.

M. CARRIQUIRY noticed that the governments take too much time to study PPP projects even if now governments have no money so they have to accept to deal with the private sector.

R. FISZELSON referred to the IMF study and pointed out that when infrastructure is really needed, it is budgetary neutral and even in some case positive. This point is well established by the IMF and Development Banks.

M. CARRIQUIRY explained that in Latin America the price of commodities began to stagnate or even to decline. This is changing the Government's way of thinking and the development of infrastructure projects is considered to maintain the competitiveness of a country.

4.2. R. FISZELSON suggested creating a CICA Working Group on Infrastructure Long Term Financing.

The creation of the Working Group on Infrastructure Long Term Financing is accepted by the Board-Council.

J.C. MARTINS proposed next CICA Board meeting will take place in Brazil with a specific day on PPPS. D. TARDY and R. FISZELSON agreed. The dates for the meeting in Brazil would be on the 27th and 28th of April 2015.

U. PAETZOLD made the remark an intragroup of Parliamentarians has been created on Long Term Investment at the initiative of French, Italian and German banks representatives. It shows it is also a European Union topic and that the point of view of the private sector is taken into account.

4.3. Revision of FIDIC White Book.

It was discussed with item 3.1.

5. Follow-up on CICA Working Groups

5.1. UNECE Centre of Excellence “PPP best practices on zero tolerance to corruption in procurement”

The point was discussed with item 4.1.

5.2. Well Prepared Projects (WPP)

M. DÉMARRE made a presentation on the Well-Prepared Projects.

There are high expectations on WPP especially in the context of the B20 – G20. Nevertheless it became a kind of schizophrenic context with huge campaigns launched against PPPs.

MR. VALLARINO said we should have worked with FIDIC since there are the ones to prepare the projects. So he raises the question of with whom CICA can best work with on this issue.

M. DÉMARRE asked for some help from the CICA Members and Friends to come up with something in this regard by collecting some documents to develop an outline to submit to PIARC (and FIDIC to a lesser extent) to have the Working Group set up.

There is a need for an intergovernmental conference being held, on the road projects for instance. There are numerous procedures and every step of the project should be described in various documents. M. DÉMARRE would like to collect these documents that are very precise and thus very useful.

E. AYKAR said it should not only focus on roads. M. DÉMARRE absolutely agreed roads are just an example.

R. FISZELSON added that a WPP is a key factor to lower the risks and increase the investments.

M. CARRIQUIRY added that it is very important for the World Bank since a not well-prepared project make the corruption process easier.

M. DÉMARRE concluded this topic saying that given the lack of public financing a lot of countries now focus on maintenance more than on new projects. The working group now focuses on putting money in the maintenance which is the primary concern for the road authority. The shift in focus is an additional point.

5.3. WB Procurement Policy Reform: report and CICA/EIC position on the last development of the reform

IT was discussed with item 3.4.

5.4. Other topics

5.4.1. *Abnormally Low Tender (ALT)*

F. KEHLENBACH made a presentation.

He referred to the workshop held in London.

UNCITRAL, WTO, GPA, EU procurement directives all mention the ALT.

4 options are foreseen:

Option 1/2: Maintain the Existing Procedures and Practices (with Minor Modification)

Option 3: Permit Rejections of ALTs based on "arithmetic deviation" approach

Option 4: Permit Rejection of ALTs after a clarification process.

The fourth option is the one of the EU.

R. FISZELSON said there is one more option which consists of asking the lower bidder to provide guarantees against the negative outcomes of an ALT.

F. KEHLENBACH raised the attention on the request from EBRD to have a common feedback from CICA, EIC and FIDIC. EBRD want a common position.

U. PAETZOLD said it should be dealt with an early stage. There is a need for documentation during the preparatory phase to ease the process. The EU Court forbids excluding a bidder/ an offer only on the basis of a mathematical calculation.

MR. VALLARINO said in Latin America the minimum bid bond is of 10% of the contract and the performance bond goes up to 15 or even 20% when it is normally of 10%. There was a discussion on this issue and on the difficulties it represents for the smaller companies.

5.4.2. *Infrastructure Trust Fund (ITF) 2.0 DG DEVCO*

F. KEHLENBACH made a presentation.

The EU has stressed the importance to develop new ways of engaging with the private sector with a view to catalyse public-private partnerships and private investment. The EU's goal is to leverage additional funds from private sector resources.

M. CARRIQUY asked if this is really of interest to CICA.

R. FISZELSON answered it is a way to better use the funds available in order to finance a bigger project.

M. DÉMARRE noted that it is relevant to CICA as far as Official Development Aid (ODA) is concerned and OECD countries have a percentage of GDP that should be used on ODA (0.7%). There are connected issues to ITF 2.0 that are not specifically European issues.

ODA criteria might evolve to add new indicators taking into account the guarantees and investments in projects even if the former criteria will not be abandoned.

R. FISZELSON added EU funds could be part of a co-financed project.

F. KEHLENBACH said also the EU aid is untied so it concerns everyone.

6. **CICA Papers and Positions**

6.1. ISMED-OECD: "Fostering Infrastructure Investment in the MENA region" CICA proposition.

It was discussed with item 3.7.

7. "Friends of CICA", Members and Observers (For discussion)

A conference with AFCA should be organized (Egypt, Libya etc.).
E. AYKAR mentioned he has some contacts in Morocco.

There was a discussion regarding the Asian Development Bank.

R. FISZELSON asked how CICA could reinforce strongly its communication.
The website should be improved.
There must be a better external visibility (through events, press...)

E. AYKAR said we need the presence of the Asia Pacific federation.

D. TARDY said in time of crisis the international expenses suffer. Small contractors are not interested. Medium sized contractors not that much. Only the big companies are interested.
CICA will probably develop more through Friends of CICA.
The USA crisis resulted to the American federation to leave CICA. However the Canadian stayed.

CICA would like to get the Arabian Contractors back.

MR. VALLARINO said the Saudi should be interested but they did not come back.

Africa would be two federations: South and North. R. FISZELSON said the meeting in Cairo might be a good step to restore the relation.

Y. Yamaguchi said OCAJI is comfortable with the "Friend" status. He pointed out that we have a fact for IFAWPCA to have left CICA and advised it could be interesting for CICA to approach other member countries who could be interested in CICA individually. Z. Xiang confirmed it would be a sound idea to have South Korea within CICA.

Z. XIANG confirmed it would be a sound idea to have South Korea within CICA. She said this CICA Board-Council Meeting was useful for CHINCA to understand the daily works done by CICA. She added they wish to contribute to those daily works. Several CHINCA committees could be interested to review the documents provided by CICA for comments.

8. Next Meetings

8.1. ISMED-OECD conference: Paris December 4th, 2014

8.2. 1st trimester 2015: World Bank biennale meeting in Washington:

- WB Procurement reform Update,
- WB new organization,
- Meetings with: i) World Bank Institute (WBI) and Public Private Infrastructure Advisory Fund (PPIAF): new trend on WB PPP Policy, ii) Multilateral Investment Guarantee Agency (MIGA), iii) International Finance Corporation (IFC).

8.3. 1st trimester 2015: Meeting with African Development Bank-AfDB on its Procurement reform


8.4 CICA Board-Council Meeting in Brasilia, hosted by CBIC, April 27th, 2015

8.4. 2nd trimester 2015: CHINCA 6th International Infrastructure Investment and Construction Forum (III&CF)-Macao, 4th and 5th of June, 2015


8.5. Members observations and proposals

9. Any Other Business


E. AYKAR asked how to celebrate the 40th anniversary of CICA, founded in 1974.



D. TARDY



H. CARAN-QUIRY



EMRE AYKAR