



The Dispute Resolution Board Foundation

Fostering common-sense dispute resolution worldwide



DRBF 9TH Annual International Conference

Operating DBs in Civil Law Countries

*Maximizing Benefits and Minimizing Costs: Effective DBs in
Developing Countries*

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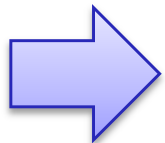
FRILET

DB situation in developing countries

So far DBs have not been much used in developing countries.

This is changing and the FIDIC MDB is playing an important role in this regard.

Due to the number of projects in distress and to the growing number of projects benefiting from international financing in the Infrastructure and PPP sector DBs have the potential to play a useful role.



However the costs of the DBs are often criticized and the benefits of the DBs are not well understood

Developing countries expectations in relation to ADR and Dispute Boards

The situation seems somewhat different between the common law and the civil law world

- **For domestic markets** the dominant view seems to be that existing dispute resolution systems are not fully satisfactory in the common law world but more or less satisfactory in the civil law world
- **For international contracts** the situation is more even



More ADR techniques are welcome especially when employers and contractors are from different legal and industry culture

When ADR is welcome, what is the place of Dispute Boards?

I will limit myself to my understanding of the expectations from the developing civil law world

- 1) Public employers are part of a strong bureaucratic system. This system produces experienced construction specialists and various usages
- 2) Public employers have difficulty to be judged by « private parties ».
- 3) When dispute arises if local procedures and networking is not sufficient they prefer court decisions (or if no other option arbitration)

➡ **As a result the DAB concept is alien to them and is not a realistic option**

➡ **The same is not true for DRB subject to serious qualifications**

What could be the acceptable DRB route for developing countries of civil law tradition?

Third party mediation is not unknown and the following elements should be taken into account :

1) Seniority and wisdom (ancienneté et sagesse):

The board members should be familiar with essential cultural factors :

- how to present,
- what to say,
- how to speak,
- how to organize, etc.

What could be the acceptable DRB route for developing country of civil law tradition? (Ctd)

2) Consensual environnement:

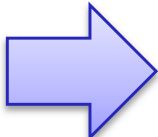
- Preference for a facilitating body or review panel exchanging in confidence (example structured partnering model sometimes used in international contract s)
- Possibility to speak individually and in confidence with board members
- Adverse to arbitration type procedures (structured exchange of documentations, evidence rule, adversarial legal approach, etc.)
- Not interested by too rigid rules of impartiality, independence or contradictory procedures

What could be the acceptable DRB route for developing country of civil law tradition? (Ctd)

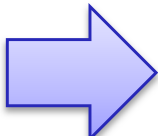
3 Adaptation to local practices

- Limiting costs (particularly travel expenses of the board members)
- Proceedings taking into account the legal traditions, examples:
 - Court appointed expert ;;status;de facto leadership
 - Conciliation committee :
 - Choice and appointment of members :
 - “rapporteur” appointment

The future of DRB in developing countries

 The growing number of complex projects of international nature in developing countries and the number of « cross cultural projects » will certainly facilitate the development of DRBs

However the underlying economic and cultural conditions will have to be taken into account

 DRBs should have the best chances to develop if several conditions are cumulatively met

Conclusion

DRB should have the best chance to become popular if:

- 1) Their cost are far lower than arbitration
- 2) They are closer to a dispute avoidance board than to a dispute adjudication board
- 3) The board members are well respected in the local culture and natural leaders for both parties
- 4) The proceedings are very simple and as far away as possible from court of arbitration proceedings
- 5) Contradictory rules are not imposed
- 6) Facilitation and partnering are up front and decision without consensus of the parties is the very last resort

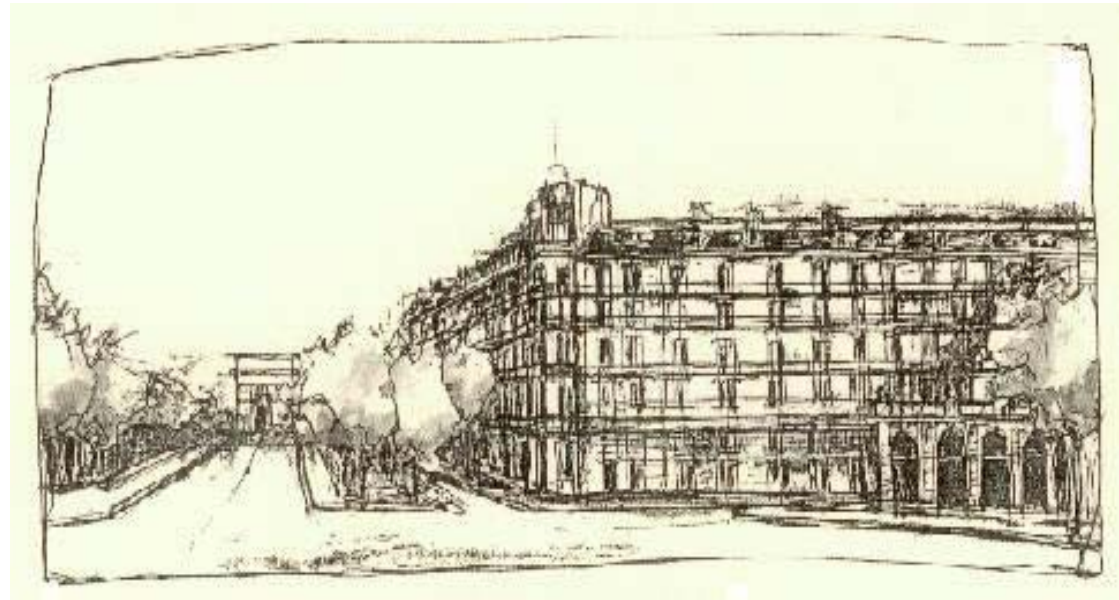


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***THANK
YOU***



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