

DRBF Forum

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LL.M., Ph.D., MBA

Paradoxes of Construction Dispute Resolution in Central and Eastern Europe

Introduction

Dispute Boards are not widely used in Central and Eastern Europe (CEE). Many legal professionals, including judges, accept that alternative dispute resolution (ADR) is a preferred model for dealing with construction disputes, however many owners and employers continue to use litigation as the dispute resolution mechanism in their contracts. This article explores where Dispute Boards are being used, and the challenges to widespread adoption within the CEE.

Background

Many countries in Central and Eastern Europe went through significant changes after 1990. Democracy brought changes in economic systems and with these came new laws. These changes created a lot of opportunities and threats that had not been encountered before. After 1990, the construction market increased both within building construction and civil engineering. Market share, turnover and profit of construction companies had been steadily increasing without major disruption. Then the economic recession came including reduced public

spending on infrastructure projects and new competitors. This caused upheavals in the CEE construction markets.

In an economic recession, construction industries face rapid change in the external environment. The attitude must be changed respectively because of budget restrictions. Further, new and very competitive global markets are being established.

It is quite common that large, public construction projects are not properly prepared by the employer in CEE, for example errors in design, lacking geotechnical surveys, etc. One of the main reasons is that the employer is pushed by the lenders or sponsors to meet unrealistic deadlines. Furthermore, in public procurement projects, the governing laws may affect the variation and claim procedures and cause many difficulties to the participants of construction projects. Whether a contractor is able to claim in compliance with the contract may become a question of survival for them. Recent experience from CEE countries shows that local construction

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President's Page



Graham Easton
President
DRBF Executive
Board of Directors

Members, Supporters and Friends of the DRBF,

This will be my last opportunity to speak to you as President of the Executive Board of Directors. It has been a busy and exciting year for the DRBF, as I am sure my fellow Directors will agree. Our membership numbers have grown and we are continuing to expand our activities world-wide. In line with this growth, we are also seeing the increasing adoption of Dispute Board concepts and processes in many countries.

During my 12 months as President, I have travelled extensively, attended many DRBF meetings and spoken with members throughout the world. The major conferences organised by the DRBF in Miami, Johannesburg, Singapore and Lima have been particular highlights for me. I am always encouraged at such meetings by the almost universal recognition of the benefits which Dispute Boards can bring to the management of major projects, irrespective of the cultural and legal diversity of the country in which the projects are located. I have also been impressed by the enthusiasm of many local "champions" of the DB process, all of whom willingly volunteer their time and energy to assist the DRBF in our outreach efforts.

Your Board of Directors has been focused during the year on strengthening the financial and administrative management of the DRBF, following the retirement of our long-serving Administrative Manager, Steve Fox. Ann McGough has now completed her first, hectic year as General Manager. Ann has been a tower of strength and we do not know what we would do without her. Tom Peterson has settled in as our Executive Treasurer / Secretary and has upgraded our financial control and budgeting procedures. Significantly, Tom has devolved the responsibility for allocating financial priorities and decision-making to each of the Regional Boards, where it logically belongs (see page 11 for more details). Lori Krutzsch has now stepped up to the role of Administrative Manager and is doing a great job. I would like to express my special thanks to Tom, Ann and Lori for their continuing contributions.

This year we have continued the work started by my predecessor, Roger Brown, in the development of clear policies and guidelines for the DRBF's operations and outreach around the world. With the expansion of the DRBF's activities, this was a necessary step to avoid the inefficient use of our limited resources. Roger is to be congratulated now that his 'policy' project has come to fruition. A landmark for me in this regard was the development of a comprehensive policy for the appointment and guidance of our DRBF Representatives. These representatives are a vital part of our organisation as they constitute the front line and first point of contact for the delivery of DRBF's services in each country / region.

Of course, much remains to be done. There is a pressing need to strengthen the DRBF's communication with members and the professional community generally. In the coming year, a top priority will be to expand and upgrade the DRBF website. On a personal note, a major project to which I plan to devote much of my own time is the publication of an updated and expanded DRBF Practices & Procedures Manual. There are also many other important initiatives under way by each of the Regions, too numerous to mention here. I encourage all to do what you can to participate in the DRBF's activities and outreach programs.

Finally, I would like to thank you for your generous contributions and support during 2014. I convey my best wishes and encouragement to the incoming President, Paul Taggart, and to the President-Elect, Doug Holen. I assure you they are both dedicated to providing sound leadership for DRBF, in the provision of services to our members and the promotion of Dispute Board concepts and processes worldwide.

A handwritten signature in black ink that reads "Graham Easton".

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Executive Board of Directors Meeting Schedule

October 25
(in Toronto)
November 17
December 15

Meeting notes
from the
Executive Board
meetings are
available to all
members.

The Board of
Directors for
each region
meet on a
regular basis.

Questions or
ideas for the
Boards should be
submitted to the
Board President
directly or to
Ann McGough at
amcgough@drb.
org..

A Conversation with... Harold V. McKittrick P.E.



Harold V. (Hal) McKittrick
Past President,
DRBF Executive
Board of Directors

Recipient of
the Al Mathews
Award for
Dispute Board
Excellence
(2008)

My experience with the Dispute Resolution Board Foundation really started when I responded affirmatively to the DRBF's membership drive in early 1997. My consulting practice at that time consisted of a significant amount of construction claims analysis, preparation, presentation and negotiation. In the course of that work, I had testified as an expert in various adjudicating forums as well as being deposed for trial. The litigation process was time consuming and very expensive, as it is today; and the concept of a Dispute Board settling issues on the job and avoiding court or arbitration was very appealing to me. I had in fact been selected for several Boards prior to this, and was looking for an opportunity to hear of other people's experiences and discuss their approaches to different problems. I attended the 2nd DRBF Annual Meeting & Conference in Chicago in 1998 and found many old friends and made some new ones, and I have been active in the DRBF from that point forward.

Q How and when did you first hear about Dispute Boards?

A In the mid-nineties many U.S. agencies were putting DBs in place, and did not have a roster of neutrals from which to draw. The Washington Metropolitan Area Transit Authority (WMATA) Mid-city Route advertised for members of such a roster, to which I responded. I was put on WMATA's roster and appointed to the Dispute Board for Columbia Heights Station in May 1995. I was not unknown in WMATA, having managed work for a contractor and the claims negotiations for several others since 1976 for that system.

Q What is the most difficult situation you have ever had to deal with on a DB?

A I am a firm believer that a split recommendation by a DB renders the recommendation almost useless. If three impartial experts cannot agree on the merits of an issue,

why should the non-prevailing party? On two Boards on which I served, I was able to find common ground for the Board to make a unanimous recommendation when it seemed that the recommendation report would contain a minority opinion.

Q What is the most satisfying DB you have served on and why?

A The most satisfying Board on which I served was as Chair of the James J. Audubon Bridge crossing of the Mississippi River. It was a very challenging project technically and contractually. The Board heard seven issues and issued recommendations accepted by the parties. More importantly, the Board was instrumental in the parties avoiding a job wrap-up claim at the end of the project. This was the subject of a paper I presented to the DRBF International Conference in Sydney, Australia in May 2011.

Q Should the DRBF recommend (maximum and minimum) age limits for DB members?

A The DRBF should not recommend age limits for DB members. One of the great things about the construction industry is that we have a reservoir of knowledge and experience we can continuously draw on. We should not create artificial barriers for DB members of any age.

Q How many DBs can a member properly serve on at any one time?

A This is a very good question; and my answer would be different for U.S. Boards and international Boards where the members travel to remote project sites for a week or more at a time. It also depends on a person's tolerance for travel and being away from home for long stretches at a time. I can only speak for myself and my participation on U.S. DBs. I find five to six full-time Boards spread across the U.S. quite manageable, but



other colleagues of mine easily do double that amount.

Q What is your greatest regret with respect to the DBs on which you have served?

A The most frustrating aspect of serving on DBs is to serve on one where upper management has bought into the process but does not convey that down to the managers in the field. A substantial continuing educational process is required, and it does not always take. In such cases upper management is rarely or never present at DB business meetings, and the project-level operatives are not fully engaged.

The other regret I have is when some Boards were not instituted at the very start of the work. This is less common now, but I can think of several projects where bad things happened that would not have were a DB in place. One of the biggest contributions a Board makes is to encourage dialog between the parties. My colleagues and I can point to many projects where there would be little communication and collaboration but for the Dispute Board.

Q If you could change one aspect of the procedures under which DBs usually operate, what would it be?

A Many times Boards are constituted with at least one or more persons who have never served on a Board and do not really know how Boards operate and what Boards are about. I strongly recommend that our model specification contain language that prospective Board members must have attended the DRBF's Administration & Practice training session, and this language be disseminated to Board users.

Q What advice would you give to younger members keen to obtain their first DB appointment?

A When you speak of younger members of DBs, it is a comparative term. Most DB members are those who have retired from public agencies, engineering firms or contractors. Others are attorneys recommended to the DB user with no conflict of interest. Most appointments are given to those people who are known by the nominators personally, professionally or recommended by others.

My advice to the younger members with Dispute Board aspirations is to become known. I know of no better way to do this than becoming active in the DRBF by attending the conferences internationally, nationally and regionally. At these conferences, they should make contact with representatives of agencies that use a lot of DRBs, such as WS-DOT, CALTRANS, FDOT, ODOT, NYC MTA, etc. I also recommend volunteering for committee work, helping with regional conferences and making yourself known throughout the DRBF.

Q How do you keep fit and healthy and what is your preferred relaxation away from DBs?

A I try to walk as often as possible; and I play golf when the weather allows. I also read a bit, mostly fiction but some historical, particularly WW2 and the American Civil War. Also, as a native Bostonian, I avidly follow all the Boston major pro sports teams.

Q Outside your own country, where would you most like to live and why?

A Probably Australia. The country has a pioneer spirit and has many similarities to the USA. Also, it would not be hard to adapt to a country with a common language and some similar traditions.

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The Forum welcomes articles on all aspects of Dispute Resolution Boards, and members are encouraged to submit articles or topics to the DRBF, attn: Editor.

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Dispute Resolution
Board Foundation



Jim Phillips Ph.D.
Chair
DRBF Ethics
Committee

Ethics in Today's World of DRBs:

Board Member Asks DRB Chair to “Level the Playing Field” and Assist the Contractor’s Attorney in Making the Contractor’s Presentation

This column in the *Forum* is being published right before the DRBF’s Annual Meeting and Conference which is being held this year in Toronto, Canada. Each year the conference schedule includes a presentation on ethics in Dispute Board practice. This year I will not be able to attend due to scheduling conflicts, and Allen Thompson has graciously volunteered to chair the Ethics panel. I am confident we will have a lively discussion as always. Please plan to attend this year’s Annual Meeting & Conference and see old friends and make a few new ones.

The question posed at the end of the last column was how should the DRB Chair respond to the request from a Board member to assist the contractor’s attorney in making his client’s presentation due to the fact that English is the attorney’s second language and every one at the hearing is having extreme difficulty following his/her presentation. The Board member making the suggestion to the Chair has become extremely frustrated and believes that the hearing has become chaotic and a huge distraction.

On its face, it appears that this is a complex problem. The purpose of a DRB hearing is to allow the parties to present their case and arguments to the Board in order for the Board to understand the issues surrounding the disputes, review the back-up documentation, ask probative questions, and provide a recommendation to the parties on their opinion as to how the disputes might be resolved. However, in order for the parties to re-

spond to each other’s presentations and arguments, and in order for the Board to render a recommendation, all participants must be able to understand the presentations being made.

I understand that this issue has come up several times and with several different outcomes, and I think it is important to discuss the ethical considerations of reaching a resolution. A cardinal rule of DRB communications is clarity. Clarity of communication in the contract documents, clarity between the parties in the ongoing exchange of communications and documents during the construction process, and clarity of communications between the parties and the DRB.

This question puts a completely different spin on the dictate of Canon 1 of the Code of Ethics, that Board members should at all times be impartial and avoid the appearance of a conflict in interest. Would the Board be impartial if it decided to assist the contractor’s attorney make his/her presentation? Probably not. The owner would object because its attorney is not similarly being assisted, which is a valid complaint and observation. The DRB should in no way appear to or in fact, show partiality to either of the parties.

This brings me to a discussion of another Canon of Ethics, Canon 2. Canon 2 provides that the conduct of Board members should be above reproach and that even an appearance of a conflict of interest should be avoided. Usually we think of conflicts of interest as financial inter-



ests or personal stakes that would have an impact on a DRB member’s neutrality. Does “assisting” the contractor’s attorney making her presentation show an improper financial interest? Probably not, but it can and will be viewed as bias and because the owner’s attorney would more than likely object.

Canon 3 of the Canons of Ethics provides that the DRB should impartially consider all disputes brought before it. Any effort by the Board to assist either party will be viewed as being partial to the party receiving the assistance. Accordingly, based on the DRBF Canons of Ethics, it is clear the Chair should not respond to the Board member’s request affirmatively.

Are there are other responses the Board might initiate rather than allow the hearing to do possible major damage to the parties’ working relationships, not to mention undermine the hearing process? One idea would be to ask the contractor to consider having another representative make the presentation in order to ensure clarity of communication. This might not be well received in view of the fact that the contractor may have incurred substantial legal fees. However, the contractor is probably painfully aware of the effect his/her attorney is having on the merits of her case and may very well welcome this suggestion.

If anyone has other thoughts and suggestions, please call or write to me. This

raises the purpose for this column and the Foundation’s commitment to providing a forum for discussions about ethical issues that we all come into contact with from time to time. I would encourage any reader who is faced with an ethical challenge to take advantage of the opportunity of contacting experienced colleagues or to write in or call me with a question. The Foundation has established a protocol whereby we can confidentially discuss an ethical dilemma that is posed and provide a consensus-based answer to those in this business who might need some advice. The DRBF’s commitment to providing an opportunity for discussion of ethical challenges is a large component of the organization’s mission to ensure that the DRB process continues to be respected in the industry.

ETHICS: FOR NEXT TIME

My next column will give a summary and review of the discussion we have at the Ethics Panel at the Annual Meeting and Conference both for those members who could not attend and for those that wish to have some closure on that discussion.

Ethics Commentary or Question?
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Jim Phillips, Chair, DRBF Ethics Committee
P: +1-804-289-8192 E: jphillip@richmond.edu

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practitioners have not been prepared for the current environment which includes tough international competition and new global rules (such as FIDIC forms of contract).

In many countries, formal contractual procedures are not used. A ‘peaceful and financially buoyant situation’ on some markets has created complacency and caused formal procedures to be ignored in some cases. Parties are always able to find agreements because of sufficient budget contingencies. An economic recession is a cause of stress. Budget contingencies are not sufficient and the authorities are required to strictly follow public procurement law. This pushes the contractors to adhere to contracts in the same strict way as with claim management procedures.

FIDIC standard forms were introduced to the CEE region in late 1990s, given the massive amount of international and European financing of construction projects. A lack of fair and adequate local sample forms also played a role in their rapid introduction to the CEE. However, employers in CEE region tend to modify the standardized FIDIC risk allocation to the disadvantage of contractors. Such modification of standard risk allocation usually causes the types of problems described in the “Check List for One Sided Contracts” created by Japan International Cooperation Agency (JICA). Two of the main symptoms of such one-sided contracts mentioned in this document were largely encountered in the CEE, i.e.:

- undermining the relationship of mutual trust and respect between the parties;
- frequent disputes between the employer and the contractor.

Such an environment has logically led to many construction disputes. It is interesting to see what kind of different consequences related to dispute resolution mechanisms were encountered in particular CEE countries, specifically in Poland, the Czech Republic, Slovakia and Hungary.

Poland - Litigation

Polish SIDiR (Consulting Engineers and Experts Association) established a sound basis for efficient use of Dispute Adjudication Boards (DABs). There is a list of adjudicators, numerous training opportunities and extensive support of adjudication. Nevertheless, arbitration clauses and DABs have been progressively removed from most roads contracts through a modification to FIDIC forms in Poland. 1999 FIDIC forms Sub-Clauses 20.2–20.8 are often replaced with only one sentence: ‘All disputes will be settled by the common court of the Employer’s jurisdiction.’ Public employers have been instructed to do so by the General Attorney of the Treasury – the body which represents government departments in the courts. As a result, all disputes resulting from large road and motorway projects are dealt with by the District Court in Warsaw because it is the only court with the jurisdiction to do so. Court proceedings are lengthy and tend to distance themselves from facilitating current realization of the contract. A first instance decision can be appealed a further two times up the court hierarchy in Poland. This means that litigation usually comes to an end after the project is completed and contractual responsibilities discharged. Therefore, court proceedings do not really influence the actual realization of the project.

Recently in Poland there has not been a single motorway, highway or bypass construction project that has not experienced claims being notified during the execution of related works. These claims turn into litigation in the majority of cases. Current trends reveal that in 2010 the Polish courts handled 10 construction cases, in 2011 around 40 and in 2012 almost 100 (US\$ billions in total value).

The number, extent and complexity of matters being filed in connection with construction of roads are so huge that litigation often spreads over several months and the expect-



ed time for resolution can be given in years (and this is only in the first instance). Moreover, it cannot be foreseen when the relevant litigation will be definitely concluded once all avenues of appeal are exhausted. This brings further uncertainty because of the lack of settled precedents.

The uncertainty of the decisions of the Polish courts (typical for all CEE countries) can be demonstrated by the outcomes concerning conditions precedent for claiming. One opinion is that the Polish Civil Code at Article 118 determines the limitation period for construction claims to be three years from the event or circumstance, and the freedom of contracts cannot take priority over this statutory rule because of Article 119 of the Polish Civil Code that reads that 'limitation periods cannot be shortened or extended by legal action'. Time limits for claims under the Clause 20.1 can be seen as shortening the limitation period. This opinion was confirmed in the judgment of the District Court in Warsaw on 13 July 2011 (file: XXV C-701/10) and also on 11 June 2012 (file: XXV C-567/11), including the confirmation by the Court of Appeals on 20 March 2013 (file No. VI ACa-1315/12), which ruled that the respective part of the Clause 20.1 is invalid under Polish law. The argument is that there is no reason to assume that the scope of freedom of contract goes so far as to allow for free creation of contractual deadlines causing the extinction of claims related to property, in particular, where such claims are subject to statutory regulation on limitation. On the other hand, there are several awards of the same court stating the opposite. For example in judgments on 6 June 2012 (file: XXV C-1215/10), on 7 March 2012 (file: XXV C-249/11) and on 30 April 2013 (file: XXV C-355/10). In the last case it was argued that: "In accordance with the general principle of freedom of contract stated in the art. 353 [1] of the Civil Code it is possible to contractually agree a period of time after which the creditor's claim expires." This is not contrary to Article 119 of the Civil Code. The effects and functions of

time bars and periods of limitation are different. Until some Supreme Court precedent is in place, the uncertainty created by such contradictory awards will remain.

The Czech Republic – Arbitration and Litigation

In the Czech Republic, the situation is similar but not as aggressive as in Poland. The construction market is not as large as the Polish and the environment was historically prone to agreements and compromises. The development of managerial and legal aspects of large infrastructure projects was heavily influenced by the period of a centrally planned economy. The situation changed in recent years however. With political changes, development of the society and recession, the construction industry (mainly in public projects) became nervous and several disputes connected to quality, price and prolongation of projects were started both in arbitration and mainly in litigation. The same as in Poland, Dispute Boards are not used because the FIDIC dispute resolution system is removed via particular conditions. With no special construction arbitration and litigation in the Czech Republic, the disputes showed the lack of an efficient dispute resolution mechanism and sad consequences for all participants of construction projects (and smiles on faces of attorneys).

No special construction courts exist in the Czech Republic and a lack of expertise causes disputes to last for years and to be conducted in a manner contrary to common sense and best practice. On the other hand in neighboring Germany, culturally, geographically and historically the closest country to the Czech Republic, special construction courts exist with settled case law. West Germany avoided the degradation of law and state courts under communist rule. This may be the reason why the evolution of the former East Germany was quicker and this region avoided some problems encountered in other CEE countries.

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Mechanical Contractors
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Slovakia - Contractual Adjudication

One country in the past (Czechoslovakia), it now has two different approaches encountered in the practice of dispute resolution. On one hand, there is literally no use of Dispute Boards in the Czech Republic. On the other hand, there is a functional system of FIDIC DABs working in some Slovak public procurement construction projects, including a prestigious national list of adjudicators established by Slovak Association of Consulting Engineers. The construction industry in Slovakia appreciates the use of DABs and it seems that DABs helped to overcome some difficult situations that burdened local construction projects without the necessity to waste human and financial resources in arbitration or litigation. Also in Slovakia as in the majority of CEE countries, the public employers are prone to modify the balanced risk allocation in FIDIC forms shifting uncontrollable and unforeseeable risks to contractors causing negative consequences in realization.

Hungary - Statutory Adjudication

In Hungary, a specific statutory adjudication was established. Legislation enacted into force on 1 July 2013 (Act XXXIV of 2013 on the Expert Body for Performance Certification, hereinafter: the ‘Act’) set up the Expert Body for Performance Certification (EBPC) and regulated its function and powers. The reason for enacting new legislation and establishing this body was in reaction to legal disputes having increased greatly in connection with the performance of construction contracts in recent years. Disputes were mainly between the employer and contractor and, to a lesser extent, between the contractor and their sub-contractors. Generally, these legal disputes took years to decide before a binding judgment was eventually handed down by the courts.

The scope of the legislation covers all construction projects in Hungary. The Act states that contractual clauses that exclude or restrict the powers or procedures of the EBPC or which attach any negative, legal conse-

quence to initiating EBPC procedures are null and void. Therefore, if the construction project is implemented in the territory of Hungary, we are faced with a mandatory provision of Hungarian law that cannot be bypassed even if choosing the law of another country. However, the EBPC does not have jurisdiction over all legal disputes in the construction sector. Its jurisdiction only applies:

- (a) to those cases in connection with the performance of construction contracts when no performance certificate is issued;
- (b) where the issuance of a performance certificate issuance is disputed;
- (c) payment is not made despite being due; as well as
- (d) to those cases when the ancillary obligations to guarantee the contract (bank guarantee, lien, surety) and their enforcement are disputed by the parties.

It is to be emphasized that the ex officio procedure of the EBPC is not mandatory and can be initiated upon request of one of the parties. The Act grants priority and summary procedure to the parties involved in court litigation where they have attempted to use the EBPC. Presumably, this will motivate the parties concerned to avail themselves of the possibility granted by the new Act instead of opting for the much longer ‘normal’ court procedure. The EBPC comprises of independent court experts and must deliver its expert opinion in 30 days from the date of receipt of the application. The party that disagrees with the expert opinion can enter into litigation within 60 days from the date of its receipt and the court is obliged to handle all such cases with priority in a summary procedure. The amended Code of Civil Procedure provides a number of guarantee provisions and preferential treatment to the party which sustained injury according to the expert opinion (e.g. judicial protective measures and prior enforceability). The functions of the EBPC overlap those of a DAB under FIDIC if initiated by a party. The EPBC still remains somewhat of an ‘unknown’ in Hungary because Act XXXIV of 2013 providing for the rules of EBPC proce-



cedure only came into effect on 1 July 2013. It is important to note that Act XXXIV of 2013 states that contractual clauses that exclude or restrict the applicability of the procedure of EPBC are null and void.

Conclusion

The unfortunate development that leads to the current practice of solving the construction disputes in litigation allowed the practitioners in the CEE region to recognize the inefficiency and frustration of such approach. Judges themselves admit that alternative dispute resolution (ADR) is a better model for hearing construction disputes. However, it is the employer who selects the method of dispute resolution and it is a norm for some public authorities in the CEE to consistently delete DAB and arbitration clauses from the FIDIC forms in favor of domestic litigation. On the other hand, the use of Dispute Boards is common in Slovakia and statutory adjudication has been developed in Hungary. This fragmentation of dispute resolution systems in a relatively small geographical area could be a symptom of uncertainty connected with creation of developed societies.

Other causes of inefficient dispute resolution include lack of education and knowledge about the advantages of Dispute Boards, lack

of tradition and respective fear of new methods, fear of non-binding awards and lack of pressure to support best practice from European Union and other international organizations. There is a great need for and opportunity to further develop alternative dispute resolution in the CEE, with an emphasis on best practice through the use of construction Dispute Boards.

Lukas Klee JD, LL.M., Ph.D., MBA is head of the legal department at Metrostav a.s., a large construction company based in central Europe. He is an arbitrator and adjudicator, and lectures on international construction law at the Charles University Faculty of Law in Prague. He can be reached at klee@email.cz.

This article is based on the book *International Construction Contract Law* that will be published by Wiley Blackwell in 2014 under ISBN 9781118717905 and articles in *International Construction Law Review*: Klee, L., Teodorescu, C. A. "Romanian Experience with FIDIC Forms in Roads and Bridges Construction," *International Construction Law Review* [2013] ICLR 432, Balazs, T., Klee, L. and Gulyas, T. (2014); "FIDIC contracts and Hungarian law: Important aspects of using FIDIC contracts in Hungary" [2014] ICLR 138 and Klee, L., Skorupski, M. and Marzec, A; and "The Use and Misuse of FIDIC Forms in Poland," *International Construction Law Review* [2014] ICLR 282. Many thanks to Michał Skorupski, Aleksandra Marzec, Claudia Teodorescu and Tamasz Balazs.

DRBF Appoints Regional Treasurers

The DRBF has recently appointed Treasurers to the Region 1 and Region 3 Board of Directors. This development is part on an on-going effort to give the responsibility for allocating financial priorities and decision-making to each of the Regional Boards.

Region 1 welcomes Ken Fusch as Treasurer effective January 1, 2015. Ken has been a member of the DRBF for over 10 years, and an active participant in DRBF conferences and the local Florida Chapter. He served in the U.S. Navy Civil Engineer Corps for 25 years, and worked for a private engineering firm for 15 years. He has served on DRBs since 2005.

Barry Tozer takes the reins as Treasurer in Region 3, a position previously held by Ron Finlay, who continues to serve as Secretary of the Regional Board. Barry has been a member of the DRBF since 2003, and served on the Region 3 Board for the past two years. He is the head of the consulting construction engineering firm Tozer & Associates Pty Ltd, celebrating 35 years of continuous operations this month.

Murray Armes has served as Region 2 Treasurer for over a year and continues the post. Murray runs his own specialist architectural consultancy, Sense Studio, based in London.

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Prominent Position for Dispute Boards in World Bank's Forthcoming New Procurement Framework

By James Perry,
Past President,
DRBF Region 2
Board of Directors
and
Geoff Smith, Chair,
DRBF Bank Liaison
Committee

Many DRBF members are aware of the Bank Liaison Committee's active engagement with the multilateral development banks and other institutional lenders. While the DRBF is working closely with a number of banks, including the Asian Development Bank, the EBRD, JICA and the IDB among others, there is no more important initiative than our continued interaction over the last several years in connection with the World Bank's (WB) development of their proposed New Procurement Framework.

Starting in 2012 the WB began its largest effort to reform its procurement policies since the bank's creation over 60 years ago. The process is now in the second and last round of public consultations, and public meetings are being held around the world during the course of September and October 2014. The DRBF has sent representatives to the European meetings in Germany, France, Britain and Italy. The bank will conclude its last round of consultations before the end of 2014 and expects to roll out its new policy and procedures in the second half of 2015 after obtaining board approval. Members interested in examining the current draft policies can find a complete set on <https://consultations.worldbank.org/forums/forum-procurement-policy-review-consultations>.

The public is also invited to complete a three-page questionnaire, which many DRBF members may wish to do.

Key Objectives of the Reform

Christopher Browne, the World Bank's Chief Procurement Officer, explained to business leaders at his Paris stop on September 17, 2014, that the new framework is intended to modernize the bank's procurement policies. Among the changes borrowers and contractors can expect in 2015 is greater involvement of the bank at both the procurement and the execution phase of large infrastructure projects, combined with a more flexible array of procurement methods designed to take into account that one size does not fit

all. Mr. Browne explained that more working groups would be developed with industry with the intent of seeking a dialogue and soliciting input for creating consistency across the bank's operations, including in areas such as technical specifications, contract conditions and anti-corruption practices. In the past the bank has been cautious about cooperating with businesses for fear of conflicts of interest, but Mr. Browne indicated that in the modern world the benefits of dialogue outweigh other concerns.

While it is too early to state definitely what will or will not be in the New Procurement Framework, it appears that future WB-financed projects may allow selection of contractors based on value for money where the technical nature of the project warrants a departure from the lowest bid rule used by the bank up to now. The borrower and contractor community can also expect to see greater flexibility in the procurement procedures, which will be applied in various situations. Mr. Browne noted that in projects where the WB is co-financing the project, they may accept letting sister multilateral development banks take the procurement lead. More importantly, the new policy will likely allow the use of local procurement procedures if the country in question is a full member of the World Trade Organisation with a government procurement agreement (GPA) in place. This could have particular impact in Central and Eastern Europe where EU procurement rules already apply. Mr. Browne was careful to note that the bank will still apply its own procurement policies even in countries that are full WTO members if they have concerns about the sufficiency of rules enforcement by any particular agency or government.

Public Private Partnerships (PPPs) will also be covered within the new framework and here Mr. Browne noted that the WB would take inspiration from the PPP procedures already practised by its sister bank, the International Finance Corporation (IFC), whose



main remit is private sector financing where the PPP model is already more prevalent and within the WB's portfolio of loans which are focused on government-backed projects.

Capacity Building

It is clear the bank plans to be more involved in the procurement and execution phases of projects. Mr. Browne anticipates the new framework will give the bank's procurement team a wide choice of tools during the procurement phase, ranging from the provision of reference materials and coaching all the way through actual hands-on management and control of the entire procurement phase in limited circumstances. He indicated anti-corruption measures would also be stepped-up, most probably in the form of additional surveillance during the procurement phase, which may be handled by outside firms such as major accounting consultancies, or possibly by non-governmental organizations such as Transparency International. Additional involvement in project execution also seems to be in the cards, and here Dispute Review Boards and Dispute Review Experts appear to hold a privileged place in the bank's new strategy.

Mr. Browne explained the bank intends to implement these new procedures without requesting additional funding from the bank's board of directors. Funds would be generated by scaling back on their current practice of handling approximately 14,000 "prior reviews" of proposed projects. Up to 80% of these reviews involve small capital outlays. The bank's procurement staff will be reassigned from such reviews and retrained in the areas of procurement and project supervision.

In addition to providing more support to project procurement and execution, either directly or through reinforcing borrowers' existing teams, Mr. Browne expects to see the bank invest in training programmes and other broad capacity development initiatives including training in project management. It is hoped this will include programmes covering the best practice use of Dispute Boards.

Standard Bidding Documentation

While not directly part of the New Procurement Framework initiative, Mr. Browne announced that his department was already reflecting on the next generation of standard bidding documents (SBD). Mr. Browne announced a two-phase plan to update these documents. The first phase, which users can expect to see in the near term, will be limited to minor adjustments and improvements in large part aimed at closing deficiencies in the current SBDs, which have become apparent to the international community over recent years. We might assume that these limited changes will be aimed at items such as fixing the so-called "gap" in sub-clause 20.6 of the FIDIC suite of contracts regarding the enforcement of Dispute Adjudication Board decisions and the like.

The WB community can expect, however, a more substantial phase 2 reform of the SBDs, which Mr. Browne anticipates will be a top-down redesign of the whole document, but he noted that his department will not have the resources necessary to begin phase 2 until later in 2015 after the new general policy is published. Mr. Browne described the phase 2 review of the SBD as a "back to basics" approach.

It is expected that the eventual new SBD will be simpler than the existing 150-page document, and Mr. Browne said he intends for it to be more closely aligned with procedures found in private industry. An extremely important aspect of the new SBD from our members' point of view is that the bank intends to be more receptive to borrowers who want to use certain contract forms other than FIDIC's. While other forms, including the Japanese ENAA form of contract and others, are currently mentioned, it seems possible that the percentage of WB projects using FIDIC forms of contract may decrease.

The role of Dispute Boards in the new WB procurement framework and future SPDs

How precisely Dispute Boards will look in the future WB policies and SBDs is not entirely clear in the draft framework docu-



ments as they currently stand, and there is certainly reason for concern in the Dispute Board community regarding the bank's plan to accept more of an à la carte menu of possible contract conditions. The incorporation of Dispute Adjudication Boards in FIDIC forms of contract since the 1990s and the integration of various forms of FIDIC contracts, including the Multilateral Development Bank Harmonized Edition in not only the WB's SBDs but in the vast majority of the other MDBs' bidding documents, has undoubtedly been the single largest source of growth for Dispute Boards in the international community. Moreover, provisions for Dispute Boards have not been integrated into any of the other primary standard forms of contract that can be found from time to time in international use. There is also concern that other existing forms of contract tend to be "uni-national" in that they emanate from a single country and represent the practices found in only one culture and/or legal environment. Moreover, no other standard form of contract benefits from the huge international body of published doctrine and international case law. Continental construction companies have been known to criticise the FIDIC conditions for having a bias towards UK custom practice; however, the FIDIC drafting committee is now made up of a large number of continental practitioners and your correspondents' view is that recourse to standard forms of contract such as the New Engineering Contract (NEC3) or Joint Contracts Tribunal (JCT) models of contract are likely to be even more unfamiliar to the international contracting community. This may increase disputes due to a lack of understanding of contract terms as contract management staff may be faced with different conditions on every project they administer, making it difficult to master any specific form of contract.

In addition to the plans described above to allow borrowers to choose from a menu of standard contract conditions, and the plans to accept local procurement procedures more frequently in place of any international form, it seems inevitable that we will see fewer contracts financed by the WB with FIDIC

general conditions. The general conditions that will be in use besides FIDIC will be a variety of local procurement conditions, international standards, possibly including NEC3, JCT, Japanese ENAA, and one can speculate very possibly some kind of adaptation of the WB's existing standard form of contract for civil law countries published in 2012 (currently available only in French), and even the ICC model turnkey contract for major projects. What exactly will be on offer remains to be seen.

Despite the fact that most of these forms of contract have no Dispute Board provisions, the current draft WB policy and Mr. Browne's presentation made it clear that the use of Dispute Boards will feature prominently on projects financed by the bank. While not stated specifically in the text of the draft framework nor stated specifically by Mr. Browne, it would seem that "Dispute Review Boards" or "Dispute Review Experts" are to be implemented on future World Bank projects. For this to happen the WB will need to add Dispute Board provisions by particular condition for any project where the borrower has chosen to use a non-FIDIC form of contract. Depending on how many model forms of contract the bank proposes to offer borrowers, there may be a substantial amount of work ahead in drafting appropriate Dispute Board particular conditions for each model. Nevertheless, the WB's full backing of Dispute Review Boards in bank-financed contracts is evident in the draft borrower's procurement procedures at Section F – Accountability, §1.18, (c) and (d) which state:

(c) Increase access to independent Dispute Review Boards in bank financed contracts;

(d) Include, as part of bank project supervision, reviews to ensure that agreements made in the contract e.g., to establish a Dispute Review Board are carried out and are functioning appropriately....

Mr. Browne clarified that the bank's intention is indeed for the implementation of Dispute Review Boards to be part of their general portfolio-wide policy and their intention is to be more vigilant in ensuring that the



Dispute Board is put in place at the outset of the project as opposed to allowing the parties to wait for a dispute to arise, which has often been the case until now despite contract provisions calling for its implementation at the outset. Mr. Browne also indicated that the bank is considering expanding the use of Dispute Review Boards to contracts involving the purchase of major plant and other goods.

Obviously Dispute Boards are not adapted for all 100,000 contracts the bank lets each year, but the bank is in the process of determining cut-off levels for the implementation of a Dispute Board which will seemingly be based on the value of the contract.

Finally, the draft procurement procedures do not attempt to define the role and function of the Dispute Review Boards and, while not entirely clear, it does seem that the bank's intention is to employ standing Dispute Boards. However, the use of the term Dispute Review Board instead of the term Dispute Adjudication Board as found in FIDIC contracts would lead most DB practitioners to conclude that the bank intends only for the future boards to make recommendations rather than binding decisions. However, these are purely speculative remarks.

Conclusions

The DRBF has been working with the World Bank for many decades now, and the constructive dialogue led for many years by Gordon Jaynes, now taken up by the chairman of the Bank Liaison Committee, Geoff Smith, we hope has played a role in convincing the WB to elevate its support of the Dispute Board process to a new prominence in its New Procurement Framework. Moreover, it is clear that our core belief in the importance of the dispute avoidance role played by Dispute Boards is clearly a benefit which the bank appears to have seized on and values.

More importantly are the new opportunities for the DRBF to play an even more important role in its cooperation. The bank has expressed interest in reaching out to the DRBF to help implement its new procedures.

There are several areas where our members can bring their experience to bear in assisting the bank in implementing the new procedures. The first and obvious area is in helping the bank train its own staff and also the procurement departments of its borrowers' executing agencies. The DRBF can also assist in the training of potential Dispute Board members as the growth of the use of Dispute Boards following the implementation of the new procedures is likely to outstrip the supply of qualified DB members.

Finally, it seems that the experience of our members could be helpful to the bank's next reform project, which is the intended top-down redesign of their existing standard bidding documents, notably in the selection of either existing standard Dispute Board rules and contract clauses or in the development of bespoke DB provisions for use with any of the non-FIDIC contract conditions options that the bank is intending to make available to borrowers.

Historically, the WB's policies on procurement have greatly influenced procurement policies at other major MDBs and we can expect that the New Procurement Framework at the WB will once again have important repercussions across the board.

Our members can expect that these changes will have a major impact on how Dispute Board services are delivered in the international market, including the need to adapt to the application of Dispute Boards in contexts other than the FIDIC format. However, many anticipate that FIDIC will remain the leading form of international contract and there will be a broad increase in the efficiency and general use of Dispute Boards.

Future articles will report on the next wave of innovation in the multilateral development aid community that will undoubtedly impact the Dispute Board community. Of particular interest is the announcement in recent months of several large new development banks, notably the Shanghai-based development bank unveiled on July 15, 2014, which will include shareholders from China, Brazil, Russia, India and South Africa.



By Frank Leech

DRBF members are encouraged to be on the lookout for regional conferences in their country where similar opportunities may exist for speaking on Dispute Boards and developing DRBF promotional opportunities. Contact Ann McGough at amcgough@drb.org for details.

The Chinese are contributing \$41 billion of capital and the overall bank capitalization is expected to reach \$100 billion initially, with \$34 billion a year in aid packages. There are other new development banks being announced and how these new institutions will feel about Dispute Boards once they are operational is a question mark to-

day. Between our existing cooperation programmes with the banks and the creation of new and important international financing institutions, the DRBF has its work cut out for it, and we appreciate our members' support.

Contact Jim Perry at jperry@ps-consulting.fr, Geoff Smith at gsmith@ps-consulting.fr.

DRBF Represented at the CLiC2014 Conference in Kuala Lumpur, Malaysia

Organized by the Society of Construction Law (SCL) Malaysia, the 5th Construction Law International Conference (CLiC2014) was held in Kuala Lumpur 18 - 20 September 2014 (<http://www.clic2014.com>).

With the assistance of DRBF Malaysia Country Representative Prof. Datuk Sundra Rajoo, the DRBF was a supporting organization and had representatives and a booth to promote the DRBF and Dispute Boards.

CLiC2014 was a very successful conference attracting nearly 150 delegates from around the globe. The theme of the conference "Constructing a Better World" included sessions on 'Innovations in Construction', 'Arbitrating Construction Disputes', 'Statutory Adjudication', 'Recent Developments in Construction Law', 'Project Risk Management / Risk Allocation', 'Delay and Disruption Claims' and 'Other Law Issues: Perspectives From Various Jurisdictions'.

The first session on day 2, 'Project Risk Management/Risk Allocation,' had seven speakers, three of whom, including DRBF members Prof. Doug Jones and Dr. Donald Charrett, spoke exclusively on Dispute Boards. The presentations on Dispute Boards covered the history, general operation and examples of use and successes of DB's on construction projects around the world. These presentations certainly stirred up interest in Dispute Boards and drew a great number of delegates to the DRBF booth.

During the conference the DRBF booth was manned by Gerlando Butera, DRBF Country Representative for Singapore, and Frank Leech, DRBF Member resident in Kuala Lumpur. Other DRBF members attending the conference, Julio Bueno, Robert Elliot, Fernando Marcondes, Basil Georgiou and Barry Tozer, took time to drop by and be available to speak with delegates.

A total of 61 delegates (more than a third of attendees) visited the DRBF booth and left their cards. These delegates included lawyers, developers, High Court Judges, claims consultants, arbitrators and adjudicators. For those delegates that came by the table, we answered questions, provided them with DRBF brochures and upcoming conference fliers, gave a brief "benefits of membership" explanation and of course background on DRBF and what we do. We also had on hand copies of the recent DRBF *Forum*, and the front page article on Benefit/Cost Equation caught everyone's attention. DRBF will be getting in touch with each of these interested delegates, inviting them to join DRBF and providing further information.

From contacts made at the conference, the DRBF will be exploring opportunities to make presentations to developers and organizations in Malaysia. There seems to be broad interest in this, and the effort will be coordinated with Prof. Datuk Sundra Rajoo, DRBF Malaysia Country Representative and Director of the Kuala Lumpur Regional Centre for Arbitration.

Frank Leech is at f_leech@hotmail.com.

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www.drbf.org

First International Congress on Dispute Boards Held in Sao Paulo

By Fátima Cristina Bonassa Bucker, Founding Partner Bonassa Bucker Advogados, São Paulo

The Dispute Resolution Board Foundation co-sponsored the First International Congress on Dispute Boards organized by the Chamber of Arbitration and Mediation of the Institute of Engineering in São Paulo, Brazil on August 7th and 8th, 2014.

Interest in Dispute Boards exceeded our expectations by drawing approximately 150 participants. Brazilian DRBF members featured prominently in the organization of the event and among the panelists. Many thanks go to Gilberto Vaz, Country Representative for Brazil, Julio Bueno, an active DRBF member in Brazil and internationally, and DRBF members Maurício Bucker, Fernando Marcondes, and Antonio Luis Pereira de Sousa. Your correspondent was also pleased to have participated in organizing and speaking at the congress.

The congress addressed the use of DBs in large international projects, as well as the recent Brazilian experience with the DB in infrastructure contracts involving the São Paulo Metropolitan Company. It was attended by engineers, lawyers, managers of major companies as well as the infrastructure and

construction sector organizations.

The panelists presented the audience with a portrait of the experience and the gain in efficiency with the use of DBs as an important tool to avoid conflicts in construction contracts such as infrastructure construction in Brazil and the Panama Canal in Panamá. It is worthy to mention that although Dispute Boards are not yet largely used in Brazil, DRBs are being adopted under contracts executed under the auspices of the World Bank.

The President of the Institute of Engineering, Camil Eid, chaired the opening session with the Minister Ellen Gracie, former Brazilian Supreme Court Minister. She stressed the importance of mechanisms that allow parties to solve their disputes without resorting to judicial measures, declaring herself an enthusiast of Dispute Board adoption within infrastructure contracts, including those where the contractor is either the government or a governmental company.

The former DRBF Region 2 President, James Perry, spoke about the Dispute Boards in



Left to right: Roger J. Peters, Gilberto Vaz, and James Perry



Left to right, top row: Mauricio Bucker, Julio Bueno, and James Perry; bottom row: Viviane Vergamini Alonso and Fatima Cristina Bonassa Bucker

FIDIC contracts, presenting the experience in the adoption of DBs in Europe. He also took part in the discussion of the American experience with DB in a panel presented by DRBF member Roger J. Peters. Rounding out the foreign speakers was DRBF member Jerry Brodsky, who spoke about financial aspects of the Panama Canal project.

A discussion on the Brazilian experience with Dispute Boards on the Yellow Line of the São Paulo Metro System indicated that the DB members and parties involved in the contract find themselves still testing the results of the implementation of DB recommendations. The importance of such experience lies in the fact that it serves as grounds for future developments in the adoption of Dispute Boards in Brazil. During the conference, the participants could compare the Brazilian experience with the huge success of the DB on the Panama Canal. Speakers also addressed members' ethical behavior in the performance of DBs and ended the event discussing future development of the process in Brazil.

One important concern was the possibility of adopting Dispute Adjudication Boards rather than Dispute Review Boards under the Brazilian legal system. Since the DAB issues binding decisions on claims, such de-

isions could be subject to challenges under the Brazilian system, especially when the agreement involves a governmental entity holding public interest. Under Brazilian law, binding decisions involving public interest would depend on an arbitration or judiciary procedure. The conclusion in the congress was that the adoption of the DRB would be more feasible instead.

As a sign of recent development, the Brazilian Engineering Institute, which hosted the congress, already offers DRB-related management services subject to its own regulations. It is important to highlight that there is room for further initiatives in Brazil to reinforce DRB practices in this country.

Therefore, efforts are necessary in (i) training professionals in Brazil to enable them to become DRB members, and (ii) spreading confidence in the market regarding the DRB system as the most advantageous tool to avoid disputes by making use of a simple and expedited procedure, which will lead to less overall cost when compared to arbitration and/or judiciary means.

Fátima Cristina Bonassa Bucker can be reached at fcbb@bonassabucker.com.br.

New DRBF Country Representatives



Jaime Grey, DRBF
Country Representative
for Peru

The DRBF is pleased to welcome the following newly appointed DRBF Country Representatives:

Peru: Jaime Gray is a lawyer graduated from Universidad San Martín de Porres, specialized in construction law with special focus on engineering, arbitration, Dispute Boards and alternative dispute resolution methods and public procurement matters. He holds a master in Business Law from the Universidad Peruana de Ciencias Aplicadas (UPC).

After practicing in one of the biggest constructor companies in Peru, he founded his own firm in 1995 along with his co-founder partners Enrique Navarro and Gustavo Paredes. He has worked or has been directly involved in many projects such as the Aobamba river project (related to the Machupicchu Hydro Electric Plant in 1998) and the two construction contracts of the Machupicchu Hydro Electric Plant reconstruction project (civil works and electromechanical works in 2001). He has also participated in the enhancement project of the Machupicchu Hydroelectric Plant (2011 – now).

He has been a guest speaker on engineering and construction law issues at numerous national and international seminars and conferences for institutions such as the International Bar Association, the American Bar Association, FIDIC, ICC and ICC Mexico, Dispute Resolution Board Foundation, and different universities, among other institutions. He is well-known as an arbitrator of engineering and construction disputes and has served as a Dispute Adjudication Board member in Honduras in highway projects such as two segments of the CA5 North Highway and the Millennium Interchange. He has also assisted parties

to resolve their differences using Dispute Boards.

He is Vice Chair of the Project Establishment Subcommittee – International Bar Association (IBA), co-editor of Construction Law International Magazine (Clint) of the IBA, and co-author of the book *Experiencia en Latinoamérica: Experiencias y Retos*. He has been recommended in the field of construction law by the international organization Who's Who Legal since 2008 and by Chambers and Partners since 2013. He is president of the Peruvian Society of Construction Law (sponsored by the SCL UK) and is a lecturer on construction law at Universidad Peruana de Ciencias Aplicadas (UPC) and Universidad del Pacífico.

Country Profile: Peru is the second economy of South America with the greatest Financial Freedom, and for the last five years it has been the leading country in providing the best environment for microfinance, according to the Global Microscope Index (The Economist Intelligence Unit).

A major metals and minerals exporter with a burgeoning agricultural sector, Peru's rapid economic growth has been the result of elevated global demand for commodities and key exports, as well as prudent fiscal planning and the expansion of non-primary sectors. With an investor-friendly legal framework, Peru has become a prime destination for foreign direct investment and was recently ranked the second-best country for doing business in Latin America by the World Bank. Despite ongoing social conflict related to extractive industries and a sizeable infrastructure gap, Peru's stable macroeconomic environment and its efforts to diversify and guard against price volatility should ensure continued

growth for this Andean economy.

Peru's infrastructure market has been very active in recent months. ProInversion has granted the following projects (i) Regional Port San Martin (Pisco) with investments of US\$ 103 million, (ii) New International Airport Cusco-Chincho with investments of US\$ 658 million, (iii) Transmission Line 220 Kv La Planicie-Industriales and associated substations with investments of US\$ 57 million, (iv) Transmission Line Moyobamba-Iquitos 220 Kv and associated substations with investments of US\$ 434 million, (v) Kuelap Cable Car with investments of US\$ 17.6 million, and (vi) the South Energy Gas Pipeline with investments of US\$ 3.6 billion. It is also worth mentioning other projects, such as the Lima Metro - Line 2 granted a few weeks ago by the Metropolitan Municipality of Lima, with an approximate investment of US\$ 6 billion, which show that private investment may continue fostering Peru's economic growth.

Chile: Eduardo Sanhueza is a Civil Engineer with a Masters in Business Administration from Universidad de Chile.

He has worked at the Center for Research, Development and Innovation on Structures and Materials at Universidad de Chile since 1998.

He currently serves as the sub-director of the Center. His expertise is:

- Technology building materials, structures and behavior of buildings
- Construction management, development of services in techno construction, energy efficiency in buildings
- Forensics engineering in defective structures and construction contracts.

He has advised companies in Technical

Claims, big contracts in civil and industrial work.

He was chairman at DAB Dispute Board Rules ICC in Freeway Dispute and has taught several engineering courses since 1996 at Universidad de Chile, as well as serving as chairman in various building material and construction standards.

Country Profile: Chile is the country with the best situation and macroeconomic stability in South America, and it has become a leader in the region. The Chilean economy is healthy, with controlled inflation, a deep financial market and very low external debt.

The construction contracts present a scenario of increasing complexity and greater liability claims. It is becoming common to find situations of conflict that can scale to such a level as to cause the failure of the projects.

The Chilean Chamber of Construction surveyed their member companies in a recent study, which shows that of the contracts signed in 2013 "Conflicts between builders and clients: 42% of contracts had a problem." Meanwhile the same Chamber indicates that it "can be concluded that it is impossible to eliminate conflicts. They will never be eliminated, but you have to control them."

Thus the Chilean Chamber of Construction is looking for mechanisms for early dispute resolution, identifying Dispute Boards (DBs) as one of the key mechanisms to promote to the construction sector. Today in Chile, DBs have been recommended on Contract Concessions since 2010, and some mining firms such as Codelco have used them in the past. Given this scenario, there is an opportunity for the growth of Dispute Boards in Chile.



Eduardo Sanhueza,
DRBF Country
Representative
for Chile

Welcome to New DRBF Members

Member Additions June - August 2014



**Do you know
someone
interested in
joining
the DRBF?**

Help us expand by sharing information with your colleagues. Complete membership information can be found on the DRBF web site (www.drbf.org) or contact the main office for details.

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DRBF Calendar of Events

Training Workshop

**Dispute Boards: Prevención y Solución de Conflictos
en Contratos de Construcción**
October 9, 2014
Santiago, Chile

18th Annual Meeting & Conference

**Dispute Boards on Complex Projects:
The Power of Dispute Avoidance & Real-Time Resolution**
October 23-25, 2014
Sheraton Centre Hotel - Toronto

Dispute Boards Continuous Improvement Workshop

October 16, 2014
Sydney, Australia

California Department of Transportation DRB and DRA Training

October 27, 2014: Sacramento, California
January 2, 2015: San Diego, California
January 27, 2015: Oakland, California
February 24, 2015: Sacramento, California

DRBF East Africa Regional Conference

Real Time Dispute Avoidance and Resolution for Construction Projects
February 26-27, 2015
Nairobi, Kenya

DRBF 15th Annual International Conference

Dispute Boards: The Continental Approach
May 21-23, 2015
Genoa, Italy

Visit www.drb.org for details



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Dispute Resolution Board Foundation
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DRBF 15th Annual International Conference

Dispute Boards: The Continental Approach

The DRBF's International Conference attracts the top Dispute Board practitioners, employers, funding institutions, contractors, legal professionals and consultants all active in alternative dispute resolution. Day one offers full-day interactive training, with an introductory level workshop and an advanced level workshop for experienced Dispute Board practitioners. The two-day conference features engaging presentations and lively panel discussions about the latest developments and issues facing the alternative dispute resolution community worldwide, with an emphasis on the application of the Dispute Boards process under Civil Law jurisdictions.

Event Details:

May 21: Training Workshops

- The DRBF offers two workshops integral for all Dispute Board practitioners, introductory or advanced.

May 22 & 23: Conference

- Best practice and lessons learned from around the world, plus new challenges and opportunities in the application of Dispute Boards.

Venue

- The workshops will be held at the Bristol Palace Hotel in the heart of the commercial and historic district of Genoa.
- The conference will take place in the Salone del Maggior Consiglio at Palazzo Ducale, the headquarters of the old Republic of Genoa.

Visit www.drb.org for complete event details and registration.

