

FIDIC 2017: A First Glance at the new Red, Yellow and Silver Books



By Leo Grutters

Finally, after nearly eight years of hard work by a vast number of people, the International Federation of Consulting Engineers (FIDIC) on December 6, 2017 launched their latest set of Flagship Standard Forms of Contract. The event chosen for this launch could not have been better: the 2017 International Users' Conference in London, its annual get-together of the who-is-who in the FIDIC world.

The launch was hotly anticipated, with many delegates already on edge after the previous year's presentation of a pre-conference copy (not intended for actual use). That pre-conference copy was given a lot of critique, some bad, but mostly constructive. The task-group reconvened after this event and went to work. The result was received by most as something that actually looks good. Obviously, there will always be people that are not totally satisfied, and as such more constructive criticism should be expected. There has not been enough time to go through the entire set of documents, but

the following will give you an indication of what is now set to become the future:

a) Finally, the notion that a claim is not a dispute has been given credence; the old Clause § 20 [Claims, Disputes and Arbitration], has now been renamed "Employer's and Contractor's Claims".

b) There is new Clause § 21 named "Disputes and Arbitration", a dedicated clause to dealing with disputes by both parties. The old SC § 2.5 [Employer's Claims] has logically been moved to this new clause, with the additional consequence that after years of Contractor's complaints, the Employer is now at long last also time-barred for his claims.

c) The old DAB has been renamed into "Dispute Avoidance/Adjudication Board" or DAAB, giving it the needed implication and definition that it has an important function in the dispute avoidance activities FIDIC encourages for all projects. *(continued on p. 6)*

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President's Page

Dear Members, Dispute Board Users and Friends of the DRBF,

It is my honour to serve as your President for the next term. My thanks go to the leadership of Dick Appuhn for the last term.

As President, my focus is on improved governance and standards as well as addressing issues that are relevant for you as DRBF Members, Dispute Board practitioners and users. It is certainly the case that without owners, clients and principals who choose to have a Dispute Board on their project, there would be no Dispute Boards.

You will often see reference to the various DRBF Regions. These are administrative regions and are currently structured as Region 1 (US and Canada), Region 3 (Australia and New Zealand) and Region 2 (the rest of the globe). We are always reviewing whether new regions should be created, and as the use of Dispute Boards grows this discussion will receive greater focus.

The DRBF Executive Board of Directors is currently reviewing a Five Year Strategy for the Foundation. Some of the strategies under consideration include having DRBF:

- (a) focusing on the primary functions of training and attracting new members by providing educational training and network opportunities, sourcing new Dispute Board opportunities for members, structured outreach activities and providing member services as its primary functions;
- (b) ensuring that DRBF's governance systems, practices and procedures are undertaken in a professional manner consistent with world-class best practice;
- (c) increasing the focus and discipline of all outreach activities in all regions, including coordinating our efforts across regions when appropriate;
- (d) reviewing and enhancing the DRBF's relationship with international and regional organisations;
- (e) upgrading and enhancing DRBF's information and communication technology capabilities; and
- (f) continuing to monitor whether new and additional regions for DRBF should be established to enhance deliver of outreach and member services in areas with a significant membership and Dispute Board use.

If any readers has comments or additions to these strategies under consideration by the Executive Board, I would be grateful to receive your contributions (email: ron.finlay@fincon.com.au).

Elsewhere in this edition of the *Forum*, you will see details of upcoming conferences and workshops in 2018. I encourage you to book for these conferences early and I hope that we might catch up at one of these conferences in 2018.

May I take this opportunity to wish all DRBF Members, Dispute Board practitioners, users of Dispute Boards and other readers the compliments of the season, Happy Holidays and Merry Christmas and a safe and happy New Year for you and your families.

With best wishes



Ron Finlay
President, DRBF



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John Sharkey

Forum Editor:
Ann McGough

Contact:
Dispute Resolution
Board Foundation
3440 Toringdon Way
Suite 205
Charlotte, NC 28277 USA
Phone: +1-980-265-2367
Fax: +1-980-434-0506
amcgough@drb.org
www.drb.org

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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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In Memoriam...

Steve Fox
1949 - 2017



Steve Fox was the DRBF's first Administrative Manager. In 1996, after graduating with honors from Highline Community College, he began work as an office manager for the DRBF and faithfully served the organization until his retirement in 2014. In 2004, he received the prestigious Al Mathews Award for Dispute Board Excellence. He passed away in Septmeber 2017 after a cancer diagnosis.

Jim Donaldson was on the DRBF's first Board of Directors, and worked closely with Steve as DRBF President (1999-2000) and Treasurer for many years. He recalls Steve's many accomplishments for the DRBF, including establishing the DRBF office in Seattle, Washington, and the administrative and financial processes to ensure a smooth-running organization. He said Steve adapted well to the role, and often displayed good insight on how to help the Foundation grow.

"Steve was critical in helping us set up the first DRBF training programs," said Jim. "One of our primary reasons for starting the Foundation was to initiate training for DRB owners and practitioners. Steve was very organized in setting up the programs, training manuals, and other details. This success was the catalyst for the successful growth of the organization."

Jim received the Al Mathews Award the same year as Steve. "I really appreciated getting it at the same time. He worked very hard to get to that point, and he was really happy to be honored," he said.

Many will recall Steve's passion for travel, and he attended numerous conferences on behalf of the DRBF, meeting members and supporting the work of the Board of Directors. He often spoke of his visits throughout the United States and Canada to Civil and Revolutionary War battlefields, railroad and car museums, and baseball spring training. A lifelong dog-lover, Steve enjoyed all other animals too and he readily picked up his wife's love of zoos. He included a zoo, game park, or animal sanctuary on almost every one of their vacations. One of his favorite weekend trips was going to the Bandon, Oregon game park and the seal caves with his grandsons.

Steve is survived by his wife of almost 24 years, Betsy, and his sister Lori Krutzsch, who also worked for the DRBF, as well as two other sisters, two stepchildren, two grandchildren, and numerous neices and nephews. His dedication to the DRBF and many of the programs and processes he established live on.

What's New in the Library?

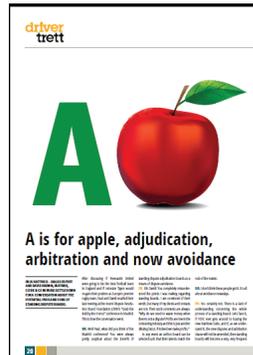
The DRBF gathers a wide variety of papers, journals, conference presentations, articles, and other publications all written by Dispute Board professionals who hold industry ethics and topics in the highest regard. All material submitted is in support of the education and professional development of the DB community. From lessons learned on recent projects, developments in DB procedures, legislative developments, and more the DRBF has created a robust toolbox of resources for you.

New Library Additions:

“A is for apple, adjudication, arbitration and now avoidance”

Authors: Paul Battrick and David Brown

An entertaining and informative article about DBs and the DRBF in the September 2017 issue Driver Trett Digest.



“Dispute Boards for Infrastructure Projects in Latin America: A New Kid on the Block”

Author: Dante Figueroa

Many DRBF members provided contributions or were referenced in the most recent issue of *Dispute Resolution International*, a journal of the International Bar Association. The DRBF members referenced include **Romano Allione, Richard Appuhn, Jerry Brodsky, Gustavo Paredes Carbajal, Yasemin Çetinel, Roberto**

Hernández, Pablo Laorden, James Perry, Gilberto José Vaz and Herfried Wöss.

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Do you have an article or presentation to submit the DRBF Library?

Email us at info@drb.org.



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d) The Standing Board is now incorporated into all three new books. The 1999 version incorporated a Standing board only for the Red Book, and Ad-Hoc boards for the Yellow and Silver Books. There is a new SC § 21.3 [Avoidance of Disputes] highlighting the increased importance placed on the DAAB as a dispute avoidance tool.

e) The 1999 version intended for any DAB decision to be complied with immediately, but reality has shown that many “losers” of such DAB decision simply ignored this, and relied upon the law to protect them from enforcement of such a decision. This loophole, has now hopefully been closed through new SC § 21.7 [Failure to comply with DAAB’s Decision].

f) There is an increased importance placed on the contractor to prove compliance with the contract. The most notable requirement being the development and management of an elaborate “Quality Management and Compliance Verification System” (refer SC § 4.9).

g) The infamous time-bar on claims notification has been maintained, but there is now a mechanism whereby the DAAB, when requested to do so, has the power to waive the time-bar restriction.

h) There is an enhanced role for the Engineer, in that he is to become more involved in the day-to-day resolution of issues between the parties. His function now also includes providing services in anticipation of a matter going to the DAAB. But, on the other side, he is now much more controlled in terms of when he should do certain things. There is an increase in the “deemed” provisions

where the Engineer does not act in a timely manner.

i) Under the 1999 version the DAB process could be derailed if and when a party simply refused to sign the relevant Dispute Adjudication Agreement. This has been corrected under new SC § 21.1 (d). This states that if a party does not sign a proposed DAAB Agreement within 14 days after having been requested to do so by the other party, the appointing entity named in the Contract shall appoint the DAAB, and the corresponding DAAB Agreement(s) shall be deemed to have been signed.

j) The DAAB still has to make decisions within 84 days after receiving a reference, but (and I anticipate many a DAAB member will rejoice), such decision is now only due, if and when all the DAAB’s outstanding invoices have been paid.

k) There is an increase in prescriptiveness towards the parties. Many sub-clauses have been textually enhanced to provide more clarity. Unfortunately, this increase resulted in the word-count and overall thickness of the document to increase as well. What used to be some 30.000 words has blown up to > 50.000, and the actual document now weighs in at a healthy +/- 1.0kg.

The first reaction of the construction industry has been positive, but as with all such new documents, time will tell.

Leo Grutters is a FIDIC President’s List Adjudicator and served on Task Group UTG6b, which is the group that finalised the drafting of the three new books. He can be reached by email at lgr@c2s-global.com.

Letter to the Editor

Dear Editor,

I am always a bit upset when I hear (now every day) of the “major change in DB approach: Dispute Avoidance”! In fact, dispute avoidance has been a primary component of the Dispute Board process since the very beginning.

See the first page of ASCE book of 1991 titled AVOIDING and RESOLVING DISPUTES DURING CONSTRUCTION, written by the Technical Committee on Contracting Practices of the Underground Technology Research Council, which included Dispute Board and DRBF founder Al Mathews, DRBF founders Joe Sperry and Bob Smith, and DRBF Former President Bob Rubin. This publication is an updated and revised edition of the ASCE publication AVOIDING and RESOLVING DISPUTES in UNDERGROUND CONSTRUCTION (1989) by a Technical Committee chaired by fellow DRBF Member Peter M. Douglass (and which included all the DRBF founders on the committee).

I believe a lot of credit should be given to these individuals with the “vision” to develop a better way of handling disputes, firstly by focusing on avoiding them.

Saluti,

Romano Allione
Email: romano.allione@tiscali.it

**AVOIDING and
RESOLVING
DISPUTES
DURING
CONSTRUCTION**
Successful Practices and Guidelines

Prepared by the Technical Committee on Contracting Practices
of the Underground Technology Research Council

Sponsored by the
American Institute of Civil Engineers
and the
American Institute of Mining, Metallurgical
and Petroleum Engineers

An updated and revised edition of
Avoiding and Resolving Disputes in Underground Construction (1989)



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New York, New York 10021-2100



Romano Allione
DRBF Charter
Member and Past
President (2009-10)
Al Mathews Award
Recipient (2008)

Forum Newsletter Editorial Deadline

Our readers love to hear Dispute Board success stories and challenges, and the latest industry news and events. If you have new information about Dispute Boards, DRBF members, or an article to share, please let us know!

Contact Forum Editor Ann McGough at
amcgough@drb.org

Deadline for the next issue: **1 February 2018**

Ethics in Today's World of DBs

Contractor Refuses to Nominate DRB Representative, and, 24 Months after Notice to Proceed, Refuses to Participate in the DRB which is Finally Seated

by James D. Phillips



Jim Phillips Ph.D.
Chair
DRBF Ethics
Committee

The question raised at the end of the previous *Forum* assumes that you have recently been seated as the Chair of a Dispute Board on a complex construction project. The Notice to Proceed (NTP) was issued more than 24 months ago, and the project has fallen significantly behind schedule due to the fact that contractor has not put enough personnel on the project to sufficiently prosecute the work. The reason the parties did not seat the Board earlier is because there was no interest by the contractor in doing so, and it refused to nominate a representative, despite the owner's insistence that they do so. It was only when it had fallen significantly behind schedule, did the owner and the contractor agree to set up a Board.

At the first DB meeting, which is finally convened 24 months after the NTP, the contractor states that they do not wish to participate in the DB process due to the costs associated, the fact that the owner now is biased against them, and they would not receive a fair consideration of their positions. The contractor's project manager further states that the owner will not cooperate with any efforts undertaken by him to resolve the project's disputes, which are numerous. The question posed is: How should you as the Chair and the Board respond?

This issue has come up for me several times and apparently a few of the membership has faced it as well. It seems that some parties to projects with a DB or

DB specification are slow to constitute a Board because either the contractor's representatives have not been trained in Board practices and therefore fail to understand the purpose of a Board, or the owner, despite knowing enough to include a specification in the contract documents, are not aware of the critical importance of establishing the Board prior to any disputes arising, or before the relationships between the parties have become strained.

There are many public entities that have construction contract personnel in the central or district office who are knowledgeable about the value of DBs, at least enough to place the Board specification in the project documents. The disconnect is that often this knowledge is not communicated to field personnel and project managers, so they are left with a different type of contract provision than they are familiar with, which they are not convinced needs to be complied with. With respect to contractors, if they have not received training in Board operations, they often respond like the one in our hypothetical by not complying with the request to nominate a Board member. Understandably, at the beginning of most construction projects, and especially ones that are deemed to be complex enough or have a high enough total cost value to warrant a Board specification, a lot is happening in very short period of time. This makes it more imperative for the parties to understand that constituting

the Board should have a high priority. As an aside, the DRB Foundation provides training for the industry and public officials regularly around the country and world so that if any reader believes that they are in a situation where training would be helpful, contacting the Foundation would be a good step toward providing a quality board training program.

One impediment to nominating Board members in a timely fashion is that either party may not be familiar with experienced and qualified candidates. The Foundation lists on its website qualified individuals who self-report the kinds of experience they have had as chairs or members of Boards. The Foundation's Administration and Practices Manual lists the following as attributes of qualified Board members: experience in the particular type of construction, specific construction methods, knowledge of dispute-prone facets of the work, demonstrated ability to write in clear, concise, and convincing manner, and for the Chair, expertise in running effective meetings in sometimes difficult circumstances. I might also add that potential candidates should at least have received the Foundation's training for Board operations, and the training for Chairs might also be considered for those who are interested in serving as Board Chairs.

I might also mention that there is a word of mouth channel in the industry where experienced Board members refer parties, who are looking for good Board candidates, to their colleagues with whom they have previously worked with on Boards. This can be an excellent way to identify candidates for consideration for nomination.

The Foundation's Canon of Ethics, the

subject of most of my columns, provide further guidance in qualifications for Board members. The essence of the ethical standards is that Board members must be objective and neutral, with no financial, personal, or even professional ties with the parties which would impact their ability to be impartial in making recommendations regarding disputes between the parties. The Canons of Ethics further provide that the candidate has a duty to disclose any financial or other interest with either party that would impact their neutrality, and that the duty to disclose is ongoing throughout the life of the project. Once such an interest is disclosed, the parties are to decide whether, in either of their opinions, the interest will impact the candidate's impartiality, and if they do not think it will, they may waive the conflict of interest.

I trust I have demonstrated that the reason of "I don't know of any qualified Board candidates" should not excuse the failure to nominate candidates. In our hypothetical, the owner has been complicit in allowing the contractor not to comply with the specification. There should be ways to enforce the specifications' provisions such as drafting a deadline into the spec by when nominations to the Board should be made. I have found that deadlines can provide incentives for compliance, even if the deadline is extended because it starts the conversation.

Thinking of methods to enforce a deadline that does not poison the relationships between the parties may be a topic of discussion in a future column or at an annual meeting. For now in our hypothetical, the Board is left with few options because the parties' relationship has deteriorated, and there are statements that indicate that the contractor will

refuse to cooperate. I might suggest that the parties agree to hear just one of the apparently many disputes, and issue a recommendation to demonstrate how the process works. Perhaps then the contractor will see the value of a Board and agree to continue to participate. I do not think a heavy handed approach to enforcing the specification will be productive. Hopefully, this discussion has provided some ideas as to the value of selecting the board early in the project, who might be good potential candidates, and how might these candidates be identified.

**ETHICS:
FOR NEXT TIME**

First off, if you have a comment about this article, please let me know. As I

have indicated, the next column is going to take a different angle toward ethics. I will have a co-author, and we will pursue a discussion of unethical practices on a construction project and how the Dispute Board might be of assistance.

**Ethics Commentary
or Question?**

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

DRBF Training Workshops

The DRBF offers educational training workshops throughout the year in various locations. In development are possible training workshops in Africa, Europe, South America, Southeast Asia and the United States. Check the Events Calendar at www.drb.org for the latest announcements and registration links.

Registration open!

DRBF Training Workshops:

- DRB Administration & Practice
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**Orlando, Florida USA
6 & 7 February 2018**

Two workshops will be led by experienced DB members, with an emphasis on local practice. Register today under “events” at www.drb.org.





DRBF 18th Annual International Conference

**Climb to the Top! How Dispute Boards Can
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23-25 May 2018

Park Hyatt Hotel • Tokyo, Japan

Join the DRBF in Tokyo, Japan for the 18th Annual International Conference, a two-day conference preceded by one day of optional education workshops for new and experienced practitioners. During the conference and workshops, we will focus on best practices and lessons learned in the application of Dispute Boards. Speakers will share first-hand experience with new developments in Asia and across the world, and the unique preventive role that Dispute Boards offer. Delegates will have ample time to share, learn and network.

- 23 May **Dispute Board Workshops** Introductory and Advanced Sessions available, earn continuing education credits
- 23 May **Welcome Reception**
- 24 & 25 May **DRBF International Conference** Presentations, panel discussions, Q & A
- 24 & 25 May **Gala Dinner Cruise**



Register at www.drb.org

Dispute Boards and PPPs - The Way Ahead?



Lindy Patterson
QC

Public private partnership (PPPs) are now used in more than 134 developing countries contributing around 15-20% of total infrastructure investments.¹ Yet the use of Dispute Boards in PPPs to avoid disputes and, if necessary, resolve them on an interim basis, outside the United States,² is not common.³

Anyone who has been involved in PPP contracts and the issues that arise under them will confirm that they are comparable with those that arise under more conventional contracts for construction and operation and maintenance. However, PPP contracts are more complex because of the number of contracts and multi-parties involved, with differing goals. As a PPP is likely to have a life of 30 years and upwards and often involve provision of essential public services, the need to maintain good working relationships amongst the parties is even more important than under the conventional contracts. This makes them an ideal candidate for standing Dispute Boards as a method of dispute avoidance.⁴

Why do we not see these used more regularly in PPPs and how might that change? PPP projects are very dependent upon their financial backers. These parties are aware that if risks are not clearly allocated a project can struggle from the outset. Therefore, funders will often be heavily involved in the drafting of the PPP contracts.

The World Bank recognised this several years ago. In 2015 it developed a “Report on Recommended Contractual Provisions in PPPs.” Part of the rationale for this Report was “the variety of PPP transactions globally; the different legal systems which exist... and the need to have “tailor made” provisions to deal with the characteristics of specific projects”. Although it recognised that the development of comprehensive PPP agreements on an international basis was an unrealistic goal, it considered there was merit in focussing on certain contractual issues encountered in virtually every PPP contract. One of these issues was Dispute Resolution.

The Report produced some sample clauses, including a dispute resolution clause, where the first steps in resolving disputes are of the ADR variety, i.e. not formal dispute proceedings.

The sample clause provided:

Firstly, for parties to meet if any dispute arises and in good faith attempt to reach an amicable settlement. If that did not work the options were EITHER

- referral to a disputes panel comprising four members – two from each party. This “internal” panel would meet and attempt in good faith to resolve the dispute by negotiation within 10 days of a notice OR

¹ In 2016 in the EU, PPP contracts with a EUR 12 billion value were signed. The average transaction size was EUR 174 million (source EPEC/EIB).

² This article does not cover PPPs in the US, which differ in structure and duration.

³ Most Belgian PPP contracts contain standing DBs. Most Dutch PPP contracts contain provision for ad hoc Boards appointed to deal with disputes only, although these often develop into quasi-standing Boards. (See Prof. Steven van Garsse’s presentation at the DRBF International Conference in Madrid in May 2017, found in the DRBF library www.drbf.org.)

⁴ “Guidance on the Use of Dispute Boards in Public Private Partnership (PPP) Projects”

Dispute Resolution Board Foundation, April 2017. www.drbf.org

- resolution of technical issues by an Independent Expert selected from a list of technical / financial experts contained within the contract.

If none of these worked, parties could then go to arbitration or independent expert.

It commented that the relevancy and efficiency of external Dispute Boards was much debated and listed a number of perceived disadvantages to these. These were:

- cost;
- lack of consensual approach;
- it was a redundant step, if arbitration is also part of the dispute resolution armoury and
- the process can be long and complicated as the Board has no background information on the project.

Regular users and members of Dispute Boards will not recognise these listed disadvantages.⁵ Neither the Report nor the sample clause covered any role of a standing Dispute Board in avoiding disputes. In fact, it appeared to be unaware that Dispute Boards would fulfil that function.⁶

So, have things changed since then?

Last month the World Bank produced an updated Report, “Guidance on PPP Contractual Provisions 2017”. The dispute resolution section has changed. There is greater recognition of processes that avoid formal dispute resolution. It recognises “given the long-term nature of the PPP contract it can be in the parties’ interests to have a dispute resolu-

tion process which supports their long-term relationship...” and therefore, has a greater focus on what it describes as informal alternative dispute resolution. It canvasses negotiation; mediation and Dispute Boards.

It produces a sample dispute resolution clause with, in ascending order, negotiation (amicable settlement); expert determination for technical disputes and finally arbitration. Three further drafting options are provided; mediation; referral to a panel of senior party representatives and finally a Dispute Review Board applying the ICC Rules.

It repeats the comments in the 2015 Report about the efficacy and costs of Dispute Boards. It describes a standing Board appointed at the outset of the project but does not describe any ongoing dispute avoidance role of such a Board, focussing only on its dispute resolution role.

The challenge is there to be taken up with those who invest in PPPs. There are very few funders, outside the Benelux countries, aware of the standing Dispute Board concept and the benefits it can bring to PPP structures.

The DRBF and its members need to find a way to engage with these vital and influential stakeholders, which is, for many countries, the way ahead in infrastructure investment.

Lindy Patterson, QC, serves on the DRBF’s PPP Task Force, and welcomes input from DRBF members on this issue. She can be reached at Lindy.Patterson@39essex.com.

The World Bank report “Guidance on PPP Contractual Provisions 2017” can be found online pppknowledgelab.org

⁵ Although costs can be cited as a deterrent to constitution of a standing board, statistics show these costs are a very small percentage of a contract value. In PPPs, which run over such a long period, such costs would easily be absorbed in the financial model with no impact on the project’s profitability.

⁶ There was an alternative option provided in the sample clause which was referral of a “non-technical dispute” to an external Dispute Board.

DISPUTE BOARD INTERNATIONAL CONFERENCE & WORKSHOP Denpasar, Bali, August 23-24 - Final Report

INTRODUCTION

The Dispute Board International Conference & Workshop was successfully held on 23-24 August 2017 at Werdhapura Village Center Bali, Indonesia, with the cooperation of Dispute Resolution Board Foundation (DRBF) and Ministry of Public Works and Housing of the Republic of Indonesia and supported by BADAPSKI (Indonesian Centre of Arbitration and Alternative Dispute Resolution for Construction), HAKKI (Indonesian Construction Contract Expert Association), and Mercuri Buana University.

The event was attended by 250 participants from 17 countries.

Dispute Boards are recognized worldwide for their effectiveness in the real time avoidance and resolution of disputes on major projects. Dispute Boards ensure project success through significant decreases in costs and time overruns. International experience is that the vast majority of projects with Dispute Boards settle disputes without litigation or arbitration. Realizing the benefit of using Dispute Boards to enhance construction productivity, Indonesia has introduced a new law of construction service, Law No. 02 Year 2017, in which the use of Dispute Boards will be facilitated by the law. Due to the introduction of that new law on construction service, the number of major projects in Indonesia with Dispute Boards will increase significantly. The introduction of Dispute Board procedures and best practices to all construction stakeholders in Indonesia is critical to the success of the implementation of the new construction law.

DAY ONE: WORKSHOP The full-day workshop will introduce delegates to Dispute Board (DB, DAB, DRB, DAP) best practice and procedures, and used case studies to involve delegates in considering the processes of establishing and working

with Dispute Boards as well as looking at the contractual basis for their operation. The session was presented in alignment with regulations in Indonesia related to alternative dispute resolution, to enhance the effectiveness of Dispute Boards locally. The conference was aimed at construction consultants, engineers, contractors, lawyers, employers and auditors who already are experienced in major construction projects, for those who are users of Dispute Boards, and for those who are potential Dispute Board members.

The tutors explained: the Introduction to Dispute Boards, the Role of Dispute Boards, Formation and Function of Dispute Boards, DRBF Ethics, Selection and Appointment of DB Members, Dispute Board Agreement, Dispute Avoidance, Site Visits & Meetings, Dispute Resolution, Procedure and Enforcement of Dispute Board Decisions.

OVERVIEW OF WORKSHOP

- Brief history of Dispute Boards (DBs)
- Types of DBs and what they do
- Role of DBs in dispute resolution
- Formation of DBs and the selection and appointment of DB Members
- Procedures for making a referral to the Dispute Board
- Amicable settlement and enforcement of Decisions



Figure 1: Opening Ceremony by Danis Sumadilaga

Left to right: Sarwono Hardjomuljadi (Country Representative, DRBF), Murray Armes (President DRBF), Yusid Toyib (Director General for Construction, Ministry of Public Works and Housing), and Danis Sumadilaga (Head of Research and Development, Ministry of Public Works and Housing).



The workshop's participants, among others: Malith Mendis, Country Representative for Sri Lanka (center).

DRBF workshop (left to right): Sarwono Hardjomuljadi (Mercu Buana University), Toshihiko Omoto (Kyoto University), Geoffrey Smith.



Closing of workshop (left to right): Wibisono Setiowibowo, Masriyanto, Dudi Suryobintoro, Sarwono Hardjomuljadi, Yusid Toyib, Khalawi Abdul Hamid, Danis Sumadilaga, Lucky Korah, Murray Armes (UK), Ann McGough (USA), Toshihiko Omoto (Japan), Geoffrey Smith (France), Nigel Grout (UK).

Denpasar, Bali 23-24 August Final Report Continued

DAY TWO: CONFERENCE kicked off with an opening speech by Professor Anita Firmanti, Secretary General of the Ministry of Public Works and Housing, and followed with multiple conferences sessions and presentations. All presentations are available for download in the DRBF [library](#).

SESSION ONE: Dispute Boards as the Choice for Alternative Dispute Resolution.
Moderator: Ann McGough
Speakers: Elizabeth Tippin, Murray Armes, and Sarawono Hardjomuljadi

SESSION ONE: An Introduction to Dispute Boards.
Speaker: Murray Armes

SESSION TWO: Dispute Boards in Practice.
Moderator: Murray Armes
Speakers: Salvador P. Castro Jr., Malith Mendis, Toshihiko Omoto, and Barry Tozer

SESSION TWO: “Role of Dispute Boards in Dispute Avoidance” - Case study from projects in Asia and around the world.
Speaker: Salvador P. Castro, Jr.

SESSION TWO: Dispute Adjudication Boards: What is happening in South Asia?
Speaker: Malith Mendis

SESSION TWO: Case study and examples from projects in Asia and around the world.
Speaker: Toshihiko Omoto

SESSION TWO: One-Person Dispute Boards on Pacific Islands FIDIC Contracts.
Speaker: Barry Tozer

SESSION THREE: FIDIC Conditions of Contract and Dispute Boards.
Moderator: Geoffrey Smith
Speakers: Richard Kell, Sarwono Hardjomuljadi, and Nigel Grout

SESSION FOUR: Study and Future Development of Dispute Boards.
Moderator: Sarwono Hardjomuljadi
Speakers: Richard Kell, Geoffrey Smith, and Krishna Mochtar

SESSION FOUR: Experiences as Expert Determiner (Penilai Ahli) in Dispute Resolution Cases in Indonesia
Speaker: Krishna Mochtar



Opening speech of the conference by Professor Anita Firmanti (Secretary General of the Ministry of Public Works and Housing)



The WPAP by Wedha Abdul Rasyid as remembrance to the workshop tutor, Toshihiko Omoto.



Conference Welcome Dinner and Cultural Performance



The local conference committee
Left to right: Franz Widjojo, Dodik Priyatno, Ana Maranti, Sarwono Hardjomuljadi

DRBF Representative for Germany Sebastian Hök



Sebastian Hök
PhD in Law,
University of
Göttingen,
Germany
DRBF
Representative
for Germany

Sebastian Hök has been the DRBF Representative for Germany for nearly four years. Many DRBF members know Sebastian from his attendance at international and regional DRBF conferences since 2009 or from his attendance at FIDIC Users' conferences in Europe, the Middle East and Asia. Some of you have attended speeches which he has held at those conferences. Below, we learn of Sebastian's perspective on Dispute Boards based on his history in the field as a FIDIC approved and listed adjudicator, FIDIC-accredited trainer, his civil law experience and education, and the specific challenges of using Dispute Boards internationally in different legal and culture environments, in particular under FIDIC forms of Contract.

Though a lawyer by profession, Sebastian Hök is fairly attracted and fascinated by civil and mechanical engineering and has worked closely together with engineers in infrastructure and plant projects worldwide. He is a firm believer in and promotor of Dispute Boards (DBs) under FIDIC forms of Contract or similar, mainly because they are aimed at the early solution of any queries at the time the claim arises, and with the strong likelihood that plant, manpower, experts and witnesses are still on site. In his view, they are designed to avoid prolonged disputes, they strengthen a best practice contract management approach and they stand for transparency and integrity at all levels in contract management. With over 25 years' experience in the construction industry, Sebastian is convinced that DBs operate very well under civil and common law. So he does his best to continue promoting them in Germany and worldwide at various levels and opportunities, where he stresses their value in reducing litigation costs and completing projects successfully. They may also help to take in account aspects of "face saving" and other very important cultural values, he says, which is sometimes even more important than strict compliance with the law only.

DBs in Deutschland

In Germany, the difficult task is to convince the project and dispute resolution community that DBs can work there, he says. For domestic public projects, a government procurement-based contract form prevails the use and implementation of DBs is not at all supported by standard forms. Therefore, the German members of the DRBF are closely liaising with the German funding institutions, local Chambers of Commerce and other bodies, as well as with the German Association of Consulting Engineers. This association is co-responsible for the training of FIDIC adjudicators in Germany, a unique initiative within Germany.

To date in Germany, DBs have been used very little, but are increasingly used in the off-shore and renewables industry. So far, Sebastian and other DRBF German members have made some headway in pulling together the main professional groups that represent engineers, architects, universities, government bodies and lawyers, encouraging them to work together to promote DBs in the Germany. One result of this initiative was a promotional event in September at Lüneburg, which was hopefully the start of a close cooperation with the university

there, which is strongly engaged in interdisciplinary education of construction-related professions.

Bringing diverse experience to DBs

Sebastian is a practising lawyer, FIDIC trainer and lecturer at University. He is also a practising DB Chairman and Member and has been for eight years. Before that, he was a legal counsel in procurement, contract implementation and dispute resolution for 20 years. The projects have been in Europe, Africa, the Middle East, Asia and America, including infrastructure and building projects. Having been a practising Arbitrator in the construction business for several years and a registered German lawyer for more than 25, Sebastian is able to deal with legal, technical, engineering and quantum issues.

Sebastian runs a small boutique law

firm in Berlin, which he believes has the optimal size to provide on-site services with the necessary back-office services. Moreover, he says that the size of his law firm is the best option when serving in the role of “referee” or “umpire,” as there is less likelihood of having conflicts of interests. In addition to acting as a DB Member, Sebastian is an Arbitrator and Mediator and acts as Court expert in court proceedings and arbitration.

Sebastian advises the German Association of Consulting Engineers, of which he is a member, and is involved as a volunteer in diverse FIDIC activities. He serves as a FIDIC task group member and legal advisor for various FIDIC contracts. In his spare time, when he can find it, Sebastian relaxes by sailing at the Berlin lakes or on the Baltic Sea.

Sebastian Hök can be contacted at: kanzlei@dr-hoek.de.



Now Enrolling: DRBF Membership 2018

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 website (www.drb.org) or contact the main office for details and a membership form.

DRBF Regional Conference in Paris: From Grand Paris to Olympic-Size Projects *Use Dispute Boards to keep the work moving forward*

This one-day event will bring Dispute Boards to the forefront to explore how they can be used for exciting projects in the region, with a focus on the Grand Paris infrastructure projects (years 2015-2030) and the Olympic Games coming to Paris in 2024. Topics to include:

- Dispute Avoidance and Resolution Through Dispute Boards
- Complex Projects: Trends Worldwide
- DBs in the Region: ITER, CERN, and more
- Dispute Avoidance and Resolution for Grand Paris and Olympics
- The Legacy of Dispute Boards

Registration for this event opens in early 2018. Mark your calendar and plan to join us!



Friday 23 March 2018
Conference Chair: [Frédéric Gillion](#)

DRBF Regional Conference & Workshop - Mexico City



How DBs Reduce Costs and Save Money

25-26 April 2018

Radisson Paraiso Hotel • Mexico City, Mexico

Explore how Dispute Boards have become a best practice to avoid disputes and resolve them early--all to keep major projects on schedule and on budget. This event is especially relevant this year as Mexico explores the high value DBs bring to projects. During the conference and workshop, experienced practitioners will share their insight on best practices and lessons learned. Delegates will have ample time to share, learn and network

On day one, choose from workshop options. The day two conference features engaging presentations and lively panel discussions on the latest developments and issues facing the dispute resolution community worldwide.

→ April 25 **Dispute Board Workshop**

- Introductory Dispute Board Workshop (full day)

→ April 25 **Welcome Reception**

→ April 26 **DRBF International Conference**

- Full day of presentations, panel discussions, and Networking Dinner

Register at www.drb.org

Registration
for these
events open
in early 2018

Mark your
calendar and
plan to join
us!

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Save the Dates!



Northwest Regional Conference Seattle, WA USA

An annual conference focused on DRBs
in the Pacific Northwest, and training
workshop for DRB practitioners

Radisson Hotel Seatac
31 May & 1 June 2018

Conference Chairs: [John Hunt](#) and [Bill Ott](#)



DRBF 22nd Annual Conference Charlotte, NC USA

The organizing committee is already hard at work to make this an
engaging and memorable conference in Charlotte, which happens
to be the location of DRBF headquarters.

17-19 October 2018

(pending confirmation)

Learn more about the city [here!](#)

Conference Co-chairs: [Leland Caldwell](#) and [Jim Cotton](#)

DRBF Regional Conference Geneva, Switzerland

Organizers are securing venue and speakers,
more details to come

14-16 November 2018

Watch for details!



*Do you
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someone
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in joining
the DRBF?*

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Complete
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membership
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DRBF Forum

Dispute Resolution Board Foundation
3440 Toringdon Way, Suite 205
Charlotte, NC 28277 USA



DRBF INTERNATIONAL CONFERENCE GALA DINNER TOKYO BAY CRUISE



A popular event offered during the **DRBF 18th Annual International Conference**, the gala dinner will find us aboard a luxury yacht for a 2.5-hour tour of the Tokyo Bay and skyline lit up at night. We'll enjoy the city lights and beautiful landmarks from the huge picture windows in the spacious dining room. Or you can step onto the deck for even more fantastic views of the sights:

- We'll pass beneath the stunning Rainbow Bridge. This 2,618-foot (798m) long bridge includes a collection of white towers that mimic the city skyline.
- Keep an eye out for nearby Tokyo Disneyland, visible in the distance.
- We'll also see the illuminated Tokyo Skytree, which reaches a height of 2,080 feet (634m), along with Hamarikyu Gardens, and the shoreline of Odaiba, an island neighborhood that lines the bay.

Bring friends or family, or simply join colleagues for a fantastic evening. Business casual attire.

More details about the 18th Annual International Conference at www.drb.org