

# The Dispute Board Federation

Geneva

*Excellence in Dispute Resolution since 2001*

October 2009

Issue: 47



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## Featured Events

Future combined  
FIDIC -DBF  
and  
International Finance Corporation  
related programmes  
and events include:

### Istanbul

*ADR in The Construction Sector  
Practical Training Programme*  
10-11 November 2009

### Istanbul

DBF Winter Symposium  
12-15 November 2009

### Istanbul

Professional Members Dinner  
13 November 2009

### Washington, D.C.

Total Immersion Alumni  
Alumni Dinner  
18 December 2009

### Hanoi

Introduction to  
Procurement  
and  
Claims Preparation  
16 -24 January 2010

### France

Total Immersion Programme  
FIDIC Contractats  
19 - 27 February 2010

### London

Professional Members Dinner  
25 March 2010

### Singapore

Claims Preparation  
20 & 21 April 2010

### Singapore

Decision Writing  
22 & 23 April 2010

### Toronto

Total Immersion Programme  
FIDIC Contracts

## THE WINTER SYMPOSIUM

### REGISTER NOW

Registration for this year's Winter Symposium is now open and if you have not yet registered we encourage you to do so - please go to our link:

[Symposium Registration](#)

The Symposium is being held at Koç University in Istanbul, Turkey. This four day event and networking opportunity brings together leaders in worldwide ADR and includes speakers from 14 different countries.

Those attending will benefit not just from the networking opportunities but also from the sessions which include roundtable discussions, lecture, and participation in the daily events. Leaders in the ADR fields will present along with those from the IFC/World Bank Group, ACE Insurance, the EBRD, the Japan International Cooperation Agency, FIDIC, and others.

Discussions and presentations will also cover the latest mediation techniques in international matters, and the effective use of Dispute Boards.

**Herbert Wilson**  
Executive Director



## Winter Symposium Interview Gaining Consensus

We asked Christopher Chilton, Chair for the DBF's Winter Symposium session on Gaining Consensus, what he hoped his session would achieve. Chris told us that the issue of Consensus would be a theme running through the Symposium but took time out to give us his thoughts on his session.

**DBF:** What do you mean by consensus?

**CC:** One of the things that always interests me is how there are so many words in common usage which, when challenged, even the most ardent user, finds difficult to pin down. In the sphere of dispute avoidance and resolution, words like disagreement, difference, dispute, argument, conflict, opinion are bandied about without real thought as to what they mean. Another couple of words that are used all the time, and sometimes interchangeably, are compromise and consensus; I'd like to come back to those later.

**DBF:** Your session covers mediation and DABs. What else could be included?

**CC:** We're all familiar with the whole range of dispute avoidance and resolution methods, collectively perhaps "dispute disposal". We can get things done by ourselves by just chatting through the issues, informed argument and negotiation. We can get help in through assisted negotiation, mediation and conciliation. Through our contracts and commercial relationships we can agree that we will mediate, go through expert determination, dispute adjudication boards and arbitration. Like it or not we may be obliged by statute to go through adjudication and arbitration, sometimes and in some jurisdictions, even statutory mediation. There are hybrids like Med-Arb and Mini-Trial too. And of course there is the two tonne elephant in the corner: litigation.

**DBF:** Can we group these methods, to use your phrase, of "dispute disposal"?

**CC:** These processes, all aimed at getting to a result which is more or less enforceable, share some common attributes. Cost is always an issue with costs rising, it sometimes seems exponentially, from mediation to litigation. Ownership of the result is seen as a good thing; go beyond mediation and this is difficult to achieve. We generally like to be in control; mediation and beyond sees the control of the dispute disposal process moving away from the parties towards the dispute resolvers. It's sometimes difficult to see who controls litigation; it certainly is not the parties. As neophyte dispute adjudicators we're told by our pupil masters, ensure finality. This goes hand-in-hand with certainty. Here, the more you pay the more you get. You may not get the result you want in the House of Lords but you do get certainty and finality. And so the "so what" moment. What is the point if one cannot enforce the award? It does seem that the less the parties have to do with the process, both its management and the result it obtains, the easier enforceability gets, even if more expensive.

**DBF:** Do you see these methods applying to conflicts too?

**CC:** Going back to two of our common words, I want to differentiate between dispute and conflict. We can say that a dispute is a disagreement or argument about something important; a conflict is a hostile meeting of opposing military forces in the course of a war. Clearly there is a continuum between these two things. Oberg and Galtung in their work with *TRANSCEND* and the International Peace Research Institute ([www.transcend.org](http://www.transcend.org)) propose that win-win is no longer good enough; we must transcend and achieve growth out of conflict, open up the issues; as well as halving the orange, plant orange groves too. This laudable approach to conflict and to life in general is not easy to apply to commercial relationships and any subsequent dispute disposal. In the disposal of a commercial dispute generally one party gets more than they had expected or hoped for. The other party gets less than they wanted. Before or during mediation it is still possible to compromise. Although not imposed by a neutral, that leads us to the concept of compromise as an outcome that neither party is completely happy with.

**DBF:** So, can we move on to consensus?

**CC:** It looks like we're back to words (again). So what are compromise and consensus? A compromise is a settlement of differences in which each side

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[www.dbfederation.org](http://www.dbfederation.org)



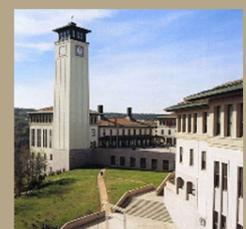
### Winter Symposium Venue Images



Blue Mosque



Koç University



Koç University

makes concessions; a middle way between two extremes in which each side agrees to give up part of its demands. It is something that combines qualities or elements of different things. Often a concession is seen as something detrimental or pejorative so that the combination of pieces of different things can reduce the quality, value, or degree of the end result. That doesn't sound like "win-win" to me. Nor does it sound like a good way to continue and grow a sustainable relationship. One might argue that with other forms of disposing of a dispute there is at least a clear, or reasonably clear winner; compromise might be seen as an agreement with two losers.

Consensus is an opinion or position in the judgment reached by a group as a whole; a general agreement or accord. It is a collaborative, cooperative process of arriving at a decision selecting one option from among many through a process of gathering relevant information, open discussion and resolution of major concerns connected with the preferred option. Unlike compromise, I would suggest that a genuinely held consensus does not have the dark side that compromise has.

**DBF:** So how do you propose we use consensus?

**CC:** There can be consensus as to method and there can be consensus as to outcome. Putting to one side the right that most citizens have in most jurisdictions to take their disputes to law, whether that be a courtroom and judge or fireside and village elder, in commercial arrangements which by definition are consensual in themselves, the parties can reach consensus as to methods of disposing of their disputes. Outcome is a little more restricted. In adjudication and beyond, there is little opportunity for consensus as to outcome. However there could be consensus as to enforcement, with the parties agreeing the detail of how the decision of a dispute board or award of an arbitrator may be fulfilled.

**DBF:** And how does this fit in with the DBF's Symposium?

**CC:** In the session on Gaining Consensus our speakers will look at ADR generally and then negotiation, mediation and DABs. As methods, they all demonstrate consensus having been agreed to by the parties or born out of the contract between the parties. As to consensus of outcome, all allow some consensus to be reached. Dispute Boards are unique in that they are formed for a standing board at the commencement of the relationship of the parties and not at the emergence of a dispute. All through the process - site visits, meetings, informal and formal opinions and hearings, the parties have the opportunity to gain consensus in the presence of an individual or small group of informed experts. I'm looking forward to hearing our learned speakers on the issues and putting the issues to the floor in Istanbul.

*Christopher Chilton is a Chartered Engineer, Certificated Project Manager and Barrister. He is responsible for dispute board appointments for the DBF*



[Conference Brochure](#)



Istanbul Ferry



City View

