Dispute Boards in International Construction Contracts: A Real-Time Dispute Resolution Mechanism

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1. Introduction

Infrastructure projects are characterized by a high incidence of contractual disputes, a phenomenon that stems from the inherent complexity of their operational dynamics and the long-term nature of their execution. In this environment, conflicts among the parties involved are not only frequent, but have become a structural component of the construction process itself. The sector's sensitivity to disagreements, combined with the multiplicity of stakeholders pursuing divergent interests, creates a setting particularly prone to disputes and litigation.

Within this framework, such projects are often structured through **EPCM (Engineering, Procurement and Construction Management)** contracts, under which the contractor manages and coordinates engineering, procurement, and construction activities without directly assuming construction risk, or through **turnkey contracts**, under which the contractor assumes the comprehensive obligation to deliver the completed and operational project.

The complexity and duration of engineering and construction activities make conflicts an inevitable and routine aspect of project execution. In this regard, the Argentine scholar **Humberto Podetti** points out:

"Indeed, since divergences are a necessary ingredient of every construction contract, and even of every deferred-performance contract, they require only appropriate treatment by the parties within the agreement that gave rise to the contract."

From an efficiency perspective, it is preferable to prevent conflicts or resolve them at their early stages rather than wait until the end of the project. Extending dispute resolution mechanisms beyond the contractual term undermines the effectiveness of the process and negatively affects all parties involved. Consequently, there has been a growing need to implement methods that allow claims to be resolved quickly and on a provisional basis, without interrupting the progress of the works.

Along the same lines, Podetti further states:

"(...) divergences arising during the performance of a contract are best resolved during the life of the very contract that gave rise to them. There is no reason why this should not be possible, except for the unwillingness of one of the parties to resolve them or the slowness of the arbitrator or judge appointed by the parties. Both of these factors can be avoided if the parties

carefully design, during the contract administration period, the appropriate procedure, not only by giving priority to mutual agreement and, when that cannot be achieved, to the fairness of a third party, but also by establishing as an indispensable condition a resolution period that is consistent with the duration of the contract itself."

Against this backdrop, the need to adopt **alternative dispute resolution mechanisms** has become increasingly evident, both to prevent disputes from arising and to resolve them efficiently when they do occur. In this context, **Dispute Boards** (hereinafter, "DBs") have emerged as fundamental tools for conflict management in construction contracts. Their purpose is to provide effective, agile, and straightforward solutions directly at the project site, without requiring the partial or total suspension of the works.

In this regard, **Dyalá Jiménez Figueres** and **Roque J. Caivano** state:

"Dispute boards are designed as a mechanism to resolve conflicts during the performance of a contract, without the need to terminate the contractual relationship or suspend the works for longer than the brief period required by the panel of experts to issue its determination. In that context, the existence of this advisory body, whose members enjoy the confidence and respect of the parties and stand ready to address their concerns, is a value in itself, since its function is more preventive than adjudicative. It is therefore an agile and efficient mechanism that enables most controversies to be resolved promptly and competently.

(...) The method allows for different variations, since such intervention may consist merely of issuing non-binding recommendations or of rendering decisions that are binding upon the parties."[4]

(emphasis added)

Ultimately, DBs emerged as a practical response to the need to resolve disputes in real time while preserving both project continuity and cooperation among the parties. In order to understand their current scope and significance, it is useful to review their origins and evolution.

2. Origin of Dispute Boards

The origin of Dispute Boards (DBs) dates back to the United States in the 1970s, when they began to be used as a tool aimed at reducing conflicts between contractors and owners in major infrastructure projects. It became apparent that disputes arising during the execution of construction works required a mechanism different from traditional means of dispute resolution, as the failure to address them in a timely manner could lead to significant delays and cost overruns.

The first panel of this kind was established in 1975 during the construction of the Eisenhower Tunnel in the State of Colorado. The parties agreed to appoint a group of experts who would remain available throughout the duration of the project and who could issue recommendations whenever disagreements or claims arose. This initial advisory model gave rise to what became known as the **Dispute Review Board (DRB)** or **Dispute Recommendation Board**, reflecting its role in issuing non-binding recommendations.

Subsequently, the United Kingdom developed a variation known as the **Dispute Adjudication Board (DAB)**. While conceived with the same objectives, it was endowed with greater authority: its decisions are binding upon the parties, albeit on a provisional basis. In 1996, British legislation incorporated this system as a requirement for public housing construction contracts, with the aim of mitigating the financial difficulties affecting the construction sector.

In the mid-1990s, the World Bank formally adopted Dispute Boards as a condition for financing projects exceeding USD 50 million. Initially, in 1995, it opted for the **Dispute Recommendation Board** model; however, in 2000 it moved toward requiring **Dispute Adjudication Boards**, empowered to issue binding decisions.

For its part, the **International Federation of Consulting Engineers (FIDIC)** incorporated the **Dispute Adjudication Board** into its standard construction contract conditions: in 1996 in the **Red Book**, in 1997 in the **Yellow Book**, and in 1999 in the revised editions of both, as well as in the **Silver Book**.

A significant milestone in this evolution was the intervention of the **International Chamber of Commerce (ICC)**, which in 2004 adopted its own set of rules entitled the **Dispute Board Rules**, with the aim of harmonizing criteria and promoting the international use of the mechanism. These rules not only systematized prior experiences but also introduced, for the first time, the concept of the **Combined Dispute Board (CDB)**, a hybrid model which, together with the two existing forms, the **Dispute Review Board (DRB)** and the **Dispute Adjudication Board (DAB)**, provided the system with a flexible structure that could be adapted to the specific characteristics of each contract.

In doing so, the ICC made a decisive contribution to the consolidation and worldwide dissemination of Dispute Boards as an effective tool for the early management of disputes in construction and infrastructure projects.

3. Main Features of Dispute Boards

The ICC defines a Dispute Board as a:

"standing body composed of one or three members. It is generally established when a medium- or long-term contract is signed or its performance begins, and its function is to assist the parties in avoiding or resolving disagreements or disputes that arise during the implementation of the contract. While common in construction projects, dispute boards are also effective in other areas, such as research and development, intellectual property, joint production arrangements, and shareholders' agreements".[5]

Similarly, Arnoldo Wald states that:

"Dispute Boards (DBs) are panels, committees or boards for dispute resolution whose members are appointed upon the execution of a contract and accompany its performance until completion. Depending on the circumstances and the powers granted by the parties, they may issue recommendations (in the case of Dispute Review Boards, DRBs), render decisions (in the case of Dispute Adjudication Boards, DABs), or perform both functions (in the case of Combined Dispute Boards, CDBs)".[6]

The most common characteristics of Dispute Boards in international construction contracts are as follows:

1. **Composition:** They are generally composed of three members. Each party appoints one member, and those two members jointly select the third, who serves as chairperson. In some cases, a sole-member board is used.
2. **Independence and Impartiality:** Board members must maintain a neutral position with respect to the parties.
3. **Early Implementation:** They are established at the beginning of the contract in order to become familiar with the project from the outset, thereby avoiding delays should a dispute arise.
4. **Active Monitoring:** Members are expected to remain informed about the progress of the project through periodic site visits, review of relevant documentation, interviews with witnesses, and examination of technical reports.
5. **Procedural Flexibility:** Boards enjoy significant freedom in determining their working methods, which distinguishes them from conventional arbitration proceedings.
6. **Confidentiality:** Board deliberations are confidential and may not be disclosed outside the contractual framework or in judicial or arbitral proceedings.
7. **Expeditiousness:** Determinations must be rendered within short timeframes, typically within three months following the submission of a dispute.

4. Institutional Rules

In order to obtain a comprehensive overview of the subject, it is useful to examine the rules developed by the institutions that provide for the use of Dispute Boards (DBs) and offer this pre-arbitral dispute resolution system. In particular, attention should be given to the Dispute Boards of the **International Chamber of Commerce (ICC)**, the **World Bank Dispute Boards**, the **Dispute Adjudication Boards of the International Federation of Consulting Engineers (FIDIC)**, and the **Dispute Review Boards administered by the American Arbitration Association (AAA)**, which are discussed below.

5 ICC Argentina. Website consultation: https://iccwbo.org/dispute-resolution/dispute-resolution-services/adr/dispute-boards/

6 Wald, Arnoldo. *A Arbitragem Contratual e os Dispute Boards*. In: *Revista de Arbitragem e Mediação*, Year 2, No. 6, July-September 2005, p. 18.

4.1. ICC Dispute Boards

In September 2004, the ICC published for the first time the rules governing the operation of Dispute Boards. These rules have been widely accepted by parties seeking neutral methods for the resolution of contractual disputes.

The system established by the ICC allows parties to choose among three different alternatives. As noted above, in addition to the traditional **Dispute Adjudication Board** and **Dispute Review Board**, there is a third option: the **Combined Dispute Board**. Accordingly, when entering into a contract, the parties must identify the type of Dispute Board they wish to adopt.

Under the ICC Rules, the existence of a contract between the parties and the members of the panel is mandatory. To facilitate the implementation of this mechanism, the ICC has developed a model agreement to be executed between each panel member and the parties.

In addition, the Rules allow the parties to agree that panel members may not only issue determinations but also assist in resolving minor disagreements of any kind.[7]

The Rules emphasize the cooperative relationship that must exist between the parties and the panel members. Pursuant to Article 12 of the Rules, at the commencement of its activities and after consulting with the parties, the panel must establish a schedule of meetings or, where the nature of the contract so requires, conduct site visits. Such meetings or visits should occur with sufficient frequency to ensure that the panel remains informed regarding contract performance and any disagreements that may arise between the parties.

Under the ICC system, a panel may be composed of either one or three members. If the parties fail to determine the number, the panel shall consist of three experts.[8] In three-member panels, each party appoints one member, subject to the approval of the other party. If the appointment is not completed within thirty (30) days, the ICC will make the appointment at the request of either party, pursuant to Article 7(4) of the Rules.

Thereafter, the two appointed members must propose a third member, who will serve as Chair. If the parties fail to agree upon the appointment within fifteen (15) days, the ICC will appoint the Chair directly, pursuant to Article 7(5) of the Rules. In this regard, the **ICC Dispute Board Centre** plays a central role in appointing panel members and in deciding objections or challenges that may arise.

It is important to note that all panel members must be independent of the parties and that all information obtained by them in the course of their activities as panel members is confidential.[9]

4.1.1. Types of Dispute Boards under the ICC Rules

The ICC recognizes three forms of dispute resolution panels for construction projects: **Dispute Review Boards (DRBs)**, **Dispute Adjudication Boards (DABs)**, and **Combined Dispute Boards (CDBs)**. For each of these mechanisms, the ICC provides standard clauses that may be incorporated directly into contracts.

1. Dispute Review Boards (DRBs)

DRBs are limited to issuing **non-binding recommendations** concerning the disputes submitted to them. The parties have thirty (30) days to reject the recommendation through formal notice. If neither party objects within the prescribed period, the recommendation becomes binding. If an objection is made, the dispute may be referred to arbitration.

2. Dispute Adjudication Boards (DABs)

Unlike DRBs, DABs issue **decisions that are binding**, although they may be challenged. A party wishing to contest the decision must do so within thirty (30) days of its issuance. In such circumstances, the dispute will ultimately be resolved through arbitration.

This mechanism is particularly effective in ensuring contractual compliance because it obliges the debtor party to perform the required payment while preserving its right to challenge the determination afterward, following the principle of **"pay now, argue later."**

3. Combined Dispute Boards (CDBs)

CDBs constitute a hybrid model combining characteristics of both DRBs and DABs. They generally issue recommendations but may render binding decisions if requested by one party and not opposed by the other.

If an objection is raised, the panel has the authority to determine whether to issue a recommendation or a binding decision, taking into account factors such as the urgency of the matter, the risk of contractual breakdown, or the need to preserve critical evidence.

4.2. World Bank Dispute Boards

In 1995, the World Bank published a revised edition of its standard construction contract, known by its English acronym **SBDW (Standard Bidding Documents - Procurement of Works)**. This mandatory model contract is required for major civil works projects financed by the World Bank. It marked the first incorporation of Dispute Review Boards into international construction projects.

An amendment to that standard contract made the use of three-member **Dispute Review Boards (DRBs)** mandatory as the first stage of dispute resolution for contracts valued at USD 50 million or more. For contracts below USD 50 million, the parties could elect to use either a one-member or three-member DRB, a single **Dispute Review Expert (DRE)**, or an independent engineer.

Subsequently, in May 2000, a further amendment to the SBDW established that recommendations issued by DRBs or DREs would become binding, while remaining subject to review in arbitration. In addition, the option of using an independent engineer to resolve contractual disputes was eliminated.

The version currently in force was published in May 2005. Among its most notable changes was the replacement of the terms **DRB** and **DRE** with the broader concept of **Dispute Boards (DBs)**, as well as the elimination of the mandatory requirement that contracts exceeding USD 50 million have a three-member panel. Instead, parties are free to choose whether the panel will consist of one or three members. Only in the absence of a specific contractual provision is a three-member panel presumed.

4.3. FIDIC Dispute Adjudication Boards

FIDIC first introduced the concept of **Dispute Boards** into its contracts for design and infrastructure projects in 1995 through the well-known **Orange Book**.

The use of Dispute Boards was subsequently extended to other contract forms, namely the **Red Book** in 1996 and the **Yellow Book** in 1997, which apply respectively to civil construction works and to the design and construction of public works.

Prior to the publication of the Orange Book, disputes between the employer and the contractor under the FIDIC contractual framework were initially resolved by an engineer. Because that engineer was remunerated by the employer, it was often difficult for him or her to act independently and impartially.

Consequently, following the approach adopted by the World Bank, FIDIC decided to implement **Dispute Adjudication Boards (DABs)**, establishing that DAB decisions would be binding upon the parties unless subsequently reviewed by mutual agreement or submitted to arbitration by one of the parties.

Under the FIDIC system, the establishment of DABs forms part of the dispute resolution clause applicable whenever a FIDIC contract is used, unless the parties expressly agree to modify or remove that provision.

4.4. Dispute Review Boards of the American Arbitration Association (AAA)

Since the adoption of DRBs in the United States during the early 1970s, they have been widely utilized in a broad range of construction projects.

As of September 2003, more than 1,000 construction projects had employed DRBs, resulting in the resolution of approximately 1,200 disputes, with fewer than 30 of those disputes proceeding to litigation.[11]

The American Arbitration Association has offered DRB administration services since December 2000. According to the Dispute Resolution Board Foundation, several factors have contributed to the success of these mechanisms:

1. The three DRB members are neutral, and their appointment is subject to approval by both parties.
2. All panel members sign an agreement with the parties obliging them to provide equal and fair treatment.
3. DRB fees and expenses are shared equally between the parties.
4. DRBs are established and begin operating at the outset of the project, before any dispute arises.
5. Panel members remain continuously informed about contract performance through periodic reviews of relevant documentation and site visits.
6. Either party may submit a dispute to the expert panel.
7. Informal assistance is provided to the parties, who are heard by the panel members in prompt hearings.
8. DRB recommendations are generally non-binding unless otherwise provided in the contract.
9. Such recommendations constitute important evidence if the dispute subsequently proceeds to arbitration or litigation.
10. Panel members are released from personal and professional liability for their activities as DRB members.

5. Procedure of Dispute Boards under the ICC Rules

Regardless of the type of Dispute Board (DB), the determinations issued by the panel are generically referred to as **“determinations.”** These may take the form of **“recommendations”** in the case of a **Dispute Review Board (DRB)** or **“decisions”** in the case of a **Dispute Adjudication Board (DAB).**

Whatever type of DB the parties choose in their contract, the party seeking a determination must submit a formal request, known as a **“statement of disagreement”** (*statement of dispute*), to both the other party and the panel.

Unless the parties agree on a different procedure, or the panel decides otherwise, the opposing party must submit a written response within thirty (30) days following receipt of the statement of disagreement. Such response must include:

1. A clear and concise description of the position taken regarding the claim;
2. The grounds or justifications supporting that position; and
3. A statement of the relief or determination sought from the panel.

In the case of a **Combined Dispute Board (CDB)**, the response must also include the party's position regarding the request for a decision submitted by its counterpart, or, if no such request has been made, any independent request for a decision, together with an explanation of why the panel should issue a determination of that nature.

Once the response has been submitted, a hearing must be held, which, unless otherwise decided by the panel, shall take place within fifteen (15) days following receipt of the response. All parties and panel members must attend the hearing, except in exceptional circumstances.

The usual procedure is for the claimant to present its position first, followed by the responding party. The panel may request additional clarifications from either party, providing the opposing party with an opportunity to respond.

These **determinations** must be issued promptly and, in any event, within ninety (90) days from the date the statement of disagreement is received. This period may be extended by agreement of the parties or by a reasoned decision of the panel after consultation with them.[12]

Because the panel is a collegial body, it must strive to reach its determinations unanimously. If unanimity cannot be achieved, the determination shall be adopted by majority vote. If no majority can be reached, the Chairperson's decision shall prevail.

Panel members who disagree with the majority position must state the reasons for their dissent in a separate written report. This report does not form part of the determination itself, although it shall be communicated to the parties.

Under the ICC system, the parties may choose to submit the panel's determination for review by the ICC.[13] Such review is conducted by the **ICC Dispute Board Centre**. In that case, the panel must submit its determination to the Centre in draft form before it is formally signed.

The Centre's review function is limited to a formal examination of the document and does not extend to the substantive merits of the determination.

Once these steps have been completed, the determination is notified to the parties.

In the case of a **recommendation** issued by a **Dispute Review Board**, it does not become binding immediately. Instead, it becomes binding upon the expiration of thirty (30) days from its receipt,[14] during which period the parties may express their disagreement.

If neither party objects within that period, the recommendation becomes binding and must be complied with without delay. It may no longer be challenged insofar as this is consistent with the applicable law.

Conversely, if either party expresses disagreement within the prescribed period, the dispute must be referred to ICC arbitration or, where applicable, to the competent courts.

A **decision** issued by a **Dispute Adjudication Board**, by contrast, is immediately binding and enforceable. Even if a party expresses disagreement within thirty (30) days, or within another period agreed upon by the parties, the decision must nevertheless be complied with, since such challenge does not have suspensive effect.

In the event of disagreement, the matter will be finally resolved through arbitration or before the ordinary courts, either by confirming or overturning the decision. However, those subsequent proceedings do not suspend its enforcement.

Finally, in the case of a **Combined Dispute Board**, the effects of the panel's determinations will be the same as those described above, depending on the nature of the determination issued.

Nevertheless, in all cases where a determination is binding and enforceable,[15] if the party required to comply with it fails to do so, such non-compliance, rather than the merits of the underlying dispute, shall be submitted to arbitration or to the competent state courts in order to obtain a final ruling.

It should be noted that, by its very nature, this procedure may be used as many times as disagreements arise during the execution of the project for which the DB has been appointed.

Likewise, multiple panels may be established in connection with the same project where there are multiple contracts involved.

5.1. Preventive Function of Dispute Boards

In addition to their adjudicative role, Dispute Boards perform a highly significant preventive function within the construction industry.

Their ability to intervene at an early stage in potentially contentious situations has proven effective in terms of cost, speed, flexibility, and informality. Their role is not limited to resolving disputes that have already materialized; rather, it seeks to anticipate and defuse them before they escalate.

This preventive function is strengthened when panel members conduct periodic site visits, review relevant documentation, and maintain up-to-date knowledge of project progress.

Immediacy becomes a fundamental operational principle, enabling adjudicators to identify and address conflicts **when they arise (“on time”)** and to resolve them directly **at the project site (“on site”)** through impartial and independent contractual procedures.

Such early intervention is often sufficient to prevent a disagreement from developing into a formal dispute.

Moreover, it helps preserve the relationship between the parties, reduce litigation-related costs, avoid disruptions to project execution, and ensure the continuity of the project.

6. Effects and Enforcement of DB Determinations under the ICC Regime

Under the ICC regime, a DB determination may become **binding**, whether because it is an unchallenged recommendation or a formal decision of the panel.

The fact that a determination is **binding** merely means that it must be complied with; it does **not** confer upon it the same legal effects as an arbitral award.

Pursuant to Articles 4(4) and 5(4) of the ICC Rules, if one party fails to comply with a binding determination, the other party may submit such non-compliance to arbitration (if so agreed) or, failing that, to a competent court.

The Rules make it clear that a DB determination cannot be enforced through the mechanisms available for arbitral awards because it does not have the same legal nature.

In any subsequent arbitration seeking to challenge an unobjected recommendation or a formal panel decision, the arbitral tribunal is not limited to analyzing the consequences of non-compliance.

Rather, it has full authority to review the merits of the dispute in their entirety and is not bound by the determination issued by the DB.

A panel determination therefore has **no res judicata effect**. While it obliges the parties to comply on a provisional basis, it may still be challenged and reviewed in the subsequent arbitration on the merits.

7. Remuneration of Dispute Boards

As noted above, the scope of the work performed by members of technical panels is extensive.

From the commencement of the project, they must remain informed of all developments occurring during contract performance, conduct site visits, and provide informal assistance to the parties in resolving any disagreements that may arise.

Under the ICC Rules, panel remuneration consists of a **fixed monthly retainer**[16] together with compensation based on hours worked.

The purpose of the monthly retainer is to ensure that panel members remain continuously available and informed regarding:

1. The contract and the monitoring of its performance;
2. The review of progress reports and correspondence;
3. Availability to attend meetings and site visits whenever necessary; and
4. Each panel member's general administrative expenses at their place of residence.

The general principle of the ICC Rules is that the parties shall bear the panel's fees and expenses in equal shares and that, unless otherwise agreed, where the panel consists of three members, they shall receive equal remuneration.

Nevertheless, the parties remain free to agree directly with panel members on a different compensation arrangement.[17]

In addition, a separate fixed fee is charged for the institutional administration of the system, which in the case of the ICC is provided through its **Dispute Board Centre**.

The cost of using the Dispute Board system throughout the life of a construction contract has ranged from approximately **0.04% to 0.51% of the total contract value**.

8. Differences Between Dispute Boards and Arbitration

There is a common misconception that Dispute Boards (DBs) and arbitration are mutually exclusive mechanisms, requiring parties to choose one or the other on a definitive basis. However, this interpretation does not reflect reality. DBs were not conceived as a competing alternative to arbitration, but rather as an evolution of the traditional model of dispute resolution in construction projects.

Unlike arbitration, which intervenes during the critical stage of a dispute, DBs operate from the very beginning of the contract. This allows them to develop an in-depth understanding of the project and to respond immediately when disputes arise.

In this regard, Fernando Estavillo Castro states:

"(…) through periodic reports (generally monthly) submitted by the parties to the dispute board and periodic meetings (generally quarterly or every four months) between the dispute board and the parties, usually at the project site, the dispute board remains informed regarding the progress of the project and the emergence and development of potentially contentious situations inherent to it, with the objective of acquiring a thorough and first-hand understanding of the facts in the event that a dispute arises between the parties."[18]

In contrast, the arbitrator becomes involved at a later stage of the conflict, when many of the circumstances that gave rise to it are no longer present. Arbitrators generally intervene during the so-called **"critical stage"** of the dispute, at a point when the parties have exhausted all available remedies. Their involvement is often limited to a single site inspection, and the reconstruction of the facts depends almost entirely on the work of counsel, which can require considerable time and expense.

On the other hand, arbitration possesses attributes that DBs do not, such as the enforceability of arbitral awards under the **New York Convention**.

Indeed, DBs are generally not governed by specific legislation in the region; rather, their authority derives from the parties' contractual agreement. Although their determinations are binding and immediately effective upon the parties, unlike arbitral awards, such determinations do not benefit from the constitutional or statutory recognition afforded to arbitral awards, nor are they subject to the protections and privileges granted by international conventions applicable to arbitration.

Moreover, the substance of DB determinations may be fully reviewed by an arbitral tribunal. Arbitral awards, by contrast, are generally not subject to review on the merits, judicial control being limited to grounds for annulment. This non-reviewability of the merits constitutes one of the principal guarantees underlying the legal effectiveness of arbitral awards.

However, although both mechanisms possess different characteristics and may appear to compete with one another, these differences should not be viewed as incompatibilities.

On the contrary, DBs contribute immediacy, continuous project knowledge, and preventive capabilities, reducing the escalation of conflicts and enabling disputes to be addressed while they remain manageable. Arbitration, for its part, provides the legal certainty of a final decision, together with international enforceability and a well-established legal framework.

Accordingly, rather than excluding one another, DBs and arbitration form an integrated model that promotes efficiency, predictability, and continuity in the execution of complex construction projects.

9. Conclusion

This article has examined the benefits of Dispute Boards as a dispute resolution mechanism in long-term infrastructure contracts.

The technical and legal expertise of their members, combined with their close involvement with the works, project documentation, and the parties themselves, enables them to anticipate and prevent conflicts before they escalate. When disagreements do arise, DBs facilitate their early and efficient management, helping to defuse tensions and preserve project continuity.

In this way, DBs have established themselves as highly effective pre-arbitral mechanisms, capable of addressing disputes that combine technical and legal issues in a swift, cost-effective, and practical manner. Their timely intervention helps clarify the issues in dispute, thereby facilitating a subsequent arbitral process that is more focused and precise.

The incorporation of standard DB clauses, such as those offered by the ICC, allows the corresponding rules to apply automatically, ensuring a predictable and functional procedural framework. This practice is particularly advisable in large-scale, technically complex, and long-term contracts, where the benefits of the mechanism more than justify its adoption.

Far from competing with arbitration, DBs complement it by forming an integrated system that enhances efficiency in the management of disputes. International experience supports their effectiveness, with dispute resolution rates approaching **97%**.

In Latin America, their adoption has progressed gradually; however, the projects in which they have been implemented demonstrate a high degree of effectiveness and tangible benefits for the parties. All of this highlights both the need and the opportunity to strengthen their regulatory framework and promote their systematic use, thereby allowing these mechanisms to fully perform their role as modern, preventive, and collaborative tools for the resolution of complex disputes.

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1 PODETTI, Humberto. *Contrato de Construcción*. Editorial Astrea de Alfredo y Ricardo Depalma, Buenos Aires, 2004, p. 422.

2 For Podetti, a divergence is a disagreement regarding a secondary or principal aspect of the overall agreement. It is a threat that may transform the parties into adversaries, generating a contractual crisis sufficient to frustrate the agreement. Alternatively, it may further strengthen mutual consent. From this perspective, divergences constitute both a challenge and an opportunity for the parties.

3 *Ibid.*, p. 425.

4 Jiménez Figueres, D., & Caivano, R. J. (2007). *Operation of ICC Dispute Boards and Their Treatment Under Argentine Law*. *International Arbitration Review*, January-June 2007.

5 ICC. *Dispute Boards Services*.

6 Wald, Arnoldo. *A Arbitragem Contratual e os Dispute Boards*. Revista de Arbitragem e Mediação, Year 2, No. 6, July-September 2005, p. 18.

7 Article 16 of the ICC Rules refers to this service as "informal assistance." According to Genton, informal assistance to the parties is the core of the efficiency of the Dispute Board mechanism: *"the informal assistance of the parties by the dispute board is probably the heart of the dispute board intervention in terms of efficiency."* Dorgan shares this view, describing it as *"one of the most valuable characteristics distinguishing the dispute board."*

8 Article 7(2) of the ICC Rules.

9 Article 9(2) of the ICC Rules.

10 *Standard Bidding Documents - Procurement of Works.*

11 *The Construction Industry's Guide to Dispute Avoidance and Resolution*, American Arbitration Association, October 2004.

12 Article 20(1) of the ICC Rules.

13 Article 20(2) of the ICC Rules. According to Genton, the ICC is the only institution that offers a review service for panel determinations. See Genton, P., *ICC Promotes Dispute Board Rules Worldwide*, p. 109.

14 The thirty-day period was established to provide the parties with a reasonable time for reflection and, where necessary, consultation with senior management of their respective organizations. See Genton, P., *ICC Promotes Dispute Board Rules Worldwide*, p. 107. The parties may, however, agree upon a different period.

15 It should be recalled that recommendations become binding once the period for objection has expired without challenge, whereas decisions become binding upon notification.

16 Pursuant to the ICC Rules, unless otherwise agreed, monthly fees are equivalent to three times the established daily rate and are payable quarterly in advance from the date of execution of the agreement until its termination.

17 The ICC Rules contain detailed provisions on this matter. See generally Articles 27 to 29.

18 ESTAVILLO CASTRO, Fernando. *Arbitration and Dispute Resolution in Construction Matters*, Seminar organized by the International Chamber of Commerce of Mexico and the Mexican Arbitration Center, Mexico City, June 2007, p. 15.

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