



International Chamber of Commerce

The world business organization



International Federation
of Consulting Engineers

International construction contracts and the resolution of disputes

Co-hosted by ICC and FIDIC

Dates

Monday 17 – Tuesday 18 October 2005

Venue

Espace Hamelin, 17 rue Hamelin, 75016 Paris

Objectives of the conference

Review procedures for claims and disputes under FIDIC contracts and explain the legal entitlements of the signatories (Contractor and Employers). Examine specific features of dispute resolution settlement techniques under international construction contracts and their practical implications. Sessions will be led by world renowned experts in the field and structured to provide interactive discussion among participants.

Discussions will specifically focus on

- The new Multi-lateral Development Bank's Harmonized Construction Contract (MDB Contract)
- FIDIC Contract forms used in private contracts (Yellow and Silver books)
- Dispute resolution options available in contracts with sovereign entities
- Dispute Boards in civil law countries
- Sub-Clause 20.5 of the FIDIC Contracts and the settlement of disputes
- Multi-party arbitration
- Preparation and presentation of claims for delay

Participants

The conference will be of particular interest to engineers, contractors, employers, financial institutions and arbitrators & legal advisors in the field of international construction.

About the ICC International Court of Arbitration

The ICC International Court of Arbitration is the leading body in international commercial arbitration. Founded to resolve business disputes of an international character, its strict impartiality and effectiveness are recognized everywhere. Countless business contracts, including many where one party is a government body, now refer to the ICC Rules of Arbitration. www.iccarbitration.org

About FIDIC

FIDIC is the French acronym for the International Federation of Consulting Engineers. It was founded in 1913 to promote the professional interests of member associations and to disseminate information of interest to members of its component national associations. FIDIC membership currently numbers 73 member associations from all parts of the globe and represents most of the practising consulting engineers in the world. www.fidic.org.

Programme

Monday 17 October 2005

CLAIMS AND DISPUTES UNDER INTERNATIONAL CONSTRUCTION CONTRACTS

09.00 – 09.50

Welcome and overview by the Chairman of the first day: The FIDIC Contract forms and the new MDB Contract

Presentation of the FIDIC contract forms used in public contracts, the Red Book and now the new Multi-lateral Development Bank's Harmonized Construction Contract (MDB Contract), and of the FIDIC forms used in private contracts, the Yellow and Silver Books. Who uses the contracts forms and why? What are their specific features? How are the Yellow and Silver Books used in privatized BOT projects? What are the implications of the new MDB contract? What is their future role?

- **Christopher Wade**, Chairman, FIDIC Contracts Committee; Private practice, United Kingdom; Advisor, SWECO International, Sweden

09.50 – 10.00 *Question and answer period*

10.00 – 10.30 **Contact break**

10.30 – 11.30

Dealing with unforeseen events

How do claims arise? How to deal with unforeseen events under the Yellow, the Silver, and the Red Books? What are the contractor's and the employer's entitlements to additional money and time? How do they obtain them? What is the effect of the applicable law on the FIDIC conditions, including individual clauses, e.g., Clause 20.1? What is the potential for use of international legal principles such as those of UNIDROIT?

- **Christopher Wade**, Chairman, FIDIC Contracts Committee; Private practice, United Kingdom; Advisor, SWECO International, Sweden
- **Christopher R. Seppälä**, Alternate Member for the United States, ICC International Court of Arbitration; Legal Advisor, FIDIC Contracts Committee; Partner, White & Case, France

11.30 – 11.40 *Question and answer period*

11.40 – 12.20

Dispute resolution options available in contracts with sovereign entities

What should a dispute resolution clause provide for in the contract preparation stage? What are the essential requirements? How to consider the dispute resolution provisions in all potential applicable bilateral and multilateral investment treaties? How to obtain protection of your project from public international law? This session will make specific references to ICSID and ICC arbitration.

- **Antonio Crivellaro**, Partner, Studio Bonelli Erede Pappalardo, Italy
- **Philip Dunham**, Partner, Coudert Frères, France

12.20 – 12.30 *Question and answer period*

12.30 – 14.00 **Contact lunch**

14.00 – 15.30

Dispute Boards in civil law countries

What is the procedure for the pre-arbitral settlement of disputes by the engineer under the pre-1999 editions and by a Dispute Adjudication Board (DAB) under the 1999 editions? What is the difference between FIDIC's "standing" DAB and "ad hoc" DAB? What qualifications should DAB members have? How should they behave? What are the common features and differences between the FIDIC and the ICC Dispute Board Rules? What are the advantages and disadvantages of DABs? What is the prospect of court enforcement of the DAB's decisions under Civil Law Jurisdictions?

- **Nael G. Bunni**, Senior Director, Bunni & Associates, Ireland
- **Helmut Köntges**, Department Manager, International Project Division, Hochtief, Germany
- **Alexis Mourre**, Founding Partner, Castaldi Mourre Sprague, France

Introduced and moderated by

- **Christopher P. Koch**, Founding Partner, Georgana & Koch, Counselors at Law, Switzerland

15.30 – 15.45 *Question and answer period*

15.45 – 16.05 **Contact break**

16.05 – 16.50

Sub-Clause 20.5 of the FIDIC Contracts and the settlement of disputes

What can parties do within the fifty-six days allowed for in sub-clause 20.5 of the FIDIC contracts to get a dispute settled? Why does FIDIC have a requirement to attempt amicable settlement before commencement of arbitration? What options are available to settle construction disputes not settled by a DAB, during this 56-day period, and before arbitration? The settlement techniques that will be discussed in this session include negotiation, mediation, expertise and other possibilities with specific reference to the relevant ICC Rules such as the ICC ADR Rules and the ICC Rules for Expertise.

- **Christopher Dering**, Principal Counsel, Civil Global Business Unit, Bechtel, United Kingdom (*invited*)
- **Jane Jenkins**, Partner, Freshfields Bruckhaus Deringer, United Kingdom (*invited*)

Introduced and moderated by

- **Peter Wolrich**, Managing Partner, Paris Office, Curtis, Mallet-Prevost, Colt & Mosle; Draftsman, ICC ADR Rules; Chairman, ICC Commission on Arbitration

16.50 – 17.00 *Question and answer period*

19.00 **Evening event**

Programme *(continued)*

Tuesday 18 October 2005

ICC ARBITRATION AND POST-ARBITRATION PHASE

09.00 – 09.15

Welcome by the Chairman of the second day

An introduction to the ICC International Court of Arbitration and its role in FIDIC contracts. Experience of ICC arbitrations under FIDIC contracts since the publication of the first edition of the FIDIC Civil Engineering Contract in 1957.

- **Pierre Tercier**, Incoming Chairman, ICC International Court of Arbitration; Professor at the University of Fribourg, Switzerland

09.15 – 09.40

The FIDIC arbitration clause

What are the specific features of jurisdictional disputes under international construction contracts? To what problems have they given rise or may they give rise in practice? Should they be amended or supplemented and, if so, how?

- **Christopher R. Seppälä**, Alternate Member for the United States, ICC International Court of Arbitration; Legal Advisor, FIDIC Contracts Committee; Partner, White & Case, France

09.40 – 09.55 *Question and answer period*

09.55 – 10.25 **Contact break**

10.25 – 10.45

Typical problems in preparing, presenting and refuting claims in arbitration

How should underlying claims by subcontractors or claims of the employers for defects relating to work performed by subcontractors be dealt with in a main contract arbitration? When to engage and how to use party-appointed experts? Have national courts any role in appointing experts before or after arbitration begins? What can be the role of the ICC's International Centre for Expertise? How should "due amounts" or uncontested, but unpaid, engineer/DAB decisions be treated? How are multiple claims prepared and the requirement of "contemporary records" and contractual "notices" addressed? How does one fill in "gaps" in an undeveloped national law in the case of a modern construction dispute?

- **Antonio Crivellaro**, Partner, Studio Bonelli Erede Pappalardo, Italy
- **Jane Jenkins**, Partner, Freshfields Bruckhaus Deringer, United Kingdom *(invited)*

10.45 – 11.00 *Question and answer period*

11.00 – 11.20

Dealing with disputes among third parties

How to deal with disputes involving sub-contractors, main contractor and employers? In BOT projects, how can disputes involving the State, the project company and the contractor be best handled?

- **Humphrey LLoyd QC**, former Judge, Technology & Construction Court, United Kingdom
- **Christopher R. Seppälä**, Alternate Member for the United States, ICC International Court of Arbitration; Legal Advisor, FIDIC Contracts Committee; Partner, White & Case, France

11.20 – 11.30 *Question and answer period*

11.30 – 12.15

Preparation and presentation of claims for delay

What are the financial consequences of the presentation of claims for delay? What other consequences can occur? The United States has the most developed case law in relation to delay claims. What is the US experience?

- **Robert McKibbin**, Associate Director, Precept, United Kingdom
- **Michael C. Stokes**, Director, Precept, United Kingdom
- **Jon M. Wickwire**, Wickwire Gavin, P.C., United States

Moderated by

- **Christopher R. Seppälä**, Alternate Member for the United States, ICC International Court of Arbitration; Legal Advisor, FIDIC Contracts Committee; Partner, White & Case, France

12.15 – 12.25 *Question and answer period*

12.25 – 14.00 **Lunch**

14.00 – 15.00

Role of the arbitral tribunal

What weight is given to the prior decisions of the Engineer and/or DAB? What role does the arbitral tribunal play in organizing the proceedings? How should multiple claims be dealt with and heard? What issues should be the subject of a partial award? How are arbitration costs allocated? What may they comprise? How can the time and expense of arbitral procedures be reduced? How can the ICC Court of Arbitration assist?

- **Humphrey LLoyd QC**, former Judge, Technology & Construction Court, United Kingdom
- **Pierre Tercier**, Incoming Chairman, ICC International Court of Arbitration; Professor at the University of Fribourg, Switzerland

15.00 – 15.10 *Question and answer period*

15.10 – 15.30 **Contact break**

15.30 - 16.30

Panel discussion: Ask the experts

This session will take the form of an interactive exchange for which participants may previously submit questions on topical issues to a panel of experienced arbitration practitioners. *All speakers of the day have been invited*

16.30 – 17.00

Practical problems and the Enforcement of Awards

What are the current practical problems of enforcement? To what extent can Contractor's liens or other security services be available to secure enforcement? How may the position of the Contractor, as a creditor, be affected by the rights of lenders to the Employer (e.g. in BOT-type projects) at the enforcement stage? What happens when sovereign entities with immunities are involved?

- **Jason Fry**, Partner, Clifford Chance, Paris; Solicitor of the Supreme Court of England and Wales; Member for New Zealand, ICC International Court of Arbitration

17.00 – 17.10 *Question and answer period*

17.10 **Close of conference**

Logistical note

Dates

Monday 17 – Tuesday 18 October 2005

Venue

Espace Hamelin, 17 rue Hamelin, 75016 Paris

Event

International construction contracts and the resolution of disputes

Working
language

English

Please note

The FIDIC Contract Guide will be referred to throughout the conference.

Each participant is advised to have a copy.

The guide contains the full texts of the FIDIC Construction, Design-Build and EPC/Turnkey contracts.

Copies can be ordered by contacting the FIDIC Bookshop www.fidic.org/paris05 ;

Tel:+41 22 799 49 00; Fax:+41 22 799 49 01; fidic.pub@fidic.org

or order and pay online

Contribution
to costs

Please check the appropriate box(es)

1 140 Euros for ICC & FIDIC members

1 290 Euros for non-members

120 Euros for accompanying person

**950 Euros “early-bird” special –
before Friday 16 September 2005**

The contribution to costs covers all conference activities, two working lunches, contact breaks and an evening event. The companion fee provides for the evening event. Sessions and networking lunches are restricted to participants only.

How
to register

■ *Easier and faster:* **Registration and payment online at www.icconferences.com**

or

■ complete and return the registration form indicating method of payment, and:

E-mail: conf@iccwbo.org Post: ICC Conferences

Fax: +33 1 49 53 29 42 International Chamber of Commerce

Phone: +33 1 49 53 28 69 38, Cours Albert 1er, 75008 Paris, France

Registration will be confirmed upon receipt of the registration form and contribution to costs.

Travel and
accommodation

Participants are responsible for making their own travel and hotel arrangements. A list of hotels in Paris, with which ICC has negotiated preferential room rates, will be sent upon receipt of the registration form, together with the contribution to costs.

Sponsorship
opportunities

Companies that choose to become Conference Sponsors are given many opportunities to profile their business. They will receive maximum exposure during the event. If your company is interested in sponsoring this conference, please contact Dorothy Cross at ICC, dcc@iccwbo.org; Telephone +33 1 49 53 28 69.

Publications

ICC International Court of Arbitration Bulletin

Since 1990, the ICC International Court of Arbitration Bulletin has been providing businesses and their lawyers with in-depth information on ICC dispute resolution services and arbitration law in general. Published twice yearly, the Bulletin contains commentaries, extracts from previously unpublished ICC arbitral awards, and ICC documents. For more information, visit www.iccbooks.com or contact Service Bulletin Telephone +33 1 49 53 29 52 Fax: +33 1 49 53 57 74; E-mail: bulletin@iccwbo.org

The International Construction Law Review. *Edited by former Judge Humphrey Lloyd QC and David Wightman.*

The International Construction Law Review examines new developments worldwide and features comprehensive reports and articles. A subscription offers you information on a wide range of issues including Arbitration and other forms of dispute resolution, alternatives to the FIDIC conditions and much more.

For more information, E-mail: clare.bendon@informa.com or visit www.informalaw.com/iclr

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Participant
information

(Please print clearly)

Title (Mr/Dr/Mrs/etc.)

Family name First/given name

Position

Company

Address

City/state Zip/postal code

Country E-mail

Telephone (.....) Fax (.....)

Accompanying
person

Family name First/given name

(Please check the appropriate box)

1 140 Euros for ICC & FIDIC members

1 290 Euros for non-members

120 Euros for accompanying person (*see logistical note*)

..... TOTAL

**950 Euros “early-bird” special –
before Friday 16 September 2005**

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to costs

The contribution to costs covers all conference activities, two working lunches, contact breaks and an evening event. The companion fee provides for the evening event. Sessions and networking lunches are restricted to participants only.

Method of
payment

By credit card: American Express Euro/MasterCard Visa

Card number Expiry date

Name of cardholder

By cheque:

Payable to “International Chamber of Commerce” bearing the reference “ICC S0509” and indicating clearly the participant’s name.

Should you need an invoice, please check box

Registration will be confirmed upon receipt of this completed registration form and contribution to costs.

Cancellations

40% of the contribution to costs will be refunded for any cancellation received in writing by ICC Conferences prior to **Friday 16 September 2005**. No refund can be made for cancellations received after this date. You are welcome to send a substitute at any time. Please inform us if you plan to send a substitute. Updated registration materials will be required.

Date

Signature

The information you provide on this form will be used to compile the participants list for this event. By providing this information, you consent to ICC storing it in its database for the sole use of the ICC International Secretariat. You may have access to this information and request to have it deleted or corrected at any time by contacting ICC Conferences.