

## **Disputes in international contracts: which methods to choose to minimize impacts?<sup>1, 2</sup>**

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### **INTRODUCTION**

As international contracts become ever more important in our society, the resulting litigations about disputes and conflicts follow the same path. Indeed, if the number of contracts signed continues to grow exponentially, disputes which are related to them do the same but the consequences on projects are real. International contractors need to study this current problem in order to avoid them as much as possible.

The disputes appear in international contracts in different ways. One contracting party or nation can don't respect the terms of a contract and create a conflict or a breach which parties need to resolve quickly<sup>3</sup>. A dispute can also appear by conflicts of interests between two or more parties. Most disputes are very important, so it is even hard to solve it easily. In these cases, parties are often helped by an external person or organisms. Disputes are an important subject in international contracts because the consequences of them are relevant. These problems are related to breaches which can make lose money, time, credibility, productivity or energy for both parties<sup>4</sup>. The stakes are important. A dispute can hamper the good development of one project, even if stop it quickly<sup>5</sup>. Understanding the importance of this topic, methods have been

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<sup>3</sup> Pinto, J. K. & Kharbanda, O. P. (1995). Project management and conflict resolution. *Project Management Journal*, 26(4), 45–54. Retrieved from <https://www.pmi.org/learning/library/project-management-organizational-conflict-resolution-2035>

<sup>4</sup> NSW Government, Types of alternative dispute resolution, Retrieved from : [http://www.courts.justice.nsw.gov.au/Pages/cats/courtguide/alternate\\_dispute\\_resolution/types\\_adr/types\\_adr.aspx](http://www.courts.justice.nsw.gov.au/Pages/cats/courtguide/alternate_dispute_resolution/types_adr/types_adr.aspx)

<sup>5</sup> PP Admin (2012, February). *Guild of project controls compendium and reference (CaR)*, Retrieved from : <http://www.planningplanet.com/guild/gpccar/formal-disputes-resolution>

developed to avoid this widespread phenomenon to expand themselves<sup>6</sup>. The aim of these processes is to avoid conflicts before their apparition. To avoid conflict, Steven Pinnell invites us to think about better project management, dispute avoidance through partnering, effective claims management procedures or firm but fair legal strategy and tactics.

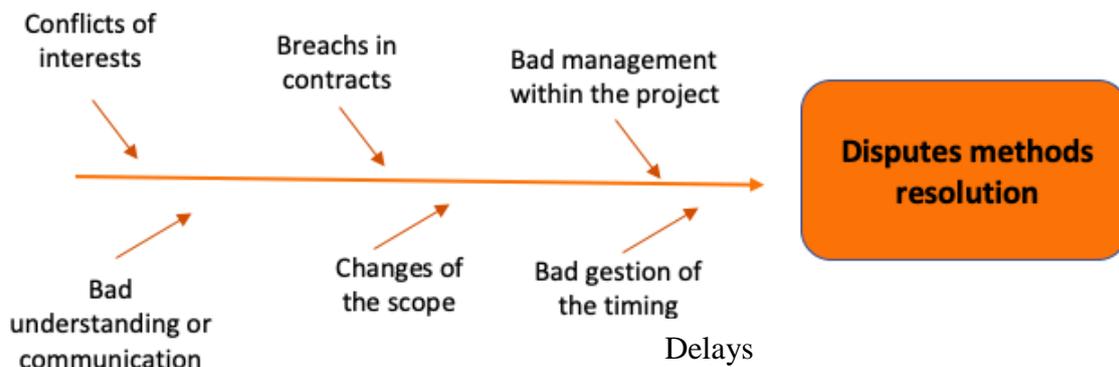


Figure 1: Root-cause analysis

However, even disputes are very widespread and important in international contract. When these situations occur, the contracting parties tend to use, firstly formal methods of resolution namely ask service of a judge in a court where a trial will settle an agreement. It is the most formal dispute resolution methods called the litigation. Thanks to a trial and the work of an impartial judge, a binding agreement will be found between the two contracting parties in opposition.

However, this kind of classic resolutions of conflict can be a very costly, complicated and lengthy process<sup>7</sup>. Parties tried to find others way of resolution that we will called alternative disputes resolutions methods. They are informal alternatives methods to litigation<sup>8</sup>. These kind of practice of conflict resolutions methods are the most used processes because parties can control the processes and the solutions themselves.

This type of methods resolutions conflicts appears in reaction of the weaknesses formal methods. Actually, many international contractors are fed up with formal ways of resolutions.

<sup>6</sup> Steven Pinnell. (2018, December). *Dispute Management Partnering, Claims Management and Dispute Resolution*. Retrieved from: <http://www.planningplanet.com/guild/library/dispute-management-partnering-claims-management-and-dispute-resolution>

<sup>7</sup> Find Law, (2017, May) What is Alternative Dispute Resolution, Retrieved from : <https://hirealawyer.findlaw.com/choosing-the-right-lawyer/alternative-dispute-resolution.html>

<sup>8</sup> California Court, The judicial Branch of California, *ADR Types & benefits*. Retrieved from : <http://www.courts.ca.gov/3074.htm>

Consequently, alternative dispute resolution methods arise. They are defined by Cornell Law School such as « *any method of resolving disputes without litigation* »<sup>9</sup>. The school adds that the validity of these ADR methods can still be reviewed by public courts. The particularity of those methods is the presence of an independent third person who helps contracting parties to resolve their disputes and find a common agreement. Namely, voluntary or mandatory, those processes of alternative dispute resolution are the mediation, the arbitration, the conciliation, the amicable expertise, the neutral evaluation, Dispute Review Board, or the settlement conferences...<sup>10</sup>. According to the Planning Planet website there are six feasible alternatives to resolving conflicts. If these methods have the same purpose, it is to say, find an agreement between two contracting parties in conflict, they are differentiated by the role and missions of an external actor. This third person who appears can be a mediator, a conciliator, an evaluator, a judge...

To do this we will follow a process in different steps. After listing the problems that this work attempts to solve, we will list and explore feasible alternatives for resolving conflict problems in international contracts. We will work on 6 possible alternatives. After making a selection, we will reflect on the criteria we will choose to evaluate the proposed solutions. These criteria will take the form of 14 attributes. We will then carry out a non-compensatory model applied at our study. Then, we will create a multi-attribute marking model to compare each attribute to each solution and see the impact of these variants on each other. We will then assign a weight to each solution. To refine the search we will calculate the relative weights of the three best solutions. These calculations will allow us to select a single alternative that we will study through a Pareto analysis to confirm the validity of our hypothesis in the field.

By the end of this paper, we would be able to understand the different methods of dispute resolution in international contracts, think about their efficiency, weight the pros and cons of each of them. This paper aims to help international contractors to manage in the more efficient way possible the disputes. We will ask how to determine the best tools and techniques to resolve various conflicts according to several variables. We will also understand how to formalize conflicts and how to reduce their damages in international contracts.

**Keywords:** Conflict of interests, Settling disputes, Agreement, Negotiation, Mediation, Arbitration, Hearing, Settlement conferences

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<sup>9</sup> Tala Esmaili. (2017, June) Alternative dispute Resolution, Cornell Law School. Retrieved from [https://www.law.cornell.edu/wex/alternative\\_dispute\\_resolution](https://www.law.cornell.edu/wex/alternative_dispute_resolution)

<sup>10</sup> CMAP, *Alternative dispute resolution methods*, Retrieved from <http://www.cmap.fr/our-offer/alternative-dispute-resolution-methods/?lang=en>

## METHODOLOGY

### Step 1: Summarize

As explained in the end of the introduction, this paper aims to give a better understanding of conflicts resolutions methods. According to the multiplication of these problems and looking at all the negatives impacts and damages that they have on international conflicts, this subject seems to be relevant. Regarded as own root-cause analysis, we are going to identify several problems we will trying to solve such as:

- Conflicts of interests
- Breaches in contracts
- Bad management within the project
- Bad understanding or communication
- Changes of the scope
- Bad organization of the timing, delays

In order to find the best way to reduce and manage conflicts we will identify several feasible alternatives that can be implemented to avoid costly, lengthy and unproductive conflicts. According to the Guild the feasibility there are six feasibility methods that we will study in this paper.

### Step 2 : Identify the Feasibility Alternatives

The aim of this step is to deepen those feasible alternatives solutions in order to adopt a better behavior about conflict in international contracts. We will study more precisely six feasible alternatives solutions<sup>11</sup>.

#### 1. Solutions

##### **Solution 1: Prevention and cooperation**

It is a very important stage which aims to prevent the emergence of conflicts, it is to say fight the conflicts before their real appearance. Joanne Staugas invite us to think about different ways to prevent conflict such as " clear written contract, a commitment to act in good faith, cooperation to achieve the objectives, open communication, well documented and planned negotiation"<sup>12</sup>. As explained in the introduction, the aim of these process is to avoid conflicts before their apparition. Steven Pinnell also invite use to think about better project management, dispute

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<sup>11</sup> <http://www.planningplanet.com/guild/gpccar/formal-disputes-resolution>

<sup>12</sup> Joanne Staugas (January-2002) - Strategies for dispute prevention and management in commercial arrangements - Vol 4 no 9. Retrieved from:  
<https://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1169&context=adr>

avoidance through partnering, effective claims management procedures or firm but fair legal strategy and tactics.

### **Solution 2: Negotiation**

The negotiation is a step which doesn't need the help of a third person. The agreement about conflict is found by the two contractor-parties themselves. All the different steps related to resolutions methods conflicts are concerned. The two sides agree on an agreement, but it goes further and concerns also its implementation and its monitoring.<sup>13</sup>

### **Solution 3: Standing neutral**

This step works also with the help of a third person who is able to evaluate a case about a conflict. This person is called an "evaluator"<sup>14</sup> or a Dispute Review Board, it is to say "typically one or three experts who can assist in the management of conflicts and disputes in longer term and large projects"<sup>15</sup>. The expert's role is to give after presentation of each parties an opinion on the strengths and the weakness of each parties. He also gives ideas, advices and ways to solve the conflict. The opinion of the expert is not binding but necessary. Indeed, he often has very advanced technical knowledge on the subject and he is the only one able to release both parties from the stagnation of the conflict.

### **Solution 4: Non-Binding solution**

This alternative contains different tools and techniques such as "Mediation, Mini-trial, Arbitration". Using mediation or arbitration is a good way to find a common agreement while "keeping good relationships"<sup>16</sup>. Using non-binding solution is time and cost saving for both parties and it avoids going to a long trial.

### **Solution 5: Private-binding solution**

In this step, the agreement about conflict will be found thanks to a third person, who is a private judge. This person is often an expert about a particular point tackle in a conflict. His solution is obviously binding, "in general in binding arbitration the arbitration the arbitrator's decision can then not be appealed against, except in very unique circumstances such as when fraud or infringement of the public policy can be proven".<sup>17</sup>

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<sup>13</sup> CMAP, *Alternative dispute resolutions methods*, Retrieved from : <http://www.cmap.fr/our-offer/alternative-dispute-resolution-methods/?lang=en>

<sup>14</sup> California Court, The judicial Branch of California, *ADR Types & benefits*. Retrieved from: <http://www.courts.ca.gov/3074.htm>

<sup>15</sup> The Australian institute of mediators and arbitrators – Dispute review boards. Retrieved from: <https://www.iama.org.au/sites/default/files/resources/rules-guidelines/disputereview.pdf>

<sup>16</sup> James G Zack, (December-2015) – Resolution of dispute – The next generation. Adaptation Planning planet – Formal dispute resolution. Retrieved from: <http://www.planningplanet.com/guild/gpccar/formal-disputes-resolution>

<sup>17</sup> Expert evidence, (March, 2017) Binding and non-binding arbitration- What is the difference, Retrieved from : <http://expert-evidence.com/binding-and-non-binding-arbitration-what-is-the-difference/>

**Solution 6: Litigation**

Litigation is the most popular kind of disputes resolution. The conflicts need the intervention of a third person who is an independent and impartial arbitrator or a tribunal<sup>18</sup>. The decisions born in a court or a tribunal with legal suit to solve the conflict. Their decisions are based on the applicable rules and trades usages. Harvard press also explained that: “The judge or the jury is responsible for weighing the evidence and making a ruling. Information conveyed in hearings and trials usually enters the public record.” Their decisions have a binding force and it ends the conflict<sup>19</sup>.

These feasibility alternatives can be applied in the conflicts area:

Prevention	Good risk allocation, Incentives for Cooperation, Dispute Potential Index, Partnering, Integrated project delivery
Negotiation	Negotiations steps negotiations
Standing neutral	Dispute Review Boards, standing Arbitrator
Non-Binding Resolution	Mediation, Mini-trial, Advisory, Opinion, Arbitration
Binding resolution	Binding Arbitration, Private Judge
Litigation	Annexed Alternate, Dispute resolution

Figure 2: Feasibility alternatives applied in the conflicts area<sup>20</sup>

**2. Attributes**

We will continue this study using these several attributes. They make it possible to quantify and measure the processes used and thus, to be able to determine which solutions are the most adapted to the conflict.

- **Cost**

The cost is certainly one of the most relevant attributes. Actually, this attribute has a major impact in conflict to the extend what the cost affects the productivity of the society<sup>21</sup>. As rational actors, companies, board or negotiators try to decrease the cost of conflict or dispute.

<sup>18</sup> CMAP, *Alternative dispute resolutions methods*, Retrieved from : <http://www.cmap.fr/our-offer/alternative-dispute-resolution-methods/?lang=en>

<sup>19</sup> Prokauer, ( 2017, December) *Prokauer on international litigation and arbitration*. Retrieved from : <https://www.proskauerguide.com/arbitration/19>

<sup>20</sup> By author

<sup>21</sup> Arcadis, *Global Construction Disputes Report*, The higher the stakes, the bigger the Risk, Constructions Solution, 2015. Retrieved from ;: <https://www.arcadis.com/media/2/8/9/%7B289321DC-B266-4A13-82FA-CBBD54B6F535%7DARCADIS%20Construction%20Disputes%20Report%202015%20004.pdf>

- **Impact on the relationship**

The second attributes which will affect the choose of methods resolutions conflicts is the impact of this conflict on the relationship of the two parties. Contracts between companies are often important in the economic health of the company. Whether it is a big contract or a small one it is important that conflict does not affect these relationships. In some situations, this attribute is primordial because the consequences can be significant. It is very important to avoid a situation of hostility with any stakeholders. This attribute aims to “identities possible risk factor for projects, based on a conflict between ‘best communication’ for a project and suggested communication through the chosen contract type”<sup>22</sup>

- **Adversity**

This attribute is less important but can still have an important impact on an international contract. It is closely related to the one before. It consists to avoid situation of adversity between the two or more contracting-parties in conflicts. In these cases, the consequences and the damages related to adversity can be decisive for the continuity and the development of the project<sup>23</sup>.

- **Effectiveness**

The questions about effectiveness and efficiency are particularly important for international contract. Actually, it is important, for rational justifications that a conflict tend to affect the less minimum the effectiveness of project. The research of agreement has to affect the minimum the quality of the process<sup>24</sup>.

- **Speed**

Considering economic, technical, temporal or administrative problems, disputes must of course last as little as possible. “ADR is usually less formal, less expensive and less time-consuming than a trial”<sup>25</sup>

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<sup>22</sup> International Journal of project management, The impact of principal-agent relationship and contract type on communication between project owner and manager. Retrieved from <https://www.sciencedirect.com/science/article/abs/pii/S0263786305000347>

<sup>23</sup> NSW Government, Types of alternative dispute resolution, Retrieved from: [http://www.courts.justice.nsw.gov.au/Pages/cats/courtguide/alternate\\_dispute\\_resolution/types\\_adr/types\\_adr.aspx](http://www.courts.justice.nsw.gov.au/Pages/cats/courtguide/alternate_dispute_resolution/types_adr/types_adr.aspx)

<sup>24</sup> Todd B Carver, Albert Vondra ( May- 1994 ), Alternative Dispute Resolution: why it doesn't work and why it does, Harvard Business Review, Retrieved from : <https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-it-does>

<sup>25</sup> California Court, The judicial Branch of California, *ADR Types & benefits*. Retrieved from: <http://www.courts.ca.gov/3074.htm>

- **Freedom to choose a neutral and competent decision maker**

Freedom to choose a neutral and competent decision maker is a key attribute in disputes resolution, especially in international contract. Most of the time, it is not a single judge, but a group composed of several persons. This kind of process allow also to resolve quicker a complex arbitration. So it is “One of the most valued features in international arbitration is the the parties’ ability to choose their tribunal, and thereby to ensure that, their dispute is heard by a tribunal that they trust, that they consider like independent, impartial and competent in the relevant subject-matter and that they know a required availability”<sup>26</sup>

- **Confidentiality**

The confidentiality of methods resolution process can be an important attribute when the parties in conflict want to solve it. This characteristic can have a major impact on resolution methods. Actually, “The desire to keep a dispute and its resolution frequently plays an important role in a party's decision to agree to arbitration.”<sup>27</sup>

- **Enforceability**

The enforceability is one major characteristics to analyze in disputation. This attribute is critical for conflict resolution, as the Website Prokauer explains: “ One of the key advantages of arbitrating rather than litigating international conflicts is the relative ease with which an international arbitral award rendered in one country can be enforced in another one.”<sup>28</sup> The author also adds that : “This advantage is crucial, as the prevailing party in an international dispute frequently has to enforce the judgment or award rendered in its favor in another country in which the unsuccessful party has assets.”<sup>29</sup>

- **The ability to select place and language of arbitration**

In a context of internationalization of disputes, ability to select place and language of arbitration is an important decision since this choice will be significant for both parties. Indeed, both contracting parties have the possibility to agree on where the trial will take place. This day is crucial because it is associated with the choices of laws used to judge. "Negotiations typically result in agreements pursuant to which the law of one party's country is to govern the contract

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<sup>26</sup> Prokauer, ( 2017, December) *Prokauer on international litigation and arbitration*.

Retrieved from: <https://www.proskauerguide.com/arbitration/19>

<sup>27</sup> Prokauer, ( 2017, December) *Prokauer on international litigation and arbitration*.

Retrieved from: <https://www.proskauerguide.com/arbitration/19>

<sup>28</sup> Prokauer, (2017, December) *Prokauer on international litigation and arbitration*.

Retrieved from: <https://www.proskauerguide.com/arbitration/19>

<sup>29</sup> Prokauer, (2017, December) *Prokauer on international litigation and arbitration*.

Retrieved from: <https://www.proskauerguide.com/arbitration/19>

while the place of arbitration is to be in the other party's country."<sup>30</sup> This choice is linked to that of the language chosen by the contracting parties. In fact, in the event of conflicts, both parties agree at the beginning of the process on the choice of language to be used to resolve the conflicts.

- **Flexibility of process**

In contrast to national disputes, international disputes enjoy a very high degree of flexibility in the choice of rules used during the process. This choice must be taken into account even if the general trend is towards uniformity of practices. "The fact that in international arbitration national procedural rules will not apply also presents the additional advantage for counsel that they will not need to familiarize themselves with the procedural rules of each jurisdiction their companies do business in."<sup>31</sup>

- **Limited discovery**

The contracting parties have other criteria for selecting the dispute resolution method, namely whether or not early discovery is accepted. Indeed, there are two types of countries on this issue: civil law countries and arbitration tribunals. In the first category of countries, a certain degree of discovery is allowed. In the second model there can be no limited discovery. Having access to additional information before the end of the trial may be seen as a disadvantage or not by the parties. "As with most procedural elements in international arbitration, the parties are free to agree to the scope of discovery they choose to allow in the arbitration. If the parties agree to US-style discovery, the tribunal will have to comply with that agreement."<sup>32</sup>

- **Absence of appeal**

"International arbitral awards are final and cannot be appealed, at least in the vast majority of countries."<sup>33</sup> Sentences handed down by the courts after jurisdiction are final. This fact can have varying consequences depending on the conflicts. In some cases, the winning party may feel satisfied with the award, but in other cases the losing party may feel aggrieved. The judge's sentence must therefore take this fact and be particularly well founded in order to render the most just decision possible.

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<sup>30</sup> Prokauer, (2017, December) *Prokauer on international litigation and arbitration*. Retrieved from: <https://www.proskauerguide.com/arbitration/19>

<sup>31</sup> Prokauer, (2017, December) *Prokauer on international litigation and arbitration*. Retrieved from: <https://www.proskauerguide.com/arbitration/19>

<sup>32</sup> Prokauer, (2017, December) *Prokauer on international litigation and arbitration*. Retrieved from: <https://www.proskauerguide.com/arbitration/19>

<sup>33</sup> Prokauer, (2017, December) *Prokauer on international litigation and arbitration*. Retrieved from: <https://www.proskauerguide.com/arbitration/19>

● **Potential need for Court intervention**

Some situations are so problematic and technical that they necessarily require a Short Intervention in the process. This process can be a practical way to resolve a conflict but it also has some negative points to raise such as : “Such court interventions can thus complicate and convolute the procedure and constitute a potential disadvantage of international arbitration”<sup>34</sup> Moreover, this process is particularly long and expensive. However, this attribute can also be seen as an advantage. This is a particularly controversial attribute.

● **Arbitrators’ inability to consolidate Actions or Join Third parties**

It is legally and legally impossible for arbitrators to consolidate actions or join third parties without the agreement of the contracting parties. This attribute is to be taken into account because it will influence the outcome of the process. We can also add that: “The privity of the arbitration agreement bars arbitrators from ordering the joinder of parties who have not signed the arbitration agreement”<sup>35</sup>

**Step 3: Development of Feasible Alternatives**

In order to classify the feasibility alternative solution, we are going to use a non-compensatory model based on own five attributes. This table with two enters enable to compare all attributes by answering at one simple question: Which attribute is the more important? The more strength attribute wins a 1 and the loser a 0. Thanks to this system an ordinal ranking will appear. The attribute which will have the better score will be the best (14), and whoever has the least will be the worst (0). Of course, this point system is subjective so, don’t hesitate also to change the ordinal ranking following your case of conflict.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	
1																	
2		Cost	Impacts	Adversity	Effectiveness	Speed	neutral decis	Confidential	Enforceability	select place ar	Flexibility	Limited disc	Absence of a Cour	interver	Arbitrators ir	Ranking	
3	Cost	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	12
4	Impact on re	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	3
5	Adversity	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
6	Effectiveness	0	1	1	1	0	0	0	0	0	0	0	0	0	0	0	11
7	Speed	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0	13
8	Neutral decis	0	1	1	0	0	1	0	0	0	0	0	0	0	0	0	9
9	Confidential	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	6
10	Enforceability	0	1	1	1	0	0	0	1	0	0	0	0	0	0	0	7
11	Select place	0	1	1	0	0	1	1	1	1	0	0	0	0	0	0	10
12	Flexibility	0	1	1	0	0	0	0	0	1	1	0	0	0	0	0	5
13	Limited disc	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0	2
14	Absence of a	0	1	1	0	0	0	1	1	0	1	1	1	0	0	0	8
15	Court interve	0	1	1	0	0	0	0	0	0	0	1	0	1	0	0	4
16	Arbitrators ir	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	1
17																	

Figure 3: non-compensatory model applied at the study

<sup>34</sup> Prokauer, (2017, December) *Prokauer on international litigation and arbitration*. Retrieved from: <https://www.proskauerguide.com/arbitration/19>

<sup>35</sup> Prokauer, (2017, December) *Prokauer on international litigation and arbitration*. Retrieved from: <https://www.proskauerguide.com/arbitration/19>

**SPEED < COST < EFFECTIVENESS < COURT INTERVENTION < SELECT PLACE AND LANGUAGE < NEUTRAL DECISION MAKER < ABSENCE OF APPEAL < ENFORCEABILITY < CONFIDENTIALITY < FLEXIBILITY < IMPACT ON RELATIONSHIP < LIMITED DISCOVERY < ARBITRATORS INHABILITIES < ADVERSITY**

**Step 4: Sorting and weighting**

In this new stage of the study, we are going to confront the attributes and the feasibility alternatives found. Firstly, we will assign to each solutions a characteristic according to this following three colours model:

- **Green** = good
- **Yellow** = medium
- **Blue** = bad

This model is called a multi-attribute marking model.

	Prevention	Negotiation	Standing Neutral	Non-Binding solution	Private Binding solution	Litigation
Cost	low	Low	Low	Medium	Expensive	expensive
Impact on relationship	weak	Medium	Medium	Medium	Strong	strong
Aversity	Weak	Medium	Weak	Medium	High	high
Effectiveness	Fair	fair	Excellent	Excellent	Fair	poor
Speed	Low	Medium	Medium	Low	medium	Long
Neutral decision maker	Absent	Optional	Mandatory	Optional	Optional	Mandatory
Confidentiality	No	Yes	Yes	No	Yes	Yes
Enforceability	Low	Low	Low	Low	Low	High
Select a place and language	Easy	Medium	Easy	Medium	Medium	Hard
Flexibility	High	Low	High	Low	Low	Medium
Limited discovery	Available	Limited	Available	Limited	Limited	Available
Absence of appeal	No	Yes	Yes	Yes	No	No
Court intervention	Absent	Absent	Optional	Absent	Optional	Mandatory
Arbitrators inhabilities	None	Some	Some	Some	Many	Many

Figure 4: the multi-attribute marking model<sup>36</sup>

<sup>36</sup> By author

With this relative rank prevention seem to be the better solution. We can't analyze it without the weighting. We will give a weight to each attribute following this following grid:

Colour			
Attribute weight	0	0 < X < 1	1

Figure 5: Weight grid<sup>37</sup>

This model is called a multi-attribute marking model.

	Prevention	Negotiation	Standing Neutral	Non-Binding solution	Private Binding solution	Litigation
Cost	1	1	1	0,5	0	0
Impact on relationship	1	0,7	0,55	0,8	0	0
Aversity	1	0,6	1	0,3	0	0
Effectiveness	0,75	0,4	1	1	0,7	0
Speed	1	0,2	0,6	1	0,5	0
Neutral decision maker	0	0,3	1	1	0,6	1
Confidentiality	0	1	1	0	1	1
Enforceability	0	0	0	0	0	1
Select a place and language	1	0,7	1	0,5	0,6	0
Flexibility	1	0	1	0	0	0,2
Limited discovery	1	0,3	1	0,2	0,5	1
Absence of appeal	0	1	1	1	0	0
Court intervention	1	1	0,4	1	0,5	0
Arbitrators inhabilities	1	0,2	0,3	0,3	0	0
Totals	<b>9,75</b>	<b>7,1</b>	<b>10,05</b>	<b>8,1</b>	<b>4,4</b>	<b>4,2</b>

Figure 6: Table of weight<sup>38</sup>

According to the results of this table each alternative solution has a weight. We decided for the stake of efficiency, that each solution that has not reached more than 7,5/14 will be rejected and eliminated. According to this requirement, we are eliminating Private Binding solution,

<sup>37</sup> By author

<sup>38</sup> By author

Negotiation and litigation. The new step of this study is to analyze the remaining solutions in Findings.

**Step 5: Summarize**

To further refine our research, we will use an additional table. Fusion between the previous steps, this new table called an additive weighting technique<sup>39</sup> will allow us to classify even more precisely the feasibility alternatives. In this one we will only select those who have passed the previous step it is to say Prevention, Standing Neutral and Non-Binding solution.

	Step 1	Step 2	Prevention		Standing Neutral		Non-Binding solution	
	Relative ranking	Normalized weight (A)	(B)	(A)x(B)	(C)	(A)x(C)	(D)	(A)x(D)
Cost	12	<b>12/ 105= 0,11</b>	1	<b>0,11</b>	1	<b>0,11</b>	0,5	<b>0,055</b>
Impact on relationship	3	<b>3/105 = 0,02</b>	1	<b>0,02</b>	0,55	<b>0,011</b>	0,8	<b>0,016</b>
Aversity	0	<b>0/105 = 0</b>	1	<b>0</b>	1	<b>0</b>	0,3	<b>0</b>
Effectiveness	11	<b>11/105 = 0,10</b>	0,75	<b>0,075</b>	1	<b>0,10</b>	1	<b>0,10</b>
Speed	13	<b>13/105 = 0,12</b>	1	<b>0, 12</b>	0,6	<b>0,072</b>	1	<b>0,12</b>
Neutral decision maker	8	<b>8/105 = 0,07</b>	0	<b>0</b>	1	<b>0,07</b>	1	<b>0,07</b>
Confidentiality	5	<b>5/105 = 0,04</b>	0	<b>0</b>	1	<b>0,04</b>	0	<b>0</b>
Enforceability	6	<b>6/105 = 0,05</b>	0	<b>0</b>	0	<b>0</b>	0	<b>0</b>
Select a place and language	9	<b>9/105 = 0,08</b>	1	<b>0,08</b>	1	<b>0,08</b>	0,5	<b>0,04</b>
Flexibility	4	<b>4/105 = 0,03</b>	1	<b>0,03</b>	1	<b>0,03</b>	0	<b>0</b>
Limited discovery	2	<b>2/105 = 0,01</b>	1	<b>0,01</b>	1	<b>0,01</b>	0,2	<b>0,002</b>
Absence of appeal	7	<b>7/105 = 0,06</b>	0	<b>0</b>	1	<b>0,06</b>	1	<b>0,06</b>
Court intervention	10	<b>10/105= 0,09</b>	1	<b>0,09</b>	0,4	<b>0,036</b>	1	<b>0,09</b>
Arbitrators inhabilities	1	<b>1/105=0,009</b>	1	<b>0,009</b>	0,3	<b>0,0027</b>	0,3	<b>0, 0027</b>
Totals	105		<b>0,5449</b>		<b>0,6217</b>		<b>0,557</b>	

After calculations, the results are more precise but and the ranks not have changed. Indeed, the first alternative is now the Standing Neutral with the highest score of 0,6217. If the results of

<sup>39</sup> Sullivan, Wickes & Kroelling (2014) [Engineering Economics](http://www.planningplanet.com/guild/gpccar/managing-change-the-owners-perspective) 15<sup>th</sup>. Adaptation from planning planet. Retrieved from: <http://www.planningplanet.com/guild/gpccar/managing-change-the-owners-perspective>

this analysis are certainly more precise they remain relatively tight: 0.0108 of difference between the second and the third solution.

### Step 6: Selection of the preferred alternative

As a result of these calculations we are led to choose the Standing Neutral solution as the most efficient based on the 14 attributes we had previously selected. These results testify to an undeniable continuity with the reality "on the ground of international contracts". Indeed, this solution is very often used in the resolution of contract because it allows a management at the same time fast and technical thanks to the work of a referee outside the conflict. The California Court on its website reminds us the cases for which Standing Neutral may be appropriate : "Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issues in the case is the amount of damages" <sup>40</sup> and those for which this solution may not be appropriate : "when there are significant personal or emotional barriers to resolving the dispute"<sup>41</sup> This ADR solution answers specific questions that justify its great efficiency. This solution is a single procedure, which allow party autonomy, neutrality, confidentiality and enforceability.

### Step 7: Follow up

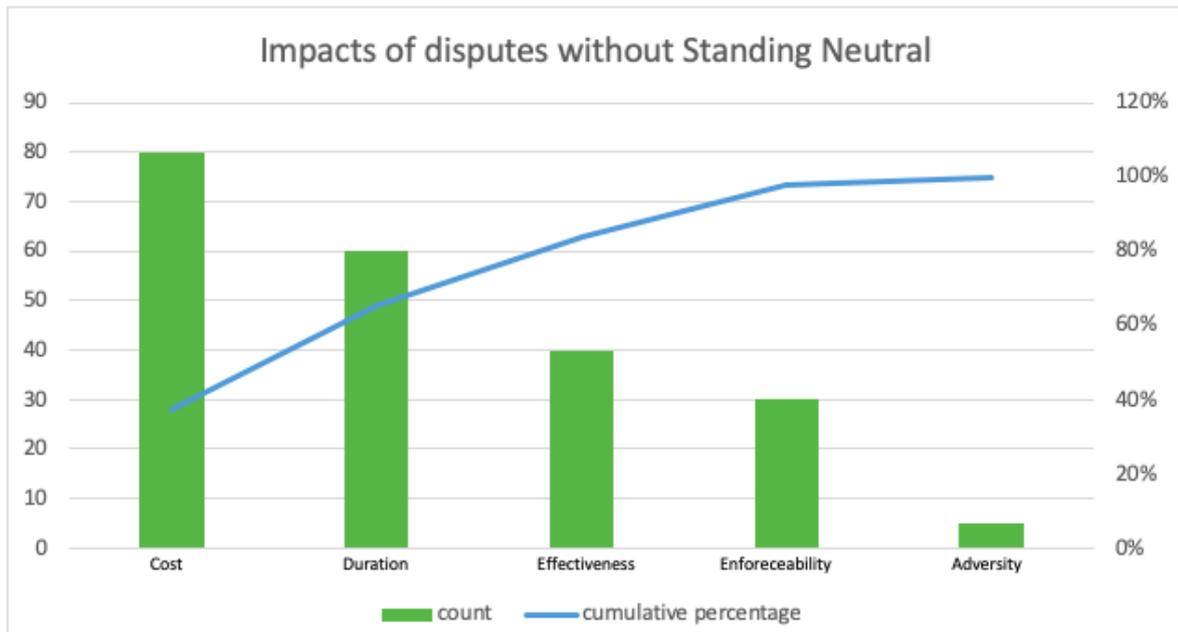
Now that we have succeeded in selecting the alternative that stands out from the others we will try to study the real impact of this method for the company. To be done, we will do an Pareto analyze such as: "A Pareto Analysis enables the project control practitioner to identify the "significant few" from the "insignificant many" and use that information to prioritize which problems should be addressed." <sup>42</sup>

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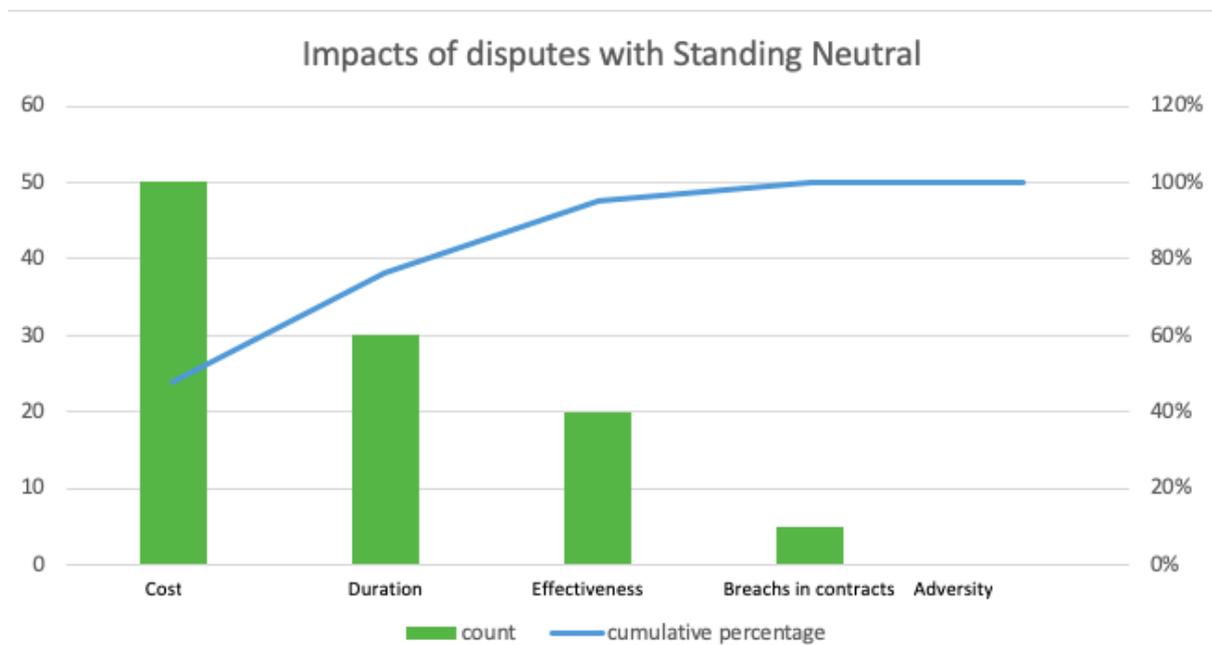
<sup>40</sup> California Court, The judicial Branch of California, *ADR Types & benefits*. Retrieved from: <http://www.courts.ca.gov/3074.htm>

<sup>41</sup> California Court, The judicial Branch of California, *ADR Types & benefits*. Retrieved from: <http://www.courts.ca.gov/3074.htm>

<sup>42</sup> GUILD OF PROJECT CONTROLS COMPENDIUM and REFERENCE (CaR) | Project Controls - planning, scheduling, cost management and forensic analysis (Planning Planet). (n.d.). Retrieved from <http://www.planningplanet.com/guild/gpccar/risk-opportunity-monitoring-and-control>



The study of this first graph is not surprising. Disputes have very important impacts for the company, either it's about the economic cost that these disputes cause, their duration or either their impact on the efficiency of the company. We are going now to analyze the same case but, this time with Standing Neutral.



In this second table it can be analyzed that the negative risks that can affect the company or the contractors are significantly reduced. The implementation of conflict resolution methods, such as Standing Neutral, has a certain positive effect for the parties involved in the contracts. It makes it possible to ensure neutral, effective and economical conflict resolution.

## CONCLUSION

The goal of this paper was to answer to the following question: What are the most effective conflict resolution methods in an international contract? In order to answer this question, we have study all the feasibility solutions which a company can implement to resolve disputes.

To understand which solution is most effective for businesses, we needed to determine which attributes affected the process. These attributes that we have quantified allowed these solutions to rank. Despite overall results, different calculation techniques allowed to refine our research and selection a single solution namely Standing Neutral. The analysis of pareto that we made then allowed to confirm this hypothesis by analyzing it on the very ground of the company.

Of course, if this work recommends the use of the standing neutral process, it is important to remember that each conflict has a unique and undeniable dimension that means that everyone has to be exclusively managed. The global construction disputes report, realized by Arcadis in 2018 reminds us quite rightly that: "A failure to properly administer the contract remained the most common cause of construction disputes"<sup>43</sup>

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