

# Editorial

*Jacques Werner*

## *Alternative Disputes Resolution?*

A few years ago, I did complete with my fellow arbitrators one of these happy but rare arbitration cases where the award was acknowledged as adequate by both parties and promptly executed. Subsequently we had discussed with the parties whether the same result could have been achieved through conciliation. The consensus was that it could not be: in order to be accepted by the parties it was necessary that the solution reached be *decided* by the arbitrators and made compulsory by an award.

In the present search of better ways for settling disputes the importance of this *decision* element tends to be somewhat forgotten. This under the influence on one hand of the Far eastern countries, which traditionally highly value an extensive conciliation effort before actual litigation before courts or arbitrators takes place; on the other hand of the Americans, who out of domestic consideration—growing dissatisfaction with the length, costs and complexity of courts litigations—have launched the concept of Alternative Disputes Resolution, which encompasses arbitration, but also other methods—mini-trials, rent – a – judge, and the like—which in essence are nothing else than conciliation mechanisms under new clothes.

I would like to submit here that what is needed in international trade is not new methods of conciliation—after all, commercial partners which really want to settle amicably their dispute always know how to do it. What is really needed are better, more efficient ways to have the disputes of the parties arbitrated and their claims *decided*, enabling thus the parties to put the disputes behind them and look ahead. This, rather than the improvement of the conciliation procedures, is the real challenge at hand.