ADR AND MANAGERS' INVOLVEMENT IN DISPUTES: ARE MANAGEMENT STUDENTS WELL PREPARED TO HANDLE DISPUTE RESOLUTION?

*Adrian Borbély**

* Ph.D. Candidate, ESSEC Business School Paris – Sinagapore, IRENE (Institute for Research and Education on Negotiation), <adrian.borbely@essec.edu>.

ADR and Managers' Involvement in Disputes: Are Management Students Well Prepared to Handle Dispute Resolution?

Adrian Borbély

Abstract

The slow development of Alternative Dispute Resolution in the French corporate sector may be explained, in part, by the way managers interact with their legal counsels. In application of the principal-professional agency framework developed by Sharma (1997), we draw propositions attempting to relate managers' behavior with their organizations' propensity to use ADR. These propositions are partially supported by the results of a survey of French management students on their perception of their role as decision-makers in dispute resolution. These results point to the need for further research on these issues.

Résumé

La lenteur du développement des Modes Alternatifs de Résolution des Conflits au sein des entreprises françaises pourrait être expliquée, en partie, par la manière dont les gestionnaires interagissent avec leurs conseils juridiques. En application de la théorie de l'agence entre principal et professionnel développée par Sharma (1997), nous établissons des propositions visant à corréler les comportements des managers avec le recours aux MARC. Ces propositions sont partiellement corroborées par les résultats d'une étude quantitative menée auprès d'étudiants français en gestion portant sur leur perception de leur futur rôle de décideur en situation de conflit. Ces résultats tendent à justifier de plus amples efforts de recherche sur ces questions.

Introduction

This paper is concerned with the reasons why French corporations appear so reluctant to use alternative dispute resolution (ADR) to resolve disputes, both with their trade partners and their individual employees.[1] The initial premise is that, in any organization, dispute resolution is necessarily strategized through interactions between managers and law professionals, both in-house counsels and private practice attorneys. Although a lot has been written about attorney's confrontational attitude and collective lack of enthusiasm toward negotiation mechanisms (e.g. Gilson & Mnookin, 1994), little-to-no research has placed the lens on the behavior of managers as clients of such legal services. Their conduct, this research suggests, may significantly impact the reflections leading companies to advocate for such and such mechanism to resolve their legal disputes.

This paper relies on agency theory to explain biases in corporations' decision-making processes. More specifically, it applies to dispute resolution the framework developed by Anurag Sharma (1997), which deals with agency relationships between principals and professional service providers. The objective is to relate manager behavior with consideration for alternatives to the traditional trial system. This may have practical implications both for corporate actors interested in increasing the efficiency of their organization's dispute resolution practices and for French business school curriculum design.

Given the paucity of research on these questions, this paper first offers propositions relating managers' typical behaviors with use of ADR. In a later part, in order to offer preliminary validation for these propositions, it presents the results of a survey conducted with management students assessing how prepared they are, or perceive to be, to deal with disputes and interact with law professionals. All of this may open wide paths for future research in our field.

---

1. Managers' approach to mediation in collective labor disputes has been thoroughly studied by Arnaud Stimec in his unpublished dissertation (for a summary, Stimec, 2006).

ADR: the state of corporate resistance in France

When facing a legal dispute, corporations need to strategize a response, which encompasses numerous decisions, including the method to be used to resolve the dispute. These methods may be classified in one of two categories based on their underlying philosophy. On the one hand, the situation may be perceived as limited to a legal battle to be resolved either through court or arbitration proceedings or via "legal bargaining" (Galanter, 1985). These adjudication processes are characterized by a "win-lose" approach and the central role played by attorneys. On the other hand, the situation may be framed as a problem-solving exercise to be addressed through collaborative methods generically called "ADR" (Alternative Dispute Resolution). In such cases, parties try to resolve their dispute on their own (negotiation) or hire a neutral third party to assist them in their discussions (mediation). Common to these practices is the importance of laying all the different facets of the dispute on the table in order to reach value-creating settlements (e.g. Garby, 2004).

ADR is not suitable for all disputes; the specificities of a case may justify trial (e.g. Wade, 2001). There exists an entire stream of literature about how to select the most appropriate resolution mechanism for different types of cases. It remains that parties in dispute need to perform a careful case-by-case analysis in order to adapt their response to the case, to "fit the forum with the fuss" (Sander & Goldberg, 1994).

When advisable, ADR offers potentially satisfactory alternatives when compared with law and litigation. It is indeed established that ADR offers significantly cheaper and faster alternatives to trial, thus limiting transaction costs (e.g. Cheung & Suen, 2002). In addition, these mechanisms enable parties to find tailor-made solutions that take into consideration a wide array of their interests and which should, by definition, be more satisfactory than any anticipated legal ruling (Walton & McKersie, 1991).

Despite its advantages, recourse to ADR is marginal in France, particularly for corporate disputes. As negotiation generally takes place behind closed doors, this is virtually impossible to assess quantitatively. Resort to mediation may therefore be used as a proxy for the overall use of ADR. Although some experts estimate that 30 to 40 % of the judicial caseload could usefully be referred to mediation (Cohen-Lang & Riquier, 2008), statistics show that mediation has not really gained traction in France. Fifteen years after its introduction into the French civil procedure

code,[2] mediation is used in less than 1 % of the cases. The Paris Commercial Court, in particular, refers to mediation fewer than 60 of its 36,000 annual cases. This important gap may lead to substantial wastes of resources for companies and certainly justifies the need for more theoretical and empirical attention.

The fact that companies do not use ADR more often has been explained from two complementary standpoints. First, game-theory research looks at the relationships between the parties (e.g. Chappe, 2008). For example, Lipsky & Seeber (1998) showed that "refusal by the other party" is by far the reason the most frequently cited by US managers for not attempting mediation. Second, and of utmost relevance to us, there may be flaws in a party's internal decision-making processes (do they fairly assess their ADR alternatives before going to Court?). The latter is the direction this paper will pursue.

Different reasons have been put forward, both by research and practice, to explain biased decision practices in dispute settings. These explanations may relate to general characteristics of the French society (the relative low costs of its justice system, its adversarial culture, etc.), the dynamics of conflicts and their resolution (e.g. ripeness theory – Mitchell, 1995) or individual factors. In the latter category, lawyers have received a lot of attention (e.g. Lempereur & Scodellaro, 2003). Little research has focused on their client, on how managers (clients of legal services) get involved in such settings and the impact their behavior could have on the resolution of disputes. After all, despite the influence of lawyers, derived from their legal expertise, it remains that it is managers (especially top managers) who are supposed to be sitting in the driver's seat (Shapiro, 2005).

Theoretical background and propositions

Dispute resolution, as it involves a client (e.g. a corporation) and service providers (attorneys), has sometimes been approached by theorists as a principal-agent situation (e.g. Mnookin *et al.*, 2004). The "principal-agent issue" is concerned with the optimization of the contractual mechanisms between a principal and an agent whose goals conflict and approaches toward risk differ. In dispute resolution, not only are interests of the actors unlikely to be fully aligned (Lempereur & Scodellaro, 2003) but information is usually unevenly distributed among actors: lawyers

2. By the February 8, 1995 Act on the organization of tribunals and civil, administrative and criminal procedures, which was completed by a July 22, 1996 Decree that introduced articles 131-1 to 131-14 in the New Code of Civil Procedure.

know more about the dispute resolution process, whereas their clients know more about the organization's bottom line and indifference curves (Mnookin & Susskind, 1999). The principal-agent issue therefore focuses on incentive alignment and information exchange, together with the appropriate control mechanisms (Eisenhardt, 1989).

This approach suffers from a certain number of drawbacks that may limit its explanatory power. First, it does not question whether clients and lawyers have an equal understanding of negotiation and dispute resolution dynamics. It also draws the agency line at the corporation's boundaries (what is inside constitutes the client and outside the agent), without consideration for the internal agency structure of the client. It generally leads to focus the blame for limited recourse to ADR on lawyers (e.g. Gilson & Mnookin, 1994).

In situations in which the agency structure specifically aims to produce a professional service, Sharma (1997) proposed a different approach: the "principal-professional issue". Because of the knowledge-intensiveness of such matters, these settings are characterized by lay clients, i.e. people who have not mastered the specialized knowledge involved in the task at hand, dealing with professionals (e.g. lawyers, accountants and consultants). Sharma's framework contains specificities that may be relevant for our theoretical approach of dispute resolution.

Briefly stated, Sharma (1997) incites us to move the line from the corporation's boundaries to the professional frontier between managers and law professionals, no matter whether these are on the corporation's payroll (in-house legal counsels) or external service providers (attorneys). Legal departments are thus included in the agent category. It also makes us focus on the "exchanges" between the parties, calling for a more behavioral approach. It reverses the power relationship: the agent, because of the knowledge he masters, should be considered as exerting power over the principal. Control and monitoring mechanisms consequently need to be adapted. Transposing such an agency framework into dispute resolution leads to the following discussion and to draft propositions for future research.

The principal-professional construct insists on the idea that the service is coproduced through interactions between the provider and his/her client (Sharma, 1997). As a consequence, the principal should not remain passive but actively participate in the service production process. Such interactions involve at least an exchange of information (Mills & Morris, 1986). This appears consistent with group decision-making

research that establishes that the quality of the exchanged information plays an important role in the quality of the decision itself (Stasser & Titus, 1985; Brodbeck *et al.*, 2007). Although agents have all the required technical knowledge to perform the task, they need input from the client as to what is desired in the specific circumstances of the case at hand.

In dispute resolution settings, this means that for dispute resolution strategizing to be efficient (defined as the fit between the case and the chosen dispute resolution method), clients of legal services (managers) need to be actively involved. If managers remain passive, lawyers alone may not be able to perform the task at the highest levels of satisfaction for their clients.

Proposition 1: Active participation by managers positively impacts dispute resolution outcomes.

Sharma's framework also casts a different light on the power balance between the principal and the agent. Traditionally, the principal is assumed to be in control of the relationship. When it comes to professional services, the professional agent may out-power the principal (Shapiro, 2005) because he or she holds the necessary technical knowledge involved in the activity. In other words, expertise generates power (Crozier, 1971; Parker Follett, 1973).

In principal-professional relationships, not only is the agent the only one who knows how to produce the service, he or she may very well be the only one who can judge the quality of the work (Dingwall, 1983). He or she may therefore "influence greatly (if not drive) the standards of exchange" (Sharma, 1997: 770). Applying this approach to dispute resolution, law professionals (private practice attorneys or in-house counsels) would therefore be in a position of power over management. They have the clearest look at the dispute resolution "table" and master the evaluation criteria for their actions. Therefore, legal advice may play a more influential role than simple advice; it may literally drive the decision of un-informed decision-makers.

Proposition 2: In corporate dispute resolution, because of their technical expertise, lawyers are in a stronger position than management.

Besides power imbalance, agency theory also assumes "bounded rationality" (Eisenhardt, 1989; Sharma, 1997). Actors in the decision-making process may approach a situation through differing lenses due,

in particular, to their education and past experience. Lawyers and managers certainly perceive disputes differently, as pre-existing knowledge structures and belief systems may play an important role (Persson, 1994) in the form of the pre-discussion preferences they will bring to the table (Gigone & Hastie, 1993).

French lawyers may, in addition to financial incentives (Lempereur & Scodellaro, 2003), be impacted by the fact that their curriculum is centered on judicial procedures and the civil law reasoning. Their education rarely encompasses ADR training, not to mention the basics in psychology and management required to understand the non-legal interests of their clients (Lempereur, 1998). Professional experience may very well not correct for this bias,[3] because of the silo structure of organizational activities, which generally hinders exchanges between professions (Schütz & Bloch, 2006). As Cohen *et al.* (1972) suggested, people may frame issues in the terms of the solutions they have at hand and not the other way around. We may therefore assume that lawyers tend to frame issues in legal terms and have a strong preference for applying the solutions they know best, i.e. adjudication, over collaborating with the other party in search for negotiated solutions.

The foregoing analysis appears consistent with the way lawyers are perceived by research and practice. For example, they are portrayed by Gilson & Mnookin (1994: 511) as "shielded by a professional ideology that is said to require zealous advocacy", leading them to "endlessly and wastefully fight in ways that enrich themselves but rarely advantage the client". Whitney North Seymour Jr., was quoted saying, in 1992: "Cases are not settled sooner because lawyers, who benefit most from litigation, are in control – not the clients who pay the bills".[4]

Therefore, due to both lack of incentive alignment and bounded rationality issues, one may posit that lawyers may put their weight behind the adjudication alternative. This, coupled with their position of power in the discussions (proposition 2), may explain why legally represented French parties in dispute so rarely choose to use ADR for resolving their disputes.

Proposition 3: The fact that French lawyers generally favor adjudication over ADR plays a significant role in the limited recourse to ADR by French corporations.

3. This certainly deserves empirical testing.
4. Whitney North Seymour is a former President of the New York Bar Association. Seymour, "Cheaper, Faster Civil Justice", New-York Times, January 7, 1992.

Sharma (1997) proposes mechanisms for controlling agent opportunism in principal-professional settings. In order for clients to effectively monitor what their professional service providers do, they may, among other things, try to reduce the asymmetry in knowledge that governs the agency relationship by increasing their personal understanding of what agents do. The objective is not to replace agents but to reduce the gap. Therefore, the more principals know about the agents' craft, the more constrained agents will be and, possibly, the closer the final outcome will be to the clients' true interests.

In dispute resolution terms, one may infer that the more management is knowledgeable about dispute resolution, the more the pro-adjudication approach of the lawyer will be inhibited. This appears in line with a statement made at a recent mediator meeting in Paris: "for mediation to go through, the legal department needs not to oppose, but the impulse should come from management".[5] It may only be in such a balanced situation that ADR will look attractive and that corporations are likely to advocate its use to resolve their legal disputes. This requires from the client both involvement in the lawyers' work (proposition 1) and knowledge about dispute resolution practices.

Proposition 4: The more the manager knows about dispute resolution, the more ADR solutions will be advocated and used.

Student study methodology

As developed in these propositions, one may infer from the principal-professional framework that managers' knowledgeable involvement may play an important role for dispute resolution to be treated as a collaborative problem-solving exercise and for ADR mechanisms to be considered and therefore used up to their full potential.

Upon such a premise, it appeared useful to poll future managers, students who were close to finishing their education in business and/or human resources, on how they would behave, should they have to manage a dispute in the near future. A questionnaire was distributed at the beginning of a negotiation or mediation seminar. In order to increase the robustness of the results, students from four different schools were polled.[6]

5. Meeting from the "Académie de la Médiation", November 17, 2009.
6. The survey was done at Ecole supérieure de commerce de Lille, EPSCI, ESSEC Business School and Paris-I University human resource management programs.

143 useful responses were collected, selecting out students who did most of their studies outside France. 67 respondents were male and the average age was 24.8 years. Average professional experience was 2.8 years, with a standard deviation of 4.08 (9 respondents had more than 10 years of experience).[7] 14 respondents declared they had graduated in law before entering their current business or human resource programs.

The questionnaire was based on a very short scenario that indicated that the organization was facing a potential dispute (either with a former employee or a commercial partner). The questions were divided into four categories, dealing with the manager's ideal involvement in the resolution of a dispute, his/her understanding of the relationships among actors (especially with regard to lawyers), his/her cultural awareness about adjudication and his/her level of confidence to tackle such issues in the near future.

Results

- Managers' involvement in a dispute

The manner in which management students perceived their ideal level of involvement in the handling of disputes may indirectly indicate the level of supervision that law professionals experience in performing their tasks. 61 % of the respondents thought that, early in the dispute, managers should exercise the responsibility for managing the case in coordination with lawyers (as opposed to alone). 36 % of them considered lawyers should deal with disputes with little-to-no supervision from management (only periodic reporting). Future managers therefore plan to involve lawyers early on in the process (only 4 out of 143 respondents would address the issue by themselves).

When asked who should negotiate with the other party before formal adjudication processes begin, almost half of the respondents considered law professionals should negotiate (25 % the attorney and 23 % the legal director). Little role was recognized for top management (7 %), despite the fact that they represent the interests of the organization as a whole.

7. Experience stands for total years of professional experience and not for experience in jobs in which respondents had to deal with conflicts. This may explain why this variable showed limited correlation with the other variables and further justifies the need to reproduce such a study with active managers who are directly dealing with dispute resolution within their organizations.

Later in the process, during trial, 29 % thought that attorneys should negotiate alone (without the presence of their client). This is interesting because when lawyers negotiate alone, it has been established that they reach less integrative outcomes, their negotiations often being limited to bargaining on legal issues (Galanter, 1985).

These results tend to indicate that most future managers do not perceive dispute resolution as falling within their responsibilities or requiring proactive behavior on their part. They would leave an extended role to law professionals from early on in the dispute (even before formal procedures are launched). This seems to be in line with proposition 1: French management students may be trained to adhere to a rather passive role in dispute resolution.

- Relationships with lawyers

Future managers appear to demonstrate good judgment when it comes to the information they would share with lawyers. Most respondents would not limit their information disclosure to legal arguments, nor to elements in favor of their position. They would therefore paint an objective and complete picture of the situation to those who they will entrust with advising them and leading dispute resolution efforts. But 57 % of the respondents would select which information to transmit based on the requests of their lawyers and not their own individual choice. This again suggests a rather passive and impressionable attitude from future managers.

Of greater concern is management students' perception of what a lawyer is. 84 % of the respondents estimate that lawyers are ADR professionals, i.e. that they are not only experts in trial procedures but also "professionals in negotiation and amicable dispute resolution". A majority of them also consider that the decision to litigate is to be made by lawyers and not management.

Taken together, these two results suggest that managers may consider legal advice to proceed with litigation as having been given after due consideration to ADR alternatives. This remains questionable when one objectively considers the lawyers' training and incentive systems (Lempereur, 1998; Gilson & Mnookin, 1994). This concern justifies the need to investigate further such a probable flaw in decision-making: principals may act on influential advice grounded in an incomplete or biased set of alternatives.

- Dispute resolution cultural awareness

The only open-ended question that the questionnaire contained was the following: "after failure of a first round of negotiations, what do you think the next step should be?" On the one hand, only 17 % of the respondents mentioned mediation, despite the fact that it is the next logical move on the cheapest-to-most-expensive dispute resolution scale (Cheung, 1999). On the other hand, 60 % of the respondents did not see any option other than trial. Managers may therefore develop a deterministic belief that trial is inevitable rather early in the dispute resolution process.

The questionnaire also focused on students' ability to assess the costs of a judicial alternative by asking questions about elements used to compute the estimated value of a judicial claim (a key piece of information used in drafting one's negotiation strategy). These questions were not very technical. Respondents were asked to estimate the chances of success of the employer and probability of appeal before the French employment Courts (respectively 10 % and 62.5 %), as well as the average hourly rate of a Parisian corporate law attorney (around 300 euros per hour).

Respondents appear to underestimate considerably the costs associated with trial. Half the respondents underestimated the hourly fee of a business lawyer by at least 50 euros (14 % by more than 150 euros). Half of them underestimated the probability of appeal by at least 10 % (30 % by more than 30 %). 83 % overestimated the probability of success of the company before an employment court, 34 % by more than 30 %. This suggests that future managers do not have the necessary knowledge about adjudication to devise an intelligent negotiation strategy (proposition 4). This may also explain why they rely so heavily on law professionals concerning these issues (proposition 1).

Responses from people with a law background were isolated in order to statistically compare their responses from those of other respondents. Interestingly, former law students did not provide significantly more accurate responses, suggesting that French legal education lacks operational elements (a whole different topic of research). Their evaluation of the probability of appeal was even significantly farther off than their non-lawyer colleagues (35.5 % instead of 56.5 %, the correct answer being 62 %), suggesting some over-confidence in their adjudication alternative (to be related to proposition 3).

- Confidence

Through four five-point Lickert scale questions, respondents were asked how confident they feel with regard to their future role in dispute resolution. It appears difficult to draw conclusions based on these results, as different factors may influence the perceived confidence of the subjects. For example, over-confidence in dispute resolution is a well-researched phenomenon (e.g. Neale & Bazerman, 1985). The objective here was different: to see what determines managers' confidence.

Therefore, principal component analysis was performed on four variables and a factor explaining more than 60 % of the overall variance was extracted (eigenvalue = 2.43). This factor revealed no correlation with professional experience, a result that raises questions and opens the way to further testing, this time with experienced professionals. Overall confidence showed no correlation with any other variable, with the exception of the amount of classes received in law ($p = .04$) and negotiation or conflict management ($p = .016$). This seems to reinforce the need for conflict management courses in business school curricula.

Discussion

Sharma's principal-professional issue appears to provide a particularly well-adapted framework to approach manager-to-lawyer relationships in dispute settings. The propositions derived from his 1997 paper, which require careful testing, imply that in dispute resolution settings, because of the lack of balance in knowledge, agency relationships may be at the root of biased decision-making practices in favor of adjudication. Should managers balk at getting involved and simply delegate dispute management to lawyers (proposition 1), there will be no mechanism for controlling the pro-adjudication stance exhibited by French law professionals (proposition 3). Power being derived from expertise (proposition 2), the knowledge acquired by managers during their education and exerted on the job may be central to the consideration of and recourse to alternatives to trial (proposition 4). In other words, letting French lawyers dominate the process when they are biased toward litigation, while providing them with little-to-no counter-argument from a management perspective, may explain why corporations end up almost inevitably in courts. Clients of legal services, managers, are in a position to shift the balance toward a more problem-solving, favorable to ADR approach. Their involvement and behavior therefore deserve more academic focus, as they may unveil keys to a better understanding of organizational resistances toward ADR.

Another way to consider the problem is to reflect on the impact of legal advice. The relative influence of advice depends on the knowledge imbalance between the parties (Larson, 1977). Legal advice may play too large a role in lawyer-manager relationships, since the advice to go to court may be offered without proper analysis of ADR alternatives. In that case, managers may not naturally, i.e. without specific training, be able to effectively counter-balance such a situation and have conflicts defined as true problem-solving issues prone to ADR processes.

The quantitative study presented in this paper was not aimed at validating or rejecting the propositions we have drawn from theory. To do so would require much more empirical research. Preliminary evidence nevertheless suggests that, when they reach the job market, French managers are not equipped to offer significant evaluation of the advice obtained from their organization's legal counsels. Future managers do not appear willing to take an active role beside law professionals in the resolution of their organization's disputes. Indications of this passive attitude lie, for example, in the fact that survey respondents generally deem that lawyers should decide whether to litigate and what information they should base their strategy and actions on; managers may also have difficulties objectively assessing their judicial alternative.

Theory suggests that managers may play a role in the efficiency of dispute resolution if they reduce their knowledge gap about the professional services they request (Sharma, 1997). Unfortunately, French management and human resource students appear not to be mastering the basics of dispute resolution processes. This deficiency in their training, if confirmed after studying active managers, may explain, in part, the proactive role that lawyers tend to have in dispute resolution processes and, as a consequence, the legal belligerence that organizations exhibit in their lack of use of ADR.

These results, as preliminary as they may be, lead to two immediate practical conclusions. First, organizations may be interested to know how their agents, managers and lawyers, interact and approach the resolution of disputes, with a special focus on directly concerned managers. Managerial interactions with lawyers may provide sources of inefficiency and waste of resources. Managers may require proper incentives (through management control) and training in order for them to satisfactorily supervise dispute resolution activities. Second, these results call for reflection within business schools concerning the limited number of conflict management courses offered in their curricula. If one takes into consideration that disputes are a fact of organizational life, then managers should be trained to analyze and efficiently respond to such situations.

Paths for future research

Further research is required to fully comprehend the impact that the different players (principals and professional service providers) and their relationships may have on consideration of alternatives to adjudication. The results of the quantitative study described above are not sufficient to draw definitive conclusions pertaining to the role managers may play in the lack of consideration and use of ADR by French corporations. It nevertheless offers early evidence that tend to substantiate the propositions drawn from Sharma's work.

As students are imperfect proxies, future research should focus on practicing managers, in order to see how much learning takes place on the job. The use of students only shows how managers are prepared, not how they behave in real life. There are potentially significant differences with actual practices of experienced managers; hence some form of organizational learning about dispute resolution. The next step is therefore to interview active managers and law professionals so as to test precise hypotheses drawn from the propositions discussed here.

Unlike law professionals, managers' involvement in dispute resolution has not been the object of attentive research. Should we follow Sharma (1997), their behavior, choices and attention to dispute resolution may determine the quality and satisfaction drawn by organizations from dispute resolution. Careful research, probably both quantitative and qualitative, will be necessary in order to learn more about the impact clients of legal services may have on decision processes related to dispute resolution.

Finally, comparative work may also be interesting in order to perceive whether manager-lawyer interactions are different across countries and whether factors drawn from these interactions may explain differences in ADR use across borders. For example, ADR is used much more often in the USA (Bonafé-Schmitt, 1987), a country where ADR training is much more developed, both in law and business schools.

References

BONAFE-SCHMITT, Jean-Pierre (1987), "La part et le rôle joués par les modes informels de règlement des litiges dans le développement d'un pluralisme judiciaire (étude comparative France – USA)", *Droit et Société*, Vol. 6, 253-275.

BRODBECK, Felix C., Rudolf KERSCHREITER, Andreas MOJZISCH & Stefan SCHULZ-HARDT (2007), "Group decision making under the conditions of distributed knowledge: the information asymmetries model", *Academy of Management Review*, Vol. 32 No. 2, 459-479.

CHAPPE, Nathalie (2008), "Les enseignements de l'analyse économique en matière de résolution amiable des litiges", *Négociations*, Vol. 10 No. 2, 75-88.

CHEUNG, Sai-On (1999), "Critical factors affecting the use of alternative dispute resolution processes in construction", *International Journal of Project Management*, Vol. 17 No. 3, 189-194.

CHEUNG, Sai-On & Henry C. SUEN (2002), "A Multi-attribute utility model for dispute resolution strategy selection", *Construction Management and Economics*, Vol. 20, 557-568.

COHEN, Michael D., James G. MARCH & Johan P. OLSEN (1972), "A Garbage Can Model of Organizational Choice", *Administrative Science Quarterly*, Vol. 17 No. 1, 1-25.

COHEN-LANG, Sonia & Paul RIQUIER (2008), *L'avocat et la Médiation*, rapport soumis à l'Assemblée générale du Conseil National des Barreaux, 21 et 22 Novembre 2008 (available at: www.cnb. avocat.fr).

CROZIER, Michel (1971), *Le phénomène bureaucratique* (Paris, Seuil).

DINGWALL, Robert (1983), "Introduction", in Robert DINGWALL & Philip S.C. LEWIS, *The sociology of professions: Lawyers, Doctors, and Others* (New York: St Martin's Press).

EISENHARDT, Kathleen M. (1989), "Agency Theory: an Assessment and Review", *Academy of Management Review*, Vol. 14, No. 1, 57-74.

GALANTER, Marc (1985), "... A Settlement Judge, Not a Trial Judge: Judicial Mediation in the United States", *Journal of Law and Society*, Vol. 12 No. 1, 1-18.

GARBY, Thierry (2004), *La gestion des conflits* (Paris, Economica).

GIGONE, Daniel & Reid HASTIE (1993), "The common knowledge effect: information sharing and group judgment", *Journal of Personality and Social Psychology*, Vol. 65 No. 5, 959-974.

GILSON, Ronald & Robert MNOOKIN (1994), "Disputing through Agents: Cooperation and Conflict between Lawyers in Litigation", *Columbia Law Review*, Vol. 94, 509-566.

LARSON, Magali S. (1977), *The rise of professionalism: A sociological analysis* (Berkeley, CA: University of California Press).

LEMPEREUR, Alain (1998), "Negotiation and Mediation in France: The Challenge of Skill-Based Learning and Interdisciplinary Research in Legal Education", *Harvard Negotiation Law Review*, Vol. 3, 151.

LEMPEREUR, Alain & Mathieu SCODELLARO (2003), "Conflits d'intérêts économiques entre avocats et clients: la question des honoraires", *Recueil Dalloz*, mai 2003, Vol. 21, Numéro 7118.

LIPSKY, David B. & Ronald L. SEEBER (1998), *The appropriate resolution of corporate disputes: a report on the growing use of ADR by US corporations*, Cornell University – PERC Institute on Conflict Resolution, Ithaca NY.

MITCHELL, Christopher (1995), "The right moment: notes on four models of "ripeness"", *Global Society*, Vol. 9 No. 2, 38-52.

MILLS, Peter K. & James H. MORRIS (1986), "Clients as 'Partial' Employees of Service Organizations: Role Development in Client Participation", *Academy of Management Review*, Vol. 11 No. 4, 726-735.

MNOOKIN, Robert, Scott PEPPET & Andrew TULUMELLO (2004), *Beyond Winning: Negotiating to Create Value in Deals and Disputes* (Cambridge, Harvard University Press).

MNOOKIN, Robert & Lawrence SUSSKIND, ed. (1999), *Negotiating on Behalf of Others: Advice to Lawyers, Business Executives, Sports Agents, Diplomats, Politicians and Everybody Else* (Thousand Oaks, Sage Publications).

NEALE, Margaret A. & Max H. BAZERMAN (1985), "The effects of framing and negotiator overconfidence on bargaining behaviors and outcomes", *Academy of Management Journal*, Vol. 28 No. 1, 34-49.

PARKER FOLLETT, Mary (1973), "Power", in Fox & Urwick, *Dynamic Administration: the Collected Papers of Mary Parker Follett* (London, Pitman).

PERSSON, Stefan (1994), "Deadlocks in International Negotiations", *Cooperation and Conflict*, Vol. 29 No. 3, 211-244.

SANDER, Franck E.A. & Stephen B. GOLDBERG (1994), "Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure", *Negotiation Journal*, Vol. 10 No. 1, 49-68.

SHAPIRO, Susan P. (2005), "Agency Theory", *Annual Review of Sociology*, Vol. 31, 263-284.

SHARMA, Anurag (1997), "Professional as Agent: Knowledge Asymetry in Agency Exchange", *Academy of Management Review*, Vol. 22 No. 3, 758-798.

SCHÜTZ, Peter & Brian BLOCH (2006), "The 'Silo Virus': Diagnosing and Curing Departmental Groupthink", *Team Performance Management*, Vol. 12, No. 1, 34-43.

STASSER, Garold & William TITUS (1985), "Pooling of unshared information in group decision making: biased information sampling during discussion", *Journal of Personality and Social Psychology*, Vol. 48 No. 6, 1467-1478.

STIMEC, Arnaud, (2006), "Les résistances à la médiation en entreprise", *Gestion*, Winter 2006-2007, 40-46.

WADE, John (2001), "Don't waste my time on negotiation or mediation: this dispute needs a judge", *Mediation Quarterly*, Vol. 18 No. 3, 259-280.

WALTON, Richard E. & Robert B. McKERSIE (1991), *A Behavioral Theory of Labor Negotiations*, 2nd edition (Ithaca, NY, Cornell University Press).