

# Commercial organisations and political conflict

15 June 2022



## Webinar's transcript

00:02:30

Isabel Phillips: Good morning, good afternoon, good evening wherever you're joining us from wherever in the world. The stress in the room, was like static electricity just waiting for lightning conductor those present when the business of crops and charcoal an animal husbandry and co-dependent. Elections were upcoming everyone was stressed people had already been killed and the impact on business was catastrophic.

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Isabel Phillips: Many of you attending this webinar will be familiar with informal economies, for those, for others in commercial organizations that will connect with the idea of businesses with multimillion dollar turnovers. And whilst information is not touted in any context it often depends on slow or at least predictable rate of change in the political context as a preferred state of being to doing business. Sudden dramatic change has massive consequences irrelevant to the political system and anxiety and uncertainty, like the anxiety just described is really problematic, so what ideas are there for those practicing and researching dispute resolution for those involved in commercial organizations of any sort in dealing with the fallout of political conflict and their business.

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Isabel Phillips: Welcome to the third in the series of the acute dispute and underlying conflict series co-hosted by JAMs and CI Arb

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Isabel Phillips: My name is Isabel Phillips I'm director of ADR and mediation development at the chartered Institute of arbitrators. And my practice has straddled the commercial in the political context and I'm conflict specialist and mediator in a number of different environments before joining the chartered Institute.

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Isabel Phillips: I'm co moderator for this webinar together with Niki Borofsky who I will introduce shortly. Please note that this seminar is being recorded and will be in on YouTube and available from about a week after the webinar itself.

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Isabel Phillips: The webinar will be an hour and 15 minutes long and after my short introduction and an introduction from Nikki and there'll be thoughts from our three speakers today, followed by discussion and question and answer.

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Isabel Phillips: So please start adding questions and that you have already in the Q and A tool, I'm sure you're familiar now you'll find that at the bottom of your zoom screen.

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Isabel Phillips: and use the chat function as I see that you're already doing, which is great for general discussion and any technical problems you have so that our team can pick that up with you.

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Isabel Phillips: So this is the third in the series focused on commercial organizations and political conflict in the context of acute dispute and underlying conflict.

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Isabel Phillips: And this series is happening in the context of the full scale, first full-scale interstate war in Europe since World War Two and we're very well that we've got a global audience joining us, and many of you around the world will sadly also have experienced issues arising out of armed conflict. So this series looks primarily at the disputes level to the disputes that come out of this on deep underlying conflict, but we will try and differentiate that because the ways of addressing those things are often very different. Underlying conflict often requiring fundamental and transformational constructive conflict engagement over long periods of time that'll become relevant later on.

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Isabel Phillips: And we're looking at the profound challenges of our time in this dispute context, climate crisis of sustainability, public health crisis highlighted by covert and also issues around exclusion and inclusion.

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Isabel Phillips: And we're focusing on the fallout of these things for civil commercial dispute context rather than the politics of any given current armed conflict. Today we'll hear from a mediator and an arbitrator and a researcher with ideas and examples of what businesses having could do to deal with political conflict.

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Isabel Phillips: So let me start by introducing Laura Abraham, fellow the chartered Institute of arbitrators she's a mediator and also an arbitrator at JAMS. And she has an international expertise in the engineering construction oil and gas and chemical industries.

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Isabel Phillips: Prior to joining JAMS she was senior Vice President deputy general counsel and global head of litigation at ACOM. Laura is a CI Arb fellow and a member of CI Arb's North American branch and a panellist on multiple global operation centers lists, including the Hong Kong international arbitration Center and the London court of arbitrary international arbitration- Laura welcome.

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Isabel Phillips: Next, we have Jane Gunn, fellow of the Chartered Institute of Arbitrators. She's an expert in the field of conflict resolution, a trained mediator and facilitator known to her clients, as 'the barefoot mediator'.

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Isabel Phillips: she's listed as a global leader in who's who mediation and featured in legal 500 hall of fame. She is the current President of the chartered Institute of arbitrators.

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Isabel Phillips: Professor Molly Melin also joins us. She's associate professor in political science at Loyola university Chicago and our current research focuses on the role of the private sector in conflict prevention and resolution, entrepreneurship and peace building and UN peacekeeping.

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Isabel Phillips: And I'd like to point to her recent book 'the building and breaking the piece of corporate activities in civil war, prevention and resolution', particularly pertinent to our subject today.

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Isabel Phillips: Her broader research and interests include international relations and foreign policy decision making, with emphasis on the causes for international conflict and conflict management.

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Isabel Phillips: The speakers and I are joined by my co moderator, who I would invite to come on camera, Niki Borofsky senior global practice manager at JAMS local solutions.

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Isabel Phillips: Niki's an attorney mediator and promoter of creative thoughtful dispute resolution processes.

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Isabel Phillips: Prior to her role as senior level practice manager at JAMS, she was Vice President at the CPR institute she's worked in house ALSTOM, as well as in the international arbitration practice Latham & Watkins and Proskauer's in Paris France. So welcome Niki and over to you.

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Niki Borofsky: Thank you so much, I am going to share my screen and just give a brief overview to welcome all of you and provide a little bit of context and I'm going to whip through my slides relatively quickly, so that we do not curtail the main event, which is our three fabulous leading women, dispute resolution speakers that we have today. But as Isabel mentioned, you know, this is the third webinar in a series and JAMS is very happy and privileged to be partnering with the chartered Institute for this timely and important discussion I really want to acknowledge my colleague Ransel Howell, who was formerly with the global team for his role in bringing this series to life.

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Niki Borofsky: I'm particularly excited about today's presentation, because it combines two of my passions- dispute resolution and politics. I had a former life as a political consultant so I'm very aware of the kind of the trials and tribulations of regime change and the campaigns and the intricacies that go along with these kinds of changes and conflicts.

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Niki Borofsky: I'm really excited to hear from our speakers. The bigger context for JAMS is as soon as COVID started, we just pivoted and knew that this was going to open up the door to a whole new host of conflicts and challenges and we came together internally with our mediators our arbitrators our panellists our staff and started a business disruption working group.

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Niki Borofsky: And really the purpose of this was to anticipate the needs of clients and companies, Stakeholders around the world and really to start listening, tailoring and adapting and being part of the training that is really representative of today's webinar.

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Niki Borofsky: You know the framework is a little bit more delved into in the first two sessions which are on YouTube already.

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Niki Borofsky: But really the purpose of the series overall is to engage in the timely conversation about the overlap of conflict resolution and dispute resolution and to use a framework of five pointed questions: what, where, who, why, and when to help dispute resolve and stakeholders from all corners really understand what's going on in the most fruitful ways to engage and make progress.

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Niki Borofsky: As Isabel mentioned there's a lot of conflict and challenges going on from pandemic issues, health issues, armed conflict wars, environmental sustainability, concerns and systemic social justice issues

and laying over this is the kind of conflicts that us commercial and you know you know more commercial dispute resolution professionals, are used to dealing with so supply web disruption and notes that it's no longer supply chain supply web- we understand that everything is complicated-breach of contract stress caused with corporate relationships and you know supply chain relationships regulatory infractions and business risk all tied in, and on top of and between and integrated with and around the underlying bigger picture conflicts.

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Niki Borofsky: So we're really here to figure out how ADR, alternative dispute resolution, is impacted by the underlying conflicts and how we can really address these issues in a more robust way

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Niki Borofsky: so I've mentioned before, this is just a little bit of a teaser if you haven't caught the session one and webinar two they are up on the web, I really encourage you to take a look and I'm going to provide just a little bit of a highlight, to give you some perspective for those of you who are joining us in the series, for the first time.

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Niki Borofsky: one of the things that was discussed by one of our speakers was the role that crisis and conflict is playing in the energy industry and the example that that Michael used was how you know stresses are created by shortages in vital supply chains, right and he noted that this is going to trigger a whole new wave of disputes beyond the conflict itself throughout the industry.

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Niki Borofsky: and that it's interesting he mentioned how speed is really the need for speed has increased, and the fact that we've all been so successful, many of us in pivoting to virtual underscores the fact that resolution as well needs to keep up the speed and import those kinds of advancements.

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Niki Borofsky: and then he noted that you know really a lot of what we're talking about is an enterprise risk management perspective that's being integrated into the ADR. Sheila bates noted that there's going to be more risk sharing as we edge towards the future and also like it or not, we've got to get used to conflict and continuing conflict, being the new normal. so we're in a series of crises so we're going to have to have a little bit of stamina.

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Niki Borofsky: the second webinar really talked about some interesting issues really on the on the outskirts and in different kind of portions of the toolbox for ADR and our speakers highlighted the role that facilitation could play and helping parties and factions to come to better resolution.

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Niki Borofsky: We talked about the role of negotiation and psychology Tim Hardy mentioned that he was embroiled in a mediation, where the parties had been fighting for years and actually the realization, they had was that they had the appetite to renegotiate the contract, instead of mediate it.

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Niki Borofsky: And then, just the reminder that we're all human and all the parties are human and you really have to key into the fact that the underlying conflict and political issues have emotional aspects.

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Niki Borofsky: So today we're going to provide you with some amazing practical advice, war stories, examples of how our panellists have dealt with these kinds of issues.

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Niki Borofsky: And this is the kind of what we're asking we're asking you to listen acknowledge how are you feeling, how are you receiving what you're hearing, learn, respond through all the methodologies, that is, about noted and we're going to listen to you and we're going to hope to have time to respond as well.

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Niki Borofsky: So the overall goal, again, is really to take the confusion that we're all feeling, that we're all seeing, that we're all experiencing from all over the globe and it really is inspiring to see how many of you are calling in from so many places. And to leverage our past experience, and all of the expertise of our speakers and all of you to provide a roadmap to give resources for commercial organizations to kind of have that box for the picture puzzle, so that we can recognize pieces that were used to sliding into place and help us see have a little bit more guidance as we navigate these challenging times. So that's it- onto the main event, thank you so much as well, and I look forward to hearing what all of our speakers have to say.

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Isabel Phillips: Thank you Nikki. So I'd like to invite Laura Abrahamson them to come on camera our first speaker today, and who I've introduced briefly, that has some fascinating experience in in the real cut and thrust of commercial dispute from a number of different perspectives.

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Isabel Phillips: Laura. It is compulsory, of course, at every webinar that there's an issue at some point with muting. Great to have you Laura, over to you.

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Laura Abrahamson: Thank you, so you know uncertain times increase risk, as Niki was alluding to both political and financial and, in my experience for businesses it's critical to effectively manage disputes in uncertain times by managing and reducing risks- political and financial because, particularly for publicly held companies whose performance is measured against market expectations, unexpected outcomes can significantly impact the companies and their stock price.

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Laura Abrahamson: To manage that risk, I suggest, effectively, you need to focus on two key things. The first is speed and getting to resolution faster, and the second is maximizing the likelihood of enforcement. In periods of prolonged conflict and upheaval, it can be very difficult for businesses to access local courts and alternative dispute resolution becomes even more important, as we saw while the COVID pandemic

created all sorts of disruptions in supply chain, or the supply web as Nikki suggested, prevented performance of contracts and gave rise to significant commercial disputes. Access to local courts was often impossible as they were shuttered, in many instances, for months arbitral institutions and arbitration centres, on the other hand, is as Niki suggested were able to stay open and effectively help businesses have a place to turn to resolve their conflicts.

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Laura Abrahamson: Focusing on the speed aspect, as well as the enforcement, I think that the growth of international mediation is an incredibly appealing tool for commercial organizations in times of conflict, because it provides both, much infinitely greater speed and a greater likelihood of compliance with resolution.

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Laura Abrahamson: Both in the US, and JAMS both have long histories of mediation and over the last several years major institutions have adopted mediation rules and procedures that I think are going to make it a much more palatable and accessible option throughout the world. Including, as recently as this year, ICSID, even in the investor state realm, adopted (which goes into effect in July) separate mediation procedures.

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Laura Abrahamson: Entirely new procedure rules developed for mediation fact finding that offer a process to supported negotiated resolution of disputes between parties.

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Laura Abrahamson: You know, one of the key aspects of mediation, because there isn't a loser or a winner, as they are with arbitral awards, parties, you know, agree to a resolution which, in theory, greatly improves voluntary compliance with settlement agreements.

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Laura Abrahamson: In addition, with the Singapore Convention, I believe as of this week 55 countries have now signed and 10 have ratified, provides additional protection that if commercial enterprises reach a settlement and mediation that there is additional enforcement capability, if one of the parties decides not to go through with the what they've agreed to.

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Laura Abrahamson: But one of the issues in my experience when dealing, on behalf of commercial enterprises who have conflicts involving government or quasi government entities, is there may not be someone on the other side, who has either the authority to negotiate or it willing politically to stick their neck out.

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Laura Abrahamson: I'll give you an example- before joining a AECOM, I was in house with Occidental Petroleum for almost 20 years and I don't think it's any surprise that if you look, I think, fully 45% of the ICSID caseload are in the oil and gas and construction energy industries. So OXY had at that dispute that arose in Ecuador in 2002 and immediately after signing contracts, obligating the company to make a billion

dollar investment and the director of the SRI, which is the Ecuadorian version of the internal revenue service, stopped refunding the VAT and publicly argued that, even though the investments were to produce oil for export, where that would normally be refunded and certainly have been the expectation of the company in agreeing to make the investment - VAT should be retained, to provide money for schools.

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Laura Abrahamson: I sat in a meeting down in Ecuador, with members of the US State Department, the Minister of energy and other senior government officials, all of whom told us that, although they agreed with OXY that we were entitled to that refund they didn't want to politically take on the head of the SRI and, therefore, instead of mediating and coming to an agreement, they wanted us to go ahead and get an arbitration award which would provide them political cover to go ahead and get the resolution we needed. So what if you can't mediate, as in in in that instance?

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Laura Abrahamson: I think my my second key takeaway would be to try resolving using the expedited arbitration procedures and again JAMS and almost all of the other major international arbitration institutions have adopted or improved their expedited rules in the last few years.

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Laura Abrahamson: Again, including, most recently ICSID which now as of July will be offering opt in expedited arbitration proceedings. And this is because time can be critical. When you have significant conflict and financial upheaval, economic upheaval it often leads to or goes along with political upheaval, including regime changes, even in democratic countries which can impact the businesses ability to effectively manage disputes.

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Laura Abrahamson: Unfortunately, despite the concerted efforts of a number of leading arbitral institutions in recent years, again to adapt their roles and help move things along faster, arbitration and regular rules can still take years.

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Laura Abrahamson: I think the ICC 2020 dispute resolution statistics published last September show at 26-month average duration of proceedings that went to a war.

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Laura Abrahamson: So, going back to my OXY example it took two years to get an arbitral award confirming the company was entitled to the refund of the VAT. However, you know, during that two years instead of us getting the political cover we needed to then get our VAT refunded, there was political regime change and the award ended up, resulting in the expropriation of our assets.



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Laura Abrahamson: So I think, you know, one of the other improvements (particularly as new ICSID rules that are going to come into effect in July, that were adopted in March). Now there's broader access to dispute resolution services, including the expansion, the additional facility rules, which has been modified to provide states and investors with access to additional facility arbitration and conciliation.

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Laura Abrahamson: Even when one or both of the disputing parties is not an ICSID contracting state, regional economic integration organizations such as the European Union may also be a party and proceedings under the amended facility rules

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Laura Abrahamson: So, you know, in summary, I think you know to effectively manage risk and effectively manage disputes businesses need to be focusing on those things that will lead them to a faster resolution and one where they are likely to maximize their chances of enforcing what that ultimate resolution is.

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Isabel Phillips: Thank you Laura- fascinating insight into I think one of the investor state cases, that is, it is extremely famous in the in the interim, and teaches us an awful lot. For some of those of you who might have been at a seminar yesterday, webinar yesterday on investor state mediation there's some interesting questions that will pick up later on. But now I'd like to hand over to Jane Gunn and who will give us a little insight about work within a specific companies around risk and political risk and risks generally. Over to Jane.

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Jane Gunn: Thank you very much Isabel and Hello everybody. So as Isabel mentioned I'm known as the barefoot mediator and that's because I'm using my mediation skills to work inside corporations with clients, not necessarily mediating but helping them to facilitate and actually helping them to think and make decisions. Some of the things that we do as mediators with clients help people think more clearly and make difficult decisions.

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Jane Gunn: And the question I always ask my clients and I asked you now is, 'are you sitting comfortably?', and the answer is you shouldn't be because I know, and we all know that the last two years of we've been navigating the storms of COVID, lockdown brexit now there's Ukraine, climate inflation, food shortages, the great resignation and then the stress of recession and I sense, and I imagine that you do that it's not over yet, so I think as Nikki said we're living in what we call a time of a cycle of crises. And looking back the IOD, back in March reported a dramatic collapse in business confidence, so the IODs directors economic confidence index collapsed in February. In February, it was minus four in March, it was minus 34 and I don't know where it stands today in June.

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Jane Gunn: And the main concerns of some of the organizations that fed into that research were cost of energy, that has a huge impact on production and just having the lights on, in your office frankly, inflation and then label market pressures, I know that many organizations are suffering from shortage of labour and

staff retention. So these are some of the big issues. and so talking to one of my clients recently who's a senior executive, what he's saying is the challenges, having to make difficult decisions at board level but also at an individual level, and I know and he was reflecting that what keeps us awake at 5am in the morning is to say, I don't know how to manage. We've just gone through a pandemic- now it's got worse, what am I going to do, how am I going to manage. And all of us have got to think how are you, your family, your career and your business going to survive physically, financially, mentally, spiritually and emotionally- we've got to think all these things at the same time.

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Jane Gunn: And so I think to survive in times of extreme disruption, we need to have a mindset and a methodology- so I'm just going to go through that really quickly here with you. On three levels, I think we need to anticipate, analyse and to adapt and to use this sense of awareness, to focus on consciousness not catastrophe.

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Jane Gunn: So, to have a look at anticipate- one of the things that I know that my clients told me that they often do in terms of conflict is that they deny danger, so we typically deny danger disbelief, prevails over reality and we fail to make plans.

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Jane Gunn: But Jim Collins who's the author of 'Good to Great' says, we must face the brutal facts. So when we anticipate, we have to sit down and we have to think what are the brutal facts, what's really going on, what is my balance sheet telling me what am I staff telling me.

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Jane Gunn: Maybe we need to ask and discover and dig a bit deeper to find out what's really going on, even though perhaps we'd rather not know the truth.

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Jane Gunn: The second thing we need to do is to analyse, we need to explore and tap into our own knowledge and experience and maybe the knowledge and experience of others- again asking staff asking customers, doing our research in the marketplace, reading the markets, working out what's going on, where are we going. So exploring much more deeply. and here is the thinking bit where I say to my clients, you need to think deeply, differently and dangerously. You've got to do that level of thinking that perhaps is a little bit uncomfortable for you to uncover and understand where you need to go from here.

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Jane Gunn: And the third thing is adapting, how do you make them tough decisions in these times, we all need to make tough decisions as individuals and as organizations. And so one of the things that one of my clients are reflected back to me was, we need to plan organize and structure so that we can deal with anything. Now normally organizations have a vision and a plan, and they know where they're going. At the moment we don't really know where we're going and so it's important to be able to switch from plan A, to plan B or plan C and to be able to plan organize and structure so that you can deal with anything at all.

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Jane Gunn: And then, where does mediation dispute resolution fit into all this. Well I think sometimes getting an external facilitator in to help can really help organizations to manage in these times, where they need to do this deep thinking and make these tough decisions very much as we would in a mediation. So my mediation framework that I use with my clients is a compass, in fact, and the N stands for what's going on now, we need to look very carefully at what's actually going on what's that telling us.

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Jane Gunn: And then E stands for explore, we need to then tap into people's experiences our own past experiences, dig a bit deeper and see what does the landscape tell us if we take a wider view.

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Jane Gunn: And then S stands for solutions certainly mediation, we look at what are number of different solutions. We don't just go down one track, we look to see are there a number of different options, ideas, solutions- so very much some kind of brainstorming to think where could we go from here, what are some of the options, what are some of the paths we could take. And then the W stands for walking forwards taking action it's really important in difficult times, not to sit on the fence but to be encouraged to take action and then not only to do that, but to review that action comeback test, are we going in the right direction, there is nothing wrong in times of crisis in changing online and changing direction. I like to think of it very much as if you're in a sailing boat and you're able to tack through the weather and make changes and decisions.

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Jane Gunn: So just to summarize, this is about being conscious and that awareness being able to help you avoid catastrophe- so consciousness not catastrophe.

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Jane Gunn: Using that compass to guide you and having perhaps a mediator or facilitator to come in and work with you at board level and at strategic level to help you make those analysis and tough decisions and remember it's about anticipate, analyse and adapt, thank you very much.

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00:34:09.990 --> 00:34:21.330

Isabel Phillips: Thank you Jane. So some really specific suggestions about how people within business can think about things, and some things out of the mediator toolkit and I think as mediators we often wish that people would use some more of those things it when that when we're not present, as well as when we are present. And so moving now into another area of quite remarkable insight. One of the things that has struck me as somebody who's crossed the boundary between the commercial and the socio-political context, is that the two fields don't necessarily communicate and don't necessarily look at each other's business very much.

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Isabel Phillips: So I'd like to invite like Molly to join us now and to give us a little bit of insight into the research that she's done on how businesses, and from empirical evidence, how businesses can contribute in situations of escalating conflict and post conflict. Of course, in this context, in a nutshell, and which is always a challenge with something as complex as this, but over to you Molly.

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Molly Melin: You so much as well, and thanks to JAMS and the Chartered Institute for having me be a part of this really fascinating webinar.

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Molly Melin: And so I think we're all observing really fascinating changes in the way that corporations operate and we're increasingly seeing the private sector, recognizing they have a really important role to play in peace and conflict. A lot of times corporations have started to really increasingly think about stability and the different areas where they operate and so more and more we're observing Corporate Social Responsibility programs that focus on a wide range of issues, we see separate foundations being funded by corporations.

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Molly Melin: A lot of MBA programs are training their graduates in corporate social responsibility. And we also see non-governmental organizations starting to work more directly with the private sector and consult business operations that are going on in adverse conditions. So there's a lot of research in business schools, such as that by Timothy Fort to name a few, that focuses on instances where corporations and incentives for corporations to act as kind of good actors and volatile environments. What my research says that's different is drawing from large data to look at when these corporations are acting in the ways that they're acting and what the implications of their actions are for peace and conflict.

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Molly Melin: And so I've collected data on instances of corporate engagement and peace building type of activities so community engagement, programs they might help to train individuals, programs that might donate to local programs, investments in infrastructure with these types of programs, and what the implications of these programs are for peace and conflict. And so as corporations are increasingly engaging beyond traditional economic exchange are there ways that companies might actually be helping to build peace.

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Molly Melin: And so there's kind of three main important findings that I want to share with you today. And that help us understand can one more or less likely to observe violence, and so one of the things that I find in my research is that corporations can really help to fill gaps and governance.

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Molly Melin: And so, in places where the government has kind of a moderate level of capacity, so places where we don't have instances of failed states but there's still kind of need or a gap in what the government is able to provide- private companies are able to kind of step in and fill that gap.

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00:38:21.690 --> 00:38:29.400

Molly Melin: And so infrastructure is a major challenge in Colombia, for example, Alpina dairy is a company that has actually helped to build roads and some of the areas which has helped dairy farmers get their product to market much more quickly but it's also a resource for community members. So the first thing that companies can do is to help fill this gap in governance.

204

00:38:47.610 --> 00:38:56.340

Molly Melin: The second thing that companies can do that can be really effective is to act as a neutral proponent of peace processes and negotiations. So one of the examples that we see of this is the Tunisian national dialogue Quartet and which during the Jasmine Revolution was really proactive in making sure they the protests that were ongoing in Tunisia were peaceful in their nature, they use social media to connect with different numbers of unions to make sure that as they were pushing for transition to democracy that they did this in a peaceful way.

208

00:39:28.230 --> 00:39:40.260

Molly Melin: The consortium of business, industry or CBI Northern Ireland acted similarly during the negotiations that led to the Friday agreements- just making sure that the way they acted was pushing for negotiations and not having kind of a say in the outcome, if you will, and not looking for a specific peace agreement.

210

00:39:50.250 --> 00:39:59.670

Molly Melin: So, being a neutral proponent of peace, as the second thing that I find that companies can do to be really effective in promoting peace.

211

00:40:00.480 --> 00:40:10.950

Molly Melin: And then lastly corporations can be really effective in helping to implement peace agreement terms, and this is something that we don't observe as often as I think we could. So this is where there's really kind of an opportunity for businesses to be more proactive and so frequently and we see companies are operating in volatile environments. And they really have the opportunity to help both sides of agreements uphold peace agreements because peace agreements are very costly to implement.

214

00:40:32.040 --> 00:40:40.380

Molly Melin: For example, in Mozambique, they signed a peace deal and part of the peace deal was that there would later be a donor's conference. And that donors conference gathered funding to help implement the actual programs that were promised as a part of the peace accord. But that donors conference only included international organizations and state actors. And I think this is one space where there's certainly a lot of foreign investment happening, but there's kind of an opportunity for them to behave in a way that would help to ensure future stability. I think there's a lot of opportunities out there for businesses to start to think about conflict prevention, especially in settings where there's a history of violence. So I will stop there, and I'm happy to answer any questions.

219

00:41:23.820 --> 00:41:41.250

Isabel Phillips: Thank you Molly. Really fascinating. I've got lots of questions and I'm hoping that you all who are watching also have lots of questions and I'm just going to hand to Nikki for a second in case she has anything to add or to ask at this point.

220

00:41:42.300 --> 00:41:55.980

Niki Borofsky: I you know I'm just I'm reminded from my years in law school when I actually helped one of my professors write a write a book on business and human rights, and then I later worked at Oxfam working on the private sector engagement arm of their campaigning to really find ways to pressure, help, advise, businesses on how to do some of the you know the three prongs that that Molly was saying in her

in her in her research where we're most successful. I mean I think one of the questions and this might be a real tough question is, you know what practical solutions could you give for businesses who you know are on the on the brink of trying to make those tough questions. Jane maybe you have some advice, since you are kind of in the thick of it with with your clients- what works best you know how, how can, how can businesses approach these things on a practical level?

225

00:42:49.230 --> 00:42:49.980

Niki Borofsky: And you're-just unmute yourself,

227

00:42:57.120 --> 00:43:04.860

Jane Gunn: One of the challenges I'm finding with my clients is not leaving enough time in their meetings to make tough decisions. So it's one of the things I just blogged about this morning is that I feel people are running too fast- they're not able to leave time in meetings or make the space or structure and that's why I think sometimes bringing a neutral in can help it's just creating the space, if you like to be able to think about these things deeply and then make tough decisions, because in the normal run of things where you're operating in a crisis, you kind of running faster than you can operate and it I think that's one of my top tips really.

231

00:43:34.830 --> 00:43:38.670

Laura Abrahamson: I, I completely agree with Jane, I think, in a world where your diaries filled with back to back, meetings, appointments and zoom's having the time to think and creating a space for all executives to be able to think through a problem matters. But I also think, going back one of the things Jane said earlier and also point Molly made- you know relationships are often everything in business, just like in life. And I think businesses who invest in both their government relations and their community relations have access to better information, I think, was Jane said to be able to understand what the situation really is now in times of volatility at extreme conflict, having relationships with people who've done the government relations and the community relations, so they have all the information they need plus the time to do the analysis makes a huge difference.

238

00:44:38.760 --> 00:44:50.130

Isabel Phillips: I agree absolutely, and I think that that also relates to questions around dispute resolution process choice, and, and having the time to actually think about what you're what you're going to do, and why you're going to do it. And this links to something that came up particularly strongly in the in the first webinar but also last time, which is the whole issue of enterprise risk management in the in the broader sense, and having that, taking this time and it just makes me think of the example when just by chance, an example from from Ukraine: where it was quite common that businesses it actually planned for a situation in which they had to set up business outside Ukraine and that, therefore, some of them were able to literally start working again within a very, very short space of time. And it makes me think of some of the context that I've worked in where there's regular power cuts, for instance, and particularly, for instance in the dry season and businesses are sort of trained and focused on doing that, so I suppose, in this context it's an expansion of some of the things that businesses do already but it's taking that into new areas and are there particular things that you think that people are missing at this point.

246

00:46:09.870 --> 00:46:16.530

Isabel Phillips: We've had COVID which has alerted public health as an issue and now the the, the issue of armed conflict- particular leading to things like supply chains, but do you think, any of you, that there are

things that that we're missing at the moment that are likely to be things that ought to be taken into those processes.

248

00:46:39.270 --> 00:46:42.480

Laura Abrahamson: Well, you know I completely agree with you Isabel- you know there's the old saying proper prior planning prevents poor performance. And that businesses have increasingly turned to robust risk management thinking and practices as a way of coping with what you don't know what the next crisis is going to be, but there's almost certainly going to be next crisis, and you know I know at ACOM we put a lot of effort into our risk management process and sort of rethought it (over the last four or five three or four years, before I left to become a full time mediator and arbitrator at JAMS) quite successfully, because for example, Hurricane Harvey hit, taking as you talked about power outages, we were able to move things remotely and be up and running and make sure our people were safe and we had communication systems and backups plans in place. At Oxy when sanctions were issued against Libya in the face of the Arab Spring, and some of the uprisings.

256

00:47:56.400 --> 00:48:04.710

Laura Abrahamson: You know at Oxy we had to evacuate all of our people in a 24-hour period and we had to make sure we were safely shutting things down and you know, there was all sorts of legal issues that came out with the making sure you stopped, you could comply with the sanctions, because how do you pay that to facilitate getting people and their families out when you're also not supposed to be putting any money or accessing some of your local assets.

259

00:48:28.830 --> 00:48:30.180

Laura Abrahamson: So I think it's again, as Jane suggested, taking the time and space, think about risk management issues in advance, having a Risk Management group who whose job is to take that space and think and anticipate. What are the plan in case of an emergency that that you can then fall back on.

263

00:49:00.210 --> 00:49:08.220

Isabel Phillips: And maybe, remember to listen to the awkward squad in the room, in those discussions, who doesn't agree with everybody right, because consensus in that context with everybody saying the same thing you probably missing, something is that is certainly sometimes of my experience.

265

00:49:17.190 --> 00:49:24.600

Isabel Phillips: I'd like to pick up at the other end of the spectrum because we're talking here about very, very large companies and I'm aware that probably some of you are calling in from a context where you're working with small and medium sized enterprises and in whatever context and that's something that I think Molly's looked at, so I was just wondering, do you have any particular suggestions for the sort of SME level in terms of building peace or responding to latent conflict situations.

268

00:49:50.100 --> 00:50:01.110

Molly Melin: True, so this is what my more recent research has been focused on and so I'm engaged in a project now with Santiago Sosa in Colombia, looking at the role of small and medium sized enterprises and kind of building community level peace, and one of the things that we're finding is that small businesses really play an important role in preventing violence at the community level, because these are the businesses that are starting to hire people, are interacting with people in a daily way and really set kind of the environment and the tone in their environment. And so, whether it means that you're hiring diversely

or engaging with members of a different community than your ethnic group, this is kind of an opportunity for bridge building, if you will, and so I think there's certainly kind of a role for small businesses to play in terms of peace building, from the ground up.

273

00:50:57.240 --> 00:51:16.080

Molly Melin: And so, as a small businesses grow into medium sized enterprises, a lot of times what we observed, is that medium sized businesses are actually kind of drawing resources into the Community as well, because they need the infrastructure to grow and so often, this is kind of ground up development.

274

00:51:17.580 --> 00:51:27.690

Isabel Phillips: And I think that links nicely to- I'm going to ask you all to participate in a in a poll, which just ask you very briefly, 'are you calling in from Private sector context, or public sector context, a charity or volunteer sector and other', and the reason that I'm asking you, that, is because one of the things that is quite striking about this particular area and some of the developments around things like investor state context is some of the questions about how private and public sector interact, to enable process like mediation to actually be used.

278

00:51:56.370 --> 00:51:59.760

Isabel Phillips: Just extending the discussion around the Ecuadorian context. I was lucky enough to hear somebody talking yesterday about some of the changes to the legislative framework in Ecuador to enable public sector bodies to participate in and mediation. And it'd be interesting to see where you guys come from and to see whether we've got the interest and the engagement from all these different sectors - because my hunch is we might have but I don't know so I'm interested to see. and so we've got overwhelming private sector, we have got just under 15% from public, charity and other on this call at the moment, so there's I think that's a sign that there is an as an engagement front for all the factors in this issue of how business response because it's it's so it's so pivotal to what we're looking at.

284

00:53:03.780 --> 00:53:13.110

Isabel Phillips: Jane just coming back to you- are their specific things around early intervention that you think that can be done to prevent damage and loss specifically.

285

00:53:15.360 --> 00:53:24.480

Jane Gunn: Actually, just to comment on what I was thinking before- with small businesses it's cash flow, you know large businesses can often survive, but small businesses their cash flow won't sustain them. And I know sort of going back out now, after two years and going back, perhaps to restaurants I've enjoyed going to and I go and find they've closed or I went to one, the other day when I was in London and they said we're any serving drinks, because we haven't got enough staff.

288

00:53:39.600 --> 00:53:45.960

Jane Gunn: So I think the cash flow and the staff flow of things that are really affecting small businesses right now. And so I guess you know, in terms of early intervention it's having a look at you know what's your greatest risk, where are the areas where you literally are at risk of your business folding which is not being able to stay in the cash flow and not being able to either retain the staff or you know have enough staff in the right areas to actually just keep the business going, they wanted to keep the restaurant open, but they just couldn't- didn't have enough staff in the kitchen to do that. So I think there must be a lot of



businesses that are going to struggle and they got to really prioritize I think you know where do we actually most need to put our resources and our planning in these times.

294

00:54:30.300 --> 00:54:39.420

Niki Borofsky: I think that just Jane what you mentioned really gets back to the notion of speed and the ability and flexibility of alternative dispute resolution mechanisms and tools and modalities, to be able to respond to these kinds of issues in real time and in ways that are responsive to the whole host of stakeholders that really need these matters resolved. I'm wondering if any of you have thoughts about ways that companies and actors can proactively engage in ensuring that these kinds of processes are quick, if there's not access, maybe to expedited arbitration. What are other what other ideas for ensuring that you know you don't linger so long that you lose the battle.

298

00:55:24.450 --> 00:55:30.720

Laura Abrahamson: I you know, one of the things I would suggest Nikki, from my experience, is that having someone from the business whether it's larger company that has a general counsel's office and one of the lawyers can do it, or if a smaller business, one of the of the principles- to stay actively involved in managing the dispute don't hand it over entirely to your outside counsel, because one of the things that by staying actively involved by you know, having a business person attend that first procedural conference can do is they can agree with the other side of things that can shorten it and make the process go quicker that your counsel may not be free to do. Outside counsel doesn't want to give up on arguments they don't want to say waive their right to take depositions if you're more in a in a US context or other disclosures they don't want to agree that necessarily

304

00:56:24.870 --> 00:56:33.240

Laura Abrahamson: We'll get to a hearing in two months or three months because they want to have all the time to prepare the arguments and do the best job they can for you. If you've got a business person there they can make those trade-offs on the spot and say it's much more important to me that we get to a hearing and I realized, we might not be as prepared, we might not be able to put all the evidence arguments we can, in but it's more important to me that we get to that resolution quickly, and I think so, by having someone from the business actively involved, they can be feel comfortable in in making the trade-offs you need to to get speed and and take advantage of the flexibility that arbitrations and alternative dispute resolution modalities provide. I mean the truth is arbitration is a matter of contracted agreement, whether its investor state with the treaties or commercial arbitration, and so, if both parties can agree to a procedure to get to something faster, the arbitrators are going to almost always go along with it.

310

00:57:31.050 --> 00:57:41.970

Jane Gunn: I think one of the things that I encourage organizations from the perspective of going on a journey and and having a guide, is that you need a map and, for me, a map is a manifesto and pledge, a manifesto means here are my beliefs, here are the things I believe in, so I believe in alternative dispute resolution I believe in early resolution.

312

00:57:48.960 --> 00:58:00.180

Jane Gunn: And a pledge is, you know I promised to use those, so I promise to my clients and to my suppliers and everything that we will have these early business meetings that we will then move on to alternative dispute resolution and that's up front it's part of the company's culture, its communicated

within the company and externally, and that means it's you know it is the first step, you don't have to think you just know right we're going to step one of our dispute resolution process.

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00:58:17.220 --> 00:58:26.760

Jane Gunn: And there it is. you know executives will meet, secondly, we'll try, an external facilitator or mediators, so you know that's there and kind of written into the code.

316

00:58:27.990 --> 00:58:33.150

Niki Borofsky: I love what you're saying Jane and what we've noticed I think at JAMS is a lot of our clients are actually changing the nomenclature, instead of having a litigation department they're having a dispute resolution or prevention department.

318

00:58:40.170 --> 00:58:56.190

Niki Borofsky: And just that small shift in mind-set really helps the the internal lawyers and the dealmakers think a little bit more proactively. And then the other thing I wanted to just piggyback on what Laura was saying, another thing that I think is a real positive potential for you know the the pivot to virtual that we experienced is those those people from the business side, the decision makers that the clients can actually participate with much less hassle.

320

00:59:09.030 --> 00:59:19.080

Niki Borofsky: By popping into a zoom or popping into a call, so really having a hybrid or virtual process opens up the participation to involve you know those key players who can get beyond the zealous advocates that you know we all are, and the arbitral tribunal wanting to preserve you know, a very fair and just process, to make those decisions that might alter from what initially the contractual clause anticipated because it wasn't made in a time of you know, really, really dire circumstances. And the only other thing that I want to add in and I'm sorry to be speaking too much, but another thing a lot of institutions, I think are re-envisioning the role of maybe arbitral institution to promote different modalities. JAMS has a mediator in reserve policy so as soon as you start an international arbitration there's a mediator, that you have access to that can pop in, and you know decide discrete issues or you can decide to kind of mediate and I know CPR has that kind of functionality and I think a lot of the other.

327

01:00:19.650 --> 01:00:31.800

Niki Borofsky: big organizations, and small, are really looking to that kind of option, especially with the growth of the Singapore Convention kind of tying it back to what Laura mentioned earlier on.

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01:00:32.370 --> 01:00:38.790

Jane Gunn: I like I like the use of your phrase that Nikki 'popping' because I think we should have a pop up dispute resolution, I think it should be that instantaneous, you know it can pop up and we can use it today we don't have to sort of have a laborious process to get into it.

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01:00:47.550 --> 01:00:55.590

Isabel Phillips: I think flexibility of process procedure and process is something that's becoming more and more talking point whether it's within arbitration so Med-Arb-Med and or we've also got a question here which 'isn't the process that Laura just described, similar to the concept of having disputed adjudication

board on a construction contract' so dispute boards are something that that have been talked about quite a bit, as with other hybrid process. I don't know if any of you have any reflections on that specifically.

334

01:01:24.900 --> 01:01:28.470

Jane Gunn: I've worked on a project, dispute prevention program if you like, and I think just having that there means it's operating under the surface so you know you don't even have to set it up you just you know it's there and it may be, it meets regularly or maybe it doesn't. but the one that I was in you know we could meet regularly, and you know, then the executive could feed into that so it was a live process, if you like, into which issues could be fed- you didn't have to you didn't have to admit you have an issue to be constituting it, that was the thing, so there was no sort of loss of face, this this board is meeting anyway.

339

01:02:07.410 --> 01:02:16.380

Isabel Phillips: So, having something that's standing entity means that you're not doing something exceptional you're doing something that's part of part of the part of the

341

01:02:19.260 --> 01:02:30.960

Laura Abrahamson: In my experience, in my years in ACOM, the and the most effective uses a dispute resolution boards are when, as Jane said, they were already set up and running and meeting before the first dispute came about. Because if you if you haven't and the first dispute comes about you then need to constitute your dispute resolution party and get it going you've already lost that time.

343

01:02:43.710 --> 01:02:48.270

Laura Abrahamson: I think one of the interesting things going back to again the flexibility and Jane's point about the tiered resolution presses, having that that through and having the executive meetings- to Niki's point the change to virtual of last two years, I think, is going to give such greater flexibility to all steps and parts of dispute resolution. The executive meetings which could have could be very difficult to set up in the past with schedules and diaries and timing and travel.

346

01:03:20.100 --> 01:03:28.830

Laura Abrahamson: You know now when they can be done- when people realize that you can effectively conduct business virtually as we've all been having to do for the last two years, during the pandemic. That you know increases the ability to have those you know executive meetings, maybe be more meaningful. The other point is, you know the, the UK has an adjudication regime to get the cash flow and keep cash flows going during.

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01:03:50.070 --> 01:04:05.100

Laura Abrahamson: construction projects, and I think that sort of idea can maybe be transplanted into other areas, because, as I was suggesting in terms of flexibility, you know the adjudication is really sort of a quick and dirty process- it's not binding.

351

01:04:05.910 --> 01:04:12.330

Laura Abrahamson: It keeps the cash flow going and in a very short order of the companies have to present their arguments, you get to a decision in two months or less and ehen the projects over to go back and appeal it. They usually don't, however, because you've solved the problem by keeping the cash flows

going, it's sort of the quick and dirty version, if you, if you will, a resolution and I think that also could be used, much more effectively in other contexts.

356

01:04:38.700 --> 01:04:48.960

Isabel Phillips: And I think it's an interesting point, because I think it's actually a process, an adjudicative process it's not usually it's maybe not often called adjudication because it's also probably not always happening in English language context, but what you see is somebody taking an adjudicative role to keep things going and all sorts of context- both formal and informal context in a lot of a lot of the countries that are represented around the world on the call moment.

359

01:05:06.630 --> 01:05:11.880

Isabel Phillips: I think one of the other things that that links to that which I'd like to pick up as a question from Kareem.

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01:05:12.660 --> 01:05:18.120

Isabel Phillips: Which is that 'for many institutions management is relatively is a relatively risk free zone, but their satellite offices and the countries may be exposed to risk and how do you recommend that the management gap between head office and satellite, but also the cultural gap between international and local management is bridged and to effectively manage times of crisis and in satellite areas

363

01:05:40.590 --> 01:05:55.830

Isabel Phillips: and I've seen a lot of that, but I'll keep my mouth shut at this point and hand over to the panellist's and including Molly because I'm sure you've also seen some of these issues around the world, so let me, let me open the floor on that question because I think there's much that could be said about it.

364

01:05:59.460 --> 01:06:18.330

Molly Melin: I do know of an instance- company, a Japanese company, they actually make sure that they're kind of higher up people actually go and visit the original shop where the pharmacy began and is now you know, a large corporate pharmaceutical company, and so I think there are kind of opportunities to bridge that cultural gap and clearly it's not always possible today to have people fly around the world to ensure that there's cultural knowledge and also understanding when there are volatile places where a company is headquartered or operating certainly.

367

01:06:46.620 --> 01:07:03.300

Molly Melin: But I think there are some interesting ways and innovative ways to make sure that people in one country understand what the potential issues are and what life is like for people that are operating in other locations.

368

01:07:05.550 --> 01:07:12.120

Isabel Phillips: I think that's such a crucial, crucial point in my experience, and anything from Jane, Laura?

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01:07:12.420 --> 01:07:20.610

Jane Gunn: I've just had clients, where I suppose they've had other offices within Europe actually but perhaps further away, but in normal times you know the executive from head office would be traveling, and so there would be this degree of connection and understanding and then that's become you know that's become impossible, so the communication, together with the cultural differences created, challenge and tension because they're not able to be on the ground with those people understanding what they're experiencing.

373

01:07:40.890 --> 01:07:50.280

Jane Gunn: And it's the communication disconnect, if you like, that then starts to create tension and difficulties in decision making. And I suppose again that's where you come in with some of the skills and ideas that we have as dispute resolvers to say how do you how do you manage that situation and start to bridge that communication gap.

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01:08:00.480 --> 01:08:01.080

Isabel Phillips: Thank you. Laura any reflections on that?

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01:08:05.220 --> 01:08:13.620

Laura Abrahamson: Well, you know I had a gut reaction, because having been in the position of working in a multinational company and you know that when I gave the Libyan example of the sanctions, we were trying to get our people out because you, you know what we hadn't anticipated were the pets- people didn't want to leave without their pets.

379

01:08:25.710 --> 01:08:38.040

Laura Abrahamson: And we had to sort of pivot and understand that you know what we were thinking of what the people who were on the ground, there were thinking of were very different in her concerns. And you know and similarly in South American, in Peru we once had, there was a fatal air crash.

383

01:08:52.260 --> 01:09:00.510

Laura Abrahamson: And you know the immediate concerns on the ground locally we're not the sort of things that people back at the Home Office were thinking and so I think that goes back to relationships as Jane mentioned when executives can travel and have boots on the ground, it does make a big difference.

385

01:09:10.560 --> 01:09:23.880

Laura Abrahamson: But in times when you can't do that, you know that the relationships really come into play in terms of understanding the perspective of the people in the in the satellite offices when there's when there's a crisis happening.

386

01:09:25.020 --> 01:09:33.840

Isabel Phillips: Now I've been involved in a number of large international non-governmental organizations that have offices, head office and satellite offices, and use tools like conflict style indication and things like that like that to look at the overall dominant styles and put in head office and satellite offices and it's often radically different, and that gives you some real insight on the systemic level, as to the way that for instance, conflict issues either within the offices, but also externally in the context that people are working

in are playing out, and therefore, for instance, why, for instance head office might not be being told about things that are happening.

391

01:10:06.420 --> 01:10:13.470

Isabel Phillips: And, and the information simply not flowing. And I think there's also the element of the difference between sort of numbers and factual information. And, as you said, the boots on the ground, but I think the boots on the ground thing is you've also got to think about the difference between traveling and staying in a capital city in a five-star hotel- and going into to actually spend time in, you know the example it's just come immediately to mind is the Niger Delta so 20 years ago.

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01:10:39.510 --> 01:10:46.560

Isabel Phillips: -very different experience and sitting in Victoria island and Lagos, right. So it's a it's just as an example of to what extent the boots on the ground thing works, depending on what people with the boots are actually doing when they've got them on the ground, so yeah just a little reflection

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01:11:00.630 --> 01:11:04.230

Isabel Phillips: And we've got another couple of questions- sorry Niki I think you're about to come in

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01:11:04.440 --> 01:11:11.220

Niki Borofsky: yeah, well for me that that kind of segues a little bit into Gerard's comment and question, and maybe... You know criticism or scepticism about how mediation can really work when there are such intractable issues at hand and I don't think you get much more intractable than when there's an armed conflict and I'm wondering if the panellists can speak to.

401

01:11:34.650 --> 01:11:47.340

Niki Borofsky: You know, is mediation, what kind of dispute resolution tools and methods are can be successful when there is such an ingrained position that maybe, you know, in the dispute and then also underlying the dispute and the conflict that the dispute is kind of steeped in what, what is your experience been, what works.

403

01:11:58.620 --> 01:12:11.790

Jane Gunn: I mean I don't have any experience in in that specifically, but I just think you can't beat listening. I think, often people say I can't go to a meeting you know, unless, until , but just sitting down with no agenda and just saying you know, using those raw listening skills that we practice as dispute resolvers can start to build bridges and certainly in the way I practice mediation it's about very small shifts, it's about making shifts

406

01:12:27.900 --> 01:12:39.780

Jane Gunn: in that acknowledgement and recognition of someone else- I don't agree with you, but I acknowledge you as a human being as somebody with a different point of view and I recognize where you're coming from and those small shifts can, in time, help to build bridges, but it's a process, but it just needs that willingness to say I'll just sit, I'll sit with you, and maybe with someone in the middle, but we'll sit we'll just see.

408

01:12:58.470 --> 01:13:05.580

Laura Abrahamson: I agree Jane, but I also think that one of the things, goes back to your anticipate, analyse, adapt, even in periods of intense conflict, I think getting parties to recognize where they really are and you know, one of the one of the beauties of mediation is oftentimes you've got people doing like lens work and trying to understand the other people's perspective, so if you can accept sort of the-

412

01:13:28.470 --> 01:13:37.140

Laura Abrahamson: if you can get people to look and face the realities of the situation, you know mediation is almost always going to be a better option for them and you know, coming to a negotiated resolution rather than turning the fate of their dispute over to an arbitral body that, you know even if you expedite it is still going to be three months off and maybe six months off depending on that the type of dispute. I think that people globally turn to mediation more they'll recognize that the power it has because with that listening and bringing people together you, you can create a much better result for businesses.

416

01:14:22.860 --> 01:14:33.450

Laura Abrahamson: And with the ICSID new rules encouraging mediation and beefing up the procedures for mediation, even an investor state conflict, I think, will be a big step forward.

417

01:14:35.550 --> 01:14:49.710

Molly Melin: So I come to the mediation literature, from a political science perspective, which is great different from the perspective that you both offer by in kind of the international mediation context, which is what I did my dissertation research on. We look at mediators as a person who can resolve the information problem, and this really gets at can why violence starts in the first place, and that is a lack of information. And so states disagree with one another on relative capacities and capabilities, for example, and the mediator can be you know, a third party who can really provide that information and help overcome these kind of misperceptions that exists

422

01:15:45.030 --> 01:15:45.810

Molly Melin: and I understand kind of that that international war context is quite different from the corporate engagement context and corporate dispute context, but I do think there's interesting overlap in terms of what role, a mediator can provide and when there's the possibility of conflict.

423

01:15:48.270 --> 01:15:51.060

Isabel Phillips: Thank you Molly. I am conscious that we are at 2:15 and I said we would finish at 2:15, i'm going to take liberties with all of you who want to stay to take another five minutes, just to give each the speakers, a chance to give a final word, and then to wrap up.

425

01:16:08.190 --> 01:16:19.170

Isabel Phillips: So as molly was just speaking I'm going to go to Laura and then to Jane and then to Molly. So just 30 seconds your final thought, for our participants today.

426

01:16:21.780 --> 01:16:33.270

Laura Abrahamson: there's a question that came in a chat that I think will be my final thought, which is should arbitrators insist that clients attend the first procedural hearing, so they can influence the decision as to whether expedited process should be adopted.

427

01:16:34.320 --> 01:16:35.340

Laura Abrahamson: I would say that I would strongly encourage. I don't think you can insist because you've got to have a client attend to who really wants to influence the decision. If you if you as an arbitrator tell the parties that they have to bring a client, then I think you've changed the mind-set on that the client part in a way that doesn't create the space and opportunity for that sort of flexible thinking, I think you want to encourage them to have someone there and then, as they listen to that procedural coverage, they can then and influence it.

433

01:17:16.830 --> 01:17:17.430

Isabel Phillips: Thank you Laura. Jane?

434

01:17:19.620 --> 01:17:30.480

Jane Gunn: I would say, from my perspective, conflict always arises from a conversation that didn't happen or didn't happen well, so I asked organizations what conversations are you not having and why. And I asked my clients to reflect on three questions, who matters most to you, and why do they matter most to you, what matters most to those people- could be their pets, you see, and why does that matter most and then, what matters most to.

436

01:17:55.560 --> 01:17:56.250

Isabel Phillips: You seem to have-

437

01:17:56.850 --> 01:17:58.920

Niki Borofsky: It wouldn't be a webinar without a technical issue. And illustrating the difficulty with which communication can stop and can ebb and flow.

442

01:18:08.160 --> 01:18:15.690

Isabel Phillips: So let's wait and see if Jane managers to reconnect and I'll hand over to Molly- final thought from you Molly.

443

01:18:16.980 --> 01:18:24.390

Molly Melin: Thank you and thank you all once again for having me, and I think one of the things that this webinar really highlights is there's a gap between what's happening on the ground and the research that's being done on these various topics and so...

445

01:18:35.370 --> 01:18:47.070

Molly Melin: I just want to highlight to the audience, that there is literature out there, and a lot of research that's been done that shows success rates of mediation, for example, and when mediation is useful and so drawing from that literature, I think, is one way they can moving forward corporations can be informed



about best practices, but also acknowledging that there are gaps in our knowledge and there's still work to be done.

447

01:19:06.870 --> 01:19:12.240

Isabel Phillips: Thank you, and I'm going to hand back to you Jane for the final- you left us with a cliff-hanger that first, and the second and we're all on tenterhooks, for the third question which was?

449

01:19:18.390 --> 01:19:26.250

Jane Gunn: uh what matters most to you and share that information- I was conscious I dropped out I suddenly though everybody's frozen what happened! That's it, yes, thank you very much.

451

01:19:30.930 --> 01:19:32.490

Isabel Phillips: Thank you Jane- Niki.

452

01:19:32.910 --> 01:19:44.670

Niki Borofsky: So I just think that is a wonderful modelling of the tenacity and persistence, I think that it takes in a mediator mind-set, to ensure that clear communication happens and I just want to thank everybody for participating and thank you to CI Arb for co-hosting this and for everybody who's questions if you didn't get to I encourage you to be persistent as well, and you know feel free to reach out to me you know, afterwards, if there's something that you're keen on learning, we are, we are really here to continue the conversation and hope to see what the next webinar in the series.

455

01:20:07.440 --> 01:20:22.500

Isabel Phillips: Thank you Nikki, and I would like to just reinforce what Niki's just said in terms of thanks to all the speakers today and to the previous webinars and for the upcoming one in a month's time.

456

01:20:23.130 --> 01:20:29.430

Isabel Phillips: We'll be posting the link for the to sign up for the next in the series shortly in the chat. The one thing that I'm going to also took the liberty of adding to what Molly just said is the fascinating thing about the two literatures and the conceptions of mediation between the socio political context and social science and this more legal dominates context of idea is that even the conception of mediation does tend to be slightly different.

459

01:20:52.320 --> 01:21:05.550

Isabel Phillips: So, it's a fascinating thing I encourage you to follow Molly's suggestion and I hope we can carry on having this conversation across these fields, because I think it is crucial to actually acting effectively in these really difficult times of acute dispute and underlying conflict. So I posted the link to sign up for the next event in, what month is it now- it's June, so the next one is in July, and I hope to see you all there. Thank you and good evening, good morning and good night.