

Acute dispute and underlying conflict



Webinar's transcript

Isabel Phillips: [00:00:02] Welcome to this series: Acute Dispute and Underlying Conflict, co-hosted by JAMs and the Chartered Institute of Arbitrators. My name is Isabel Phillips. I'm director of ADR and Mediation Development at the Chartered Institute of Arbitrators. In terms of my practice experience, I've straddled the commercial and political, and I'm a conflict specialist in international conflict, in fragile and violent contexts, and a mediator, trainer and consultant, previously working CEDR before I joined the Chartered Institute of Arbitrators and also various other organizations, including the Deutscher Scharf International. And I'm going to be moderating this webinar together with my colleague Ranse Howell from JAMS. Just a couple of housekeeping points. Please note that the seminar is going to be recorded and will be made available to you online, if you're an attendee to this seminar through YouTube after the seminar, probably about 24 hours afterwards. It's going to be one hour long and after a short introduction, first for myself and then from Ranse, we'll have some thoughts from two speakers, Michael, Michael McIlwrath and Sheila Bates, and will then have some discussion followed by Q&A both from each other and also hopefully from you, too. So please do start adding questions in the question- Q&A tool at any point during the session. If you have general discussion or technical problems, please use the chat function so that we can help you out with that. So a few words of introduction. So this is the first of the Acute Dispute Webinar series, and I want to give you just a few words about one of the ideas behind it.

Isabel Phillips: [00:01:58] So we're in a situation where there's the first full scale interstate armed conflict in Europe since World War Two. And that's resulted in a bunch of geopolitical shifts and re-evaluation. And because of the ramifications of these developments, two different worlds of conflict resolution and alternative dispute resolution have been thrown into into relief in quite an interesting way. To illustrate what I mean by this, I'm going to quote John Burton Weir if you from a conflict resolution background, you've probably heard of him; if you're from an ADR background, you may well not have done. And he commented back in the nineties, 'ADR typically lacks any analytical process. Frequently it makes no distinction between disputes and conflicts, and it tends to apply existing legal norms in this more informal way'. So this might be quite contentious, particularly in an ADR context to hear those words. But for those directly affected by conflict, those dealing with disputes and arising directly and indirectly out of the conflict situation as parties, representatives or dispute resolvers or conflict specialists, these differences are may be important- the difference between conflict and dispute. Why? Because clarity around what we can and can't resolve depending on structures, tools and contexts we're operating in. And what needs more fundamental transformational change in the way that things are done is important. And without

differentiating these two things, it can cause confusion and frustration. So within this series, what we're trying to do is looking at the disputes level without ignoring the different issues of underlying conflicts requiring fundamental and transformational constructive engagement, conflict- constructive conflict engagement. And those include the profound challenges of our time- the climate crisis and sustainability, public health crisis as highlighted by COVID around the world, and the issues of diversity and inclusion, which are global issues in many different ways.

Isabel Phillips: [00:04:11] So that's one of the thoughts behind this, looking at these acute disputes that we in across the world are dealing with, coming out of a very profound conflict, underlying conflict. And with that, I would like to welcome you to the first in this series, which is titled Commercial Stability in a World of Conflict: Effective Dispute Management in Uncertain Times. And I'd just like to say a few words about, firstly, my co-moderator Ranse Howell and then the other two speakers. So Ranse is the Director of International Operations at JAMs ADR. He's an expert in negotiation and dispute resolution consultancy with previous work with CEDR and clients, including the EIB, the EBRD and UNHCR. He holds a PhD, a JD and is also an adjunct professor at both Pepperdine and Westminster universities. And he is joined by Sheila Bates, who is based in France, a highly experienced senior accredited mediator, board member and trainer. She's also a conflict coach and facilitator. Her background is in FTSE and Fortune quoted companies as well as IFIs, and has particular interest and expertise in international disputes relating to human rights law, labour law, and facilitating dialogue in supply chain management and modern day slavery, which is of particular interest today. Michael McIlwrath is based in Italy. He has 22 years of in-house, lead in-house litigation roles for the General Electric Oil and Gas Division and is now VP for of litigation for Baker Hughes. Oh, I'm getting a- please correct me.

Michael McIlwrath: [00:06:00] I was- I left. I was I was until last year. Now I have my own company, but I was vice president of litigation at Baker Hughes.

Isabel Phillips: [00:06:07] Sorry. Apologies. So, yeah, founded your own company, MDisputes Srl. And also alongside running his own company, is Chair of the ICC's governing body for Dispute Resolution Services and adjunct professor for the Bocconi Law School in Milan. So with those introductions, I'd like to hand over to Ranse to introduce the structure of the session.

Ranse Howell: [00:06:35] Thank you very much, Isabel. And it's really a pleasure to, to present some of our thoughts and also work with, with my former colleague Isabel Phillips, who we spent many years working together at CEDR. And the partnership that we formed with the Chartered Institute is very valuable. And also to colleagues on the screen, Sheila Bates and, and Michael McIlrath, who I've who, I've who I've known for many years and also admired their work and also their passion and their dedication to not only presenting the best in dispute resolution, but looking for alternative ways. What I hope to do today and what we hope to do is to sort of present a framework and present sort of a stage as to why we're having these conversations and why it's important to have these conversations right now as opposed to waiting. And there are many similarities to what we sort of saw two years ago. And I'm going to share my screen as we love to do. And here we go... And here I am. There's two of me. Isn't that not disturbing me at the top and me here. So when I when we started to to look at some of the challenges and the things that were emerging out of the conflict that was emerging in in between Russia and Ukraine, many of the of the cascading issues were very similar to those that we first faced when we when we first started to look at the situation with with COVID, we said this seems sort of familiar, but we've never seen anything like this before.

Ranse Howell: [00:08:21] So what do we do? So it's a bit like standing in front of a maze. You're kind of standing there, shall I go left or right? And so what we hope to do is sort of pull back a bit and give you almost a route map and some form of direction to say, yes, it might still be somewhat of a challenge, but if you have a direction and you understand where you need to travel, then you have the comfort and the knowledge that you will get there successfully. And for those of you who've ever been in the maze, even if

you have the map, the map, it's still a bit sort of confusing. And I'm a short person, so that always also causes a bit of an issue as well. And so, two years ago we started doing some thinking and there was some information that was published in The Economist really about the the kind of the supply chain dynamics. So if, if there was a supply chain challenge in China, where would people have to shift? Where would where would things be available? I know that Sheila and Michael are going to be speaking to that. And I think that the conversation over the past few years is really looking at supply chain resiliency and also the fragility of supply chains. We also then started to write about really managing business relationships as we started to sort of see the fallout.

Ranse Howell: [00:09:34] And the same thing is true as now, you want to consider what will be some of the cascading disputes that will emerge. And they might not even necessarily be readily apparent. But just knowing what you've seen in the past, you can say these are some of the things that we'll experience. We at JAMs, we put together a working group and really pull together a panel of experts to say, What have you seen in the past? What are you going to be seeing in the future and how different is this from what you've seen and how similar? And I think using that thinking and using that approach really helps to guide us. And so what we're going to do is just present really a kind of a very brief and quite an easy and straightforward framework because this is the same sort of thing you would consider whenever you would have something that would cause either a challenge, a disruption, or a difficulty, which is really to identify what the triggering effect or the conflict is. Where is this located? Is it something that's regional? Is it national or is it international? Of course, that has an impact on the dynamics and who the stakeholders you might want to include. Who are the parties involved? Are they are they individuals? Are they institutional? Are they government? And again, for those, if you've worked with with governments and regulatory bodies, you understand the complexity that that will lead.

Ranse Howell: [00:10:58] Why would you be interested in doing it now? Why not wait? Because I've often heard, well, there are no disputes emerging, so we're okay. And then of course you do...the question of to ignore it would cost what it would mean what? And potentially there's a lost opportunity. And then, of course, last but not least, when you're when you're doing your sort of analysis, is it a short, medium or long term intervention? And sometimes you don't really know that until you start. But often what I've seen is people do parallel types of or parallel initiatives. So therefore things are working alongside each other, but they have a short, medium and long term impact and effect. And I think just sort of giving that sort of framework helps individuals to to understand that there are many, many different situations and circumstances. They don't have to be as globally challenging and as impactful as, say, COVID or the one we currently see at the moment. But they, but there are certainly things that are happening all the time and that we kind of scratch your head and say, oh, how is this similar? How is this different? Many of them have very, very much the same DNA. And so just to give a quick sort of macro view that the 'what' here is the the current situation that we're experiencing in in Russia, and really what will happen as far as the restrictions on oil and gas and of course, the negative views of not only Russian businesses, but Russian individuals.

Ranse Howell: [00:12:36] And people have seen that across the world that people have having some of this this challenge. And, of course, where is the intervention going to be? Where is it located? Yes, it's located in some part of Central Europe. And many people might say, well, that's not really going to affect me. But as Sheila and Michael are going to say, well, it will affect you because... because of the supply chain, because of the because of various different rare earth metals that are being mined and also because of the grain that has usually come from certain, from that part of the region. Who's involved? Is it government sanctions initially are the initial trigger, then companies are involved. Why would you want to intervene? Because if you- if you if you don't intervene now, then should you wait? There is, of course, the reputational risk and a whole bunch of other things that you have to navigate. And of course, there is also a thing about business uncertainty. And of course, the question is when should you intervene? Should you do it now or should you wait? And this is just sort of a very brief introduction. It's a sort of analysis that you might want to do just a very quick sort of snapshot as to changing views.

Ranse Howell: [00:13:53] Baker McKenzie produced a very useful report at the beginning of 2022, and they said what would be some of the greatest challenges or external factors that would provide an increase in exposure to disputes? And this and that beginning of the year, it was COVID, as you can see at the top. We asked the same question last month at the event in California at the USC JAMs Symposium. And you see now with, with 21% of respondents said it was actually it was geopolitical issues. And so you can see the frame has quickly changed to to what people didn't necessarily think is an important issue but has certainly risen to something that people are considering. So what we've done here is consider for those who are interested, insurance, what sort of insurance do you do you kind of consider when do you make a claim and how do you make the claim? Here are some additional examples. There has been a very useful ongoing addition to lots of additional resources. These will be made available and law.com has done a fantastic job as compiling a list of articles that are relevant for those who want some further information. That's sort of my brief sort of overview and and sort of setting the scene as to why we're having this conversation and why now, why we've invited these fantastic individuals and why are we going to be continuing the conversation? So, Isabele, I think that... Sheila will be...

Isabel Phillips: [00:15:38] Thank you. Yes, Sheila. Can I invite you to. To take the floor or the virtual screen more accurately at this point?

Sheila Bates: [00:15:46] Thank you very much. Delighted to be here to to meet you all. And thanks for setting the scene, both Isabel and Ranse. What I thought might be helpful to do was to take you quite quickly through sort of Ranse's framework, but with respect to the supply chain network and broader business. So really, we're going to go straight into it onto slide two, if I may, please. And just think about in the context of of the world that we live in today. Well, what what is triggering the difficulties in disputes and or conflict?, taking good note of Isabel's differentiation between the two, in the world today and of course, you know, Ukraine and the Russian invasion of it is a big, big, big factor. But I think that for most people in industry, COVID 19, climate change, business and human rights, other regions of conflict are there. And it's interesting to note just thinking about other regions of conflict in some of the work that I've been doing in the last couple of years, for example, we now have a critical situation in Ukraine and that will have an impact on on food security and costs and prices, etc.. And also think about other countries where, for example, in Myanmar, where there's there's disputes and conflict going on and how a very good dispute resolution process that had been put in place was no longer able to function because of the war.

Sheila Bates: [00:17:25] So that really had a very direct impact on the ability to... For people in dispute to be able to resolve their situations with with big ready to wear brands as it happened. Another area is in Africa, in Guinea, where there was also war going on. And that also had a particular impact on on a dispute that I was working on in terms of how do you deal with the the impact of COVID and a war and a dispute between workers and their employer? So all of this is going on all the time, but we just seem to have one thing heaped on top of the other at the moment. And in terms of of where this dispute is, you know, where is this going on? Well, if we want to focus on Ukraine, well, that's a starting point. But there's a pretty much knock, knock, knock on effect everywhere with respect to how you handle disputes and and conflict. And we've already seen across the across the, you know, the Western world, across Europe, that the impact on food security and rising costs has been spoken about a lot already. And we're not very far into the current situation with Russia and Ukraine. So what I think is probably interesting for businesses and I was just looking at the list of attendees and I see that there are a lot of you who are involved in contract work and putting together contracts and dealing with supply chains.

Sheila Bates: [00:19:02] And I kind of thought, well, you will have a huge bunch of stakeholders. Your stakeholders are first and foremost, obviously your clients, but also your suppliers. How, how are things for them and how are the impact of everything that's going on in the world affecting them and their ability to work with you to deliver what you need, what are their pressures? And of course, we talk about supply chains, but I think probably supply web is a much better word because it's much more complex than just a

chain up and down. And your workers and leaders, you know, I've had an experience recently trying to try to buy something from a very well known brand, and it has taken five or six various visits to try and get what they're meant to be delivering, delivered and installed. And that's has a huge impact on the workers because it's a waste of time for them rocking up and not being able to do their job. It's really difficult for them where they have clients that are unhappy. And so there's a dispute arising straight away because the shortages in the supply chain delivery issues mean that there are lots of unhappy clients and very often you find that the workers are neither empowered or trained to handle those situations.

Sheila Bates: [00:20:25] What about your advisors, the banks and the other funders? We know there's a lot of pressure on ESG and corporate and social responsibility these days. It's really beginning to have an impact with with bankers and investors. And then, of course, governments and policy makers. Governments are great- they are good at governing countries in principle, but they are slow to act and policies are slow to be put in place. And probably some of you are already feeling this in terms of, do you have the adequate room to manoeuvre in this fast changing marketplace? And then, of course, there's civil society. And I think there's a lot of pressure now in terms of Black Lives Matter, MeToo, business and human rights, ethical, ethical trading and all these factors. And why is it important? Well, for your business continuity, food security is really something that people are concerned about. And I'm sure that's something that is quite familiar to many people on this on this seminar today. And, of course, you've got the rising costs and the war for talent. There's going to be a massive issue in terms of having enough talent to do all the things that need to be done. And what are the contractual arrangements do you have? Have you written into that, what's needed in the current very volatile scenario? Again, what are your ethical and business and human rights approach? You know, how is this going to impact people trafficking? Is there going to be more of it as there is a shortage of of of staff and people are desperate, on the other hand, for work and what's going to happen to people's corporate values? This is something that's really been challenged and we've seen it already with particular respect to to Ukraine and Russia.

Sheila Bates: [00:22:18] And this is something that I think will be really interesting to see, is how willing and how able are businesses to take a principled stand in the face of conflicts and behaviours which they find distasteful, and how will they handle that. And when? I think it's all happening now and I think it's going to be with us for this foreseeable future. So a couple of things really I think it would be useful to consider. I've probably touched on some of them already, so if I could just have the next slide, that would be really great. Thank you. So first of all, what's your risk? And probably a lot of you already are stuck looking at that or have been looking at it. And if you haven't, you certainly will be soon. And the first thing is in terms of your systems, your processes and your practices. Is your business fit for purpose in this rocky, volatile world? You know, what does need to change and when and what resources do you have to hand and what are your constraints and your people risk? You think about burnout and lack of skills and lack of training at the end of the day, this is going to be a very important factor.

Sheila Bates: [00:23:33] And then what strategies do you have for mitigation in place? Well, we've all learnt a lot in the last two years, that's for sure. And I think that that is really going to help us in the months and years to come. In terms of your mitigation of of disputes, you know, what inbuilt and dynamic preventative mechanisms do you have? Have you got any and are those mechanisms, are they rapid? Are they flexible? And are they looking forward and not backwards so that we can continue to do business and to thrive in these very uncertain and volatile times? So that's kind of just setting the scene from my side. And I'm going to hand over now to Isabel, who will introduce, I think, the next person. Thank you very much, everybody.

Isabel Phillips: [00:24:23] Thank you, Sheila. It's really fascinating insight. And those last two questions we'll ponder on what's your risk and what's your mitigation. And at this point, I'd like to hand over to Michael, who's going to talk to us a little about some of the other ramifications, including energy, I think.

Michael McIlwrath: [00:24:41] Yes, I will. Here we are. Okay. Well, thank you. Thank you very much, for thank you for inviting me to today's session, which, by the way, it reminds me of some of the sessions that I used to have in the businesses that I worked in, where we would periodically, just as a matter of routine, assess the risks and the game changers and the things that we needed to do to have mitigation plans in place, something you would consistently update all the time. And certainly that's no more pressing than right now. What I would like to do, building on what Sheila has now just said. So I'd like to talk a little bit about the energy sector, but I'd like to to to have a prologue aboutout. Can you see my screen, by the way? Isabel?

Isabel Phillips: [00:25:28] Yes, we can.

Michael McIlwrath: [00:25:29] Yeah, great. Sort of, I'd like to talk a bit about how not to plan for a crisis. For an emergency. And the example I would give is the EU versus AstraZeneca litigation. So during the COVID crisis, there were a lot of supply contracts for the purchase of vaccines, which of course became a vital, fundamental solution or partial solution to to the public health crisis nations were facing. What did the EU do? Well, the EU, which has long been a sponsor of alternative forms of collaboration and dispute resolution, they included courts of Brussels in their supply contract to public access. We also have access to the news about the litigation that was filed in the Brussels courts when there was a dispute over delays in the delivery of the vaccines. I raise this because I think that was poor planning. It was not thinking about, well, wait a minute, if there's going to be a problem with delivery, the public needs to get vaccines, maybe going to court and tying things up for a long time and employing capital and dispute resolution isn't the optimal solution. So I'll get back to this in a second. Well, let's take let's take what we've learned from the COVID situation in the vaccine purchases. Now, think about what's going to happen with energy. The invasion of Ukraine, as you all know, is creating- will create incredible disruption, including with respect to the supply of energy.

Michael McIlwrath: [00:26:55] And if we take just Europe, which is heavily dependent on Russian hydrocarbons and there's news today about potentially stopping shipments of coal. Well, you can't just turn things off. Europe needs energy. What does this mean in practical terms? In practical terms, it means they're going to be lots and lots of additional energy, new energy projects. You know, there's a, I'll discuss a little bit about LNG, but it's not like you can just say, well, we'll just buy gas from somewhere else and we'll bring it on ships. There needs to be infrastructure, need to be projects for that. They need to move fast. These projects are not done overnight. There are lots of different sources of energy, but they they have their lead times, starting with feasibility studies and implementation. There are a lot of uncertainties around the supply chains that are going to be used for these energy projects that will impact and all of these may contribute to disputes. And of course, this doesn't go, the other crisis that we're facing doesn't go away, which is the climate change crisis. And we have to be cognisant of the efforts that are being done. Also work within those constraints and see what that will mean for us. This is with Europe- it's global global impact because if you you'll see you prioritize projects and materials and resources in one area, it's going to stress where those are being delivered in other places,

Michael McIlwrath: [00:28:17] It's going to in terms of stakeholders, to use Sheila's terms, I think it's a good term. It's going to be lots of energy companies, governments, equipment and technology suppliers and I think dispute institutions as well as well need to really think about the impact. Failure is going to be a problem. I mean, this is one where you can't fail, not just because of sanctions, but because of the need for energy independence. And energy security is now a priority. And I think in terms of the timing, I would say it's starting now because now is when contracts are being entered into, the disputes that are likely to arise will be 12, probably 12 months or more longer from when these contracts are entered into. And I think we'll continue to see this over the next three, four or five, six, seven years- there's a tail to when the contracts are entered into, when the disputes subsequently arise. Probably longer than that, but I think that's the that's the crunch period that we're facing. If we go to the next slide. I'll just give you a quick illustration of how I think the disputes are going to be affected and why we should begin planning for

them. Now, maybe you'll have read in the news that the United States made a commitment to help Europe with respect to replacing Russian gas by committing the delivery of 15 billion cubic meters of additional LNG.

Michael McIlwrath: [00:29:39] That sounds fantastic, but there's a problem. One is that the United States doesn't have that much, they have gas, but export capacity, you need equipment, you need to freeze or liquefy the the LNG to export it, you need terminals for that. Europe is already maxed out in terms of its import ability. So there's going to have to be a lot of construction on both ends of the ocean in order for that to happen. If you go to the next slide, in practical terms, what is this going to mean? We say, well, we'll just build more capacity. Well, yeah, but building capacity takes takes maybe a year and a half for a small terminal. This is to give a practical example, a company that we've worked with recently called Gas and Heat, small company in Italy. They build LNG, they build small scale Lng terminals and small scale- this, by the way, is a small LNG LNG plant. That's... Right, today, that's maybe 18 months to 24 months. That's going to have to go faster and they're going to have to build a lot of them. And if we go to the to the next slide, we'll also need ships, by the way, that will transport those. So what are the disputes likely to be? Well, they're going to be an energy project execution. And there's going to be lots of causes.

Michael McIlwrath: [00:30:53] There are always disputes in all complex projects. But but now it's going to be speed that will be stressing as well. There will be also the problem of supply chain uncertainties with these. To give just one example, if we go to the next page, I'll just show you briefly. The the the the nickel is a key component for building storage vessels, whether it is storing hydrogen or liquid natural gas or any type of potential energy that needs to be stored under pressure. Nickel is one of the key components. While nickel comes out of Russia and the Donbas region of the Ukraine or a lot of the world's nickel comes out of those. And just look at the spike that we've seen in prices. If you had entered into a lump sum contract to deliver any type of energy facility or not just energy facility, but anything that was using nickel before the war broke out, you're being heavily impacted now in the contracts that have entered into before, may not be profitable today and they may not even be capable of being performed if these have a substantial material impact on certain contracts. So just quickly to conclude, I think that we're going to see a lot of disputes. We're going to see disputes anyway. But I think that there will be a push in disputes with a shortage of materials and shortage of manpower.

Michael McIlwrath: [00:32:22] By the way I think the skilled manpower is also going to extend to dispute resolution professionals. I know a lot of people working in dispute resolution today are already very busy and maxed out. So I do think it's a time where people need to think of how do I resolve problems as opposed to just how do I conduct the dispute. If we go to the last page and I'll just conclude here on this, what are the things that we should be thinking of doing? If I were in any company today that was remotely being impacted by what we're seeing is likely to happen in the energy markets? Well, right now is when projects that I'm sure that feasibility studies I mean contracts are probably not yet being finalized some may, but these tend to have to be studied for a certain period. There's a permitting process that has to take place for a lot of energy projects. So I would be looking at the contract terms and conditions, as Sheila said. Are you addressing the risks that you might see- if it's materials or a key component, you may need to have clauses for price escalation. You need to have clauses that address for constraints in your supply chain or variations of the supply chain. Let's not make the mistake of AstraZeneca. So this would be my epilogue here. Let's think of dispute resolution that also points to a degree of collaboration and not just mediation and finding amicable solutions.

Michael McIlwrath: [00:33:39] But let's think about emergency arbitration. Let's think about dispute boards. If we're in the courts, let's think about accessing expedited procedures to those courts that have them. I think it's a great time to be training people. I think teams that are going to be executing these projects, the skills, not just on the technical side, but also on the soft skills. How do you resolve problems? How do you how do you negotiate disputes? And I think it's a time for for governments and dispute institutions to also begin thinking about what more can be done in order for disputes to be part of the

enabling aspect. Although let's think about how we can go fast so that disputes don't slow down projects. It's a little bit of a tail wagging the dog. But if we worry about doing things on a traditional timeline where it takes 2 to 3 years to build a project and they can get held up for one or two years because of disputes, that's not going to work. The emergencies that we're facing today, it's time to think about, well, how can disputes- So let's start at the end and think- how can you get them done fast so that you don't have the sorts of problems that will be holding them up and delaying their implementation. Thank you.

Isabel Phillips: [00:34:49] Thank you, Michael. I think that's a fascinating insight. And I think it ties up the two ends of the situation of looking at how to be able to move faster in dealing with disputes so that they don't hold things up. And that links nicely back to how do we address and constructively engage with conflict before it creates problems? And that, part of that is thinking about what the disputes may arise from it. So and I think what we've just had there is, is analysis, what's your risk, what's your mitigation and what are the potential actions attached to mitigation? And final thing I'd like to reinforce here is I think we've got quite a mixed audience of people from business and commerce, from law backgrounds as attorneys and representatives, but also lots of dispute resolution and conflict resolution specialists in the form of mediators, adjudicators, arbitrators. So I think all these questions are relevant to the whole of that and the demographic, whoever you are. And please do add questions in the Q&A that have come up as a result of these presentations. So I'd like to hand over to Ranse again to kick off the discussion.

Ranse Howell: [00:36:00] Yeah. And what, thank you Isabel, what you just reminds me is that this, whilst this session is just an hour, we could actually spend days just, just kind of delving in and packaging because it's almost as you peel the unpeel, the onion, you see there are more layers and more layers of complexity. And Shelia and Michael, thank you so much for providing really what I think is a very useful context. But but thinking about this, what really have you learned over the past two years that will help businesses manage the disputes triggered by the current conflict and also potential potentially future conflicts? Sheila?

Sheila Bates: [00:36:42] Well, I think probably one that's pretty obvious to all of us, but I think really is going to help is of course, we're all actually fatigued by Zoom and teams and everything else. And I think that in terms of dispute resolution, the use of technology really has come of age. And that's important because access is much broader than previously. So that will help faster routes to resolution. It also helps people have a greater sense of security when they're involved in a dispute. If they can actually deal with that dispute in an online process, that's often very comforting for people. They find it easier. And so I think one of the other key things that Michael had touched on it earlier is also that you're training, training staff and workers to deal with some of the the issues that arise in terms of skills shortages, in terms of supply shortages and actually managing client expectations, because that is a whole new world. And Michael talks about them being soft skills and they're commonly known as that, aren't they? I think probably many of the mediators around and others involved in dispute resolution would say that they're the hard skills, they're the really tough ones. So I think training people to do that would be is really important. So that's, that's what I think we've, we've learnt over the last couple of years from from my perspective.

Ranse Howell: [00:38:10] Thank you, and Michael...

Michael McIlwrath: [00:38:11] I agree. I think one of the things that we've learned is that before the pandemic dispute resolution, as you know very well, as everybody knows, nobody wanted to change. Everything continued as it done for decades, if not, I mean, we're all working basically out of 18th century procedures. Right. And then the and I tried before to get people to use technology, as Sheila said, so we'd have the use of technology. What I think, though, is most remarkable about what has happened is how rapid change has occurred and not just in the adoption of technology- we've also seen that the technology has enabled other changes. It's been a catalyst for changes. I just wrote a chapter for a book that will be coming out on some of the consequences of the COVID situation. One of them is, I call the rise of the case management, rise of the Midstream Conference or the Case Management two conference, where you now

see arbitration, for example, deciding, more likely, to decide the disputes in bits like you don't have to just do everything up at this big hearing at the end where everybody is going to meet in a hotel conference room in three years and decide the dispute, you might be able to decide key components in the first few months of the dispute. So I think that it's this flexibility that we're seeing and I think the change is continuing and we can expect that it will- I think it will see more adaptation as time passes.

Ranse Howell: [00:39:35] So, so what I'm hearing really kind of a three TS, it's sort of technology, training and time, which is the speeding up of time and that we don't need to wait for a 'Wagner ring series' type thing, but we can actually have small arias or small sort of scenes to really sort of manage our disputes. In thinking that, the disputes that are emerging that emerge out of COVID, are they similar to the sort of disputes that you're seeing now and you anticipate in the future, or are they different? Sheila.

Sheila Bates: [00:40:08] I think that, in some cases, what may have been considered an interim situation is actually now looking like it's a structural shift in the way of doing business. So I think that that's going to cause more disputes because there are, there is really going to be competition for a lot of resources. And so it's going to be a test of how we do business in terms of our business ethics. And there are going to be- there are further things, demands upon us in terms of energy and climate change and business ethics. So I think, in fact, it's all been ratcheted up. And I think that that's going to put more pressure on business, and I think that there will likely be more disputes. So I'm not sure if it's different. I just think there's going to be more of it. And they definitely people definitely need help.

Michael McIlwrath: [00:41:09] By the way, I think if I may, I think it's very different, Sheila. I think that COVID shut things down. Right. The disputes that we saw out of COVID were a force majeure, does it apply, what's happening, because the world was shutting down. We've now had a couple of years with all kinds of stimulus actions. Trillions of dollars have been injected into the market already. And now we're going to see a number of projects taking place to adapt and see how you how can you build. But you've got all these other constraints that are out there. So I think it's I think it's a fundamentally different situation that we're facing in terms of the problem and the disputes that are likely to arise out of it.

Ranse Howell: [00:41:49] And I know that there are a couple of questions that have come in already. So, Isabel, would you like to...

Isabel Phillips: [00:41:55] Yeah, I thought I'd just pick up that, because it don't relate directly to this point. One of the questions is, 'what do you see as the long term effects of both the war and the pandemic pandemic on disputes and the course of their resolution?' So there's a couple of views being exchanged there between Michael and Sheila, so maybe just to sort of draw that out just for a second to answer that question. So the the long term effects of the war and the pandemic, pandemic on disputes and their resolution.

Sheila Bates: [00:42:29] Well, I think in some respects, Michael and I are not necessarily saying entirely different things. I think that perhaps particularly in the energy business, I can see that's really changed and will change fundamentally. I think that there's a shift that we're not going back to the way the world was before. And therefore, I think that all those stresses will, you know, will continue. And. We're going to just have to learn to get to grips with them. That's that's that's my sense. This is the world we're in. You know, as people say, well, we are where we are. So we really will have to get to grips with with what's happening- with all the complexities that, you know, that Michael has been mentioning specifically in the area of energy. Then what you'd say, say, Michael?

Michael McIlwrath: [00:43:20] Well, I agree. I think it definitely has an impact. I think it's too soon to say what sort of- we're right at the beginning of the Ukraine crisis, I don't know, in terms of feeling this sort of geopolitical impact if it's going to change the nature of the disputes. I think if anything, it's just going to drive the need for speed, you know, and that, but that's something that the old system, I think, would have

struggled to deal with. And now, because of the adaptability we've seen through COVID, I think that we're in a better position, as I said, sort of a tail wagging the dog where I think we can now look at disputes and say, hey, wait, you can go fast, right? You can actually do these. Don't think that it's going to take you three years to build this terminal. Maybe you can do it in 15 months. I mean, you're not going to do it in two days. But we're now part of- I think we now in dispute resolution have to see ourselves also in part of the enabling chain of getting things done.

Isabel Phillips: [00:44:13] Yeah, I think just picking up that point, I think that that's something that I've observed in the during the COVID time, which I think is, is going to continue to be similar, the sense of what previously it would be told, you be told it was impossible because of time suddenly becomes possible because it has to be, irrelevant of time. So I think that for me is one of the similarities.

Michael McIlwrath: [00:44:36] And that's a great point Isabel, but now, now we know it is doable, right? You know, I think we're actually better if anything, we're better positioned now to face this crisis because we've seen how adaptable the systems that we have are to, to, to the needs.

Sheila Bates: [00:44:50] One of the things I think might be interesting and it will be interesting to see if it comes about or not is to what extent we can learn from areas where there have been conflict, where there are many, many places in the world where conflict is ongoing. So, you know, maybe it would be really helpful for us to take advice and guidance from from those people.

Ranse Howell: [00:45:12] Yeah. And actually picking up on on what you just said. Sheila, how important is it that businesses have proactive conversations in periods of uncertainty, potentially in trying to either anticipate or manage or prevent the conflict which will potentially arise?

Sheila Bates: [00:45:34] I think it's essential and I think that we've lived in a world where there's been a great premium on technical expertise and that, that's not going to go away because we need all that technical expertise. Additionally, I think the capacity to a) bring your people with you in times of uncertainty and do what you can to empower them and support them so that they can deal with the practical realities of of how they're going to have to deal with their customers in a different way and how, you know, how the relationship between suppliers and their customers will will inevitably change. There'll be more risk sharing and perhaps more partnerships. So maybe, maybe there will be a slight difference in the power the power balance between customers and suppliers as a possibility.

Isabel Phillips: [00:46:22] So let me pick up one of the other questions from from the chat here, which relates to what you're talking about, sounding like, I quote, enterprise risk management. And is your sense that ERM has been inadequate or inept, or that it needs to be rebuilt to deal with a tougher world?

Michael McIlwrath: [00:46:45] I mean, yes, it is enterprise risk, it's exactly what it is. And. Well, no, I mean, it depends on how how rigorous you are in applying your ERM, you know, how, how robust, how good is your ERM process. So if you, you can't, you know, look you go through these exercises where you try to anticipate every conceivable thing that might go wrong with the business, cyber attacks and asteroid impact. Well, there are certain sort of earth, earth killing moments and you go, well, there's not going to be- if the earth is killed, there's nothing we can do. But you try to think of every conceivable risk that might impact your business and what you might do to mitigate it. So I just think it's a question- I don't know, David's right. It's an enterprise risk management. If you didn't think about this, go back and check your process. Okay.

Sheila Bates: [00:47:30] I think resilience is going to be a massive element, you know, helping people to be resilient because we don't know what's around the corner. The last few years have proved that. But core skill is being resilient.

Ranse Howell: [00:47:43] And one thing that I'd also like to pick up on is, you know, putting my sort of social psychologist hat on is how can we guide or kind of suggest a mechanism where individuals or organisations might not sort of respond emotionally to what is potentially quite a challenging geopolitical situation?

Sheila Bates: [00:48:09] Yeah.

Ranse Howell: [00:48:12] Yeah.[laughs]

Ranse Howell: [00:48:14] Next!

Sheila Bates: [00:48:15] I think, yeah. Well, I think that it's I think people are going to be tested and perhaps maybe one's got more questions than answers. I think that leadership skills are going to be key. And and I think we're going to see even more focus on that within within organisations. And I think it's going to be again so important to take staff with you. I think that one of the challenges potentially could be the fact that we've lost, you know, we've lost some connectivity in the last couple of years. People are now returning to work. So what's that going to mean in terms of dealing with the crisis that's now on our on our doorstep, very near to us. So I think that I think there's going to be more shared risk taking. And I think that there's going to be there's pressure, I think, on organisations to take a principled stance and I think their values are going to be tested. So what's going to happen there and how are they going to keep those emotions under control? So I think we've just got to realise there will be a lot of emotion and we all know that if you squash the emotion you're not going very far. So we've got to deal with the emotion

Ranse Howell: [00:49:25] Emotion doesn't go away, does it? Michael

Michael McIlwrath: [00:49:27] If you guys I mean, to me, I don't know about the emotional element, I think you may get there the same way just by rationally thinking through what your risks are. I mean, by the way, I was thinking enterprise risk management to David's point earlier, this is what you guys are doing with this seminar. This is literally enterprise risk management, kind of an open, open source for everybody. But no, but I think, you know, as we think about sanctions and the impacts that are going ahead, you can have an emotional reaction. I hate this. I hate what's going on. I'm going to get out of those countries. I'm not you know- you can do that. But on the other hand, you may also look to the fact that sanctions are going to make it impossible for you to get paid. I know that there are companies, for example, that are not have contracts, for example, in Russia for delivery. They're not shipping. I mean, they're risking breaching their contracts. It's not emotional reaction. That's because they know that if they ship, they won't be able to get paid because of the the impact of sanctions on the international banking system. Right. So I think you really kind of need to think down the several layers into how everything's going to be impacting your business, which I'm sure most businesses are trying to figure out right now.

Isabel Phillips: [00:50:33] Can I just fire the final two- couple of quick questions that Mike- that have come in from the audience around, whether you think that dispute boards are going to see increased use and energy projects in disputes as they come up rather than afterward. And also, in terms of the G.P.C. report, how do you propose getting getting lawyers who are not always so willing to change? I didn't say it! It's a question from somebody else. Aboard on a new paradigm of dispute resolution.

Michael McIlwrath: [00:51:08] Thomas is being provocative. So to quickly answer Paul. Yes, I think there's a role. I think there's a look. You're going to have to need new tools. We need tools to go fast. And the problem is, is that companies that are not familiar with dispute boards, which are typically used on very large projects where you have these sort of standing organisms, I give you an example of a small scale LNG. That's a plant that didn't cost \$1,000,000,000 to build that cost \$35 million to build. Right. And it's and you can do lots of those. And maybe instead of going after lots of billion dollar projects, you do lots of smaller projects because they're easier to scale. You can do more of them and you get energy and gas to where it's

needed more often. You may need government intervention to make things like a dispute board viable for those types of projects because the parties and this kind of ties in to Thomas what he's saying, because the lawyers and their and their advisors may not be familiar, they need to be cajoled through that door to get them there in order for speed to to to occur.

Isabel Phillips: [00:52:16] Thank you. I think -Ranse.

Ranse Howell: [00:52:24] And one other thing that I just sort of sort of almost in closing, as you can see here, as we sort of delve down, this is the reason why this first session sort of sets the scene. And the other three sessions will really focus on the sort of the different areas of focus from a particular practice perspective. But sort for both Michael and Sheila, what is sort of your key takeaway thoughts or advice or guidance or having had this conversation and thought, you know what, this is something that you should consider or hopefully there are asteroids because that would be really unfortunate.

Sheila Bates: [00:53:04] Yeah.

Michael McIlwrath: [00:53:07] That's a hard question. Can Sheila go first?

Ranse Howell: [00:53:08] Yeah. Okay.

Sheila Bates: [00:53:09] Okay. Well, I think that, you know, in a way, expect the unexpected. And we've had a lot of the unexpected in the last couple of years and. It's challenged everybody. And I would say, you know, how do you need to arm yourself to just to deal with that as individuals? Because at the end of the day, an organization is a group of individuals and that I think is probably a big takeaway for for all of us. And I think, again, you know, trying to be proactive, but it's a way of life it's not- so a crisis is not an event, really. They're now becoming a series, aren't they? So I think it's get ready for the series. That's what I would would say.

Michael McIlwrath: [00:54:01] I'm -having a chance to reflect. I agree. I agree completely with Sheila. And I would say that, look, we're talking to the people who are on this call are obviously people who are engaged and thinking about the risks, interactive in dispute resolution. So in a sense, it's preaching to the choir. But I would say that now is the time for you to be the leaders in the field, to use your influence so that so that the contracts that are being negotiated today will address those risks. Right. And you're impressing on others the importance of doing that, not just because there's a need for your private contract, your commercial contract, but there's a public need at the same time to see all this happen on a very, very fast pace. So that would be my reflection.

Ranse Howell: [00:54:46] And thank you, both of you. Just before I hand over to Isabel to give closing remarks, this also sort of really reminds us that we've talked a lot about resolution, but there's a huge amount about prevention and management. And this is where that the role of of mediator or arbitrator or dispute resolution professional can be used. And and they have the skills and they have the knowledge to provide a framework to to provide a structure that might not necessarily look like something you're familiar with, but it provides the mechanisms that that's sort of needed for this particular situation, for this particular challenge at that particular time. And I think it's about flexibility and it's about education. And I know that JAMs and I know that Chartered Institute are certainly looking at a range of of of sort of opportunities to provide those sorts of interventions. It's been a pleasure having this conversation, and I look forward to many more future discussions. Isabel.

Isabel Phillips: [00:55:42] Thank you. Yeah. And to reinforce that point, all in my experience, dispute and conflict resolution experts, whether they're mediators, arbitrators, adjudicators or other forms of ADR, CR and conflict management are usually area expertise, area experts in some given area. And I just like to sort of reinforce the point around the idea of enterprise risk management- that, of course, if you were talking

to public health experts before COVID, they were saying this is going to happen, this is going to happen very soon. And people ask me in terms of my specialism, oh, isn't it awful? What's happening in relation to the Russia-Ukraine situation, I said that it's it's a sadly it's not hugely surprising. And I think as a field, we have huge amounts of expertise that is there and ready to be drawn on if we actually talk to each other. So please come and talk to us. Please come and engage in the subsequent three seminars that we're going to be running. I've just posted the link into the chat. First sign up for the next seminar, which is- sorry webinar get with the 2022 programme, Civil Commercial Neutrals and the Fallout of Conflict. And a couple of housekeeping things. You can find events from both CI Arb and JAMs on our website, and if you would like to view this recording, it will be available on YouTube. So there you go.

Ranse Howell: [00:57:22] And also we invite comments and observations. Don't forget we want this to be a dialogue as well. So if you want to, if you've got anything that you want to add, certainly feel free to either contact myself or Isabel or any of the individuals at JAMS or Chartered Institute. It's been fantastic.

Isabel Phillips: [00:57:41] Get in touch and we look forward to seeing you on the 4th of May.

Ranse Howell: [00:57:45] Thank you.

Michael McIlwrath: [00:57:46] Thank you.

Isabel Phillips: [00:57:46] Thank you. Thank to everybody, including Michael and Sheila.

Ranse Howell: [00:57:50] Thank you, Michael. Thank you, Isabel.