



## The Applicability of Corporate Dispute Resolution Principles to World Conflicts

By Noah J. Hanft

As originally appeared in *The New York Law Journal*

BYLINED ARTICLE | NOVEMBER 2017

We live in a world full of numerous and profound crises. And there will never be easy answers for things such as geo-political and humanitarian conflicts; challenges arising from competition over scarce resources; increasing global tensions over the development of weapons of mass destruction; and armed conflicts and terrorism around the world. Although these complex, and, in many cases, large scale, life-health-and-safety threatening issues are outside the realm of traditional corporate and commercial contexts where ADR principles have been successfully applied, unpacking the lessons of time-tested conflict prevention and resolution methods reveals how they may be used to reduce domestic and global tensions, reach viable solutions and promote sustainable conciliation and cooperation. In any event, it is imperative that we never stop seeking answers, or striving to find solutions,

and sometimes guidance or inspiration can be gleaned from some unexpected sources.

Parties to conflicts in the corporate realm have often been surprised to discover the wealth of additional—and flexible—options available to them when they look beyond traditional litigation, in order to explore alternative dispute resolution (ADR) strategies.

---

**“[T]here will never be easy answers for things such as geo-political and humanitarian conflicts; challenges arising from competition over scarce resources; increasing global tensions over the development of weapons of mass destruction; and armed conflicts and terrorism around the world.”**

---



This was certainly my own experience when I served as General Counsel at MasterCard for almost 14 years, and where—after initially looking to the courts as the forum to address all business conflicts—we ultimately resolved almost all our major cases through mediation.

The power of mediation, not only to resolve disputes but to change often deep seated corporate culture, is truly remarkable. Now, of course the stakes in broader and complex world conflicts and crises are usually much higher than those found in the corporate context, but the time-tested tools of conflict resolution perfected by non-profit and multinational dispute resolution think tank, The International Institute for Conflict Prevention & Resolution (CPR), and utilized by highly experienced commercial mediators can, I believe, have a profound effect.

**First, and most importantly, ADR methods are most likely to work in a context where conflicted parties are committed to the process, can demonstrate that commitment to the other side and are therefore free to negotiate without fear of appearing “weak”—a concern shared by both companies and countries.** In the 1980’s, CPR created the CPR pledge, a document that allows

signatories to offer a moral commitment to consider mediation and other alternatives before running into court. Seeing that one’s opposing party has signed even this non-binding pledge has inspired many a corporate legal head to simply pick up the metaphorical phone and say “Hey, I see that we’ve both already agreed to try to work such things out amicably, so let’s give it a shot.” Most importantly, the CPR Pledge allowed corporate parties and their counsel to have this discussion without losing face by making the first move.

---

**“The power of mediation, not only to resolve disputes but to change often deep seated corporate culture, is truly remarkable.”**

---

As an example of the potential consequences of not wanting to appear “weak,” consider what happened in the Middle East, after a coalition led by Saudi Arabia imposed a trade and transport boycott against oil-rich Qatar, alleging that Qatar was financing terrorist activities and was allied too closely with Iran. President Donald Trump attempted to break the stalemate by arranging a phone call between leaders from both countries. While he predicted a quick victory, as reported by [The New York Times](#), negotiations broke down because



Qatar issued a statement after the call that its emir “welcomed” a Saudi offer to appoint peace envoys, which infuriated the Saudis, “who appeared insulted by the suggestion that they had bowed first in the dispute.” The failure was predicated on avoiding the appearance of capitulating first, rather than on actual difficulties encountered in the problem-solving. This result is unsurprising in a culture where confidentiality, privacy and face-saving are valued, according to an ADR research study conducted by the [College of Law, Qatar University](#). Unfortunately, no previously-existing pledge to negotiate, which would allow the parties to save face by honoring, existed.

---

**“ADR methods are most likely to work in a context where conflicted parties are committed to the process, can demonstrate that commitment to the other side and are therefore free to negotiate without fear of appearing “weak”—a concern shared by both companies and countries.”**

---

The Qatar example also illustrates another lesson pulled from successful corporate ADR—the importance of selecting a mediator who has impeccable credibility and

**experience; powerful listening skills; a commitment to the relentless pursuit of solutions; patience; thick skin; and diplomatic skills, cultural sensitivity and awareness.**

I recently spoke about the Syrian conflict at the International Symposium on Cultural Diplomacy in connection with its UN initiatives. In preparing for my presentation, I came upon an executive summary prepared by the International Peace Institute (“UN Mediation in the Syrian Crisis: From Kofi Annan to Lakhdar Brahimi,” March 2016), which posed the question, “Could events have turned out differently?” That report described several challenges faced by the mediators, and lessons that could be taken from their experiences. These included “a restrictive and contradictory mandate” that transformed an end result of negotiations into a precondition; a lack of inclusion, with “key parties missing at every stage”; and problems with perception over the mediators’ impartiality. The timing of the mediation was also concluded to be less than ideal, with both parties still willing to withstand high levels of suffering, which allowed a stalemate to take hold.

These examples, taken together with findings from CPR’s long history of helping to find the best ways to



resolve conflicts, offer the following lessons for resolving disputes in a broader humanitarian and geo-political context:

- **Timing is critical.** If mediation is held too soon, there are too many open issues, unknown factors and unanswered questions. If held too late, the parties are likely to have become entrenched in their positions.
- **The “right” individuals must be brought to the table**—and, to the extent possible, the “wrong” individuals, who may have their own agendas, must be kept away. All sides to a conflict must be represented and have the authority to negotiate a resolution. At the same time, over-inclusiveness must be avoided, through a diligent effort to identify who the true influencers are, as well as the most optimal partners to embrace an interest-based resolution.
- **All participants must understand, embrace and own the process, collectively.**
- **All parties must understand the interests and goals of not just their own positions, but the positions of the other parties.** The benefits and advantages must be highlighted for all parties, as well as the risks of failure.

---

**“All parties must understand the interests and goals of not just their own positions, but the positions of the other parties.”**

---

While I can share only very general details—as I learned during a series of confidential mediation sessions I was involved in while at MasterCard, involving multiple parties and aimed at resolving a bitter and long-standing dispute—even the most hostile and intractable disputes, involving corporation or country, can be eased if the mediator:

- **Earns the trust of the parties, first by engaging in individual discussions**
- **Focuses on resolving the easier points first, and then addresses the remainder of resolution process in small, bite-sized pieces**
- **Because there are often groups on each side with conflicting views, spends time with each such sub-group to manage negotiations and find alignment**
- **Identifies the representatives who are reasonable, transaction-oriented and have the real influence to play constructive roles**
- **Waits to introduce joint sessions until an environment of basic, foundational trust is created**



- Uses a variety of techniques to reduce emotion, including humor, where appropriate
- Steers the discussion away from “rights,” “winners” and “losers,” and instead focuses on what the parties really cared about (often, in the corporate context, things much easier to give than money)
- Focuses the parties on how their constituents would be impacted, and on the practicable solutions that would work best

---

**“Considering the similarly common elements between corporate and broader cultural/humanitarian disputes, and applying some of the ADR strategies discussed herein, could potentially result in a safer, more inclusive and peaceful world for all.”**

---

Negotiating a peace accord or political agreement is, of course, quite different from negotiating settlements among corporations or individuals to avoid litigation. However, the essentials of conflict and dispute resolution employed successfully by

companies utilizing ADR—the idea of finesse over mere fight—remain the same. In his book *Negotiating the Nonnegotiable: How to Resolve Your Most Emotionally Charged Conflicts* (Viking, 2016), Harvard expert and author Daniel Shapiro, who has advised leaders of war-torn countries, discusses the common elements that underlie many battles, be they fights with one’s spouse or complex international and political tensions in the news—things like identity and emotion, autonomy and alienation, status and roles.

Considering the similarly common elements between corporate and broader cultural/humanitarian disputes, and applying some of the ADR strategies discussed herein, could potentially result in a safer, more inclusive and peaceful world for all. It is definitely worth the effort.

—By Noah Hanft, International Institute for Conflict Prevention & Resolution Inc.

*November 30, 2017 edition of the “New York Law Journal” © 2017 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited, contact 877-257-3382 or reprints@alm.com.*



**Noah J. Hanft**  
President and Chief Executive Officer  
+1.646.753.8248  
[nhanft@cpradr.org](mailto:nhanft@cpradr.org)

Noah J. Hanft is President and CEO of the International Institute for Conflict Prevention and Resolution (CPR). Prior to joining CPR, he was General Counsel and chief franchise officer for MasterCard, Inc.

## ABOUT CPR

CPR is the only independent nonprofit organization whose mission is to help global business and their lawyers resolve commercial disputes more cost effectively and efficiently. For over 30 years, the legal community has trusted CPR to deliver superior arbitrators and mediators and innovative solutions to business conflict.

**CPR**  
30 E 33<sup>rd</sup> Street, 6<sup>th</sup> Floor  
New York, New York 10016  
Phone: +1.212.949.6490  
Fax: +1.212.949.8859  
[www.cpradr.org](http://www.cpradr.org)