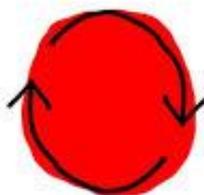


CONFLICT RESOLUTION IN THE TIME OF COVID-19

Voices from the Seven Continents of the World

Edited by Gregg F. Relyea

Editor's Note: In this article, seven leading mediators and conflict resolution practitioners share their unique voices on three pressing issues: the impact of COVID-19 on their practices, workarounds being attempted, and their visions for the future in a post-COVID (or on-going COVID) world. These contributors are speaking for themselves with their own original thoughts. Their compelling words come from both their heads and their hearts. Each essay is unique, yet each essay also confirms universal experiences and travails. Oddly, collective challenges and painful experiences may stimulate new unity within the conflict resolution community. They may also lead to mediators taking action to familiarize the general community with the benefits of mediation. Sharing personal experiences and truths, it is hoped, will inspire fellow practitioners to consider the new world and to re-invent their conflict resolution practices and services.



permanent state of
re-invention

hugh

Throughout history, well before institutional courts were established and to the present, alternative dispute resolution (ADR) has been the predominant method of resolving civil disputes. With the COVID-19 pandemic causing court closures and limited operations, ADR has been placed suddenly and squarely in the limelight as the primary method of conflict resolution. Perhaps the modern "conflict revolution"¹ beginning in 1976 with the Pound Conference² is about to undergo another phase, bringing ADR to the fore in the minds of the general public and not just with lawyers, insurance companies and businesses.

Even before COVID-19, ADR accounted for 95-99% of resolved lawsuits³ in Federal and State courts as well as in many pre-litigation conflicts. Now, it is poised to be more broadly used as the primary method of conflict resolution. Litigants and other disputants are scrambling to find ways to resolve their conflicts and move on with their lives and businesses. Is it, perhaps, time to finally recognize that trials are the "alternative" and ADR has been and will continue to be the

¹ Conflict Revolution: Designing Preventative Solutions for Chronic Social, Economic and Political Conflicts, Kenneth Cloke (Goodmedia Press, 2015).

² The Pound Conference, attended by lawyers, judges, and academics, was held to explore ways to improve access to justice by reducing court congestion, developing low cost or no cost programs for indigent parties, and exploring the concept of offering multiple forms of ADR, *i.e.*, the "multi-door courthouse," conceived by the late Professor Frank Sander.

³ Defining ADR as any process for resolving disputes without going to trial, this statistic includes dispositive motions and other summary proceedings.

norm for resolving conflict? And is it time to finally drop the word "alternative" from the name of the field and to recognize its central role in people's everyday lives?⁴

This sudden shift in the conflict resolution landscape means that negotiators, mediators, arbitrators and other dispute resolution practitioners will need to adapt--and quickly--to meet the needs of people in conflict. As an emerging profession over the past forty years, ADR and mediation in particular have always required resourcefulness and initiative on the part of practitioners. Today, the urgency to adapt is even greater. Perhaps COVID-19 has prompted a long overdue examination of conflict resolution practices as the world changes, technology evolves and new types of conflict emerge. Social media conflicts, privacy issues and online defamation are becoming established as specialized areas of law. So too are corollary changes in conflict resolution processes (e.g., teleconferencing, texting, email, webinars).



NORTH AMERICA

Some Lessons from the Pandemic

Kenneth Cloke

"If we want things to stay as they are, things will have to change."

Giuseppe Tomasi di Lampedusa

"Every day silence harvests its victims. Silence is a mortal illness."

Natalia Ginzburg

"Everything has changed, except the way we think."

Albert Einstein (on hearing of the bombing of Hiroshima)

There are many ways of understanding or defining conflict, each leading to a different set of techniques and approaches, and among them are these, reinforced by our experience of the pandemic:

- Conflict is the lack of appreciation of the imminence of death or sudden catastrophe.
- Conflict is the sound made by the cracks in a system.
- Conflict is a need to evolve, together with a refusal to change.

⁴ For years, commentators have urged the field to be called "dispute resolution" or "conflict resolution." The title "alternative dispute resolution" implies that ADR is a marginalized, intermittent, adjunct process, when, in reality, it is a standalone, well-defined, group of structured processes that are used on a daily basis in a wide variety of everyday informal and formal conflicts.

We have learned from the pandemic that we are all facing death, and are therefore one, connected by crisis and undivided by conflict. And we have also learned that we are facing it differently, and are therefore many, separated by race, gender, nationality, age, religion, wealth, occupation, social class, political beliefs, emotional vulnerability, and physical well-being, and divided by conflict.

What we have not learned sufficiently or everywhere is how to turn our differences into deeper and more powerful expressions of empathy and compassion; how to strengthen I/Thou communications and relationships with our opponents; how to use the pandemic to repair the cracks in our systems; and how to evolve to higher *orders* of conflict that reveal and require higher orders of resolution.

We are learning that we can withdraw from the world and still be in it. We are learning to be socially and emotionally connected while physically distant. We have learned the importance of science, and the equal importance of art, music, and dance. We are learning that we can be courageous, even when we are frightened. We are learning the meaning of touch, contact, intimacy, and connection; of having time to reflect, exercise and meditate; of the centrality of celebration and loss. We are learning the depth, extent and intricacy of our interdependency. We are learning the value of slowness, and that when we stop even for a moment, our skies clear of pollution, global warming slows its pace, whales and dolphins return to our shores, and we are able to take pleasure in the beauty of nature and each other.

We have learned that global problems cannot be solved using national or local methods; that death and loss touch all of us; that political conflicts can be deadly; and that it doesn't matter whose end of the boat is sinking. We have learned that it is easier to face death together, even if each of us dies alone, and that looking out for ourselves requires us to look out for each other.

What we have not yet learned is how to hold on to these lessons and not return to an addictive cycle that leads only to future crises and conflicts. We have not learned how to love one another enduringly, or that in all the conflicts we experience between "Us" and "Them," there simply *is* no them, there is only us. We have not, in short, learned the most fundamental lesson in all of conflict resolution: that *every one* of our conflicts contains opportunities for learning, discovery of self and other, and evolution to higher, better, and more satisfying relationships. And that the pandemic is pointing our attention precisely toward those outcomes.

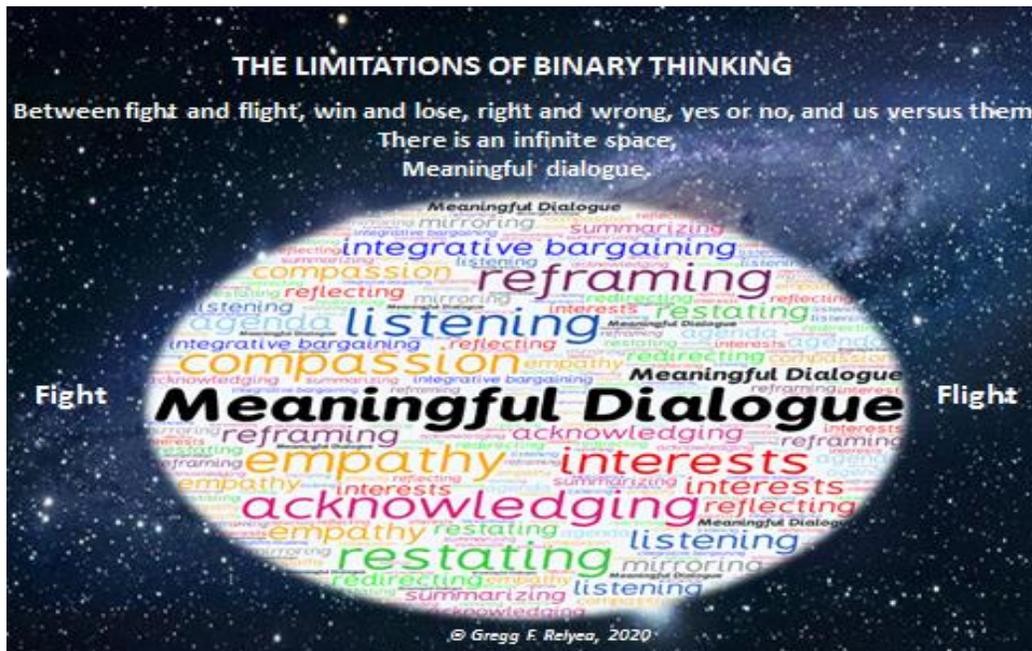
Doing so will require us to bring conflict resolution *directly* into the political arena. It will require us to strengthen global collaboration through dialogue, negotiation and mediation; to invent interest-based forms of political discourse, economic activity, and social problem solving; and to find new ways of assuaging the pathological belief in medical conspiracy, suicidal resistance to common sense health measures, hostility to science and art, and fear and rage toward migrants and minorities that are also infecting us.

None of this will be easy or quick. But, as mediators, we have been silent, confused, reactive, and avoidant in applying our skills and knowledge of conflict resolution to the chronic social, economic and political conflicts that are impacting our response to COVID-19, and to other, equally pressing issues, for far too long, and are paying the price.

So let us honor the dead and dying, the heroes in hospital gowns and grocery aprons, the friends and families who have suffered – and let us commit that their sacrifices shall not have been in vain, by dedicating ourselves, our energies and intentions, our knowledge and skills, to keeping these lessons alive until we have transformed them into renewed hope for a better world, and return to our old, conflicted lives, but newer, more collaborative ones enriched by learning – and not just back, but better.



Ken Cloke is a world-recognized mediator, dialogue facilitator, conflict resolution systems designer, teacher, public speaker, author of numerous books and articles, and a pioneer and leader in the field of mediation and conflict resolution for the last 37 years. His books include *Resolving Conflicts at Work* (Jossey-Bass, 2001) and *Mediating Dangerously--The Frontiers of Conflict Resolution* (Jossey-Bass, 2011).



AUSTRALIA

Three People Sitting Under a Tree to Resolve Their Differences

David Bogan -- Australia (and New Zealand)

I was mediating in Melbourne when the news of the severity of COVID-19 began to circulate on Australian news. Its potential to be seriously disruptive to my ongoing practice dawned on me. Shortly thereafter, both New Zealand and Australia restricted access across their borders to their own citizens, which required a two-week isolation period on each side of the Tasman Sea and, while I was contemplating the effects of that, both countries closed their borders! The sudden

awareness of what was happening was stunning--I realized that, even though there still were requests for mediation coming in, my practice as I had known it for thirty years was at an end.

In the quiet space of the total lock-down that COVID-19 provided for us in New Zealand, I found myself going back to the basic principles of mediation that initially inspired me: connecting with parties and their interests, emotions, and individuality, enabling their voices to be heard directly and in their own words, respecting the parties' right to self-determination and honoring the informality of mediation that encourages creativity and individual, mutually beneficial solutions to issues that may otherwise have been narrowly framed only as legal issues.

After assessing the potential impact of COVID-19 on my professional practice, I was reminded of how mediation has grown and changed and of the basic premises that have never changed and will always be central to the mediation process.

What was needed, and immediately, was a way to continue in my work as a mediator that would survive fewer physical interactions and presence and more time spent either on the telephone or online. My first step in this new direction was to enroll in the mediate.com course entitled "Online Mediating--Mediation Express Training," which I recommend to my fellow mediators. (www.mediate.com/products/pg1357.cfm) Like any form of hope, this training course was like the sun coming out of the gloom, making the future look brighter.

After taking the online training offered by mediate.com, I realized that one fundamental practice change might involve mediating from a primary central location without needing to live my life in transit anymore. That single difference will have an enormous impact on my professional--and personal--life. Another principal challenge is going to be how to 'be present' with parties while ensuring both confidentiality and security in any remote process. The course taught that pre-mediation communications regarding the online process might have to be in writing and very specific to each case. "Ground rules," which never played a prominent role in commercial mediation, may have to be delivered in writing and with specificity to protect all participants. Still, questions abound: Will a central location detract from the connection with the parties and, if so, how and to what extent? Is it possible that mediating from a central location actually will free up time to productively review documents, analyze issues in a reflective way in an emotionally quiet environment and manage the business of mediation?

In the course of my reflections, I also thought of the many models of mediation and came back to the most memorable one for me, to which I have tried to remain faithful. In 1994, the Rt Hon. Richard S. Amery, Shadow Minister for Water Resources and Co-operative Societies,¹ reduced the mediation process to its essence:

*Mediation is about three people,
Sitting under a tree to resolve their differences.*

¹ Shadow ministers are members of the opposition political party, chosen by the Leader of the Opposition. Shadow ministers have the important responsibility of scrutinizing—closely examining—the work of the government and individual ministers. Each shadow minister concentrates on the work of a particular minister and government department currently in power. Shadow ministers also put forward and explain opposition policies. Shadow Minister Amery's comment was made in connection with the New South Wales (NSW) Farm Debt Mediation Practices Act (1994).

The Shadow Minister's prescient remarks reflect that, for years to come, in more remote communities of Australia it became common for Farm Debt mediations to take place outdoors and under a tree.

Over the years, I have continued to follow the development of mediation as it has moved from being a 'hunter-gatherer' process, *i.e.*, individually crafted occupation, to a new form. Mediation has become more of a collective and highly regulated "farming process" with 'gates' and 'fences' that both limit and direct how mediators should be 'qualified,' 'trained' and, in some cases, 'licensed' in the 'fields' in which they work.

I much prefer the simple hunter-gatherer process, where the mediator is quintessentially the third person under the tree, listening to each person, acknowledging their positions, and then working together with both parties to promote 'their' way forward. Perhaps mediation will return, in some part, to these roots in a post-COVID world. Alternatively, mediation may take the shape of a process that is increasingly technology-based, with layers of physical distance separating parties. Regulation of mediation may increase. Online mediation might explode in popularity or, over time, it might experience limited usage as a secondary choice to face-to-face mediation, due to the two-dimensional screen-to-screen experience, with limited messaging from body language. The dynamic and energetic exchange of face-to-face interactions might be lost to a degree in the online mediation process.

GUIDING PRINCIPLES

DURING THE COVID-19 ERA AND BEYOND

Mediation offers numerous principles that can benefit the world. By continuing to practice them in our daily lives, we can add to that benefit. A few of these principles are well-summarized in the following quotes:

“There is no existence without co-existence and there is no co-existence without confrontation.” The late Professor Luis Diaz explains that conflict is a normal part of our existence, having our boundaries approached and breached. It is in how we manage those interactions for ourselves and others that makes the difference.

"People cannot 'move' until their positions are acknowledged, which doesn't mean either approved or denied." This is my mediator's paraphrasing of the book *"The Life-Giving Gift of Acknowledgment,"* by Michael J. Hyde (Purdue University Press, 2005).

“The reason people fight is because they're both right.” (Anonymous) It follows that if the parties are 'both right', then they each have the base needed to move forward. A lawyer friend of mine has taken issue with this and said it should be, “The reason people fight is because they're both wrong and that's why they need lawyers!"

“I would spend 55 minutes defining the problem and then the answer becomes self-evident.” (Albert Einstein) When asked what he would do if he were faced with the greatest problem in the world to solve and only one hour to do so, Professor Einstein is reported to have offered this seemingly simple, but genius approach. This easily understood concept is something I use daily, both personally and professionally. Data-based decision-making is valuable in general, in mediation, and in determining public health policies and practices, including those related to COVID-19.

I have mused in this quiet and reflective time about the past, present and future. Despite all the changes brought on by COVID-19, there seem to be enduring principles that promote some degree of continuity and context. People have to tell the unique stories that frame their lives. It has always been this way and it always will be. Our role as mediators will continue as the third person under the tree, in person or to the extent possible, on the phone or otherwise. We will listen attentively, without favor to one party or another. We will help them weave their individual stories into a single, successful, joint and ongoing narrative. One of the principal goals of a mediator, while listening attentively, is to inspire the parties to listen to each other. Mediators should remain curious and communicate by asking carefully sculpted questions.

In any age, with the inevitable crises of the day or in routine circumstances, mediators should refrain from judging the parties or people. Instead, they should encourage the careful examination of all the surrounding circumstances and context of a dispute. In *The Biology of Belief* (2005), Professor Bruce H. Lipton wrote, "If the cells you are studying are ailing, you look first to the cell's environment, not the cell itself, for the cause."²

To survive in a radically changing environment, whether due to COVID-19 or anything else, mediators (and others) must change in our actions and in ourselves.



David Bogan is amongst the most pre-eminent and best-qualified mediators, many of whom are Court Justices, capable of mediating the most complex and sensitive disputes. He is highly-regarded for his ability to create an environment in mediation that encourages parties to communicate constructively and to negotiate in good faith. David is the co-author of an international bestseller, "Avoid Retirement and Stay Alive" (HarperCollins Publishers, 2007 and McGraw Hill, 2007) and author of "What's Keeping You Awake at Night?" (Harper Collins, 2010). www.davidbogan.com

² *The Biology of Belief*, Chapter 2, "It's the Environment Stupid."



EUROPE

Seeing the World "From the Balcony" in Times of the Pandemic

Carla Marcucci

If I had to explain to an alien what occurred on Earth in March, 2020, I would say that the citizens of the planet were suddenly compelled to view our world *from the balcony*. Before then, many of us had encountered great difficulty *going to the balcony*--even in our work as dispute resolution professionals--although some of us had been encouraging it for a while¹.



From this new perspective, *from the balcony*, we are now able to get a collective 360-degree view of the world in its complexity. Seeing one country after the other facing the same challenges, most with their own egocentric, constricted vision and united only by their short-sightedness, has been very revealing.

We have seen rolling images of cities from one end of the planet to the other,
all equally empty, silent and hurt.
We have found ourselves walled in at home, separate and distant from each other,
stopped in our tracks with the luxury of time, and with few alternatives.
We have seen nature breathing and flourishing again, freed of our presence.
In the deafening silence, numerous demonstrations of solidarity have filled the void.

We have witnessed how even the largest and most powerful countries have suffered a
meltdown, like snowflakes under the sun, in the absence of a global strategy to defeat a
microscopic germ.

¹ William Ury, *Getting to Yes--Negotiation Agreement Without Giving In* ((Penguin Books, 1981), *Getting to Yes with Yourself (and other Worthy opponents)* (Harper One, 2015), p. 21.

We have seen that we cannot save ourselves on our own and that borders, rather than protecting us, have weakened us.

We have seen that when one of us loses, all of us lose and that the time-worn cliché about only being as strong as the "weakest link" is a timeless truth.

We have seen, at least in Italy, courtroom justice in quarantine.

What's still standing, however, is alternative dispute resolution, perhaps in modified forms, based on solid pillars of consent and our creative ability to reach solutions that satisfy the interests of all.

If the same alien were to ask me, "*And now what?*" I would reply that, before stepping away *from the balcony* to dive back into the flow of life - it would behoove us to take a moment to prepare ourselves for an existential move. It is as though we were leaving a large old house with heaps of belongings amassed over the course of a lifetime, objects from a different era, yet so hard to discard, to a new, smaller home with no room or use for the old trappings.

We will have to choose what is essential, the best and worth the most.

We will have to create space for the new, in order to build a wholesome and sustainable future.

To thrive in our new world as an individual, we will have to first find a way to thrive in it as a community.

Humankind has been given an unprecedented opportunity, radical, sudden and traumatic as it may be, for change, based on a new mantra - in collaboration lies the cure. This moment is a call to action for those of us who have been involved in dispute resolution to spread the culture of interest-based negotiation, mediation and collaboration well beyond the confines of our professional areas.

This is the most effective vaccine, one that has been successfully tried and tested over the years, and now is ready to be shared for the benefit of the world at large.

If we succeed in grabbing this opportunity, we must thank the thousands of people who have lost their lives in this transition, as well as the survivors who, by facing the future with curiosity and courage and making the momentous changes that this time demands, ensure that the sacrifices made will not be in vain.

To advance these changes is our responsibility.



Carla Marcucci is a family lawyer with over 35 years of experience, committed to resolving disputes with conflict resolution advocacy, interest-based negotiation and Collaborative Practice. She is totally devoted to supporting the spread of Collaborative Practice in Italy as a founding member and currently Past President and trainer of AIADC (Associazione Italiana Professionisti Collaborativi - <https://praticacollaborativa.it>) as well as a member of IACP (International Academy of Collaborative Professionals - <https://www.collaborativepractice.com>). A frequent presenter at conferences and co-author of the first manual in Italy on Collaborative Practice "*La Pratica Collaborativa- Dialogo fra teoria e prassi*" edited by Marco Sala e Cristina Menichino, Carla is also the author of numerous articles on ADR and other issues.



ASIA

Hope in the Darkness – The Revival of Reciprocity

Hitoshi Suzuki

The world is facing the worst disaster in a hundred years.
It has been hard to contain, and there is still a long way to go.
In such trying times, something ironic is happening.
The skies all over the world have become cleaner dramatically.
COP 19¹ could do little for the sky, but COVID-19 forced us to clean it immediately.

This crisis has given us a huge lesson.
It has reminded us of the essential value of reciprocity for human beings.
Naturally, Homo sapiens is a mammal living in a communal state, helping each other.
Like it or not, the world is connected in complex ways to make one big community.
As a result, the virus inside people also can be carried from anywhere to everywhere.
A flame from embers and sparks will rapidly grow again and spread to the whole house.
The residents cannot but cooperate and play their roles to entirely extinguish the fire.
How absurd it is to see people and nations compete for advantage when ‘their house’ is burning.

Moreover, this could be just a beginning, for we have already opened the box.
We have changed nature, melted permafrost covering ancient viruses, treated animals like
factory products, and artificially recombined genes.
We have possibly broken a delicate harmony we have adapted to.

The 20th century is sometimes described as ‘a century of wars.’
Imprinted subliminally since those times, we might have put too much value on competitions to
expand, beat others, grab their share, deprive nature of its resources, massively consume, waste,
and dispose of goods and lives for economic growth.
If left unchanged, we could end up becoming our own worst enemy.

Now we should remember that reciprocal altruism is embedded in our primal nature to survive.
You save others, and they will save you in return when you are in trouble.
Helping and sharing will save your community, family and yourself, ultimately.
To make this circulation happen and reinforce the strategy of coexistence,

¹ COP 19 is the popular name for the United Nations Climate Change Conference of the Parties held in Warsaw, Poland (2013), where pre-2020 climate action was the principal topic.

our genes and brains have been naturally programmed to make us feel strong happiness when we do something for others and see faces of gratitude.

In the darkness of the crisis, we can see a sign of hope.

Spontaneous gestures of helping, sacrificing, and gratitude are emerging everywhere. Though physically separated, people are more connected and encouraging one another.

This might be the only chance in a hundred years to change our mindset.

It is time to emphasize the value of helping for mutual safety, survival and happiness.

It is time to broadly share the philosophy we have treasured, to pursue 'a century of coexistence,' and make the world a big reciprocal community, as it should be.

It is not impossible, for we have cleaned the sky, which seemed almost impossible.



Hitoshi Suzuki is a civil lawyer in Tokyo, Japan, mediator at Tokyo Bar Association Dispute Resolution Center (TBADRC), vice-chairman of TBADRC (2003-2013), professor at Tokai University Law School (2007-2015, ADR, civil law), co-author of *THE SETTLING BRAIN* (2010) with Yuji Ikegaya / professor of medicine, the University of Tokyo.



AFRICA

ARBITRAL COMMUNITY MOBILIZES TO ADAPT TO THE COVID-19 CRISIS

THROUGH INCREASED USE OF ELECTRONIC PROCEEDINGS

Adedoyin Rhodes-Vivour SAN C.Arb¹

It started sometime in December, 2019 like a bad dream, happening somewhere far off in faraway China – 6,164 miles away.

A strange virus (Corona Virus 2, a severe acute respiratory syndrome) was leaving death, sadness and tears in its wake. The Wuhan seafood market in Eastern China initially was identified as the source. On March 11, 2020, the World Health Organization (WHO) officially declared the COVID-19 outbreak a global pandemic (by then, WHO had announced the official

¹ SAN signifies that Mrs. Doyin Rhodes-Vivour is a Senior Advocate of Nigeria, which is the equivalent of the British "Queen's Counsel," the highest designation for legal advocates. C.Arb denotes a Chartered Arbitrator, a title conferred by the Chartered Institute of Arbitrators headquartered in the United Kingdom. She holds LLB and LLM degrees from the University of Lagos and an MA with Merit in International Peace and Security from King's College, University of London.

name as COVID-19). The virus previously thought limited to China had become a truly global pandemic.

The European countries of Italy and Spain were the first jurisdictions outside of China to be badly hit and then the horrors in the United States started. I thought of the arbitral community and my friends involved in conflict resolution, as well as colleagues all over the world. I was concerned about our regular meetings in different jurisdictions, felt concern for their safety and wondered whether things would ever return to normal. I wondered what the new normal would be. One by one, notifications of postponements of arbitral related meetings and events I was scheduled to attend filtered in².

It was speculated that this silent unseen enemy could not thrive in hot tropical weather but then the virus got into Africa. Egypt recorded the first case in Africa on February 14, 2020. The first case in Nigeria, confirmed on February 27, 2020, involved an Italian who worked in Nigeria and recently returned from Milan, Italy. The case was managed successfully at the Infectious disease hospital and the patient was subsequently discharged. Nigerians got prepared to deal with the virus and contain its spread, as did other parts of Africa. Talk of a lockdown started. Nigerians began stockpiling food, water, medication and getting ready to work from home. Lockdown was declared to commence in Lagos, the commercial center of Nigeria, on March 26, 2020 for an initial period of 2 weeks. From that day forward, our busy lives stopped. Our professional calendars had to be strictly followed, yet physical interaction previously was thought to be required to carry out our obligations, which included jetting off to foreign lands, getting into your car for physical meetings, and complying with timelines. The new norm of social distancing put a stop to it all.

Nigerians love to celebrate. Social interaction is deeply cherished. Weddings and funerals usually are large gatherings where the number of people attending an event can easily exceed one thousand people. Now, the Courts of Justice were on lock down. It all stopped!

Has it all been so bad – I think not. Even in these challenging times, one begins to truly appreciate the important things in life before life got so busy and the air so congested. These include family, friends, less traffic, less pollution, silence, quality time in solitary company to rethink life, time to think of the less-privileged and make one's input, to strategize, to prepare for the new normal, to spend more time in the company of our creator, fully dependent on our creator appreciating the very air we breathe, which many of us have taken for granted.

Family wise, even as we spare our thoughts for those who are alone, the importance of family and friends comes to the fore. I, a busy lawyer and arbitrator having built up my career over the past four decades, my husband an equally busy Justice of the Supreme Court of Nigeria and our two sons, were now locked up in our home in Lagos enjoying each other's company without the routine timelines and busyness. My daughter and our son-in-law lived not far from us in their apartment with our two lovely grandchildren – the times we used to see our grandchildren were to dwindle greatly. We cherished the voice and video calls as all of us found ourselves working

² Postponements included the International Bar Association (LCIA) 23rd International Arbitration Day and the London Court of International Arbitration Symposium scheduled for March, 2020 in Turkey, the International Council for Commercial Arbitration 2020 Edinburgh conference, the LCIA Tylney Hall Symposium set for September, 2020, The African Arbitrators Association (AFAA) conference scheduled for June, 2020 in Ghana, the International Chamber of Commerce Paris 5th Africa Conference set for June, 2020 in Lagos and the LCIA Pan-African Council event also scheduled for September in Kenya.

from home and appreciating the family time and occasional drop offs of food by our son and daughter. This lockdown had to be respected. The world changed, hopefully for only a while, as scientists raced against time – a cure, a vaccine -- this nightmare must end but with lessons learned.

The versatility of arbitration came to the fore as I continued working on my arbitration matters from home. Arbitration is not new to Africa but is the traditional and cultural manner of dispute resolution in Africa, before the advent of a colonial court system that remains part of our legal system. Hon. Justice Oguntade, Justice of the Supreme Court (Ret'd.), as Justice of the Court of Appeal JCA pronounced thus in *Okpuruwu v. Okpokam* (1998) 4 NWLR (PT 90) 554 at 586 :

In the pre-colonial times before the advent of the regular courts, our people (Nigerians) certainly had a simple and inexpensive way of adjudicating over disputes between them. They referred them to elders or a body set up for that purpose. The practice has over the years become so strongly embedded in the system that they survive today as custom.

Modern arbitration, premised on the principles of party autonomy with its expediency and flexible procedures, is strongly supported as the answer to congested courts in Nigeria. Prior to COVID-19, in arbitration, it was commonplace for online proceedings to be held, including case management conferences, preliminary meetings and pre-hearing conferences. Neither was it unusual for cross-examination of witnesses to be conducted online where the circumstances justified it. I have personally been involved in virtual case management conferences, preliminary meetings and cross-examination of witnesses – a witness who could not travel for health reasons. The international nature of dispute resolution through arbitration, often with geographical distance between the parties, requires it. Examples include the use and filing of electronic correspondence and documents, in addition to the hard copy filing and bundles. Signing of awards in international arbitration is normally in soft (electronic) form and hard copy.

In the COVID-19 social distancing world, virtual meetings came to the rescue. The role of virtual arbitral proceedings quickly moved from valuable to essential. There has been an even greater reliance upon virtual arbitration than before and it is expected to continue to grow.

The arbitral community appeared well-prepared. Protocols and guidelines were promptly issued to deal with the new normal and any challenges that may arise. The Chartered Institute of Arbitrators issued Guidance Notes on Remote Dispute Resolution Proceedings covering a broad range of technical, logistical, legal and procedural matters. The guidelines offered a very helpful checklist of items for consideration. The scope of the Guidance Notes includes other forms of dispute resolution apart from arbitration, *e.g.*, mediation, adjudication, negotiation, expert determination, dispute boards or any other type of dispute resolution. These guidelines brought to the fore challenges that may be encountered in the course of remote proceedings, including the necessity for a reliable electricity supply (sometimes a luxury in some parts of Africa, including my dear country, Nigeria) and a stable and secure Internet connection.

Did the writers of the Seoul Protocol on Video Conferencing introduced at the 7th Asia Pacific ADR conference held in Korea in November, 2018 know just how vital the protocol was going to be in the reality of the 2020 pandemic? Indeed, that conference produced a viable guide for planning, testing and conducting video conferencing. The guide included basic tips, *e.g.*, the

need for clear quality and audible transmission, compatibility between hardware and software and testing of equipment well in advance of the hearing. Non-adherence to the tips could result in catastrophe and embarrassment in the course of a remote proceeding. Working groups of professional arbitrators were established to address cybersecurity issues surrounding the arbitration process.³ Arbitration providers developed additional checklists for conducting arbitration hearings during COVID-19.⁴

The leading arbitral institutions rose to their responsibility in providing guidance. The International Chamber of Commerce (ICC) and the International Court of Arbitration released guidelines to mitigate coronavirus delays on arbitral proceedings. The advent of COVID-19 further confirmed the unity between arbitral institutions.⁵

Africa was definitely not to be left out. The African Arbitration Academy issued its Protocol on Virtual Arbitration Hearings in April, 2020 offering useful tips on conducting arbitral proceedings bearing in mind the special needs of Africa. The protocol in recognizing the special technological needs in Africa stated:

...where any of the parties do not have access to the technology... parties may solicit arbitral institutions or other centers in Africa that can offer their venues for conducting virtual hearings. The technological and connection services offered by arbitral institutions or centers are often reliable and can provide the necessary equipment, software, high quality internet connection, and minimal chance of signal interruptions....

The Nigerian judiciary took steps to ensure justice delivery in the wake of the lockdown of the courts. The Chief Justice of Nigeria constituted a committee in order to ensure that courts continue to work in the era of social distancing. The committee, headed by Supreme Court Justice Bode Rhodes-Vivour, Commander of the Federal Republic of Nigeria (CFR), issued remote court seating guidelines that have been approved by the Chief Justice, making remote hearings part of the Nigerian judicial system. The first remote court proceeding in Nigeria was conducted in the Lagos High Court when judgment was delivered virtually for the first time in Nigeria pursuant to the Lagos State Judiciary Remote Hearing of Cases COVID-19 Pandemic Practice Directions. Nigerian courts have again borrowed from the practice in the arbitral community, firstly incorporating case management into various high court rules in the past

³ The ICCA-NYC Bar-CPR Working Group's 2020 – Cybersecurity Protocol for International Arbitration reflects the culmination of two years of work by a working group on cybersecurity in arbitration proceedings consisting of representatives of the International Council for Commercial Arbitration (ICCA), New York City Bar Association (NYCB) and the International Institute for Conflict Prevention and Resolution (CPR). The goal of the working group was to provide a framework to guide tribunals, parties and administering institutions in their usage of information security measures that are reasonable to apply to a particular arbitration matter

⁴ Delos, the Global Arbitration Review [GAR] Award winning arbitral body, also provided the arbitral community with a checklist on conducting arbitration and mediation hearings in times of COVID-19, which was released promptly on March 12, 2020 with an updated version on April 3, 2020.

⁵ A joint statement was issued by arbitral institutions including the Cairo Regional Center for International Commercial Arbitration 'recognizing that these are challenging times and recognizing the joint ambition of the institutions to support international arbitration's ability to contribute to stability and enforceability in a highly unstable environment, including by ensuring that pending cases may continue and that parties may have their cases heard without undue delay.'

couple of years and other innovations, including the courts substituting filing of witness statements in place of time-consuming examinations in chief.

These times are challenging and the arbitral world appears ready to take on the challenge of a COVID-19 world. The hope is that, post COVID-19, the beauty of love, joy, unity and togetherness replace the ashes of death, tears and sorrow. Hardly any family is not touched by the tragedy. I received news that a family friend, a distinguished Doctor of Laws and distinguished Nigerian scholar from a renowned family passed away in London, England. Weeks later, my brother tragically passed on from COVID-19 related complications in the United Kingdom. The tragedy is monumental and mounting.

The statistics of fatalities are alarming, the analysis astounding. Questions are being asked, questions that deserve answers--why is there such a disparity on the international scene in the number of fatalities based on economic and social status? Why are more people of color, blacks, ethnic communities, minority and Asian backgrounds dying compared to others? Is it a result of lack of vitamin D in the blacks, a result of blacks living in crowded communities where social distancing is more difficult to maintain, or a result of the access of black and poorer people to healthcare and resources? Can anything be done to better protect health care workers? Why is that, in countries like Nigeria, the, less privileged, irrespective of the danger of infection and possibly death, were crying for the lockdown to be lifted? Crying for food? Why has the healthcare delivery system in some African countries been so neglected?

My expectation and hope as we rise from the ashes of COVID-19 is that African countries emerge stronger, rebuild their healthcare and infrastructure, make judicious use of their vast resources to the benefit of its people, and address electricity and power concerns as a means to economic development. In this way, Africa can devise ways of becoming more self-reliant yet living in unity with the world and contributing in return. Moreover, Africa can address the disparity in economic and social levels of its people, bridging the gap between the haves and have nots, and going back to a world of compassion and right values. It is my expectation that our justice delivery system will learn from the world of arbitration and alternative dispute resolution (ADR) in achieving a more expeditious administration of justice in our journey to the 22nd century.



Adedoyin Rhodes-Vivour is a Senior Advocate of Nigeria (SAN) who qualified as a lawyer in Nigeria nearly four decades ago. She is a Chartered Arbitrator (C.Arb, Chartered Institute of Arbitrators headquartered in the United Kingdom) and an Accredited Mediator (Center for Effective Dispute Resolution (CEDR)). She has conducted arbitration extensively under various arbitration rules including United Nations Commission on International Trade Law (UNCITRAL), International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA). She is recognized as one of the world's leading arbitrators and listed in the Guide to the World's Leading Commercial Arbitration Experts. She has held various leadership positions in the arbitration/ADR community including being Chairman of the Nigeria branch of the Chartered Institute of Arbitrators and an officer of the Mediation Committee of the International Bar Association. She is a member of the International Chamber of Commerce Paris Arbitration Court and the ICC Arbitration Commission. She is a Vice-President of the LCIA African Users Council. Mrs. Rhodes-Vivour speaks at conferences (domestic and International), has written various articles and is author of the book *Commercial Arbitration Law and Practice in Nigeria through the Cases* (2016, LexisNexis).



ANTARCTICA

IN A TIME OF PLAGUE, A RENEWED SENSE OF THE VALUE OF CONNECTION AND COOPERATION

Rory O'Connor, M.D.

When the South Pole is a closer neighbor than the head office in Christchurch, where I reside, you know you are in a remote and isolated place. In the world of COVID-19, being remote and isolated is now seen as a good thing. And Scott Base, my home for 9 months, is certainly a good thing. Scott Base is New Zealand's outpost on the great southern continent of Antarctica. Now, by chance, 11 of us will be spending the winter months together in the only place that remains free of the virus. As individuals, the 11 of us all have unique skills that are required to maintain the base, support the science and prepare for the summer season. As a team, we are dependent on everyone's skills for our safety and wellbeing during winter. Antarctica has long been an analogue for space missions. How do you successfully integrate wellbeing, team dynamics and productivity? Antarctica provides an ideal study arena to assess the human responses to living in an extreme environment, in isolation and in small communities.

Compared to the days of Scott¹ and Shackleton², we are fortunate to have great communications to the outside world. Now though, we see in real time the reaction to the pandemic sweeping across world. It is with a sense of disbelief as we watch the cases mount and countries go into lockdown. In the months leading up to my departure, people asked about how I would cope, how I would feel being away from people and what I would miss. It's easy to find pat answers to these questions, but harder to really think through and prepare yourself. The reality is that you don't truly know until you are in the middle of it. In a topsy turvy moment, I now find myself asking the same questions to family and friends now socially distancing and self-isolating. While I have thought about, prepared and finally arrived in Antarctica, those same family members and friends have been thrust into a strange and unfamiliar situation not of their choosing.

COVID-19 has become a double-edged sword, cutting like a scythe through both our home and work lives. Fear enters the emotional lexicon as we think of elderly relatives. Daily phone calls, video links and photo messages assuage the separation and help to maintain the connection home. The missed birthdays and family gatherings are already hard, but the sense of not being able to physically help those at home, especially at this time, is the hardest. There is a rising

¹ Robert Falcon Scott. British Antarctic explorer in the early 1900's who led expeditions to try to be the first to reach the South Pole.

² Sir Ernest Shackleton. Irish Antarctic explorer, known as a principal figure during the Heroic Age of Antarctic Exploration (1898-1922).

inner turmoil between the somewhat selfish desire of having chosen the Antarctic experience and the seeming abandonment of nearest and dearest to COVID-19.

ANZAC day³ on April 25th was a moment of solidarity where we reflected on the sacrifices of those in the service of their country. It was a reminder of the courage and endurance of a previous generation during a time of conflict. Our service, also attended by our American colleagues from McMurdo base, was only possible because many people had worked hard to keep Antarctica free of the virus. The address talked about hope and optimism in this, our own time of need. To look forward to better times where we could come together and share once again. Finding a common purpose and the right narrative is important for cooperation and defusing tension. At this time, the communication back to the Christchurch office has become more frequent and deliberate. Their changed circumstances meaning that a winterized Antarctic base becomes the epitome of sophisticated mingling and socialization. We are in a reverse empathy equation, providing comfort and support to those back home who are now even more isolated than we are. It means we have had to develop a new understanding of what it means to be "at home."

Fortuitously, COVID-19 has struck at the beginning of the winter season when the base team can sit tight and the office moves into planning mode. Technology has enabled home working that surprised many with how effective it was. Zoom conferencing has given us the face-to-face connection and insights into everyone's personal space. The electronic background hints at hobbies, interests and other lives. It has personalized the connection, moving people along from colleague to partner in work. It reinforces the team dynamic of gaining strength through adversity. Zoom fatigue is the corollary when natural breaks are missed, the work is all done behind a screen and the pressure valve of spontaneous humor in the coffee room is a distant memory.

In Antarctica, motivation, openness and tolerance has always been needed to live and work together, more so during the long dark months of the winter. The weather and darkness will conspire to keep everyone on base and we lose opportunities for walking, skiing and undergo numerous seasonal changes. The physical hibernation can lead to a mental fugue, ripe for dissatisfaction and anger. Acceptance and stoicism could be seen as a lack of imagination and a trait of successful overwinterers. I would argue that it is the richness of the imagination that sets them apart. It is important to keep a sense of curiosity, of humor and find joy in small things. To be at peace with the passage of time and have your fill of the opportunities presented.

COVID-19 has delivered a moment of reckoning, where the old paradigms have fallen short. It may just have taught us the value of human endeavor, connection and cooperation, three things that, upon reflection, made me apply for a job in Antarctica in the first place.



Dr. Rory O'Connor is an experienced remote area physician who has provided health leadership and direction across many international oil and gas operations. He has steered the executive level debate on all health related matters including the previous pandemic scenario of H1N1, mental well-being, offshore and integrated emergency response. Key to that has been negotiating and navigating the resource constraints of schedule, cost and personnel with the competing

³ ANZAC Day marks the anniversary of the first campaign that led to major casualties for Australian and New Zealand forces during the First World War. The acronym ANZAC stands for Australian and New Zealand Army Corps. Wikipedia, Anzac Day.

interests in priorities and production. A focus on understanding the customers led to the successful delivery of team outcomes and health and safety objectives, fulfilling the vision to be a top level performer in the oil and gas industry. Rory is also passionate about the Arctic and Antarctic, undertaking challenging expeditions that nourish the soul and explore physical limits.



SOUTH AMERICA

"Community Spread" of Mediation in a Post COVID-19 World

Andrea Maia

Author's Note: I would like to express my personal respect and condolences for anyone who has lost someone during this time. This crisis reinforces my commitment to the life-long mission in helping others resolve their conflicts in the best way possible: either creating more value or at least trying to diminish losses through mediation.

Although the COVID-19 crisis has historical predecessors¹, it has the potential to be, by far, the largest pandemic since the 1918 Influenza Virus. It may not be the first serious health crisis in the Internet era², but COVID-19 is undoubtedly the most widespread and dangerous.

Pandemic illnesses during the Internet age are quantitatively and qualitatively different. Information flows instantly around the globe: numbers of deaths, rate of infection, public policies, scientific papers about new vaccines or medicines, misinformation, hate speech, fear and hope. It all permeates the public debate in the internet world. Indeed, the COVID-19 is the most popular topic in the history of televised news programs.

COVID-19 is distinct from other pandemics and world crises in other ways, including the ease and speed of transmission and symptom development. For instance, global warming will take decades to show its results. Leaders making decisions today will not deal with mass migration, hunger or war caused by global warming. With COVID-19, we are all watching the same movie in real time. If a leader denies it, in a month reality arrives with a roar.

Social isolation is the predominant policy recommended to save lives, but it comes with high emotional and economic costs. It is particularly challenging because it requires a fast change in our daily routines, which leads to an increase in conflicts. Just to list a few, in times of the

¹ Throughout history and on an on-going basis, numerous countries have experienced local and trans-border plagues and illnesses, including smallpox, polio, Bubonic plague, Black Death, AIDS, and the Zika Virus.

² Ebola, Middle East Respiratory Syndrome (MERS), Severe Acute Respiratory Syndrome (SARS), influenza outbreaks (Avian Influenza (Bird Flu)), Swine Flu (H1N1)).

Corona Virus, people are renegotiating rent, mortgage and job contracts. There are sudden and dramatic changes in consumer relations such as gym memberships, credit card payment policies and personal loan forgiveness. Professional sporting competitions have all but shut down. Banking and commercial trading have been, for the moment, severely impacted. Public institutions, including schools at all levels, from pre-school to Ph.D. and professional programs, have been all but shut down. Government agencies are scrambling to create new ways to provide services. The transportation industry has sustained severe losses, including airlines companies (tickets are being canceled or postponed), Uber ridership (drastically declined), and public transport (buses and subways are largely empty). The entire events industry, including conferences, music performers, and other artistic presentations will be affected for the following six months at a minimum. Companies are declaring judicial recovery and bankruptcy. Even something as fundamental to a democracy as voting has been modified to protect voters, poll workers and the entire foundation of one person/one vote.

Along with the impact on public and private sectors, COVID-19 has yielded significant personal impacts. People are spending more time indoors, which increases both family and neighbors' connections as well as conflicts. The sudden convergence of public, private and personal conflicts has major potential to create lose-lose relationships.

Not all of those emerging conflicts were caused, at least initially, by the intentional wrongdoing of people. Nevertheless, people around the world are all in the same boat and are more willing to negotiate disputes to diminish their losses.

Mediation is one powerful tool for these times, especially compared to going to court. Online dispute resolution (ODR) is especially suitable for the challenges we are facing. I own an ODR company called Mediar360 and the number of companies interested in ODR has increased substantially in the past two months.

Over the past five years, Brazil has been building a statutory framework authorizing mediation³. Since 2015, there has been a steady increase in the numbers of cases resolved through mediation. The COVID-19 crisis is accelerating changes in Brazilian culture and people are exploring online methods to communicate and resolve disputes. Many institutions, such as the Brazilian Courts and the Bar Association of the State of Rio de Janeiro are designing recommendations for the use of ODR as a governmentally-recognized form of dispute resolution. On April 24, 2020, a new law was enacted that allows online conciliation of small claims occurring in the judicial branch⁴.

In my personal life, quarantine has changed everything. I am used to having a very busy schedule, always dealing with several different projects and going from one part of the city to another and frequently traveling internationally. Quarantine is giving me time to enjoy my family and slow the pace. I am cooking for my son and spending more time with my mother, for which I am very grateful. I am also using my mediation skills to make the overall environment around me a little bit lighter.

³ Brazilian Mediation Act of 2015. Law No. 13, 140.

[http://www.camaradearbitragemsp.com.br/en/res/docs/Brazilian Mediation Act.pdf](http://www.camaradearbitragemsp.com.br/en/res/docs/Brazilian%20Mediation%20Act.pdf)

⁴ Online conciliation of Small Claims, Law No. 13,994 (2020). http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2020/Lei/L13994.htm.

Last week, one of our neighbors, a music disc jockey, started performing in the playground of my building. Almost everyone was delighted and expressed their happiness in our internal condominium WhatsApp group.

However, a few other neighbors started complaining and there was almost a serious argument in the group. Suddenly, I found myself mediating the disagreement, which included a number of long-standing and complex emotional issues.

I predict that mediation will play an exponentially greater role in every part of our lives due to the broad spectrum of conflict presented by COVID-19. In a curious parallel with the evolution of COVID-19 from a direct transmission process to community spread, mediation will jump from specialized areas, such as law, family relations and insurance claims to the community at large. Public awareness of the benefits of mediation will grow and the usage of mediation will expand. COVID-19 may be a dangerous pandemic, but, paradoxically, it offers mediators, peacemakers, and other conflict resolution practitioners the opportunity to develop their practice in new and innovative ways. The only limit is the imagination.



Andrea Maia is a proven performer, capable negotiator and strategic thinker with years of experience and an academic background in law, business and conflict resolution. Andrea has sixteen years of experience in Corporate Law, either as a Corporate Lawyer in large organizations such as Embraer and Banco Opportunity. In her own practice, she works with a variety of large and small clients, including Jornal do Brasil. Currently, Andrea works in mediation, negotiation and alternative dispute resolution (ADR) as a founding partner at FindResolution.

CONCLUSION

COVID-19 has shaken the status quo to its core. Together with other pressing social issues, it requires re-examination of everything we do, feel, think and believe. The pandemic will reveal our true priorities. Relationships may strengthen or become strained. True interests will emerge. Along the way, we will learn what is most important to us, as mediators, parents, family members, co-workers and colleagues. Everyday distractions will fade in importance as we each make our way through the fog and toward new ways of practicing conflict resolution, which has always been important, but now is positioned to play an even greater role on the world stage.



As individuals, peacemakers and conflict resolution practitioners, we are being asked to learn new ways of interacting, socializing, teaching, consuming and countless other activities once thought to be routine and unchangeable. Mediators and other conflict resolution professionals have always been agents of change, only now we must become the change by transforming our practices and processes to serve the interests of the day. Along with the tragic losses of loved ones, jobs, and settled ways of life, perhaps COVID-19 has opened a world of new opportunities and choices.



Gregg Relyea is a private, full-time mediator with an emphasis on commercial and employment mediation over 28 years of practice. For more than 25 years, Gregg has taught mediation at the university and law school levels. As one of the most experienced mediation trainers, he has trained lawyers, judges, and business people, domestically and internationally, for 20 years. He is the author of a comprehensive text about core negotiation and mediation skills "*Negotiation, Mediation and Dispute Resolution--Core Skills and Practices*" (Resolution Press, 2020). Gregg has co-authored a series of children's illustrated books that uses storytelling to demonstrate core skills of conflict resolution: "*Trouble at the Watering Hole, The Adventures of Emo and Chickie*" (2017), "*Bullied No More!*" (2018) and "*Phony Friends, Besties Again*" (2019).