



GLOBAL CONNECTIONS

THE JAMS FOUNDATION WEINSTEIN FELLOWS NEWSLETTER | SUMMER 2012

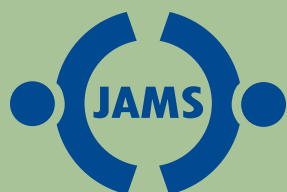
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Photo: Weinstein Fellows Class of 2011. Back row, left to right: Peter Kamminga (Netherlands); Savath Meas (Cambodia); Paola Cecchi Dimeglio (France); Heping Jiang (China); Judge Daniel Weinstein, Jay Folberg, Jay Welsh (JAMS Foundation); Vivian Feng Ying Yu (guest); Mushegh Manukuyan (Armenia); Evgeni Georgiev (Bulgaria); Andrew Wei-Min Lee (Australia/China); Dimitra K. Triantafyllou (Greece). Front row: Gabriela Asmar (Brazil); Pema Needup (Bhutan); Laila T. Ollapally (India); Manuela Renáta Grosu (Hungary); Guang Chen (China). Not shown: Thanarak Naowarat (Thailand).



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FROM THE EXECUTIVE DIRECTOR

You who have completed the JAMS Foundation's Weinstein International Fellows program represent the future of dispute resolution globally. We have been fortunate to work with you and want to maintain the benefit of your enthusiasm and the collective dedication you bring to improving the way disputes are resolved. It is important that the momentum of your efforts and your accomplishments be encouraged by continued communication and sharing of experiences. Although each of your Fellowships was unique, you hold similar goals of advancing ADR and a common bond with JAMS, and thus with one another. All of us consider you part of our JAMS family.

The purpose of this newsletter is to help keep you connected with each other and with JAMS. In these pages we hope to post professional and personal news, new ADR developments in your home countries, ideas, opportunities, accomplishments, and to introduce you to new Fellows. Selfishly, we at JAMS don't want to lose you. We want to stay in touch and maintain our fellowship with each of you. So we hope you will not only regularly read this newsletter, but contribute news, articles and pictures that will keep us connected.

—**JAY FOLBERG** Executive Director, JAMS Foundation

WEINSTEIN FELLOWS UPDATES



BADRI BHANDARI

Nepal, Class 2009

BADRI PRASAD BHANDARI, A PRACTICING ATTORNEY FOR NEPAL'S SUPREME COURT

has continued his work as a consultant to national and international organizations working in the field of Alternative Dispute Resolution in Nepal. Upon completion of his Fellowship in 2010, he received an LL.M. in Dispute Resolution from Pepperdine University School of Law. Badri is currently conducting research on dispute resolution as a doctoral candidate in juridical science at Golden Gate University School of Law in San Francisco. Badri is also a member of Mediators Beyond Borders (MBB) and

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is a co-team leader for MBB's Nepal Project and has conducted an advanced mediation training as a lead trainer in Nepal in a collaboration between the Nepal Mediators Society and Mediators Beyond Borders International (MBBI). As follow-up to this mediation training, Badri conducted a two-day advance mediation training the first week of July 2012 for working mediators in Nepal. Badri will also be doing assessment work with the Supreme Court of Nepal and MBBI on the "5-50" program, the goal of which will be to increase the efficacy rate of court-referred mediation in the Nepal court system to 50% within five years. As a co-team leader of MBBI's Nepal Project, Badri also attended a two-day training conducted by MBBI's Training Center Project Team Training at the Southern Methodist University in Plano, Texas, on June 1-2, 2012. Recently, Badri spoke on a panel on global trends in conflict at MBBI's fifth congress held on March 1-4, 2012, in Baltimore, Maryland.



XIMENA BUSTAMANTE
Ecuador, Class 2009

XIMENA BUSTAMANTE PARTICIPATED IN THE MEDIATION PANEL of the Ecuadorian-American Chamber of Commerce Arbitration and Mediation Center, an honor which allows her to mediate various commercial cases. Ximena credits her effectiveness as a mediator in these cases to the experience and skills she gained through her Fellowship and her LL.M. studies in Dispute Resolution at Pepperdine University School of Law. She hopes that further successful mediations will expand the use

of mediation in Ecuador. In addition to increasing her mediation practice in Ecuador, Ximena also participated as an arbitrator in the First Arbitration Moot, held in Quito, Ecuador, on February 28-29, 2012, with the participation of seven universities in Quito, Guayaquil, and Cuenca, and organized by the Arbitration and Mediation Center of the Ecuadorian-American Chamber of Commerce and the San Francisco de Quito University. Renowned national and international arbitrators attended.



PAOLA CECCHI DIMEGLIO
France, Class 2011

PAOLA CECCHI DIMEGLIO PUBLISHED A BOOK with Larcier on negotiation and ADR in strategic alliances (see <http://editions.larcier.com/auteurs/121074/paola-cecchi-dimeglio.html>). She also published several articles on the use of ADR in different cultural contexts in peer-reviewed journals, including the *Journal of Trans-National Dispute Resolution*. In late 2011, she spoke at a conference organized by the French Ministry of Justice and GEMME France on judicial mediation and the cultural implications of ADR. She also spoke at the ABA Dispute Resolution Section Conference in April 2012 in Washington, DC.



EVGENI GEORGIEV
Bulgaria, Class 2011

JUDGE EVGENI GEORGIEV HAS BEEN BUSY WITH THE REDESIGN OF THE ADMINISTRATION of the Regional Court of Sofia's court-annexed mediation program. Initially, one committee of three judges and two mediators determined judgments that were considered final only if all judges were in agreement. The program now includes a committee of 27 people—19 mediators and eight judges—of whom two-thirds provide a final decisional vote. The committee is now divided into three subcommittees: family law, quality assurance and statistics, and public relations. Both the full committee and the subcommittees each meet once a month. Minutes of meetings are made public on the court's website. Decisions are confirmed by the Chief Judge. The full committee has proven to be an excellent motivator and means of collaboration within the different groups. Administration of the court-annexed mediation program now includes a computer-based case management system provided by the World Bank. Along with his colleagues and a former senior researcher from the Max Planck Institute in Hamburg, Judge Georgiev has written a chapter on mediation in Bulgaria to be published in a book covering 25 jurisdictions worldwide. It will be published in English by Oxford University Press. In May 2012, Judge Georgiev provided a presentation on mediation in Bulgaria at a mediation conference in Paris organized by GEMME (European Judges for Judicial Mediation), and he hopes to provide a mediation training program for judges in Bulgaria in partnership with the Fulbright commission in August 2012.

MANUELA GROSU COMPLETED HER FELLOWSHIP STUDY

in New York, which focused on the interaction between mediation and arbitration in commercial disputes through interviews with JAMS neutrals and other ADR professionals based in different parts of the world. She also had the opportunity to discuss different ADR processes with scholars, lawyers and clients involved in and familiar with such processes. These discussions have confirmed the importance of focusing one's attention on the differing perceptions, expectations and perspectives that disputants, counsel and ADR professionals bring to the same disputes. As a visiting researcher at Cardozo School of Law, Manuela also attended clinical programs in mediation as well as classes on experimental methods of teaching and learning ADR in which self-reflection has been a significant and critical component. Upon her return to Hungary and conclusion of her Fellowship project, Manuela hopes to assist foundations fostering ADR-related research and to further develop and support court-annexed mediation programs in her home country.



MANUELA GROSU
Hungary, Class 2011



JIANG HEPING
China, Class 2011

JUDGE JIANG HEPING HAS PUBLISHED THREE ARTICLES ON AMERICAN ADR DEVELOPMENTS in the *People's Court Daily*, one of China's most respected national newspapers. Judge Jiang was transferred in March 2012 to the case filing department affiliated with the mediation center of Dongguan No. 2 People's Court, where he will be responsible for the design and implementation of court-annexed ADR. At the invitation of Dr. Mei Gechlik from Stanford Law School, Judge Jiang

Heping visited the School of Transnational Law at Peking University on February 23, 2012, where he provided a presentation to the faculty and students titled "A Comparative Analysis of Court-Annexed ADR in China and the U.S.," in which he analyzed similarities and differences between the two countries concerning ADR goals, processes, structures, stakeholders, sources and evaluation. After the presentation, Judge Jiang discussed related questions with faculty and students.



PETER KAMMINGA
Netherlands, Class 2011

PETER KAMMINGA, CO-CHAIR OF THE ABA COMMITTEE ON THE "FUTURE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)," is in the process of presenting the results of his empirical study on the use of, and obstacles related to, collaborative law around the world. Some results were presented at the ABA conference on dispute resolution in April 2012 in Washington, DC. Peter also published an article on inter-firm negotiations and conflict in the *Canadian Journal of Arbitration and Mediation*. He

conducted a study for ProRail (the Dutch agency responsible for maintenance and extension of the national railway infrastructure) on cooperation between clients and contractors on construction projects, resulting in the Dutch report "Contract and Cooperation in Infrastructure Development." He spoke at a conference organized by the French Ministry of Justice on Judicial Mediation on dealing with dilemmas in high-stakes mediations involving the business and public sectors. At the KING Seminar in December 2011, he spoke about how contractual mechanisms can support cultural changes in large projects.



MUSHEGH MANUKYAN
Armenia, Class 2011

MUSHEGH MANUKYAN IS ESTABLISHING A MEDIATION CENTER IN YEREVAN, ARMENIA called ADR Partners, LLC. The company started its activities in mid-April with the organization of seminars on mediation for young attorneys and law graduates, and is currently promoting an NGO called "Labor Rights Defender (Mediator) Office," which primarily specializes in resolving nonprofit labor disputes. In addition, the EU and Council of Europe have developed a joint program on access of

justice in Armenia. In conjunction with this program, and in col-

laboration with two international experts, ADR Partners will organize a training for Armenian judges on mediation. The Armenian judiciary is very interested in court-annexed mediation. Concurrently, Mushegh is completing his second course teaching ADR at the law faculty of the Armenian-Russian (Slavonic) University, a great achievement since all of the students determined at the end of the course that they would definitely advise their clients to try mediation before going to court, even though almost all had not heard of mediation before taking the ADR course.



LAILA OLLAPALLY
India, Class 2011

LAILA OLLAPALLY HAS SHARED HER EXPERIENCE AS A WEINSTEIN FELLOW and the insights gained with lawyers and judges across India. In November 2011, Laila spoke at the South Indian Conference on Mediation held in Bangalore, where Supreme Court Judges, High Court Judges and mediators from South India were present. In early March 2012, Laila was invited to speak at the Kerala High Court along with the Chief Justice; Victor Schacter, partner at Fenwick & West in California;

and the President of the Kerala Bar Association to the members of their bar on "The Role of Lawyers in Mediation." Laila also addressed the Delhi High Court mediators on "Global Perspectives on Mediation" along with their Chief Justice, two other judges of the Delhi High Court, and a senior mediator from Gujarat. Laila subsequently conducted a two-day advanced mediation training program for the Delhi mediators. Laila looks forward to continuing to share the deeper appreciation for mediation that she gained as a Weinstein Fellow and to furthering the cause of ADR in India.



NICOLA WHITE
Ireland, Class 2010

NICOLA WHITE HAS CONTINUED TO PROMOTE AND DEVELOP THE FIELD OF ADR IN IRELAND. During her Fellowship, Nicola worked on preparing the Final Report on Mediation and Conciliation for the Law Reform Commission of Ireland, published by the Chief Justice in November 2010. The Report is available at www.lawreform.ie. As part of the Final Report, Nicola also drafted a mediation bill for Ireland. The bill was sent to the government for review and in March 2012, the gov-

ernment approved the bill with some amendments to the original draft. There are some concerns regarding the amendments made by government. However, further amendments are to be expected as the bill passes through the House of Parliament. It is expected that the bill will become law in the next six months. The mediation bill is available at <http://www.inis.gov.ie/en/JELR/MedBillGSFinal.pdf/Files/MedBillGSFinal.pdf>. Nicola also continues to lecture on mediation at a private college in Dublin. Before leaving to complete her Fellowship, Nicola designed a Master's in Dispute Resolution. In its first year, this course had six students; this year, the course has 27. Nicola is also working with CEDR (Centre for Effective Dispute Resolution), which opened a Dublin office in October 2011. ■

JAMS FOUNDATION WEINSTEIN INTERNATIONAL FELLOWS CLASSES OF 2009 AND 2010

THE WEINSTEIN INTERNATIONAL FELLOWSHIP program was inaugurated in 2008 and provides opportunities for individuals from outside the United States to visit the U.S. to learn more about dispute resolution processes and practices and to pursue a project of their own design that serves to advance the resolution of disputes in their home countries.

A group photo of our Fellows Class of 2011 is featured on the front of this newsletter and at right are photos of the Classes of 2009 and 2010. The Class of 2012 (scheduled to meet in September) is featured on Page 5.

For more information about the Weinstein International Fellowship, please visit us online at www.jamsadr.com/weinstein-fellowship/.



CLASS OF 2009: Left to right: Ximena Bustamante (Ecuador), Orouba Qarain (Jordan), Tsisana Shamlikashvili (Russia), Judge Daniel Weinstein (JAMS), Giulio Zanolla (Italy), Ahmed El Feqy (Egypt), Mohan Lal Mehta (India), Badri Bhandari (Nepal).



CLASS OF 2010: Left to right: Ralph Zulman (South Africa), Hagit Shaked-Gvili (Israel), Lilian Vargas (Argentina), Nicola White (Ireland), Judge Daniel Weinstein (JAMS Foundation), Aminu Gamawa (Nigeria), Fraser Sampson (United Kingdom), Jay Folberg (JAMS Foundation), Tilahun Retta (Ethiopia) and Galyna Yeromenko (Ukraine). Not shown: Srdan Simac (Croatia).

WEINSTEIN INTERNATIONAL FELLOWS CLASS OF 2012



MARÍA ROSARIO GARCÍA ALVAREZ (Spain) serves as the President of the Second Section of the Labor Division of the Madrid High Court of Justice.



IVAN BIMBOVSKI (Macedonia) is a certified mediator and vice dean of the Faculty of Law at the European University in the Republic of Macedonia.



OLUROTIMI WILLIAMS DAUDU (Nigeria) works as a principal judicial officer and special assistant to the President of the National Industrial Court of Nigeria.



THIERNO DIALLO (Senegal) is the general manager of the Mediation, Arbitration, and Conciliation Center in Dakar, Senegal.



LIVIA ANGELA GIORDANO (Switzerland) is an employment attorney in Zurich and LL.M candidate in dispute resolution at Pepperdine University School of Law.



KATHY ALICIA MARIA GONZALES (Trinidad) is the founder and CEO of Janus Conflict Management Services.



ENGA KAMENI (Cameroon) is an attorney with Jing and Partners and a doctoral candidate in international arbitration at the University of Pretoria, South Africa.



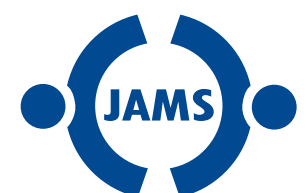
LEJLA BRATOVIĆ MAVRIS (Bosnia-Herzegovina) is the Director/Co-Founder of Global Majority, an international nonprofit organization dedicated to the promotion of nonviolent conflict resolution through education, training, mediation and advocacy.



TOLEGEN MYRZABAYEV (Kazakhstan) is an attorney in Kazakhstan and a recent LL.M graduate of the University of Pennsylvania Law School.



BLAŽO NEDIĆ (Serbia) is the director of Partners for Democratic Change Serbia and the regional mediator for the World Bank Group for Serbia, Croatia, Bosnia and Herzegovina, Montenegro, Macedonia, Bulgaria and Albania.



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NOTICES AND EVENTS

Launching *Tan Pan: The Chinese-English Journal on Negotiation*

Vivian Feng Ying Yu and Andrew Wei-Min Lee—with support from the JAMS Foundation, Hamline University and Convenor Conflict Management—have launched the first issue of *Tan Pan: The Chinese-English Journal on Negotiation*. This bilingual journal seeks to promote the theory and practice of ADR, including negotiation, mediation and arbitration, in China. The first issue focuses on ADR pedagogy, discussing what has been done at Chinese universities and featuring ADR teachers in China and around the world. The second issue will focus on mediation. We look forward to interviewing and featuring Weinstein Fellows and JAMS Panelists to highlight our work in China and around the world.

July 16-20, 2012: International Business Summer School on Mediation in Admont, Austria

Every two years, Ulrike Gamm and Mario Patera run the International Business Summer School on Mediation in Admont. Their five-day program is a unique and exciting blend of science, culture, art and spirituality under the banner of mediation. Here is a sample day from the last session: Share a discussion on decision-making neuroscience in the morning, eat lunch with Austrian business leaders and mediators in the afternoon, hike up a mountain to observe a mime performance emphasizing the importance of body language in the evening and then share a Chinese tea ceremony before bed. This year, Weinstein Fellow **ANDREW WEI-MIN LEE** and Vivian Feng Ying Yu are scheduled to present workshops on ADR from a Chinese perspective, including sessions on Chinese calligraphy and philosophy, and the evolving role of women in pursuing a harmonious Chinese society. <http://www.isbm.at/>.



Peter Kamminga (left) and Paola Cecchi Dimeglio (bottom left) make presentations on mediation and ADR at the GEMME (European Association of Judges for Mediation) Conference held in conjunction with the French Ministry of Justice in December 2011. Judge Jiang Heping (below) compares ADR in China and the U.S. at the School of Transnational Law at Peking University in February 2012.



TRAINING AND CONSULTATION ON ADR FOR LOCAL LEADERS BRINGING JUSTICE CLOSER TO THE PEOPLE

By Judge Pema Needup¹ (Class 2011)

In Bhutan, alternative dispute resolution (ADR) is not really new. Bhutan has a long history of resolving disputes through a traditional mediation system commonly known as *Nangkha Ngang-drik*² dating back to the eighth century, which still exists as a form of out-of-court settlement of disputes and has been an integral part of Bhutanese culture and tradition. Traditional mediation in Bhutan did not exist as an adjunct to a formal justice system but likely existed as a primary dispute resolution mechanism in lieu of a formal justice system, which developed only in the early 1960s. The process is based on the principle of compassion and peaceful coexistence, important aspects of the community-oriented Bhutanese society. However, the process is neither systematized nor structured, and there are no institutionalized mediation centers with trained and qualified mediators.

Objectives of Training and Its Components

Accordingly, before the institutionalization of community mediation centers in Gewogs³ can take place, it is imperative that training be imparted to our community mediators on ADR processes. Toward this end, the Bhutan National Legal Institute (BNLI)⁴ recently conducted a two-week training on ADR for some 65 Mangmis⁵ in Punakha. The Mangmis were from seven northwestern Dzongkhags.⁶

The opening and inaugural program was graced by Her Royal Highness Ashi Sonam Dechan Wangchuck, the President of the Bhutan National Legal Institute, His Lordship the Honorable Chief Justice of Bhutan, His Excellency the Minister for Cultural and Home Affairs, Honorable Justices of the Supreme Court and the High Court, and other dignitaries. The training began on February 25, 2012. Ultimately, a total of 205 Mangmis of all the 20 Dzongkhags will be trained. For southern Dzongkhags, the training will be conducted in Gelephu, and for eastern Dzongkhags, the training will be conducted in Monggar.

The purpose of the training is the following:

1. To enhance community involvement in dispute resolution processes by providing local leaders with basic knowledge and skills to facilitate resolution of disputes;
2. To increase access to justice by bringing dispute resolution processes closer to the door steps of the people at the grass-roots level; and



3. To realize the objective of gross national happiness (GNH) through dispute resolution processes.

The training components are as follows:

- a. **Consultation:** The consultative discussions emphasized the past practice of mediation, its current practice and challenges, and recommendations for the future institutionalization of ADR systems in Bhutan.
- b. **Theoretical Aspect:** Among other things, the participants focused on learning about the concept of ADR, goals and objectives of ADR, advantages of ADR, types of ADR, definition of mediation, types of mediation,⁷ drafting of a mediation agreement, cases that can be mediated and that cannot be mediated, the role of the mediator, the mediation process or structure of mediation, code of conduct for mediators, ethical guidelines for mediators, qualities of a mediator, the concept of confidentiality⁸ and confidentiality agreements, conflict management, communication skill guidelines, co-mediation, negotiation techniques, multiple realities/perceptions and assessing individuals' behavior during conflict situations, etc.
- c. **Practical Aspect:** Role plays were essential for the ADR facilitators since they need to play a constructive role in bringing a peaceful and amicable solution to the disputes. A few simple cases were designed for these role plays (see Page 8). Half of the training schedule was devoted to the role plays. Group presentations and discussions followed each role play. Other training materials such as video clips and ADR-related anecdotes were also used to make the participants more actively engaged and interested.
- d. **Important Acts:** The participants were also made aware of some of the important Acts, such as the Marriage Act (1980), the Land Act (2007), the Inheritance Act (1980), the Civil and Criminal Procedure Code (2001), the Penal Code of Bhutan (2004), the Movable and Immovable Property Act

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CASES FOR ROLE PLAYS

Case 1 : Land Dispute Regarding Inheritance of Joint Family Property

- Parties:
1. Namgay Phuntsho (Father)
 2. Karma Dorji (Eldest Son)
 3. Kinley Tenzin (Youngest Son)
 4. Mediator (Mangmi)
 5. Observer

Namgay Phuntsho and his three children have been living together in Rangthaling. Lately, his eldest son, Karma Dorji, built a house on the land that Namgay Phuntsho had given to his youngest son, Kinley Tenzin. When Namgay Phuntsho tries to evict Karma Dorji from the land, Karma Dorji argues that as the eldest son, he has the right to inherit the best part of his father's land. On the other hand, Namgay Phuntsho argues that the land currently occupied by his eldest son, Karma Dorji, was given to his youngest son, Kinley Tenzin, because he was cared for by him when he was hospitalized recently. Kinley Tenzin says that he has already invested in the land by fencing it and planting Doma (betel nut) after his father gave the land to him. The parties want to mediate the dispute at the Gewog to preserve the family relationship.

Case 2: Matrimonial Dispute Regarding Adultery and Illegitimate Child

- Parties:
1. Tshering Dorji (Husband)
 2. Pema Choki (Wife)
 3. Sangay Wangmo (Girlfriend, mother of illegitimate child)
 4. Mediator (Mangmi)
 5. Observer

Tshering Dorji is the father of two children. He had an affair with Sangay Wangmo, to whom he lied by stating that he was not married. After Sangay Wangmo gave birth to a baby, she found out that Tshering Dorji was a married man. Pema Choki, wife of Tshering Dorji, is charging her husband and Sangay Wangmo with adultery and dissolution of marriage. However, the parties have agreed to try to mediate the dispute at the Gewog Office.

Case 3: Financial Dispute Regarding Loan Payment

- Parties:
1. Karma Chodup (Borrower)
 2. Kinley Wangdi (Lender)
 3. Sangay Dorji (Witness)
 4. Mediator (Mangmi)
 5. Observer

Karma Chodup borrowed a sum of Nu.10,000 from Kinley Wangdi for a period of one month. Since they were good friends, no agreement was drawn. However, Sangay Dorji, whom both the parties knew, was also present during the course of the transaction. Later, Karma Chodup refused to pay back the money he borrowed. Kinley Wangdi has approached the Gewog Office for mediation of the dispute.

Case 4: Property Dispute Regarding Land and Orange Tree

- Parties:
1. Tshering Phuntsho (Owner of the orange tree)
 2. Ngawang Dorji (Owner of the land)
 3. Mediator (Mangmi)
 4. Observer

Tshering Phuntsho and Ngawang Dorji are neighbors who own adjoining land. Tshering Phuntsho planted oranges on his land. However, as alleged by Ngawang Dorji, during the cadastral survey in 2010, a part (30 decimal) of Tshering Phuntsho's land along with a fruit-bearing orange tree fell on the land of Ngawang Dorji. It was agreed that Tshering Phuntsho would harvest the oranges for that year. However, Ngawang Dorji sold the oranges to other people before Tshering Phuntsho harvested the oranges. Tshering Phuntsho has approached the Gewog Office with the dispute for mediation.

(1999), the Jabmi⁹ Act (2003), the Evidence Act, (2005), the Child Care and Protection Act (2011) and judicial forms.

- e. **Evaluation/Assessment:** The BNLI prepared questionnaires, and participants expressed their feedback/recommendations accordingly at the conclusion of the training program.

Source of Funding

The training was funded by the Swiss Agency for Development and Cooperation (SDC), the Austrian Development Cooperation (ADC) and the children's component of UNICEF.

Trainers and Resource Persons

The Supreme Court has designated me and two other district judges as the trainers for this entire ADR training program. The idea is to have uniformity and consistency of training inputs in the other two regions. The BNLI has also identified two officials from the institute to lecture on the Acts.

Conclusion

This initial two-week training concluded on March 9, 2012, with an award ceremony in which Her Royal Highness bestowed certificates of participation on the participants. The training was a great success in terms of participation and research inputs. The participants were amazed and extremely happy with how the training was conducted, the research inputs by the trainers and the quality of the deliberations. The training was very well organized in all respects. The entire credit belongs to Her Royal Highness Ashi Sonam Dechan Wangchuck, the President of the BNLI, Honorable Chief Justice of Bhutan, the Director and officials and staff of the BNLI.

It was a two-way learning experience. In the process, I have greatly benefited by the exchange of ideas, views and interactions with various participants. The training has enriched my knowledge and experience of ADR. The training was well received by the participants in terms of both its theoretical and practical aspects (such as the role plays). I am very sure that all the participants will reap the benefits of this training and bring justice closer to the people. ■

1 The author was the Presiding Judge at the Pema Gatshel District Court in Bhutan at the time he participated in the JAMS Foundation Weinstein International Fellowship Program in San Francisco from September 1 to November 30, 2011. Judge Needup was recently transferred to the District Court in Trashigang as the Presiding Judge beginning March 1, 2012. Trashigang is the largest district in Bhutan, consisting of 16 Gewogs.

2 Negotiated Settlement.

3 A county or the territorial constituency for election of Gup (an elected leader or Head of the Gewog) and Mangmi (an elected representative of the Gewog, who is also a Deputy Gup).

4 The Bhutan National Legal Institute was established under the Judicial Service Act of 2007. It is the centre devoted to providing continuing judicial and legal education through training, professional development, research, publication and dissemination programs to foster desirable traits, values and attitudes for promoting a fair, just and efficient justice system.

5 An elected official of the Gewog, who is also a deputy Gup (an elected leader or Head of the Gewog).

6 Districts.

7 Our mediators were local leaders who still wanted to exert their authority like judges, as they did not know that their primary role is only to facilitate the process. Some participants preferred facilitative mediation, while others preferred evaluative mediation. All, however, unanimously agreed that they will use hybrid and combined processes of facilitative and evaluative mediation as appropriate for our cultural context.

8 Our mediators are used to conducting open-door mediation since its inception and were not familiar with the concept of confidentiality in mediation. Initially when I introduced this new concept of confidentiality, participants were not ready to accept this new idea, and many participants opposed the confidentiality concept. However, toward the end of the training program, I was able to convince the participants, who also seem to have understood the importance of confidentiality in the mediation process. Although the signing of confidentiality agreements may not be necessary for the time being, the participants were informed that it is necessary at least to maintain confidentiality of the process.

9 Jabmis are individuals similar to paralegals, whose role is to appear on behalf of other individuals in court cases.

WRITING “MEDIATION” IN CHINESE: 调解

By Andrew Wei-Min Lee (Class 2011)

In Chinese, the word “mediation” is written as two characters, 调解 (pronounced tiáojiě). The first character, 调 (tiáo), is made up of two symbols. The left side features a dot with a tick below and is our symbol for “speech.” The right side is the symbol for “circular.” Originally, it was the picture of a granary, which traditionally was built in a round shape. Together, the left and right symbols combine to form the word “tune,” as in tuning an instrument.

The second character, 解 (jiě), is made up of three symbols: 牛 (bull), 刀 (knife) and 角 (horns or antlers). Combined, these symbols trace back thousands of years to the concept of using a knife to cut the dangerous horns off of a strong and important bull.

Therefore, the origins of our word for mediation come from the idea of “sitting in a circle and using speech to tune our strong and important relationship by cutting the dangerous things away.”

Today's China is blessed with many advancements that we owe to modern technology. But perhaps it is important for us to remember that the very old also has much to offer.

CHINA'S ANNUAL INTERVARSITY NEGOTIATION COMPETITION FEATURES WEINSTEIN FELLOWS

By Andrew Wei-Min Lee and Vivian Feng Ying Yu

Since 2009, Weinstein Fellow **ANDREW WEI-MIN LEE** and Vivian Feng Ying Yu have run a national negotiation competition for Chinese university students. The fourth annual competition took place from May 10-15, 2012 and featured Weinstein Fellows **DIMITRA TRIANTAFYLLOU** (Greece) and **LAILA OLLAPALLY** (India), and JAMS Mediator Bruce Edwards (United States), who served as international judges.

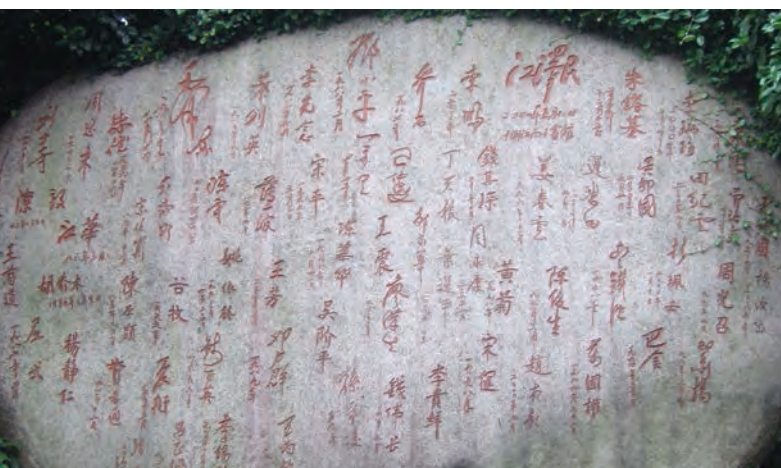
China has a long history in mediation, but there is practically no teaching at all of mediation, negotiation or other forms of ADR in mainland Chinese universities. The goal of the competition is to inspire Chinese faculty to teach courses in ADR. This year, 32 of China's top university students came together to negotiate cases taken from hot topics in Chinese society. Some of the themes addressed were how to develop a culturally significant site in an economically sustainable way, resolving differences between two brothers that have inherited their father's business and how to manage traditional expectations of caring for both aging parents and a young child in an economically challenging environment.

Parallel to the goals of developing Chinese ADR pedagogy, an equally important goal every year is to provide a platform for others to get a taste of life and work in China. Visitors experienced a range of activities, from being hosted at a State reception center by senior Communist Party officials in charge of developing ADR

to mentoring university students in negotiation to hiking through a bamboo forest to chat with tea farm villagers. They visited Buddhist temples, drank tea next to tea farms and walked around a typical Chinese supermarket to experience ordinary life in a Chinese community.

One of the most treasured rewards of the experience was the deep level of personal exchange. By the end of the event, we were not just JAMS panelists, Weinstein Fellows and Chinese judges; we were friends in deep discussion about our own cultures, from the history of Greek olive oil to a typical weekend in San Francisco. We talked about our hopes for our children as we watched them make porcelain bowls at the Chinese Art University.

The friendships and bonds built this year have already seeded plans for next year. We very much are looking forward to welcoming our friends to China in 2013. ■



Clockwise from top right: Andrew Lee and Dimitra Triantafyllou observe a Chinese Wishing Tree; Laila Ollapally is interviewed for a documentary on the China University Negotiation Competition 2012; the Hangzhou Leadership Stone, inscribed with the names of Chinese leaders like Deng Xiaoping, Zhou En Lai and Mao Ze Dong; the Judges of the China University Negotiation Competition.



A practice mediation during a training at the Cambodian Center for Mediation.

UPDATE ON THE CAMBODIAN CENTRE FOR MEDIATION (CCM)

By Savath Meas (Class 2011)

I presently work as President for the Cambodian Centre for Mediation (CCM). The CCM has been legally accepted by the Royal Government of Cambodia as an independent nonprofit organization committed to promoting peaceful and nonviolent solutions and self-determination in Cambodia through mediation as a form of alternative dispute resolution (“ADR”). It was legally registered with the Ministry of Interior on October 1, 2010.

The main goal of the program is to promote mechanisms for alternative dispute resolution in Cambodia through the building capacity of mediation skills; developing professional mediators within the community, civil society and government; and providing access to justice through mediation services to the public. The centre has three main strategic objectives to ensure access to training for mediators: (1) certification and registration for skilled mediators; (2) access to mediation services; and (3) promotion and education of the public and government on mediation.

We have developed a feasibility study that will be conducted in the near future. Our research will assess the demands and needs of mediation services for the public and private sectors, and explore the potential for mediation programs in Cambodia. The result of our assessment will provide credible information and specific recommendations for possible activities and strategies for mediation development programs and future project proposals for fundraising.

Our current activities focus on providing mediation training for professionals and mediation services to the public community and private sectors. Although the centre does not have current support or funds, the team has committed itself to running training projects by contributing its own resources to the centre.

During the months of April-June 2012, the centre was involved in three main activities:

1. It provided mediation training to officials of the Maison de la Justice (district centre for justice) who are local authority mediators. There were 30 officials from different district centres and offices in 10 district centers. The training program was conducted in late April and will continue as a two-day training session every two months. It is a cooperative project of CCM with the Ministry of Justice. The program will then provide mediation training to another 60 mediators and will expand to another 10 district centers.
2. It provided training on conflict resolution to volunteer community people and youth from different universities in Phnom Penh one day every week in May and June. These short-course training sessions were provided for free to 15 participants who committed to learn these new skills and voluntarily work with conflict and mediation for their communities. The goal of this training program is to promote peaceful conflict resolution and engage students and community people with local dispute resolution.
3. In cooperation with ADHOC and CORD, it conducted a one-day national conference on ADR consultation in June. The conference discussed the new tool of ADR in Cambodia. The ADR tools have been developed and adapted to the Cambodian cultural context and practice. These tools consist of five steps: (1) Meet; (2) Talk; (3) Share; (4) Decide; and (5) Stabilize. I was a speaker at the conference and presented the ADR concept and defined ADR tools as a form of non-formal dispute resolution in Cambodia.

In the next issue of the newsletter, I hope to address the five steps referenced above as a new tool in the development of ADR in Cambodia. ■



Savath Meas conducts mediation training for women mediators at the District Center, Ministry of Justice.

THE DEVELOPMENT OF MEDIATION IN NEPAL

By **Badri Bhandari** (Class 2009)

Nepal has a lengthy history of resolving disputes informally outside the courts. Before the formation of autonomous local bodies,¹ *Jimuwal* and *subbas*, nominated for the collection of revenue and dispute settlement at the local level, settled disputes using a process similar to arbitration. Settlement of disputes with the involvement of socially renowned individuals is also common in rural Nepal. And because Nepal is a multi-ethnic and multicultural society, indigenous communities like the *Thakali*, *Magar* and *Tharus* communities also practice indigenous systems to settle disputes at the local and community levels.

After the enactments establishing local self-governance bodies in the 1960s, the law relating to the local bodies also provided them with judicial authority. According to the current Local Self-Governance Act (1999) (“LSGA”), the local bodies have jurisdiction to settle disputes through a hybrid process of mediation-arbitration. Although the judicial rights provision of the law has not been formally implemented, this provision is in the process of informal implementation through community mediation programs operated by different local NGOs with the support of various funding agencies. Before the enactment of the LSGA, Village Development Committee Acts and Regulations had also enacted provisions regarding settlement of disputes by the local bodies.

The Country Code of Nepal (*Mluki Ain* 2020 BS) (1963) provides for dispute settlement through compromise at any stage of a litigation (Section 182 of the Chapter on Court Management). In this process, parties come to the negotiation table represented by their lawyers, and a compromise deed is prepared by the lawyer of either party. A joint application is filed for the approval of the compromise deed by the bench. If the bench approves the compromise deed, the case is closed.

The Fourth Amendment to the District Court Regulations (2004) introduced the concept of court-referred mediation in Nepal; however, it did not establish all the processes and procedures required to mediate a case referred by the trial court. As there was a need for introduction of court-referred mediation, the 2006 Amendments to the Supreme Court, Appellate Court and District Court regulations developed a legal framework with detailed provisions regarding mediation and the referral process, including a requirement for compulsory training for court-referred mediators and a code of conduct for mediators. Similarly, the Supreme Court also provided guidelines for conducting mediations. The amendments addressed the court-connected system, the lack of a uniform act that applies to other forms of mediation and the need for such an umbrella act that addresses all forms of mediation in Nepal. With respect to these and other issues, the recently adopted Mediation Act of 2011 is a milestone in systematizing the practice of mediation in Nepal.



Rooftops of monasteries and the Bhouda Stupa, Kathmandu, Nepal

The 2011 Mediation Act acknowledges settlement of any dispute through mediation if provided by agreement of the parties, and a case *sub-judice* in any adjudicating body can be settled through mediation. The parties are given authority to determine and select the number of mediators who will mediate their case in a democratic process. If the parties desire only one mediator, the mediator is appointed with the parties’ consent. If the parties decide to appoint three mediators, each party will appoint one mediator, and the third will be appointed by the parties or by the mediators who were appointed by the parties, with the third mediator working as co-coordinator of the other two mediators. The Act recognizes private mediation service providers and establishes minimum qualifications for mediators, but is also flexible regarding these mediation training requirements; if the parties so choose, an individual without mediation training can serve as mediator. For certification, supervision and policy suggestions, a mediation council headed by the presiding judge of the Supreme Court reviews all mediation-related activities, including the approval of training and the preparation of a framework for establishing a permanent structure for community mediation. The 2011 Mediation Act recognizes community mediation; mediated settlements are recorded by the local body, and the parties are required to enforce the settlement.

The government of Nepal is authorized to develop the required regulations for the effective implementation of the 2011 Mediation Act. This has not yet been done. Out-of-court settlement is not new to Nepalese society, and community mediation is the preferred means of providing access to justice and empowering the more vulnerable societal groups. A great deal of effort will be required to establish the profession of mediation like that found in developed countries such as the U.S. ■

¹ Local self-governance units.

ADVANCING THE USE OF CONVENING IN ECUADOR

By *Ximena Bustamante* (Class 2009)

In Ecuador, we are starting to understand the importance of thoughtful convening to encourage mediation. Therefore, initial efforts are being made to involve mediators in this stage.

According to the model developed by Professor Randy Lowry at Pepperdine Law School, convening is mediation's first stage.¹ This is a key phase, as it focuses on bringing the parties to the mediation table and it helps pave the road for a successful process.

A convener seeks to accomplish different objectives during the convening stage. First he/she will seek to explain the mediation process in non-threatening ways for the uninformed lawyers/parties. Furthermore, the convener will ensure neutrality and impartiality, as well as emphasize the voluntariness of the process. Moreover, the convener will try to build credibility, demonstrating to the parties that the institution and the mediator are qualified to aid in the resolution of the specific dispute, both procedurally and substantively. In addition, the mediator will take this opportunity to start creating rapport and trust among the disputants. The convener will also prepare the process by reaching agreements regarding confidentiality, the issues that will be addressed, who the mediator will be (if the convener is not the mediator), when mediation briefs are to be presented in advance and the date and location of the proceedings, as well as ensuring that the right people attend the meeting. This pre-mediation stage has the potential to build a working relationship with the neutral, and it provides an opportunity to start to mediate.² In a way, the convening stage is "a mediation of the mediation process;" the desired result is the parties' commitment to mediate.

The relevance of a successful convening goes beyond the specific case. As Diana Mercer points out, "[t]houghtful convening is the bridge between marketing and building a practice."³ It is through this stage that the mediator/institution transforms all of its marketing efforts and training programs in actual cases.⁴ Furthermore, in countries in which mediation is unknown or still developing, convening is the path toward providing successful stories that will



demonstrate the benefits of mediation, which will eventually lead to a greater expansion of the system.

However, mediation practice in Ecuador has traditionally overlooked such an important stage. Regrettably, convening is highly regulated under the law. According to section 51 of the Ecuadorian Arbitration and Mediation Statute, if any of the parties fails to attend the mediation on the date and time determined by the institution, a second invitation is sent. If a party fails to attend the second time, the mediator issues a document certifying that mediation is impossible. Accordingly, the efforts to convene are usually limited to an invitation letter for the requested party and a determination of date and time convenient for the mediator and the institution (the parties are hardly consulted). Therefore, the mediator frequently attends the session only to find that one or even both sides are missing.

During the past few months, the Arbitration and Mediation Center of the Ecuadorian-American Chamber of Commerce is encouraging mediators' involvement in the convening stage. As a result, more cases are being mediated and ultimately settled. For example, in a debt case, the requested party failed to attend the first invitation. Under the usual practice, the probability was that such a party would have failed to attend the second invitation as well, and the impossibility of mediation would have been issued. However, the mediator personally called the party, portrayed the process as a safe space, built rapport, ensured neutrality and mediated initial issues among the parties. As a result, the reluctant party attended the mediation, and the case finally settled. In another case, the mediator worked with the parties to ensure that all the right participants were at the table. This allowed formal negotiations to begin. In these cases, the mediators' knowledge of the process, skills and experience to foresee what was needed proved useful to mediate the mediation.

Further steps are expected to be taken to encourage the convening stage and thus, ultimately, to promote the development of mediation in Ecuador. ■

1 Jeffrey Krivis, *The Five Stages of Mediation*, <http://www.mediate.com/articles/krivis.cfm>.

2 Dwight Golann and Jay Folberg, *Mediation: The Roles of Advocate and Neutral*, page 146 (2006).

3 Diana Mercer, *The 6 Steps to Convening Mediations*, <http://www.mediate.com/articles/merc3.cfm>.

4 "When we think of generating business our minds naturally turn toward external marketing...we sometimes forget that our most valuable marketing contact—the client who actually telephones our office—is our most viable marketing prospect." *Id.*

THE POSITIVE IMPACT OF THE EU DIRECTIVE 2008/52/EC

By Paola Cecchi Dimeglio (Class 2011)

Europe is currently in a difficult place economically, but in the mediation field, progress is being made. Consider the Mediation Directive—Directive 2008/52/EC “on certain aspects of mediation in civil and commercial matters”—drafted by the European Parliament and the Council, dated May 21, 2008. This Directive aims to encourage and facilitate mediation as an alternative tool for resolving cross-border disputes in the European Union (EU), with the exception of Denmark. The Directive promotes “the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.” Member States of the EU were obliged to comply with the Mediation Directive by May 21, 2011, except for Article 10, dealing with “[i]nformation on competent courts and authorities,” which required compliance as of November 21, 2010.

Today, we can observe that the timing of implementation to comply with the Directive has differed widely among member states. The majority of member states has reported completing the implementation process on time, some states are a little behind in implementation and some others are actually ahead of the Directive’s requirements. For example, France and Luxembourg did not complete implementation by the Directive’s required date, although they are now in compliance. The Czech Republic has still not reported compliance with the Directive; however, the Lower Chamber of the Czech Parliament recently approved a proposal to comply with the mediation act. The proposal is now being discussed in the Senate and, if successful, should become effective as of June 1, 2012.

The scope of application of the Directive also varies among member states. For instance, Belgium, France, Germany, Greece, Italy, Portugal and Slovenia apply the principles of the Mediation Directive to both cross-border and domestic disputes. While in England and Wales, the Ministry of Justice has stated that the Directive will apply only to cross-border disputes.

Finally, member states use different incentives to promote the use of mediation. Some use financial incentives or sanctions, whereas others have made mediation compulsory. In Bulgaria, parties will receive a refund of 50% of the fee paid for filing the dispute in court, and Romania offers full reimbursement of the court fee if the parties settle a pending legal dispute through mediation. In Italy, disputes cannot be filed in court until the parties have first attempted to resolve the issues through mediation. Regardless of the strategy used, the goal is to secure better access to justice, a key objective of the policy overall. Mediation is a tool that can

bring about a cost-effective and quick extrajudicial resolution of disputes through processes tailored to the needs of the parties.

At this point in time, it is clear that the Mediation Directive has significantly increased awareness and understanding of mediation within European society. Europe has come a long way but is just beginning to realize the potential of alternative dispute resolution mechanisms, especially mediation. Much remains to be accomplished in the field, such as the establishment of common standards for the profession of mediator, the design of quality professional training and an accreditation process that can be utilized across the EU. For the moment, we can observe the positive impact of mediation, which has proven to be more effective and advantageous than resorting to the courts in the EU. ■



THE NETHERLANDS: A NEW SECURITIES SETTLEMENTS HUB?

By Peter Kamminga (Class 2011)

Non-U.S. investors who want to settle claims related to securities fraud have a new forum for obtaining approval of their settlements: the Court of Amsterdam.

In November 2010, a class of European and other non-U.S. investors settled claims in two securities class action suits for a total of 58.4M USD combined. The plaintiffs (all non-U.S. residents) were shareholders of Converium/SCOR who purchased Converium Holding AG common stock on the Swiss Stock Exchange (SWX) and other stock exchanges located outside the United States between January 7, 2002, and September 2, 2004. The shareholders sought damages from Zurich Financial Services, Ltd., for providing misleading financial advice related to the loss of value in Converium stock during the period of 2002 to 2004. On January 17, 2012, a little over a year after a settlement agreement was signed by both parties, the Amsterdam Court of Appeals gave final approval to the settlement, confirming its earlier provisional judgment on jurisdiction.

The news got quite some coverage among insurers and securities class action lawyers around the world, especially in the U.S. For the Dutch, this did not come as a complete surprise, as the court approved a similar settlement agreement related to Shell Oil in April 2007. What makes this case different is that, unlike in the case of Shell (a half-Dutch company), the Dutch interests in Converium were almost nonexistent. None of the potentially liable parties was domiciled in the Netherlands, and only a small number of the shareholders were.

What does this mean? And will this lead to a settlement boom in the Netherlands? This approval may have significant outcomes: It shows that the Dutch Collective Settlement Act of 2005 (WCAM) is available to parties not based in the Netherlands and that WCAM is considered binding even when the wrongdoing took place elsewhere in the world. The Netherlands is the only European jurisdiction offering the option to declare a settlement binding on an “opt-out” basis. By providing non-U.S. investors a forum in which they may settle claims about shares purchased at non-U.S. exchanges, the Amsterdam Court is an interesting option as a pragmatic and investor-friendly forum.

Some experts say this could lead to two settlement circuits: one in the U.S., where a jury may award high damages to plaintiffs,

and a second in the Netherlands, where a judge may approve (declare binding) a settlement agreement for the whole class. It seems efficient and could result in multinationals trying to settle their cases in Amsterdam instead of the U.S.

The decision of the U.S. Supreme Court in *Morrison v. National Australia Bank* in 2010 underscores the ruling of the Amsterdam Court. In *Morrison*, the Supreme Court restricted the rights of investors within the U.S. and around the world to bring claims under U.S. federal securities laws for shares not purchased on a U.S. exchange. This makes U.S. courts a less desirable option for certain investors.

One issue that could make multinationals hesitant about moving settlements to the Netherlands is the question of the preclusive effect of the settlements being declared binding: Can the parties be confident that the WCAM settlement will be binding everywhere outside of the Netherlands? The finality of judgment is important to ensure that those that did not opt out of the settlement cannot pursue further individual proceedings. Those that consider moving settlements to the Netherlands must ensure that interested parties residing outside of the Netherlands are informed that the choice of forum clause binds them to the WCAM settlement. ■

RECENT MEDIATION DEVELOPMENTS IN UKRAINE

By Galyna Yeromenko (Class 2011)

I would like to welcome everyone and thank the JAMS Foundation for the opportunity to be part of the JAMS community. As the director of the Ukrainian Mediation Center (UMC) at Kyiv-Mohyla Business School, I am gratified to be able to share some information about recent mediation developments in Ukraine.

In 2010, the Ukrainian Mediation Center was selected as a finalist by CEDR (U.K.) for its 20th Anniversary Awards for Excellence in the category of Best Communication 2010. You can view our film with English subtitles at <http://ukrmediation.com.ua/en/>.

Also in 2010, the coalition “For the Development of Mediation” in Ukraine was established. Experience from other countries has shown that mediators often begin to compete in markets that have not yet been created, and that this competition interferes with the development of mediation as a service. The coalition’s goal is to develop market services and adherence to quality. Accordingly, mediation standards and a code of ethics are in the process of being developed. Those who acknowledge the standards and the code, and undertake to act in accordance with them, may become members of the coalition. It is possible that this coalition may become a broad movement, demonstrating that mediation is not a future phenomenon but presently exists in Ukraine with many influential supporters. To that end, in September 2012, we are planning to conduct an International Conference titled “Modern Practice of Mediation: Types, Techniques, Approaches.”



The Ministry of Foreign Affairs in Kiev, Ukraine

In 2011, CEDR (U.K.) created an international alumni network, and trainers of the UMC became members of this international network. UMC has broad international activity, and our trainers have conducted trainings for mediators in Kazakhstan, Belarus, Moldova and Tajikistan.

In autumn 2011, the draft law “On Mediation” was considered by parliament but was rejected. A new version of the bill was submit-

ted and registered in the Verkhovna Rada of Ukraine on April 5, 2012. This bill has a framework character and was supported by public authorities, including the Ministry of Justice. I am one of the co-authors. An alternative version of the bill was submitted and registered in the Verkhovna Rada of Ukraine on April 12, 2012, which has created a kind of competition between the two drafts before parliament.

One recent trend in mediation developments suggests that an increasing number of trainers are providing courses for basic mediation skills. Generally, such trainers are lawyers. Furthermore, many presentations are being provided to lawyers to help overcome their resistance to mediation, as well as to convince them that mediation and legal services are not in competition but are complementary.

In addition, groups of volunteers have also been created for the further development of Ukrainian mediation practices. Pilot mediation projects have been organized and conducted with state authorities on children's affairs and protection of consumers, as well as with one of the leading insurance companies of Ukraine, provided by the Ukrainian Mediation Center.

In April 2012, the Commission for Mediation was established by the International Chamber of Commerce (ICC Ukraine). I was appointed as the Head of the Commission on Mediation and the Advisor to the President of the ICC (Ukraine).

Find us at <http://ukrmediation.com.ua>. ■

THE CURRENT STATUS OF MEDIATION IN RUSSIA¹

By Dr. Tsisana Shamlikashvili (Class 2009)

This Briefing Note presents an overview and analysis of the current status of mediation in Russia, and shows the extent to which Russian legislation in the area of alternative dispute resolution (ADR) and mediation corresponds to Directive 2008/52/EC of the European Parliament and of the Council of May 21, 2008 on certain aspects of mediation in civil and commercial matters (hereinafter referred to as **the EU Directive**).²

Over the past few decades, mediation has developed apace, increasingly being seen by the international community as a universal supra-judicial option for dispute resolution as required by the challenges of the modern world, which present us with the difficult task of striking a balance between globalization, which implacably interferes in the lives of both national communities and individuals, and the natural human striving for satisfaction of personal interests and needs.

After a long process of evolution, mediation gradually took shape as a way of overcoming conflicts, differences, and disputes, empowering the parties themselves and enabling them to satisfy their goals that are under threat, but not—and this is one of the most important aspects of mediation—at the expense and to the detriment of the opponent, but giving him an equal opportunity to exercise his own rights and interests. Below, mediation is defined as a method of dispute resolution that enables settlements to be reached on the basis of consent between the parties.

Mediation is the path to a well-considered, mutually acceptable solution based on consensus between the parties involved in a dispute. Mediation constitutes participation by an impartial person—the mediator—in the procedure of dispute settlement. Mediation is a special form of intermediating. As a neutral third party, the mediator has the task of assisting the parties voluntarily participating in the mediation procedure to help them arrive at

a mutually acceptable and viable solution that reflects their interests and requirements. This solution has to be one that will ensure the mutual satisfaction of the conflicting parties. Successful mediation ensures that, as a result, there are no winners or losers; rather it is a win-win situation for all parties concerned.

The mediation process has been developing in Russia since 2004-2005. The ongoing changes in Russian society since the early 1990s required drastic reforms also in the area of law, because the legal system and the public's legal awareness for a long time continued to be affected by the stereotypes shaped during the Soviet period. One factor here was the lack of legal knowledge, the lack of ability and will to use the judicial system as a tool for protecting one's rights. Aside from legal ignorance, a significant role was played by people's distrust of the government and its institutions, together with a lack of faith in their own potential in terms of social influence, as had been typical during communist party rule.

Over the last 20 years, Russia has achieved a breakthrough in creating legal institutions to meet the needs and requirements of the developing market economy. As participants in the market economy, Russian people began applying for judicial protection more and more frequently. By the early 2000s, the overloading of the court system had become a very acute problem. One of the consequences of this was the problem of ensuring the quality of justice. Russia's leaders proclaimed creating the basis of a law-ruled state and promoting institutes of the civil society to be one of their priorities.

Among the measures aimed at achieving this goal was the progressive introduction of mediation in Russia.

This process soon attracted many supporters among public organizations and the legal profession. Mediation is considered a humanistic and at the same time pragmatic approach to settling

disputes, enabling the state to delegate some of its powers to ordinary citizens and simultaneously promoting in society a readiness and ability to accept these powers and to assume responsibility for making their own decisions.

Thus, mediation became recognized not only as a legal institution, but also an important social institution. This has been confirmed by the efforts and the support that the authorities have shown over the past few years in the course of creating conditions for the successful introduction of mediation into Russian legal culture as well as social life in general.

The shaping of the legal basis and institutionalization of mediation are undoubtedly one of the major steps for promoting the further expansion of mediation in Russia. On the initiative of Russian President Dmitri Medvedev, drafts of a *Federal Law on Alternative Dispute Resolution Procedures Involving an Intermediary (Mediation)* and a *Federal Law on Amendments to Certain Legislative Acts of the Russian Federation Following Adoption of the Federal Law on Alternative Dispute Resolution* were presented to the State Duma for consideration.

Both drafts were adopted by the Duma — the Russian Federation parliament — and signed into law by the President of the Russian Federation. Since January 1, 2011 they have been in force as the *Federal Law on Alternative Dispute Resolution Procedure Involving a Mediator (Mediation Procedure)* (No. 193-FZ of July 27, 2010, hereinafter referred to as **the Law on Mediation**)³ and the *Federal Law on Amendments to Certain Legislative Acts of the Russian Federation Following Adoption of the Federal Law on Alternative Dispute Resolution Procedure Involving a Mediator (Mediation Procedure)*⁴ (No. 194-FZ of July 27, 2010, hereinafter referred to as **the Law on Amendments**).

The adoption of the Law on Mediation was a milestone not only in terms of improving the Russian legal system but also the overall development of Russian society. On one hand, adoption of this law is real evidence of the transition from repressive orientation to humanization of the Russian justice system. On the other hand, the Law on Mediation is a signal from the government to the people, evidencing its trust in them and encouraging them to show more social activity. In this respect, the role played by the utilization and promotion of mediation in the EU countries, where mediation started to be actively employed in the late 1980s to early 1990s, as well as by the EU Directive should be stressed also.

The EU Directive significantly affected the creation of a legal basis for mediation in Russia. In fact, the wording of that document served as one of the main guidelines for drafting the Law on Mediation.

The Russian Law on Mediation established a facilitative model of mediation. Pursuant to this law, the mediator is not only prohibited to hand down any decisions; he cannot even suggest any options for conflict settlement or act as legal consultant to the parties. That means that the parties maintain full control not

only over the content of the settlement but also over the process of seeking settlement options and preparing agreements on the resolution of their dispute.

During the last six years, immense efforts have been made in terms of education, including introductory courses and lectures for the legal profession, managers, psychologists, and other professionals, and the organization of regional and international events aimed at popularizing mediation and promoting the pooling of experience between mediation specialists. Contemporary Russian society, however, is still not sufficiently familiar with this new institution.

With a view to successfully introducing mediation and providing high-quality mediation services (which is extremely important, especially in the initial stage of development of a new institution, when unprofessional action may have a negative impact on its image among the public), the government, public institutions, and the legal community in Russia continue to make joint efforts to shape an informed demand for mediation and offer a competent supply to meet that demand. These efforts include addressing the business community as well as other professional and social groups. In line with this, active efforts are being made to introduce mediation into the school education system in order to promote the culture of constructive conflict-related behavior starting at school age.

The professional community of Russian mediators is growing. Following a procedure established by the Russian Government, a program of mediator training, including regular continuing education, has been established.

As prescribed by the Law on Mediation, professional mediators may set up self-regulated associations (SRO). This will create the prerequisites for shaping a unified and coordinated policy for further development of this new institution. At the same time, it will provide a mechanism for regulating mediation activities and providing quality control of the mediation services provided, at the same time avoiding over-involvement by the government. To this end, the Russian Organization of Mediators, a nonprofit partnership, was established to serve as the basis for creating a mechanism for the self-regulation of mediation activities in Russia.

In addition to considering issues related to the integration of mediation in Russia, this Briefing Note also includes recommendations as to how this process can be developed in a successful and effective manner, and in which areas combined efforts at the international level in general and with the European Union in particular would be beneficial. ■

1 Excerpted from a report titled *Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs*.

2 http://www.mediacia.com/files/Documents/Directive_2008_en.pdf.

3 http://www.mediacia.com/files/Documents/Law_eng1%20Simple.pdf; <http://www.mediacia.com/files/Documents/zakon%201.pdf>.

4 <http://www.mediacia.com/files/Documents/zakon%202.pdf>.