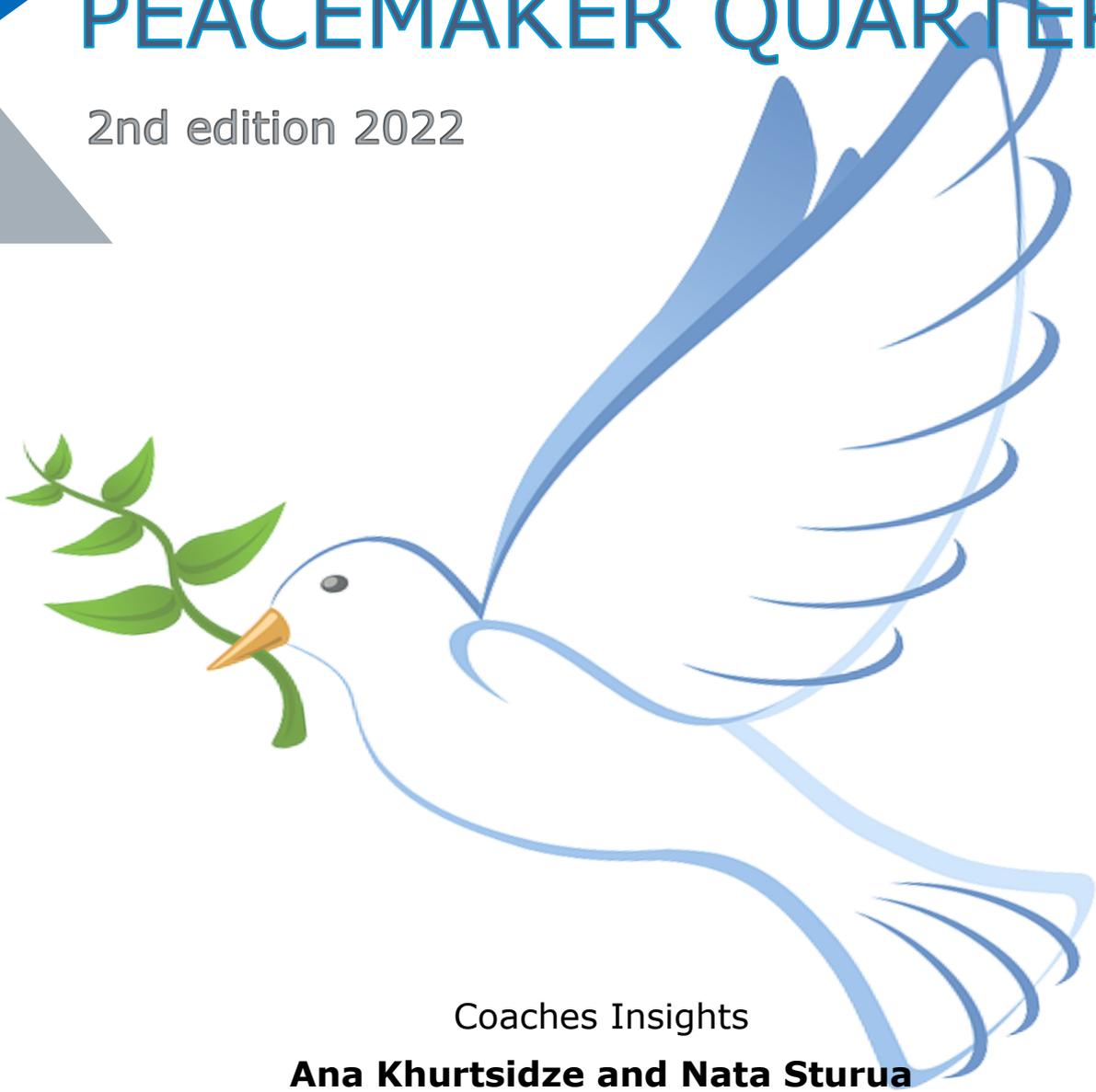


INADR

PEACEMAKER QUARTERLY

2nd edition 2022



Coaches Insights

Ana Khurtsidze and Nata Sturua

"The experience students gain at tournaments is very valuable because through hands-on experience, they become deeply engaged in the techniques of mediation."

Women Mediators:
The Importance of
Different Voices

Mary Lou Bryant Frank, Ph.D.

"... "ethic of care" has been shown to provide significant value in mediation... that "voice" is one that is much needed today."

Compulsory Mediation in
England and Wales:
A Sea Change?

Professor Derek P. Auchie

"... a new seriousness in England and Wales toward the question of compulsory mediation."

Highlights of 2022



Dennis Favaro receiving a Plaque to commemorate his term as the President of INADR

From left to right: Keith Davidson, Fred Lane, Dennis Favaro, Richard M. Calkins, John Lag

CYKLIKZNE
22 WRZEŚNIA, 10.00
POZNAŃ



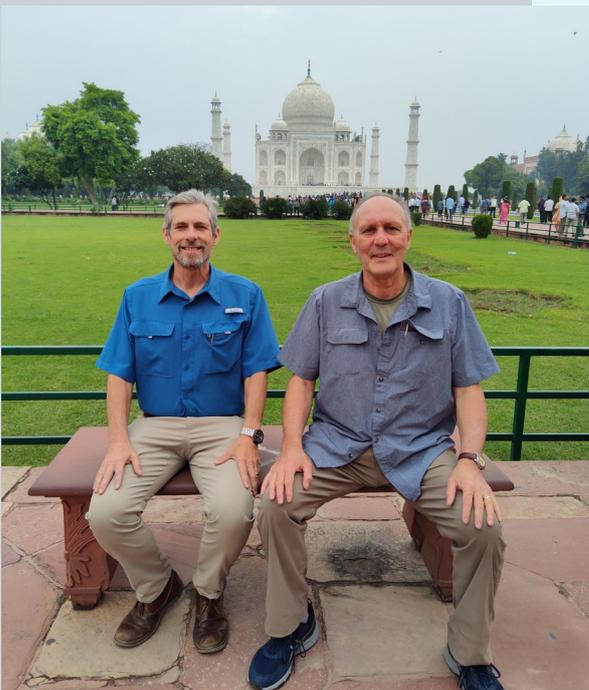
Tomasz P. Antoszek during the INADR-SWPS University International Mediation Tournament in Poznań, Poland



Mary Lou Bryant Frank receiving the PEMA Speaking Award

PEMA, the Peace Mindset Ambassadors organisation, is an international peacebuilding organization working on strengthening, advocating and maintaining peace in the minds and hearts of young people as well as elders and leaders in our society.

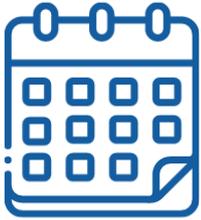
From left to right: Mary Lou Bryant Frank, Ken Frank



Dennis Favaro and John Lag during the 11th NLIU-INADR International Mediation Tournament in Bhopal, India

March 8-11, 2023

BOLOGNA, ITALY



START 9:00AM CET

FIRST DAY DEDICATED TO
MEDIATION TRAININGS
WITH EXPERTS FROM ALL
OVER THE WORLD IN A
UNIQUE HISTORICAL
LOCATION

INADR

International
Law School
Mediation
Tournament

8-11 March 2023 | Bologna, Italy



APPLY NOW, LIMITED SPOTS AVAILABLE

REQUIREMENTS

Check out our [Rules](#) and see if you can join us. In case of any doubt, email us.

APPLICATION

- film a Tik Tok connected with the mediation
- fill in the form with your details and that's it

Our team will review your application and get back to you

Deadline to apply: December 15th, 2022

FEE*

One team may register per school. If additional space is available we may allow a second team.
680\$ per team (3 participants and a coach)
200\$ individual fee.

*The fee includes the participation to the tournament, trainings, prizes, trophies, social events, coffee breaks, awards ceremony. INADR is a non for profit based in Illinois, Chicago, USA.

The 21st edition of the International Law School Mediation Tournament is back on site for participants to gain a memorable experience in the beautiful Italian setting of the city of Bologna.



ALMA MATER STUDIORUM
UNIVERSITÀ DI BOLOGNA
DEPARTMENT OF LEGAL STUDIES

APPLICATION FORM

www.inadr.org

More information: inadrconnect@gmail.com

**Mary Lou Bryant Frank,
Ph.D.**

Women Mediators: The Importance of Different Voices

The landscape of the field of gender and mediation is complex. Since most mediators at all levels continue to be men, the scope of this brief review focuses on the unique contributions women can make in mediation. The objective of this discussion is to provide a perspective on the current research about women in mediation. In a world struggling to find peace, every voice that can help bring healing to conflict is vital. Women have an important contribution.

On October 31, 2000, the United Nations Security Council unanimously adopted *Resolution 1325* on women, peace, and security. This resolution addressed not only the impact war had on women, but the value of women as peacemakers and peacekeepers. Since that time, much has happened; however, women's roles and participation in mediation have not significantly changed.

Stereotypes still exist. In many studies (Stuhlmacher & Morrisset, 2008) male mediators were perceived more favorably than females. Women who have sought to be more assertive as mediators also do not fair well. However, the discrimination they face is due to stereotypes and not abilities. "Stereotyping functions as a safety and convenience mechanism. It allows us to make judgements about people, provides a basis from which to engage (or not engage) the other person, and gives us a false sense of knowing others." (Bhalla, 2019, p 64). While gender seldom impacts the substance of mediation, gender stereotypes can negatively impact the process and attitudes of those involved. Getting past those stereotypes is often difficult for participants in mediation as well as mediators themselves. Syukur & Bagshaw (2020) indicated that the impact of these biases should also be addressed in training mediators. Once stereotyping behavior is accounted for and addressed, perceptions



also change, and males and females are perceived more equitably.

Numerous studies detail the contributions women mediators bring to mediation. Some of the studies (Zhang, Bollen, Peng, & Euwema, 2022) focus on the ability of women as bridgebuilders in how they can acknowledge the emotional elements of a mediation. Their study found personality characteristics of openness, multipartiality, emotional support, and agreeableness were all important variables that were higher for women. These also were associated with positive peacemaking behaviors.

Several key factors associated with gender also impact the mediation process. Ta Johnson, Keels, and Bayram (2022)'s research found that women as mediators tend to seek more equitable and symmetrical solutions. Equity is especially important when there is a power imbalance due to perceived or real differences. Individuals from marginalized groups value women mediators who are equitable and fairer in listening to both sides (Turner, 2020). Klein (2012), in seeking to understand the research on gender from the perspective of a judicial mediator, found that in reaching agreement in mediation, women were better able to work with individuals from different political perspectives. Women were able to bring a more lasting peace and treat people with more equality. Uniquely, women were seen as bringing a desire for impartiality and collaboration, enabling them to better work with diverse groups and positions.

Interpersonal skills also impact mediation and its outcomes. In a similar vein, Turner (2020) found women's interpersonal skills

were more facilitative of mediation. In Turner's study (2020), women have more abilities in empathy as well as being impartial and inclusive. These skills were seen as critical to success in mediation. Maxwell (1992) showed that while men were more effective in reaching initial agreements, women were more effective in binding settlements. Women's skills in building relationships seemed to impact not only mediation, but also the lasting nature of the agreement.

In the realm of international mediation, women as mediators still struggle to have a place at the table. From 1992 to 2019, seventy percent of the international peace activities had no women in any major role of the process. The reason for the exclusion has been that the belief that those who create war have the skills to make peace happen. However, women's unique abilities to facilitate relationships, create an equitable process, and broker lasting agreements would seem to be suited to the peace table. The United Nations agrees and has supported women's involvement in the peace progress in its statements and through its programs for over twenty years (Fritz, 2020).

References

Bhalla, M.A. (2019-2020). Gender Identity & Text-Based, Online Mediation, *McGill Journal of Dispute Resolution* 78 (3), 56-61. <https://canlii.ca/t/t2xr>.

Burrell, N. A., Donohue, W. A., & Allen, M. (1988). Gender-based perceptual biases in mediation. *Communication Research*, 15(4), 447-469. <https://doi.org/10.1177/009365088015004006>

Fritz, J. M. (2020). Increasing the number of women mediators in peacemaking initiatives. *International Journal for Crime, Justice, and Social Democracy*, 9 (1), 68-79.

Gilligan, C. (2016). In a different voice: Psychological theory and women's development. Harvard University Press.

Klein, K. K. (2005) "A Judicial Mediator's Perspective: The Impact of Gender on Dispute Resolution: Mediation as a Different Voice," *North Dakota Law Review*: Vol. 81(4), 771-793.

Klein, R.S. (2012). The Role of Women In Mediation And Conflict Resolution: Lessons For UN Security Council Resolution 1325, *Washington & Lee Journal of Civil Rights and Social Justice*, 18(2) 277. 277-313. <https://Scholarlycommons.Law.Wlu.Edu/Crsj/Vol18/Iss2/7>

Dr. Mary Lou Frank recently gave a keynote address on gender and wrote the foreword to an international book on women, *Gender equality: Issues and Challenges*, due out next year. As a psychologist and mediator, she brings research about gender to the field of mediation.

As it was envisioned, the potential for mediation to transform conflicts at the community and global levels is significant. In our homes, our cities, our countries, and our world, we are faced with struggles and battles that call for peaceful solutions. Gilligan (2016) called women's ways of dealing with conflicts, bringing an "ethic of care" focused on relationships vs. the "rights" based, individualistic approach used by men. Gilligan (2016) said that women brought a "different voice." That "ethic of care" has been shown to provide significant value in mediation. In many ways, it would seem that "voice" is one that is much needed today.

Maxwell, D. (1992). Gender differences in mediation style and their impact on mediator effectiveness. *Mediation Quarterly*, 9 (4), 353-364.

Stuhlmacher, A.F. and Morrisett, M.G. (2008), "Men and women as mediators: disputant perceptions", *International Journal of Conflict Management*, Vol. 19 No. 3, pp. 249-261. <https://doi.org/10.1108/10444060810875804>

Syukur, F.A. & Bagshaw, D. (2019 ,February 17). Gender, power, and court-annexed mediation in Indonesia. *Conflict Resolution Quarterly*, .12-1 ,2020

Ta-Johnson, V.P., Keels, E., & Bayram, A. B. (2022) How Women Promote Peace: Gender Composition, Duration, and Frames in Conflict Resolution, *International Interactions*, DOI: 10.1080/03050629.2022.2106480

Turner, C. (2020) 'Soft ways of doing hard things': women mediators and the question of gender in mediation, *Peacebuilding*, 8:4, 383-401, DOI: 10.1080/21647259.2019.1664369

Zhang, X, Bollen, K., Peng, K., & Euwema, M.C., (2021). Natural-born peacemakers? Big five personality traits, gender, and interpersonal peacemaking. *International Journal of Conflict Management*, 33 (5), 933-955. <https://doi.org/10.1108/IJCM-07-2021-0119>



Professor Derek P. Auchie
Chair in Dispute Process Law,
University of Aberdeen, Scotland, U.K.
Tribunal judge, arbitrator and
mediator

Compulsory Mediation in England and Wales: A Sea Change?

The idea of compulsory mediation has attracted some serious attention in England and Wales recently, leading to indication of a significant change in attitude and direction, as evidenced by two recently published papers.

The CJC Report

This change started with a report by the Civil Justice Council 'Compulsory ADR', published in June 2021 ('the CJC report')[1]. This study considered two questions:

1. Can the parties to a civil dispute be compelled to participate in an ADR process? (The "legality" question); and
2. If the answer is yes, how, in what circumstances, in what kind of case and at what stage should such a requirement be imposed? (The "desirability" question).

On the first question, the Court of Appeal had ruled in a 2004 appeal, *Halsey v Milton Keynes General NHS Trust*[2] that parties can be encouraged to mediate even in the strongest terms, but they could not be forced to do so. This view was expressed in the context of a system that allowed (and still allows) a winning party in a civil action to be 'punished' by being disallowed its costs (in whole or in part) where that party has unreasonably refused an offer of mediation from the other party. This financial penalty has, since 2004, been seen as the strongest encouragement to mediate that the courts could employ.

The CJC report authors conduct a detailed review of the English authorities since the *Halsey* case, as well as some from European countries, and conclude that the arguments employed in *Halsey* against the right to compel mediation were wrong. In doing so, the report relies on a speech delivered by a senior judge, Mr Justice Lightman, who stated:

An order for mediation does not interfere with the right to a trial: at most it merely imposes a short delay to afford an opportunity for settlement and indeed the order for mediation may not even do that, for [it] may require or allow the parties to proceed with preparation for trial...the Court of Appeal [in *Halsey*] appears to have been unaware that the practice of ordering parties to proceed to mediation regardless of their wishes is prevalent elsewhere throughout the Commonwealth, the USA and the world at large, and indeed at home in matrimonial property disputes in the Family Division.[3]

The report then considers whether (as suggested in *Halsey*) compulsory mediation would breach Article 6 of the European Convention on Human Rights (ECHR). This treaty was incorporated into domestic UK law by the Human Rights Act 1998. Article 6 of the ECHR refers to the right to a fair trial. The CJC report concludes that compulsory mediation in itself does not breach article 6, not least since compulsory mediation is available in other ECHR signatory

states, without successful challenge. The possibility of a compulsory mediation system (especially one that forces settlement, or unduly restricts access back into court) breaching Article 6 of the ECHR was, however, left open. In addition, a mediation process that is disproportionately expensive or that takes an excessively long time might breach the right to a fair trial under ECHR Article 6.

The CJC report proceeds to set out forms of compulsory ADR that are already in place, suggesting that compulsory mediation would not, in this sense, introduce something completely new.

The report authors consider compulsory ADR processes in other jurisdictions namely in: Italy, Ontario, Australia and Greece, all of which appear to work well.

The question of sanction is considered. Some senior judges argue that while parties can be compelled to participate in ADR processes (including mediation), the presence of a sanction for not doing so could lead to a breach of the right to a fair trial under Article 6 ECHR. However, the report authors reject that approach, pointing out that parties are already sanctioned within the litigation process for not complying with orders of the court, such as for the production of documents.

The authors explain that the requirement to undertake an ADR process as a precondition for continuing with (or starting) litigation is easier to justify than an order of the court in a specific case, since in the former situation, the attempted ADR process is simply part of the wider process for pursuing a claim in court. In other words, rather than punishing a party for failing to comply with an order, the parties must comply with a process as a pre-condition to proceeding.

Where a non-compliance sanction is in place, the authors support a 'striking out' of the claim/defence sanction (as opposed to, for example, a costs one), on the basis that this is an effective remedy. The possibility of an application to cancel a strike out, where good reason for non-compliance exists, will protect against the disproportionate impact of such an order.

Some of the arguments against compulsory mediation are challenged in the report.

For example, the erosion of the constitutional right to litigate by the diversion of too many cases away from the courts. This objection is easily dispatched: as long as the parties are not forced to agree and they can readily access the courts if the ADR process does not work, the constitutional prowess of litigation remains unaffected.

Also, the evidence of a lower settlement rate for cases where parties are compelled to mediate is considered: the conclusion of the authors is that the evidence to support this trend is not strong.

In considering the desirability question, the report sets out (and discusses) the main factors, expressed as questions:

Is the form of ADR proposed or required too burdensome or disproportionate in terms of cost or time?

Are particular specialist jurisdictions better suited to compulsion than general litigation?

Is there sufficient confidence in the neutral person, the ADR provider?

Do the parties taking part in the ADR have access to legal advice?

At what stage should ADR be required?

How do we cope with perfunctory performance?

It strikes me that these questions are ones that could be posed at the 'desirability' stage when considering compulsory ADR processes (especially mediation) within any jurisdiction. These considerations are global in nature.

The Ministry of Justice consultation

This was launched in July 2022 and closed in early October 2022. The consultation is split into two parts.

The first part explores the possible conversion of the current **optional** court-run mediation service for small claims (claims for under £10000) into a **compulsory** one, with the power to exempt some cases and with sanctions for non-compliance (including striking out a claim/defence).

The second part seeks views on the possible need for government action to strengthen the civil mediation sector, for example through accreditation, or even regulation. This issue is to be seen in the context of a possible expansion of compulsory mediation beyond small claims. In my view, the current unregulated mediation training and accreditation system cannot survive if mediation is to become compulsory – no one would suggest that the system of appointment, training and monitoring of judges should be anything other than robust. When members of the public are compelled to use a service, there needs to be a guarantee of high quality.

This consultation draws upon (among other sources) the CJC report.

Conclusion

These developments indicate a new seriousness in England and Wales toward the question of compulsory mediation. There is a clear drive to implement it, and to change the narrative, which, until recently, was that mediation cannot be forced, it can only be encouraged.

As I have argued in an earlier INADR Peacemaker article, litigation (and the steps within it) are forced, so forcing something different (mediation as a precondition to litigation access) is no different in principle. As long as parties are not forced or pressured into agreeing to a resolution during mediation and as long as they can readily revert to litigation where a serious attempt to mediate fails, we have no need to worry about the constitutional right to have claims adjudicated.

I can see further developments in this area happening in 2023. Watch this space.

References

[1] <https://www.judiciary.uk/wp-content/uploads/2021/07/Civil-Justice-Council-Compulsory-ADR-report.pdf>.

[2] (2004) EWCA Civ 576.

[3] *Mediation: An Approximation to Justice*, Mr Justice Lightman, 28 June 2007, at [8], cited at para 41, page 18 of the CJC Report.



INADR

Want to see more?

Visit www.inadr.org/peacemaker-quarterly/ and stay up to date on our past and upcoming Peacemaker Quarterly editions.

Ana Khurtsidze and Nata Sturua

COACHES INSIGHTS



Ana Khurtsidze, Tamar Kurdadze, Papupa Papuashvili, Sophio Kharazishvili, Nata Sturua
INADR-SWPS University International Mediation Tournament in Poznań, Poland, 2022

Ana Khurtsidze and Nata Sturua are certified mediators and members of the International Academy of Dispute Resolution (INADR). They also coach INADR teams for the University of Georgia in Tbilisi, Georgia, where Ana is dean of the law school. In 2013, they founded the University of Georgia Mediation Clinic at the law school. Ana and Nata have provided the following insights on best practices in mediation and INADR tournament coaching.

Q. How did the University of Georgia mediation society first get involved in the International Academy of Dispute Resolution (INADR) tournaments?

A. When the University of Georgia opened its mediation clinic a decade ago, students were

instructed on how to develop problem-solving and conflict-resolution skills, examine circumstances in which mediation might be appropriate, and explore the role of the lawyer in mediation - either as a mediator or as counsel to a client or potential client seeking mediation services.

The University of Georgia then began to participate at international competitions in 2015. More recently, In 2019, UG Law School participated in its first INADR law school tournament held in Athens, Greece, and received 2nd place for Best Advocate-Client team. Later that year, in a tournament in Poland, UG Law School won 1st place for Best Advocate-Client Team. In 2022, the team won Best Mediator Award in the INADR Poland tournament.



Mariam Pirtskhalaisvhili, Enri Abuladze, Mari Sharadze, Ana Khurtsidze

The 2020 INADR 19th Annual International Mediation Tournament, Chicago, USA



Mari Sharadze, Irakli Bitskinashvili,
Mari Pirtskalaishvili, Enri Abuladze
**Mediate19, International Mediation Competi-
tion, Bialystok, Poland, 2019**

Q. How and when did you become a coach for your university mediation team?

A. In addition to running our mediation clinic, our dispute resolution practice provides mediation services for complex commercial cases. We are an active member of multiple organizations that support and promote dispute resolution alternatives and coach the university mediation team in competitions. We also have coached and taught mediation and negotiation skills to groups through the Alternative Dispute Resolution East European (ADREE) center and UG Law School mediation clinic.

Q. What encourages you to be a team Coach?

A. We believe that mediation is the right way to resolve disputes. The experience students gain at tournaments is very valuable because through hands-on experience, they become deeply engaged in the techniques of mediation. Students represent the next generation of business people and lawyers, and through

this experience, they will bring the knowledge of mediation and its benefits to their careers.

Q. What can students expect from participating in an INADR tournament?

A. INADR tournaments draw students from many regions and provide a multi-cultural environment. Students can expect a more challenging and competitive environment. An INADR event is a well-organized learning and sharing event, and everyone leaves with a significant improvement in their skill levels, despite very different training and experience levels. No matter how you score, the feedback to students is supportive and encourages more students to grow in their skills as well as apply for the next tournament.

Q. What is the team's preparation process and your role in it?

A. During the preparation time, students participate in multiple mediation simulations



Irakli Bitskinashvili, Tamar Kurdadze, Mariam Tsiklauri,
Tsira Chorgoliani
**INADR Virtual Tournament, Vilnius, Lithuania,
2020**

designed to enhance skills, demonstrate concepts, and provide opportunities for experimentation. Through readings and simulation exercises, students also address policy and ethical issues raised by mediation. Our main role is to show students the fundamental value of mediation.

Q. What advice and tips can you provide for other coaches, which can help them improve team preparation?

A. We believe that an INADR tournament is interest-based mediation that encourages teams to develop strategy. Value creation starts with taking time to explore options via brainstorming and non-judgmental evaluation. Tournaments gives students great opportunities to practice brainstorming and explore the benefits of mediation while keeping a scoresheet that identifies and values this behavior.

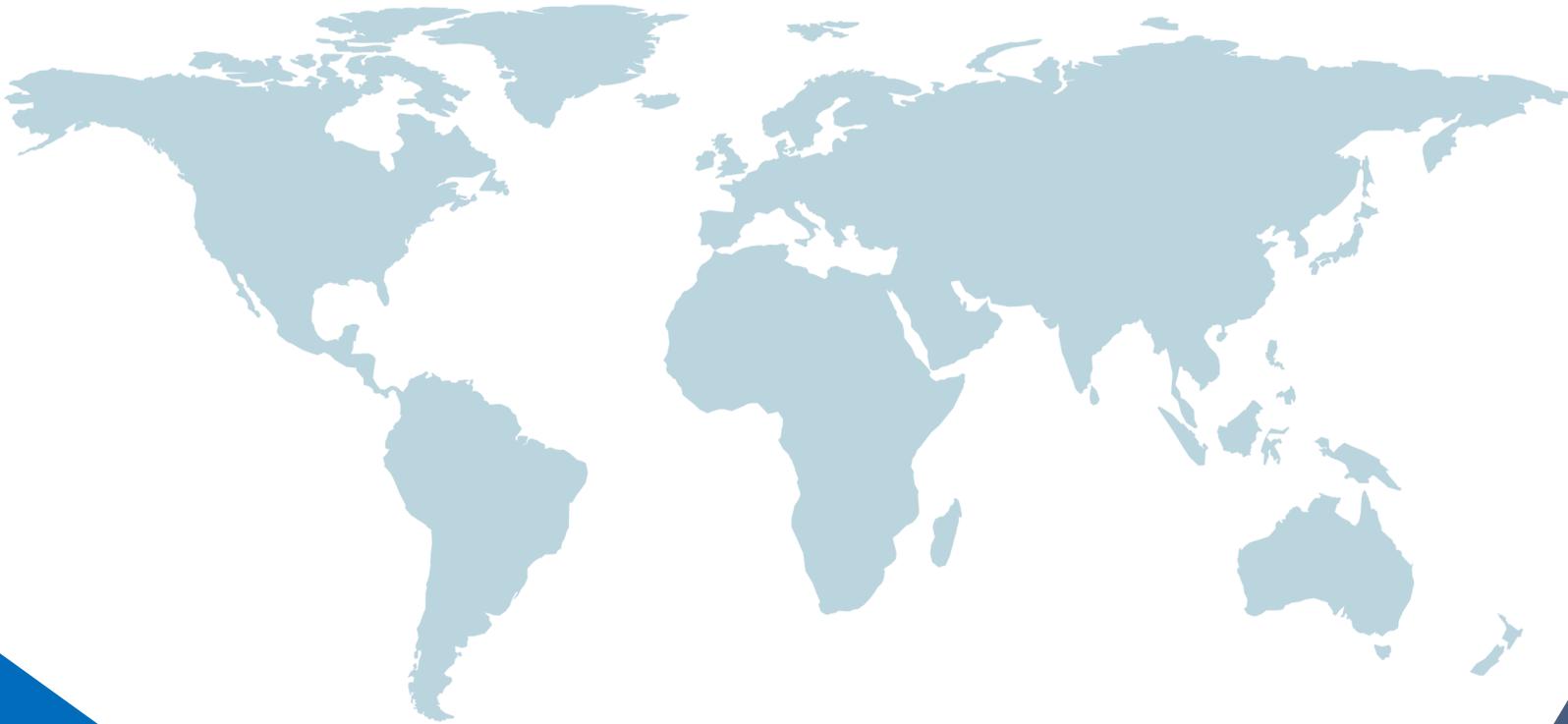
Q. What are the most difficult processes students need to learn to become good mediators?

A. What's most challenging for students is to listen and explore options and experiences

without judgement. This is why we love INADR. It helps students develop these skills through experience, which are important for meeting mediation challenges.



Lasha Lurstamanashvili, Ana Jiqia, Mariam Turmanidze
**The 2019 INADR Annual International Mediation
Tournament, Athens, Greece**



INADR OFFICERS



ELENA KOLTSAKI

President



KEN FRANK

President Elect



SUSAN SLOANE

Secretary



ANTHONY BALDASSANO

Treasurer



TERESA FRISBIE

Vice President USA



DEREK P. AUCHIE

V.P. Membership



AGNIESZKA GÓRA

Vice President
International



ANA KHURTSIDZE

Vice President of
Education International

PAST PRESIDENTS



RICHARD M. CALKINS



H. CASE ELLIS



FRED LANE



NANCY SCHULTZ



MARY LOU FRANK



DENNIS R. FAVARO

AT LARGE MEMBERS



JACEK CZAJA



AGNĖ TVARONAVIČIENĖ



JOHN LAG



S. JAI SIMPSON-JOSEPH

INADR PUBLICATION COMMITTEE



CYNTHIA HANSON



AGNIESZKA GORA



KEN FRANK



AGNĖ TVARONAVIČIENĖ



DEREK P. AUCHIE



JEANICE MCDADE



KATERYNA MANETSKA



FEDERICA SIMONELLI



LYDIA VATUTINA



ALINA LOI

INADR FELLOWS AND INTERNS



ELVIRA
BACCI



KATERYNA
MANETSKA



FEDERICA
SIMONELLI



LYDIA
VATUTINA

INADRPUBLICATIONS@GMAIL.COM