



International Mediation Institute

www.IMImediation.org

7-Year Anniversary Review

2007-2014

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The Origins of IMI

Vision without Action is a daydream; Action without Vision is a nightmare
Japanese Proverb

In 2006, leaders of four organisations, one in the US, one in Europe and two in Asia, discussed the longer term future of the dispute resolution field and what, if anything, they could do to improve its prospects. They represented the Netherlands Mediation Institute (NMI), the Singapore Mediation Centre (SMC), the Singapore International Arbitration Centre (SIAC) and the American Arbitration Association's International Centre for Dispute Resolution (AAA/ICDR).

The growth of international trade and investment had significantly enhanced the need for private dispute resolution services. Until the 1980s, this mainly meant arbitration. Modern arbitration tracks its origin to the 19th Century in Europe, then in the 20th Century, formalised with the US Federal Arbitration Act of 1925. AAA and the Chartered Institute of Arbitrators were established and arbitration gradually matured to international acceptability.

Since it was first seriously proposed as an “alternative” to litigation and arbitration at the Pound Conference in St Paul, Minnesota in April 1976, mediation had been growing in recognition and acceptance, particularly in North America but also in several other countries, including the Netherlands and Singapore. But, unlike arbitration, which had the benefit of user recognition and control in national statutes and international conventions, the growth of mediation has largely been fragmented and uncoordinated. Hundreds of mediation provider organisations have come into existence, there were virtually no effective legislative controls on the delivery of mediation, and anyone could practice as a mediator. In almost all jurisdictions, that remains the case to this day.

Why IMI?

The four organisations understood that with arbitration experiencing its international *Golden Age*, user concern had increased about the cost and time of arbitrating. However, not all disputants want a judge or arbitrator to decide right or wrong, and few had the satisfaction of "winning" as their prime objective; most desire a quick and acceptable outcome, enabling them to move on. This user drive to control their own outcomes, and reduce risk, through settlement negotiations is not always achievable. Often people were the problem. Assisted negotiation - with the help of a mediator - offers the opportunity of a mediator to reduce the adverse effect of tactical maneuvering and emotion - but it requires quality, experienced mediators as well as users who understand the value of mediation over traditional litigation and arbitration. Mediation is a very different process from arbitration and litigation, because it is not an application of law but a negotiation process, but there is great reluctance on the part of many users to try mediation, mainly owing to a widespread lack of understanding of how and why it works.

Mediation Compared to Litigation and Arbitration

Value Criteria	Mediation	Litigation/Arbitration
Cost	Very low	Very high
Time	Very fast	Very slow
Who decides?	The Parties	Judge or Arbitrator
Likelihood of destroyed relationships	Low	Very high
Scope for tactical <u>maneuvering</u>	Low	Very High
Who controls?	The Parties themselves	The Parties' Lawyers
Rules of evidence	None	Very many
Horizon Focus	On the future	On the past
Negotiation form	Collaborative	Antagonistic
Communication	Intense + positive	Limited and defensive
Ability to satisfy everyone	Very high	Virtually zero
Outcome	Win/Win	Win/Lose
Capacity to find solutions outside the dispute	Unlimited	None
Stress factor	Tensions released	Highly stressful

The founding institutions agreed that quality and information were the keys to unlocking greater traction for mediation. At the urging of Netherlands-based international mediator, Annette van Riemsdijk, it was agreed that the best vehicle for increasing quality perception and improving understanding about mediation was an independent, non-profit, non-service-provider, global foundation designed to inspire user confidence in mediators and mediation. That foundation needed to attract support from all competing players in the dispute resolution market worldwide and all other stakeholders - users (disputants), advocates (mainly law firms), adjudicators (judges and arbitrators), educators (academics and mediation skills trainers) and policy makers (mainly governments). Its mission would be to set high transparent mediation quality standards and to explain and promote the value of resolving disputes using mediation. No such entity existed in 2006.

For these public benefit reasons, it was resolved to form the International Mediation Institute (IMI) and provide initial funding for it to achieve these goals on a global scale.

Why?

- To inspire the use of mediation**
- To remove user doubts over quality**
- To enable users to control their outcomes**
- To make mediation the normal way to resolve disputes**

How to make IMI Reality

Once the first Executive Director (Michael Leathes) and the Operations Manager (Irena Vanenkova) had been identified, a meeting was convened in early 2007 to discuss incorporation, funding and an operational plan. It was agreed to register IMI as a foundation ("stichting") in The Hague, that AAA/ICDR, SMC and SIAC would fund IMI for its initial few years through grants, and that IMI would develop an international mediator competency credentialing scheme supported by NMI, which offered the expertise it had developed in creating NMI Certification of mediators in the Netherlands - the only truly national credentialing scheme for mediators in the world at that time.

IMI was incorporated under Dutch Law in The Hague on March 23, 2007. Provision was made in the Articles of Association for an Advisory Council as well as a Board of Directors. The first executive director agreed to serve in a capacity pro bono, in order to contain costs. It was also agreed that, in due course, an Independent Standards Commission would be convened comprising thought leaders in mediation drawn from all stakeholder groups, worldwide.

A week after IMI was incorporated, the European Parliament passed a Legislative Resolution on what was then the draft EU Mediation Directive which, among other amendments to the Directive, inserted a new Article 4 urging EU Member States to introduce effective quality control mechanisms on the provision of mediation services and to develop certification systems in the mediation field. The Legislative Resolution also called on Member States to improve the level of objective public information about mediation. This reassured the founders that quality and information were the correct components of the IMI mission.

It was also agreed that transparency and diversity should underpin the IMI competency scheme, preferably involving a way to make user feedback on the competency, skills and other characteristics of mediators openly available for the benefit of future users.

How?

By celebrating knowledge, skills and experience
By enabling user experience to be shared
By ensuring greater transparency
By objective information

What IMI would deliver

Vision and Mission

The first task of IMI was to determine its Vision and Mission. The Vision and Mission statements of IMI passed through several iterations, finally settling upon:

Vision:

Professional Mediation Worldwide: Promoting Consensus & Access to Justice

Mission:

IMI will:

- Set and achieve high mediation standards
- Convene stakeholders and parties
- Promote understanding and adoption of mediation
- Disseminate skills for parties, counsel and mediators

Web Portal

The next priority was to establish the IMI web portal, as it was decided at the outset that this would be the main communication medium. The web portal was initially designed by then Operations Manager Irena Vanenkova and constructed by Tribiq, an Internet Service Provider (ISP). The web portal went live on April 30, 2007. Tribiq remains the ISP of IMI and has continually improved the portal, with the help of Irena, who became Executive Director in 2008 and Emma Ewart, who succeeded as Operations Manager.

Establishing High Mediation Practice Standards

Simultaneously, IMI began to consult with leading users, mediators and service providers to gain an insight into their thinking on both quality and information to help IMI devise its operating plan. No attempt had previously been made to establish worldwide quality standards in mediation, but the issue was starting to be debated in dispute resolution circles. The NMI Certification scheme was gaining international recognition, and at the time mediator practice standards were being drafted in Australia by a Government-funded agency, the National ADR Advisory Council (NADRAC). This activity began to be noticed by leading international corporate users, such as General Electric, Northrop Grumman and Nestlé, and some service providers, such as the founding institutions of IMI but also others.

The initial consultation enabled IMI to prepare a paper in July 2007 proposing a system for certifying international competency standards for mediators. This system envisaged setting high, experience-based standards (similar to the NMI Certification Standards, but unlike the draft Australian system which envisaged the establishment of basic standards).

In September 2007, IMI held its first Board Meeting, in Zeist, the Netherlands attended by representatives of each of the founding institutions, at which the proposed credentialing scheme was reviewed, refined and approved.

Tools

IMI set itself a task to provide useful tools that could be presented on its web portal to encourage understanding and use of mediation by those less accustomed to the process.

Promotion

Because most mediation service providers understandably use their promotional budgets mainly to promote their own services, there was no real professional platform that users and others could visit for independent objective guidance. IMI therefore resolved to address this deficiency through thought leadership and a variety of mechanisms to make mediation less mysterious and more comprehensible, and to focus especially on users (disputants). If users, and their advisers, could come to understand mediation better, they would become less hesitant to use the process, and the growth rate of mediation would start to increase.

Location

The Hague was chosen as the seat of IMI for its standing as the international city of peace, justice and reconciliation, and the location in the Peace Palace of the International Court of Justice and the Permanent Court of Arbitration. Moreover the City of The Hague was encouraging international NGOs like IMI to establish themselves in the city.

A leading international mediator, Leslie Mooyaart (formerly General Counsel of KLM, now Vice President Legal at APM Terminals, a division of Maersk), who had been instrumental in the formation of IMI, offered IMI a temporary address at his office location in The Hague. However, it was agreed to apply as soon as possible to the Municipality of The Hague to be allocated a permanent physical office space in one of the City-owned buildings reserved for international NGOs. In 2008, the Municipality of The Hague identified a fully-serviced office to accommodate IMI in the Bertha von Suttner Building at 70 Laan van Meerdervoort, close to the Peace Palace, which the Municipality reserves for approved NGOs at subsidised rents. In addition, the Municipality graciously donated €45k to IMI over three years to help it establish in The Hague. IMI continues to hold this office.

Charitable Status

GE had been a supporter of IMI from the outset, and IMI was invited to apply for a grant from the GE Foundation. In order to qualify as an applicant, it was necessary for an independent assessment to be made that IMI, as a non-US registered foundation, would, if registered in the United States, qualify under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt non-profit organisation. Following a review by Sullivan & Cromwell, that determination was made and submitted to the GE Foundation.

Meanwhile, IMI had applied to the Dutch Tax Service for a ruling that IMI to be accepted as an "Algemeen Nut Beogende Instellingen" (ANBI) (Institution Aimed at the Common Good), a status accorded to charitable, religious, humanistic, cultural and scientific institutions whose mission and operations are deemed by the Tax Service overwhelmingly to serve the public interest. Donations to ANBI-registered entities are exempt from Dutch Gift Tax and donors to such entities may deduct grants made from taxable income. IMI has been deemed to be ANBI-registered since January 2009.

What?

Establishing the highest standards worldwide
Tools to find the most suitable mediators
Tools to help all users resolve disputes
Promoting mediation convincingly
Convening the right people
Quality & Information

Governance & Strategy

From its early beginnings in 2007, IMI has progressively refined its governance, and consequently its strategy.

Governance

The initial Board of Directors, comprising people affiliated with the Founding Institutions, quickly expanded to include a number of in-house corporate counsel and others. The Advisory Council was convened, and an Independent Standards Commission was established.

Board of Directors

It was decided by the Founding Institutions that the Chair of IMI should always be someone with a background as a leading corporate user of mediation. Wolf von Kumberg of Northrop Grumman was appointed as the first Chair in 2007, followed by Michael McIlwrath of General Electric in 2008, Patrick Deane of Nestlé in 2010, Ute Joas Quinn of Shell, and later Hess Corp, in 2011 and Deborah Masucci of AIG in 2013. All remain members of the IMI Board.

All current members of the IMI Board are:

Deborah Masucci (Chair)	Formerly AIG, New York
Shawn Conway (Secretary)	Conway & Partners, Rotterdam
Doug McKay (Treasurer)	Shell International, The Hague
Andrea Carlevaris	International Chamber of Commerce (ICC), Paris
Harold Coleman	American Arbitration Association (AAA), New York
Patrick Deane	Former Chair of IMI, and of Nestlé, Vevey
Jason Fry	Clifford Chance, Paris
Isabelle Hautot	Orange, Paris; Chair, CCIAG
Michael Leathes	Former IMI Executive Director, London
George Lim SC	Wee Tay & Lim, Singapore
Lim Seok Hui	Singapore International Arbitration Centre
James MacPherson	Former CEO, Bahrain Chamber for Dispute Resolution
Michael McIlwrath	GE Oil & Gas, Florence
Ute Joas Quinn	Hess Corporation, Houston
Kimberley Taylor	JAMS, New York
Wolf von Kumberg	Northrop Grumman, London
Diana Wallis	President, European Law Institute

The Board has a four-year rotation policy. There are also Board policies on Conflicts of Interest, Anti-Bribery & Corruption and Gifts & Hospitality.

Serving the Board of Directors are the two key full time members of staff: the Executive Director Irena Vanenkova and the Operations Manager, Emma Ewart.

Advisory Council

The IMI Advisory Council has review, advisory and enabling functions. The members of the Advisory Council are:

Lord Woolf of Barnes	Former Lord Chief Justice of England & Wales
Sheikha Haya Rashed Al Khalifa	Chair of the Board of ICC Bahrain
Professor Tommy Koh	Singapore Ambassador at Large
William K. Slate III	Former President, American Arbitration Association
William Ury	Co-founder, Harvard Program on Negotiation
Jay Welsh	General Counsel, JAMS
Aleš Zalar	Former Minister of Justice, Slovenia

Independent Standards Commission

In 2007 IMI created a non-statutory group called the Independent Standards Commission (ISC) with the aim of:

- providing advanced thought leadership
- establishing high competency standards for mediators
- reviewing and approving programs to qualify mediators for IMI Certification
- ensuring continuing quality control of approved programs
- monitoring and improving the IMI Code of Professional Conduct
- appointing assessors to review Code of Professional Conduct complaints.

The ISC has established a number of Task Forces and Committees to carry out its work. Already-completed Task Forces have developed standards and criteria for Inter-Cultural Certification and Mediation Advocacy Certification. Current Task Forces and Committees deal with:

- Mediation Ethics
- Online Dispute Resolution (ODR)
- Mediation in Investor-State Dispute Settlement
- Appraisal of Qualifying Assessment Programs
- Mediation of disputes under the OECD Guidelines for Multinational Enterprises.

There are currently 73 members of the ISC from 27 countries on all continents.

Leadership of the ISC is provided by the Chair and Vice-Chairs:

Judith P. Meyer (Chair)	Commercial Mediator, Philadelphia
Constantin Adi Gavrilă	Director, Craiova Mediation Centre, Bucharest
Margaret Halsmith	Chair, LEADR, Perth
Jeremy Lack	Commercial Mediator, Geneva
Joel Lee	Vice-Dean, National University of Singapore
Geoff Sharp	Commercial Mediator, Wellington
Ellen Waldman	Professor of Law, Thomas Jefferson School of Law, San Diego

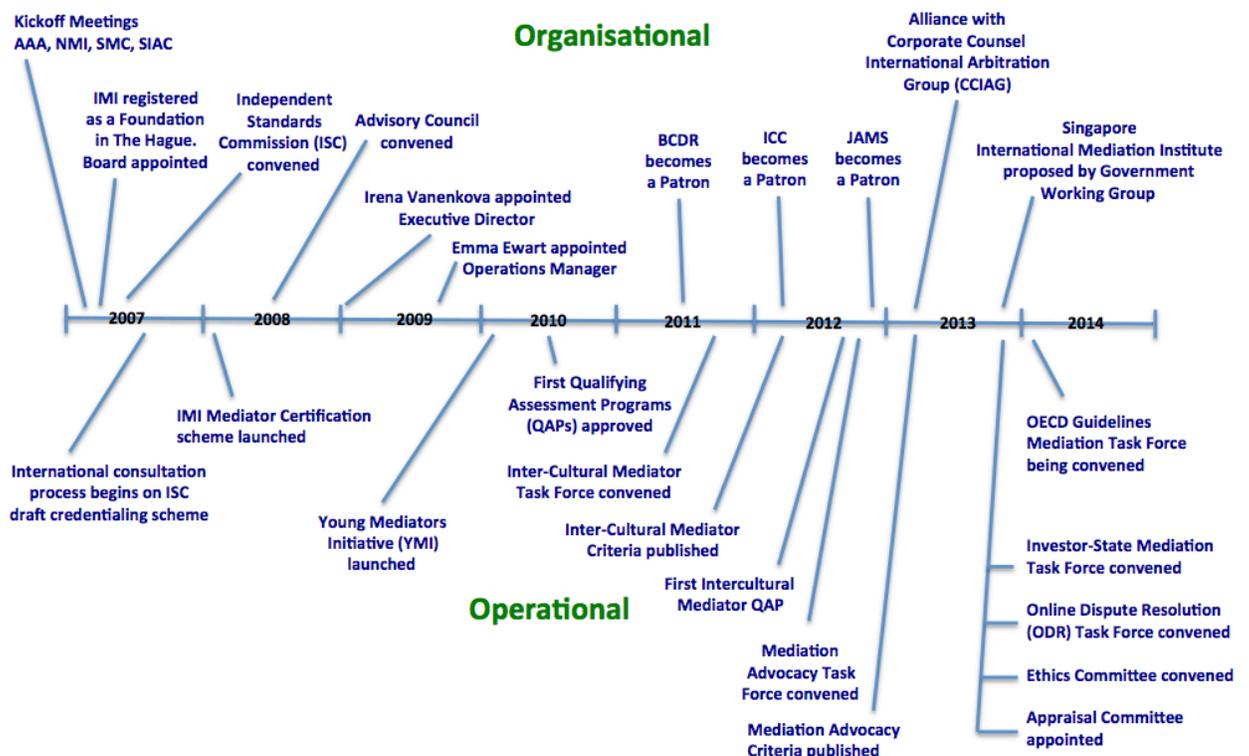
Strategy

IMI strategy is based on 12 core principles:

- Quality and Information are the two main focus areas of the IMI Mission.
- Quality certification is experienced based, and set at a high standard.
- The Independent Standards Commission sets the standards.
- All materials generated by IMI are copyright-free to encourage their use.
- The IMI portal will include a search engine to find IMI Certified mediators.
- All IMI Certified mediators are required to have an online Profile.
- Summaries of user feedback on mediator performance are part of all IMI Profiles.
- IMI is user-led, and the Chair of the Board is always a user.
- IMI is donor-funded and does not compete in the market for mediation services.
- The organisation is genuinely global, non-partisan and multi-stakeholder.
- All members of the Board provide their time and expertise on a pro bono basis.
- All stakeholders are welcome to actively support IMI.



Key Organizational and Operational Timeline



Quality & Credentialing

When IMI was established in 2007, there were no internationally-applicable quality standards for mediators, and no international credentialing scheme. The NADRAC in Australia was considering practice and approval standards at a basic post-training level, and CEDR, a UK-based mediation service provider, was accrediting mediators on the same post-training basis. However, only the NMI, a non-profit, non-service-provider body in the Netherlands, subsidized by the Netherlands Government, was certifying competency of experienced mediators locally at a high, experienced-based level.

The IMI Board believed that for users to have confidence in mediators, and therefore to use mediation more frequently and with better results, it was necessary to credential mediators to a high, experience-based standard. The results in the Netherlands proved the wisdom of this strategy. In 2011, there were an estimated¹ 52,000 civil and commercial mediations in the Netherlands, a country with a population of 17 million and with a single high-level mediator certification scheme operated by a non-provider entity. By contrast, in the UK, a country with a population of 63 million where mediation is considered successful, but with no national certification scheme, there were only an estimated² 8,000 mediations in 2012. On a per capita basis, the frequency of mediation in the Netherlands in 2011 was therefore about 24 times greater than in the UK. Users in the Netherlands seemingly have a far greater confidence in the quality of mediators, and respect for mediation as a method for resolving disputes, than do those in the UK.

IMI considered adopting on an international level the credentialing process applied by the NMI in the Netherlands. It was based on a third party assessment conducted pursuant to ISO Standard 17,024 (certification of competency of individuals) but was considered bureaucratic, inflexible, difficult to adapt culturally and jurisdictionally, costly and slow. Moreover, the assessment criteria used was proprietary, and the copyright owner was unwilling to allow it to be adapted or shared with others without his consent.

Consequently, IMI did not adopt the NMI scheme (which NMI has itself since abandoned) and developed its own high-level competency certification process, with help from members of the IMI Independent Standards Commission. In particular, published research by Christopher Honeyman on performance based criteria and assessment of mediators, as well as developing standards in Canada, Australia and Argentina, were also available to the IMI ISC for the modelling of its credentialing scheme.

The Certification Scheme devised by IMI can be implemented only by organisations that have been approved by the Independent Standards Commission based on applications made to the ISC to apply a set of stated criteria³. Once approved, these organisations are known as Qualifying Assessment Programs (QAPs), and are authorised to qualify mediators for IMI Certification. The advantages of this scheme are that:

¹ <http://kluwermediationblog.com/2012/03/07/promotion-and-legislation-on-mediation-in-the-netherlands/>

² <http://www.cedr.com/news/?item=The-Fifth-Mediation-Audit-2012>

³ <http://www.imimmediation.org/criteria-for-qualifying-assessment-programs>

- IMI does not itself qualify mediators - this is done by those with QAPs.
- No two QAPs are likely to be exactly the same, allowing for local adaptation.
- All QAPs must qualify to the same high competency standards set by the ISC.
- QAPs can offer their own credentialing to coincide with IMI Certification, thereby raising local standards.

IMI exercises control over the QAPs by requiring mediators qualified by a QAP to complete an IMI Certified Mediator Profile in a pre-determined format, and that mediators cannot call themselves IMI Certified until their Profile has been approved by IMI and posted on the IMI web portal. IMI also conducts periodic audits of QAPs to ensure they are correctly implementing the IMI Criteria. There are so far 30 QAPs in 19 countries, and over 400 IMI Certified Mediators on the IMI search engine in 47 countries, including 7 sub-Saharan countries, 4 South American countries and 6 in the Middle East.

Feedback

An obligatory part of every IMI Certified Mediator Profile is a Feedback Digest, an independently-prepared summary of user feedback collected by the Mediator using the [IMI Feedback Request Form](#) or a similar form. Once completed by users this feedback is anonymized and turned into a summary by an independent [Reviewer](#) selected by the mediator. The identity of the Reviewer must be disclosed on the Profile, and as a result the credibility of the Feedback Digest has much to do with that of the Reviewer. Only the Reviewer can upload the Feedback Digest onto the mediator's Profile and amend it afterwards. In compiling the Feedback Digest, the Reviewer must follow [Guidelines](#) published by IMI. Once the Profile is complete and verified by IMI, it is posted onto the [IMI Search Engine](#) and the mediator is IMI Certified.

Feedback is exceptionally useful to users, not only providing reassurance of experience and competency, but also providing reliable insight into the mediator's suitability to the conflict. Very few mediators make prior user feedback transparent, but it is considered essential information by most users for reliable mediator selection purposes.

Code of Professional Conduct

The Independent Standards Commission has convened an Ethics Committee, chaired by Professor Ellen Waldman, the leading international authority on mediation ethics, to keep the IMI code of Professional Conduct fully updated in line with the highest standards of international practice, as well as the disciplinary process.

Another obligatory part of the Profile is a declaration by the mediator of which Code of Conduct she or he ascribes to, and the complaint mechanism that would apply. Many IMI Certified Mediators have chosen the [IMI Code of Professional Conduct](#) and the [IMI Professional Conduct Assessment Process](#) (which can result in loss of IMI Certification and other sanctions and is administered by the ISC). Assurance of ethical conduct is an important element in generating user confidence in mediators and the mediation process.

Inter-Cultural Mediation Competency Certification

As a development of IMI Certification for mediators, IMI set up a Task Force of the Independent Standards Commission in April 2010 to develop criteria for inter-cultural mediator training and a dedicated IMI Certification. In an initiative partly funded by the GE Foundation, the Task Force developed succinct and flexible criteria that enable IMI Certified mediators to extend their skills and experience inter-culturally. As with IMI Certification of mediators, the Inter-Cultural Certification can be implemented worldwide by QAPs. The criteria include Cultural Focus Areas (CFAs) applicable to mediating inter-cultural conflicts, including communication styles, cultural diversity paradigms, conflict attitudes and mindsets, process differences, orientations towards information exchange and time, and decision-making approaches for all main cultural groups.

Mediation Advocacy Certification

In 2012, a Task Force of the Independent Standards Commission was convened to develop competency criteria for lawyers and other party representatives to achieve recognition as IMI Certified Mediation Advocates. The competency of the parties' advocates in mediations is widely recognized as a crucial factor in securing the best possible settlements. To establish a professional and technical basis for enabling parties to identify the right people to advise and represent them in mediations, a comprehensive set of Competency Criteria of Mediation Advocates/Advisers was developed by the Task Force with the support and endorsement of a range of stakeholders, including the Mediation Committee of the International Bar Association, the Standing Conference of Mediation Advocates (SCMA), the Paris Bar, ACB Foundation and Herbert Smith Freehills LLP. This initiative was part-funded by the GE Foundation.

ADR professional and provider organisations may now submit to the ISC their applications to be approved for qualifying competent professionals for IMI Mediation Advocacy Certification.

Mediation advocacy skills increase user understanding of how and why mediation works and when mediation is the most likely route to a desired outcome. This makes users more willing to participate in mediation, and actively to propose it when appropriate.

Diversity

By January 2014, 404 mediators from 28 countries practicing in 28 conflict fields and speaking 28 languages had become IMI Certified. The gender balance was 35% women and 65% men. Although this is by far the most internationally and culturally diverse group of transparently experienced mediators anywhere, much progress has yet to be made on the gender balance and also generating more IMI Certified Mediators in Asia, Africa, Latin America, Russia and affiliated countries and the Middle East. The quest of IMI to increase the number of QAPs and Hubs will progressively improve diversity in all these respects.

Information & Tools

Information

Lack of understanding is one of the main impediments to the growth of mediation and the breadth of its uptake. The average user is often confused by numerous different definitions of mediation, mostly technical and written by lawyers who often describe mediation as a legal or quasi-legal process, and by a serious lack of information about how and why mediation works. Without a proper and objective understanding, there is little prospect of universal acceptance of mediation.

Because mediation services are highly fragmented, with numerous mainly small providers competing for relatively little business, there are few resources for promoting the field. Such funds as service providers do have to spend on promotion are usually spent on income-generating initiatives, such as training, and there is generally a strict enforcement of copyright by providers on training and promotional materials, so that information is not easily sharable.

IMI set about breaking this paradigm by developing informational materials about mediation that are not copyright-protected, thereby encouraging wide and diverse dissemination. Since 2008, IMI has published numerous pieces of information about mediation, such as online videos (including a detailed study guide to one of the videos), 20 Questions that people ask about mediation, write-ups and articles on how mediation works, an online library, podcasts, survey data, blogs, webcasts, and newsletters. There is an article by IMI offering a classic definition of mediation, and a Young Mediators Initiative designed to share information among those aspiring to be mediators and to help them generate experience as assistants to practicing mediators.

Tools

Mediation Tools are designed to provide help and assistance to users, mediators and mediation service providers - those who are experiencing conflicts or making deals and are considering mediation, and those who advise or service them. Most IMI tools have been developed as a result of GE Foundation funding and include:

- **Decision Tree** to provide objective and impartial guidance to users of mediation services on what to bear in mind, and what basic decisions need to be taken, when going to mediation. Presented as a visual with links to more information.
- **Olé - Online Evaluation/Case analysis Tool** to provide help to parties and their advisers to analyze and assess specific disputes in order to determine the best possible way forward. Olé can be used online or in a printed version (the web enablement funding having been provided by the GE Foundation).
- **Model Contract Clauses** including guidance on drafting dispute resolution clauses and examples of many clauses offered by different provider organisations.

Research Data

There is a serious deficiency of reliable data on the use of mediation, both nationally in most countries, and internationally.

The most instructive reliable data publicly available in recent years include:

- A 2003/06 study by the American Arbitration Association of 254 US companies, supplemented in 2012/13 by a similar study in France in association with FIDAL.
- A 1997/98 survey led by Cornell University of the in-house counsel of 606 Fortune 1,000 companies, updated by a 2011 survey of 368 US-based in-house counsel led by Pepperdine University's Straus Institute for Dispute Resolution and Cornell University's Scheinman Institute on Conflict Resolution.

These studies demonstrated quite convincingly that, at least in the US, there was a growing appetite for mediation among corporate counsel, with the more mediation-experienced companies (those described in the AAA survey as the most "Dispute-Wise") actively engaged in dispute avoidance programs and experiencing higher price-earnings ratios than non-Dispute-Wise companies.

The 2011 survey by Pepperdine/Cornell indicated that many large US companies are using binding arbitration less often and instead relying more on mediated negotiation and other approaches aimed at resolving disputes informally, quickly and inexpensively. Pepperdine Professor Thomas J. Stipanowich noted the emergence of a "quiet revolution" in US dispute resolution in which corporate counsel, driven by cost and risk reduction strategies, are playing an increasingly directive role on how disputes are managed and resolved. A common theme from the survey results was a desire for optimal control of the dispute resolution process, with in-house counsel preferring to manage outcomes, so mediation and other approaches that aim at achieving a mutually acceptable settlement are strongly favoured.

However, neither of these surveys gave truly international impressions, and neither asked a number of key questions that would determine and underpin the Vision and Mission that IMI had adopted. Accordingly, in January 2013, IMI sent out a survey to in-house dispute resolution counsel in 124 multinational corporations, based mainly in Europe and North America, designed to surface user attitudes and approaches to arbitration and mediation. The Survey ran from mid-January to mid-March 2013. This seems to have been the first time that in-house dispute resolution counsel had been asked for their views on many of the issues raised at an international scale. Seventy-six in-house dispute resolution counsel completed the Survey.

The IMI Survey addressed issues not covered in the previous user surveys. The IMI Survey focused more on in-house counsel needs, attitudes and preferences regarding issues concerning information, professional quality standards and the skills they expect from their arbitrators, mediators and outside counsel.

Most responders were either senior in-house legal counsel (63%) or members of senior management (20%) in their companies, with 17% indicating they were engaged in other corporate roles. 71% of responders were from corporations with over 10,000 employees, and 18% were employed by companies having between 1,000 and 10,000 employees.

The IMI Survey, like most other surveys, was based on multi-choice answers to a range of propositions, principally to enable the Survey to be completed relatively quickly. Many of the questions referred collectively to "Neutrals" which the Survey's preamble defined as meaning both arbitrators and mediators.

Highlights of the results included:

76% believed that all mediators should belong to a professional body with a code of conduct and disciplinary process;

77% wanted mediators to seek feedback from users, and to make that feedback openly available to future users;

60% indicated that credentialing bodies should not be service providers;

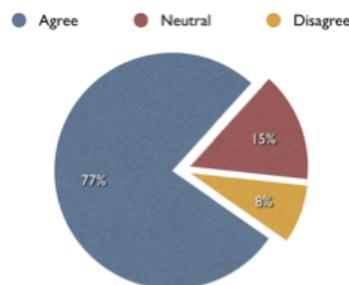
80% agreed that outside counsel should be trained in mediation advocacy skills.

The top six criteria applied by corporate counsel when selecting a mediator were:

- Experience as a mediator (99%)
- Past user experience with a particular mediator (97%)
- Mediator's personality and attitude (93%)
- Independently-verified feedback from users (88%)
- Expertise in the core issue of the case (85%)
- Evidence the mediator's competency was independently assessed (83%)

These results strongly indicated that the IMI Mission reflected corporate user needs, and, by extension, the needs of other categories of disputants.

All Neutrals should seek feedback from users and make that feedback openly available to future users (in summary format, prepared by an independent person or institution while preserving the anonymity of the feedback giver).



Capacity-Building

Underpinning the IMI mission is the need to build mediation capacity throughout the world. Capacity-building strategies vary according to local and regional circumstances, such as the condition of the Rule of Law, the extent to which mediation has already developed, local resources, funding availability and collaboration opportunities with governments, judiciaries, mediation bodies, user groups and other stakeholders.

Raising Mediation Practice Standards

Raising standards of mediation practice, and convincing users that competent mediators can help them deliver better, faster and less risky/costly outcomes than judges and arbitrators must be the common key to the growth of mediation in all countries.

As illustrated under Quality & Credentialing (page 10), there is an apparent but unsurprising correlation between mediation uptake and visible high standards of mediation practice. Encouraged by the recent user survey data, IMI will therefore continue to promote adoption of its credentialing scheme, which relies on QAPs. This classic *glocal* approach will catch fire over time. Increasing the number of QAPs is a fundamental IMI strategy, and it can be done effectively and efficiently, via local hubs.

Adoption of IMI credentialing scheme in Southeast Asia

In December 2013, the Singapore Ministry of Law announced that a Working Group convened by the Chief Justice had recommended that a mediation professional body, to be called the Singapore International Mediation Institute (SIMI), be created in Singapore, as an independent non-profit body and as a collaboration of IMI and the National University of Singapore (NUS). IMI is in discussions with NUS and relevant stakeholders about how the IMI credentialing scheme, as well as IMI's informational materials and tools and operating procedures, can be adopted in Singapore. It is expected that SIMI will set new standards for mediators, and encourage growth of mediation throughout Southeast Asia. It is envisaged that SIMI will be an autonomous entity working in close association with IMI.

North Europe/Russia Hub

IMI has appointed a task force to develop a hub of IMI in Northern Europe/Russia, designed to advance mediation skills and capacity in trans-border disputes in this area.

Brazil/South American Hub

For several years, a small group of IMI Independent Standards Commission members has been preparing the ground for an IMI hub in Brazil, and those involved participated in parliamentary consultations for a new law in Brazil to promote mediation practices.

African hub

Over the past several years IMI has assisted a group from Nigeria, South Africa and Kenya to establish the African Mediation Association. In September 2013, this entity was incorporated as a foundation in The Hague, with its residence at the IMI office. In parallel, discussions are in progress to establish a national hub of IMI in Nigeria.

Mediation in Arbitration

In delivering the Annual Mediation Lecture in Singapore in October 2013, Lord Woolf of Barnes, former Lord Chief Justice of England & Wales and Chair of the IMI Advisory Council said, after twice making reference to IMI:

“...remarkably, while I would have expected mediation to have a more prominent role in arbitration than in other areas of litigation, in fact the opposite is true.... I have found among the arbitration industry a remarkable reluctance about promoting mediation. I find the reasons advanced for this worryingly unsatisfactory. If this is due in any way to supposed self-interest, this is a mistake. Parties to commercial arbitration, as in litigation, are increasingly jaundiced by rising costs. If increased use of mediation reduces the average cost of arbitration, this would increase its popularity.”

IMI is fortunate to have attracted the support of several of the largest arbitration bodies, (AAA/ICDR, ICC, JAMS and BCDR), all of which have active mediation capabilities. AAA updated its Commercial Arbitration Rules and Mediation Procedures in October 2013 to require mediation to take place concurrently with arbitration subject to a party opt-out - a major step forward in the energetic use of mediation in arbitration. ICC introduced new Mediation Rules with effect from 2014, replacing the 2001 ADR Rules.

Public disputes

Through the work of Task Forces of the Independent Standards Commission, recommendations and opportunities are being generated to bring much greater use of mediation in Investor-State disputes and in conflicts arising between communities and businesses under the OECD Guidelines for Multinational Enterprises. Both of these areas typically involve very difficult disputes involving massive social and economic consequences, and are widely considered, by government, corporate and community stakeholders alike, to be highly appropriate for mediation.

IMI has applied to the United Nations ECOSOC for NGO Consultative Status, which will help IMI advance mediation capacity in inter-State disputes. There has been a considerable increase in the interest of nations in mediation in recent years, resulting in a UN Security Council Resolution on Enhancing Mediation and its Support Activities in 2009. In September 2010, Finland and Turkey convened a Group of Friends of Mediation at the UN *to raise awareness of mediation and to help build mediation capacity and expertise in the UN and regional organisations*. Almost every country is a member of the Group of Friends, and Consultative Status will enable IMI to build a direct alliance with the Group of Friends on behalf of the mediation field and profession.

In December 2013, IMI efforts in public disputes were brought to the attention of negotiators involved in the pending Trans Pacific Partnership (TPP) Treaty discussions, enabling language on a mediation requirement to be tabled in the negotiations, attracting a number of favorable comments from Industry negotiators.

Stronger international stakeholder engagement

For several years IMI has been planning the creation of a global forum for cross-constituency sharing of ideas and proposals among mediation users, advocates and referrers, providers and mediators, adjudicators, and mediation education and support bodies. Mediation is a de-centralised, fragmented field in most countries. Strategic dialogue within stakeholder groups is remarkably superficial and cross-constituency dialogue is almost non-existent. Mediation growth will not occur without improved intersectional communications and common strategies to improve capacity and traction.

Users hardly have any voice because in only rare instances are they sufficiently organized to crystallize and state their needs. There are few international mediation user forums to give authoritative expression to user needs - such as the 125 member Corporate Counsel International Arbitration Group - CCIAG (which hitherto has focused on arbitration, though it does have mediation in its mission statement) and the 23 member Round Table Mediation und Konfliktmanagement der deutschen Wirtschaft - RTMKM, which is focused on Germany but brings together many German-based international companies. IMI has a formal alliance with CCIAG and good connections with RTMKM. The Association of Corporate Counsel (ACC), which has over 30,000 in-house counsel members in 75 countries, and similar national bodies, does not yet have sections or chapters on mediation or ADR.

On the service side, the only international initiative that brings together mediation providers is the UIA World Forum of Mediation Centres (WFMC) which hosts an annual meeting attended, in the main, by small and medium providers. Although valuable in its own right, this is mainly a networking group and the WFMC does not attempt to enter into dialogue with the demand side or with educators and policy makers to progress the broader development of mediation. The American Bar Association's (ABA) International Committee, the International Bar Association's (IBA) Mediation Committee and the International Chamber of Commerce (ICC) do have mediation committees and perform valuable project work, but are not designed to convene all stakeholders in the field. Other than IMI, the largest service providers have no suitable platform for collectively improving the international mediation field and addressing emerging major issues, such as investor-State, human rights (eg OECD Guidelines), WTO and UN disputes.

Finally, educators and trainers lack a joint facility for developing mediation teaching. Dialogue between law and business schools is patchy, and there is little international discussion regarding inter-cultural mediation, mediation advocacy training, hybrids, collaborative law training, neuroscience standards, and other key educational issues.

Not only does IMI perceive all three areas as crucial to the proper development of mediation, but it is important to intersect them to create holistic benefit. If the user need can be more coherently and convincingly expressed, if service providers can have their value more effectively recognized and in fields that have hitherto under-utilized mediation, and if educators and trainers can improve their programs and offerings to address the changing needs of users and providers, mediation will progress effectively.

For these capacity-increase reasons IMI is planning to create a Global Mediation Council (GMC) that convenes all relevant stakeholders across all borders. A properly constituted and functioning GMC would give participants the following benefits:

- Cross constituency networks, linking users with providers with trainers.
- Unlimited access to all information and tools developed by IMI.
- Ability to initiate discussions/reviews/surveys within specific stakeholders groups.
- Access to assistance from the GMC members in different countries and regions.
- Engagement at public policy forums via IMI as the voice of mediation (e.g. UN).
- The opportunity to shape the future of mediation in a coherent manner.
- Publication of opinion pieces, articles and other materials.

The creation of the GMC, combined with the gradual development of IMI hubs, would make mediation more accessible to a more diverse group of constituencies, increasing understanding and acceptance of mediation and generating real growth.

Users Council

As a first step toward the creation of the GMC, IMI has begun to convene a Mediation Users Council, bringing together businesses, industry associations, chambers of commerce, communities and individuals; professional firms that advise and represent users on dispute management; adjudicators (judges and arbitrators) that refer parties to mediation; as well as certain national international organizations and NGOs.

The Users Council will be an autonomous international group of thought leaders convened to progress issues of importance to disputants and their professional advisers with regard to mediation and related methods of achieving negotiated outcomes. Those issues may include policy, regulatory, legal and practice matters in mediation, developing the role of IMI, expressing the views of Users, improving tools for Users and mediators, commenting on quality criteria, supporting the implementation of agreed initiatives, and assisting the IMI Board to help drive its Mission for the benefit of Users.

Independent Standards Commission (ISC) Task Forces

One of the unique features of IMI is the ability to draw on a wide range of expertise of people in the ADR field through the Independent Standards Commission. To convene and apply that expertise in a productive manner, with tangible outputs, IMI has asked ISC members to lead time-bound ad hoc task forces with specific terms of reference in areas that the IMI Board considers require development and progress.

IMI continues to leverage the quality and collective reach of its ISC, which has been gradually growing, for over six years. Valuable contributions have already been made in terms of the IMI Intercultural Mediator Certification and the IMI Mediation Advocacy Certification, both of which are products of ISC Task Forces and will build expertise in mediation quality and user skills. Other Task Forces and Committees are in progress in relation to Mediation Ethics, Investor-State Mediation, OECD Guidelines for Multinational Enterprises and Online Dispute Resolution.

Young Mediators Initiative (YMI)

The role of the YMI is to build mediation capacity at the intake end of the field by connecting young trained mediators and mediation advocates worldwide to create a platform for the exchange of ideas and experiences, and to facilitate interaction with mediators who can offer hands-on experience-generation and learning opportunities.

Articles, Opinion Pieces and Speeches

IMI is a regular contributor of opinion pieces, articles, presentations and speeches in publications and at events throughout the world. Examples include:

The Right Mediator: How Do You Know?

What's In It For Me? Mediator certification and the laws of supply and demand

Lawyers as a Catalyst for Change

Certifying International Competency Standards for Mediators

Can Mediation Evolve into a Global Profession?

2020 Vision: Where will mediation be in 2020?

Making Mediation Mainstream - A User Perspective

Dispute Resolution Mules: Preventing the process from being part of the problem

Stop Shovelling Smoke: Give users a classic definition of mediation

Empowering the Growth of International ADR

Engineering Peace: Achieving the promise of mediation in the world's most difficult conflicts

Diversity of Application

Mediation is used in all fields of conflict, from family and community disputes, the vast spectrum of business conflicts, financial services, government and regulatory negotiations, healthcare, human rights, personal injury, sport, tax and many others. Mediation is used in criminal situations to assist individuals and communities to implement restorative justice programs. Mediation is also used outside the context of a dispute, when two or more parties merely want to negotiate a higher quality deal that addresses their respective needs and interests. Mediation is highly diverse and adaptable.

The quality criteria and standards devised by IMI are directly applicable to all situations where mediation can be used, including those that are designed to transform relationships rather than achieve specific negotiated outcomes. The goal of IMI is to address quality and information in all circumstances where a neutral third party can add value.

The Future

The past seven years have emphatically established the need for IMI globally. Support for the IMI mission has been growing strongly throughout the world and is expected to continue. Such developments as the recommended establishment in 2014 of the Singapore International Mediation Institute jointly by IMI and the National University of Singapore, and the prospect of hubs in Africa, Northern Europe/Russia and Brazil are expected to continue to mature and gain traction.

IMI will remain a donor-funded global professional body for mediation and will not participate in the marketplace by providing billable services. Although this self-restraint brings financial challenges, IMI believes that there are sufficient long-term strategic funders willing to continue their support for the initiatives of IMI, such as the corporate Patrons and founding institutions of IMI, and others yet to lend their support to the accomplishment of the IMI mission.

IMI will thereby remain independent, transparent and objective. Support for the IMI mission is expected to increase, with more corporate donors and provider institutions adding to IMI's capabilities. IMI will continue with its resolve to convene all stakeholders, regardless of their competitive positions in the market, and to invite them to share in the implementation of the IMI mission while remaining user driven. This vests IMI with the stakeholder authority to fill the global vacuum that exists for setting standards of excellence and the ethical practice of mediation globally. IMI will increasingly have the ability to promote understanding and acceptance of mediation worldwide and, with UN Consultative Status expected in 2014, to represent the mediation field and profession to global policy makers.

The Top 10 Strategies for building the IMI Mission in 2014/15 are:

Capacity Building

1. Increase the work of the Independent Standards Commission Task Forces

Task Forces of the ISC can play a unique role in developing mediation capacity. Already ISC Task Forces have established the quality criteria for IMI Mediator Certification, IMI Inter-Cultural Mediator Certification and IMI Mediation Advocacy Certification. A standing Task Force is reviewing the IMI Code of Professional Conduct for Mediators and the disciplinary process associated with it.

ISC Task Forces are in progress to develop standards for Online Dispute Resolution (ODR) providers and to encourage mediation in Investor-State Disputes. A further Task Force is being convened to establish standards for mediators dealing with cases under the OECD Guidelines for Multinational Enterprises. Task Forces are planned in the areas of family mediation, disputes between nations, intellectual property and other fields.

2. Build Hubs of IMI to increase diversity

Hubs of IMI are a *glocalized* way to build mediation capacity nationally and regionally, with appropriate cultural diversity while gradually applying high international practice standards. Hubs in Southeast Asia, Northern Europe/Russia, Africa (Nigeria) and South America (Brazil) are all at different stages of development.

3. Create a Global Mediation Council, starting with a Users Council

As described on page 19, the Users Council will be created in early 2014. One of its first initiatives may be the hosting of an online user conference to identify and accelerate evolutionary change in the resolution of cross-border disputes using massive stakeholder crowd-sourcing via the internet on a global scale.

4. Strengthen the activity and value of the Young Mediators Initiative (YMI)

The YMI mentioned on page 20 will be progressed, with more IMI Certified Mediators strongly encouraged to allow trained but inexperienced mediators to gain experience as assistant mediators.

5. Encourage additional IMI Patrons

IMI aims to increase the number of institutions and organisations publicly joining the IMI mission and adding further expertise and diversity to the IMI Board and Independent Standards Commission as well as increasing the reach of the IMI Mission.

6. Build mediation dialogue at UN and Regional Agencies

IMI will actively leverage Consultative Status at the UN Economic and Social Committee on behalf of the mediation field and profession.

Quality

7. Add more Qualifying Assessment Programmes (QAPs) to increase diversity

QAPs enable local mediators, regardless of their field of specialization, to be qualified for IMI Certification as well as an equivalent local certification. This increases skills and user recognition of those skills, enables users to find the right mediators through the IMI Search Engine, and thereby expands the uptake of mediation.

8. Certify Standards of Mediation Training and Basic Accreditation

IMI is considering a request to the ISC to establish high minimum standards for basic training leading to an entry-level accreditation. This may be associated with an IMI-recognised credential, and will be discussed in 2014.

Information

9. Develop new Tools and Materials

IMI publishes all its tools and materials on an open-source basis, copyright-free, to encourage their widespread use. New materials and tools are continually under consideration. In January, a major IMI article on mediation in Investor-State disputes will be published in the biannual Review of the World Bank's International Council for the Settlement of Investment Disputes (ICSID). IMI will be making a Keynote Speech at the Asian Mediation Association's biennial Conference in Hong Kong in April, on the subject: *Mediation's Elusive Goal: Achieving Exponential International Growth - What factors restrain rapid growth? Why are they still there? How can they be overcome?* Two IMI Directors have agreed to make a joint monthly contribution to the Kluwer Mediation Blog in January 2014 from a user perspective

10. Launch an increasingly diverse multi-lingual web portal.

Funding permitting, IMI intends as soon as possible to expand the number of language versions of its web portal. This will occur automatically as hubs are established, but a broader range of language versions is also planned.

Stakeholder Response

Mediation has come a long way, but still has much further to go. The field now needs to evolve quickly into a true profession. High minimum practice and ethical standards need to be set, made transparent and achieved internationally; users of mediation need to see these standards operating effectively. More and better information must be made available by individual mediators about their skills, capabilities and personalities. Quality and Transparency together will enable mediation to grow.

*Lord Woolf of Barnes
Lord Chief Justice of England & Wales, 2000-2005
The Woolf Report 1996 was the catalyst for the development of mediation in the UK*

IMI has undertaken a task of immense importance, not merely in developing uniform standards of practice for conflict resolution, but in creating the foundation for an enormous increase in international conflict resolution capacity. If we are to solve global problems we will require not only global solutions, but global processes, methods and techniques. This will necessitate the development of a collaborative approach to diversity and uniformity in conflict resolution practices, and the creation of a global forum where our differences can be discussed, analyzed, learned from, and synergistically combined.

IMI has taken the first step in bringing conflict resolution into the 21st century by inviting us and the cultures and nations we represent to come together and learn from each other. Only in this way can we hope to overcome the obstacles we have created through conflict.

*Kenneth Cloke
President, Mediators Beyond Borders*

Of all the efforts at making mediation mainstream, of all the mammoth initiatives and giant strides by leading proponents, of all our success stories, nothing compares with the IMI vision of standard setting and Industry watch, for without such, mediation remains an endangered specie.

Kehinde Aina, Director, African Mediation Association

I sincerely welcome the recent incorporation of the International Mediation Institute (IMI). As the first global, non-governmental organisation that will enable certification of the competency of mediators worldwide, it will certainly be of great benefit and value to all users of dispute settlement services.

Ali Alatas, Former Minister of Foreign Affairs, Republic of Indonesia

In an age of globalisation, IMI offers local mediators a global voice, national bodies an international benchmark, and users of mediation confidence in the mediation profession worldwide.

Professor Nadja Alexander

*Director of the International Institute of Conflict Resolution, Shue Yan University (HK)
Senior ADR Consultant, World Bank Group; Editor, Global Trends in Mediation*

Two undeniable facts underpin the IMI and its extraordinary mission: a commitment to raise the bar of quality dispute resolution, and leadership by example. This organization reflects the substantial practical benefits experienced by some of the most sophisticated consumers of dispute resolution services in the world.

Roger M. Deitz

Mediator; Past Chair of the ADR Committee, New York City Bar

IMI holds the promise of delivering real value to disputants and their professional advisers, to mediation providers and trainers, to judges and arbitrators and to teachers and governments. There is advantage in it for everyone.

Thierry Garby

President, Union Internationale des Avocats (UIA) World Forum of Mediation Centres

I congratulate IMI in establishing a valuable platform for the global mediation standards. As the professionalism of mediation is raised, I believe mediation will claim its rightful place as a legitimate and viable way of resolving disputes.

*Professor Tommy Koh, Singapore Ambassador-At-Large, Ministry of Foreign Affairs,
Board Member, Lee Kuan Yew School of Public Policy, Singapore*

As a user of mediation services I am an enthusiastic supporter of the IMI effort to establish a universal standard for Mediators. It will make the choice of a qualified mediator to assist with our disputes so much easier and more reliable.

Wolf von Kumberg

Legal Director, Assistant General Counsel, Northrop Grumman Corporation

While acknowledging all the benefits and values that IMI can bring to mediation practice internationally, it really is just the beginning of the exciting process of mindset change that people need to experience so that we switch from win to resolve, from fear to trust and from destruction to collaboration.

Tina Monberg Copenhagen Director, meditationcenter, Copenhagen

IMI is valuable for the private sector. It will bring a substantial increase in trust and opportunities to identify a professional mediator, even in those parts of the world that lack the presence of a professional mediation body. Yet IMI is more than a practical initiative to ensure quality and facilitate the use of mediation internationally. It is about thought leadership and provoking the next step in the development of mediation into a self-determining interdisciplinary profession - with requirements regarding professionalism of its practitioners and with its own techniques and theories.

Manon Schonewille
Managing Director, ACB Mediation Author of the Toolkit Mediation series

I applaud this thoughtful initiative to seek to introduce a scheme which will help mediators around the world to raise their own and others' standards and to make sure that the services of mediators are available, understood and valued among a range of users in commerce, government and elsewhere. There is a great need for the skills and techniques employed by mediators to be utilised in a much broader range of activity than at present, to the great benefit of our world.

John Sturrock QC
Chief Executive and Founder, Core Solutions Group

The establishment of the IMI will help create international standards for mediators, a critical step towards enhancing the professional level of international mediation.

Wang Hong Song
Secretary-General, Beijing Arbitration Commission

Resolving disputes by way of mediation has been inherent in the Confucian culture, and my colleagues and I have been long-time advocates for mediating international commercial disputes. Mediation is no doubt as good as the mediators. CIETAC welcomes the initiative of certification of mediators and believes it will enhance the business community's confidence in mediation and therefore contribute to the growth of mediation in the world.

Yu Jianlong
Vice-Chairman and Secretary General
China International Economic & Trade Arbitration Commission (CIETAC)