



# Mediators Beyond Borders™

Partnering for Peace & Reconciliation

## Proposed Language to Encourage Mediation in Climate Change Treaty

Presented to the 15<sup>th</sup> Conference of the Parties

United Nations Framework Convention on Climate Change

Copenhagen, 2009

by Mediators Beyond Borders

Mediators Beyond Borders, an NGO Observer Organization admitted to the 15<sup>th</sup> Conference of the Parties (COP 15), together with the organizations and individuals listed below, respectfully submit the following proposal for an Annex on Conciliation for adoption by the 15<sup>th</sup> Conference of the Parties.

### Background

Article 33, Section 1 of the United Nations Charter provides:

“The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”

Article 19 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change currently governs the settlement of disputes, and provides:

“The provisions of Article 14 of the Convention on settlement of disputes shall apply *mutatis mutandis* to this Protocol.”

Article 14 of the Convention provides for the settlement of disputes as follows:

- “1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.
2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:
  - (a) Submission of the dispute to the International Court of Justice, and/or

- (b) Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on arbitration.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b) above.

3. A declaration made under paragraph 2 above shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.
4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the arbitral tribunal, unless the parties to the dispute otherwise agree.
5. Subject to the operation of paragraph 2 above, if after twelve months following notification by one Party to another that a dispute exists between them, the Parties concerned have not been able to settle their dispute through the means mentioned in paragraph 1 above, the dispute shall be submitted, at the request of any of the parties to the dispute, to conciliation.
6. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a recommendatory award, which the parties shall consider in good faith.
7. Additional procedures relating to conciliation shall be adopted by the Conference of the Parties, as soon as practicable, in an annex on conciliation.
8. The provisions of this Article shall apply to any related legal instrument which the Conference of the Parties may adopt, unless the instrument provides otherwise."

### **Argument Offered by Mediators Beyond Borders for Proposed Annex**

While Article 14 allows for the use of "any other peaceful means," it does not explicitly mention mediation. While conciliation and the International Court of Justice are

provided for, mediation is not mentioned as a method that can be used before, during and after these procedures. And while Section 7 provides for additional procedures to be adopted by the Conference of the Parties in an annex on conciliation, no annex is anticipated for mediation.

Therefore, Mediators Beyond Borders respectfully proposes that COP 15 adopt the following language regarding the mediation of climate change disputes:

**Proposed Annex on Conciliation:**

- "1. (A) *Reaffirming the principles set forth in Chapter IV, Articles 33-38 of the UN Charter governing the peaceful settlement of disputes, the parties agree that the parties to any dispute resulting from the interpretation or implementation of this treaty "shall first seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."*
- (B) *In the event that efforts to negotiate a solution are unsuccessful, parties are encouraged to use mediation to settle their disputes at all stages, including before, during and after conciliation, arbitration, and actions before the International Court of Justice.*
- (C.) *Mediation shall be conducted in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on mediation."*

Respectfully submitted,

Mediators Beyond Borders