



Supporting Statement for the Inclusion of Mediation in Climate Change Negotiations

“Since one of the most promising approaches to the peaceful settlement of disputes is skillful third-party mediation, we, the United Nations, have a responsibility to “we the peoples” to professionalize our efforts to resolve conflicts constructively rather than destructively and to save succeeding generations from the scourge of war.”

Report of the Secretary-General on enhancing mediation and its support activities,
[United Nations Security Council, Report # S/2009/189]

The impacts of climate change are already contributing to intra-state and inter-state conflicts over water resources, species conservation, environmental immigration, and emergency management.¹ In a high-level brief by the European Union Commission, climate change was described as posing security risks by acting as a “threat multiplier which exacerbates existing trends, tensions and instability.”² Climate-induced conflicts are expected to increase in number, extent, and intensity as competition for scarce resources grows and the pace of change outstrips our ability to adapt our carbon-based economies, agricultural production and potable water supplies.³

International frameworks and protocols are developed in part to reduce and manage conflicts; inevitably, however, they generate conflicts themselves when difficult policy choices advantage some and disadvantage others. When setting priorities, distributing resources, implementing and enforcing agreements that govern how people and nations work together, conflicts will arise and warrant the development of procedures for effective resolution. Directing parties to mediation in anticipation of conflict or when unassisted negotiations falter is the intention behind the proposed mediation provision.

Mediation in one form or another has been an active part of peaceful conflict resolution for thousands of years in a variety of societies around the world. While there is variation in its use and legal context in different countries, the basic practice of mediation today is remarkably constant: parties come together in the presence of an independent and impartial mediator who facilitates their negotiations and helps them work toward a mutually acceptable solution.

Unlike arbitration, the decisions made in mediation are made by the parties to the conflict, not the mediator. Unlike the conciliation under the UN Convention, there need be no delay in bringing the parties to mediation. Environmental mediation tends to involve multiple parties and complex technical and scientific issues, necessitating more extensive upfront assessment work, convening of the appropriate parties, mutual learning and collaborative fact-finding, as well as agreement building and implementation planning.⁴ Researchers confirm the effectiveness of environmental mediation in reaching high quality agreements and building cooperative working relationships among parties.⁵ Mediation has been used successfully, though infrequently, in negotiating international environmental conventions and treaties.⁶

In an April 09 UN Security Council Report, the Secretary-General outlined several of the benefits of mediation, among them:

- addressing the root causes of conflict;
- helping overcome obstacles that block progress through conventional means;
- taking economic, environmental and community interests and values into account;
- being sensitive to cultural differences and accommodating peace and justice concerns ; and
- creating sustainable agreements that facilitate implementation.⁷

The report advocated for increasing the timely use of mediation and strengthening the capacity at all levels of government and civil society for constructive resolution of disputes. A UNEP report also recommended that priority be given to “capacity-building for dispute resolution, environmental governance and land administration in states that are vulnerable to conflicts over natural resources and the environment.”⁸

For these reasons, the following proposed mediation provision was drafted by Mediators Beyond Borders (www.mediatorsbeyondborders.org) as an amendment to the agreement on climate change:

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.”***

¹ United Nations Environment Programme. February 2009. *From Conflict to Peacebuilding The Role of Natural Resources and the Environment*. UNEP. http://postconflict.unep.ch/publications/pcdmb_policy_01.pdf

² EU Commission and High Representative. 2008. *Climate change and international security: Paper to the European Council*. S113/8. European Council. Brussels as cited in UNEP Report, ibid.

³ Intergovernmental Panel on Climate Change. 2007. *Fourth Assessment Report: Climate Change 2007 Impacts, Adaptation and Vulnerability*. IPCC.

http://www.ipcc.ch/publications_and_data/publications_ipcc_fourth_assessment_report_wg2_report_impacts_adaptation_and_vulnerability.htm and U.S. Global Change Research Program. 2009. *Global Climate Change: Impacts in the United States*.

<http://www.globalchange.gov/publications/reports/scientific-assessments/us-impacts/full-report/global-climate-change>

⁴ Jacob Bercovitch (ed.) 1996. *Resolving International Conflicts : The Theory and Practice of Mediation* . Boulder, Colo. Lynne Rienner Publishers and O’Leary, Rosemary and Lisa Blomberg Bingham. (eds.) 2003. *The Promise and Performance of Environmental Conflict Resolution*. Washington, DC. Resources for the Future.

⁵ U.S. Institute for Environmental Conflict Resolution, Morris K. Udall Foundation. 2009. *Environmental Conflict Resolution: Performance Evidence from the Field*. www.ecr.gov

⁶ Deborah Schueli and Ariella Vranesky. 1996. “Environmental Mediation in International Relations.” In Bercovitch. Op. cit.

⁷ United Nations Security Council. April 2009. *Report of the Secretary-General on enhancing mediation and its support activities*. S/2009/189: 8.

⁸ United Nations Environment Programme, *From Conflict to Peacebuilding The Role of Natural Resources and the Environment*, UNEP February 2009. http://postconflict.unep.ch/publications/pcdmb_policy_01.pdf

For further information, contact:

Kenneth Cloke, President, Mediators Beyond Borders (kenclokebbb@gmail.com)

Thomas Fiutak, Mediators Beyond Borders, COP15 Project (fiuta001@umn.edu)

P. Mark Kirwin, Esq., Mediators Beyond Borders, Asian Coordinator and Climate Change (mkirwin@hhklaw.com)

Tina Monberg, European Contact COP15 / Member of Mediators Beyond Borders (tm@mediationcenter.dk)

Mark Batson Baril, Mediators Beyond Borders, COP15 Project (markb@disputeresolutionpartners.com)

Kirk Emerson, Mediators Beyond Borders, COP15 Project (kirk_emerson@mindspring.com)