

## CONCEPT PAPER

### UNGA RESOLUTION ON MEDIATION

#### “Strengthening the role of mediation in conflict prevention and resolution”

November 23, 2010

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#### **Background**

The idea to advance a United Nations General Assembly resolution on mediation was co-initiated by Foreign Ministers of Finland and Turkey during the meeting “Increase the Peace through Mediation” held on September 24, 2010 in the margins of the UNGA high level week. There was a strong common sentiment that an UNGA resolution would be a useful tool to highlight the increasing importance of mediation in conflict prevention and crisis management as well as to seek support for the development of mediation.

In the same meeting, the ministers established Friends of Mediation to advance the above mentioned issues. This group will together seek to table a resolution on mediation during the 65<sup>th</sup> session of the UNGA to be accepted by consensus. The resolution would be tabled under “Maintenance of international peace and security”, agenda item 33 “Prevention of armed conflict”.

#### **Definition of mediation**

For the purposes of the GA resolution, mediation is defined as a means of preventing and responding to conflict. Mediation is a non-coercive political form of third-party engagement in a conflict, which can be resorted to at any stage of a conflict. Mediation is not based on use of force, and it is not aimed at helping one of the participants to win. It is an extensively used form of conflict management where the third party has no authoritative decision-making power<sup>1</sup>, but assists the disputants in their search for a mutually acceptable agreement. Due to its nature, mediation is also distinguishable from pure negotiation. Mediation is a dynamic and ongoing process that begins with a pre-mediation process and continues up to the post-mediation implementation and monitoring phase.

Our definition of mediation aims to be broad and inclusive. This in mind, the most useful definition of mediation is the following by Wall, Stark and Standifer:

*"Mediation is assistance to two or more interacting parties by third parties who (usually) have no authority to impose an outcome."* (Wall, James A. Jr. & Stark, John B. & Standifer, Rhett L.: *Mediation. A Current Review and Theory Development*. Journal of Conflict Resolution, Vol. 45, No. 3, June 2001, 370–391.)

#### **Rationale**

Mediation has received up to this date remarkably little attention or support despite its acknowledged benefits. With the UN's renewed commitment to the promotion of mediation, there is a need to raise awareness and to highlight the increasing importance of mediation in conflict prevention and resolution among all Member States. Recent success stories of the use of mediation by states, regional and sub-regional organizations as well as the civil society demonstrate its usefulness. In the same vein, there is a need to

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<sup>1</sup> This non-binding nature of mediation distinguishes it from more such forms of conflict management as arbitration and adjudication which lean on judicial procedures the verdict of which the conflicting parties have to accept.

seek support for the development of mediation, in order to improve and increase information sharing, cooperation and coordination between all involved actors as well as coherence and complementarity of mediation activities. Furthermore, there are capacity building needs among the relevant actors that should be addressed.

Mediation as a tool of settling international disputes is incorporated in the UN Charter. Chapter VI requires Member States to seek a solution by peaceful means to any dispute to which they might be party if that dispute is of such a nature that its continuance is likely to endanger the maintenance of international peace and security. The importance of mediation has further been reiterated in the UNGA resolution on Prevention of Armed Conflict A/RES/57/337 adopted by consensus. The World Summit Outcome in 2005 underscored the importance of the use of mediation within the UN framework.

The Security Council has the primary responsibility for the maintenance of international peace and security as enshrined in the UN Charter. The SC has explicitly expressed its dedication to support promotion of mediation in its PRST/2008/36 on Mediation, its PRST/2009/8 on SG's Mediation Report, and its PRST/2010/18 on Maintenance on International Peace and Security.

The rationale for our aim to strive for a UNGA resolution on mediation is that a GA resolution would be one way to reinforce the promotion of mediation in conflict prevention and resolution.

The involvement of the UN with its universal legitimacy in mediation has proven a powerful source of leverage in order to reach an agreement as stated in the 2009 Report of the Secretary-General on Enhancing Mediation and Its Support Activities, S/2009/189, and the SC PRST/2008/36. In order to be able to practice mediation more professionally, strengthening the capacity of the Secretary-General and the UN, and mobilizing more resources to this end are needed. The role of the organization is to support cooperation between different actors as well as coherence of action, and to assist through e.g. capacity building in their mediation activities. The 2005 World Summit Outcome Document indicated support for the SG's effort to strengthen the UN mediation capacities. This was also underlined by the SC in its PRST/2008/36.

The 2009 Report of the Secretary-General on Enhancing Mediation and Its Support Activities, the SC PRST/2008/36 on Mediation, The SC PRST/2009/8 on SG's Mediation Report and the SC PRST/2010/14 on Optimizing the use of prevention tools: Prospects and Challenges in Africa all state that there is a need to strengthen capacity to practice mediation more professionally and effectively throughout the entire international system.

Several individual Member States as well as regional and sub-regional organizations are actively involved in the practice of mediation. Chapter VIII of the UN Charter requires Member States to make every effort to achieve pacific settlement of local disputes through regional arrangements or by regional agencies before referring them to the SC. Also, there are a number of actors within the civil society that have incorporated mediation in their *raison d'être*. Efforts by these non-governmental organizations have proven successful in several cases, and their expertise has been accordingly acknowledged by the SG in his 2009 report.

Therefore, another rationale of a GA resolution is that it can to be seen as a tool to strengthen the Secretariat's capabilities as well as the capacities of the entire membership, regional and sub-regional organizations and the civil society.

The conclusion from the above is that there is a pressing need to rally the international community to more actively use mediation and provide resources for it, in order to settle disputes threatening international peace and security. To this end, we think that a more firm normative ground in the form of a UNGA resolution is needed to actively proceed with promoting, advancing and developing the use of mediation in conflict prevention and resolution, and especially, in clarifying the role of the UN in it. UNGA resolutions carry considerable political weight, and in this regard, work as an instrument to gain wider support and recognition to the use of mediation. Resolutions adopted by consensus reflect a shared vision and political unity.

Throughout the resolution it is our intention – in the spirit of the landmark SC resolution 1325 and subsequent resolution 1820, 1888 and 1889 – to draw the attention to the importance of women’s equal participation and full involvement in all conflict resolution efforts. We will also emphasize taking into account the gender aspect during mediators selection as well as the overall approach and perspective that women can render in mediation processes as stated among other things in the 2008 SC PRST PRST/2008/36 on Mediation.

### **Way forward**

The Friends of Mediation met at PR level in New York on November 15<sup>th</sup>, 2010, and delegated work towards a draft resolution to experts. Our aim is to finalize this draft by the end of the year, in order to then send it to the entire membership of the UN. The draft should be accompanied by with a letter from the PR’s of Finland and Turkey calling for informal informals on it in the beginning of the New Year. After a few rounds of informal informals with all interested parties, we hope to table the resolution in the first half of 2011 and to be adopted by the GA by consensus. To this end, we hope that members of the Friends of Mediation will rally support for the initiative as soon as it has been distributed to the UN membership.