



MEDIATION AND SETTLEMENT OF DISPUTES

Expected Council Action

The Council is expected to hold an open debate on 21 April to consider the Secretary-General's report on mediation and settlement of disputes requested by the Council in its presidential statement of 23 September 2008 (S/PRST/2008/36). At press time Council members were still at an early stage of discussion about any Council decisions on the report.

Background

On 23 September 2008 the Council convened a high-level meeting on mediation and settlement of disputes chaired by President Blaise Compaoré of Burkina Faso and (then) chairman of the Economic Community of West African States. In the presidential statement issued at the end of the meeting the Council reaffirmed the UN's role in mediation efforts and requested a report from the Secretary-General in six months on UN mediation and possible ways to improve it.

On 8 April the Secretary-General submitted his report on enhancing mediation and its support activities to the Council. The report examines the challenges which confront the UN and its partners in providing effective mediation assistance to parties in conflict.

The need for a sufficient pool of experienced and knowledgeable mediators and support teams and sufficient funding for and other operational resources seems to be a major practical constraint.

The need for early action to provide assistance to parties and to design and pursue processes to address the root causes of conflicts is a second area of concern.

A third is how to overcome obstacles that block progress and steer the parties towards agreements that lead to sustainable peace.

A fourth challenge identified is the role of the Council. The Secretary-General expresses the clear view that the Council should have a vital role to play in all stages of the conflict cycle. He instanced cases where an active Council engagement (e.g. its endorsement of a mediator) helped to clarify the situation or strengthen the mediator's activities. The report also noted that while the Council had used targeted sanctions measures (under Chapter VII) as disincentives towards spoilers, and such tools had been widely studied and used, positive instruments had been much less attention. (This seems to be an allusion to the relative absence of Council activism and engagement of its mandate under Chapter VI of the Charter.) The Secretary-General says that this area requires more work to refine the kinds of tools that can be employed.

Recommendations made by the Secretary-General in the report include:

- strengthening conflict prevention and resolution through early engagement;
- professionalising operational support to UN mediators;
- developing the next generation of UN mediators;
- integrating mediation support into UN field operations;
- building on the progress so far made by the UN Secretariat's Mediation Support Unit;
- fostering gender balance and expertise in senior mediation posts;
- developing closer partnerships with regional, subregional and other mediation actors; and
- promoting national capacity in conflict prevention and resolution.

Key Issues

A key issue is whether Council members can do justice to this report (which the Secretariat was given six months to prepare) and negotiate a well-developed collective response in the time available before the debate on 21 April.

The second key issue, and one which may take Council members significant time to discuss, is the future role of the Council in international mediation efforts in conflict situations as envisaged in the Secretary-General's report.

Linked to this is the question of the working methods which the Council should employ when it decides to take up the mediation dimensions of a country-specific situation.

A fourth issue is whether to continue to discuss the issue of mediation in thematic settings.

A fifth issue arises from the fact that many of the Secretary-General's recommendations relate to the Secretariat resources and capacity, which are therefore matters for decision by the General Assembly. It is open to the Council to envisage this issue as a partnership between the two organs, using the technique envisaged in article 11(2) of the Charter. The Council could refer to the General Assembly its conclusions on the desirable steps for enhancing the Secretariat capacity, taking into account those recommended in the Secretary-General's report.

Finally, the question arises as to whether the Council can do more in this context and at this time in developing the partnership regional organisations in the spirit of Chapter VIII. The interaction in 2008 among the Council, the AU and mediators from both institutions during the crisis in Kenya is a good example of the potential that exists. Similarly, the Council had some useful interactions with the members of the Association of Southeast Asian Nations in 2008 on the Myanmar question. The question seems to be whether there is much scope for further added value at the thematic level or whether the challenge now is to operationalise partnerships in concrete country-specific situations.

Options

Options available to the Council for the 21 April debate include:

- focusing in the short term on the actual debate rather than any outcome document and taking advantage of the short time available to engage national decision makers in developing new policy options for floating in the debate;
- deciding to hold a follow-up debate in about two months after the proposed Council mission to Africa—a series of visits which may intensify Council members' understandings of the need and options for enhanced mediation efforts both by itself and by the Secretariat;

- deciding to begin negotiations on an outcome document later in April;
- adopting a brief noncontroversial statement on 21 April noting the Secretary-General's recommendations and undertaking to work further on the recommendations;
- mandating the Ad-Hoc Working Group on Conflict Prevention and Resolution in Africa to take up the Secretary-General's recommendations and the issue of mediation; and
- setting up a more comprehensive working group to examine how to implement the Secretary-General's proposals and to develop ways in which the Council could better utilise and support the use of mediation and other similar "pacific settlement" techniques in specific situations in resolving conflict.

Council Dynamics

During the 23 September 2008 high-level meeting, Council members had stressed the importance of mediation for the peaceful settlement of disputes. There was at that time a general consensus on the need to follow up their discussion of the issue.

The Council is presently confronted with articulating a significant collective vision of the role of the Council in international mediation efforts in conflict situations. While the Secretary-General's report provides substantive lessons learned regarding mediation over the years and points to possible avenues for improvement, his recommendations tend to highlight the technical aspects of what the Secretariat should do but is less specific on what the Council could do to effectively discharge the UN Chapter VI, or pacific settlement of disputes, mandate.

The Council (largely steered by the preferences of the P5 Council members—China, France, Russia, the UK and the US) has in the recent past been reluctant to seriously pursue its role in mediation. It has tended to limit itself to some relatively limited statements of support for the Secretary-General's efforts.

Many UN members have in recent years criticised the Council for the excessive attachment to Chapter VII, or peace enforcement tools, of the UN Charter as opposed to a more systematic utilisation of Chapter VI tools. Participants in the 23 September meeting had also focused on the role of the UN, the Security Council and the Secretary-General in working in cohesion to promote the mediation of problem situations and enhancement of those roles.

There appears to be a growing belief in the utility of mediation as a Chapter VI instrument, particularly among AU members conscious of the burden currently being assumed by the AU Peace and Security Council. African countries in particular have been in the forefront on the issue of mediation in the Council, citing the relatively less costly nature of mediation (*vis-à-vis* peacekeeping) and its potentially huge dividends as a tool of peacemaking. The Secretary-General's report was a product of Burkina Faso's initiative to hold a meeting on the utility of third party mediation in the peaceful resolution of conflicts during its Council presidency in September. (Burkina Faso's initiative has made some important contributions in the field of international mediation and the success in brokering the Ouagadougou peace agreement in March 2007 between the Ivorian government forces and the former rebel *Forces nouvelles* appears to have fueled this initiative. More recently, a former Burkinabe foreign minister, Djibril Yipènè Bassolé, has been working as the joint/AU/UN chief mediator for Darfur. These activities have gained Burkina Faso considerable respect and support from most Council members.)

The AU's increasing willingness to resort to mediation in recent times has also been juxtaposed with the relatively less engaged circumstances of the UN. The political support and engagement of the Security Council for mediation processes is seen as vital for enhancing leverage on the parties and has led to greater support for this approach within the UN as a whole.

The extent to which Council members will give substantive support for the Secretary-General's proposals remains to be seen.

Underlying Problems

Perennial challenges confronting mediation processes include numerous and sometimes overlapping mediation initiatives, and the lack of coherence and coordination of international efforts and resources in areas such as:

- policy development and direction;
- adequate funding; and
- sustained political will and commitment by the international community.

There is also the challenge of overcoming the perception among some states that the inclusion of a country on the Council's agenda is tantamount to being relegated to a failed state status. This has contributed to the situation where countries with fragile or threatening security situations have resisted being included in the Council's agenda which has in turn precluded the Council's engagement at an early stage of a conflict when mediation would be most appropriate and potentially more effective. (It is also an ironic situation against the backdrop of criticism of the Council's resort to Chapter VII instruments.)

UN Documents

Selected Security Council Resolutions

- S/RES/1653 (27 January 2006) addressed conflict prevention and resolution in the Great Lakes Region.
- S/RES/1625 (14 September 2005) was a declaration on the effectiveness of the Security Council's role in conflict prevention, calling for the strengthening of cooperation and communication between the UN and regional and subregional organisations in accordance with Chapter VIII.
- S/RES/1170 (28 May 1998) established the Council's Ad-Hoc Working Group on Conflict Prevention and Resolution in Africa.

Selected Presidential Statements

- S/PRST/2008/36 (23 September 2008) the Council reaffirmed the UN's role in mediation efforts and requested a report from the Secretary-General in six months on UN mediation and possible ways to improve it.
- S/PRST/2007/31 (28 August 2007) requested the Secretary-General to submit a report on the options for further implementation of resolution 1625.
- S/PRST/2007/1 (8 January 2007) requested the Secretary-General to provide the Council with more regular analytical reporting on regions of potential armed conflict and stressed the importance of establishing comprehensive strategies on conflict prevention.
- S/PRST/2002/2 (31 January 2002) made recommendations for achieving conflict prevention and resolution in Africa and noted that the Council would consider establishing a working group to monitor these recommendations.
- S/PRST/2000/25 (20 July 2000) invited the Secretary-General to submit a report on the prevention of armed conflict.
- S/PRST/1999/34 (30 November 1999) recognised the importance of building a culture of armed conflict prevention and the need for a contribution from all principal UN organs to achieve this goal.

- S/PRST/1998/35 (30 November 1998) reaffirmed the increasingly important role of regional arrangements in maintaining peace and security.

Selected Secretary-General's Reports

- S/2009/189 (8 April 2009) was the Secretary-General's report on enhancing mediation and its support activities.
- S/2008/18 (14 January 2008) was the report of the Secretary-General on the implementation of Security Council resolution 1625 on conflict prevention, particularly in Africa.
- A/60/891 (18 July 2006) was a progress report of the Secretary-General to the General Assembly on the prevention of armed conflict.
- A/59/2005 (21 March 2005) was the report *In larger freedom: towards development, security and human rights for all*.
- A/59/565 (2 December 2004) and Corr. 1 (6 December 2004) was the report of the High-Level Panel on Threats, Challenges and Change.
- S/2001/574 (7 June 2001) was the Secretary-General's first comprehensive report on conflict prevention.

Selected General Assembly Resolution

- A/RES/60/1 (16 September 2005) was the World Summit Outcome Document which emphasised "the obligation of States to settle their disputes by peaceful means in accordance with Chapter VI of the Charter."

Other

- S/PV.5979 (23 September 2008) was a high-level meeting on mediation and settlement of disputes.
- S/PV.5735 and resumption 1 (28 August 2007) was the discussion on the role of the Security Council in conflict prevention and resolution, in particular in Africa.
- S/2007/496 (14 August 2007) was the letter from Congo containing the terms of reference for the open debate on 28 August 2007 on conflict prevention and resolution, especially in Africa.
- S/2002/207 (1 March 2002) outlined the terms of reference and mandate for the Ad Hoc Working Group on Conflict Prevention and Resolution in Africa.