



THE PERMANENT MISSION
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

December 8, 2017

The Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva

Dear High Commissioner Zeid:

Thank you for your letter dated October 3, 2017, requesting information for preparation of your report on procedures and practices in respect of civil society involvement with regional and international organizations. The United States would like to offer the attached views with respect to the contributions of civil society to those organizations and their work, as well as challenges and best practices.

Sincerely,

Jason R. Mack
U.S. Deputy Permanent
Representative to the UN Human
Rights Council

OHCHR REGISTRY

13 DEC 2017

Recipients :.....C.S.....
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SUBJECT: U.S. Response to OHCHR Request for Contributions to Report on Civil Society Involvement with Regional and International Organizations

The United States attaches the highest importance to the contribution of civil society to the work of the United Nations. Non-governmental organizations (NGOs), civil society organizations (CSOs), academic institutions, private sector organizations, and other stakeholders worldwide play a crucial role in the UN's work, especially by calling attention to peace, security, and human rights issues that warrant a response from the United Nations and its Member States.

Civil society plays a critical role in promoting human rights in the United States. Our laws and institutions create an enabling environment where civil society is free to act without fear of reprisal. Consistent with our commitment to support free and robust civil society at home and around the world, we conduct frequent, in-depth consultations with civil society before and during various UN meetings as well as in preparation for our review under the Universal Periodic Review and for our treaty reports and presentations.

The United States vigorously defends civic space at the United Nations, working to ensure civil society's access to UN bodies and active participation in UN meetings. We advocate strongly for language in resolutions to promote civic space, protect human rights defenders, and preserve the freedoms of expression, peaceful assembly, and association. We also coordinate joint statements with other countries to call out countries restricting civic space.

The United States is a longstanding and active member of the UN Committee on NGOs, a subsidiary body of ECOSOC. We regret that certain Committee members have politicized the accreditation process, using it to block the accreditation of human rights organizations critical of them. While the number of NGO applications for accreditation has grown, the number of NGOs deferred or denied consultative status has also increased, and many have been deferred for several sessions. We remain concerned that some NGO Committee members continue to misuse the questions process to delay or block NGO accreditation applications. The U.S. has used its position on the Committee to help several NGOs secure consultative status. We remain deeply committed to reforming the

NGO Committee so that it can better serve its intended purpose of facilitating an active role for civil society in the UN system.

Everyone, individually and in association with others, should have unhindered access to and communication with international bodies, in particular the United Nations, its representatives, and its mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the Universal Periodic Review mechanism, and treaty bodies, as well as regional human rights mechanisms, bearing in mind that free and unhindered access to and communication with individuals and civil society are indispensable to enable the United Nations and its mechanisms to fulfill their mandates.

We condemn all acts of intimidation or reprisal by States and non-State actors against individuals and groups who seek to cooperate, cooperate, or have cooperated with the United Nations, its representatives, and its mechanisms in the field of human rights. We urge all UN Member States to take all possible measures to encourage the engagement of NGO and civil society actors in the UN's work, including removing or refraining from imposing arbitrary measures designed to prevent their participation. We welcome the designation of the Assistant Secretary-General for Human Rights by the Secretary-General as senior official to lead the efforts within the UN system to address intimidation or reprisals against those who seek to cooperate, cooperate, or have cooperated with the United Nations on human rights.

The United States is also deeply concerned that interference with NGO participation across the United Nations, including in the General Assembly and its subsidiary bodies, has also grown in recent years. Member States restrict NGO participation by invoking points of order and incorrectly asserting that NGOs do not have a formal speaking role, interrupting civil society in the middle of their formal interventions, or holding closed informals that are limited only to Member States. The United States believes that this issue could be addressed by having Bureau members and Committee chairs call points of order when Member States interrupt NGOs. We also consistently urge Member States to hold more open informal meetings so that NGOs can participate.

The United States consistently pushes for open meetings of the Security Council in order to ensure participation from civil society with firsthand experience and knowledge of human rights situations on the ground. While the Security Council's rules and procedures provide plenty of opportunity for NGO participation in both the open sessions of the Council and the Arrria meetings, their participation depends entirely on which Council member chairs the meeting. In order to increase participation from civil society and enhance the impact of the Council's work, the United States strongly urges other Security Council members serving as the Presidency for any given month to hold more open meetings and encourages all Council Members to hold Arrria-style meetings.

Since its establishment, the Universal Periodic Review (UPR) process has provided a unique mechanism to promote accountability for human rights commitments. The UPR process has offered an invaluable opportunity for States to reflect upon their own records of respect for human rights, through direct and open dialogue with other States and with civil society. While many States have benefited from these exchanges and subsequently implemented reforms inspired or reinforced by their participation in the UPR process, the United States remains concerned about ongoing efforts by some States to stifle the participation of NGOs.

Although NGOs do not officially participate during formal UPR working group presentations, their voices are an essential part of the discussion. Civil society provides an alternative perspective to the narrative of States through their independent data collection, and firsthand accounts by victims of human rights abuses. Civil society should be able to organize side events on the margins of UPR working group presentations and participate in UPR briefings without fear of harassment, intimidation, or reprisals, whether at home or abroad.

We have also noticed a recent trend in which some Member States have sought in a non-transparent way to prevent NGOs from participating in important high-level UN meetings, summits, and other UN processes. One way these countries are seeking to limit NGOs' participation is by inserting language in the General Assembly (UNGA) resolutions that establish the modalities for these meetings in order to attempt to limit the types of NGOs that can participate, or in many cases, limit participation only to Member States. Even when NGOs hold ECOSOC

consultative status, we are aware of instances in which States have sought to block them from participating in UN high-level meetings. While the United States agrees that Member States should retain the ability to prevent certain organizations with ties to criminal entities or terrorist organizations, for example, from participating in UN fora, we are extremely concerned that some States for political reasons actively seek to prevent NGOs from participating in UN meetings. The United States would also recommend that Member States hosting high-level events ensure that the modalities governing their meeting are inclusive of civil society.

A growing number of countries are seeking the ability to exclude NGOs, civil society, academic institutions, the private sector, and other stakeholders without ECOSOC consultative status from participating in high-level events on a “no-objection” basis. This gives each country a de-facto veto over an NGO’s participation, even an NGO that is not based in that country. The United States and other likeminded countries seek to include language emphasizing the importance of transparency and establishing safeguards to prevent abuses of this procedure.

All of these examples reinforce the notion that the structure of the UN system provides plenty of opportunities for NGO participation. Member States pose the primary challenge to NGO participation in the United Nations. We all need to work together to ensure that NGOs can have the opportunity to fully participate in the UN system.

In addition to the views expressed above, the attached annex provides a summary of how the United States views current UN procedures and practices for civil society participation at the United Nations. We encourage you to directly engage and seek input from the UN bodies mentioned in the annex as well.

ANNEX

U.S. Summary of UN Procedures and Practices for Civil Society Participation at the UN

1. Background: Despite well-established rules and procedures that outline NGO participation in the UN system, NGOs continue to be barred from participation as the trend toward restricting civic space grows globally. Many of the UN meetings and fora where NGOs participate leave it entirely up to the discretion of the chair leading the meeting to determine the terms of their participation. Often the meetings where NGO presence is essential to highlight human rights, discussions on security and other issues within their home country are the very ones from which they are barred from participating.
2. Overview: The primary means to secure UN NGO accreditation, and most difficult to secure, is accreditation by the Economic and Social Council (ECOSOC). NGOs with ECOSOC accreditation are granted General consultative status or Special consultative status, or they are included on the NGO Roster. The type of status determines the level of privileges the NGO has before ECOSOC and its subsidiary bodies. General consultative status is reserved for large international NGOs with an area of work covering most of the issues on the agenda of ECOSOC and its subsidiary bodies. These tend to be fairly large, established international NGOs with a broad geographical reach. Special consultative status is granted to NGOs which have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by the ECOSOC. These NGOs tend to be smaller and more recently established. Organizations that apply for consultative status but do not fit in any of the other categories are usually included in the Roster. NGOs with existing accreditation with UN Specialized Agencies or at the recommendation of the Secretary-General can also be placed on the Roster. The other means for receiving access to the United Nations is through the Department of Public Information (DPI); however, these NGOs are only affiliated with the UN, which provides far fewer privileges than ECOSOC accreditation.
3. ECOSOC Accreditation: NGOs with ECOSOC accreditation can participate in the regular sessions of the Council, the Functional and Regional Commissions of

ECOSOC, and the other subsidiary bodies. During the open, i.e., public, sessions of these bodies, NGOs can: i) attend official meetings; ii) submit written statements prior to the sessions; iii) make oral statements; iv) meet official government delegations and other NGO representatives; v) organize and attend parallel events that take place during the session, i.e., side-events; and vi) participate in debates, interactive dialogues, panel discussions, and informal meetings. While the exact rules – modalities – of NGO participation vary between bodies, common to each is that ECOSOC-accredited NGOs that are in good standing with the Council are allowed to participate.

4. How to Obtain ECOSOC Accreditation: The Non-Governmental Organizations Branch (a unit located under the Office for ECOSOC Support and Coordination in the Department of Economic and Social Affairs (DESA)) coordinates ECOSOC NGO accreditation applications. To apply for accreditation, NGOs must: i) create a profile for the organization; ii) submit the online application which includes a questionnaire and supporting documentation; iii) undergo the initial screening of the application by the NGO Branch to ensure that the application is complete; iv) undergo the review of the application by the ECOSOC Committee on Non- Governmental Organizations (NGO Committee) at its regular session in January or at its resumed session in May every year; v) receive the recommendation by the Committee for general/special consultative status; and vi) receive an affirmative decision taken by ECOSOC on the application in April and July every year. During the review of the application by the NGO Committee, NGOs can be asked questions to further clarify their application. NGOs must respond to all questions submitted by the Committee; if NGOs do not respond after three notices, their application is dismissed. The tactic of asking questions during NGO Committee sessions is an effective means for members to perpetually defer applications, often resulting in a de facto rejection of the application. These questions are supposed to be purely based on the structure/function of the NGO, but this process is often politicized by some Committee members.

5. Expectations of ECOSOC Accreditation: NGOs that receive General or Special Consultative Status are expected to adhere to the principles laid out in ECOSOC resolution 1996/31. The NGO Committee monitors this participation

through Quadrennial Reports submitted to the Committee through the NGO Branch. These reports must include a description of the organization's activities, especially as it relates to their contribution to the work of the United Nations, including the Sustainable Development Goals (SDGs) and other international development goals. Failure to submit a Quadrennial Report after three notifications results in the NGOs status being suspended, i.e., their privileges are revoked. The suspension can be lifted by submitting the report at a later date.

6. NGO Roster: Organizations included in the Roster tend to have a rather narrow and/or technical focus. NGOs that have formal status with other UN bodies or specialized agencies (e.g., International Labor Organization, United Nations Economic, Scientific and Cultural Organization, World Health Organization and others), can be included on the ECOSOC Roster. The Roster lists NGOs that ECOSOC or the UN Secretary-General considers can make "occasional and useful contributions to the work of the Council or its subsidiary bodies."

7. Department of Public Information Affiliation: The Economic and Social Council gave the Department of Public Information a mandate to affiliate with NGOs in order for DPI to disseminate information about the United Nations to the membership of the NGOs. The purpose of this relationship is to build knowledge of and support for the United Nations at the grassroots level. NGOs with DPI affiliation are generally expected to publicize UN activities and promote the observance of UN international days and years, as established by the General Assembly. NGOs seeking DPI affiliation simply need to petition DPI. NGOs with ECOSOC consultative status and strong public information programs are granted association with DPI upon written request to the DPI/NGO Section. NGOs can be associated with DPI without having consultative status with ECOSOC. DPI affiliation does not grant the NGO the right to attend General Assembly or ECOSOC meetings; however, DPI-affiliated NGOs can receive grounds passes and attend side events.

NGO Participation in the General Assembly and its Subsidiary Bodies

8. The participation of civil society is extremely limited in the UN General Assembly (UNGA). During formal UNGA meetings, a civil society representative can only speak in the Plenary if specified in a General Assembly resolution or decision. In some of the Main Committees (i.e., First, Second, Third, etc.), civil society representatives can be invited to speak. If the meeting is open, i.e., public, civil society members can attend if seating is available. During high-level events, NGOs with ECOSOC accreditation can secure “overlays,” i.e., limited distribution admission passes, from the NGO Branch on a first-come, first-served basis for either the morning or afternoon session, but not both, in an attempt to distribute these overlays on an equitable basis.

9. During informal meetings of the General Assembly, civil society participation is left to the discretion of the Chair. Considering time constraints, the number of civil society speakers is very limited. The Chair of the meeting can also choose to invite civil society representatives to speak as keynote speakers or panelists. If the meeting is open, i.e., public, civil society members can attend if seating is available.

10. GA subsidiary bodies including the UN Human Rights Council follow the same process by which NGOs can participate in informal meetings at the discretion of the chair. In the plenary sessions of the U.N. Human Rights Council, NGOs are also given a designated slot to speak under each agenda item after observing Member States. Unfortunately, some States consistently attempt to block this participation by interrupting the NGOs in the middle of their statements as well as engage in other forms of intimidation.

NGO Participation in the Security Council

11. Participation in formal meetings of the Security Council is limited to i) the members of the Council (Permanent: China, France, Russian Federation, United Kingdom and the United States) and the ten rotating members with two-year terms), and ii) any member of the United Nations not a member of the Security Council and any State not a Member of the United Nations, if invited to participate

in a meeting or meetings of the Security Council. Incoming members of the Security Council are often invited to attend these formal meetings in order to become accustomed to the work of the Council and the issues presently before it.

12. Informal meetings of the Security Council, or “Arria-Formula” meetings, are less restrictive and a relatively new mechanism used by the Council. These meetings are informal, confidential gatherings during which Security Council members can have a frank and private exchange of views. The procedural framework is flexible, and the facilitator(s) or convener(s) can invite those people/organizations believed to be able to provide beneficial information and/or to whom they may wish to convey a message. These meetings provide interested Council members an opportunity to engage in a direct dialogue with high-level representatives of Governments and international organizations – often at the latter’s request – as well as non-State parties, on matters with which they are concerned and which fall within the purview of responsibility of the Security Council. Unfortunately, however, despite the more flexible nature of these meetings, NGOs are often still excluded from participating.

NGO Participation in the Economic and Social Council

13. NGO participation at the United Nations through the Economic and Social Council is an element of the UN Charter. Article 71 of the Charter states: “The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.” The modalities of NGO consultative status with ECOSOC and its subsidiary bodies is governed by ECOSOC resolution 1996/31. The resolution outlines the eligibility requirements, rights and obligations of NGOs in consultative status, procedures for withdrawal or suspension of consultative status, the role and functions of the ECOSOC Committee on NGOs, and the responsibilities of the United Nations Secretariat in supporting the consultative relationship. Consultative status is granted by ECOSOC upon recommendation of the Committee on NGOs, which is composed of 19 Member States.

14. ECOSOC Meetings: NGO participation in formal meetings of the Economic and Social Council is more robust than in the General Assembly (see Para 4). NGO participation in informal meetings is at the discretion of the Chair. Most, if not all, negotiations on resolutions before ECOSOC and its subsidiary bodies that are negotiated in New York occur during informal meetings that are closed, i.e., accredited NGOs are not permitted to attend and the meetings are not open to the public or press. For written statements to ECOSOC, the number of words for submission depends on the type of consultative status. NGOs with General consultative status can submit a statement with a maximum of 2,000 words. NGOs with Special consultative status can submit a statement with a maximum of 500 words. Only one written statement is allowed for each organization. Organizations with Roster consultative status may only submit a written statement if invited to do so by the Secretary-General, in consultation with the President of ECOSOC or its Committee on NGOs. Organizations with General or Special consultative status have the option of presenting an oral statement at formal ECOSOC sessions; these statements must relate to theme. Organizations on the Roster may give statements only if requested by the Secretary-General or ECOSOC and/or its subsidiary bodies.

15. Functional Commissions: Most NGOs seeking ECOSOC accreditation do so to participate in the Functional Commissions of the Council – eight thematic committees where much of the work of the Council is conducted. The Functional Commissions follow the Rules of Procedure of ECOSOC, and thus NGO participation is similar to ECOSOC meetings. However, written statements by NGOs with general or special consultative status submitted to ECOSOC commissions and subsidiary bodies on subjects in which the NGOs have specialized knowledge have a different word-count limitation. Again, NGOs with General consultative status can submit a statement with a maximum of 2,000 words. NGOs with Special consultative status can submit a statement with a maximum of 1,500 words. Accredited NGOs seeking to participate in the Functional Commissions simply have to register online with the NGO Branch.

16. Regional Commissions: The Regional (Economic) Commissions are hybrid bodies that are subsidiary bodies of ECOSOC, but staffed by UN Secretariat. Each regional commission has its own Rules of Procedure, and much pre-date ECOSOC

resolution 1996/31; nevertheless, the practices of the Commissions need to conform to the Rules of Procedure of ECOSOC. In all instances, NGOs are permitted to attend the open, i.e., public, sessions of the commissions. The Economic Commission for Africa (ECA), the Economic Commission for Latin American and the Caribbean (ECLAC), the Economic and Social Commission for Asia and the Pacific (ESCAP), and the Economic and Social Commission Western Asia (ESCWA) all have a mandated agenda item for items proposed by non-governmental organizations in general consultative status. The rules from the ECA, ECLAC, and ESCWA pre-date ECOSOC resolution 1996/31 and refer to an outdated list of NGOs labeled “Category A” and “Category B.” The Economic Commission for Europe (ECE) does not have a required Agenda Item for NGOs; however, NGOs are reportedly integrated through the agenda.

17. Specialized Agencies: Specialized agencies (e.g., International Labor Organization (ILO), United Nations Economic, Scientific and Cultural Organization (UNESCO), World Health Organization (WHO), and others, including the World Bank Group) are autonomous organizations whose work is coordinated through ECOSOC (intergovernmental level) and the Chief Executive Boards for Coordination (CEB) (inter-secretariat level). Rules of NGO accreditation by the Specialized Agencies are adopted at the Agency-level and vary per organization. Nevertheless, many of the Specialized Agencies have made strides to integrate the participation of NGOs in their related fields. The ILO, for example, has long integrated worker’s organizations and others into its tripartite structure. NGO consultation and cooperation with the WHO is regulated by Article 71 of the WHO Constitution, as well as its “Principles Governing Relations with Nongovernmental Organizations.” Finally, UNESCO has its own criteria for the creation of either formal or operational relations between NGOs and the Organization. NGOs with accreditation with the Specialized Agencies are placed on the Agency Roster – a subset of the broader NGO Roster.

NGO Participation in High-Level Meetings and Conferences

18. High-level meetings and conferences are generally accompanied by an independent modalities resolution that addresses all manners of logistics, including the participation of NGOs. These modalities can call for the participation of

ECOSOC accredited NGOs, as well as those without ECOSOC accreditation. The latter requires an independent mechanism to review the applications of NGOs and determine which organizations have a legitimate interest in attending and participating in the meeting or conference. While this structure can permit the participation of NGOs with ECOSOC accreditation, modalities often include the ability of Member States to object to the participation of specific NGOs, thereby blocking them from participating. This happened most recently (and egregiously) during the June 8-10 High-Level Meeting on Ending AIDS during which nearly two dozen LGBTI-affiliated NGOs were anonymously blocked from participating.

The Secretariat and NGOs

19. The UN Secretariat is composed of a number of departments and offices under the Office of the Secretary-General. While many of these functional units are inward-focused, serving a number of logistical and administrative services, others have external mandates so their work necessitates the input of civil society organizations. In these instances, the departments and offices of the UN Secretariat directly engage with civil society and non-State actors on substantive areas within their mandates. One such unit is the Non-Governmental Liaison Service (NGLS), which – in addition to the NGO Branch and the DPI NGO Relations Section – serves as a bridge between NGOs and the United Nations. NGLS is a jointly-financed interagency program of the UN system that provides training materials to NGOs, connects them with UN processes, and supports high-level meetings and conferences with modalities that call for NGO participation beyond those with ECOSOC accreditation. Like the NGO Branch, NGLS resides under the Department of Economic and Social Affairs (DESA).