

UNGA Thematic Report on Multilateral Organisations and FOAA

Concept Note

A. Introduction

Global governance has long been the domain of States. Civil society is gaining increasing recognition as a legitimate actor and as influential in the processes and outputs of inter-governmental organisations (IGOs). In his upcoming report to the UN General Assembly in October 2014, the Special Rapporteur (SR) turns his attention to the space afforded to civic actors at and in relation to the multilateral level. So far, the SR's reports have focused on the exercise of the rights to freedom of peaceful assembly and of association at the national level. He recognises that States have the obligation to respect, protect and promote human rights at the local level. In his view, similar obligations exist at the international level, at least to the extent that States should not stand in the way of those exercising their rights at the international arena or at the national level. He believes that States should be held to the same standards at the domestic level as at the international level.

In this report, the SR intends to assess the extent to which States facilitate or diminish civil society's involvement in processes at and in relation to the multilateral level, including in the exercise of their rights to freedom of peaceful assembly and of association. The report departs from the premise that an enabling environment for civil society to operate in contributes significantly to the ability to exercise the rights to freedom of peaceful assembly and of association and other rights as well. The report will explore whether States at the multilateral level create conducive spaces to interact with civil society and whether in implementing their programmes through multilateral institutions they enable or hinder civil society voice and involvement. The SR will assess how policies and practices by multilateral organisations impact positively or negatively the ability of civil society organisations to exercise their freedom of association. While not all negative practices, strictly speaking, violate the right to freedom of association, identifying practices and policies that restrict civic space remains important because such restrictions may ultimately lead to violations or create environments where such violations are likely to occur.

The SR recognises that interactions between civil society and States at the multilateral level have an effect on various other rights, including the right to participation in public affairs, freedom of expression and the rights of various categories of civic actors such as indigenous peoples, women etc. The report will necessarily touch on these rights.

In relation to the right to freedom of peaceful assembly, the SR will examine closely how States facilitate assemblies organised around large multilateral events such as world conferences, meetings of the G8 etc. For the most part, the principles governing the exercise of the right to freedom of peaceful assembly apply to large multilateral events. However, the context in which such assemblies are held may result in States taking unprecedented measures to facilitate or hinder the exercise of the rights to freedom of peaceful assembly. The SR examines whether such extraordinary measures are justified.

Of concern also is how multilaterals in their various interactions with civil society help or hinder the exercise of freedom of peaceful assembly. The framework within which multilateral institutions or their agencies engage at the national level may place barriers in the way of groups seeking to exercise their rights to freedom of peaceful assembly. For example, where UN agencies are restricted from directly

working with civil society groups or where policies do not allow for funding of peaceful assemblies. The SR will explore how policies or programmatic interventions by multilateral institutions impact on the exercise of peaceful assembly.

B. Issues for discussion

a. Methodology

- i. Questionnaire – (should already have been circulated so not sure value added for discussion)
- ii. Additional means of obtaining specific information from the IGOs selected
- iii. Survey of similar studies, literature (eg CIVICUS forthcoming report)

b. Substantive issues – Enabling environment for civil society

- i. Scope – A number of global multilateral institutions have been pre-selected for in-depth focus in the report, including:
 - UN – Economic and Social Council (ECOSOC), United Nations Development Programme (UNDP), Office of the High Commissioner for Human Rights (OHCHR), UN Office on Drugs and Crime (UNODC), Human Rights Council (HRC)
 - World Bank & International Monetary Fund (IMF)
 - World Trade Organisation (WTO)
 - Financial Action Task Force (FATF)
 - Extractive Industries Transparency Initiative (EITI)

The discussion will revolve around the justifications for choosing these particular IGOs and suggestions for additional organisations should this be necessary (eg the post 2015 sustainable development goals process, the Global Partnership for Effective Development Co-operation, Open Government Partnership, Community of Democracies). A pertinent question to be answered is whether the selection criteria should consist only of IGOs in which States participate at the policy level. Alternatively, should the report cover agencies or departments of such IGOs that have a bearing on civic space even if States are not necessarily involved in their governance structures?

Interaction between civil society and these institutions will be assessed along two axes. First, how is civil society involved in the priority-setting and decision-making processes? Thus, when States meet to make policy decisions to what extent do they create space for NGOs, and if so, is that space meaningful? Secondly, to what extent do multilaterals involve and consult with civil society in their work on the ground, and how do their programmes foster enabling environments for civil society? It should be noted that organisations covered in the report work on a variety of issue areas including human rights, economics, etc.

ii. Conceptual framework

- Beyond civil society's right to have a voice at the multilateral level, what contribution can such engagement make to global governance? Consequently, why is it crucial to guarantee their rights (association, assembly, expression, participation) at this level?

- One of the major constraints to a stronger role in international governance is the conception that States are the key players in this arena. Assertions by civil society for more space and say in international affairs have met with resistance by States, and participation by civil society is mostly kept at a minimum. Discussions could revolve around the legitimacy of the state-centric global governance and the space that this concept leaves for civil society's participation.
 - The report should emphasise that the rights examined and an enabling environment for civil society applies equally at the national and international levels. States may be tempted to hide behind the institutional framework of the organisations and argue that the responsibility to engage with civil society rests with the entity and not individual member States. In response, a robust argument could be made that the obligations apply primarily to States that form the IGOs and secondarily to the institution or the bureau of the institution; and finally that even when they are acting collectively, States are bound to uphold the normative standards regulating rights.
 - The extent to which limitations apply at the multilateral level would also need to be discussed, and similarly the responsibilities civil society organisations may have at this level. For example, would concerns often raised about legitimacy and accountability of NGOs amount to a justifiable reason to limit their freedom to associate at the multilateral level?
- iii. General issues – these relate to themes that are common to all multilateral institutions
- Access to multilateral institutions – discussions around the extent to which the right to freedom of association is recognised by the institutions – should institutions ensure an explicit legal basis for engagement with civil society? Should they have frameworks that make such engagement possible (even where no legal basis exists)? What standards should these processes meet (eg is registration in a national jurisdiction necessary)? What kinds of organisations/associations should be guaranteed access? Is there an obligation on institutions to ensure that NGOs have equal access to make oral interventions during meetings for example by preventing GONGOs at the HRC from hijacking the list of NGOs speakers and preventing genuine NGOs from taking the floor?
 - Activities at multilateral level – What level of participation rights should civil society organisations be entitled to for the right to be guaranteed? How should engagement between IGOs and civil society/participation be mediated to ensure effective outcomes for all without unduly limiting the exercise of freedom of association (eg conduct of delegations and CSO representatives? What role for access to information?)
 - State responsibilities to facilitate participation at the multilateral level – What measures can States take to encourage civil society participation?

Are there examples of innovative actions that multilateral institutions or States have taken to ensure the freedom of association at the multilateral level?

- Private sector/business – In what ways does State engagement with the private sector/business hinder more robust involvement of civil society at the multilateral level? What are examples of interventions at the multilateral level that disproportionately privilege the private sector over civil society?
 - Reprisals – have States engaged in reprisals on civil society organisations or representatives that have sought to engage at the multilateral level? Has there been adequate response to such actions by other States at the multilateral level against the offending State? What is the scope of States responsibility to respect and protect against threats and harm to civil society actors who participate at the multilateral level?
- iv. Issues related to specific IGOs
- Existence and nature of legal basis for engagement with civil society
 - Best practice and challenges in engaging with civil society with illustrative examples
 - a. Are there ways in which multilateral organisations have directly hindered civil society organisations from exercising their rights to freedom of association?
 - b. Are there examples successful interventions by multilateral organisations to reinforce the exercise of freedom of association, particularly in restrictive environments
 - c. What lessons can be learned from these examples?
- v. Recommendations
- c. Substantive issues – Freedom of peaceful assembly
- i. Scope – assemblies held in connection with meetings of IGOs (demonstrations/protests) Examples of such assemblies, distinguishing how they were managed
 - ii. Focus on specific concerns related to assemblies held in connection with meetings of IGOs – best practices and challenges
 - Examples of good practice/challenges in regulation of peaceful protests in these contexts?
 - iii. Focus on concerns related to how multilateral institutions promote or hinder the exercise of freedom of peaceful assemblies in the course of their work
 - Eg policies against funding peaceful assemblies
 - iv. Recommendations