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CIVIL SOCIETY PARTICIPATION

ABILA STUDY GROUP **CRIMES AGAINST HUMANITY**

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CIVIL SOCIETY PARTICIPATION

Proposed Language for Adoption by the Preparatory Committee for the United Nations Conference of Plenipotentiaries on Prevention and Punishment of Crimes against Humanity

Invites other interested and relevant parties and stakeholders, including individuals from civil society and representatives from relevant non-governmental organizations, academic institutions, and victims and survivors groups, taking into account the principles of transparency, accessibility, diversity, equitable geographical representation, and gender parity, to submit requests to fully and effectively participate in the Preparatory Committee and Conference as observers pursuant to paragraph 17 of resolution 79/122;

Requests the Chair of the Preparatory Committee to compile a list of those requests and submit the list to States and members of specialized agencies for their consideration on a non-objection basis and to bring the list to the attention of the Preparatory Committee for a final decision on participation;

Determines that States intending to object to such participation shall provide a detailed rationale for any objection in writing, separately for each organization, and that such rationale, if requested by one or more States or members of specialized agencies, shall be notified to the Secretariat and the requester;

Clarifies that approved civil society representatives may make oral interventions at formal sessions of the Preparatory Committee, Working Group, and Conference, subject to the availability of time and at the discretion of the Chair, and submit written statements to be transmitted to all delegates and observers by the Preparatory Committee Bureau and published on the web page of the Committee; and

Encourages the Committee Bureau and any participants that host technical briefings, side events, and intersessional consultations, including consistent with paragraph 12 of resolution 79/122, to facilitate meaningful and effective participation and inputs from a diverse range of stakeholders, with due recognition of the geographical diversity, accessibility needs, and resource limitations of civil society stakeholders.

Explanatory Notes

In light of UN General Assembly Resolution 79/122, which determined that the Preparatory Committee shall discuss the “organization and methods of work of the Conference” and decide, at its first session, on the participation of stakeholders without non-governmental organization (“NGO”) consultative status with the UN Economic and Social Council (“ECOSOC”),¹ the above proposal suggests procedural text on the potential modalities of such civil society participation.

1. Recognizing the invaluable role of civil society in the prevention and punishment of crimes against humanity and guided by the principles of transparency, accessibility, and inclusion, this proposal enumerates practical modalities to facilitate the full, meaningful, equal, and safe participation of diverse civil society actors in the elaboration of the Convention, consistent with international law, UN practice and guidance, and other treatymaking and multilateral processes.
2. The proposal understands civil society broadly to include victim/survivor associations, non-governmental organizations working on justice and accountability, human rights, humanitarian, and other relevant issues, and academic institutions, as well as individuals and groups from affected communities—as technical experts with essential knowledge and/or as individuals with directly relevant lived experiences and ties to key constituencies.
3. The proposal is consistent with the UN Charter, which provides the normative foundation for the participation of civil society in UN deliberative processes—recognizing in the preambular opening that the United Nations belongs to “We the peoples” and specifically anticipating, in Article 71, consultation with NGOs with relevant competencies.² The requisite participation of civil society and indeed, the fundamental right to take part in public affairs,³ have since been further elaborated and entrenched under international law, including with respect to international deliberations.⁴

¹ UNGA Res 79/122 (4 December 2024) UN Doc A/RES/79/122, para 8 (deciding that the Preparatory Committee “shall also decide, at its first session, on the participation of stakeholders other than those referred to in paragraph 16, and decides that, upon completion of its mandate, the Preparatory Committee shall report directly to the Conference”); see also *ibid* para 16 (“*Decides* that attendance at the Conference and the Preparatory Committee as observers will also be opened to relevant non-governmental organizations in consultative status with the Economic and Social Council in accordance with the provisions of Council resolution 1996/31 of 25 July 1996”).

² Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) preamble para 1, art 71.

³ Universal Declaration of Human Rights (adopted 10 December 1948) UN Doc A/RES/217(III), art 21; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 25. See also Arab Charter on Human Rights (adopted 22 May 2004, entered into force 15 March 2008) art 24; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123, art 23.

⁴ See CCPR, ‘General Comment No 25, The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service’ (ICCPR Article 25) (12 July 1996) UN Doc CCPR/C/21/Rev.1/Add.7, para 5 (interpreting “public affairs” to “cover [...] all aspects of public administration, and the formulation

4. The proposal draws from the UN Guidance Note on the Protection and Promotion of Civic Space, which recalls the following steps for facilitating meaningful civil society participation in intergovernmental processes: “1. Fair rules on access to information and participation modalities. 2. Transparent and fair accreditation and registration processes. 3. Diversity of civil society, including underrepresented populations. 4. Safety of persons who engage. 5. Mechanisms through which civil society can contest restrictions.”⁵ The Guidance Note further recognizes the role of the UN Secretariat in supporting such participation.⁶
5. In order to strengthen the diversity of voices represented at the Preparatory Committee, Working Group, and Conference, the proposal provides for the inclusion of civil society representatives lacking ECOSOC accreditation. Although the authority to accredit NGOs with formal consultative status lies with ECOSOC, the General Assembly has long recognized the need to consult and coordinate with a diverse range of civil society stakeholders, including organizations without ECOSOC consultative status.⁷ Past practice, including before the General Assembly, has permitted ad hoc invitations to NGOs lacking ECOSOC accreditation.⁸ For instance, the Ad Hoc Committee that elaborated the UN Convention on Cybercrime was asked by the General Assembly to facilitate the participation of organizations without ECOSOC consultative status—ultimately totaling 214 approved stakeholders.⁹ The

and implementation of policy at *international*, national, regional and local levels”) (emphasis added); see also OHCHR Report, ‘Draft Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs’ (20 July 2018) UN Doc A/HRC/39/28, para 100 (“Participation of civil society actors in meetings of international organizations, mechanisms and other forums, at all relevant stages of a decision-making process, should be allowed and proactively encouraged.”).

⁵ UN Guidance Note, ‘Protection and Promotion of Civic Space’ (September 2020) <https://www.ohchr.org/sites/default/files/Documents/Issues/CivicSpace/UN_Guidance_Note.pdf> 8.

⁶ Ibid 7 (“According to the Charter of the United Nations, international law and the 2030 Agenda for Sustainable Development, the role of the United Nations Secretariat is to support Member States in making intergovernmental processes open to civil society participation and ensuring that diverse groups are included in them.”).

⁷ See, e.g., UN Charter (n 1) art 71; UN Secretariat, Repertory of Practice of United Nations Organs, UN Charter, art 71, Supp 1 (1954-1955), vol 2, para 8 (conveying the General Assembly’s appeal to NGOs, without reference to whether they held ECOSOC consultative status, to cooperate in the implementation of its resolutions); UN Civil Society, ‘Our Services: Ad Hoc Special Accreditation’ <<https://www.un.org/en/page/our-services#:~:text=Ad%2Dhoc%20Special%20Accreditation%20is,Proof%20of%20Legal%20Status>> (explaining the ad-hoc special accreditation process for NGOs without consultative status).

⁸ See, e.g., UNGA Res 56/168 (19 December 2001) UN Doc A/RES/56/168, para 3 (inviting disabled persons organizations, including those without ECOSOC status, to contribute to the elaboration of the Convention on the Rights of Persons with Disabilities); Stephen D Goose, Mary Wareham, Jody Williams, ‘Banning Landmines and Beyond,’ in Jody Williams, Stephen D Goose, Mary Wareham (eds), *Banning Landmines: Disarmament, Citizen Diplomacy, and Human Security* (Rowman & Littlefield Publishers, 2008) 1, 6-7 (describing the novel “government-civil society partnership” of the Ottawa Process and the subsequent Mine Ban Treaty Process).

⁹ UNGA Res 75/282 (26 May 2021) UN Doc A/RES/75/282, para 9 (requesting “a list of representatives of other relevant non-governmental organizations [without ECOSOC consultative status], civil society organizations, academic institutions and the private sector” who could participate in the Committee that elaborated the UN Convention against Cybercrime). The list of all such accredited stakeholders is in the ‘Report of the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering

1998 Rome Statute Preparatory Commission also allowed NGOs observer access by ad hoc invitation and, during the Rome Conference itself, approximately 450 NGO individuals from 236 approved NGOs participated, with 800 NGOs comprising the informal coalition of NGOs and international law experts substantively engaged on the treaty.¹⁰

6. The proposal stipulates the inclusion of civil society stakeholders without ECOSOC accreditation through a non-objection procedure. This draws on decades of UN practice.¹¹ In the spirit of inclusivity, Member States are encouraged to utilize the non-objection mechanism judiciously.¹² The proposal further requires objecting States to provide a detailed rationale for their objection,¹³ to be shared upon request to the Secretariat and requester, in an effort to facilitate greater transparency, fairness, and due process.¹⁴ The approval for participation should last for the entire duration of the Preparatory Committee, Working Group, and Conference.

the Use of Information and Communications Technologies for Criminal Purposes’ on its session on organizational matters held on 24 February 2022 (2 March 2022) UN Doc A/AC.291/6, Annex I.

¹⁰ UNGA Res 53/105 (8 December 1998) UN Doc A/RES/53/105, paras 6-7; William R Pace, Mark Thieroff, ‘Participation of Non-Governmental Organizations’, in Roy S Lee (ed.), *The International Criminal Court: The Making of the Rome Statute* (Martinus Nijhoff Publishers, 1999) 391, 392.

¹¹ See, e.g., UNGA, ‘United Nations Conference on the Arms Trade Treaty: Provisional Rules of Procedure of the Conference’ (7 March 2012) UN Doc A /CONF.217/L.1, Rule 63(b) (stipulating a non-objection procedure for the inclusion of “[o]ther interested non-governmental organizations relevant and competent to the scope and purpose of the Conference”); UNGA, ‘United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects: Rules of Procedure of the Conference’ (4 May 2016) UN Doc A/CONF.192/16, Rule 63(b) (same); UNGA Res 75/282 (n 8) para 9 (providing for a non-objection basis for the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes to decide on the participation of “representatives of other relevant non-governmental organizations, civil society organizations, academic institutions and the private sector, including those with expertise in the field of cybercrime, who may participate in the Ad Hoc Committee”); UNGA Res 55/242 (27 February 2001) UN Doc A/RES/55/242, Annex, paras 8, 30. See also UNGA Res 55/13 (3 November 2020) UN Doc A/RES/55/13, para 13; UNGA Res 76/307 (8 September 2022) UN Doc A/RES/76/307, para 11; UNGA Res 77/275 (24 February 2023) UN Doc A/RES/77/275, para 10.

¹² See, e.g., Open-Ended Working Group on Security of and in the Use of Information and Communications Technologies 2021-2025 ‘Draft Final Report’ (11 July 2025) UN Doc A/AC.292/2025/CRP.1, Annex I, para 15(e).

¹³ See, e.g., ‘Practical Modalities for Stakeholders’ Participation and Accreditation: Future UN Mechanism on Cybersecurity’ (June 2025) <https://docs-library.unoda.org/Open-Ended_Working_Group_on_Information_and_Communication_Technologies_-_2021/Practical_Modalities_to_Enable_Meaningful_Stakeholder_Participation_in_the_Future_UN_Mechanism_on_Cybersecurity_-_cross-regional_paper_-_June_2025.pdf> Annex, para 20 (with 40 States and the EU proposing that “[t]he notice of intention to object shall be made in writing and include, separately for each organization, a detailed rationale for such objection(s)”).

¹⁴ See, e.g., International Service for Human Rights (ISHR), ‘Accreditation procedure threatens to undercut civil society participation at UN meeting’ (24 April 2013) <<https://ishr.ch/latest-updates/accreditation-procedure-threatens-undercut-civil-society-participation-un-meeting>> (arguing that the UN’s emerging practice of a non-objection procedure for NGO participation is vulnerable to politicization and the exclusion of legitimate NGO stakeholders, and linking to a joint letter by 23 leading human rights organizations expressing concern about this possibility); OHCHR, ‘Attacks on UN Civil Society Allies Raise Alarm’ (22 November 2018) <<https://www.ohchr.org/en/stories/2018/11/attacks-un-civil-society-allies>>

7. Due consideration should be given to equitable geographical representation, gender equity and parity,¹⁵ and the inclusion of underrepresented groups and individuals¹⁶—including children,¹⁷ Indigenous Peoples,¹⁸ and persons with disabilities¹⁹—in an ethical, safe, and inclusive manner. The practical modalities for implementing these principles could draw from the UN’s internal procedures and guidance documents, including the UN Geographical Diversity Strategy and UN System-wide Strategy on Gender Parity. The proposal’s references to “accessibility” and “accessibility needs” recognize that, in practice, reasonable accommodations should be made to facilitate full, meaningful, and effective participation and squarely tackle any physical, communication, institutional, and attitudinal barriers. This may require proactive and targeted outreach, augmented communication formats or channels, establishment of dedicated focal points or mechanisms, and allocation of necessary resources or other forms of support for those least represented.²⁰
8. The proposal builds on the scope of observer participation stipulated in paragraphs 16 and 17 of General Assembly Resolution 79/122, including participation in both the Preparatory Committee and Conference through attendance at formal meetings, access to official documents, and the opportunity to

raise-alarm> (with the ISHR expressing concern that “NGOs are denied accreditation without any hearing; all it takes is an objection of a member state without, in most cases, any substantiation”).

¹⁵ For further guidance on ensuring gender competency, parity, and equity in the preparatory and negotiation process, please see the ABILA Study Group Proposal on Gender Competency, Inclusivity, and Non-Discrimination.

¹⁶ See UN Guidance Note on the ‘Protection and Promotion of Civic Space’ (n 4) 5 (recognizing that facilitating diverse participation “may require special efforts to reach out to people and groups whose voices may otherwise not be heard, especially members of ethnic and religious minorities, indigenous peoples, land rights and environmental defenders, young people, children, migrants, refugees, asylum-seekers and stateless persons, persons with disabilities, older persons, women, and lesbian, gay, bisexual, transgender and intersex persons”).

¹⁷ See, e.g., HRC Res 56/5 (10 July 2024) UN Doc A/HRC/RES/56/5, para 5 (“Requests the working group to ensure the meaningful participation of children, in an ethical, safe and inclusive manner, and in particular to give children the opportunity to express their views on the topic and substance of the proposed optional protocol, to facilitate their expression, including through child-friendly information, to listen to children’s views and to act upon them, as appropriate”).

¹⁸ For example, emerging practice at the UN has facilitated the participation of Indigenous Peoples without requiring organizational affiliation. See, e.g., OHCHR, ‘Participation of Indigenous Peoples at the UN is crucial for advancing their rights’ (24 September 2024) <<https://www.ohchr.org/en/stories/2024/09/participation-indigenous-peoples-un-crucial-advancing-their-rights>>.

¹⁹ See, e.g., UNSC Res 2475 (20 June 2019) UN Doc S/RES/2475 (2019) para 6 (“Urges Member States to enable the meaningful participation and representation of persons with disabilities, including their representative organizations, in humanitarian action, conflict prevention, resolution, reconciliation, reconstruction and peacebuilding, and to consult with those with expertise working on disability mainstreaming”); Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3, art 29(a) (obliging States Parties to undertake to “ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others”).

²⁰ UN Guidance Note on the ‘Protection and Promotion of Civic Space’ (n 4) 5-8; HRC, ‘Procedures and Practices in Respect of Civil Society Engagement with International and Regional Organizations: Report of the United Nations High Commissioner for Human Rights’ (18 April 2018) UN Doc A/HRC/38/18.

make materials available to delegates and speak at the meetings, “as appropriate”.²¹ The proposal envisions the equal participation of all approved civil society stakeholders—whether or not ECOSOC-accredited—and understands participation in the “Preparatory Committee” to encompass the Working Group. The proposal further seeks to clarify the precise modalities of such participation, particularly vis-à-vis formal oral and written interventions,²² at the discretion of the Chair.²³ Recognizing the temporal and other limitations anticipated during the Preparatory Committee and Conference, civil society stakeholders are encouraged to work together to consolidate their inputs and deliver joint statements, as appropriate. Other conference committees have managed such limitations while preserving the participation of civil society to not only attend sessions, but also make oral statements (time permitting) and provide written submissions (with word limitations), which are then made publicly available.²⁴ Moreover, States are encouraged to increase efforts to engage civil society stakeholders including, for example, through co-sponsorship of side events and technical briefings.²⁵

9. With regard to both the formal negotiations and intersessional consultations, the facilitation of civil society participation should account for common systemic barriers, such as visa denials, financial constraints, and lack of access to interpretation. States should consider potential support and intervention by the UN Department of Economic and Social Affairs, which provides support to the ECOSOC Committee on NGOs, and the UN Committee on Relations with the Host Country, *inter alia*, in facilitating the in-person participation of approved civil society stakeholders at the Preparatory Committee, Working Group, and Conference. States

²¹ UNGA Res 79/122 (n 1) para 8.

²² See, e.g., Committee on the Rights of Persons with Disabilities, ‘Rules of Procedure’ (19 April 2024) UN Doc CRPD/C/1/Rev.2, Rule 52 (“Non-governmental organizations may be invited by the Committee to make oral or written statements and provide information or documentation relevant to the Committee’s activities under the Convention to meetings of the Committee.”).

²³ See, e.g., Open-Ended Working Group on Security of and in the Use of Information and Communications Technologies 2021-2025 ‘Draft Final Report’ (n 11) para 15(d).

²⁴ See, e.g., ‘Report of the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes’ on its session on organizational matters held on 24 February 2022 (n 8) Annex II, para 3 (“The participation of multi-stakeholders will consist of the following: (a) Attending any open formal sessions of the Ad Hoc Committee; (b) Depending on the time available, making oral statements, at the end of discussions by Member States, on each substantive agenda item. Given the limited time available at the meetings, multi-stakeholders may consider selecting from among themselves spokespersons, in a balanced and transparent way, taking into account the equitable geographical representation, gender parity and diversity of the participating multi-stakeholders; (c) Submitting written materials. Such submissions should be limited to 2,000 words. The submissions will be posted, in their original language, on the website of the Ad Hoc Committee.”). See also ‘Practical Modalities for Stakeholders’ Participation and Accreditation Future UN Mechanism on Cybersecurity’ (n 12) Annex, para 10 (with 40 States and the EU proposing “at least one hour per day of meetings for oral contributions by non-governmental organizations [...] provided at rotating timeframes to accommodate various geographical regions”); HRC, ‘NGO Participation in the Human Rights Council’ <<https://www.ohchr.org/en/hr-bodies/hrc/ngo-participation>> (providing for online registration for oral interventions).

²⁵ UNGA Res 79/122 (n 1) para 12 (encouraging consultations on issues of substance prior to the Conference being convened).

are also encouraged to explore remote participation options and UN Webcast²⁶ of the plenary sessions, with due consideration of any security risks and safety concerns of participating civil society stakeholders. For intersessional consultations, the proposed text on the participation of civil society stakeholders calls for “due recognition of the geographical diversity, accessibility needs, and resource limitations of civil society stakeholders”. This provision encourages the convening of in-person, hybrid, and remote multi-stakeholder consultations at the regional level, potentially in partnership with regional organizations and through joint multi-stakeholder funding.²⁷

10. Lastly, the meaningful participation of civil society should extend beyond the elaboration of the Convention, to its eventual implementation and enforcement. Such inclusion is particularly important to ensure transparency in the process, responsiveness to on-the-ground experiences of the enumerated crimes, and effective implementation of the Convention by States.

²⁶ See, e.g., UN, ‘Agreement on Marine Biological Diversity of Areas beyond Natural Jurisdiction’, Webcast <<https://www.un.org/bbnjagreement/en/media/webcast>>.

²⁷ Financial support for civil society participation could include drawing from existing UN funding mechanisms and establishing a voluntary multilateral fund specific to the Convention and/or UN treaty-making processes more broadly. See, e.g., OHCHR ‘UN Voluntary Fund for Indigenous Peoples’ <<https://www.ohchr.org/en/about-us/funding-budget/indigenous-peoples-fund>> (supporting Indigenous Peoples to engage in UN meetings); UN Women’s Peace & Humanitarian Fund, ‘The WPHF Funding Window for WHRDs’ <<https://wphfund.org/whrds>> (supporting women human rights defenders with advocacy support through funding and direct logistical assistance).