

## **Legal opinion concerning questions arising from the work of the UN-Habitat Working Group on Stakeholder Engagement Policy**

### **I. Background**

1. In 2017, the Governing Council of UN-Habitat (GC) requested the Executive Director, in consultation with Member States, to develop a draft stakeholder engagement policy, drawing on best practices and models from relevant multilateral institutions and exploring new mechanisms to promote transparency and the effective engagement of civil society, and to submit the draft policy by the end of 2017 for consideration by the Committee of Permanent Representatives (CPR) to submit it for consideration and possible approval by the GC at its twenty-seventh session.<sup>1</sup>
2. Additionally, the GC recognized the need to reform the accreditation system, in consultation with Member States, drawing on best practices and models from relevant multilateral institutions, to ensure the active participation of all relevant stakeholders, the monitoring of accreditation, and the enhancement of transparency and accountability.<sup>2</sup>
3. In 2019, the Executive Board decided to establish an ad hoc working group on stakeholder engagement policy (“the Working Group”).<sup>3</sup>

### **II. Request for legal guidance**

4. At its twenty-eighth meeting, held on 13 November 2024, the Working Group decided to request authoritative legal guidance from the Secretariat on how to interpret a portion of OP4 of GC Resolution 19/8 of 9 May 2003, entitled “Arrangements regarding the accreditation of local authorities and other Habitat Agenda partners”.<sup>4</sup>
5. The Working Group specifically sought guidance on the exact meaning of (a.) “no-objection basis” and (b.) “by final decision” in OP4. It furthermore sought clarification on (c.) a (perceived) contradiction between GC Resolution 19/8 and the UN-Habitat Assembly rules of procedure (UNHA-RoP), as adopted in Decision 1/1 of the UN-Habitat Assembly of 31 May 2019.<sup>5</sup>

### **III. The legal framework**

6. The procedure for accreditation of “local authorities and other Habitat agenda partners”, is set out in GC Resolution 19/8, according to which the General Council decided that “other Habitat Agenda partners referred to in rule [68]6 of the rules of procedure that were

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<sup>1</sup> HSP/GC/26/7, UN-Habitat Governing Council, Resolution 26/7 – Accreditation.

<sup>2</sup> Ibid.

<sup>3</sup> HSP/EB.1/1, UN-Habitat Executive Board, Decision 2019/3 – Implementation of normative and operational activities of the United Nations Human Settlements Programme, including the resolutions and decisions of the United Nations Human Settlements Assembly.

<sup>4</sup> HSP/GC/19/8.

<sup>5</sup> HSP/HA.1/HLS.2.

<sup>6</sup> Formerly Rule 65 of the Rules of Procedure of the Governing Council.

not accredited according to operative paragraphs 1 and 3 [...] may be invited by the Executive Director and accredited on an ad hoc basis to a session of the Governing Council: the Executive Director shall submit the list of such partners to the Committee of Permanent Representatives for approval on a no-objection basis by final decision of the Committee, and to Governments not represented on the Committee of Permanent Representatives for their consideration, 10 weeks in advance of the Governing Council session” (OP4).<sup>7</sup>

7. Rule 68(1) of the UNHA-RoP further governs the participation of “other Habitat Agenda partners,” according to which their “duly accredited representatives” may observe public meetings of the UN-Habitat Assembly and its intersessional organs.
8. Section X of the UNHA-RoP outlines the Assembly's decision-making process, including general principles (Rule 52) and the applicable majority requirements (Rule 54).

#### IV. Legal analysis

9. The current request pertains solely to the entities identified in GC Resolution 19/8, OP4, for which the last stage of the accreditation process requires the Executive Director to submit the list of partners to the CPR for approval “*on a no-objection basis by final decision of the Committee*”.

##### a. “On a no-objection basis”

10. A literal reading of the term “on a no-objection basis” suggests that the CPR is required to approve the list of partners without any of its members formally objecting. An objection refers to a “statement, either written or oral, by a State or delegation informing the organization, conference or meeting that it formally objects to a proposed action or commitment.”<sup>8</sup>
11. Formal objection differs from unanimity: some delegations may have reservations to about the accreditation of some or all of the partners on the list. Others may make declarations stating that, while not objecting they do not approve of the decision. Thus, the absence of recorded objections does not imply unanimity but simply that no delegation formally objects. It follows that a “no-objection basis” equates to a requirement for consensus within the practice of the United Nations.
12. In that context, it is important to note that the only other scenario addressed in GC Resolution 19/8, requiring a decision by one of the Organization’s governing bodies, namely accreditation of “other local authorities referred to in Rule 67 of the UNHA-RoP” (OP2), does not include any specific majority requirement. Rather it refers to “Approval by the Assembly” suggesting that, in such case, the usual decision-making principles

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<sup>7</sup> HSP/GC/19/8, UN-Habitat Governing Council, Resolution 19/8 – Arrangements regarding the accreditation of local authorities and other Habitat Agenda partners, OP4.

<sup>8</sup> 2005 UNITAR Glossary of Terms

(consensus or in the absence thereof, decision by a majority vote – see Rule 52 in conjunction with Rule 54 of the UNHA-RoP) apply.

13. It follows that by including the “no-objection” clause, the authors of GC Resolution 19/8 deliberately opted for a higher than usual threshold in deviation from the general decision-making requirements (including majority vote as a fall-back option).
14. On a more general note, the concept of decisions being taken on a “no-objection basis” is frequently used in a United Nations context, including the United Nations General Assembly.<sup>9</sup> It has been introduced into the rules pertaining to the admission of stakeholders to United Nations conferences. Typically, the presiding officer will draw up a list of stakeholders on a non-objection basis and, subsequently, submit the list to the competent governing body, for final decision.<sup>10</sup>
15. In the realm of UN-Habitat, Rule 72 of the UNHA-RoP stipulates that a rule may be temporarily suspended by the Assembly “on a non-objection basis or by way of voting”.
16. The rule has been consistently interpreted as describing the absence of any formal objection, often in combination with a silence procedure.

#### **b. On the meaning of “by final decision”**

17. In the context of United Nations governing bodies, “final decision” describes the fact that a body acts as the ultimate decision-maker with no deferral of decision-making powers being permitted to any other body.
18. Concerning the accreditation of stakeholders by a subsidiary body, once the competence to decide on the accreditation of stakeholders has been assigned to a specific body, the competent body cannot refer its powers back to the parent body, unless the parent body specifically decides to do so.
19. In the UN system, it is established practice that the supreme organ which might, otherwise, have all powers which the legal framework does not expressly attribute to other organs, cannot revoke powers which it has vested in subsidiary organs:<sup>11</sup> in the case of the General Assembly, for instance, the United Nations Legal Counsel advised that if the Assembly wishes to assume itself any function that it has assigned to a subsidiary body, then it must amend the relevant Regulations.<sup>12</sup>

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<sup>9</sup> See, A/RES/55/242, Organizational arrangements for the special session of the General Assembly on HIV/AIDS and its preparatory process; A/RES/74/276, Special session of the General Assembly against corruption.

<sup>10</sup> A/RES/76/307 - Modalities of the Summit of the Future, OP11; Conference of the States Parties to the United Nations Convention against Corruption and its subsidiary bodies, Rule 17(1) of the Rules of Procedure for the Conference; A/CONF.229/2017/4 - United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination, Participation of non-governmental organizations in the conference, OP1.

<sup>11</sup> Schermers/Blokker, *International Institutional Law* (2<sup>nd</sup> ed.), paragraph 231.

<sup>12</sup> Legal Opinion of the General Counsel of the United Nations, UNJY 1985, at 138–139.

20. Therefore, although the Committee of Representatives has been established by the UN-Habitat Assembly, it cannot be excluded that the Assembly wishes to assume any function that it has assigned to the Committee of Permanent Representatives. In such case, the UN-Habitat Assembly, rather than assuming itself any functions that it has assigned to the Committee of Representatives, must amend the legal framework, i.e. Resolution 19/8, OP4.

**c. On the (potentially) conflicting legal framework concerning a decision on the accreditation of certain stakeholders**

21. The Chair further sought clarification on potential “conflicts” between norms in the UNHA-RoP and in GC Resolutions.

22. In the usual course of business, the rules of procedure of UN intergovernmental bodies should be applied in a manner that is consistent with the decisions of those bodies. In the case of any perceived conflict between the two, the decisions of inter-governmental bodies should prevail.

23. In the specific context of the consensus requirement in GC Resolution 19/8, OP4, and the decision-making process under the UNHA-RoP (which allows for decision-making by a simple majority in the absence of consensus), the opposing decision-making requirements could be understood as a conflict of norms, notably as a conflict between Rule 54 of the UNHA-RoP and GC Resolution 19/8, OP4.

24. However, in international law, there is a strong presumption against normative conflict.<sup>13</sup> As a general rule, where seemingly contradictory instruments are simultaneously applicable, case law and academic opinion propose that they shall be interpreted in such a way as to coordinate their effects and avoid any opposition. Diverging commitments must therefore be harmonised as far as possible to ensure consistency with existing law.<sup>14</sup>

25. In the present case, the UNHA-RoP and GC Resolution 19/8 were endorsed by the UN-Habitat Assembly (and its institutional predecessor, the GC) in 2003 and 2019 respectively. Absent any indication to the contrary, it cannot be presumed that the GC or Assembly intended to lead to conflicting decisions.

26. Second, the two instruments serve distinct purposes. The UNHA-RoP are a general set of rules codifying the conduct of the Assembly’s proceedings, representation, accreditation and decision-making process. By contrast, GC Resolution 19/8 specifically addresses the accreditation of external entities. Under the *lex specialis* principle, the more specific norm takes precedence over the general one. Similarly, GC Resolution 19/8 takes precedence over the more recent UNHA-RoP (based on the General Council’s Rules of Procedure) under the *lex posterior derogat legi priori* principle.

27. In conclusion, what GC Resolution 19/8 is seeking to achieve is to set a higher decision-making requirement for the accreditation of a specific set of NGOs. This requirement stands, notwithstanding any provisions of the rules of procedure.