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The United Nations and Human Rights Non-Governmental Organizations (NGOs) - Seventy-Five Years of Consultations, Collaboration, and Contributions (1945-2000)

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THE UNITED NATIONS AND HUMAN RIGHTS NON-GOVERNMENTAL ORGANIZATIONS (NGOS)

SEVENTY-FIVE YEARS OF CONSULTATIONS, COLLABORATION, AND CONTRIBUTIONS (1945 – 2000)

George E. Edwards*

Introduction	329
Legal Bases for NGO Involvement with the U.N	330
U.N. ECOSOC Consultative Status for NGOs	333
What NGOs have U.N. ECOSOC Consultative	
Status?	334
A. General Consultative Status	335
B. Special Consultative Status	335
C. Roster Consultative Status	336
What do NGOs do in the U.N. system?	336
The process for NGOs to apply for U.N. ECOSOC	
Consultative Status	338
Can a program based at a law faculty or other	
academic institution be granted U.N. ECOSOC	
consultative status now, as an Indiana law school	
	A. General Consultative Status B. Special Consultative Status C. Roster Consultative Status What do NGOs do in the U.N. system? The process for NGOs to apply for U.N. ECOSOC Consultative Status Can a program based at a law faculty or other academic institution be granted U.N. ECOSOC

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328	PACE INT'L L. REV.	Vol. 33.2
	program was granted U.N. ECOSOC special	
	consultative status in 2011?	339
VIII.	Conclusion	340

I. Introduction

At the San Francisco Conference where the United Nations Charter was negotiated, participants and observers included representatives of "societies and organizations"1—nongovernmental organizations (NGOs).² The precise number and identities of those NGOs is unclear, but 42 of the participants were consultants to the U.S. delegation that successfully lobbied for the Charter to include an official relationship between the U.N. and NGOs, and the promotion and protection of human rights.3 NGOs thus had a profoundly positive impact on the creation of the United Nations. For the first 75 years of the U.N.'s existence, NGOs have played an invaluable role in supporting the U.N. in its multi-varied missions, directly by acting in furtherance of the U.N.'s stated purposes, 4 including regarding human rights, and indirectly by helping affiliated NGOs fulfill their own missions.

The definition of the term "NGO" is elusive, and it is routinely defined in the negative—by what it is not, rather than what it is—as per this definition: "An NGO is a private, independent, non-profit, goal-oriented group not founded or controlled by a government."⁵

¹ The San Francisco Conference, UNITED NATIONS, https://www.un.org/en/about-us/history-of-the-un/san-francisco-conference (last visited Apr. 30, 2021).

² "An NGO is a private, independent, non-profit, goal-oriented group not founded or controlled by a government." George E. Edwards, Assessing the Effectiveness of Human Rights Non-Governmental Organizations (NGOs) from the Birth of the United Nations to the 21st Century: Ten Attributes of Highly Successful Human Rights NGOs, 18 Mich. St. J. Int'l L. 165, 170 (2009) [hereinafter Edwards, Assessing the Effectiveness of Human Rights NGOs]; see also George E. Edwards, Attributes of Successful Human Rights Non-Governmental Organizations (NGOs) – Sixty Years After the 1948 Universal Declaration of Human Rights, in An Introduction to International Human Rights Law 145, 145–217 (Azizur Rahman Chowdhury & Md. Jahid Hossain Bhuiyan eds., 2010).

³ Felice Gaer, *Human rights and the U.N. Charter: NGOs made the difference*, UNIVERSAL RTS. GRP. GENEVA (June 26, 2020), https://www.universal-rights.org/by-invitation/human-rights-and-the-uncharter-ngos-made-the-difference/.

⁴ See U.N. Charter art. 1.

⁵ Edwards, Assessing the Effectiveness of Human Rights NGOs, supra

"General NGOs" are broad and fit into many different substantive categories. General NGOs can be "research institutes, churches and other religious groups, cooperatives, literary or scientific organizations, credit unions, foundations, [scouting groups], sporting groups, service organizations, neighborhood associations, consulting firms, political parties... educational and training institutions, and trade unions and other professional associations." They might have wideranging goals, including "protecting business interests of the group's corporate members, protesting corporate behavior, promoting sports, promoting political candidates or policies, promoting the interests of a specific industry, education and training, [or] disseminating news...."

A "human rights NGO" is a subset of the broader "general NGO" and also has an elusive definition. A human rights NGO incorporates the definition of a "general NGO," but also requires that the group's primary concern be to promote and protect human rights enshrined in international law,⁸ with human rights promotion and protection obligations at the local, national, sub-regional, regional, and global levels.⁹

II. LEGAL BASES FOR NGO INVOLVEMENT WITH THE U.N.

Chapter X of the U.N. Charter, consisting of articles 61–72, lists the required composition of the Economic and Social Council (ECOSOC), its functions and powers, its procedure, and the formal relationship between ECOSOC and NGOs. ¹⁰ Article 61 provides that ECOSOC membership shall consist of 54 U.N. member states, elected by the General Assembly. ¹¹ Article 71

note 2, at 170.

⁶ *Id.* (footnote omitted).

⁷ *Id.* (footnotes omitted).

⁸ *Id.* International instruments promoting the protection of human rights include: International Covenant on Civil and Political Rights, *adopted* Dec. 19, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3; and G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

⁹ Edwards, Assessing the Effectiveness of Human Rights NGOs, supra note 2, at 172–73.

¹⁰ See U.N. Charter arts. 61-72.

¹¹ *Id.* art. 61.

and various ECOSOC resolutions beginning in 1948 provide the legal bases for the U.N. to grant NGOs "consultative status," permitting NGOs formally to provide technical analysis and expertise to various U.N. bodies. 12 Article 71 expressly uses the term "non-governmental organizations" in referencing consultative arrangements between the United Nations and national and international organizations, as follows:

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.¹³

Article 71 does not define "non-governmental organization" or "NGO." The Article's only attempt to distinguish categories or types of NGOs was to prioritize international NGOs, with whom "arrangements" with the U.N. "may be made" without "consultation with the Member of the United Nations concerned," whereas such "consultation with the Member of the United Nations concerned" was required for national NGOs.¹⁴

Article 71 provides that ECOSOC "may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence." But what are "matters within [ECOSOC's] competence?" Articles 62 to 67 outline the functions and powers of ECOSOC, and broadly identify a list of substantive and

 14 See id. Article 71 appears to have been primarily focused on relations between the U.N. and international NGOs (INGOs), as opposed to national NGOs, as evidenced by the Article's provision that national NGOs arrangements may be made "where appropriate" and "after consultation with the Member [State] of the United Nations concerned," restrictions that did not exist with INGO relations. See also Economic and Social Council Res. 1996/31, \P 8 (July 25, 1996) (noting that national organizations "may be admitted . . . after consultation with the Member State concerned").

5

 $^{^{12}}$ See id. art. 71; Edwards, Assessing the Effectiveness of Human Rights NGOs, supra note 2, at 177–78.

¹³ U.N. Charter art. 71 (emphasis added).

¹⁵ U.N. Charter art. 71 (emphasis added).

procedural areas that would constitute "matters within [ECOSOC's] competence." ¹⁶ This list includes, most notably, items in Article 62(1), which identifies "international economic, social, cultural, educational, health, and related matters," ¹⁷ and Article 62(2), which identifies "promoting respect for, and observance of, human rights and fundamental freedoms for all." ¹⁸

The U.N. consulted NGOs before the U.N. was born, including as part of the San Francisco Conference during which the U.N. Charter was negotiated. ¹⁹ During the 75 years the U.N. has existed, it has continuously consulted NGOs, through formal mechanisms governed by U.N. Charter Article 71 and derivate rules, and informal methods.

If the U.N. were to cease consulting with NGOs, would the U.N. be in breach of Article 71 and other rules derived from the Charter? Or, are any consultation requirements derived from and through Article 71 permissive only—precatory, and not mandatory? The plain language of Article 71 uses the word "may" rather than "shall" or "must" regarding ECOSOC making arrangements for consultation with NGOs.²⁰ Article 71 provides, in part, that ECOSOC "may make suitable arrangements for consultation with [NGOs] which are concerned with matters within [ECOSOC's] competence."²¹ Article 71 does not provide that ECOSOC "shall" or "must" make suitable arrangements for consultation with NGOs.

Applying the rules for treaty interpretation incorporated into the Vienna Convention on the Law of Treaties.²² some would

¹⁶ *Id.* arts. 62–67, 71.

¹⁷ *Id.* art. 62, ¶ 1.

 $^{^{18}}$ Id. art. 62, ¶ 2. Article 62(3) further empowers ECOSOC to draft treaties "for submission to the General Assembly," while Article 62(4) empowers it to call "international conferences on matters falling within its competence." Id. art. 62, ¶¶ 3–4.

¹⁹ Gaer, supra note 3; see supra Introduction.

²⁰ U.N. Charter art. 71.

²¹ Id. (emphasis added).

 $^{^{22}}$ See Vienna Convention on the Law of Treaties art. 31(1), May 23, 1969, 1155 U.N.T.S. 331 (providing that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the

argue that the ordinary meaning of the Article 71 word "may" suggests non-mandatory, and thus would appear to support a conclusion that Article 71 does not require ECOSOC to consult with NGOs. However, it has been argued that the U.N. has a duty to consult with NGOs, irrespective of Article 71, and that intergovernmental organizations and national governments have similar obligations as a matter of customary international law.²³

III. U.N. ECOSOC CONSULTATIVE STATUS FOR NGOS

Pursuant to Article 71 of the Charter, ECOSOC granted consultative status to NGOs in 1946, and enumerated the first official set of rules governing this relationship in ECOSOC resolution 288 B(X) of 1950.24 The General Assembly (G.A.) reviewed these rules, and through G.A. resolution 1296 of 1968, the GA established criteria for NGO participation at the U.N.²⁵

As domestic and international human rights NGOs proliferated from the 1950s to the 1990s and significantly contributed to the U.N.'s work, the U.N. expressly invited a broader variety of NGOs to participate, including sub-regional and regional, complementing the national and international NGOs that were expressly referenced in the U.N. Charter.²⁶

In 1996, after a multi-year review of the relationship between NGOs and the U.N., ECOSOC adopted resolution 1996/31 that updated that relationship and permitted NGOs to be accredited²⁷ so long as "the[ir] aims and purposes [are] in conformity with the spirit, purposes and principles of the Charter of the United Nations."28 Resolution 1996/31, which

treaty").

²³ See Edwards, Assessing the Effectiveness of Human Rights NGOs, supra note 2, at 182 & n.44 (citing Steve Charnovitz, Nongovernmental Organisations and International Law, 100 Am. J. Int'l L. 348 (2006)).

²⁴ Id. at 178: United Nations. Working with ECOSOC: A Guide to Consultative STATUS 2 (2018),http://csonet.org/content/documents/ECOSOC%20Brochure_2018_Web.pdf.

²⁵ Economic and Social Council Res. 1296/44 (May 23, 1968).

²⁶ Edwards, Assessing the Effectiveness of Human Rights NGOs, supra note 2, at 178.

²⁸ E.S.C. Res. 1996/31, *supra* note 14, \P 2.

defines NGO as an "organization which is not established by a governmental entity or intergovernmental agreement," governs the NGO relationship today, including NGOs' relationship with the Human Rights Council, which began operating only in 2006.29NGOs, whose NGO accreditation applications are reviewed by the ECOSOC Committee on NGOs,30 provide input to U.N. officials and bodies formally at U.N. meetings and during U.N. international conferences and their preparatory sessions. and informally.³¹ "NGOs may offer insights on all critical matters concerning the U.N.'s operations, including matters that directly threaten peace and security."32 "Even if an NGO does not have U.N. ECOSOC consultative status, the NGO may still consult with the United Nations on an ad hoc basis or through procedures established by various U.N. affiliated bodies."33

IV. WHAT NGOS HAVE U.N. ECOSOC CONSULTATIVE STATUS?

Resolution 31 of 1996 outlined three categories of "consultative arrangements" between ECOSOC and NGOs: (a) general consultative status; (b) special consultative status; and (c) roster inclusion.³⁴ Today, approximately 5,000 NGOs have consultative status in those three categories.³⁵

 $^{^{29}}$ Id. \P 12; see also Edwards, Assessing the Effectiveness of Human Rights NGOs, supra note 2, at 178–79.

³⁰ The U.N. Committee on NGOs is an ECOSOC standing committee that was established by resolution 3(II) on June 21, 1946. Committee on Non-Governmental Organizations, UNITED NATIONS, https://www.un.org/esa/coordination/ngo/committee.htm (last visited May 20, 2021). The Committee, which reports directly to ECOSOC, has 19 member states, meets annually for three weeks in New York, and occasionally has other informal sessions. The Committee's current terms of reference are outlined in Resolution 1996/31 of 25 July 1996. Id. After the Committee reviews and approves an NGO's application, "it is only considered recommended for consultative status" and "[i]t is only after the recommendation becomes an ECOSOC decision that the NGO is granted the consultative status." Id.

 $^{^{\}rm 31}$ Edwards, Assessing the Effectiveness of Human Rights NGOs, supra note 2, at 179–80.

³² Id. at 180.

³³ *Id.* (footnotes omitted).

 $^{^{34}}$ E.S.C. Res. 1996/31, supra note 14, $\P\P$ 22–24.

³⁵ It is not easy to ascertain the exact number. Compare ECOSOC Status – Basic Facts about ECOSOC Status, NGO BRANCH: DEP'T OF ECON. & SOC. AFFS., http://csonet.org/index.php?menu=100 (last visited Apr. 30, 2021) (indicating that there are "5,593 NGOs enjoy[ing] active consultative status" as of April 2021), with U.N. Secretary-General, List of Non-Governmental

A. General Consultative Status

NGOs with ECOSOC general consultative status tend to be large international NGOs whose work covers multiple or many of the issues at focus in ECOSOC and ECOSOC subsidiary bodies. These NGOs are meant to have broad reach. These organizations include, for example, Academic Council on the United Nations System, Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations (CONGO), Global Economist Forum, Humane Society of the United States, International Association of Lions Clubs, International Electrotechnical Commission, and International Organization for Standardization.

B. Special Consultative Status

NGOs with ECOSOC special consultative status tend to have competence in, and tend to be specifically concerned with, one or a small number of ECOSOC issues.⁴⁰ Most NGOs with special consultative status are human rights NGOs, that focus on human rights issues locally, regionally, nationally, or globally. Approximately 4,000 NGOs have special consultative

Organizations in Consultative Status with the Economic and Social Council as of 1 September 2018, Note by the Secretary-General, Econ. & Soc. Council, at 1, U.N. Doc. E/2018/INF/5 (Oct. 31, 2018) (indicating that in 2018, 5,161 organizations maintained consultative status), and with How to apply for consultative status with ECOSOC?, UN DEP'T OF ECON. & SOC. AFFS., https://www.un.org/development/desa/dspd/civil-society/ecosoc-status.html#:~:text=Currently%2C%204%2C045%20NGOs%20enjoy%20cons ultative,of%20Public%20Information%20(DPI) (last visited May 20, 2021) (indicating that "[c]urrently, 4,045 NGOs enjoy consultative status with ECOSOC").

³⁶ Consultative Status with ECOSOC, UNITED NATIONS, https://www.un.org/esa/coordination/ngo/about.htm (last visited Apr. 30, 2021).

³⁷ *Id*.

³⁸ For a complete list of NGOs with general consultative status, see Consultative Status with ECOSOC and other accreditations – General, NGO BRANCH: UN DEP'T OF ECON. & SOC. AFFS., https://esango.un.org/civilsociety/getByConsultativeStatusCode.do?method=g etByConsultativeStatusCode&consStCode=1&searchType=csSearch&consSt Name=General (last visited Apr. 30, 2021).

³⁹ Id.

⁴⁰ Consultative Status with ECOSOC, supra note 36.

status.41

C. Roster Consultative Status

NGOs that apply for consultative status that do not fit into either the general or special consultative status categories may be granted roster consultative status.⁴² "NGOs that have formal status with other U.N. bodies or specialized agencies (FAO, ILO, UNCTAD, UNESCO, UNIDO, WHO and others), can be included on the ECOSOC Roster[,]" which also "lists NGOs that ECOSOC or the U.N. Secretary-General considers can make 'occasional and useful contributions to the work of the Council or its subsidiary bodies." Roster NGOs "tend to have a rather narrow and/or technical focus." Approximately 975 NGOs possess roster consultative status.

V. WHAT DO NGOS DO IN THE U.N. SYSTEM?

NGOs engage in a wide range of activities within the U.N. system to promote U.N. goals, and to promote the goals of the respective NGOs. NGOs may attend and express views at conferences and other official and unofficial U.N. and U.N.-hosted meetings, disseminate information, provide valuable expert advice, help monitor implementation of international agreements, raise awareness, advocate for policy, engage in education, and lend services and technical expertise. Human rights NGOs have played important roles at virtually every U.N.

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10

⁴¹ For a complete list of NGOs with special consultative status, see Consultative Status with ECOSOC and other accreditations – Special, NGO BRANCH: UN DEP'T OF ECON. & SOC. AFFS., https://esango.un.org/civilsociety/getByConsultativeStatusCode.do?method=g etByConsultativeStatusCode&consStCode=2&searchType=csSearch&consSt Name=Special (last visited Apr. 30, 2021).

⁴² Consultative Status with ECOSOC, supra note 36.

⁴³ *Id*.

⁴⁴ *Id*.

 $^{^{45}}$ For a complete list of NGOs with Roster status, see Consultative Status with ECOSOC and other accreditations – Roster, NGO BRANCH: UN DEP'T OF ECON. & Soc. AFFS., https://esango.un.org/civilsociety/getByConsultativeStatusCode.do?method=getByConsultativeStatusCode&consStCode=3&searchType=csSearch&consSt Name=Roster (last visited Apr. 30, 2021).

 $^{^{46}}$ See Advocs. For Hum. Rts., Paving Pathways for Justice & Accountability: Human Rights Tools for Diaspora Communities 199–206 (2014).

Conference held in the last 75 years since the U.N.'s birth—and perhaps at *all* U.N. conferences during this period.

Different U.N. bodies—such as "U.N. treaty bodies" (established to oversee implementation of U.N. human rights treaties) or the Human Rights Council (which periodically reviews human rights practices in all member states)⁴⁷—require states to submit reports on human rights in members' respective states, announcing to the relevant U.N. body whether that member state is, or is not, complying with that member state's human rights obligations domestically. NGOs routinely submit "shadow reports" to these U.N. bodies, explaining that specific member states are in breach of their human rights obligations, pointing to specific examples of these breaches. 48 These "shadow reports" are "alternative to" the member states' reports, and frequently contradict them, setting up opportunities for the U.N. bodies to conduct hearings at which governments or ally present their reports and NGOs present their shadow reports and make oral statements that challenge the member states' reports, 49 and the U.N. bodies form conclusions as to whether the member state has breached its human rights obligations.⁵⁰

 $^{^{47}}$ Id. at 8–9. In many cases, if not most cases, member states inform the U.N. that the respective member states fully in compliance with all their human rights obligations.

 $^{^{48}}$ Id. at 229. For further information on the contents of shadow reports, see id. apps. L–M.

⁴⁹ For example, the Program in International Human Rights Law of the Indiana University McKinney School of Law and two partners submitted three "shadow reports" to the UN Human Rights Council as part of the Third Universal Periodic Review (UPR) of the U.S.A. See IU McKinney Program in International Human Rights Law Written Submissions and Oral Statement to the United Nations Human Rights Council, Ind. Univ. McKinney Sch. of L., https://mckinneylaw.iu.edu/human-rights/submitted-reports.html (last visited Apr. 30, 2021). The three reports, submitted in November of 2020, and February and March of 2021, alleged that the U.S. was perpetrating COVID-19-related human rights violations against men held at Guantanamo Bay. Cuba, in breach of U.S. international human rights law treaty and customary international law obligations. See id., which provides a link to each report. On March 17, 2021, an Indiana McKinney law student, Ms. Elizabeth "Ellie" Halodik, made an oral statement on the floor of the UN Human Rights Council at its virtual meeting, echoing arguments made in the three reports. See id., for a recording and a transcript of the oral statement.

⁵⁰ See Using Shadow Reports for Advocacy – Summary of the Dialogue, NEW TACTICS IN HUM. RTS. (Aug. 3, 2009, 2:57 PM), https://www.newtactics.org/using-shadow-reports-advocacy/using-shadow-reports-advocacy.

When certain types of human rights breaches are alleged, NGOs might bring or facilitate bringing one or more of three different types of complaints (also called "communications") to different U.N. bodies: (1) state-to-state complaints (also called "inter-state" complaints); (2) individual complaints against a state; and (3) inquiries.⁵¹ In addition to filing on behalf of themselves as aggrieved parties, or on behalf of individual or group victims, human rights NGOs may serve as legal advisors, experts, or amici curiae in these cases.⁵²

VI. THE PROCESS FOR NGOS TO APPLY FOR U.N. ECOSOC CONSULTATIVE STATUS

Before an NGO begins its U.N. ECOSOC consultative status application, the NGO might be advised that: (a) the application process can take many months or years; (b) the application process can be quite taxing; (c) some NGO applications are rejected; and (d) if an application for consultative status is rejected, the NGO should consider applying again, and if rejected again, apply again, and apply until the application is accepted.⁵³

The normal process is long—the Committee on NGOs reviews new consultative status applications twice a year, in January ("regular session") and in May ("resumed session"), with the deadline for submitting a completed application being June 1 for the year before the Committee on NGOs reviews the application.⁵⁴ Thus, for example, for the Committee on NGOs to review an NGO in the January or May 2025 session, the deadline for submitting the complete application is June 1, 2024.

 $^{^{51}}$ Human Rights Bodies - Complaints Procedures, U.N. Hum. Rts.: Off. of the High Comm'r, https://www.ohchr.org/en/hrbodies/tbpetitions/pages/hrtbpetitions.aspx (last visited Apr. 30, 2021).

 $^{^{52}}$ Saratoon Santivasa, The NGOs' Participation in the Proceedings of the International Court of Justice, 5 J. E. ASIA & INT'L L. 377, 379–80 (2012).

⁵³ See generally Consultative Status with the United Nations' ECOSOC, FUNDSFORNGOS, https://www2.fundsforngos.org/cat/consultative-status-united-nations-ecosoc/ (last visited Apr. 30, 2021).

⁵⁴ How to apply for consultative status with ECOSOC?, supra note 35.

If the Committee on NGOs reviews an application, it may "recommend" the NGO for consultative status, in which case the Committee will submit the name of the recommended NGO to ECOSOC for final approval for the NGO to be granted consultative status.⁵⁵ Rarely has ECOSOC not granted consultative status to an NGO recommended by the Committee on NGOs.⁵⁶

Once an application is approved and an NGO is granted U.N. ECOSOC consultative status, it assumes various obligations, including to submit a "quadrennial report" every four years, outlining the NGO's contributions to the U.N. during the previous four years.⁵⁷

VII. CAN A PROGRAM BASED AT A LAW FACULTY OR OTHER ACADEMIC INSTITUTION BE GRANTED U.N. ECOSOC CONSULTATIVE STATUS NOW, AS AN INDIANA LAW SCHOOL PROGRAM WAS GRANTED U.N. ECOSOC SPECIAL CONSULTATIVE STATUS IN 2011?

In the early 2000s, the Program in International Human Rights Law of the Indiana University McKinney School of Law, under my direction, filed an application for U.N. ECOSOC special consultative status. In 2011, around five years after we filed our application, ECOSOC granted our program special consultative status.⁵⁸ It appears that ours was the first program of an academic institution in the U.S., and certainly the first program at a U.S. law faculty, to be granted ECOSOC special consultative status.

Because it would take many pages to explain the 5-year process, with all its hurdles, this story will be saved for another day. The only suggestion is that if your NGO is seeking U.N. ECOSOC consultative status accreditation, be persistent.

⁵⁶ *Id*.

⁵⁵ *Id*.

⁵⁷ *Id*.

⁵⁸ United Nations Special Consultative Status Granted to Indiana Law School Program, IND. UNIV. MCKINNEY SCH. OF L., https://mckinneylaw.iu.edu/human-rights/special-consultative-status.html (last visited Apr. 30, 2021).

VIII. CONCLUSION

Human rights NGOs have worked within and for the U.N. system since the San Francisco Conference at which the U.N. was founded, and for the entire 75 years since the U.N. was born, and NGOs will continue to work within and for the U.N. for years to come. Human rights NGOs in particular are powerful, ubiquitous, critically important, and indeed necessary, and will continue to grow in number and influence as they seek to help ensure that states around the globe fulfill their obligations under international human rights law.