

RELATIONSHIPS OF THE IAJ WITH UN INSTITUTIONS*

By BARBARA SCOLART¹

1. The United Nations and the role of non-governmental organizations

The Charter of the United Nations envisages, in its art. 71, a cooperation with non-governmental organizations: “The Economic and Social Council [ECOSOC] may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence.”

A definition of non-governmental organizations (NGO) can be derived from the praxis and the documents elaborated within the Organization of the United Nations since its foundation. In particular, a definition of NGO can be found in the ECOSOC Resolution 288B (X) of 27 February 1950, according to which a non-governmental organization is “any international organization that is not founded by an international treaty”.

Article 71 neither indicates the criteria that must be adopted to evaluate the admission of non-governmental organizations nor states the contents of the consultative relationship between the NGOs and the ECOSOC. Therefore, it has been for the ECOSOC itself to adopt the arrangements for consultations with the NGOs, with an important specification: such arrangements can be made with international organizations whose sphere of activity falls within the competence of ECOSOC, whose aims are consistent with the principles enshrined in the UN Charter, and whose dimension is representative of its field of action. As to the national NGOs, they would only be accepted after consulting the relevant government.

As to the discipline of the consultation envisaged in art. 71, Resolution 288 B (X) represents the first attempt to regulate the cooperation between the UNO and NGOs. After this, the ECOSOC conducted two reviews to modify, update and implement the system created in 1950: the first dated 23rd May 1968, with the approval of the resolution 1296 (XLIV); the second dated 25th July 1996, resolution 1996/31.

Since the beginning of their cooperation with the UN, the NGOs were divided into three categories. Associations falling within Category A had a “basic interest in most of the activities of

* This article is based on the volume *History of the International Association of Judges*, Rio de Janeiro, 2008, Forense ed.

the Council”; those within Category B had “a special competence” in some fields of activity of the ECOSOC; and Category C organizations were primarily charged “with the development of public opinion and with the dissemination of information”.

The last category was suppressed in 1950 and replaced by a Register of organizations supposed to be very specialized and which might be consulted on an ad hoc basis, when the ECOSOC might feel the need for their help.

After the major review made in 1968, the labels were changed to Category I, Category II and the so-called Roster, the classification remaining essentially unchanged.

It must be stressed that the distribution of the NGOs into three categories corresponded to a diversity in their rights of participation to the works of the ECOSOC. The basic principle, valid for all the NGOs, was that they must have fewer rights in the Council than the observer delegations from specialised agencies or governments that were not Council members.

Given this, and affirmed the general right for all NGOs to attend ECOSOC meetings, Category A NGOs could circulate written statements to the members of the Economic and Social Council and could also expect to address a Council committee or even the full Council. As to the other NGOs, the titles of their statements were put on a list and the full statements could only be circulated upon request of a member of the ECOSOC.

Through the review process of 1950 (ECOSOC Resolution 288B(X) of 27th February 1950), besides the abolishing of Category C status and its substitution with the listing on the Register, one of the main changes was the reduction of the volume of papers coming from NGOs, which were since then allowed to present to the Council only statements no longer than 2000 words (the limit being of 500 words for Category B NGOs).

For the following 18 years, Resolution 288B(X) remained the definitive set of rules regulating the arrangements for consultative status.

Meanwhile, the UNO experienced some crucial events that reflected also upon its cooperation with NGOs. Among them, the Cold War with the consequent opposition between the Western conception of human rights and the role of non institutional actors and the Eastern (or communist) perspective and its denial of the rights of NGOs to interfere in the internal affairs of sovereign States (in particular when it ended in a criticism of the State approach towards human rights).

¹ Adjunct Professor and lecturer in Rome and assistant to the Secretary-General of IAJ

Also, in those years the UN were facing an increase in the membership thanks to the new Asian and African members that had been joining the Organization from 1955 onwards, following the decolonisation process. This shifted the political balance of the Organization quite far from the Western dominance that had characterized its first twenty years of life.

Thus, a new resolution was adopted by the ECOSOC in 1968 (Resolution 1296(XLIV) of 23rd May), whose main contents (apart from the re-labelling of the consultative categories, already mentioned above) concerned the financing of the NGOs (which must be based predominantly on membership fees), their global dimension, the introduction of the duty for NGOs to submit reports on a regular basis (every four years) and the provisions to suspend or withdraw consultative status.

At the beginning of the 1990s, the relationship between NGOs and the United Nations underwent a new and significant evolution as a result of the UN Conference on Environment and Development, also known as the 'Earth Summit', held in Rio de Janeiro in 1992.

The breadth of the participation of NGOs in the Conference was unprecedented and the outcome was not anticipated at the start of the process of convening the conference. Thus, Agenda 21, one of the five main documents produced by the Earth Summit, echoed the feature of NGOs as true actors on the international scene devoting one of its sections to the participation of all "social groups" in the debate about sustainable development.

In particular, Chapter 27 of Agenda 21 is specifically devoted to "Strengthening the Role of Non-governmental Organizations: Partners for Sustainable Development". It is worth mentioning some paragraphs, to outline how NGOs are regarded in the UN context: "Non-governmental organizations play a vital role in the shaping and implementation of participatory democracy. Their credibility lies in the responsible and constructive role they play in society. [...] The nature of the independent role played by non-governmental organizations within a society calls for real participation; therefore, independence is a major attribute of non-governmental organizations and is the precondition of real participation" (Chapter 27, paragraph 1).

Some paragraphs of Chapter 27 of Agenda 21 concern more specifically the need to reorganize the cooperation of the UNO with NGOs.

In this sense, for example the wording of paragraph 6: "With a view to strengthening the role of non-governmental organizations as social partners, the United Nations system and Governments should initiate a process, in consultation with non-governmental organizations, to review formal

procedures and mechanisms for the involvement of these organizations at all levels from policy-making and decision-making to implementation”.

Moreover, paragraph 9 stated that “the United Nations system, including international finance and development agencies, and all intergovernmental organizations and forums should, in consultation with non-governmental organizations, take measures to (a) review and report on ways of enhancing existing procedures and mechanisms by which non-governmental organizations contribute to policy design, decision-making, implementation and evaluation at the individual agency level, in inter-agency discussions and in United Nations conferences [...]”.

Thus, the course of the Earth Summit and its outcomes gave impetus to the last revision of the ECOSOC’s arrangements for consultation with NGOs, which took place in 1996, with the resolution 1996/31 (25th July 1996), by which the ECOSOC acknowledged “the breadth of non-governmental organizations’ expertise and the capacity of non-governmental organizations to support the work of the United Nations” (preamble).

Resolution 1996/31 defines three classes of consultative status, which are equivalent of Category I, Category II and Roster status defined in resolution 1296 (XLIV): General, Special and Roster.

Following the definition provided by the resolution, “organizations that are concerned with most of the activities of the Council and its subsidiary bodies and can demonstrate to the satisfaction of the Council that they have substantive and sustained contributions to make to the achievement of the objectives of the United Nations in fields set out in paragraph 1 above, and are closely involved with the economic and social life of the peoples of the areas they represent and whose membership, which should be considerable, is broadly representative of major segments of society in a large number of countries in different regions of the world shall be known as organizations in general consultative status” (paragraph 22).

Organizations in special consultative status are those “that have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by the Council and its subsidiary bodies, and that are known within the fields for which they have or seek consultative status” (paragraph 23).

“Other organizations that do not have general or special consultative status but that the Council, or the Secretary-General of the United Nations in consultation with the Council or its Committee on Non-Governmental Organizations, considers can make occasional and useful contributions to the work of the Council or its subsidiary bodies or other United Nations bodies within their

competence shall be included in a list (to be known as the Roster). This list may also include organizations in consultative status or a similar relationship with a specialized agency or a United Nations body. These organizations shall be available for consultation at the request of the Council or its subsidiary bodies. The fact that an organization is on the Roster shall not in itself be regarded as a qualification for general or special consultative status should an organization seek such status” (paragraph 24).

As in the past, the division into three classes is the basis to determine the extent of the rights granted to NGOs in consultative status, since such extent depends on the category in which a non-governmental organization has been admitted (see paragraphs 27-39 of resolution 1996/31, concerning consultations with the Council and with Commissions and other subsidiary organs of the Council; no differences in rights are envisaged for the participation of non-governmental organizations in international conferences convened by the United Nations and their preparatory process).

2. The cooperation between the IAJ and the UNO: from the beginning to the 1990s.

Adopting the criteria of classification elaborated by the United Nations, the International Association of Judges is a non-governmental organization (NGO). This nature of the institution arises from the character of its Constitution, which is not an international treaty.

The membership in the Association (art. 2 of its Constitution) is reserved to national associations or national representative groups of judges, thus excluding any institutionalized or political structure (such as the Ministry of Justice and even the High Councils of the Judiciary or analogous bodies).

As to the goals of the association (art. 3 of the Constitution), they are the safeguarding of the independence of the judicial authority, as an essential requirement of the judicial function and guarantee of human rights and freedom; the safeguarding of the constitutional and moral standing of the judicial authority; the increasing and perfecting of the knowledge and the understanding of Judges; the study of judicial problems.

The financing of the Association is based on annual contributions “which ordinary [and extraordinary] members are required to pay to the General Secretariat to meet the running costs of the Association” (Constitution, art. 7.1), thus meeting the requisite demanded by paragraph 13 of resolution 1996/31 (“The basic resources of the organization shall be derived in the main part from contributions of the national affiliates or other components or from individual members”).

In the 1970s the Central Council of the IAJ began to discuss possible cooperation with the United Nations and to seek an opportunity to request the admission of the Association to the ECOSOC in consultative status.

Following a decision of the Central Council, the IAJ's President, Mr Alfons De Vreese (Belgium), submitted in 1975 an official application to the UN asking that the IAJ, as a non-governmental organization, be granted the consultative status with the ECOSOC. Mr De Vreese wrote also to Professor Eric Suy, UN Under-Secretary-General for Legal Affairs, and to Mr Schreiber, Director of the Commission for Human Rights. Mr Voitto Saario, Finnish delegate to the IAJ, who had in several occasions represented his country in front of the UN, also took some personal steps in favour of the application.

Professor Suy answered Mr De Vreese's letter, expressing the opinion that the IAJ application would meet a favourable welcome and informing him that the application would be discussed by the ECOSOC Committee in its meeting scheduled in February 1977.

In March 1977 the IAJ's President travelled to New York to personally support the application of the IAJ, but he was not heard by the Committee and he then learnt that the IAJ application had met the strong opposition of the Russian delegate in the Committee.

Nevertheless, thanks to the intervention of the Tunisian delegate, the Committee decided to admit the IAJ in the Roster, the list envisaged by article 19 of the Resolution 1296(XLIV) of 23rd May 1968 grouping the associations "which the Council, or the Secretary-General of the United Nations [...] considers can make occasional and useful contributions to the work of the Council or its subsidiary bodies or other United Nations bodies".

This solution, although not fully meeting the wishes of the IAJ, was regarded by the Association with satisfaction because it allowed it to participate in the examination of problems and questions submitted for the attention of the technical bodies of the UNO.

The cooperation with the Organization started immediately after, with the drafting, by the IAJ Secretary-General Mr Enzo Merigliola (Italy), of a reasoned opinion on the creation of a UN High Commissioner for Human Rights and of Regional Commissions for Human Rights as well as on ways and means for improving the mechanisms of national periodical reports and of examination of petitions claiming the violation of human rights².

² United Nations General Assembly resolutions 3136 (XXVIII) of 14th December 1973, 3221 (XXIX) of 6th November 1974 and 3451 (XXX) of 9th December 1975.

In view of future occasions of cooperation with the technical bodies of the UNO, the IAJ decided that copies of the possible UN requests of advice should be transmitted to all the IAJ member associations, to allow them to express their views which would be collected and summarised by the IAJ Secretary-General and then sent to the UN. In this way, the cooperation with the UN would have been the result of the contribution of the whole Association.

In the following years, the IAJ received several requests for advice by UN bodies and participated in some sessions of the Commission for Human Rights in Geneva and in seminars organised by it, thanks to the zeal of a Swiss judge, Mr Bron, who attended those meetings on behalf of the IAJ.

In 1980 the IAJ Vice-president Mr Hédi Saied (Tunisia) took part in the 6th United Nations Congress on the prevention of crime and the treatment of the offenders, which was held in Caracas from 25th August to 5th September. Mr Saied took part in the debates both as representative of the Tunisian Government and as Vice-President of the IAJ. In this last capacity, he amply illustrated the activity of the Association and, in particular, the contributions offered by the IAJ Study Commissions to the solution of certain problems concerning criminal justice. Mr Saied also wrote a report, whose aim was to clarify some aspects of a draft Resolution – which was then approved by the Congress – in which he stressed, *inter alia*, the need, common worldwide, for independent, expert and impartial judges.

Although involved in consultations with technical bodies of the United Nations, the visibility and the contribution of the IAJ to the international debate on human rights and judicial reforms remained slightly perceived, both at national and international levels. To overcome this difficulty, the IAJ decided to renew its efforts in view of obtaining full consultative status with the ECOSOC and at the same time decided to implement its participation in the initiatives and congresses of the UNO.

It must be noted that in 1979 the Committee of Ministers of the Council of Europe accepted the request for admission of the IAJ among the non-governmental organizations having consultative status with the Council itself.

The year 1981 was dedicated by the United Nations to the handicapped person. The IAJ echoed this initiative charging two of its Study Commissions with the comparative study of some aspects of substantive and procedural law concerning the handicapped person: thus, the 2nd Study Commission dealt with the “Protection of the interests of the mentally handicapped in private law” and the 3rd Study Commission with the “Procedural protection for physically or mentally

handicapped persons". A UN representative, Dr Neudok, attended the working sessions of the Study Commissions in Vienna, thus showing the interest of the UN towards the studies devoted by the IAJ to the protection of physically disabled or mentally handicapped persons.

During the 1981 meeting in Vienna, the Central Council of the IAJ also unanimously approved a resolution expressing IAJ's appreciation for the work done by the Organization of the United Nations in favour of the independence of the judicial power and for the protection of the disabled persons:

"The International Association of Judges expresses its satisfaction to the United Nations for the work that it has accomplished so far in the areas of the independence of the judiciary and the protection of the rights of disabled persons, and hopes that the U.N. will continue to give priority to these two important questions, taking into consideration the conclusions of the present meeting of the Association".

Besides its relations with the UN and the Council of Europe, during the 1980s the IAJ strengthened its liaisons with other international institutions, such as the *Institut Supérieur International des Sciences Criminelles* and four main non- governmental organizations dealing with criminal law and criminology and having consultative status with the ECOSOC: the International Association of Criminal Law, the *Fondation Internationale Pénale et Pénitentiaire*, the International Society for Criminology and the *Société Internationale de Défense Sociale*. These institutions invited a representative of the IAJ (who, on the occasion, was the Secretary-General) to their meeting in Milan in 1982.

The cooperation with the UNSDRI (United Nations Social Defence Research Institute) finally led to the financing of the English edition, revised, of the book "Le juge dans la nouvelle société": "The role of the judge in contemporary society", UNICRI publication No. 24, 1984 (out of print).

The IAJ was also involved, thanks to the participation of Mr. Günter Woratsch (Austria) and Mr. Giovanni Longo (Italy), in the preparatory works of the 7th International Congress of the United Nations on Crime Prevention and the Treatment of Offenders (which took place in Milan, 1985). In 1984 a preparatory conference of the Congress was held in Varenna (dealing with aspects of criminal policy such as torture and death penalty) and Vienna (dealing with the independence of the judiciary) and Mr Woratsch, Vice-President of IAJ, participated on behalf of the IAJ. The 7th Congress on Crime Prevention took place in Milan from 26th August to 6th September: the representatives of the IAJ, Mr Woratsch and Mr Longo (Secretary General), attended the sessions dedicated to juvenile delinquency and to the independence of the judiciary.

In 1984, the President of the 3rd Study Commission, together with the IAJ Secretary-General, Mr Longo, took part, on behalf of the IAJ, to a seminar dealing with juvenile delinquency organized in Rome by UNSDRI: on that occasion, the IAJ was the only NGO invited to attend the meeting.

In 1985, echoing the proclamation by the United Nations of the International Youth Year, the third Study Commission was charged to study the subject: “The judge faced with juvenile delinquency”.

In 1985, at the meeting in Oslo, Mr Helge Rostad, representative of UNSDRI, intervened to explain the activities and the programme of the Institute and presented also a brochure published by UNSDRI in collaboration with the IAJ that he described as “a message to the world on the problems of justice”.

Besides the remarkable involvement of the IAJ in the initiatives of the UN and its subsidiary bodies, the year 1985 must be remembered because of a significant achievement of the Association: in 1985 the IAJ was granted the Category II consultative status with the ECOSOC, thus becoming able to designate official representatives to the UN headquarters in New York and to the UN offices in Geneva and Vienna. The Presidency Committee of IAJ decided to appoint Mr. Günter Woratsch as its representative in Vienna. Mr. Woratsch attended all UN meetings in Vienna dealing with topics of interest for IAJ, i.e. judicial independence, impartiality and liability.

In the following years, the cooperation with the Rome seat of UNSDRI allowed the participation of IAJ’s representatives to the works of a panel whose aims were to formulate draft implementation procedures of the general principles on the independence of the judiciary approved in the Congress of Milan. The project was to be discussed in a meeting under the auspices of the UNO to be held in Baden bei Wien at the end of 1987.

The UNSDRI also invited a representative of the IAJ (the Secretary-General pro tempore, Mr Longo) to participate in a mission to Malta to evaluate the possibility of carrying out research programmes of the Institute in that country.

The UN Office in Vienna invited the IAJ to send a representative to participate in the works of the experts committee charged to study the issue of the independence of the judiciary in view of the forthcoming UN Congress on the prevention of crime and the treatment of offenders. The committee finished the drafting of a project of “procedures for the implementation of basic principles on the independence of the judiciary”, already approved by the United Nations

General Assembly in 1987 (which invited all the member states to apply the principles and to transmit periodical reports on their internal legislation and the practical enforcement of the principles). One of the main achievements of the IAJ was the inclusion in the project, under proposal of the Association, of a provision enabling the NGOs in consultative status with the ECOSOC (thus, also the IAJ) to inform the UN Secretary-General of the violation or misapplication of the general principles on the independence of judges. Such information would be used by the UN Secretary-General to make his report every five years on the implementation of the principles and their violations.

The cooperation with the UNICRI, United Nations Interregional Institute for Crime Research and Justice (the former UNSDRI) led in the organization of a seminar, held in the Dominican Republic in November and December 1989, on “*La justice et le développement démocratique en Amérique Latine, en comparaison avec la situation en Italie , dans le cadre de l’Europe*”. The seminar was co-financed by UNICRI, with the participation of the ILANUD (*Instituto Latino Americano de las Naciones Unidas por la prevención del delito y el tratamiento del delincuente*) and funds of the Italian Government. University professors, lawyers and judges attended the meeting; among them Mr Antonio Brancaccio, First President of the Italian Corte di Cassazione, and Mr Philippe Abravanel (Switzerland), Vice-president of the IAJ.

In 1996, during its meeting in Amsterdam, the Central Council of the IAJ approved a motion of support for the efforts made within the UN for the creation of an International Criminal Court.

“In response to the serious attacks which touch the international community as a whole, the UN has proposed the creation of an International Criminal Court.

A permanent High Jurisdiction with an international status would ensure an independent position and a strong legitimacy which would allow more efficient crime prevention at an international level as well as prosecution and repression of crime.

The IAJ has always aimed at developing international cooperation for the defence of the principle of the State based on the rule of law and for the improvement of justice throughout the world.

*For this reason the IAJ wishes to give strong support for the establishment of a permanent International criminal Court.”*³

In 2005, Mr. Ernst Markel, Honorary President of IAJ, was appointed by the Presidency Committee as a second representative of IAJ at the UN office in Vienna.

³ The treaty establishing International Criminal Court was signed in Rome on 17th July 1998 and entered into force on 1st July 2002.