

The Council Committee on NGOs

An analysis of the reports of the Council Committee on NGOs between 2005 and 2015

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1. Introduction

The Council Committee on NGOs (hereafter: the Committee) recommends the Economic and Social Council (hereafter: the ECOSOC) as to whether or not to grant an NGO ECOSOC consultative status and concerning the possible suspension or withdrawal of that consultative status. Some scholars have criticized Resolution 1996/31, the resolution that governs the obtainment of ECOSOC consultative status, of being vague and full of lacunae, which leaves the Committee with a great deal of discretion in its decisions on whether or not to grant consultative status.¹ Furthermore, according to many academics, the long membership of members of the Committee combined with the considerable power of the Committee in making recommendations with regard to granting and withdrawing consultative status led to a politicized process² and the ‘increasingly common practice of silencing NGOs’.³ These allegations are a cause for real concern. As obtaining ECOSOC consultative status is seen as one of the most prominent ways for NGOs to obtain access to – and participate in – the UN,⁴ a politicized decision-making process of the Committee could result in considerable difficulties for some NGOs in obtaining access to the UN. Therefore, this research aims to provide a better insight into the work of the Committee as a gatekeeper of ECOSOC consultative status. It examines the work of the Committee over the past decade and aims to map out the grounds on which consultative status is granted, not granted or withdrawn. The research analyzes how the criteria in Resolution 1996/31 are applied in practice and if certain patterns of grounds for granting or withdrawing consultative status can be discovered.⁵

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1 J.D. Aston, ‘The United Nations Committee on Non-governmental Organizations: Guarding the Entrance to a Politically Divided House’, (2001) 12 *European Journal of International Law*, no. 5, <<https://doi.org/10.1093/ejil/12.5.943>>, pp. 943-962, p. 950.

2 Aston, *supra* note 1, p. 945; R.A. Houghton, ‘A Puzzle for International Law: NGOs at the United Nations’, (2014) *North East Law Review*, no. 2, pp. 1-24, p. 22; K. Martens, ‘Bypassing Obstacles to Access: How NGOs are Taken Piggy-Back to the UN’, (2004) 5 *Human Rights Review*, no. 3, <<http://doi.org/10.1007/s12142-004-1010-8>>, pp. 80-91, p. 83; J. Vigny, ‘A Practical Guide to the UN Committee on NGOs’, 2015, available via: <www.ishr.ch>.

3 Houghton, *supra* note 2, p. 22.

4 Martens, *supra* note 2, p. 82.

5 There are different theories that emphasize the role of NGOs in international organizations, such as *constructivism* (E. DeMars & D. Dijkzeul, *The NGO Challenge for International Relations Theory* (2015)), the *functionalist approach* or the *community approach* (S. Charnovitz, ‘The Illegitimacy of Preventing NGO Participation’, (2011) 36 *Brooklyn Journal of International Law*, no. 3, pp. 891-910). As this research focuses on the practical implementation of Resolution 1996/31, rather than on the theoretical role of NGOs, these theories are not discussed at length here. Suffice it to say that this research is based on the assumption that NGOs should be able to be actively involved in the UN, including via the obtainment of ECOSOC consultative status.

The main question that this research intends to answer is:

How does the Council Committee on Non-Governmental Organizations apply the criteria in Resolution 1996/31 when recommending whether to grant, not grant, suspend, or withdraw ECOSOC consultative status?

The research has both academic and societal relevance. The academic relevance of the research is the fact that it adds to the existing academic literature: although many authors have written about the merits and pitfalls of ECOSOC consultative status and the Committee in theory,⁶ an actual analysis of the work of the Committee over the past years has never been conducted. In this way, the research also has societal relevance, as it can expose patterns in the decision-making of the Committee, which could help the UN with possible reforms and could give NGOs useful guidelines on how to operate in order to obtain consultative status.

The analysis in this research is solely based on the Committee reports. Without a doubt, a lot more information could be retrieved from different sources, such as from interviews with those involved in the Committee's process, like Committee members and representatives of NGOs. However, due to a lack of time and the conciseness of the research, the choice was made to focus on the Committee reports. As these reports do not reveal a complete picture of the decision-making process of the Committee, the outcomes of the research are modest.

In order to answer the main research question, the first part of this research aims to map out the criteria governing ECOSOC consultative status. For this purpose, the drafting history of Resolution 1996/31 and its criteria are examined. The purpose of this part of the research is to develop a yardstick for the criteria governing ECOSOC consultative status and how these criteria could be interpreted. Later in the research, the actual work of the Committee is tested against this yardstick.

In the second part of the research, the official reports of the Committee sessions over the years 2005-2015 are analyzed.⁷ The Committee usually holds two sessions a year: one regular session and one resumed session. The research focuses mostly on the Committee's recommendations not to grant consultative status and to withdraw or suspend consultative status. This choice is made for two reasons. Firstly, these recommendations best demonstrate the application of the criteria in Resolution 1996/31 and the political tension within the Committee. The second reason is of a practical nature: for the most part, the official reports do not offer much insight into the decision-making process of the Committee. The reports generally contain lists containing the Committee's recommendations to grant consultative status and lists of deferred applications. However, the reports on some applications – the ones that gave rise to debate among the Committee members – are reported on more thoroughly. This is also the case for requests for the withdrawal or suspension of consultative status. The analysis in this research focuses on these cases. In order to carry out this analysis, the 20 reports that were published between 2005 and 2015 are studied. As mentioned above, the main focus is to discover the grounds behind these recommendations and how they can be linked to the criteria in Resolution 1996/31. Furthermore, in order to gain more insight into the practice of deferrals, the running time of the applications is studied.

In the conclusion, the actual decision-making process of the Council Committee on NGOs, that could be derived from the analysis of the reports, is tested against the yardstick developed in the first part of the research.

2. The criteria governing ECOSOC consultative status

2.1. Introduction

This section aims to map out the criteria enshrined in Resolution 1996/31 and the ways in which they can be interpreted. This is necessary in order to analyze how the Committee interprets these criteria at

6 E.g. Aston, *supra* note 1; Houghton, *supra* note 2; Martens, *supra* note 2; M.H. Posner & C. Whittome, 'The Status of Human Rights NGOs', (1994) 25 *Colombia Human Rights Law Review*, no. 2, pp. 269-290; Vigny, *supra* note 2; P. Willets, 'From "Consultative Arrangements" to "Partnership": The Changing Status of NGOs in Diplomacy at the UN', (2000) 6 *Global Governance*, no. 2, pp. 191-212.

7 The reports can be found via: <<http://csonet.org/index.php?menu=93>> (last visited 26 January 2017).

a later stage of this research. In this section, firstly, the different methods of interpretation for national and international law are examined, after which the interpretation method chosen for the purpose of this research is explained. The next section briefly discusses the history of NGO participation with the UN and the predecessors of Resolution 1996/31. Section 4 elaborates on the drafting history of Resolution 1996/61. Thereafter, the actual criteria in 1996/61 are mapped out in Section 5. The last section contains a conclusion.

2.2. Methods of interpretation

In general, four main methods of interpreting legal acts are distinguished: the grammatical interpretation method focuses on the literal meaning of the text; historical interpretation concentrates on the legislative history; the systematic interpretation method looks at the act within the broader context of other provisions; and the teleological interpretation method focuses on the actual purpose of the act.⁸

In international law, the interpretation of treaties is governed by the customary legal rules of interpretation as codified in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (hereafter: the Vienna Convention).⁹ Article 31 states that ‘a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose’. The above-mentioned context includes agreements made between all the parties and instruments made by one or more of these parties and accepted by the others in connection with the conclusion of the treaty. Other agreements on the interpretation of the treaty, practice in the application of the treaty or relevant rules of international law governing relations between the parties, are to be taken into account when interpreting the context of a treaty. Article 32 states that if the meaning of the treaty is ambiguous or leads to unreasonable results, supplementary means of interpretation, such as analyzing the preparatory work, can be considered.

Although there is a large volume of literature on the interpretation methods of international treaties, little attention has been paid to the interpretation of other international instruments, such as resolutions.¹⁰ Some authors advocate the application of methods of interpretation derived from the Vienna Convention with regard to, for example, the UN human rights treaty bodies and the resolutions of the Security Council.¹¹ They argue that not all of these interpretation methods are applicable to different international instruments. The preparatory work of Security Council resolutions, for example, is not public and is thus not available for analysis.¹² The same holds true for ECOSOC Resolution 1996/31: the preparatory work, for example the reports of the open-ended Working Group on the Review of Arrangements for Consultation with Non-Governmental Organisations – the working group established for reviewing the previous Resolution 1296 (XLIV) – is not public and cannot be consulted in order to gain an insight into the underlying meanings of the resolution.

As mentioned above, there is no prescribed interpretation method for resolutions. However, this research follows the line of Article 31 of the Vienna Convention and aims to interpret the provisions of Resolution 1996/31 ‘in the light of its object and purpose’. In order to do this, Resolution 1996/31 and its criteria for granting and withdrawing consultative status are interpreted using both the grammatical interpretation method and the teleological interpretation method. In applying the grammatical method, the text of Resolution 1996/31 and the changes made in comparison to Resolution 1296 are considered. As far as possible, the criteria in Resolution 1996/31 are also analyzed using the teleological interpretation method. With the teleological interpretation method, the research attempts to derive the object and purpose of Resolution 1996/31 by examining the drafting history of Resolution 1996/31 – as far as it can be derived from public documents – and the preamble to this resolution.

8 Many authors have written about these methods of interpretation. In the Netherlands, Paul Scholten introduced these methods in the general part of the *Asser-serie* (1931).

9 Vienna Convention on the law of treaties, concluded at Vienna on 23 May 1969, available via: <<https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>> (last visited 26 January 2017).

10 M.C. Wood, ‘The Interpretation of Security Council Resolutions’, *Max Planck Yearbook of United Nations Law* (1995), pp. 73-95, p. 73.

11 K. Mechlem, ‘Treaty Bodies and the Interpretation of Human Rights’, (2009) 42 *Vanderbilt Journal of Transnational Law*, pp. 905-947; Wood, *supra* note 10, pp. 73-95.

12 Wood, *supra* note 10, p. 94.

2.3. General introduction on NGO participation with the ECOSOC

NGO participation with the UN started during the establishment of the UN. Representatives of 1,200 voluntary organizations were present at the founding conference of the UN in 1945 and they played a significant role in the wording of the UN Charter.¹³ After this, the UN decision-making process has increasingly been made more accessible to non-state players.¹⁴ Officially, the involvement of NGOs in the UN derives from Article 71 of the 1945 UN Charter, which reads that the ECOSOC ‘may make suitable arrangements for the 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”’. After the General Assembly had called upon the ECOSOC to implement Article 71 of the UN Charter as soon as possible, on 21 June 1946 the ECOSOC adopted Resolution 2/3, which contained temporary arrangements for NGO consultation. These arrangements were incorporated in ECOSOC Resolution 288 B (X) in February 1950.¹⁵ In 1968, Resolution 1296 superseded Resolution 288 B (X).¹⁶ The preamble to this resolution reads: ‘Considering that consultations between the Council and its subsidiary organs and the non-governmental organizations should be developed to the fullest practicable extent.’ The resolution puts strong emphasis on the establishment of consultative status with international NGOs: national NGOs are generally expected to present their views through the international NGOs to which they belong.¹⁷

Nowadays, obtaining ECOSOC consultative status is seen as one of the most prominent ways for NGOs to obtain access to the UN. Obtaining ECOSOC consultative status is seen as the ticket for NGOs to have official relations with the UN: it provides them with opportunities to obtain information, to be invited to conferences and meetings and to promote their own interests. Consultative status also allows representatives of NGOs to obtain access to the UN building, which provides them with the opportunity to promote their interests among delegates on an informal level. Consultative status gives NGOs the international credibility that provides legitimization for other UN bodies to work with these NGOs.¹⁸ Furthermore, consultative status is also needed in order for NGOs to attend meetings and conferences of the HRC, including the review sessions of the Universal Periodic Review, the most important human rights instrument of the HRC.¹⁹

Obtaining consultative status is currently managed through ECOSOC Resolution 1996/31,²⁰ which replaced the above-mentioned Resolution 1296 (XLIV) of 1968.²¹ In Resolution 1996/31, several criteria that an NGO must meet in order to be given consultative status are set out, which are discussed later in this section. Applications for consultative status are dealt with by the Committee. The Committee organises sessions each year in which it considers applications for consultative status and requests for changed status and makes recommendations to the ECOSOC.²² It also examines the reports of NGOs on their activities which they have to submit every four years. In exceptional circumstances, the Committee can ask an NGO to submit a report between the regular reporting dates.²³ On the basis of these reports, the Committee may recommend the ECOSOC to suspend or exclude consultative status.²⁴ The Committee also has the competence to defer applications to a later date. This competence is frequently used²⁵ and is also seen as a political tactic to win time and to have an excuse to postpone controversial debates.²⁶ Members of

13 C. Alger, ‘The Emerging Roles of NGOs in the UN System: From Article 71 to a People’s Millennium Assembly’, (2002) 8 *Global Governance*, no. 1, pp. 93-117, p. 93.

14 Non-Governmental Liaison Service (NGLS) 2007, p. 7.

15 ECOSOC Resolution 288 B (X), 27 February 1950, UN doc. E/1661.

16 ECOSOC Resolution 1296 (XLIV), 23 May 1968, UN doc. E/4548.

17 *Ibid.*, para. 9.

18 Martens, *supra* note 2, p. 82.

19 L. Nader, ‘The Role of NGOs in the UN Human Rights Council’, (2007) 4 *International Journal on Human Rights* 2007, no. 7, pp. 7-27, p. 17.

20 ECOSOC Resolution 1996/31, 25 July 1996, Consultative relationship between the United Nations and non-governmental organizations.

21 ECOSOC Resolution 1296 (XLIV), *supra* note 16.

22 ECOSOC Resolution 1996/31, *supra* note 20, para. 61(b).

23 *Ibid.*, para. 61(c).

24 *Ibid.*, para. 55.

25 In its session held in June 2015, 200 of the 388 applications were deferred. See: Report of the Committee on Non-Governmental Organizations on its 2015 resumed session, 22 July 2015 (UN doc. E/2015/32 (Part II)).

26 Aston, *supra* note 1, p. 950.

the Committee are elected by the ECOSOC on the basis of equitable geographical representation.²⁷ The Committee consists of 19 representatives of Member States, who each serve for a period of four years. However, there is no limit on sequencing periods on the Committee. For example, China and Cuba have been members of the Committee for decades.²⁸

2.4. The drafting history of Resolution 1996/31

In February 1993, the framework for a review of Resolution 1296 concerning the arrangements for consultation with NGOs was established through ECOSOC decision 1993/214. This decision called for ‘a general review of current arrangements for consultation with non-governmental organizations (...) with a view to updating them, if necessary, in particular in the light of recent experience, including that gained during the process of the United Nations Conference on Environment and Development.’²⁹ The UN Conference on Environment and Development, which was held in 1992, was seen as a good example of NGOs becoming more active and influential in the UN.³⁰ During this conference, 2,400 representatives of NGOs were present. Also, a parallel NGO Forum was organized, which was attended by 17,000 NGO representatives.³¹ The review of Resolution 1296 was carried out under the auspices of the open-ended Working Group on the Review of Arrangements for Consultation with Non-Governmental Organizations (hereafter: the Working Group), comprised of Member States. The Working Group was established through ECOSOC Resolution 1993/80.³² In this Resolution, NGOs with ECOSOC consultative status, and other relevant NGOs, particularly those from developing countries, are invited to participate in the Working Group.³³ However, paragraph 7 of the Annex to Resolution 1993/80 states that NGOs will not have a negotiating role in the Working Group, due to its intergovernmental nature.

The review took place from February 1993 until July 1996.³⁴ As mentioned above, the work of this Working Group is not public. However, the UN Non-Governmental Liaison Service (hereafter: the UN NGLS) – an organ of the UN that aims to strengthen multi-stakeholder engagement in the UN – has published a marginal report on the review process. According to this report, Under-Secretary-General Nitin Desai gave a speech at one session of the Working Group, saying: ‘They (NGOs) have increasingly assumed the role of promoters of new ideas, they have alerted the international community to emerging issues and have developed expertise and talent, which, in a number of areas, have become vital to the work of the United Nations, both at the policy and operational levels.’³⁵

The review process took longer than expected: Decision 1993/412 stated that the review had to be finalized by 1995.³⁶ In 1995, the mandate of the Working Group was extended by a year through ECOSOC decision 1995/304.³⁷ The long reviewing process was partly due to the different positions of Member States. According to the UN NGLS report, this is why the review only partly reflected the change in attitude towards the participation of NGOs in the UN that occurred in the years before the review. Also, NGOs were not allowed to participate in the negotiation process. However, there was a great deal of interaction between delegates and NGOs outside of the official process and NGO representatives were given access to witness the negotiations.³⁸

27 ECOSOC Resolution 1996/31, *supra* note 20, para. 60.

28 Martens, *supra* note 2, p. 83.

29 ECOSOC Decision 1993/214 on the review of the arrangements for consultation with non-governmental organizations, 12 February 1993.

30 NGLS Roundup: ECOSOC Concludes NGO Review, November 1996, available via: <<https://www.unnngls.org/orf/documents/text/roundup/10NGOREV.TXT>> (last visited 26 January 2017).

31 UN Conference on Environment and Development (1992), <<http://www.un.org/geninfo/bp/enviro.html>> (last visited 26 January 2017).

32 ECOSOC Resolution 1993/80, Review of the arrangements for consultation with non-governmental organizations, 30 July 1993, UN doc. E/RES/1993/80.

33 *Ibid.*, paras. 6 and 7.

34 Reference document on the participation of civil society in United Nations conferences and special sessions of the General Assembly during the 1990s, August 2001, available via: <<http://www.un.org/ga/president/55/speech/civilsociety1.htm>> (last visited 26 January 2017).

35 NGLS Roundup: ECOSOC Concludes NGO Review, November 1996, available via: <<https://www.unnngls.org/orf/documents/text/roundup/10NGOREV.TXT>> (last visited 26 January 2017).

36 ECOSOC Decision 1993/214, *supra* note 29.

37 ECOSOC Decision 1995/304, General review of arrangements for consultations with non-governmental organizations, 26 July 1995. In this decision, ECOSOC also proclaimed that it would increase the current membership of the Committee, based on equitable geographical representation, and would request the Committee to undertake a review of its working methods.

38 NGLS Roundup: ECOSOC Concludes NGO Review, November 1996, available via: <<https://www.unnngls.org/orf/documents/text/roundup/10NGOREV.TXT>> (last visited 26 January 2017).

2.5. Principles and criteria in Resolution 1996/31

After the President of the Council submitted the draft Resolution on 17 July 1996,³⁹ Resolution 1996/31 was adopted on 25 July 1996. One of the main changes in Resolution 1996/31, compared to Resolution 1296, is that consultative status is now also available for national and regional NGOs. Furthermore, emphasis is placed on granting consultative status to NGOs from developing countries. The preamble stresses ‘the need to take into account the full diversity of the non-governmental organizations at the national, regional and international levels.’ Article 5 states that one of the principles that needs to be applied for the establishment of consultative status is: ‘Consultative relationships may be established with international, regional, sub-regional and national organizations, (...) The Committee, in considering applications for consultative status, should ensure, to the extent possible, participation of non-governmental organizations from all regions, and particularly from developing countries, in order to help achieve a just, balanced, effective and genuine involvement of non-governmental organizations from all regions and areas of the world.’

The principle referred to in Article 15 of Resolution 1996/31 is essential to this research. It states that: ‘The granting, suspension and withdrawal of consultative status, as well as the interpretation of norms and decisions relating to this matter, are the prerogative of Member States exercised through the Economic and Social Council and its Committee on Non-Governmental Organizations.’ Such a principle was not mentioned in the former Resolution 1296 and gives the Committee a great deal of discretion in interpreting the criteria in the resolution.

The criteria for the establishment of ECOSOC consultative status are as follows:

- The NGO must be concerned with matters within the competence of the ECOSOC (Article 1).
- The aims and purposes of the NGO have to be in conformity with the spirit, purposes and principles of the UN Charter (Article 2).
- The NGO shall engage in supporting the work of the UN (Article 3).
- The NGO must be of recognized standing within its field of competence or of a representative character (Article 9).
- The NGO must have an established headquarters, an executive officer, a democratically adopted constitution (which it must deposit with the Secretary-General of the UN), which will provide for the determination of policy by a representative body (Article 10).
- The authorized representatives of the NGO must have authority to speak for its members (Article 11).
- The NGO must have a representative structure and have appropriate mechanisms for accountability, which must be able to exercise effective control over its policies and actions. An NGO that is not established by a governmental entity and accepts members designated by government authorities may still be considered an NGO, provided that that membership does not interfere with the freedom of expression of the NGO (Article 12).
- The NGO must derive the main part of its resources from contributions by national affiliates or from individual members. If the NGO is financed from other sources, such as a government, it must openly declare this to the Committee and explain the reasons for not meeting the above-mentioned requirements (Article 13).

For regional, sub-regional and national NGOs, an additional requirement is that:

- It must be able to demonstrate that its work is of direct relevance to the aims and purposes of the UN. In the case of an application by a national NGO, the Member State concerned is consulted before the NGO can be admitted (Article 8).

Part III of Resolution 1996/31 describes the different categories of status that can be granted. The most extensive status that an NGO can acquire is general consultative status, which is granted to NGOs that (1) are

39 Draft resolution submitted by the President of the Council on the basis of informal consultations, E/1996/L.25, 17 July 1996, para. 5.

concerned with the activities of the ECOSOC and can make substantive contributions to the objectives of the UN, (2) are closely involved in the lives of the people living in the area they represent, and (3) are representative of considerable parts of society in many countries in different regions in the world.⁴⁰ Special consultative status can be granted to NGOs that have special competence in only a few working fields of the ECOSOC and are known for their expertise in those fields.⁴¹ If an NGO working in the field of human rights seeks special consultative status, an extra criterion is that it should pursue their goals in accordance with the spirit of the Charter of the United Nations, the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action.⁴² A third category of consultative status is to be included in the Roster. NGOs are included in the Roster if they can make occasional and useful contributions to the work of the ECOSOC. If an NGO is included in the Roster, it can be requested to consult with the ECOSOC and can also submit written statements.⁴³

Each fourth year, NGOs with consultative status must submit a report of their activities to the Committee. In exceptional circumstances, the Committee can request a report from an NGO between the regular reporting dates.⁴⁴ On the basis of these reports and other information, the Committee must periodically review the activities of NGOs.⁴⁵ The Committee also has the competence to recommend the ECOSOC to withdraw the consultative status of an NGO, or to suspend it for a period of up to three years. Consultative status shall be suspended or withdrawn in the following cases:

- If an NGO clearly abuses its status by engaging in acts contrary to the purposes and principles of the UN Charter, including unsubstantiated or politically motivated acts against UN Member States incompatible with those purposes and principles (Article 57a).
- If there is substantiated evidence of influence from sources resulting from internationally recognized crimes, such as the illicit drugs trade, money laundering or the illegal arms trade (Article 57b).
- If the NGO has not made any positive or effective contributions to the work of the UN, and the ECOSOC in particular, in the preceding three years (Article 57c).

In 2008, another reason for withdrawing or suspending consultative status was established. According to Resolution 2008/4, the Committee can also recommend the suspension or withdrawal of consultative status if an NGO has failed to submit its quadrennial report.⁴⁶ This resolution states that the Committee shall send a reminder one month after the due date of the report, and a warning of suspension by the first day of the following January.⁴⁷ If on the first day of the following May the NGO has still not submitted its report, the Committee can recommend that the NGO be suspended for one year.⁴⁸ At the resumed session in May one year later, the Committee can either reinstate the NGO if it has submitted its report, or withdraw consultative status if it has not.⁴⁹

2.6. Concluding remarks and yardstick

Concluding from the previous sections, a combination of the teleological and grammatical interpretation methods results in an ambivalent picture of the meaning of Resolution 1996/31. The drafting history of and the preamble to Resolution 1996/31 indicate that the purpose of the review of former Resolution 1296 was to revise the resolution so that it would better reflect the increasing involvement and value of NGOs, particularly of national NGOs and NGOs from developing countries. The criteria that – after a long reviewing process – finally ended up in Resolution 1996/31, however, seem to be rather strict and vague. Strict, as NGOs

40 ECOSOC Resolution 1996/31, *supra* note 20, para. 22.

41 *Ibid.*, para. 23.

42 *Ibid.*, para. 25.

43 *Ibid.*, para. 24, para. 31(e).

44 ECOSOC Resolution 1996/31, *supra* note 20, para. 61(c).

45 *Ibid.*, para. 55.

46 ECOSOC Resolution 2008/4, Measures to improve the quadrennial reporting procedures, 21 July 2008.

47 *Ibid.*, para. 1(b) and (c).

48 *Ibid.*, para. 1(d).

49 *Ibid.*, para. 1(f).

need to have a rather sophisticated and professional organizational structure in order to be considered for consultative status. And vague, in that it is not clear what is meant by phrases like ‘the spirit, purposes and principles of the UN Charter’ with which the aims and purposes of an NGO have to conform. Furthermore, the criteria for the withdrawal of consultative status are unclear. When does an NGO clearly abuse its status? What is a politically motivated act against a UN Member State? What is a positive or effective contribution to the work of the UN?

In principle, the vague criteria in Resolution 1996/31 should thus be interpreted according to the purpose of this resolution: to ensure an increase in NGO participation in the ECOSOC and to guarantee more involvement by NGOs from all regions, particularly from developing countries. However, Article 15 states that the interpretation of the norms is the prerogative of the Council and the Committee. In combination with the vague, broad norms of the resolution, this leaves the Committee with a great deal of discretion when interpreting the resolution. The next section shows how the Committee actually interprets these criteria and to what extent the Committee uses its prerogative to interpret the criteria in conformity with the purposes of Resolution 1996/31.

3. Results of the examination of Committee reports

3.1. Introduction

This section analyzes the reports of the Council Committee between 2005 and 2010. The analysis is based on 20 Committee reports, because, as mentioned in the introduction, the Committee holds two sessions per year: one regular and one resumed session. In this section, firstly, an outline is given of the numbers of applications, deferrals, recommendations not to grant consultative status and withdrawals and suspensions of consultative status. In these numbers, some interesting trends and developments can be observed. In the third subsection, the grounds that are used to recommend not granting consultative status or to suspend or withdraw consultative status are discussed. The fourth subsection focuses on the use of deferrals of applications: it gives an indication of the running time of applications and looks at the debates on the use of deferrals between members of the Committee during the Committee sessions.

3.2. Numbers

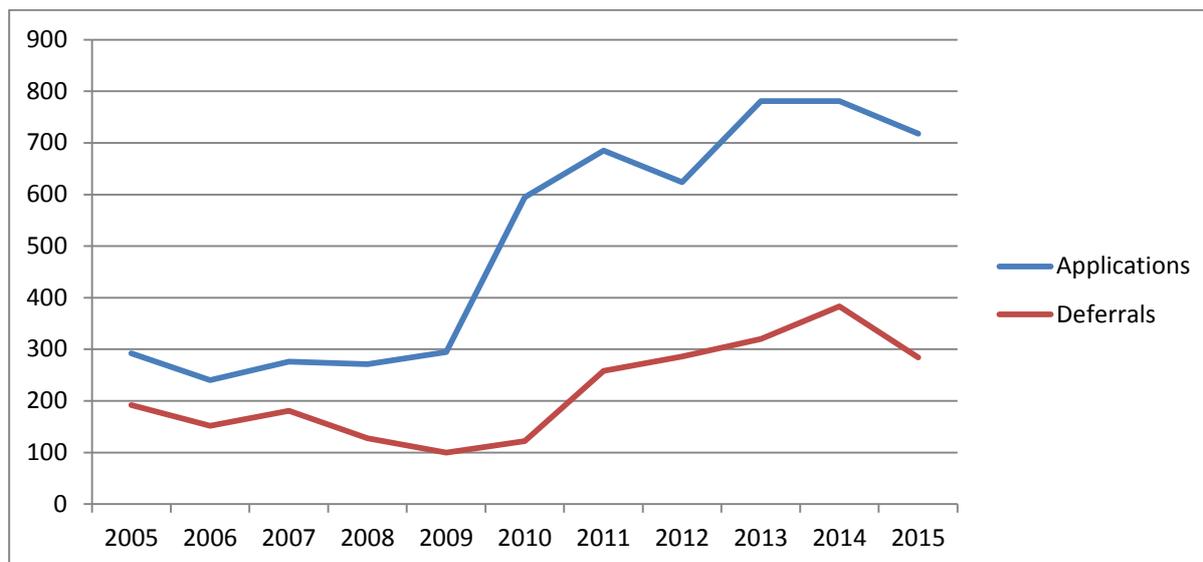
Between 2005 and 2015, overall, a significant increase in the number of applications for ECOSOC consultative status can be noted. Before the first session in 2005, the Committee received 144 applications. In the second session of 2010, 388 applications were considered. Alongside the increase in the number of applications, the number of applications that were deferred for further consideration to the next session also increased. Figure 1 below shows the number of applications and deferrals per year.⁵⁰

Over the past ten years, the Committee has not often recommended not granting consultative status. Such recommendations were made concerning the applications of 17 NGOs, at 12 of the 20 sessions, most of them between 2005 and 2009. The Committee did not often use its competence to suspend or withdraw consultative status either: over the years, 17 consultative arrangements have been suspended or withdrawn, of which seven withdrawals were due to the fact that the NGOs in consultative status had ceased to exist. As mentioned in Section 1, Resolution 2008/4 established another ground for the suspension or withdrawal of consultative status: a failure to submit quadrennial reports.⁵¹ This ground has been used by the Committee since 2009. Per year, an average of 127 consultative arrangements have been suspended for one year because the NGOs in question had failed to submit their quadrennial reports after having been sent a reminder. An average of 98 consultative statuses were withdrawn per year after the NGOs in question had not submitted their reports after having been suspended for one year.

50 The numbers of applications and deferrals presented in figure 1 show the added numbers of the regular sessions and the resumed sessions of that year.

51 ECOSOC Resolution 2008/4, supra note 46.

Figure 1 Number of applications and deferrals



Another development that can be noted is that in 2010 the Committee started to regularly terminate its consideration of applications on the ground that there had been no contact with those NGOs for several sessions. Before the resumed session of 2006, no grounds were given for terminating the consideration of applications. From 2006 until 2009, the Committee started sporadically using the ground that there had been no contact with the NGO in question. From 2010 onwards, the Committee has terminated many considerations on the ground that the ‘NGOs had failed, after three reminders over the course of two consecutive sessions of the Committee, to respond to queries posed to them by members of the Committee’. This ground for terminating the consideration of applications cannot be found in Resolution 1996/31, but has been used extensively by the Committee. Since 2010, an average of 48 considerations of applications have been closed per year on this ground.

3.3. Grounds for not granting, suspending or withdrawing consultative status

In this subsection, the grounds for the recommendations not to grant consultative status and the grounds for recommendations to suspend or withdraw consultative status are examined. The reports usually do not explicitly mention the criteria of Resolution 1996/31 on which these decisions are based, but merely show the debate on these recommendations between the Committee members. Firstly, the grounds for not granting consultative status are set out. After that, the grounds for the suspension or withdrawal of consultative status are dealt with.

3.3.1. Recommendations not to grant consultative status

As mentioned above, between 2005 and 2015, the Committee recommended not granting consultative status to 17 NGOs. Two of these decisions were made by consensus. The first recommendation that was made by consensus was based on the ground that the NGO had ‘continued to indulge in activities that undermined the territorial integrity of Pakistan and that were inconsistent with the Charter of the United Nations, and with Economic and Social Council resolution 1996/31’.⁵² The second recommendation was based on the ground that the NGO ‘did not have activities that would contribute towards the work of the Council’.⁵³ The other 15 recommendations were not made by consensus and were preceded (and usually

52 Report of the Committee on Non-Governmental Organizations on its 2007 regular session (New York, 22-31 January 2007), 20 February 2007, UN doc. E/2007/32 (Part I), paras. 7-8.

53 Report of the Committee on Non-Governmental Organizations on its 2008 regular session (New York, 21-30 January 2008), 13 February 2008, UN doc. E/2008/32 (Part I), para. 26.

followed) by an extensive debate among the Committee members. Nine of these concerned NGOs involved in the promotion of gay and lesbian rights. In many of the debates preceding these recommendations, the work of the Committee was called discriminatory or politically motivated by at least one of the Committee members. In the following paragraphs, a brief description of each of the recommendations not to grant consultative status that led to a debate is given.

In the regular session in 2006, the Committee recommended not to grant consultative status to three NGOs.⁵⁴ The NGO 'People in Need' was accused by the Cuban representative of carrying out anti-Cuban missions financed by the United States State Department. The representative of the United States stated that the allegations were unfounded and did not wish to respond to them due to their 'obvious political nature rather than their factual content'. Consultative status was not recommended for the NGO 'International Lesbian and Gay Association', based on the ground that it did not provide, according to some Committee members, satisfactory answers, especially with regard to its alleged affiliation with paedophilia. The German and French representatives called this decision discriminatory and stated that no single argument had been given that indicated that the NGO did not fulfil the criteria in Resolution 1996/31. Similar arguments were made with regard to the recommendation not to grant consultative status to the NGO 'Danish National Association for Gays and Lesbians'. The representative of Denmark stated that this decision 'reflected badly on a Committee that had been criticized in the past for introducing partisan political considerations'.

During the resumed session in 2006, the Committee recommended not to grant consultative status to two more NGOs promoting gay and lesbian rights.⁵⁵ These decisions were again based on the accusation that these NGOs did not provide satisfactory answers to allegations with regard to paedophilia. In the case of the NGO 'International Lesbian and Gay Association – Europe', the representative of Iran additionally stated that the NGO could not contribute to the work of the Council. With regard to the application of the NGO 'Lesbian and Gay Federation in Germany', the permanent observer of the Holy See stated that: 'the activities of the organization had nothing to do with human rights. Sexual orientation was not comparable to race or ethnic origin. Homosexuality was not a positive source of human rights.' Once again, the decisions not to grant consultative status to these NGOs was met with criticism by some Committee members. The representative of France called the speedy rejection of the applications a violation of paragraph 15 of Resolution 1996/31, which states that NGOs shall have the opportunity to respond to any objections raised by Committee members.

Another NGO promoting gay and lesbian rights was recommended not to be granted consultative status in the regular session in 2007.⁵⁶ No grounds for this decision are reported. The representative of the United Kingdom and Northern Ireland reacted to the decision by stating that: 'The criteria [of Resolution 1996/31] applied regardless of the nature of the organization' and that the NGO at stake 'obviously fulfilled these criteria'. The representative further stated that the Council had eventually decided to grant consultative status to three NGOs promoting gay and lesbian rights when a recommendation to the contrary had been made during the previous year. According to the representative, this reinforced the view that 'the Committee could not be trusted to undertake properly the work with which it was tasked'.

During the resumed session in 2007,⁵⁷ the Committee recommended not to grant consultative status to the NGO 'Jewish National Fund', due to the allegation that it had a relationship with an organization that supported illegal settlement activities in the occupied Palestinian territories and it had therefore violated the Fourth Geneva Convention. The representative of Israel stated that the NGO had contributed significantly to the work of the ECOSOC and that the questions posed to the NGO were 'purely political and irrelevant to the work of the Committee'. During the same session, yet another NGO promoting lesbian, gay, bisexual and

54 Report of the Committee on Non-Governmental Organizations on its 2006 regular session (New York, 19-27 January 2006), 24 February 2006, UN doc. E/2006/32 (Part I), paras. 35-64.

55 Report of the Committee on Non-Governmental Organizations on its resumed 2006 session (New York, 10-19 May 2006), 19 June 2006, UN doc. E/2006/32 (Part II), paras. 22-53.

56 Report of the Committee on Non-Governmental Organizations on its 2007 regular session, (New York, 22-31 January 2007), 20 February 2007, UN doc. E/2007/32 (Part I), paras. 9-15.

57 Report of the Committee on Non-Governmental Organizations on its resumed 2007 session (New York, 14-18 May 2007), 1 June 2007, UN doc. E/2007/32 (Part II), paras. 7-30.

transgender rights (hereafter: LGBT rights) was denied the recommendation to grant consultative status. Again, no specific grounds for this decision were mentioned in the report, other than that the representative of Egypt had proposed a 'procedural motion to close consideration of the application owing to the lack of consensus on granting it consultative status'. During the regular session in 2008, the Committee decided not to grant consultative status to another LGBT NGO, based on the grounds that there were concerns with regard to the NGO's views on paedophilia and that some representatives doubted that the NGO met the criteria of Resolution 1996/31. No further clarification was given. Representatives of the United Kingdom and Romania stated that the NGO clearly fulfilled the criteria and called the recommendation not to grant consultative status 'straightforward discrimination'.⁵⁸ The Committee once again recommended not to grant consultative status to an NGO promoting LGBT rights in its regular session in 2009.⁵⁹ The representatives of Burundi and Egypt stated that they 'could not agree with the objectives of an organization that promoted a certain lifestyle' and that in order to take action on an application, there could not be any doubt about the affiliation of NGO members to paedophilia. On behalf of the UN Member States that are also members to the European Union, the observer for the Czech Republic stated that the Committee had acted in a discriminatory manner, which violated Article 26 of the International Covenant on Civil and Political Rights. In the resumed session of 2011, another LGBT NGO was denied the recommendation to grant consultative status, based on similar grounds and resulting in similar objections from some representatives.⁶⁰

In the resumed session in 2008, the Committee recommended not to grant consultative status to the NGO 'Human Rights Foundation'.⁶¹ The representative of Cuba stated that the chairman of the NGO was a convicted criminal in her country. Representatives of the United States, the United Kingdom, Israel and Peru asked for a deferral of the application, because there was no representative of the NGO present to answer questions, but this request was not permitted. Afterwards, they stated that the Committee had violated the preamble to Resolution 1996/31, which included that the Council should encourage 'the breadth and diversity of views' of NGOs during its deliberations.

During its resumed session in 2009, the Committee recommended not to grant consultative status to the NGO 'Democracy Coalition Project'.⁶² For the first time, specific provisions in Resolution 1996/31 were mentioned in the argumentation. Representatives of the Russian Federation, Cuba and China stated that the NGO had engaged in politically motivated acts against certain Member States and it did not fulfil the provisions set out in Articles 2 and 57a of Resolution 1996/31, because it was critical of the actions of some Member States. Article 2 reads that activities of the NGO shall be in conformity with the purposes and principles of the UN Charter. Article 57a lays down grounds for the suspension and withdrawal of consultative status. The representative of the United States stated that: 'by simply expressing its opinions a non-governmental organization could not be accused of working against the principles and Charter of the United Nations or of being politically motivated'. During the resumed session in 2014, another NGO was accused of politically motivated acts against Member States. According to the representative of Cuba, the chair of this NGO had relations with terrorist organizations and it promoted internal subversion and regime change in Cuba. Therefore, the NGO could not meet the requirements set out in Resolution 1996/31. The representative of the United States stated that the NGO did meet those requirements. However, the Committee recommended not to grant consultative status.⁶³

In its resumed session in 2015, the Committee recommended not to grant consultative status to the NGO 'Freedom Now'. The representative of China stated that the NGO's website 'contained a lot of accusations

58 Report of the Committee on Non-Governmental Organizations on its 2008 regular session (New York, 21-30 January 2008), 13 February 2008, UN doc. E/2008/32 (Part I), paras. 13-25.

59 Report of the Committee on Non-Governmental Organizations on its 2009 regular session (New York, 19-28 January and 2 February 2009), 4 March 2009, UN doc. E/2009/32 (Part I), paras. 9-19.

60 Report of the Committee on Non-Governmental Organizations on its 2011 resumed session (New York, 16-24 May and 16 June 2011), 16 June 2011, UN doc. E/2011/32 (Part II), paras. 28-38.

61 Report of the Committee on Non-Governmental Organizations on its resumed 2008 session (New York, 29 May-6 June and on 25 June 2008), 15 August 2008, UN doc. E/2008/32 (Part II), paras. 32-48.

62 Report of the Committee on Non-Governmental Organizations on its resumed 2009 session (New York, 18-27 May 2009), 19 June 2009, UN doc. E/2009/32 (Part II), paras. 24-32.

63 Report of the Committee on Non-Governmental Organizations on its 2014 resumed session (New York, 19-28 May and 6 June 2014), 12 June 2014, UN doc. E/2014/32 (Part II), paras. 23-35.

against the Member States of the United Nations, its words and actions were politically motivated and it would not be possible for the organization to make any contribution to the work of the Council.⁶⁴

3.3.2. Recommendations to withdraw or suspend consultative status

Between 2005 and 2010, the Committee withdrew the consultative status of seven NGOs. It suspended the consultative status of four NGOs.⁶⁵ Most of these decisions were based on a vote, rather than a consensus. However, all of these decisions were preceded by a debate between the Committee members.

In the resumed session in 2005, the Committee recommended to withdraw the consultative status of the NGO 'International Council of the Association for the Peace in the Continents', because it had allegedly 'engaged in a pattern of acts contrary to the purposes and principles of the Charter of the United Nations, including politically motivated acts against Member States of the United Nations'. The Committee withdrew the consultative status with a roll-call vote of 8 to 4, with 6 abstentions, although some representatives stated that the NGO should have been given more time to respond to questions.⁶⁶ In that same session, the Committee recommended to suspend the consultative status of 'A Woman's Voice International' for one year. The representative of China stated that the NGO representative had used a taser gun during his statement at the Commission on Human Rights and had therefore violated the rules and regulations governing the relationship between NGOs and the UN.⁶⁷

In 2006, the Committee recommended to withdraw the consultative status of the NGO 'Islamic African Relief Agency', because it had been placed on the United States' list of terrorist organizations. This decision was made by consensus.⁶⁸ In 2007, the Committee recommended to withdraw the consultative status of the NGO 'Liberal International'. The representative of China stated that the NGO had assisted an official from Taiwan to speak in its name during a Human Rights Council session. According to the representative, this behaviour was contrary to the purposes and principles of the UN Charter and Resolution 1996/31. The NGO had also abused its status by challenging the 'one China' policy. The representative of the United States stated that the NGO's action was not an unsubstantiated or politically motivated act against China and the action also did not reflect 'a pattern of acts' as stipulated in Resolution 1996/31. The Committee recommended to withdraw its consultative status by a roll-call vote of 13 for and three against, with two abstentions.⁶⁹

After a complaint by Algeria, the Committee recommended to suspend the consultative status of the NGO 'The Arab Commission for Human Rights' in 2009. This NGO had allowed an individual who had been convicted in Algeria and had an arrest request issued by INTERPOL to speak on its behalf during a Human Rights Council session. By doing this, the NGO had violated paragraph 57 of Council Resolution 1996/31. This decision was taken with 18 votes in favour and one abstention from the United States.⁷⁰

During its regular session in 2010, the Committee recommended to withdraw the consultative status of the NGO 'General Federation of Iraqi Women'. This decision was taken by consensus and was based on a complaint by Iraq that the NGO was in fact a 'subsidiary political entity established by the former regime in Iraq' and that the organization was not registered in Iraq.⁷¹ During that same session, the Committee recommended to suspend the consultative status of the NGO 'Interfaith International'. The representative of Pakistan had requested the withdrawal of consultative status, because the NGO had been 'systematically

64 Report of the Committee on Non-Governmental Organizations on its 2015 resumed session (New York, 26 May-3 June and 12 June 2015), 17 June 2015, UN doc. E/2015/32 (Part II), paras. 23-28.

65 These numbers exclude the withdrawals and suspensions of consultative status due to outstanding quadrennial reports.

66 Report of the Committee on Non-Governmental Organizations on its resumed 2005 session (New York, 5-20 May 2005), 15 June 2005, UN doc. E/2005/32 (Part II), paras. 14-32.

67 *Ibid.*, paras. 58-66.

68 Report of the Committee on Non-Governmental Organizations on its 2006 regular session (New York, 19-27 January 2006), 24 February 2006, UN doc. E/2006/32 (Part I), paras. 90-98.

69 Report of the Committee on Non-Governmental Organizations on its resumed 2007 session (New York, 14-18 May 2007), 1 June 2007, UN doc. E/2007/32 (Part II), paras. 47-61.

70 Report of the Committee on Non-Governmental Organizations on its 2009 regular session (New York, 19-28 January and 2 February 2009), 4 March 2009, UN doc. E/2009/32 (Part I), paras. 50-57.

71 Report of the Committee on Non-Governmental Organizations on its 2010 regular session (New York, 25 January-3 February 2010), 3 March 2010, UN doc. E/2010/32 (Part I), paras. 21-23.

engaged in politically motivated activities to undermine the sovereignty and territorial integrity of Pakistan'. However, a number of committee members preferred a suspension, so as to ensure that a balance was struck and that the Committee was not engaging in the censorship of NGOs.⁷² In 2012, the Committee recommended by consensus to withdraw the consultative status of Interfaith International, because it had violated its suspension by misrepresenting itself as an NGO in consultative status and organizing events during a Human Rights Council session.⁷³

During its resumed session in 2010, the Committee recommended the suspension of the consultative status of the NGO 'Centre Europe-tiers monde' for two years. This decision was based on a complaint by the representative of Turkey, who stated that the NGO had disrespected the territorial integrity of Turkey, had undertaken unsubstantiated and politically motivated acts against Turkey and had been inciting and condoning acts of terrorism. The decision was taken by consensus, although the representative of Switzerland did state that he regretted this harsh decision, because it had not been clearly established that the NGO had made 'non-peaceful use of its right to freedom of expression.'⁷⁴

In 2015, the Committee recommended to withdraw the consultative status of two African NGOs: the 'African Technical Association' and the 'African Technology Development Link'. These withdrawals were both based on complaints by Pakistan and were considered together. The representative of Pakistan stated that the two NGOs had not acted in compliance with their mandate [they were both on the Roster] by delivering statements in the Human Rights Council that concerned the political and human rights situation in Pakistan. Also, the language that these NGOs used was allegedly politically motivated. The United States' representative expressed her concern about the 'targeting of non-governmental organizations who expressed their views in the Human Rights Council contrary the view of Governments.'⁷⁵

3.4. Deferrals

During the resumed Committee session in 2009, the United States' representative condemned the use of what he called 'standard filibuster tactics', which he described as 'asking infinite questions of non-governmental organizations to avoid making decisions on granting them consultative status.'⁷⁶ As mentioned in the introduction, this is not the first or only time that the Committee has been accused of using its competence to defer cases as a political tactic. This allegation is difficult to test: the reports of the Committee sessions do not contain the numbers of questions posed to NGOs applying for consultative status, nor their content. The only information available is the list of deferred applications in each report and the content of the debates among the Committee members.

As mentioned above, Figure 1 shows an increase in the number of deferrals over the years. In order to have an indication of the average running time of the applications – so the number of sessions in which the applications were deferred –, the NGOs that were on the 'deferred list' during the regular session in 2011 are taken as a sample. Looking at the reports between 2005 and 2010, it can be determined at how many sessions these applications were deferred.⁷⁷ In the regular session in 2011, 216 applications were deferred to a later session. The figure below demonstrates in how many sessions these applications were deferred before a recommendation was made by the Committee.

72 Report of the Committee on Non-Governmental Organizations on its 2010 regular session (New York, 25 January-3 February 2010), 3 March 2010, UN doc. E/2010/32 (Part I), paras. 24-26.

73 Report of the Committee on Non-Governmental Organizations on its 2012 resumed session (New York, 21-30 May and 8 June 2012), 8 June 2012, UN doc. E/2012/32 (Part II), paras. 40-45.

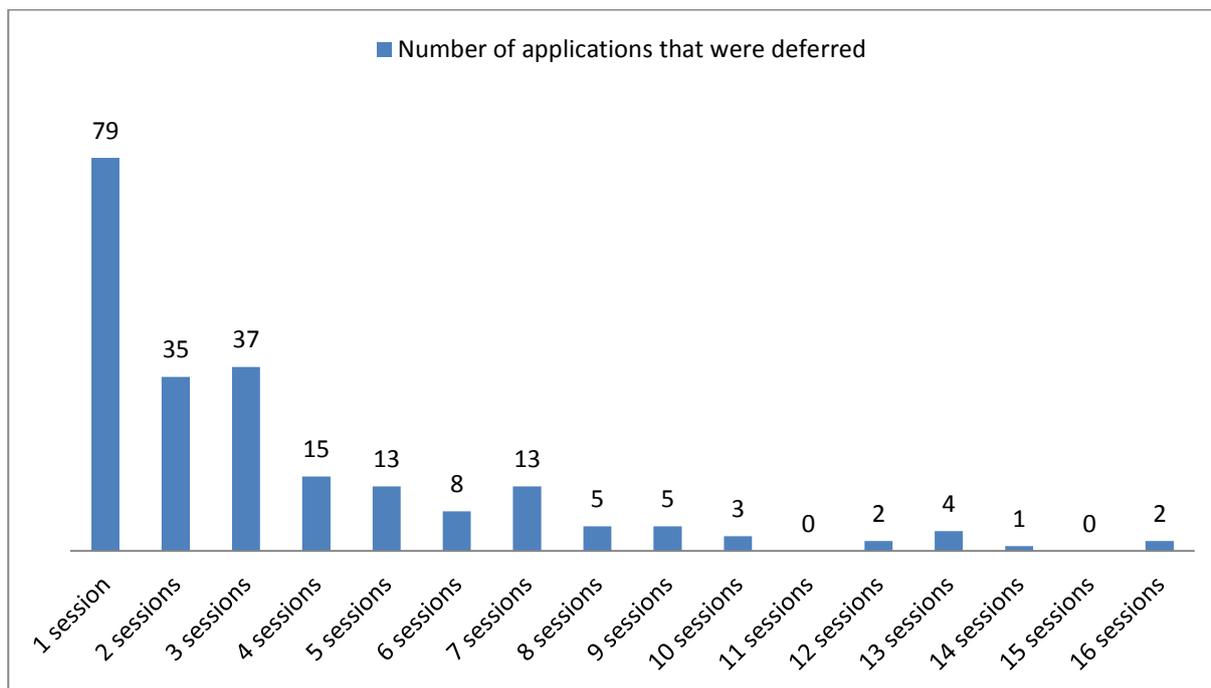
74 Report of the Committee on Non-Governmental Organizations on its 2010 resumed session (New York, 26 May-4 June and 18 June 2010), 21 June 2010, UN doc. E/2010/32 (Part II), paras. 43-46.

75 Report of the Committee on Non-Governmental Organizations on its 2015 resumed session (New York, 26 May-3 June and 12 June 2015), 17 June 2015, UN doc. E/2015/32 (Part II), paras. 60-71.

76 Report of the Committee on Non-Governmental Organizations on its resumed 2009 session (New York, 18-27 May 2009), 19 June 2009, UN doc. E/2009/32 (Part II), para. 33.

77 Note: it is possible that applications are deferred for a longer period of time than presented in this research, because the research is limited to reports between 2005 and 2015 and the applications of some NGOs were still on the 'deferred list' in the resumed session in 2015. It is unclear when these NGOs will be granted (or not granted) consultative status. Therefore, the information is not precisely accurate, but merely presents an indication.

Figure 2 Number of sessions in which the applications were deferred



It can be noted that most of the applications were deferred for only one session. Out of the 216 deferrals, 79 NGOs received a definite answer from the Committee at the next session. However, the figure also shows that a number of applications were deferred for a great number of sessions: some NGOs even had to wait 16 sessions before the Committee had come to a conclusion on their applications.

Since the resumed session in 2009, in which the United States' representative commented on the 'standard filibuster tactics', there have been extensive debates among the Committee members about the desirable running time of an application and the number of questions posed to NGOs. These debates usually ended with the Committee voting on a 'no-action motion' or the recommendation not to grant consultative status. When the Committee was considering the application of the NGO 'International Gay and Lesbian Human Rights Commission' during the resumed session in 2010, the United States' representative asked for a vote to grant the NGO consultative status, which was denied after a successful no-action motion filed by the representative of Egypt. Representatives and observers of, amongst others, the European Union, Chili, Australia and Switzerland expressed their regret that 'after three years and 44 questions the Committee was not yet in a position to make a decision on the organization's application'.⁷⁸ During the consideration of an application in 2011, the representative of Peru stated that: 'after that long period of time the non-governmental organization deserved a response from the Committee, underlining that the lack of a decision affected the efficiency of the work of the Committee'.⁷⁹ Other Committee members expressed an opposite view on this matter. In the resumed session in 2013, the representative of Sudan stated: 'Rushing towards action in the consideration of certain organizations had become a regrettable precedent of the Committee, which would not be helpful for its future work'.⁸⁰ Although the representatives of the United States seem to be in favour of a timely settlement of applications, it does not always hold that view. In 2015, the United States' representative expressed his concern with regard to granting consultative status to the NGO 'Global

78 Report of the Committee on Non-Governmental Organizations on its 2010 resumed session (New York, 26 May-4 June and 18 June 2010), 21 June 2010, UN doc. E/2010/32 (Part II), para. 14.

79 Report of the Committee on Non-Governmental Organizations on its 2011 resumed session (New York, 16-24 May and 16 June 2011), 16 June 2011, UN doc. E/2011/32 (Part II), para. 8.

80 Report of the Committee on Non-Governmental Organizations on its 2013 resumed session (New York, 20-29 May and 7 June 2013), 10 June 2013, UN doc. E/2013/32 (Part II), para. 23.

Network for Rights and Development’, which had been under review since 2011. He stated that: ‘rushing to a vote was not in line with the previous practice of the Committee.’⁸¹

4. Analysis of research results

4.1. Introduction

The previous section contained the results of an examination of the reports of the Council Committee between 2005 and 2010. This section analyzes these results. It examines how the grounds used by the Committee for not granting, suspending or withdrawing consultative status correspond with the criteria in Resolution 1996/31. Furthermore, although not explicitly based on the criteria of Resolution 1996/31, the use of deferrals by the Committee is analyzed. The section also considers the possible consequences of the way in which the Committee interprets the criteria when managing ECOSOC consultative status.

4.2. Analysis

In analyzing the Committee reports between 2005 and 2015, it can be noted that the Committee makes use of the broad discretion given by Resolution 1996/31 and that the criteria and their interpretation give rise to a great deal of debate among the Committee members. The broad interpretation of the criteria can best be noted when examining the Committee’s recommendations not to grant consultative status. In almost all of the cases discussed above, the reports do not explicitly refer to the criteria in Resolution 1996/31. In some instances, phrases like ‘inconsistent with the UN Charter’ or ‘did not have activities that would contribute towards the work of the Council’ were used. In most of these cases, the use of these rather explicit references to the criteria in Resolution 1996/31 still led to extensive debate among the Committee members, as not everyone agreed on their interpretation. In other cases, however, no grounds for the decision not to recommend consultative status were mentioned at all. Some Committee members opposed to granting an NGO consultative status were vague in their wording by stating that they ‘doubted that the NGO met the criteria’, while others even justified their arguments with phrases like ‘could not agree with the objectives of an organization that promoted a certain lifestyle’. The Committee recommended not to grant consultative status to a large number of NGOs promoting LGBT rights, based on the accusation of their affiliation with paedophilia. It is noteworthy to mention that in a number of those cases the Council nevertheless decided to grant consultative status after a negative recommendation from the Committee.

Of course, all the above-mentioned grounds and phrases can be traced back to the criterion in Article 2 of Resolution 1996/31 which states that the aims and purposes of the NGO have to be in conformity with the spirit, purposes and principles of the UN Charter. However, this criterion is so broad that it seems to comprise almost all reasons that Committee members may have for not granting an NGO consultative status. These grounds include unfounded allegations of paedophilia, a disagreement on whether actions fall under the freedom of expression or under politically motivated acts against member states and the belief of a single representative that ‘homosexuality is not a positive source of human rights’. The interpretation of this criterion gives rise to much debate among the Committee members, resulting in them not infrequently accusing each other of being politically motivated. It is remarkable that the other criteria which an NGO has to meet in order to be considered for ECOSOC consultative status, which are wide broad and more factual, were not once used as a ground for a recommendation not to grant consultative status.

The grounds for recommendations to withdraw or suspend consultative status were mentioned more explicitly in the reports. Also, these grounds can more easily be traced back to the criteria in Resolution 1996/31. Most suspensions and withdrawals were based on the accusation that the NGO had clearly abused its status by engaging in acts contrary to the purposes and principles of the UN Charter, often in combination with the accusation that it had engaged in unsubstantiated or politically motivated acts against UN Member States (Article 57a). Some other NGOs were accused of having relations with terrorist organizations, which can

⁸¹ Report of the Committee on Non-Governmental Organizations on its 2015 regular session New York, 26 January to 4 February and 6 and 13 February 2015, 18 February 2015, UN doc. E/2013/32 (Part II), para. 14.

be understood as a complaint under Article 57b of Resolution 1996/31. However, this does not mean that all the Committee members agreed on how these criteria should be interpreted. What some Committee members interpreted as withdrawing the consultative status of an NGO that had engaged in politically motivated acts against UN Member States, others saw as the 'targeting of non-governmental organizations who expressed their views in the Human Rights Council contrary the view of Governments'. Without a clear definition of 'unsubstantiated or politically motivated acts against UN member states', there will always remain contradictory views among the Committee members on the meaning of this criterion. Moreover, NGOs will have to ensure that their statements and actions are not too critical about one or more of the UN Member States. This jeopardizes the right to freedom of expression that is valued highly in the UN.

The use of deferrals of applications can less easily be linked to the criteria governing ECOSOC consultative status. Furthermore, because there is a lack of transparency on the amount and content of questions that are addressed to applying NGOs, it is hard to draw any conclusions on this matter. However, the number of sessions that some NGOs have to sit through before they receive a definite recommendation from the Committee, in combination with the extensive debates and accusations on the matter, indicate that deferrals are not always merely used due to a lack of time. Asking many questions and filing no-action motions to postpone voting on the recommendation whether to grant consultative status seem to be common practice in the Committee. As a result, NGOs that are 'controversial' – in the sense that the Committee members do not agree about their suitability for consultative status – often have to wait a long time for a decision to be made on their application. Furthermore, it can be extremely time-consuming and expensive for an NGO to repeatedly answer questions and to send a representative to all the Committee sessions in which its application is being considered. This could cause problems for NGOs from developing countries: NGOs that are claimed to be a priority for consultative status in the preamble to Resolution 1996/31.

5. Conclusion

Applying the grammatical and the teleological interpretation method to the criteria governing ECOSOC consultative status, which can mainly be found in Resolution 1996/31, results in an ambivalent answer to how these criteria should be interpreted. The drafting history of and the preamble to Resolution 1996/31 indicate that the purpose of the resolution is to better reflect the increasing involvement and value of NGOs in the UN, particularly of national NGOs and NGOs from developing countries. The criteria that ended up in Resolution 1996/31, however, seem to be rather broad and vague. The combination of these vague criteria with Article 15 of the resolution, which states that interpreting the norms is the prerogative of the Council and the Committee, leaves the Committee with broad discretion in interpreting the resolution.

In analyzing the Committee reports between 2005 and 2015, it can be observed that the Committee makes good use of the vague criteria and the discretion that Resolution 1996/31 offers. The criteria are often interpreted broadly, which causes a lot of debate among the Committee members. In by far the most cases, there is disagreement among the Committee members on how the criteria should be interpreted. Almost no unfavourable decision towards an applying NGO was made by consensus. In some cases, grounds that are used for recommendations are hard to trace back to the criteria in Resolution 1996/31. This can especially be observed in the consideration of applications by NGOs involved in the promotion of LGBT rights. The implicit use of these vague and broad criteria can lead to a decision-making process that gives the impression of being rather arbitrary. As a consequence, NGOs that promote issues that are not approved of by all the Committee members find themselves having a hard time in being granted consultative status. Furthermore, the often broad interpretation of the criterion 'unsubstantiated or politically motivated acts against UN member states' jeopardizes the freedom of expression of NGOs. The sometimes endless deferrals of applications are expensive for the NGOs in question and may therefore result in problems for NGOs from developing countries.

The Council has the final say on whether or not to grant consultative status or to suspend or withdraw this status. In this capacity, the Council can monitor the work of the Committee and come to different conclusions, which for example happened in the cases of several NGOs promoting LGBT rights, which were

eventually granted consultative status after a negative recommendation from the Committee. However, the Committee should be able to perform its duties in an independent and non-partial manner and lighten some of the workload of the Council by making solid recommendations.

In order to improve the work of the Committee, a number of suggestions can be made. Firstly, some criteria in Resolution 1996/31 should be defined more clearly. This is especially relevant for the criterion in Article 2 that the ‘the aims and purposes of the organization shall be in conformity with the spirit, purposes and principles of the Charter of the United Nations’ and the criterion in Article 57a that consultative status shall be suspended or withdrawn if the NGO ‘clearly abuses its status by engaging in a pattern of acts contrary to the purposes and principles of the Charter of the United Nations including unsubstantiated or politically motivated acts against Member States of the United Nations incompatible with those purposes and principles’. NGOs should be involved in the process of redefining these criteria. Secondly, as was suggested by the representative of Turkey during several Committee sessions,⁸² a procedural rule should be established that ensures that the Committee has to take action on all applications that have been deferred for more than four sessions, in order to put a halt to the arbitrary deferral of applications. Finally, the rules on membership of the Committee should be altered so as to ensure that a Member State cannot have a representative in the Committee for more than one period (four years). In this way, over the years, many different Member States can participate in the Committee and a variety of different views can influence the decision-making process. This might decrease the possibility that particular political sentiments linger through the work of the Committee for a long period of time.

As mentioned in the introductory section, this research limits itself to an analysis based on the Committee reports. Although some conclusions and recommendations could be derived from this analysis, further research – for example, by making theoretical assumptions on NGO participation, or by interviewing those involved in the process – is desirable in order to present a more complete picture of the work of the Committee. ■

82 See e.g. Report of the Committee on Non-Governmental Organizations on its 2011 resumed session (New York, 16-24 May and 16 June 2011), 16 June 2011, E/2011/32 (Part II), para. 14.