

United Nations Consultative Status: The FBA ILS Takes Leadership Role in Seeking to Expand FBA's Global Reach

by Mimi Tsankov



Mimi Tsankov holds a number of leadership roles in the Federal Bar Association. These include serving as deputy chair, International Law Section; board member, Southern District of New York Chapter (SDNY); and chair, SDNY Immigration Law Committee. Tsankov wrote this article in her personal capacity. The comments contained herein do not represent those of the U.S. Department of Justice.

At the FBA Midyear Meeting in March, the association's board of directors approved a request that the FBA apply to the United Nations for official consultative status (CS).¹ This decision reflects the culmination of months of study by an FBA task force composed of FBA chapter and section leaders who examined the parameters of holding such a status and explored whether doing so supports the FBA's mission of strengthening the federal legal system and the administration of justice.² The task force concluded that by holding U.N. CS, the FBA would be able to support its mission in a more meaningful way on an expanded global level.³ To that end, the FBA has submitted its application to the United Nations with the expectation that, if approved, CS will be conferred in 2018.⁴

Part I. Mission Alignment, UN CS, and Application Review Process

Mission Alignment

As a world leader in establishing principles of governance, the United Nations supports access to and delivery of justice so that rule of law principles are upheld.⁵ Recent United Nations studies indicate that rule of law concerns continue to be some of the most pressing issues facing our global communities.⁶ The FBA mission embodies promoting rule of law principles, and the primary purpose of the organization is "to strengthen the federal legal system and administration of justice by serving the interests and the needs of the federal practitioner, both public and private, the federal judiciary, and the public they serve."⁷ Furthermore, the FBA International Law Section's (ILS) mission statement includes, in pertinent part: (1) assisting people in other nations with U.S. legal talent to further the cause of peace and democracy, and (2) furthering the development of human rights principles and the enforcement of such principles.⁸ Thus, there is considerable alignment between these two organizations in terms of promoting rule of law principles.⁹

United Nations Consultative Status

The U.N. Economic and Social Council (ECOSOC) is the body that serves as the central forum for discussing international economic and social issues, such as rule of law concerns, and for formulating policy recommendations addressed to U.N. member states and the U.N. system.¹⁰ One of the ways that ECOSOC supports its mission is through engaging with partner organizations through its official partnership system in which non-governmental organizations (NGOs) and associations are conferred "consultative status."¹¹ Currently, there are more than 4,500 NGOs worldwide that enjoy active U.N. CS with ECOSOC.¹² These organizations are diverse both thematically and geographically.¹³ Of particular note, the American Bar Association has held this status since 1997¹⁴ and the list of current ECOSOC NGOs includes, among others, the AARP,¹⁵ the National Association of Women Lawyers,¹⁶ the American Civil Liberties Union,¹⁷ the NAACP,¹⁸ the New York County Lawyer's Association,¹⁹ and the New York State Bar.²⁰

ECOSOC describes the role of its active U.N. CS partner organizations in the following ways:

- Information dissemination;
- Awareness raising;
- Development education;
- Policy advocacy;
- Joint operational projects;
- Participation in intergovernmental processes; and
- Contribution of services and technical expertise.²¹

With such a wide range of activities available to partner organizations, from observation to project participation,²² this status presents unique opportunities for the FBA and its sections, such as ILS.²³ If CS is conferred upon the FBA, it may offer an additional means of furthering the FBA ILS mission, for example, by establishing a formal structure for FBA members to advance and support global peace and democracy, as

well as the development and enforcement of universally recognized human rights principles.²⁴ Members of the FBA ILS could attend relevant United Nations meetings and thereafter raise awareness through the dissemination of pertinent information to its members with cutting-edge CLE programming.²⁵ By virtue of participation in the United Nations meetings, the FBA might be better-equipped to network with legal and policy leaders on important and emerging rule of law issues, thereby enhancing the quality of the CLE programming for the benefit of its members.²⁶ The FBA ILS could benefit from the opportunity to interact with foreign attorneys, both in terms of recruiting foreign associate members, and in building relationships with foreign attorneys who may be able to provide assistance to FBA members with international practices.²⁷

Application Review Process

The CS online application process is fairly straightforward and involves a profile registration followed by the submission of a full online application by June 1 of each year.²⁸ The online application requires completion of a questionnaire form that addresses, among other items, how the organization would use the status.²⁹ The application also requires submission of a number of required documents, including the organization's constitution and bylaws, certificate of registration, and financial statements.³⁰

Applications are reviewed by the ECOSOC Committee on Non-Governmental Organizations twice a year and the committee's recommendations are published in a report and submitted to the ECOSOC for final consideration at its next meeting.³¹ Official notification is sent to all reviewed NGOs informing them about the committee's recommendation.³²

NGOs with CS can designate representatives to obtain passes for United Nations premises, valid on a yearly basis.³³ Each NGO can request up to a maximum of seven annual passes each for New York, Geneva, and Vienna.³⁴ Of the seven annual passes, two are reserved for the NGO president/chief executive officer and chief administrative officer.³⁵ NGOs can request temporary passes for one day, and up to three months, for a maximum of nine temporary passes at a time.³⁶

Organizations granted U.N. CS must submit to the ECOSOC NGO committee, every fourth year, a brief report of their activities regarding their contribution to the work of the United Nations.³⁷

Part II. FBA Review Process

In mid-2016, the FBA Southern District of New York (SDNY) Chapter began exploring the idea of applying for CS under the leadership of SDNY Chapter President Liam O'Brien.³⁸ FBA SDNY Chapter Board Member Raymond Dowd, who was involved in the initial discussions, suggested that the chapter reach out to Hon. Joanna Seybert and that it consider making this an issue for the FBA ILS and/or the FBA's national organization to further review.³⁹ Dowd spoke with FBA members who had applied for CS on behalf of other organizations, such as the New York Women's Bar Association, and he shared some insights from his board service at the New York County Lawyers' Association, which gained CS status during his tenure as a board member.⁴⁰ Based on these discussions, the consensus emerged that by engaging with the United Nations directly, the FBA might:

- Further meet its mission to support access to and delivery of justice so that rule of law principles would be upheld;
- Enhance FBA programming opportunities through the firsthand

gathering and dissemination of information and by supporting issue awareness;

- Raise the profile of the FBA in New York City, thereby leveraging the FBA's proximity to the United Nations and its opportunity to engage with world leaders; and
- Support membership in the New York City area, in advance of the 2018 FBA National Conference in New York, through enhanced U.N.-related programming opportunities.⁴¹

At the FBA 2016 Annual Meeting, Dowd engaged in informal discussions with Judge Michael Newman, president; Stacy King, executive director; West Allen, chair of the Government Relations Committee and member of the National Board of Directors; Bruce Moyer, government relations counsel; and others in leadership roles who encouraged exploration of the concept and suggested opening discussions with the FBA ILS as a logical next step.⁴² At the FBA 2016 Annual ILS meeting, Dowd raised the issue to the assembled group, and, following further discussions, Brian Murphy, FBA ILS chair, expressed support for moving forward.⁴³ In October 2016, the FBA ILS and the FBA SDNY Chapter formally approved pursuing this effort.⁴⁴

In the dual roles of FBA SDNY Chapter board member serving as chair of the SDNY Immigration Law Committee and as FBA ILS deputy chair, I was asked to provide research and liaison support between the FBA SDNY Chapter, the FBA ILS, and the FBA National Board of Directors regarding applying for CS.⁴⁵ In this liaison role, I forwarded a memorandum requesting that the FBA National Board consider convening a task force to study the advisability and feasibility of applying for CS.⁴⁶ In February 2017, the national board requested that such a task force be assembled and that it submit to the national board a report and recommendation, as well as a draft application, in advance of the March midyear meeting.⁴⁷

On Feb. 3, I convened a task force composed of the following individuals:⁴⁸ (1) West Allen; (2) Raymond Dowd; (3) Robin Feder, board member; (4) Donna Frosco, SDNY Chapter board member; (5) Stacy King; (6) Matt McGhie, immediate past chair and current board member of the ILS; (7) Olivera Medenica, former chair and current board member of the SDNY Chapter; (8) Bruce Moyer; (9) Brian Murphy, former ILS chair; (10) Hon. Joanna Seybert, ILS senior counselor; (11) Wylie Stecklow, Civil Rights Law Section Chair and FBA SDNY Chapter board member; (12) Hon. Linda Murnane Strite, ILS senior counselor; (13) Nicola Tegoni, ILS member; (14) Prof. Ruth Wedgwood, ILS senior counselor; (15) Judith Wood, ILS Human Rights Committee chair; and (16) Jane Zaretskie, former national director of membership and chapters.

In February, I met with the task force telephonically on three occasions⁴⁹ during which the group analyzed the feasibility and advisability of pursuing this status.⁵⁰

As an initial matter, the task force agreed that U.N. CS supports the vision of the FBA to be the premier bar association for the federal practitioner and judiciary and that holding this status is within the scope of the FBA's mission.⁵¹ Furthermore, the task force identified a range of benefits that holding such status could have. These include:⁵²

- Providing FBA U.N. CS delegates ease in entering the United Nations and witnessing and monitoring its work and its proceedings;

- Supporting FBA members in the collection and dissemination of information developed at the United Nations;
- Enabling FBA members to raise awareness about matters being examined, discussed, and debated at the United Nations;
- Enriching and expanding on FBA members' ability to provide cutting-edge educational opportunities regarding United Nations development education;
- Raising the FBA's profile in national and international legal arenas;
- Increasing membership through high-profile programming;
- Increasing FBA member participation in the upcoming 2018 FBA Annual Meeting in New York City through targeted programming that leverages this status; and
- Enabling FBA ILS members with the opportunity to interact with foreign attorneys, both in terms of recruiting foreign associate members, and in building relationships with foreign attorneys who may be able to provide assistance to FBA members with international practices.⁵³

There was considerable discussion about the nature of the proposed engagement and the impact on FBA members for whom holding such a status could present a conflict of interest.⁵⁴ It was acknowledged that some FBA members could be impacted if FBA holds this status, such as those members with a diplomatic interaction.⁵⁵ The task force noted that if the FBA refrains from taking political positions at the United Nations, conflicts of interest may be minimized for existing FBA members.⁵⁶ Some task force members suggested that the perimeter of the types of engagement need not be delineated such as to circumscribe limits on policy advocacy since there are a variety of oversight measures that already exist within the FBA leadership structure.⁵⁷ Others suggested that the focus of the activity should be on information gathering and dissemination rather than on taking positions on issues.⁵⁸ The task force left to the FBA executive board the duty of defining the extent to which FBA activities in U.N. CS status should be circumscribed.⁵⁹

In its report, the task force recommended that the process for selection of ECOSOC delegates be an open and transparent one whereby FBA members would apply to serve as a one-year delegate and be selected based on their professional interests and ability to commit significant time to engaging in United Nations activities so as to strengthen the FBA-ECOSOC partnership.⁶⁰ The task force recognized the necessity of significant and steady engagement for the FBA ECOSOC partnership to be fully realized.⁶¹ It recommended that the FBA leverage the unique opportunities that geography plays given that the United Nations is located in the physical locale of the FBA SDNY and Eastern District of New York Chapters and to acknowledge the special connection that some sections such as the FBA ILS and the FBA Civil Rights Law Section have to the substantive work of the United Nations.⁶² It recommended that factors such as professional interest and commitment to availability could be considered in the selection of delegates.⁶³ Finally, the task force acknowledged that the FBA Executive Board has an overarching interest in managing this proposed relationship, and felt it appropriate to defer on the distribution of delegate passes.⁶⁴

Part III. Next Steps

On March 20, Robin Feder, writing on behalf of the FBA's Board of Directors, informed the task force that the board had approved the

submission by the FBA SDNY Chapter and the FBA ILS of a CS application in the name of the FBA.⁶⁵ Feder stated that the board voted at its March 17 meeting to approve the submission of the CS application with the intention of filing it prior to the June 1 deadline.⁶⁶ She explained that the board had not yet decided on the mechanism for selecting the delegates, but that it seemed likely that a yearly application process, as suggested by the task force, would be required.⁶⁷ Feder iterated that, as the task force had recognized, the board has an overarching interest in managing the proposed relationship, and in this regard, the board would likely set specific parameters for the delegates and require regular reporting on the delegates' activities and accomplishments.⁶⁸ She communicated that the board is enthusiastic about the prospect of holding this status, and looks forward to moving ahead.⁶⁹ The FBA has since filed the application and it is currently under review. ☉

Endnotes

¹See FBA 2017 Annual Midyear Meeting Minutes.

²See *infra*, Part I.

³See *infra*, Part II.

⁴See FBA 2017 Annual Midyear Meeting Minutes.

⁵*Rule of Law, Justice Security, and Human Rights*, U.N. DEV. PROGRAMME, <http://www.undp.org/content/undp/en/home/ourwork/democratic-governance-and-peacebuilding/rule-of-law--justice-and-security.html> (last visited Aug. 2, 2017). "Strengthening the rule of law and promoting human rights are cornerstones of UNDP's work..." *Id.*

⁶*Id.* In 2005, world leaders gathered for a world summit during which they identified the rule of law as one of the four key areas demanding greater attention. Member states decided to establish a dedicated rule of law assistance unit within the U.N. Secretariat to strengthen the U.N. activities and to promote the rule of law. *The Rule of Law in the UN's Intergovernmental Work*, U.N. RULE OF LAW, <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/the-rule-of-law-in-un-work> (last visited Aug. 2, 2017). The ECOSOC plays a key role in monitoring and implementing development issues relevant to the rule of law. *Id.*

⁷FBA Mission and Vision, FED. BAR ASS'N, <http://www.fedbar.org/About-Us/FBA-Mission.aspx> (last visited Aug. 2, 2017).

⁸Article III, Constitution of the Federal Bar Association.

⁹FBA U.N. CS Task Force Report, FBA 2017 Annual Midyear Meeting Materials, March 6, 2017, at 2.

¹⁰United Nations, *Working with ECOSOC: An NGOs Guide to Consultative Status* (2011), <http://csonet.org/content/documents/Brochure.pdf>.

¹¹*Id.* at 2.

¹²See Basic Facts About ECOSOC Status, NGO BRANCH: DEP'T OF ECON. & SOC. AFF., <http://csonet.org/?menu=100> (last visited Aug. 2, 2017).

¹³See UN ECOSOC, *List of Non-Governmental Organizations in Consultative Status with the Economic and Social Council as of 1 September 2015* (Aug. 22, 2016), <http://undocs.org/E/2015/INF/5>.

¹⁴*Id.* at 12.

¹⁵*Id.* at 3.

¹⁶See Institute for Global Communications, NGOs in Consultative Status, <http://habitat.igc.org/ngo-rev/status.html>.

¹⁷*Id.* at 12.

¹⁸*Id.* at 73.

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¹⁹*Id.*

²⁰*Id.* at 75.

²¹*Id.* at 7.

²²*Id.* at 11-24.

²³*Supra* note 12.

²⁴FBA U.N. CS Task Force Report, FBA 2017 Annual Midyear Meeting Materials, dated March 6, 2017.

²⁵*Id.*

²⁶*Id.*

²⁷*Id.*

²⁸*Supra* note 13.

²⁹*Id.* at 29.

³⁰*Id.*

³¹*Id.* at 32.

³²*Id.* at 33.

³³*Id.* at 8.

³⁴*Id.*

³⁵*Id.*

³⁶*Id.*

³⁷*Id.* at 37.

³⁸*Supra* note 12.

³⁹*Id.*

⁴⁰*Id.*

⁴¹*Id.*

⁴²*Id.*

⁴³*Id.*

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*Id.*

⁴⁷*Id.*

⁴⁸*Id.* at 3-4.

⁴⁹*Id.* at 5.

⁵⁰*Id.*

⁵¹*Id.* at 5-6.

⁵²*Id.*

⁵³*Id.* at 6.

⁵⁴*Id.*

⁵⁵*Id.* at 7.

⁵⁶*Id.*

⁵⁷*Id.*

⁵⁸*Id.* at 9.

⁵⁹*Id.*

⁶⁰*Id.*

⁶¹*Id.* at 9.

⁶²*Id.*

⁶³*Id.*

⁶⁴*Id.* at 9-10.

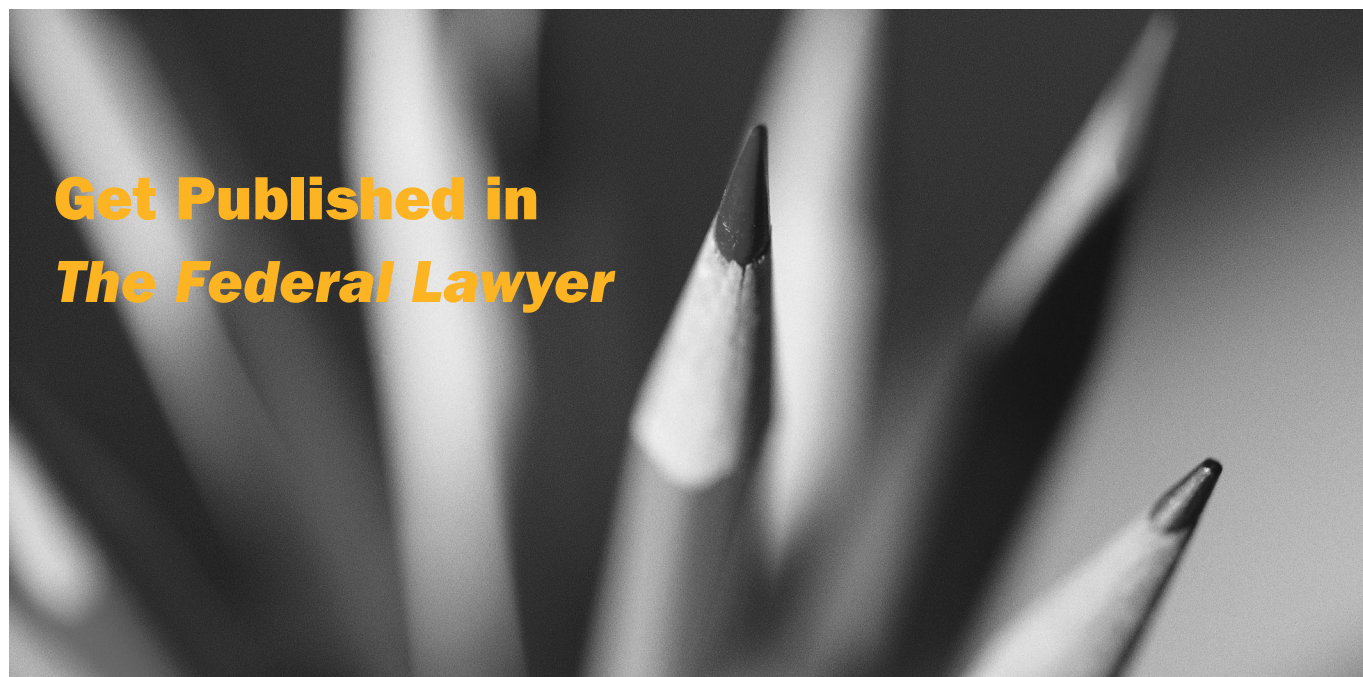
⁶⁵Email from Robin Feder, FBA Board Member, to Mimi Tsankov, Member, FBA U.N. CS task force (March 20, 2017) (on file with author).

⁶⁶*Id.*

⁶⁷*Id.*

⁶⁸*Id.*

⁶⁹*Id.*



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