THE REFORM OF THE UN SECURITY COUNCIL: WHAT ROLE FOR THE EU?
Second Meeting of the Working Group I,
project 'The EU and the reform of the UN'
Istituto affari internazionali (IAI)
Rome, 14/V/2010

a. Agenda
b. List of participants
1. The reform of the UN Security Council / Natalino Ronzitti (16 p.)
2. The EU's contribution to the effectiveness of the UN Security Council: representation, coordination and outreach / Nicoletta Pirozzi (12 p.)
3. Restarting negotiations for the reform of the Security Council / Elisabetta Martini (8 p.)
4. The evolving role of the UN Security Council in international security: legitimiser and legislator / Rein Müllerson (9 p.)
5. The EU common foreign and security policy in the UN Security Council: between representation and coordination / Daniele Marchesi (pubbl. in *European foreign affairs review*, vol. 15, no. 1 (2010), p. 97-114)

Istituto Affari Internazionali

THE REFORM OF THE UN SECURITY COUNCIL: WHAT ROLE FOR THE EU?

WORKING GROUP I

In the framework of the project
The EU and the Reform of the United Nations

UN=EU EFFECTIVE MULTILATERALISM

With the support of

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14 May 2010

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AGENDA

Friday 14 May

9.30 – 9.45	**OPENING REMARKS**
	Natalino Ronzitti, LUISS University, and Istituto Affari Internazionali (IAI), Rome
	Joachim Krause, Institute for Social Sciences, CAU, Kiel
9.45 – 10.00	**INTRODUCTORY SPEECH**
	Amb. Michael Freiherr von Ungern-Sternberg, Director General for the United Nations, Federal Foreign Office, Berlin
10.00 – 12.00	**SESSION I** – *The reform of the UN Security Council*
CHAIR:	*Johachim Krause*, Institute for Social Sciences, CAU, Kiel
SPEAKERS:	*Natalino Ronzitti*, LUISS University, and Istituto Affari Internazionali (IAI), Rome
	Peter Brownfeld, Embassy of the United States to Italy, Rome
	Discussion
12.00 – 12.15	*Coffee break*
12.15 – 13.30	**SESSION II** – *The evolving role of the UN Security Council in international security: legitimiser and legislator*
CHAIR:	*Ettore Greco*, Istituto Affari Internazionali (IAI), Rome
SPEAKER:	*Rein Müllerson*, University Nord, Tallinn
	Discussion
13.30 – 14.30	*Buffet Luch*
14.30 – 16.30	**SESSION III** – *The EU's contribution to the effectiveness of the UN Security Council*
CHAIR:	*Inna Melnykovska*, Institute for Social Sciences, CAU, Kiel
SPEAKERS:	*Nicoletta Pirozzi*, Istituto Affari Internazionali (IAI), Rome
	Daniele Marchesi, University of Cologne, and European Commission, Brussels
	Discussion
16.30 – 16.45	**CONCLUDING REMARKS**
	Natalino Ronzitti, LUISS University, and Istituto Affari Internazionali (IAI), Rome

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LIST OF PARTICIPANTS

Samanta Bongini	Italian Delegate, International Young Democrat Union, Rome
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PAPER ON

"THE REFORM OF THE UN SECURITY COUNCIL"

by
Natalino Ronzitti

Professor of International Law, LUISS University,
and Scientific Advisor, IAI, Rome

DRAFT NOT TO BE QUOTED

Introduction

An impressive body of literature has been produced on the reform of the Security Council (SC) since the latest attempts made with the creation by the General Assembly (GA), in 1993, of the "Open-ended working group on the question of equitable representation on and increase in the membership of the Security Council and related matters".

These attempts are still on-going and it is not possible to predict their outcome, notwithstanding the efforts of the former Secretary General (SG) Kofi Annan and the High Level Panel. The reform of the SC cannot be confined to permanent membership and the right of veto. But it is understandable that States strive to obtain a permanent seat. Their power, prestige and influence will grow if the permanent seat is endowed with the power of veto.

The aim of this paper is to review the proposals put forward thus far and to evaluate new ones in order to see whether a reform is desirable and/or feasible.

It is a goal which requires a brief explanation of the mechanisms embodied in the UN Charter for amendments to and review of the SC. A brief reminder of the category of subjects under international law which may become UN members is also necessary in order to clarify the meaning of regional membership within the UN.

UN Membership

Membership of the UN is a *condicio sine qua non* to become a full member of any main UN bodies. Since SC reform includes proposals designed to include subjects other than states as members of that body, it is worth recalling a few notes on UN membership. According to Article 3 of the Charter, the original members of the UN are those States that, having taken part in the San Francisco Conference or having signed the 1942 Declaration on the United Nations, have signed and ratified the UN Charter. In addition to the very small number of original members, the UN is open, according to Article 4, to peace-loving States which accept the obligations set out in the Charter and in the view of the UN itself are able and willing to carry out those obligations[1]. Is thus clear that only States may be parties to the Organisation, whether original members or states that have subsequently acquired their membership through the admission process, which is carried out through a decision by the GA at the recommendation of the SC. As to the notion of State, we must to refer to the meaning of this word under international law. The form of State is not relevant, for instance if the entity in question is a unitary or a federal State. On the contrary: a confederation of States whose components maintain a distinct legal personality is not a State under article 4. Belarus and Ukraine's status as original members of the UN, when they were members of the Soviet Union, is an accident of history arising from the political conditions existing at the time of the San Francisco Conference. Switzerland, which was recently admitted to the United Nations, is a confederation. However, its cantons are not international persons and from that perspective they are no different from the German Länder. Entities other than States may acquire a different status from full membership. For instance, international organisations or liberation movements have observer status within the GA. The SC's provisional rules of procedure recognise that entities other than states may be invited to the meetings of the SC.

As for the composition of the SC, its members are States either originally named at the San Francisco Conference (permanent members with the right of veto) or elected by the GA. The non-permanent members are chosen from the members of the Organisation. To be elected, therefore, they have to be States.

[1] See Thomas D. Grant, *Admission to the United Nations. Charter Article 4 and the Rise of Universal Organization*, Martinus Nijhoff Publishers, Leyden-Boston, 2009.

The amendment and review of the UN Charter

Any modification of the United Nations Security Council membership involves an amendment of the UN Charter being improbable to foresee a modification operated by the practice giving origin to a kind of customary revision.

The Charter sets out two mechanisms: an amendment procedure (art. 108) and a review procedure (art. 109). From a formal standpoint there is no difference between the two procedures as far as amending the Charter is concerned. Any modification must obtain two-thirds of the votes of the GA or of the Review Conference and must be ratified by two-thirds of the UN's members, including the permanent members of the SC. Permanent members do not enjoy any right of veto for the adoption of the GA or review Conference decision. They may vote against the decision or abstain; the decision is adopted if it meets the two-thirds criterion. However, the permanent member must ratify the decision when it is submitted to its national parliament. If not, the amendment or decision is not adopted.

A problem of interpretation arises as to the meaning of two-thirds of the GA. Should it be two-thirds of those present and voting or two-thirds of all GA members? While Charter Article 18 on the vote by the GA states that resolutions on important questions shall be taken by a two-thirds majority of the members present and voting, Article 108 on the amendment procedure does not qualify "two-thirds majority". The issue was clarified by GA resolution 53/30 of 23 November 1998, which states that the two-thirds majority for adopting a resolution on amending the provisions governing the SC refers to two-thirds of the UN members and not two-thirds of members present and voting[2].

The Charter review did not take place and the Review Conference was never held, even though Article 109 envisaged that it should have been placed on the GA agenda 10 years after the UN Charter entered into force. The Charter's tenth anniversary took place in 1955, when the Cold War was at its peak and such a Conference was inconceivable.

Article 108 and 109 do not set out any limit to the Charter amendment/review. They only regulate the procedure for amending the Charter and thus do not take any position on the substantive reform of the SC, whether this takes the form of an increase in the number of permanent or non-permanent members or a change in the veto system[3].

The increase in the number of United Nations Security Council members in 1963

Until now, the only reform of the SC took place in 1963, when the number of the non-permanent members was increased from 6 to 10 under resolution 1991-XVIII. The amendment was approved in the GA with France and the Soviet Union voting against, the UK and US abstaining and China (Taiwan) voting in favour. All permanent members eventually ratified the amendment; if they had not, it would never have entered into force, which it did in 1965. Resolution 1991-XVIII also increased the number of ECOSOC members from 18 to 27. A second increase from 27 to 54 was approved with resolution 2847-XXVI, with the amendment entering into force in 1973.

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[2] A/RES/53/30. Question of equitable representation on and increase in the membership of the Security Council and related matters: *The General Assembly*, *Mindful* of Chapter XVIII of the Charter of the United Nations and of the importance of reaching general agreement as referred to in resolution 48/26 of 3 December 1993, *determines* not to adopt any resolution or decision on the question of equitable representation on and increase in the membership of the Security Council and related matters, without the affirmative vote of at least two thirds of the Members of the General Assembly.

[3] Bardo Fassbender, *The United Nations Charter as the Constitution of the International Community*, Martinus Nijhoff Publishers, Leiden-Boston, 2009, pp. 184-185.

The reason for increasing the number of SC members was the growth in membership numbers compared with the membership existing at the time of its foundation. In 1945 the UN counted only 50 members, while by 1963 its membership had risen to115. This was due to the admission of several European States in 1955 and the entry of Asian and African countries as a result of decolonisation. However, in 1963 the decolonisation process was not yet complete. The birth of new countries with the completion of the process, the split-up of the Soviet Empire and the dissolution of Yugoslavia would dramatically increase the UN's membership, which now stands at 192 States.

And this happened even though no new reform of the SC took place after the resolution voted in 1963.

Non-permanent members are elected for two years by the GA and cannot be immediately re-elected once their mandate expires. They are chosen taking into account a geographical distribution initially established by resolution 1991-XVIII and since then unchanged: 5 members from African and Asian countries, 1 from Eastern European countries, 2 from Latin America and 2 from the Western European and Others Group (WEOG).

SC decision-making and the right of veto

According to Article 27 of the Charter, SC decisions require a different majority depending of their nature: decisions on procedural matters are taken with an affirmative vote of 9 members, while substantive decisions require an affirmative vote of 9 countries, including the concurring vote of the permanent members. If a permanent member votes against, the decision cannot be adopted. The abstention of a permanent member is not equivalent to a veto, as long-standing practice shows[4]. The veto has also been cast to determine if the issue before the Council should be considered as having a procedural or substantive nature.

The problem of the veto continued to be considered a taboo for many years. As stated by historian Paul Kennedy, "[....]to any reasonable person nowadays, it is outrageous that a mere 5 of the 191 sovereign states that make up the United Nations have special powers and privileges. Five countries [...] are permanently sited at the core of the UN Security Council, which [...] itself is the heart of our global security system. Upon what they do, or decide not to do, and upon what they agree to, or veto, lies the fate of our efforts to achieve peace through international covenants"[5].

From its foundation until the seventies, the veto record belonged to the Soviet Union. The UK and France made recourse to the veto to block a resolution during the 1956 Suez crisis. The US first adopted the veto in March 1970 on the occasion of a resolution on Southern Rhodesia. Thereafter, the US made increasing use of the veto. As Paul Kennedy reminds us, between 1985 and 1990 the Soviet Union did not cast any vetoes, while the US used it twenty-seven times[6].

Since a resolution does not come out of the blue but is the outcome of a negotiating process, it is often the case that a draft resolution running the risk of being vetoed is not even put to the vote. For instance, the US and UK did not table a draft resolution authorising the use of force against Iraq in 2003, because of the opposition of the Russian Federation and France, another European veto holder.

[4] We could also say that the practice of non-equivalence of abstention with veto gave rise to a modification of the Charter (see ICJ, *Advisory Opinion on Namibia (South West Africa)*, ICJ *Report*, 16, 22, para. 22). It is obvious that amendments through subsequent practice cannot impinge upon the number of SC members. It is also difficult to conceive of a practice giving rise to a custom limiting the right of veto.

[5] Paul Kennedy, The Parliament of Man. The Past, Present, and Future of the United Nations, Random House, New York, 2006, pp. 51-52

[6] Paul Kennedy, op. cit, page 54

Cold War SC

During the Cold War the SC functioned more as a forum for hatred-fuelled discussion than as a true decision making body. This is proven by the paucity of resolutions adopted in comparison with what happened after the fall of the Berlin wall. The first major post-war conflict, i.e. the Korean War, saw a SC paralysed by the Soviet opposition. As a result, the Western Powers tried to shift the balance from the SC to the GA by adopting the Uniting for Peace resolution (377-V) in 1950. The Soviet Union viewed the resolution as contrary to the Charter and it could be utilised until the West had the majority in the GA. An illusion that vanished very soon with the advance of decolonisation and the rise of the non-aligned movement. Major crises proved to be intractable for the SC, for instance the Cuban missile crisis in the sixties or the Vietnam War – which was played out almost beyond the confines of the SC. The Cold War also influenced the UN membership and the quest for universality. For a long period the admission of former enemy countries was held back by the Soviet Union, which also opposed the entry of a few Asian and African countries considered too close to the US. The Cold War also hindered the SC from adopting mandatory sanctions. The first such sanctions passed by the UN were those against Southern Rhodesia, while the weapons embargo against South Africa was initially only recommended, before it became mandatory.

Reasons for reforming the SC

There are a number of reasons for reforming the SC. They may be enumerated as follows: (a) the birth of new states and the transformation of the international community; (b) the increase of the SC's role after the end of the Cold War; (c) the SC as legislator; (d) the new threats; and (e) the use of force by states.

(a) As mentioned earlier, at San Francisco the Charter was signed by only 50 States. The UN's membership was more than double that number when the amendment on the increase in non-permanent members of the SC entered into force. Nowadays, the number of UN members has increased almost fourfold since its foundation. Since its birth, the international community has completely changed. At the beginning the UN was composed of Western and Eastern European countries plus a number of Latin America countries. Nowadays the majority of members belong to African and Asian Countries.

(b) **The SC's increased role after the end of the Cold War.** The role of the SC has dramatically increased since the end of the Cold War. While during the Cold War the SC was the place where the two superpowers engaged in verbal confrontation and was virtually paralyzed, after the fall of the Berlin Wall its policy changed. The SC started to become the place where effective decisions were taken. This is demonstrated, for instance, by the number of peace-keeping operations put in place and by the crises solved, such as the Timor Leste case. The SC has also taken on an important territorial administration function, for example in Kosovo before its independence.

(c) **The SC as legislator**. The Charter attributes to the Council the power to take decisions on measures to be carried out by member states (Art. 25). Mandatory sanctions fall within this framework. They are a kind of administrative regulation adopted to cope with concrete situations such as threats to peace. Since 9/11 the SC has started to adopt "legislative resolutions", i.e. resolutions taken to address hypothetical situations such as the threat arising from international terrorism or WMD proliferation. Take for instance SC Resolutions 1373 (2001) and 1540 (2004). The former was adopted after the attack on the Twin Towers in New York on 11 September 2001. The latter defines the proliferation of WMD as a threat to peace and, like resolution 1373, lays down provisions that oblige States to enact legislation to address proliferation and to ensure that they fulfil their duty to prevent the production of WMD. The resolution declares that States should also adopt measures to prevent WMD and their

means of delivery from falling into the hands of non-State actors. The creation of the two *ad hoc* criminal tribunals should also be remembered, i.e. the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (SC Resolutions 808-1993 and 995-1994).

(d) **The new threats**. The international community is facing new and dangerous threats, stemming from international terrorism, WMD proliferation and failed states. Nuclear proliferation has required action by the SC vis-à-vis those States that have withdrawn from the Non-Proliferation Treaty (NPT) or have been accused of failing to comply with the obligation to produce fissile material only for peaceful purposes. North Korea and Iran are cases in point. North Korea and the sanctions policy show how the freedom of States to withdraw from the NPT has been curtailed and the principle of consent to enter into international obligations has been reduced.

(e) **The use of force by states**. According to the Charter, states are allowed to use armed force only in self-defence. The principle is enshrined in Article 51 and the main moot point is whether anticipatory self-defence is lawful or, on the contrary, may only be exercised after an armed attack has occurred. Contemporary international law doctrine has construed Chapter VII as giving the SC the power to authorize states to resort to armed force whenever a threat to peace occurs. For instance, States may be authorised to use force to prevent or put an end to genocide or to meet a latent threat stemming from an accumulation of WMD.

Attempts at reform

The first attempts to reform the Charter, and in particular to change voting arrangements and the composition of the SC, date from the 1950s and Argentina and Cuba's initiative to discuss the right of veto. One opportunity for reform should have been the tenth anniversary of the UN, since Article 109 envisages a review Conference at that point if no earlier date had been set. However, 1955 passed without change. Indeed, if a review Conference had taken place in the middle of the Cold War, it would have been a failure. The tenth session of the GA took the decision to call a review Conference when more appropriate conditions came to prevail on the world stage.

As said before, the first (and only) reform of the SC took place in 1963, when the Council's non-permanent members were increased from 6 to 10. The number of ECOSOC members has been increased twice (in 1963 and 1971).

Attempts to reform the UN resumed in 1974. A special committee was created and given the task of studying the problem and in 1975 was named the "Special Committee for the United Nations Charter and for strengthening the role of the Organisation". In the nineties the question of SC reform become paramount and in 1993 the GA passed resolution 48/267, which established the "Open-ended working group on the question of equitable representation and increase in the membership of the Security Council and other Security Council matters".

It was immediately clear that the number of permanent members was the more important question and a group of countries, namely Germany, pressed for a vote to obtain a resolution proposing an increase in the number of permanent members (so called Quick Fix). These ambitions were temporarily defeated by those countries which would have remained outside the Council. They were able to put a procedural resolution to the vote, according to which the two-thirds majority for adopting a GA resolution on the reform of the SC would have required two-thirds of the UN's members to vote in favour.

The new Secretary General, Kofi Annan, had ambitions for a more general UN reform. He appointed a panel of 16 "eminent persons" to study current threats to international peace and security. The "High Level Panel (HLP) on Threats, Challenges and Change", as it was named, prepared a Report (2004) dealing not only with the reform of the SC but involving all important UN Chapters. As for the SC reform, the HLP did not reach agreement and was obliged to indicate two ways to expand SC membership. The two proposals agreed that the total number of SC members should be 24. However they differed in that model a) envisaged 6 new permanent seats with no power of veto and three more two-year non-renewable seats. Model b), on the other hand, called for no new permanent seats, but rather a new category of 8 four-year renewable seats and one new two-year non-permanent and non-renewable seat. It was also proposed that the situation should be reviewed in 2020.

The HLP report was followed by the SG Report "In Larger Freedom – Towards Development, Security and Human Rights for All" (2005). The SG proposed that the UN should be structured around the work of three councils: the Security Council, ECOSOC and the newly created Human Rights Council. As regards the composition of the SC, the SG endorsed the HLP's two models, which were composed as set out in the following box:

Security Council reform: models A and B

Model A provides for six new permanent seats, with no veto being created, and three new two-year non-permanent seats, divided among the major regional areas as follows:

Regional area	No. of States	Permanent seats (continuing)	Proposed new permanent seats	Proposed two-year seats (non-renewable)	Total
Africa	53	0	2	4	6
Asia and Pacific	56	1	2	3	6
Europe	47	3	1	2	6
Americas	35	1	1	4	6
Totals model A	191	5	6	13	24

Model B does not envisages any new permanent seats but creates a new category of eight four-year renewable-term seats and one new two-year non-permanent (and non-renewable) seat, divided among the major regional areas as follows:

Regional area	No. of States	Permanent seats (continuing)	Proposed four-year renewable seats	Proposed two-year seats (non-renewable)	Total
Africa	53	0	2	4	6
Asia and Pacific	56	1	2	3	6
Europe	47	3	2	1	6
Americas	35	1	2	3	6
Totals model A	191	5	8	11	2

The 2005 GA summit, at Heads of States and Government level, did not take a stance on the SC Reform. The three short paragraphs dedicated to the subject (152-154, A/RES/60/1) express support for an early reform of the SC, which would make it "more broadly representative, efficient and transparent", thus enhancing its effectiveness and legitimacy, the better to implement its decisions.

At the end of 2005 the positions were as follows. The G4 (Brazil, Germany, India and Japan) tabled a draft resolution aiming to increase to 25 the members of the SC: 6 new permanent members, with the possibility of a veto right after 15 years, plus 4 non-permanent members. The African Union (AU) position was that the total number should be 26, i.e. adding 6 permanent members with a right of veto and 5 non-permanent members. Italy and a group of other countries formulated the "Uniting for Consensus proposal"(UfC): 10 new non-permanent members, with the possibility of immediate re-election after the expiry of their mandate. However, no proposal was put to the vote.

The following years marked a deadlock in the work of the Open-ended Working Group, until its proceedings were given a renewed impetus by the decision (GA Res. 62/557 of September 2008) to discuss the SC reform in an informal plenary of the GA. This entrusted Ambassador Zahir Tanin (Afghanistan) to chair the intergovernmental negotiations. The overview submitted by Ambassador Tanin (18 May 2009) covered 5 issues that had been identified as necessary for true SC reform: categories of membership, veto, regional representation, size and working methods of the SC, relations between SC and GA.

This new round of negotiations did not bring about any real change in the positions tabled in past years. The G4, supported by France and the UK, reiterated its proposal of having new permanent members. The AU pressed for a more equitable representation of developing countries within the SC, with at least three African permanent seats endowed with the right of veto. The UfC stuck with its original proposal to have only new non-permanent seats, this time with the option of having a number of non-permanent members with an extended duration (3 to 5 years) but with no possibility of re-election.

It appears that the on-going work on the SC reform offers no prospect (for the moment) of reaching a positive outcome, notwithstanding the attempts to identify new solutions. For instance, France and the UK proposed an intermediate reform, consisting of having a number of temporary seats that would become permanent if the members so wished. The AU and members of the UfC rejected the proposal for a temporary solution given the danger, as they saw it, of the category of temporary members in effect being transformed into one of permanent membership.

The content of the proposals: (a) size of an enlarged Council, (b) categories of membership and regional representation, (c) the veto, (d) relations between the SC and the GA, (e) the amelioration of working methods[7]

The following are the five key cluster areas illustrated by the President of the GA, Sheikha Al Khalila, in 2007. The current debate on the SC reform is centred around these five issues.

1) Size of an enlarged SC

There is a general agreement that the SC should be enlarged. The expansion goes from a low-twenties option (five-to-seven non-permanent members or a mix of permanent and non-permanent members), mid-twenties (six permanent members and four non-permanent) to a high-twenties option (a wider

[7] See Jacob Silas Lund, *Pros and Cons of Security Council Reform, 19 January 2010, Center for UN Reform Education* (http//www.centereforunreform.org). The author is grateful to Ms Elisabetta Martini for her help in writing this section.

geographical representation would allow a better representation of African, Latin American and small island countries)

2) Membership categories and regional representation

I Membership categories

The question of categories is by far the most crucial issue. An enlargement of the Council has been accepted by all the counterparts but proposals range from "low twenties" to "mid-twenties", without considering Gaddafi's proposal[8] to open the Council to all the UN membership.

Expansion of both permanent and non-permanent categories:

- **African group:** 2 permanent and 5 non-permanent seats to African states, selected by the African Union;
- **G4:** 6 permanent (2 for African States, 2 for Asian States, 1 for Latin America or Caribbean, 1 for Western Europe and other States) and 4 non-permanent seats (1 African, 1 Asian, 1 Eastern European, 1 Latin American or Caribbean);
- **France and UK:** permanent seats to Brazil, Germany, India and Japan along with representation of Africa;
- **Slovenia**[9]**:** 6 permanent (2 for Africa, 2 for Asia, 1 for Latin America and Caribbean, 1 for Western Europe and other States) and 4 non-permanent.

The four new non-permanent seats, added to the existing number of non-permanent members, would increase the number of non-permanent seats to 14. These 14 seats should be divided into 2 groups: a group of 6 seats with more frequent rotation, eligible for re-election every second two-year term over a period of twelve years, with the other 8 seats following the existing rules.

Expansion only in the non-permanent category:

- **Italy and Colombia**[10]**:** Longer-term seats allocated to the regional groups (Africa, Asia, Asia/Africa on a rotating basis, Group of Latin American and Caribbean States, Western European and Other Groups/Eastern European Group on a rotating basis). Regular non-permanent seats for a two-year term, without the possibility of immediate re-election, for the following groups: small states (population below 1 million), medium-size states (population between 1 million and 10 million), Africa, Asia, Group of Latin American and Caribbean States, Eastern European Group.

They proposed 2 options for the duration of longer-term seats:

a) From 3 to 5 years without the possibility of immediate re-election, or

b) 2-year term with the possibility of up to 2 immediate re-elections.

- **The UfC** re-proposed the 2005 document but declared that it backed the Italo-Colombian proposal.

[8] Gaddafi's speech, 23 September 2009 available at http://www.un.org/ga/64/generaldebate/LY.shtml
[9] Proposal put forward 9 February 2010.
[10] Proposal put forth in April 2009, available at http://www.italyun.esteri.it/NR/rdonlyres/C37FC89F-8132-4CA8-A2F9-149515B37BD1/0/2009_04_17screform.pdf

– **The UK, France, Russia, Germany, Liechtenstein and the Republic of Korea** underlined the need for an intermediate solution in order to bypass the stall in the negotiations. However, different proposals were submitted within this framework:

UK and France[11]: creation of a new category of seats with a longer mandate than that of currently elected members. On completion of this intermediate period a review should take place to "convert these new seats into permanent seats";

Russia did not specify its idea of an interim model but underlined in its non-paper of 2 March 2010 that "so far none of the existing models of reforming the Council enjoys prevailing support in the UN"; this ran counter to the commonly held idea of an overwhelming majority in favour of the G4 proposal.

The US took a stance in favour of a limited expansion of both permanent and non-permanent members. New permanent members should be identified by name (country-specific). Only the P5 should have the right of veto, i.e. they should continue to enjoy a right conferred by the Charter since its entry into force.

China is for increasing the number of SC members with priority for developing countries, especially African ones. In its statement of 6 October 2009, however, China did not specify the number or categories of new members and was silent on the right of veto.

Germany finally clarified its idea of an intermediate solution on 12 November 2009. Like the UK and France, Germany states firmly that this kind of solution "must be constructed in such a fashion as to pave the way for an expansion of both categories", allowing Member States to make the transition to a permanent expansion of both categories at the review conference, in no less than fifteen years.

While the Korean proposal is closely linked to that of Italy and Colombia, **Liechtenstein**'s document[12] contains some new points. It envisages the creation of a new category of seats with a longer mandate of 8/10 years with the possibility of re-election (2 for Africa, 2 for Asia, 1 for Latin America and Caribbean, 1 for Western Europe and Other States). After 16/20 years a review conference should take place, where the member states would have the possibility of converting these seats into permanent ones.

II Regional Representation

During the negotiations, when countries address the issue of regional representation they mainly tend to refer to "geographical representation", following article 23 of the Charter. As a result, when additional member States are proposed in the models put forth by negotiators, countries are divided into blocks like "African States", "Asian States", "Latin American and Caribbean States", "Western European States", or "Group of Eastern European States". These blocks reflect a mere geographical distribution of the seats and do not imply that a given country could represent anyone other than itself.

It should be noted that the **League of Arab States** claims a permanent "Arab representation" in any future expansion – a request echoed by France, and a regional definition not provided by the UN resolution on groupings but of undisputed importance in the XXI century.

[11] See the "UK-French Summit Declaration on global governance and development", 6 July 2009, available at http://www.franceonu.org/spip.php?article4052 and re-proposed on the 1 March 2010.
[12] Letter of 26 February 2010.

Differing from the League of Arab States, the **Organisation of the Islamic Conference** proposes an "adequate representation of major civilisations"[13], including the Islamic *Ummah*, in any membership categories in an expanded Security Council, so as to improve the dialogue among civilisations.

The **African Union**, stressing the historical injustice suffered by the African continent, claims two permanent seats and five non-permanent, retaining for itself the right to appoint countries from among its members. As the African countries underline in almost every intervention made, these seats would not imply a regional representation that, in their opinion, would not fit the outstanding principle of sovereign equality among States. However, even this – low-profile – interpretation of "regional representation" is rejected by **permanent members**, namely the US and Russia, which only envisage "country-specific"[14] admissions to the Security Council.

During these last rounds of negotiations, Italy did not present anew its proposal for a European Union seat. However, both **Italy and Portugal** underlined the great change effected by the entry into force of the Lisbon Treaty. In the opinion of both countries this new reality should be translated "in the manner in which the EU interacts with the Security Council"[15], and according to Italy must be taken into account in any further development of the SC's reform.

Germany, while campaigning for its own permanent seat, has stated that the final goal – in an unforeseeable future – would be the creation of a European seat.

3) Veto

The question of the veto remains one of the dividing issues that continues to stall the reform process. But the P5, in principle all the other countries seem to be keen to abolish this tool, which is broadly considered an unjust and undemocratic legacy of the past. In practice, this aspect of the reform is more closely linked to the outcome of the question of the Council's enlargement.

The **G4** is campaigning to enlarge both categories of members and to equip the new permanent members with the same prerogatives as the P5. However, this group is no longer a block and some countries are more likely to compromise. While India and Brazil strongly reaffirm their right to be fully accepted into the control room as booming emerging countries, Japan and Germany are more prudent. The situation of these two countries is greatly different from fifteen years ago, when the Security Council's reform negotiations started, and they no longer seem like fully fledged candidates for permanent seats. As a result, Germany and Japan seem keener on compromise and have proposed that, at the beginning of their term, new permanent members could receive the right of veto. In parallel, however, they should give a commitment not to use it until the future review of the Charter.

The **African group** states that they back the total abolition of the veto. However, if the power of veto outlives the reform and other countries join the group of permanent members, they must be invested with all the responsibilities and tools that being a permanent member entails. Given that the African group is asking for two permanent seats, it goes without saying that it wants these permanent seats to have the power of veto. During the 14th African Union summit[16] in late January, the Heads of State

[13] OIC Resolution NO. 20/36-POL on Reform of the United Nations and Expansion of the UN Security Council's Membership.
[14] Statement by Ambassador Alejandro Wolff, U.S. Deputy Permanent Representative, in the General Assembly, 13 November 2009.
[15] Statement by H.E. Ambassador José Filipe Moraes Cabral, Permanent Representative of Portugal, New York, 8 December 2009.
[16] See the Final Declarations of the Summit available at http://www.africa-union.org/root/AU/Conferences/2010/january/summit/14thsummit.html

reaffirmed this proposal as spelled out in the Ezulwini Consensus and failed to soften it, as the UN negotiators had expected.

In its latest proposal, set forth in April 2009 by Italy and Colombia, the **UfC** does not envisage the possibility of enlarging the permanent category. It does, however, care about the veto question, and has presented two possible options: the complete abolition of, or limitations to the scope of, the veto, i.e. allowing the use of the veto only on Chapter VII matters. However, the UfC does not intend to tackle these issues separately since a comprehensive reform is needed.

Given their size, the **Small Five** (S5: Costa Rica, Jordan, Liechtenstein, Switzerland, Singapore) are not interested in Council enlargement. They stress that reforming the Council's working methods and revitalising the General Assembly – enhancing relations between the two – would make it more acceptable for some countries not to be part of the SC.

As regards the power of veto, the S5 urge the permanent members to refrain from using the veto in cases of genocide, crimes against humanity and mass violations of international humanitarian law. But, as the recent problems over the Goldstone report show, definitions of what constitutes a serious violation of human rights law are indeed divergent.

The risk exists that all this talk will be in vain, since the **P5** are adamant that the standing prerogatives of the existing permanent members must not be changed by the reform.

Russia has underlined that only when – if – the new composition of the Council is decided should the question of the veto be discussed.

4) The Security Council's working methods

While countries like **Russia** are discouraging negotiators from addressing the "working methods issue", this is one subject where most of their counterparts have managed to find areas of convergence, inasmuch as some countries have expressed a wish to separate the five issues and to come up with an early partial reform. This would focus on the Security Council's working methods and the relations between the Council and the General Assembly.

The points for a broad reform of the Council's working methods were spelled out in the Note by the President of the Security Council (S/2006/507)[17] on the "perception of the transparency, efficiency and inclusiveness" of the Security Council's activity. In April 2009 the **Small Five** presented their proposal on this subject in the wake of the 2006 Presidency document. Early in March 2010, the S5 stressed once again the importance of not leaving to any compromise document the "working methods issue", in spite of the mounting interest in the issue of categories.

First of all, interaction and dialogue with SC non-members, especially when they are contributors of troops to UN missions, should be enhanced, as should cooperation with regional and sub-regional organisations. This could be achieved by ensuring that these "stakeholders" participate in the Council's public and private meetings and by implementing Articles 31 and 32 of the Charter.

The **Italian-Colombian** proposal of April 2009 addressed the question of working methods in some depth, also asking for better access to information through open briefings, timely availability of draft resolutions and Presidential statements, and qualitative briefing for non-Council members.

[17] Available at http://www.un.org/en/sc/repertoire/Notes/s-2006-507.pdf

This subject recently returned to the main floor, thank to **Japan's** new engagement on this matter and a debate held at the end of April 2010 on the implementation of the 2006 Note.

On this occasion it is noteworthy that the **US** intervention focused on conveying the improvements already made with respect to open meetings, transparency and efficiency.

5) Relations between the Security Council and the General Assembly

During the debate on the latest Report on Security Council activity, all the States harshly criticised the report's failure, in its traditional format, to serve the purpose of accountability. These reports are a mere description of what has been done and lack a full political analysis of the work of the Council. As many countries stated, the importance of the SC's Report to the GA on its work is demonstrated by the fact that the UN Charter devotes a specific article to it. Consultations between the two organs should be strengthened by scheduling regular and formalised meetings between their Chairpersons with a view to sharing information and improving cooperation.

Once again, while divergences between negotiators have been ironed out, **Russia** admonished all creeping "attempts to redistribute the powers of the main bodies of the Organisation to the advantage of the General Assembly, compromising the prerogatives of the Security Council"[18].

What Role for the EU in the SC?

Is EU membership of the Security Council legally feasible? The answer is clearly in the negative, since to be a member of the SC an entity must be a member of the UN. The Organisation is open only to States, as set out by Article 4 of the Charter. The legal personality of the EU, as formally embodied in the Lisbon Treaty (Art. 47), does not open up any new prospects. Among other things, the EU, like other international organisations, already had a legal personality even though this was not formally stated previously. For instance the EU, as a subject under international law, entered international agreements and was subject to international responsibility if it committed any international offence. EU membership may be seen as a goal, to be pursued in the long term, only if the unification process gives rise to a federal State.

According to a number of scholars the EU is a federation *in fieri* (in the making). However, this is not sufficient to comply with the statehood criterion required by Article 4 of the Charter. One possible way out would be to change Article 4 and include international organisations as potential UN members. However, this proposal would open up a real Pandora's box and other organisations, for instance the AU or the OSA and the Arab League, would apply for membership. The EU's presence in the SC is for the time being unrealistic, as Mr. Alexander Graf, rapporteur on UN questions to the European Parliament, admitted before the start of the 65th UN GA.

The European Union already has a presence in the UN, in the form of two permanent members (France and the UK) and of two or three non-permanent members elected from the WEOG (usually two members) and often a member from the Eastern or Asia Group. For the electoral process, the Groups are still those set forth in GA Res. 1991 (XVIII) of 17 December 1963, notwithstanding it has become a relic of past times. Following the EU's enlargement, 16 EU members belong to the WEOG, 8 to the Eastern Group and 1 (Cyprus) to Asia.

There are two possible courses of action:

[18] Non-paper of the Permanent Representative of the Russian Federation, 2 March 2010.

- The first is to have a non-permanent member seat attributed on a rotating basis to an EU member. This member should represent the EU and a machinery establishing a connection with the EU should be set out;
- The second is a correct implementation of Article 34 of the Lisbon Treaty (which amended Article 19 of the Maastricht Treaty) in order to defend the positions and the interests of the Union and to enable the High Representative to present the EU's position.

The High Representative could explain the EU position, provided that a common position does exist. And this, as shown by the 2003 Iraq war, is not always the case. However, closer and better coordination of the EU members when they operate in the UN is the only viable solution. This coordination should involve not only the SC but also the GA and all other organs, for instance the newly created Human Rights Council. The European Parliament recommended this to the EU Council, which adopted a resolution on 25 March 2010 in light of the 65th session of the GA. The resolution also points out that an EU seat in an enlarged SC is a long-term objective that should be pursued.

Coordination, however, has its limits: Article 34 expressly safeguards the responsibility attributed by the UN Charter to the SC members. This means that the interests of the permanent members are protected, including the right of veto.

Is a reform of the SC really necessary and/or feasible?

There are a number of reasons for reforming the SC. First of all, its expansion in membership. The UN now counts 192 members. A situation quite different from its foundation and from that existing in 1963 when the Council was expanded from 11 to 15 members. he main reasons for reforming the SC , which have often been pointed out, are its:

- lack of democracy;
- insufficient geographical representation;
- lack of legitimacy for ensuring global governance;
- poor representation of the international community if compared with its increased powers.

Are there reasons that militate against a reform of the SC? If so, they are difficult to find. The main such reason is that a streamlined SC functions better than a large, expanded body. This is particularly true when important decisions must be taken, involving a long process of consultations among its members. But experience proves that even a lean SC is often stalemated when it has to respond to major crises.

The conclusion must be that the reasons in favour of a SC reform outweigh those against.

Whether a real reform is feasible is quite another question. The reform should involve not only the SC members, but also the right of veto. Other "reforms" may be achieved through day-to-day practice, without amending the Charter. At most, one may conceive of one or more amendments to the Council's rules of procedure, for instance regarding its working methods. As Jacobs Silas Lund pointed out, "allowing things to remain as they are...may be a much more realistic option than one might assume". He points out, mentioning an insider's opinion, that even the G4 countries fear that the non-expansion option might be a possible outcome of the current negotiating effort. Nor is the reform of the right of veto gaining currency. The conclusion is very pessimistic, since "some of the P5 countries are more than happy to see reform moving at near-zero-velocity speed"[19].

[19] Jacob Silas Lund, *Pros and Cons of Security Council Reform*, 19 January 2010, cit.

Is there any alternative to Security Council reform?

The Security Council reform should take place within the UN framework. Is it conceivable to indicate alternative forums? The structures most often considered are not institutions in the proper sense, with a set of fully fledged organs. They are political consultation groupings which meet once a year in the best of cases, although the intervening periods are taken up with preparatory meetings, consultations and the work of the sherpas. The most appropriate forums are the G8, G14 and G20.

The advantage of the G8 is that it includes countries which aspire (or were aspiring) to become permanent SC members, such as Germany, Japan and Italy. The G8, born as an economic coalition, has become a political body and has been enlarged to include the Russian Federation, transforming the former G7 into the G8.

Unlike the G8, the G14 includes emerging economies. It is an enlarged G8 (G8 plus), since it also encompasses Brazil, China, India, Mexico, South Africa and Egypt. Its comparative advantage with respect to the G8 is that China is a G14 member, meaning that it includes all of the permanent members of the Security Council. However, it seems that G14 vision did not materialize or, at least, was not a vital idea.

The G20 is more representative than the above two groupings, since it encompasses countries like Indonesia and Turkey. The EU too is member. However, the G20 is merely an economic forum even though African Asian and Latina America partners are pressing for turning it in a political forum.

Thus, only the G8 is a political forum and it remains to be seen whether it can be enlarged to new partners. The idea to transform it in G14 is no more viable.

Be that as it may, the problem with groupings is that they may act as a temporary *directorium* in laying down principles. However, they are not suitable for managing daily business and meeting to cope with extraordinary situations requiring rapid decisions. In addition, they cannot be empowered with the task of making deliberations that states are obliged to implement and which may be sanctioned by a court of law. How would it be possible to ask non-member States to implement decisions made by this group if there is no formal treaty obliging them to do so?

The UN is a system where the SC interacts with the GA or vice-versa, even if imperfectly. The GA represents all states belonging to the international community. The UN has a Court – the International Court of Justice – to which states may apply to solve their disputes and to which the main UN organs may apply for legal opinions on important questions.

The UN's popularity depends on many factors: the personality of its SG, its members' respect for the principles enshrined in the Charter and – last but not the least – the mood of the US administration. Thus far, nobody has found a real substitute and a viable alternative to the United Nations.

Conclusion

There is no need to dwell any further on the necessity of a SC reform. A broad consensus exists on the issue. The real problem is the scope and the content of the reform. A further point is how that reform might be achieved.

It seems that the majority of UN members share the opinion that the SC should be enlarged This opinion is also gaining currency within the P5, in spite of their fear that an enlarged SC might diminish

their role. A better representation of the international community is requested for other forums such as the G8 and its expansion towards G14 and G20. This is a trend that should not be overlooked.

As to the number of non-permanent seats, opinions vary. However, a SC made up of 20 members (permanent and non-permanent) seems a realistic expectation, even though there is no agreement on the exact figure.

There are still differences of opinion on the duration of non-permanent seats and whether the reform should be for an intermediate span of time. There is no consensus either on the category of the new seats (permanent and/or non-permanent)

The increase in the number of seats may be achieved only by triggering the amendment procedure, as the 1963 precedent shows. This makes it difficult to propose a change in the composition of the SC that is valid only for a fixed period of time. It would mean reopening Pandora's Box.

The right of veto is a contentious item. The only stumbling block is that the right of veto now held by the P5 is not up for discussion. Nobody can conceive of this right being eliminated. On this point the Charter cannot be amended, since the amendment abolishing the right of veto for all or part of the P5 must also be ratified by the veto-holders. The point here is whether there will be any new SC members endowed with the right of veto. The discussion goes hand in hand with the question of new permanent seats, since the right of veto should be given only to the new permanent seat-holders. Nobody has proposed the right of veto for non-permanent members!

The changes outlined above require the amendment procedure to be set in motion. The work of the UN may be improved in other respects without changing the Charter. This is true, first of all, of improving the SC's working methods and making them more transparent. The Charter allows the SC to adopt (and change) its rules of procedure (Article 30) and to establish subsidiary bodies (Article 29).

The exercise of the right of veto cannot be limited without amending the Charter. However, it may be politically limited, since a resolution is the result of a negotiating process and the veto may become a permanent member's last resort when its vital interests are at stake.

Limiting the SC's powers? The current trend is to increase them, as shown by the SC legislative resolution. A more representative SC would avert any criticism of its exercising powers not conferred by the Charter. The SC would be made more effective in coping with current threats such as terrorism and nuclear proliferation.

Relations with the General Assembly might be improved by making the annual and special reports submitted by the Security Council, as envisaged by Arts 15 and 24.3 of the Charter, more analytical. But it is difficult to see a change in the delicate balance between the General Assembly and the Security Council as set out in Chapter IV of the Charter, unless we wished to undermine the Security Council's powers and effectiveness. The United Nations are not a constitutional superpower with a parliament (the General Assembly) and a government (the Security Council) accountable to the parliament. Like other international organisations, the UN were structured to function (for vital issues) around an executive body whose composition is inevitably narrower that the one representing all members of the international community.

Istituto Affari Internazionali

THE REFORM OF THE UN SECURITY COUNCIL: WHAT ROLE FOR THE EU?

WORKING GROUP I

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PAPER ON

"THE EU'S CONTRIBUTION TO THE EFFECTIVENESS OF THE UN SECURITY COUNCIL: REPRESENTATION, COORDINATION AND OUTREACH"

by

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DRAFT NOT TO BE QUOTED

The European Union (EU) is characterised by a "dual nature, being both a subsystem in its own right and an actor within the wider international system".[1] This is particularly evident when we investigate the EU's relations with the United Nations (UN) and its performance in the UN system, especially as regards the UN Security Council (UNSC). In conceptualising the EU's actorness on the international stage, three main dimensions must be taken into consideration: coordination (among EU member states), representation (of the EU as a single actor) and outreach (measured in terms of what the EU and its member states collectively achieve at the international level). Taking these considerations as its starting point, this paper aims to assess the EU's contribution to the work of the UNSC and outline the prospects for the future development of two main aspects:

- the EU's presence in terms of its unitary representation and coordination among the EU members of the UN Security Council;

- the EU's contribution, in terms of process and outreach, to the main policy areas within the UN Security Council's competence. These include traditional UNSC matters, such as peacekeeping and non-proliferation, as well as emerging and still contested competences of the UN's supreme organ, such as climate change.

The EU at the UN Security Council: representation and coordination

The EU as such still has no independent status within the United Nations. The European Community was granted observer status in 1974 at the General Assembly (GA). This means that a representative of the European Commission is allowed to take the floor during the General Assembly's meetings – but only after all 192 member states have done so, and without the right to vote.

No formal EU representation is envisaged in the UN Security Council. Until the Lisbon Treaty entered into force, EU members of the UNSC had to abide by the provisions of former article 19 of the Treaty on the European Union (TEU). These provisions included the responsibility for all EU members – permanent and non-permanent – of the Security Council to liaise with each other and to keep the other EU members fully informed of Security Council issues. France and the United Kingdom, which hold permanent seats in the Security Council, were obliged to "ensure the defence of the positions and the interests of the Union" in the execution of their functions. However, article 19 made clear that this obligation should be without "prejudice to their responsibilities under the provisions of the United Nations Charter", which had to be safeguarded first and foremost.

On the basis of article 19 TEU, weekly meetings on UN Security Council matters were institutionalised in 2001: these meetings are intended to ensure information sharing and coordination among EU member states at Political Counsellor level (on Thursday afternoon). They are accompanied by weekly meetings in New York by the Heads of Mission of the EU member states (on Tuesday morning). While these meetings favoured an increase in the flow of information circulating among EU representatives in New York, no regular coordination mechanism in anticipation of the UN Security Council's discussions has yet been fully established. To improve this situation, further mechanisms have been developed in recent years, including monthly gatherings in New York of the Permanent Representatives and UNSC Coordinators of the EU members sitting on the UNSC (once a month) and targeted meetings in EU capitals by the EU members of the Security Council at UN Director level. The Political and Security Committee (PSC) of the EU Council in Brussels has also started more regular discussions of the issues on the UNSC's agenda. Debates on the broad UN agenda are also conducted once a month in Brussels by the EU Council's Working Party on United Nations issues (CODUN).

[1] See K. E. Jorgensen, *Analyzing the European Union's Performance in International Institutions*, presented at the 2009 ISA Convention, New York, 15-18 February 2009, p. 13.

One of the main objectives of the Lisbon Treaty is to give the EU a more coherent and unitary presence on the world stage, including within international organisations. In keeping with this aim, the new Treaty formally recognises the legal personality of the EU (article 47 TEU) and has eliminated its pillar structure, at least on paper. Although these innovations carry a significant political message, they are destined to have only a limited impact on the EU's international actorness and its representation at the United Nations.

Article 34 TEU, which has replaced former article 19 TEU, does not contain innovative elements. It extends the obligation to defend the position and interests of the Union to all EU members of the UN Security Council – the obligation was previously limited to EU permanent members – but continues to prioritise their responsibilities as UN members over their membership of the EU. This stance is reinforced by Declarations 13 and 14 on the Common Foreign and Security Policy annexed to the Lisbon Treaty.

Nevertheless, the future implementation of the Lisbon Treaty offers a wide range of possibilities to make the EU a more credible presence within the UN, and the Security Council in particular. The EU has started to grasp – in part – these opportunities. The European Commission's Delegation in New York and the EU Council Secretariat's UN Liaison Office have been unified under the authority of the EU Council's representative, Mr. Pedro Serrano, who is acting as Head of the Delegation. The representative chairs former article 19 meetings and often intervenes to present the EU's position on particular issues debated in the UN Security Council, tasks that were previously performed by a representative of the rotating EU presidency. The Spanish representative continues to chair the Heads of Mission meetings, while other meetings are chaired on a case by case basis.

Article 34 TEU also provides that "when the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be invited to present the Union's position". On 4 May 2010, Lady Ashton intervened for the first time in a UN Security Council meeting. Although her speech on that occasion was limited to broadly addressing the current status of and further opportunities for EU-UN cooperation, her interventions could be usefully exploited in the future to raise the profile of the EU's presence at the UN on crucial Security Council matters.[2]

At least since 1993, when the Common Foreign and Security Policy (CFSP) was established by the Maastricht Treaty, there has been a series of attempts to give greater space to the EU and its foreign policy at the UNSC, possibly by creating a permanent EU seat. This proposal has received particular support from the Uniting for Consensus (UfC) movement, which counts a number of European countries, including Italy and Spain, at its forefront.

However, the implementation of this proposal is hampered by a number of legal and political obstacles: France and the United Kingdom are reluctant to support any UNSC reform proposal that might diminish their privileges as permanent members; Germany has campaigned at length for a national permanent seat in the G4 framework (together with Brazil, India and Japan); the creation of a UNSC seat for a regional organization such as the EU would entail a difficult amendment of the UN Charter and give space to similar claims by other entities (i.e. African Union, Organisation of American States, etc.). Last but not least, the EU has often proved to be unable to find common ground among its members on sensitive UNSC issues – the most evident being the split over the Iraq war in 2003 –, thus ruling out the possibility of presenting a unitary stance in New York in the CFSP framework.

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[2] See European Union, *Statement by High Representative Catherine Ashton at the UN Security Council*, New York, 4 May 2010, A70/10, available at:
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/114179.pdf.

More pragmatic approaches have been promoted since 1993, but they have usually failed to gain the consensus of all EU member states. For instance, when Germany and Spain announced – during their two-year mandate at the UNSC in 2003-04 – their intention to offer a seat to the EU Presidency within their delegations in the framework of the so-called "European laboratory", they were blocked by France and the UK. The same happened when Italy suggested that an EU Council representative – from the Presidency and/or High Representative's office – should be permanently associated with its delegation at the UNSC in 2007-08. The initiative met with firm opposition from France and the UK, and a lukewarm reception from Germany, which was due to hold the EU Presidency at the beginning of Italy's UNSC mandate. During their stint as non-permanent members of the Security Council, Italy and Belgium promoted the Union's visibility by regularly referring to the EU position in their interventions at the UNSC.

In order to establish more effective intra-EU coordination, Italy has also created a "focal point" within its Mission to liaise permanently with other EU countries' representatives, with the EU Presidency and with the Council Secretariat.

In the framework of the current intergovernmental negotiations for Security Council reform, which started in February 2009, the Uniting for Consensus (UfC) group has taken a new initiative. The idea behind the UfC platform is to make UNSC members more accountable to the regions they represent, especially by establishing election/re-election and rotation mechanisms within the regional groupings themselves. In so doing, the ability of each country to contribute to the UN's machinery and peace and security operations would be taken into account. In line with this concept, the UfC coalition proposes to create a new category of longer-term non-permanent seats (from three to five years without possibility of immediate re-election or two-year with the possibility of up two immediate re-elections) to be allocated to the regional groups. One of these seats would be allocated on a rotating basis to the Western European and Others group and the Eastern European Group.[3] The members of those groups would be encouraged to designate an EU member state to occupy the seat and thus ensure that the Union has an indirect institutional presence in the UNSC.

EU member states have also started preliminary consultations on a resolution to be tabled at the UN for a "reinforced observer status" to be accorded to the whole Union, and not to the European Community only. This would allow it to be among the first speakers at the UN General Assembly and to have more visibility and impact on GA discussions. However, UN members' reactions to this idea have been rather cautious, as it has the potential to open the "Pandora's box" of regional representation within the UN. For the time being, it is the Spanish representative who presents the position of the Union.[4]

Another interesting sector for future development of the EU's representation at the UN is the provision contained in article 27 of the Lisbon Treaty for the creation of a European External Action Service (EEAS). The EEAS is meant to assist the High Representative in fulfilling his or her mandate and shall "work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States". EEAS personnel will supplement the structures of EU Delegations in third countries and international organisations. In New York, the EU Delegation would be boosted by up to 50 additional officials. As a provisional solution, the under-staffed EU Delegation (15 counsellors and secretaries currently employed, plus about additional 10 attachés and officers) is working in collaboration with the Spanish Permanent Mission to the UN: joint teams of EU and Spanish officials have been created to work on the different UN issues.

[3] See A/64/CRP.1, 21 January 2010.

[4] Interview with an official of the Italian Permanent Mission to the UN, New York, 5 May 2010.

Until now, the EU's presence at the UN has been highly fragmented, with a proliferation of different actors. This has generated confusion and complexities in its interactions with external partners. However, the EU's representation to the different UN bodies could be significantly improved if the potential of the Lisbon Treaty were fully exploited. The objective is to establish a single point of reference for UN institutions and member states, thus ensuring increased EU visibility and continuity.

The EU's contribution to UNSC matters: process and outreach

As correctly pointed out by David Hannay, the EU could be a crucial actor in helping the UN to overcome the current stalemate and find a solution that is "a good deal better than the UN oscillating between indispensability and ineffectiveness" as it has been in the last two decades.[5] He also identifies a series of policy areas and functions on which decisive progress will be needed in order to restore the United Nations Security Council's role and legitimacy on the world stage. Over and above the need to find a more efficient format for UNSC membership and working methods, these priorities include: peacekeeping, nuclear disarmament and the prevention of nuclear proliferation, and environmental challenges associated with climate change.[6] The following paragraphs aim to assess the EU's performance in these sectors, in terms of both process and outreach, and its relevance in achieving a more effective UNSC. As for peacekeeping, the analysis will look at the evolution of the cooperation between the EU's crisis management actions in the framework of the European Security and Defence Policy (ESDP) and the UN peacekeeping, with a reference to both military and civilian aspects and support to other security actors, such as the African Union (AU). The EU's contribution in the field of non-proliferation is investigated with regard to the E3/EU initiative towards the Iran's nuclear issue, its impacts on the EU-Iran cooperation and the UN Security Council's role in this field. Finally, the last section is focused on the EU's performance as concerns climate change, a raising UN Security Council's attribution, by considering its failure in the last Copenhagen summit and the possible changes introduced by the Lisbon Treaty.

Peacekeeping

EU-UN relations in peacekeeping (or crisis management, in EU terminology) has gone through a series of major changes in recent years. These were essentially due to the need for the two organisations to adapt their structures and operational capabilities to the new international security environment.

On the UN side, the increasing demand for and changing nature of peacekeeping interventions led to a greater recognition of the role of regional organisations, and in particular the EU, in promoting and enforcing peace in partnership with the UN.[7] A first acknowledgement of the strategic interest of having a division of labour between the UN and the various regional actors can be found in the "Agenda for Peace", drafted by the then Secretary General, Butrus Butrus Gali, in 1992.[8] This new focus on a UN-regional organisations (UN-RO) partnership developed significantly in the course of

[5] See D. Hannay, *Effectiveness and ineffectiveness of the UN Security Council in the last twenty years: a European perspective*, paper produced in the framework of the project "The European Union and the Reform of the United Nations", conducted by the Istituto Affari Internazionali (IAI) in Rome and the Institute of Social Sciences, Department of Politics, at the Christian Albrechts-University of Kiel (CAU) with the support of the Volkswagen Stiftung. Paper presented at the first meeting of Working Group I "The EU and the reform of the UN Security Council", Rome, 12-13 November 2009, available at: http://www.effectivemultilateralism.info/library/Hannay.pdf.

[6] Ibidem.

[7] See T. Tardy, *EU-UN cooperation in peacekeeping: a promising relationship in a constrained environment*, in M. Ortega (edited by) *"The European Union and the United Nations – Partners in effective multilateralism"*, Chaillot Paper no. 78, EU Institute for Security Studies, June 2005, http://www.eu-iss.org.

[8] See Agenda for Peace, 1992 (A/47/277-S/24111).

1990s and was reinforced by a series of high-level meetings between the UN Secretary General and its specialist agencies, on the one hand, and regional organisations on the other. In October 2005, in its first resolution on the subject, the Security Council expressed its determination to further develop UN-RO cooperation and asked the Secretary General to report on challenges and opportunities in this area. At the September 2006 high-level meeting, the Secretary General presented his report, "A Regional-Global Security Partnership: Challenges and Opportunities", in which he advanced eight recommendations for the development of the partnership. These include clarification of roles, agreement on guidelines for UN-regional cooperation and the formalisation of partnerships with the UN by concluding formal agreements, and a general statement of principles.[9]

On the EU side, the development of the ESDP as part of the CFSP led to a review of its relationship with the UN, "both as a legitimising body and as the main peacekeeping implementer".[10] A turning point in this process was the 2003 Iraq crisis: it weakened both the UN and the EU by delegitimising the role of the UN Security Council as guarantor of international peace and security and dividing EU Member States. As a consequence, the EU decided to put a strong emphasis on supporting the UN, in an attempt to revitalise both multilateralism and its own actorness on the world stage.[11] This resulted in the adoption of two pivotal documents for CFSP. The European Commission Communication "The European Union and the United Nations: The choice of multilateralism" presented the EU's commitment to multilateralism as a defining principle of its external policy[12]. And the European Security Strategy "A Secure Europe in a better world" stated that strengthening the United Nations and equipping it to fulfil its responsibilities and to act effectively is a European priority. [13]

The conceptual framework for EU-UN cooperation in crisis management was defined in the Joint Declaration of September 2003. From the Declaration stem four areas of action for further cooperation – planning, training, communication and best practice – and the creation of a joint consultative mechanism known as the Steering Committee. This document also encouraged additional reflections on the EU's possible contribution to UN peacekeeping, either in the form of a "stand alone force" or as part of a larger UN mission. In "EU-UN Co-operation in Military Crisis Management Operations: Elements of Implementation of the EU-UN Joint Declaration", a document adopted by the June 2004 European Council, two specific models are identified for conducting EU operations under a UN mandate:

- "bridging model": the EU rapidly intervenes for a short period – with a clearly defined endpoint – to give the UN time to mount a new operation or reorganise an existing one;
- "stand-by model": an "over the horizon reserve" or "extraction force", whereby the EU provides support to a UN operation.

Finally, the EU can be used by its member states in a "clearing house process" when they provide national contributions to UN missions. Under this process they would submit information on the capabilities they have committed to the UN and, should they so wish, use the EU Council to coordinate national contributions. Similar options have been developed in the civilian field.

But over and above the declarations made, the EU has contributed operationally to UN peacekeeping in many ways and with mixed results. Each of the scenarios envisaged in military crisis management has been experienced, with different levels of success. The bridging model was implemented with Operation Artemis, deployed in the Ituri province of the Democratic Republic of the Congo (DRC) from June to September 2003 to tackle a humanitarian crisis and allow the UN to reorganize and

[9] See A/61/204-S/2006/590.

[10] See T. Tardy, op. cit.

[11] See L. Van Langenhove, I. Torta, T. Felicio, *The EU's Preferences for Multilateralism; a SWOT Analysis of EU/UN Relations*, UNU-CRIS Occasional Papers, 0-2006/21, p. 9.

[12] See European Commission, *Communication from the Commission to the Council and to the European Parliament. The European Union and the United Nations: The choice of multilateralism*, COM (2003)526 final (Brussels, 9 September 2003).

[13] See *European Security Strategy. A secure Europe in a better world*, Brussels, 12 December 2003, p. 9.

reinforce Mission of the United Nations Organisation in DRC (MONUC). Again in DRC, the EU sent the EUFOR RD Congo operation, a stand-by force with the mandate of helping MONUC maintain the security situation during the parliamentary and presidential elections in the summer of 2006. In the case of UNIFIL II in Lebanon, the EU Council acted as a clearing house for EU member states' contributions to the UN mission. In the civilian field, EU-UN cooperation currently includes EUPM, which replaced the UN International Police Task Force (IPTF) in Bosnia-Herzegovina in January 2003, and EULEX Kosovo, deployed in 2008 – after Kosovo's declaration of independence – to take over from UNMIK. UN and EU missions are also deployed simultaneously in Afghanistan and the Palestinian territories.

Practical EU-UN interaction in the field has not always been easy, due to both operational and political constraints. However, it still represents the most advanced form of international-regional peacekeeping cooperation. The EU has sometimes failed to fulfil UN requests for intervention. As a recent example, in the autumn of 2008 the UN again asked the EU to conduct a short-term operation to protect the civilian population in the Ituri province of the DRC, to allow the UN to reinforce MONUC by deploying additional personnel. The calls for action by the UN Secretary General and the international community did not suffice to convince the EU member states to intervene, as they ran up against the opposition of Germany and the United Kingdom and the hesitation of Italy and France.

In addition, EU member states have become more and more reluctant to deploy their personnel in the framework of UN missions: they currently provide about 8% of the uniformed personnel taking part in UN peacekeeping operations around the world.[14] As a partial compensation for this, it must be acknowledged that EU member states collectively contribute nearly 40% of the UN peacekeeping budget (some $5 billion annually).

Nevertheless, a number of recent developments in both the UN and the EU offers inputs for new routes to cooperation between the two organisations. First of all, future opportunities for EU-UN co-operation in crisis management can be found in the deployment – if the UN so requests – of EU rapid deployment capabilities. The EU battle-groups, drawn up in the framework of Headline Goal 2010, reached operational readiness by January 2007 but have never been employed by the EU. Efforts are also underway within the UN system and the EU to develop their capacities for planning and implementing the civilian components of multidimensional peacebuilding.[15] The challenge here is to coordinate these initiatives effectively and thus produce a unique, enhanced base for peacebuilding activities.

Another sector to be explored is cooperation with other regional organisations. For example, the EU and the UN are both committed to support the efforts undertaken by the African Union (AU) to develop African capabilities to address peace and security challenges. In 2004, the EU established an African Peace Facility (APF) to provide funding for African-led peace support operations and capacity-building activities. For the period 2008-10, the EU allocated 300 million euros to the APF under the 10th European Development Fund. The UN is currently exploring options to enhance the predictability, sustainability and flexibility of resources for AU peacekeeping operations mandated by the Security Council. This process was triggered by a recognition that funding for regional peacekeeping usually relies on voluntary contributions by UN Member States: it remains *ad hoc*, uncoordinated and depends on the vagaries of donor financing. To improve this system, a report by an AU-UN Panel chaired by Romano Prodi recommends that two new financial instruments be established. The first would be based on UN-assessed contributions through both the regular and peacekeeping budgets; the second, a

[14] Data as of February 2010. EU member States contribute about 8,000 personnel out of 100,000 blue helmets currently deployed. The major EU member state contributors are Italy (2,265 personnel), France (1,673) and Spain (1,134).

[15] See S. Forman, *Building Civilian Capacity for Conflict Management and Sustainable Peace*, Discussion Paper, Denmark's Meeting on Strengthening the UN's Capacity in Civilian Crisis Management, Copenhagen, June 2004.

multi-donor trust fund that would finance an AU Comprehensive Plan for long-term capacity building. The follow-up process would be a great opportunity to stimulate a wider dialogue between international actors on how to improve their support for AU peacekeeping capabilities. The aim would be to identify possibilities for complementarity and interaction with existing funding mechanisms, particularly with the APF.

At the last meeting of the EU Foreign Affairs Council, which took place in Luxembourg on 26 April 2010, the conclusions on the Common Security and Defence Policy laid special emphasis on "the importance of enhancing the visibility of the EU positions and contributions on crisis management in all the relevant UN fora". During the last Franco-Italian Summit, a common declaration on security and defence was issued on 9 April 2010. The declaration underlined the importance of enhancing the visibility of the EU's positions and its contribution, in the UN Security Council framework, to managing those crises in which it is involved. Generally speaking, it is important for the EU to clarify once and for all its position vis-à-vis the United Nations in the field of peace and security, and to draw up clear strategic priorities and conditions for intervention following a request by the UNSC.

Nuclear disarmament and the prevention of nuclear proliferation[16]

The role played by the European Union in the field of nuclear disarmament and non-proliferation can be analysed through the case of the E3/EU Iran initiative. This is interesting from a number of perspectives. First, it represents a test case to assess the possible impact of "minilaterals" in shaping the EU's role as a key actor in the security field. Second, it serves as a model to see whether and under what conditions minilateral cooperation can evolve into multilateral cooperation in the UN framework, thus reinforcing institutions such as the Security Council and the AIEA. And third, and last, it helps us understand whether and how the EU has managed to achieve results in international negotiations.

Sebastian Harnisch maintains that minilaterals in security policy often fill a "niche" which the relevant multilateral institutions have (temporarily) vacated.[17] This "niche opportunity" relies on the implicit admission that the advantages of minilateral cooperation – basically flexibility and speed in the decision-making process – outweigh the disadvantages – weaker legitimacy and authority. He identifies two reasons why this opportunity opened up in the case of the E3/EU: the lack of an institutionalised actor for non-proliferation issues within the EU; and the inability of the AIEA and the UNSC to perform their original tasks.

However, both these assumptions could be contested. First of all, the development of the negotiations on the Iran issue shows a close relationship between the activation of the E3/EU action and the EU initiatives in this field. It is true that the E3 format (composed of the representatives of Germany, France and the United Kingdom) initially met with opposition from some EU member states, notably Italy and the Netherlands. It must also be underlined that the E3 has received no formal endorsement from the EU institutions. At the same time, the former High Representative for CFSP, Javier Solana, was associated with the E3 initiative as far back as September 2004, and his office backed the talks between the E3 and Iran for the conclusion of the Paris Agreement of 15 November 2004. In connection with the regular EU-Iran comprehensive dialogue launched in 1998, talks on a Political

[16] This paragraph largely relies on the information and inputs collected through an interview with Riccardo Alcaro, Researcher in the Transatlantic Affairs area of the IAI, who is currently conducting a research on "Exploring the potential and limits of CFSP: the EU action on the Iran's nuclear issue" in the framework of the European Foreign and Security Policy Studies programme (http://www.efsps.eu).

[17] See S. Harnish, "*Minilateral Cooperation and Transatlantic Coalition-Building: the E3/EU Iran Initiative*", in European Security, Vol. 16 No. 1, March 2007.

Dialogue Agreement (PDA), a Trade and Cooperation Agreement (TCA) and a human rights dialogue started in 2002.

Moreover, both the Presidency conclusions of the European Council and the GEARC conclusions have made repeated reference to the initiative and recognised its links to the EU. Starting with the Presidency conclusions of 4-5 November 2004, the EU recognised the E3/EU as acting on behalf of the Union, through which it ensured its representation and involvement in the dispute over Iran's nuclear programme.[18] In addition, the negotiations between the E3/EU and Iran were based from the outset on an explicit link between the requests to the Iranian government to suspend uranium enrichment and reprocessing activities, as well as full cooperation with the AIEA in terms of the Additional Protocol. EU-Iran cooperation is another criterion, in particular concerning the PDA and the TCA. Finally, it must be recalled that E3/EU actions have always been fully in line with the principles and objectives of the EU's WMD Strategy, adopted in December 2003.

The EU/E3 initiative can also be viewed as a good example of a contribution to an enhanced role for both the UNSC and the AIEA. The policy established autonomously by the EU/E3 has been largely adopted by the UNSC, which accepted the US and E3/EU's main request. It also pursued the two-track strategy strongly favoured by the latter: incremental pressure by sanctions and maintenance of a "win-win" diplomatic option. The E3/EU have always put the role of the AIEA at the centre of their negotiations, making cooperation with the Agency one of the mandatory conditions of any agreement with Iran, in line with a genuine multilateral approach. On 12 January 2006, the E3/EU released its first public statement asserting its intention to support the immediate referral of Iran to the UN Security Council. Later that month, the non-European permanent members of the UNSC (US, China and Russia) made a joint statement with the E3/EU, concisely repeating the same complaints and demands on Iran and initiating what will be called the E3/EU + 3. The AIEA Board also adopted a resolution on 4 February 2006 calling on the Security Council to step in, despite the perplexities of the Non-Aligned Movement (NAM). The UNSC action came in the form of resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008) and 1835 (2008), which imposed increasingly heavy sanctions on the Iranian government.

Beyond this process itself, it is also important to assess what the EU has achieved through the E3/EU process and what lessons can be drawn for its future engagement in non-proliferation matters. It can be said that the EU/E3 has been instrumental in drawing attention to Iran's nuclear ambitions and putting them under international scrutiny. Its actions may also have delayed the development of Iran's nuclear programme, although this aspect remains uncertain. Nevertheless, the E3/EU strategy has failed so far in making the Iranian government comply with the international non-proliferation regime. Iran recently announced that it would enrich uranium up to the level of 20%.

The reasons for this failure include the "incoherent definition of goals by the EU itself and [the] disjointed conduct of policy and diplomacy" by its institutions and by the E3/EU, especially on the coherent application of negative conditionality measures such as sanctions.[19] Moreover, the E3/EU was unable to mediate between the Iranians and the international community.[20] Even though the US

[18] The Presidency conclusions of the European Council held on 4-5 November 2004 state that: "[The European Council] confirmed that the European Union and its Member States would remain actively engaged – notably through the efforts of France, Germany, the United Kingdom and the High Representative – with the objective of achieving progress on the Iranian nuclear issue before the AIEA Board of Governors meeting starting on 24 November 2004". See Council of the European Union, Brussels European Council, 4/5 November 2004. Presidency conclusions, 14292/1/04 REV 1, Brussels, 8 December 2004, available at:
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/82534.pdf.

[19] See C. Molling, *"The grand bargain in the NPT: challenges for the EU beyond 2010"*, in I. Anthony et al., *"Nuclear Weapons after the 2010 NPT Review Conference"*, Chaillot Paper, EU Institute for Security Studies, Paris, April 2010, p. 59.

[20] See S. Harnisch, op. cit.

seemed to have aligned with the E3/EU policy, EU actors need to elaborate a more effective strategy to reach other crucial actors and mediate on their expectations. As things stand at present, it is crucial for the E3/EU to find ways to establish closer ties with Turkey and Brazil, which serve as non-permanent members of the UNSC and oppose new sanctions on Iran. This is a lesson that the EU should also bear in mind in the framework of the ongoing 2010 Non-Proliferation Treaty Review Conference.

Environmental challenges

As David Hannay correctly maintains, "environmental challenges associated with climate change contain important threats to international peace and security".[21] With the recognition of this environment-security nexus, climate change has become a major agenda item for both the European Council and the UN Security Council.[22] Since the 1990s, the EU has increasingly assumed a leadership position on climate change and in global environmental governance in general. During the negotiations for the Kyoto Protocol of 1997, the EU pushed for stringent international commitments. It proposed the deepest emission cuts and accepted the highest reduction target among the major industrialised countries (a reduction of 8%).[23] In 2007, the EU unilaterally committed to cutting greenhouse gas emissions by 20% of the 1990 level by 2020. Over the last two decades, the EU has succeeded in improving the coordination of its external climate policy, considered a key test area in the implementation of effective multilateralism. At the same time, the EU has put a lot of effort into developing effective domestic policies in this sector, helped by the new centrality of the energy security agenda and the mounting concerns on rising energy prices and the differentiation of energy suppliers.

This "leadership by example" enabled the EU to play a crucial role in launching negotiations on a global post-2012 climate agreement by the parties to the UN Framework Convention on Climate Change (UNFCCC) in Bali in 2007. Nevertheless, its impact on the UNFCCC and the Kyoto Protocol has been comparatively limited.[24] The EU's performance in the UN Climate Change Conference in Copenhagen in December 2009 was affected by the same shortcomings, and has been judged a failure of the EU's international diplomatic efforts. Why has the EU's contribution to this important UN policy failed and what are the main lessons to be learned for the future?

One of the main reasons for the EU's scarce outreach in boosting the international climate agenda lies in its institutional and organisational arrangements. As Piotr Maciej Kaczynski recently underlined, the EU "learned that a choir of European leaders could not sing convincingly even with a single voice".[25] The Copenhagen EU mandate was prepared within the EU Council by specific working parties and then discussed by COREPER I and the Environmental Council. In consideration of the complexity and importance of the issue, it was referred to the European Council, which adopted the EU's position in October 2009. The EU-led negotiations were managed by the EU Troika, composed of the current holder of the EU rotating presidency, the incoming presidency and the European Commission. In

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[21] See D. Hannay, op. cit. See also Resolution adopted by the General Assembly, *Climate change and its possible security implications*, A/RES/63/281, 11 June 2009, available at http://ods-dds-ny.un.org/doc/UNDOC/GEN/N08/487/65/PDF/N0848765.pdf?OpenElement.

[22] See Department of Public Information, *Security Council holds first-ever debate on impact of climate change on peace and security, hearing over 50 speakers*, SC/9000, 17 April 2007, available at http://www.un.org/News/Press/docs/2007/sc9000.doc.htm. See also C. K. Penny, "*Greening the Security Council: Climate Change as an emerging threat to international peace and security*", International Environment Agreements, No. 7, 2007.

[23] See S. Oberthür and C. Roche Kelly, "*EU Leadership in International Climate Policy: Achievements and Challenges*", in The International Spectator, Vol. 43, No. 3, 2008, p. 36.

[24] Ibidem.

[25] See P. Maciej Kaczynski, "*Single voice, single chair? How to re-organise the EU in international negotiations under the Lisbon rules*", CEPS Policy Brief, No. 207, March 2010, p. 1, available at http://www.ceps.eu.

addition to the official EU representation, national representatives of EU member states played a full part, as UN members, in the negotiations.[26]

This multiple political representation had the effect of undermining the official EU negotiators' position. Moreover, as is often the case in the UN framework, the position agreed among the EU member states cannot be negotiated with third countries with the sufficient degree of flexibility. Indeed, any important change needs to be decided through additional gatherings of the 27 leaders; such meetings are time-consuming and do not favour the EU's external interaction with other delegations.

With the entry into force of the Lisbon Treaty, climate change policy remains a shared competence between the Union and its member states. However, the rotating EU presidency has been replaced by a permanent President (with a two-and-a-half-year mandate, renewable once). Article 17 TEU explicitly states that the European Commission "shall ensure the Union's external representation" (for all but CFSP matters, for which the task lies with the new double-hatted High Representative). A stronger role is also envisaged for the European Parliament. Moreover, the competence of the Environment Commissioner in this field has been shifted to the new Commissioner for Climate Action, Connie Hedegaard, whose mandate is to play "a central role [...] in leading the EU's negotiations on climate as well as helping the EU to deal with the consequences of climate change", with the support of the new External Action Service.[27] This would require a rethinking of the composition of the EU's negotiating team and the role of the Troika. Even so, the mutually wary relations between the EU institutions, and primarily the European Commission, and the member states would continue to impinge on the effectiveness of the EU's diplomatic efforts in international negotiations in the UN framework.

The reason for the disappointing results achieved by the EU in Copenhagen does not, however, lie solely in the organisational aspects of the EU's representation. It is probably true that, over and above the institutional aspects of its representation in international talks, we should look "more to the substance of what the Union brings to the table".[28] EU President Herman Von Rompuy has himself pointed out the need to "talk about the lessons to be drawn from Copenhagen for our relations with strategic partners".[29] One of the main such lessons is the urgent need for the EU to take into account the evolution of the international climate agenda and develop policies that are able to respond to the needs and concerns of emerging powers (China, India, Brazil, South Korea, South Africa and others). This means, in effect, broadening its climate policy agenda beyond greenhouse gas emissions, "to include financial assistance and investments, technology transfer, adaptation and equity".[30]

Conclusion

The analysis conducted in this paper has showed a number of features of the EU's presence within the UNSC and its contribution to the effectiveness of the supreme UN organ. Most notably, the EU's aspirations for an active role within the UNSC have always oscillated between the need for coordination among its member states and claims for a unitary representation of the Union as such. This tension persists in the new provisions of the Lisbon Treaty and informs the debate by EU member states on the UNSC reform. The two dimensions of coordination and representation also have an impact on the EU's performance in key UNSC matters. The assessment of the EU's contributions in the fields of peacekeeping, non-proliferation and climate change shows that it is not possible to identify any stable patterns of correlation between a specific internal coordination process and external

[26] Ibidem.
[27] See P. Maciej Kaczynski, op. cit., pp. 2-4.
[28] Ibidem, p. 6.
[29] Invitation letter by Herman Van Rompuy, President of the European Council, for the Informal meeting of Heads of State or Government, Brussels, 8 February 2010, PCE 25/10.
[30] See S. Oberthür and C. Roche Kelly, op. cit., p. 47.

outreach. The modalities and priorities of the EU's interventions in the different cases in question have varied considerably and the assessment of the results obtained is mixed. What has emerged clearly is that the EU is called upon to display its potentialities with a view not only to contributing, but also to shaping, the UNSC agenda. This requires "a greater sense of strategy and a greater degree of tactical flexibility than the EU has so far managed to demonstrate".[31] The opportunities opened up by the Lisbon Treaty should not be underestimated. New instruments and structures are now at the disposal of the EU leaders to equip the Union with one voice and one face and enable it to finally abide by its proclaimed commitment to effective multilateralism, starting with the UN Security Council.

[31] See D. Hannay, op. cit.

Istituto Affari Internazionali

THE REFORM OF THE UN SECURITY COUNCIL: WHAT ROLE FOR THE EU?

WORKING GROUP I

In the framework of the project
The EU and the Reform of the United Nations

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PAPER ON

"RESTARTING NEGOTIATIONS FOR THE REFORM OF THE SECURITY COUNCIL"

by
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DRAFT NOT TO BE QUOTED

The 63rd General Assembly (GA) ended in September 2009 with Decision 63/565[1], which urges to continue the inter-governmental negotiations on the Security Council's reform that started in early February 2009. The newly elected President of the GA, the Libyan ambassador Ali Treki confirmed Mr. Zahir Tanin as chairman of negotiations, who accepted the task with the mandate of Decision 62/557[2] of 15 September 2008.

During the 64th General Assembly, heads of states and UN top officers opened the session with long and vague speeches where the mentions to the reform of the Security Council (SC) appeared most of the time just as an academic and rote exercise. Against this background, President Treki did not lose the opportunity to underline the historical injustice of setting aside the African continent from the Security Council.

Areas of convergence and chances for a partial reform

After the opening of the 64th General Assembly, discussions about the reform of the Security Council restarted on 12 November 2009 during the 43rd-44th Meetings of the GA, on the occasion of the presentation of the "Report of the Security Council". During the debate all states criticized harshly the fact that the report, in its traditional format, did not serve the purpose of accountability. These reports have been said to be a mere description of what has been done and lack a full political analysis of the work of the Council. The importance of the report of the SC's work to the GA is proved by the fact that a specific article[3] of the UN Charter is devoted to it, many countries restated during the meeting. Beyond this tool, in some states' opinion, consultations between the two organs should be strengthened by scheduling regular and institutionalized meetings between the chairs of the UN bodies in order to share information and improve cooperation.

In particular the group of the Small Five[4] (S5) - due to their size - is not interested in the question of the enlargement of the Council. As a result they stressed that reforming the working methods of the Council and revitalizing the General Assembly, especially enhancing the relations between this latter and the Security Council, would improve communication so that countries that are not members of the Council do not feel marginalized from its most important activities.

Most of the countries succeeded in finding areas of convergence on this matter insomuch as they expressed the wish to separate the five issues[5] into which the chairman had divided the broad question of the reform and to come up with an early partial reform focused on Security Council's working methods and the relations between the Council and the General Assembly.
On one hand this hypothesis is fiercely opposed by many countries, such as Italy, who included this subject in its comprehensive proposal put forth in April 2009 with Colombia. In this document they thoroughly dealt with the working methods, asking for easier access to information through open briefings, for timely availability of draft resolutions and presidential statements and for analytical briefing for non-Council members. Anyway, the Italo-Colombian proposal strongly affirmed the inextricable linkage among the five issues and the impossibility of separating them.

[1] Available at http://www.italyun.esteri.it/NR/rdonlyres/24D2664A-4FDA-40A7-BEF6-F4C1F6DB7FEF/0/IntergovernamentalNegotiations.pdf
[2] Available at http://docs.google.com/viewer?a=v&q=cache:DdNs6Mk55oIJ:www.centerforunreform.org/system/files/Res%2B62.557.PDF+Decision+62/557+GENERAL+ASSEMBLY+2008&hl=it&pid=bl&srcid=ADGEESh YlJ58k-rbokjn33-jvEzTQ3RJiIA8W28NobPEMcxDutYAx3_pTu9Ny-9bwGvRZ9_j2KlWGLVJ6hqeaOAknbcpVehfvogchYRz3mtOeALfdp4i7iGKxsbcumPfBTxWmzQM8xG4&sig=AHIEtbQqdqxGyZ6_xZ3Ybwjm50SPfbK1tA
[3] Article 15 of the UN Charter
[4] Costa Rica, Liechtenstein, Jordan, Singapore and Switzerland
[5] See the Overview presented by Mr. Tanin on 18 May 2009, available at http://www.un.org/ga/president/63/issues/screform18509.pdf

On the other hand this proposal is opposed as well by some permanent members, such as Russia, which admonished all "attempts to redistribute the powers of the main bodies of the Organisation to the advantage of the General Assembly compromising the prerogatives of the Security Council"[6].

Despite this call for prudence, this subject recently regained primacy thank to a new engagement of Japan on this matter and a debate held at the end of April on the implementation of the note made by the President of the Security Council (S/2006/507)[7] in light of the "perception of the transparency, efficiency and inclusiveness" of the Security Council's activity. But on this occasion, it is noteworthy that the United States – usually very frugal in their rare speeches – dedicated a long intervention[8] to conveying the improvement already made as far as open meetings, transparency and efficiency are concerned.

New rounds, old problems

On 16 November 2009 Ambassador Tanin, in a letter sent to all member states, invited them to the first meeting of the fourth round of negotiations, which took place on 8 and 9 December 2009. This meeting was meant to be devoted to "reflection" on states' own positions and proposals and on the positions and proposals of their peers, but despite the appeal to flexibility and compromise all the parties seemed to stand firm on their stances. It cannot be denied that almost all different groups of states in these months, instead of proposing "creative ideas"[9] only re-shared old documents dated 2005 or 2006 and focused their diplomatic endeavors on proving that their positions are backed by the majority of the member states.
If the enlargement of the Security Council is by now a solution accepted by all the states - including the Permanent Five - to overcome the anachronistic composition of the organ, the categories of new seats still need to be decided. The economic crisis highlighted how urgent the need is for the UN to reflect contemporary global reality but how to reach an higher level of effectiveness of the Security Council is not agreed upon yet. The question of categories is by far the most crucial issue. An enlargement of the Council has been accepted by all the counterparts, but proposals range from "low twenties" to "mid-twenties", without considering Gaddafi's proposal – made during his one hour-long opening speech - to open the Council to all the UN members.

Does an overwhelming majority exists?

The Uniting for Consensus (UfC) group strongly refuses the idea that there exists an "overwhelming majority" of states which back the solution of enlarging both categories of seats inside the Council. In fact, it is noteworthy that every group remains steadfast in its position and even the parties who do agree on the enlargement of both permanent and non-permanent categories do not share a single position. For example the African group claims two permanent and five non-permanent seats for African states, a proposal that seems compatible with the one put forth by the Group of Four[10] (G4) and backed by the Permanent Five. But, the P5 and the African Union (AU) totally disagree on the claim of the AU to retain for itself the right to appoint the countries among its members. The United States and Russia strongly affirmed that they could envisage only "country-specific"[11] admissions to the Security Council.

[6] Non-paper of the Permanent Representative of the Russian Federation, 2 March 2010

[7] Available at http://www.un.org/en/sc/repertoire/Notes/s-2006-507.pdf

[8] Available at http://usun.state.gov/briefing/statements/2010/140723.htm

[9] As Mark Lyall Grant, Ambassador and Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations, solicited in its intervention on 12 November 2009

[10] The G4 is campaigning for adding 6 permanent (2 for African states, 2 for Asian states, 1 for Latin America or Caribbean, 1 for Western Europe and other states) and 4 non-permanent seats (1 African, 1 Asian, 1 Eastern Europe states, 1 Latin American or Caribbean)

[11] Statement by Ambassador Alejandro Wolff, U.S. Deputy Permanent Representative, in the General Assembly, 13 November 2009

The positions of the AU, the G4 and P5 differ even in another crucial question, the veto power. Except the Permanent Five, in principle all the other countries seem to be keen to abolish this tool, which is broadly considered an unjust and undemocratic legacy of the past. In practice, this aspect of the reform is much more linked to the result that will be achieved on the question of the Council's enlargement.

Inside the main groups

The G4 is campaigning for enlarging both categories of members and for equipping the new permanent ones with the same prerogatives of the outstanding P5. However, this group is not a block anymore and some countries are more likely to compromise. While India and Brazil strongly reaffirm their right of being fully accepted into the control room as the booming emerging countries, Japan and Germany are more prudent. The situation of these two countries is far different from fifteen years ago, when Security Council's reform negotiations started, and they do not seem anymore the fully-fledged candidates for permanent seats. As a result, Germany and Japan seem more keen on adjusting their positions and proposed that new permanent members at the beginning of their term could receive the veto but in parallel give a commitment not to use it until the future review of the Charter.

The African group backs the total abolition of veto, but if the veto power will outlive the reform and other countries will join the group of the permanent members, they must be given all the responsibilities and tools that being a permanent member implies. Due to the fact that the African group asks for two permanent seats, it goes without saying that it is asking for permanent seats provided with veto power. During the 14th African Union summit in late January 2009, the heads of states reaffirmed this proposal as had been spelled out in the Ezulwini Consensus[12] and did not soften it, as was expected by UN negotiators.

The UfC, in their last proposal[13] put forth in April 2009 by Italy and Colombia, does not envisage the possibility of an enlargement of the permanent category, but back the creation of a new category of seats, the longer-term seats allocated to the regional groups (Africa, Asia, Asia/Africa on a rotational basis, group of Latin American and Caribbean states, Western European and other group/Eastern European group on a rotational basis). These would be added to regular non-permanent seats deprived of the possibility of immediate re-election, allocated to the following groups: small states (population below 1 million), medium-sized states (population between 1 million and 10 million), Africa, Asia, group of Latin American and Caribbean states and the Eastern European group.
As far as longer-term seats are concerned, they proposed two options for their duration: from 3 to 5 years without possibility of immediate re-election, or two-year terms with the possibility of up to two immediate re-elections. In this document, the UfC addressed the question of veto as well, presenting two possible options: either the complete abolition or spelling out of limitations of the scope of veto, i.e. allowing the use of veto only on Chapter VII matters.

As explained above, the Small Five do believe that a revitalization of the General Assembly would guarantee a more democratic organisation and a first step towards a more shared solution to the question of the reform of the Security Council. But, a crucial point would also be a reform of the SC's working methods, in particular of the use of veto power. The S5 urge the permanent members to refrain from using the veto in cases of genocide, crimes against humanity and mass violations of international humanitarian law. As the recent problems over the Goldstone report[14] show, however, definitions of what constitutes serious violations of human rights law are indeed divergent.

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[12] African Union, Ezulwini Consensus, available at http://www.aumission-ny.org/documents/Ezulwini_Consensus%5B1%5D.pdf
[13] UfC platform on Security Council reform, 20 April 2009, available at http://www.italyun.esteri.it/NR/rdonlyres/C37FC89F-8132-4CA8-A2F9-149515B37BD1/0/2009_04_17screform.pdf
[14] The report issued at the end of the fact-finding mission created by the United Nations Human Rights Council to investigate international human rights and humanitarian law violations related to the Gaza War (2008-2009)

All this talk could be in vain, since the Permanent Five are adamant that the standing prerogatives of the existing permanent members must not be changed by the reform. The rules of procedure of the Council should not be a matter of discussion at all during these negotiations, due to the fact that in accordance with article 30 of the Charter only the Council itself can deal with it. Russia, in particular, is discouraging negotiators from discussing the question of veto, which is included in the broader "working methods" issue. Discussion about veto could become possible only when an eventual new composition of the Council is decided.

In this context of general disagreement, the request for straw polls made by the G4 at the beginning of new rounds suddenly fell down, and pressure rose to draw a composite paper. Such a demand was epytomised in the letter[15] signed by 143 countries, which was sent to Mr. Tanin to solicit him to come to "text-based negotiations".

A composite paper: a G4 victory?

Since the very beginning of the new round, the G4 asked for a document that could become the basis for the next rounds of negotiations. They called for a concrete draft of decisions, which could take into account the fact that most of the countries agree on the enlargement of both categories. Agreement on this crucial point could then allow them to discuss and negotiate the rest of the issues, the G4 affirms.
On 23 December 2009 a letter sponsored by this group was sent to Mr. Tanin with the signatures of 143 countries urging him to present a composite paper. Even if the content of the letter appeared to be very neutral, since it did not call for narrowing down the proposals on the floor, members of the UfC did not sign it, nor did the United States, Russia or China.
Italy and Turkey denounced the fact that the G4 did not ask them to sign it, despite the concurrent content of the letter. In these two countries' opinion, it was a clear attempt to present all the subscribers as supporters of the G4's proposal, while they are not.

Despite the UfC's initial contrariety to a document that could exclude some proposals in light of a false overwhelming majority, the UfC group sent their own letter to Mr. Tanin in January 2010, declaring themselves open to a document that would not be focused on only one proposal and that would not impose any artificial deadlines on negotiations.
On 14 January 2009 Mr. Tanin thanked the states for the letters received, though he only answered the one presented by the 143 states, and announced a texted-based fifth round, while the fourth round was about to start on 19 and 20 January 2010 without any call for this by the chairman.

The Chairman's appeal for proposals

During these meetings many members seemed disappointed by Mr. Tanin's decision to postpone the compilation of the document and affirmed the impossibility to go on with discussions without a draft resolution to discuss. As a result, the chairman decided to fix a 3 March 2010 deadline for the states to send him all the proposals that they wanted included in the text. This choice made it clear that no proposal would be cut down – to the great relief of the UfC group - in accordance with the mandate of 2008[16], which denies the chairman the power to exclude any proposal put forth by the states.

[15] Multi-State letter, available at http://www.svg-un.org/downloads/GA_RequestForCompositeSCRPaperLetter_23Dec09.pdf
[16] Available at
http://docs.google.com/viewer?a=v&q=cache:DdNs6Mk55oIJ:www.centerforunreform.org/system/files/Res%2B62.557.PDF+Decision+62/557+GENERAL+ASSEMBLY+2008&hl=it&pid=bl&srcid=ADGEESh YIJ58k-rbokjn33-jvEzTQ3RJiIA8W28NobPEMcxDutYAx3_pTu9Ny-9bwGvRZ9_j2KlWGLVJ6hqeaOAknbcpVehfvogchYRz3mtOeALfdp4i7iGKxsbcumPfBTxWmzQM8xG4&sig=AHIEtbQqdqxGyZ6_xZ3Ybwjm50SPfbK1tA

Until 3 March 2010, Mr. Tanin received many letters, namely the 2005 G4's draft resolution, the 2005 UfC's document, the Italo-Colombian proposal of April 2009, a Korean one - mainly based on the Uniting for Consensus position - the African group position, a document from the L.69 group led by India, one from the League of Arab States, one from the Organisation of the Islamic Conference, a UK/French declaration, the 2005 proposal made by the East European countries group, a Lichtenstein proposal and a declaration from the Small Five - that stressed once again the importance of not leaving aside to any compromise document the "working methods issue", despite the mounting interest in the categories issue.

Among all these documents, only the Slovenian proposal represented a real innovation. Slovenia[17] proposed an increase of six permanent seats (two for Africa, two for Asia, one for Latin America and Caribbean countries, one for Western Europe and other states) and four non-permanent ones. The new four non-permanent seats added to the existing number of non-permanent members would bring the amount of non-permanent seats up to twelve. These twelve seats should be divided in two groups, six seats with more frequent rotation, eligible for re-election every second two-year term within a period of twelve years while the other eight seats would follow the already-existing rules.

Regional Representation

Apart from the Slovenian proposal, the ones from the League of Arab States and the Organisation of the Islamic Conference represent evidences of the importance of the question of regional representation.

During the negotiations, when countries address the issue of regional representation most of the time they tend to refer to "geographical representation", following article 23 of the Charter. As a result, when additional member states are proposed in the models put forth by negotiators, countries are divided in blocks like "African states", "Asian states", "Latin American and Caribbean states", "Western European states", "Eastern European states". These blocks reflect a mere geographical distribution of the seats and do not imply the fact that a country could represent anyone other than itself.

Despite that, the League of Arab States claims a permanent "Arab representation" in any future expansion - a request echoed by France - a regional definition not provided by the UN Charter but of undisputed importance in the XXI century. Differing from the League of Arab States, the Organization of the Islamic Conference proposes an "adequate representation of major civilizations"[18], including the Islamic *Ummah,* in any categories of membership in an expanded Security Council, so as to improve the dialogue among civilizations.

The African Union, stressing the historical injustice suffered by the African continent, makes claim for two permanent seats and five non-permanent ones, retaining for itself the right to appoint the countries among its members. As the African countries underline in almost every intervention made, these seats would not imply a regional representation that, in their opinion, would not fit the outstanding principle of sovereign equality among states.

However, even this low-profile interpretation of "regional representation" is rejected by permanent members, namely the United States and Russia, who can envisage only "country-specific "[19] admissions to the Security Council.

[17] Proposal put forward 9 February 2010
[18] OIC Resolution NO. 20/36-POL on Reform of the United Nations and Expansion of the UN Security Council's Membership
[19] Statement by Ambassador Alejandro Wolff, U.S. Deputy Permanent Representative, in the General Assembly, 13 November 2009

During these last rounds of negotiation, Italy did not present again its wish for a European Union seat, but Italy and Portugal underlined the great change epitomized in the entry into force of the Lisbon Treaty. In the opinion of both countries this new reality should be translated "in the manner the EU interacts with the Security Council"[20] and according to Italy must be taken into account for further developments of the SC's reform.

Germany, while campaigning for its own permanent seat, affirms that the final goal - in an unforeseeable future - would be the creation of a European seat, but in the meantime, an intermediate model could represent the solution for its European peers.

Two options for an intermediate model

The joint declaration made by United Kingdom and France in July 2009, and reaffirmed during these new rounds of negotiations, expressed the will to explore a pragmatic option in order to bypass the stall in negotiations. Germany immediately welcomed the proposal, along with other many countries - even finally Lichtenstein, Republic of Korea and Russia. However, there is not a single view on this intermediate reform.

The United Kingdom and France[21] back the creation of a new category of seats with a longer mandate than that of currently elected members. On completion of this – undetermined - intermediate period, a review should take place to "convert these new seats into permanent seats". This option is strongly refused, not only by the countries that exclude the possibility of the creation of new permanent seats, but even by the ones – India above the others - that look at this model only as a way to delay the final decision.

While the Korean proposal is closely linked to the Italo-Colombian one, Lichtenstein's document[22] conveys some new points. It admits the creation of a new category of seats with a longer mandate of eight/ten years with the possibility of re-elections to be allocated to the following groups: two for Africa, two for Asia, one for Latin America and Caribbean, one for Western Europe and other states. After 16/20 years a review conference should take place, where the member states will have the ability, though not the obligation, to convert these seats into permanent ones. While this proposal could gain the approval of the UfC, it is firmly rejected by the G4 group.

Russia did not specify its idea of an interim model but underlined in its non-paper of 2 March 2010 that "so far none of the existing models of reforming the Council enjoy prevailing support in the UN", contrasting the common idea of an overwhelming majority in favor of the G4 proposal.

Germany finally clarified its idea of an intermediate solution. As the United Kingdom and France, Germany strongly affirms that this kind of solution "must be constructed in a fashion so as to pave the way for an expansion of both categories", allowing member states to make a transition into a permanent expansion of both categories at the review conference, in no less than fifteen years. This is a condition unacceptable for Italy, though it initially seemed interested in this proposal, which was hailed as the best compromise to stop quarrelling among the European Union's member states.

[20] Statement by H.E. Ambassador José Filipe Moraes Cabral, Permanent Representative of Portugal, New York, 8 December 2009
[21] UK/French declaration of 6 July 2009, re-proposed the 1 March 2010
[22] Letter of 26 February 2010

A European Union position

As mentioned before, only Italy and Portugal underlined the entering into force of the Lisbon Treaty and referred to it as a turning point for the European approach towards the United Nations. The newly appointed High Representative for Foreign Affairs and Security Policy of the Union, Lady Ashton, during her audition in front of the European Parliament (EP), replied to a question by Mario Mauro - the Italian Vice-President of the EP - saying that she has no opinion about an eventual EU seat in the Security Council.

In the European Parliament, the rapporteur on UN-related issues is the German liberal Alexander Graf Lambsdorff, who said recently that such a common seat "is not realistic in the near future (...) But as a long-term political objective this is an important priority of the European Parliament"[23]. In the recommendation to the Council of the European Union approved on 25 March 2010, the Parliament asked the Council to "ensure that the EU speaks with a single voice in order to make its position heard"[24] and devoted an ad hoc chapter of the document to "Global Governance and UN reform" where the EP urged Lady Ashton "to take tangible action and new initiatives in supporting the reform process of the UN system, stressing the need for a comprehensive reform of the Security Council in all its aspects" and to "build a more cohesive position among EU member states on the reform of the UN Security Council and to advance this position at the UN; to emphasise that an EU seat in an enlarged Security Council remains a goal of the European Union".

Such a recommendation to the Council on the 65th Session of the United Nations General Assembly has not found any echo in the European Council's conclusions of 26 March 2010.

[23] Interview available at http://www.europarl.europa.eu/news/public/story_page/030-71031-081-03-13-903-20100319STO70953-2010-22-03-2010/default_en.htm

[24] Recommendation available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0084+0+DOC+XML+V0//EN&language=EN

(4)

The evolving role of the UN Security Council in international security: legitimiser and legislator

Rein Müllerson

Legitimiser

There is no doubt that the UN Security Council plays a legitimising role on issues of internationl peace and security. Under the Charter and more specifically under its Chapter VII it is only the Security Council that can and has the responsibility to determine the existence of any threat to the peace, breach of the peace, or act of aggression and make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security. Of course, adopting a rather controversial „Uniting for Peace" resolution the General Assembly has also authorised actions to maintain or restore international peace and security. However, this has been rather an exception than a rule though some authors and even states have proposed to use the legitimising role of the General Assembly much more widely (e.g. in the case of the Kosovo crisis in 1999).

Though the Security Council is an important, and in accordance with the UN Charter the only, avenue to international legitimacy concerning actions to secure international peace and security, there have emerged regional organizations such as NATO, the European Union, the African Union, ECOWAS and others that offer alternatives ways.

The 1999 NATO Kosovo operation Allied Force that NATO countries carried out without Security Council's authorisation led to the emergence of the notion „illegal, but legitimate"; this term was coined by the Independent Commission on Kosovo (therefore it may be called Judge Goldstone's concept of legitimacy). However, at no point did any NATO government call this operation illegal, though legitimate. Their arguments were based on the creative interpretation of the Charter or on the extra- (not necessarily contra) Charter right to humanitarian intervention. For example, Sir Jeremy Greenstock, the British Ambassador to the UN, stated in the Security Council, not going into details, that the military intervention was „lawful on the basis of overwhelming humanitarian necessity". He didn't say that it was simply legitimate; he called the intervention lawful;

full stop. The same formula was used also by Robin Cook, the then British Foreign Secretary, who before the House of Commons Foreign Affairs Committee replied to the question of the Diane Abbot MP: „the legal basis for our action is that ... states do have the right to use force in the case of overwhelming humanitarian necessity". Such an approach implies that not in all cases (and I am not speaking of the inherent right states to use force in self-defence) of actions involving use of force in international relations there is the need for Security Council legitimisation.

Although I don't like the phrase „illegal, but legitimate" I admit that it has a place and role in international law. What place does it have and what is legitimacy?

There is Tom Franck's famous definition of legitimacy of norms of international law and international institutions as „a property of a rule or rule-making institution which itself exerts a pull towards compliance on those addressed normatively" (he uses four indicators of legitimacy: determinacy, symbolic validation, coherence and adherence). This means that there may be legally valid norms and lawful acts that lack legitimacy, that lack „the compliance pull". The same applies, in principle, to decisions of the UN Security Council and other international bodies. Professor Franck spoke of legitimacy of norms of international law, decisions of international institutions and also judicial bodies. This is an issue of legitimacy within the law. Here, there is no room for „illegal but legitimate". However, there is a wider notion of legitimacy and when Judge Goldstone or rather the Commission headed by him spoke of legitimacy of Operation Allied Force he used this wider concept of legitimacy though even in that sense legitimacy is a property or characteristic of something that quite obviously has a lot to do with law. The link between law and legitimacy lies at the origins of the term 'legitimacy', though this genetic link is not the only one between these notions. In Latin and in Roman law, *legitimus* meant „lawful, in accordance with law". However, in the wider sense the concept of legitimacy is not only about the property of legal norms and institutions; it is not only about legitimacy of norms, institutions, but also about situations or behaviour of various actors, e.g., states and non-state entities. Here lawfulness is one, though in normal cases the most important, element or aspect of legitimacy. However, legitimacy is more than simply lawfulness. It also includes morality or a sense of fairness or justice. Ian Clark defines legitimacy as „political space marked by the coundaries of legality,

morality, and constitutionality" (Clark, Legitimacy in International Society, p. 20). Henry Kissinger, writing about post-Napoleonic arrangements in Europe, opined in 1977 that „legitimate is and order whose structure is accepted by major powers" as legitimate (Kissinger, A World Restored, p. 145). Today, such an approach would be not only politically incorrect but also wrong in substance. However, as I will try to show later, today, say, G20 or even P5 with a few other states may also play a role marked by Henry Kissinger. Although, in principle, legality and legitimacy have to coincide and overlap, in practice they not always do and sometimes they may even clash and in such cases it may be possible to say that something is legitimate though illegal or *vice versa* illegitimate though lawful. For example, economic sanctions against Iraq that were in force for about twelve years were arguably lawful since the Security Council had adopted them in accordance with all the relevant procedural requirements of the UN Charter. However, they were seen as illegitimate not only by the then Iraqi government but many experts as well. The two coordinators of the UN Humanitarian Programme for Iraq Denis Halliday and Hans von Sponeck as well as Jutta Burghardt, the Representative and the Country Director of the World Food Programme resigned in protest against the sanctions. In their eyes, as well as in the eyes of many, these sanctions were not legitimate, though arguably they may have been lawful. I am using the world „arguably" because at least in their eyes such sanctions may have been also illegal since though adopted in accordance with procedural requirements of the UN Charter they may have been contrary to some *jus cogens* norms of international law. Denis Halliday called the Iraqi sanctions „genocide". Although I cannot agree with such a qualification, the suffering brought to bear by the sanctions on the Iraqi people, especially on Iraqi children, was immense and the argument that it was Saddam Hussein who was at the origin of this suffering and he could have stopped the application of sanctions by abiding by the lawful and legitimate requirements of the UN Security Council, though technically correct, is not very persuasive. Pinching the people in order to force dictators to abide by law is not legitimate; depending on circumstances it may even be unlawful.

Let's take a slightly hypothetical situation. Let's assume that after the controversial 1441 Resolution there would have been a Security Council resolution that would have authorised the use of all necessary means to force Saddam to comply with all

the relevant previous resolutions. This would have made the March 2003 use of force against Iraq lawful, which it was not, at least in the eyes of the British Foreign Office lawyers, who resigned then as well as those who recently testified before the Iraqi inquiry. But had a new resolution turned the invasion of Iraq into a legitimate one? Maybe a bit more legitimate but in the eyes of many it wouldn't have mattered much, if at all.

When certain decisions or acts of behavour are seen as legitimate though their legality, i.e. correspondence to law, may be questionable, it may be that their legitimacy, if upheld not only by experts but by a substantial number of states, contributes to the process of change of legal norms in question. For example, the extension of 200 mile economic zones in the 1960-70s was illegal, contrary to the freedoms of the high seas, but the concept was seen by an increasing number of states as legitimate and so it became first a part of customary law and later it was also confirmed in the 1982 Law of the Sea Convention.

Of course, as we have seen, states usually don't rely on arguments of legitimacy only; they prefer to refer to lawfulness of their acts. Sometimes this can be plausible done because not only the concept of legitimacy is rather imprecise and subjective (what may be legitimate in the eyes of one man may be completely illegitimate in the eyes of another) but quite a few important norms of international law also lack what Tom Franck called determinacy and therefore their legitimacy may be not as strong as we – international lawyers – would like it to be. The heated dispute over the so-called question of automaticity in SCR 1441 was only possible because the resolution was not clear enough (though certain interpretations, especially by the French and Russians were more plausible than the US or British ones) and statements of Security Council members during the voting process were in some important respects diametrically opposite.

The SC is, as a minimum, bound be two categories of norms of international law: *jus cogens* norms and procedural rules of the UN Charter. In the Tadic case the Appeals Chamber of the ICTY said: „neither the text nor the spirit of the Charter conceives of the Security Council as *legibus solutus* (unbound by law)" (ICTY, IT-94-AR72 (Appeals Chamber, Interlocutary Judgement on Jurisdiction of 2 October 1995), para. 28).

Although there is no judicial review of decisions of the Security Council but there is a channel through which judicial bodies may have an opportunity to have their say on the issue of legality (though not legitimacy) of Security Council resolutions. This is so-called „incidental jurisdiction" of the International Court of Justice (the Lockerby case), the ICTY (the Tadic case before the Appeals Chamber) or other international judicial bodies. Recently, this approach has been confirmed by the Court of First Instance of the EC, which, in the cases of Yassin Abdullah Kadi and Ahmed Ali Yusuf and Al Barakaat International Foundation, has held that the SC 'must observe the fundamental peremptory provisions of *jus cogens'* (Case T–306/01, Ahmed Ali Yusuf and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities, Judgment of the CFI, 21 Sept. 2005, at para. 281; Case T–315/01, Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities, Judgment of the CFI, 21 Sept. 2005, at para. 230). Potentially even domestic courts may have their say on the issue though differently from international courts and tribunals their decisions cannot be considered as acts (even incidental) of judicial review since if they decide contrary to what the Council has decided their decisions may entail state responsibility under international law though in the eyes of many their judgments may be legitimate.

Concluding this part of my presentation I would submit that as legality is an important part of the concept of legitimacy, acts that require or that in the eyes of most states require Security Council authorisation and which don't have it are not seen as legitimate by those states. But as legitimacy of acts is often a matter of degree (from fully legitimate through more legitimate and less legitimate to completely illegitimate) and not the matter of application of what Tom Franck has called „idiot" norms that don't allow even two different interpretations, then there is, if not always then at least often, a room for disagreement over legitimacy of certain acts. But this is not only characteristic of the concept of legitimacy of acts of states and international bodies but also of international law, though to a much lesser extent (what is lawful in the eyes of some may be illegal in the eyes of another). Where there is no doubt is that the Security Council performs the role of the main legitimising body on matters of international peace and security though not all of its decisions have the same legitimising quality. At the same time, the lack of

Security Council's imprimatur on issues of international peace and security may qualify acts of individual states of international bodies both illegal and illegitimate.

Legislator.

Now about the role of the Security Council as a legislator. Certainly, there is no such role provided for the Security Council in the UN Charter. The Council is the main (the principal) executive organ of the Organisation. As Judge Fitzmaurice put it in his dissenting opinion to the ICJ's Advisory Opinion on Namibia: 'It was to keep the peace and not to change the world order that the Security Council was set up' (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Dissenting Opinion of Judge Sir Gerald Fitzmaurice, [1971] ICJ Rep 291, at 294, para. 115).

However, more recently it has been argued that as traditional law-making mechanisms at the international level are ill-suited to produce general law in a short time span when an emergency situation, like, the „war on terror" requires. When a prompt normative response, and not only executive action, is required, the system does not readily possess adequate instruments to react. Therefore the Security Council has to step in to fill the cap.

There are at least two resolutions of the UN Security Council [1373 (2001) and 1540(2004)] imposing general legal obligations, including the obligation to adopt certain domestic legal norms, for all the member States of the UN.

Following the 9/11 attacks against the United States, the SC passed Resolution 1373, which imposed on states a number of obligations of a general character, mostly concerning the prevention and punishment of the financing of terrorist activities in addition to other obligations aiming at the prevention and repression of terrorist acts. It may be worth recalling the obligations imposed by the SC on UN Member States by way of Res. 1373:

'The Security Council . . . Acting under Chapter VII of the Charter of the United Nations, 1. Decides that all States shall: (a) Prevent and suppress the financing of terrorist acts; (b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be

used, or in the knowledge that they are to be used, in order to carry out terrorist acts; (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and

entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities; (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such per- sons and of persons and entities acting on behalf of or at the direction of such persons; 2. Decides also that all States shall: (a) Refrain from providing any form of support, active or passive, to entities or per- sons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists; (b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information; (c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens; (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens; (e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts; (f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or sup- port of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings; (g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on

issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents'.

1372 has not remained an episodic instance since the Security Council later enacted Resolution 1540, concerning the proliferation of weapons of mass destruction, which presents similar features. Then there is Resolution 1566 also adopted under Chapter VII and referring back to both SCR 1372 and 1540, where the Security Council '[r]ecalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature' (SC Res. 1566 (2004), para. 3).

When the SC created the ICTY and the ICTR it also legislated. The Statutes of these two ad hoc judicial bodies are legislative acts; it is so not only or not so much, if at all, that there may have been legislative elements in the definition of certain crimes in the Statutes adopted by the Council. The very acts of the creation of courts and tribunals are legislative acts. Article 14 (1) of the ICCPR provides that „everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". Therefore, the Statutes of the ICTY and ICTR have to be seen as law, as part of international law.

Georges Abi-Saab, who is against granting legislative functions to the UN principal executive body believes that resolutions such as 1373 of 28 September 2001 „come nearest to a declaration of an „international state of emergency" that establishes a temporary regime under Chapter VII (Wolfrum, p., 127) and therefore cannot be considered as legislative acts. However, whenever we are in a Chapter VII situation we are in the domain of an „international state of emergency" and in that respect there is no difference between the adoption of executive or normative resolutions by the Council. I think that in cases of Article 39 situations legitimacy of Council's adoption of normative resolutions depends on the reaction of member-states. If they actively support such

resolutions or acquiesce in them, then it is not for law professors to say that it is illegal that the Council had acted *ultra virus*. Of course, they can draw attention to dangers that may follow from such practice; not only passive but also hyperactive Security Council with wide discretionary powers may be dangerous although I believe that after the 1990s declarations of threats to international peace and security stemming from various sources, some of which were followed by non-sanctioned by the Security Council uses if military force (Northern Iraq and Kosovo), the Council may be much more cautious.

One more thought. Differently from domestic law, in international law there is no clear-cut distinction between normative acts that create law (i.e. legislation *stricto sensu* signifies the enactment of prospective, general and abstract rules of conduct that bind all the subjects in the unlimited future, whenever the contingencies they provide for obtain; i.e. enacting rules of general international law' (Georges Abi-Saab). Therefore resolutions of the SC of the type of "executive action" are not that different, if at all different from, say, treaty norms that address themselves to a limited number of subjects of international law (the parties to a treaty) and may be of limited term as well. Even „executive" resolutions of the Security Council are not that different from some treaty norms. In international law with its variety of sources there is no clear-cut distinction between normative and executive acts, between law and contracts, between multilateral and unilateral acts. All of them may create legal obligations for states as well as for non-state entities and individuals.

And the last thought. Due to the acute economic and financial crisis and the changes in the balance of power it may well be that other more informal structures, like G20, will play a part in the decision-making process of the Security Council. G20 may also play a role of a legitimator of decisions of the SC. So far as the EU will not have a more centralised and cohesive foreign and security policy, and in my opinion it will not in the nearest future, the position of Europe in the SC and the world will be relatively weak. One of the European permanent members of the SC is not fully involved in Europe while the strongest EU member-state is not a permanent member. At the same time, I don't see any perspectives of having one permanent seat for the EU. Neither the UK nor France would give up their privileged positions in the Security Council that helps them to box above their weight-category.

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The EU Common Foreign and Security Policy in the UN Security Council: *Between Representation and Coordination*[*]

DANIELE MARCHESI[**]

Abstract. In Europe, the discussion on the reform of the UN has run parallel to the institutionalization of the Common Foreign and Security Policy (CFSP). Since the Treaty of Maastricht, the CFSP began raising expectations about the possible role of the European Union (EU) in the UN, ranging from a common representation to a more effective coordination of the EU Member States on the Security Council. The purpose of this essay is to explore the link between the reform of the United Nations Security Council (UNSC) and the development of the CFSP of the EU. To what extent and how does the UN institutional structure have an impact on European integration in the field of foreign and security policy? To answer this question, the essay follows the evolution of European representation and coordination on the Security Council by using insights from realism, historical, and sociological institutionalism. Finally, it looks at how future reforms of the UNSC would affect the CFSP. The essay argues that the UN reform debate has influenced the development of EU foreign policy at the UN. Opposing strategies as well as institutional and sociological logics all resulted in an ambiguous process of incremental institutionalization of internal coordination. A reform of the UNSC would open new institutional opportunities and paths for European integration in foreign policy, either strengthening the current trend towards a directoire or encouraging new patterns of information sharing, coordination, and representation.

I Introduction

The discussion on the reform of the United Nations Security Council (UNSC), which began after the end of the Cold War, has run parallel to the institutionalization of European foreign policy, following the Treaty of Maastricht. The building of Common Foreign and Security Policy (CFSP) and UN reform became somewhat intertwined and related issues as EU integrationists started to see in the long-term perspective of a single seat for Europe at the UN the culmination of the process of

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integration in foreign policy.[1] In Europe, the division over the UN is partly framed by the opposing views on what European foreign policy is and should become: a European common and integrated policy or a more flexible and loose intergovernmental cooperation, perhaps under the leadership of a few key Member States. Outside Europe, the pressure to reform the UN is accentuated by the expectations created by the rise of new players, including the EU, and their role in global governance, which is not reflected in the structure of the UNSC.[2] Yet, years of talks on reforming the Security Council, working groups, and, since 2009, negotiations[3] have led to little progress. Many observers and protagonists have grown tired of this issue and sceptical about the outcome.

This essay claims that the debate, however unfruitful, remains very interesting for the EU and has important repercussions on how Europe works in the UN. The question is: how and to what extent does the issue of UN reform influence European integration in the field of foreign and security policy?

When looking at this problem, it is tempting to adopt an exclusively realist approach, focusing on Member States preferences.[4] On the one hand, this approach has helped elucidating in detail the interests of Member States in the problem of reforming the UNSC. On the other hand, it has shown that these preferences have been particularly stable (at least since the entry into force of the Treaty on European Union (TEU) in 1993) and that there is little evidence of convergence or of socialization. There is no EU common position, and this issue is not even mentioned in Brussels.

Realist/liberal intergovernmental analysis has also concentrated on the big players,[5] the United Kingdom, France, Germany, and Italy. Indeed, the interplay of this quartet on UNSC reform offers plenty of material for classical rationalist interpretation. Germany, following reunification, has started claiming an equal status in the UNSC as the other permanent members. Italy has immediately opposed this eventuality

[1] See, e.g., Italian Foreign Minister Gianni De Michelis, *Financial Times*, 7 Sep. 1990, in P. Tsakaloyannis & D. Bourantonis, 'The EU's CFSP and the Reform of the Security Council', *European Foreign Affairs Review* 2, no. 2 (1997): 198.

[2] C. Hill, 'The Capability-Expectations Gap, or Conceptualising Europe's International Role', *Journal of Common Market Studies* 31, no. 3 (1993): 305–328. See also, on the rise of regional integration schemes and their growing role in global governance, K. Graham & T. Felicio, *Regional Security and Global Governance: A Study of Interaction between Regional Agencies and the UN Security Council – With a Proposal for a Regional-Global Security Mechanism* (Brussels: Vub Press, 2006).

[3] The UN General Assembly decided to launch intergovernmental negotiations on this matter on 15 Sep. 2008 (Decision 62/557). The negotiations began on 19 Feb. 2009 under the presidency of Mr Zahir Tanin, Permanent representative of Afghanistan to the UN.

[4] K. Laatikainen & K. Smith, 'Introduction', in *The European Union at the United Nations, Intersecting Multilateralisms*, eds K. Laatikainen & K. Smith (New York: Palgrave MacMillan, 2006).

[5] See F. Schimmelfennig, 'Liberal Intergovernmentalism', in *European Integration Theory*, eds A. Wiener & T. Dietz (Oxford: Oxford University Press, 2003), 75–94; F. Andreatta, 'Theory and the European Union's International Relations', in *International Relations and the European Union*, eds C. Hill & M. Smith (Oxford: Oxford University Press, 2005), 18–38.

fearing a loss of status. The United Kingdom and, particularly, France have slowly but surely realized that a permanent seat to Germany in its national capacity would legitimize their own permanent seats, which are increasingly seen by the wider UN membership as relics of their colonial past. For this reason, they have progressively supported Germany in order to diminish the pressure inside and outside Europe to relinquish their own seats in favour of a common European representation.[6]

Yet, a purely realist analysis offers an insufficient answer to this essay's question and can be enriched by other approaches. The concept of 'path dependence',[7] for instance, explains how institutions have a long-term, pervasive impact on state behaviour and how initial institutional choices can restrict subsequent evolution. In this view, a series of factors can concur to produce 'critical junctures' and 'institutional opportunities' that structure and influence future policy making. In our case, these institutional 'milestones moments' can be identified both at the EU and UN level: the UN Charter and the establishment of France and the United Kingdom as permanent members; the Maastricht Treaty and the insertion of Article 19 TEU; the following EU Treaties; and hypothetically, the future reformed UNSC. Indeed, the main hypothesis of this essay is that a reform at the UN would represent a 'critical juncture' for the future development of CFSP.

This essay will try to show how the UNSC reform debate has contributed to the shaping of the EU's profile at the UN: the way the EU shares information, coordinates, and is represented in New York and in Brussels on issues under the scope of the UNSC. It will then be possible to provide a number of explanations from realist, institutional, and sociological perspectives of why the current setup has emerged in the years.

This research draws on the UN archive of debates on the UNSC since 1993, on secondary literature,[8] as well as on direct observation of coordination activities and on a series of interviews carried out in New York and Brussels between 2004 and 2008. The next section explains the evolution of the institutional complex of the EU in the UNSC in terms of communication, coordination, and representation

[6] For an historical overview of this problem, see Tsakaloyannis & Bourantonis, n. 1 above.

[7] P. Pierson, 'Increasing Returns, Path Dependence, and the Study of Politics', *American Political Science Review* 94, no. 2 (2000): 251–267; J.G. March & J.P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics* (New York: The Free Press, 1989).

[8] For studies on EU coordination in the Security Council, see M. Farrell, 'EU Representation and Coordination within the United Nations', in eds Laatikainen & Smith, n. 4 above, 27–46; E. Drieskens, D. Marchesi & B. Kerremans, 'In Search of a European Dimension in the UN Security Council', *The International Spectator* 42, no. 3 (2007): 421–430; H. Young, 'How to Unravel the Spider's Web: EU Coordination at the United Nations', Presented to the 'EU Political Multilateralism and Interaction with the UN', Garnet PhD School, United Nations University (Bruges, 10–14 Dec. 2006) using public policy and network analysis; J. Verbeke, 'EU-Coordination on UN Security Council Matters', in *The United Nations and the European Union: An Ever Stronger Partnership*, eds J. Wouters, F. Hoffmeister & T. Ruys (The Hague: T.M.C. Asser Press, 2006), 49–60; E. Drieskens, 'EU Actorness in the UN Security Council: A Conceptual and Theoretical Framework', Presented to the 'EU Political Multilateralism and Interaction with the UN', Garnet PhD School, United Nations University (Bruges, 10–14 Dec. 2006), focusing on principal-agent theory.

and looks at how it has been framed by the different strategies towards the UNSC reform. The third section attempts to explain what are the main factors of institutional stability and instability in this area; some of the novelties introduced by the Lisbon Treaty are also discussed. The last section concludes by looking at the potential impact of a reform of the UNSC on the development of CFSP.

II The EU in the UNSC

1. Describing the Context

As is the general rule for the UN, only states can be member of the UNSC. This is the first formal impediment to any EU and CFSP presence and actorness. A second challenge relates to the substance of what is discussed in the UNSC: short-term crisis management and the use of force. As a 'post-modern' supranational-intergovernmental actor, the EU has a structural difficulty in coordinating effectively in this domain.

However, beyond these objective obstacles, the EU has a strong presence in the Security Council, mainly through its Member States.[9] In effect, looking at the absolute number of members, the EU is in a very favourable position of overrepresentation: two permanent members and, at any given time, up to three elected members (coming from three different electoral groups).[10] However, while this situation feeds the resentment and adds to the pressure to reform the UNSC membership, it often does not translate into a recognizable and effective EU activity within this body. Consequently, there is a demand to enhance coordination inside and outside the UNSC and to then represent CFSP positions in an effective way on the UN stage. This has been done with considerable success in the UN General Assembly and other UN bodies,[11] but in the UNSC, developments have been slow and painful, if any.

EU cooperation on UNSC matters occurs at least at three different levels: in the capitals, in Brussels, and in New York. The national policy is formulated mostly in the capitals, and this is particularly true for all matters related to the reform of the UN body, which are part of the long-term strategic concept of each Member State. It is generally recognized that 'Europeanization' and 'Brusselization' have been rather limited so far.[12] In Brussels, UN issues are debated in various council working groups and, in particular, in the Working Party on the United Nations (CONUN) (once a month) and in the Political and Security Committee (PSC).

[9] EU presence in the Security Council has varied since 1993 from 3 to 5 (the United Kingdom and France are constantly serving).

[10] Up to two from the Western European and Others Group (WEOG), one from the Eastern European Group (EES). These could even add up to four, if only theoretically, counting Cyprus from the Asian group.

[11] See the considerable body of research on EU voting cohesion in the UNGA, e.g., P. Luif, 'EU Cohesion in the UN General Assembly', EU-ISS, *Occasional Papers* 49 (December 2003); and M. Rasch, *The European Union at the United Nations*, PhD Thesis, University of Essex, 2006.

[12] Rasch, n. 11 above.

CONUN (also responsible for UN reform matters), however, is often only an information session where issues are debated in general terms following the agenda predetermined by the EU Presidency.[13] Every six months, the group meets at UN directors' level and attempts to provide some steering on UN policy. Nevertheless, Member States rely on their delegations in New York to do most of the work, including feeding them with information, and Brussels is bypassed. Equally, for what concerns the PSC, the attempt to guide EU action in the Security Council is hampered by distance and by the very fact that the Member States' ambassadors in New York are often recalcitrant to receive steering from their junior colleagues in the PSC. Another key organizational problem is having an alignment between these various meetings, both in terms of timing and agenda.

New York remains critical both for the day-to-day follow up of the negotiations and for the response to crises. And in the New York scene, the primary audience is the wider UN membership, not the European Union (EU), especially on matters on the UNSC agenda. Although a certain degree of socialization develops among European diplomats,[14] this is hardly enough to make them forget their job description as representatives of their national interest and prestige on the world stage.

There is therefore plenty of ground to the claim that the prospects for a 'common EU policy' in the Security Council are 'bleak'.[15] Nevertheless, an increasing cooperative effort is displayed on the part of the EU Member States, and a number of provisions and practices have been institutionalized, which overall tend to enhance the EU presence in the UNSC. This effort has not been constant but has been influenced by the debate on the reform of the Security Council.

2. Between Coordination and Representation

The pivotal element of EU cooperation at the United Nations is Article 19 of the Treaty on the EU.[16] This was the final outcome of the intergovernmental bargaining

[13] Interview with Commission official (Brussels, 16 Jan. 2008).

[14] See the work of Helen Young on network analysis, n. 8 above.

[15] Rasch, n. 11 above, 316; for a similarly negative view on EU coordination in the UNSC, see A. Degrand-Guillaud, 'Actors and Mechanisms of EU Coordination at the UN', *European Foreign Affairs Review* 14, no. 3 (2009): 405–430, at 406.

[16] '1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the common positions in such fora.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions.

2. Without prejudice to paragraph 1 and Article 14(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.'

leading to the Maastricht Treaty,[17] and, at the same time, it codified a practice that had already slowly developed in New York within the European Political Cooperation. As it is clear from the second part of the provision, the TEU established three types of obligations for the Member States serving in the UNSC: information (to the wider EU membership), concertation (among the states serving in the UNSC), and the 'defence of the positions and interests of the Union'. Formally then, the article does not mention coordination nor representation, although there is a general duty to coordinate within international organizations.

For what concerns information sharing and coordination, Article 19 TEU was formalized only in the year 2000, in a moment in which the debate on the UNSC was at a pause. Under the French Presidency, Spain proposed a paper on a weekly 'briefing' on UNSC matters. The practice was later standardized by the Council in 2002.[18] These meetings are held on Thursdays afternoon in the premises of the Commission delegation, where a Liaison Office of the Council Secretariat has also been installed since 1995 to support the general EU coordination effort, across the UN bodies. Further meetings are held weekly at Heads of Mission level. The states that want to maintain a higher profile in the UN but are not permanent members are those that are keener towards developing this practice. Their idea is to transform the information sharing into a real *forward-looking* preparation to the UNSC meetings. This would allow them to participate in the formulation of the policy of the UNSC, even when they are excluded from it.[19]

When the EU does have a common position, following the negotiations among the capitals, in Brussels and in New York, this can be 'represented' in the UNSC to increase visibility and identity. Notwithstanding the initial impediment of the lack of statehood and legal personality, today EU 'representatives'(the Presidency, much more rarely, the High Representative for CFSP or, on issues of competence, a Commissioner) are often invited to put forward a common position, when there is an EU consensus on a particular issue debated in the UNSC. When this happens, the EU members seating in the UNSC give their statement after expressing their alignment to the EU position, which therefore reverberates many times in the discussion (a similar situation occurs in the General Assembly). The EU, however, is invited only to the public meetings of the UNSC, when the states are just formalizing their positions. The EU Presidency is kept out of the most important stages of negotiation and deliberation, which takes place during the informal consultations of the Security Council, the '*sancta sanctorum*' of national sovereignty.[20]

[17] S. Nuttall, *European Foreign Policy* (Oxford: Oxford University Press, 2000).

[18] See the internal working paper adopted by the Council of Minister on the implementation of Art. 19 TEU, 16 Jul. 2002, SN 3133/02.

[19] Even if limited mostly to an information exercise, the briefings are absolutely advantageous for the EU Member States providing access to first-hand information that other UN Members States obtain with considerable difficulty. Interview with EU official (New York, 2006).

[20] F.P. Fulci, 'L'Unione Europea alle Nazioni Unite', *Rivista di studi politici internazionali* 269 (Gennaio-Marzo 2001): 32–41, at 38.

Having described the complex institutional setup of EU cooperation and representation on UNSC matters, it is possible to analyse its relationship with the debate on the UNSC reform. This relationship emerges more clearly when looking at the variation in the Member States' positions towards improving coordination and representation and, particularly, at the position of Germany, which, with its bid to become a permanent member of the UNSC, is the crucial player.[21]

3. *UNSC Coordination and the Ghost of UNSC Reform*

It took almost ten years to put in practice Article 19 as was provided in the Maastricht treaty. Following its reunification, Germany became more confident of its chances and rights to obtain a permanent seat, and France and the United Kingdom quickly undertook to support it. Then, after the first diplomatic confrontation of Italy and Germany on the issue of UNSC reform ended with a procedural resolution of the General Assembly in 1998, making it much harder to obtain a 'quick fix',[22] the debate on reform was internalized in the EU. The events that led to the North Atlantic Treaty Organization (NATO) intervention in Kosovo, with the bypassing of the UNSC, increased the determination of some Member States to coordinate better their action in the UNSC and to raise the profile of the EU. However, it was also the stalemate on the UNSC reform that induced a change of strategy in Germany. The German government under Kohl was divided and criticized at home for having pushed too much for a national seat. Therefore, at least until the end of 2001, there was an attempt to Europeanize the approach to UN reform.[23] This had a dual consequence on the German strategy: externally, Germany proposed to devote its possible permanent seat to the European interest; internally, it supported the idea of a 'European embryonic seat' or 'European Laboratory'.[24] This approach continued during the first phase of the left to centre Schroeder government (in particular, with the Foreign Minister Fischer), which openly supported the idea of an EU seat in the UNSC, as a long-term goal.[25]

[21] For a similar view and an analysis of the evolution of the German position, see U. Roos, U. Franke & G. Hellmann, 'Beyond the Deadlock: How Europe Can Contribute to UN Reform', *The International Spectator* 43, no. 1 (2008): 43–55.

[22] United Nations General Assembly Resolution 53/30, 23 (New York: November 1998).

[23] See, e.g., former German Chancellor Helmut Schmidt, quoted in German UN Aspirations Backed by Europe, *Deutsche Welle*, 24 Sep. 2004. Available at <http://dw-world.de>, 22 Mar. 2005.

[24] For a brief discussion and critique of this proposal, see S. Blavoukos & D. Bourantonis, 'EU Representation in the UN Security Council: Bridging the "Capabilities-Expectations" Gap?', *Essex Papers in Politics and Government* 157 (May 2002); Fulci, see n. 20 above, at 41.

[25] J. Fischer, *Die Zeit*, 12 Nov. 1998. Available at <www.globalpolicy.org/security/docs/fischer.htm> and N-TV Television 'Interview with Federal Foreign Minister Fischer on Current Political Issues', 28 Jul. 2004, where he is quoted: 'The decisive question is whether or not there will be a European seat. I am very much in favour of this. However, we cannot realistically expect this to be achieved quickly ...' <www.auswaertiges-amt.de/diplo/en/Infoservice/Presse/Interview/Archiv/2004/040728-FischerNTV.html > 5 May 2008).

In this phase and for about two years, the diplomatic services of Germany, Spain, and Italy worked intensively between the capitals and New York in preparation for the German and Spanish elective membership to the UNSC for 2002-2004, when this 'European laboratory' could have been experimented. This consisted in having one of the European non-permanent members 'hosting' a delegate from the EU Presidency or from the Council Secretariat while seating in the UNSC.[26] The idea varied from that of simply assisting to the UNSC meetings and collecting information to that, eventually, of the national delegate letting the EU delegate intervene in the debate. Arguably, this project would not necessitate any amendment of the Charter and would grant the EU greater visibility and access. However, the United Kingdom and France oppose the presence of a representative of the EU in the UNSC by default.

Eventually, as the elective term of Germany and Spain in the UNSC was starting during the worst phase of the Iraq crisis between 2002 and 2003, during which the EU was irremediably divided, the laboratory proposal was abandoned. Rather, the German government launched its second bid for a permanent seat, in the context of the momentous run-up to the 2005 World Summit in New York, which had to agree on a far-reaching reform of the UN system, under the impulse of Secretary General Kofi Annan. Subsequently, other more conservative proposals for EU 'concertation' in the UNSC were explored by Italy and Belgium during their term as rotating members.[27] These included increasing the coordination within the group of EU members seating in the UNSC, in the capitals, in Brussels, and in New York. The EU Presidency was also invited in these meetings and serves as a link with the rest of the membership. Italy also pledged to consistently represent European positions during its tenure. Clearly, though, these efforts are not fully institutionalized and can vary depending on the EU members actually elected in the UNSC and on whether they have the capacity and interest to coordinate with the EU. Furthermore, one may expect a general preference towards favouring a rollback in these practices on the part of United Kingdom and France.[28]

III Constraints and Opportunities: Three Perspectives

1. Explaining Stability

There are three main factors that limit the cumulative trend of EU coordination on UNSC matters and that make this a gradual and ambiguous process with an uncertain outcome. First, from a realist point of view, there is the resistance of France and the United Kingdom to any attempt to interfere with their exclusive

[26] *Ibid.*

[27] See Drieskens, Marchesi & Kerremans, n. 8 above.

[28] A. Missiroli & S. Biscop, 'The Contribution of Italy and the European Union to the Collective Security System of the United Nations', IAI Conference (Rome 30 Nov. 2007).

prerogatives as permanent members.[29] Traditionally, these two have promoted proposals that would create incentives for Germany to separate itself from the rest of the EU membership and to orient its strategy towards the directoire. Their support for a permanent seat for Germany is the most notorious example of this strategy. Another example is the offer by France to include a German diplomat in Paris' delegation to the UN.[30]

The two European permanent members tend to prioritize 'external effectiveness' (i.e., the capacity of the EU to actually promote successfully this position in the UN), and in their view, it is not desirable to maintain a too cohesive profile among the European members. This would be interpreted as a sort of 'blockism', leading the other members of the UNSC to artificially establish similar practices among themselves, eventually paralyzing the body.[31] Similarly, too much European caucusing is damaging in their view. Common positions require a time-consuming effort of EU internal bargaining and, once specified, translate into a monolithic and ineffective negotiation profile, often based on the lowest common denominator.

Second, from an institutionalist perspective, the French and British 'veto player' behaviour is grounded on an institutional context or 'complex', which locked them into a privileged position to which they are unlikely to graciously renounce.[32] Their position as permanent members is historically and legally established in the UN Charter. This situation is further safeguarded by the letter of the TEU provision that at the very last sentence of Article 19 prioritizes their responsibilities towards the UN as permanent members, over their membership of the EU.[33] This corroborates the institutionalist argument that coexisting institutions are often mutually reinforcing and can enhance the overall stability of a system.

Third, from a sociological perspective, the practices and norms surrounding Security Council membership hinder the willingness of Member States to push for change. As a Belgian Permanent Representative put it, when the EU member enters the Security Council, it 'enters into another world with its own rules

[29] C. Hill, 'The European Powers in the Security Council: Differing Interests, Differing Arenas', in *The European Union at the United Nations, Intersecting Multilateralisms*, eds K. Laatikainen & K. Smith (New York: Palgrave MacMillan, 2006).

[30] H. Williamson, 'Germany to Fight for Seat on Security Council', *Financial Times*, 9 Nov. 2004. Apparently the pact was proposed by France already in 2003 as a fallback position in case of a failure to reform the UN. This would have meant the 'sharing' of the permanent seat between the two countries forming the 'Europe motor'. Germany refused in order to avoid diluting the pressure on UNSC reform. A similar arrangement was actually put in place by Brazil, which in 2004–2005 hosted an Argentinean diplomat in its delegation to the UNSC.

[31] For this view, see R. Gowan & F. Brantner, 'A Global Force for Human Rights? An Audit of European Power at the UN', European Council on Foreign Relations, *Policy Paper* (September 2008).

[32] G. Tsebelis, *Veto Players: How Political Institutions Work* (Princeton: Princeton University Press, 2002).

[33] Tsakaloyannis and Bourantonis argue that this sentence was introduced to 'foreclose' the debate on EU representation, see n. 1 above, 200.

of procedure, tacit understandings, negotiation culture and political dynamics'.[34] Rigidly defending EU common positions would be 'inappropriate'[35] and could be counterproductive. Even the most integrationist Member States are restrained by what is 'appropriate' in the UNSC, and once they actually enter the UNSC, they have to act in symphony with the permanent members, if they do not want to be marginalized. Generally, EU members serving temporarily in the UNSC have to maintain a difficult equilibrium during their term, between being 'pro-EU' and the temptation of just enjoying the ride and taking full advantage of their temporary privileges as UNSC members.[36]

The same explanation is valid for the resolutely low profile maintained by the EU supranational actors on these issues, beyond the rare declarations of support for an EU seat in the long term.[37] Finally, from this perspective, the absence of an open debate on UNSC reform among EU members in the Europeanized context of Brussels has hampered the development of a common analysis and discourse on these issues. EU Member States have, thus, been able to frame conflicting strategies towards coordination and representation in New York (including towards the reform of the UNSC), within the same pro-European rhetoric. And, as performance in the area of foreign policy is notoriously difficult to assess,[38] any argument for reform based on functional effectiveness or efficiency is a no-flier.

2. Explaining Change

Notwithstanding these constraints, rational, institutional, and sociological logics are also conducive to a certain degree of change, in the form of limited institutionalization.[39] As is typical of the EU system, federalist and intergovernmental strategies coexist within a complex institutional configuration, where the overall EU presence is increasing incrementally while, at the same time, Member States

[34] Verbeke, see n. 8 above, 54.

[35] For the concept of 'appropriateness', see B. Rosamond, 'New Theories of European Integration', in *European Union Politics*, ed. M. Cini (Oxford: Oxford University Press, 2003), 113–117.

[36] Drieskens, Marchesi & Kerremans, see n. 8 above.

[37] Resolution of the European Parliament on the Reform of the UN, PE 357.491 (16 Jun. 2005) (Rapporteur: Armin Laschet). Also the Commissioner for External Relations Benita Ferrero Waldner and High Representative for the CFSP Javier Solana have expressed similar opinions: see Ferrero-Waldner, 'Effective Multilateralism: Building for a Better Tomorrow', Speech at the United Nations Association of Spain (Barcelona, 14 Apr. 2009).

[38] K.E. Jorgensen, 'The European Union's Performance in World Politics: How Should We Measure Success?', in *Paradoxes of European Foreign Policy*, ed. J. Zielonka (The Hague/Boston: Kluwer Law International, 1998), at Ch. VI.

[39] Or even of 'fusion'. For this concept, W. Wessels, 'An Even Closer Fusion? A Dynamic Macropolitical View of the Integration Process', *Journal of Common Market Studies* 35, no. 2 (1997): 267–299.

maintain and actually enhance their control.[40] This line of argument also explains how the limited institutionalization does not produce a simplification of the EU policy processes. On the contrary, also on UNSC matters, there is an increasing complexity and differentiation with the creation of new and overlapping instances and practices of information-sharing and coordination (meetings, committees, focal points in New York, Brussels, and the capitals), at various levels and with varying memberships.

One explanation for this progress comes from the general trend towards 'Brusselization' of European foreign policy and the strengthening of the PSC, which has an impact on UN affairs. Within the limits noted above, it is becoming increasingly appropriate for EU Member States to coordinate in the security field. This trend is reinforced by the steps made on the European Security and Defence Policy (ESDP) front, with more and more joint military operations carried out by the EU under UN mandate or in cooperation with the UN. Contrary to what was noted before, the coexistence and increasing interplay of the EU and the UN are not always promoting the stability of the current institutional setup. It also pressures the EU to acquire an ever more cohesive profile and to speak consistently with a single voice in the UNSC. Inside the EU, it provides the context for persisting tensions and expectations for gradual improvement or even radical transformation. Progressively, it becomes harder for the EU to maintain its image as a champion of effective multilateralism and of a stronger UN, without feeding into the global expectations for it to present a common solution to the puzzle of UNSC reform.

The crucial explanation, though, is that the deadlock at the UN institutional level (no UN reform) has produced incentives for all actors to increase coordination and institutionalization. The acceptance by France and the United Kingdom of meetings and briefings is explained as an attempt to diffuse conflict and recrimination. By fostering what they regard as mere information sharing, they seek to improve their legitimacy and the sense of ownership and participation while diluting the pressure to reform the UN against the status quo. On the contrary, the varying effort of the other EU Member States to coordinate is motivated by their will to gain permanent and institutionalized access to the UNSC through the channel of the EU and CFSP. For this group of states, coordination can translate to more integration. This was clearly the case following 1998, when Germany, frustrated in its bid for a permanent seat, became more interested in promoting the EU presence in the UNSC. Overall, the opposing strategies of EU Member States towards the UNSC reform have led to an ambiguous and indefinite outcome.

As it is implemented, the Lisbon Treaty[41] will build on this complexity, without necessarily tilting the balance towards either a supranational or intergovernmental

[40] See the arguments of A. Milward, *The European Rescue of the Nation-State* (London: Routledge, 2000).

[41] Treaty Amending the Treaty on European Union and the Treaty Establishing the European Community Lisbon Treaty (hereinafter 'Lisbon Treaty'), formally signed in Lisbon on 13 Dec. 2007.

CFSP.[42] There is some evidence that the various innovations introduced in the external relations domain establish further incremental improvements in the institutional context of EU presence in the Security Council.[43] On the one hand, the legal personality undercuts a (small) part of the arguments used against the EU seat.[44] On the other hand, the new figure of the High Representative for Foreign Affairs and Security Policy and Vice President of the Commission (HR/VP) would be equipped with the necessary status and tools (e.g., the External Action Service) to increase EU's visibility and coherence in the current configuration and in the future one, if any UN reform is agreed upon. Finally, the problems of inconsistency in foreign policy, linked to the rotating EU presidency, should be limited by the novel figure of the permanent president of the European Council and the HR/VP (granted that a good cooperation and division of labour can be established between these two).

Overall though, notwithstanding the worries of some Member States,[45] the ambiguity between intergovernmental and supranational tensions in the EU's institutional structure will remain. In fact, the new Article 34 of the TEU would slightly reformulate Article 19 but is unlikely to change the fundamental characteristics of European coordination in the Security Council (e.g., no delegation from the EU to the members serving in the UNSC, priority of responsibilities towards UN over EU membership, substantial control by the UNSC members over the amount of information provided to the EU and over the presence of the HR/VP in the UNSC).[46]

IV UNSC Reform and Implications for the EU

The stalemate in the reform of the Security Council for more than fifteen years, notwithstanding the general recognition of the need to reform, reveals the huge importance that is attached to this issue. Nobody is willing to give in, and all the attempts to attenuate the fear of the irreversibility of any reform are not working.

[42] W. Wessels, 'Keynote Article: The Constitutional Treaty – Three Readings from a Fusion Perspective', *Journal of Common Market Studies* 43, no. 1 (2005): 11–36.

[43] L. van Langenhove & D. Marchesi, 'The Lisbon Treaty and the Emergence of Third Generation Regional Integration', *European Journal of Law Reform* X, no. 4 (2008), 477–496.

[44] New Art. 47 TEU.

[45] See the Declarations 13 and 14 annexed to the final act of the intergovernmental conference adopting the Treaty of Lisbon, promoted by the United Kingdom to limit the potential of the new provisions particularly at the UN.

[46] New Art. 34 TEU: 'Member States which are also members of the United Nations Security Council will concert and keep the other Member States and the High Representative fully informed. Member States which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.'

The idea,[47] for instance, to have a temporary reform (or 'intermediary model') with a compulsory review after up to fifteen years has gained acceptance, for instance, in Germany, but the spectrum of positions is still very broad. In the multitude of proposals advanced within the Open-Ended Working Group[48] and discussed, since 2009, by the intergovernmental negotiations in the General Assembly,[49] the main issue of contention remains the problem membership expansion, namely, should new permanent members be established or not?

In Europe, finding a consensus has been so far impossible. Yet, the success of a particular model of UNSC reform could represent a 'critical juncture' for the future development of CFSP,[50] unlocking some new institutional opportunities while closing others. This final section will advance some educated guesses on what would be the impact of a possible reform on European foreign policy. There are two possible scenarios.

1. Scenario 1: Directoire in CFSP

The first scenario hypothesizes an enlarged UNSC with new permanent members including Germany, as proposed, for example, by the G4 group (Germany, Japan, India, and Brazil).[51]

Germany as been already associated to the UNSC permanent members through the E3 (Germany, France, and the United Kingdom) ad hoc structure, which emerged in 2003 to manage the proliferation threat coming from Teheran.[52] The High Representative Secretary General (HR/SG) Solana was associated to this group in 2004 in order to maintain the link with the EU and the other Member States (E3/EU). This remains a flexible, non-institutionalized arrangement. Italy, which was excluded, notwithstanding its strong economic stake in Iran and the fact that it was holding the EU Presidency when the initiative was launched, has progressively gained privileged access. The HR/SG has acted as a chain of transmission with the rest of the EU but was also often charged with representing the whole G6 (or Permanent 5 plus Germany) contact group – including the United

[47] See, United Nations, 'Report of the Facilitators to the President of the General Assembly on the Consultations regarding The Question of Equitable Representation and Increase in the Membership of the Security Council and Other Matters Related to the Security Council', (New York, 19 Apr. 2007).

[48] Established by United Nations General Assembly Resolution 48/26 of 3 Dec. 1993.

[49] For constant updates on the Member States position on UNSC reform: <www.reformtheUN.org> (15 Jul. 2009).

[50] For similar conclusion from a realist point of view, see C. Hill, 'The European Dimension of the UN Security Council Membership Debate', *International Spectator* XL, no. 4 (2005).

[51] 'G-4 proposal', available at, ReformtheUN.org, <www.reformtheun.org/index.php/issues/1737?theme=alt4>, 15 Jul. 2009.

[52] S. Everts, 'Engaging Iran: A Test Case for EU Foreign Policy', Center for European Reform, *Working Paper* (March 2005).

States, China, and Russia – towards Iran. This is clearly an important recognition. Similar structures with different memberships have been used in various areas of engagement (e.g., the Balkans, Africa, Eastern Europe, and Caucasus) with different groups of states forming according to interests, capacities, and experience.[53]

With Germany as a permanent member, this format would become institutionalized and stable on all matters in the competence of the UNSC. The influence the United Kingdom, France, and Germany, which have traditionally been at the centre of European foreign policy (the 'Big three'), would grow in Europe and on the global scene. The impact of this reform on the 'external effectiveness' of the EU is not clear. This depends on the general context of the Security Council (including the evolution of the use of veto), which is becoming less of a 'benign environment' for the Western world.[54] For EU internal cohesiveness, though, the problem with this approach is twofold.

First, it is static in nature. This is inherent to the concept of creating a new permanent member.[55] There is an intrinsic lack of accountability, which could lead to a drift of German foreign policy towards constantly privileging national concerns. This is to be expected especially when considering the logic of 'appropriateness' within the UNSC. Even though in the rhetoric Germany appeals to a permanent seat as a temporary solution in view of a common EU representation, it is likely that it will become itself part of the establishment. Therefore, it is plausible that this type of reform would entail a rollback in the progress made by the EU in security coordination, as the focus would be put mainly on the three EU states seating permanently in the UNSC. The attempt to create ascending mechanisms in the EU towards the expression of a single voice (e.g., forward-looking Article 19 meetings, qualified majority voting) would be put in the backburner.

Second, the other EU Member States would have to rely continuously on Germany, France, and the United Kingdom for information and leadership, as the possibility of being elected to the remaining Security Council seats would be reduced considerably (and the status and experience gap with the three major EU members will further widen). This could reduce the overall sense of shared responsibility, diminish the engagement in CFSP of the states outside the directoire, and, eventually, overburden the directoire itself.

[53] S. Keukeleire, 'EU Core Groups – Specialization and Division of Labour in European Union Foreign Policy', *CEPS Working Document* 252 (October 2006). However, see also the concept 'Permanent Structured Cooperation' introduced by the Lisbon treaty (new Art. 42 TEU), which would allow states willing and able to meet certain standards to move forward in military cooperation and integration.

[54] Gowan and Brantner have noted the increasingly tough stance taken by China and Russia in the UNSC, followed by other non-Western elected members, which is making it more difficult for the EU to promote its positions as compared with the 1990s and early 2000, see n. 32 above, 47–49.

[55] On the problems linked to permanent membership: J. Paul & C. Nahory, 'Thesis towards a Democratic Reform of the UN Security Council', *Global Policy Forum* (July 2005). Available at <www.globalpolicy.org/security/reform/2005/0713theses.htm>, 10 Sep. 2007.

On the other hand, the 'big three' cannot be seen as a homogeneous bloc. Although, France, Germany, and the United Kingdom are all indispensable actors of EU foreign policy, their policy preferences do not always coincide. The split in 2003 over the Iraq war, when Germany was serving as an elected member in the UNSC, is an egregious example. On many other issues, the three states can disagree: on relations with the NATO, on the Middle East, as on Russia. These differences can be structural or can vary on the basis of the political conjuncture and leaders in power. Germany can often bring added value, by helping triangulate between the interests of France and those of the United Kingdom, using its important relation with the United States.[56] However, frequently, compromise can be found only within the wider EU arena. The EU provides the institutional context and the political pressure to find a common ground. As illustrated by the case of Iran, ultimately, the three states receive much of their legitimacy and clout from the EU, as they act as representatives of Europe on the global stage. Therefore, even in the specific forum of the UNSC, it is hard to see how an institutionalized directoire would be sustainable in the long term, without the establishment of a number of clear mechanisms for coordination and accountability towards the rest of the EU membership.

2. Scenario 2: Enhancing Coordination in CFSP

A second model of reform, proposed by the movement 'Uniting for Consensus (UfC)' led in Europe by Italy and Spain, aims at avoiding the creation of new permanent seats. This camp has proposed various alternatives, often very complex, to permanent seats: longer term seats, rotating regional seats, renewable elective seats, and so forth. An important common element of most of these proposals is lifting the prohibition for immediate re-election. This is supposed to increase the accountability and transparency of UNSC politics, as non-permanent members would try to seek a second term by acting responsible towards their 'constituency'.

The position of the Italian and Spanish governments is strongly informed by national interest over a possible loss of status if Germany was included among the new permanent members.[57] Their preference goes to balancing Germany by promoting more EU integration. That is why, overall, the reform models that they support have a clearer potential to stimulate an integrated CFSP. For instance, in a 2009 compromise proposal presented by UfC, Europe as such would be allotted a regional seat, shared among the WEOG and EES group.[58] This seat could in the

[56] H. Haftendorn & M. Kolkmann, 'German Policy in a Strategic Triangle: Berlin, Paris, Washington ... and What about London?', *Cambridge Review of International Affairs* 17, no. 3 (2004).

[57] F. Salleo & N. Pirozzi, 'Italy and the United Nations Security Council', *The International Spectator* 43, no. 2 (2008): 95–111.

[58] Proposal Uniting for Consensus, 2009. Available at ReformtheUN.org: <www.reformtheun.org/index.php/issues/1737?theme=alt4>, 15 Jul. 2009.

future be used for a common EU representation. European states would establish a mechanism of rotation or election of the state responsible for expressing the voice of the whole region. The state elected to hold the regional permanent seat would be accountable to the membership and would therefore maintain strong links of information and coordination with the other Member States.[59] The pressure would increase for France and the United Kingdom to relinquish their permanent seats, since it would become difficult for them to play an autonomous role with a constant EU presence in the UNSC. Eventually, this would also open the institutional door to a common EU seat and to the introduction of some degree of majority voting in CFSP (without which a single seat would lead to paralysis).

As for the previous reform model, it is unclear whether the EU's external effectiveness would be enhanced by this setup. Certainly, the EU's current advantage in terms of overall numbers in the UNSC would be severely undercut. This risk is mitigated by two considerations. On the one hand, the European position of overrepresentation will be hardly sustainable in the long run, within the emerging global order. On the other hand, UNSC politics and the existence of veto make numbers in themselves much less important in this forum. What matters most is the overall authority, power, and resources of the members: their capacity to put forward relevant proposals and negotiate proactively.

V Conclusions

The purpose of this essay was to unveil the link between the debate on the UNSC reform and the development of CFSP. It was argued that the UN institutional complex plays a role in carving paths and opening opportunities that channel the build-up of a European foreign policy. The essay shows how, notwithstanding the limitations linked to the role of veto players France and the United Kingdom, the sovereignty-based environment of the UN, and the social and institutional logics of conformism typical of Security Council politics, some progress was made in EU information sharing and representation. There is also pressure to increase coordination, through a number of proposals and practices that are gaining acceptance.

A major explanation for this is the 'ghost' of UNSC reform, which is somehow in the minds of everyone involved in EU-UN relations. The lack of UN reform has created incentives for the EU Member States to promote more exchanges and coordination, although for different reasons. For some, all these efforts are a first step towards further integration; for others, they translate a tactic to diffuse tensions and limit the challenges to the status quo. As is typical of the EU system, the result of these opposing strategies is an ambiguous and complex institutional configuration, where an increase in EU presence goes hand in hand with the resilience of

[59] M. Spatafora, Speech by Permanent Representative of Italy on Security Council Reform, United Nations General Assembly (New York, 20 Jul. 2006), available <www.italyun.org/docs/statemen/2006_07_20_Spatafora.html>, 5 May 2008.

Member States' control. The Lisbon Treaty should not really change this pattern but actually provides another example of how incremental progress is made.

In this context, the possible reform of the Security Council could represent a 'critical juncture' for the future development of CFSP. A reform granting permanent membership to Germany would probably consolidate and institutionalize the directoire structure in CFSP. This could either produce the rallying of the states behind the leadership of France, Germany, and the United Kingdom in a flying-geese kind of pattern or re-launch national foreign policies, in a pattern of dispersion and sporadic cooperation on a 'coalition of the willing' basis. The other trend of CFSP goes towards further integration, more coordination, and institutionalization and, ultimately, towards the need for qualified majority voting. An enlarged UNSC, without new permanent members, could perhaps revitalize this trend, for instance, by increasing the accountability of the Member States serving in the UNSC towards the rest of the EU membership.

The question remains on whether a reform of the UNSC will ever take place. The need for it has not decreased. On the contrary, the structural transformation in international relations, including the emergence of new regional and global powers, has become even more obvious in the last few years and was amplified by the 2008 financial crisis. The expansion of forums such as the G8, which was upgraded into a G13 (plus Brazil, China, India, Mexico, and South Africa) and then the G20 in 2009 (representing about 90% of the worlds GDP), shows that there is a functional and political pressure for more equitable representation. The proliferation and reinforcement of such summits should go in parallel with the strengthening of 'deeper' global institutions, such as the UN. A more, representative and accountable UNSC membership is, therefore, crucial to maintaining this body relevant and at the centre of the multilateral system. A majority of states continue to stress this point, demonstrating the existence of a broad consensus on the issue of reform.[60] What is missing is the sense of urgency, especially among the current permanent members.

Importantly, the politics of the Security Council are becoming less favourable to the EU, with China and Russia more willing to use their right of veto assertively and with the support of an increasing number of developing countries. Authorizing international action is becoming more difficult, even in the face of humanitarian crises, genocides, and failed states. The UNSC paralysis on issues such as Darfur or the Myanmar crisis in 2007 has shown how the principle of 'responsibility to protect', which was supported by the EU and endorsed by the World summit in 2005, is still a long way from being established and operational.

All these elements make it all more pressing for the EU to focus on results and on what it wants to achieve at the UN. To do this, it should finally start an open and transparent debate about its profile in the UNSC: not only to tackle the issue

[60] Chart summarizing the General Debate during the General Assembly Sixty-Fourth Session, 23–26 Sep. to 28–30 Sep. 2009, available on <www.reformtheun.org>, 30 Oct. 2009.

of internal cohesiveness and coordination but also to explore ways to improve its capacity to effectively promote its views in the world. The fact that today, beyond the rhetoric on 'effective multilateralism', the EU is still not capable of taking a common stand on this crucial issue, is probably the most instructive lesson that UN reform has to teach to CFSP.