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UN SECURITY COUNCIL REFORM. CURRENT DEVELOPMENTS

by Elisabetta Martini

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At its founding, the UN had 51 members and the Security Council (SC) consisted of the same five countries that serve as permanent members today, plus six nonpermanent members.

In 1963, the number of nonpermanent members was increased to 10. Since then, the overall membership of the UN has nearly quadrupled to 192, but there has been no further expansion of the Security Council.

There is general agreement that the Security Council should be enlarged, and that it is time to utilize this “momentum for reform”, but despite this there is no convergence of views on the modality of the reform package, yet.

1. Dealing with negotiations deadlock

In September 2008, with the General Assembly (GA)'s 62/557 decision, Member States agreed to move the fifteen -year-old deadlocked discussions on Security Council reform from the Open-ended Working Group¹ to the Intergovernmental Negotiations in an informal plenary of the General Assembly. According to Ambassador Zahir Tanin, Permanent Representative of Afghanistan to the UN and Chair of the Intergovernmental Negotiations, the aim of this shift of negotiations' framework was to bring the process closer to a form that could potentially lead to a decision on this issue, even without consensus. This change was fiercely opposed by the Uniting for Consensus (UfC) group that campaigned for the application of consensus as the decision-making procedure during intergovernmental negotiations. As a result, the issue regarding rules of procedure became a major divisive topic among UN members, inasmuch as different rules could imply different outcomes.

2. The role of the Presidency of the General Assembly

On February 18, 2009, after having chosen among his deputies a Chairman of Negotiations, the President of the General Assembly, Miguel D'Escoto Brockmann presented a work plan² which identified the five key issues to be discussed: categories of membership, the question of the veto, regional representation, size of an enlarged Council and working methods of the Security Council, the relationship between the Council and the General Assembly. Moreover, in order to resolve differences between members' positions it has been decided not to apply the GA's rules to

¹ Open-ended Working Group on the question of equitable representation and on increase in the membership of the Security Council and other matters related to Security Council (Oewg) created in 1993 and charged with elaborating reports and recommendations on the Security Council reform to be submitted to the General Assembly.

² Available at <http://www.un.org/ga/president/63/letters/screform180209.pdf>.

intergovernmental negotiations. By not applying the GA's rules to these negotiations, Member States are not allowed to ask for a vote until the end of the negotiations.

Despite this compromise, negotiations suffered another setback on May 18, 2009, when Ambassador Tanin presented his *Overview*,³ in which he laid out the options put forth in the meetings held since February for each of the five topics. On this occasion many members loudly voiced their opposition to Ambassador Tanin's document. These members, namely those belonging to the UfC group, already had reservations about the idea of a "composite paper" and therefore refused to recognize it as the basic reference for further negotiations. According to Italy and other members on its side, this document would have simply paralyzed negotiations and impeded any possible compromise. Even during the last meeting in September 2009⁴ the role of the Chairman was firmly opposed by Italy, saying Zahir Tanin made an arbitrary choice privileging a specific model over the other proposals, namely the expansion in both current categories of members, permanent and nonpermanent.

Despite the endeavors carried out by Zahir Tanin to chair a well-charted and fair gathering, discussion seemed to be at a standstill. The Open-ended Working Group had to recommend that consideration of the SC Reform be continued at the next session of the GA.⁵ But things could waver as Libya has just taken helm of the UN General Assembly. In fact, the new Presidency under Libyan control could leave an imprint on current negotiations by choosing a new Chairman acting on its behalf, by producing a new work plan, by scheduling meetings on specific reform options. As a result, this situation could work in the African Union's favour as Libya also has the control of the AU chairmanship. Currently, Libyan President, Muammar Gaddafi, is the chairperson of the AU while the new GA's President, Ambassador Ali Treki, is Libya's Minister for the African Union affairs. In addition to the Presidency of the 64th General Assembly, Libya currently holds also a nonpermanent seat in the Security Council.

3. The bone of contention

Five key issues were highlighted in the above mentioned Overview produced by the Chairperson: categories of membership, regional representation, relationship between the Security Council and the General Assembly, veto and working methods. It cannot be denied that the first of these issues represents the real area of contention between the two main factions: G4 and United for Consensus. Whereas the Small-Five Group attaches more importance to a reform that will create a SC that is more transparent, accountable and accessible for non-members, the current permanent members are trying to keep a low-profile, due to their preferences for maintaining the status quo or for a transitional reform.

³ Available at <http://www.un.org/ga/president/63/issues/screform18509.pdf>.

⁴ The third round of negotiations has been held from 1st to 3rd September 2009.

⁵ See Chapter III of the *Report of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters related to the Security Council (A/63/47)*, 11 September 2009, [http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/47\(SUPP\)](http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/47(SUPP)).

Every Member State recognizes the need for a more representative and accountable Security Council, and each member considers the current situation as an anachronistic legacy of the post World War II order, but the different groups have different ideas of how the reformed Council should represent the new order.

4. The G4 proposal

The Group of Four (G4) is composed of Brazil, Germany, India and Japan, and has called for new national permanent seats, which would be assigned by choosing among the economically strongest and most influential countries of the international community. In its 2005 official proposal the G4 members put themselves forth as the main candidates for these seats together with an unspecified African country.

The staunchest supporter of the G4 proposal is by far India. India points out the need for a “genuine reform”⁶ and rejects any attempts at making merely cosmetic changes to the Security Council. It should be remembered that, according to India such a “genuine reform” can only be carried out by an expansion of the number of both permanent and nonpermanent members. As a result, India has called for new national permanent members, especially for countries that represent Asia and Latin America. According to India, the core issue is that the new SC must reflect contemporary realities, and address the under-representation of developing countries. If the G4 proposal was adopted, the national permanent members would, according to article 27 of the UN Charter, automatically enjoy veto rights. The only concession that India is disposed to make is to defer the utilization of the veto power until after a review is undertaken. So far this position has not succeed in resolving the differences among the UN delegations.

It cannot be denied that even inside the G4 some differences persist. While India and Brazil firmly pursue a strategy based on a bold position, Germany is engaged in striking a balance between national aspirations and European commitments. As a result, Germany has demonstrated openness to intermediary agreements as long as the agreements have a good chance of gaining the necessary two-thirds majority in the GA and are backed by the other two major European powers (France and the United Kingdom). Brazil and India, which are not engaged in any regional organisation comparable to the EU, insist on emphasising the problems with the intermediate reform even in terminological terms. According to Brazil and India, intermediate reform would be nothing more than a variation of the concept of non-permanency, simply a “distillation of old wine in the new bottle of flexibility”.⁷ Moreover according to India, an intermediate solution would just postpone the inevitable task of making a real decision.

⁶ *Intervention by H.E. Mr. M.S. Puri Ambassador Acting PR of India during negotiations on ‘Size of an enlarged Council and working methods of the Security Council’*, 7 April 2009, <http://www.un.int/india/2009/ind1552.pdf>.

⁷ *Statement by Mr. Vivek Katju, Special Secretary, International Organizations and Political issues, at the Informal GA Plenary Meeting on ‘Intermediate model’ at the United Nations*, 3 September 2009, <http://www.un.int/india/2009/ind1589.pdf>.

5. The African Union variation of a “real reform”

The UN SC is at the top of the African Union (AU) agenda because of its crucial role in peace and security on the African continent.

During the last round of negotiations South Africa acted as proxy for the African Union. The African appeal for a real reform includes an expansion in both permanent and nonpermanent categories of seats, which would increase the number of SC members to 26, reserving two permanent seats and five nonpermanent ones⁸ for African countries, without straying from the 2005 *Sirte Declaration*.⁹ According to the AU, this solution is the only suitable one to overcome the current situation of underrepresentation of developing countries among the nonpermanent members and the non-existence of representation of Africa and Latin America among the permanent seats. In part, this request contrasts with the G4 proposal of allocating just one more non-permanent seat to African countries. The African Union is unlikely to acquiesce to the G4 proposal in light of the high relevance of Africa for regarding peace and security issues.

As far as the right of veto is concerned, the African position diverges from the G4's 2005 proposal. The African countries do not intend to give up the attribution of this right in their proposed additional seats. Moreover, there are political obstacles linked to the identification of the two African countries candidate for the permanent seats. The African Union reserves for itself the right to select the countries within its framework, although South Africa has stressed that the seats will not serve as “regional seats”. A Committee of ten Heads of State¹⁰ is created to resolve this matter, but the African Union is still far from choosing which of its member states it would endorse for permanent seats. Also, it has yet to establish the criteria for selecting countries to serve on the reformed Security Council.

According to the *Ezulwini Consensus*, which was adopted by the AU Foreign Ministers as Africa's common position on UN reform, the AU has agreed that “Africa's goal is to be fully represented in all the decision-making organs of the UN, particularly in the Security Council, which is the principal decision-making organ in matters relating to international peace and security”,¹¹ but nothing more than this has been decided yet. Among the criteria put forth by the UN report of the High-level Panel on Threats, Challenges and Change the new members of the UN SC must have contributed “most to the United Nations financially, militarily and diplomatically”,¹² particularly through contributions to the United Nations assessed budgets and through participation in

⁸ Two more than now.

⁹ African Union, *Sirte Declaration on the Reform of the United Nations* (Assembly/AU/Decl. 2 V), Sirte, 5 July 2005, <http://www.africa-union.org/summit/JULY%202005/Declarations%20-%201%20and%202%20PLUS%20Resolution.pdf>.

¹⁰ African Union, *Decision on the Reform of the Security Council of the United Nations* (Assembly/AU/Dec. 1 IV), Addis Ababa, 4 August 2005, <http://www.africa-union.org/summit/August%202005/Ext%20Assembly%20AU%20Dec.pdf>.

¹¹ African Union, *The Common African Position on the Proposed Reform of the United Nations: the Ezulwini Consensus* (Ext/EX.CL/2 VII), Addis Ababa, 8 March 2005, http://www.africa-union.org/News_Events/Calendar_of_%20Events/7th%20extra%20ordinary%20session%20ECL/Ext%20EXCL2%20VII%20Report.pdf.

¹² UN High-level Panel on Threats, Challenges and Change, *A more secure world: our shared responsibility* (A/59/565), 2 December 2004, par. 244-60, <http://www.un.org/secureworld/report.pdf>.

mandated peace operations. The other conditions identified in the report are that new members should “represent the broader UN membership, increase the democratic and accountable nature of the Security Council, and should not impair its effectiveness”.¹³

At the moment three African countries - Egypt, South Africa and Nigeria - are the likely contenders for Africa's permanent seats. Among the other African countries, the next most eligible could be Libya, Kenya and Senegal.¹⁴

6. The UfC proposal

Created to counter the G4 proposal, the Uniting for Consensus is a group of approximately 40 States, whose leaders include Italy, Pakistan, South Korea and Colombia. The reasons underlying this opposition are easily understandable, since each of these States are fiercely opposed to what they call an unjust reduction of their international political relevance. After having agreed with the need to increase the representativeness of the Council, in 2005 the UfC made a proposal¹⁵ that centres on an enlargement of the number of non-permanent members from ten to twenty. The non-permanent members would be elected by the GA for a two- year term and would be eligible for immediate re-election, subject to the decision of their respective geographical groups. On April 20, 2009, Colombia and Italy, acting as representatives of the UfC group, provided a new model of reform,¹⁶ which was presented as a concrete attempt to reach a deal. In the document was a proposal for the creation of a new category of seats, still non-permanent, but elected for an extended duration (3 to 5 years terms) without the possibility of an immediate re-elections. This new kind of seats would not be allocated to single national countries but rather to regional groups on a rotational basis. As far as traditional categories of seats are concerned, the UfC proposal does not imply any change, but only the introduction of small and medium size states among groups eligible for regular, non-permanent seats. This proposal includes even the question of veto, giving a narrow range of options that goes from abolition to limitation of the application of the veto on Chapter VII matters.

7. The Italian position

During the last round, Italy firmly rejected the G4 proposal as well as the African one and even denounced the unfair behaviour of G4 countries. According to Italy, the G4 is

¹³ Ibidem.

¹⁴ Despite the lack of Obama's position on the Security Council Reform, it seems that the US is leaning towards the candidacy of Nigeria, according to the emphasis put on Nigeria important contribution in peacekeeping operations by James B. Warlick, Acting Assistant Secretary of the Bureau of International Organisations Affairs, during a question and answer session held at the Foreign Press Centre in Washington the 20th March 2009 about 'US Reengagement with the UN', available at <http://fpc.state.gov/120852.htm>.

¹⁵ Uniting for Consensus, *Draft resolution on the Reform of the Security Council*, 21 June 2005, <http://www.reformtheun.org/index.php?module=uploads&func=download&fileId=1710>.

¹⁶ *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.

attempting to exclude the UfC proposal from the floor, “on the basis of a presumed level of support”,¹⁷ Moreover, Italy believes that it has shown flexibility by putting forward a new proposal on April 20, 2009, while the G4 remained tied to its 2005 document.

Italy’s active role in current discussions started in February 2009 before the beginning of intergovernmental negotiations, when Minister Frattini hosted more than 80 countries to develop a shared path towards a reform of the Council. Stressing the principle of representation, Italy drafted a proposal that would serve the cause of both small and medium-sized states. In Italy’s opinion the fact that the final document does not mention “expansion of permanent seats” as the main pattern for the reform should be considered as evidence of a successful diplomatic effort. According to Italy, this expansion of permanent seats would not solve the SC’s problems of legitimacy and representativeness. Only periodic elections could ensure democratic and transparent criteria for selection. It should be noted that following the criteria laid out by the UN Report of the High-level Panel on Threats, Challenges and Change the performance of the G4 has been only intermittent. Further, G4 countries do not often rank high on the list of top UN contributors.

Furthermore Italy remains convinced that only by including regional dimension in a reformed Security Council is it possible to face international political instability. In line with this position the Italian government suggests that states sit on the Council on a rotational basis to represent regional interests.

The UfC proposal calls for longer term seats for regional groups on a rotational basis, namely to the groups of Africa, Asia, Asia/ Africa, GRULAC¹⁸ and WEOG¹⁹/EEG.²⁰ In the forefront is the Italian delegation emphasising its strong belief that a forward-looking reform must take into account the emerging role of regional organisations as stabilizing force. Italy is adamant that a political reality like the European Union cannot still be neglected by the Security Council, especially since the European Union has a Common Foreign and Security Policy.

This position has not found a relevant consensus for both legal and political reasons. For legal reasons, only States can be members of the United Nations according to the UN Charter. The political remark is that the strong representation of EU States in the Security Council often does not translate into a shared EU activity and position. While in other UN bodies EU countries maintain a cohesive position, coordination in the SC has been much more difficult. This difficulty can be only partially explained by French and British insistence on concerns for maintaining the prerogatives of their own sovereignty. Understandably these two member states could hardly be expected to renounce their status of “great powers”.

¹⁷ *Statement by H.E. Ambassador Giulio Terzi Permanent Representative of Italy to the United Nations - Meeting of the informal plenary of the General Assembly on the question of equitable representation on and increase in the membership of the Security Council and related matters*, 2 September 2009, http://www.italyun.esteri.it/Rappresentanza_ONU/Menu/Comunicazione/Archivio_News/2009_09_02+meeting+GA.htm.

¹⁸ Group of Latin American and Caribbean Countries.

¹⁹ West European and Others Groups.

²⁰ Eastern European Group.

Article 19 of the Treaty of European Union (article 34 of the consolidated version according to the Lisbon Treaty) is the pivotal element for the supporters of a single European Union representation. However, it is worth noting that this article lays out three kinds of obligation for the Member States serving in the Security Council: information, concertation and the defence of the positions and interests of the Union. The article does not even mention coordination and is far from planning for a single European representation and reserves the responsibilities of the EU permanent members according to the UN Charter. During the 2003 Convention on the Future of Europe, the issue of EU representation at the UN was extensively debated in the working group VIII on external action and in the third working group on legal personality. At the end of the day, the proposal for a European seat in the SC was rejected for the above mentioned institutional impediments and political considerations.

According to Italy, the call for a better accountability of the Council is centred on allocating seats to Member States based on regions on a rotational basis that would represent regional interests. The strong Italian position expressed in early May for the creation of a regional seat now seems to have given the way to a more realistic approach. In September, Minister Frattini stressed that the European seat is still part of the Italian proposal, but he also admitted that national interests still control European perspectives within the Council. As a result, the Italian strategy will remain in the wake of last discussions and will probably be conducted with a gradualist approach. This shift could mark the beginning of a convergence with the German policy. The German government explained, in fact, that its long-term objective is an EU seat, but that currently the EU is not ready to serve on the Council, as long as the EU members cannot speak with one voice on all issues.

On October 10, 2009, *Der Spiegel*²¹ reported the unexpected news that the newly-formed German government is about to abandon its traditional appeal for a national permanent seat and will espouse the idea of a European one. So far, neither a confirmation nor a denial has been issued by the German government.

This issue can be re-addressed only when the EU will finally complete its institutional reform when the Lisbon Treaty will enter into force.

8. The possible savior of last resort: the intermediate reform

The expansion of the Council membership is the contentious issue that is slowing the pace of Intergovernmental Negotiations. In order to overcome the stalemate, France and Great Britain, that have repeatedly expressed support for the G4 proposal, put forward in July 2009 the option of an intermediate reform.²² This option would include the creation of a new temporary category of seats with longer terms than the current two - year term and, at the end of the initial phase, it could be decided whether or not to turn this new type of seats into a permanent one. Such a solution, proposed by two veto-wielding permanent members and already garnering some consensus, could make it possible to test whether the expansion of the Security Council would be a detriment to

²¹See <http://www.spiegel.de/spiegel/vorab/0,1518,654376,00.html>.

²² See the *UK-French Summit Declaration on global governance and development*, 6 July 2009, English text available at <http://www.number10.gov.uk/Page19944>.

its effectiveness. As a result, the Afghan Presidency of the intergovernmental negotiations decided to focus the September round of negotiations on this specific issue. On this occasion South Africa strongly stated that it considers the intermediate reform solely a “pretext to retain the status quo”,²³ a stratagem carried out by permanent members in order to avoid sharing their privileges.

Italy also voiced its doubts about the meaning of the terms “intermediate reform”. Italy is against the idea of a temporary reform if it is in reality aimed at establishing de facto new national permanent seats. The UfC faction also showed concern for the vagueness of the review clauses to which the advocates of this approach refer. It must be recalled that despite article 109 of the UN Charter, the review conference was never held. Uniting for Consensus members even rejected the idea of a partial reform that they believe would lead the new Security Council to become something ill-defined and ineffective. Only a truly gradual approach would be welcomed by this party, as long as it introduces a reform sufficiently flexible to be modified or adjusted over time.

9. Waiting for great powers’ decision

So far, great powers such as the United States, the Russian Federation and China have not stated their views on the Security Council reform. They seem torn between the so called *dual risks*: they can envisage the risk of weakening the UN by an expansion of the SC’s membership as well as by the maintenance of the status quo.

Reforming the Security Council is a two-stage process. First, a minimum of 128 members of the General Assembly must cast an affirmative vote to adopt a reform plan. During this vote, those abstaining or absent are not counted and there is no requirement that all permanent members must vote to approve the plan at this stage. Second, once the plan is approved by the General Assembly, it must be ratified by the national legislatures of two-thirds of member countries, including all of the permanent-member countries. As a result, it is impossible to vote for a reform that is not agreed to by the Second World War great powers. Moreover, it would be risky to pass a reform not completely supported by them, who might find it convenient to arrange a parallel, more informal and restricted forum to discuss global security issues.

²³ *Statement by Ambassador Baso Sangqu, Permanent Representative of South Africa during the Second Exchange in the Second Round of the Intergovernmental Negotiations on the Question of Equitable Representation on and increase in the membership of the Security Council and other Matters Related to the Council*, 12 June 2009, available at http://www.southafrica-newyork.net/pmun/view_speech.php?speech=1844724.