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REPORT OF THE CONFERENCE “THE EU AND THE REFORM OF THE UN SECURITY COUNCIL”

by Elisabetta Martini

Report of the conference on “The EU and the reform of the UN Security Council”, Rome, 12-13 November 2009, organized in the framework of the project on “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,

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The 1st meeting of Working Group I on “The EU and the Reform of the UN Security Council” was held at the Istituto Affari Internazionali (IAI) in Rome on 12-13 November 2009. This event was organized under the framework of the joint project “The European Union (EU) and the Reform of the United Nations (UN)” carried out by the University of Kiel and IAI, with the support of the Volkswagen Stiftung.

The first day of discussion began with a comparison between the European and the US approaches towards the question of the reform of the Security Council (SC). This effort started from a historic perspective, taking into account the last twenty years of the SC activities in order to address its successes and failures.

The European position was elucidated by the first speaker, David Hannay, former British Ambassador to the United Nations and the EU Chair of the United Nations Association of the UK (UNA-UK). The distinguished speaker had also prepared a background paper for this occasion on “Effectiveness and ineffectiveness of the UN Security Council in the last twenty years: an European perspective”¹.

According to Ambassador Hannay, when dealing with the effectiveness and ineffectiveness of the SC, it is incumbent to start by identifying the great rift marked by the end of the Cold War to the functioning of this body as well as the disappointment that followed due to the squandering of the opportunities coming from this event. The very onset of the resumption of the SC activism can be placed in the years 1987-1988, with the cooperation to end the eight-year long Iraq/Iran war. In the same years, the peace operation deployed in Namibia ushered in the beginning of the wide-ranging UN missions that were deployed in the next decades. Despite some important initial successes in peacekeeping, some significant failures, such as Rwanda and Srebrenica, discredited the entire UN system.

It stands to reason that these international setbacks led to a severe decline in terms of UN member States support to UN missions. However, when we trace the origin of the UN failures, it cannot be denied that the old UN system was not equipped to deal with the new vitality of the Security Council. Despite the renewed efforts of cooperation, permanent members were not inclined towards the idea of institutionalizing it. As a result, the members avoided an overall reassessment of the Charter. Some documents,

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¹ 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, Presented at the first meeting of the Working Group I "The EU and the reform of the UN Security Council", Rome, 12-13 November 2009, available at <http://www.iai.it/pdf/DocIAI/IAI0928.pdf>.

such as the Secretary-General, Boutros Boutros Ghali's "Agenda for peace"² reveal that there was the awareness of all the new threats and dangers for international security and that means were proposed to deal with these security threats. However, Boutros Boutros Ghali's project was soundly overruled due to the political national wills to avoid the task of reforms.

Now that multipolarity has been recognized as a fact of the existing international order and the US seems to prefer multilateral approaches to security issues, the Security Council must take advantage of this momentum in order to strengthen its role and to avoid being overtaken by the more legitimate and enlarged G20. Five policy areas must be addressed by the SC to do this, namely:

- an enhanced cooperation among the permanent five members (P5),
- a professional approach to peacekeeping missions to ensure rapid response capability,
- a greater commitment to nuclear non-proliferation and nuclear disarmament,
- a real awareness of the link between climate change and global security,
- its own reform.

As far as cooperation among the P5 is concerned, it is necessary to draft a broader agenda, which should include the serious involvement of key regional players.

The need for a more professional peacekeeping system does not imply the creation of a UN permanent force, but a more formalized structure that should also be committed to guaranteeing that UN personnel respect human rights. In the context of new means for maintaining international security, the question of the newly recognized concept of the "responsibility to protect" (R2P) must be encompassed. Far from being considered a mere justification for interfering in domestic affairs, R2P becomes an operational concept that must be put into force as one of a handful of tools aimed at supporting weak states and the governments of failed ones.

The UN security system in accordance with Chapter VIII of the Charter must rely on cooperation with regional organizations, as the Report³ recently produced by Prodi's panel underlines. This implies that organizations which act on behalf of the UN must be provided with all necessary wherewithal, in particular financial resources, otherwise in the future it is unlikely that regional actors will be prone to deploy their own forces.

The SC has already charted an ambitious agenda for nuclear issues that must be pursued with decisiveness and perseverance.

The fact that the SC is indispensable and still at the center of international relations despite its previous failures should not imply that the reform can be deferred. Member States cannot avoid addressing the weaknesses and the lack of legitimacy of the Council. What seems to be the most realistic option on the table is the so called "formula B", the intermediate reform that would envision the creation of longer term, renewable, elected membership, which would have the opportunity to become new permanent members in the future. However, the path towards an agreed deal is difficult.

² *An Agenda for Peace. Preventive diplomacy, peacemaking and peace-keeping* (A/47/277 - S/24111), 17 June 1992, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, available at <http://www.un.org/Docs/SG/agpeace.html>.

³ *Report of the African Union – United Nations Panel on modalities for support the African Union peacekeeping operations* (A/63/666–S/2008/813), 31 December 2008, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2008/813.

Other issues that impact negatively on the SC, are its position on territorial questions that concern the P5, the failure of resolving old frictions, such as in the Israeli-Palestinian case, and the underperformance of the European Union. The EU is one of the biggest contributors to UN resources and is therefore entitled to play a major role inside the Council, but, because of the divisions among its members, it is not taking advantage of this. Intra-EU quarrels are undermining the traditional European role as the driving force for further reforms. This situation can even be considered a paradox: in fact, the EU should be firmly committed to the success of reform negotiations, as reforms would improve the chances for implementing effective multilateralism, an EU priority. Only the realization of a reform, which would restore the SC's credibility, could lead to a law-based international community where the EU could play a crucial role.

A US perspective on SC reform was articulated by John Van Oudenaren, Senior Adviser for the World Digital Library (WDL) initiative of the Library of Congress in Washington D.C., and author of a background paper on "Effectiveness and ineffectiveness of the UN Security Council in the last twenty years: a US perspective"⁴. By giving an historical background of the different phases of SC's debates and votes, two distinct main roles of this international body can be identified. One role is the institutional venue of the restored concert of powers and the other role is of an international forum for global governance.

The entire Cold War period, even if divided into different stages, was arguably marked by a general attitude of disinterest among great powers for complex forms of cooperation on social and economic issues. The standoff between East and West blocked every possible decision inside the Council, firstly because of the unscrupulous use of the veto by the USSR and then because of the U.S. vetoes against the G77-sponsored resolutions, especially those concerning the Israeli-Palestinian conflict.

After the Cold War ended and on the occasion of Iraq's aggression against Kuwait, the SC started a period of frenetic activism, especially in the field of peacekeeping operations. In the 1990s alone there were 38 UN missions deployed compared to the eight mandated during the 1970s and 1980s. During the post-Cold War era, permanent members seemed to be more responsible in using their veto power, even if this new responsibility could be considered as the result of the general caution in bringing resolutions to a vote when the risk of veto existed. Due to the desire to avoid all direct confrontations, this approach can be considered tantamount to the balance of power system in the European Concert at the beginning of the nineteenth century.

The fact that most of the UN missions ended in failure, sometimes very publicly, created momentum to tackle new issues within the framework of the Security Council, in particular environmental issues, nuclear non-proliferation and climate change. The new role of the SC as a forum of global governance should have implied a change of its decision-making procedures and most importantly of its composition. The expansion of

⁴ J. Van Oudenaren, *Effectiveness and Ineffectiveness of the UN Security Council in the Last Twenty Years: A US 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. Presented at the first meeting of the Working Group I "The EU and the reform of the UN Security Council", Rome, 12-13 November 2009, available at <http://www.iai.it/pdf/DocIAI/IAI0930.pdf>.

issues should have been followed by an improvement of the SC representativeness to the detriment of the monopoly of the great powers and in favor of new emerging middle powers. Rather than implementing these needed reforms, the shift in focus was carried out without any change, thus leading to strong complaints by the G77 group.

While addressing some crucial issues, such as the fight against terrorism, the Security Council played the role of a quasi-legislative body: acting under Chapter VII of the UN Charter, the SC adopted resolutions after 9/11 that mandated that all states take a number of measures to prevent and suppress the financing of terrorism. These measures entailed a deep intrusion into national laws and, for the first time with a black list of terrorists attached to resolutions, the SC directly considered individuals, which up until then were considered under the jurisdiction of national states.

In this context, pressures aimed at achieving a more representative and universal Security Council are going to increase as long as the concept of international peace and security continue to become less narrowly defined. In fact, most of the countries do not acquiesce anymore to the idea of a special responsibility held by the great powers for international security. By discrediting the legitimacy and representativeness of the five permanent SC's members, middle powers intend to questioning their "custodial role".

In this competition for power, it remains to be seen where the European Union will stand. Firstly, in all discussions about reforming international institutions it must be taken into account the overrepresentation of Europe: in the SC, members or candidate members of the EU have the opportunity to obtain five of the fifteen seats. The weight of EU member States within the SC is destined to increase as a consequence of the improvement of the Common Foreign Security Policy stemming from the Lisbon Treaty. However, the European Union has not produced a clear and uniform policy for facing global questions. Three options can be envisaged for the EU in the SC:

- the EU as a unified great power negotiating on an equal footing with China and the US,
- the EU as a loose confederation of middle powers represented on the international stage by its three stronger States (France, Germany and the United Kingdom), or
- the EU as a special moral force focused on issues such as the improvement of the rule of law and human rights.

So far, in crucial moments such as in making the decision of the use of force against Iraq in 2003, European countries within the SC were divided due to intra-EU questions and balances, thus damaging the image of the EU.

The topic of the United Nations' reform in general and of the Security Council in particular now need to be considered together with the growing emergence of multipolarity and the competition made by other fora, such as the G20. The EU must choose a clear role within the UN, also in order to garner the attention of Obama administration, which seems to be more cosmopolite but less Eurocentric than its predecessors.

After the presentations of the two paper-givers, the discussion proceeded by highlighting the following issues:

Managing multipolarism and developing transatlantic relations.

The election of Obama brought about the official recognition of the world's multipolarity as a well-established fact. Additionally, it was now acknowledged that multilateralism can be one of the main instruments for dealing with the multipolarity. There are positive signs that Obama aims to use the UN as a tool to manage and govern multipolarity. Having said that, it remains to be seen if the UN will work as an effective tool and in this context what will be the place of the European Union. The shift towards multipolarism should make French and British positions less significant than the European one, so that a single external voice for the EU could leave an imprint on Obama's efforts for global governance. In this circumstance the EU would play the role of a reliable partner for the US and China in a future G3. It cannot be denied that the EU, in order to increase its political influence, retains at its disposal the leverage of the enlargement process towards the Balkans and Ukraine. The EU agrees with the values embedded in the agenda put forth by the US President, but it has not yet found an effective way to cooperate with the US, nor has it presented its own world vision. As a result, Obama now seems to be more intent in strengthening bilateral US-Chinese relations in apparent discordance with his Democratic predecessor, Bill Clinton.

Current European role within the SC and opportunities arising from the Lisbon Treaty.

Despite the EU self-flattering attitude of considering itself as the model for integration policies, from the US perspective the EU is a "difficult" multilateral actor and not even the most exemplary as far as external relations are concerned. The real problem is that intra-EU quarrels and divisions are visible to the rest of the world. In addition, the unique nature of EU integration is not perceived in depth by the US. From an Atlantic perspective it is difficult to make out the difference between the EU and other regional organizations, such as ASEAN and the African Union. According to some scholars, the confusion created by EU member states is due to the fact that the European Union is a mere opportunistic multilateral actor: when national interests are at stake these interests always prevail over the common ones. So far, France and the UK, who have no interest in sharing their own privileges in the SC, have set back every bid to fully implement the cooperation already foreseen before the entry into force of the Lisbon Treaty according to Article 19 of the TEU.

The Lisbon Treaty, which entered into force on 1 December 2009, creates the new figure of the High Representative for Foreign Affairs and Security Policy and mandates that the EU members represented in the Security Council must invite the High Representative when the EU has a common position on the issues discussed. This provision has been considered very disappointing and too prudent by the Euro-enthusiasts, but if fully implemented it could serve as a transitory mechanism towards a formal EU representation in the SC.

Although far from being the third great power in the multipolar world, there is a convergence on the stronger role that the EU should play in the field of the improvement of rule of law in the UN system. By monitoring the activities of the Security Council regarding the respect of human rights and also by UN forces deployed on the operational field, the EU could give concreteness to the rule of law principle within the organisation and gain recognition on the international stage.

Security Council's membership: representativeness vs. effectiveness?

In the above mentioned multipolar world, an institutional body which does not reflect the actual balance of power risks hampering its own activities. This is because the decision-making process does not involve the real players in charge of the implementation of the decisions taken. In accordance with this vision, it seems that the only way to move forward is by enlarging the SC membership. Such a realistic approach must be combined with the question of legitimacy. If almost all stakeholders agree with the need to expand the number of SC members, clear admission criteria must be discussed. The self designation of the G4 members (Brazil, Germany, India and Japan) does not satisfy democratic criteria of election. A credible Security Council must address the problem of representativeness of the different continents and realities as well as the overrepresentation of Europe. Objective criteria for joining the Security Council must be established, such as contribution to UN budget and peacekeeping forces, as well as human rights performance indicators. Those who underline the problem of the tradeoff between representativeness and effectiveness must bear in mind that the lack of legitimacy means also the lack of muscle.

The Security Council as a global legislator

The lack of legitimacy and representativeness of the current SC becomes an even more serious problem when we look at this body in the role of global legislator. In a purely legal perspective it cannot be considered this way, but recent resolutions in the field of non-proliferation and anti-terrorism, namely Resolution 1540 (2004)⁵, overruled national laws and individuals. Article 41 of the UN Charter figured out content and limits of the "normative" role of the SC and afterwards the Non-Proliferation Treaty (NPT) made the SC the supreme arbiter for sanctions against violators of the treaty. Today, the SC plays a normative role in the fields of peacekeeping and institution-building. Although, states do still remain the executors of UN resolutions: an extension of both the number and the mandate of SC seats appears to be the only solution to ensure the effective implementation of SC decisions. In addition, it seems to be the most suitable option given the fact that significant interferences in states' domestic jurisdictions need to be legitimized by a more inclusive decision-making process. In this context, a more effective regional representation would be a key point to improve the legitimacy and effectiveness of SC decisions. Nevertheless, possible forms of regional representation must be combined with the UN Charter, which envisages that only states can become members of the UN.

Informal groupings: new decisional bodies or a sop to would-be great powers

The risk of a collapse of SC activities, because of its lack of legitimacy and its incapacity to represent the new multipolar world, could mean that other informal and more inclusive formats will be preferred to the SC. As it was the case for the G8/G20, these formats have the advantage of being able to change membership and targets without any complicated institutional review. Their resilience makes them able to address different issues by each time choosing the members that have the most prominent interests at stake. Today, states seem to prefer *ad hoc*, sectoral groupings

⁵ Resolution 1540 (2004) on Non-proliferation of weapons of mass destruction (S/RES/1540), 28 April 2004, available at

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/328/43/PDF/N0432843.pdf?OpenElement>.

more than longstanding institutions to deal with global issues such as the environment and proliferation of weapons of mass destruction. This preference for informal forums means that the centre of decision-making is moving away from the Security Council. Additionally, the proliferation of these informal groupings could produce a negative impact on the SC reform process, by overshadowing its necessity or at the least its urgency.

The second day of discussions was ushered in by Thilo Maraunhn, Professor of Public Law, International Law and European Law at the Justus-Liebig-University of Giessen. The speaker analyzed the government agreement⁶ reached by the newly elected CDU-FDP coalition in Germany, which has inspired a great deal of talk about the apparent dismissal of the request for a permanent seat in the SC.

Foreign policy cannot be considered as a top priority of the German government, which has been traditionally focused on economic and interior issues. In particular in this moment of deep economic crisis, Germany seems to look at international relations from an export nation's perspective, by referring frequently to international trade and the resumption of the Doha Round. It is meaningful that the first paragraph of the coalition's agreement, devoted to "peace and security", does not look at the UN, but rather points out the role in the field of other international actors, such as the EU, NATO, the G8 and the G20. However, later in the document it is indicated the intent to strengthen the UN by achieving a comprehensive reform to better reflect the structure of international politics.

The agreement gives special emphasis to the Lisbon Treaty. In it is shown a clear will of empowering the EU by providing it with one voice to address the issues of peace, freedom, and welfare. Along with this support for the European Union, there is a mention of a joint European permanent seat in the SC. This new expression of interest does not imply an abandonment of the traditional claim to become a SC permanent member. In fact, on the way toward this goal Germany says to be prepared to accept any further responsibility in the SC, such as a non-permanent seat in 2011-2012 or other possible roles, in view of a reformed membership. However, the permanent seat is no more an objective *per se*.

What is stressed in a separate paragraph of the above mentioned governmental agreement is the will to endorse a seat for the UN in the International Renewable Energy Agency (IRENA), established in Bonn in January 2009. This choice reflects a shift towards a more pragmatic approach. The German government looks at the United Nations only as an instrument aimed at gaining more influence on the international stage, so that a permanent seat in the SC becomes less important than hosting an international agency in its own territory.

Finally, it was underlined that the strong support of the government for EU integration seems not to be in line with the Federal Constitutional Court approach coming from its recent ruling⁷.

⁶ Die Bundesregierung, *Coalition Agreement*, available at <http://www.bundesregierung.de/Webs/Breg/EN/Federal-Government/CoalitionAgreement/coalition-agreement.html>.

⁷ *Act Approving the Treaty of Lisbon compatible with the Basic Law; accompanying law unconstitutional to the extent that legislative bodies have not been accorded sufficient rights of participation*, Judgment of 30 June 2009, available at <http://www.bundesverfassungsgericht.de/pressemitteilungen/bvg09-072en.html>.

The discussion that followed the presentation mainly focused on two main aspects:

The call for the EU seat: concrete commitment or smoke and mirrors?

The proclaimed support of Germany for a stronger European Union can be easily questioned by other countries if we look at Germany's political choices on the issues of EU budget, economic governance and energy policies. These choices seemed to be more inspired by national interests than by European ones. In addition, in the latest round of nominations for the chairmanships of EU institutions the German government did not select any high-profile politicians to reinforce its role and prestige inside at the EU level.

Considering all of this, it is realistic to assume that Germany considers the option of an EU seat in the SC only as a long term objective, while in the short term it will continue to bid for a national, permanent seat. The real difference is likely to be just in the way Germany looks at its candidature, especially after becoming aware that at the moment there is no political will for adding a new permanent European seat. The fact that today there are would-be permanent seats for countries with stronger credentials, a lower support for its candidature by the US and a perceived European overrepresentation, has made Germany change its global strategy or at least the interim steps.

A pragmatic approach towards the SC reform.

Discussions brought about the convergence on a pragmatic approach, that is an intermediate reform of the SC. The proposal for an EU seat within the SC has great political significance and is aimed at enhancing the EU action in the UN, but it does not take into account the legal provisions of the UN Charter and the political contents of the Lisbon Treaty. In order to make an EU seat possible, UN member states should firstly amend the UN Charter. Moreover, EU members states should show a clear political will to achieve this goal. For the time being, this does not seem very likely, as witnessed by the two declarations⁸ attached by France and the UK to the Lisbon Treaty, which are aimed at preventing any disposition from affecting their privileges inside the SC.

Having regard to the fact that so far the G4 proposal did not succeed in obtaining concrete support from the P5, the creation of the new category of longer, renewable and elected seats devoid of the right of veto is the most feasible, as long as it is not perceived as a ultimate reform. In parallel, the European Union must use the new institutional arrangements coming from the Lisbon Treaty to implement better coordination in the Security Council.

The EU seat as such cannot be implemented in the foreseeable future. Therefore, EU countries must focus on how to make the Lisbon Treaty improve the representation of the EU in the SC in a practical way so that the UN effectiveness can be increased as well. This pragmatic approach would also avoid the risk of trying to achieve a systematic reform. This comprehensive attempt to do all things at once and quickly resulted in failure and the experience proved that a reform is possible just if it is conducted on sectoral basis. Moreover, in order to reach a deal, the most divisive issues, such as both the German and the EU seats, should be temporarily put aside.

⁸ *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community*, Declarations 13 and 14 concerning the Common Foreign Security Policy, Lisbon, 13 December 2007, available at <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>.

The Security Council reform cannot be considered as a mere institutional issue because it is a matter of political will.

The outcome of the meeting will constitute the basis for further reflection on the role of EU member states and institutions in the reform of the Security Council. These issues will be addressed in the second meeting of Working Group I, which will be held in Rome in the first half of 2010.