



# The European Union and the Reform of the UN Security Council: Toward a New Regionalism?

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## Abstract

The United Nations (UN) is a central reference for the performance of the European Union (EU) on the international stage and one of the most interesting platforms to test the effectiveness of the innovations introduced by the Lisbon Treaty in its foreign and security policies. In particular, the EU's contribution to the reform of the UN Security Council (UNSC) represents a crucial policy and institutional input to assess the Union's capability to act. The new Treaty could allow the EU to play a more assertive role at the SC and pave the way for a new regionalism within the United Nations.

**Keywords:** *United Nations (UN) / UN Security Council (UNSC) reform / UN Charter / Representation / Regionalism / European Union (EU) / Lisbon Treaty / European External Action Service (EEAS) / Effective multilateralism*

## The European Union and the Reform of the UN Security Council: Toward a New Regionalism?

by Nicoletta Pirozzi and Natalino Ronzitti\*

### Introduction

The United Nations is a central reference for the EU's performance on the international stage and one of the most interesting platforms to test the effectiveness of the innovations introduced by the Lisbon Treaty in its foreign and security policies.

In particular, the EU's contribution to the reform of the UN Security Council represents a crucial policy and institutional input to assess the Union's capability to act within the UN. So far, EU member states have remained divided and unable to formulate a common EU position on the substance of the reform issue. Germany, for instance, is striving for a permanent seat in the SC, while Italy, leading the United for Consensus (UfC) group, prefers to support an increase in non-permanent members with the possibility of immediate re-election or a category of non-permanent members with a longer mandate. Both are however united in their demand for a European seat in the long run. France and the UK are more cautious and have always campaigned against any proposal that would alter significantly the current *status quo*.

One of the main goals of the Lisbon Treaty is to promote cohesiveness in the European Union's external action and thereby elevate its standing in the world. Some provisions contained in the Lisbon Treaty, such as the recognition of the EU's legal personality and the elimination of the pillar structure, seem to have more of a symbolic rather than a functional import. All the same, the Lisbon Treaty does offer, for future implementation, a wide range of opportunities for making the EU a more credible actor within the UN, and within the Security Council in particular. The EU has begun to grasp, in part, these opportunities: for example, by merging the European Commission Delegation in New York with the EU Council Secretariat Liaison Office, increasing its actorness through the role assigned to the new EU High Representative for Foreign Affairs and Security Policy (HR) and through the European External Action Service (EEAS).

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Based on these assumptions, the first part of this paper opens with an analysis of the UN Charter's requirements for UN membership and the procedure for amendment. This procedure has to be set in motion when an increase of membership is demanded, as proved by the change in the SC composition in 1963. The amendment procedure is also required if the quality of membership is to be changed; for instance, in the case of inclusion of international organizations. However, it will be demonstrated that it is possible to meet the request coming from international organizations - and in particular from the EU - without setting in motion the amendment procedure, which is very cumbersome and politically difficult to achieve. This analysis will be used to focus on the emergence of the European Union as a more capable and credible actor in the United Nations and within its main body, the Security Council, thus paving the way for the growing recognition of a new regionalism.

In the second part of the paper an assessment will be made of the main changes brought in by the Lisbon Treaty in the EU's presence at the UN, keeping both the broader UN framework and the specific case of the Security Council in view. An assessment of the Security Council will focus on two main functions: the coordination among EU member states, and the representation of the EU as a unitary entity. Special attention will be paid to the role of the European External Action Service. On the basis of this analysis, the conclusions will offer an evaluation of both reality and perspectives of the European Union's role at the UN and within its main body.

## I. The EU and the Reform of the UN Security Council

### 1. The Reform of the UN Security Council

#### 1.1. UN Membership

Membership of the United Nations (UN) is a *condicio sine qua non* to become a full member of any of the main UN bodies. Since within the framework of the Security Council's (SC) reform process proposals designed to include subjects other than states as members of that body have been advanced, it is worth recalling a few essentials on UN membership. According to Article 3 of the Charter, the original members of the UN are those states which, 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 are, in the view of the UN itself, able and willing to carry out those obligations.<sup>1</sup> It is thus clear that only states may be parties to the Organization, whether original members or states that have subsequently acquired their membership through the admission process, which is carried out through a decision of the General Assembly (GA) at the recommendation of the SC.

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<sup>1</sup> See Thomas D. Grant, *Admission to the United Nations. Charter Article 4 and the Rise of Universal Organization*, Leiden and Boston, Martinus Nijhoff, 2009.

As to the notion of state, we must refer to the meaning of this word under international law. The form of the state is not relevant if for instance 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 status that is different from full membership. For instance, international organizations have observer status within the GA. The SC's provisional rules of procedure recognize that entities other than states may be invited to the meetings of the SC.

As regards the composition of the SC, its members are those 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 general membership of the UN. To be elected, therefore, they have to be states.

### 1.2. *The Amendment to 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 Article 18 of the Charter on the issue of 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 November 23, 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.<sup>2</sup>

<sup>2</sup> "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

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's 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.<sup>3</sup>

### *1.3. Increase in the Number of Security Council's Members in 1963*

Until now, the only reform of the SC that had taken place was 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 U.S. 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.

The reason for increasing the number of SC members was the growth in the number of members 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 to 115, due to the admission of several European States in 1955 and the entry of Asian and African countries as a result of decolonization. However, in 1963 the decolonization 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).

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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." See UN General Assembly, *Question of Equitable Representation on and Increase in the Membership of the Security Council and Related Matters*, (A/RES/53/30), 1 December 1998, <http://www.un.org/depts/dhl/resguide/r53.htm>.

<sup>3</sup> See Bardo Fassbender, *The United Nations Charter as the Constitution of the International Community*, Leiden and Boston, Martinus Nijhoff, 2009, p. 184-185. According to this author, the constitutional quality of the UN Charter sets out limits to amendments of its basic principles and leaves little room for any change via customary law: Bardo Fassbender, *UN Security Council Reform and the Right of Veto. A Constitutional Perspective*, The Hague and Boston, Kluwer Law International, 1998, p. 138-147.

#### 1.4. Attempts to Reform the Security Council

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 consist of 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 envisaged 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 decided to call a Review Conference when more appropriate conditions came to prevail on the world stage.

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 Organization." In the 1990s the question of SC reform became 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, led by 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 (SG), 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<sup>4</sup> 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 an agreement and was obliged to indicate two ways to expand SC membership. The two proposals agreed on the total number of SC members being twenty-four. However they differed in that model A envisaged 6 new permanent seats with no power of veto and 3 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*.<sup>5</sup> The SG proposed that the UN

<sup>4</sup> See UN High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, (A/59/565), 2 December 2004, <http://www.un.org/secureworld>.

<sup>5</sup> See UN Secretary General, *In Larger Freedom. Towards Development, Security and Human Rights for All*, (A/59/2005), 21 March 2005, <http://www.un.org/largerfreedom/contents.htm>.

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 structured as set out in the following box:

<b>Security Council Reform: Models A and B</b>					
<b>Model A</b> provides for 6 new permanent seats, with no veto being created, and 3 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
<b>Totals model A</b>	<b>191</b>	<b>5</b>	<b>6</b>	<b>13</b>	<b>24</b>
<b>Model B</b> does not envisage any new permanent seats but creates a new category of 8 four-year renewable-term seats and 1 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 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	2	1	6
Americas	35	1	2	3	6
<b>Totals model B</b>	<b>191</b>	<b>5</b>	<b>8</b>	<b>11</b>	<b>24</b>
<i>Source: UNSG Report In Larger Freedom, p. 43 (Box 5)</i>					

The 2005 GA summit, at Heads of States and Government level, did not take any position 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 detailed below. 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 UfC proposal: 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 led to entrusting Ambassador Zahir Tanin (Afghanistan) to chair the intergovernmental negotiations. The overview submitted by Ambassador Tanin (May 18, 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 to 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 ongoing work on the SC reform offers limited prospects (for the moment) of reaching a positive outcome, notwithstanding the attempts to identify new solutions. For instance, France and the UK have proposed an intermediate reform by creating a number of temporary seats that would become permanent if the members so wished. The AU and members of the UfC have rejected the proposal of a temporary solution given the danger, as they see it, of the category of temporary members being transformed into one of permanent membership.

The latest proposals are those submitted in a document circulated by Ambassador Zahir Tanin on February 23, 2011. It constitutes the basis for the seventh round of negotiation which started on March 2, 2011. Cluster 3 of Tanin's document is dedicated to regional representation. However, regionalism is seen as a method for allocating seats in the SC and not as an avenue to give a representation to regional organizations.

## 2. Regionalism and the Role of the EU

### 2.1. Regionalism under the UN Charter

Regionalism is not seen in the Charter solely as a geographical tool for the SC electoral process. It also has a political dimension and it interacts with the SC. The main source of regionalism is Chapter VIII, but there are also other relevant provisions mainly within the context of peace and international security.<sup>6</sup>

<sup>6</sup> See Edith Drieskens, "Limits and Opportunities for Regional Representation at the UN Security Council", in *International Organizations Law Review*, Vol. 7, No. 1 (2010), p. 149-169.



Chapter VIII addresses both regional arrangements and agencies competent in the field of international peace and security. The EU, following the latest developments, has become a full-fledged organization whose field of activity extends to peace-keeping and peace-enforcement, as shown not only by its constituent instruments but also by numerous missions undertaken in several areas.

As far as the use of force is concerned, the activity of regional organizations is under the UN aegis, which must authorize any coercive measure (the clause on former enemy states is completely obsolete).

Regionalism is dealt with also in Chapter VII. As stated in Article 48, the SC decisions for the maintenance of international peace and security shall be carried out by the members of the United Nations directly and through their action in the appropriate international agencies of which they are members. The provision includes regional organizations. The same is true for Article 49, which requires that the UN members shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council. Last, but not the least, Article 48, para. 1, affirms that the decisions of the SC under Chapter VII shall be taken by all UN members or by some of them, as the SC may determine. "Some of them" might mean that the SC may delegate states grouped in an international organization to carry out its decisions.

It should also be taken into account that the Charter envisages the possibility that the Military Staff Committee establishes regional military sub-committees under the authorization of the SC and after consultation with appropriate regional agencies. The Charter's provisions on the Military Staff Committee are nowadays obsolete. However, they testify the Charter's deference to the regional organizations.

## *2.2. How the EU Interacts with the Security Council*

The SC, whose main task is to maintain international peace and security, deals with a number of issues that are relevant for the EU, now that the European institutions have been endowed with full-fledged competence in several areas. Some examples include:

- SC legislative resolutions. The SC has started to act as a legislator, even though the Charter does not give it proper powers to act in that way. The SC addresses hypothetical situations through legislative resolutions that, as matters of principle, should be regulated by international treaties. This happened for instance for SC Resolution 1371 (2001) and 1540 (2004) dealing with international terrorism and weapons of mass destruction. The EU was given competence in those fields, as shown by the Lisbon Treaty and by the regulations adopted.
- The SC has adopted several sanctions against states responsible for human rights violation, for threatening international security and for infringing on policies of non-proliferation and on disarmament obligations. Most of those sanctions have an impact on the EU trade competence and the former EU second pillar policies. They are implemented by a EU decision and EU regulations under the provisions of the Treaty on the Functioning of the EU (TFEU). The regulations are

directly applicable in the member states. Targeted sanctions, for instance, assets freeze and travel ban, may generate problems in terms of access to justice, whenever judicial remedies are banned.

- The use of force authorized by the SC. In addition to individual and collective self-defence, states may use armed force, if authorized by the SC, for instance in the framework of the Responsibility to Protect (R2P). The EU is endowed with the power to carry out forceful actions authorized by the SC, as foreseen in the Petersberg tasks, which have been extended with the entry into force of the Lisbon Treaty.

### 2.3. A Regional Representation within the Security Council? What Formula?

A regional representation within the SC may be achieved by means of a number of modalities. It may imply SC membership. On the basis of the present-day Charter's provisions, regional representation might mean that only states belonging to regional groupings may become SC non-permanent members. One has to refer to Article 23, para 1 and to the GA Resolution 1991-XVIII, establishing regional groups for the SC electoral process. Since the Resolution is no more in keeping with the current political reality, a change might be opportune, even though politically difficult to achieve in terms of distribution of seats between the regional groups.

The other option, which is legally possible but politically difficult to achieve, is to set up an amending protocol allowing regional representation within the SC. From a formal point of view, this means a Charter's amendment, achieved without taking recourse to the amendment/revision procedure set out by the Charter. The protocol should be ratified by all UN members, a result difficult to achieve. In comparison with the amendment/revision procedure, the protocol amending procedure would not abolish the veto right, since it would require the ratification by all members, including the permanent ones.

A less ambitious proposal would consist in following, *mutatis mutandis*, the same pattern envisaged by the GA Resolution for allowing a regional presence within the General Assembly. The SC resolution should take into account the specific nature of the EU and in particular the fact that the EU, as an international organization, has the competence to implement SC resolutions in a number of fields, as specified in the preceding paragraph.

For this reason a proposal could be to draft a SC resolution modelled on the resolution recently passed which confers to the EU an enhanced status at the GA, allowing the EU to sit as a kind of observer within the SC. The EU might be:

- a) Allowed to be inscribed on the list of speakers in order to make interventions;
- b) Invited to participate in the debates of the SC dealing with matters falling under the EU competence;
- c) Permitted to have its communications relating to the sessions and work of the SC;

- d) Permitted to present proposals and amendments orally as agreed by the member states of the EU; such proposals and amendments shall be put to vote only at the request of a member state; and
- e) Allowed to exercise the right of reply regarding the positions of the European Union as decided by the state holding the SC presidency.

It is understood that the representatives of the European Union shall not have the right to vote, nor to co-sponsor resolutions or decisions, nor to put forward candidates.

A less intense modality of participation is the one provided under Article 31, which allows any UN member who is not a member of the SC, to take part in the discussions of the SC whenever its interests are specifically involved. The obstacle here for the participation of the EU is represented by the fact that Article 31 refers to states that are UN members. However, an amendment, tailored on the invitation of regional organizations through the addition of a second paragraph, should be easier to achieve. The same is true, *mutatis mutandis*, also for Article 32, which envisages the possibility to invite a state that is neither a member of the SC nor of the UN.

The simplest way, not requiring any formal amendment, is to use Article 39 of the Provisional Rules of Procedure of the SC, allowing to it extend an invitation to a person to be heard before the SC,<sup>7</sup> even if in this case the invitation is extended to a person and not to an international organization. On the basis of this provision, the EU has already intervened at the UN Security Council - through its High Representative for Foreign Affairs and Security Policy or the Head of Delegation in New York - to put forward its positions on issues of particular relevance for its foreign and security policy. Therefore, one might foresee a more frequent and broader recourse to Article 39 in order to enhance the status of the EU within the SC.

## II. The EU's Role after its Reform

### 3. The EU at the UN after the Entry into Force of the Lisbon Treaty

In order to analyse the role of the European Union at the UN Security Council after the entry into force of the Lisbon Treaty, it is important to look at what has changed in its status in the broader framework of the United Nations.

The new Treaty formally recognizes the legal personality of the EU (Article 47 TEU) and has eliminated the 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 actorness and its representation at the United Nations. In practical terms, the EU has acquired over time the capacity to negotiate and to make international treaties, and to be a member of an international organization. Regarding its status within the UN, the European Union has replaced and succeeded the European Community and

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<sup>7</sup> "The Security Council may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence."

now exercises all its rights and assumes all its obligations. Therefore, the EU is currently party to more than 50 UN multilateral agreements and conventions. It has obtained a special "full participant" status in a number of UN conferences and commissions, such as the UN Commission on Sustainable Development (CSD), and is also a full member of the UN's Food and Agriculture Organization (FAO).

Special attention should be devoted to the status of the EU at the UN General Assembly (GA). The European Economic Community gained observer status at the GA in 1974. This means that a representative of the European Commission was allowed to take the floor during the General Assembly's meetings - but only after all the other member states had done so - and without the right to vote. Usually, the representative of the country that held the EU's rotating presidency had the task of presenting the position of the Union in the GA discussions.<sup>8</sup>

Following the recognition on the EU's legal personality and the elimination of the pillar structure by the Lisbon Treaty, in 2010 the member states of the EU tabled a draft resolution to the GA for a "reinforced observer status" to be accorded to the whole Union, and not solely to the European Community. The original proposal aimed at conferring on the EU, among others, the right to speak prior to the other observers, to sit together with the member states and to present and circulate documents, thus gaining more visibility and making more impact on GA discussions. This is a privilege that no other regional organization enjoys.<sup>9</sup> It thus produced cautious reactions from UN members, as it had the potential to open the Pandora's box of regional representation within the organization.

Moreover, the initiative was not backed by a well-designed diplomatic strategy on the part of EU institutions, due also to the initial resistance of some member states. The resolution failed to pass in the GA's meeting of September 14, 2010, by a 76 to 71 vote, and the debate was deferred. The bloc that voted against the resolution was led by Suriname on behalf of the Caribbean Community and Common Market (CARICOM), a regional organization of Caribbean countries, and included most of the African governments, many Pacific island nations, most of the Latin American states, and India and China.

European representatives have probably underestimated the consequences that such a defeat can have on the EU's presence at the UN. Immediately after the negative result, they decided to resume the campaign for a "reinforced observer status" and to table another resolution in the GA a few weeks later. However, the resistance of other UN members spelt caution for the European countries and institutions, as a repeat debacle would have enormously discredited the Union's role in the organization. For this reason, the date of resubmission of the resolution was postponed until May 3 of the current year, when the GA finally adopted it.<sup>10</sup>

<sup>8</sup> Interview with an official of the Italian Permanent Mission to the UN, New York, 5 May 2010.

<sup>9</sup> A number of non-state observers participate in GA meetings. These include several regional organizations, such as the African Union, CARICOM and the League of Arab States, as well as many intergovernmental and international bodies and agencies, such as Interpol, the International Criminal Court and the International Committee of the Red Cross.

<sup>10</sup> The Resolution was adopted as orally revised by a recorded vote of 180 in favour to none against, with 2 abstentions (Syria and Zimbabwe).

The resolution offers fairly modest rights to the EU at this stage.<sup>11</sup> Among others, the EU can now be inscribed on the list of speakers among representatives of major groups; it can circulate its documents directly and without intermediary; it can present proposals and amendments orally; and, it can now give a reply regarding its positions. The EU can exercise these new rights in the sessions of the GA, its committees and working groups, in international meetings and conferences convened under the auspices of the GA and in UN conferences. It needs to be highlighted that the representatives of the EU will not have the right to be seated among member states, they will not vote, they will not co-sponsor resolutions or decisions, nor put forward candidates.

It is worth noting that a provision contained in the resolution envisages extending similar rights of participation to representatives of other regional organizations, if such a request is made on behalf of a regional organization which has observer status at the General Assembly and whose member states have agreed to allow their representatives to speak on behalf of the organization and its member states.

Nevertheless, this vote can be seen as a step toward an increased recognition of the role of the EU within the UN. It has the potential to make a significant impact on the EU's presence in the UN Security Council. Moreover, it paves the way for a new protagonism from regional organizations within the United Nations, as it recognizes the growing role gained by these entities and confers enhanced rights to those regional groups of states that have already developed a significant degree of integration.

### 3.1. *The EU at the UN Security Council*

Europe is usually well represented within the UNSC, with two permanent members (France and the UK) and two or three non-permanent members (Germany and Portugal are the European representatives for the period 2011-12).<sup>12</sup> However, no formal EU representation is envisaged in this body.

There has always been a tension between “intergovernmental” and “integration” approaches among the EU member states *vis-à-vis* their role within the UN Security Council. This has up to now impeded the development and implementation of an effective action by the Union.<sup>13</sup> Both these approaches have emerged from the UNSC working environment while the policy documents of the EU incline more toward “coordination” among EU member states rather than “representation” of the Union as a single actor. On their side, EU member states have so far shown a tendency to prioritize their UNSC seat over EU common representation. Nevertheless, some

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<sup>11</sup> See UN General Assembly, *Participation of the European Union in the Work of the United Nations*, (A/RES/65/276), 3 May 2011, <http://www.un.org/Depts/dhl/resguide/r65.shtml>.

<sup>12</sup> European non-permanent members of the UNSC are elected among the Western Europeans and Others Group (WEOG) and the Eastern European Group. The African and the Asian Groups usually have three members each in the UNSC, while the Americas are represented by normally three, and occasionally four states.

<sup>13</sup> See Robert Kissack, *Pursuing Effective Multilateralism. The European Union, International Organisations and the Politics of Decision Making*, Basingstoke and New York, Palgrave Macmillan, 2010, p. 107-109.

innovations contained in the Lisbon Treaty have the potential to give the EU a more coherent and unitary presence on the world stage, including within the UN Security Council.

### 3.1.1. Coordination among EU Member States

Prior to the Lisbon Treaty's coming 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 had vested in all EU members of the Security Council, permanent and non-permanent, the responsibility to liaise with each other and to keep the other EU members fully informed on Security Council issues. France and the United Kingdom, which hold permanent seats in the Security Council, were under obligation to "ensure the defence of the positions and the interests of the Union" in the execution of their functions. However, Article 19 made it 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 of the Treaty on the European Union, weekly meetings on UN Security Council matters were institutionalized in 2001: these meetings were intended to ensure information sharing and coordination among EU member states at the Political Counsellor level (on Thursday afternoons). They were accompanied by weekly meetings in New York by the Heads of Mission of the EU member states (on Tuesday mornings). While these meetings favoured an increase in the flow of information circulating among EU representatives in New York, a regular coordination mechanism in anticipation of the UN Security Council discussions had not yet been fully established.

To improve this situation, in recent years additional mechanisms have been developed, which include monthly gatherings of the Permanent Representatives and UNSC Coordinators of the EU members, sitting in the UNSC in New York (once a month). Targeted meetings are held in EU capitals comprising EU members of the Security Council at UN Director level. The Political and Security Committee (PSC) of the EU Council in Brussels has also augmented its regular discussions relating to 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).<sup>14</sup>

Article 34 of the Treaty on the European Union (TEU), which has replaced former Article 19 TEU after the entry into force of the Lisbon Treaty, 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 prioritize their responsibilities as UN members over those as EU members. This priority is reinforced by Declarations 13 and 14 on the Common Foreign and Security Policy annexed to the Lisbon Treaty. Both the declarations safeguard the responsibilities and powers of EU member states

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<sup>14</sup> See Daniele Marchesi, "The EU Common Foreign and Security Policy in the UN Security Council: Between Representation and Coordination", in *European Foreign Affairs Review*, Vol. 15, No. 1 (2010), p. 97-114.

in the formulation and conduct of their foreign, security and defence policies, with a specific reference to their national representation within the UN Security Council.

### 3.1.2. Representation of the EU

Setting aside the aspiration to a single EU seat, more pragmatic approaches had been promoted since 1993 to ensure a more effective presence of the Union within the UNSC, but they have usually failed to get consensus from all EU member states. For instance, when Germany and Spain announced their intention - during their two-year mandate at the UNSC in 2003-04 - 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.

Again, when Italy suggested that an EU Council representative - from the Presidency and/or High Representative's office - be permanently associated with its delegation at the UNSC in 2007-08, its initiative met with firm opposition from France and the UK and a lukewarm response from Germany, which was due to hold the EU Presidency simultaneous with the start of Italy's UNSC mandate. During their mandate as non-permanent members of the Security Council, Italy and Belgium worked for the Union's visibility by regularly evoking "the EU position" in their interventions at the UNSC. In order to establish more effective intra-EU coordination, Italy also created a "focal point" within its Mission to liaise permanently with other EU country representatives, with the EU Presidency and with the Council Secretariat.<sup>15</sup>

The adoption of the Lisbon Treaty and its innovative provisions in the fields of foreign and security policy were expected to provide a significant push toward a more unitary representation of the EU at the UNSC. However, an attempt made to associate High Representative Lady Ashton's representative with the delegation of Portugal, which is serving as non-permanent member at the UNSC for the period 2011-12, keeled over without leading to any concrete follow-up measures.

Nevertheless, Article 34 of the TEU contains a provision that should not be underestimated in terms of its possible reinforcing of the EU's impact on Security Council issues. In fact, it 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."

Since the entry into force of the Lisbon Treaty, there have been nearly 40 EU statements at the UN Security Council, two of which were by Lady Ashton. She intervened for the first time in a UN Security Council meeting on May 4, 2010. Although her speech on that occasion was limited to broadly addressing the current status of and further opportunities for EU-UN cooperation, her interventions can be fruitfully exploited to raise the profile of the EU at the UN on crucial Security Council matters.<sup>16</sup> One

<sup>15</sup> See Nicoletta Pirozzi, "Italy's Mandate at the UN Security Council (2007-2008): A Missed Opportunity?", in Jan Wouters, Edith Drieskens and Sven Biscop (eds), *Belgium in the UN Security Council: Perspectives on the 2007-2008 Membership*, Antwerp [etc.], Intersentia, 2009, p. 63-71.

<sup>16</sup> See European Union, *Statement by High Representative Catherine Ashton at the UN Security Council*, New York, 4 May 2010 (A70/10), [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/114179.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/114179.pdf).

positive example is Lady Ashton's address on "Cooperation between the United Nations and regional and sub-regional organizations in maintaining peace and security: European Union," delivered at the UNSC on February 8, 2011.<sup>17</sup>

### 3.2. *The New European External Action Service (EEAS)*

Another interesting opportunity for further strengthening the EU's representation at the UN is the provision contained in Article 27 TEU for the creation of a European External Action Service (EEAS). The EEAS is meant to assist the High Representative in fulfilling his/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."

The EEAS personnel will supplement the structures of EU Delegations in third countries and international organizations. In New York, the European Commission's Delegation (established in 1974) and the EU Council Liaison Office (created in 1994) have been recently unified under the authority of the EU Council's representative, Pedro Serrano, who is acting as Head of the Delegation. As a provisional solution, the under-staffed EU Delegation (counting only 15 personnel at the beginning of 2010) has worked in collaboration with the representative of the country holding the rotating EU presidency. In the course of 2010, the EU Delegation's staff was reinforced by an additional 12 seconded national experts: it is envisaged that another 5 persons coming from the new EEAS will join the Delegation in 2011, making a total of 32 personnel.<sup>18</sup>

Starting with the Spanish presidency in the first semester of 2010, joint teams of EU and Spanish officials have been formed to work on different UN issues. The successive Belgian presidency has reduced significantly its own visibility at the UN - as seen in the enhanced role played by the EU - and has maintained close cooperation with the Delegation's personnel. However, a different trend can be noticed in the current EU presidency, held by Hungary, which has constantly reiterated its own responsibilities in the various UN bodies and progressively divested the authority of the EU's representative in New York.

The added value of the new European diplomatic corps in New York is that it can act as the unitary interface of the EU within the UN. European diplomats will not only represent the focal points for UN members when they want to consult and negotiate with the Union, but they will also ensure a direct liaison between the UN and the institutions in Brussels. A constant interaction with national capitals will also be established through the national diplomats within the service and by the contacts between personnel of the EU Delegation in New York with officers of the EU Delegations in third states. The successful outcome of this innovative step depends largely on the configuration and functioning of the EEAS, which is in the process of

<sup>17</sup> See European Union, *Catherine Ashton EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission Address at the United Nations Security Council United Nations*, New York, 8 February 2011 (SPEECH/11/77), <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/77>.

<sup>18</sup> Interview with an official of the EU Delegation, New York, 3 March 2011.



being structured. The downside to this is the risk of the EU having to act through twenty-seven-plus-one diplomatic services.

### 3.3. *The Impact of the Lisbon Treaty: Between Rhetoric and Facts*

The innovations of the Lisbon Treaty undoubtedly carry a symbolic significance as regard the profile of the EU and the coherence of its external actions in the UN framework. The recognition of its legal personality and the elimination of the pillar structure have allowed the Union to ask for an enhanced observer status at the General Assembly and to proceed with the merging of the former EC Delegation and EU Council Liaison Office in New York. However, what is the real impact of these changes on the EU's presence at the UN? The GA resolution does confer to the Union some new rights, but they are more formal than substantial, and can be considered a partial failure of the EU's diplomacy, if we compare the content of the approved text with the original proposal and look at the difficulties of the adoption process. Nevertheless, it has at least two important merits: to recognize the raising profile of regionalism within the United Nations and to assign a peculiar position to the EU, which is the first (and the only one for the time being) regional organization to have acquired an enhanced observer status. This can be considered as an acknowledgement of its *sui generis* nature with reference to the high level of integration and coordination among its member states. Even the more operational advantages of having an EU's common house in New York should not be underestimated: the EU Delegation has become the point of reference for UN institutions and its broader membership when they want to talk to the Union and significantly contributed to the streamlining of the interaction between the two organizations.

What has been the impact of the Lisbon Treaty in terms of the EU's participation and contribution to the UN Security Council? In order to answer to this question, it is important to refer to the two benchmarks outlined above, namely the status of coordination mechanisms among EU member states and the representation of the Union itself at the Security Council. In terms of coordination, Article 34 of the Lisbon Treaty does not go beyond the obligation for the EU members of the UNSC to concert and keep the other member states and the High Representative fully informed. Coordination meetings at various level take place in New York and in Europe, but they are more targeted to information sharing than to policy coordination. One positive outcome of the Lisbon Treaty in this regard can be identified in the new role assigned to the EU Delegation - in the person of its Head or one of its officers - which has now the responsibility to chair the coordination meetings among EU member states in New York, thus ensuring a higher degree of continuity and institutional memory than in the past, when this task was assigned to the rotating presidencies.

A more substantive impact could be produced by the provisions of the Treaty in terms of the representation of the EU at the Security Council. In fact, the frequency and scope of the interventions made by the High Representative and the Head of Delegation to present the Union's positions on relevant issues at the UN Security Council after the entry into force of the Lisbon Treaty lead us to believe that the EU is willing and able to gain more visibility in this important endeavour. However, the achievement of a greater presence at the UN Security Council is subject to two main accomplishments, which have not yet been realised: a more cohesive foreign policy

conducted by the EU member states on UNSC matters and an effective European External Action Service to support the High Representative and ensure a strong diplomatic action of the Union. If these prerequisites will not be fulfilled in the next future, the Treaty risks to become irrelevant for the enhancement of the EU's actorness at the Security Council.

### **Conclusion: The EU and Regionalism at the UN Security Council**

EU member states are divided on the SC reform and the possibility of having a European seat. This is an option supported by the EU institutions, for instance the European Parliament, and in the long run even by those states, like Germany, who are striving for a permanent seat.

The European seat can be seen in perspective as an objective which accompanies the process of European integration. A unified Europe would mean a single state and there are scholars who see the EU as a federation in progress. A single state would mean that the current members will become part of a new entity and the amalgamation process will lead to their extinction. The succession of states to the new entity will take place and the new entity will become a member of the SC, even though an automatic succession is not possible according to the law on state succession to international organizations.

On the contrary, radical proposals, like the one advanced in academia, of a SC solely made of international organizations, are neither feasible nor politically palatable.<sup>19</sup> Often international organizations do not speak with a single voice and are not endowed with the competence to implement the SC's decisions.

A European seat in addition to those currently occupied by European states seems for the moment not feasible. The European states are over-represented, having two permanent seats (France and UK) and usually two or three non-permanent seats.

However, it would be possible to envisage forms of participation of the EU in the work of the SC. The EU participation would increase the effectiveness of the SC, since there are a number of resolutions that the EU has the competence to carry out and to implement within its own domestic order. This does not mean that the EU should be the only international organization admitted to take part in the SC deliberations. Other international organizations should be involved, given that the motivational criterion should be the capacity of the organization to implement SC resolutions.

A greater role by the EU within the UN Security Council should therefore be linked to the ability of the Union to stand as a credible actor on peace and security matters on the international stage. This is in line with the commitment to "effective multilateralism" contained in the European Security Strategy adopted in December 2003 and also in line with the progress achieved by the EU in the framework of the European Foreign and Security Policy (EFSP).

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<sup>19</sup> See Nico Schrijver, "Reforming the UN Security Council in Pursuant of Collective Security", in *Journal of Conflict & Security Law*, Vol. 12, No. 1 (2007), p. 134-135.

In order to enhance its impact on SC issues ranging from non-proliferation to crisis management to the fight against terrorism, the EU must - first and foremost - prove itself able to put across a single message through its representatives and act as a coherent entity in the foreign policy domain. Thanks to the innovations of the Lisbon Treaty, the EU is now equipped with an enhanced institutional structure, upgraded competences and increased coordinating mechanisms. The big challenge for the main EU actors is now to agree on a unitary and strong stance at the UN.

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