



Restarting Negotiations for the Reform of the Security Council

by Elisabetta Martini

Abstract

In the framework of the IAI-University of Kiel project on “The European Union and the Reform of the United Nations” (Effective Multilateralism) and in the wake of the previous paper “UN Security Council Reform. Current Developments”, this new study intends to go thoroughly into the inter-governmental negotiations carried out since February 2009 in order to understand if a tangible chance to reform the Council does exist in the foreseeable future. By offering an overview of all the relevant stances came out in the last months, the paper tends to focus on Italian and German positions as to understand what are the margins of compromise available between these two European countries today that the Lisbon Treaty is in force.

Keywords: *UN Security Council Reform / European Union / Germany / Italy*

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by Elisabetta Martini*

The 63rd General Assembly (GA) ended in September 2009 with Decision 63/565¹, which urges to continue the inter-governmental negotiations on the Security Council's reform that started in early February 2009. The newly elected President of the GA, the Libyan ambassador Ali Treki confirmed Mr. Zahir Tanin as chairman of negotiations, who accepted the task with the mandate of Decision 62/557² of 15 September 2008. During the 64th General Assembly, heads of states and UN top officers opened the session with long and vague speeches where the mentions to the reform of the Security Council (SC) appeared most of the time just as an academic and rote exercise. Against this background, President Treki did not lose the opportunity to underline the historical injustice of setting aside the African continent from the Security Council.

Areas of convergence and chances for a partial reform

After the opening of the 64th General Assembly, discussions about the reform of the Security Council restarted on 12 November 2009 during the 43rd-44th Meetings of the GA, on the occasion of the presentation of the "Report of the Security Council". During the debate all states criticized harshly the fact that the report, in its traditional format, did not serve the purpose of accountability. These reports have been said to be a mere description of what has been done and lack a full political analysis of the work of the Council. The importance of the report of the SC's work to the GA is proved by the fact that a specific article³ of the UN Charter is devoted to it, many countries restated during the meeting. Beyond this tool, in some states' opinion, consultations between the two organs should be strengthened by scheduling regular and institutionalized meetings between the chairs of the UN bodies in order to share information and improve cooperation.

In particular the group of the Small Five⁴ (S5) - due to their size - is not interested in the question of the enlargement of the Council. As a result they stressed that reforming the working methods of the Council and revitalizing the General Assembly, especially

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¹ UN General Assembly, 63rd Session, *Decision 63/565*, 14 September 2009, available at <http://www.italyun.esteri.it/NR/rdonlyres/24D2664A-4FDA-40A7-BEF6-F4C1F6DB7FEF/0/IntergovernmentalNegotiations.pdf>.

² UN General Assembly, 62th Session, *Decision 62/557*, available at <http://www.centerforunreform.org/system/files/Res+62.557.PDF>.

³ Article 15 of the UN Charter.

⁴ Costa Rica, Liechtenstein, Jordan, Singapore and Switzerland.

enhancing the relations between this latter and the Security Council, would improve communication so that countries that are not members of the Council do not feel marginalized from its most important activities.

Most of the countries succeeded in finding areas of convergence on this matter inasmuch as they expressed the wish to separate the five issues⁵ into which the chairman had divided the broad question of the reform and to come up with an early partial reform focused on Security Council's working methods and the relations between the Council and the General Assembly. On one hand this hypothesis is fiercely opposed by many countries, such as Italy, who included this subject in its comprehensive proposal put forth in April 2009 with Colombia. In this document they thoroughly dealt with the working methods, asking for easier access to information through open briefings, for timely availability of draft resolutions and presidential statements and for analytical briefing for non-Council members. Anyway, the Italo-Colombian proposal strongly affirmed the inextricable linkage among the five issues and the impossibility of separating them.

On the other hand this proposal is opposed as well by some permanent members, such as Russia, which admonished all "attempts to redistribute the powers of the main bodies of the Organisation to the advantage of the General Assembly compromising the prerogatives of the Security Council"⁶ Despite this call for prudence, this subject recently regained primacy thank to a new engagement of Japan on this matter and a debate held at the end of April on the implementation of the note made by the President of the Security Council (S/2006/507)⁷ in light of the "perception of the transparency, efficiency and inclusiveness" of the Security Council's activity. But on this occasion, it is noteworthy that the United States - usually very frugal in their rare speeches - dedicated a long intervention⁸ to conveying the improvement already made as far as open meetings, transparency and efficiency are concerned.

New rounds, old problems

On 16 November 2009 Ambassador Tanin, in a letter sent to all member states, invited them to the first meeting of the fourth round of negotiations, which took place on 8 and 9 December 2009. This meeting was meant to be devoted to "reflection" on states' own positions and proposals and on the positions and proposals of their peers, but despite the appeal to flexibility and compromise all the parties seemed to stand firm on their stances. It cannot be denied that almost all different groups of states in these months, instead of proposing "creative ideas"⁹ only re-shared old documents dated 2005 or

⁵ See the *Overview* presented by Ambassador Zahir Tanin, Permanent Representative of Afghanistan to the United Nations, on 18 May 2009, <http://www.un.org/ga/president/63/issues/screform18509.pdf>.

⁶ *Position of the Russian Federation on the UN Security Council reform*, non-paper sent by Vitaly Churkin, Permanent Representative of the Russian Federation to the United Nations, to Zahir Tanin on 2 March 2010, available at <http://www.reformtheun.org/index.php?module=uploads&func=download&fileId=4323>.

⁷ UN Security Council, *Note by the President of the Security Council (S/2006/507)*, 19 July 2006, <http://www.un.org/en/sc/repertoire/Notes/s-2006-507.pdf>.

⁸ Remarks by Ambassador Alejandro D. Wolff, U.S. Deputy Representative to the United Nations, at debate on United Nations Security Council Working Methods Reform, New York, 22 April 2010, <http://usun.state.gov/briefing/statements/2010/140723.htm>.

⁹ As Mark Lyall Grant, Ambassador and Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations, solicited in its intervention. See UN General Assembly, *Official*

2006 and focused their diplomatic endeavors on proving that their positions are backed by the majority of the member states.

If the enlargement of the Security Council is by now a solution accepted by all the states - including the Permanent Five - to overcome the anachronistic composition of the organ, the categories of new seats still need to be decided. The economic crisis highlighted how urgent the need is for the UN to reflect contemporary global reality but how to reach a higher level of effectiveness of the Security Council is not agreed upon yet. The question of categories is by far the most crucial issue. An enlargement of the Council has been accepted by all the counterparts, but proposals range from “low twenties” to “midtwenties”, without considering Gaddafi’s proposal - made during his one hour-long opening speech - to open the Council to all the UN members.

Does an overwhelming majority exist?

The Uniting for Consensus (UfC) group strongly refuses the idea that there exists an “overwhelming majority” of states which back the solution of enlarging both categories of seats inside the Council. In fact, it is noteworthy that every group remains steadfast in its position and even the parties who do agree on the enlargement of both permanent and non-permanent categories do not share a single position. For example the African group claims two permanent and five non-permanent seats for African states, a proposal that seems compatible with the one put forth by the Group of Four¹⁰ (G4) and backed by the Permanent Five. But, the P5 and the African Union (AU) totally disagree on the claim of the AU to retain for itself the right to appoint the countries among its members. The United States and Russia strongly affirmed that they could envisage only “country-specific”¹¹ admissions to the Security Council.

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

Inside the main groups

The G4 is campaigning for enlarging both categories of members and for equipping the new permanent ones with the same prerogatives of the outstanding P5. However, this group is not a block anymore and some countries are more likely to compromise. While India and Brazil strongly reaffirm their right of being fully accepted into the control room as the booming emerging countries, Japan and Germany are more prudent. The situation of these two countries is far different from fifteen years ago, when Security

records, 64th session : 44th plenary meeting (A/64/PV.44), 12 November 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/606/19/PDF/N0960619.pdf>.

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

¹¹ Statement by Ambassador Alejandro Wolff, U.S. Deputy Permanent Representative, in the General Assembly, on the Security Council Report and Security Council Reform, New York, 13 November 2009, <http://usun.state.gov/briefing/statements/2009/131936.htm>.

Council's reform negotiations started, and they do not seem anymore the fully-fledged candidates for permanent seats. As a result, Germany and Japan seem more keen on adjusting their positions. In particular, Japan proposed that new permanent members at the beginning of their term could receive the veto but in parallel give a commitment not to use it until the future review of the Charter.¹²

The African group backs the total abolition of veto, but if the veto power will outlive the reform and other countries will join the group of the permanent members, they must be given all the responsibilities and tools that being a permanent member implies. Due to the fact that the African group asks for two permanent seats, it goes without saying that it is asking for permanent seats provided with veto power. During the 14th African Union summit in late January 2009, the heads of states reaffirmed this proposal as had been spelled out in the Ezulwini Consensus¹³ and did not soften it, as was expected by UN negotiators.

The UfC, in their last proposal¹⁴ put forth in April 2009 by Italy and Colombia, does not envisage the possibility of an enlargement of the permanent category, but back the creation of a new category of seats, the longer-term seats allocated to the regional groups (Africa, Asia, Asia/Africa on a rotational basis, group of Latin American and Caribbean states, Western European and other group/Eastern European group on a rotational basis). These would be added to regular non-permanent seats deprived of the possibility of immediate re-election, allocated to the following groups: small states (population below 1 million), medium-sized states (population between 1 million and 10 million), Africa, Asia, group of Latin American and Caribbean states and the Eastern European group. As far as longer-term seats are concerned, they proposed two options for their duration: from 3 to 5 years without possibility of immediate re-election, or two-year terms with the possibility of up to two immediate re-elections. In this document, the UfC addressed the question of veto as well, presenting two possible options: either the complete abolition or spelling out of limitations of the scope of veto, i.e. allowing the use of veto only on Chapter VII matters.

As explained above, the Small Five do believe that a revitalization of the General Assembly would guarantee a more democratic organisation and a first step towards a more shared solution to the question of the reform of the Security Council. But, a crucial point would also be a reform of the SC's working methods, in particular of the use of veto power. The S5 urge the permanent members to refrain from using the veto in cases of genocide, crimes against humanity and mass violations of international humanitarian law. As the recent problems over the Goldstone report¹⁵ show, however, definitions of what constitutes serious violations of human rights law are indeed divergent.

¹² Jakob S. Lund and Daniel Safran-Hon, *Third Round of Intergovernmental Negotiations on UN Security Council Reform Conclude*, available at <http://www.centerforunreform.org/node/407>.

¹³ 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.

¹⁴ *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.

¹⁵ Report issued at the end of the fact-finding mission created by the United Nations Human Rights Council to investigate international human rights and humanitarian law violations related to the Gaza War (2008-2009), http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFMGC_Report.pdf.

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

In this context of general disagreement, the request for straw polls made by the G4 at the beginning of new rounds suddenly fell down, and pressure rose to draw a composite paper. Such a demand was epitomised in the letter¹⁶ signed by 143 countries, which was sent to Mr. Tanin to solicit him to come to “text-based negotiations”.

A composite paper: a G4 victory?

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

Italy and Turkey denounced the fact that the G4 did not ask them to sign it, despite the concurrent content of the letter. In these two countries' opinion, it was a clear attempt to present all the subscribers as supporters of the G4's proposal, while they are not.

Despite the UfC's initial contrariety to a document that could exclude some proposals in light of a false overwhelming majority, the UfC group sent their own letter to Mr. Tanin in January 2010, declaring themselves open to a document that would not be focused on only one proposal and that would not impose any artificial deadlines on negotiations.

On 14 January 2009 Mr. Tanin thanked the states for the letters received, though he only answered the one presented by the 143 states, and announced a text-based fifth round, while the fourth round was about to start on 19 and 20 January 2010 without any call for this by the chairman.

The Chairman's appeal for proposals

During these meetings many members seemed disappointed by Mr. Tanin's decision to postpone the compilation of the document and affirmed the impossibility to go on with discussions without a draft resolution to discuss. As a result, the chairman decided to

¹⁶ Multi-State letter, available at http://www.svg-un.org/downloads/GA_RequestForCompositeSCRPaperLetter_23Dec09.pdf.

fix a 3 March 2010 deadline for the states to send him all the proposals that they wanted included in the text. This choice made it clear that no proposal would be cut down - to the great relief of the UfC group - in accordance with the mandate of 2008¹⁷, which denies the chairman the power to exclude any proposal put forth by the states.

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

Among all these documents, only the Slovenian proposal represented a real innovation. Slovenia¹⁸ proposed an increase of six permanent seats (two for Africa, two for Asia, one for Latin America and Caribbean countries, one for Western Europe and other states) and four non-permanent ones. The new four non-permanent seats added to the existing number of non-permanent members would bring the amount of non-permanent seats up to twelve. These twelve seats should be divided in two groups, six seats with more frequent rotation, eligible for re-election every second two-year term within a period of twelve years while the other eight seats would follow the already-existing rules.

Regional Representation

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

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

Despite that, the League of Arab States claims a permanent "Arab representation" in any future expansion - a request echoed by France - a regional definition not provided by the UN Charter but of undisputed importance in the XXI century. Differing from the League of Arab States, the Organization of the Islamic Conference proposes an "adequate representation of major civilizations"¹⁹, including the Islamic Ummah, in any

¹⁷ See UN General Assembly, 62th Session, *Decision 62/557*, cit.

¹⁸ Statement on Security Council reform, sent by Ambassador Sanja Štiglic, Permanent Representative of Slovenia to the United Nations, to Zahir Tanin on 9 February 2010, available at <http://www.reformtheun.org/index.php?module=uploads&func=download&fileId=4330>.

¹⁹ OIC, *Resolution on Reform of the United Nations and Expansion of the UN Security Council's Membership* (RES.20/36-POL), Damascus, 23-25 May 2009, <http://www.oic-oci.org/36cfm/w/en/res/36CFM-POL-RES-FINAL.pdf>.

categories of membership in an expanded Security Council, so as to improve the dialogue among civilizations.

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

However, even this low-profile interpretation of “regional representation” is rejected by permanent members, namely the United States and Russia, who can envisage only “country-specific”²⁰ admissions to the Security Council.

During these last rounds of negotiation, Italy did not present again its wish for a European Union seat, but Italy and Portugal underlined the great change epitomized in the entry into force of the Lisbon Treaty. In the opinion of both countries this new reality should be translated “in the manner the EU interacts with the Security Council”²¹ and according to Italy must be taken into account for further developments of the SC’s reform.

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

Two options for an intermediate model

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

The United Kingdom and France²² back the creation of a new category of seats with a longer mandate than that of currently elected members. On completion of this - undetermined - intermediate period, a review should take place to “convert these new seats into permanent seats”. This option is strongly refused, not only by the countries that exclude the possibility of the creation of new permanent seats, but even by the ones - India above the others - that look at this model only as a way to delay the final decision.

²⁰ Statement by Ambassador Alejandro Wolff, cit.

²¹ Statement by Ambassador José Filipe Moraes Cabral, Permanent Representative of Portugal, at the informal meeting of the plenary on the intergovernmental negotiations on “The Question of Equitable Representation on and Increase in the Membership of the Security Council and related matters”, New York, 8 December 2009, available at <http://www.reformtheun.org/index.php?module=uploads&func=download&fileId=4152>.

²² See UK-French Summit *Declaration on Global Governance and Development*, 6 July 2009, <http://www.franceonu.org/spip.php?article4052>. This joint declaration has been repropounded as the *UK/French Position on Reform of the United Nations Security Council*, sent by Mark Lyall Grant and Gerard Araud, Permanent Representatives of United Kingdom and France, to Zahir Tanin on 1 March 2010, available at <http://www.reformtheun.org/index.php?module=uploads&func=download&fileId=4324>.

While the Korean proposal is closely linked to the Italo-Colombian one, Lichtenstein's document²³ conveys some new points. It admits the creation of a new category of seats with a longer mandate of eight/ten years with the possibility of re-elections to be allocated to the following groups: two for Africa, two for Asia, one for Latin America and Caribbean, one for Western Europe and other states. After 16/20 years a review conference should take place, where the member states will have the ability, though not the obligation, to convert these seats into permanent ones. While this proposal could gain the approval of the UfC, it is firmly rejected by the G4 group.

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

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

A European Union position

As mentioned before, only Italy and Portugal underlined the entering into force of the Lisbon Treaty and referred to it as a turning point for the European approach towards the United Nations. The newly appointed High Representative for Foreign Affairs and Security Policy of the Union, Lady Ashton, during her audition in front of the European Parliament (EP), replied to a question by Mario Mauro - the Italian Vice-President of the EP - saying that she has no opinion about an eventual EU seat in the Security Council. In the European Parliament, the rapporteur on UN-related issues is the German liberal Alexander Graf Lambsdorff, who said recently that such a common seat "is not realistic in the near future (...) But as a long-term political objective this is an important priority of the European Parliament"²⁴. In the recommendation to the Council of the European Union approved on 25 March 2010, the Parliament asked the Council to "ensure that the EU speaks with a single voice in order to make its position heard"²⁵ and devoted an ad hoc chapter of the document to "Global Governance and UN reform" where the EP urged Lady Ashton "to take tangible action and new initiatives in supporting the reform process of the UN system, stressing the need for a comprehensive reform of the Security Council in all its aspects" and to "build a more cohesive position among EU

²³ See *Elements for a General Assembly Resolution on the Enlargement of the Security Council: intermediate model*, sent by Christian Wenaweser, Permanent Representative of Lichtenstein, to Zahir Tanin on 26 February 2010, available at <http://www.reformtheun.org/index.php?module=uploads&func=download&fileId=4314>.

²⁴ Interview (REF: 20100319STO70953) available at http://www.europarl.europa.eu/news/public/story_page/030-71031-081-03-13-903-20100319STO70953-2010-22-03-2010/default_en.htm.

²⁵ European Parliament recommendation to the Council of 25 March 2010 on the 65th Session of the United Nations General Assembly (2010/2020(INI)), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0084&language=EN>.

member states on the reform of the UN Security Council and to advance this position at the UN; to emphasise that an EU seat in an enlarged Security Council remains a goal of the European Union”.

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

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