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In Search of a European Dimension in the UN Security Council

Edith Drieskens, Daniele Marchesi and
Bart Kerremans

Belgium and Italy have been elected to sit as non-permanent members on the UN Security Council for two-year terms as of January 2007. Both want to give their current membership a European dimension. Yet, they will have to do so in times of change at both the UN and the EU level.

Before focussing on the Belgian and Italian objectives, this article presents the state of affairs of the ongoing reform processes in Brussels and New York and of EU actorness in the Security Council, as both are critical for estimating the prospects for a stronger European profile. A brief look is also taken at the mandate for the Intergovernmental Conference (IGC) to be held in autumn of this year. While it is argued that the resulting Reform Treaty is unlikely to modify the European presence in the Security Council substantially, whether or not Belgium and Italy can give their stay in the Security Council a European dimension will depend on a number of factors both within and beyond their control.

The ongoing story of UN reform

In December 2004, the High-Level Panel on Threats, Challenges and Change presented its report¹ envisaging two models for enlargement of the Security Council. Both raised the number of seats to 24 and divided UN members into four geographic areas (Africa, the Americas, Asia and the Pacific, and Europe), with

Edith Drieskens is Doctoral Researcher at the Institute for International and European Policy at Leuven University, Belgium. *Daniele Marchesi* is an Academic Assistant and Researcher at the Department of European Political and Administrative Studies of the College of Europe, Belgium. *Bart Kerremans* is Professor of International Relations and American Government at the Institute for International and European Policy at Leuven University, Belgium. Email: ed2350@columbia.edu

¹ *A More Secure World: Our Shared Responsibility*. This panel of eminent persons was set up following UN Secretary General Kofi Annan's address to the General Assembly on 23 September 2003. One of its main tasks was to recommend the changes needed to ensure effective collective action, including a review of the principal organs of the UN.

six seats each. Model A created six new permanent seats (without veto rights) and raised the number of non-permanent seats to 13. Model B added eight four-year renewable-term seats and one new two-year non-permanent one. Both models were endorsed by then UN Secretary General Kofi Annan in his *In Larger Freedom* report in March 2005. In it, Annan stated that a decision on Security Council reform had to be reached before the start of the UN Millennium Review Summit scheduled for September 2005.² Although he preferred the decision to be taken by consensus, he did not exclude a vote on it in the UN General Assembly. The inability to reach consensus, he said, could no longer be an excuse for postponing action. Like the report of the High-Level Panel, Annan's text provided for a review of the reform measures in 2020. Yet, it was only a matter of weeks before alternative proposals began circulating, including draft resolutions on Security Council reform by the Group of Four (G-4), that is India, Brazil, Japan and Germany, and by the African Union (AU).³ Thus, no agreement was reached at the UN Millennium Review Summit, also because there was no EU consensus on the issue. By winter 2005, it was already clear that the reform endeavours had failed to overcome the deadlock.⁴

The debate, however, has continued and only a few months ago, in early spring 2007, it seemed that for the first time in many years, the prospects for a reform of the Security Council had become somewhat brighter. The General Assembly had discussed the issue once again in December and a broad consensus on the need for action had emerged. But again, the delegations eventually remained divided over the path to follow, in particular over the expansion of Security Council membership and the veto powers involved. General Assembly President Sheikha Haya Rashed Al-Khalifa concluded that three options were on the table: continuing the process within the framework of the Open-Ended Working Group, which had been established by the General Assembly in 1993 to steer discussion on reform of the Security Council, but had achieved little; starting a new consultation round within the Assembly; or letting the members continue their efforts to end the deadlock.

The second option was adopted on 24 January 2007 and Al-Khalifa invited the members to start consultations around five key issues, including not only the Security Council's size, its membership and the use of the veto, but also its working methods, its relationship with the General Assembly and the question of regional representation. To support this process, five permanent representatives were selected as facilitators. On 19 April, after three months of extensive consultations,

² *In larger freedom: towards development, security and human rights for all.*

³ The G-4 proposal calls for the enlargement of the Security Council with ten new members, six permanent ones without veto powers and four non-permanent ones with two-year terms. The six permanent seats are intended for themselves and for two African countries. By contrast, the AU proposes to increase the membership of the Security Council to 26 and grant Africa two permanent and five non-permanent seats.

⁴ See, for example, the articles by Chevellard, Hill and Missirioli in the special core on "The Millennium Summit and UN Reform" in the no. 4, 2005 issue of *The International Spectator*.

they issued a report confirming that the *status quo* was no longer acceptable and proposing a transitional stage of reform involving, perhaps, an interim solution.⁵ On the basis of this report, the Ambassadors to the UN of Chile and Liechtenstein conducted further negotiations. Recognising that views still diverged on how to proceed, on 26 June, they concluded that such an interim arrangement might indeed be the best option, perhaps the only one.⁶ According to their report, such an arrangement entails the creation of a new category of longer-term seats, possibly in combination with the expansion of the number of regular non-permanent ones, as well as a mandatory review at a predetermined date to deal with the obstacles that cannot be overcome directly.

The first facilitator's report left many questions open, but not that of regional representation. Ambassador Mirjana Mladineo of Croatia, who was responsible for this issue, wrote that the introduction of regional seats is not an option because of the different nature of the regional groupings and the differences in their internal working procedures. The majority of members seem convinced that the principle of equitable geographic distribution should be exercised through the existing rules. Regional seats would contradict the UN's intergovernmental nature, most delegations argued. Most are also against reconfiguring the current regional groupings. While the report did recognise that the notion of accountability, and more specifically the accountability of the members of the Security Council towards the other members of their regional group, could be explored further, both for elections and for serving on the Security Council, it would be up to the serving members to represent regional views.

The role of the prospective reform of the EU

Arguably, one could see a growing tension between regional actors playing an active role in international politics, including at the UN level, and UN membership being open only to individual national states.

As is known, Italy has been one of the strongest advocates in Europe of a common EU representation in the Security Council in the long run, and it has played the card of regional representation defensively, mainly to obstruct the candidacy of Germany or other states from becoming new permanent members. This, it is felt, would not only reduce Italy's status with respect to them, but also consolidate the *directoire* approach in EU foreign policy by elevating Germany to the same level as France and the UK.

⁵ *Report of the five Facilitators*, 19 April 2007. <http://www.un.org/ga/president/61/letters/SC-reform-Facil-report-20-April-07.pdf>

⁶ *Report of the two Facilitators*, 26 June 2007. <http://www.un.org/ga/president/61/letters/SCR-Report-26June07.pdf>

Yet, even if the UN were to allow for regional seats and the EU member states would then agree to exchange their national ones for an EU one, the EU would still not be able to take this on at the moment because it lacks legal personality, at least in a formal sense. By granting this legal personality, the so-called Reform Treaty,⁷ which, as agreed upon at the European Council meeting in Brussels on 21–22 June 2007, is to replace the defunct Treaty establishing a Constitution for Europe (TCE), will thus remove an important obstacle to EU representation in the Security Council.

The mandate approved by the European Council for the IGC, to be held in autumn of this year, suggests that the new treaty will include several institutional novelties that could strengthen the EU's actorness, even without a profound institutional reform of the UN.⁸ But a nuanced assessment is needed here.

The IGC mandate maintains the major innovations on foreign policy envisaged by the TCE, including the creation of a Union Foreign Minister, renamed High Representative of the Union for Foreign Affairs and Security Policy. The creation of this minister/representative is meant to improve the consistency and visibility of the EU's external representation, bringing together the functions of the High Representative for Common Foreign and Security Policy (CFSP) and the External Relations Commissioner. He/she should chair the meetings of the EU's External Relations Council and take over the external representation role from the EU Presidency, including in international organisations.⁹ In this context, he/she would also be responsible for coordination between the member states. Under the current Treaties, this task is not defined, but *de facto* performed by the country holding the Presidency, an institution that is to disappear following the reform.

As regards the Security Council, the draft Reform Treaty is expected to maintain the TCE provision that, in the event that the EU has defined a position on an item which is on the Security Council agenda, the EU member states serving have to request that the EU Minister of Foreign Affairs be invited "to present it".¹⁰ Although this provision is meant to enhance the EU's profile within the Security Council, it does not change the fact that the member states will continue to run the show, not only when such a position does not exist, but also when it does because a common position has to be adopted by unanimity and therefore approved by all. Moreover, for the actual invitation of the EU's foreign policy chief, UN rules apply. So far, the current High Representative for the EU's foreign policy, Javier Solana, has addressed the Security Council four times; the Commission has addressed it only once. And as they are invited under different Security Council Rules of

⁷ Draft Reform Treaty Amending the Treaty on the European Union and the Treaty establishing the European Community.

⁸ Annex I to the Presidency Conclusions of the 21–22 June 2007 Brussels European Council meeting.

⁹ Art. III-305(1) TCE.

¹⁰ Art. III-305(2) TCE.

Procedure (Rules 37 and 39), the double-hatting of the new foreign policy representative raises questions from a UN point of view as well.

By stipulating that the EU member states in the Security Council – meaning not only the permanent ones, but also the non-permanent ones – would have to defend the EU positions and interests in the execution of their functions, albeit without prejudice to their responsibilities under the provisions of the UN Charter, the TCE seemed to put an end to the special status of France and the UK in this respect, as confirmed by the second paragraph of the current article 19 Treaty of European Union (TEU) – at least on paper.¹¹ But the draft Reform Treaty does not confirm this amendment, and the second paragraph of the future article 19 will still refer to permanent members only.¹²

Thus, even if the IGC confirms the provisions listed above, the European presence in the Security Council is not likely to be modified substantially. Moreover, some member states clearly want to limit their impact. The fact that, upon the urging of the UK, the IGC has been mandated to adopt a declaration stating that the new provisions on CFSP will not affect the member states' participation in international organisations, including their membership of the Security Council, is a clear case in point.¹³ As a result, the situation will probably remain as it is today. The EU member states serving on the Security Council will continue to be required only to concert and keep the others fully informed, pursuant to art. 19(2) TEU. As permanent members, France and the UK have to defend the positions and interests of the EU but, as indicated above, without detracting from their responsibilities flowing from the UN Charter.

The efforts to improve European coordination

An increasing number of scholars have started exploring the representation of the EU at the UN, recognising that this is a complex phenomenon with many layers and dimensions. Yet, most research on the representation and coordination of the EU member states in the Security Council has been limited to a description of membership and an overview or historical reconstruction of the relevant European treaty provisions. Few scholars have discussed policy and decision-making practice. Moreover, while most have focussed on the special status

¹¹ The TCE removed the word “permanent” in art. 19(2) TEU, so that non-permanent members would also have had to defend European positions without prejudice to their responsibilities under the provisions of the UN Charter (art. III-305(2) TCE). But they are allowed to do so anyway, reading art. 19(1) TEU together with art. 307 of the EC Treaty or art. 103 of the UN Charter. Nonetheless, one could argue that the non-permanent members would have seen their double loyalty explicitly set down. For a first analysis, see Fassbender, “The Better Peoples of the United Nations?”, 880–1.

¹² Draft Reform Treaty Amending the Treaty on the European Union and the Treaty establishing the European Community, §37.

¹³ Annex I to the Presidency Conclusions of the 21–22 June 2007 Brussels European Council meeting, 26, note 22.

of France and the UK, the role and behaviour of the member states with non-permanent seats and of the EU institutions have hardly been touched upon.

The existing research demonstrates that for many years France and the UK gave their obligations a restrictive interpretation, limited to having their permanent representatives answer questions at the Friday morning meetings of the Heads of Mission of the EU countries in New York.¹⁴ Only in January 2001 was information exchange systematised, when the practice of “article 19 briefings” was established.¹⁵ In these weekly (de)briefings, named after article 19 TEU (see above), one of the EU members of the Security Council – a different one every month – informs the others of events in the Security Council. These meetings are organised every Thursday afternoon in the Commission/Council building in New York and chaired by the country holding the EU Presidency. Representatives of the Commission and the EU Council’s New York Liaison Office also participate. These meetings now have a more dynamic and forward-looking character than a few years ago, however they continue to revolve around an exchange of information rather than coordination. Moreover, in comparison to the weekly meetings of the (deputy) Heads of Mission and informal contacts, they rarely provide new information, except, perhaps, for the small(er) and new(er) member states.

In the run-up to their 2003–04 Security Council membership, Spain and Germany suggested a number of additional steps to improve coordination, not only taking up once again the Italian idea (known as the “EU laboratory” idea) of including in their delegation one representative of the EU Presidency and one of the High Representative, but also organising more frequent coordination meetings between the EU members of the Security Council to inform each other of the instructions received from the capitals before discussions take place. Briefings were organised on a daily – even hourly – basis during the 2003 Iraq crisis in an effort to settle intra-European disputes, and some coordinated action was indeed taken on economic and financial sanctions. However, as a result of the deep cleavages over Iraq, the momentum gained by the 2002 Council initiative almost completely faded away and Spain and Germany had to shelve the procedures proposed. Belgium and Italy are now expected to give these developments new impulse.

Potential and limits for promoting a European dimension

With Belgium and Italy having joined as non-permanent members in January 2007, Slovakia completing the second year of its mandate, and France and the

¹⁴ See, for instance, Biscop and Drieskens, “Effective Multilateralism and Collective Security”, 115–32; Luijck, *EU cohesion in UN General Assembly*.

¹⁵ The Council of Ministers later adopted a paper on the implementation of article 19 TEU. See Council document SN 3133/02 of 16 July 2002.

UK serving on a permanent basis, as many as one third of the members of the Security Council are EU member states this year, offering exceptional opportunities.

On numerous occasions, the Belgian government has declared that it wants to give its mandate a “European dimension” in a pragmatic and result-oriented way, following four policy lines.¹⁶ Rather than lobbying for an EU seat or trying to strengthen cooperation between the EU and the UN within the framework of Chapter VIII of the UN Charter, the Belgian team has decided to focus on coordination, both between the EU member states serving and between Brussels and New York. First, it wants to improve the functioning of the article 19 briefings, making them more qualitative, efficient and systematic. Secondly, it intends to synchronise the debates within the EU in Brussels with those at the UN in New York, by gearing the proceedings in the Political and Security Committee with the agenda of the Security Council. Thirdly, recognising the potential of five EU member states serving at the same time in the Security Council, it aims to strengthen the coordination between these countries, in New York and elsewhere. Finally, the Belgian team has been thinking of strengthening coordination between the permanent (P-5) and non-permanent (E-10) members, by bringing the informal E-10 forum, which met for the last time in early 2005, back to life.

As indicated above, Italy has also approached its current membership from an EU perspective.¹⁷ Immediately after its election, the Italian Ambassador to the UN even declared that the Italian seat would be an EU one. It comes as no surprise that Italy sees its mandate as a unique opportunity to promote its proposals on Security Council reform. The almost unanimous support that its candidature for a seat in the Security Council received in the General Assembly was seen in Rome as recognition of its role in the UN and the prominent role it has played in the context of the debate on Security Council reform. In addition, the election of a South Korean as UN Secretary General,¹⁸ the loss of momentum of the G-4 reform initiative after the 2005 Millennium Review Summit and the more cautious approach of the Merkel government towards obtaining a permanent seat, nourished expectations that Italy would seize the opportunity to leave its mark by securing institutional advances in EU coordination. Yet, also Italy is well aware that it is impossible to force the hand of this forum and that trying to do so could jeopardise its own position. Therefore, it has from the beginning of its mandate opted for an incremental approach to achieving its long-term objective of establishing a single EU representation in New York.

¹⁶ Drieskens, Van Dijck, Kerremans, “Het Belgisch lidmaatschap van de Veiligheidsraad”, 131–5.

¹⁷ See the resolution in the Italian Chamber of Deputies on Italy’s role in the Security Council, approved on 28 November 2006: “Ruolo dell’Italia nel Consiglio di Sicurezza”.

¹⁸ Like Italy, South Korea is one of the leading members of the “Uniting for Consensus” movement in the UN, which aims at adding ten non-permanent but immediately re-eligible members to the Security Council.

While waiting for an EU seat, Italy has been one of the strongest advocates of an expansive interpretation of the EU Treaty articles dealing with EU coordination in international fora. In fact, Italy would like to give new impulse to the article 19 briefings by including, for instance, information on the proceedings of the Security Council's subsidiary bodies. Like Belgium, it is also trying to boost coordination between the EU members of the Security Council in New York, Brussels and the national capitals. Due to judicial objections, but especially to resistance from France and the UK, the idea already mentioned of creating a EU laboratory within the Security Council has had to be abandoned again. As an alternative, a permanent information channel with the German EU Presidency team was established and efforts have been made to continue this during the Portuguese semester.

Finally, while Italy's insistence on the importance of strengthening EU coordination in the Security Council made it more difficult for Germany to push for a permanent seat of its own, especially in the first six months of the year when it held the EU Presidency, Germany's position also seems to have shifted towards support for the new transitional model of long-term seats proposed by the facilitator's report, though without giving up its objective of a full-fledged permanent status.

The efforts of Belgium and Italy to promote a European dimension in the Security Council are coming up against a number of obstacles. First of all, for France and the UK there are red lines that cannot be crossed: no mandates from Brussels, no lines of accountability and no further institutionalisation of the informal coordination practice. As a consequence, the continuation of some practices that Belgium and Italy are keen upon remains vulnerable to the changing priorities of the EU countries serving.

Another complicating factor might be the "size gap" between them. As a big member state, Italy might be tempted to seek cooperation above all with the permanent members. As a consequence, much depends on whether the Italian government will prefer a temporary, but politically rewarding, role in a *global directoire* to a more "low profile" European one, pushing for EU coordination and representation.

The question is also whether a small member state like Belgium can prevent this big member state dilemma from emerging, for instance by strengthening the coordination between the EU member states serving in the Security Council as well as between the five permanent members and the ten rotating ones. These ten states – often seen as occasional passers-by, some say tourists – face many constraints: they have no veto rights, no institutional memory to rely on and only limited agenda-setting powers. In addition, it is almost impossible for them to counterbalance the strong pressures coming from the permanent members to behave "appropriately" by appealing to loyalty bonds with their regional group.

Conclusion

Despite these difficulties, Belgium and Italy can make a difference, also in conveying the EU view. That a good division of labour, exploiting the differences in expertise, as well as pragmatism and professionalism are rewarded was illustrated by Belgium's leading role in the fact-finding mission to Kosovo.¹⁹ However, their success will depend ultimately on developments beyond their control, and more specifically on the completion of the intertwining reform processes sketched above – on the one hand, the UN reform process, and notably the reform of the Security Council and the evolution of the German position on this issue, on the other, the institutional reform of the EU, including the new treaty to be agreed by the upcoming IGC and the ensuing ratifications. Nonetheless, in their search for a European dimension in the Security Council, they can build on the current momentum in EU-UN security relations, which has benefited from the fast development of the European Security and Defence Policy (ESDP) and, in particular, from the growing number of responsibilities taken on by the EU within the framework of UN crisis management.

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¹⁹ In April 2007, the Security Council organised a six-day information mission to Kosovo. The mission stopped in Brussels, Belgrade, Pristina and Vienna and was led by the Belgian Ambassador to the UN.

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