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**THE STATUS OF THE EUROPEAN UNION AT THE UNITED NATIONS
AFTER THE GENERAL ASSEMBLY RESOLUTION OF 3 MAY 2011**

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Introduction

On 3 May 2011 the UN General Assembly ('UNGA') passed a resolution on the "Participation of the European Union in the work of the United Nations"¹ in order to upgrade the role of the European Union ('EU' or 'Union') within the UNGA and to bring it in line with the reforms in the Lisbon treaty. It was a political decision at the highest echelons of the EU to press for the adoption of this resolution at all costs despite an adverse political environment in New York. The EU High Representative, Catherine Ashton, saw the resolution as a hard-won victory for the EU, stating that "The Resolution will in future enable EU representatives to present and promote the EU's positions in the UN, as agreed by its Member States."

This contribution discusses the political and practical consequences of the resolution, and whether the EU has achieved its goal to enhance its participation within the UNGA. We argue that despite the efforts by the EU Delegation and the EU High Representative herself, this watered-down resolution fails to meet its original purpose. The politically central goal set by the Union in trying to obtain enhanced observer status at the UNGA was to improve its leverage and visibility as a global actor codetermining developments on the international plane. This was in line with the letter and spirit of the Lisbon Treaty, which foresees a stronger external representation of the EU through the President of the European Council, the High Representative of the EU for Foreign Affairs and Security Policy ('HR'), the Union Delegations, adding to the European Commission. However, the final version adopted by the UNGA only secures speaking rights for President Herman van Rompuy and HR Catherine Ashton at the UN ministerial plenary meetings taking place at the beginning of each regular session of the GA, whereas it qualifies unacceptably the actual participation rights of the Union in the everyday work of the GA and, thereby, its capacity to influence decisions of this UN organ.

The Resolution

The EU first attempted to upgrade its role in the UNGA in September 2010. The EU's then failure to secure enhanced rights was blamed on both a poor diplomatic effort on behalf of the EU as well as a surprising level of resistance from other states to the

¹ United Nations General Assembly, Resolution A/65/L.64/Rev.1.

proposal. The EU came back to the table with a renewed effort to secure 'enhanced observer status' and was able to get a resolution passed, albeit with many important amendments and concessions (explained in detail below). The Resolution was passed with 180 votes in favour, and none against. Zimbabwe and Syria abstained, while ten states did not record a vote: Azerbaijan, Côte d'Ivoire, Kiribati, Libya, Nauru, Rwanda, Somalia, Sri Lanka, Vanuatu, and Venezuela.

The Resolution passed in New York on 3 May 2011 bears surprisingly little resemblance to the draft of September 2010. Notably, all references to the Lisbon Treaty have been removed. The Resolution no longer makes any reference to the benefits of regional integration, or to the long-standing relations between the EU and the UN, which appeared in the first draft. The Resolution gives no background or context whatsoever regarding why such participation rights are necessary. In essence, the European proposal was utterly de-Europeanized.

Most importantly, however, the participation rights that the EU 'won' remain less than what is needed under Lisbon for the EU to truly behave as a global actor within the UN. The EU has secured the right to be inscribed on the list of speakers together with the representatives of major groups as well as to have its communications circulated directly as documents of the UNGA. As to the former, the practice in New York is for the President of the UNGA to determine the exact order in the list of speakers. In accordance with the Resolution the President will now be able to give the floor to the EU representative earlier in the discussion. This means that the EU delegation in New York will have to negotiate each summer with the office of the President in order to secure a speaking slot among the first speakers at the UN ministerial plenary meetings every September.

The Resolution further provides that the EU has also a right to reply "as decided by the presiding officer", which is restricted to only once per item. However, the EU has no right to challenge decisions of the presiding officer and is therefore incapable of defending itself in case of perceived arbitrary decision by the presiding officer. Additionally, the EU has no right to raise a point of order, nor to vote, nor to put forward candidates in the UNGA.

Further, contrary to the letter and spirit of the Lisbon Treaty, the EU has willingly conditioned its capacity to voice its views in the UNGA even on issues touching upon its own (exclusive or exercised shared) competences on the "agree[ment] by the Member States of the European Union". In addition, it can only make proposals and amendments orally whereas these "shall be put to vote only at the request of a

member state.” It may be noted here that this outcome may serve the foreign policy of some EU member states, which insist on refusing the competence of the Union Delegations to represent them in international fora. It remains to be seen whether a restrictive interpretation of this resolution may be used as precedent by such member states in other international organisations.

Thus, in practical terms the EU has only gained the right to present its views at the UNGA before its own nameplate. In all other aspects it is procedurally handicapped and still has to rely on its member states to promote its agenda in the UNGA. It has accepted to remain in the backseat in international relations behind its member states, cementing a long-standing – but unacceptable in post-Lisbon terms – *modus operandi* in the UNGA. The EU spent valuable political capital and lost the political impetus from the coming into force of the Treaty of Lisbon, all for a resolution that fails to achieve its original goal.

Effect in other UN organs and bodies

The enhanced rights that the EU now enjoys within the UNGA will also flow on to some other bodies related to the UNGA. This is because the Resolution states that the modalities of participation also apply within the General Assembly’s “committees and working groups, in international meetings and conferences convened under the auspices of the Assembly and in United Nations conferences”. The subsidiary organs of the General Assembly include Boards, Commissions, Councils and Panels, Committees, and Working Groups. The Resolution only allows enhanced participation within the Committees² and Working Groups.³

It is unclear whether and to what extent the Resolution will impact upon the status of the EU in other UN organs or programmes and funds of the UN, such as the Human Rights Council or World Food Programme, or the specialized agencies, such as the World Health Organization or the Food and Agriculture Organization, all of which have their own rules of procedure. Each UN organ decides whether to grant observer status to a non-state body, and the modalities under which the latter might participate. This means that the modalities of the EU’s observer status vary from

² There are six Committees under the General Assembly: Disarmament and International Security Committee (First Committee); Special Political and Decolonization Committee (Fourth Committee); Economic and Financial Committee (Second Committee); Social, Humanitarian and Cultural Committee (Third Committee); (e) Administrative and Budgetary Committee (Fifth Committee); and the Legal Committee (Sixth Committee).

³ A list of UN General Assembly Working Group is available at <http://www.un.org/en/ga/about/subsidiary/other.shtml>.

organ to organ. Therefore, it appears interpretatively consistent to argue that the Resolution does not apply generally in the UN system. However, the general title of the Resolution, which makes reference to the “work of the UN” cautions against any adamant conclusion at present. On the other hand it is indisputable that the new arrangements do not apply to the Security Council. Further, it should be assumed that the Resolution is with no prejudice to some organs within the UN family where the EU has already obtained wider participation rights than the ones foreseen in the resolution. This point, together with the contentious ones raised above, remain to be clarified in practice and authoritatively by the interpretation of the UN Office of Legal Affairs.

The EU Precedent: the participation of other organizations in the UN

While essentially not gaining much from the Resolution, the EU also made some important concessions. In this respect the EU agreed to lower the threshold in the Resolution for other regional organizations to obtain similar rights in the UNGA. The Resolution states that the UNGA may adopt modalities for participation of other regional bodies “following a request on behalf of a regional organization that has observer status in the General Assembly and whose member States have agreed arrangements that allow that organization’s representatives to speak on behalf of the organization and its member States”. This means that a regional organization, such as the Caribbean Community (CARICOM) or the African Union, could seek participation rights similar to those obtained by the EU when the organization’s members have allowed the organization to speak on their behalf. This is a far lower threshold than that in the corresponding section in the draft of September 2010. The 2010 draft would only have allowed enhanced participation rights for organizations where they had “reached a level of integration that enables that organization to speak with one voice”.⁴ The new wording is a result of a negotiation involving the EU and the Caribbean Community, which has stated that it would seek similar participation rights in the future.

Future requests for greater participation by regional bodies must still be voted upon by the UNGA on a case-by case basis. However, the current Resolution sets a precedent that would make it easier for other organizations to upgrade their role at the UNGA. Participation in international organizations, including the UN, is generally limited to states. Where international organizations have created an exception to this

⁴ Draft Resolution A/64/L67 of the UN General Assembly – Participation of the European Union, Annex L. in Emerson et. Al, *Upgrading the EU’s role as a Global Actor: Institutions, Law and the Restructuring of European Diplomacy*, Centre for European Studies, 2011.

rule, they normally only allow membership for regional organizations with a relatively high degree of integration and decision-making power, such as the EU.⁵ This Resolution effectively lowers the threshold for intergovernmental organizations to participate within the UN bodies. For example, in its Interpretative Declaration, CARICOM stated that “The conferral of identical rights [to those given to the EU] is not dependant on a duplication of the European Union’s modalities of integration, nor is it premised on the achievement of any perceived “level” of integration.”

Following the vote, representatives of Bahamas (representing CARICOM), Nigeria (representing the AU) and Sudan (representing the Arab League) stated that the Resolution was a precedent to allow other regional bodies upgrade their participation rights. They will likely expect the European Union to be favourable towards these requests. Greater participation by these regional bodies will eventually downplay the exceptional nature of the EU, which has a higher level of integration and decision-making autonomy than other regional bodies.

The Resolution also raises questions for the UN. The Bahamas argued that the Resolution might create “a new category of non-state observer with a unique complement of rights and privileges”.⁶ Smaller states, who are given a voice within the UNGA on the same level as the more powerful, feel that this voice will be diminished if the UN becomes dominated by regional organizations. Nauru, which did not vote, argued that the Resolution posed “serious risks” for the organisation, and would change the nature of the UN. The Hungarian representative, on behalf of the EU, sought to allay these fears, stating that: “As we have agreed from the outset, the UN is, and should remain, an organization of States. The European Union will remain an observer at the General Assembly.”⁷ Yet another criticism was that the EU’s enhanced observer status would increase its representation when Europe is already viewed by many as over-represented in international fora. Nauru argued that the EU would effectively gain a “28th seat” through the Resolution. Again, the EU sought to allay these concerns by giving assurances that the new modalities would not negatively affect the rights of States to address the General Assembly.

⁵ Participation of the European Union within international organizations is often made possible through a specific ‘Regional Economic Integration Organization Clause’ (REIO clause) that allows entities such as the EU to participate. E.g Article 2(4), Constitution of the Food and Agriculture Organization.

⁶ Statement by The Bahamas on behalf of CARICOM, 3 May 2011.

⁷ General Statement on behalf of the European Union by H.E. Mr. Csaba Kőrösi, Permanent Representative of the Republic of Hungary, at the United Nations General Assembly 65th Session, 88th Plenary meeting on "Strengthening of the United Nations system: draft resolution (A/65/L.64/Rev.1).

It is necessary to keep in mind the dynamics within the UN and the institutional culture in order to explain the objections raised by different states and micro-states in the process of consultations. Member states of other regional organisations did not share identical preferences in the negotiations. However, it can be safely argued that their primary interest lies in safeguarding the intergovernmental nature of the UN and the UNGA as a guarantee of their sovereignty mirrored in their institutionally unrestrained capacity to make foreign policy at the UN and to codetermine decisions. In the UNGA their vote counts and they are determined to safeguard this right. Simultaneously, they perceived this negotiation as an opportunity to upgrade in the future the status of their regional organisations in the GA.

How the EU is viewed externally

This saga illustrates the diverging views on the type of actor the EU is within the international system. It is clear that the EU viewed the changes as merely 'procedural' whereas other states saw them as a threat to their interests and to the intergovernmental nature of the UN as a whole.

The Lisbon Treaty created a foreign policy architecture that would allow the EU to speak with one voice on the international plane, creating permanent positions such as the President of the European Council and the High Representative. However, to make use of these changes, the EU has sought to adjust the rules of the international organizations in which it participates. This has meant that the Lisbon reform now carries with it an external dimension, whereby the EU must persuade other UN member states to allow its greater participation in international fora. Its inability to do this seems to be one of the reasons for the watered down text of the Resolution. As evidenced by the shocking rebuff it received in September 2010, the EU underestimated the opposition that such a proposal would generate whereas it had an inflated view of its international stature as a global actor.

In Europe, the EU is viewed as a supranational organization with a distinct legal personality and a high level of autonomy. Yet the debates within the UNGA show that externally the EU is still viewed as a European 'bloc' virtually indistinguishable from its member states. A UN press release following the vote, for example, repeatedly describes the Union as a 'bloc'.⁸ As discussed above, the text of the Resolution also attests to this. The EU may now present proposals "*as agreed by the Member States of the European Union*" and these can only be put to a vote "*at the*

⁸ General Assembly GA/11079/Rev. 1*, 3 May 2011.

request of a Member State.” This language does not present the EU as an autonomous global actor, but one that remains tied to its member states.

Conclusion

Rather than being seen as a diplomatic victory at the UN, the latest resolution should at best be seen as the beginning of a greater diplomatic effort to upgrade the EU’s role in the World Organization. The impact of the Resolution will only be known once we see how it will be used in practice. As evidenced by the restrictive interpretation by CARICOM, some states will seek to use the resolution to restrict the EU’s participatory role. The EU must forcefully insist on exercising its rights, otherwise these hard fought for changes will be a hollow victory. This negotiation also highlights the actual standing of the EU in global politics. The international community apparently does not conceive the EU as a powerful actor capable of pursuing and achieving its central goals without bending to pressure. Rather the fact that the EU found itself obliged to negotiate sometimes from an inferior position with micro-states is highly illustrative in this respect. Lastly, there remains a question over the extent to which the EU has to be ready to flex its economic muscles when this is absolutely necessary. It is inconceivable for the world’s number one donor of development aid to be unable to secure relatively easily the support of the majority of states in the UNGA on an issue of instrumental importance to it.



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