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Citation: Wouters, J., Odermatt, J. & Ramopoulos, T. (2011). The Lisbon Treaty and the Status of the European Union in the International Arena: The May 2011 Upgrade at the UN General Assembly. IEMed Mediterranean Yearbook, 2011, pp. 166-170.

This is the published version of the paper.

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The Lisbon Treaty and the Status of the European Union in the International Arena: The May 2011 Upgrade at the UN General Assembly

Panorama

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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 within the UNGA and to bring it in line with the reforms in the Lisbon Treaty. It was a political decision taken 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 EU 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) and the EU 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, which take place at the beginning of each regular session of the GA, whereas it unacceptably qualifies the actual participation rights of the EU 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 failure at the time 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 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.

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

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-Europeanised.

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, and 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 of 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 in September.

The Resolution further provides that the EU also has a right to reply "as decided by the presiding officer," which is restricted to just 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 decisions taken by the latter. Additionally, the EU has no right to raise a point of order, nor to vote, nor to put forward candidates in the UNGA.

Furthermore, contrary to the letter and spirit of the Lisbon Treaty, the EU has willingly conditioned its capacity to voice its view in the UNGA even on issues touching upon its own (exclusive or exercise shared) competences on the "agree[ment] by the Member States of the European Union." In addition, it can only make proposals and amendments orally and 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 denying the competence of the EU Delegations to represent them in international fora. It remains to be seen whether a restrictive interpretation of this resolution may be used as a 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 agreed 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 Lisbon Treaty, 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 Groups³.

It is unclear whether and to what extent the Resolution will impact upon the status of the EU in other UN organs, programmes or funds, such as the Human Rights Council or World Food Programme, or the specialised agencies, such as the World Health Organisation or the Food and Agriculture Organisation, 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 organ to organ. Therefore, it appears interpretatively consistent to

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 www.un.org/en/ga/about/subsidiary/other.shtml.

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 certain 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, remains to be clarified in practice and authoritatively by the interpretation of the UN Office of Legal Affairs.

The EU Precedent: The Participation of Other Organisations 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 organisations 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 organisation that has observer status in the General Assembly and whose Member States have agreed arrangements that allow that organisation’s representatives to speak on behalf of the organisation and its Member States.” This means that a regional organisation such as the Caribbean Community (CARICOM) or African Union (AU) could seek participation rights similar to those obtained by the EU if the organisation’s members have allowed the organisation 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 organisations that had “reached a level of integration that enables that organisation to speak with one voice.”⁴ The new wording is a result of a negotiation involving the EU and 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 organisations to upgrade their role at the UNGA. Participation in international organisations, including the UN, is generally limited to states. Where international organisations have created an exception to this rule, they normally only allow membership for regional organisations with a relatively high degree of integration and decision-making power, such as the EU.⁵ This Resolution effectively lowers the threshold for inter-governmental organisations 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 the 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 to 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 more powerful ones, feel that this voice will be diminished if the UN becomes dominated by regional organisations. 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, “As we have agreed from the outset, the UN is, and should remain, an organisation 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 repre-

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.

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.

A NEW STRATEGY FOR A NEIGHBOURHOOD IN TRANSFORMATION

At the EU borders lie 16 countries whose perspectives and aspirations have a direct impact on the former. The events of these past few months in Southern Mediterranean countries only accentuate this interdependence. In this context of change and given the limited results obtained through the European Neighbourhood Policy (ENP), the EU has begun the process of revising the Policy in order to step up support for the political reform underway and provide a more adapted response on a case by case basis.

Providing Support for Progress towards Strong Democracy

Supporting the Deepening of Democracy: The level of aid allocated as support to sound, sustainable democracy will depend on the progress made by each country in terms of political reform.

Establishing a Partnership with Society: Developing a plural civil society is an indispensable condition for guaranteeing a healthy democracy. Hence, a facility dedicated to civil society (as part of the ENP) would allow organisations improved access to EU aid. By the same token, the establishment of a European Fund for Democracy would stimulate the emergence of numerous democratic political actors representing the plurality of society. Another indispensable issue in a democracy is fostering media freedom. In this regard, unhindered access to internet by civil society and the use of electronic communications technology are essential. Finally, the EU will step up dialogue on human rights.

Intensifying Political Cooperation on Security: The EU intends to strengthen its participation in the resolution of protracted conflicts, ensure a concerted use of the Common Foreign and Security Policy (CFSP) as well as other instruments, and promote joint action with ENP Partners regarding key security issues in international areas.

Providing Support for Sustainable Economic and Social Development

Sustainable Economic Growth and Job Creation: To attain these goals, the EU will encourage partner countries to adopt policies favourable to more sustained, sustainable and inclusive growth, the development of Small and Medium-sized Enterprises (SMEs) and micro-enterprises and job creation.

Strengthening Trade Ties: Since the EU is the main export market for neighbouring countries, a deep and comprehensive free trade area (FTA) with the EU would prove the most effective tool for strengthening trade ties. In the long term, the most advanced partners could progress towards regional economic integration. In the shorter term, the EU will seek to extend trade concessions in existing agreements or negotiations underway in sectors likely to stimulate an immediate recovery in the economies of partner countries.

Strengthening Sectoral Cooperation: Cooperation can be strengthened in all sectors involved in the domestic market, according to the criterion "more for more." The areas of cooperation proposed are knowledge and innovation, climate change, environment, energy, transportation, maritime affairs and information and communication technology.

Migration and Mobility: In these domains, the emphasis is on visa facilitation for some partner countries of the ENP and the liberalization of the visa regime for the most advanced partners. Thus, the development and/or emergence of mobility partnerships would ensure proper

management of the movement of people between the EU and third countries. Finally, the EU encourages member states to fully utilize the opportunities offered by the EU Visa Code.

Establishing Efficient Regional Partnerships through the ENP

Strengthening the Eastern Partnership: From the EU perspective, deep and comprehensive free trade areas are essential for strengthening political and economic ties with EU partners in the East. In this regard, the EU is planning to launch comprehensive programmes to provide partner countries with the necessary administrative capacity to introduce reforms.

For the Eastern Partnership, topics on the agenda are: further democratization; continuing the visa facilitation and visa regime liberalization processes; intensifying sectoral cooperation, particularly in the sphere of rural development; and maintaining a substantive dialogue in areas such as education, transport and social and employment policies.

Establishing a Partnership for Democracy and Shared Prosperity in the South Mediterranean: The ENP should provide an ambitious response to the winds of change blowing in South Mediterranean countries. This response is addressed in the joint communication, "A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean."

Simplified, Coherent Action and Programme Frameworks

Clearer Priorities through More Determined Political Leadership: Action plans and relevant EU aid under the ENP will be focused on a small number of priorities and more specific benchmarks will be introduced.

Financing: The aim is to target the funds slated and programmed through the ENPI and other relevant instruments of foreign policy in light of the ENP's new approach. The latter involves the provision of additional resources of up to 1.242 billion euros by 2013. In addition, resources are to be mobilized to strengthen the budget.

Involving the EIB and the EBRD: In order to support major infrastructure projects, stimulate development and address key challenges in energy, environment and transport, we must ensure that the EIB and other regional banks have sufficient financial resources. Therefore, the EU proposes expanding the EIB and the EBRD's lending possibilities, in particular by the extension of the latter's mandate to certain southern partners.

Planning for 2013 and Beyond: With regard to the post-2013 financial framework, the future European Neighbourhood Instrument (ENI) will provide most of the budget support to Partner Countries. The procedure for obtaining financing through the ENI should be more flexible and simpler and the conditions stricter in order to allow greater differentiation between the countries receiving aid.

Finally, coordination efforts will have to be stepped up between the EU, its Member States and other international financial institutions (IFIs) and significant bilateral donors to maximize external support to the reform agenda established within the context of the ENP.

For further information:

http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf

sensation 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.

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 negotiation. 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 the status of their regional organisations in the GA in the future.

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 organisations 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 Sep-

tember 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 organisation 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’⁷. 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 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 Organisation. 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 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. 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 relatively easily secure the support of the majority of states in the UNGA on an issue of instrumental importance to it.

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).

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