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Participation of the EU in the work of the UN: General Assembly Resolution 65/276

Pedro Antonio Serrano de Haro



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CENTRE FOR THE LAW OF EU EXTERNAL RELATIONS

**PARTICIPATION OF THE EUROPEAN UNION IN THE WORK OF
THE UNITED NATIONS: GENERAL ASSEMBLY RESOLUTION
65/276**

PEDRO ANTONIO SERRANO DE HARO*

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Abstract

The adoption of UNGA Res. 65/276 on 3 May 2011 constitutes an important step in implementing the Treaty of Lisbon provisions at the United Nations. The new set of EU international representatives can now present EU positions at General Assembly formal meetings, as well as at UN international conferences, in conditions similar to those awarded to representatives of UN members acting on behalf of major groups. This resolution is an acknowledgement of the EU's specificity. It can be considered a major breakthrough in a forum where the promotion of national sovereignty continues to be a dominant factor. This paper seeks to present the main concerns that were voiced by the UN membership, as well as the responses provided by the EU, during the negotiations that led to the adoption of the resolution. It will also offer an interpretation of its clauses and an analysis of its implementation one year after its adoption. The scope of and arrangements contained in this resolution do not offer a solution to all the questions raised by the participation of the EU in the work of the UN. Nevertheless, they do address the most immediate needs within the realm of the General Assembly and UN international conferences and provide a good basis for progress elsewhere. The paper is based on the author's personal involvement in the development and implementation of this initiative.

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1. INTRODUCTION

The Treaty of Lisbon modifying the Treaties of the European Union (EU) and of the European Community (EC), entered into force on 1 December 2009. One of the major changes it introduced was the establishment of new arrangements for the international representation of the EU with the aim of increasing the effectiveness and coherence of the EU's external action. The United Nations (UN) is at the centre of the EU's approach to international relations, based on effective multilateralism.¹ Implementation of the new arrangements for the representation of the EU at the United Nations is therefore particularly relevant. As part of these efforts, on 3 May 2011, the EU was successful in achieving the adoption of a resolution by the General Assembly of the United Nations, concerning 'The participation of the European Union in the work of the United Nations' (hereinafter Res. 65/276). This resolution enhances EU representatives' capacity to act in the General Assembly and at UN conferences as well as international meetings and conferences held under the auspices of the Assembly. It constitutes a significant step in the recognition of the EU's singularity as an international actor. The EU's new representatives can now carry out tasks that otherwise would have had to be implemented through an EU Member State representative. However, some works have contended that this resolution does not meet its goal.² Going even further, some have argued that the difficulties the EU has experienced in having this resolution adopted reflects the lack of recognition of the EU as a relevant international actor.³ Such criticism, in the author's view, fails to take into account that UN General Assembly Res. 65/276, within its scope, enables the new EU representatives to undertake most of the representation tasks formerly performed by representatives of the rotating Presidency of the Council. It also ignores the transfer of representation responsibilities in other UN organs, such as the Peace Building Commission (PBC), the Commission on Social Development (CSD) or as regards presentation of EU positions in the UN Security Council. Finally, some of the critics do not seem to be fully aware of the complex dynamics within the UN General Assembly, where the preservation of the principle of equality among sovereign States is of paramount importance and where group alignment often leads to movements that are difficult to counter. General judgments on the power of international actors based on their success, or lack thereof, in defending a position or promoting a concrete initiative within the UN General Assembly may often lead to erroneous conclusions and raise questions on the relevance of any of those usually considered as key international players.

¹ See European Council, 'A secure Europe in a better World: European Security Strategy', approved on 12 December 2003, at pp. 9-10 'An International Order Based on Effective Multilateralism'. See also, i.a., Art. 21(1) TEU: the Union 'shall promote multilateral solutions to common problems, in particular in the framework of the United Nations'.

² J. Wouters, J. Odermatt and T. Ramopoulos 'The status of the European Union at the United Nations after the General Assembly Resolution of 3 May 2011', *Leuven Center for Global Governance Studies, Global Governance Opinions* (2011), at 4: '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'.

³ Wouters, Odermatt and Ramopoulos, *supra* note 2, at 8: '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.' See also M. Emerson and J. Wouters, 'The EU's Diplomatic Debacle at the UN. What else and what next?', *Centre for European Policy Studies, CEPS Commentary* (2010). J.-C. Piris *The Future of Europe: Towards a Two-Speed Europe?* (Cambridge University Press, 2011), at 3 commenting on Emerson and Wouters: 'would the EU be condemned to slowly becoming irrelevant?'

The present working paper offers an analysis of UNGA Res. 65/276 and the process that led to its adoption. When clarifying the arrangements established for EU representation, it will seek to respond to questions and criticisms raised. The opinions expressed are based on the author's own involvement in this diplomatic initiative. Nevertheless, the views reflected are purely personal and do not commit the European Union, nor any of its Member States or any other actor.

2. THE REPRESENTATION OF THE EU AT THE UN IN NEW YORK

2.1 Pre-Lisbon arrangements for EC/EU representation at the UN

Prior to the entry into force of the Treaty of Lisbon, there were separate arrangements for the international representation of the EC⁴ and the EU.⁵ The Commission was essentially in charge of the former and the Member State occupying the rotating Presidency of the Council represented the Union for matters concerning the Common Foreign and Security Policy (CFSP). At the EU's request, the UN officially acknowledged the EC/EU duality in representation. An agreed formulation included in the UN Directory⁶ reflected the roles of both the representative of the Member State exercising the Presidency of the Council of the EU and the Head of the Delegation of the Commission. This information was updated every six months following the rotation of presidencies. In practice, representation at the UN in formal meetings was mostly ensured through the rotating Presidency. Representatives of the rotating Presidency of the Council of the EU, in their 'UN member' capacity, enjoyed full rights in most UN organs and conferences and could participate as observers in organs of limited composition to which they were not members. EU positions could therefore be presented throughout the UN system in a manner equivalent to that of other regional or negotiating groups, also represented through one of their members. In fact, the EU acted principally as a regional or negotiating group at the UN. Representatives of such groupings, in line with existing practice,

⁴ For matters falling within the competence of the European Community, Art. 300 TEC entrusted the Commission, as authorised by the Council, to open and conduct negotiations aimed at concluding agreements between the Community and one or more States or international organisations. Furthermore, Art. 302 TEC entrusted the Commission with the 'maintenance of all appropriate relations with the organs of the United Nations and of its specialised agencies', and, more generally, 'such relations as are appropriate with all international organisations'. Art. 303 and 304 referred specifically to the establishment of cooperation with the Council of Europe and the OECD, respectively.

⁵ Art. 18 TEU entrusted the Presidency of the Council (of the EU) with the representation 'of the Union in matters coming within the Common Foreign and Security Policy (CFSP)'. The Presidency would be responsible for expressing 'the position of the Union in international organisations and international conferences' on such matters. Cf. Art. 21 TEU The Presidency was assisted in these tasks by the 'Secretary General of the Council (of the EU) who shall exercise the function of High Representative (HR) for common foreign and security policy'. Furthermore, Art. 18(4) and (5) TEU added that the Commission was to be 'fully associated in (those) tasks' and that the 'next Member State to hold the Presidency' would assist the Presidency 'if need be'. This consolidated the so-called 'EU Troika' format, the Presidency (assisted by the HR), the Commission and the following Presidency, through which the EU was represented in most contacts with its international partners. Art. 24 TEU entrusted the Presidency, as authorised by the Council, with the representation of the Union in negotiations aimed at concluding international agreements within CFSP.

⁶ In the UN 'Blue Book', a footnote under European Community reads as follows: 'European Community represented by the Presidency of the Council of the European Union and by the European Commission. H.E. XXX, Permanent Representative of YYY, YYY exercising the Presidency of the Council of the European Union from (date) to (date)'.

are granted preferential speaking rights over individual UN members in most formal meetings. The early presentation of group positions is intended to facilitate the identification of the main parameters of the discussion. This establishes the grounds for subsequent negotiations and assists individual UN members in determining their own positions through pertinent alignments. Through the rotating Presidency the EU would therefore intervene among the first speakers in most formal meetings. On its side, the EC enjoyed an observer status at the General Assembly since 1974⁷ and at the ECOSOC.⁸ It was accepted as full participant at the CSD⁹ and, more recently, invited to participate in the meetings of the PBC both as an 'institutional donor' and a 'relevant regional organisation'.¹⁰ The EC was also accepted as observer or 'full participant' in a number of UN high-level conferences, including on Climate Change, Least Developed Countries and Sustainable Development. The observer status allowed EC representatives to intervene, but usually at the end of the speakers list, once UN members had spoken. In practice, the Presidency would often deliver statements also covering aspects of EC policy, such as development, environment, etc., at formal meetings at the UN. This was in the interests of effectiveness, without prejudice to the Commission's capacity to act autonomously in representation of the EC and with its full consent. It ensured that EC/EU messages would be transmitted early in the debate in order to increase their impact. For high-level meetings affecting EC competences, specific formulae outside the formal speakers list would be found on a case by case basis to allow timely interventions by high-level Commission representatives when required.

2.2 Action plan for implementation of the Treaty of Lisbon at the UN: Transitional arrangements in New York

By the Treaty of Lisbon the EU replaced and succeeded the EC.¹¹ It entrusted the representation of the CFSP to the High Representative (HR)¹² and to the permanent President of the European Council 'at his level',¹³ and no longer to the rotating Presidency. References to a role for the rotating Presidency of the Council in the external representation of the EU have indeed disappeared. The new Treaty also decided that the High Representative would be Vice-President (VP) of the Commission¹⁴ instead of Secretary General of the Council. Being in charge within the

⁷ UN General Assembly, *Resolution: Status of the European Economic Community in the General Assembly*, RES/3208 (XXIX), 11 October 1974.

⁸ In accordance with UN, *Rules of Procedure of the Economic and Social Council*, E/5715/Rev.2, Rule 79: 'intergovernmental organizations accorded permanent observer status by the General Assembly to participate ..., without the right to vote, in its deliberations'.

⁹ UN ECOSOC, *Decision 1995/201. Full participation of the European Community in the Commission on Sustainable Development*, 8 February 1995.

¹⁰ UN General Assembly, *Resolution: The Peacebuilding Commission*, A/RES/60/180, 20 December 2005.

¹¹ Art. 1(3) TEU: 'The Union shall replace and succeed the European Community'.

¹² Art. 27(2) TEU: 'The High Representative shall represent the Union for matters relating to common foreign and security policy... He shall ... express the Union's position in international organisations and international conferences'.

¹³ Art. 15 TEU last paragraph: 'The President of the European Council shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy'.

¹⁴ Art. 18(4) TEU: 'The High Representative shall be one of the Vice-Presidents of the Commission'.

Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action, the HR/VP would contribute to ensure the consistency of the Union's external action.¹⁵ Finally, EU Delegations in third countries and at international organisations would represent the Union (both on CFSP and ex-EC issues).¹⁶

Under the previous regime, the country holding the rotating Presidency of the Council of the EU had been able to fulfil its duties of representing the EU at the UN with the full powers of a member. By contrast, with the EU not being a UN member at the time of entry into force of the Treaty of Lisbon its new institutional representatives had significantly less expansive capacity for action in UN organs and bodies. The replacement of the rotating Presidency, which is a key element of the new set of arrangements for the international representation of the EU, could therefore lead to a loss of effectiveness in some organs and bodies. At the same time, implementation of these arrangements at the UN was quickly identified as highly important. The UN is the main permanent forum of the international community. Ensuring that the new EU representatives assume their responsibilities at the UN was key in confirming their full effectiveness as international players.

This would also constitute a particularly qualified recognition of the EU as a political international actor different from a State, but also different from a classical intergovernmental organisation. Maintenance of a central role in representing the EU within UN fora by the country holding the rotating Presidency could, on the contrary, cast doubts on who in the EU was responsible for the conduct of its foreign policy and external action. A complementary role of the Presidency, if required, should be kept as minimal as possible. Only the option of full membership could provide an unequivocal and fully satisfactory answer to formal EU participation in UN organs on equal footing with UN members. Nevertheless, this option was not considered. UN membership is linked to statehood¹⁷ and the EU is not a State. EU membership in the UN would require a change in the UN Charter that would allow specific international actors other than States to become members (as in the WTO); or that would create a new category of 'member organisations', as in FAO.¹⁸ To

¹⁵ Art. 18(4) TEU establishes that the High Representative will be one of the Vice-Presidents of the Commission and, in that capacity, 'will ensure the consistency of the Union's external action' and 'shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action.' The High Representative's role in ensuring consistency is further recalled in the last paragraph of Art. 21 TEU. This coherence is also ensured through EU Delegations placed under the direct authority of the High Representative, see *infra* note 16.

¹⁶ Art. 221(1) TFEU: 'Union delegations in third countries and at international organisations shall represent the Union.' These responsibilities are not limited to matters relating to common foreign and security policy. This is further compounded by the fact that this Article is included in Title VI of the TFEU 'The Union's relations with international organisations and third countries and Union Delegations', instead of in Title V, Chapter 2 of the TEU 'Specific provisions on the common foreign and security policy'. Council Decision EU No 2010/427 of 26 July 2010 establishing the organisation and functioning of the European External Service, Art. 1(4) clearly places EU Delegations within the EEAS, OJ 2010 L 201/30. Art. 3 of this Decision develops the cooperation between the EEAS and Commission services aimed at ensuring the referred to coherence and consistency of EU external action. Finally, Art. 5, among other aspects, deals with EEAS-Commission interaction at EU Delegation level, thus closing the loop.

¹⁷ Charter of the United Nations, Art 3: 'The original Members of the United Nations shall be the States which ...'; Art. 4: 'Membership in the United Nations is open to all other peace-loving States...' (emphasis added).

¹⁸ The EU is a full member of the WTO by virtue of Art. XII of the WTO Agreement that foresees membership for States as well as for 'customs territory having full authority in the conduct of its trade policies'. The EU is also member of FAO, by virtue of Art. II of its Constitution, which foresees member-

change the UN Charter is a lengthy and complex procedure.¹⁹ Seeking something similar at the UN, an essentially political organisation, has more sovereignty-linked implications. Chances of making progress on this issue under the given circumstances, leaving aside judgments on its desirability, were scarce. Therefore, it became necessary to examine each UN organ separately and decide on the path to follow on a case by case basis.

An initial analysis of respective rules of procedure and/or the observer status inherited by the EU in various UN organs suggested that the new EU representatives could immediately fulfil their responsibilities in conveying and promoting EU positions, replacing the Presidency in the UN Security Council, the CSD and the PBC, as well as in informal meetings and processes. However, it was also judged that replacing the Presidency in formal meetings of the General Assembly, its committees and working groups, where the EU inherited the EC's observer status and therefore a very limited capacity for action, could lead to a loss of effectiveness in the delivery of EU messages and the overall promotion of its interests. Indeed, the EU already enjoyed a special status in both the CSD and the PBC, which allowed its representatives to present and advance their positions effectively.²⁰ As regards the UN Security Council, Rule 39 of its Provisional rules of procedure foresees that it 'may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence'. Thus EU representatives can be invited to present EU positions in UN Security Council debates under conditions very similar to those under which the rotating Presidency, as a UN non-Security Council member, can intervene (Rule 37). The role of those EU Member States, which also are members of the UN Security Council, would, of course, continue to be fully respected, in accordance with Article 34 of the Treaty of the European Union.

It was decided, consequently, to begin implementing the transfer of responsibilities for the external representation of the EU where this was already feasible without prejudice to EU interests. At the same time, the EU and its Member States agreed to work with the rest of the UN membership to develop procedures that would allow EU representatives to assume their responsibilities fully and effectively in the General Assembly, as soon as possible. During the interim period, the country holding the rotating Presidency would continue to represent the EU in formal meetings of the General Assembly, its committees and working groups, and, as appropriate, in UN conferences. These decisions were reflected in a first set of internal transitional arrangements agreed between the EU Delegation and the

ship for 'regional economic integration organisations' to which their member States have transferred competences which allow the organisation to take decisions that are binding for them. Both in FAO and WTO the EU is acting on matters which are of its exclusive competence. This is not the case for CFSP nor for many other issues which are currently discussed at the UN.

¹⁹ Charter of the United Nations, Art. 108: 'Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the Members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the members of the United Nations, including all the permanent members of the Security Council'.

²⁰ See, e.g., S. Tomat and C. Onestini, 'The EU and the UN Peacebuilding Commission: A short account of how the EU presence has influenced the newest UN body', in S. Blockmans, J. Wouters and T. Ruys (eds.), *The European Union and Peacebuilding: Policy and Legal Aspects* (The Hague, T.M.C. Asser Press 2010), 141-159.

Spanish rotating Presidency of the Council for the first semester of 2010. The transitional arrangements also considered support by the rotating Presidency for the EU Delegation, through the creation of joint (Presidency/EU Delegation) teams, later called EU-teams, in order to fulfil the tasks of internal coordination and external representation, pending the reinforcement of the human resources of the EU Delegation. Similar transitional arrangements were adopted during the subsequent Belgian and Hungarian presidencies. The Spanish rotating Presidency of the Council sent a letter to the UN Secretary General informing him of the provisional arrangements. The EU would maintain, until further notice, a double representation at the UN: the Permanent Representative of the country holding the rotating Presidency of the Council, acting on behalf of the High Representative, and the Head of the EU Delegation.

3. EU REPRESENTATION AT THE GENERAL ASSEMBLY: THE OBSERVER STATUS

The General Assembly, together with the Security Council, is the main organ of the UN. But, contrary to the UN Security Council, its membership is not limited. It is the organ where all UN members gather and openly discuss and agree on cooperation with the aim of responding to the challenges that the international community faces. Practices and arrangements established at the General Assembly are of relevance throughout the entire UN system. Therefore, ensuring that its new representatives could replace the rotating Presidency of the Council at the General Assembly effectively became a main objective for the EU in pursuing the implementation of the Treaty of Lisbon at the UN. This would have to be achieved principally on the basis of the EU's status as an observer, inherited from the EC.

3.1 Observer status at the General Assembly

Throughout the years a practice developed to invite upon request initially non-UN members and then intergovernmental organisations to participate in the deliberations of the General Assembly as observers. These were permanent invitations and required the adoption of a resolution. Most of these resolutions are fairly succinct and do not specify the capacity of action that is awarded to the observer.²¹ It is generally understood that observers can attend meetings of the General Assembly, its committees and working groups, have access to official UN documents and can be inscribed in the speakers list after UN members. Furthermore, a seating section in the General Assembly Hall is reserved for observers with permanent offices at the UN Headquarters. Neither the UN Charter nor the rules of procedure of the General Assembly refer to observers, nor grant them rights, nor limit those that may be granted to them.

²¹ As an example, the resolution granting observer status to the European Community, (UN General Assembly, *Resolution: Status of the European Economic Community in the General Assembly*, RES/3208 (XXIX), 11 October 1974), simply 'requests the Secretary General to invite the European Economic Community to participate in the sessions and work of the General Assembly in the capacity of observer.' With the exception of Palestine, the Holy See and now the EU, other resolutions granting observer status follow this model.

More than seventy organisations, most of them of intergovernmental nature, have been granted such status. In parallel, the number of 'observer States' has diminished significantly, most of them having acquired membership. Only the Holy See occupies currently this category, accompanied by Palestine as an observer 'entity'.

3.2 Limitations imposed on EU representatives by the EU's status at the General Assembly

As representatives of a UN member, EU rotating Presidency representatives could exercise all the rights inherent to UN membership while acting on behalf of the EU. This is also the case for representatives of negotiating groups or regional groups at the UN who are normally represented through one of their members equally on a rotational basis. An EU representative is instead limited in the General Assembly by the capacity of action awarded to the EU as an observer.

An immediate change of representatives following the entry into force of the Treaty of Lisbon would therefore have been detrimental for the EU, particularly when presenting positions in formal meetings. While representatives of other groups would be speaking early on in the debate, in accordance with established practice that gives priority to representatives of groups, EU representatives would only have been allowed to intervene at the end of the debate, once all UN members that so wished had spoken. Additionally, EU representatives would not have been allowed to have their written communications distributed as official documents, nor would they have been able to exercise procedural rights including right of reply, presentation of proposals, and other such actions.

The EU had to seek ways of remedying these limitations if it wanted its new representatives to fulfil their role in the UN without endangering the effective promotion and defence of its interests.

3.3 The Palestinian and Holy See precedents

Palestine and the Holy See obtained the adoption of resolutions, in 1998 and 2004 respectively, that conferred them 'additional rights and privileges of participation in the sessions and work of the General Assembly and the international conferences convened under the auspices of the Assembly or other organs of the United Nations, as well as other UN conferences'. Most notably, Palestine was granted the following rights:²²

- participation in the General Debate;
- without prejudice to the priority of Member States, inscription on the speakers list under agenda items other than Palestinian or Middle East issues, after the last Member State inscribed in that list (a sensu contrario, Palestinian representatives are inscribed among Member States on items relating to Palestinian or Middle-East issues);

²² UN General Assembly, *Resolution: Participation of Palestine in the Work of the United Nations* A/RES/52/250, 7 July 1998.

- right of reply;
- right to raise points of order related to the proceedings on Palestinian and Middle East issues, but not to challenge the decision of the presiding officer;
- right to co-sponsor draft resolutions or decisions on Palestinian and Middle East issues;
- seating immediately after the last non-members and before all other observers, with six seats allocated in the General Assembly Hall.

It was also recalled that Palestine would not have the right to vote, nor to put forward candidates, nor to request that a draft decision or resolution be put to a vote.

Based on this precedent, the Holy See was granted similar 'rights and privileges' in 2004.²³ In addition, the Holy See obtained the right to have its communications related to the sessions and work of the General Assembly and international conferences convened under the auspices of the Assembly or other organs of the United Nations, as well as other UN conferences, issued and circulated directly, and without intermediary, as official documents. Nevertheless, while Palestine can intervene among UN members on Palestinian or Middle East issues, the Holy See can only be inscribed on the speakers list after Members, regardless of the issue.

The draft Palestinian resolution encountered a procedural defeat, and was subsequently withdrawn, when first presented to the General Assembly for decision on 9 December 1997.²⁴ This led to consultations during which it was discussed whether or not the 'rights and privileges' that Palestine was seeking were reserved to UN members. Among the explanations of vote delivered on the occasion of the adoption of the resolution granting Palestine its new rights and privileges on 7 July 1998, the then Russian Permanent Representative, Sergei Lavrov, put a fitting conclusion to this debate indicating that they were compatible with an observer status.²⁵ This discussion was not re-opened on the occasion of the adoption, by consensus, of UNGA Res. 58/314 on the participation of the Holy See in the work of the UN.

The Palestinian and Holy See resolutions constituted valuable precedents for the EU. These resolutions showed that the General Assembly could decide on specific arrangements for the participation of an observer if it chose to do so.

3.4 Negotiation processes and informal meetings

Formal meetings are just one part of the methods through which the General Assembly carries out its work. Most negotiations unfold in informal processes where representatives of major negotiating groups (such as the NAM,²⁶ G-77,²⁷ SIDS,²⁸ AOSIS²⁹) or regional groupings (such as the African Group, ASEAN, Rio Group,

²³ UN General Assembly, *Resolution: Participation of the Holy See in the Work of the United Nations*, A/RES/58/314, 1 July 2004.

²⁴ UN General Assembly, A/52/PV.68.

²⁵ UN General Assembly, A/52/PV.89.

²⁶ Non-Aligned Movement.

²⁷ 'Group of 77' (coalition of developing states).

²⁸ Small Island Developing States.

²⁹ Alliance of Small Island States.

Arab Group) engage in discussions chaired by facilitators, by the co-sponsors of an initiative or in other formats. The EU is a consolidated actor in such negotiating processes. Most of the internal EU coordination work in New York, conducted through more than 1,000 meetings per year, is indeed devoted to the preparation of negotiation positions and their follow-up. Additionally, the General Assembly often convenes in informal format to listen to briefings by the Secretary General or to study certain questions more thoroughly, in a brain-storming mode, often with the participation of external experts or panelists.

In both cases, negotiation processes and informal meetings, rules of procedure reserved for formal meetings do not apply. The EU Delegation started therefore to assume the role of representing the EU in such processes and meetings in early 2010, as agreed in the transitional arrangements finalised with the Spanish Presidency.

4. NEGOTIATION PROCESS LEADING TO THE ADOPTION OF UNGA RES. 65/276

As indicated above, the EU had decided to follow a double track approach in implementing the provisions of the Treaty of Lisbon as regards its representation at the UN. Firstly, EU representatives assumed representation responsibilities exercised until then by the rotating Presidency where it would not cause prejudice to the effective promotion of EU interests, in particular in informal meetings of the General Assembly and negotiating processes, as well as in the Security Council, CSD and PBC. This showed EU partners at the UN the reality of the changes that had taken place. It also exposed the need to adapt UN procedures in order to avoid a situation where EU interlocutors in negotiations would not be the same as those expressing its positions in formal meetings. Finally, it proved that the changes brought about by the Treaty of Lisbon essentially affected internal EU arrangements and would have no negative consequences for those interacting and negotiating with the EU. If anything, EU partners would benefit from a permanent interlocutor instead of having to adapt themselves to the six-monthly changes of EU Presidency. Partners would be able to build more stable relationships with the EU, less dependent on the changes of persons and the different interests, knowledge and experience that succeeding Presidencies might bring.

In parallel, the EU launched a campaign to inform the broader UN membership of the changes introduced by the Treaty of Lisbon, particularly as regards the EU's external relations, and of the need to allow the new EU representatives to fulfil their role effectively at the UN, focusing on the General Assembly. These two tracks were mutually reinforcing.

4.1 The main goal: Maintaining the EU's capacity for action at the UN

The EU wanted to ensure that the implementation of the Treaty of Lisbon and the transfer of representation responsibilities from a rotating Presidency to permanent structures would not, paradoxically, lead to a loss of effectiveness at the UN. Indeed, through the Member State exercising the rotating Presidency of the Council, almost any action within the General Assembly could be undertaken on behalf of the EU.

The EU as such was not therefore seeking a stronger position at the UN. Its goal was to preserve an equivalent capacity under a different set of arrangements, with its representatives accredited as observers instead of being part of the delegation of a UN member.

The order in the speakers list was quickly identified as a key element. If the EU was to maintain its effectiveness it could not systematically speak at the end of the list after all UN members. Other modalities that the EU considered important in upholding its capacity for action at the General Assembly were: having its communications distributed as official documents, raising points of order, presenting proposals and amendments, exercising the right of reply and ensuring that EU representatives would always have a reserved seat in all meetings they could attend. Finally, since the representation had to be exercised also at the highest level, it was important to ensure participation at the annual General Debate. Only the Holy See and Palestine, among observers, had been granted such rights at the General Assembly, with the exception of presentation of proposals and amendments, granted to the EU in the CSD, but not included in either the Palestinian or the Holy See resolutions.

The EU understood the difficulties that some of these proposals might raise and decided from the outset that it was preferable not to pursue modalities closely linked to voting rights in the understanding that these should be limited to UN members. It is for these reasons that the right to co-sponsor resolutions or decisions was never included among EU requests, despite it having been granted to Palestine and the Holy See.

It was also important that non-EU UN members realise that this exercise was not launched with the purpose of achieving unilateral advantages at the UN. The change of representation responsibilities affected EU bilateral relations as much as it did its multilateral action. The goal of the EU was to achieve overall coherence and effectiveness in its external representation. Having to maintain different systems of representation in multilateral fora would contradict this objective.

Those UN members that accepted the change of representatives in their bilateral relations with the EU had to be ready to accept it in multilateral fora if they wished to maintain a coherent approach. While many EU partners readily understood this logic and agreed to it, others had greater difficulties in accepting it.

4.2 Phases of the negotiation

4.2.1 *Informing of the changes*

Immediately after the entry into force of the Treaty of Lisbon, the EU Delegation and the rotating Presidency in New York, with the support of the Permanent Representatives of all EU Member States, launched a campaign to explain the main changes it introduced in the field of EU external relations. The fact that the EU in New York already counted on a pre-existing framework for political dialogue with the main regional and negotiating groups active at the UN proved extremely useful in informing partners: A thorough explanation was given on the new arrangements for the representation of the EU and its potential impact at the UN. Emphasis was placed on the need to ensure that the new EU representatives would be able to intervene in a timely manner in the General Assembly, instead of having to wait,

as representatives of an observer, until the exhaustion of the speakers list. It was also underlined that the EU was not seeking 'additional' rights, but that its goal was to preserve as much as possible the capacity it had to act within the UN, while transferring responsibility for its representation to a new set of institutional actors.

Starting with the Spanish Presidency in the first semester of 2010, these explanations were further complemented by practice. As explained above, the new EU representatives, notably through the EU Delegation, started assuming their roles of representing the EU in the UN Security Council, PBC and CSD, as well as in informal meetings and processes. Additionally, the EU changed its pre-Lisbon 'Troika' format (current Presidency, next Presidency and EU institutional representatives), leaving out the incoming Presidency from its 'political dialogue' meetings, to signal clearly the changes in the EU representation post-Lisbon.

First exchanges revealed general sympathy for progress achieved in the EU's development. At the same time, there was a clear perception of the need to explain thoroughly these changes due to the complexity of the EU. Initial questions were raised on whether other regional organisations might be granted similar advantages to those being sought by the EU, with some groups in favour of this and others expressing concern. Mostly, there was an overall non-committal attitude.

Unfortunately, only in June 2010 was the EU in a position that allowed it to share with the broader UN membership a first set of elements for the proposal it wished to present to the General Assembly. A new round of engagement with groups and individual Ambassadors on this basis revealed no major opposition, nor enthusiasm for the proposals that the EU was bringing forward. There was an increased level of understanding of the changes, although some UN members started raising questions on the legality of the proposal and more concretely on its impact on UN members' rights. A first draft resolution was distributed to the UN membership in July, through a letter co-signed by the Permanent Representative of Belgium (holding the rotating Presidency of the Council in the second semester of 2010, representing the EU in accordance with agreed transitional arrangements) and the acting Head of Delegation.

4.2.2 *Motion requesting postponement*

All along, EU representatives had been indicating their wish to have a new set of arrangements in place for the 65th General Assembly starting mid-September 2010. This was also expressed in the letter accompanying the distribution of the first draft resolution in July 2010. At the end of August, the draft resolution, with some changes to accommodate initial reactions, was formally tabled.³⁰ It was then, at the beginning of September, that resistance against the early adoption of the EU initiative started to become more articulate. There was very little time to react if the EU insisted on maintaining its announced schedule.

Some African countries underlined that the language with which the EU had referred to the possibility of similar arrangements being extended to other groupings was unsatisfactory. It was located in the preamble, instead of the operational section of the Resolution. Furthermore, it was perceived as seeking to impose the EU model for integration to other groups if they wished to be granted those arrangements. Others started questioning more openly the legality of the EU's proposal.

³⁰ UN General Assembly, A/64/L.67.

On the eve of the proposed submission to the General Assembly for decision, messages that some Caribbean countries had difficulties with the adoption gained strength and clarity. Both the African and Caribbean sides started suggesting a postponement of the adoption and the launch of a longer and more comprehensive phase of consultations, involving the whole membership rather than groups and individual UN members.

The EU found itself in a dilemma. On the one hand, if it agreed to postpone, its representatives would certainly not be able to participate in the General Debate of the 65th General Assembly and a longer phase of consultations would be required. On the other hand, if the text could be adjusted to meet the most clearly formulated concerns, notably those of the Africans and some other delegations that made concrete proposals, any major opposition would hopefully disappear and the resolution would be adopted. It was decided to follow the latter path. The EU had reasons to believe that if a postponement motion was unsuccessful, the resolution itself counted with sufficient support to enjoy wide legitimacy once adopted.

Unfortunately, these last minute changes, announced in the formal session on 14 September 2010, proved insufficient. It was no longer a matter of substance, but of process and UN group-dynamics. The African group, despite internal differences, finally joined CARICOM in requesting postponement of action. Nauru, on behalf of a number of Pacific island nations supported the motion. The General Assembly decided to postpone action on the EU draft resolution by 75 votes to 71, with 26 abstentions and an equivalent number of countries deciding not to participate in the vote.³¹

4.2.3 *Global campaign and the adoption of the resolution*

The setback suffered by the EU revealed that its UN membership in general needed more time to discuss and understand its proposal. The EU had to listen carefully to concerns expressed, provide explanations and adapt the proposal as required. A broader campaign was necessary, reaching out bilaterally to every single representative at the UN, in addition to all groups and respective authorities in all capitals. Short timelines, particularly following the presentation of a first draft, had not permitted such comprehensive action during the previous phase.

Genuine concerns seemed to exist for some UN members regarding the implications of the changes proposed by the EU for the future of the UN. These had been voiced in the General Assembly session of 14 September 2010. Would it turn the UN into an 'organisation of organisations', where individual members, particularly smaller States, would lose their voice? Were the proposed changes compatible with the UN Charter? Would the rights of individual UN members suffer for the benefit of a non-member? Finally, a number of UN members were very critical of the method pursued by the EU in promoting this initiative and called for an open process through informal consultations of the whole that would allow all UN members to listen to the positions of others and to hold a public debate on the EU's proposal.

The diagnosis was clear and, under the leadership of High Representative Catherine Ashton, the EU launched a campaign reaching out to regional groups at

³¹ UN General Assembly, A/64/PV.122.

the UN, as well as to all UN members individually in New York, in their respective capitals and in Brussels. This was done by EU representatives, supported by the rotating Presidency and all EU Member States as appropriate. As the campaign advanced, the draft resolution was revised several times and presented to all for further comments. Informal open consultations of the whole membership at Head of Mission level were organised on 22 November 2010 and 14 February 2011. These were very well attended with more than 100 Permanent Representatives present and over 40 interventions made at each session; responses were provided by the Permanent Representative of the rotating Presidency and the acting Head of the EU Delegation. Substantial changes to the draft resolution were introduced following each of these meetings adapting it in the light of suggestions and criticisms.

Each time the revised draft would be circulated by letter co-signed by the Permanent Representative of the country holding the rotating Presidency and by the acting Head of the EU Delegation. Further revisions were also made following some last rounds of bilateral and group consultations and circulated again to the whole membership and observers.

The consultation process was comprehensive. A great majority of UN members engaged very constructively. A limited number, however, maintained strong reservations until late in the process. Only last minute negotiations led to a compromise that, while offering some additional concessions, preserved the main elements of what the EU was seeking.

On this basis, and in the presence of the EU High Representative who came to New York to support personally and guide last efforts, the General Assembly proceeded to the adoption of the resolution on 3 May 2011.³² During the presentation of the proposal in the formal session, the rotating Presidency introduced the latest amendments agreed. These changes were welcomed, and the adoption of the resolution was explicitly supported, in interventions from CARICOM, the African Group and the Arab Group, before the decision. The Delegation of Zimbabwe however, after unsuccessfully seeking to introduce an additional amendment, requested a recorded vote.

UNGA Res. 65/276 was adopted by 180 votes in favour and 2 abstentions (Syria and Zimbabwe). This constituted a strong endorsement of the EU proposal, better in some ways than a consensus, since it revealed explicit support; a consensus often masks mere acquiescence. Endorsement was further expressed in the round of applause that accompanied the adoption and the line of Ambassadors that formed to express their congratulations to the High Representative.

The CARICOM representative read out an Explanation of Vote, after the vote, giving its interpretation of the arrangements adopted. The representative of Nauru, who did not participate in the vote, reiterated her concerns regarding the resolution. The EU rotating Presidency intervened to safeguard its position regarding interpretations advanced by CARICOM and referring these matters to an authorised interpretation by the UN Secretariat, as practice required.

The next section will discuss the answers provided by the EU to the concerns expressed by the delegations regarding this initiative. This will be followed by a detailed analysis of the resolution.

³² UN General Assembly, A/65/PV.88.

5. MAIN QUESTIONS RAISED BY THE EU INITIATIVE

Upholding the rights of States as UN members was at the centre of most of the concerns that surfaced during the negotiations. The main questions were the following:

5.1 Do the proposed arrangements require an amendment of the UN Charter or a change in the rules of procedure of the General Assembly?

Questions were raised on whether the arrangements that the EU was seeking for its representatives corresponded to rights and privileges reserved exclusively for UN members. If this was the case, bearing in mind that UN membership is limited to States,³³ such arrangements could not be adopted unless the UN Charter was amended first. A similar reasoning was made regarding the General Assembly rules of procedure, some of which refer explicitly to 'members'. A few delegations argued that the reference in those clauses to 'members' should be interpreted as excluding the extension of similar rights to 'observers'.

The EU explained that the 'observer' capacity at the UN General Assembly has been developed outside the Charter and the rules of procedure. The fact that the Charter and the rules of procedure ignore such capacity, does not, however, mean that observers to the General Assembly do not exist. Observer status is granted to non-UN members by General Assembly resolutions and the capacity to act linked to that observer status can be determined, on a case-by-case basis in the resolutions granting such status to the various actors. Indeed, as indicated in Art. 10 of the UN Charter, 'the General Assembly may discuss any questions or any matters relating to the powers or functions of any organ provided for in the present Charter and may make recommendations to the Members of the United Nations on any such matters'.

Accordingly, some of the 'rights and privileges' granted to Palestine and the Holy See as observers, for example the right of reply, are regulated in clauses that refer to UN 'Members'.³⁴ Finally, in a breach with the logic of their own reasoning, some of the delegations which were trying to limit EU requests also objected to other modalities, such as points of order,³⁵ regulated in clauses that refer to 'representatives' instead of 'Members'.

In informal meetings, officials from the Office of Legal Affairs of the UN Secretariat confirmed that, in their interpretation, nothing in the proposal of the EU was in contradiction with the UN Charter or the General Assembly rules of procedure, nor would it require their previous reform or amendment. The UN Secretariat seemed nevertheless disinclined to intervene more publicly in a discussion they perceived as being 'more political than legal'. Some UN members less favourable to the EU's proposal suggested in consultations that the Office of Legal Affairs produce a legal opinion on this issue. This would have required a formal request from the General Assembly and would have introduced further delays in the proc-

³³ Art. 3 and 4 of the Charter of the United Nations, see *supra* note 17.

³⁴ UN, *Rules of Procedure of the General Assembly*, A/520/Rev.15, Rule 73.

³⁵ UN, *Rules of Procedure of the General Assembly*, A/520/Rev.15, Rule 71.

ess. Fortunately, most UN members agreed with the reasoning presented by the EU.

5.2 Do the proposed arrangements give priority to an observer organisation over UN members?

This question was at the heart of all discussions and reservations on the EU's proposal. The UN is an organisation of States.³⁶ In fact, achievement of UN membership has been for many States, particularly those resulting from the decolonisation process, an immediate consequence and reaffirmation of their statehood. The UN is also the main permanent forum of the international community. For many smaller States it is key for the development of their diplomatic identity. It is where they obtain formal recognition of parity of rights among States and, as some of them put it, where they can 'have their voice heard'.

The EU was very sensitive to these arguments. It fully understands that the UN is an organisation of States in which smaller nations can present their views on equal footing with larger players. This is why, throughout the process of negotiation of its proposal, the EU underlined that the arrangements it was requesting should not be viewed as 'rights and privileges' granted to a multilateral actor and were not being claimed under that capacity. The arrangements were requested by the EU 'in order to present positions of the EU and its Member States as agreed by them' (paragraph 1 of the annex to UNGA Res. 65/276).

It is the fact that EU representatives intervene on behalf of EU Member States, which are also UN members, that gives EU representatives legitimacy to implement the arrangements granted through this resolution. It is for this reason that positions expressed by EU representatives are particularly relevant for the debate. Indeed, these positions reflect commitments from UN members that ultimately will be translated into votes. Therefore, when EU representatives intervene it cannot be argued that they are being granted a privilege over UN members, because they are also expressing the position of UN members and representing their views. This same reasoning equally inspires operative paragraph 3 of the resolution that establishes that modalities such as those set out in the annex of the resolution can be granted to other regional organisations if and when the Member States of that organisation 'have agreed arrangements that allow that organisation's representatives to speak on *behalf of the organisation and its member States*' (emphasis added).³⁷

³⁶ Art. 3 and 4 of the Charter of the United Nations, see *supra* note 17.

³⁷ Wouters, Odermatt and Ramopoulos, *supra* note 2, criticise the fact that the presentation of EU positions covered by the arrangements established in Resolution 65/276 (UN General Assembly, *Resolution: Participation of the European Union in the work of the United Nations*, A/RES/65/276) require the agreement of Member States. Such criticism fails to take into account that in the vast majority of debates within the General Assembly the items under discussion cover simultaneously a wide range of issues which would fall under what we consider mixed or parallel competences. Normally, even when issues of exclusive competence of the EU are discussed at the General Assembly it is done in combination with other issues where EU Member States have retained competences. Therefore, if the EU wishes to have a single statement this statement will require the agreement of its Member States. Additionally, in the WTO and the FAO EU rights are linked to the right to vote and, in fact, full membership. This option, as examined above (section 2.2) was not envisaged. The EU's enhanced capacity to act at the General Assembly awarded by Resolution 65/276 can then only be justified vis-à-vis third States if the opinions expressed will have a direct consequence on decision making and will be reflected in EU Member States' votes. It must be noted that prior to this Resolution all statements delivered by the Presidency were

The collective expression of EU Member States' positions at the UN was in itself nothing new. This practice had been maintained for decades, through the representative of the rotating Presidency. The Treaty of Lisbon was changing the EU spokesperson, but those represented were the same and their capacity to express their views jointly already existed.

Some argued further that the EU was in fact adding a 28th voice to that of its Member States in UN debates. The EU responded by clarifying that as an observer the EC had in the past already enjoyed the possibility of intervening in addition to its Member States. Furthermore, it underlined that, with the exception of very formal high-level meetings where all members feel compelled to speak, in most cases when a statement has been delivered on behalf of the EU many of its Member States decide not to intervene nationally, thus freeing up space for other speakers. On average, only 2 to 4 EU Member States intervene in regular meetings in addition to an EU statement.

5.3 Can the proposed arrangements lead to a transformation of the UN into an 'organisation of organisations' to the detriment of smaller UN members?

The possibility of extending the arrangements pursued by the EU to other regional organisations in the future was actively discussed during the negotiations. Some delegations seemed to have a contradictory position on this issue. While they did not favour granting 'privileges' exclusively to the EU, they also harboured reservations about the consequences that potential extension of similar arrangements to other regional organisations could have within the United Nations and its dynamics.

Among the more extreme positions, some feared that, if the path of the EU were to be followed by others, the General Assembly would eventually be transformed into an 'assembly of organisations' where the voice of individual nations, particularly smaller ones, would be lost. At the other end of the spectrum, mostly within the African and Arab groups, delegations argued forcefully that it was of key importance to ensure that equal arrangements could be extended in the future to other regional organisations.

The EU was confronted with the challenge of having to reconcile these contradictory positions. Its initial proposal sought to identify some elements that would determine the eligibility of organisations seeking similar arrangements (permanent representation structures, common foreign policy and a formal decision to entrust the collective representation of its Member States to its regional organisation). This was rejected by many UN members under the argument that the EU was trying to 'impose its own model', making it practically impossible for other organisations to achieve similar arrangements.

The EU answered that this was not the case, as the elements identified were necessary consequences of exercise of the competences contained in the arrangements. Nevertheless, understanding the political sensitivity of the issue, it undertook to search for alternative language. These efforts were ultimately reflected in operative paragraph 3 of the Resolution that establishes that modalities such as those

subject to the agreement of Member States. Under present conditions, pursuing such arrangements on the grounds of the EU's supra-national competences would not have facilitated a favourable outcome.

set out in the annex of the Resolution can be granted to a regional organisation if and when the Member States of that organisation 'have agreed arrangements that allow (its) representatives to speak on behalf of that organisation and its Member States'.

At present, most of the groups (i.e., African, Arab, Latin America and Caribbean Group, etc.) as well as regional organisations (such as ASEAN and CARICOM) speak through a representative of a Member State that holds a rotating presidency. This was also the case for the EU prior to the Treaty of Lisbon and the adoption of Res. 65/276. The rotating period of chairing functions varies from one group or organisation to another. In order to obtain arrangements similar to those extended to the EU, the regional groups would need to be represented by its corresponding regional organisation (e.g. the African Union and the Arab League) and the rotating chair replaced by the permanent representative of that regional organisation.

While these are, in themselves, simple steps, particularly for those organisations that already have a permanent observer status at the General Assembly, in practice it requires a significant transfer of responsibilities to, and trust in, the regional organisation. Suffice it to say here that it has taken the EU more than 50 years to reach such a stage in its development and the adoption and ratification of the Treaty of Lisbon has not been an easy path. Other regional organisations may encounter comparable challenges. It is therefore doubtful that the General Assembly will end up transformed into an 'assembly of organisations' in the foreseeable future. Those that have criticised the way this issue has been handled in Res. 65/276 should bear in mind these considerations.³⁸

It is also important to note that regional and other negotiating groups have developed at the UN in a spontaneous and natural manner throughout the years. Most negotiations at the UN indeed take place among representatives of groups, the EU being a key protagonist among them. The parliamentary-type structure of the General Assembly encourages countries to organise themselves in groups in order to promote initiatives and defend common interests. The natural outcome is a division by regional and/or interest groups, as it is difficult for nations to promote or defend positions individually. Any fears of a future 'assembly of organisations' should therefore take into account today's existing reality, not to mention the benefits (trade, economic, political, security, etc.) of regional integration per se, which lie outside the scope of this study.

Finally, it is worth noting that the development of stronger regional arrangements is fully compatible with flexible approaches to negotiations at the UN. Fears by some that the development of such arrangements may lead to the creation of more rigid blocs do not appear justified. In fact, precisely because of its nature based on cooperation, the EU is one of the most ardent defenders of trans-regional initiatives. The participation of representatives of individual EU Member States in the development of such initiatives or in so-called 'groups of friends' is considered a great asset to the EU as a whole and to its capacity for action within the UN.

6. ANALYSIS OF UNGA RES. 65/276

UNGA Res. 65/276 has a structure similar to that of the Palestinian and Holy See resolutions. Its preamble and operational sections are complemented by an annex

³⁸ see Wouters, Odermatt and Ramopoulos, *supra* note 2.

containing the modalities for the 'participation of the European Union in the work of the United Nations'. Initially, the EU proposed a simpler format without an annex. A single operational paragraph contained, in a concise manner, the full set of arrangements for the representation of the EU. The purpose was to demonstrate that, although inspired in the Holy See and Palestine precedents, the EU was different from these actors and had no claims to State-type recognition. Nevertheless, many UN members did not understand this approach and invited the EU to follow more closely the previous models.

The following analysis offers some clues for the interpretation of the resolution based on the negotiation process.

6.1 The Preamble

The preamble sets the political and legal basis for the adoption of decisions. In initial versions of the draft resolution there were several explicit references to the Treaty of Lisbon. These were dropped in the negotiations to accommodate those that argued that EU Treaties were only compulsory for EU Member States and could not oblige UN members, nor the UN as a whole. EU Member States agreed with this argument and had no claims to the contrary. Their goal was to obtain the acknowledgement of concrete new objective realities at the UN, while the specific legal base of such realities remaining an internal EU matter.

Key elements resulting directly from the Treaty of Lisbon such as the replacement of the EC by the EU (preamble paragraph 6) and the identification of the EU representatives (preamble paragraph 7) were in any case maintained. In addition, preamble paragraph 6 also underlines EU specificity as party to numerous international instruments and observer and participant in UN bodies and specialised agencies. Criticisms by some of authors regarding the 'de-Europeanisation' of this resolution, a resolution that concerns exclusively the EU, seem therefore unfounded.³⁹

6.1.1 *The relevance of multilateralism and cooperation with regional organisations*

Preamble paragraphs 1 to 3, building on language used in other resolutions, underline the central role of the General Assembly within the United Nations (paragraph 1), the need to strengthen multilateralism in the 'current interdependent international environment' (paragraph 2) and, consequently, 'the importance of cooperation between the UN and regional organizations' (paragraph 3).

These paragraphs provide a framework for the adoption of new modalities for the participation of the EU in the work of the UN. They underline that the General Assembly acted on this matter in the interest of the UN and not simply in response to a request from the EU or a group of UN members. As mentioned above, during the negotiations many delegations underlined that EU internal law (the Treaty of Lisbon) could not oblige the UN nor its members. It was important in their view that the UN itself be given proper recognition. The EU understood that the resolution

³⁹ see Wouters, Odermatt and Ramopoulos, *supra* note 2.

needed to be drafted from a UN perspective and language that satisfied all sides was found after successive refinements.

6.1.2 *Modalities for the external representation of regional organisations*

Preamble paragraph 4 acknowledges that ‘it is for each regional organization to define the modalities of its external representation’. This paragraph is a remnant from the negotiation process. Such a principle does not need to be affirmed in a General Assembly resolution to guarantee its validity. It derives from the sovereign rights of the Member States of any given regional organisation.

As explained earlier, the first draft of the resolution referred to elements or prerequisites that those organisations seeking to obtain arrangements similar to those requested by the EU needed to fulfil. Some delegations interpreted these elements as an effort to impose a model for regional integration. Preamble paragraph 4 sought to provide reassurances that this was not the case, and that autonomy of decisions of all regional organisations regarding their external representation was preserved. Later in the negotiation process the language of the controversial paragraph was changed. This subsidiary paragraph was nevertheless maintained to avoid any unnecessary suspicions in case of deletion.

6.1.3 *The observer capacity of the EU*

Some delegations insisted on recalling the first resolution granting the EEC, the predecessor of the EU, observer status.⁴⁰ The aim was to obtain a reaffirmation of the fact that the EU, despite the modalities granted through the new resolution, would remain an observer. The EU accommodated such requests, as reflected in preamble paragraph 5.

6.1.4 *The international legal personality of the EU*

The EU obtained recognition of its existing international personality as party to many international legal instruments and observer or participant in the work of several UN specialised agencies and bodies. Preamble paragraph 6 underlined the specificity of the EU among other observers and provided stronger justification for the adoption of the resolution.

6.1.5 *The succession of the EC by the EU*

The EC was the holder of legal obligations and rights established within the UN framework, including as signatory of international treaties. The succession of the EC by the EU was promptly communicated to the UN Secretary General by letter co-signed by the then rotating Presidency of the EU (the Permanent Representative of Sweden) and the EC representative, after the entry into force of the Treaty of

⁴⁰ UN General Assembly, *Resolution: Status of the European Economic Community in the General Assembly*, A/RES/3208(XXIX) of 11 October 1974.

Lisbon, with the request that it be communicated to all UN members. Having this succession acknowledged in preamble paragraph 6 of the resolution did not respond to a legal requirement, but it did provide additional reassurance.

6.1.6 *The new EU representatives*

Preamble paragraph 7 enumerates the new set of EU representatives: the President of the European Council, the High Representative, the European Commission and EU Delegations. While the determination of representatives is a sovereign right, this paragraph aims at providing clarity as to who the representatives of the EU are, following the entry into force of the Treaty of Lisbon and guarding against any possible challenges in this regard when implementing the modalities adopted in the resolution.

6.1.7 *Mindful of the modalities for the participation of other observers*

At the request of one observer delegation, a final preamble paragraph was added (paragraph 8) to reassure all observers that modalities for their own participation in the work of the UN, in accordance with their respective resolutions, would remain unchanged.

6.2 **The operational section**

6.2.1 *Operative paragraph 1*

Operative paragraph 1 contains a reaffirmation of the intergovernmental nature of the General Assembly and of the fact that membership of the UN is limited to States. It is aimed at reassuring those concerned that the arrangements granted to the EU through this resolution could be interpreted as having an impact on the overall nature of the UN or might give the EU a 'quasi-UN member' status. Reaffirmation of the observer nature of the EU in operative paragraph 2, as well as the recollection of UNGA Res. personally 3208 in preamble paragraph 5 share this same goal. The need to include these various references prove how important those concerns were during the negotiations, despite the fact that the EU had no intention of changing the intergovernmental nature of the UN, nor of moving towards UN membership.

6.2.2 *Operative paragraph 2*

Operative paragraph 2 is the key operational paragraph of the resolution. It decides on the adoption of the modalities described in the annex. Having reaffirmed the EU's observer capacity, it determines the scope of application of this decision which covers the General Assembly, its committees and working groups, international meetings and conferences convened under the auspices of the Assembly and UN conferences.

Regarding such international meetings and conferences, the interpretative note issued by the Secretary General on 1 June 2011 clarifies that the modalities adopt-

ed in this resolution will apply 'unless additional rights and privileges of participation are otherwise provided for the representatives of the European Union in the rules of procedure of the particular international meeting or conference convened under the auspices of the General Assembly or under the rules of procedure of the particular United Nations conference'.⁴¹ Normally, procedures for each meeting and conference are negotiated on a case-by-case basis. The EU could therefore, in principle, improve its modalities for participation as required and if agreed by others. In the past, the EU has indeed been granted 'full participant' status in some conferences, such as the UN Framework Convention on Climate Change, UN conferences on Sustainable Development and on Least Developed Countries.

Within its scope of application, the resolution established a 'floor' for arrangements for EU participation, not a 'ceiling'. It can also be used as a precedent, but does not affect negatively any pre-existing rights.

6.2.3 *Operative paragraph 3*

Operative paragraph 3 has already been discussed above with regard to the main questions raised during the negotiations. Indeed, extension to other regional organisations of the modalities such as those granted to the EU through this resolution was a key element in the negotiation process of this resolution. It opened the door to support from the African and Arab groups, as well as some other States keen in pursuing integration processes in their own regions.

Four main circumstances have to concur: a request must be made on behalf of a regional organisation; the regional organisation has an observer status at the General Assembly; the Member States of that organisation have agreed arrangements that allow the organisation's representatives to speak on behalf of the organisation and its Member States; and the General Assembly decides on the modalities.

The request will obviously need to take the form of a draft resolution. This draft resolution will have to be presented by the Member States of the organisation concerned or at least by one of them in representation of the organisation as a whole, as long as it is entitled to do so in accordance with the regional organisation's internal rules.

While the text of the resolution seems to imply that the organisation should already have an observer status at the General Assembly before requesting these modalities, it is possible to envisage that the modalities could be granted simultaneously together with the observer status, as long as the other circumstances are present.

Arrangements allowing representatives to speak on behalf of their organisations and their Member States, are key elements without which the request could not be presented. In practice it implies that representatives of the organisation (e.g. African Union, Arab League), i.e. no longer of the regional group (e.g. African or Arab Group), would be taking the floor. Permanent representatives to the UN of the organisation would be explicitly entrusted with the responsibility of representing the organisation and its Member States to the UN, instead of a representative of a Member State under a rotating procedure. This should be reflected in a binding

⁴¹ See *supra* note 34.

decision by the Member States of the organisation. It would need to be formally transmitted to the UN.

During the negotiations there was also some discussion on whether the modalities for the participation in the work of the UN should be exactly the same as those granted to the EU. The EU never had any objections to this, although it maintained that each organisation should be free to determine the exact content of the modalities for the exercise of its representation at the UN. Accordingly, language initially proposed referred to 'similar' modalities. Some UN members feared that this could generate doubts on the breadth of the modalities that other organisations could aspire to. To address this concern, the language finally adopted refers to 'modalities such as those set out in the annex'. In any case, each organisation will have to determine the exact modalities it is requesting.

Finally, it is important to note that, while this resolution constitutes an important precedent, the General Assembly will have to decide on each case individually.

6.2.4 *Operative paragraph 4*

Operative paragraph 4 requests the Secretary General to report on the implementation of the modalities set out in the Annex to the Resolution. A similar clause was included in the Palestinian and Holy See resolutions. The Secretary General fulfilled this obligation by presenting a Note entitled 'Participation of the European Union in the work of the United Nations'.⁴²

6.3 **The Annex**

The Annex contains the 'modalities' for the participation of the EU in the work of the UN. In the Palestinian and Holy See resolutions, these modalities are described as 'rights and privileges'. Such language was not used in the EU's proposal anticipating reactions from some delegations that argued that the EU is different in nature from both the Holy See and Palestine. It seemed important to avoid opening a discussion on the type of rights that an observer entity could have or not have at the UN. Some delegations indeed brought this issue up in the negotiations, but the approach followed by the EU from the outset facilitated a quick, uncontroversial reply: the aim of the resolution was to establish 'arrangements' or 'modalities' for EU participation in the work of the UN.

The Annex is composed of four paragraphs. The first contains the description of the 'modalities'. Paragraph 2 refers to seating arrangements. Paragraph 3 explicitly excludes the exercise of some rights linked to membership status. Finally, paragraph 4 clarifies that a recall of this resolution by the President of the General Assembly at the start of a new session will suffice to ensure the implementation of the modalities contained therein for the participation of the EU in its work throughout the whole period (a full year). A similar clause was included in the Palestine and Holy See resolutions.

⁴² UN General Assembly, *Note by the Secretary-General: Participation of the European Union in the work of the United Nations*, A/65/856, 1 June 2011.

The Note of the UN Secretary General contained in document A/65/856, dated 1 June 2011, constitutes the basis for the analysis of the modalities. Nevertheless, it is necessary to recall that, immediately after the adoption of the Resolution, the Permanent Representative of the Bahamas, in her capacity as chair of CARICOM, read out an Explanation of Vote clarifying her group's understanding of the implementation of these modalities. Some of its elements did not coincide with the EU's own interpretation. The Permanent Representative of Hungary, intervening on behalf of the EU, raised a point of order to indicate that the EU could not agree with the comments just made by the Chair of CARICOM. He requested that his objection be placed on record and that interpretations on the implementation of modalities for the participation of the EU in the work of the UN be withheld until the Secretary General himself provided an authorised interpretation of the resolution as requested therein.

The Permanent Representative of Bahamas, again in her capacity as CARICOM chair, sent a letter on 9 May to the UN Secretary General, recalling their interpretation of the Resolution. This was circulated to all UN members at CARICOM's request.⁴³ Some of the interpretations contained therein are not in accordance with the language adopted in Res. 65/276. The EU maintains that the interpretation of the Resolution should follow the UN Secretary General's Note.

6.3.1 *Modalities for the participation of the EU in the work of the UN*

6.3.1.1 Inscription in the speakers list among representatives of major groups

The Note of the Secretary General clarifies that 'EU representatives shall be inscribed among major groups in the order in which the European Union signifies its desire to speak'. Therefore, EU representatives may intervene early-on in any debate with representatives of major groups, normally ahead of individual Member States' representatives, instead of at the end of the speakers list, as other observers.

This is undoubtedly one of the major achievements of the Resolution. It allows EU representatives to replace the rotating Presidency in the presentation of EU positions in formal UN meetings, safeguarding the effectiveness in the delivery of EU messages and positions. It ensures continuity between work performed in informal and official UN meetings, allowing EU representatives to assume responsibility for the full process of negotiations and representation. In the author's view, some comments on this Resolution have failed to grasp the practical significance of this clause and erroneously amalgamated it with the participation in the General Debate.⁴⁴

Both in their Explanation of Vote and the letter sent to the UN Secretary General, CARICOM indicated that 'in a speakers' list including multiple major groups, the European Union will not be able to speak prior to any major group represented by a full State member of the United Nations'. It is worth noting that, during the negotiations, CARICOM proposed language to that effect. Such language was not

⁴³ UN General Assembly, *Letter dated 9 May 2011 from the Permanent Representative of the Bahamas to the United Nations addressed to the Secretary-General*, A/65/834, 10 May 2011.

⁴⁴ Cf. Wouters, Odermatt and Ramopoulos, *supra* note 2.

accepted by the EU and did not form part of the package finally agreed with CARICOM. The EU insisted that its representatives should be allowed to speak 'among those of other major groups' and not as last group-representative. This was discussed openly, understood and reflected in the adopted text. The interpretative note of the Secretary General is clear enough in this respect.

6.3.1.2 Invitation to participate in the General Debate of the General Assembly following the practice for participating observers

Prior to the adoption of Res. 65/276 Palestine and the Holy See were the only observers that could intervene in the General Debate. The participation of the EU in the General Debate was a very sensitive question during the negotiations. Indeed, achieving a good position in the speakers list of the General Debate is a major challenge for all delegations, who wish to ensure that their principal will be able to take the floor at the best possible moment in what constitutes a yearly major political event.

In accordance with the approved modalities, EU representatives will participate following the practice established for Palestine and the Holy See, to wit at the end of a morning or afternoon session and taking into account the level of the EU representative. The EU will indicate three preferences, but responsibility for the organisation of the speakers list lies within the UN Secretariat and the office of the President of the General Assembly.

6.3.1.3 The distribution of written communications as official UN documents

This provision will allow the Head of the EU Delegation to request distribution of EU positions directly. Other regional organisations can only distribute their communications at the request of one of its Member States. This was also the case for the EU prior to the adoption of Res. 65/276.

6.3.1.4 Presentation of proposals and amendments orally in formal sessions of the General Assembly or international meetings or conferences

Such proposals or amendments shall only be put to a vote at the request of a Member State. Rule 78 of the General Assembly rules of procedure indicates that such proposals and amendments 'shall normally be submitted in writing' and circulated to delegations at least the day preceding the meeting. Nevertheless, Rule 78 indicates further that the President 'may permit the discussion and consideration of amendments and motions as to procedure even if they have not been submitted in writing or if they have been submitted the same day'.

Although the EU initially sought a broader capacity, the limitation to oral presentation of proposals and amendments and the requirement of submission of these proposals and amendments to a vote only at the request of a Member State, were necessary to ensure an uncontroverted adoption of the Resolution. These concessions were part of the final deal.

As indicated in the UN Secretary General's Note, while EU representatives will be allowed to introduce proposals or amendments orally in formal meetings, action on these will require an additional request by a Member State representative, in practice that of an EU Member State. This clause gives EU representatives an

enhanced capacity for action in negotiations, allowing them to present amendments in the session in which a proposal is being presented for decision to the General Assembly. Neither Palestine nor the Holy See has been granted this possibility, although the EC did obtain this right in the Commission for Sustainable Development, as examined above, under section 6.2.

6.3.1.5 Exercise of right of reply regarding positions of the European Union as decided by the presiding officer

EU representatives may request to speak again, once the speakers list has been closed, in response to an intervention by another delegation. As for UN members, the exercise of the right of reply of the EU is subject to a decision by the presiding officer who will judge whether 'a speech delivered after he has declared the list closed makes this desirable'.⁴⁵

Some UN members were reluctant to grant representatives of an observer the possibility to respond to comments made by a UN member. This reluctance was finally overcome at the cost of limiting the right of response to a single intervention and to specifying that it will only be in reference to EU positions. UN members can be allowed up to two interventions per item, in accordance with Decision 34/401 on the rationalisation of the procedures and organisation of the General Assembly. Additionally, EU representatives can only exercise their right of reply concerning positions of the EU. This in itself does not represent a real limitation as EU representatives cannot intervene formally on issues that do not concern positions of the EU.

6.3.2 *Seating arrangements for the EU*

The Annex mentions that 'The representatives of the European Union shall be ensured seating among the observers'. As other observers, the EU has two assigned seats within the General Assembly Hall. This remains unchanged. The significance of this clause lies in the fact that it also ensures reserved seating for EU representatives in all meetings in which observers participate that take place in rooms other than the General Assembly Hall. In fact this concerns the majority of meetings at the UN Head Quarters. Some of the meeting rooms are smaller and unless a seat is reserved with a nameplate, participation in the meeting can be compromised.

Only the Holy See and Palestine receive similar treatment among observers. Although, in their case, they sit among UN members in the General Assembly Hall and have six seats at their disposal there. The EU did not request these arrangements at the General Assembly Hall to make it clear that it was pursuing neither a quasi-member nor a quasi-State recognition.

6.3.3 *Rights explicitly excluded*

'The representatives of the European Union shall not have the right to vote, to sponsor draft resolutions or decisions, or to put forward candidates'. With the aim

⁴⁵ Art. 73 of the General Assembly rules of procedure.

of providing additional reassurances, UNGA Res. 65/276 explicitly excludes three rights closely linked to UN membership. Co-sponsorship of decisions or resolutions has been added to voting rights and presentation of candidates, both of which were already excluded in the Holy See and Palestinian resolutions. Indeed, while for the Holy See and Palestine signing on to a draft resolution or decision is an essential way to express their association with it, co-sponsorship on the EU side will continue to be expressed through the individual signatures of its 27 Member States. Furthermore, EU Member States are active participants in their own right in the work of the UN. Having all of them jointly convey EU co-sponsorship reinforces their role both at the UN and as EU Member States.

The Secretary General's interpretative Note adds that EU representatives will not have 'the right to raise points of order, to challenge or appeal the rulings of the presiding officer or to make procedural motions including the adjournment of debate, the closure of debate and the suspension or adjournment of the meeting'. This is one of the few points in the Secretary General's interpretative Note that goes beyond the text of the Resolution. The right to raise points of order was a major concession explicitly granted by the EU at the end of the negotiation process, to secure an uncontroverted adoption of the Resolution.

6.3.4 *Procedural requirement for the implementation of the arrangements*

'A precursory explanation or recall of the present resolution shall be made only once by the President of the General Assembly at the start of each session'. This paragraph was clarified in the Secretary General's interpretative Note: 'at the beginning of each session of the General Assembly, during its consideration of the report of the General Committee, the President will indicate that the participation of the representatives of the European Union in that session will be in accordance with Assembly resolution 65/276, after which there will be no precursory explanation prior to any intervention by the representatives of the European Union in the session'. A similar clause was included in the Palestine and Holy See resolutions.

7. IMPLEMENTATION OF UNGA RES. 65/276

Almost a year after its adoption the implementation of Res. 65/276 can be, overall, judged favourably. EU representatives have effectively replaced the rotating EU Presidency in delivering formal statements at General Assembly meetings and the EU Delegation is the hub for the promotion of EU interests and the representation of the EU at the UN in New York.

The President of the European Council, Herman Van Rompuy, participated for the first time in the General Debate of UN General Assembly No. 66. He was invited to speak among Heads of State and Government at the end of the morning session of 23 September 2011, on the second day of the General Debate, immediately after the British Prime Minister. This was the first time that a non-State-type representative intervened in the General Debate.

EU representatives are systematically invited to speak in formal meetings among representatives of major groups, ahead of individual UN members. They can therefore present EU positions in a timely and effective manner. Nevertheless, CARICOM,

in line with the Explanation of Vote it delivered at the time of the adoption of UNGA Res. 65/276, has continued to insist that, as representatives of a non-State, EU representatives should be given the floor after representatives of major groups who are also UN member's representatives.

EU communications are distributed as official documents without hindrance and seats are systematically reserved for EU representatives.

One shortcoming is linked to the delivery of Explanations of Vote. Some UN members argue that this is linked directly to the right to vote and cannot therefore be granted to EU representatives. In cases where it is accepted, EU representatives may instead deliver a 'General Statement' after the vote. Otherwise an EU Member State representative delivers an Explanation of Vote on behalf of the EU.

Another weakness is that EU representatives cannot raise points of order. This is a procedural instrument used in exceptional circumstances. It can nevertheless prove quite useful during controversial debates. In such cases, representatives of the EU Delegation will have to coordinate with representatives of an EU Member State to ensure that, if required, a point of order can be raised to ensure the promotion or defence of specific EU positions.

Some of the limitations may be overcome with time. Notably when UN members realise that the arrangements agreed for participation of EU representatives cause no prejudice to UN members' individual rights and when working effectively with EU representatives becomes the predominant consideration. Other may require revisiting the Resolution. If at all, this should be done when any remaining sensitivities have found appeasement.

8. CONCLUSIONS

The adoption of UNGA Res. 65/276 on 3 May 2011 regarding the participation of the EU in the work of the UN has contributed significantly to place the EU's external representatives identified in the Treaty of Lisbon at the centre as regards the promotion of EU interests in the UN. It is these representatives that the UN Secretary General, the President of the General Assembly or any UN member or representative of a major group call on now when they wish to engage with the EU. It is these representatives that present and promote EU positions on a daily basis with the agreement, backing and support, as required, of EU Member States.

The negotiation leading to the adoption of the resolution, despite its difficulties, also showed strong support for the EU from major international actors and powers. Beyond the presentation of the common positions of a plurality of national actors, they rightly viewed this as an additional and important step in the construction of a new player, different from a Nation-State that contributes, as a partner, to addressing more effectively the challenges faced by the international community.

The Resolution opened new grounds at the UN in terms of the role that observer regional integration organisations may play. It is precisely because of this that it faced difficulties. Indeed, the negotiation of the Resolution revealed deep sensitivities with some UN members. Concerns related to national sovereignty were at the heart of such reservations. This is not new at the UN. Protection of national sovereignty is very much a central element in most discussions at the UN.

Implementation of UNGA Res. 65/276, and other steps taken in the process of assumption of responsibilities at the UN by the new EU representatives, has already

demonstrated that the interests and capacity for action of non-EU UN members remain fundamentally unaffected. The development of relations with the EU outside the UN context and international acceptance of the new EU interlocutors, should also contribute to building further trust and understanding for the changes brought about by the Treaty of Lisbon. At the same time, it is also worth noting that in the year that has gone by since the adoption of the Resolution, no other regional organisation has followed suit.

Further efforts are still required to ensure that EU representatives can fulfil their responsibilities throughout the UN system. General Assembly Res. 65/276 offers a model for the participation of non-UN members that could be extended to the work of other UN organs and specialised agencies. This may be particularly relevant for ECOSOC which, in accordance with Rule 79 of its rules of procedure, allows 'intergovernmental organisations' to participate in its work, if they have attained permanent observer status at the General Assembly. In some specialised agencies the question will be whether it is not membership status that the EU should pursue instead, following the FAO example.

Changes brought about by the Treaty of Lisbon should help strengthen bonds between the EU and its partners. Thus, ultimately, it will be the effectiveness of the new EU representatives and their actual contribution to promoting international cooperation both in and outside of the UN that will consolidate their role and ensure their full international acknowledgement.

ANNEX

Resolution adopted by the General Assembly

[without reference to a Main Committee (A/65/L.64/Rev.1)]

65/276. Participation of the European Union in the work of the United Nations

The General Assembly,

Bearing in mind the role and authority of the General Assembly as a principal organ of the United Nations and the importance of its effectiveness and efficiency in fulfilling its functions under the Charter of the United Nations,

Recognizing that the current interdependent international environment requires the strengthening of the multilateral system in accordance with the purposes and principles of the United Nations and the principles of international law,

Recognizing also the importance of cooperation between the United Nations and regional organizations, as well as the benefits to the United Nations of such cooperation,

Acknowledging that it is for each regional organization to define the modalities of its external representation,

Recalling its resolution 3208 (XXIX) of 11 October 1974, by which it granted observer status to the European Economic Community,

Recalling also that, consistent with the relevant legal provisions, the European Union has replaced the European Community and is a party to many instruments concluded under the auspices of the United Nations and an observer or participant in the work of several specialized agencies and bodies of the United Nations,

Noting that the States members of the European Union have entrusted the external representation of the European Union, previously performed by the representatives of the member State holding the rotating Presidency of the Council of the European Union, to the following institutional representatives: the President of the European Council, the High Representative of the Union for Foreign Affairs and Security Policy, the European Commission, and European Union delegations, which have assumed the role of acting on behalf of the European Union in the exercise of the competences conferred by its member States,

Mindful of the modalities for the participation of observer States and entities, and other observers in the work of the United Nations, as set out in the respective resolutions,

1. *Reaffirms* that the General Assembly is an intergovernmental body whose membership is limited to States that are Members of the United Nations;

2. *Decides* to adopt the modalities set out in the annex to the present resolution for the participation of the representatives of the European Union, in its

* Reissued for technical reasons on 18 May 2011.

capacity as observer, in the sessions and work of the General Assembly and its committees and working groups, in international meetings and conferences convened under the auspices of the Assembly and in United Nations conferences;

3. *Recognizes* that, 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, the Assembly may adopt modalities for the participation of that regional organization's representatives, such as those set out in the annex to the present resolution;

4. *Requests* the Secretary-General to inform the General Assembly during its sixty-fifth session on the implementation of the modalities set out in the annex to the present resolution.

*88th plenary meeting
3 May 2011*

Annex

Participation of the European Union in the work of the United Nations

1. In accordance with the present resolution, the representatives of the European Union, in order to present positions of the European Union and its member States as agreed by them, shall be:

(a) Allowed to be inscribed on the list of speakers among representatives of major groups, in order to make interventions;

(b) Invited to participate in the general debate of the General Assembly, in accordance with the order of precedence as established in the practice for participating observers and the level of participation;

(c) Permitted to have its communications relating to the sessions and work of the General Assembly and to the sessions and work of all international meetings and conferences convened under the auspices of the Assembly and of United Nations conferences, circulated directly, and without intermediary, as documents of the Assembly, meeting or conference;

(d) Also permitted to present proposals and amendments orally as agreed by the States members of the European Union; such proposals and amendments shall be put to a vote only at the request of a Member State;

(e) Allowed to exercise the right of reply regarding positions of the European Union as decided by the presiding officer; such right of reply shall be restricted to one intervention per item.

2. The representatives of the European Union shall be ensured seating among the observers.

3. The representatives of the European Union shall not have the right to vote, to co-sponsor draft resolutions or decisions, or to put forward candidates.

4. A precursory explanation or recall of the present resolution shall be made only once by the President of the General Assembly at the start of each session.