

Towards more effective global security governance through UN@EU cooperation

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Theme

The complexity of current security threats requires that the UN work more closely with regional organisations, including the EU, through improved cooperation and partnerships in several areas, such as conflict prevention, crisis management, peacekeeping and peace-building.

Summary

In a **UN Security Council meeting (UNSC) on the role of regional organisations and sub-regional arrangements** held on 9 March 2015, the UN Secretary-General (UNSG) held that the UN is unable to tackle current security threats on its own. The complexity of these threats requires that it work more closely with regional organisations, including the EU, through improved cooperation and partnerships in several areas, such as conflict prevention, crisis management, peacekeeping and peace-building. The importance of the role of regional organisations was reaffirmed at the UN General Assembly (UNGA) **High-Level Thematic Debate on Strengthening Cooperation between the United Nations and regional and sub-regional organisations** held on 4 May. The object of the debate was to address questions such as how to strengthen UN partnerships with regional organisations and the need to improve regional capacities in the area of peace and security more generally.

Analysis

(1) Introduction

In a **UN Security Council meeting (UNSC) on the role of regional organisations and sub-regional arrangements** held on 9 March 2015, the UN Secretary-General (UNSG) held that the UN is unable to tackle current security threats on its own. The complexity of these threats requires that it work more closely with regional organisations, including the EU, through improved cooperation and partnerships in several areas, such as conflict prevention, crisis management, peacekeeping and peace-building. The importance of the role of regional organisations was reaffirmed at the UN General Assembly (UNGA) **High-Level Thematic Debate on Strengthening Cooperation between the United Nations and regional and sub-regional organisations** held on 4 May. The object of the debate was to address questions such as how to strengthen UN partnerships with regional organisations

and the need to improve regional capacities in the area of peace and security more generally.

(2) Critical steps in the development of UN-EU cooperation

The EU embraces cooperation with the UN, and reinforcing cooperation between the UN and regional organisations, in line with its medium-term priorities for the UN (2012-15) and as one of its priorities at the 69th session of the UNGA 2014.¹

For decades the EU has sought to advance a common voice of its members on matters of foreign affairs. For the most part, however, this endeavour has been impeded because of the absence of EU organs and mechanisms assigned with the task to actually work towards such a goal. The Lisbon Treaty represents a breakthrough in this regard. Not only does it call for the appointment of an EU High Representative on Foreign Affairs and Security Policy (art. 18 TEU), but it also mandates the Council to establish an External Action Service (art. 27.3 TEU). The same treaty endows the EU with international legal personality (art. 47 TEU) and gives it a clear mandate to strengthen cooperation and build partnerships not only with third countries but also with ‘international, regional or global organisations which share the principles’ that the Union seeks to advance in the wider world: democracy, the rule of law, human rights, human dignity, equality and solidarity and respect for the principles of the UN Charter and international law’. Specifically, the EU ‘shall promote multilateral solutions to common problems, in particular in the framework of the United Nations’ (art. 21 TEU). The Lisbon Treaty thus enables, even obliges, the EU to engage with the UN more deeply.

The legal empowerment of the EU as a multilateral actor has been rewarded in the UN context. Following the entry into force of the Lisbon Treaty in 2009, the EU has obtained new rights to participate in the work and sessions of the UN General Assembly (UNGA). As of 2011, EU representatives are allowed to present agreed common positions, make interventions, present proposals and circulate EU communications as official documents.² Furthermore, the UNSC has started to organise regular meetings with regional organisations, including the EU. Since 2010, the EU High Representative on Foreign Affairs and Security Policy has been invited five times by the UNSC to discuss the EU’s contributions in the area of global peace and security, and the possibilities for further improvement.³

UN-EU cooperation has intensified most significantly in the area of crisis management. The first formal commitments were expressed in 2003 with the signing of the **Joint Declaration on UN-EU Cooperation in Crisis Management** in the area of civilian and military crisis management, in particular in the Balkans and in

¹ See EU Delegation to the UN-New York, ‘EU Priorities for the UN 69th General Assembly’, http://eu-un.europa.eu/articles/articleslist_s121_en.htm.

² UNGA res. 65/276 of 3/V/2011.

³ A first UNSC meeting with the EU High Representative was held in 2010 and has been organised on an annual basis thereafter except for in 2012 when no such meeting was held.

Africa. A **Joint Statement** was made in 2007. As of 2011, the UN has a **Liaison Office for Peace and Security in Brussels** (UNLOPS) to enhance its partnership with the EU, NATO and other organisations in Brussels on peacekeeping, crisis management, political affairs, conflict and mediation. In 2012, the Council of the EU adopted a **Plan of Action to enhance EU CDSP support to UN peacekeeping** (*EU Action Plan*), which calls for the establishment of a list of military and civilian capabilities that EU members can potentially put at the disposal of UN peacekeeping. In the process of implementing this plan (lasting until the end of 2014), both organisations have been striving for closer cooperation. The value of UN cooperation with regional organisations, above all the AU but also the EU, was underscored in **UNSC resolution 2167 of 28 July 2014**.

At the moment, the UN and the EU are operating side-by-side in several crisis situations. There are no less than eight parallel UN and EU missions in the Democratic Republic of the Congo, Kosovo, Mali, Central African Republic, Somalia, Libya, Afghanistan, and the Israel/Palestinian territories.⁴ Both organisations are now seeking to strengthen their cooperation in the light of these and previous experiences. In this spirit, the UNSG recently appointed a **High-level Independent Panel on Peace Operations** that will address a broad range of issues facing peace operations, including partnerships with regional organisations. Also, the ongoing process of drafting a new EU Action Plan for 2015 focuses on ways to better tackle practical problems faced in the context of parallel engagements. Stress is placed on the UN's lack of military capacity in challenging environments where 'soft soldiering' is deemed insufficient. In these contexts, the EU may act as strategic enabler through the provision of rapid-reaction forces, such as the EU Battlegroups, logistical assets or high-tech equipment.⁵ Also being discussed is how to overcome outdated and negative attitudes of the EU's military and political leaders towards UN peacekeeping in general. A third issue is how to deal with the reality of differing approaches to Rule of Law as well as Justice and Security Sector Reform (JSSR) activities.⁶ What is lacking is a shared understanding of the meaning of these concepts and how to implement them in concrete settings.⁷

(3) Political appraisals of EU contributions and actions

In its first-ever presidential statement on UN-EU cooperation issued in 2014, the UNSC lauded the EU's activities in the area of peace and security.⁸ Special mention was made to the EU's achievements as an international negotiator, including its role in the reaching of an agreement in November 2013 on a **Joint Plan of Action** on

⁴ See Wanda Hummel & Tobias Piezt (2015), 'Partnering for Peace: Lessons and Next Steps for EU-UN Cooperation on Peace Operations', *ZIF Policy Briefing*, February, p. 2.

⁵ *Ibid.* See also Adam C. Smith (2014), 'European Military Capabilities and UN Peace Operations: Strengthening the Partnership', *ZIF Policy Briefing*, October; and Wanda Troszczyńska-Van Genderen (2015), *Reforming the United Nations: State of Plays, Ways Forward*, European Parliament Study, February 2015, p. 34.

⁶ UNSC mandates regularly call for security sector reform. See eg *Securing states and societies: strengthening the United Nations comprehensive support to security sector reform. Report of the UN Secretary General*. UN doc. A /67/970-S /2013/480, 13/VIII/2013, p. 7.

⁷ Hummel & Piezt, *supra* note 4, 4.

⁸ UNSC Presidential Statement (14/II/2014).

Iran's nuclear programme. Also noted was the **EU-facilitated dialogue between Serbia and Kosovo**, which led to an agreement and the normalisation of relations between the two parties in April 2013. The Council President further welcomed the EU's comprehensive approach to the maintenance of peace and security, and its role in combating piracy off the Somali coast. Another positive advance was the EU's assistance to the Central African Republic through **humanitarian aid**, and its financial contributions and temporary operation to assist the African-led **International Support Mission to the Central African Republic (MISCA)**. In addition, the President expressed appreciation of the EU's initiative to provide humanitarian assistance to the affected people in Syria and neighbouring countries, and its timely in-kind support for the rapid establishment of the **Organisation for the Prohibition of Chemical Weapons—United Nations Joint Mission for the Elimination of the Chemical Weapons Programme of the Syrian Arab Republic**.

At the recent UNSC meeting with the newly elected EU High Representative, Federica Mogherini, held in March 2015, the UN Secretary-General reiterated the UN's positive view on the EU's role as a negotiator, not only in the context of the Belgrade-Kosovo dialogue and the Iran nuclear talks, but also in relation to the **Middle East peace process**.⁹ Also highlighted were the EU's diplomatic efforts in Libya.¹⁰ Ban Ki-Moon further emphasised the EU's support for mediation, including through the funding of the UN's Standby Team of Mediation Experts. In addition, he emphasised the significance of the UN-EU partnership in the management of crisis situations, such as in Somalia, Mali and the Central African Republic.

At the same meeting, however, individual UNSC members expressed concerns about the EU's aspiration to act in a more autonomous manner on matters of security and peace. Welcoming the EU's cooperation with the UN, China expressed its hope that the EU would abide by the principles of the UN Charter, particularly as regards respect for the sovereign equality of states and the peaceful settlement of disputes.¹¹ Russia conveyed its positive stance on the EU's engagement in crisis situations, but also stressed that in 'implementing its crisis-management operations, the European Union and its member States should always go strictly by the relevant decisions of the Security Council'. In this context, Russia referred specifically to the EU-facilitated dialogue between Belgrade and Pristina, noting that 'despite the growing demand for an effective mechanism for organising a division of labour between the United Nations and regional associations, including the EU, the leading role of the Security Council in issues related to the maintenance of international peace and security is unshakable. It is enshrined in the Charter of the United

⁹ UNSC meeting, *supra* note 1.

¹⁰ Between 2011 and 2014 the EU role was led by Bernadino León when serving as EU Special Representative for Libya and EU Special Representative for the Southern Mediterranean. In August 2014, Mr León was appointed UN Special Representative and Head of the UN Support Mission in Libya (UNSMIL).

¹¹ Reaffirming a strong commitment to the purposes and principles of the UN Charter was the theme selected by China for the open debate held in February 2015 when presiding the UNSC. See **Concept paper for Security Council open debate on Feb. 23**.

Nations and cannot be subject to review'.¹² Finally, Russia expressed misgivings about the **EU's advisory mission to Ukraine**.

The resurfacing of Cold War politics in international relations raises an awareness of the EU's ambitions and interests that can come into tension with an ever-closer UN cooperation. The EU's restrictive measures imposed on Russian and Syrian leaders in the absence of the UNSC's authorisation is a case in point. To this should be added that the EU is in the process of aligning itself with NATO. This move is not surprising considering the changing security situation in Europe, the EU's ambition to advance a common defence policy and that the majority of EU members are also part of NATO (22). Nevertheless, the process could be perceived negatively by the UNSC's members that are not part of NATO. The EU and NATO share objectives, such as fighting against terrorism and the proliferation of weapons of mass destruction. According to NATO's new **Strategic Concept**, adopted at the Lisbon Summit in 2010, other common areas are energy security issues and cyber defence. At that summit, NATO's Secretary-General stressed the importance of EU-NATO cooperation in the light of new threats and challenges, 'emanating from the east as a consequence of the behaviour of a more assertive Russia, responsible for aggressive actions in Ukraine, and from the south, in the Middle East and North Africa, through turmoil, barbaric violence, and ISIL terrorist activities close to our borders'.¹³

(4) Legal assessment of UN-EU cooperation and its limits

That the UNSC would need to count on regional and sub-regional arrangements to carry out its mandate in an effective manner is not a novel idea. In a handful of provisions concentrated in Chapter VIII of the UN Charter adopted in 1945, the drafters of this founding document laid down a basic framework for governing relations between the UNSC and regional organisations. These provisions focus not so much on the rights of regional actors as on their basic responsibilities. In addition to establishing a general responsibility for these organisations to act in accordance with the principles and purposes of the UN Charter (arts. 1 and 2), the UN founders endowed them with a special responsibility to settle local disputes arising in their respective regions (art. 52). However, no 'enforcement action' may be taken at a regional level without UNSC authorisation, which, on the other hand, 'shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority' (art. 53). Also, regional organisations are obliged to fully inform the UNSC 'of their activities undertaken or in contemplation... for the maintenance of international peace and security' (art. 54).

¹² For an overview of EU engagement with Ukraine, see **EU External Action Service, Factsheet. EU-Ukraine Relations**, Brussels, 24/IV/2015.

¹³ 'Secretary General: We can achieve more if we work more closely together', 30/III/2015.

Reading these provisions, it becomes clear that the drafters of the UN Charter envisioned a collective security arrangement that would be multilateral in character with the UNSC at its core. In order for the new institutional arrangement to be effective, regional organisations would need to shoulder responsibilities not only in relation to local dispute settlements, but also in the enforcement of UNSC decisions. Regional actors were encouraged to assume an active role in the maintenance of peace and security and in this respect act autonomously but only up to a certain point: 'enforcement actions' by regional organisations were not to be allowed unless mandated by the UNSC. If we consider that the term 'cooperation' has several literal meanings –both 'working jointly towards the same end' and to 'assist someone or comply with their requests'–,¹⁴ the spirit of the cooperative schemes foreseen by the UN founders were more akin to the second meaning.

Seventy years on, the budding legal question is how to interpret the provisions meant to govern the relationship between the UN and regional organisations to meet the threats and challenges of today. Key questions turn on what is meant by unauthorised 'enforcement action', which defines the limit to the role of regional organisations in the maintenance of international peace and security. A somewhat different issue is whether the strengthening of regional capacities in the area of peace and security will affect the interpretation of regional responsibilities in accordance with Chapter VIII of the UN Charter and if so, how.

While Chapter VIII does not define the meaning of 'enforcement action', there is general agreement that unilateral or regional military actions, whether as part of an international intervention or a peace operation, count as such. Since the launching of the **Agenda for Peace** by Boutros Boutros-Ghali in 1992, peace operations may use force in their own defence and of their mandate or civilians in imminent danger and are thus seen as requiring UNSC authorisation. The sole clear exception to the prohibition against unilateral or regional use of force (art. 2.4) is the right to self-defence, whether individual or collective in character (art. 51). Nevertheless, other possible interpretations of the character of the prohibition against the use of force abound. For example, the legality of armed intervention on purely humanitarian grounds is a matter of continued debate. In addition, there is no clear prohibition against unilateral or regional economic sanctions or other similar restrictive measures. US- and EU-based international law scholars tend to view such sanctions as legal provided there are conditions for adopting countermeasures.¹⁵ Nevertheless, there is no general agreement on this approach, as indicated by the Russian and Chinese views on such sanctions.

¹⁴ See *Oxford Dictionaries*, available at <http://www.oxforddictionaries.com/definition/english/cooperate>.

¹⁵ For these conditions, see generally arts. 49 to 54 of the ILC draft articles on the **Responsibility of States for Internationally Wrongful Acts**. Annex to UNGA res. 56/83 of 12/XII/2001, and corrected by doc. A/56/49(Vol. I)/Corr.4.

The drafters of the UN Charter crafted a legal framework that stakes out the basic responsibilities of regional organisations in global security governance. Nevertheless, the rules that were formulated are done so in general terms and do not recognise any rights. Even if from a legal standpoint, legal vagueness or silence in the law is thought to undermine the ideals of the Rule of Law, such as legal clarity and predictability, the fact that the exact limits of the law in this area remain somewhat unsettled may have some strategic advantage in the sense of inducing a climate of toleration of differing views on the rights of regional organisations. Conflicting positions on the limits of the autonomy of regional organisations in concrete cases are to be expected. Rather than undermining the conditions for advancing schemes of cooperation, the issues under disagreement will be the object of continued dialogue in the political context.

(5) Towards more effective global security governance

The promotion of a global security governance model in which regional organisations are given a critical role has special merit in that it seeks to provide more effective global responses and management of crisis situations. The present efforts to strengthen cooperation between the UN and regional organisations are guided by this primary objective. Key questions are thus of a practical nature and centre on how to best cooperate, and who should be responsible for what in different situations. On these matters the legal framework established in the UN Charter does not provide much guidance. Instead, the relevance of organising principles such as comparative advantages, complementarity and burden-sharing that have been introduced to improve effectiveness in international aid is under consideration.¹⁶ So far, there is no agreed understanding of the practical significance of these principles in the context of UN cooperation with regional organisations in the area of peace and security. These are questions that still remain ahead.

Conclusions

As this comment has indicated, the furthering of a model of global security governance in which regional organisations are given a more prominent role also raises questions of principle. Of primary concern is the degree of autonomy of regional organisations to act on their own in the area of peace and security beyond the realm of dispute settlement envisioned in the UN Charter. The EU's responses in crisis situations not supported by UNSC mandates have evoked negative reactions by members. In this light, the question arises as to whether the return of Cold War politics and the changing security situation in Europe may place strains on current ambitions to strengthen UN-EU cooperation in the maintenance of peace and security. As for now, there is no indication that such strains will materialise in practice. Indeed, the multitude of crisis situations already seized by the UNSC in

¹⁶ These principles were mentioned in the Concept Note for the UNGA High-Level Thematic Debate on Strengthening Cooperation between the United Nations and regional and sub-regional organizations, Trusteeship Council, 4/V/2015.

need of more effective governance, including funding and military assistance, speak in favour of continued reinforcement of cooperation between the UN and regional organisations, including the EU, in the years to come.