

Global Governance and the United Nations. Italy's Views on the Importance of the Rule of Law in the Reform of the Security Council

Presentation

by

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I am particularly pleased and honored to have this evening the opportunity to speak to such a distinguished audience of Italian American attorneys and counselors at law practicing in the most prominent judicial departments in the New York court system and in the United States.

I would like to express my appreciation to Justice Dominic Massaro for suggesting this initiative and to thank President Lorraine Corsa for her invitation to address the Columbian Lawyers Association.

There is no precedent in the post-1945 world when so much attention has been given to the reform of global governance. Nowadays there is a continuous request for “reshaping the world,” for “a new multilateralism”, and for “fostering institutional change.”

Tonight I would like to focus on these requests from three perspectives:

1. What is the nature of the challenges that the UN are facing?
2. Are there alternatives to the UN?
3. How could a more just and efficient international order be shaped by the rule of law; and how the US and Italy can contribute to this endeavour?

I. Nature of the challenges.

Secretary General Ban Ki-moon recently recalled that “The UN was founded on, and has always relied on, a combination of **power and principle**. While some of the Organization's structures, especially the

Security Council, reflect the geopolitical realities of 1945, they were situated within a set of broader, universal principles meant to govern nations, regardless of size, strength or political system. We need to harness both **power** and **principle** to meet today's challenges.”

In 1945 **power** was concentrated in the hands of a few countries that had emerged victoriously from World War II. As President Roosevelt put it, the world order had to be guaranteed by “**four policemen**”: a team of super-powers, or regional powers, that did not necessarily have similar systems of government. The US and UK had liberal democracies, China a nationalistic regime, and the Soviet Union a Bolshevik communist state.

The approval of the UN Charter in 1946 was therefore an extraordinary achievement. It reflected the same **principles** found in the constitutions of our democratic societies: human dignity, social progress, individual freedom, and a legal system based on the rule of law. In other words, the UN Charter defined the international obligations of member states in terms of the same rights and obligations that citizens of our countries find in our constitutions.

I say this to underline the guidance that UN members should increasingly find in the basic UN values. Our countries face global threats which will become over the next 3-4 years accrued challenges for our part of the world. **Our governments are engaged not only because of social and humanitarian solidarity; we have a specific interest in not allowing the poorest countries getting off track of the UN Millennium Development Goals.** According to the Global Monitoring Report, in 2009 there has thus far been: a 1.3% drop in the global GDP; decrease in pro capita revenue in more than 50 Countries. There will be soon from 50 to 90 million more poor people in the world, and one billion people at risk of starvation.

There is a growing sense that the UN badly needs an update. In a recent article from *Foreign Affairs* Professor Kupchan wrote: “Not since the 1940s, have voices on both sides of the aisle of American politics called for such an ambitious overhaul of international institutions. Rarely have liberal idealism and neoconservative realism converged so completely.”

Undoubtedly **power** and **principle**, to use SG Ban Ki-moon's formulation, must guide our efforts to overhaul the international

system. The response to the economic crisis, in fact, already exemplifies this.

In terms of **power** the G20 has gained momentum. By its composition, it recognizes the fundamental shift that has occurred in the past 10 - 15 years in the world economy. Twenty countries now represent 65% of the world's population and 85% of the global economy. Especially in a time of crises, these 20 major economies need to coordinate their policies and create the conditions for market stabilization.

This **power** shift has to be connected to clear **principles**. Even in this emergency situation we should be driven not only by the need to adjust the global governance to the emerging economic powers; it is also compelling to guide this adjustment according to the well established principles of the UN Charter.

A first main reason to do so is that the United Nations are by definition a universal system. Every member of the international community is represented, every state is equal, and state sovereignty is recognized and guaranteed. Its universal character has sustained the Organization for more than 64 years, and remains the strongest foundation for any future reform.

A **second reason** is that the UN principles should imply that:

- 1) **In development assistance** those most affected by the crisis have increased access to basic resources such as food, water, and health care.
- 2) **The UN system and its financial institutions** – the IMF, WTO, and World Bank – **be decisive players in fighting protectionism** and promoting economic growth;
- 3) **Climate change be addressed as an absolute priority.** The Copenhagen Conference at the end of this year must define a common action against global warming;
- 4) **As universal guarantor of peace and security, the UN Security Council will increasingly focus on** crisis prevention, peacekeeping and peacebuilding across the globe.

To be effective and representative of the international reality, a multilateralism centered on the UN, must therefore combine power – as it has shifted over the past decade – and universal principles – for all UN members.

Are there alternatives to the UN?

II. International peace and security are, in a way, the true core business of the UN.

Could we see realistic alternatives to the UN in this area? Could we find a better balance of power and principle, than can be offered by a reform of the UN Security Council? Should the power shift in the world suggest new and completely different responses to the challenges we are facing?

One of the most appealing ideas along these lines was repeatedly mentioned in last year's US presidential campaign: **the so-called "League of Democracies."** The UN membership is too large and diverse, some argue, to be able to act in a timely and effective way. Not to mention the way the veto has been wielded even recently to prevent the Council from taking action in situations such as nuclear proliferation or humanitarian crisis.

In contrast, **western democracies seem, to those belonging to this school of thought, more prepared to work together. If common values are the foundation for policy action, then a "league" or a "concert" of governments based on similar democratic values could indeed become the tool for crisis management,** for implementing the rule of law, or even for spreading democracy. But would this league represent an informal instrument, or **would it aim to a completely new international organization? I am not convinced by the notion that we need a new organization replacing or even flanking the United Nations.**

The biggest risk of a "League" is that will merely reinforce current tendencies, building on existing **cooperation while failing to instill cooperation where it is most needed.**

States that would not be eligible for a League of Democracies also need to be engaged. We should avoid a two-tier organization, with different "floors" based on our judgment about democratic performance. Fighting terrorism, preventing nuclear proliferation, building regional stability require the help of countries that can interpret democracy also in a way much different from ours, but still willing to sincerely cooperate for peace and security. And this is exactly what is happening within the United Nations.

Nazi Germany and imperial Japan were defeated, in the end, by an alliance between Western democracies and the Soviet Union. Unfortunately, any hopes of building a postwar order on this cooperative basis were dashed in the late 40s, and in its place the Cold War began between the United States and the Soviet Union. The United States did, however, with President Nixon reach out to China.

Rather than providing a platform for a new organization, such as the League of Democracies, the strong commonality of democratic principles should be the springboard for strengthening cooperative security, for enhancing the multilateral system and, for reforming the UN Security Council.

III – USA and Italy. Security Council Reform and Rule of Law

At this moment in history, countries whose roots, political culture, and values are identical, such as the United States and Italy, **are having an extraordinary chance to closely work** for a reform of the global governance. This is a goal that our governments should try to achieve together. In the years since the fall of the Berlin Wall, very few Countries, as much as the United States and Italy, have pursued identical strategies in international security, even throughout different administrations in Washington and Rome. **If we did not always find ourselves in the best conditions for a stronger multilateral approach, and our public opinions sometimes lost sight of the value of the United Nations, today we can do more, much more.**

When it comes to the economy, international public opinion shows strong interest in reshaping the global governance. The same interest should also be felt for reshaping the security governance. Over the past sixty years, this kind of governance has been the realm of the Security Council. This organ is so critically important because 192 member states not only have conferred to it “primary responsibility for the maintenance of international peace and security”; but also because all UN member States have “agreed to accept and carry out its decisions”. The Council is, therefore, the true and the highest executive body – the government – of the system. At the same time the Council works as a legislative body.

It is a widespread judgment that the Council's performance is inadequate and ineffective; its timely reform is perceived as a clear priority by all governments.

However the greater public appears less interested in understanding the **remote causes of threats to our Countries**, except for the impact cases, such as Afghanistan after September 11, or more recently for terrorist attacks in Madrid and London.

But does international public opinion realize the urgency of addressing indirect threats as well, caused by the break-up of states such as Somalia and Guinea Bissau? By recurrent inter-ethnic wars in Darfur or in the Great Lakes region of Africa? By tensions on Caucasian issues? By recurrent crises involving the middle East or nuclear proliferation? Consequently, how much importance do our public opinions place in Security Council reform? In all honesty, **I believe that the attention that the public pays to international security and, therefore, to the question of Security Council reform is far below a desirable level.**

Over the next few years, world security is destined to become an higher priority for everybody. Each aspect of the global reality that we can observe and predict will have an immediate impact on our lives. For example:

- **the acceleration of climate change, provoking massive migrations of entire populations and a decline in social and economic conditions** in weak States and in areas that are fertile grounds for terrorism, trafficking in human beings, and organized crime;
- **further spread of terrorism, hate mongering, and open opposition to Western values;**
- **globalization of terrorist networks**, and not only of Islamist origin;
- an **aggravation of demographic imbalance**; over the next four decades the world population **will grow from six to nine billion**, with the highest peak in the poorest parts of the planet, such as sub-Saharan Africa;
- **unresolved crises that could evolve in different directions**. For many of them – such as Afghanistan, Pakistan, Kashmir, the Middle East, and Africa – solutions will require extended periods

of time, uncertain roads, and a persistent fear that at every step of the way they could degenerate into regional conflicts;

- **proliferation and the very existence of nuclear weapons.** An enormous and genuine risk that we do not talk about enough. Not only the arsenals, the gigantic legacy that the United States and Russia inherited from the cold war. But also because of the fact that in more than ten years we have not been able to stop the illegal nuclear programs of North Korea and Iran, and the situation in South Asia.

After 1989, the Security Council had to tackle regional and global crises with a frequency and an intensity that were exponentially increased by comparison to the first fifty years of UN life.

During the Cold War, the rivalry of two Superpowers and the risk of a nuclear holocaust actually represented a **deterrent to the outbreak of regional conflicts**. After the end of the Cold War, this barrier was gone, leaving the Security Council further exposed. **Two thirds of all 54 UN peace-keeping operations** were decided on after 1989. This percentage has only increased over the last few years. The skyrocketing demand for peacekeeping stems mainly from Africa, but also from the Balkans, Middle East, Central America.

The fact that the Security Council should remain the overarching body of governance for tomorrow's security, is confirmed by the broadening scope of the questions the Council is addressing: cross-cutting and politically-sensitive global issues. **During the last biennium of Italian presence in the Security Council**, the Council **adopted 181 decisions on "traditional" cases** (Congo, Somalia, Eritrea, Ethiopia, the Middle East, Afghanistan, Timor Leste, and Georgia, to cite just a few).

During the same period, however, the Council was also involved in global issues including: disarmament, climate change, non-proliferation, terrorism, the role of women, the protection of children in armed conflicts, the spread of light weapons, and cooperation with regional organizations; **adopting 38 decisions outside its traditional patterns of activity**.

Most significantly, **the Council is nowadays more active in the fields of justice and rule of law**; in conflicts on natural resources; in the protection of civilians; in the reform of the security sector, and

sexual violence. This broad and ambitious program **makes the Security Council - and will increasingly make so in the future - the true center of power and legitimacy in guaranteeing peace and security during this Century.**

All that makes even more pressing the need for a profound reform of the Council.

In the first place, because the Council should democratically represent all UN Member States. When it was first created, it was - as I said - a mirror of the reality of 1946, after the second World War. In the meantime the membership has grown exponentially. Since the 1963 reform, the Council has not only doubled, but also evolved regularly, with new principles that have been asserted in the international community.

In the second place, the Council issues decisions that are binding for the whole international community, but its laws are often disregarded with impunity, especially by those who feel unrepresented. **The lack of representation in the Security Council is a deadly obstacle to the effectiveness of its decisions.**

Because of their political and economic global interests, and because of the culture and the solidity of the values they uphold, United States and Italy need an international system that is governed by **definite rules, sure principles, and precise responsibilities. They need to be able to count on a Security Council:**

- a) whose decisions are fully respected and implemented;**
- b) that is politically authoritative;**
- c) which truly represents all Member States of the United Nations as well as the emerging powers in the current international framework;**
- d) that is as democratic in its procedures and composition.**

A Security Council reform that neglects these principles – for the sake of satisfying the national ambitions of a handful of Countries – would make the situation worse than what we have today; it would kill a great opportunity, alienating from the United Nations a large number of important players, whose total population equal almost 45% of the world population: such as Italy, Spain, Poland, Mexico, Argentina, Turkey, Egypt, Algeria, Indonesia, Canada, Korea, not to mention China and Russia.

Let me assure you that after months of debate in the intergovernmental negotiations on Security Council reform, never before we felt such a **strong desire by the membership to affirm the need of clear principles, hence the validity of the rule of law as a pillar of the UN system.** This is because while the competences of the Security Council have grown, there has not always been due account to **principles of impartiality of law, of accountability and equality among member states, which are at the foundations of rule of law in the international system.**

The Council has created sophisticated regimes to enforce its decisions, especially in the fight against international terrorism. But this expansion of powers has not been matched by a corresponding definition of the legal framework in which it operates. National and international judicial bodies external to the UN system, namely the European Court of Human Rights and the European Union Court of Justice, have recently excepted to Council's decisions affecting human rights protection. These developments tend to have a negative impact.

If the authority of the Council would largely depend on how it will carry out its functions, a **Security Council reform will need to bring more explicitly the rule of law within the United Nations.**

During the current negotiations, **many voices have opposed the prerogatives enjoyed by the permanent members, especially the veto.**

Let us be realistic. **It would be impossible to overturn the current international arrangements rooted in the Allied power victory in 1945. But it would run counter to the currents of history to extend these privileges to other Countries,** granting them permanent status and releasing them from any accountability through regular elections by the General Assembly. It would undermine the Council's authority and credibility. Only a reform centered on the **periodic election** of all new Members **will** assure a more equitable and democratic representation, in accordance to basic principles of the rule of law. **Free and fair elections** are the guarantee of accountability and legitimacy in our societies. **Why should another standard, or a double standard, be applied** to the reform of such a fundamental organ of the United Nations?

A serious reform inspired by rule of law cannot avoid a major revision of the relationship between the Security Council and the entire membership. Measures should be envisaged to strengthen the relationship between the Council and the General Assembly, bringing into the realm of international **relations a “checks and balances” model that is proper to a great number of Constitutions and systems of government.** The main concern is to make executive bodies accountable to the Assemblies that elect them. Accountability is already enshrined in the Charter: a reform of the Security Council should fully implement it.

To return to my opening quotation from Secretary General Ban Ki-moon, a reform of this kind will **recognize the power shifts in the world’s reality, and at the same time will strengthen the essential principles of the UN Charter.** The growing economic and political weight of Countries like India, Brazil, and South Africa would be recognized in the future governance of international peace and security. **But even more the new reality of the European political integration should be recognized. Let us not be fooled by a campaigns and economic pressures orchestrated by a handful of Countries** which are seeking a permanent seat essentially to promote their own national interests. The effectiveness and authority of the Security Council will not be improved by four or five new permanent seats created for the eternity and removed from the democratic process of elections and immune from accountability to the General Assembly.

Talking about rule of law in a context different from that of the United Nations, one of the leading authorities on anti-corruption, Homer E. Moyer, Jr., recently said that “Having an international perspective on rule of law issues should also be a bit humbling, humbling because it gives us an appreciation of how ambitious the simple phrase “rule of law” is. Whenever an agency takes an action beyond its statutory or regulatory authority, whenever the term “national security” is used as an indiscriminate trump card to justify denials of due process, whenever polarizing, partisan politics distorts the behavior of public servants, whenever a policeman uses excessive force, whenever any of us compromises our own professional integrity, the rule of law is disappointed.”

Rule of law in the reform of the Security Council imply that a crucial *paradigma* should be acknowledged: the predominance of

principles. These principles - shared by Italy and the United States - cannot be but those amounting to a fully accountable and legitimized Security Council.

Only if we are able to follow this path the Security Council reform will be a reform on which we can state, with the words of Homer Moyer on the cause of the rule of law, that “what’s good for the goose is good for the gander, regardless of whether we are the goose or the gander”.

Thank you all.