

## **The United Nations principal political organs and the universal pandemic: How to meet, negotiate and deliberate under ‘new, extraordinary and exceptional circumstances’?**

*Giuseppe Nest\**

### *1. Introduction*

In a United Nations setting that was quite disoriented by the unprecedented situation created by a declared universal pandemic, in mid-March 2020 the UN Headquarters were shut down and nobody, including UN officers and delegates, was allowed to enter the New York premises of the Organization.

It took some days to single out the procedures that the principal political organs of the UN system located in New York had to follow in order to ensure their continuous functioning and the effectiveness of their operation modalities until the end of the emergency, and those efforts are still ongoing. Among the issues to be addressed in order to face the emergency and the strict restrictions that followed the declaration of a pandemic, the working methods (mainly, meeting and voting) of some of the main bodies of the Organization, the Security Council, the General Assembly and the Economic and Social Council (ECOSOC) had a prominent role. Those bodies, assisted by the Secretariat, followed different paths and procedures, and a crucial role was played, especially at the beginning, by their presidents.

It is well known that the draft resolutions and decisions as well as other acts through which those bodies express their will – in conformity with rules of procedures and working methods adopted at the beginning of their activities and modified in the last 75 years – are negotiated within the respective memberships and the process usually begins with direct contacts among delegates and officers. Diplomacy indicates that

\* Professor of International Law, Faculty of Law and School of International Studies, University of Trento.



interpersonal relations in these operations matter, and that both bilateral and multilateral, formal and informal meetings are instrumental to reach an agreement.

The formal and informal procedures followed within those main bodies to meet and vote are quite different and they were adapted to specific contingencies. In the following pages, after briefly recalling how the United Nations principal political organs located in New York usually worked and deliberated before the start of the pandemic, I will illustrate what has happened after the UN Headquarters were shut down: how those bodies are meeting and making decisions, and how the new, temporary and extraordinary rules were introduced; what the prospects are in the short and medium run and what the impact of new working methods and procedures on the future of the Organization could be. Issues concerning the substantive response of the principal UN political organs to a pandemic is out of the scope of this paper.<sup>1</sup>

## 2. *General Assembly*

In the General Assembly in ‘normal’ days, ie until mid-March 2020, resolutions and decisions have been adopted, according to the required majority or by *consensus* (ie without a vote), after negotiations aimed at a text that could enjoy the necessary support by the membership in conformity with consolidated practice, the UN Charter (Article 18) and the

<sup>1</sup> On different aspects of this issue and the involvement of the principal UN political organs with regard to pandemic, *ex plurimis*, M Arcari, P Palchetti, ‘The Security Council as a global “health-keeper”? Resolution 2177 (2014) and Ebola as a threat to the peace’ (2014) 10 *QIL-Questions Intl L* 1-3; L Balmond, ‘Le Conseil de sécurité et la crise d’Ebola: entre gestion de la paix et pilotage de la gouvernance mondiale’ (2014) 10 *QIL-Questions Intl L* 5-25; GL Burci, ‘Ebola, the Security Council and the Securization of Public Health’ (2014) 10 *QIL-Questions Intl L* 27-39; S Urbinati, ‘L’epidemia di Ebola in Africa occidentale come minaccia alla pace e alla sicurezza internazionale: quale ruolo per il Consiglio di sicurezza?’ (2016) 99 *Rivista di diritto internazionale* 826 ff. On the reactions of the UN system to COVID-19 pandemic, more recently, JR Pavone, ‘La pandemia di COVID 19. L’ONU finalmente batte un colpo?’ *SIDIBlog* (9 May 2020) <[www.sidiblog.org/2020/05/09/la-pandemia-di-covid-19-lonu-finalmente-batte-un-colpo/](http://www.sidiblog.org/2020/05/09/la-pandemia-di-covid-19-lonu-finalmente-batte-un-colpo/)>; CD Gaver, N Perera, ‘Will the UN Security Council Act on COVID-19?’ *Opinio Juris COVID-19 Symposium* (4 April 2020) <<http://opiniojuris.org/2020/04/04/covid-19-symposium-will-the-un-security-council-act-on-covid-19/>>.



Rules of Procedure of the General Assembly (in particular, but not only, Sections XII and XIII)<sup>2</sup>.

Looking at what happens in practice, the procedure is different for items allocated to one of the six Committees of the General Assembly or to the plenary. In the first case, on items that are identical to those of the previous session, the president of the Committee, assisted by the Secretariat, indicates a rapporteur who could also act as the facilitator of the draft resolution. The basic draft is usually the text adopted during the previous session which sometimes is only updated, but may also be modified and negotiated within the Committee or in an ad hoc working group between September and December of each year (or also in the resumed session in the case of the Fifth Committee).

This negotiation is conducted by one or more delegates, assisted by the Secretariat, and it finally produces a text that is submitted to the Committee, thus to the member States that participate in its meetings. The Committee takes position, sometimes through a vote and quite often by *consensus*, on the text. The text is then transmitted to the plenary where usually the same procedure adopted in the Committee is followed for the final deliberation.

In regard to the items that are assigned by the General Committee to the plenary, the draft resolutions or decisions, if they are recurring, follow the same path of the items allocated to the six Committees of the General Assembly. On the contrary, if new items are at stake, the President of the General Assembly (PGA) singles out, informally, the State or States that will act as facilitator and conduct negotiations on a draft text. The draft text is then transmitted to the entire membership in order to reach the necessary support before the discussion and the deliberation in the plenary. All these negotiations are usually conducted in-person by delegates who meet their counterparts and discuss the content of the draft document: this type of meeting takes place quite often at the UN Headquarters.

The impossibility of acceding to the United Nations premises, and thus the impossibility to negotiate in a traditional way obliged the PGA to start

<sup>2</sup> An excellent, practical explanation of the genesis of a General Assembly resolution/decision is provided by 'The PGA Handbook. A practical guide to the United Nations General Assembly' (2nd edn, New York 2017) <[www.unitar.org/sites/default/files/media/publication/doc/un\\_pga\\_new\\_handbook\\_0.pdf](http://www.unitar.org/sites/default/files/media/publication/doc/un_pga_new_handbook_0.pdf)>.



consultations with the entire membership in order to find a temporary alternative to the inconveniences caused by the pandemic and the lockdown.

On March 24<sup>th</sup> the PGA, on the basis of the consultations carried out with the membership and the General Committee,<sup>3</sup> circulated a draft decision to all member States entitled ‘Procedure for taking decisions of the General Assembly during the Coronavirus disease 2019 (COVID-19) pandemic’, that was adopted on March 27 (74/544), and renewed on May 15 (74/555) until the end of June 2020 and on June 15 (A/74/L.72) until the end of July 2020, in conformity with the procedure that was proposed by the PGA. The decision illustrates the modalities to be followed by the General Assembly through a silence procedure, derogating temporarily the Rules of Procedure of the General Assembly, in order to adopt decisions or resolutions.<sup>4</sup>

Decision 74/544 begins by stating – quite surprisingly – that the President ‘will consult the General Committee’ (whose competence in the field is not clear) and then proceeds by giving a detailed description of the silence procedure.<sup>5</sup> The procedure begins with the PGA circulating a draft decision/resolution to all member States, specifying the deadline for raising objections and allowing at least 72 hours. If no objection has been raised the decision/resolution is considered adopted through a letter by the PGA to the whole membership. Finally, the decision states that, ‘the General Assembly should take note of the decision at its first plenary meeting held after the cessation of the precautionary measure as soon as the circumstances allow’.

In order to clarify the content of the decision on the silence procedure, on April 9 the PGA circulated a further document containing a detailed step-by-step process, reassured the membership about easy access to all documents on the work of the General Assembly, and

<sup>3</sup> According to the President of the General Assembly (PGA), those consultations indicated that ‘it is quite clear that we all agree that, under the prevailing extraordinary circumstances, the General Assembly has to be able to take essential decisions related to the Organization’.

<sup>4</sup> For the texts of the decisions <[www.un.org/pga/74/covid-19/](http://www.un.org/pga/74/covid-19/)>.

<sup>5</sup> Reservations about the involvement of the General Committee in the silence procedure proposed by the PGA were made by Liechtenstein in a letter addressed to the PGA on 26<sup>th</sup> of March 2020, where it is said that ‘in accordance with its established mandate, the General Committee cannot take on a function – also not temporarily – to become a clearing house for proposals to be submitted to the General Assembly’ (on record with the author).



expressed his satisfaction ‘that the General Assembly has continued its important work via novel means in order to ensure *business continuity* and mitigate the spread of the COVID-19’.<sup>6</sup> The procedure to make objections is also specified in the step-by-step document: a letter or *note verbale* containing the objection should be addressed to the President who will circulate to the membership a letter assessing that the silence has been broken. The President *may* take further steps to consult the membership; if this is the case (and, presumably, the consultations are fruitful), the President could submit a revised draft to a new round of silence procedure. In the document, it is confirmed that ‘currently no vote is technically possible and foreseen for the adoption of draft decision/resolution in accordance with General Assembly decision 74/544...’.<sup>7</sup>

The insufficiencies of this silence procedure as regards the formation of the will of the General Assembly and, consequently, the participation of the entire membership in the process are so evident that it seems superfluous to underline its pitfalls. Reference is here, for example, to the fact that the member States face a ‘take it or leave it’ procedure that does not allow them to articulate their position and intervene in order to amend or modify one or more aspects of the proposed text. This means that a grave political burden ensues from the procedure, especially if only one or a few States among the 193 member States have a negative position towards the draft decision/resolution.

Those insufficiencies brought the PGA to appoint a facilitator, the Permanent Representative of Jamaica, in order to reach an agreement for the e-voting process.<sup>8</sup> On the basis of the informal consultations

<sup>6</sup> Emphasis added. For the step-by-step procedure <[www.un.org/pga/74/covid-19/](http://www.un.org/pga/74/covid-19/)>.

<sup>7</sup> As illustrated below (nn 8 and 9), negotiations on decision-making of the General Assembly by a vote without a plenary meeting during the coronavirus disease (COVID-19) pandemic are under way within the membership, except for a decision on holding elections by secret ballot without a plenary meeting that has been adopted on 29 May 2020 (n 9 below).

<sup>8</sup> For the text of the draft proposals on e-voting (excluding elections) <[www.un.org/pga/74/wp-content/uploads/sites/99/2020/04/on-voting-process.pdf](http://www.un.org/pga/74/wp-content/uploads/sites/99/2020/04/on-voting-process.pdf)>; <[www.un.org/pga/74/wp-content/uploads/sites/99/2020/06/Letter-from-the-Facilitator-GA-e-voting-excluding-elections-Draft-decision-Rev-2.pdf](http://www.un.org/pga/74/wp-content/uploads/sites/99/2020/06/Letter-from-the-Facilitator-GA-e-voting-excluding-elections-Draft-decision-Rev-2.pdf)>. On June 15 2020 the PGA circulated the final text of draft decision A/74/L.71, which has been put under silence procedure until June 19 <[www.un.org/pga/74/2020/06/15/procedure-for-taking-decisions-of-the-general-assembly-excluding-elections-by-a-vote-while-a-plenary-meeting-of-the-assembly-is-not-practicable-owing-to-the-coronavirus-disease-covid-19-pandemic/](http://www.un.org/pga/74/2020/06/15/procedure-for-taking-decisions-of-the-general-assembly-excluding-elections-by-a-vote-while-a-plenary-meeting-of-the-assembly-is-not-practicable-owing-to-the-coronavirus-disease-covid-19-pandemic/)>.

conducted so far, the PGA sent to all the member States several revised draft decisions on the ‘Procedure for taking decisions of the General Assembly by a vote (excluding elections) without a plenary meeting during the coronavirus disease (COVID-19) pandemic’. This text is still under discussion, while another draft decision, entitled ‘Procedure for holding elections by secret ballot without a plenary meeting during the coronavirus disease (COVID-19) pandemic’ has been adopted through a silence procedure on 29 May 2020 (74/577).<sup>9</sup>

Notwithstanding the weaknesses of the silence procedure recalled above, it is on the basis of this procedure that the General Assembly was successful in doing what the Security Council has not been able to do: adopting resolutions on COVID-19. Namely, the same day in which the decision on silence procedure was adopted, six delegations (Ghana, Indonesia, Liechtenstein, Norway, Singapore and Switzerland) requested the PGA to circulate a draft resolution under the agenda item 123, *Strengthening of the United Nations system*, entitled ‘Global solidarity to fight the coronavirus disease 2019 (COVID-19)’, that was adopted in conformity with the silence procedure on the 2<sup>nd</sup> of April.<sup>10</sup> A few days

<sup>9</sup> For the letter by the PGA introducing the text of the proposal on holding elections by secret ballot <[www.un.org/pga/74/wp-content/uploads/sites/99/2020/05/ELECTION-PROCEDURE-1-1.pdf](http://www.un.org/pga/74/wp-content/uploads/sites/99/2020/05/ELECTION-PROCEDURE-1-1.pdf)>. For the final text of the proposal <[www.un.org/pga/74/wp-content/uploads/sites/99/2020/05/A\\_74\\_L.67.pdf](http://www.un.org/pga/74/wp-content/uploads/sites/99/2020/05/A_74_L.67.pdf)>. On the basis of Decision 74/577 the PGA sent to the membership instructions for the election of the PGA in the 75<sup>th</sup> session <[www.un.org/pga/74/wp-content/uploads/sites/99/2020/06/Letter-on-PGA75-elections.pdf](http://www.un.org/pga/74/wp-content/uploads/sites/99/2020/06/Letter-on-PGA75-elections.pdf)>; and for the elections of the non-permanent members of the Security Council and the members of the ECOSOC <[www.un.org/pga/74/2020/06/02/elections-by-secret-ballot-without-a-plenary-meeting-during-the-coronavirus-disease-covid-19-pandemic/](http://www.un.org/pga/74/2020/06/02/elections-by-secret-ballot-without-a-plenary-meeting-during-the-coronavirus-disease-covid-19-pandemic/)>. All the elections will take place on 17 June 2020.

<sup>10</sup> UN Doc A/74/L.52, adopted as A/RES/74/270, co-sponsored by 136 member States. In introducing the draft resolution, the proponents underlined that ‘as the universal body of nations, the General Assembly must urgently send a strong message of unity, solidarity and international cooperation. People of the world expect no less from the United Nations’. And they added that ‘the United Nations system has a central role to play in mobilizing and coordinating the global response to this pandemic, not only in the short term but also in dealing with the long term economic, social and developmental consequences of this crisis’ and that ‘it is important and necessary to reaffirm and reinforce our support for the United Nations and the multilateral system’. The attempt by the Russian Federation to adopt another resolution (co-sponsored by Central African Republic, Cuba, Nicaragua and Venezuela) containing a ‘Declaration on solidarity of the United Nations in the face of the challenges posed by COVID-19’, under the agenda item 126, Global Health and Foreign Policy, was objected by the European Union, Ukraine, United Kingdom and the United States <<https://nyti.ms/2x0vssp>>. While this paper is being



later, on April 15, Mexico requested the PGA to circulate another draft resolution under the same agenda item 123. The resolution, entitled ‘International cooperation to ensure global access to medicines, vaccines and medical equipment to face COVID-19’ was adopted, following the silence procedure, on 20 April 2020.<sup>11</sup>

### 3. ECOSOC

A path similar to that of the General Assembly has been followed by the ECOSOC.<sup>12</sup> At the beginning of April, on the basis of the agreement reached in the General Assembly on the methodology, the President of the Council circulated a proposal enabling the Council to take decisions or resolutions during the pandemic.<sup>13</sup> Along the lines of what has happened in the General Assembly, the decision did not find any objection and it was adopted on the 3<sup>rd</sup> of April as decision 2020/205.<sup>14</sup> A few days later, as it had happened for the General Assembly, a step-by-step document was circulated among ECOSOC members describing the procedure in both cases, success of silence procedure or objections towards the draft decision or resolution.<sup>15</sup> A notable difference between the General Assembly and ECOSOC is the fact that at the beginning of the procedure, the President of the Council consults with the Bureau, and the

finalized, the activity of the General Assembly has been accelerated and, among several initiatives, it has been communicated that a draft text of an ‘omnibus resolution on COVID-19 pandemic’ is under negotiation by the membership. For this and other initiatives: <[www.un.org/pga/74/documents/letters/](http://www.un.org/pga/74/documents/letters/)>.

<sup>11</sup> UN Doc A/74/L.56, adopted as A/RES/74/274, co-sponsored by 179 member States. On this resolution, RT Treves, ‘The Health of International Cooperation and UNGA Resolution 74/274’ (2020) 70 QIL-Questions Intl L 21-36.

<sup>12</sup> For all the documents concerning ECOSOC and the outbreak of coronavirus (COVID-19) <[www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/2020doc/ECOSOC\\_and\\_the\\_CORONAVIRUS\\_OUTBREAK-19\\_March.pdf](http://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/2020doc/ECOSOC_and_the_CORONAVIRUS_OUTBREAK-19_March.pdf)>.

<sup>13</sup> For the letter of the President of ECOSOC introducing the silence procedure <[www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/2020doc/2020-04-01-President\\_letter\\_and\\_draft\\_decision\\_on\\_silence\\_procedure.pdf](http://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/2020doc/2020-04-01-President_letter_and_draft_decision_on_silence_procedure.pdf)>.

<sup>14</sup> Decision 2020/205 (including a declaration of the representative of the Philippines) <[www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/2020doc/President\\_letter\\_on\\_approval\\_of\\_silence\\_procedure\\_signed.pdf](http://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/2020doc/President_letter_on_approval_of_silence_procedure_signed.pdf)>.

<sup>15</sup> For the pertinent document <[www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/2020doc/2020-04-07-Procedure\\_for\\_ECOSOC\\_decision\\_via\\_silence\\_procedure\(003\).pdf](http://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/2020doc/2020-04-07-Procedure_for_ECOSOC_decision_via_silence_procedure(003).pdf)>.



members of the Bureau have to consult with the members of their respective regional group. The results of these consultations are made public before sending the document under silence procedure. Furthermore, on the 15<sup>th</sup> of April the President of the Council circulated a letter regarding elections to subsidiary bodies through silence procedure, showing her engagement in presenting proposals to this end.<sup>16</sup> On the 19<sup>th</sup> of May the President sent a letter to the membership with the aim of extending the effects of resolution 2020/205 until the end of June 2020, and on the 22<sup>nd</sup> of May resolution 2020/206 was adopted.<sup>17</sup>

#### 4. *Security Council*

Even if some critical and tragic events, such as those that occurred on 9/11, would have suggested the Security Council and the entire membership to set up an emergency procedure in order to foresee Security Council meetings and adoption of resolutions if delegates were unable to meet in-person, no such emergency procedure has ever been put in place until the end of March 2020.<sup>18</sup> This is really surprising in the light of the UN Charter that requires the Security Council to ‘be so organized as to be able to function continuously’, and empowers it to meet in places other than the seat of the Organization ‘as in its judgement will best facilitate its work’ (Article 28). Rule 5 of the Provisional Rules of Procedure of the Security Council states that ‘the Council shall normally meet at the seat of the United Nations’. The same rule provides that any member of the Council or the Secretary-General may propose that the Security Council should meet at another place and that should the Council accept such proposal, ‘it shall decide upon the place, and the period during which the Council shall meet at such place’. It has been observed that ‘it seems that

<sup>16</sup> For the letter on the elections to the subsidiary organs of the ECOSOC <[www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/2020doc/President\\_ECOSOC\\_letter\\_elections\\_15\\_April\\_2020.pdf](http://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/2020doc/President_ECOSOC_letter_elections_15_April_2020.pdf)>.

<sup>17</sup> For the letter concerning the extension of the procedure <[www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/2020doc/Letter\\_PECOSOC\\_to\\_MS\\_23\\_May\\_2020\\_approval\\_of-L\\_7.pdf](http://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/2020doc/Letter_PECOSOC_to_MS_23_May_2020_approval_of-L_7.pdf)>.

<sup>18</sup> P Bernard, C Nooten, ‘L’ONU, symbole du désordre mondial’ *Le Monde* (29 avril 2020) <[www.lemonde.fr/idees/article/2020/04/29/l-onu-symbole-du-desordre-mondial\\_6038075\\_3232.html](http://www.lemonde.fr/idees/article/2020/04/29/l-onu-symbole-du-desordre-mondial_6038075_3232.html)>.





the “seat of the UN” can be interpreted as the city where the UN is located or ‘seated’ rather than just as the UN premises. In this context, an argument can be made that virtual meetings that are based in New York would be seen as being held at the seat of the UN’.<sup>19</sup>

Actually, since mid-March it took fifteen days of consultations among the Security Council members to adopt – as it will be recalled later, not without difficulties – a new, extraordinary and temporary procedure. It is said that some (a few) delegations were ready to meet at the UN Headquarters in person; others did not and proposed to meet via video teleconference (VTC). Those who wanted to meet at the UN Headquarters maintained that if the Security Council had to meet via VTC, those meetings could not have been considered ‘official meetings’ of the Council.

Be that as it may, on the 27<sup>th</sup> of March ‘on the basis of agreement among the Security Council members’ the process for videoconference of Council’s meeting as well as a specific voting procedure were outlined in a letter of the President of the Council, China.<sup>20</sup> According to this procedure, following a request from a Security Council member or members presenting a draft resolution in blue (ie allegedly/presumably ready for adoption), the President circulates a letter with the draft resolution in annex, announces that the draft resolution will be put to a vote, and requests the members of the Council to vote in writing within a non-extendable period of twenty-four hours. After the member States have voted (in favor, against or abstention), the President of the Security Council will convene, within twelve hours from the conclusion of the voting period, a VTC of the Security Council to announce the outcome of the vote. However, in the period immediately following the end of the voting period, the President of the Council will inform the member States of the details of voting operations (ie the outcome and how each State has voted) and the member States can present an explanation of their vote.

It is thanks to these ‘temporary, new, extraordinary and provisional measures’, that were (initially) supposed to be in place until the end of April that the Security Council adopted four resolutions in the last days of March utilizing the VTC system, in meetings (not broadcasted on the web)

<sup>19</sup> For this quote and further information on Security Council meeting away from New York, see Security Council Report, New Security Council Working Methods in the midst of COVID-19 (27 March 2020) <[www.whatsinblue.org/2020/03/new-council-working-methods-in-the-midst-of-covid-19.php](http://www.whatsinblue.org/2020/03/new-council-working-methods-in-the-midst-of-covid-19.php)>.

<sup>20</sup> UN Doc S/2020/253 (31 March 2020).



that, notwithstanding different positions, had the status of ‘official meetings’ of the Council.<sup>21</sup> It cannot be otherwise since, as it has been observed, ‘if the virtual meetings would not be considered formal meetings of the Council, how would the Council perform certain essential tasks, such as adopting resolutions to renew mandates that would otherwise expire?’<sup>22</sup>

The Security Council, through its presidency for the month of April, the Dominican Republic, circulated a paper on the 2<sup>nd</sup> of April ‘agreed upon by the members of the Council’, which indicates that the above-mentioned letter – adopted only a few days before – needed some refinement and integration, to say the least.<sup>23</sup>

In fact, the paper contains guidelines ‘provided in addition to the measures outlined in the letter dated 27 March 2020’. The guidelines referred to some of the points that were not agreed upon in that letter. The voting system was confirmed while amendments were introduced as regards the nature of the VTC meetings and the status of presidential statements was clarified.

The April paper clarified that, in implementing the agreed informal plan for the month of April, the Council was going to meet through informal VTC. In this manner, the Dominican Republic (not the Security Council as such) bearing the responsibility of acting as President of the Council, overcame the semi-paralysis encountered by the Council in the month of March.

Furthermore, the paper specified that ‘for the purpose of inclusiveness and transparency’, the informal plan of work of the Council would have been circulated by the presidency to the wider membership of the Organization. New ‘nomenclature’ was introduced as regards ‘virtual

<sup>21</sup> Reference is here to S/RES/2515 (2020), S/RES/2516 (2020), S/RES/2517 (2020), S/RES/2518 (2020), all adopted on the 30<sup>th</sup> of March. It is noteworthy that in the UN document reproducing the ‘official’ text of the resolution only the date of the adoption appears, with no reference to a relevant (numbered) meeting of the Council. It is also interesting that the resolutions adopted during COVID-19 pandemic are accompanied by a letter from the President of the Council on the voting outcome and voting details, in conformity with the first letter of the President of the Council setting the new procedure, recalled above (n 19).

<sup>22</sup> Security Council Report, ‘In Hindsight: Security Council Working Methods in Time of COVID-19’ May 2020 Forecast <[www.securitycouncilreport.org/monthly-forecast/2020-05/in-hindsight-security-council-working-methods-in-the-time-of-covid-19.php](http://www.securitycouncilreport.org/monthly-forecast/2020-05/in-hindsight-security-council-working-methods-in-the-time-of-covid-19.php)>.

<sup>23</sup> UN Doc S/2020/273 (6 April 2020).



discussions’: ‘open video teleconference on [item on the agenda to be discussed]’, followed by ‘closed video teleconference [item on the agenda to be discussed]’. And ‘consultations will be referred to as “closed video teleconference on [item on the agenda to be discussed]”’. Quite important, ‘given technical constraints, the virtual discussions will be conducted in English’.

Reading the paper reveals the strong disagreement that emerged within the Council: after clarifying that ‘verbatim records of the events will not be published’, the paper assesses that ‘given that there has been no agreement to consider the discussions of the Council held on the virtual platform as formal meetings, and to ensure the transparency and legitimacy of the Council’, the President encourages briefers to share the texts of their intervention in order to set up a compilation document within 48 hours containing the interventions of the briefers and of those participants ‘who ask for inclusion of their statement in the document’. Of course, transparency and legitimacy of the Council are not enhanced by the fact that briefers and participants share in advance the texts of their interventions and those texts are collected in a compiled document; the ambiguity on the status of the discussions on the virtual platform remains.

Another interesting aspect of the April paper is the provision concerning the presidential statements that are deemed to be an important document through which the Council, aside from resolutions and decisions, can express its will. Actually, the presidential statements are negotiated and agreed texts that are adopted only if no objection is raised, but are issued under the responsibility of the President of the Council and read by him/her. In this ‘virtual’ context, in the absence of in-person meetings, the presidential statements are also supposed to be negotiated through alternative means. In fact, the paper states that ‘in the absence of objections, presidential statements that have been agreed upon by consensus following a non-objection procedure of no less than 48 hours will be read out by the President during an open video teleconference, they will have the same status as those adopted in the Security Council Chamber’, and ‘will be published as an official document of the Council’. As previously observed, nothing similar to this has been agreed as regards the status of the Security Council resolutions and decisions.

It is on the basis of the procedures outlined in this paper that the Security Council was able to meet again on the 9<sup>th</sup> of April, at the presence of the Secretary-General, in order to discuss his appeal for a global



ceasefire and the pandemic's impact on Council agenda situations, including peacekeeping operations, special political missions and humanitarian responses, delivered on 23 of March. The fact that the meeting was requested by nine elected members (Belgium, Dominican Republic, Estonia, Germany, Indonesia, Niger, Saint Vincent and the Grenadines, Tunisia and Vietnam) maybe implies that the rest of the membership was somewhat skeptical about the new procedure, leaving aside divergent positions on the merit of the issues under discussion.<sup>24</sup>

No resolution was adopted by the Security Council in the month of April, although on the 21<sup>st</sup> of April the first 'virtual' meeting of the Council was finally broadcasted in conformity with the agreement reached, and it was followed by others.<sup>25</sup>

On the 7<sup>th</sup> of May the Estonian presidency circulated a letter that, along the lines of previous letters by the presidencies of March and April,

<sup>24</sup> For the Secretary-General statement delivered in the Security Council on 9 April 2020 <[www.un.org/sg/en/content/sg/statement/2020-04-09/secretary-generals-remarks-the-security-council-the-covid-19-pandemic-delivered](http://www.un.org/sg/en/content/sg/statement/2020-04-09/secretary-generals-remarks-the-security-council-the-covid-19-pandemic-delivered)>. In his very interesting statement the Secretary-General emphasized also some of the inconveniences emerged because of the COVID-19 on the ground. For instance, he explained that 'the crisis has hindered international, regional and national conflict resolution efforts, exactly when they are needed most. Many peace processes have stalled as the world responds to COVID-19. Our good offices and mediation engagements have felt the impact. Restrictions on movement may continue to affect the work of various confidence-based mechanisms, as well as our ability to engage in crisis diplomacy to de-escalate potential conflicts'. And with regard to mediation efforts he added: 'Despite the difficulties of convening parties for direct talks, we are using digital tools where we can to open and maintain channels of communication and to de-escalate crises'. On the efforts to adopt a resolution on the proposal providing for cessation of hostilities during the pandemic by some of the members of the Security Council <[www.voanews.com/covid-19-pandemic/draft-covid-19-resolution-submitted-un-security-council](http://www.voanews.com/covid-19-pandemic/draft-covid-19-resolution-submitted-un-security-council)> and <[www.france24.com/en/20200513-new-resolution-on-global-ceasefire-during-covid-19-pandemic-presented-to-un-security-council](http://www.france24.com/en/20200513-new-resolution-on-global-ceasefire-during-covid-19-pandemic-presented-to-un-security-council)>. For a strong criticism of the inactivity of the Security Council in the pandemic, especially as regards the Secretary-General appeal <[www.wilpf.org/covid-19-the-united-nations-security-council-is-doing-what-exactly/](http://www.wilpf.org/covid-19-the-united-nations-security-council-is-doing-what-exactly/)>. On the repercussions of the pandemic in situations of armed conflict, the Executive Director General of the World Food Program made a clear intervention on April 21 in the Security Council virtual meeting on the 'Maintenance of International Peace and Security: Protecting Civilians Affected by Conflict-Induced Hunger' <[www.wfp.org/news/wfp-chief-warns-hunger-pandemic-covid-19-spreads-statement-un-security-council](http://www.wfp.org/news/wfp-chief-warns-hunger-pandemic-covid-19-spreads-statement-un-security-council)>.

<sup>25</sup> For the list of VTCs of the Security Council members and outcomes during the months of April, May and June 2020 <[www.un.org/securitycouncil/content/meetings-2020-rtc](http://www.un.org/securitycouncil/content/meetings-2020-rtc)>.



reiterated in an annex the working methods of the Council for the month of May.<sup>26</sup> The presidency for the month of June, France, did the same.<sup>27</sup>

In May the Security Council adopted five resolutions following the modalities enshrined in the President of the Security Council letter of 27 March and amended in the following months, and until June 16 three resolutions were adopted.<sup>28</sup>

Two final observations could be made with regards to the extraordinary procedure activated in March, specified in April and extended until the end of June: first, the Rules contained in the Provisional Rules of Procedure of the Security Council, and especially those concerning ‘Conduct of business’ (Chapter VI) and ‘Voting’ (Chapter VII), have been temporarily replaced by the extraordinary procedure; second, one could wonder what type of consideration (if any) has been given to the ‘measures’ concerning the working methods of the Security Council contained in the Note of the President of the Security Council of 2017 that at that time was saluted as a milestone in transparency, inclusiveness and openness of the Council.<sup>29</sup> In fact, in that document some crucial aspects of the activity of the Council, and namely ‘the drafting of documents, including resolutions, presidential statements and press statements’ and the role of member of the Council acting as ‘penholders’, were carefully described.<sup>30</sup> In recent years the Council, perhaps because of the novelties introduced in 2017, has registered a certain degree of flexibility in welcoming the contributions of the civil society in some open meetings and Arria formula meetings. It seems that the lockdown due to the pandemic has had the effect of rewinding the most recent developments in the working methods of the Security Council.<sup>31</sup>

<sup>26</sup> UN Doc S/2020/372 (7 May 2020) <<https://undocs.org/S/2020/372>>. The Estonian delegation issued an ‘informal program of work’ during its presidency of the Council <<https://un.mfa.ee/working-methods-of-the-security-council-during-the-presidency-of-estonia-may-2020/>>.

<sup>27</sup> UN Doc S/2020/490 (3 June 2020).

<sup>28</sup> S/RES/2519 (2020) of May 14 2020; S/RES/2520 (2020), S/RES/2521 (2020), S/RES/2522 (2020), S/RES/2523 (2020), all adopted on the 29<sup>th</sup> of May 2020. Until June 16 2020 the following resolutions were adopted: S/RES/2524 (2020) and S/RES/2525 on 4 June 2020; S/RES/2526 (2020) on 5 June 2020.

<sup>29</sup> UN Doc S/2017/507 (30 August 2017).

<sup>30</sup> *ibid* especially paras 78-88.

<sup>31</sup> A letter was sent by several NGOs complaining about the consequences of the pandemics on the transparency of the Security Council working methods <<https://watchlist.org/wp-content/uploads/joint-cso-letter-to-unsc-on-participation-transparency.pdf>>.



More recently, on the 15<sup>th</sup> of May an open debate broadcasted in VTC – organized by Estonia, who was not only the President of the Council for the month of May but also the vice-chair of the Informal Working Group on Documentation and Other Procedural Questions (IWG), in collaboration with St Vincent and the Grenadines, chair of the IWG – was another occasion to tackle issues related to Security Council working methods, although this time the main aim of the meeting was to discuss the follow-up of the IWG activities.<sup>32</sup> However, the presence of many Permanent Representatives in the VTC was self-explanatory and showed the importance that the members of the Security Council attached to the debate on working methods.<sup>33</sup>

On the basis of a concept note written by the organizers of the videoconference, the participants were invited to prepare their statements on the issues to be discussed, ie efficiency, effectiveness and transparency of the Security Council.<sup>34</sup> Among the ‘guiding questions’ contained in the concept note, one was of crucial importance in the light of the current events:

‘(ii) How can the Council adapt its agility to continue functioning effectively during extraordinary and unprecedented circumstances, for example, when it is rendered incapable of meeting physically owing to emergencies (such as health emergencies, natural disasters or other threats)? How can it preserve its ability to continue to meet and make decisions during emergency situations?’.

Listening to the webcast of the VTC is not very helpful in providing a possible answer, at least on the part of some of the members of the

<sup>32</sup> Namely, the open videoconference’s theme was: ‘Ensuring transparency, efficiency and effectiveness in the work of the Security Council’, and it was under the item ‘Implementation of the note by the President of the Security Council (S/2017/507)’. It is noteworthy that the while the letters of 27 March 2020, 2 April 2020 and 7 May, mentioned above, through which the President of the Security Council set up, amended and extended the ‘new, extraordinary and temporary’ working methods were addressed to the members of the Security Council, the letter of the Estonian presidency of 8 May 2020 (UN Doc S/2020/374) convening the open videoconference was addressed to the Secretary-General.

<sup>33</sup> For the recording of the meeting of the 15 May 2020 IWG <<http://webtv.un.org/meetings-events/watch/working-methods-of-the-security-council-security-council-open-vtc/6156994033001>>. A synthesis of the meeting was made by the UN Press Service (SC/14188) <[www.un.org/press/en/2020/sc14188.doc.htm](http://www.un.org/press/en/2020/sc14188.doc.htm)>.

<sup>34</sup> UN Doc S/2020/374 (8 May 2020) at 4.



Council who confined themselves to present their divergent points of view with regard to the scope of the activities of the Security Council. Those who intervened (the P5, St Vincent and the Grenadines, Viet Nam, on behalf of the elected members) slightly referred to the above-mentioned question, except for the British representative who stated that

‘due to a lack of Council consensus, neither the Council nor its subsidiary bodies have held formal meetings since the 12th of March. There are therefore no verbatim transcripts of our meetings (...). Meetings are conducted without the benefit of the established framework of the provisional rules of procedure and the mechanisms for resolution of disagreements that they provide. We all hope that we can return to the chamber soon, but as long as we are confronted with these extraordinary circumstances, we need to continue to pursue opportunities for improving our working methods. When we do return to the normal, we need to consider how we can put contingency plans in place to ensure that we are able to respond more quickly and effectively to any future crises.’<sup>35</sup>

This statement bluntly but clearly describes the disarray that accompanied the first two months of lockdown of the Security Council. No formal meetings not only of the Council but also of its subsidiary bodies; no records; no recourse to the rules of procedure. The need for contingency plans, in which the Security Council will pursue opportunities to improve its own working methods, is a clear admission of the insufficiencies of those methods and the urgent need to reform them.

##### 5. *Final remarks*

The extraordinary circumstances created by the pandemic are having strong repercussions on the activities of the main political organs of the United Nations located in New York. The impossibility to meet in-person for delegates and UN officers have transformed in an unprecedented way the working methods, although temporarily. The General Assembly

<sup>35</sup> For the text of the intervention by the UK representative <[www.gov.uk/government/speeches/adapting-security-council-working-methods-to-be-innovative-and-agile](http://www.gov.uk/government/speeches/adapting-security-council-working-methods-to-be-innovative-and-agile)>. The UK representative also said that: ‘the UK regrets that the Council working methods have not been able to respond in a more agile and effective way to this crisis’.

has adopted a silence procedure that has never been applied before. It has some inconveniences since it sets up, under the responsibility of the PGA, a ‘take it or leave it’ procedure that is quite rigid since no system of resolution of disagreements is in place. To overcome these inconveniences and to provide a voting system beyond the silence procedure, the PGA has consulted the membership and some progress has been made, namely on elections. The ECOSOC has moved along the same lines.

The Security Council also was unprepared to face the extraordinary circumstances that did not allow for meeting in-person. Divergent points of view emerged and, albeit some perplexities, the VTC became the normal way of having open or closed meetings of the Council. Criticisms could be addressed to the Security Council members, and especially to the permanent members, for their inability or unwillingness to set up an emergency mechanism for a body that is supposed to meet regularly and continuously in order to accomplish its duties as the UN main organ with primary responsibility in the maintenance of international peace and security.

The more constructive answer to the question regarding the ability of the Council to function in extraordinary circumstances was given by a representative of civil society who, during the meeting of the IWG recalled above observed that ‘the global pandemic has forced new tools on all of us [and] this is an opportunity not to return to business as usual’.<sup>36</sup> It seems that at least for some of the Council members this is exactly what they are waiting for. But nobody can predict if and, in the positive, when this is going to happen and what situation the United Nations will face at that moment.

<sup>36</sup> Karin Landgren, Executive Director, Security Council Report, intervening in the IWG meeting held on 15 May 2020 <[securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/working\\_methods\\_debate\\_may\\_2020.pdf](https://securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/working_methods_debate_may_2020.pdf)>. In her very interesting briefing she – contrary to what was said by some of the P5 – emphasized that the Security Council should be ready to lead on issues like climate, cyber and pandemic threats, or root causes of conflict that lie in structural inequality and other chronic human rights violations, and she asked: ‘if this Council does not lead on these issues, then who is to do so?’. Other interesting observations were made as regards strengthening exchanges between Security Council, General Assembly, ECOSOC and Peacebuilding Commission in facing global threats; a better use of technology to speak not only with representatives in the field but also with Heads of Government, parliamentarians, ministers, civil society, and representatives of United Nations agencies, funds and programs, ‘even in hard-to-reach places’.

