

Spain and the UN Security Council: global governance, human rights and democratic values

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In January 2015 Spain assumed its position as a non-permanent member in the UN Security Council (the 'Council'). Its mandate will run for two years. During this period, Spain will work alongside the five permanent members –China, France, the Russian Federation, the UK and the US ('P-5')–, four non-permanent members –Angola, Malaysia, New Zealand and Venezuela– whose mandates, like Spain's, run until the end of 2016, and a further for –Chad, Chile, Jordan, Lithuania and Nigeria– whose mandates finish at the end of December of 2015. Besides having a general role and functions, Spain currently chairs the Iran Sanctions Committee, the Democratic People's Republic of Korea Sanctions Committee and the Committee on the Non-proliferation of Weapons of Mass Destruction, in which it also acts as penholder. It is furthermore penholder in the Taliban Sanctions Committee, which is chaired by New Zealand.



Council membership means special rights and privileges. It generates rights of access to and participation in, including voting on, all decisions of this organ. These decisions may amount to recommendations on how international disputes are to be resolved (Chapter VI UN Charter). More importantly, the Council has competences to determine international security threats, breaches of the peace and acts of aggression. In response, it may adopt measures, including coercive ones, including mandatory arms embargoes, economic sanctions, ICC referrals and the authorisation to use armed force (Chapter VII UN Charter). The Council may also impose obligations on all UN members to cooperate in the enforcement of its decisions. To this should be added that the admission of new UN member states, the election of UN secretary-generals and the appointment of judges to the International Court of Justice require a prior recommendation of the Council.

However, council membership implies not only rights, but generates, above all, great responsibilities. **Spain assumes Council membership at a time when the expectations of what this organ is meant to accomplish are on a constant rise.** Governments and regional organisations around the world, as well as civil society, are looking to this organ for leadership and direction in the process of meeting current threats and global challenges. In this light, the questions that deserve attention are how the Council and its members have sought to meet the challenges of rising expectations on its role in world affairs, what the main difficulties are and the role of Spain and other members in the process of overcoming them.

The ending of the Cold War created unprecedented opportunities for the Security Council to meet its primary responsibility to act as a guardian of international peace and security. As an illustration, in 1990 it condemned the Iraqi invasion and occupation of Kuwait and

authorised the use of armed force.¹ In 1992 it approved the creation of a unified task force to enable the provision of humanitarian assistance to civilian populations in the Somali conflict.² In 1993 it established an *ad hoc* international criminal tribunal in response to the Yugoslav conflict.³ A year later it decided to create a second such tribunal in response to the Rwandan genocide.⁴ Moreover, following the 9/11 terrorist attacks, it took on a leading role in the Global Fight against Terrorism. Resolution 1373 of 28 September 2001 determines that international terrorism constitutes a security threat and imposes obligations on all UN members to cooperate in the enforcement of concrete measures, including the criminalisation and prosecution of the financing of terrorism as well as the freezing of assets of persons who plan, support and commit these acts. In addition, it created the Counter-terrorism Committee (CTC) to monitor the Resolution's implementation. These actions have been followed by several others, such as the establishment of the CTC Executive Directorate in 2004, which aims to strengthen Council capacities to provide governance and support in this fight.

The UN reform process (2001-05) offered a moment of reflection on the responsibilities of the Security Council in a changing security environment. The discussions that took place resulted in a general agreement that **the international community faces several new threats and global challenges that require collective action through the Security Council**. According to the 2005 World Summit Outcome,⁵ these threats are not limited to interstate conflicts but extend to international terrorism, domestic conflicts (civil wars), grave crime on a massive scale (genocide, crimes against humanity, war crimes), weapons of mass destruction, epidemics and climate change. The growing number of internal conflicts involving grave crime, also perpetrated by non-state actors, was recognised as an especially grave concern. It was understood that the rise in these types of conflicts warranted an affirmation that the responsibility to protect ('R2P') is not an exclusive responsibility of states. In situations in which states are unable or unwilling to protect their civilian populations, the R2P is transferred to the international community. It was further agreed that the Security Council has the mandate to adopt coercive measures, including the use of force, to bring such situations to an end.

The Council has responded positively to demands about the need to expand its area of responsibility to cover new threats in a changing security environment, such as the proliferation of weapons of mass destruction, such as nuclear weapons, climate change and epidemics.⁶ It has determined several domestic conflicts and post-conflict situations, involving atrocities, as amounting security threats, among them the Democratic Republic of the Congo, the Central African Republic, the Sudan and South Sudan, Côte d'Ivoire, Guinea-Bissau, Liberia and Libya. Additionally, it has responded to several situations of on-going atrocities through the adoption of coercive measures. Whereas the authorisation of the use of force is not ruled out, as manifested by the intervention in Libya in 2011,⁷ a more common response to conflicts involving atrocities as well as other threats, such as international terrorism, is the **creation of mandatory sanctions regimes**. Since the end of the Cold War, the Council has established a total of 27 sanctions committees. It

¹ UNSC res. 678 of 29/XI/1990, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/678%281990%29.

² UNSC res. 794 of 3/XII/1992, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/794%281992%29.

³ UNSC res. 827 of 25/VI/1993, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/827%281993%29.

⁴ UNSC res. 955 of 8/XI/1994, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/955%281994%29.

⁵ UNGA res. 60/1 of 20/X/2005, <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN021752.pdf>.

⁶ For example, UNSC res. 2177 of 18/IX/2014 addresses the Ebola outbreak,

http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2177%20%282014%29.

⁷ UNSC res. 1973 of 17/III/2011, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1973%282011%29.

currently administrates 16 such committees. The most recently created regime is the 2606 South Sudan sanctions committee, established on 3 March 2015.

What is novel about sanctions regimes is that **they are ‘targeted’ in the sense of ‘using one or more measures to signal, constrain or coerce states, entities or individuals to change behaviour’**. The different measures include arms embargoes, asset freezes and travel bans, which are often used in tandem.⁸ Most sanctions committees focus on internal conflict and post-conflict situations. However, two sanctions committees established in 2006 focus on how to tackle threats posed by the proliferation of weapons of mass destruction, and also nuclear weapons: North Korea and Iran. The most well-known committee centre deals with the threat posed by al-Qaeda and associated individuals and entities. Its mandate has been modified several times so that its sanctions now apply to designated individuals and entities wherever located.⁹ Last year, its mandate was further extended to cover potential threats of individuals and entities belonging to ISIL and ANF.¹⁰ As of 26 February 2015, a total of 618 persons and 421 entities and other groups are being targeted by UN sanctions regimes.¹¹

Furthermore, the Council has demonstrated a growing interest in the **promotion of criminal tribunals to investigate, prosecute and sanction grave crimes committed on a massive scale**. Since the creation of the two *ad hoc* international criminal tribunals for the former Yugoslavia and Rwanda, it has requested that the UN Secretary-General negotiate an agreement with the Sierra Leone government about the establishment of a special court.¹² It also gave broad mandates to the UN transitional administrations in East Timor and Kosovo, allowing them to constitute panels consisting of international judges within existing national judiciaries. In 2005 it referred the situation in Darfur to the ICC.¹³ A year later it concluded an agreement with Lebanon on the creation of a special tribunal in response to the terrorist attack on 14 February 2005 that killed former Lebanese Prime Minister Rafiq Hariri and 22 others, an agreement that entered into force as a result of a Council resolution.¹⁴ In 2011 it referred the situation in Libya to the ICC.¹⁵

Another significant advance is **how the Security Council is seeking to go beyond the reactive realm when responding to the threat posed by conflicts involving atrocities**. This development reflects how the meaning and implications of the R2P agreed on in 2005 has evolved and is now thought of as not only referring to reactive responses but also to measures aimed at preventing such conflicts from breaking out in the first place and designed to reconstruct societies having suffered from them. In this spirit, the Council has established *ad hoc* working groups on peacekeeping operations (in operation since 2001) and conflict prevention and resolution in Africa (in operation since 2002). Moreover, it contributes to the advancement of themes such as the protection of civilians in armed conflict, women, peace and security, and justice, the rule of law and

⁸ For an overview of these measures, see ‘Security Council Report, Active Security Council sanctions regimes: an abridged history (2014)’, available at http://www.securitycouncilreport.org/images/homepage/security_council_sanctions_regimes.pdf.

⁹ According to the list that was last updated on 19 February 2015, the al-Qaeda committee targets 234 individuals and 70 entities.

¹⁰ UNSC res. 2170 of 15/VIII/2014, <http://www.globalr2p.org/media/files/resolution2170syria.pdf>.

¹¹ See Consolidated United Nations Security Council List, available at <http://www.un.org/sc/committees/consolidated.pdf>.

¹² UNSC res. 1315 of 14/VIII/2000, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1315%282000%29.

¹³ UNSC res. 1593 of 31/III/2005, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1593%282005%29.

¹⁴ UNSC res. 1757 of 30/V/2007, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1757\(2007\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1757(2007)).

¹⁵ UNSC res. 1970 of 26/II/2011, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1970%282011%29.

impunity in these societies. In 2005, the Security Council, together with the General Assembly, created the **Peacebuilding Commission** to focus attention on ‘the reconstruction and institution-building efforts necessary for recovery from conflict’ and to support the development of integrated strategies for sustainable development.¹⁶

Notwithstanding the advances towards a more proactive approach to major threats and global challenges, **the Council continues to be criticised for failing to live up to rising expectations**. The efforts to improve respect for human rights in the enforcement of Council decisions still falls short of meeting basic demands. The way in which targeted sanctions in the form of asset freezes are imposed has provoked a series of human rights complaints. At the outset, the enforcement of these sanctions paid no attention to fair-trial rights, including the right to be presumed innocent and the right to be informed promptly and in detail of the nature and cause of the charges. There was no consideration of humanitarian needs of targeted individuals. Over the last decade, several improvements have been made, such as the introduction of a humanitarian exception to cover basic needs and a delisting procedure as well as a focal point for delisting requests. Those individuals and entities seeking to be removed from the al-Qaeda List can now submit their petitions to an Ombudsman appointed by the Secretary-General. Even so, there is a general concern that the Council fails to respect human rights in this sphere of action, such as due process norms and the right to an effective remedy.

A second line of criticism stems from rising expectations on **the need for the UN organ to focus attention on how to improve its conduct in the light of democratic values**. The 2005 World Summit Outcome expressed support for early reform of the Security Council ‘in order to make it more broadly representative, efficient and transparent and to further enhance its effectiveness and the legitimacy and implementation of its decisions’. In particular, it stressed the importance of continuing to adapt the Council’s working methods so as to increase the involvement of UN members without seats in the Council, to enhance its accountability to membership and to seek more transparency.¹⁷ The Council has sought to respond to the call for more transparency through increased interactivity, public meetings, consultations and informal dialogue.¹⁸ For example, in different notes, the Council President has stressed the importance of dialogue with non-Council members and bodies, as well as consultations between the Council, the Secretariat and troop- and police-contributing countries.¹⁹ The President has also emphasised wider participation of Council members in the drafting of Council products, and the relevance of intra-Council dialogue.²⁰ Meanwhile, it has not shown any interest whatsoever in changing its composition in order to make it more representative or how to tackle the need for accountability.

A third line of criticism centres on **the Council’s inability to react in a timely and decisive manner to highly pressing situations**, such as **Ukraine, Syria and Palestine**. During 2014 these situations were among the topics most discussed in the Council: Syria (29 times), Ukraine (15 times) and the situation in the Middle East, including the

¹⁶ UNSC res.1645 of 20/XII/2005, para. 2.b, <http://www.unrol.org/files/N0565417.pdf>.

¹⁷ UNGA res. 60/1 of 24/X/2005, paras. 153 and 154,

<http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN021752.pdf>.

¹⁸ Security Council Report, Security Council *Working Methods: A Tale of Two Councils* (25/III/2014), special research report available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_working_methods_2014.pdf.

¹⁹ S/2013/515 and S/2013/630.

²⁰ S/2014/268 and S/2014/56.

Palestinian question (13 times).²¹ However, three draft resolutions that were presented were not passed as permanent members cast their vetoes. The Council's passivity in the face of on-going atrocities perpetrated in Syria, especially by its authorities, has harmed the reputation of this organ. In a Security Council meeting held on 22 May 2014, the French draft resolution referring the Syrian situation to the ICC failed as the Russian Federation and China voted against it. The Council thereafter condemned the parties to this conflict and the Syrian authorities in particular for denying humanitarian access to civilian populations in the country. So far, however, none of these decisions have been accompanied with any forcible measure to ensure compliance on the ground.²²

In conclusion, **both advances and setbacks characterise the on-going efforts to shoulder the primary responsibility over the maintenance of peace and security.** It is important to recall that significant progress has occurred. Even so, as has also been pointed out, several challenges taint the record of progress, among them the fact that the Council fails to act impartially in the determination of security threats and the failure to respect human rights and democratic values. No important change in the determination of security threats will occur as long as the P-5 understand their veto rights as implying a licence to block Council decisions whenever such decisions contradict their national self-interest. The longstanding disagreement between Council members about the primacy of human rights and democratic values when security is at stake makes any change unlikely. In this light, a piecemeal approach, while frustrating and riven with disappointments, is to be preferred. **Permanent and non-permanent members committed to human rights and democratic governance** can make use of their special rights and privileges so as to seek gradual progress on these matters. In this context, it is to be recalled that **Spain** has manifested a clear commitment to promoting human rights and to defend the protection of civilians and respect for international law, including international humanitarian law, during its term as Council member.

²¹ Other topics most intensively discussed during 2014 were: Sudan/South Sudan (35 times), the Middle East (17 times) and the Central African Republic (13 times). See Security Council Report, *In Hindsight: Council Statistics in 2014: New Energy and Activity*, 30/1/2015), available at http://www.securitycouncilreport.org/monthly-forecast/2015-02/in_hindsight_council_statistics_in_2014_new_energy_and_activity.php.

²² In 2014, UNSC res. 2139 of 22/II/2014, res. 2165 of 14/VII/2014, and res. 2191 of 17/XII/2014.