Strengthening the rule of law through the United Nations Security Council

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Use of force and the Rule of Law: The approach of Mexico during its membership as an elected member of the Security Council, 2009-2010

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My presentation is divided into four parts to examine the use of force, the protection of civilians and the responsibility to protect to highlight the importance of what the Security Council (SC) faced and did between 2009 and 2010, when Mexico participated as an elected member.

The first part provides a set of examples regarding practical cases or situations of conflict that combined all these elements though in different ways and interrelations. The second part examines the concept of political will and the issue of partnership within the SC as essential components for finding solutions to the conflict situations and to allow the members to build consensus in that respect. The third part touches on what can be understood as the Mexican agenda within the SC to explain and try to explain what Mexico pursued and fulfilled in order to contribute to the maintenance of peace and international security. Finally, the last part is devoted to some final considerations regarding the use of force and the limits to the international action which implies a complex challenge to the main responsibilities of the SC worldwide.

Some practical cases between 2009 and 2012

In 2009-2010 we, Mexico, and the other 14 members of the SC, faced several conflict situations which involved or combined in different ways the elements mentioned before and of course with different outcomes. However, I will refer just to four of them to illustrate how the SC reacted and tried to address the situations in which violence was implied as is the need for protecting civilians. Clearly these two broad subjects allowed the SC, from the perspective at least of some of its members, Mexico included, to address the issues in two parallel and separated tracks, though closely interlinked: the political track and the humanitarian track, to try to ensure effectiveness in regard to the SC action and role and legitimacy of its decisions.

The first example is the crisis in Gaza in 2009, after the Israeli military operation “Cast Lead”, which opened the door for a major humanitarian crisis.
As we know, the SC adopted resolution 1860 in an effort to tackle the situation. In this regard, the two tracks to address the issue—the political and the humanitarian—were closely interlinked posing limits and challenges to the international concerted action for reasons more than obvious. From a political stand, at the headquarters in New York, a complex process of negotiation started when the Foreign Ministers of the Arab countries arrived somehow by surprise. Of course, there was a certain degree of reluctance by Permanent members to engage in such an exercise as it was clear that the Arab position was to condemn the excessive use of force by Israel in a complex context where the broad peace process of the Middle East was in a deadlock. The positions towards the conflict are well known as is the marginal participation that the Security Council has been playing lately in the Middle East situation.

In this scenario, what Mexico envisaged was that, notwithstanding the difficult conditions in the part of the political process, there was space enough to bridge the different positions, by addressing the humanitarian situation through a balanced approach. This balance implied the condemnation of the use of force by the two parties, and therefore to call for an immediate cease fire. It was very important in such an effort to avoid any possible veto from the P5. Fortunately, Mexico was not alone as other elected members were taking a similar approach, particularly Austria and Costa Rica. Those countries also had similar concerns in relation to the protection of civilians and the respect of International Humanitarian Law, and they understood that taking this track would benefit the concerted SC action and agreement on a possible solution, with the support of all P5 members as well as the Arab countries.

So on this basis the SC managed to agree on a draft resolution, and it was not untill the very end, when SC members were about to adopt it, that one of the permanent members decided to abstain. This abstention indeed diminished the political strength of the resolution, but the text became a solid reference in the future in addressing the situation, especially in regard to the proposal to establish an international mechanism, under UN supervision, to monitor the access of humanitarian assistance to Gaza, as well as to control the illicit traffic of weapons with the purpose of supporting Gaza inhabitants return to normality, rebuilding the infrastructure, and breaking the chain of violence. The humanitarian dimension was the key to addressing the issue rather than the political track, although the relationship between the two was crucial at all times.

The second example is Sri Lanka. In the first months of 2009 due to the conflict among the Government and the rebel group LTTE, framed as a terrorist group, the humanitarian situation deteriorated rapidly. Therefore, the Mexican delegation, without intending to interfere in the political process, requested the Secretary General to address the issue and inform the SC on the developments there. At the beginning certain permanent members showed their clear opposition to this initiative. However, in April 2009, during the first Mexican
Presidency of the SC, its members agreed to examine the situation. Since the issue was a very divisive one, Mexico found an innovative way to move forward, avoiding confrontations among the membership. In this sense, the SC met in what became known as “Interactive Informal Dialogues”. The implication of this formula was to send a clear message that the situation in Sri Lanka was not going to become part of the agenda, but that it was of the utmost importance to guarantee the security and the lives of the civilian population trapped in the conflict. At the same time, this kind of meeting avoided confrontation among SC members and allowed the Presidency of the SC to invite Sri Lanka to participate to explain its own position and the ways to ensure protection of civilians and its obligations under International Humanitarian Law (IHL).

The outcome after a series of three Interactive Dialogues was to send a unified SC message, with enough political weight to create awareness, condemning terrorist acts, stressing the importance of the humanitarian situation and asking the Government to fulfill its obligations under IHL; so as to call the Government to establish a dialogue to generate the conditions for a reconciliation process when the military conflict ended. On top of all this, the initiative contributed to avoiding major bloodshed. Again the humanitarian track allowed the SC a different way to touch the political process, but avoiding hurting all sorts of sensitivities.

The third example is about the humanitarian crisis in Kyrgyzstan at the beginning of June 2010 where there was an uprising that generated a Constitutional breakdown in the view of a future referendum to validate precisely the Constitution. This crisis gave place to thousands of displaced persons due to ethnic clashes, and opened the door for the social and political deterioration. The provisional Government was helpless in the midst of such a situation. That period coincided with Mexico chairing the SC for the second time in its tenure, and what we decided to do with the agreement of all SC members was to find ways to facilitate the dialogue among the concerned parties, avoiding a major escalation of the crisis. The prompt reaction by the SC helped to create favorable conditions to allow the political process to continue. As is well known the constitutional referendum took place at the end of the month.

The fourth example is in relation to Children and Armed Conflicts which referred to one of the core issues of protection of civilians, and thus in strengthening the rule of law in addressing international conflicts. The SC working group on this subject was chaired by Mexico in the two years of its membership. Thanks to a concerted action by the SC members it was possible to adopt a resolution in July 2009. It is enough to mention that resolution 1882 widened the scope for the protection of children, and gave the Special Representative of the Secretary General further tools to ensure their protection in conflict situations.
**Political will and partnership**

From a practical perspective it seems to be clear that the effectiveness of the SC is closely related to the problem of political will, and therefore the legitimacy of its action. However to build consensus and political agreement is a complex process and I tend to suggest that it is attached to the quality of the membership in the sense of the priorities of the members individually considered, under the assumption that the SC’s work is in fact in most cases to deal with real politics where there is a myriad of different national interests, in complex scenarios, and that sometimes good will might not be enough to find solutions.

That said, whilst the rule of law, use of force, and protection of civilians are closely interrelated subjects, in some situations, judging from my own experience, the only possible way to address the political process is through the humanitarian dimension of the conflict. To touch the political issues in some cases affects some sensitivities on the side of the stakeholders and might obstruct any international effort. In any case, it is clear that in every conflict situation the civilians are the innocent ones paying the biggest price, and thus the international effort has to focus on addressing such issues.

Under this complexity where the legal, political and humanitarian tracks are interlinked, at least from a practical point of view, the situations have to be addressed according to its own merits and particularities, though the tools are the same. Similarly, to avoid violence and the use of force seems to be a better course of action as we know that violence tends to create more violence. A political solution should imply a peaceful settlement of disputes, dialogue and negotiations.

In this regard, it seems to be an important fact within the SC to build on partnerships. Against the idea that within the SC there is a fulltime dynamic of P5 (five permanent members) versus E10 (10 elected members), the reality is that according to the different issues one can see a number of combinations in the sense of partnerships, including the P5. In our case, it was very notorious since the very first moment of 2009, and with the crisis in Gaza, that the newly elected members at that time (Austria, Japan, Mexico, Turkey and Uganda) were to contribute in the SC in quality and quantity to create consensus and to leave their own imprint in this regard. There are plenty of examples of the constructive participation of these five countries individually and as a whole.

**The Mexican agenda**

It is important to stress that Mexico tried in all situations to contribute to finding a negotiated solution and to promote dialogue among parties in order to
create the conditions for a political process to be conducted rather than resort to the use of force to bring an end to the problem.

The core of the Mexican position in the SC was attached to its traditional advocacy for the respect of International Law as well as to the principles on foreign policy contained in the Mexican Constitution (non interference, self determination of the people, peaceful settlement of disputes, the proscription of the threat or the use of force in the international relations, the legal equality among States, international cooperation for development, and the struggle for international peace and security). These principles were updated with new priorities of the Mexican foreign policy like the promotion and respect of Human Rights, International Humanitarian Law and the protection of civilians.

It is important to stress that this is only the fourth time in its history that Mexico participated in the Security Council, and reflects thoroughly the changes that have taken place in the country since 2000 in the sense of democratic and political change.

On the other hand it is worth noting that Mexico did not have any sort of hidden agenda in which specific national interest can play a different role in that sense. In many ways this helped thoroughly the aim of building trust and reliability in the Mexican proposals and to its approach to the maintenance of international peace and security. Even in situations very close to the Mexican interest—like the situations in Haiti, which is the only one Latin American and Caribbean subject on the SC agenda, or Western Sahara, related to the core of the Mexican principles in foreign policy in the sense of self determination—the contribution was intended to be constructive and bridging based on balanced proposals.

**Final considerations**

The use of force has, paradoxically, the ultimate goal of imposing or restoring peace. This seems to be obvious but the fact is that force implies big challenges and above all a wide complexity attached to the simple fact of its application to conflict situations: violence tends to create more violence. So it is clear that there are certain limits to the action of the Security Council, and on the other extreme its inaction has consequences that in most cases work against its own credibility and legitimacy. There are clear boundaries to what is desirable in the process of decision making and what is possible on a practical basis in which several factors are involved in any consideration.

It is worth noting that since 2005, the protection of civilians and responsibility to protect concepts have gathered wide acceptance and importance. However, we are still debating the scope and the limits to the application of the concepts in real situations. Nowadays, we have two very good examples of this importance, though they are the different sides of the same coin: Libya and
Syria. On the one hand, the case of Libya exemplifies all the steps forward that the international community has been able to give in this regard, including the use of force, while Syria is the opposite example in the sense of what the international community has been unable to reach in matters of protection of civilians and responsibility to protect, not to mention the incapability of imposing a cease fire, to halt the violence and give way to a political process. We cannot forget that for different reasons both cases are part of the wider process known as the Arab Spring.

From a political point of view, while Mexico served at the SC there was a tendency in the SC to listen to the regional voices. In two years, perhaps with the exception of Sudan and the ICC indictment against President Al Bashir, the SC heard the regional voices in making its decisions. For that reason it is not a surprise that in the case of Libya the SC listened to the Arab voices and decided accordingly. A different discussion is what came afterwards in the sense of the broad interpretation of the specific mandate given by resolution 1973. Mexico was no longer at the SC at the time of the adoption of resolutions 1970 and 1973 in regards to Libya, but it is still interesting to think about how the configuration of the SC in which we participated might have behaved in this regard, bearing in mind what it has been mentioned in the previous section. Decision-making and legitimacy are core elements of the SC, and the use of force with a lack of clarity can undermine precisely its legitimacy, and can work again its credibility.

The examples provided and the situations mentioned underscore the fact that the rule of law itself, and particularly the protection of civilians and responsibility to protect, are more important now than in the immediate past within the SC decision-making process. The use of force as well is a tool with new dimensions and importance from the standpoint that contemporary situations in the SC agenda are not traditional conflicts (conflicts among States), but rather internal crises like civil wars and so on with multiple actors internally, regionally and globally. However, the rule of law and its different components are a meaningful part of the solutions ought to be implemented in solving a particular conflict; there is still a long way to go in this sense. After more than 70 years the SC is still working on provisional rules just to mention a few examples in this regard.