



The Congress and European security policy: how much parliamentary control?

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The term of José Luís Rodríguez Zapatero has been concurrent with the development of two important security policy issues at the European level. First of all, the missions of the European Security and Defence Policy ESDP have become commonplace in European foreign actions, going from four missions in the second legislature of José María Aznar to 16 new operations (4 military and 12 civil) begun during the term of office of the socialist government. Secondly, since 2004 the EU has given significant impetus to police and intelligence cooperation, the primary goal of this being increased effectiveness in the fight against terrorism.

From an institutional point of view, ESDP issues and those of Police and Judicial Co-operation in Criminal matters (PJC) share the common characteristic of being essentially intergovernmental and having developed rapidly, particularly in the late nineties. The combination of these factors has been decried as a cause for a growing "double democratic deficit" in European security policy¹. This deficit stems from the fact that decisions in this area are increasingly made at the European level, making control of these decisions by national parliaments more difficult without reverting to increased involvement by the European parliament. Looking at it from a different angle, the problem of parliamentary control of security policies can also be summarised in terms of a "double paradox": on the one hand, national parliaments have the power to hold their respective governments accountable, but their access to information and their overall vision of what is happening in the European arena is usually lacking; on the other hand, the European parliament receives direct and precise information from different authorities of the Council and the Commission, but they do not have the authority to control them in these political areas².

This article examines this debate to focus on the first part of the double deficit or the double paradox in order to analyse the degree to which the assertion that there is a lack of parliamentary control by member states (in this case the Congress of Deputies) is true. To do so, Congress activities related to the fields of ESDP operations and police cooperation in the fighting against terrorism will be examined. The article concludes with some succinct final observations on the possibilities of the role of the parliaments in the areas analysed.

Control of ESDP operations

"While this government is in office, not a single soldier will leave without the support of this parliament." These are the terms set down by the Prime Minister, José Luis Rodríguez Zapatero in September 2005, a few weeks before the approval of the new Organic Law on Defence, which introduced the prerogative of parliamentary approval for the participation of armed forces in foreign operations. With this, Spain became a country with strong parliamentary control in terms of military peace operations, putting Spain ahead of other countries such as France or Britain in which the deployment of troops is the sole responsibility of the government.

The source of this significant extension of parliamentary powers can be found in the tense political atmosphere and social mobilisation that characterised José María Aznar's last legislature, caused by the deployment of troops in Iraq after the U.S. invasion. From the beginning of the attacks in March 2003, the opposition had demanded repeatedly that in any case where the deployment of troops to Iraq was being considered, parliament would be consulted, given the exceptional and significant nature of the issue, a military intervention that did not have the support of the U.N. and which had divided the EU. However, the government, considering the lack of legal provisions which would make consulting parliament obligatory, decided to send 1,200 soldiers to Iraq. These troops were deployed between July and August of 2003³. Criticisms of the government for having "placed Spain in an illegal war against the wishes of parliament" were repeated often on the benches of the opposition, and in the election campaign, the socialist party committed to reevaluate the role of parliament in foreign military operation if it were to win the election.

In point of fact, the Zapatero government did push for the new Organic Law of National Defence and it was approved on 17 November 2005. The law introduced a requirement for ex-ante "consultation" and "authorisation" by the parliament if troops were to be sent outside of the country, as well as other requirements⁴. The law also made it mandatory to hold an annual parliamentary debate about the development of international operations in which the armed forces were participating. It is also important to note that the law not only strengthened the criteria of legitimacy inside Spain for sending troops, but became a requirement for exterior legitimacy as well. That is to say, the law set down a series of conditions with which foreign missions must comply, among them the requirement that they be sanctioned by the U.N. or approved by international organisations in which Spain is a member, as well as conformity with the principals of international law.

These significant new developments in the Spanish peace operations policy as a whole did not, however, translate into great changes in ESDP missions. Since the law refers to Spanish armed forces, it only applies to military missions in which the army participates (see table 1 in the appendix). Of these, only once has an ESDP mission been given the prerogative of consultation and authorisation, the EUFOR Congo mission. The other two cases in which parliament has given authorisation in this legislature were missions led by NATO (ISAF in Afghanistan) and by the U.N. (UNIFIL in Lebanon). Of these two cases, the one which followed the spirit of rigorous parliamentary control more closely was the authorisation of Spanish participation in UNIFIL, since the congressional debates took place in manner that was almost parallel to decisions made by the international community concerning the crisis that was unfolding in the summer of 2006. However, in the other cases, authorisation was always done after approval had been given and the government had committed to contributing to the operation, leaving parliament with little chance of influencing the government's position⁵. The other three ESDP missions in which Spain participated under the Zapatero government did not require parliamentary approval⁶.

Except in the case of EUFOR Congo, a lack of debate in the Congress on ESDP missions has been the dominant trend. This can be seen clearly when we look at parliamentary questions relating to peace operations, of which only 10 percent have to do with ESDP missions (see table 2 in the appendix). The level of interest is almost directly proportional to the troops deployed and the amount of risk the troops must face. It is not very surprising then that ESDP missions occupy a relatively minor position compared to other missions such as ISAF or UNIFIL⁷. The debate about financial issues related to ESDP missions has also been very limited. Only in the case of EUFOR Congo

did some of the opposition deputies demand that the government provide explanations of costs. They also used this as an opportunity to request that the government accompany any further requests for deployment authorisation with a cost analysis, as in other countries such as Germany.

However, the lack of debate about ESDP missions in parliament is even more striking in the case of civil missions. The EU has undertaken 14 missions of this type, half of which have had Spanish participation. This usually means sending members of the Guardia Civil or the National Police, depending on the objectives of the mission. None of these missions has been the subject of parliamentary debate in the Congress in the four years of legislature. Parliamentary debate on the subject has been limited to isolated comments made "in passing" during the annual debates about missions which are the result of article 19 of the Organic Law on National Defence. Thus, Spain is one of the six member states of the EU 27 in which parliament does not discuss or approve ESDP civil missions⁸.

Control of European police and intelligence cooperation in the fight against terrorism

As far as the policies of Justice and Home Affairs is concerned, the second legislature of José María Aznar's government made progress in justice matters, introducing means of great importance, such as the establishment of Eurojust and rapid extradition procedures (Euro-order). The period of 2004 to 2008 was marked by notable advances in police and intelligence cooperation, in terms of operational as well as the exchange of information material inside and outside of the EU⁹. Following the trend established by the previous legislature, Parliament had a bit of a rough time with the accelerated development of PJC and EU policies. Congress and the Senate tried to deal with the issues as they presented themselves without getting into a deeper debate or trying to anticipate them.

An example of the passive role played by parliament was the development of the Treaty of Prüm, which was signed initially by seven member states, including Spain, and which in the near future will be incorporated in the legal framework of the EU¹⁰. The treaty was a police cooperation agreement with the primary objective of exchanging information (DNA, fingerprints and vehicle number plates) in order to fight terrorism, organised crime and illegal immigration. The treaty was somewhat controversial; the European Parliament expressed its belief that the treaty weakened Community institutions, since it did not adhere to the framework set out by the enhanced cooperation agreement; rather it was initiated outside of the EU framework and behind the backs of the parliaments. Yet at the very end of the process, given the fact that it was an international treaty, it required ratification by the Congress and the Senate. Both chambers approved it in April and June of 2006, one year after its signature by the Spanish government and without further debate or proposals. Later some of the obligations from the treaty became more controversial and Congress participated in a more active manner. This was indeed the case of the Organic Law regulating police databases for DNA identification. Initiated as an ordinary law, the committee decided to make it an organic law because it dealt with questions related to fundamental rights, particularly the right to privacy. This procedure led to intense debates among the parties who maintained more and less "guarantist" approaches. An agreement was reached on 21 June 2007; the *Esquerra Republicana de Catalunya* (Left Republican Party of Catalonia) being the only party that held out for amendment until the final vote on the proposal.

Congress also paid a bit more attention to developing the power of Europol. The enquiry committee on the 11 March attack also contributed to this, albeit in a collateral manner; the issue of international police cooperation and the role of Europol was debated in depth by the committee. For example, the deputies of the committee had access to confidential Europol reports and even Europol's director of operations appeared before the committee. Here the difference between the prerogatives of the national and European parliaments is obvious in terms of the supervision of this organisation. For example, the European Parliament was not able to force Europol to appear before the well-known "Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners." The 11 March investigation commission was also able to get the previous European coordinator in the fight against terrorism, Gijs de Vries, to appear. With him they discussed questions such as problems with striking a balance between confidentiality and effectively fighting terrorism. Mr. de Vries also made documents available to the enquiry committee relating to problems with national legislation which impeded strengthening the operational capacity of Europol, calling on the deputies to debate the issues and collaborate with the government to implement them¹¹.

A last example of changes in terms of police cooperation which has not been discussed much by the Congress, despite its obvious significance, is the transfer of passenger data (an issue known as PNR, from "Passenger Name Record"). Controversy on this issue was precipitated in May of 2004, when the U.S. and the EU reached an agreement which would allow U.S. security services access to information from passengers travelling from the EU to the U.S. in order to identify people who were potentially dangerous and take appropriate measures. The Parliament, very sensible to measures that could violate privacy rights and data protection laws decided to use its legality control powers to challenge the agreement before the European Court of Justice¹². The Court gave a major political victory to the Parliament annulling the decisions authorising the PNR Agreement. However, the Council approved a very similar PNR agreement in June of 2007 making use of the third intergovernmental pillar, thus bypassing the European Parliament. This move from the Council was harshly criticised by the European Parliament for having proceed with a "lack of any type of democratic supervision"¹³. Conversely, the Congress of Deputies kept its distance from the PNR issue, with the exception of a few comments on the subject during the appearances of the Interior Minister and the Director of the Agency for Data Protection. The Congress has also not dealt with the issue - which is already in the advanced stages – of implementing the PNR system in the EU, a decision which was being taken within the framework of the third pillar¹⁴.

Conclusions

In this article, we have seen that the role of the Congress in European security policies is not as good as it could be in terms of having proper democratic control of ESDP and PJCC. This can be seen in the low level of debate on these issues, both in quantitative and qualitative terms. In ESDP operations –without underestimating the great advances introduced with the new Organic Law on National Defence– we must remember that the consultation and authorisation procedure has only been applied to one of the 16 missions initiated by the EU in this legislature. Furthermore, even in this example the debate did not take place before the approval of the EU joint action for the mission, meaning that the substantive debate concerning the mandate had already taken place. In the arena of police cooperation we have also seen a lack of debate and improvisation, which contrasts with the intense activity seen in European Parliament on some of these issues. The Congress has only concerned itself with these issues when they have

touched on very specific questions, such as creating legislation for police DNA databases or evaluating the role of police cooperation in cases such as the attack of 11 March.

It follows from the above conclusions that the Congress still has a considerable margin to better perform its control function within the reach of its existing powers¹⁵. This notwithstanding, the reflection should be made on whether the Congress and other national parliaments in general are well positioned to undertake a debate about European security policies from a global perspective and in the general interest of the EU. Up to now, the European Parliament has shown tenacity in the discussion of these issues, and despite its very limited powers in these areas, it has been able to hold the concerned European institutions to account. Therefore, without prejudice to the powers of national parliaments, the empowerment of the European Parliament on these issues could foster EU-wide parliamentary debates that are less symbolic and more about real political options, and hence, debates in which European electors can participate or feel some identification with. The Treaty of Lisbon can contribute to this in areas related to Police and Judicial Cooperation in Criminal matters, since co-decision will become the normal procedure in the area of Justice and Home Affairs. The next Spanish government should get actively involved in the effective implementation of this provision and in making sure that the future mechanisms for enhanced cooperation in JHA and CFSP are used as stipulated in the Treaty, instead of recurring to mechanisms outside the EU institutional framework, which may be faster, but also more slippery to democratic control.

Notes

¹ Ever since the mid 90s the debate about the legitimacy of European security policies has gained growing salience, both among scholarly and political circles. The European Parliament has been particularly active in denouncing the lack of adequate mechanisms for parliamentary control in the ESDP and JHA domains. The use of the term "double democratic deficit" was coined by Born and Hänggi (2005).

² This approach to the parliamentary control in terms of "double paradox" is specially underlined by the Parliamentary Assembly of the Western European Union (WEU Assembly "Contribution to the Peace Research Institute Workshop on Parliamentary Control of European Security Policy Frankfurt, 7-8 December 2007", non-published paper)

³ The parliamentary controversy grew in the subsequent months due to the polemic about the appearances of the government before the Congress. Between March 2003 and the end of the parliamentary term, the opposition presented to the government 31 requests of appearance in order to give account to the Parliament of the position of the government and role of Spain in the conflict. However, after the 26th of March 2003, the government only accepted one of these requests (that of the Ministry of Defence, Federico Trillo-Figueroa, who appeared before the Defence Committee the 17th of July 2003). Yet, the government responded a considerable number of parliamentary questions. In fact, the parliamentary activity related to the Iraq conflict was massive during that parliamentary term: 186 parliamentary questions, 13 urgent interpellations and 71 requests of appearance.

⁴ This prerogative has some exceptions, mainly the lack of mandatory authorisation of the missions directly related to the defence of Spain and the possibility to hold ex-post authorisation in case this was necessary for reasons of urgency (see article 17 of the Organic Law on National Defence).

⁵ The authorisation for the deployment of troops to EUFOR Congo was debated one month after the adoption of the EU Joint Action. The decision to send 52 additional troops to ISAF (Afghanistan) was taken one and half year after the 37 Ministers of the countries contributing to ISAF, Spain among them, had already reached the compromise to contribute to the ninth enlargement of the mission.

⁶ In the case of ALTHEA in Bosnia Herzegovina, the military operation in which Spain has contribute a greater number of troops (a maximum of 580), was approved before the entry into

force of the Organic Law on National Defence. However it is striking that this deployment of troops was never debated in the Parliament. Likewise, the two remaining military operations, AMIS II in Sudan and EUFOR Chad, were neither debated nor authorised. In the case of AMIS II, the reason for the lack of authorisation was that the military troops deployed were not "forces", but "observer personnel" for which it authorisation is not mandatory; in the case of EUFOR Chad, Spain has only offered logistic material (see box 1 in the annex), so authorisation was not mandatory either.

⁷ For further argumentation on the scant attention paid by Spanish representatives to EU civil missions, see article by María A. Sabiote within this monograph.

⁸ See Born *et. al* (2007).

⁹ See article by Gemma Collantes within this monograph.

¹⁰ The full name of the Treaty is "Treaty on the stepping up of cross-border cooperation particularly in combating terrorism, cross-border crime and illegal migration" signed in Prüm (Germany), on the 27th of May 2005. The preparative act for its inclusion into the EU legal Framework was the "Initiative of the Federal Republic of Germany with a view to the adoption of a Council Decision 2007/.../JHA of ... on the implementation of Decision 2007/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime", Official Journal of the European Union, C 267/4, 9.11.2007.

¹¹ The appearances of the two mentioned EU officials took place on the 3rd November of 2004 (session 29 of the Enquiry Committee) and on the 15th of November of 2004 (session 30 of the same Committee) respectively. The growing interest of the Congress in Europol can also be appreciated in the fact that its mentioning in debates and parliamentary questions was significant. For instance, 20 written parliamentary questions were posed, addressing issues such as the Spanish contribution to the European debate on the future operational capabilities of Europol or on how to upgrade this institution in order to better fight against terrorism.

¹² The Parliament considered that the Commission and the Council's decisions violated Article 8 of the ECHR on the right to family and private life; the EC Directive on data protection; and contained various inadequate and unjustified procedures, such as having imposed the urgent provision of article 300.3, whereby the Council can decide without consulting the Parliament.

¹³ European Parliament resolution of 12 July 2007 on the PNR agreement with the United States of America, P6_TA-PROV(2007)0347, 12.07.2007.

¹⁴ Proposal for a Council framework decision on the use of Passenger Name Record (PNR) for law enforcement purposes COM(2007) 654 final, 6.11.2007.

¹⁵ For a large catalogue of good practices in the parliamentary control of ESDP missions, see the already cited report by Born *et al.* (2007) and other reports of the Geneva Centre for the Democratic Control of Armed Forces (DCAF).

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APENDIX

TABLE 1. Congress activity on ESDP missions (April 2004 - February 2008)

Mission	Information about the Mission		Parliamentary participation	
Name/Type of mission	Duration	Maximum of personnel deployed	Authorisation?	Debate?
Military Missions				
EUFOR RD Congo	June-December 2006	130 (units)*	YES (30.05.2006 in Defence Committee; after the EU Joint Action 27.04.06)	YES
EUFOR Althea (Bosnia and Herzegovina)	December 2004-	580 (units)	NO	NO
Amis II (Darfur/Sudan)	April 2005-December 2007	7 (Observers)	NO	NO
EUFOR Chad	February 2008-	2 (Observers) 2 transport aircraft	NO	NO
Civil Missions				
EUJUST Themis (Georgia)	July 2005- July 2006	---	NO	NO
EUOPL Kinshasa (Congo)	April 2005- June 2007	1	NO	NO
EUSEC Congo	June 2005-	---	NO	NO
EUJUST Lex (Iraq)	July 2005-	Training courses	NO	NO
Mission of Observation in Aceh (Indonesia)	August 2005- September 2006	8	NO	NO
EUPOL COPS (Palestinian Territories)	November 2005-	2 (plus equipment material)	NO	NO
EUBAM Rafah (Palestinian Territories)	November 2005-	12	NO	NO
EUPAT (ARYM)	December 2005-	---	NO	NO
EUPOL RD Congo	February 2005- June 2007	---	NO	NO
EUPOL Afghanistan	June 2007-	9	NO	NO
EU Planning Team (Kosovo)	April 2006-	---	NO	NO
EUBAM (Moldova)	October 2005-	---	NO	NO
EUSEC Guinea Bissau	Pending	---	NO	NO

* The Ministry of Defence distinguishes between the military personnel deployed as "military units" and as "observer personnel". Parliamentary authorisation of deployment is only mandatory if "military units" are involved.

Source: own elaboration, with information from the Records of Congress debates (*Diarios de Sesiones del Congreso de los Diputados*), the website of the Ministry of Defence of Spain and the website of the Council of the European Union.

TABLE 2. Parliamentary questions about ESDP missions

Thematic area	Written questions	Oral questions	Geographic area	Written questions	Oral questions
Logistics and personnel	23	1	Afghanistan	29	9
Activity of the personnel	15	6	Lebanon	15	2
Security conditions	13	6	Iraq	10	4
Political statements	13	3	Darfur	8	2
Human Rights	10	0	Balkans	8	6
Assessment	9	5	Congo	4	1
Dates of troops deployment/withdrawal	5	4	Haiti	3	2
Economic matters	4	4	Other	8	6
Other	6	4	Without region	13	1
Total	98	33	Total	98	33

Source: own elaboration, from the records of Initiatives of Congress.