

# *Spain and the Law of the Sea: 20 years under LOSC*

## A Comprehensive New Approach: The National Maritime Security Strategy

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### (A) INTRODUCTION

Maritime security is an increasingly high priority on the agendas of states, international organizations and the private sector. In Spain, it is an area of utmost political and strategic importance and interest for national security. This was recognized in two documents endorsed by the Prime Minister in 2013: the 2013 National Security Strategy,<sup>1</sup> recently reviewed and replaced by the 2017 Strategy,<sup>2</sup> and the National Maritime Security Strategy,<sup>3</sup> which implements its provisions concerning the maritime domain.

The National Security Act subsequently confirmed this special treatment,<sup>4</sup> including maritime security as an area requiring specific attention due to its fundamental role in preserving rights and freedoms, ensuring the supply of essential services and resources, and guaranteeing the welfare of the population.

The Spanish National Maritime Security Strategy was a milestone. Spain was the first country in the European Union to define its national maritime interests in a sectoral document. It was followed by the United Kingdom,<sup>5</sup> the EU itself,<sup>6</sup> France and Portugal.<sup>7</sup> The Strategy reaffirmed the basic

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I am most grateful for the valuable comments by Antonio Notario-Ezquerro of the National Security Department. The usual disclaimer applies; all views herein expressed are strictly personal.

<sup>1</sup> Council of Ministers Agreement of 31 May 2013 (*Official State Gazette* (BOE) No. 131, 1 June 2013).

<sup>2</sup> 2017 National Security Strategy, which received a favourable report from the National Security Council on 1 December 2017 and was subsequently approved by the Council of Ministers by Royal Decree (BOE, pending). On the procedure for the Strategy's preparation, see the National Security Council Agreement of 20 January 2017 (BOE No. 38, 14 February 2017).

<sup>3</sup> National Security Council meeting of 5 December 2013. The document is available [here](#). The document will be reviewed to align it where necessary with the new 2017 National Security Strategy.

<sup>4</sup> Article 10, Law 36/2015, 28 September 2015, on National Security ([BOE No. 233](#), 29 September 2015)(hereinafter, "National Security Act"). The National Security Policy is organized around national defence, homeland security and external action, the essential components of national security supported by the state intelligence services. It also includes "areas of special interest", such as cybersecurity, maritime security, energy security or environmental conservation.

<sup>5</sup> [The UK National Strategy for Maritime Security](#) was published on 13 May 2014.

<sup>6</sup> The *European Union Maritime Security Strategy* was adopted by the European Council on 24 June 2014. The Strategy

principles to guide the action of the state as a whole in a cohesive and synchronized manner. It also defined a series of objectives and set out lines of action. The ultimate aim was to raise the standards of maritime security, understood as a responsibility shared with the international community.

Like the equivalent documents of the most advanced states and organizations in this field, the Spanish Strategy is based on a comprehensive approach to maritime security. At the same time, it reflects Spain's country profile as a nation open to the sea, bordering the Mediterranean and the Atlantic, with a maritime tradition, vocation and aspirations.<sup>8</sup> Spain also has a high degree of decentralization in the exercise of public power between the central government authorities and other public authorities, a fact that is reflected in the Spanish model of maritime administration.

In this monographic issue of the *Spanish Yearbook of International Law*, commemorating the twentieth anniversary of Spain's ratification of the United Nations Convention on the Law of the Sea (LOSC), an introductory space has been reserved for maritime security. This is because, as with other international instruments on the matter, many of the Convention's provisions are the result of the accommodation of the various security interests of states, which have evolved from classical power and control of the sea to encompass new areas as well, such as the economic, human or environmental dimensions.

Maritime security is therefore present in law, policy, strategy and, to a lesser extent, academia. I will organize the ideas presented in the remainder of this paper in four sections.

First, I will address the principles of Spanish strategic security culture that permeate the country's approach to national maritime security. Second, I will discuss the main contributions of Spain's National Maritime Security Strategy. Third, I will explain how the Strategy has been implemented. Fourth and finally, I will offer an overview of the current state of the direction and coordination of crisis management in the context of the National Security System, an area in which Spain saw significant legislative development in 2015.

## (B) THE FOUNDATIONS OF STRATEGIC MARITIME SECURITY CULTURE IN SPAIN

A security strategy is an instrument for political action<sup>9</sup> that lays out the shared principles, defines the interests to be protected, establishes lines of action, and allocates resources and capabilities in pursuit of a feasible and sustainable goal. It does this based on a credible assessment of the priority risks and

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Action Plan was adopted on 16 December 2014. Both documents available [here](#).

<sup>7</sup> The French strategy, *Stratégie nationale de sûreté des espaces maritimes*, was adopted on 22 October 2015. The Portuguese strategy, *Estratégia nacional para o mar 2013-2020*, was adopted by that country's Council of Ministers and published on 12 February 2014. It focuses on economic, environmental and social challenges in order to promote sustainable development and economic competitiveness.

<sup>8</sup> In the words of A. de Senillosa, Director of the National Security Department of the Prime Minister's Office, "Whenever Spain resolutely turns its gaze to the sea, it behaves like the great country it is." (*The Sea: Strategic Scenario for National Security*, Spanish Maritime Cluster seminar, 26 November 2015.)

<sup>9</sup> G. Mulgan, *The Art of Public Strategy: Mobilizing Power and Knowledge for the Common Good* (Oxford University Press, Oxford, 2009). On national security strategies, see: M.A. Ballesteros, *En busca de una Estrategia de Seguridad Nacional* (Ministry of Defence, Madrid, 2016); and A.G. Stolberg, *How Nation-States Craft National Security Strategy Documents* (Strategic Studies Institute, U.S. Army War College, October 2012).

threats with a view to anticipating, preventing and responding to them, whilst all the while increasing the resilience and capacity to recover of the state and society at large.

In short, it is a model for understanding the major trends and drivers of change in security<sup>10</sup> that makes it possible to prepare the state and society to face long-term challenges. As such, a strategy must be acceptable, credible, legitimate, feasible and sustainable.<sup>11</sup> It can also be an important instrument of influence and diplomacy.

Whatever else it may be, a security strategy is an advanced mechanism for updating a state's vision and planning, to align its tools with the actual magnitude of the challenges looming over society and serve as a basis for whatever policy the government might implement in the matter.

Since 2012, when the process to prepare the National Security Strategy that would ultimately be approved in 2013 began, Spain has witnessed an unprecedented degree of development with regard to its security doctrine and strategic culture. One of its hallmark traits can be summed up in the maxim “from strategic thinking to action”, in the sense that documents must be “actionable”, capable of delivering results. This goal has been met in two ways: the establishment of an institutional system and organization designed to provide integrated modular responses and the design of a programmed, sustained and evolving work method set out in action plans.

In this regard, as a parallel institutional development simultaneous to the approval of the National Security Strategy, the National Security Council<sup>12</sup> was created, to serve as the cornerstone of the National Security System.<sup>13</sup>

Other fundamental and characteristic aspects of the new way of thinking and doing things when it comes to national security are today codified in law.<sup>14</sup>

I am referring to the effort to narrow the gap between national security policy and Parliament by means of a Joint Congress-Senate Committee and the related search for maximum parliamentary support.<sup>15</sup> I am also referring to the sharing of Spain's security project with the various public authorities, based on the conviction that national security requires a state policy.

Equally relevant is the gradual cultivation of a national security culture able to explain the importance of security for the full exercise of rights and public freedoms, as well as the involvement

<sup>10</sup> See: *Munich Security Report 2017: Post-Truth, Post-West, Post-Order?*, and *The Global Risks Report 2017* (World Economic Forum, 2017). On the maritime domain, see: *Global Marine Trends 2030* (QinetiQ, Lloyd's Register and Strathclyde University, Glasgow, 2013).

<sup>11</sup> *Thinking Strategically* (Royal College of Defence Studies, Defence Academy of the United Kingdom, October 2010). On the embodiment of these principles in the 2013 Spanish National Security Strategy and, thus, the consensus-based, participatory and feasible nature of the document's adoption, in accordance with Spain's country profile, see: J. Moragas, “La Estrategia de Seguridad Nacional”, *Política Exterior* (2013), 174.

<sup>12</sup> Royal Decree 385/2013, 31 May 2013, amending Royal Decree 1886/2011, 30 December 2011, establishing the Government's Delegated Commissions (*BOE No. 131*, 1 June 2013), and Arts. 17, 21 and 26 National Security Act.

<sup>13</sup> Arts. 18-21 National Security Act.

<sup>14</sup> Arts. 4-8 National Security Act.

<sup>15</sup> The National Security Strategy and the resulting National Maritime Security Strategy and National Cybersecurity Strategy of 2013, available at <http://www.dsn.gob.es>, were adopted with the support of the then-main opposition party. In 2015, the National Security Council adopted the National Energy Security Strategy, which is also available at the aforementioned website.

of agents from the public and private sectors in fulfilling this objective.<sup>16</sup>

The aforementioned pattern of coordinating reflection and action based on a permanent organizational foundation has been replicated in the field of maritime security. Following the approval of the Strategy, in February 2014, the National Maritime Security Council, tasked with providing support to the National Security Council in this matter, was set up to implement it.<sup>17</sup>

As for the principles of citizen and parliamentary involvement, the state of maritime security, the challenges entailed and the achievements made are an integral part of the Annual Report on National Security. This report has been submitted to Parliament following its approval by the National Security Council since 2013, when it was first submitted to the Constitutional Committee,<sup>18</sup> in an unprecedented effort to inform the public and Parliament of the measures taken in matters of maritime security. Since 2015, the reports have been submitted, by legislative mandate, to the Joint Committee on National Security.<sup>19</sup>

(C) A COMPREHENSIVE STRATEGY ADAPTED TO SPAIN'S DISTINCT MARITIME CHARACTER  
AND THE INHERENTLY INTERNATIONAL NATURE OF MARITIME SECURITY

The 2013 National Maritime Security Strategy is a document of the highest political order, a fact that reflects the sea's status as a theatre of interest, with economic-commercial, human, environmental, communicational, and geopolitical dimensions.<sup>20</sup> It is thus necessary to ensure high standards of maritime security in Spain and its surroundings.

With regard to this latter dimension of the sea as a space to project power, the strategic impetus given to maritime security in Spain was timely. Although this aspect of security seemed to have been relegated to the back burner following the stepped-up efforts to control the sea in the wake of 9/11, events have continuously reaffirmed the close link between maritime security and geopolitics and the

<sup>16</sup> Since 2013, the basic principles of national security have been unity of action, anticipation and prevention, efficient and sustainable use of resources, and resilience. Others arising from practice have since been added, such as ongoing assessment, which translates into the need to update the national security strategic policy framework at least once every five years. See Art. 4, National Security Act.

<sup>17</sup> See section D of this contribution.

<sup>18</sup> Appearances by the Chief of Staff of the Prime Minister's Office, J. Moragas, to present the Annual Report on National Security 2013 (Session Minutes of the Congress of Deputies [lower chamber of the Spanish Parliament], 15 July 2014, *Official Gazette of the Spanish Parliament* (BOCG) No. 615) and 2014 (Session Minutes of the Congress of Deputies, 28 April 2015, BOCG No. 797).

<sup>19</sup> Article 13 National Security Act. Appearance by the Chief of Staff of the Prime Minister's Office, J. Moragas, to present the Annual Reports on National Security for 2015 and 2016 (Session Minutes of the Joint Committees, 14 February 2017, BOCG No. 14).

<sup>20</sup> C. Bueger and T. Edmunds identify four core dimensions of maritime security: national security, the marine environment, economic development (meaning the "blue economy") and human security ("Beyond seablindness: a new agenda for maritime security studies", 93 *International Affairs* (2017) 1293, at 1299-1300). In this regard, maritime security sector reform is a key issue today. For an overview of the origins and meaning of this concept, see: J. Castellón, "Qué entendemos por reforma del sector de seguridad", in Instituto Español de Estudios Estratégicos, *La reforma del sector de la seguridad: el nexo entre la seguridad, el desarrollo y el buen gobierno*, Cuadernos de Estrategia 138 (Ministerio de Defensa, Madrid, 2008).

major changes in international politics and tensions.<sup>21</sup>

Security has served to shape international law of the sea and, especially, the LOSC,<sup>22</sup> which in some cases codified state practice or set forth the existing general consensus. For example, security interests drove the discussion and guided the agreement on issues such as the definition (and breadth) of areas such as the territorial sea—defined by Bynkershoek in the 18<sup>th</sup> century as extending as far as a cannon ball fired from the shore—<sup>23</sup> over which coastal states project their sovereignty and jurisdiction and in which they may thus exclusively exercise certain powers. They were likewise behind the right of innocent passage through the territorial sea,<sup>24</sup> so long as such passage is not prejudicial to the peace, good order or security of the coastal state, and the right of innocent or transit passage applicable to international straits of great strategic importance.<sup>25</sup>

In fact, the sea's contribution to the security of nations is what led to the development of international law of the sea,<sup>26</sup> the cornerstone for cooperation initiatives intended to facilitate optimal use of the opportunities the sea affords.

In this regard, the Spanish Strategy naturally underscores the role of the 1982 LOSC as the main international legal framework for marine areas and the starting point for any effort to address the challenges posed by maritime security, understood in the evolving sense described above.

Another key to understanding the Strategy is the close link between maritime security and other interests in the context of regional organizations of which Spain is a member, such as NATO, with its 2011 Maritime Strategy,<sup>27</sup> or the EU, which, in 2010, began to work on its current strategy, which was ultimately adopted in 2014.<sup>28</sup> Other forums and organizations have likewise positioned themselves and advanced in their understanding of maritime security.<sup>29</sup>

<sup>21</sup> Working document (07/2017) “Mares violentos”, Instituto Español de Estudios Estratégicos, available [here](#); M.T. Klare, “Mahan Revisited: Globalization, Resource Dependency, and Maritime Security in the Twenty-First Century”, in D. Moran and J.A. Russell (eds.), *Maritime Strategy and Global Order* (Georgetown University Press, Washington, 2016), 261.

<sup>22</sup> N. Klein, “Maritime Security” and D.R. Rothwell, A.G. Oude Elferink, K.N. Scott and T. Stephens, “Charting the Future for the Law of the Sea”, both in D.R. Rothwell, A.G. Oude Elferink, K.N. Scott, and T. Stephens, *The Law of the Sea* (Oxford University Press, Oxford, 2015) 582 and 888, respectively.

<sup>23</sup> As P. Andrés Sáenz de Santa María points out in *Sistema de Derecho internacional público* (Civitas-Thomson Reuters, Madrid, 2011), at 335, this links the sovereignty of the coastal state to the use of force. See also, N. Klein, “Maritime Security”, *supra* n. 22, at 582, who refers to the “cannon-shot”.

<sup>24</sup> Art. 19.2 LOSC.

<sup>25</sup> Arts. 34-45 LOSC.

<sup>26</sup> Preamble LOSC.

<sup>27</sup> NATO [Alliance Maritime Strategy 2011](#).

<sup>28</sup> It was in 2010 under the Spanish Presidency of the Council that the initiative to draft a Maritime Security Strategy for the European Union was launched. The issue was discussed by the Political and Security Committee on 17 June 2014, and the text was adopted by the General Affairs Council at its meeting of 24 June and subsequently endorsed by the European Council. See, T. Molina Schmid, “Los asuntos marítimos en el marco de la Unión Europea. Una estrategia de seguridad marítima de la UE”, in Various Authors, *Enfoque integral de la seguridad en el espacio marítimo español* (Escuela de Altos Estudios de la Defensa, Ministerio de Defensa, 2013) 61; R. Roy, “The European Union’s approach to maritime security”, in J. Krause and S. Bruns, *Routledge Handbook of Naval Strategy and Security* (Routledge, London, New York, 2016), 381.

<sup>29</sup> [Africa’s Integrated Maritime Strategy](#) (2050 AIM Strategy), 31 January 2014, and the African Charter on Maritime Security and Safety and Development, or “Lomé Charter”, adopted on 15 October 2016. On the seeming lack of adherence to inclusive and collective maritime security interests, see B.N. Patel, “Eight Dimensions of Maritime Security Law and Practice Among Member States of the Indian Ocean Rim Association”, in C. Espósito, J. Kraska, H.N. Scheiber and M-S

The Spanish Strategy takes a convergent approach. It analyses security comprehensively and, after identifying the challenges, creates an institutional system to enable equally comprehensive action in terms of anticipation, prevention and response.

### (1) A Comprehensive Approach to Maritime Security

Spain's National Maritime Security Strategy established a pattern that can be seen in the strategies subsequently adopted by its neighbours in the EU or that had been put forward by traditional maritime powers.<sup>30</sup> It is a pattern marked by a broad, holistic ambition, encompassing the various risks and threats to be addressed and interests to be protected, a comprehensive vision with consequences for the governance of the maritime domain.

This “360° vision” of maritime security in Spain stems from its concept of national security,<sup>31</sup> which comprises, in concentric circles, the protection of its citizens, the defence of Spain and its constitutional principles and values, and the country's contribution to international security. Today it is impossible to differentiate between internal and external security. In a world in constant flux, a world that is globalized and interconnected but also fragmented,<sup>32</sup> where threats are cross-cutting, transnational and intertwined, the blurring of this boundary is clear: security begins beyond our borders. To be effective, any response must be comprehensive and include both domestic and international cooperation.

This is especially true with regard to the sea, whose inherent characteristics make it quite particular. It is a four-dimensional ambivalent environment,<sup>33</sup> open and difficult to control, in which risks and threats are easily projected and easily transcend; a space without visible borders, which facilitates interconnection and interdependence; a space with very different yet intimately related zones,<sup>34</sup> as well as areas —some quite remote— that lie beyond the sovereignty and jurisdiction of states, which cannot be appropriated but rather are governed by the principle of freedom.

The changing and evolving nature of maritime security has been theorized in relation to the discipline of international relations. Recently, the need to advance in this field “beyond seablindness”

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Kwon (eds.), *Ocean Law and Policy: 20 Years under UNCLOS* (Brill-Nijhoff, Leiden, Boston, 2016), 249-265.

<sup>30</sup> In addition to the aforementioned strategies adopted by EU Member States, see the [US National Strategy for Maritime Security](#) (2005).

<sup>31</sup> 2013 and 2017 Spanish National Security Strategies and Art. 6 of the National Security Act. On the concept of national security, see: Opinion of the Spanish Council of State, 13 May 2015, on the National Security Bill ([Document CE-D-2015-405](#)). See also: D. A. Baldwin, “The Concept of Security”, 23 *Review of International Studies* (1997), 5-26; B. Finel, “What is Security? Why the Debate Matters”, 4 *National Security Studies Quarterly* (Fall 1998), 1-18; L. Lazarus, “The Right to Security”, in R. Cruft, S. Matthew Liao and M. Renzo (eds.), *Philosophical Foundations of Human Rights* (Oxford University Press, Oxford, 2015), 423; I. Loader and N. Walker, *Civilizing Security* (Cambridge University Press, Cambridge, 2007), on security as a global public good.

<sup>32</sup> On “decentralized globalism” see: B. Buzan and G. Lawson, *The Global Transformation. History, Modernity and the Making of International Relations* (Cambridge University Press, Cambridge, 2015).

<sup>33</sup> Insofar as it not only encompasses the area occupied by water, but the coast, littoral, continental shelf, international seabed area, airspace and cyberspace. See: C. Schofield, “Ever More Lines in the Sea: Advances in the Spatial Governance of Marine Space” in C. Espósito, J. Kraska, H.N. Scheiber and M-S Kwon (eds.), *supra* No. 29, at 387-418.

<sup>34</sup> Preamble LOSC.

has become clear; it is a matter deserving its own differentiated space.<sup>35</sup> In any case, the all-encompassing approach to maritime security is the most widely shared.<sup>36</sup>

In Spain, national maritime security is understood as the action of the state aimed at protecting national interests related to:<sup>37</sup> 1) compliance with national legislation and international law in maritime areas under Spanish sovereignty and jurisdiction and respect for international rules on the high seas, in adherence to Spain's international commitments; 2) protection of human life at sea; 3) freedom and security of navigation; 4) maritime trade and transport; 5) the shipping industry and other maritime industries; 6) the security of ships flying the Spanish flag (merchant, fishing and recreational fleets); 7) ports and maritime infrastructure, including off-shore facilities, oil pipelines, underwater pipelines and submarine cables, as well as critical infrastructure located along the coastline; 8) marine resources (living and non-living); 9) the marine environment; and 10) underwater archaeological heritage.

These interests reflect Spain's unique maritime condition, in which geographical and political aspects that underlie the Strategy are decisive.

With a coastline spanning almost 8,000 kilometres and a marine area of around 1.1 million square kilometres,<sup>38</sup> Spain is the fourth-largest country in Europe. In the current panorama of interdependent, liquid<sup>39</sup> security—an especially appropriate term in this context—the sea is an essential element for the country.

Spain's distinctive geostrategic profile moreover requires it to have peripheral vision. Lying at the crossroads between Europe and North Africa, the Mediterranean and the Atlantic, comprising a peninsular mainland, archipelagos, islands and sovereign territories in North Africa, bordering the Strait of Gibraltar, one of the world's busiest bottlenecks, with an average transit of more than 100,000 ships a year,<sup>40</sup> Spain is a bridge between countries and cultures, unavoidably exposed but also exceptionally positioned with regard to the sea.

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<sup>35</sup> C. Bueger and T. Edmunds (*supra* No. 20, at 1293-1311) offer an account of the realist interpretation of security at sea found in G. Till, *Seapower: A Guide for the Twenty-First Century* (Routledge, New York, 2013), although in my view, certain qualifications can be found. They also identify the liberal approach, represented by J. Kraska and R. Pedrozo, *International Maritime Security Law* (Brill, Leiden, 2013), associated with the rise of international governance regimes, since the sea is a space in which a collective public order is manifested. Finally, they cite B. Buzan, O. Waever and J. de Wilde (*Security: a new framework for analysis* (Lynne Rienner, London, 1998)) as theorists who consider maritime security a distinct subset of security thinking, including but not limited to the previous two dimensions referring to power and law at sea.

<sup>36</sup> C. Bueger, "What is maritime security?", 53 *Marine Policy* (2015), 159-164; L. Feldt, P. Roell, R.D. Thiele, "Maritime Security – Perspectives for a Comprehensive Approach", 222 *Institute for Strategic, Political, Security and Economic Consultancy* (2013); J. Kraska and R. Pedrozo, *supra* No. 35; J. Klein, "Maritime security" in S. Jasper (ed.), *Securing freedom in the global commons* (Stanford University Press, Stanford, 2010), 69; N. Klein, *supra* No. 22, at 582. For C. Bueger and T. Edmunds (*supra* No. 20, at 1293, 1300-1302), this vast object explains the interconnected nature of the risks and threats to maritime security, their transnational and inter-jurisdictional nature, and their "liminality", meaning, their extension to the coast.

<sup>37</sup> National Maritime Security Strategy and "La organización de la Seguridad Marítima en España: oportunidades y desafíos", restricted report, presented to the National Maritime Security Council on 9 December 2014.

<sup>38</sup> Data available [here](#).

<sup>39</sup> See M. Leonard, "[The Era of Mutual Assured Disruption](#)", in reference to the work of Z. Bauman, *Liquid Modernity* (Polity Press, Cambridge, 2012) and *Liquid Times: Living in an Age of Uncertainty* (Polity Press, Cambridge, 2007).

<sup>40</sup> Data from the Maritime Security Agency.

Additionally, although virtually all aspects of maritime security fall under the exclusive jurisdiction of the state, given that the country's autonomous regions and municipalities lack jurisdictional waters, the responsibility for maintaining this security does not lie solely with the Spanish government and central government authorities; it also falls to the other public authorities, autonomous regions and local councils, especially in matters related to fisheries, underwater cultural heritage and environmental protection.

National maritime security is integrated into the Spanish “state of autonomous regions”. In Spain, competence in the field of maritime security is shared both vertically and horizontally.<sup>41</sup> Thus, the general principles of organization and operation of relations between public authorities apply, including institutional loyalty, collaboration, cooperation, coordination and efficient management of public resources.<sup>42</sup>

## (2) National Maritime Interests *versus* Risks and Threats: Comprehensive Modular Responses to Multiform Global Challenges

As noted, the Spanish Strategy identifies highly diverse maritime interests to be protected from challenges due to a variety of causes. Indeed, very different factors can jeopardize maritime security, depending on whether the cause is social, technological, geopolitical, economic, environmental or a natural disaster. The source or reason is rarely monocausal.

The Strategy chooses to classify risks and threats by whether they originate in deliberate acts of a criminal nature or are the result of accidents or chance.<sup>43</sup> It thus distinguishes between, on the one hand, illicit acts —trafficking, piracy, terrorism, weapons proliferation, irregular immigration and human trafficking, illegal exploitation of marine resources, destruction and degradation of the marine environment, acts against underwater cultural heritage and cyber threats— and, on the other, maritime accidents and natural disasters.

In addition to these risks and threats, it takes into account the existence of multipliers<sup>44</sup> that can be conducive to their emergence or accelerate or aggravate them. Poverty, inequality, demographic imbalances and climate change would fall into this category. In this regard, the Spanish National Maritime Security Strategy notes that unsettled maritime boundaries with neighbouring countries are also likely to generate friction and affect national maritime security interests.

On this basis and with the understanding that the ultimate aim of maritime security is to help facilitate the maximum use of the opportunities afforded by the lawful uses of the sea for the benefit of Spain's wellbeing and prosperity, always in consonance with its commitments to and common projects with its partners and allies and bearing in mind the aspirations of the international

<sup>41</sup> G. Guerra, “Administración y protección marítima”, in Various Authors, *Enfoque integral de la seguridad en el espacio marítimo español* (Escuela de Altos Estudios de la Defensa, Ministerio de Defensa, 2013), 183.

<sup>42</sup> Law 40/2015, 1 October 2015, on the legal framework applicable to the public sector ([BOE No. 236](#), 2 October 2015); “La organización de la Seguridad Marítima en España: oportunidades y desafíos”, *supra* No. 37.

<sup>43</sup> R. Calduch, “Riesgos, amenazas y escenarios en el enfoque integral de la Seguridad marítima española”, in *Enfoque integral de la seguridad en el espacio marítimo español* (Escuela de Altos Estudios de la Defensa, Ministerio de Defensa, 2013).

<sup>44</sup> Instituto Español de Estudios Estratégicos, [Los potenciadores del riesgo](#), Cuadernos de Estrategia 159 (Ministerio de Defensa, Madrid, 2013).

community as a whole, the Strategy establishes a general objective, identifies four basic principles, and lays down five lines of action to guide the state's actions in pursuit of that objective.

The objective is to promote a wide-ranging maritime security policy informed by the principles contained in the National Security Strategy through strategic lines of action that pursue a comprehensive approach, efficiency, international cooperation, partnership with the private sector, and enhanced cybersecurity in the marine environment.<sup>45</sup>

Finally, the Strategy describes the mechanism of the institutional maritime security architecture within the National Security System, the ultimate purpose of which is to strengthen decision-making at the strategic policy level.

#### (D) THE IMPLEMENTATION OF SPAIN'S NATIONAL MARITIME SECURITY STRATEGY

The division of public power in Spain, a highly decentralized state in matters of maritime security, explains why one of the guiding principles of the 2013 National Maritime Security Strategy is unity of action, coupled with recourse to the system technique to coordinate and align actions and instruments.

To this end, the National Security System, promoted and led by the Prime Minister, was established in 2013. The system is based on the National Security Council, which, in its capacity as the Government's Delegated Commission for National Security, assists the Prime Minister in directing the National Security Policy and actions related to crisis management.

The National Maritime Security Council and the Situation Committee were created as support bodies for the National Security Council for the management of crises, including maritime ones, situations in which unity of action is essential to ensuring efficiency and a coordinated response.

##### (1) The National Maritime Security Council

On the initiative of the National Security Council, the National Maritime Security Council was created as a support body in the maritime domain the same day the National Maritime Security Strategy was approved. It held its constituent meeting on 28 December 2014. The president of the Council is the Chief of the Defence Staff; the vice-president is the Director of the National Security Department. A seat on the council is also reserved for the Operations Director of the National Security Department, so that the department can ensure the continuity of the work promoted by each Council presidency, which was initially conceived of as rotating.

The Council is a coordinating body whose actions have made the National Maritime Security Strategy a useful, actionable, living document that has remained current since its approval. In addition to the competent ministerial departments, the other public authorities, private sector, and society at large may also participate. With regard to the central government authorities, not only are the "canonical" ministries competent and represented, i.e. the Ministries of Defence,<sup>46</sup> Finance and Civil

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<sup>45</sup> The latter two lines of action were coordinated in Spain in collaboration with the Spanish Maritime Cluster.

<sup>46</sup> Organic Law 5/2005, 17 November 2005, on National Defence ([BOE No. 276](#), 18 November 2005) and Ministerial Order 86/2012, 4 December 2012, creating the Maritime Security and Surveillance Command and the Defence and Air

Service,<sup>47</sup> Home Affairs<sup>48</sup> and Public Works,<sup>49</sup> all of which have broad missions and centres and resources at sea; in the preservation of maritime security, understood in a broad sense including all potential risks or threats, nearly all the central ministries participate. The National Maritime Security Council's composition reflects this division of competences.<sup>50</sup>

As for its legal nature and functions, the National Maritime Security Council is a collegial body that supports the National Security Council and, therefore, the Prime Minister within the framework of the Government Act.<sup>51</sup> Consequently, the National Maritime Security Council is not attached to any ministerial department. Its functions are to reinforce coordination, collaboration and cooperation amongst the various competent authorities.

Additionally, the Council pursues the necessary initiatives to ensure the harmonious evolution of the National Maritime Security Strategy with regard to the Integrated Maritime Policy, the European Union Maritime Security Strategy and other international strategies. It also performs risk and threat assessments.

At its meeting on 9 December 2014, it approved the National Maritime Security Strategy Action Plan, which was endorsed by the National Security Council at its meeting on 23 January 2015.

## (2) The Spanish Maritime Strategy Action Plan

The Council presidency was extremely proactive in fulfilling its mandate.<sup>52</sup> It submitted for consideration an Annual Plan based on five long-term projects, as well as a draft Action Plan that proposed, amongst other things, the establishment of a National Maritime Surveillance Centre, the creation of a permanent maritime security body, the coordination and suppression of conflicts amongst the various maritime services, and the establishment of a virtual coast guard service.

Indeed, the best way to promote coordinated action through a joint maritime security operations

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Operations Command (*Official Defence Gazette* No. 242, 13 December 2012).

<sup>47</sup> Law 31/1990, of 27 December 1990, on the State Budget for 1991, creating the State Tax Administration Agency (AEAT from the Spanish) (BOE No. 311, 28 December 1990), and Order PRE/3581/2007, 10 December 2007, establishing the departments of the State Tax Administration Agency and attributing to them functions and powers implemented in Organic Law 12/1995, 12 December 1995, on the deterrence of smuggling, amended by Organic Law 6/2011, 30 June 2011 (BOE No. 296, 11 December 2007).

<sup>48</sup> Organic Law 2/1986, 13 March 1986, on Security Forces and Corps (BOE No. 63, 14 March 1986), and Order PRE/2523/2008, 4 September 2008, creating the Civil Guard centres for the maritime surveillance of coasts and borders (BOE No. 215, 5 September 2008).

<sup>49</sup> Royal Legislative Decree 2/2011, 5 September 2011, approving the consolidated text of the State Ports and Merchant Marine Act ([BOE No. 253](#), 20 October 2011).

<sup>50</sup> In addition to the Ministries of Defence, Finance and Civil Service, Home Affairs and Public Works, the following ministries and bodies are represented: Ministry of Foreign Affairs and Cooperation; Ministry of Education, Culture and Sport; Ministry of Energy, Tourism and Digital Agenda; Ministry of Agriculture, Fisheries and Food and Environmental Affairs; Ministry of the Presidency and Regional Administrations; Ministry of Economy, Industry and Competitiveness; the National Intelligence Centre; and the National Security Department (Prime Minister's Office). Other competent ministerial departments, central, regional or local government authorities or experts able to make a valid contribution may also be invited depending on the matter to be discussed.

<sup>51</sup> Law 50/1997, 27 November 1997, on the Government ([BOE No. 285](#), 28 November 1997).

<sup>52</sup> The presidency of the Council was held by General Admiral F. García Sánchez, Chief of the Defence Staff, until June 2017.

centre or body was one of the most debated aspects in the deliberative and analytical process leading up to the Strategy's implementation.<sup>53</sup>

By initiative of the presidency and decision of the Council, the Maritime Security Research Group was created in the National Security Department of the Prime Minister's Office. It was tasked with identifying the strengths, weaknesses, opportunities, and threats of the Spanish maritime administration model and analysing other cooperative and centralized models, including the one proposed by the presidency, with a view to assessing their potential transfer to the Spanish system and, therefore, their suitability, viability and acceptability, i.e. their functionality and regulatory and economic impact.<sup>54</sup>

The report's conclusions are reflected in the Action Plan.<sup>55</sup> Despite their intrinsic value, the proposals to create new bodies included in the document submitted by the presidency were deemed premature and likely to have a strong regulatory impact. Nevertheless, they were largely included in the line of action to enhance the comprehensive approach as part of the dimension concerning the strengthening or creation of new bodies.

The Action Plan reifies and develops the Strategy's five lines of action – comprehensive approach, effectiveness and efficiency, international cooperation, public-private partnership and cybersecurity – in the form of fourteen specific actions. These specific actions are divided amongst the five lines of action according to a 5+5+1+2+1 scheme that places clear emphasis on the comprehensive approach and effectiveness and efficiency lines.<sup>56</sup> Management of these actions is assigned to a member of the National Maritime Security Council according to a schedule. In the following paragraphs, I will highlight just a few of the actions undertaken under the first line of action, concerning the comprehensive approach.

The first line of action is broken down into five specific actions. Three involve the strengthening or creation of new bodies, one is technical, and the fifth is functional. Specifically, the first three concern the creation of a maritime security office, the strengthening of the National Security Department's Situation Centre, and the creation of a Cell for Information and Analysis of Risks and Threats to Maritime Security (CIARA from the Spanish).

Attention should be called to the importance of this latter body, chaired by the Deputy Director General of the Armed Forces Intelligence Centre (CIFAS) and with representatives from all the ministerial departments and bodies with seats on the National Maritime Security Council itself. Constituted on 11 June 2015, the CIARA performs a twice-yearly assessment and monitoring of risks and threats, paying particular attention to their likelihood, and prepares extraordinary reports

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<sup>53</sup> F. del Pozo, "La seguridad marítima hoy: la mar nunca está en calma", *Real Instituto Elcano* (Documento de Trabajo 3/2014, 12 March 2014).

<sup>54</sup> "La organización de la Seguridad Marítima en España: oportunidades y desafíos", *supra* n. 37.

<sup>55</sup> On 23 January 2015, the National Security Council endorsed the National Maritime Security Strategy Action Plan, previously approved by the National Maritime Security Council on 9 December 2014.

<sup>56</sup> The action line concerning effectiveness and efficiency is implemented through five actions. Two are related to material resources and capabilities with a view to listing and cataloguing these resources and capabilities, respectively, in light of the recommendations contained in the Report on the Reform of Public Administrations (CORA). The other three concerns: cooperation in the field of training and capacity-building; the development of an Underwater Archaeological Heritage Catalogue; and biodiversity protection and marine spatial planning.

whenever the circumstances so require.

Within the comprehensive approach line, and in relation to the above, the technical action has consisted of the development of systems to enable the exchange and sharing of maritime security information at the national level. This has resulted in the development of the SEGMAR tool, designed to support maritime security bodies in decision-making by providing them with aggregate data,<sup>57</sup> and the *Colabora* portal, a single document repository for the entire maritime administration represented on the National Maritime Security Council.

The fifth and final action undertaken under the umbrella of strengthening the comprehensive approach is functional and consists in improving operational cooperation and collaboration. In this regard, attention should be called<sup>58</sup> to the approval of the Maritime Security Operations Coordination and Cooperation Agreement and the Comprehensive Plan for Maritime Security in the Strait of Gibraltar or MARES Plan.<sup>59</sup>

#### (E) CRISIS MANAGEMENT IN THE SPANISH NATIONAL SECURITY SYSTEM

The National Security Act developed and advanced the regulatory framework for crisis management in Spain, which was designed to accommodate the decentralized territorial organization of the state enshrined in Title VIII of the Constitution. This framework was thus conceived of as a space for inter-administration action according to the competences attributed to each administration by the Constitution and the respective Statutes of Autonomy, to be governed by the general principles of mutual trust and cooperation set out in the regulations governing the public sector regime.

The National Security Act aims to improve coordination amongst the competent authorities, the private sector and civil society through permanent, modular prevention and response frameworks that do not need to be assembled *ad hoc* for each crisis. It thus seeks to move beyond compartmentalized action in this area in order to address the cross-cutting nature of most crises, which generally require the involvement of multiple actors to be resolved.

In the maritime sphere, prior to the Act's passage, crises such as the sinking of the *Prestige* in 2002 or the massive arrival of irregular immigrants to the Canary Islands in 2006 were managed by crisis cells set up *ad casum*.

The National Security Act signalled an advance in the integration of actions for a comprehensive response. To this end, within the government, the National Security Council was created at the

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<sup>57</sup> SEGMAR is a modular IT system with three main features: a video-conference system for the coordination of operations centres, a chat feature to facilitate 24/7 monitoring, and a geographic viewer with different layers of information.

<sup>58</sup> Also of relevance is the maritime dimension of the report on terrorist threat levels and their alignment with the International Ship and Port Facility Security Code (ISPS) levels (Report of the Secretary of Homeland Security, Ministry for Home Affairs, 22 September 2015). The ISPS was adopted into the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) in a new Chapter following the 9/11 attacks in the United States of America.

<sup>59</sup> The first one offers a framework for interministerial cooperation initiatives in the field of maritime operations. The MARES Plan officially outlines the coordination procedure for addressing potential risks and threats arising in the maritime area running from Cape Gata, Almería, to the province of Huelva. The area is subject to heavy global maritime traffic and significant east-west and north-south trade flows through ports such as Algeciras, which have registered increasing volumes of container traffic and are the focus of multiple international geostrategic interests.

strategic policy level and tasked with assisting the Prime Minister in directing and coordinating actions to manage crisis situations and, in particular, situations of interest for national security. This it would do with the support of the Specialized Situation Committee, which is the same for all crisis situations regardless of their nature or the area they affect.<sup>60</sup> If activated, this committee may supplement its actions with other specialized bodies, such as the National Maritime Security Council.

A situation of interest for national security<sup>61</sup> refers to a state prior to one of constitutional anomaly.<sup>62</sup> This includes contingencies in which the severity of the effects of the situation and the dimension, urgency and cross-cutting nature of the measures required for its resolution call for enhanced coordination of the competent authorities in the performance of their ordinary duties and powers, without this coordination ever entailing the suspension of the fundamental rights and public freedoms of citizens. This would have been the case in the aforementioned maritime crises in 2002 and 2006.<sup>63</sup>

With regard to the role of specialized bodies such as the National Maritime Security Council of supporting the Situation Committee, in November 2014, the Council held two extraordinary sessions in relation to the incident involving the Greenpeace vessel Arctic Sunrise and its actions protesting the exploratory work being carried out by the Repsol drillship Rowan Renaissance in Canary Island waters east of Fuerteventura and Lanzarote. The meetings enhanced interministerial coordination at the strategic policy level.

As for the migrant and refugee crises, one of the response measures adopted was the joint activation, on 27 April 2015, of the National Maritime Security Council with the Immigration Committee. The purpose of the meeting, which was co-chaired by the Chief of the Defence Staff and the Secretary of State for Security, was to prepare the measures to comply with the resolutions of the extraordinary meeting of the European Council in April 2015.

## (F) CONCLUSION

In a globalized world, good governance of the sea is vital. Cooperation between states is essential both to ensure better use of the opportunities afforded by this domain and to tackle the security challenges arising in it. The maritime space is inherently international. In particular, international law of the sea and, more specifically, its flagship, the LOSC, are often underpinned by the maritime security interests of states. These interests evolve and are currently quite diverse.

Maritime security occupies an important place on the agendas of states and international organizations. In their strategic documents, the prevailing approach to maritime security is a comprehensive one. This approach has expanded beyond the canonical power and control of the sea to

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<sup>60</sup> The Situation Committee will be chaired by the National Security Council member or the acting authority appointed by the Prime Minister, as appropriate.

<sup>61</sup> Art. 23 ff. National Security Act.

<sup>62</sup> Organic Law 4/1981, 1 June 1981, on States of Alert, Emergency and Siege ([BOE No. 134](#), 5 June 1981).

<sup>63</sup> The Prime Minister can determine the necessary human and material resources to be provided by the competent authorities. The contribution of resources according to the principles of gradual and proportional contribution in accordance with the situation and compensation is regulated under Title IV of the National Security Act.

today encompass economic, human or environmental factors as well.

Spain has been a trailblazer in the EU. Through its National Maritime Security Strategy it showed, first, that in the 21<sup>st</sup> century any understanding of maritime security must be all-encompassing and relational and, second, that the present and future uses of the sea are of utmost importance for a seafaring country, open to the Mediterranean and the Atlantic, with a maritime past, legacy, prestige and ambition.

One of the challenges of the maritime security governance model is to reflect and unite the vast diversity it encompasses and to defend common interests and values. Furthermore, it must do all this in an unstable world that is changing at an unprecedented speed, with known and unknown systemic and global risks and threats requiring global responses. To pursue this unifying goal, Spain created the National Maritime Security Strategy and the National Maritime Security Council, based on the conviction that no challenge can outweigh the will to overcome it.